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The plague of string citations

CHECK OUT THE ORIGINAL PARAGRAPH FROM THIS OPINION, which dealt with a motion to quash two subpoenas on grounds of attorney–client privilege. In the entire 262-word paragraph, covering 20 lines, there are two sentences containing analytical points. Two.

You are seeing one paragraph from a page that's a sea of blue. No other profession writes and cites this way. And yes, I understand the central importance of authority in law and legal analysis.

But do we really need four cases for the general, undisputed first assertion and six for the second? Why not pick the best one or two authorities and let it go at that? Of course, the writer would then have to go to the trouble of choosing, rather than just pasting cites and quotes from previous opinions.

I offer three possible revisions below. Take your pick. The first one cites in the parenthetical the case from which the *MarineMax* quote originated, the *Evans* case. The second simply notes in the parenthetical that the internal citations are omitted. The third revision uses the "cleaned up" technique advocated by Jack Metzler in *Cleaning Up Citations*, 18 J. App. Prac. 143 (2017) — which dispenses not only with internal citations but also with ellipses, brackets, and more. Although the technique has some critics, it is gaining traction in briefs and opinions. All three revisions use the *EM Ltd.* case alone for the second assertion; it's a controlling Second Circuit case. The third revision also paraphrases the second assertion and adds the most relevant of all the remaining citations from the original. No doubt there are other possibilities as well.

Finally, note that I have deliberately avoided the hotly debated subject of footnoted citations. I discuss it in *Seeing Through Legalese: More Essays on Plain Language*. For now, just this: I think the advantages outweigh the disadvantages (some of which may be overstated). But that debate goes on. In the meantime, writers could at least stop piling up citations unnecessarily.

— Joseph Kimble

Original

Notwithstanding the foregoing principles, however, "[t]he party seeking discovery must make a *prima facie* showing that the discovery sought is more than merely a fishing expedition." *Barbara v. MarineMax, Inc.*, No. 12 Civ. 368, 2013 WL 1952308, at *2 (E.D.N.Y. May 10, 2013) (citing *Wells Fargo Bank, N.A. v. Konover*, No. 05 Civ. 1924, 2009 WL 585430, at *5 (D. Conn. Mar. 4, 2009)); *Evans v. Calise*, No. 92 Civ. 8430, 1994 WL 185696, at *1 (S.D.N.Y. May 12, 1994); *Denim Habit, LLC,* 2016 WL 2992124, at *3. In general, "[a] district court has broad latitude to determine the scope of discovery and to manage the discovery process." *EM Ltd. v. Republic of Argentina*, 695 F.3d 201, 207 (2d Cir. 2012) (citing *In re Agent Orange Prod. Liab. Litig.*, 517 F.3d 76, 103 (2d Cir. 2008)); *Barbara*, 2013 WL 1952308, at *3 ("Courts afford broad discretion in magistrates' resolution of discovery disputes."); *Coggins v. Cnty. of Nassau*, No. 07 Civ. 3624, 2014 WL 495646, at *2 (E.D.N.Y. Feb. 6, 2014) (A district court has "broad discretion to determine whether an order should be entered protecting a party from disclosure of information claimed to be privileged or confidential.") (internal quotation omitted); see also *Mirra v. Jordan*, No. 13-CV-5519, 2016 WL 889683, at *2 (S.D.N.Y. Feb. 23, 2016) ("[m]otions to compel are left to the court's sound discretion."); *Liberty Mut. Ins. Co. v. Kohler Co.*, No. 08- CV-867, 2010 WL 1930270, at *2 (E.D.N.Y. May 11, 2010) ("[A] motion to compel is entrusted to the sound discretion of the district court.").

Revision 1

Notwithstanding these principles, however, "[t]he party seeking discovery must make a prima facie showing that the discovery sought is more than merely a fishing expedition." *Barbara v. MarineMax, Inc.*, No. 12 Civ. 368, 2013 WL 1952308, at *2 (E.D.N.Y. May 10, 2013) (quoting a case that quoted *Evans v. Calise*, No. 92 Civ. 8430, 1994 WL 185696, at *1 (S.D.N.Y. May 12, 1994)). In general, "[a] district court has broad latitude to determine the scope of discovery and to manage the discovery process." *EM Ltd. v. Republic of Argentina*, 695 F.3d 201, 207 (2d Cir. 2012).

Revision 2

Notwithstanding these principles, however, "[t]he party seeking discovery must make a prima facie showing that the discovery sought is more than merely a fishing expedition." *Barbara v. MarineMax, Inc.*, No. 12 Civ. 368, 2013 WL 1952308, at *2 (E.D.N.Y. May 10, 2013) (internal citations omitted). In general, "[a] district court has broad latitude to determine the scope of discovery and to manage the discovery process." *EM Ltd. v. Republic of Argentina*, 695 F.3d 201, 207 (2d Cir. 2012).

Revision 3

Notwithstanding these principles, however, "the party seeking discovery must make a prima facie showing that the discovery sought is more than merely a fishing expedition." *Barbara v. MarineMax, Inc.*, No. 12 Civ. 368, 2013 WL 1952308, at *2 (E.D.N.Y. May 10, 2013) (cleaned up). In general, the district court has broad discretion to manage the discovery process. *See, e.g.*, *EM Ltd. v. Republic of Argentina*, 695 F.3d 201, 207 (2d Cir. 2012). That authority extends, of course, to disputes over disclosing information claimed to be privileged. *Coggins v. Cnty. of Nassau*, No. 07 Civ. 3624, 2014 WL 495646, at *2 (E.D.N.Y. Feb. 6, 2014).

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