

PROFESSIONAL LIABILITY UPDATE

ATTORNEY CLIENT PRIVILEGE

By Jennifer A. Becker

Fox Johns Lazar Perkin & Wexler, APC v. Superior Court (Brewer Corporation) 2013 WL 5314686

The Fourth District holds a judgment creditor's examination of a judgment debtor's attorney is limited to information about the judgment debtor's property held by the attorney.

Wexler represented Point Center Financial, Inc. in a trial where was a substantial judgment entered against Point. Brewer, a prevailing plaintiff, sought discovery from Wexler under C.C.P. § 708.120. This section allows a judgment creditor to discover information about a judgment debtor's property possessed by a third party. The parties disputed the permissible extent of an examination of Wexler and his obligation to produce documents.

Comment: The Court properly protected Wexler's clients' information from the intrusive discovery proposed by Brewer.

The Court of Appeal noted C.C.P. § 708.120 is not governed by the same liberal standards applicable to pre-trial discovery under the Civil Discovery Act. Rather, § 708.120 allows an examination of a third party only if he or she is in possession of a judgment debtor's property or owes the judgment debtor over \$250. Permissible examination is limited to the judgment debtor's property or receivables. The Court rejected Brewer's stated purpose, to discover the identity of Wexler's clients, review his law firm's billings to other clients, and obtain information about entities that may be the alter ego of Point.

Wexler's obligation to produce documents was similarly tethered to the objectives of the statute, discovery of the judgment debtor's property.

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