Discovery: Getting the Information You Need

Tara Twomey, National Consumer Law Center
Kai Richter, Nichols Kaster, PLLP

October 6, 2015

This webinar is provided by the National Consumer Law Center and the Legal Assistance Foundation (LAF) of Chicago with a grant from the Office of the Illinois Attorney General

©National Consumer Law Center
Webinar Technical Tips

- If you joined with a microphone and headset plugged into your computer or your computer speakers, please be sure your **device volume settings** are properly adjusted. You do not need to call in using your telephone.
- Everyone will be muted during this presentation.
- This training is being recorded.
Webinar Tips

• Questions? Type it in the Q&A function and we will relay it to the speaker(s)
• If you are having technical problems, please use the Q&A function for help and I will assist you
• Evaluation survey: you will be able to access this survey after exiting out of the webinar screen
• We will be emailing you a link to our website to download this PowerPoint and watch the recording
• Tara Twomey is currently Of Counsel to the National Consumer Law Center and the Project Director for the National Consumer Bankruptcy Rights Center. She has previously lectured in Law at Stanford, Harvard and Boston College Law Schools.

• Tara is a former Clinical Instructor at the Hale and Dorr Legal Services Center of Harvard Law School where her practice focused, in part, on sustainable homeownership for low- and moderate-income homeowners.

• She is a contributing author of several books published by the National Consumer Law Center, including Foreclosures and Bankruptcy Basics.
Presenter: Kai Richter

- Kai H. Richter is an experienced attorney who has fought for the rights of everyday people throughout his legal career. He is a leader of Nichols Kaster’s Consumer Class Action Team and is currently handling a number of cases on behalf of consumers with claims against banks, mortgage servicers, debt collectors, and other large companies.

- Kai received his law degree from the University of Minnesota Law School in 1999 and received a B.A. from Dartmouth College in 1995. He also has taught legal writing at Hamline University and previously served as a co-director of the Robert F. Wagner Moot Court Program at the University of Minnesota Law School.
Discovery: Getting the Information You Need

Tara Twomey, National Consumer Law Center
Kai Richter, Nichols Kaster, PLLP
October 6, 2015

This webinar is provided by the National Consumer Law Center and the Legal Assistance Foundation (LAF) of Chicago with a grant from the Office of the Illinois Attorney General

©National Consumer Law Center
The Toolbox
The Toolbox

• Formal Discovery
  – Initial Disclosures
  – Interrogatories
  – Requests for Production
  – Requests to Inspect
  – Requests for Admission
  – Depositions
    • Individual or Corporate
  – Subpoenas/Non-party

• Informal Discovery
  – Internet Research
  – PACER
  – Prior Testimony
  – FOIA/Public Records Request
  – RESPA
What’s Available

• Loan File/mortgage servicing file
• Origination documents
• Transaction history
• Account statements
• Correspondence
• Customer service no
• Audio recordings
• Electronic data
What’s Available

- Written policies and procedures
- Reasons for policies or any policy changes
- Vendor Contracts
- Relevant Communications
- Meeting minutes/notes
- Audit/compliance documents
- Information regarding similar lawsuits
- Organizational charts
- Financial records/information
- Witness/documents defendant may rely upon
Strategic Considerations
Strategic Considerations

• Discovery Limits
• The “Funnel” approach
• Order of Discovery
• Postponing Depositions
• When to compromise
• Seeking relief from the court
Dealing with Objections

• Identify blanket objections
  – Per se unacceptable
  – “Unduly burdensome” is not an excuse to produce nothing

• Critically examine other objections

• Promptly send deficiency letter and meet and confer

• Common discovery abuses

• Probe privilege objections
ESI

• What does it include?
• Cost/benefit analysis
• Need only be produced in one format
• ESI preservation letter
• Resources
Protective Orders

• A necessary evil?
• Preferred form?
• Resist additional protections if unnecessary or cumbersome
• Should not be a blank check
Discovery: Getting the Information You Need

Tara Twomey, National Consumer Law Center
Kai Richter, Nichols Kaster, PLLP

October 6, 2015

This webinar is provided by the National Consumer Law Center and the Legal Assistance Foundation (LAF) of Chicago with a grant from the Office of the Illinois Attorney General

©National Consumer Law Center
Just a Reminder

• Please fill out the evaluation survey!
• I will email you the PowerPoint and recording in a few days
• Thank you to our speakers!

Since 1969, the nonprofit National Consumer Law Center® (NCLC®) has worked for consumer justice and economic security for low-income and other disadvantaged people, including older adults, in the U.S. through its expertise in policy analysis and advocacy, publications, litigation, expert witness services, and training. www.nclc.org