

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

THOMAS M. COOLEY LAW SCHOOL,
a Michigan non-profit corporation,

Case No.

Plaintiff,

Honorable

v.

Redacted Public Version

THE AMERICAN BAR ASSOCIATION,
an Illinois non-profit corporation,

Defendant

There is no other pending or resolved civil action arising out
of the transaction or occurrence alleged in this Complaint

/s/ Michael P. Coakley
Michael P. Coakley

VERIFIED COMPLAINT AND JURY DEMAND

PARTIES, JURISDICTION AND VENUE

1. Plaintiff, Thomas M. Cooley Law School d/b/a/ Western Michigan University Thomas M. Cooley Law School (“WMU-Cooley” or “the Law School”), is a Michigan non-profit educational corporation with its principal place of business in Lansing, Michigan.

2. Defendant, the American Bar Association (“ABA”), is an Illinois non-profit corporation that does business in Michigan and has its principal place of

business in Chicago, Illinois. The ABA is organized into divisions, sections, and offices, among them the Section of Legal Education and Admissions to the Bar.

3. The Council of the ABA Section of Legal Education and Admissions to the Bar (“Council”) is an accrediting agency under 20 U.S.C. § 1099b and is recognized by the United States Department of Education as the accrediting agency for professional law-degree programs. Decisions concerning the approval of law schools and the acquiescence in major changes in program or structure of approved law schools, such as the establishment of separate campus, are made by the Council, not the ABA House of Delegates. WMU-Cooley is a law school approved by the Council.

4. The Accreditation Committee of the ABA Section of Legal Education and Admissions to the Bar (“Committee”) is also recognized by the United States Department of Education as an accrediting agency for decisions involving continued accreditation. The Committee reviews applications for acquiescence in major changes in program or organizational structure and makes recommendations to the Council about whether those applications should be granted. The Committee also makes decisions regarding certain other matters as delegated to it by the Council.

5. Upon information and belief, the membership of the Council and the Committee are not controlled by the President of the ABA or the House of

Delegates. The President may nominate individuals for membership on the Council or the Committee, but those nominations can be and have been ignored by the Section's nominating committee.

6. The decisions of the Council and the Committee are not controlled by and cannot be reversed by the ABA House of Delegates. The only power the House has is to refer back to the Council a Council decision to amend the standards, interpretations, and rules or a Council decision to remove a school from the list of approved law schools. After the referral process occurs, any subsequent decision by the Council is again reviewable by the House and may be again referred back. After a second referral, any subsequent decision by the Council is final and unreviewable by the House.

7. Jurisdiction exists under 28 U.S.C. § 1331 and 20 U.S.C. § 1099b(f), which grants this Court jurisdiction to review accreditation decisions, and 28 U.S.C. § 1332.

8. The amount in controversy exceeds Seventy Five Thousand (\$75,000.00) Dollars, exclusive of interest, costs and attorney fees.

9. Venue is appropriate under 28 U.S.C. § 1391(b).

THE ABA APPROVAL AND INTERIM MONITORING PROCESS

10. The ABA approves and then periodically re-approves law schools. WMU-Cooley was last reapproved by the ABA in December 2015. It was at that time found to be in full compliance with all ABA accreditation standards.

11. On May 19, 2016, following an April meeting of the Accreditation Committee, the Law School was notified that it was subject to interim monitoring to determine if it remained in compliance with certain ABA standards, specifically Standard 202 concerning financial resources; Standard 301 regarding providing a rigorous program of legal instruction; Standard 309(b) regarding sufficient academic support to afford students a reasonable opportunity to complete the program of legal education, graduate, and become members of the legal profession; Standard 316 regarding bar passage rates; and Standard 501(b) which required that an approved law school only admit applicants who “appear capable of satisfactorily completing its program of legal instruction and being admitted to the bar”; and Standard 508, which requires law schools to provide all students with basic student services and career counseling. The Law School was directed to provide information by a date certain to demonstrate its compliance with those standards.

12. The Law School submitted the requested information as directed by the Committee.

13. On June 24, 2016, the Law School submitted to the ABA a request under ABA Standards 106 and 106 for acquiescence to open a separate location on the main campus of Western Michigan University in Kalamazoo, Michigan, to offer up to 60 credits of the Law School's 90 credit-hour J.D. program there. The Council appointed a fact-finder who visited Kalamazoo, met with Western Michigan University's President, Board Chair, and various Law School personnel, and subsequently issued a highly favorable report, which was ultimately reviewed by the Committee at its April 20-21, 2017 meeting.

14. On March 31, 2017, following a meeting of January 12-13, 2017, the Committee sent the Law School a letter determining that the Law School's submissions demonstrated that it complied with Standards 316(b) and 508, but that the Committee was unable to determine whether the Law School complied with the remaining standards under which it was being reviewed. The Committee directed the Law School to provide additional information demonstrating compliance with those standards. In that letter, the Committee introduced as a new standard for consideration, Standard 501(a), requiring the Law School to "adopt, publish and adhere to sound admissions policies and practices consistent with the Standards, its mission, and the objectives of its program of legal education."

15. The Law School submitted the requested information as directed by the Committee.

16. On May 3, 2017, following a meeting of April 20-21, and despite the favorable site report, the Committee sent the Law School a letter recommending that the Council defer decision on the Law School's request to open the separate location at Kalamazoo, pending the interim monitoring review.

17. On June 9, 2017, following a meeting of June 2-3, 2017, the Council accepted the Committee's report and recommendation and deferred final action on the Law School's request to open the new location at Kalamazoo.

18. On October 4, 2017, following a meeting of September 12-15, 2017, the Committee sent the Law School a letter determining that the Law School complies with Standards 202(a), 301(a), 309(b), and 501(a), [REDACTED]

[REDACTED]. The Committee directed the Law School to provide by February 1, 2018 specific additional information demonstrating [REDACTED]

[REDACTED]. The Committee also deferred the Law School's request to open the Kalamazoo location pending the Law School's demonstration that it is in full compliance with the each of the standards under review.

19. The Law School appealed the Committee's [REDACTED]
[REDACTED], and as to deferral of the Kalamazoo

campus application to the Council, and made written submissions in support of its appeal.

20. On November 4, 2017, the Law School appeared before the Council on the appeal.

21. On November 13, 2017, following a meeting of November 3-4, 2017, the Council, by e-mail from Mr. Barry Currier, the ABA's Managing Director of Accreditation and Legal Education, sent the Law School a letter affirming, without explanation and without addressing any aspect of the school's submission in support of the appeal, the Committee's findings of fact and conclusions with respect to [REDACTED]

[REDACTED].

22. The letter also affirmed the Committee's specific reporting requirements delineated in the "Response Requested" section of the Committee's October 4, 2017 letter. Those requirements include submitting a report to the Committee by February 1, 2018 to demonstrate the Law School's [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].

23. Further as part of its November 13, 2017 letter, the Council affirmed the Committee's deferral of decision on the Law School's request for acquiescence in the Kalamazoo location.

24. Despite having taken no final adverse action as provided by 34 C.F.R. § 602.26, the Council notified the Law School that it will post the November 13, 2017 letter within 24 hours of the time the Law School was notified of the Council's decision, which was at 4:58 p.m. EST on November 13, 2017, in accordance with 34 C.F.R. § 602.26, which, according to the Council's letter, must be posted "[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]" but it made no finding that the Law School "is significantly out of compliance with the ABA Standards."

25. Having received this notice of publication, the Law School informed the ABA by e-mail to Mr. Currier at 6:34 p.m. EST on November 13, 2017 that it is appealing the Council's decision to the Appeals Panel under ABA Rule 15(c), which provides that "A law school has a right to appeal a decision of the Council as provided in Rule 36," and requested the ABA to delay all disclosures until the issues are resolved. The Law School reminded the ABA of the harm to the school that disclosure and publication will cause and that there is no reason for such

precipitous action. Such publication will effectively eviscerate the Law School's right to appeal. The Law School specifically asked Mr. Carrier to inform the Law School that it agreed to "now to delay all disclosures until we resolve these issues."

26. The ABA by e-mail from Mr. Carrier acknowledged the Law School's 6:38 p.m. e-mail. He indicated that "I will take the matter up with the Council leadership and my office colleagues and be back to you as quickly as I can be." At some time on November 13, 2017, the ABA sent notice of the Council's letter to the U.S. Secretary of Education, the Higher Learning Commission (another agency that accredits the Law School, the State of Michigan Department of Licensing and Regulatory Affairs, and the Florida Commission for Independent Education (a Florida agency that licenses the Law School's operations in Florida.

COUNT I: ACTION CONTRARY TO LAW (INJUNCTION)

27. The Law School incorporates by reference paragraphs 1-26 of the Complaint.

28. As demonstrated above, the Law School will suffer immediate irreparable harm without an injunction to prevent publication of the November 13, 2017 letter. The publication of interim determinations by the ABA will irreparably harm the Law School's reputation in the public and specifically with prospective law students. It will also effectively destroy the Law School's right of appeal, as once publication is made, it cannot be undone.

29. Issuance of the injunction will not cause substantial harm to others as the information contained in the letter is non-final and subject to reversal once the Law School provides the ABA with the specific reporting it has been directed to submit in approximately three months, on or before February 2, 2018, or the Appeals Panel reverses the Council's decision.

30. The public interest would be served by issuance of the injunction because enjoining publication of the letter will protect the public from receiving misinformation about the Law School's legal education program.

31. The Law School has demonstrated a strong likelihood of success on the merits given that the Council's decision is not a final adverse action and is subject to the Law School's right of appeal.

WHEREFORE, WMU-Cooley respectfully requests that this Honorable Court immediately enter a temporary restraining prohibiting publication of the November 13, 2017 letter absent further order of the Court.

COUNT II: DECISION MADE WITHOUT SUBSTANTIAL EVIDENCE TO SUPPORT IT

32. The Law School incorporates by reference paragraphs 1-31 of the Complaint.

33. The Council of the ABA is an accrediting agency recognized by the Department of Education and is required to have substantial evidence to support its decision affirming the Committee's October 4, 2017 decision.

34. The Council did not have substantial evidence, nor did it demonstrate that it weighed evidence, to support its decision to affirm the Committee's decision finding the Law School [REDACTED] and to adopt the Committee's recommendation to defer final action on the Law School's request to open the new location at Kalamazoo.

35. WMU-Cooley has suffered damages as a result of the ABA's decisions made without substantial evidence.

WHEREFORE, WMU-Cooley respectfully requests that this Honorable Court enjoin the ABA from publishing the November 13, 2017 letter absent further order of the Court. WMU-Cooley also requests this Court to award WMU-Cooley damages and any additional relief it deems appropriate.

COUNT III: ABUSE OF DISCRETION

36. WMU-Cooley incorporates by reference paragraphs 1–35 of the Complaint.

37. The Council of the ABA is an accrediting agency recognized by the Department of Education, and its decisions are reviewable for an abuse of discretion.

38. The ABA abused its discretion by failing to consider all relevant factors and provide reasoning or rationale for its decision to find the Law School [REDACTED]

[REDACTED] and to defer decision on the Law School's application to open making a clear error in judgment.

39. WMU-Cooley has suffered damages as a result of the ABA's abuse of discretion.

WHEREFORE, WMU-Cooley respectfully requests that this Honorable Court enjoin the ABA from publishing the November 13, 2017 letter absent further order of the Court. WMU-Cooley also requests this Court to award WMU-Cooley damages and any additional relief it deems appropriate.

COUNT IV: VIOLATION OF ARBITRARY AND CAPRICIOUS STANDARD

40. WMU-Cooley incorporates by reference paragraphs 1-39 of the Complaint.

41. The Council of the ABA is an accrediting agency recognized by the Department of Education, and its decisions are reviewable under an arbitrary and capricious standard.

42. The Council's decision to affirm the Committee's findings of fact and conclusions with respect to the Law School's [REDACTED] [REDACTED] was arbitrary and capricious, because it was made without any fixed standards or principles, given that Standard 501(b), which requires that an approved law school [REDACTED] [REDACTED]

[REDACTED]

[REDACTED] neither the Committee nor the Council provided an interpretation of that phrase.

43. Rather the standards and principles of decision employed by the Committee and Council changed suddenly during the decision-making process without explanation or rationale.

WHEREFORE, WMU-Cooley respectfully requests that this Honorable Court enjoin the ABA from publishing the November 13, 2017 letter absent further order of the Court. WMU-Cooley also requests this Court to award WMU-Cooley damages and any additional relief it deems appropriate.

COUNT V: VIOLATION OF COMMON LAW DUE PROCESS

44. WMU-Cooley incorporates by reference paragraphs 1-43 of the Complaint.

45. The Council of the ABA is an accrediting agency recognized by the Department of Education and must abide by the requirements of common law due process and fundamental fairness in making decisions that affect the substantial rights of a school and its students.

46. The ABA has violated common-law due process requirements, because Standard 105(b), which requires that an approved law school only admit “applicants who ‘appear capable’ of satisfactorily completing its program of legal

instruction and [REDACTED]

[REDACTED]; because the ABA acted without explanation or reason; because it failed to site specific underlying, basic facts, and failed to state ultimate facts; and because it rendered its conclusion without applying the [REDACTED] to those basic and ultimate facts.

47. Cooley has suffered damages as a result of the Council's violation of common-law due process requirements.

WHEREFORE, WMU-Cooley respectfully requests that this Honorable Court enjoin the ABA from publishing the November 13, 2017 letter absent further order of the Court. WMU-Cooley also requests this Court to award WMU-Cooley damages and any additional relief it deems appropriate.

COUNT VI: VIOLATION OF INTERNAL RULES AND PROCEDURES

48. WMU-Cooley incorporates by reference paragraphs 1-47 of the Complaint.

49. The Council of the ABA is an accrediting agency recognized by the Department of Education and must abide by its own internal rules and procedures.

50. In its decision to defer consideration of the Law School's application for acquiescence to open a separate location in Kalamazoo, the Council did follow

its own standards and rules, especially Standard 105(b), which states the sole criterion for granting acquiescence.

51. The Committee's findings demonstrated that the Law School's application met the requisite standards, yet the Council decided that the application "will be deferred to such time as the Law School demonstrates it is in full compliance with each of the Standards," a requirement that does not exist in the standard governing an application to open a separate location

COUNT VII: VIOLATION OF THE HIGHER EDUCATION ACT (20 § U.S.C. § 1099B)

52. WMU-Cooley incorporates by reference paragraphs 1-51 of the Complaint.

53. The Council of the ABA is an accrediting agency under 20 U.S.C. § 1099b and is recognized by the United States Department of Education as the accrediting agency for professional law-degree programs.

54. As an accrediting agency, the Council is obligated to comply with the Higher Education Act and the regulations promulgated thereunder.

55. Under the Higher Education Act ("HEA"), the Council must "apply procedures throughout the accrediting process, including evaluation and withdrawal proceedings, that comply with due process, including . . . adequate specification of requirements and deficiencies at the institution of higher education or program being examined." 20 U.S.C. §1099b(a)(6)(A). The Council is also

bound to ensure consistency in its decision making and is therefore required to have effective controls against the inconsistent application of its standards, to base its accreditation decisions based on published standards and to ensure that the information it is relying on in making an accreditation decision is accurate. 34 C.F.R. § 602.18. Finally, the Council is obligated to notify Cooley in writing of the results of any decision or appeal and the basis for that result. 34 C.F.R. § 602.25.

56. The Council violated the HEA by failing to employ procedures in this matter that comply with due process, failing to provide WMU-Cooley with adequate specification of requirements and deficiencies in its programs and in its proposed Kalamazoo location, failing to ensure consistency in its decisions regarding applications for acquiescence, failing to have effective controls against inconsistent application of its standards, interpretations, and rules to applications submitted by different schools, failing to base its decisions on published standards available equally to all schools, and failing to ensure that the information it relied on in making its decisions was accurate.

57. Cooley has suffered damages as a result of the Council's violation of the HEA.

WHEREFORE, WMU-Cooley respectfully requests that this Honorable Court enjoin the ABA from publishing the November 13, 2017 letter absent further

order of the Court. WMU-Cooley also requests this Court to award WMU-Cooley damages and any additional relief it deems appropriate.

Respectfully submitted,

MILLER, CANFIELD, PADDOCK AND
STONE, P.L.C.

By: /s/ Michael P. Coakley

Michael P. Coakley (P34578)

Conor T. Fitzpatrick (P78981)

150 West Jefferson, Suite 2500

Detroit, MI 48226

(313) 963-6420

Coakley@millercanfield.com

Fitzpatrick@millercanfield.com

Attorneys for Plaintiff

Dated: November 14, 2017

JURY DEMAND

NOW COMES the Plaintiff, Thomas M. Cooley Law School, by and through the undersigned counsel, and demands a trial by jury on all issues for which it is entitled to a jury.

Respectfully submitted,

MILLER, CANFIELD, PADDOCK AND
STONE, P.L.C.

By: /s/ Michael P. Coakley
Michael P. Coakley (P34578)
Conor T. Fitzpatrick (P78981)
150 West Jefferson, Suite 2500
Detroit, MI 48226
(313) 963-6420
Coakley@millercanfield.com
Fitzpatrick@millercanfield.com

Attorneys for Plaintiff

Dated: November 14, 2017

CERTIFICATE OF SERVICE

I hereby certify that on November 14, 2017, a copy of the foregoing was served via email on Stephanie Giggetts, Accreditation Counsel for Defendant American Bar Association, and that a copy of the same was also served via process server to ABA's agent of record.

/s/ Conor T. Fitzpatrick

VERIFICATION

STATE OF MICHIGAN)

) ss

COUNTY OF INGHAM)

Don LeDuc, being first duly sworn, deposes and says:

1. I am President and Dean of Plaintiff, Western Michigan University Thomas M. Cooley Law School.

2. I am authorized by Western Michigan University Thomas M. Cooley Law School to verify this Complaint; and

3. I have read the foregoing Verified Complaint for Injunctive and Other Relief. I verify under penalty of perjury that the allegations contained in the Verified Complaint are true and correct to the best of my knowledge, information, and belief, and, if sworn as a witness, I can testify competently as to the facts in the Verified Complaint.



Subscribed and sworn to before me this 14th day of November, 2017.



Notary Public, Ingham County, Michigan

My Commission Expires: 8-8-2022

HELEN MAE HAESSLY
NOTARY PUBLIC - STATE OF MICHIGAN
COUNTY OF LIVINGSTON
My Commission Expires August 8, 2022
Acting in the County of Ingham