

**IN UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION**

TODD JANSON, et al., on behalf of)	
themselves and on behalf of all others)	
similarly situated,)	
)	
)	
Plaintiffs,)	
)	
v.)	Case No. 2:10-cv-04018-NKL
)	
LEGALZOOM.COM, INC.)	
)	
)	
Defendant.)	

**PLAINTIFFS’ MOTION IN LIMINE REGARDING ANY EVIDENCE OF THE
MISSOURI BAR FAILING TO DISCIPLINE OR TAKE ACTION AGAINST
LEGALZOOM.COM**

Come now, Plaintiffs, by and through counsel, and for their Motion in Limine to exclude any evidence of The Missouri Bar Failing to Discipline or Take Action Against Legalzoom.com (hereinafter “Legalzoom”), states as follows:

I. Introduction

Plaintiffs have reason to believe that Legalzoom will attempt to introduce evidence or argue in the trial of this matter that the Missouri Bar has not taken action against Legalzoom and has not disciplined Legalzoom. The inference Legalzoom will want to leave with the jurors is that since the Missouri Bar may not have disciplined it for its conduct, then what they are doing must be acceptable and legal within the state of Missouri.

Missouri law related to the unauthorized practice of law is not enforced by the Missouri Bar, but can be enforced by any party who was charged for improper activity as defined by Missouri statutes and common law related to the unauthorized practice of law. Therefore, the

Missouri Bar's failure to initiate action or discipline against Legalzoom has no relevance to this case. In addition, the introduction of such evidence or argument to the jury would inject a collateral issue before the jury and could easily lead them to decide this case on an improper basis. The Missouri Bar's inaction in this case has nothing to do with the facts at issue or the law that controls this case. As such, any and all evidence related to the Missouri Bar and what actions it has taken or has not taken related to Legalzoom is irrelevant and to the extent it is relevant its prejudicial impact clearly outweighs any probative value of this evidence.

II. Argument

"Federal Rule of Evidence 402 provides that irrelevant evidence is inadmissible." *Wright v. Ark. & Mo. R.R. Co.*, 2009 U.S. App. LEXIS 16719, *12 (8th Cir. July 29, 2009). "Evidence is relevant if it has 'any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.'" *Id.* at *12-13 (quoting Fed. R. Evid. 401). "A district court is given broad discretion to determine the relevance of evidentiary matters." *Id.* at 13.

Rule 403 of the Federal Rules of Evidence provides "[a]lthough relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Fed.R.Evid. 403. "Confusion of the issues warrants exclusion of relevant evidence if admission of the evidence would lead to litigation of collateral issues." *Firemen's Fund Ins. Co. v. Thien*, 63 F.3d 754 (8th Cir. 1995). Rule 403 is concerned with unfair prejudice which is evidence that has an undue tendency to suggest decision on an improper basis. *Pro batter Sports, LLC v. Joyner Technologies, Inc.*, 2007 WL 3285799 (N.D.Iowa, October 18, 2007).

The definition of the practice of law is ultimately a question for the judiciary. *Carpenter v. Countrywide Home Loans, Inc.*, 250 S.W.3d 697, 703 (Mo. 2008). Interpretive suggestions from the legislature even in the way of a statute criminalizing such conduct are merely in aid of the judiciary's definition of what is and is not permitted. *Id.* Accordingly, what the Missouri Bar thinks of what is permitted or is not permitted in regards to the practice of law is not relevant to this Court's pronouncement of the law to which the jury will apply the facts. Similarly, any inaction by the Missouri Bar relative to its interpretation of this law, assuming it even has an interpretation of it, is of no relevance to the Court or the jury, as it does not amount to evidence that the Missouri Bar approves in any way of what LegalZoom is doing.

In addition, as stated by the Missouri Supreme Court, "any person engaged in the unauthorized practice of law has no right to collect fees, and those who have been improperly charged these fees have the right to their return..." *Id.* Missouri law clearly empowers citizens to act on their own to seek the return of their money that was improperly paid to someone engaged in the unauthorized practice of law. The Missouri Bar has nothing to do with the remedies or collection of those fees. Rather, people, banding together or standing alone, have the right to seek reimbursement of these improperly collected fees.

Since the Missouri Bar's actions or lack of action have nothing to do with this case and since any introduction of such evidence would unnecessarily confuse the jury, who would not know what role the Missouri Bar has to play in this matter, Plaintiffs respectfully request this Court issue an Order prohibiting Legalzoom from introducing any evidence or making any argument related to actions taken or not taken by the Missouri Bar.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on August 2, 2011, I served this paper upon the following via this Court's ECF system:

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