



U.S. District Judge Katherine Polk Failla of the Southern District of New York. (Credit: Diego M. Radzinski)

## SEC Urges Judge to Deny Coinbase's 'Breathtakingly Broad' Subpoena Request

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August 06, 2024 at 03:33 PM

🕒 4 minute read

Cryptocurrency



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The original version of this story was published on New York Law Journal

### What You Need to Know

- The U.S. Securities and Exchange Commission pushed back on accusations by Coinbase that it has not complied with discovery requests.
- The SEC also alleged that additional discovery requests by Coinbase were overbroad and it has satisfied Coinbase's discovery requests.
- An expert on cryptocurrency and blockchain said the ruling could set a precedent for the SEC in future discovery requests.

The U.S. Securities and Exchange Commission doubled down on its "extensive efforts" so far to produce documents in discovery for Coinbase Inc. and argued in a motion before a



Daniel Maland of Rennert Vogel Mandler & Rodriguez. (Courtesy photo)

federal district court in Manhattan that the additional "burden of fishing through and logging over three million more documents cannot be justified."

Daniel Maland, a partner at [Rennert Vogel Mandler & Rodriguez](#) and the Florida Bar chair of crypto and blockchain education, said the U.S. District Court for the Southern District of New York's anticipated decisions in this discovery dispute will "certainly impact the drafting of discovery towards the SEC on a go-forward basis." Maland is not involved in the case.

“Guided by a general counsel who previously served as a U.S. magistrate judge, Coinbase knows how to turn the screws to make the SEC work for their case,” Maland said in an email.

“However, just because Coinbase asks for it does not mean the court will deem them entitled to everything,” he added. “As with all civil suits, the court must ensure the common law and federal rules governing discovery are not violated here while ensuring the SEC, as a plaintiff, fully participates in the discovery process.”

Paul Grewal, Coinbase’s chief legal officer, said on social media that the documents, such as the statements made by SEC Chair Gary Gensler, bear directly on the claims the agency now asserts on the crypto exchange’s fair-notice defense.

“[The SEC] filed its response to our request to produce important documents showing the record of the SEC’s inconsistent views of digital assets and its own regulatory reach,” Grewal said. “If the SEC is going to engage in an unprecedented regulation by enforcement campaign, the least they owe to those they target—and the public—is transparency.”

Now, it will be up to U.S. District Judge Katherine Polk Failla to rule on the matter.

The SEC charged Coinbase with violating strict liability provisions of the federal securities statutes, court records show. The case escalated in April, when the defendants served requests for the production of documents on the SEC, seeking all of the agency’s documents from 2017 to the present that touch on the crypto asset markets.

In June, Coinbase also notified the SEC of its intent to serve the subpoena on Gensler, seeking all documents about crypto assets for the same time. However, last month, Coinbase scaled back the portion of that subpoena, seeking the four years before Gensler was sworn in as chair, during which he taught at the Massachusetts Institute of Technology.

In a [motion filed in July](#), Coinbase wrote that the SEC's justification for refusing to search for documents outside of its investigatory files because of "relevance, burden, and privilege" does not hold water. However, in the memorandum of law filed on Monday evening, the SEC disputed that characterization, including that it has not complied with discovery requests.

"Coinbase now seeks to compel the SEC to (1) 'run the preliminary search' it proposed, (2) supplement the search to capture drafts of speeches and internal documents of the SEC staff's review of Coinbase's S-1, and (3) 'produce and log' on a document-by-document basis withheld documents," the SEC wrote in the filing.

The SEC argued in the motion that the first point is moot as it has run the "preliminary search" involving "all 48 search terms and all 22 custodians," which resulted in more than 3 million documents before duplicates, a process the SEC is undertaking. The third request is also partly moot, the SEC added, because the SEC has agreed to search the more than 54,000 documents.

However, the SEC pushed back on the second request, writing in the memorandum of law that Failla should deny it and Coinbase's motion. In doing so, the SEC claimed that other federal courts have denied the fair-notice defense that Coinbase is advancing.

"Coinbase's untenable position that 'impressions,' drafts, and emails are probative also implies that Coinbase's own internal impressions are discoverable," the SEC asserted. "And if it turned out that SEC officials insisted internally that the application of the law to Coinbase's conduct was crystal clear, would that mean the SEC wins on the merits?"

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Paul Grewal, Coinbase's chief legal officer. (Courtesy photo)

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