

SC EXHIBIT - 00036

**SEALED BY
COURT ORDER**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANAU.S. COURT OF APPEALS
FILED

OCT 19 2004

CHARLES A. FULBRUGE JR.
CLERKIN RE: GRAND JURY TESTIMONY : MISC. NO. 04-29R U L I N G

On August 19, 2004, and September 9, 2004, Mr. Claude C. Lightfoot, Jr. gave testimony before the Grand Jury considering *inter alia* the conduct of Judge Gabriel Thomas Porter, Jr. (Judge Porteous) in connection with his bankruptcy proceeding filed in the Eastern District of Louisiana. Mr. Lightfoot is an attorney specializing in bankruptcy matters who represented Judge Porteous and his wife in connection with their bankruptcy proceeding. On several occasions, Mr. Lightfoot left the grand jury room and consulted with Judge Porteous's attorney who objected to a number of questions addressed to Mr. Lightfoot on grounds of attorney/client privilege. Counsel objected to and refused to answer questions in the following areas:

1. What discussions were had between counsel and Judge Porteous with regard to not sending Regions Bank a work out letter?
2. The scheduled listed wedding rings. Did counsel discuss with Judge Porteous whether there was an engagement ring?
3. What discussions were had with Judge Porteous and what

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advice and instructions did counsel give him about what information to include or not include on the bankruptcy forms?

4. What discussions did counsel have with Judge Porteous about what amount to include as his monthly income?
5. What discussions did counsel have and what advice and instructions did he give Judge Porteous about compliance with the order confirming the bankruptcy plan?
6. What discussions did counsel have and what advice and instructions did counsel give Judge Porteous about his discharge in bankruptcy?
7. What discussions did counsel have with Judge Porteous about the names that appear on the original petition (Ortous)?

The questions related to items 2,3,4 and 7 are covered in principle by the court's ruling of June 21, 2004. These questions call for communications between Judge Porteous and counsel concerning data to be included in the public papers to be filed in connection with the bankruptcy proceeding. As the earlier ruling makes clear, when information is disclosed to counsel for the purpose of being incorporated into a bankruptcy petition or other public filing, there is no intent for the information to be held in confidence. See U.S. v. White, 950 F.2d 426 (7th Cir. 1991). Accordingly, the objections to disclosing the information covered

by items 2,3,4 and 7 are overruled and the witness is directed to answer these questions.

Item 1 concerns discussions between counsel and Judge Porteous relating to not sending Regions Bank a workout letter. We agree with the government's argument set forth in its memorandum filed under seal, that the attorney client privilege does not apply to this communication because of the crime-fraud exception and that the government has made out a prima facie case of a crime or fraud reasonably related to this inquiry.¹ The objection to disclosure of the information called for in this question is therefore overruled and the witness is directed to answer this question.

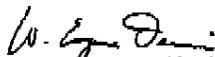
Issue 5 relates to communications between Judge Porteous and Mr. Lightfoot about compliance with the order confirming the bankruptcy plan. We agree with the government's argument set forth in its memorandum filed under seal, that the attorney client privilege does not apply to this communication because of the crime-fraud exception and that the government has made out a prima facie case of a crime or fraud reasonably related to this inquiry. Accordingly, the objections to questions on this issue are overruled and the witness is directed to answer these questions.

¹ Accordingly, we reject the argument that in the grand jury context, a target or witness is entitled to rebut the government's prima facie showing under seal that a crime or fraud has been committed. See In re Grand Jury Proceedings (Violette), 183 F.3d 71 (1st Cir. 1999); In re: Grand Jury Subpoena, 223 F.3d 213 (3d Cir. 2000); In re Grand Jury Proceedings (Doe), 1993. U.S. App. LEXIS 1247 (9th Ci. 1993).

Issue 6 calls for testimony from counsel about advice and instructions he gave Judge Porteous about his discharge in bankruptcy. We are not persuaded that the government has demonstrated a reasonable relationship between any fraudulent or criminal activity and the information called for by this question. Therefore the objection to questions relating to counsel's advice about the discharge in bankruptcy are sustained.

The court has concluded that it does not need oral argument and therefore counsel's motion for oral argument is DENIED.

Lafayette, Louisiana this 19th of October, 2004.



W. EUGENE DAVIS
United States Circuit Judge
Sitting by Designation