

BY ETHAN J. BIRNBERG<sup>1</sup>

## ABC Attorneys Key Players in Consumer Bankruptcy Commission

**Editor's Note:** Learn more about the Commission at [ConsumerCommission.abi.org](http://ConsumerCommission.abi.org).

Throughout U.S. history, legislators and politicians have debated how to treat, fund and prioritize issues critical to U.S. citizens. Each day, we see another article or report on education, health care, housing and how to increase economic growth. Presidential administrations have changed over the years, along with policies and industries. Thankfully, despite changes in economic and political climates, bankruptcy laws and rules can exist in a vacuum, said no insolvency professional — ever.

It is no secret that student loans have been having a grave effect on younger generations. “I see student loan issues each time I interview a potential associate. While they do not need to file [for] bankruptcy, where they want to work — and how much they must be paid — is predicated on their outstanding debt,” said **Richardo I. Kilpatrick** (Kilpatrick & Associates, PC; Auburn Hills, Mich.), a certified consumer bankruptcy law specialist by American Board of Certification (ABC) and a former ABI President. “That’s a problem my generation never encountered. Something’s got to be done, and bankruptcy is a venue that can assist and ameliorate some of [the] problems that exist with student loans.” Kilpatrick is one of five ABC-certified members of the ABI Commission on Consumer Bankruptcy, which is charged with researching and recommending improvements to the consumer bankruptcy system that can be implemented within its existing structure.<sup>2</sup>

Other ABC-certified attorneys appointed to the Consumer Commission include **Edward C. Boltz** (The Law Offices of John T. Orcutt, PC; Durham, N.C.), **Rudy J. Cerone** (McGlinchey Stafford, PLLC; New Orleans), ABI Executive Director **Samuel J. Gerdano** and **Henry E. Hildebrand, III** (Chapter 13 Trustee; Nashville, Tenn.). The ABC is the nation’s premier legal specialty certification organization and awards certifications in consumer bankruptcy law, business bankruptcy law and creditors’ rights law. In addition to being part of an

exclusive and reputable referral network of ABC-certified attorneys, and attending networking events solely for ABC-certified members at conferences such as ABI’s Winter Leadership Conference (Nov. 30-Dec. 2 at the La Quinta Resort & Club in Palm Springs, Calif.),<sup>3</sup> one benefit that I have received from my business bankruptcy law certification is the opportunity to talk with successful practitioners about their experiences, their advice on how to build a practice and how certification has benefited them. For this article, my ABC certification led me to discuss the recently formed Consumer Commission with Kilpatrick and Cerone, as well as with Prof. **Bruce A. Markell** (Northwestern University School of Law; Chicago). These individuals and other Commission members are some of the most reputable and well-known professionals in the industry.

The Consumer Commission is supported by three committees: the Committee on Case Administration and the Estate, the Committee on Chapter 7 and the Committee on Chapter 13. Prof. Markell, a former bankruptcy judge and member of the Bankruptcy Appellate Panel for the Ninth Circuit, chairs the Committee on Chapter 13. In his view, the Consumer Commission’s purpose is not to advise Congress on how to rewrite the Bankruptcy Code because “in the current political climate, it is not a priority.” However, the Consumer Commission will provide an in-depth, strategic report for consumer bankruptcy issues that will have an immediate impact.

Cerone, a former ABC president and ABI Executive Committee member, is particularly interested in discharge issues that occur following both chapter 7 and 13 cases. He hopes that the committees will explore discharge-violation issues. In his view, how the courts deal with alleged discharge injunction violations needs further scrutiny and analysis, and the Consumer Commission’s research — and any recommendations it might make — could assist everyone involved in consumer bankruptcy practice, including debtors, creditors and bankruptcy judges.

One area in which the Consumer Commission will help is giving publicity to issues known within the bankruptcy world, but not on the outside, such as how attorneys get compensated. Consumer cases include splitting fees to allow payments after bank-



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<sup>2</sup> See Hon. William H. Brown, Hon. Elizabeth L. Perris and Prof. Robert M. Lawless, “ABI Announces Commission on Consumer Bankruptcy,” XXXVI *ABI Journal* 4, 14-15, 93, April 2017, available at [abi.org/abi-journal](http://abi.org/abi-journal).

<sup>3</sup> More information on this conference will be posted at [abi.org/events](http://abi.org/events).

ruptcy, “no-money-down” bankruptcies, fee-only chapter 13 plans and “no-look” fees. However, this terminology and its concepts do not resonate with a nonbankruptcy judges or practitioners. An important audience for the Consumer Commission consists of those not actively involved in our bankruptcy world, and it will also seek to explain the pros and cons of advancing procedures and rules that are not readily apparent through advocacy. In other words, viewing consumer bankruptcy practitioners through their practice and litigation is not the best way to judge how the consumer practice works, and the Commission’s report and recommendations will provide a critical and unique angle to encourage statutory reform. In turn, the Consumer Commission’s work will allow an audience larger than bankruptcy practitioners to understand consumer bankruptcy problems.

Besides publicity, a second area of focus for the Consumer Commission is analyzing and recommending how to resolve pending issues such as those subject to circuit splits. Within this area, the Commission will provide its proposed resolutions related to student loan issues and the best legal standard for undue hardship, among other hotly contested consumer issues. Prof. Markell also foresees the Commission recommending how to handle administrative issues through local rules or other streamlined procedures. Here, one issue is how nondischargeability cases should proceed when debtor’s counsel has limited his/her representation solely to filing the case and excluded defending adversary proceedings. Finally, the Consumer Commission is likely to review the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA), and comment on its effectiveness and implementation. Above all, the Commission will issue a practical report for the most immediate impact, which will frame future debates for Congress, appellate courts, and the U.S. Supreme Court.

## Wondering Why You Should Get ABC-Certified?

One reason is the opportunities. When asked how certification helped him rise through the ranks and receive opportunities such as joining the Consumer Commission, Kilpatrick responded:

I’ve had a great run. Being [ABI President], part of the second class of ABC-certified attorneys, and several other appointments, awards, and opportunities ... these things would have never happened but for my ABC certification, and strong participation in [ABI] and [ABC].

Certification makes you focus on the practice and keep current in the law and what is going on in the insolvency world. Those [who] represent creditors know the scrutiny that third-party vendors get and the compliance their counsel must go through. Being certified is an indicia of quality; it rewards you with the ability to get gratifying client engagements.

A second reason consists of referral relationships and distinguishing yourself from others. According to Cerone:

Certification separates you from others. You have shown a specialized skill set and substantial experi-

ence in an area of bankruptcy law, and being able to hold yourself out as a specialist will get the attention of client and potential clients. This is particularly beneficial for younger attorneys looking to get ahead. It’s also why many attorneys, including myself, note our ABC certification in the email signature attached to every correspondence.

All bankruptcy practitioners should affiliate and come in contact with as many other professionals as they can. One great way to accomplish this [that] doesn’t tie directly to an ongoing case, and a way to give back to the profession, is by getting certified in a particular specialization. It opens doors to further opportunities, and allows the public and media to distinguish you from other practitioners. It strengthens your ability to cultivate business.

**The Consumer Commission actively seeks to hear from you about reform that is needed, whether through written submissions or oral statements.**

For Kilpatrick and Cerone, being ABC-certified started their path toward being one of 15 members of the Consumer Commission. There is no doubt that the Commission’s efforts will benefit practitioners, courts, the bankruptcy community and Americans seeking to restructure their personal finances and receive a fresh start. The importance and impact of the ABI Commission to Study Reform of Chapter 11’s report, issued in December 2014,<sup>4</sup> was once again highlighted when the Supreme Court cited the Final Report and Recommendations in *Jevic*.<sup>5</sup> The Consumer Commission’s report, scheduled for release at the ABI Winter Leadership Conference in December 2018, could have an even larger impact because of the massive amount of consumer bankruptcies that occur and the issues they present to bankruptcy courts on a daily basis.

The Consumer Commission actively seeks to hear from you about reform that is needed, whether through written submissions or oral statements. To complete a written submission or review oral statements from prior open meetings, visit [ConsumerCommission.abi.org](http://ConsumerCommission.abi.org). The Commission will also have an open forum at this year’s National Conference of Bankruptcy Judges in Las Vegas on Oct. 10.

I have been fortunate to be mentored by ABC-certified attorneys, and I was certified as a business bankruptcy specialist in my seventh year of practice. As I slide into my tenth year as an attorney, I have reaped the rewards of ABC certification and will soon sit for ABC’s consumer bankruptcy exam. For me, certification is one way to maximize my legal education, promote professionalism and stay dedicated to personal improvement. When talking with Kilpatrick and Cerone, they both offered the same advice:

<sup>4</sup> Access the ABI Commission to Study Reform of Chapter 11’s Final Report and Recommendations at [commission.abi.org/final-report](http://commission.abi.org/final-report).

<sup>5</sup> See *Czyzewski v. Jevic Holding Corp.*, 137 S. Ct. 973, 979 (2017).

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Younger lawyers are, to a certain extent understandably, too concerned with the tension between operating a business and practicing law. Build your skill set, get ABC-certified, keep your knowledge of bankruptcy law current, attend networking events and participate in committees, whether through ABC, ABI, or at your state and local level. These are important stepping stones to get your practice to where you want it. If you focus on ... providing high-level, qual-

ity service to your clients and partners, the business, clients, and success will come.

Take the next step to bolster your career and get recognized by your colleagues and clients as an ABC-certified specialist. Take the ABC Prep Course to prepare for the examination (details at [abi.org/abcprep](http://abi.org/abcprep)), check the ABC exam schedule for upcoming conferences or schedule an in-office exam, and find out more about the benefits of certification at [abcworld.org](http://abcworld.org). **abi**

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