

**SEALED BY
COURT ORDER**

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

U.S. COURT OF APPEALS

FILED

JUN 21 2004

CHARLES R. FULBRUGE III
CLERK

IN RE: GRAND JURY SUBPOENA
DUCES TECUM

MISC. NO. _____

04-29

ORDER

SC EXHIBIT - 00081

The Court, after considering the briefs of the government, the witness, Mr. Lightfoot, and Judge Porteous and after conducting a telephone conference with counsel on June 18, 2004, issues the following ruling on the government's Motion to Compel compliance by Mr. Claude C. Lightfoot, Jr. to a grand jury subpoena duces tecum.

The government seeks to require attorney Claude Lightfoot to produce documents related to his handling of the bankruptcy proceeding of Judge Gabriel Thomas Porteous, Jr. and his wife, Carmella A. Porteous (collectively Judge Porteous). Mr. Lightfoot and Judge Porteous contend that the documents are privileged either as attorney client communications or as attorney work product.

As a general proposition, the court agrees with the Seventh Circuit decisions in U.S. v. White, 950 F.2d 426 (7th Cir. 1991), and U.S. v. McCormick, 709 F.2d 485 (7th Cir. 1983). These cases generally hold that "when information is transmitted to an attorney with the intent that the information will be transmitted to a third party . . . such information is not confidential." White at 430. More specifically White holds that "when information is disclosed for the purpose of assembly into a bankruptcy petition and supporting schedules, there is no intent for the information to be

held in confidence because the information is to be disclosed on documents publicly filed with the bankruptcy court." Id.

Except as specifically provided below, therefore, the documents and records listed in items 1, 2, and 3 on the grand jury subpoena which were provided by or at the direction of Judge Porteous to Mr. Lightfoot to be used for the purpose of preparing the bankruptcy petition and the attached schedules are ordered produced. Records referred to in Item 4 relating to efforts to resolve Judge Porteous' debts and the decision of whether or not to declare bankruptcy are also ordered produced. The billing records of Mr. Lightfoot relative to his handling of the bankruptcy of Judge Porteous referred to in Item 5 are also ordered produced.

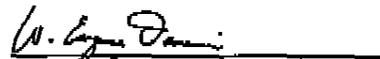
Mr. Lightfoot is directed to produce to the government the documents covered by this order within ten days of the date of this order.

Notwithstanding the provisions of the above order, Mr. Lightfoot need not produce documents provided to him by Judge Porteous, the substance of which were not included directly or indirectly in the bankruptcy filings. As to any documents covered by the preceding sentence, Mr. Lightfoot and/or Judge Porteous should also make a particularized showing within ten days why Judge Porteous did not reasonably expect that the information on those documents would be incorporated either directly or indirectly in the bankruptcy filings.

If Mr. Lightfoot or Judge Porteous have any documents they claim should be excluded from this order of production for reasons stated above, they should file a memorandum explaining why such document should be excluded from the order. A copy of this memorandum shall be served on the government. If necessary to fully explain the reason Mr. Lightfoot or Judge Porteous claim any document is not subject to the production order, they may file an ex parte affidavit with the court along with an accompanying memorandum. The government is granted 10 days from the date of receipt of any brief by Mr. Lightfoot or Judge Porteous to respond to such filing.

The court declines to issue a global ruling on anticipated objections by Mr. Lightfoot to particular questions that may be propounded to him before the grand jury except to note that the same legal principles set forth in this ruling on document production apply to Mr. Lightfoot's testimony. In other words, oral communications concerning data to be included in the bankruptcy filing enjoy no more privilege than documents provided counsel for this purpose. If objections arise during Mr. Lightfoot's testimony, I encourage counsel to telephone me so I can attempt to resolve the objections.

Lafayette, Louisiana, this 21st day of June, 2004.


United States Circuit Judge sitting
by designation