In his March 20, 2013 “Privilege Points” release, Tom Spahn discusses issuing discovery to an adversary party’s law firm:

Surprisingly few decisions deal with litigants' document discovery of an adversary's law firm. Perhaps few parties seek such discovery because they fear a retaliatory document request.

In *Waite, Schneider, Bayless & Chesley Co. v. Davis*, Case No. 1:11-cv-0851, 2013 U.S. Dist. LEXIS 5253 (S.D. Ohio Jan. 14, 2013), plaintiff law firm sued a former client for fees, which triggered a malpractice counterclaim. The law firm issued a document subpoena to the law firm of Baker & Hostetler, which had represented the former client in some pertinent matters. Although not citing any case law or legal principles that prohibit such third-party discovery, the court obviously was not pleased. Acknowledging the former client's description of the subpoena as plaintiff law firm's "disingenuous behavior in seeking documents from a non-party which the [plaintiff law firm] knew to be within [former client's] custody and control," the court explained that "[o]f greater concern to the Court is the [plaintiff law firm's] conduct in issuing a subpoena to Baker & Hostetler for documents available from, and already provided in large part by, [former client]." *Id.* at *16-17. The court concluded that "[s]uch conduct seems at odds with the spirit of the federal rules relating to discovery," and indicated that it "declines to impose sanctions at this time but cautions counsel that it may well do so in the future." *Id.* at *17.

Litigants' law firms can take solace in decisions taking this approach.