

# 2019 Mid-Level Professional Development Program

#### **Practice Tips from the Bench**

**Curtis S. Miller, Moderator** 

Morris, Nichols, Arsht & Tunnell LLP; Wilmington, Del.

Hon. Shelley C. Chapman

U.S. Bankruptcy Court (S.D.N.Y.); New York

Hon. Barbara J. Houser
U.S. Bankruptcy Court (N.D. Tex.); Dallas

o.s. bankropicy court (N.b. 10x.), bands

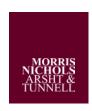
Hon. Vincent F. Papalia

U.S. Bankruptcy Court (D. N.J.); Newark



## ABI 2019: Mid-Level Professional Development Program

Practice Tips from the Bench



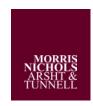
#### **Panelists**

- Hon. Shelley C. Chapman\*
  - U.S. Bankruptcy Court (S.D.N.Y.)
- Hon. Barbara J. Houser\*
  - U.S. Bankruptcy Court (N.D. Tex.)
- Honorable Vincent F. Papalia\*
  - U.S. Bankruptcy Court (D.N.J.)

#### Moderator:

- Curtis S. Miller
  - Morris, Nichols, Arsht & Tunnell LLP

<sup>\*</sup> Nothing the Judges say today may be construed as precedent or as dictating the outcome of pending or future cases before them.



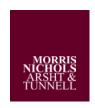
#### **Topics**

- Oral advocacy
- Written advocacy
- Expert analysis and testimony

MORRIS NICHOLS ARSHT & TUNNELL

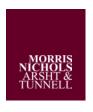
#### Oral Advocacy

- Preparation for oral argument
  - 。Practice, Practice, Practice
  - 。 Observe oral argument in front of Judge
  - Know the facts of your case inside and out
  - Know the relevant pleadings and case law inside and out, including your opponent's cases
- Presentation and organization of oral argument
  - . The importance of roadmapping
  - 。 Address each argument in turn
  - Speak clearly and at a normal pace



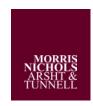
#### Oral Advocacy

- Highlighting the strengths and addressing the weaknesses of an argument
  - Know the strengths and weaknesses of your argument and your opponent's
  - Focus on the most important points
  - Concede and address weaknesses when necessary
  - Anticipate the hard questions and prepare responses in advance



### Oral Advocacy

- Addressing questions from the Court
  - Welcome questions from the Court
  - Address questions directly
- Do's and don'ts during oral argument
  - Be respectful, credible and flexible
  - Minimize rhetoric
  - Do not attack the other side
- Pet Peeves



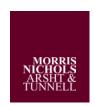
#### Written Advocacy

- Organizing the brief
  - 。Roadmap
  - 。 Address each issue in turn
- Maximizing the effectiveness of a preliminary statement
  - Keep it clear and concise
  - Provide an overview of the argument and why you should win



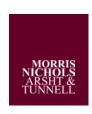
#### Written Advocacy

- Presentation of the facts in a brief
  - Provide the story for the Court
  - Highlight the most important facts for your arguments
- Making the arguments
  - Focus on your best arguments rather than make as many as possible
  - 。 Distinguish unfavorable case law



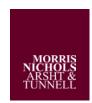
#### Written Advocacy

- Do's and don'ts of brief writing
  - Make it easy for the reader (a/k/a the Court)
  - Write clearly and concisely
  - Minimize rhetoric
  - Do not attack the other side
  - Be credible



#### **Expert Testimony**

- Testimony:
  - 。Be honest
  - Don't speculate
  - Be cautious about volunteering helpful information
  - Take your time to think before answering questions
  - Ask for clarification if necessary
  - Consider whether lay opinion testimony is more appropriate
- Declarations/Affidavits:
  - Review carefully You will be crossed on anything filed
  - Don't sign if you're uncomfortable



### Question and Answer

• Questions?

11



These materials have been prepared solely for informational and educational purposes, do not create an attorney-client relationship with the author(s) or Morris, Nichols, Arsht & Tunnell LLP, and should not be used as a substitute for legal counseling in specific situations. These materials reflect only the personal views of the author(s) and are not necessarily the views of Morris, Nichols, Arsht & Tunnell LLP or its clients.

Copyright © Morris, Nichols, Arsht & Tunnell LLP. All Rights Reserved.