

ABC Update

BY PATRICIA B. FUGÉE

Happy 25th Birthday, ABC!

The American Board of Certification (ABC) turns 25 this year, which is an achievement well worth celebrating — and we will be doing just that; stay tuned for more info about an ABC celebration at an upcoming ABI event! The importance of this anniversary is amply demonstrated by events leading to ABC's formation, as well as the existing rules of professional conduct.

In 1990, the U.S. Supreme Court had occasion to note the “growing interest in lawyer-certification programs.”¹ The Court further noted in 1973 at the Sonnett Memorial Lecture that “then Chief Justice Warren E. Burger advanced the proposition that specialized training and certification of trial advocates is essential to the American system of justice.”² Endorsing that proposition, a group of lawyers formed the National Board of Trial Advocacy (NBTA), which developed a set of objective, demanding standards for certification of trial counsel that many states accepted as evidence supporting the designation.³

Gary Peel, an attorney licensed in Illinois and Arizona, was certified in civil trial advocacy by the NBTA in 1981, and NBTA renewed his certification thereafter.⁴ Beginning in 1983, Peel's letterhead reflected this certification.⁵ The Illinois Attorney Registration and Disciplinary Commission filed a complaint against him in 1987, alleging that the letterhead violated the Code of Professional Responsibility. After the Commission and the Illinois Supreme Court ruled against Peel, the Supreme Court considered the constitutionality of prohibiting lawyers from advertising their board certification.⁶ In ruling in the attorney's favor, 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 rather a verifiable fact.⁷ The Court also emphasized that where the certifying organization has rigorous, objective requirements, stating that one is certified by such an organization is not an inherently misleading communication that can be curtailed.⁸ The Court concluded that the “[d]isclosure of information such as that on [a] petitioner's letterhead both serves the pub-

lic interest and encourages the development and utilization of meritorious certification programs for attorneys.”⁹

Following the Supreme Court's decision in *Peel*, ABI's leadership worked for more than a year to design an objective certification program for business and consumer bankruptcy lawyers. Known initially as the American Board of Bankruptcy Certification (ABBC), ABC was sponsored by ABI in 1992 as a nonprofit organization “dedicated to improving the quality of the bankruptcy bar,”¹⁰ and stated that “[t]he rigorous ABBC certification standards are designed to encourage bankruptcy practitioners to strive toward excellence and to recognize those attorneys who are especially knowledgeable in the bankruptcy field.”¹¹ The certification standards were developed after months of in-depth review of ethical regulations, applicable judicial and administrative decisions, and an exhaustive review of existing and proposed state bar-endorsed certification programs.¹²

ABC's inaugural year was certainly a success. In 1992, more than 300 attorneys applied for certification. ABC's initial officers and directors were an extraordinary group of bankruptcy lawyers, judges and law professors.

In 1993, the American Bar Association (ABA) approved accreditation standards for private attorney-certifying organizations such as the ABC.¹³ According to a 1993 report, “The ABBC was intimately involved in the promulgation of these standards and was among the first to apply to the ABA for accreditation.”¹⁴ The ABC obtained ABA accreditation and has maintained it since then, and has been approved by many states as an authorized board for certification purposes.¹⁵

While ABI was working toward the ABBC, as it was initially known, the Commercial Law League of America (CLLA) developed a separate program to identify commercial law practitioners with special expertise, which was ultimately merged on



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1 *Peel v. Atty. Registration & Disciplinary Commission*, 496 U.S. 91, 94 (1990).

2 *Id.*

3 *Id.* at 95-96.

4 *Id.* at 96.

5 *Id.* at 97.

6 *Id.* at 99-100.

7 *Id.* at 101.

8 *Id.* at 102.

9 *Id.* at 111.

10 ABI Annual Report, 1991-92, at p. 14.

11 *Id.*

12 *Id.*

13 ABI Annual Report, 1993, at p. 12.

14 *Id.*

15 See “State Approaches to Certification,” ABC, available at abcworld.org/state; see, e.g., Ohio Rules of Professional Conduct 7.1 (prohibiting misleading statements in advertising); 7.4(e) (prohibiting statements about specialization unless the lawyer has been certified as a specialist by an organization approved by the Ohio Supreme Court Commission on Certification of Attorneys as specialists and the name of the certifying organization is clearly identified in the statement) and “Accredited Agencies and Specialty Programs,” Supreme Court of Ohio, available at supremecourt.ohio.gov/Boards/certification/accredited (showing ABC as an approved organization).

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Jan. 1, 1998, into the ABC. Accordingly, ABC certification now includes certification in business bankruptcy law, consumer bankruptcy law and creditors' rights law, and is designed to recognize lawyers who have met discrete, objective certification standards.

The achievements of ABI and CLLA in sponsoring and developing the ABC, as well as the founding officers and directors, are significant, as reflected by the success of the program over its 25-year history. The ABC, which has certified more than 1,000 professionals, is the sole national organization providing board certification for insolvency lawyers, and certification provides an objective standard that assists the public in making informed decisions about choosing counsel, as well as encourages attorneys to strive toward excellence and recognizes those who have met ABC's rigorous standards. ABC is proud to have a long list of U.S. bankruptcy judges and other judges among its members.¹⁶ In addition, Congress has recognized the value of certification by amending § 330 of the Bankruptcy Code

to provide that board certification is a factor to be considered in determining compensation.¹⁷

From my personal experience, becoming certified by the ABC has been an accomplishment of which I am very proud. It demonstrates my commitment to my competency in the practice area, as well as my professionalism and ethics. In addition, serving on ABC's Board of Directors has been a wonderful experience, providing me with the opportunity to work with amazing lawyers all over the U.S., including some old friends and new.

The ABC, including its officers, directors and board-certified lawyers across the U.S., is very proud of its accomplishments and will be inviting ABC members and ABI attendees to a commemoration of the 25-year anniversary honoring ABC's founding officers and directors and celebrating its success, while looking forward to the future of continued excellence. Look for details about the event to be announced in the coming months, and we hope to see you all there! **abi**

¹⁶ See "Certified Judges," ABC, available at abcworld.org/judges.

¹⁷ 11 U.S.C. § 330(a)(3)(E).

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