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Be Careful When Issuing Deposition Subpoenas in Discovery

When representing a client in litigation, a lawyer might issue one or more subpoenas for deposition, perhaps for records only, to one or more persons or entities. It is possible that, especially in larger firms, the person or entity from which the lawyer is seeking documents is also a client of the lawyer’s firm. Because of the potential conflict of interest in serving a deposition subpoena on a firm client, it is a good practice to perform a conflicts check on the entities or persons on whom you intend to serve deposition subpoenas, to make sure they are not clients of the firm. If it turns out that one of them is a firm client, the lawyer might call that client and ask if the client prefers that another law firm handle the deposition subpoena, or if the client has no problem with the firm’s handling of it. By taking this precaution, the firm not only avoids a potential conflict but a potential unhappy client.