

## Temple 10-Q – Judge Michelle Harner Interview Transcript

**Host:** [00:00:00] Hello Temple 10-Q Community. My name is Maddy Demchick and I'm a 3L here at Temple Law. I'll be your host today as we welcome Judge Michelle Harner, bankruptcy judge for the District of Maryland. I'm so excited to have Judge Harner with us to discuss her career prior to the bench and her work today as a federal bankruptcy judge. Welcome Judge Harner, we are so happy to have you here with us today.

**Guest:** Thank you. I'm very honored and excited to be here with you.

**Host:** So why don't we start with you telling us a bit about your background, life before the law, your education, and any work you did before the bench.

**Guest:** Certainly. So I'll start with undergrad and I went to Boston College for my undergraduate work, and coming out of Boston College, decided to go to law school primarily because I was told by my family that I should think about either medicine or the law, and I do not have the stomach for medicine. [00:01:00] So here I am in the law, but I am glad someone thought to suggest it to me because it's been a very rewarding path for me.

And I found as I was looking at law schools, I went to The Ohio State University College of Law in Columbus, it's now the Moritz College of Law, it was not when I was there. I was attracted to the law for so many reasons I hadn't thought about previously, but primarily the problem solving we engage in as lawyers and the opportunity to advocate for those who either don't have a voice or can't advocate for themselves, and in many ways, landing in the bankruptcy field allows me to do both of those on a regular basis. So it was a really nice path that I found myself on.

**Host:** Thank you for sharing. So, some of our listeners might be more familiar than others. Something I didn't know until relatively recently was that becoming a federal bankruptcy judge [00:02:00] follows a different process than, say, a federal district court judge. So walk us through that process and your experience with that process, and if there was anything that surprised you, or you found particularly interesting that you want to share.

**Guest:** Certainly. So you're absolutely right, it is a different process and I would encourage all law students or even young professionals in the field to think about serving from the bench, it's a wonderful way to pay it forward. And state courts and the federal district and court of appeals all have their own paths to be a bankruptcy judge.

It varies by circuit, but in the Fourth Circuit where I sit, it basically is an application process where you put an application in to be considered for the open bankruptcy

judgeship in a particular district. They then typically form a committee of judges, practitioners, and usually a dean of an area law school who [00:03:00] review and do a series of interviews with the candidates and make a recommendation to the circuit.

It is the court of appeals for the particular circuit that actually appoints the bankruptcy judges and we're appointed for a 14-year term that may be renewed.

**Host:** And so now when you're thinking about your experience on the bench thus far, tell us a little bit about your role, how the role of bankruptcy courts has evolved, how it's changed, especially given a lot of the economic turbulence that we've seen in recent years. Are there any trends you're noticing? A lot of similar cases? Things like that.

**Guest:** So that's a great question. I guess I'm not sure I would say there's been an evolution necessarily in the bankruptcy courts or how we approach cases. But I think all of us who sit on the bankruptcy bench try very hard to adapt to the changing circumstances around us.

Whether that's changes in the practice, which certainly if you think about the chapter 11 space, there [00:04:00] have been notable changes in how chapter 11 cases are filed and brought to closure. I also think in the consumer space, we've seen changes from an increase in filing in more recent days to an increase in the number of *pro se* litigants in certain districts, and an increase in individuals trying to deal with debt that they may not be able to address in a bankruptcy case, such as student loans.

**Host:** And, you mention student loans being one and also about *pro se* litigants and consumer work. So we often think about bankruptcy as a purely financial process. A company goes into economic distress and they have to reorganize, or file, or go through some other process. But as you've mentioned in a few different examples, it is a deeply human experience.

And so when you're thinking about your role as a judge in these cases, how do [00:05:00] you approach balancing the technical aspects of the work with some of those emotional aspects and those deeply human features?

**Guest:** I was fortunate that when I did my bankruptcy clerkship out of law school, so I clerked for the Honorable William T. Bodoh, who sat in the bankruptcy court in Youngstown, Ohio, and he was one of the judges who had many of the steel cases when the steel companies were filing bankruptcy cases back in the 1980s and 1990s, he was one of the judges who dealt with them. And so we saw from our side of the bench being a law clerk, the human impact of even the chapter 11 case, right, on the employees, the retirees, the executives who are trying to deal with the overwhelming financial distress.

And so for me, that was an eye-opening experience that made me realize not only do the consumer lawyers in the [00:06:00] bankruptcy field do hugely important work on the human side of the divide, but the chapter 11 lawyers as well are dealing with a very human story as well. Since taking the bench, I've certainly have been reminded of the human elements in any bankruptcy case, and I tell people I see individuals in cases, both small business and consumer, because my docket is primarily small to middle market companies and overwhelmingly consumer cases. I see tears of joy when people are able to find the relief they seek, and I see tears of frustration, embarrassment, distress. Individuals who file for bankruptcy are, I think at one of the lowest points in their lives, and they're brought into the bankruptcy court, not necessarily because they want to be there, but because they have to be there.

And so here, I think as a bankruptcy [00:07:00] judge, it's important to remember that I have a code I have to follow. And we were talking about the evolution of bankruptcy courts, I think we've all come to appreciate the even greater importance of the language of the statute. And in some ways I'm very glad that I have a statute to follow because I try to implement the language Congress gave me in the bankruptcy code to the very best of my ability.

And I base it on the facts that counsel puts into the record and I hope I reach the best result I can. That doesn't always give the parties everything or maybe anything they want, but I always try to listen and let them tell their stories and then take the facts and apply the law and walk away knowing that was the best I could do.

I'm not sure if that makes sense, but the human element is there, but at the end of the day, you have to decide it on the law and the facts.

**Host:** I think that's a very fair approach and I [00:08:00] imagine that's how all of your colleagues make their decisions as well. So we've talked about approaching these cases. A lot of times they're *pro se* litigants, especially in consumer cases. But I want to switch gears a little bit and ask about what you wish more lawyers understood about practicing specifically in bankruptcy court. And I'll ask a follow up to that. What you have seen that distinguishes a really excellent advocate in your courtroom under these constraints of the bankruptcy code.

**Guest:** So those are great questions and it follows up very nicely on what we were just talking about. And so the one thing I always encourage young lawyers and, even those lawyers who have been practicing a while to do, is to remember you're in a statutory practice. If you're becoming a bankruptcy lawyer.

Oftentimes, particularly when I first took the bench in 2017, lawyers would walk into my courtroom and say, "Judge, you can do that, you're a court of equity." And [00:09:00] we

do have certain equitable powers under the bankruptcy code, but they are always tied to other provisions of the code itself. So I think it's important for lawyers when they're presenting their cases, whether it's in bankruptcy court or tax court, any statutory practice to make sure they're laying a map for the judge that walks the judge through the statutory provisions that leads them to the result they want. It's so helpful to me when a lawyer comes in and says, "Judge, it's not only the right result, it's the result mandated by the code, and here's why. Let's look at this section, then let's turn to that section." And so having that roadmap through the code is incredibly helpful to the court. That, and then having the evidence. So many times cases are won or lost on who bears the burden and who actually brings the evidence that can be admitted into the record.

And I think particularly for younger lawyers, they often forget that I can't [00:10:00] decide something if the fact isn't actually admitted into the record. So the language of the statute and the facts, again, are hugely important.

**Host:** And I think that brings me to my next question. As with any practice, it's the practice of law and with experience comes advancement in your practice. But for our students who are thinking maybe I'm interested in bankruptcy as a potential area of practice, what are some classes that you think they should be taking? Some extracurricular activities that you know about for law students from your experience working with law students that they should be thinking about?

**Guest:** So first, in general, I will say that it's hugely important for law students from my humble perspective, regardless of what career path they're going to go down to take advantage of being in law school. This is the one time of your legal profession where, even though it doesn't feel like it, you have time to attend networking events, to [00:11:00] attend lectures and just learn something because you're interested in it.

So even though it feels like you should always be outlining and studying for that exam, or preparing for questions in class, make time for your professional development during your three years in law school. And then if you're thinking about bankruptcy, I would encourage you to reach out to the bankruptcy judges in your area.

Ask them if you can observe hearings. Our hearings of course, are open to the public and anyone can attend, but at least in my district, if we know we're going to have law students in the courtroom, we, you know, might be able to come back out after the hearing with the lawyers present so that there's no *ex parte* communication, but give the lawyers an opportunity to talk to the law students about what they just saw and starting to have that interaction with the bench and the bar early in your career I think is very important.

There also are, as in most disciplines, a number of professional organizations like the American Bankruptcy Institute that have special discounted rates for [00:12:00] students

and it gets you access not only to practitioners and judges, but hugely beneficial courses on bankruptcy nuts and bolts so that if you're not taking bankruptcy, secure transactions, and other commercial law courses during bankruptcy, which you should, I'm biased though, you can also get those through some of our professional organizations.

**Host:** That is great advice. And you had mentioned earlier that you had done a clerkship and now as a judge I imagine that you have, you have clerks. So tell us for our students who might be interested in clerking and what that looks like. What, from your experience as a clerk, and now on the opposite side as a judge, about what that experience looks like and the benefits that students can get from that experience.

**Guest:** So, I think a clerkship is valuable for anyone who wants to practice in the legal field. Whether you think you want to do litigation, or transactional work, or domestic law work, or estates and trust and planning work, because it gives you an opportunity first to extend your education, so you have an [00:13:00] additional year of training that's more like an apprenticeship than what you get during your three years of law school. It also offers you the opportunity to see the law from a different perspective.

Prior to taking the bench, well, I first was a practitioner and I practiced corporate law and then I was a law professor, and I always reminded my law students when I was teaching business associations that they should go for a clerkship because even if they were going to be a transactional lawyer, you need to know what your deal looks like when it blows up and it ends up in the courtroom. So knowing, right, what's going to be presented or needed to be presented as evidence to support your theory of the contract is invaluable. So if, you know, students have the ability, and have the time to apply for clerkships, I encourage them to do so.

It's invaluable and it's usually, you know, one or two years. And I know students want to get out there and they want to start representing clients. They want to start making money among other things, or just paying it forward, right? And helping folks with access to [00:14:00] justice issue. But you'll be able to do those things so much more effectively if you give yourself the time to grow. And that clerkship offers that time.

**Host:** And I think you pointed to a common misconception, is that clerkships are only for people who want to be trial attorneys and want to be litigators, but they really are for everyone. So thank you for sharing and clearing up that misconception.

On that idea of misconceptions, do you think there are any misconceptions that you can think of from your experience on the bench of either what it means to file for bankruptcy, on bankruptcy generally? Being a judge from that vantage point.

**Guest:** I think one of the biggest misconceptions, again, at least based on the cases I see, I won't generalize because I don't know. But I think many, particularly non-lawyers, think that people use bankruptcy because they don't want to pay their debts.

And I don't see that in my court. Again, people are embarrassed to be in my court. They [00:15:00] want to find a way to pay their creditors. They're just so overwhelmed that they're turning to a system that we have for this exact purpose.

The US bankruptcy system is by far the gold standard in the world, and it allows an opportunity for both individuals and businesses to admit a financial mistake and find a way forward so they can continue on and be more productive and financially stable, not only for themselves, again, I think it's better for the larger community and us as a whole to have this kind of safety net and ability for people to try again when things just go wrong.

And most of the individual, at least cases that I see, it's healthcare costs, it's the loss of a job, it's the loss of a spouse and that income. It's not things people planned for. And people will ask me, well, aren't people trying to abuse the system? I think there's always those who will try to abuse most any system in place, right? But I would say the overwhelming number of debtors I see [00:16:00] are just there because they're the honest, but unfortunate debtor that the system is meant to help.

**Host:** And I think that goes to, probably a general misconception about the legal profession. Generally, a lot of what people on the outside see comes from media and movies and television and books.

And especially with bankruptcy, I think it's often portrayed in a very negative light and what you said, but it really is a tool, and there's a lot of, I'll call them hot topics in the bankruptcy practice generally. Is there one that you're either seeing a lot of cases and have therefore become an expert on, or just one that you're particularly interested in that you want to share a little bit more about?

**Guest:** I'll start with one that I find interesting having been a former chapter 11 lawyer and then an academic and now on the bench and thinking about these issues more globally, and it's one I think you're interested in as well. And that's how the corporate bankruptcy space is [00:17:00] responding to the *Purdue* decision.

Not so much domestically, but internationally. And, Professor Bruce Markell actually wrote an article that we published. So I'm the editor-in-chief, which is how we met, of the *American Bankruptcy Law Journal*. And Professor Markell published an article in Volume 98. You can go to [ablj.org](http://ablj.org) to read it, but he talks about, he calls it the

international two step, and it's word play on the Texas two step, but where US companies are finding a way to file an insolvency proceeding in a foreign jurisdiction that allows for non-consensual third party releases.

**Host:** And can you tell our listeners what a non-consensual third party release is?

**Guest:** So that's one thing I will say. If you hear us talking, you're hearing all this lingo and you're thinking, "I could never do that," don't worry. It's very easy to grasp and you just have to stop us and say, "what the heck are you talking about?"

So let's just take a step back if we've got a moment. The purpose of [00:18:00] bankruptcy, particularly for businesses, is to allow the business to file, get the benefit of what we call the automatic stay, which basically stops everything and it's meant to allow the business to look around, figure out its financial situation, figure out perhaps if there's some operational changes that need to be made, and then put forward a plan of reorganization to emerge from bankruptcy a stronger healthier company.

And oftentimes what the plan does is it discharges the debtor from its pre-bankruptcy or what we call pre-petition debt. A question has come up in many chapter 11 cases regarding whether or not the debtor's bankruptcy plan can also release other parties who are not debtors in the bankruptcy case from obligations they may also owe to creditors.

And so we call them non-consensual third party releases, but [00:19:00] it's just whether or not a non debtor can use the bankruptcy process to get a release of its claims. The United States Supreme Court in *Purdue* answered that question, at least with respect to non-consensual third party releases and said "no."

And so now what we've seen in response, lawyers are trying to figure out a variety of ways to obtain permissible relief for their clients and those affected by the bankruptcy. But one strategy has been to file an insolvency proceeding in a foreign jurisdiction, and there are countries that allow these non-consensual third party releases.

And once they're approved in the foreign jurisdiction, the US company brings that judgment back to the United States and what we call it a chapter 15 bankruptcy case and tries to have that decision enforced in the States. And it's a really interesting development, and I find it's not only interesting because [00:20:00] of the strategy and technique being employed by companies and lawyers to obtain what they view as appropriate relief, but also because it speaks to how we coordinate with other countries on international insolvency issues because so many of our larger corporations are in fact operating on an international footprint. And so wanting to think about how to harmonize

and provide consistent relief across the various business jurisdictions is I think something we should all be thinking about.

**Host:** Yeah, it is definitely a topic that I'm interested in. I think that as with any new and novel issue, there's not so much case law on it, but it's slowly coming out. And so in a broader sense, when something like this happens where there's a new, if you wanna call it trend or issue, I don't know if you've ever had to decide a new or novel issue from the bench, but what goes through a judge's mind? And what's the approach when you're dealing with a question that has, you know, hundreds of years of case law [00:21:00] or really clear precedent? What's the approach?

**Guest:** Every judge may approach the cases before them in a different fashion, but at the end of the day, you are looking to figure out what's permitted by the law, given the facts that you have before you. And sometimes the law is not clear, and I think one of the best examples of that is we call them circuit splits, but there are many bankruptcy issues that even though we have a uniform, a national bankruptcy code, depending on where you file in the United States, you may get a very different answer from another court at the opposite end of the country. And so, sometimes bankruptcy judges have to do the best they can with the language of the statute. And so I try my best to read the words, think about what they mean, and look to [00:22:00] precedent. If I don't have binding precedent from the Fourth Circuit or the District of Maryland, I look to my colleagues.

We're fortunate to have a very talented bankruptcy bench, and even if I don't agree with someone's approach, understanding why they did what they did often clarifies my reasoning and helps me get to the best point I can.

**Host:** That's a very good approach. And so to circle back a bit, which you mentioned when we were talking about at the beginning of our conversation on third party releases, you mentioned your role, with the American Bankruptcy Law Journal. So as you mentioned, that is how we met. So can you tell our listeners a little bit about what ABLJ is, ways for students to follow, and be involved, and just a little bit of background on your involvement and your role.

**Guest:** Absolutely. So the American Bankruptcy Law Journal's what law students would think of as a pretty traditional law review. It's unique, however, in two respects. The first is that it's run by bankruptcy judges, so the editor-in-chief and all of the [00:23:00] associate editors are sitting bankruptcy judges. And the second thing that's unique about it is it's a peer review law journal.

So before we accept any article for publication, it goes through a blind peer review process, so those who are reviewing the articles don't know who wrote the article and the author doesn't know who reviewed the piece. But we base our offers of publication on

that peer review process. The American Bankruptcy Journal publishes three issues a year. We are entering our hundredth year here in 2026. The first issue of the ABLJ came out in 1926 and we're really excited about that. And we touch on all things bankruptcy and commercial law, so it's not pure bankruptcy. There's also some UCC and secure transaction and other commercial law topics touched on in the journal.

My goal currently as the editor-in-chief of the American Bankruptcy Law Journal is [00:24:00] try to help academics and practitioners and the bench connect so that practitioners and those of us on the bench have another resource to look to when we're grappling with this ambiguity and these different issues.

It helps to see how others look at it, particularly those who are kind of outside the practice for a moment looking in. And so my hope is that we're adding value to the profession more generally by connecting these three, you know, different kinds of professions in the bankruptcy space.

Students who are interested in bankruptcy or just interested in working with professionals, either judges, and or academic scholars, and some of our scholars are practitioners, so I should not exclude that opportunity as well, are welcome to reach out to Professor Lipson at Temple and, and ask about the opportunities for students to work with the ABLJ.

But we are trying to integrate the student fellows more and more as we [00:25:00] build our digital presence. We were a hard copy journal for, gosh, all but three years of our hundred year span and we're now all digital. So you can go again to [ablj.org](http://ablj.org) to learn more about us. But, the student fellows do a lot of, backend editing work for us, and we're hoping to build a podcast series similar to this as well as to provide writing opportunities for the students because again, we want to help the students, start to enter their professional career on a more informed and better footprint than they might otherwise have.

**Host:** Well, I can vouch that it has been a great experience and great access to all different types of issues in this area. And another thing you mentioned is about students being connected to practitioners, judges, academics and just people who have been practicing, quite frankly. We talk a lot about guidance and following in the footsteps because for many law students, you're sort of thrown in [00:26:00] there and you learn a lot by doing.

So when you think about mentorship and guidance, who were your mentors? What did they teach you that still guides you today? And what types of traits should our students be looking for in potential mentors and role models in the profession?

**Guest:** Mentors, not only for your professional life, but for most every aspect of your life, are hugely valuable. And I think for some law students, at least when I went to law school, I was kind of an introvert. It wasn't natural for me to just pop into a professor's office and start asking questions. But I would encourage law students to reach out and to find people they connect with and to rely on them as mentors.

And when you're either a law student or a young professional, it's an opportune time to create those relationships because you have so many things you want to know. And all you have to do is start asking people about themselves and what they do and how they got there, and you're not only going to [00:27:00] get incredible information, but you're going to start to build those relationships.

And so I've been fortunate to have many, many mentors, over my career span so far. The three most prominent, who I still consider mentors today are, my small contracts professor, Nancy Rappaport, who is still a professor of law and still my very good friend and mentor.

David Heiman was a partner at Jones Day, which is where I practiced for over 11 years. And David was an incredible mentor and still a great mentor and very good friend today.

And then the judge I clerked for, Judge William T. Bodoh was a tremendous friend and mentor.

You know, they all taught me different things, but I think if I think about my conversations with all three of them over the years, it was, first of all, to put myself out there and not be afraid to say yes to new opportunities. Sometimes pushing yourself outside your comfort zone opens doors you never knew were there. So I think that was hugely [00:28:00] important and serves me well today.

The other thing was just to stop and listen. You're doing a better job sometimes if you're listening more and talking less, which I'm not doing right now. But, probably the most important thing I do on the bench every day is engage in active listening and even though I can't start to understand some of the circumstances I see before me, I can listen and I can let people or businesses tell me what happened and what they're hoping to achieve and why they think they deserve that relief.

**Host:** And I think that goes to my next and final question. Now, looking back, you've been in academia, you've been a law student, you've been a private practitioner, you've been a judge now, you've been the editor-in-chief of the ABLJ, you've done many other things I'm not adding.

So when you think about all these experiences, when you think about your day-to-day on the bench and your approach, can you point to a specific experience [00:29:00] that you feel prepared you the most to learn these skills and apply these skills? Or is there one, something that you did in your legal career up to now that you did not think would be applicable to your role as a judge that ended up being very helpful later on?

**Guest:** You know, I can't pinpoint one thing, but what I will say is, I would go back to that, “don't be afraid to say yes and just embrace whatever opportunity is given to you.” If you would have told me when I started law school, gosh too many years ago, that I would at one point be a federal bankruptcy judge, I would've laughed at you.

And to be honest, I'm not even sure I knew what a federal bankruptcy judge was when I started law school. Because back to your point about how most people find out what the law is, I think LA Law was my source of what it was like to be a lawyer, and I didn't end up being a trial lawyer or anything close to that. But, I got to this [00:30:00] position just because I said yes a lot of times when my inner voice was terrified, but I knew if I didn't try, I would never know.

So saying yes, and being open and I think even as a judge, that's important, right? When I take the bench, in any case, I never take the bench with a predetermined result in mind. I take the bench with an open mind, an informed mind, and I'm there and ready to listen.

**Host:** And I think that's a really great way to end our conversation. Being an active listener, saying yes, taking chances, getting outside of our comfort zones. That's something I think all of us law students can learn from. So thank you so much for joining us and sharing your experience, your insight, and all of the wealth of knowledge that you have.

**Guest:** Thank you for having me.