You Say Subpoena, I Say Subpoena
But do we mean the same thing?

A "subpoena" for documents refers to two very different types of demands with very different implications for who works the response and how. For some requests, the response can be summed up as "go get the records." For others, the whole EDRM comes into play, bringing with it scope negotiation and potential motions practice.

Once it's confirmed that your company has been properly served and must respond, the next step is to assess how you will identify responsive information. *Does the request describe a discrete set of records, identifiable by objective metadata?* For example, the subpoena might call for one customer's account records for a five-year period. If so, the process is straightforward: target and collect the information, prepare to produce it (by, for example, imaging native files), and deliver it. *Fulfillment of these objective requests— sometimes called "go and gets"—doesn't require legal discretion and lends itself to a standardized process, executed by an operational team.* From a technology standpoint, imaging and redaction are usually all you need.

In contrast, response to what we'll call an "EDRM" subpoena looks a lot like party discovery. *An EDRM subpoena calls for information that isn't objectively identifiable.* To find responsive material, you collect from sources holding potentially responsive information, followed by review to isolate what should be produced. An in-house lawyer, with or without outside counsel, handles objections, negotiation, and motions practice.

Once scope is defined, the process follows the EDRM: collect, process, filter, and review. E-discovery and managed review vendors provide project management, technical processing and support, and document review services. With outside counsel engaged, you likely track the matter in a matter management and billing solution. Processing, filtering, review, and production in a specified format require an e-discovery platform.

While an EDRM subpoena involves legal knowledge, negotiation, and analysis of what information falls within scope, a go-and-get subpoena calls for an objective records retrieval exercise.

The two entail completely different strategies, teams, and technology. The first step in an effective subpoena response process is a means to segregate these matters at intake—to decide who will handle the matter and how, then route accordingly. The second is to create a system for efficient management of "go and gets."

Learn more about how to improve your response process at: *The Safari Watering Hole - Online Resources for Legal Operations* including: *Top 5 Ways To Improve Your Subpoena Response*