

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE**

LINCOLN MEMORIAL UNIVERSITY, DUNCAN SCHOOL OF LAW,)	
)	Case No. 3:11-CV-608
Plaintiff)	
)	Judge Varlan
v.)	Magistrate Judge Shirley
)	
THE AMERICAN BAR ASSOCIATION,)	
)	
Defendant)	

NOTICE OF SUPPLEMENTAL AUTHORITY

Duncan School of Law (“DSOL”) submits the following supplemental authority bearing on the issue of exhaustion of administrative remedies: *Darby v. Cisneros*, 509 U.S. 137, 143-147 (1993). The exhaustion issue is discussed at pages 13-15 of Plaintiff’s Motion for Temporary Restraining Order and For Preliminary and Permanent injunction (Doc. # 2). In *Darby*, the United States Supreme Court held that a party must exhaust administrative remedies

“*only* (original emphasis) when expressly required by statute or when an agency rule requires appeal before review and the administrative action is made inoperative pending review. Courts are not free to impose an exhaustion requirement as a rule of judicial administration where the agency action has already become ‘final’ under § 10(c).

509 U.S. at 154. The court also held that the use of the word “may” as related to the option of an appeal, does not mean “must,” and no exhaustion is required. *Darby*, 509 U.S. at 150.; *Bangura v. Hansen*, 434 F.3d 487, 498 (6th Cir. 2006). As pointed out by Plaintiff’s counsel during oral

argument and in Plaintiff's Motion (Doc. #2, p. 14), Rule 10(a) of the ABA uses the word "may" in reference to an appeal from the Council decision. In addition, the ABA treated this decision as final by publicizing it in contravention of its own rules. See, ABA Internal Operating Practices 5 (attached hereto as Exhibit A).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify on January 12, 2012, I am filing the foregoing Notice via the Court's CM/ECF which will automatically generate a Notice of Electronic Filing that will be emailed to the following registered Filing Users:

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