

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

UNITED STATES OF AMERICA * **CRIMINAL NO. 07-103**
v. * **SECTION: "L"**
JAMES PERDIGAO *
* * *

**UNITED STATES' MOTION IN LIMINE AND INCORPORATED
MEMORANDUM IN SUPPORT OF EXCLUDING EVIDENCE, REFERENCES
OR INFERENCES UNRELATED TO THE CHARGES OR A RELEVANT DEFENSE**

NOW INTO COURT, through the undersigned Assistant United States Attorneys,
comes the United States of America who respectfully moves this Honorable Court to exclude any
and all evidence, references or inferences by the defendant in the following instances:

1. Allegations made by the defendant, James Perdigao, in the civil complaint
filed in the Eastern District of Louisiana entitled James G. Perdigao v.
Adams and Reese, LLP., et al, Civil Action No. 08-3570, Section "C"(3).
(Now Section "L") (Hereinafter referred to as the civil complaint)
2. All allegations and material filed by the defendant, James Perdigao, in the
Motion for Recusal of the United States Attorney's Office, Eastern District

of Louisiana, and request for evidentiary hearing in this criminal matter.

(Hereinafter referred to as the Motion for Recusal)

The allegations contained in the defendant's civil complaint and Motion for Recusal are immaterial to any relevant defense to the charges outlined in the superseding indictment against the defendant. Further, any introduction of these allegations from either the civil complaint or the Motion for Recusal would confuse and mislead the jury, not to mention the waste of judicial resources that would be used to litigate issues that are irrelevant, inflammatory and distracting.

LAW AND ANALYSIS

Irrelevant and Immaterial Evidence Should be Excluded

"The essential prerequisite of admissibility is relevance." See United States v. Hall, 653 F.2d 1002, 1005 (5th Cir. 1981); Fed. R. Evid. 402.¹ "Relevant Evidence," as defined in Rule 401, is evidence that "[has] some 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." See Hall at 1005; Fed. R. Evid. 401.² "Implicit in that definition are two distinct requirements: (1) The evidence must be probative of the proposition it is offered to prove, and (2) the proposition to

¹ Rule 402 (Relevant Evidence Generally Admissible; Irrelevant Evidence is Inadmissible) provides that:

All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, by Act of Congress, by these rules, or by other rules prescribed by the Supreme Court pursuant to statutory authority. Evidence which is not relevant is not admissible. (Emphasis added).

² Rule 401 (Definition of "Relevant Evidence") provides that:

"Relevant evidence" means evidence having 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. (Emphasis added).

be proved must be one that is *of consequence to the determination of the action.*” Id.; McCormick on Evidence § 185 at 773-774 (4th ed. 1992); Graham, Handbook of Federal Evidence § 401:1 (6th ed. 2006). And, “whether a proposition is of consequence to the determination of the action is a question governed by the substantive law” (*i.e.*, look to the relevant jury instruction defining the charge). United States v. Hall, 653 F.2d 1002, 1005 (5th Cir. 1981) (*governing hypothesis of any criminal prosecution, for purposes of determining relevancy of evidence introduced, consists of the elements of offense charged and relevant defenses to defeat criminal liability*). Simply stated, the “proposition must be probative of a matter at issue in the litigation, such as a relevant defense raised to defeat criminal liability.” Id. (emphasis added). If the evidence fails to be probative of a “relevant defense” then the evidence should be excluded. Id. See also United States v. Bowers, 660 F.2d 527, 529 (5th Cir. 1982) (no error in excluding defense witness testimony where issue was not relevant); United States v. Milestead, 671 F.2d 950, 953 (5th Cir. 1982) (within trial court’s discretion to refuse to allow government witness to be cross examined about plea agreement in separate case); United States v. Bear Ribs, 722 F.2d 420, 421 (8th Cir. 1983) (no error in excluding defense on grounds it was irrelevant, prejudicial and could confuse the jury); United States v. LeFevour, 798 F.2d 977, 980 (5th Cir. 1986) (in prosecution of judge arising out of acceptance of bribes for quashing parking tickets, trial judge did not err in refusing admission of evidence showing that defendant sometimes dismissed cases for other reasons, on ground that its probative value would be clearly outweighed by its effect in confusing jury).

Inadmissible under Rule 403³

Furthermore, any evidence of the alleged unproven, uncharged crimes and the ranting subterfuge contained both in defendant's civil complaint and Motion for Recusal would also confuse and mislead the jury into believing that these matters are somehow related to the charges against the defendant in the superseding indictment. Rule 403 of the Fed. R. Evid. permits the trial court to exclude evidence even if relevant which would confuse issues or mislead the jury. United States v. Saldana, 427 F.3d 298, 307 (5th Cir. 2005).

CONCLUSION

The government respectfully reminds the Court that the very reason to limit the evidence in this matter was demonstrated completely by defense counsel in his intentionally unfocused argument to the Court at the hearing on September 22, 2008. As the Court well knew (like the defendant) the purpose of that hearing was to address whether or not the defendant, James Perdigao, was satisfied with the services of his present counsel and whether or not the defendant had received effective assistance from his counsel to this point. Not surprisingly, counsel for the defendant continued to persist to argue issues from his Motion for Recusal the United States Attorney's Office as was clearly noted in his remarks to the Court at the hearing. The government submits that this was done intentionally, as the defendant wishes to divert the focus of the charges away from him. These types of statements and deliberate bad faith will continue at trial if left unchecked by this Honorable Court.

³ Rule 403 (Exclusion of Relevant Evidence on Grounds of Prejudice, Confusion or Waste of Time) provides that:

Although 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.

WHEREFORE, for the reasons outlined above, the United States moves this Court to exclude any and all evidence, references or inferences relating to the defendant's civil complaint and Motion for Recusal.

Respectfully submitted,

JIM LETTEN
UNITED STATES ATTORNEY

/s/ James R. Mann

JAMES R. MANN (20513)

Assistant U.S. Attorney

james.mann@usdoj.gov

SALVADOR PERRICONE (10515)

Assistant United States Attorney

JON MAESTRI (12438)

Assistant United States Attorney

500 Poydras Street, B210

New Orleans, Louisiana 70130

Telephone: (504) 680-3000

CERTIFICATE OF SERVICE

I hereby certify that on September 26, 2008, I electronically filed the foregoing with the Clerk of Court by using the CM/ECF system which will send a notice of electronic filing to William F. Wessel, Attorney at Law. I further certify that I mailed the foregoing document and the Notice of Electronic filing by First Class Mail, postage prepaid and properly addressed to Charles F. Griffin, Attorney at Law, 802 S. Carrollton, New Orleans, Louisiana, 70118.

/s/ James R. Mann

JAMES R. MANN