



### III. THE CID SHOULD BE SET ASIDE

#### A. The CID Should Be Set Aside Because It Exceeds the CFPB's Statutory Authority

The CFPB can take authorized action “to prevent a covered person or service provider from committing or engaging in an unfair, deceptive, or abusive act or practice under Federal law in connection with any transaction with a consumer for a consumer financial product or service, or the offering of a consumer financial product or service.” 12 USC § 5531(a). A “covered person” is “any person that engages in offering or providing a consumer financial product or service.” 12 USC §5481(6).

Here the CID exceeds the CFPB's authority, which has an expressed statutory “practice of law” exclusion. 12USC § 5517(e)(1). “It is undisputed that the regulation of the practice of law is traditionally the province of the states. *Am. Bar Ass'n v. FTC* 430 F.3d 457, 471 (DC Cir. 2005) Under 12 USC § 5517(e)(1), except under enumerated circumstances, “the Bureau may not exercise any supervisory or enforcement authority with respect to an activity engaged in by an attorney as part of the practice of law under the laws of a state in which the attorney is licensed to practice law.” 12 USC § 5517(e)(1).

The law firm that employed Plummer was in the business of providing a variety of legal services, including but not limited to civil litigation, criminal defense, personal injury, and real estate. Even if the law firm in question provides service that could arguably be categorized as a “consumer financial product or service,” so long as this service or product is “offered or provided as part of, or incidental to, the practice of law,” the CFPB does not have enforcement or investigatory authority. 12 USC 5517 (e)(2).


**B. The CID Should Be Set Aside Because It Improperly Seeks Attorney-Client Privileged Information And Attorney Work Product**

Attorney-client privilege is an obligation of the attorney to his client. The attorney does not control the privilege, the client “owns” the privilege. Non-lawyer employees of a law firm are bound by the same duties of confidentiality as the attorneys. This requirement of confidentiality on the part of non-lawyer employees continues to bind the employee even after employment with a law firm is concluded. The CID should be set aside because it seeks information that the CFPB is not entitled to obtain due to it being attorney-client privileged information. Further, attorney work product is protected from discovery as attorney work product. As with attorney-attorney-client privilege this applies to the non-lawyer employees of the attorney. The CID should be set aside as it seeks privileged attorney work product. Plummer cannot provide the information sought without potentially breaching duties of confidentiality, attorney-client privilege, or turning over privileged work product, and for this reason the CID should be set aside.

**IV. CONCLUSION**

For the foregoing reasons, the CID should be set aside in it’s entirety.

Dated: February 22, 2018



Amy Plummer

Sworn to and Subscribed Before Me,  
This 22 Day of Feb 19  
Signed: [Signature]  
Notary Public of South Carolina  
My Commission Expires: July 11, 2028