

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN**

ANGELO BINNO,

Plaintiff,

v.

Honorable Denise Page Hood

AMERICAN BAR ASSOCIATION,

Case No. 2:11-cv-12247

Defendant.

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**DEFENDANT AMERICAN BAR ASSOCIATION'S
ANSWER TO PLAINTIFF ANGELO BINNO'S COMPLAINT**

Defendant American Bar Association ("ABA"), an Illinois not-for-profit corporation, states the following as its Answer to Plaintiff Angelo Binno's ("Plaintiff") Complaint:

INTRODUCTION

1. The ABA does not have sufficient knowledge or information upon which to form a belief as to the truth of the allegations relating to Plaintiff's motives in filing his Complaint and

denies the remaining allegations in ¶ 1 because they are untrue. The ABA complies with the Americans With Disabilities Act of 1990, 42 U.S.C. § 12189, as amended (“ADA”). The ABA’s accreditation practices do not unlawfully discriminate against blind or visually impaired persons who may be applicants to law schools.

2. The ABA denies the allegations in ¶ 2 including all of its subparts because they are untrue. The ABA does not discriminate against blind or visually impaired persons and its accreditation standards do not in effect deny blind or visually impaired students equal access to educational opportunities at ABA accredited law schools. The ABA does not require that law schools administer an “entrance exam” that is patently discriminatory. The ABA Standards for Approval of Law Schools do not have the effect of discriminating against blind or visually impaired law school applicants. Although Standard 503 of the ABA Standards for Approval of Law Schools requires that every law school applicant take a valid and reliable admissions test, it does not require that the Law School Admissions Test (“LSAT”) be taken. Standard 503 states as follows:

A law school shall require each applicant for admission as a first year J.D. student to take a valid and reliable admission test to assist the school and the applicant in assessing the applicant’s capability of satisfactorily completing the school’s educational program.

The ABA believes that the LSAT is a valid and reliable test as those terms have meaning in the testing field and does not believe that the LSAT is inherently discriminatory to anyone, including the blind and visually impaired. The ABA acknowledges that the LSAT is widely used by law schools to assess applicants for admission along with other important factors such as undergraduate grades. The ABA denies that a law school that waives or exempts a blind or visually impaired applicant from taking the LSAT necessarily risks being subject to remedial action or sanctions under Rule 13 of the ABA Rules of Procedure for Approval of Law Schools.

If a law school desires to waive or exempt an applicant from taking the LSAT or another valid and reliable test, the law school may (and should) seek a variance from Standard 503 under Standard 802. Standard 802 of the ABA Standards for Approval of Law Schools provides as follows:

If the Council finds that [a law school's] propos[ed] [admission program is inconsistent with Standard 503, but] is nevertheless consistent with the general purposes of the Standards, the Council may grant the variance, may impose conditions, and shall impose time limits it considers appropriate.

3. The ABA denies the allegations in ¶ 3 because they are untrue. The ABA's accreditation practices do not effect ongoing discrimination and continuing denial of equal access to educational opportunities at American law schools for blind or visually impaired persons as alleged by Plaintiff.

JURISDICTION AND VENUE

4. The ABA admits that this Court has jurisdiction over this case.
5. The ABA admits that venue is proper in the Eastern District of Michigan.

PARTIES

6. The ABA is without sufficient knowledge or information upon which to form a belief as to the truth of the allegations in ¶ 6.

7. The ABA denies the allegations in ¶ 7 because they are untrue. Plaintiff lacks standing to bring the present cause of action against the ABA because he cannot establish that his alleged inability to gain admission to law school is "fairly traceable" to the ABA's accreditation standard that all law schools require applicants take the LSAT or another valid and reliable test, and not the result of the independent decision-making processes of the law schools to which he applied. Plaintiff also lacks standing because it is merely speculative that a favorable decision in

this case would redress his alleged inability to gain admission to law school absent facts that law schools would not require applicants to take the LSAT as a prerequisite to admission in the absence of the ABA's accreditation standard.

A. The ABA is without sufficient knowledge or information upon which to form a belief as to the truth of whether Plaintiff is physically disabled.

B. The ABA is without sufficient knowledge or information upon which to form a belief as to the truth of Plaintiff's wishes to attend law school or inability to gain admission to law school as stated in the Complaint.

C. The ABA denies that Plaintiff is unable to seek a waiver and exemption of the "entrance exam" requirement because the ABA requires that an "entrance exam" be given to each applicant prior to his or her admission.

D. The ABA is without sufficient knowledge or information upon which to form a belief as to the truth of the allegations that Plaintiff has been and continues to be damaged by the ABA's exam requirement for admission to any accredited law school in the United States. The ABA denies that it requires the administration of a discriminatory "entrance exam."

8. The ABA admits that it is a "private entity" as defined by the ADA and that the United States Department of Education has recognized it as an accrediting entity for law schools. The ABA denies the remaining allegations in ¶ 8 because they are untrue and further denies that it is subject to Article III of the ADA for purpose of this action.

FACTUAL ALLEGATIONS

9. The ABA denies the allegations in ¶ 9 because they are untrue. The ABA Section of Legal Education and Admissions to the Bar is not the sole entity charged with accrediting law

schools in the United States. For example, the State Bar of California and regional accreditation organizations exist within the United States that accredit law schools.

10. The ABA denies the allegations in ¶ 10 because they are untrue. The Council of the Section of Legal Education and Admissions to the Bar (the “Council”) has been recognized by the United States Department of Education as an accrediting agency for the accreditation of programs leading to the professional degree in law. It is the Council and not the ABA that is so recognized.

11. The ABA admits that the Council promulgates the Standards and Rules of Procedure for Approval of Law Schools with which law schools must comply to receive or retain ABA accreditation.

12. The ABA is without sufficient knowledge or information upon which to form a belief as to the truth of whether, prior to 1997, law schools exercised discretion to grant “entrance exam” exemptions or waivers to otherwise qualified blind or visually impaired applicants. The ABA states further that law schools currently have the ability to waive or exempt an applicant from taking the LSAT or another valid and reliable test by seeking a variance under Standard 802 of the ABA Standards for the Approval of Law Schools.

13. The ABA admits that Standard 503 states in pertinent part:

A law school shall require each applicant for admission as a first year J.D. student to take a valid and reliable admission test to assist the school and the applicant in assessing the applicant’s capability of satisfactorily completing the school’s educational program.

14. The ABA admits that the Interpretation 503-1 of Standard 503 states in pertinent part:

A law school that uses an admission test other than the Law School Admission Test sponsored by the Law School Admission Council shall establish that such other test is a valid and reliable test to

assist the school in assessing the applicant's capability to satisfactorily complete the school's educational program.

15. The ABA denies that a law school that chooses to grant a waiver or exemption from the examination requirement faces sanctions, up to and including, loss of accreditation under Rule 13 of the ABA Standards for Approval of Law Schools. In fact, eight law schools currently operate under a waiver and exemption from Standard 503's examination requirement.

16. The ABA admits only that, upon information and belief, the majority of law schools in the United States require applicants to take the LSAT as a prerequisite to admission. The ABA denies as untrue the allegation that the requirement to establish that a test is valid and reliable does not apply to the LSAT. Currently, the LSAT is, and must be, a valid and reliable test to assist law schools in the review of applicants.

17. The ABA admits only that the Law School Admission Council's ("LSAC") website states that "All American Bar Association (ABA)-approved law schools, most Canadian law schools, and many other law schools require applicants to take the LSAT as part of their admission process." The ABA denies as untrue the allegation that all law schools in the United States require applicants to take the LSAT. The ABA also denies as untrue the allegation that requiring applicants to take the LSAT is a condition for continued accreditation by the ABA.

18. The ABA admits that the LSAT is a standardized test consisting of approximately 100 multiple-choice questions in part as well as other testing complements.

19. The ABA admits only that the analytical reasoning portion of the LSAT accounts for approximately 1/4th of the multiple-choice questions on the exam. The ABA denies the allegation that answering analytical reasoning or "logic game" questions requires applicants to undertake spatial reasoning and diagramming of visual concepts for successful completion. Spatial reasoning and diagramming of visual concepts are tools used by test takers to complete

the test. The ABA admits that an example of an actual LSAT logic question for the 2007 examination and accompanying instructions are incorporated in the Complaint (except that there are no accompanying instructions).

20. The ABA is without sufficient knowledge or information upon which to form a belief as to the allegation that a blind or visually impaired applicant would be unable to conceive those spatial relationships or diagram answers in the same manner as their sighted peers. The ability to conceive spatial relationships or diagram answers in one's own mind varies from individual to individual. The ABA also is aware of reasonable accommodations that are regularly provided by the LSAC to blind or visually impaired persons who request such accommodations in taking the LSAT, including allowing for a scribe, who may prepare diagramming such as Braille depictions, to accommodate the disabled or the blind or visually impaired test taker.

21. The ABA is without sufficient knowledge or information upon which to form a belief as to the LSAC's acknowledgement of the appropriateness of a LSAT waiver as a reasonable accommodation for blind applicants. A review of the letter dated May 25, 1995 that is attached to the Complaint as Exhibit B reveals that the Law School Admission Services suggested that it may be more beneficial for the applicant to request that the law schools waive the LSAT requirement.

22. The ABA is without sufficient knowledge or information upon which to form a belief as to whether Plaintiff is legally blind and whether he is therefore incapable of perceiving spatial relationships or performing necessary diagramming to successfully complete logic questions on the LSAT at a "competitive" level. The ABA also is unable to conclude that legally

blind persons are incapable of perceiving spatial relationships or performing necessary diagramming to successfully complete logic questions on the LSAT at a “competitive” level.

23. The ABA is without sufficient knowledge or information necessary to form a belief as to the truth of the allegations in ¶ 23.

24. The ABA is without sufficient knowledge or information upon which to form a belief as to the truth of the number of times Plaintiff has taken the LSAT, the reasons why he may have performed poorly on the LSAT and why he has been unable to attain admission to a law school. The ABA further does not have sufficient knowledge or information upon which to form a belief as to the truth of the allegations as to whether Plaintiff was denied admission to one or more law schools in the Eastern District of Michigan, the number of law schools to which Plaintiff was denied admission in the Eastern District of Michigan, and the reasons why. The ABA denies as untrue the allegations that the LSAT is a discriminatory examination and that it is an “entrance exam.”

25. As to the allegations in ¶ 25, Plaintiff asserts a request for an exemption or waiver of the LSAT when reapplying to law schools. The ABA does not have the authority to grant or deny or even to review such a waiver request. Upon information and belief, such a waiver request must be addressed to and reviewed by the law school(s) to which Plaintiff applies for admission. The ABA does not know whether Plaintiff made such a request to any of the law schools to which he has applied. The ABA denies that the LSAT is discriminatory and that illegal stigma and prejudice results from taking the test. The ABA is without sufficient knowledge or information upon which to form a belief as to the truth of whether Plaintiff can speak three languages, completed a high school education, was accepted to or graduated from

Wayne State University, and obtained employment at the United States Department of Homeland Security or granted a high level security clearance.

26. The ABA denies the allegations in ¶ 26 because they are untrue. The ABA states further that nothing in Standard 503 precludes Plaintiff from requesting either a reasonable accommodation in taking the LSAT from the LSAC or an exemption or waiver of any requirement that he take the LSAT from the law schools to which he applies.

27. The ABA denies the allegations in ¶ 27 because they are untrue and further denies that it has seriously injured Plaintiff or other blind or visually impaired persons through its law school accreditation standards and procedures.

28. The ABA denies the allegations in ¶ 28 because they are untrue. The ABA states that its agents or employees have not acted intentionally, willfully, in bad faith, and/or with reckless disregard to the federal rights of Plaintiff or others with disabilities. The ABA further states that it has a deep and abiding commitment to compliance with federal law and to making a legal education and the legal profession equally accessible to all.

29. The ABA denies the allegations in ¶ 29 because they are untrue. The ABA has not discriminated against Plaintiff, does not discriminate against others based on their disabilities, and its accreditation standards do not in effect deny Plaintiff or others equal access to a legal education. The ABA further states that not all law schools require the LSAT as a condition of acceptance. The ABA also states that requiring applicants to take the LSAT is not a condition for law school accreditation by the ABA.

30. The ABA denies as untrue the allegation that Plaintiff has no adequate remedy at law, and further asserts that Plaintiff has no right to seek monetary relief. The ABA understands that Plaintiff seeks equitable relief, but denies that any of its actions or policies illegally

discriminate against Plaintiff or blind or visually impaired persons. The ABA otherwise denies the allegations in ¶ 30 because they are untrue.

31. The ABA denies the allegations in ¶ 31 because they are untrue. The ABA again states that a blind or visually impaired person is not forced to draw pictures as a requirement to take a test that is only one factor that may be used by law schools to make their admission decisions.

**COUNT I - VIOLATION OF TITLE III OF THE AMERICANS WITH
DISABILITIES ACT, SPECIFICALLY 28 CFR 36.309(2ND) RELATED (SIC)**

32. The ABA restates its responses to ¶¶ 1 through 31.

33. The allegations in ¶ 33 are legal interpretations to which no responsive pleading is required. However, to the extent that the allegations are merely a recitation of 42 U.S.C. §12101(a), the ABA admits those provisions of the ADA.

34. The allegations in ¶ 34 are legal interpretations to which no responsive pleading is required. However, to the extent that the allegations are merely a recitation of 42 U.S.C. §12101(b), the ABA admits those provisions of the ADA.

35. The ABA is without sufficient knowledge or information upon which to form a belief as to the truth of the allegations in ¶ 35.

36. The ABA admits the allegations in ¶ 36.

37. The ABA denies the allegations in ¶ 37 because they are untrue.

38. The ABA denies the allegations in ¶ 38 because they are untrue.

39. The ABA denies the allegations in ¶ 39 because they are untrue.

40. The ABA admits only that Title III of the ADA makes it illegal for public accommodations, commercial facilities, and private entities that offer examinations or courses related to applications, licensing, certification, or credentialing for secondary or postsecondary

education, professional, or trade purposes to discriminate against a qualified person with a disability. The ABA denies the remaining allegations in ¶ 40 and that it is an entity covered by Title III of the ADA with respect to the LSAT.

41. The ABA denies that the quote in ¶ 41 is a quotation of Title III of the ADA; rather, it is a quotation of 28 C.F.R. 36.309(a). The ABA denies any insinuation in ¶ 41 that the quoted regulation applies to the ABA with regard to the LSAT because the ABA does not “offer” the LSAT within the meaning of the ADA.

42. The ABA denies that the quote in ¶ 42 is a quotation of Title III of the ADA; rather, it is a quotation of 28 C.F.R. 36.309(b)(1)(i). The ABA denies any insinuation in ¶ 42 that the quoted regulation applies to the ABA with regard to the LSAT because the ABA does not “offer” the LSAT within the meaning of the ADA.

43. The ABA denies the allegations in ¶ 43 because they are untrue and are otherwise legal interpretations to which no responsive pleading is required. The ABA states that not all law schools it has accredited require applicants to take the LSAT.

44. The ABA denies the allegations in ¶ 44 because they are untrue.

45. The ABA is without sufficient knowledge or information upon which to form a belief as to the truth of the allegations in ¶ 45.

46. The ABA denies the allegations in ¶ 46 because they are untrue. The ABA denies that the intent of the LSAT is to measure Plaintiff’s aptitude for the study of law. The ABA further denies that the LSAT’s analytical reasoning questions illegally reflect Plaintiff’s impaired sensory skills in violation of 28 C.F.R. 36.309(b)(1)(i).

47. The ABA denies the allegations in ¶ 47 because they are untrue.

48. The ABA denies the allegations in ¶ 48 because they are untrue. The ABA is not the sole entity responsible for accrediting law schools or promulgating rules and regulations for the testing of prospective law school applicants.

49. The ABA denies the allegations in ¶ 49 because they are untrue. The ABA denies that it is covered by Title III of the ADA with respect to the LSAT. Even so, the ABA denies that it has discriminated against persons with disabilities.

PRAYER FOR RELIEF

50. The ABA denies the allegations in ¶ 50 because they are untrue.

51. The ABA denies the allegations in ¶ 51 because they are untrue.

52. The ABA denies the allegations in ¶ 52 because they are untrue.

53. The ABA denies the allegations in ¶ 53 because they are untrue.

54. Plaintiff is not entitled to compensatory damages under Title III of the ADA if it were applicable to the ABA with regard to the LSAT.

55. The allegations in ¶ 55 are legal conclusions to which no responsive pleading is required.

56. The ABA denies the allegations in ¶ 56. Plaintiff is not entitled to any relief from this Court.

WHEREFORE, Defendant American Bar Association requests that this Court enter a judgment of no cause of action in its favor and against Plaintiff Angelo Binno and award its reasonable costs and attorneys' fees and such other relief as this Court deems just and proper.

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Dated: August 16, 2011

I hereby certify that on August 16, 2011, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system, which will send notice of such filing to all counsel of record.

/s/Allyson A. Miller (P71095)
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