

Eleventh Circuit Calls Out CFPB's Conduct

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In an unusually blunt decision, the 11th Circuit Court of Appeals [affirmed a district court's decision](#) to dismiss various claims brought by the Consumer Financial Protection Bureau (CFPB) for “violating the district court’s clear orders and derailing multiple depositions... .”

The case began as an action by the CFPB against eighteen defendants for engaging in or assisting a purported fraudulent debt collection scheme in violation of the Consumer Financial Protection Act (CFPA) and the Fair Debt Collection Practices Act (FDCPA). As the 11th Circuit noted, the CFPB’s “problematic” conduct began when various defendants attempted to depose a representative of the Bureau. As the 11th Circuit noted, this “problematic” conduct that ultimately led the district court to dismiss the lawsuit against various defendants as a discovery sanction included:

- objecting to a deposition altogether on the basis that the CFPB had already provided responses to interrogatories;
- lodging over seventy work product objections during the first deposition, even objecting to fact-based questions the district court had ordered answered;
- utilizing “memory aids” from which the CFPB’s witness read verbatim (this included reading one such memory aid for fifty-eight minutes and then advising the parties that there were another ninety-three pages to go); and
- refusing to identify or admit any “exculpatory facts” existed whatsoever.

Following these actions, a hearing was held with the district court, which reiterated guidance on how the deposition(s) should proceed and what type of questions the Bureau was expected to respond to in further depositions. Despite this, the CFPB continued to engage in the same “problematic” conduct at subsequent depositions. Upon motion by various defendants, the district court agreed to strike the CFPB’s claims against them as a discovery sanction and dismissed the case. The CFPB appealed, and the 11th Circuit ultimately affirmed the district court’s decision, finding that its instructions on deposition-related conduct were definite and clear, they were conveyed to the Bureau on multiple occasions, and the Bureau disregarded the same repeatedly, which, the 11th Circuit found, was sufficient egregious conduct to warrant the severe sanction of dismissal and not second-guess the district court’s decision.

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