

**UNITED STATES OF AMERICA
Before the
CONSUMER FINANCIAL PROTECTION BUREAU**

**ADMINISTRATIVE PROCEEDING
File No. 2015-CFPB-0029**

In the Matter of:)	RESPONDENTS' OPPOSITION TO
INTEGRITY ADVANCE, LLC and)	ENFORCEMENT COUNSEL'S
JAMES R. CARNES,)	MOTION TO ALLOW TWO
)	ATTORNEYS TO ARGUE
)	
)	
Respondents.)	
)	

**RESPONDENTS' OPPOSITION TO ENFORCEMENT COUNSEL'S
MOTION TO ALLOW TWO ATTORNEYS TO ARGUE**

Enforcement Counsel requests that the Director allow two attorneys to participate in oral argument, including an attorney from the Consumer Financial Protection Bureau's ("CFPB") Legal Division. Because the commingling of functions of the CFPB Legal Division attorneys raises concerns about the fairness and perceived fairness of the proceedings, the Director should deny Enforcement Counsel's Motion. As Respondents Integrity Advance, LLC and James R. Carnes ("Respondents") informed Enforcement Counsel, Respondents do not object to two attorneys arguing on behalf of the CFPB. Respondents, however, do object to an attorney from the CFPB's Legal Division participating in oral argument.

The Legal Division is tasked with "provid[ing] the Bureau with legal advice about the work and operations of the agency." <https://www.consumerfinance.gov/about-us/the-bureau/bureau-structure/legal/>. The Legal Division is separate from and performs different functions than the Supervision, Enforcement & Fair Lending Division, which is responsible for "ensur[ing] compliance with federal consumer financial laws by supervising market participants

and bringing enforcement actions when appropriate.” <https://www.consumerfinance.gov/about-us/the-bureau/bureau-structure/supervision-enforcement-fair-lending/>.

Given the Legal Division’s role as advisor to the CFPB, allowing an attorney from that Division to participate in oral argument in an administrative proceeding before the CFPB Director would raise conflict of interest concerns due to its impact on the actual or perceived fairness of the proceedings. As the D.C. Circuit has recognized, “regulatory agencies have an obligation to keep [investigative and adjudicative] roles separate insofar as is possible, in order to insure the judicial fairness of adjudicative proceedings and also the unrestricted vigor of investigative proceedings.” *F.T.C. v. Atl. Richfield Co.*, 567 F.2d 96, 102 (D.C. Cir. 1977). Indeed, “such confidence as the public and the courts have in the integrity of the FTC and other agencies’ adjudicative processes may be said to rest in great part on their effort and success in keeping separate these two diverse functions.” *Id.* Allowing an attorney from the Legal Division to participate in oral argument would impermissibly blur the lines between those “diverse functions,” *id.*, regardless of whether that attorney “has been and will continue to be walled-off from providing any advice or counsel to the Director concerning this matter.” EC Mot. at 2 n.1.

For these reasons, Enforcement Counsel’s Motion to allow a Legal Division attorney to be the second attorney arguing in this matter should be denied.

Dated: November 18, 2020

Respectfully submitted,

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and James R. Carnes*

CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of November 2020, I caused a copy of the foregoing Respondents' Opposition to Enforcement Counsel's Motion to Allow Two Attorneys to Argue to be filed by electronic transmission (email) with the Office of Administrative Adjudication (CFPB_electronic_filings@cfpb.gov), and served by email on opposing counsel at the following addresses:

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