

# ABC Update

BY SCOTT B. COHEN<sup>1</sup>

## Why Become an ABC Member?

Last year, I had a bankruptcy matter in West Palm Beach, Fla., for a client that I have known socially and professionally for more than 20 years. Normally, this is not a problem, except that my practice is located in Arizona and California, and I did not have any connections in this particular area of Florida. My firm is a member of an international affiliation of law firms, so I called our affiliate in Fort Lauderdale, Fla., and spoke to a construction law partner whom I know personally, and he introduced me to his bankruptcy partner. He had an excellent resume, but it did not read like a bankruptcy specialist's resume.

Next, I called one of the two business bankruptcy law specialists who were members of the American Board of Certification (ABC) and located in West Palm Beach. This attorney regularly appeared before the assigned bankruptcy judge and had more than two decades of commercial bankruptcy experience. My ABC contact knew debtor's counsel and had a good working relationship with him. As I have come to expect, the ABC specialist I hired to represent my client was an excellent attorney and my client was well represented. By coincidence, the debtor's lead counsel was **Robert C. Furr**, who was at the time ABC president and is now ABC chairman. One of the major breakthroughs in the case came when Mr. Furr was in Scottsdale, Ariz., for ABI's Winter Leadership Conference in 2018 and we were able to meet face to face following an ABC board meeting during that event.

My story is not unusual or atypical. There are times when even the best referral networks have gaps. However, the ABC is more than just a network of certified specialists in consumer bankruptcy law, business bankruptcy law and creditors' rights law. Like thousands of other bankruptcy and creditors' rights attorneys, my membership in the ABC is both professionally and personally rewarding.

### What Is the ABC?

The ABC is a nonprofit organization dedicated to serving the public and improving the quality of the bankruptcy and creditors' rights law bars. The organization has certified nearly 1,000 attorneys in consumer and business bankruptcy law, as well as creditors' rights law, nationwide. To become certified, applicants must successfully complete a short form application.<sup>2</sup> There is a prep course and an examination that is graded by faculty. I

skipped over the application fee, which is waivable for younger lawyers and ABI "40 Under 40"<sup>3</sup> honorees. The ABC enjoys the sponsorship of ABI and the Commercial Law League of America. The American Bar Association has accredited all ABC certifications, and numerous states offer reciprocity for specialization.

In 1992 more than 300 attorneys applied for certification, and the ABC was led by Chairman **Keith J. Shapiro**, President Paul B. Geilich, Vice-President **John Wm. Butler, Jr.**, Dean of Faculty Prof. **G. Ray Warner** and Secretary-Treasurer **Samuel J. Gerdano**.<sup>4</sup> The inaugural board of directors consisted of five bankruptcy judges, five law professors and the following bankruptcy attorneys: **Dillon E. Jackson**, Faye Knowles, **Forrest B. Lammiman**, **Thomas J. Salerno**, **William E. Schonberg**, Jerome Shulkin, **James D. Sweet** and **Charles M. Tatelbaum**. Sen. Elizabeth Warren (D-Mass.) was one of those founding law professors. In 2017, ABC celebrated its 25th anniversary.

There are numerous certified bankruptcy judges. At the 2018 ABI Annual Spring Meeting, ABC hosted a program with ABC-certified Bankruptcy Judges Mary F. Walrath (D. Del.), **James M. Carr** (S.D. Ind.), David W. Hercher (D. Ore.), **Jerry C. Oldshue** (S.D. Ala.) and **James J. Tancredi** (D. Conn.). The panel was facilitated by ABC Past Presidents **Craig M. Geno** and **J. Scott Bovitz**,<sup>5</sup> and featured bankruptcy judges discussing professionalism, competency and best practices.<sup>6</sup>

The inaugural 2018 ABC Judges Panel was well received, and the ABC was granted an encore in 2019. At ABI's Annual Spring Meeting, ABC hosted an educational and entertaining panel<sup>7</sup> that included board-certified Judges Carr, Hercher, Oldshue and Tancredi, along with Bankruptcy Judge **Madeline C. Wanslee** (D. Ariz.). Mr. Bovitz moderated the panel again, and this time he incorporated **Wesley H. Avery** to address the concerns of panel trustees and policies of the U.S. Trustee. ABC Director **Samuel D. Hodson** summarized the panel in an ABC Update column in the *ABI Journal*.<sup>8</sup>



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<sup>1</sup> The author thanks his friend and law partner and ABC member **Steven N. Berger** for reviewing a prior draft of this article.

<sup>2</sup> "How to Become Certified," ABC, available at [abcworld.org/how-become-certified](http://abcworld.org/how-become-certified) (unless otherwise specified, all links in this article were last visited on Feb. 28, 2020).

<sup>3</sup> For more on this initiative, visit [abi40under40.org](http://abi40under40.org). Applications are currently being accepted for members of the 2020 class.

<sup>4</sup> Mr. Gerdano recently retired at the end of December 2019 as ABI's executive director after nearly 30 years of service to the organization.

<sup>5</sup> Mr. Bovitz also serves as a coordinating editor for the *ABI Journal*.

<sup>6</sup> "Judges on Best Practices," available at [abcworld.org/judges-best-practices](http://abcworld.org/judges-best-practices).

<sup>7</sup> "Ain't Misbehaving," ABI (2019 Annual Spring Meeting), available at [cle.abi.org/product/ain't-misbehaving](http://cle.abi.org/product/ain't-misbehaving) (note: session must be purchased in order to view, as it is eligible for CLE credit).

During ABI's 2020 Annual Spring Meeting, which at press time has been postponed, ABC will host its third panel of board-certified bankruptcy judges, titled, "A Few Good Lawyers: Best Behavior, Use of Technology and Other Taboos: A Discussion by ABC Judges." ABC appreciates the participation of Bankruptcy Judges Carr, Hercher and Tancredi, along with Bankruptcy Judges **Edward L. Morris** (N.D. Tex.) and **Stephen D. Wheelis** (W.D. La.). This panel will be moderated by **Kirk B. Burkley** and **Patricia B. Fugée**. ABC is grateful for ABI's continued support and its inclusion of the ABC on the program for its Annual Spring Meeting. Check back on [abi.org/events](http://abi.org/events) for updated information.

## In Defense of Meritocracy

There is no dearth of lawyer referral networks. Like you, I have referred matters to law school classmates and used global law firm networks. We also have informal referral networks based on reciprocity or expertise. I do not write this piece to bash any approach that works for you. Rather, I suggest that you consider including an ABC-vetted specialist in your next referral. Better yet, become an ABC-certified lawyer.

ABC attorneys have met rigorous, objective standards for becoming specialists. ABC-certified specialists need to complete, among other things, 60 hours of CLE within 36 months prior to filing the application. At least 30 hours of that CLE needs to be in bankruptcy law. For those active in ABI, this requirement is easy to meet.<sup>9</sup>

In addition to CLE requirements, applicants must have a minimum of 400 hours devoted to the practice of bankruptcy law during each of the three years immediately preceding the date of the long-form application. There also is the requirement that you have completed at least 30 adversary proceedings or contested matters. Additional experience-based requirements are set forth on the ABC's website.<sup>10</sup> Applicants are also subject to lengthy and stringent recertification standards.

I fully recognize that numerous accomplished lawyers are not certified specialists, and that certification is not the only way to demonstrate expertise. The ABC is not mutually exclusive with any number of important standards or recognitions of expertise, leadership and experience in the bankruptcy community.

## Personally Rewarding

ABC-certified specialists report that becoming certified was personally meaningful to them. "Becoming certified by the ABC has been an accomplishment that I am very proud of," Ms. Fugée said. "It demonstrates my commitment to my competency in the practice area, as well as my professionalism and ethics." She is the president-elect and general counsel for the ABC.<sup>11</sup>

<sup>8</sup> Samuel Hodson, "ABC Panel at ASM Covers Ethics, Competence and Standard of Care," XXXVIII *ABI Journal* 8, 42-43, 64-65, August 2019, available at [abi.org/abi-journal](http://abi.org/abi-journal).

<sup>9</sup> Looking for a convenient source of CLE credit? Visit [cle.abi.org](http://cle.abi.org) for a variety of options suited to your practice of bankruptcy law. Better yet, attend an ABI conference to get those credits in person. The schedule of upcoming conferences is posted at [abi.org/events](http://abi.org/events).

<sup>10</sup> "Application Long Forms," ABC, available at [abcworld.org/downloads](http://abcworld.org/downloads).

<sup>11</sup> Like all ABC board members, Ms. Fugée was not paid for this endorsement.

**Randy Nussbaum** appreciates the personal relationships that he has developed through the ABC. He welcomes the opportunity to get to know bankruptcy lawyers on a social basis who are proud of the way they practice law. Mr. Nussbaum sits on the ABC's Board of Directors and is chair of marketing.

For other ABC members, the inbound referrals are a plus. "There is not a month that goes by that I do not receive a referral or an inquiry from out of state because I am an ABC-certified business bankruptcy attorney listed in the ABC Directory," said **Rudy J. Cerone**. "Becoming certified was one of the best things I have done for my practice."

Still others like the marketing benefits. In *Peel v. Attorney Registration & Disciplinary Comm'n of Illinois*,<sup>12</sup> the U.S. Supreme Court held that an attorney had a First Amendment right, under standards applicable to commercial speech, to advertise certification as a trial specialist by the National Board of Trial Advocacy. In ruling in favor of the attorney, the Court emphasized that "a claim of certification is not an unverifiable opinion of the ultimate quality of a lawyer's work or a promise of success ... but is simply a fact, albeit one with multiple predicates, from which a consumer may or may not draw an inference of the likely quality of an attorney's work in a given area of practice."<sup>13</sup> After *Peel*, ABI's leadership worked to design an objective certification program for business and consumer bankruptcy lawyers. Ultimately that program became the ABC, and it encourages bankruptcy practitioners "to strive toward excellence and to recognize those attorneys who are especially knowledgeable in the bankruptcy field."<sup>14</sup>

Other ABC members think that it is important that they can charge higher rates as a nationally certified specialist. Congress has recognized the merit of certification and rewarded it economically: It amended § 330 of the Bankruptcy Code to provide that board certification is a factor to be considered in determining compensation.<sup>15</sup>

## Good Karma

The ABC invites you to apply (or recertify) with the organization to take advantage of its referral network or for your own personal growth and development. You can use any of the links in this article or find the ABC as an exhibitor at ABI's Annual Spring Meeting when it is rescheduled. ABI also sponsors a cocktail party at the conference — and the first couple of beverages are on us.

Returning to Florida, my co-counsel (shameless plug for **C. Craig Eller**) then recommended us to the head of his practice group when Nelson Mullins Riley & Scarborough, LLP needed local counsel in Arizona. While we all have excellent referral networks, they may not all have the necessary geographic reach or coverage that our clients need. The ABC expertly fills those gaps and provides the highest level of competency for your clients. **abi**

<sup>12</sup> 496 U.S. 91, 94 (1990).

<sup>13</sup> *Id.* at 101.

<sup>14</sup> ABI Annual Report, 1991-92, p. 14.

<sup>15</sup> 11 U.S.C. § 330(a)(3)(E).