

ABC Update

BY MICHAEL D. FIELDING

The Value of Board Certification: Views from the Bench

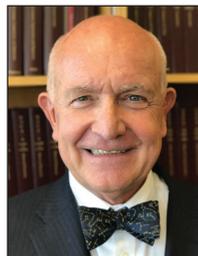
What value does board certification really hold for a bankruptcy attorney? Earlier this year, the American Board of Certification (ABC) sought to find out by asking the people who probably have the broadest experience of the bankruptcy bar: the judges observe dozens of practitioners as they come and go within the halls of the court. Through a combination of email and telephone interviews, we surveyed three eminent judges — Hon. **Bruce T. Beesley** (U.S. Bankruptcy Court (D. Nev.); Reno), Hon. **Jeffrey J. Graham** (U.S. Bankruptcy Court (S.D. Ind.); Indianapolis) and Hon. **Darren D. Farfante** (13th Judicial Circuit Court; Tampa, Fla.) — in order to get their perspectives on board certification.

Each of the judges with whom we spoke is a board-certified attorney, but each pursued certification for slightly different reasons. The appeal of certification for Judge Graham, an ABI member since 2002, was its merit-based credential. “So many other awards and honors are peer-based and may reflect popularity as much as competence,” he said. “Board certification, on the other hand, requires knowledge as well as standing with your peers.”

Judge Farfante, an ABI member since 2004, echoed those sentiments, claiming that he wanted to demonstrate “developed expertise in a practice area,” but he also liked the idea of exclusivity. “I learned that there were very few attorneys in my city and specific practice area (creditors’ rights) who were certified.” Judge Beesley, who is also certified in creditors’ rights law, was led to the process because “it fill[ed] a need at his firm.”

The direct, measurable benefits of certification are sometimes hard to ascertain. However, all three judges cited a marked impact in their relationships with colleagues and clients inside their firms, as well as with opposing counsel. “I found that my certification not only made my personal clients and my firm’s clients feel more comfortable dealing with me, it also carried over to my interactions with the other attorneys in my law firm who viewed my certification as confirmation that I was well versed in my practice area,” Judge Farfante said. “I would go as far [as] to say that certification impacts relationships with opposing counsel in that it helps provide an independent ‘stamp of approval’ on your practice and the manner in which you conduct yourself as an attorney.”

Judge Graham struck a similar note, commenting that certification can raise one’s stature within



Hon. Bruce T. Beesley



Hon. Jeffrey J. Graham



Hon. Darren D. Farfante

the bankruptcy community, and “that in and of itself is a nice perk when dealing with unfamiliar counsel.” Judge Beesley, an ABI member since 1998, added that the benefits can be more substantive and business-focused. “Business clients value specialists,” he said. “In a contracting insolvency legal market, board certification distinguishes lawyers with sophisticated clients.” As an adjunct to his point about specialization, Judge Beesley also cited the “rigorous CLE requirements” associated with the certification process, which is part and parcel of a larger methodology meant to identify excellent practitioners. Applicants must pass a rigorous, day-long exam and show that they have (1) devoted a minimum of 400 hours and 30 percent of their practice for the last three years to the specific area for which they seek to become board certified; (2) substantial and wide experience in matters unique to their desired certification; (3) attended a minimum of 60

hours of CLE during the past three years in bankruptcy law; (4) submitted grievance histories for all jurisdictions in which they are admitted (including the resolution of any grievances that may have been submitted); and (5) provided references from nine attorneys (four of whom must be familiar with the applicant’s practice and the other five of whom must have served as opposing counsel to the applicant). Once an attorney becomes board certified, he/she must renew that certification every five years by showing that he/she continues to meet the five foregoing requirements.

“Continuing education is critical for attorneys to stay on top of issues,” Judge Graham said. “The board certification of 20 bankruptcy-related CLE hours [per year] should not pose a problem for someone practicing bankruptcy law on a regular

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basis.” Judge Farfante added, “Board certification is important ... not only for the initial testing and background assessment, but also for imposing a continuing obligation on attorneys to take CLE in their area of specialization as opposed to general legal education.”

Such verifiable expertise is the mainstay of any legal specialization, and while it might not always directly correlate with better client outcomes, the three judges surveyed here suggested that odds are in the client’s favor when retaining board-certified attorneys. “There are certainly wonderful attorneys who are not board certified,” Judge Graham said. “However, certified attorneys seem to be uniformly capable and less likely to cause issues with opposing counsel or the court.”

Judge Graham’s intuition is backed up by industry data, which shows that board-certified attorneys routinely outperform their peers in the area of client satisfaction. The American Bar Association Center for Professional Responsibility’s Survey on Lawyer Discipline Systems (SOLD) collects and analyzes responses to a questionnaire from 56 lawyer disciplinary agencies throughout the U.S. Over the past three years, new and pending complaints against attorneys have steadily increased. By contrast, during that time only one board-certified attorney was reported as a party to a state bar grievance.

To the extent that maintaining satisfied clients is tied to a lawyer’s profitability, it is not unreasonable to state a business case for board certification, but for bankruptcy lawyers, the business case is sometimes not just the result of a client’s calculations but the court’s as well. “Courts give more defer-

ence to board-certified lawyers in fee applications,” Judge Beesley said. This notion was echoed by Judge Graham when he recollected his days in private practice, and added that “[a]s a practicing attorney, I do think that board certification was a factor when determining my billable rate, which ultimately influenced fees awarded in my cases, so it [might] influence fee awards indirectly.”

Regardless of whether we can draw a direct line between board certification and profitability, Judge Farfante reminds us of the role of personal initiative and professional responsibility: “I would tell young attorneys that board certification is like many things in the practice of law; it is ‘what you make of it.’” There are many ways to measure value, but Judge Farfante’s perspective captured succinctly how ABC views its core mission: to provide objective standards of excellence and to further advance the practice of law. “Perhaps more importantly, certification can provide you with access to a network of like-minded practitioners who share not only an interest in the particular practice area, but also a common interest in bettering yourself and continually educating yourself,” he said. “My experience is that the ABC has been very supportive of its membership and has proactively sought ways to make itself better and more relevant for its membership.”

For more information on becoming ABC-certified in consumer bankruptcy, business bankruptcy or creditors’ rights law, visit abcworld.org. To get ready for the exam, learn the basics at abi.org/abcprep. **abi**

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