

Risk Manager

Why I Hate “And/Or” and You Should Too

By: Erin McNeill. *Wednesday, September 7th, 2011*



Image via Wikipedia

Amen to Ted Tjaden [for writing this article about why “and/or” should never be used in legal writing.](#)

Although I know that “and/or” has its place – it certainly is economical – that place is not in well-crafted [discovery](#) requests. Too often I see it when the drafter of the [document](#) simply failed to really think about what he was saying and making a commitment. For some attorneys, use of “and/or” is nearly a reflex, born of the philosophy that “if ‘and’ is good, ‘and/or’ is better!” Yet, in nearly every sentence in which “and/or” appears, the sentence would be clearer and easier to read if the [writer](#) simply committed to using one or the other. In crafting discovery that is genuinely attempting to elicit a cogent response from the opposing party, clarity is vital. It helps the other party know exactly what the writer is [asking](#) for, and it will help the court find the request clear and reasonable if the other party is non-responsive in the answer.

Use of “and/or” also seems uncertain, as if the writer was afraid that if he asked for “any document or picture that supports the damages in this case” instead of “any document and/or picture that supports

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the damages” opposing counsel would clap her hands in glee, because she only had to produce the documents OR the pictures, not both, in response. Of course, this fear is utterly unfounded. The [request for production](#) that asks for “any document or picture” clearly also asks for the production of both, if available. Woe to any attorney that attempts to skirt the discovery rules by arguing otherwise.

Eliminating “and/or” eliminates the impression that the writer is lazy or uncertain. It shows that the writer really thought about what he wanted, rather than copying from a [form book](#). It suggests confidence and precision. It is also easier to read, which should be the goal of most legal writing, particularly in discovery, when the objective of the request is to obtain a useful answer.

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