

SCHWARTZ & BALLEN LLP
1990 M STREET, N.W. • SUITE 500
WASHINGTON, DC 20036-3465
WWW.SCHWARTZANDBALLEN.COM

TELEPHONE
(202) 776-0700

FACSIMILE
(202) 776-0720

MEMORANDUM

May 1, 2015

To Our Clients and Friends

Re: U.S. Court of Appeals Rejects Challenge to Constitutionality of the CFPB

A panel of the United States Court of Appeals for the D.C. Circuit on Friday rejected a challenge to the constitutionality of the Consumer Financial Protection Bureau. The court did not reach the merits of the case, but rather decided it on procedural grounds.

The challenge was brought by Morgan Drexen, Inc., which is in the business of licensing software and providing paralegal services to law firms, and by an attorney to whom Morgan Drexen provided paralegal services. The plaintiffs alleged that the independent structure of the CFPB violates the constitutional separation of powers because its powers are overbroad, it is headed by a single director removable only for cause, it is funded outside the normal appropriations process and judicial review of its actions is limited.

At the time the action was filed, Morgan Drexen was a potential target of a CFPB enforcement action. The CFPB subsequently charged Morgan Drexen with violations of the Telemarketing Sales Rule and the Consumer Financial Protection Act by assessing consumers illegal up-front fees for debt relief services disguised as fees for bankruptcy services they did not need and which were not performed. The CFPB also alleged that Morgan Drexen's claim that it only supports attorneys in the provision of debt-relief and bankruptcy services is misleading because it often performed all the debt resolution work. The court concluded that because of the pendency of the CFPB's enforcement action in district court, it was appropriate for the constitutional challenge to be considered in that proceeding rather than in a separate action.

The attorney challenging the constitutionality of the CFPB contended that she has standing to bring the action because the CFPB's enforcement action against Morgan Drexen is inherently an enforcement action against her, causing her injury because her law practice may be enjoined. Therefore, she argued the CFPB action was an unlawful attempt to regulate lawyers. The court rejected the attorney's contention that the CFPB's

SCHWARTZ & BALLEEN LLP

enforcement action against Morgan Drexen will result in an injury to her law practice or prevent her from obtaining paralegal services from the company. It is of interest to note that one panel member, Judge Kavanaugh, dissented, stating that by attempting to regulate Morgan Drexer's activities, the CFPB was also regulating the attorney's business, which is sufficient to confer standing.

The court's opinion can be found on our website at <http://www.schwartzandballen.com/news.html>

If you have any questions, please call Gilbert Schwartz, Robert Ballen, Tom Fox, Heidi Wicker, or Ben Gray at (202) 776-0700.