



Discovery: Getting the Information You Need

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



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Presenter: Tara Twomey

- 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.





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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





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- Please fill out the evaluation survey!
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- Thank you to our speakers!



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