

[Banking and Finance Law Daily Wrap Up, TOP STORY—9th Cir.: CFPB responds to law firm's civil investigative demand appeal, \(Mar. 22, 2018\)](#)

Banking and Finance Law Daily Wrap Up

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By [Lisa M. Goolik, J.D.](#)

The Consumer Financial Protection Bureau and Seila Law, LLC, have submitted their opposing briefs in an appeal before the U.S. Court of Appeals for the Ninth Circuit. Seila Law has asked the appellate court to overturn a U.S. district judge's order requiring the law firm to comply with a civil investigative demand (CID) issued by the Bureau for information regarding the firm's debt-relief services. In its brief, [the firm argues](#) that the Bureau's structure violates the Constitution, and, as a structurally unconstitutional agency, it cannot enforce a CID. The [Bureau counters](#) that, since Seila Law filed its brief in November 2017, subsequent events—most notably, the appointment of Bureau Acting Director Mick Mulvaney and a decision by the U.S. Court of Appeals for the District of Columbia Circuit that the Bureau's structure does not violate the Constitution—have rendered the firm's arguments without merit.

District court's order. The Bureau's CID asks for information on the law firm's operations as part of its investigation into whether companies engaged in debt-relief and credit-counseling services have violated the Federal Trade Commission's Telemarketing Sales Rule or provisions of the Consumer Financial Protection Act. While the CFPB has not filed an enforcement action that explicitly accuses the firm of wrongdoing, the Bureau has made clear its belief that Seila Law is implicated in a continuation of the practices of Morgan Drexen, Inc., a debt relief provider that filed for bankruptcy after a judgment was entered against it in an enforcement action due to its practices in that suit.

In August 2017, a U.S. district judge rejected the firm's effort to avoid enforcement of the CID, holding that: the Bureau was not structured in violation of the Constitution; the CID included adequate notice of the purpose and scope of the CFPB investigation; and the practice-of-law exclusion from the Bureau's enforcement authority did not protect the law firm from the CID based on what was under investigation ([Consumer Financial Protection Bureau v. Seila Law, LLC](#), Aug. 25, 2017, Staton, J.). The [order was stayed](#) pending the outcome of the law firm's appeal.

Subsequent events. On appeal, Seila Law renews its argument that the CFPB's structure violates the Constitution, and the Bureau, as a structurally unconstitutional agency, cannot enforce a CID it issued pursuant to a law enforcement investigation. Further, the firm argues, the district court erred by enforcing a CID issued by the CFPB while unconstitutionally structured.

In its brief, the law firm cites the [decision of a three-judge panel](#) of the U.S. Court of Appeals for the D.C. Circuit that the Bureau's organization infringed on the President's power to ensure that federal law is faithfully executed and violated "separation of powers" principles.

However, as the Bureau notes in its response, subsequent events have overtaken Seila Law's constitutional objection. In January, the District of Columbia Circuit's full panel [determined](#) that the structure does not violate the Constitution, rejecting the concerns of the earlier three-judge panel (see [Banking and Finance Law Daily](#), Jan. 31, 2018).

Further, shortly before Seila Law submitted its brief, the Bureau's Director resigned, and the President designated Mick Mulvaney to serve as the Acting Director. As Acting Director, Mulvaney is removable by the President at will. Further, the Bureau argues that Acting Director Mulvaney has chosen to ratify the Bureau's earlier decisions to issue, uphold, and petition to enforce the CID. As a result, the head of the Bureau, who is removable by the President at will, has authorized the investigation.

Statutory, procedural challenges. The firm also argues the CID violates the Consumer Financial Protection Act, propounding the demand was "an unenforceable 'fishing expedition' which fails to provide adequate notice of the purpose and scope of the CFPB's investigation." According to Seila, the CID's Notice of Purpose—"to determine whether... unnamed persons are engaging in unlawful acts or practices in the advertising, marketing, or sale of debt relief services or products... in violation of... any other Federal consumer financial law"—effectively provided no notice at all.

The Bureau responds that Seila Law's statutory arguments are without merit because Congress gave the Bureau the authority to send civil investigative demands to persons it has reason to believe are in possession of information relevant to a violation of the consumer financial laws, and it followed all necessary procedures in issuing the CID.

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Companies: Morgan Drexen, Inc.; Seila Law, LLC

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