

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

TODD JANSON, GERALD T. ARDREY, CHAD M.
FERRELL, and C & J REMODELING LLC, on behalf of
themselves and on behalf of all others similarly situated,

Plaintiffs,

v.

LEGALZOOM.COM, INC.,

Defendant.

Case No. 2:10-cv-04018-NKL

**SUGGESTIONS IN OPPOSITION TO
PLAINTIFFS' MOTION IN LIMINE (DOC. NO. 149) REGARDING
THE HISTORY OF THE REGULATION OF THE PRACTICE OF LAW**

Defendant LegalZoom.com, Inc. ("LegalZoom"), for its Suggestions in Opposition to Plaintiffs' Motion in Limine Regarding the History of the Regulation of the Practice of Law, ("Motion 149," Doc. 149), states as follows:

In Motion 149, Plaintiffs seek to exclude from this case evidence regarding the history of regulation of the practice of law, claiming (a) it is not relevant, (b) it will confuse the jury, and (c) it will waste the court's time. All three propositions are incorrect.

Plaintiffs seek to exclude evidence that the jury could use to understand and put into context the claims that Plaintiffs have brought against LegalZoom. Indeed, Motion 149 is nothing more than a reformulation of their earlier frontal attack on LegalZoom's expert, Dean Burnele V. Powell, who is prepared to testify about the history of the regulation of the practice of

law and related matters.¹ Plaintiffs seem frankly troubled by the prospect of their claims being considered by a jury that has heard from an expert on the subject of how the legal profession has been regulated by the judiciary. But evidence of the history of regulation of the practice of law is relevant, it would not confuse matters, and presenting it would not unduly use judicial resources. Thus, Motion 149 should be denied.

I. The History of the Regulation of the Practice of Law is Relevant

Plaintiffs first assert that “the history of the regulation of the practice of law has no bearing in this case on whether Legalzoom is complying with Missouri law.” Motion 149 at 1.

This assertion is neither supported nor supportable. Dean Powell is prepared to address background and historical information on the practices and standards applicable to the legal profession. There can be no serious question that understanding the history of regulation of the practice of law would help jurors grapple with the claims of unauthorized practice of law Plaintiffs have leveled against LegalZoom. The history of the regulation of the legal profession is therefore relevant to — indeed, informs the entirety of — this case. Moreover, this case involves numerous subjects with which jurors are not likely to be familiar, including the nature of the practice of law and how the profession is and has been regulated. As such, evidence about those matters, including the history of the regulation of the practice of law, is not only relevant but essential to the task the jury will face.

Providing jurors with context in the form of testimony concerning the general history and practices of businesses and industries, including the legal profession, is a common purpose of expert testimony. *See, e.g., Marx & Co. v. Diners’ Club, Inc.*, 550 F.2d 505, 509 (2d Cir. 1977)

¹ LegalZoom has of course already opposed Plaintiffs’ motion to exclude Dean Powell’s expert testimony. Doc. 103. The Court denied Plaintiffs’ motion to exclude Dean Powell’s expert testimony as it related to the Motion for Summary Judgment. Doc. 145.

(“testimony concern[ing] [the practices of lawyers] . . . is admissible under the same theory as testimony concerning the ordinary practices of physicians or concerning other trade customs: to enable the jury to evaluate the conduct of the parties against the standards of ordinary practice in the industry.”); *see also Police Ret. Sys. of St. Louis v. Midwest Inv. Advisory Serv.*, 940 F.2d 351, 357 (8th Cir. 1991); *United States v. Bilzerian*, 926 F.2d 1285, 1294 (2d Cir. 1991).

In its certification Order, this Court stated that “the central issue of th[is] case” is “what type of online interaction between buyer and seller of legal forms constitutes ‘assisting in the drawing for a valuable consideration of any paper, document or instrument affecting or relating to secular rights’” under the Missouri unauthorized practice of law statute. Doc. 61 at 10 (*quoting* § 484.010 RSMo.). Critical to the determination of that issue is an understanding of what activities have been deemed not to fall within the scope of the statute and why. Without that information, jurors with little to no experience with the legal profession or its regulation are likely to be completely unequipped even to understand the matters in dispute in this case.

II. Evidence of the History of the Regulation of the Practice of Law Would Not Confuse the Jury or Unduly Use Judicial Resources

Plaintiffs then contend that evidence of the history of the regulation of the practice of law should be excluded because it would confuse the jury about what law it should apply and would waste judicial resources. Motion 149 at 2. But Plaintiffs cannot seriously contend that there is a risk that jurors will confuse (a) an expert witness discussing the history of the regulation of the practice of law with (b) the Court instructing them as to the law they are to apply in this case. If they do, LegalZoom submits that Plaintiffs underestimate the Court’s ability to manage the trial of this action. The Court will of course ensure that neither Dean Powell nor any other witness offers a legal conclusion or opinion with respect to the ultimate legal issue in the case, and will instruct the jury on its task and the law it must apply, thereby avoiding any possible confusion.

CONCLUSION

For the reasons set forth above, LegalZoom respectfully requests that the Court deny Plaintiffs' Motion in Limine Regarding the History of the Regulation of the Practice of Law.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 9, 2011, I electronically filed the above and foregoing with the clerk of court using the CM/ECF system, which will send notice of electronic filing to all counsel of record.

s/ James T. Wicks