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Dicta

By Hon. LaShonda A. Hunt

Mirror, Mirror on the Wall

Observations on Trial Practice from the Other Side of the Bench

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I am a proud unicorn: one of those bankruptcy judges who did not practice bankruptcy before her appointment to the bench. The last four years have been a wild and sometimes bumpy ride, as I've struggled to learn a foreign language filled with acronyms, jargon and Bankruptcy Code sections. Still, I like to believe that some aspects of my generalist background helped prepare me to serve as a trial judge. After all, I was a commercial litigator at a national law firm, a federal law clerk on the district court and appellate levels, an in-house lawyer for a major utility company (where I had some exposure to mega-cases), and general counsel for a couple of state agencies. A jack-of-all-trades who knows a little about a lot is an accurate description of me.

One past position that has proved most helpful, though, is as Assistant U.S. Attorney in the Civil Division. We were trial lawyers representing the Department of Justice in defense of the federal government and agencies in a variety of cases. I handled the full range of civil lawsuits and did everything from drafting pleadings to trying cases to arguing appeals. It was a great way to learn how to master all aspects of the civil litigation process. Knowing how to manage discovery, engage experts, apply the rules of evidence and present a case definitely comes in handy as a new trial judge.

I was fortunate to attend several of the Department of Justice's nationally recognized training programs on trial advocacy. Because so few civil cases make it to trial anymore, opportunities for any lawyer to learn by doing are limited. Mock trial exercises fill a critical gap, especially for new lawyers who want to hone their skills and develop into effective litigators.

One of my most memorable experiences as a new Assistant U.S. Attorney involved videotaping my mock trial performance and having experienced faculty members — practitioners and federal judges — offer criticism. That was when I discovered my tendency to blink a lot, make strange faces and gesture extensively with my hands. It was unnerving, to say the least, to see on the screen my every imperfection. I wondered whether a jury could even focus on what I was saying or whether they were too distracted by my nervous tics. Fast-forward to today, a world filled with Zoom trials, and now my face is front and center for everyone to see up close and personal. Even worse, Zoom has a mirror feature that allows me to see myself. At least in the courtroom wearing reading glasses, I could shield my expressions from the litigants at the podium. Suffice it to say, I was not blessed with a poker face. (Thankfully, a kind colleague has since shown me how to hide the self-view.)

But remembering that video of myself years ago and constantly seeing my own reflection today prompted me to consider what others take away from our performances in the courtroom. Now, sitting on the bench as a trier of fact gives me a unique vantage point to observe lawyers at trial. Having had many bench trials, simple and complex, in person and virtually, and given my own experiences as a trial lawyer, I have a few pointers to share. I call them the four Ps of trial practice.

Preparation

Prepare for the long game and assume that the dispute will be decided after a trial. I was warned before taking the bench that bankruptcy lawyers avoid trials like the plague (although perhaps this is not the best metaphor these days). I have certainly received that last-minute call to chambers explaining that the parties have suddenly settled. Usually, that is the best result for everyone involved. Indeed, it is far more economical to settle than to roll the dice with a judge who is not familiar with the particulars of the situation.

Although our job as judges is to rule on disputed issues, I urge litigants to sit down and talk first. Stop fighting and see if there are areas of agreement you can use to build consensus. Parties tend to be happier with the deals they broker themselves than with decisions a court imposes. Wise attorneys also recognize the danger in pressing the unfortunate combination of bad facts and unfavorable law.

That said, counsel should always proceed on the assumption that the matter will go to trial. Why? Because a case usually has three potentially dispositive stages — motion practice, settlement or trial — and each involves a different case-management strategy. Of these, trials require the most forethought, the most case assessment.

How does case assessment work? Consider a common nondischargeability adversary proceeding alleging that the debtor fraudulently induced the creditor to lend money that the debtor never intended to repay.

- First, start with the complaint and answer, along with the relevant case law or statu-

tory provisions, and identify your theory of the case. Usually an adversary like this hinges on the debtor's intent to defraud.

• Next, think about whether *you* have to prove your theory, and if so, how you will do that. Determine the elements of the claim and who bears the burden of proof. If any affirmative defenses are raised, ask the same questions: What are the elements, and who has the burden?

• Now, examine the evidence and consider whether it supports or contradicts each element. As you proceed in discovery, continue to assess the evidence and whether it fits into the analytical framework. If the facts are unfavorable to your theory, how will you explain them away?

All of this information should be organized neatly in your trial notebook, which is nothing more than a fancy binder with tabs. The goal is to ensure that if you get to trial, you will be able to tell a compelling story, one consistent with the evidence. And if you find that those unfavorable facts can't be explained, that tells you that settlement might be something to consider seriously. If you approach preparation in a strategic and focused manner, you will be in a better position to understand the issues along the way and pivot if necessary.

Pursuit

Pursue every form of discovery. With limited exceptions, the civil discovery rules apply in contested matters and adversary proceedings in bankruptcy. These rules give litigants powerful tools to investigate and uncover relevant information about the claims and defenses. Discovery also offers a chance to assess the strength of the evidence as you prepare for trial or settlement discussions. Without discovery, parties are flying blind.

Except in the largest cases, written discovery can be quick and inexpensive. Carefully drafted document requests can force your opponent to produce every potentially harmful or beneficial piece of paper in the case. Interrogatories can help you come to understand the factual support for the claims and defenses, as well as identify witnesses with knowledge who might need to be deposed.

Requests to admit are another gem too often overlooked. If drafted properly, requests to admit can eliminate factual disputes and ease problems of proof at trial.

Oral depositions are more expensive, but they, too, are a worthwhile tool for locking in an opponent's story. Transcripts let you hold witnesses to their stories under oath and subject them to impeachment if they deviate. Too often, I have seen cross-examination go awry when an unexpected answer from an undeposed witness takes counsel by surprise. As a former litigator, I am shocked at the number of bankruptcy matters that proceed to trial after limited or no discovery. Even in smaller-dollar cases, the opportunity to nail down the witness and eliminate wiggle room should not be overlooked. Judges' rulings often hinge on witness credibility determinations.

Remember that your opponents have no reason to share their version of the facts, but they can be made to through discovery. Discovery is an integral part of trial preparation that can make or break a case.

Positioning

Position your client for success by developing a solid plan for getting your evidence into the record and keeping out your opponent's. Determine which witnesses and documents will be needed to prove the claims or defenses, and consider potential barriers to admissibility. Often, parties simply assume that their evidence will be admitted. Better to make the opposite assumption and anticipate the objections your opponent might raise. I have lost count of the number of times counsel, faced with unanticipated objections, appear to be at a loss for words or, even worse, flash that "deer in the headlights" look.

To avoid evidentiary squabbles, some judges enter detailed pretrial orders requiring parties to exchange witness and exhibit lists (as well as proposed exhibits) and identify objections before the trial. But not all do, and if your document is rejected, the one critical to proving an element of your claim, you may fail to meet your burden of proof. So be ready — and have a backup plan to get the information into the record. Review the rules of evidence before the objection arises at trial. Comb through the discovery responses to find other admissible evidence that can also prove the point.

In addition, don't do a data dump, where parties try to have admitted into the record every piece of paper produced in discovery for fear of missing something. Instead, go back to your trial notebook and decide what is relevant to the contested legal issues. By this point, you should know the critical testimony and documents well, particularly what helps and what hurts your case. That way, you can easily adjust your trial strategy if certain evidence is allowed in or kept out.

Performance

To perform well at trial, tie together the facts and the law to show that your client should win. Trials are like stage plays. There is an opening act, development of the story in the middle scenes, then the final act before the curtain closes. Human minds are wired to remember stories and themes. So use the opening statement and closing argument to underscore your theory of the case. Some repetition is helpful; too much detracts from the presentation. Every witness and every exhibit should fall in line with your theme. And take the time to prepare your witnesses for the big event.

This is solid advice, and I wish I could say I always heeded it as a practitioner. But, true confession: I bombed in the first trial I first-chaired. I had a supportive and experienced supervisor as co-counsel. I had received some of the best trial advocacy training around. And still I failed to execute.

What happened? I had made assumptions that caused me to prepare badly. It was a wrongful-death case with a plaintiff whose theory struck me as so far-fetched that I just knew the judge would reject it outright. In other words, I prepared for trial with tunnel vision — and that limited thinking caused me to minimize the shortcomings of my own case. Then I made a tactical error: I decided not to depose the doctor whose handwritten notes turned out to be critical because I figured his testimony would not matter. But the judge saw it differently, overruling all of my evidentiary objections and

continued on page 50

Dicta: Observations on Trial Practice from the Other Side of the Bench

from page 27

sustaining all of my opponent's. The judge also rejected my expert witness, torpedoing my defense. On the last day of trial, I tried to salvage the case by waiving closing argument and instead submitting a stellar post-trial brief that would surely save the day. It did not.

But I learned some important lessons that I put to use in my other cases — and I am happy to say that following the four Ps produced better results thereafter. I did not win all of those cases — no one wins them all — but I never found myself unprepared again.

Conclusion

A final point: Lawyers learn to try cases by trying them. As trials decline in number, *pro bono* work can allow you to apply the principles I've discussed and obtain invaluable trial experience you might not otherwise gain, and those in need get legal representation that they could not otherwise afford. I encourage all lawyers to take on *pro bono* assignments: They are a great way to advance the administration of justice, serve the public good, and put into practice the four Ps. That, in my humble opinion, is a win-win for everyone. abi

Cyber-U

By Elizabeth B. Vandesteeg

Technology and Legal Ethics

Remote Work Considerations (Part III)

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Gone are the days when attorneys could take an "as needed" approach to technology. The legal industry has long accepted that the pervasive and ever-changing nature of technology — not to mention its many benefits — means it is an integral part of the practice of law. Attorneys also need to understand and adjust the ethical standards that the profession must uphold in order to maintain fundamental protections for their clients and their clients' information. As discussed in Part I of this series,[1] ethical standards are applicable to all attorneys equally, but they are particularly relevant for bankruptcy attorneys, who are custodians of a host of personally identifiable information (PII) and other sensitive and confidential information. Part II[2] focused on the specific ethical obligations and practical standards set forth in two recent American Bar Association (ABA) ethics opinions — Formal Opinions 477R[3] and 483[4] — which govern the storage and transmittal of client data, as well as the necessary steps that lawyers and firms must take to protect against, and notify clients of, any unauthorized access to client information.

In Part III, the article will discuss Formal Opinion 498,[5] the ABA's most recent ethics opinion, which was released in March 2021. This opinion takes a fresh look at the latest technological advances and changes to the ways that attorneys practice law in a remote-work environment, and provides guidance on how to navigate the heightened cybersecurity risks attorneys face in that remote environment.

Legal Practice and Ethical Obligations Extend Beyond Brick-and-Mortar Offices

Formal Opinion 498 begins by acknowledging that lawyers' legal practices are not confined to their business offices, nor is there a requirement for them to have a brick-and-mortar office:

> A lawyer's virtual practice often occurs when a lawyer at home or on-the-go is working from a location outside the office, but a lawyer's practice may be entirely virtual because there is no requirement in the Model Rules that a lawyer have a brick-and-mortar office. Virtual practice began years ago but has accelerated recently, both because of enhanced technology (and enhanced technology usage by both clients and lawyers) and increased need.

Ethics rules apply regardless of where an attorney practices, whether virtually or not. Given the reality of a largely remote legal industry over the course of the COVID-19 pandemic (and the high likelihood of ongoing remote legal work) the ABA issued Formal Opinion 498 to identify and clarify certain rules that are specifically implicated and especially critical with a virtual office.

Competence, Diligence and Communication

Formal Opinion 498 points to Model Rules 1.1, 1.3 and 1.4,[6] which address lawyers' core ethical duties of competence, diligence and communication with their clients, with a reminder that these duties apply regardless of whether interactions are face-to-face or virtual. As mentioned in Part II of this series, Formal Opinion 477R expressly states that it is "beyond the scope" of the ABA Formal Opinion to expressly dictate what may constitute "reasonable steps" to protect client data, but it provides various factors and considerations as guidance. Formal Opinion 498 reiterates that, as noted in Formal Opinion 477R, lawyers must employ a "fact-based analysis" to various factors to "guide lawyers in making a 'reasonable efforts' determination." Formal Opinion 498 also states that "[w]hether interacting face-to-face or through technology, lawyers must 'reasonably consult with the client about the means by which the client's objectives are to be accomplished; ... keep the client reasonably informed about the status of the matter; [and] promptly comply with reasonable requests for information....'[7] Thus, lawyers should have plans in place to ensure responsibilities regarding competence, diligence, and communication are being fulfilled when practicing virtually."

Confidentiality

Pursuant to Model Rule 1.6, the obligation of client confidentiality persists regardless of whether

1 Elizabeth B. Vandesteeg, "Technology and Legal Ethics: A User's Manual (Part I)," XXXIX *ABI Journal* 2, 12, 49-51, February 2020, *available at* abi.org/abi-journal.
2 Elizabeth B. Vandesteeg, "Technology and Legal Ethics: A User's Manual (Part II)," XXXIX *ABI Journal* 4, 24-25, 64, April 2020, *available at* abi.org/abi-journal.
3 *See* ABA Comm. on Ethics & Prof'l Responsibility, Formal Op. 477R (2017).
4 *See* ABA Comm. on Ethics & Prof'l Responsibility, Formal Op. 483 (2018).
5 *See* ABA Comm. on Ethics & Prof'l Responsibility, Formal Op. 498 (2021).
6 Model Rules of Prof'l Conduct, R. 1.1, R. 1.3 and R. 1.4.
7 Model Rules of Prof'l Conduct, R. 1.4(a)(2)-(4).

continued on page 48

Cyber-U: Technology and Legal Ethics: Remote Work Considerations

from page 12

an attorney has a physical or virtual legal practice. Formal Opinion 498 reminds attorneys, that "[a]t all times, but especially when practicing virtually, lawyers must fully consider and implement reasonable measures to safeguard confidential information and take reasonable precautions when transmitting such information."

Supervision

Formal Opinion 498 reiterated that supervising attorneys have an obligation to ensure that attorneys on their team are also abiding by these rules, even in a remote-work environment. This means that attorneys must ensure that paralegals, assistants and other professionals working on client matters have access to technology that safeguards client information. Moreover, attorneys must take steps to oversee the other members of their team to ensure compliance with the rules, use of technological safeguards and proper instruction of the rules and safeguards. Formal Opinion 498 also specifically recommended "routine communication and other interaction ... to discern the health and wellness of the lawyer's team members."

Best Practices and Technologies for Use in Virtual Practices

Formal Opinion 477R noted that a "lawyer has a variety of options to safeguard communications, including, for example, using secure internet access methods to communicate, access and store client information (such as through secure Wi-Fi, the use of a Virtual Private Network [VPN], or another secure internet portal), using unique complex passwords, changed periodically, implementing firewalls and anti-Malware/Anti-Spyware/Antivirus software on all devices upon which client confidential information is transmitted or stored, and applying all necessary security patches and updates to operational and communications software." Formal Opinion 498 specifically addresses some best practices and potential technological solutions that exist in managing virtual practices, including these six avenues.

Technology Systems

Although attorneys might not consider managing technology systems part of their job description, this is simply a required undertaking in a remote-work environment, both as a firm and as individual practitioners. The ethics rules make clear that attorneys (and their firms) have an obligation to carefully review the terms of their hardware and software agreements to ensure that these systems are adequately protecting client confidentiality. Formal Opinion 498 specifically reminds lawyers to take steps to prevent unauthorized access to confidential information, advising lawyers to "be diligent in installing any security-related updates and using strong passwords, antivirus software, and encryption." While this is a best practice in all circumstances, it is especially important to monitor in the remote-work environment when firm-owned devices may remain off the controlled network for extended periods of time.

In a remote-work environment, lawyers need to be more vigilant about risks in their home/work environment. Home routers should be secured, and lawyers should consider using VPNs when outside the office network. As technology evolves, updates to these systems might be necessary as well.

> **The complex relationship between technological advances and the accompanying risks can create a confusing landscape for attorneys, and the unique circumstances of the COVID-19 pandemic have exacerbated these complexities.**

Accessing Client Files

Lawyers must take care to use systems that allow them to remotely access client files and protect this information from possible data loss. For many firms and attorneys, a reputable cloud-storage service is the best option, with data regularly backed up and accessible in the event of a data loss. Lawyers and law firms should also have a data-breach policy and communications plan in place should a data loss or breach occur.

In addition, the opinion reiterated Formal Opinion 477R's clarifications on document and data exchange, stating that "lawyers' virtual-document and data-exchange platforms should ensure that documents and data are being appropriately archived for later retrieval and that the service or platform is and remains secure. For example, if the lawyer is transmitting information over email, the lawyer should consider whether the information is and needs to be encrypted (both in transit and in storage)."

Virtual Meetings

Many lawyers have relied on virtual meeting platforms, such as Zoom and Microsoft Teams, to meet with clients and team members, especially over the past 12-18 months, while many law firms have operated remotely. Formal Opinion 498 reminds lawyers that access to accounts and meetings should only be through strong passwords, and all recordings and transcripts should be secured and only used with client consent.

Smart Speakers

Attorneys should disable the listening capability of devices or services in the home office, such as smart speakers, virtual assistants and other listening-enabled devices (*e.g.*, Siri and Alexa), while communicating about client matters. This is important to appropriately mitigate against unintended, unauthorized access to attorney/client privileged communications.

Supervision of Technology Use and Virtual Offices

For many attorneys working remotely, a "home office" might be nothing more than a table in a bedroom or kitchen not separated from the rest of the home by a closed door. Nonetheless, attorneys always must be diligent about maintaining privilege and should take care to ensure that client-related meetings and information cannot be overheard or seen by others in the household, office or other remote location, or by other third parties.

Formal Opinion 498 noted that supervision of the firm's bring-your-own-device policy is particularly important. If lawyers or law firm professionals will be using their own devices "to access, transmit, or store client-related information," the policy must ensure that security is tight, that a lost or stolen device may be remotely wiped, that client-related information cannot be accessed by others (including family members), and that client-related information will be adequately and safely archived and available for subsequent retrieval.

Technology Vendors and Other Third Parties

Attorneys' obligation to protect client confidentiality also extends to vendors and third parties. Formal Opinion 498 states that lawyers should consider the use of a confidentiality agreement with their technology vendors and other third-party providers to protect client information. This, again, is a best practice regardless of whether the legal practice is in person or remote.

Limitations on Virtual Legal Practice

Formal Opinion 498 acknowledges that virtual practice and technology have limitations. For example, lawyers must make sure that trust-accounting rules, which vary significantly across states, are followed, regardless of whether they have a virtual legal office. In addition, lawyers and law firms must be able "to write and deposit checks, make electronic transfers, and maintain full trust-accounting records while practicing virtually." Lawyers should also "make and maintain a plan to process the paper mail, to docket correspondence and communications, and to direct or redirect clients, prospective clients, or other important individuals who might attempt to contact the lawyer at the lawyer's current or previous brick-and-mortar office." If a lawyer will not be available at their physical office, there must be signage indicating this information.

Conclusion

The complex relationship between technological advances and the accompanying risks can create a confusing landscape for attorneys, and the unique circumstances of the COVID-19 pandemic have exacerbated these complexities. However, one thing remains certain: Competence in technology cannot simply be outsourced, and attorneys' ethical obligations cannot be minimized. The Model Rules — and the ABA's recent opinions — make it clear that attorneys must educate themselves on the ever-changing risks and the benefits of technology. abi

Strength in Diversity

By Anupama Yerramalli and Sarah E. Tomlinson[1]

ABI Diversity Group Kicks Off Multifaceted Approach to Training, Education and Participation

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Editor's Note: *This new column focuses on the continued growth and development of diversity and inclusion initiatives. Those interested in contributing articles for this column should contact* ***Anupama Yerramalli*** *at anu.yerramalli@lw.com for more information.*

At a time when our nation is reeling from backlash and attacks directed at minority and diverse populations, it is important that all communities focus on inclusion and diversity training and education. Through the formation of ABI's Diversity & Inclusion Working Group, the restructuring industry is taking steps to do its part. The Working Group's mission is "to develop recommendations to increase diversity within ABI and its leadership, to help create opportunities for diverse ABI members, and otherwise to promote diversity within ABI and within our professions." The Working Group is chaired by **Michael L. Bernstein** (Arnold & Porter Kaye Scholer LLP; Washington, D.C.) and **Shanti M. Katona** (Polsinelli; Wilmington, Del.), and consists of multiple workstreams staffed by volunteers focused on diversity, equity and inclusion initiatives within training, pipeline-development, mentorship, profile-raising, accessibility, gender diversity and terminology, and leadership.

As part of these important efforts, the *ABI Journal* will publish a column focused on issues practitioners, jurists and others in the restructuring community face to educate, train and grow from each other's shared wisdom and experiences. This column is meant to be a forum for discussion, shared learning and overall broadening of horizons on these important topics.

On Jan. 21, 2021, the Working Group held its first event, "Diversity in Insolvency: Putting Inclusive Ideas into Practice," which 400 people attended.[2] The event covered all areas of insolvency practice — from private firms to public service, including every size of firm, attorneys, support staff, judges, professors and trustees. In short, this first event was a rousing success.

Led by **Omar J. Alaniz** (Reed Smith LLP; Dallas), this team of volunteers consisted of **Amber M. Carson** (Gray Reed & McGraw LLP; Dallas), **Alan R. Rosenberg** (Markowitz, Ringel, Trusty + Hartog, PA; Miami), **Luis Salazar** (Salazar Law; Miami) and **Sarah E. Tomlinson** (U.S. Bankruptcy Court (E.D. Mo.); St. Louis). Together, they assembled the idea to target the issue of diverse attorneys leaving insolvency before making partner, and what firms and teams of every size can do to change that trend. The plan developed into bringing in diversity, equity and inclusion experts to talk about real skills and benefits in a plenary session before breaking out into small groups led by facilitators to continue the discussion.

ABI's President, Hon. **Barbara J. Houser** (U.S. Bankruptcy Court (N.D. Tex.); Dallas), led the virtual plenary session. She started off discussing the importance of diversity, equity and inclusion by highlighting the disheartening statistics, which indicate that many diverse attorneys never make partner. Judge Houser then laid out the goals and introduced the all-star panel, consisting of Carlos Dávila-Caballero, director of Diversity and Inclusion with Simpson Thacher & Bartlett LLP; Sylvia F. James, chief diversity and inclusion officer with Winston & Strawn LLP; and Jade Eaton, who is formerly with the U.S. Department of Justice's Antitrust Division. The lively discussion highlighted the depth and the breadth of the subject. The panelists discussed institutional changes, such as implementing sponsorship programs, as well as providing skill-building work and well-developed constructive feedback for all junior attorneys — efforts that any person in a position of authority could make. The audience frequently commented in the chat box, and submitted more questions than the panel had time to answer. The comments fell into four major categories: eager, engaged, interested and, most of all, seeking to improve the insolvency practice.

As the event broke out into small breakout rooms, the facilitators took center stage. Bankruptcy judges from across the nation joined diversity, equity and inclusion professionals to set up ice-breakers and get the rooms talking. Many of the rooms, however, ended up being participant-led. Attendees posed questions covering such topics as whether bankruptcy forms include preferred pronouns, especially at 341 meetings. Other conversations included how junior attorneys build books of

continued on page 64

1 Opinions or comments in this article are from Ms. Tomlinson's own experiences and are not representative of the U.S. Bankruptcy Court for the Eastern District of Missouri.

2 Watch a free recording of the session at cle.abi.org.

Strength in Diversity: New Approach to Training, Education and Participation

from page 22

business and rapport with clientele in down years. Some rooms discussed how to implement sponsorship programs or how to adjust client expectations when assigning work to less-experienced associates.

Many of the facilitators and attendees shared personal anecdotes of how their chambers, department, firm, school or business supports diversity. These stories came with the goal of encouraging everyone to see what steps can be made — no matter the structure or group size. Attendees left with a sense that insolvency practice can be more inclusive, and many expressed a desire for more training on more targeted topics, such as developing gender-neutral forms, identifying inadvertent discriminatory evaluation techniques, and how to promote insolvency as a practice to diverse communities.

Building on the momentum of the January 2021 event, the volunteers, joined by new member **Diane Kim** (Duane Morris; Wilmington, Del.), focused on training and planned for ABI's Annual Spring Meeting session, "Diversity in Insolvency: Continuing the Conversation for Inclusivity of Insolvency Professionals." The topics selected for this event developed as a direct result of the questions asked and requests made at the first training seminar.

This event consisted of a plenary session on April 13, 2021, led by Hon. **Ashely M. Chan** (U.S. Bankruptcy Court (E.D. Pa.); Philadelphia). She kicked off the session and introduced the panel of **William J. Perlstein** (FTI Consulting, Inc.; Washington, D.C.); Ricardo Anzaldua, formerly of Freddie Mac; and **Grace E. Robson** (Markowitz, Ringel, Trusty + Hartog, PA; Fort Lauderdale, Fla.). Each panelist discussed diversity, equity and inclusion goals and initiatives in their respective industries, providing deeper dives into the financial advisor perspective, in-house perspective, and the small-to-mid-size-firm perspective. Techniques and best practices for increasing the profile of diverse professionals remained a hot topic, and the conversation was a rousing successor to the initial event.

After the plenary session, ABI's Diversity & Inclusion Working Group hosted breakout sessions throughout ABI's Annual Spring Meeting, led by more industry leaders. For the financial advisor room, Maureen Greene James, vice president of Global Diversity, Inclusion and Belonging with FTI Consulting, Inc., facilitated the discussion. For the in-house perspective, **Eunice R. Hudson** (Freddie Mac; McLean, Va.) and **Lauren J. Hofmann** (JP Morgan Chase Bank, NA; Plano, Texas) led a joint discussion. For the small-to-mid-size-firm perspective, **Jeffrey S. Fraser** (Albertelli Law; Lake Worth, Fla.) presented. Each breakout session produced unique discussions and provided necessary tools that practitioners can use to improve the representation in their fields.

On April 22, award-winning journalist and author Michele Norris closed out the Annual Spring Meeting with a galvanizing keynote. She has co-hosted NPR's "All Things Considered," and developed two successful initiatives: "The Race Card Project" and NPR's "Backseat Book Club." As a *Washington Post* opinions columnist, Norris sparks important dialogue on current events, social issues and the power to make change as she breaks down commonly held beliefs and attitudes on race, diversity and bias. Norris has received many honors, including the Peabody Award and the duPont Award, and she was named "Journalist of the Year" by the National Association of Black Journalists and as one of *Essence* magazine's "25 Most Influential Black Americans." In September 2010, she published her first book, *The Grace of Silence: A Memoir*.[3] Registered attendees of ABI's Annual Spring meeting can access recordings of the diversity panel, as well as Ms. Norris's presentation, through May 31, 2021, on the Annual Spring Meeting virtual platform.

There is, without a doubt, much work left to be done. However, ABI and the insolvency practice as a whole should be motivated to see the excitement to meet this initiative head-on and work toward change. The dedication of ABI's community to these important issues is evidenced by the formation of the working group, the panels to date and the launch of this *ABI Journal* column. abi

3 Did you miss this exciting event? Conference materials are available at materials.abi.org.

Faculty

Hon. Cathleen D. Parker is a U.S. Bankruptcy Judge in the District of Wyoming in Cheyenne, appointed in June 2015, and served as Chief Judge. Prior to her appointment, she was an attorney with the Wyoming Attorney General's Office for 16 years. She primarily represented the Wyoming Departments of Revenue and Audit in front of administrative tribunals, the Wyoming State Courts and the Wyoming Supreme Court. At the time of her appointment, she was the supervisor of the Revenue Section of the Civil Division and was the head of the Attorney General's Bankruptcy Unit. Prior to joining the Office of the Attorney General, Judge Parker worked as an attorney in private practice in Colorado handling both civil and criminal matters. She received her J.D. in 1998 from the University of Wyoming School of Law and received the ABI Medal of Excellence.

Keri L. Riley is a partner with Kutner Brinen Dickey Riley, P.C. in Denver, where she focuses primarily in the areas of bankruptcy and insolvency law. She has represented debtors and creditors in all aspects of bankruptcy cases, including complex chapter 11 reorganizations and liquidations, chapter 7 cases, adversary proceedings, and appeals to the Tenth Circuit Bankruptcy Appellate Panel and Tenth Circuit Court of Appeals. Prior to joining the firm, Ms. Riley clerked for the Colorado Attorney General's Office, where she worked with the Consumer Protection Services Department, advocating for the rights of consumers who were subjected to illegal business practices. Her commitment to her clients has continued to earn her recognition in the legal community following graduation, and she has been selected as a "Rising Star" by *Super Lawyers* every year since 2018. In addition, she has been active in helping the survivors of human trafficking rebuild their financial lives through her continued *pro bono* work with the Alliance to Lead Impact in Global Human Trafficking. Ms. Riley received her J.D. with honors from the University of Denver, Sturm College of Law and was a member of the DU National Trial Team and ABA Appellate Advocacy Team, where she won multiple awards for her advocacy skills.

Hon. Michael E. Romero is a U.S. Bankruptcy Judge in the District of Colorado in Denver, initially appointed in 2003 and appointed Chief Judge from July 2014-June 2021. He is also one of the nine judges serving on the Tenth Circuit Bankruptcy Appellate Panel, and also serves as its Chief Judge. Since becoming a judge, Judge Romero has served on numerous committees and advisory groups for the Administrative Office of the U.S. Courts, is the past chair of the Bankruptcy Judges Advisory Group and has served as the sole bankruptcy court representative/observer to the Judicial Conference of the United States, the governing body for the federal judiciary. He recently completed his term as the president of the National Conference of Bankruptcy Judges and actively participates in several of its committees. He also serves on the Executive Board of Our Courts, a joint activity between the Colorado Judicial Institute and the Colorado Bar Association that provides programs to further public understanding of the federal and state court systems. Judge Romero is a member of the Colorado Bar Association, ABI, the Historical Society of the Tenth Circuit and the Colorado Hispanic Bar Association. He received his undergraduate degree in economics and political science from Denver University in 1977 and his J.D. from the University of Michigan in 1980.

Hon. Joseph G. Rosania, Jr. is a U.S. Bankruptcy Judge for the District of Colorado in Denver. Previously, he was a shareholder of Connolly, Rosania & Lofstedt, P.C. (CR&L), where he focused onn bankruptcy-related litigation, and clerked for Hon. Jay L. Gueck, former U.S. Bankruptcy Judge for the District of Colorado. He also ran a successful solo law practice concentrating on bankruptcy and related litigation. Judge Rosania was a member of the Panel of Private Trustees for the District of Colorado from 1985-2015. He also served as a chapter 7 and 11 trustee, an examiner in three cases including a securities fraud case, and as counsel to unsecured creditors' committees in several cases, and he represented chapter 11 debtors. A frequent speaker, Judge Rosania has taught business law classes at the University of Colorado and Colorado State University. He received his J.D. in from the University of Colorado School of Law, where he was in the top 20 percent of his class.

Hon. William T. Thurman is a U.S. Bankruptcy Judge for the District of Utah in Salt Lake City, appointed in 2001, and served as its chief judge. He also is a member and former chief judge of the Tenth Circuit Bankruptcy Appellate Panel. Judge Thurman served as a member of the U.S. Judicial Conference's Code of Conduct Committee and as a member of Conference's Financial Disclosure Committee. He has been active in the National Conference of Bankruptcy Judges, having served on its board and chaired several of its committees. He also has been a frequent speaker for and member of other national and local organizations focusing on lawyer and judicial education and ethical conduct, and he is a Fellow with the American College of Bankruptcy. Prior to his appointment, Judge Thurman was in private practice in Salt Lake City with McKay, Burton & Thurman for 27 years, where he focused on bankruptcy law and served as a panel chapter 7 trustee. He received both his B.A. and J.D. from the University of Utah.

Hon. Kimberley H. Tyson is Chief U.S. Bankruptcy Judge for the District of Colorado in Denver, initially appointed to the bench in May 2017. Previously she was a director of Ireland Stapleton Pryor & Pascoe, PC, where her practice focused on bankruptcy and related litigation. She represented secured and unsecured creditors, creditors' committees, trustees and purchasers in bankruptcies, as well as clients in contested foreclosure proceedings and lender-liability cases. She also pursued hidden or improperly transferred assets. In March 2011, she was appointed to the panel of chapter 7 trustees by the U.S. Trustee. Ms. Tyson is a former chair of the Colorado Bar Association's Bankruptcy subcommittee and is a frequent lecturer on bankruptcy issues, co-authors the bankruptcy chapter of the *Annual Survey of Colorado Law*, and has been named in *Colorado Super Lawyers*. She is an active member of ABI, having served on its Rocky Mountain Bankruptcy Conference advisory board since 2003. Ms. Tyson clerked for Hon. John K. Pearson of the U.S. Bankruptcy Court for the District of Kansas and Hon. Jerry G. Elliot of the Kansas Court of Appeals. She earned her B.A. at Smith College and her J.D. at the University of Kansas School of Law.