

ABC Update

BY MICHAEL D. FIELDING

Substantiated Again: Continuing Benefits of Board Certification

Earlier this year, the American Bar Association Center for Professional Responsibility¹ released the results of its annual Survey on Lawyer Discipline Systems (SOLD),² which collects and analyzes responses to a questionnaire from more than 50 lawyer disciplinary agencies throughout the U.S. SOLD provides valuable insights into the trends associated with complaints filed against lawyers across the nation.

The data regarding client complaints about attorney performance — representing calendar year 2016 — continue to paint a troubling picture, despite some recent improvement in the percentage of complaints versus the number of active lawyers. For nearly every 10 active lawyers, a complaint has been filed by a client. The SOLD survey results are shown in the table.³

It has not been lost on many observers that the recent elevated number of complaints against lawyers exists against a professional and cultural backdrop featuring the proliferation of awards, accolades and rankings that claim to identify and celebrate professional excellence. There is an inherent irony: The more recognitions that come into being, the more they seem to have an inverse relationship to the satisfaction of the attorneys' clientele.

Everyone likes to be recognized for their professional work, but the methodology behind many of the recognitions for lawyers leaves a lot to be desired. Some are outright commercial endeavors (the so-called "pay-to-play" recognitions), while others simply suffer from a lack of serious scrutiny and probably do more to obscure merit and competence than reveal them. Thus, how

can a potential buyer of legal services block out the noise and gain useful information in vetting potential legal counsel?

[T]he data presents a pretty strong argument that clients are better served by board-certified lawyers — and a satisfied client is the foundation of any strong practice.

ABC

Amid the riot of awards and rankings, there is (especially in the author's practice area of bankruptcy law) a readily available — if often overlooked — layer of protection for both practitioners and their clients: board certification. Statistically speaking, lawyers who are certified by the American Board of Certification (ABC) are far less likely to have an attorney grievance filed against them or be the subject of a state bar disciplinary action. Founded in 1992 as a non-profit organization, ABC seeks to improve the quality of representation in bankruptcy and creditors' rights law, and one of the cornerstones of ABC's approach is evaluating attorneys within specific disciplines.

Becoming board certified is not for the faint of heart, nor is it subject to the faulty methodologies that inform some of the recognitions currently in vogue. Applicants must pass a rigorous day-long exam and must show that he/she:

- has devoted a minimum of 400 hours and 30 percent of their practice for the last three years to the specific area in which he/she seeks to become board certified;



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1 American Bar Association Center for Professional Responsibility, available at americanbar.org/groups/professional_responsibility.html (unless otherwise specified, all links in this article were last visited on July 5, 2018).

2 See "2016 Survey on Lawyer Discipline Systems," American Bar Association, available at americanbar.org/content/dam/aba/administrative/professional_responsibility/2016sold_results.authcheckdam.pdf.

3 Several disciplinary agencies failed to respond to the SOLD questionnaire with 2016 data, including those in California, Connecticut, Massachusetts, Nevada and New York (First Department).

SOLD Survey Results

Year	Active Lawyers	New Complaints	Pending Complaints	Percentage
2013	1,187,777	43,535	24,133	5.7%
2014	1,235,298	88,930	27,340	9.4%
2015	1,403,258	116,175	28,498	10.3%
2016	1,256,765	87,487	23,487	8.8%

- had substantial and wide experience in matters unique to a desired certification;
- attended a minimum of 60 hours of continuing legal education during the past three years in bankruptcy law;
- submitted grievance history for all jurisdictions in which he/she is admitted (including the resolution of any grievances that may have been submitted); and
- provided references from nine attorneys (four of whom must be familiar with the applicant's practice, and five of whom have served as opposing counsel to the applicant).⁴

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. With respect to grievance matters, attorneys who seek certification or recertification as ABC members must detail whether they have been “disbarred, suspended, reprimanded or otherwise disciplined by the state bar of any state, by a state or federal court, or by any other entity that has authority over attorney discipline.” Attorneys must also disclose whether they have been the subject of “(1) a disciplinary law suit or action; (2) a complaint or inquiry with a grievance committee of any bar association or with the designated disciplinary entity of any state; (3) a finding or admission of legal malpractice; [and/or] (4) a criminal indictment or information for a felony crime.” Attorneys must detail any conviction, probation or fine for a felony crime.

The initial and ongoing certification standards are an objective “weeding-out” process designed to identify exceptional lawyers in the bankruptcy and creditors’ rights bars. This commitment to excellence has tangible results. In 2017, there were 831 total certifications; *none of the attorneys holding a certification reported any grievance against them that year.*

The Numbers Do Not Lie

These results from ABC attorneys stand in stark contrast to the elevated number of complaints captured in the annual SOLD report. Why is this?

⁴ The specific requirements for becoming board certified can be found at abcworld.org/downloads.

Part of the answer, particularly in bankruptcy law, is inherent to the complexities of the law itself. Simply put, you cannot effectively represent clients in this field without the subject-matter expertise, but that can be said for any number of legal practice areas.

However, ABC shines a bright light on what should be the first and most important area of concern for any buyer of legal services, and it does so in a way that cannot be replicated by legal directories or media-outlet awards and accolades. Assessing expertise requires setting objective standards of excellence, and ABC does a tremendous job of articulating those standards and measuring practitioners against them. It should come as little surprise that those attorneys who achieve board certification are significantly less likely to have a grievance filed or disciplinary action taken against them.

On the other hand, clients get several benefits by engaging a board-certified attorney. Board certification is a simple way to verify that an attorney has met objective criteria in a specialized area of law. This helps a prospective client quickly narrow the search for legal counsel, after which other factors (personality, billing rates, accessibility, etc.) are likely to come into play. In other words, board certification is not the sole factor for a buyer of legal services to consider, but choosing from among board-certified lawyers is statistically proven to result in greater rates of client satisfaction.

Conclusion

The practice of law is very competitive, so how can someone be differentiated in the marketplace? As a starting point, attorneys should explore the benefits of board certification. Those who practice in the area of bankruptcy and creditors’ rights law are clearly benefited by ABC’s clarity and mission, and so are their clients. Board certification does not promise lawyers bigger books of business, nor does it guarantee that their clients will always enjoy risk-free engagements, but the data presents a pretty strong argument that clients are better served by board-certified lawyers — and a satisfied client is the foundation of any strong practice. **abi**

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