

**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. 151) REGARDING ANY EVIDENCE
OF THE MISSOURI BAR FAILING TO DISCIPLINE OR
TAKE ACTION AGAINST LEGALZOOM.COM**

Defendant LegalZoom.com, Inc. ("LegalZoom"), for its Suggestions in Opposition to Plaintiffs' Motion in Limine Regarding Any Evidence of the Missouri Bar Failing to Discipline or Take Action Against Legalzoom.com ("Motion 151," Doc. 151), states as follows:

Citing no directly relevant authority, Plaintiffs seek to bar evidence that "the Missouri Bar" has not taken action against or disciplined LegalZoom on account of class representatives' purchases of products from the company. Motion 151 at 1. They argue that such evidence will give rise to an inference that LegalZoom's conduct is acceptable and legal.

The Supreme Court of Missouri has authorized the Office of the Chief Disciplinary Counsel ("OCDC"), an agency of the judiciary, to investigate, institute, and prosecute appropriate proceedings against parties engaged in the unauthorized practice of law. Mo. Sup. Ct. R. 5.29(a). The OCDC represents the Missouri Bar in any proceedings against a person or

entity accused of being engaged in the unauthorized practice of law. *Id.* The OCDC has taken no action against or otherwise disciplined LegalZoom on class members' claims.

As Plaintiffs acknowledge, the Court has broad discretion in determining the admissibility of evidence. *See United States v. Levine*, 477 F.3d 596, 603 (8th Cir. 2007). However, the Federal Rules of Evidence favor admissibility. *See Levine*, 477 F.3d at 603. The general rule under Rule 403 is that balance should be struck in favor of admission. *Id.*; *Block v. R.H. Macy & Co.*, 712 F.2d 1241, 1244 (8th Cir. 1983).

While it is true that the court may exclude evidence that confuses the issues and leads to litigation of collateral issues, *Firemen's Fund Insurance Co. v. Thien*, 63 F.3d 754, 758 (8th Cir. 1995), Plaintiffs provide no explanation why the evidence at issue on Motion 151 would be litigation of collateral issues. In *Thien*, the court did not allow a party to submit evidence related to liability in the accident when the sole issue in the case was whether there was insurance coverage. *Id.* at 759. In this case, the primary issue is whether LegalZoom engaged in the unauthorized practice of law. The fact that the investigative and prosecutorial arm of the Missouri judiciary has brought no action against LegalZoom for plaintiffs' claims is clearly relevant to determining liability in this case. The jury should therefore be permitted to receive evidence of that fact.

Plaintiffs emphasize that Missouri law allows citizens to seek the return of money paid to persons engaged in the unauthorized practice of law and claim that the Missouri Bar "has nothing to do with the remedies or collection of those fees." Motion 151 at 3. Plaintiffs are incorrect. The state of Missouri also has the right to sue and collect such sums. § 484.020 RSMo. Nevertheless, this argument is irrelevant because the OCDC is given broad powers to investigate and prosecute parties accused of engaging in the unauthorized practice of law.

As Plaintiffs readily concede, the definition of the practice of law is a question for the judiciary. *Carpenter v. Countrywide Home Loans, Inc.*, 250 S.W.3d 697, 703 (Mo. banc 2008).¹ The actions — or inaction — of the OCDC, the agency charged by the judiciary to investigate and prosecute unauthorized practice of law claims, is relevant to the issue of whether a party is engaged in the unauthorized practice of law.

Further, Plaintiffs fail to establish that any prejudice would result from the evidence in question or that its admission would waste the jury's or Court's time. Plaintiffs must describe with sufficient particularity why the Court should exclude the challenged evidence. *Pro batter Sports, LLC v. Joyner Techs., Inc.*, No. 05-CV-2045-LRR, 2007 WL 3285799, at *5, *9 (N.D. Iowa Oct. 18, 2007). Accordingly, the jury should be permitted to consider this evidence.

LegalZoom does not intend to offer evidence on this point. It should nevertheless be permitted to counter argument of or cross-examination testimony by plaintiffs' counsel suggesting that the Missouri Bar has investigated plaintiffs' claims.

CONCLUSION

For the reasons set forth above, LegalZoom respectfully requests that the Court deny Plaintiffs' Motion in Limine Regarding Any Evidence of the Missouri Bar Failing to Discipline or Take Action Against Legalzoom.com.

¹ Plaintiffs equate the interpretations of the OCDC with "[i]nterpretative suggestions from the legislature." Motion 151 at 3. As discussed above, the OCDC is an agency of the judiciary, not the legislature.

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