

ABC Update

BY MICHAEL D. FIELDING

Study: Board-Certified Attorneys Enjoy Higher Billable-Hour Rates

While recent reports¹ attest that year-over-year billable-hour rate increases have recovered from the global financial crisis, these data points hide two important characteristics of today's legal market: (1) headcount growth inside of corporate legal departments is far outpacing that of lawyers in large law firms, as more work is taken on in-house; and (2) the legal market is becoming increasingly polarized, with some lawyers at the top of the scale doing exceptionally well while others struggle.

These two trends — softer demand and market polarization — show no signs of abating, and if anything, still-emerging factors like machine learning and artificial intelligence will likely exacerbate these market dynamics, further commoditizing low-value work that requires less sophisticated skills. Amid these trends, there is one strategy that insolvency attorneys should consider to help preserve their values in the marketplace and enhance the demand for their services: become board certified by the American Board of Certification (ABC).

While a comprehensive survey on the topic is sorely needed, there is anecdotal evidence that strongly suggests the value of board certification. For example, in August 2018, the *Missouri Lawyers Weekly* published a survey of billable rates for 162 attorneys practicing in the Missouri, indicating that board certification is correlated with higher rates. Of the sampled attorneys, 48 were identified as bankruptcy practitioners — with four of those attorneys being board certified. It comes as no surprise that more than one-fourth of the available data came from that practice area. Unlike other practice areas, bankruptcy attorneys must regularly disclose their hourly rates in fee applications.

Consider the following statistics derived from the published data: The average billable rate for all 162 attorneys was \$344 per hour, with the median being \$318 and the standard deviation being \$135 per hour. The highest earner commanded \$865, while the lowest generated \$150 per hour. The 48 insolvency attorneys had an average hourly rate of \$338, with a median rate of \$285 and a standard deviation of \$135. In contrast, the other 114 non-insolvency attorneys had an average rate of \$347 with a median rate of \$343 and a standard deviation

of \$134. In other words, the data illustrates that insolvency attorneys as a whole tend to earn less when compared to all other practice areas in the profession, but such a result should not be a surprise. There are many more consumer insolvency attorneys, and bankrupt consumers simply do not have the economic wherewithal to pay high rates to their lawyers.

[T]he anecdotal evidence strongly suggests that the cost of becoming board certified is far outweighed by the real economic returns that certified attorneys enjoy each year.

Among the insolvency lawyers surveyed, the data reveals a bright distinction between insolvency attorneys who are board certified and those who are not. The 44 bankruptcy attorneys who are not board certified had an average billable rate of \$336 with a median rate of \$280 and a standard deviation of \$139. In sharp contrast, the four board certified attorneys from the report had an average billable rate of \$360 per hour with a median value of \$353 and a standard deviation of just \$84.

In other words, board certified attorneys have an hourly rate that is on average nearly 5 percent more than all attorneys and 7.1 percent more than non-certified insolvency attorneys. To put this in perspective, if a certified and non-certified attorney were to each bill 1,800 hours in a year, the average certified attorney would generate \$43,200 more in revenue each year — and that is real money.

Why do board certified attorneys, on average, command higher billable rates? The short answer is that becoming board certified requires an attorney to rise to the top of his/her game. In turn, these better-skilled attorneys can charge higher rates in the competitive legal market.

To become a board certified, an attorney applicant must pass a rigorous day-long exam.²



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¹ See "2016 Real Rate Report in Brief: A Summary of Lawyer Rate Trends," Wolters Kluwer/CEB, available at amlawdaily.typepad.com/files/2016-real-rate-report-summary-of-rate-trends.pdf (last visited Oct. 29, 2018).

² To find out more about ABC certification (including upcoming exam dates), visit abcworld.org. To prepare for an upcoming ABC exam, visit abi.org/abcprep.

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In addition, the applicant must show that he/she has (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) had substantial and wide experience in matters unique to their desired certification; (3) attended a minimum of 60 hours of continuing legal education during the past three years in bankruptcy law; (4) submitted a grievance history 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 he or she continues to meet the five foregoing requirements. The initial and ongoing certification standards are an objective "weeding-out" process designed to identify exceptional lawyers in the bankruptcy and creditors' rights bars.

The comparison of certified versus non-certified rates should come as no surprise. Higher-skilled professionals earn higher premiums because clients are willing to pay for premium services, particularly at the higher end of the marketplace for sophisticated legal services. Indeed, the refrain of "Premium services for premium clients at premium rates" is definitely borne out in law firm economics. In short, the anecdotal evidence strongly suggests that the cost of becoming board certified is far outweighed by the real economic returns that certified attorneys enjoy each year. **abi**

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