**18-7031**

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# United States Court of Appeals
# For the
# District of Columbia Circuit

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**In re DEPOSITION OF**
**MATTHEW AUGUST LEFANDE**

*Appellant*

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**PETITION FOR REHEARING**

**PETITION FOR REHEARING EN BANC**

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## Table of contents

## I. Table of Authorities

### Cases



Cases marked with an asterisk are those upon which we chiefly rely.

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**Statutes**



**Court Rules**



**Related Cases**

*District Title v. Warren*, 14-1808 (D.D.C.)

*Warren v. District Title,* 14-7196 (D.C. Cir.)

*District Title, Inc. v. Day,* 18-C-15-000820-ER (Cir. Ct. Md.)

*In re Deposition of Matthew August LeFande, Esq.*,
17-Misc-2466 (ABJ/DAR) (D.D.C.)

*In re Matthew August LeFande*, 17-5212 (D.C. Cir.)

*In re Anita Warren*, 17-22544 (Bank. Md.)

*District Title v. Warren*, 0:17-ap-508 (Bank. Md.)

*Warren v. Sushner,* TDC 18-0679 (D.Md.).

*In re Matthew August LeFande*, 18-7127 (D.C. Cir.).

## II. Statement regarding en banc.

The panel has tendered an opinion offering a profoundly troubling proposition. That is, a District Court judge may enforce an indisputably illegal and void discovery order with a criminal contempt sanction. Contempt actions serve only to vindicate a court's actual authority. Absent actual authority to proceed, there can never be any interference with the administration of justice. The panel's cavalier manner sidesteps the primary issue in this appeal, that it was the District Court, and not the attorney, who repeatedly violated the law. This posture renders the judiciary's obligation to confine itself to its own constitutional and statutory limitations a nullity, dissolving any meaningful distinction between justice and despotism. The decision lies in direct conflict with the most fundamental tenets of our constitutional form of government and must be reversed to remain in conformity with established law.

## III. Statement of the Case

Plaintiff District Title alleged that it unilaterally overpaid Defendant Anita K. Warren in a real estate settlement transaction. Prior to filing any Answer, Warren moved to compel arbitration as provided in her contract

with District Title. ECF Docket # 14. On November 13, 2015, the District Court nevertheless granted summary judgment to District Title and against the only two defendants in the case, Warren and her son, Timothy Day. ECF Docket # 79.

Defendant Day died on or about April 6, 2017. J.A. 64. On September 18, 2017, LeFande moved to dismiss Day as a party defendant as he had been apparently dead since April of 2017 and no effort had been made to substitute a party or open his estate. J.A. 75. The District Court ordered Attorney LeFande to appear for a deposition in support of post judgment discovery on September 21, 2017 with no suggestion of any service of process upon him. J.A. 85. The Minute Order specifically identified Anita Warren as "still a proper defendant in this case" and insinuated that any post-judgment discovery was now directed to her as a party. *Id*. Anita Warren filed for bankruptcy on September 19, 2017. J.A. 151. A suggestion of bankruptcy was filed in the District Court on that date. J.A. 84.

On September 21, 2017, the District Court demanded Attorney LeFande take the stand to be deposed in the courtroom. LeFande, asserting a lack of personal jurisdiction over him due to the lack of service of any

process, and asserting his constitutional rights and his duty of confidentiality to his clients, refused to take the stand. J.A. 95-99. On that date, Magistrate Robinson fined LeFande $5,000.00. LeFande paid the fine and took a timely appeal to this Court. J.A. 150.

On December 5, 2017, Magistrate Robinson again ordered Attorney LeFande to show cause in response to "Plaintiff's largely-unavailing efforts to take post-judgment discovery". ECF Docket # 125 at 1. LeFande timely filed an Opposition. ECF Docket # 126. LeFande irrefragably demonstrated that the District Court acted in violation of the Bankruptcy Court's automatic stay, acted without jurisdiction over the subject matter or LeFande's person, and the testimony sought was covered by multiple privileges.

On May 8, 2018, a Suggestion of Death for Defendant Warren was filed in the District Court case. ECF Docket # 129. On May 11, 2018, the District Court ordered the Plaintiff to "file a Rule 25(a) motion by August 6, 2018 to substitute the proper party for each defendant or face the possible dismissal of either or both defendants for want of prosecution". Minute Order. No motion for substitution has been filed by any party.

## V. Argument

"Federal courts are courts of limited jurisdiction. They possess only that power authorized by Constitution and statute". *Kokkonen v. Guardian Life Insurance Co. of America*, 511 U.S. 375, 377 (1994) (citing *Willy v. Coastal Corp.*, 503 U.S. 131, 136-137 (1992); *Bender v. Williamsport Area School Dist.*, 475 U.S. 534, 541 (1986)). At every stage of a proceeding "[t]he first and fundamental question that" the District Court is "bound to ask and answer is whether [it] has jurisdiction to decide the case." *Bancoult v. McNamara*, 445 F.3d 427, 432 (D.C. Cir. 2006) (quoting *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 94 (1998) (quoting *Great Southern Fire Proof Hotel Co. v. Jones*, 177 U.S. 449, 453 (1900)) (quotation marks omitted)). "A court does not have the power, by judicial fiat, to extend its jurisdiction over matters beyond the scope of the authority granted to it by its creators." *Stoll v. Gottlieb*, 305 U.S. 165, 171 (1938). Any action by a federal court "requires its own basis for jurisdiction." *Kokkonen*, 511 U.S. at 378.

"[T]here are certain strictly jurisdictional facts, the existence of which is essential to the validity of proceedings and the absence of which renders the act of the court a nullity." *Id*. at 176. There is no factual dispute that

Defendant Day was dead and Defendant Warren was in bankruptcy at the time that Attorney LeFande was compelled to testify in support of the execution of judgment against them. "Consequently, the only matters before us on appeal will be whether the District Court's application of the law is correct..." *Herbert v. National Academy of Sciences*, 974 F.2d 192, 197 (D.C. Cir. 1992).

### 1. The District Court's execution of judgment was in violation of the bankruptcy court's automatic stay and could not be enforced with contempt powers.

A bankruptcy filing "withdraw[s] from all other courts all power under any circumstances to maintain and enforce" all judicial actions against the debtor, "its Act is the supreme law of the land which all courts -- state and federal -- must observe." *Kalb v. Feuerstein*, 308 U.S. 433, 439 (1940). Accordingly, ***any action taken against the debtor while the stay is in place is void and without legal effect***. *Id.* (emphasis added).

There is no dispute that the September 21, 2017 deposition demanded of Attorney LeFande was in execution of the District Court's judgment, that Anita Warren was the sole remaining judgment debtor in the case, and that the District Court had notice of her bankruptcy two days prior to the

deposition. Any order that Attorney LeFande be deposed in violation of the bankruptcy automatic stay was void and could not be enforced by the Court's contempt powers.

### 2. A judgment creditor is prohibited by District of Columbia law from proceeding against a dead party in execution of judgment.

The District Court has repeatedly stated outright that it may conduct discovery, but all roads regarding the purpose of such discovery lead back only to execution of judgment against dead people.

> Judgment was entered against the decedent when he was alive, and the Court has already concluded that District Title has legitimate grounds to attempt to ascertain what Day did with his assets while he was alive...

ECF Docket # 137 at 15.

"Under District of Columbia intestacy laws all property of a decedent passes directly to the personal representative, who thereafter holds legal title for administration and distribution of the estate." *United States v. Wade*, 992 F. Supp. 6, 11 (D.D.C. 1997) (citing D.C. CODE § 20-105; *Richardson v. Green*, 528 A.2d 429, 432-37 (D.C. 1987)) *reversed on other grounds* 152 F.3d 969 (D.C. Cir. 1998).

The probate exception to the District Court's jurisdiction prohibits the Court from proceeding against a *res* which is properly controlled and administered by a state probate court. *Markham v. Allen*, 326 U.S. 490, 494 (1946) (citations omitted). "[T]he federal courts exist to resolve real disputes, not to rule on a plaintiff's entitlement to relief already there for the taking". *Campbell-Ewald Co. v. Gomez*, 136 S. Ct. 663 (2016) ROBERTS C.J. *dissenting.* "If a dispute is not a proper case or controversy, the courts have no business deciding it, or expounding the law in the course of doing so." *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 341 (2006).

> [The] Federal Rules... do not... give to a judgment creditor any right to subject to the judgment the property of persons other than the judgment debtor, nor to require the disclosure of assets of persons other than the judgment debtor.

*Burak v. Scott*, 29 F. Supp. 775, 776 (D.D.C. 1939).

> Since an accounting has not yet been had of the estate itself, and since any full accounting of the trust assets at this time would necessarily anticipate and interfere with it, plaintiff's demands for accounting of the estate and trust and removal of the trustee fall within the rule that a previously attached *quasi in rem* jurisdiction of property in a state court requires a federal court to dismiss any claim with regard to the property where the adjudication would interfere with the proceedings in the state court. This principle is so firmly rooted in our law as to have required and not merely permitted Judge Foley to dismiss the plaintiff's claims insofar as they sought an accounting of the estate and trust.

*Beach v. Rome Trust Co.*, 269 F.2d 367, 371 (2d Cir. 1959) (citations omitted).

The District Court having a complete lack of jurisdiction to proceed was an unavoidable reason reason to deny further discovery.

> [W]e have approved the exercise of ancillary jurisdiction over a broad range of supplementary proceedings involving third parties to assist in the protection and enforcement of federal judgments -- including attachment, mandamus, garnishment, and the prejudgment avoidance of fraudulent conveyances.
>
> Our recognition of these supplementary proceedings has not, however, extended beyond attempts to execute, or to guarantee eventual executability of, a federal judgment. We have never authorized the exercise of ancillary jurisdiction in a subsequent lawsuit to impose an obligation to pay an existing federal judgment on a person not already liable for that judgment

*Peacock v. Thomas*, 516 U.S. 349, 357 (1996) (citations omitted).

> The Rules cannot guarantee payment of every federal judgment. But as long as they protect a judgment creditor's ability to execute on a judgment, the district court's authority is adequately preserved, and ancillary jurisdiction is not justified over a new lawsuit to impose liability for a judgment on a third party.

*Id*. at 359.

**3. There was never any jurisdictional dispute in this case. Jurisdiction was asserted by the Defendants on removal and that jurisdiction ended upon Day's death and Warren's bankruptcy.**

The panel parrots a false and thoroughly rebutted citation by the United States Attorney for the proposition that a District Court with an established lack of jurisdiction may enforce its orders by contempt powers. Op. at 9. Neither *Willy*, 503 U.S. 131 nor *United States v. United Mine Workers*, 330 U.S. 258 (1947) support this conclusion and *United Mine Workers* has been repeatedly and invariably distinguished from the circumstances of the instant appeal.

> In the *United Mine Workers* case it was held that except in circumstances of plain usurpation, a United States District Court has the authority to determine its own jurisdiction in a matter before it, and to maintain the status quo, as by issuance of a temporary restraining order, pending the determination of that issue. The Supreme Court concluded, therefore, that even should the district court be ultimately found, in such a case, to lack jurisdiction over the parties or the subject matter, it had power to punish violations of its prior restraining order as contempt. ***Here, however, the court was not seeking to preserve existing conditions pending a jurisdictional determination.*** Similarly inapposite is *United States v. Bryan*, [339 U.S. 323 (1950)], which dealt with the failure of a witness under subpoena to raise objections to the competence of the body before which he appeared to testify. That decision did not touch the question of the validity of the subpoena which was issued or the power or jurisdiction of the body issuing it.
>
> [A] mandate is void which is beyond the power and jurisdiction of the issuing court and that the court may not punish for its violation. Thus,

> the power and jurisdiction of the court to issue a subpoena may be raised for the first time in a proceeding to punish for contempt.

*United States v. Thompson*, 319 F.2d 665, 667-668 (2d Cir. 1963) (citations omitted, emphasis added).

The District Court disingenuously asserted its subject matter jurisdiction to be engraved in stone since removal.

> LeFande has been arguing without success since 2014 that the Court lacks "subject matter jurisdiction" to hear this case notwithstanding the fact that he was the one who removed the case from Superior Court. *See* Order (July 30, 2015) [Dkt. # 50]; Mem. Op. (July 30, 2015) [Dkt. # 51] (rejecting defendants' jurisdiction argument in their motion for summary judgment); see also *In re Warren*, No. 15–5225 (D.C. Cir. Oct. 27, 2015) (summarily upholding the Court's decision).

ECF Docket # 137 at 13 n.5.

Very much to the contrary, "the probate exception disables federal courts from exercising diversity jurisdiction under 28 U.S.C. § 1332." *Ashton v. Paul*, 918 F.2d 1065, 1072 (2d Cir. 1990).

> The standard for determining whether federal jurisdiction may be exercised is whether under state law the dispute would be cognizable only by the probate court. If so, the parties will be relegated to that court; but where the suit merely seeks to enforce a claim *Inter partes*, enforceable in a state court of general jurisdiction, federal diversity jurisdiction will be assumed.

*Rice v. Rice Foundation*, 610 F.2d 471, 476 (7th Cir. 1979).

"The federal claimant cannot deprive competing [probate] claimants of their just due by obtaining a premature distribution or valuation of estate assets from the federal court." *Turton v. Turton*, 644 F.2d 344, 347 (5th Cir. 1981) (citations omitted). "Whatever the origins and purposes of the exception, however...'it is too well established a feature of our federal system to be lightly discarded, and by an inferior court at that.'" *Ashton*, 918 F.2d at 1071. There can be no reasonable dispute that the property sought by District Title is a part of the Decedents' respective estates, as this was the result of its litigation in the first place.

> It is sufficient to say that the Court can conceive of no legally justifiable reason for withholding a decision to dismiss, where the Court lacks jurisdiction of the cause. Nothing more could be gained by compliance with the order to produce that would be of aid or of benefit to these plaintiffs in this proceeding. The additional information would not alter the outcome of this action and the procurement thereof would only unnecessarily annoy and harass the defendant.

*Bell v. United States*, 31 F.R.D. 32, 36 (D. Kan. 1962).

Herein, Attorney LeFande is not a judgment debtor, and he has never been a party to the lawsuit. The District Court's actions in execution of judgment against Defendant Warren are void for violation of the Bankruptcy Court's automatic stay. The District Court's actions against Defendant Day

in execution of judgment are without jurisdiction and also void under the Probate Rule. The demand for Attorney LeFande's deposition on September 21, 2017 was made by a District Court devoid of authority to make any kind of discovery order whatsoever. The District Court knowingly violated the law, LeFande did not. LeFande was not only within reason, but *one hundred percent correct*, to not forfeit his clients' confidences in the face of a court order he knew to be illegal.

### 4. Absent service of process, the District Court was without personal jurisdiction over Attorney LeFande.

The panel harps upon nonexistent failures by LeFande to preserve issues regarding the District Court's lack of authority over his person. Op. at 11-12. LeFande repeatedly addressed the District Court during its attempt to conduct the illegal deposition. Each time LeFande began to recite the jurisdictional defects of the proceeding including its lack of service upon him, he was shouted down by the bench. App.98-99.

Now the panel acknowledges the lack of service of process upon Attorney LeFande, but insists LeFande can still be sanctioned for failing to comply with a patently defective demand for his deposition. What is left is

an incomprehensible mess of admittedly inconsistent application of the law and *ex post facto* rationalizations for the District Court's illegal conduct, none of which has any place in our constitutional form of government. To suggest that the rules and law don't apply to only Matthew LeFande in just this instance neither comports with due process or equal protection of the law. It certainly cannot support a finding of a criminal violation beyond a reasonable doubt.

The Fourteenth Amendment ensures that the individual need not "speculate as to the meaning of penal statutes" and is "entitled to be informed as to what the State commands or forbids," *Lanzetta v. New Jersey*, 306 U.S. 451, 453 (1939). As one of the "most fundamental protections of the Due Process Clause," *Farrell v. Burke*, 449 F.3d 470, 484 (2d Cir. 2006), the Constitution requires that "laws be crafted with sufficient clarity to 'give the person of ordinary intelligence a reasonable opportunity to know what is prohibited' and to 'provide explicit standards for those who apply them,'" *Betancourt v. Bloomberg*, 448 F.3d 547, 552 (2d Cir. 2006) (quoting *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972)).

A law violates due process "if it fails to provide people of ordinary intelligence a reasonable opportunity to understand what conduct it

prohibits." *Hill v. Colorado*, 530 U.S. 703, 732 (2000). Individuals should receive fair notice or warning when the state has prohibited specific behavior or acts. A law is unconstitutionally vague "if it authorizes or even encourages arbitrary and discriminatory enforcement." *Hill*, 530 U.S. at 732. The Supreme Court recognizes the second is "the more important aspect of the vagueness doctrine," and mandates that laws contain "minimal guidelines to govern law enforcement." *Kolender v. Lawson*, 461 U.S. 352, 358 (1983). Indeed, statutes must "provide explicit standards for those who apply" them to avoid "resolution on an *ad hoc* and subjective basis, with the attendant dangers of arbitrary and discriminatory application." *Grayned*, 408 U.S. at 108.

Attorney LeFande should never have been placed in a position where he had to assert his clients' rights to be free from the then obvious unlawful intrusions of the District Court to his own detriment. LeFande performs a constitutional function in civil litigation just as much as any judge on the bench. As a result, the are inalienable immunities incumbent in the performance of his duties. These include the immunity from service of process while attending court, a concept the panel cavalierly now disregards.

> Judicial necessities require immunity in instances where voluntary appearances by individuals will preserve the integrity of the courts' authority or aid in the efficiency of the judicial process.

*Interstate Commerce Commission v. St. Paul Transportation Co.*, 39 F.R.D. 309, 310-311 (D. Minn. 1966) (citations omitted).

District Title has endeavored for years to interfere with Attorney LeFande's representation of his clients and compromise the integrity of these proceedings with fantastical tales of Defendant Timothy Day living in New Zealand with ill-gotten gain, much to the torment of his dying mother.

> [P]ublic policy mandates that they not be compelled to testify. Discussion of this principle--that attorneys should not be compelled to testify against their clients--primarily arises in the context of depositions, most likely because the practice of calling opposing counsel as a witness at trial is so offensive to our conception of the adversarial process. Courts have made clear that attorneys should, only in rare and special circumstances, be forced to testify against their own clients.

*Giannicos v. Bellevue Hospital Medical Ctr.*, 7 Misc. 3d 403, 406 (N.Y. Sup. Ct. 2005).

> Here the attorney was compelled to testify against his client under threat of punishment for contempt. Such procedure would have been justified only in case the defendant with knowledge of his rights had waived the privilege in open court or by his statements and conduct had furnished explicit and convincing evidence that he did not understand, desire or expect that his statements to his attorney would be kept in confidence. *Defendant's attorney should have chosen to go to jail and take his chances of release by a higher court.*

*Dike v. Dike*, 448 P.2d 490 (Wash. 1968) (quoting *People v. Kor,* 277 P.2d 94, 100-101 (Cal. App. 1954) (italics in *Dike*).

As the District Court observed, Attorney LeFande did everything in his power to avoid this direct confrontation, but his ultimate duty remained to his clients, not the District Court. It is evident that the District Court drove this very confrontation, rather than respecting the privileges asserted, abiding by District of Columbia law and allowing an orderly appeal of the issue.

> The court's first inquiry, when requested to issue an order to or impose sanctions upon a non-party, must of necessity be the court's jurisdiction over the person to whom the court's order would be directed. Generally, the court acquires jurisdiction over non-parties during the discovery process by the issuance and service of a subpoena upon the person. In this case, the deponent was not served with a subpoena. While he appeared for his deposition and gave testimony, under oath, at the request of the defendant, the court did not acquire jurisdiction over him since he had not been served with a subpoena.

*Cuthbertson v. Excel Indus.*, 179 F.R.D. 599, 602 (D. Kan. 1998).

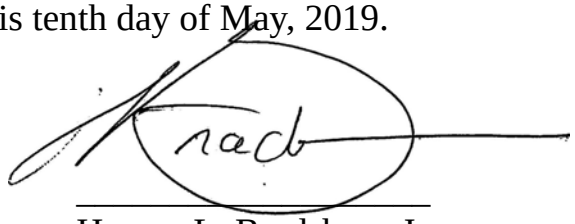
LeFande has litigated in the District Court for some seventeen years. He knows the Rules. He properly demands that those Rules be applied equally by the Court according to controlling authority. To say ***after the fact*** that he can be somehow compelled to testify in a case where jurisdiction has

ended and no service of process has been made upon him is unlawful. To suggest that he now can be held criminally liable ***without the remotest demonstration that he was incorrect in this assertion*** is a gross perversion of justice.

## V. Conclusion

For these reasons, and for such other reasons as the Court finds to be good and sufficient cause, the District Court's judgment of contempt must be VACATED and REVERSED with instructions to the Clerk to return LeFande's five thousand dollars forthwith. The District Court must be prohibited from further illegal attempts at discovery in execution of judgment. A protective order should be entered against further demands for Attorney LeFande's deposition.

Respectfully submitted, this tenth day of May, 2019.



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**Certificate of Compliance with Rule 21(d)**

1. This petition complies with the type-volume limitation of Fed. R. App. P. 21 (d)(1) because this petition contains 3,695 words, excluding the parts of the petition exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using OpenOffice Writer in Times New Roman 14 point font.

**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing Petition was served on the United States Attorney via electronic filing this tenth day of May, 2019.

Horace L. Bradshaw, Jr.

**11 U.S. Code § 362 - Automatic stay**

(a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970, operates as a stay, applicable to all entities, of—

(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;

(2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;

(3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;

(4) any act to create, perfect, or enforce any lien against property of the estate;

(5) any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case under this title;

(6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title
...

**28 U.S. Code § 636 - Jurisdiction, powers, and temporary assignment**

(e) Contempt Authority.—

(1)In general.—
A United States magistrate judge serving under this chapter shall have within the territorial jurisdiction prescribed by the appointment of such magistrate judge the power to exercise contempt authority as set forth in this subsection.

(2)Summary criminal contempt authority.—
A magistrate judge shall have the power to punish summarily by fine or imprisonment, or both, such contempt of the authority of such magistrate judge constituting misbehavior of any person in the magistrate judge’s presence so as to obstruct the administration of

justice. The order of contempt shall be issued under the Federal Rules of Criminal Procedure.

(3)Additional criminal contempt authority in civil consent and misdemeanor cases.—
In any case in which a United States magistrate judge presides with the consent of the parties under subsection (c) of this section, and in any misdemeanor case proceeding before a magistrate judge under section 3401 of title 18, the magistrate judge shall have the power to punish, by fine or imprisonment, or both, criminal contempt constituting disobedience or resistance to the magistrate judge's lawful writ, process, order, rule, decree, or command. Disposition of such contempt shall be conducted upon notice and hearing under the Federal Rules of Criminal Procedure.

(4)Civil contempt authority in civil consent and misdemeanor cases.—
In any case in which a United States magistrate judge presides with the consent of the parties under subsection (c) of this section, and in any misdemeanor case proceeding before a magistrate judge under section 3401 of title 18, the magistrate judge may exercise the civil contempt authority of the district court. This paragraph shall not be construed to limit the authority of a magistrate judge to order sanctions under any other statute, the Federal Rules of Civil Procedure, or the Federal Rules of Criminal Procedure.

(5)Criminal contempt penalties.—
The sentence imposed by a magistrate judge for any criminal contempt provided for in paragraphs (2) and (3) shall not exceed the penalties for a Class C misdemeanor as set forth in sections 3581(b)(8) and 3571(b)(6) of title 18.

(6)Certification of other contempts to the district court.—Upon the commission of any such act—
(A)
in any case in which a United States magistrate judge presides with the consent of the parties under subsection (c) of this section, or in any misdemeanor case proceeding before a magistrate judge under section 3401 of title 18, that may, in the opinion of the magistrate judge, constitute a serious criminal contempt punishable by penalties exceeding those set forth in paragraph (5) of this subsection, or
(B) in any other case or proceeding under subsection (a) or (b) of this section, or any other statute, where—
(i) the act committed in the magistrate judge's presence may, in the opinion of the magistrate judge, constitute a serious criminal contempt punishable by penalties exceeding those set forth in paragraph (5) of this subsection,
(ii) the act that constitutes a criminal contempt occurs outside the presence of the magistrate judge, or
(iii) the act constitutes a civil contempt,
the magistrate judge shall forthwith certify the facts to a district judge and may serve or cause to be served, upon any person whose behavior is brought into question under this

paragraph, an order requiring such person to appear before a district judge upon a day certain to show cause why that person should not be adjudged in contempt by reason of the facts so certified. The district judge shall thereupon hear the evidence as to the act or conduct complained of and, if it is such as to warrant punishment, punish such person in the same manner and to the same extent as for a contempt committed before a district judge.

(7)Appeals of magistrate judge contempt orders.—
The appeal of an order of contempt under this subsection shall be made to the court of appeals in cases proceeding under subsection (c) of this section. The appeal of any other order of contempt issued under this section shall be made to the district court.

**D.C. Code § 20–105. Devolution of property at death.**

All property of a decedent shall be subject to this title and, upon the decedent's death, shall pass directly to the personal representative, who shall hold the legal title for administration and distribution of the estate.

**D.C. Code § 20–901. Claim not paid in normal course of administration.**

No proceeding to enforce a claim against a decedent's estate may be revived or commenced before the appointment of a personal representative. After appointment, and until the estate is closed, the procedures prescribed by this chapter shall be followed. After the estate is closed, a creditor whose claim has not been barred may recover directly from the persons to whom property has been distributed as provided in sections 20-1302 and 20-1303 or from a personal representative individually as provided in section 20-1303 .

**D.C. Code § 20–903. Limitation on presentation of claims against the estate.**

(a) Requirement of presentation; time; limitation. — Except as otherwise expressly provided by statute with respect to claims of the United States and the District of Columbia, (1) all claims against a decedent's estate, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract or other legal basis, shall be barred against the estate, the personal representative, and the heirs and legatees, unless presented within 6 months after the date of the first publication of notice of the appointment of a personal representative; and (2) all claims against the estate based

on the conduct of or a contract with a personal representative shall be barred unless an action is commenced against the estate within 6 months of the date the claim arose.

(b) Liens not affected. — Nothing in this section shall affect or prevent any action or proceeding to enforce any mortgage, pledge, judgment, or other recorded or otherwise perfected security interest on property of the estate.

(c) Action instituted before death. — Nothing in this section shall affect any action that was commenced against the decedent if the decedent had been duly served with process before death; provided, however, that the personal representative shall not be personally liable on account of having paid a claim or distributed assets, without taking into consideration claims prosecuted in accordance with this subsection if, at the time of payment or distribution (1) the personal representative had no actual knowledge of such claim, and (2) the claimant had not timely presented such claim in accordance with section 20-905.

**D.C. Code § 20–906. Order of payment.**

(a) If the applicable assets of the estate are insufficient to pay all claims in full, the personal representative shall make payment in the following order:

(1) Court costs, publication costs, and bond premiums;
(2) Funeral expenses, not exceeding $1,500;
(3) Fiduciary and attorney's fees, not exceeding $1,000;
(4) The homestead allowance pursuant to section 19-101.02 and the family allowance pursuant to section 19-101.04;
(5) Exempt property pursuant to section 19-101.03;
(6) Reasonable and necessary medical and hospital expenses of the last illness of the decedent, including compensation of persons attending the decedent;
(7) Claims for rent in arrears for which an attachment might be levied by law;
(8) Judgment and decrees of courts in the District of Columbia; and
(9) All other just claims.

**D.C. Code § 20–914. Execution and levy prohibited.**

No execution shall issue upon nor shall any levy be made against any property of the estate under any judgment against a decedent or a personal representative. No claim (which is not by its terms secured) shall attach to any particular estate asset, real or personal, whether in the hands of the personal representative or of any bona fide purchaser, or to the proceeds from the sale of any such asset. The provisions of this

section shall not be construed to prevent the enforcement of mortgages, deeds of trust, pledges, liens, or other security interests upon property in an appropriate proceeding.

# United States Court of Appeals

**FOR THE DISTRICT OF COLUMBIA CIRCUIT**

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Argued January 15, 2019 Decided March 26, 2019

No. 18-7031

IN RE: DEPOSITION OF MATTHEW A. LEFANDE, ESQ.,

UNITED STATES,
APPELLEE

v.

MATTHEW AUGUST LEFANDE,
APPELLANT

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Appeal from the United States District Court
for the District of Columbia
(No. 1:17-mc-02466)

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*Matthew August LeFande*, *pro se*, argued the cause for appellant. On the briefs was *Horace L. Bradshaw Jr.*

*Nicholas P. Coleman*, Assistant U.S. Attorney, argued the cause for appellee. With him on the brief were *Jessie K. Liu*, U.S. Attorney, and *Elizabeth Trosman* and *John P. Mannarino*, Assistant U.S. Attorneys.

Before: MILLETT and PILLARD, *Circuit Judges*, and EDWARDS, *Senior Circuit Judge*.

Opinion for the Court filed by *Circuit Judge* PILLARD.

PILLARD, *Circuit Judge*: Matthew LeFande appeals an order summarily holding him in criminal contempt for refusing a magistrate judge's orders to take the witness stand and be sworn for in-court questioning on the record in lieu of an ordinary, out-of-court deposition in a civil action. LeFande served as counsel for defendants in an underlying civil case, *District Title v. Warren*, No. 14-1808 (D.D.C.). After the district court in that case entered judgment against LeFande's clients for nearly $300,000, District Title sought to enforce its judgment. To that end, it wanted to depose LeFande because District Title had reason to believe he knew about and may have aided his clients' transfer of assets to New Zealand to evade the judgment. Numerous attempts to serve LeFande with a subpoena failed. When LeFande appeared before the magistrate judge for a status conference, she ordered him orally, by minute order, and by separate written order to appear in court and take the witness stand for questioning under the court's supervision. LeFande appeared with his counsel on the date ordered, but repeatedly refused to take the stand, citing attorney-client and Fifth Amendment privileges, among other objections. The magistrate judge accordingly found him in criminal contempt and imposed a fine of $5,000. The district court overruled LeFande's objections and confirmed the magistrate judge's criminal contempt order.

On appeal, LeFande asks us to vacate the contempt order and enter a protective order shielding him from future demands for his deposition. He argues that the district court lacked subject-matter jurisdiction over the post-judgment discovery proceeding for which it sought his deposition because one of the judgment debtors died and the other filed for bankruptcy; that it lacked personal jurisdiction over him because he was never served with a subpoena; that the order to testify violated the attorney-client privilege; and that District Title sought the

discovery for an improper purpose. Because none of those arguments has merit, we affirm the criminal contempt order.

## I. Background

This litigation saga started when funds transferred as part of a real estate transaction went to the wrong person. In 2014, Anita Warren sold a piece of real estate through District Title, a real estate settlement company. District Title mistakenly transferred more than half of the proceeds of the sale—$293,514.44—to Warren's bank account rather than to her mortgage lender, Wells Fargo Bank. Warren promptly transferred the funds to her son, Timothy Day.

When Warren and Day refused to return the money, District Title filed suit in District of Columbia Superior Court to recover it. LeFande, representing Warren and Day, removed the action to the United States District Court on diversity grounds. *See* 28 U.S.C. § 1441.

District Title moved for a preliminary injunction to prevent Warren and Day from transferring any of their real or personal property and to require them to seek court approval to disburse funds for their living expenses, health expenses, or other necessities. The next day, Timothy Day sold a house he owned in Saint Mary's County, Maryland, for a below-market price. District Title contends that LeFande counseled Day in that matter, and that LeFande was involved in the transfer of the funds from that sale to a bank account in New Zealand. A few weeks later, the district court entered a preliminary injunction forbidding Warren and Day from transferring or dissipating their assets and requiring them to account for all their assets, withdrawals, and transfers, while District Title's collection action was pending and their debt not otherwise secured. *Dist. Title v. Warren*, 181 F. Supp. 3d 16, 29-30 (D.D.C. 2014). We affirmed the preliminary injunction. *Dist.*

*Title v. Warren*, 612 F. App'x 5 (D.C. Cir. 2015). Following discovery into District Title's underlying breach-of-contract and unjust enrichment claims, the district court entered summary judgment in favor of District Title in the amount of $293,514.44 and permanently enjoined Warren and Day from "dissipating their assets until the judgment is satisfied." *Dist. Title v. Warren*, No. 14-1808 (ABJ), 2015 WL 7180200, at *10 (D.D.C. Nov. 13, 2015). We again affirmed. *Dist. Title v. Warren*, No. 15-7157, 2016 WL 3049558 (D.C. Cir. May 4, 2016).

Meanwhile, District Title moved under Federal Rule of Civil Procedure 69(a)(2) to conduct post-judgment discovery to support collection on the judgment. As relevant here, District Title requested leave to issue subpoenas *ad testificandum* and *duces tecum* to LeFande, who it asserted "may have information concerning assets held or transferred by Timothy Day," particularly the St. Mary's property proceeds. Supplemental Appendix (S.A.) 95-96. Before the district court acted on that motion, in April 2017 LeFande filed a "Suggestion of Death" to notify the court and District Title that Day had recently died.

Soon thereafter, District Title moved for an order to show cause as to why LeFande should not be held in contempt for violating the district court's injunction, and renewed its request for leave to issue a subpoena to LeFande. *See* S.A. 127-32. In support of its motion, District Title offered evidence that LeFande had "actively participated" in concealing Day's assets by instructing the settlement company involved in Day's sale of his Saint Mary's property to transfer the proceeds to a New Zealand bank account. S.A. 129-30; *see also* S.A. 135-42. LeFande opposed the motion and sought a protective order to prevent his deposition, citing, *inter alia*, Fifth Amendment and attorney-client privileges.

The magistrate judge to whom the district court had assigned the post-judgment discovery, *see Dist. Title v. Warren*, 265 F. Supp. 3d 17, 20 n.3 (D.D.C. 2017), granted District Title's request for issuance of a subpoena to LeFande and denied LeFande's motion for a protective order on the ground that he lacked any basis to avoid deposition and would have to assert any relevant privileges on a question-by-question basis. *Dist. Title v. Warren*, No. 14-1808 (ABJ/DAR), 2017 WL 2462489, at *5 (D.D.C. June 2, 2017). The district court enforced the magistrate judge's order and affirmed that "LeFande must sit for the deposition" and assert any applicable privileges in response to specific questions. *Dist. Title*, 265 F. Supp. 3d at 22-23.

District Title's ensuing efforts to obtain LeFande's deposition were thwarted by their determinedly uncooperative object. *See* S.A. 212-14. LeFande did not respond to opposing counsel's repeated letters sent by overnight delivery and email, nor to several visits by the process server to LeFande's home, all attempting to schedule the deposition. The process server tried six times to serve LeFande in person, leaving multiple notes seeking a convenient time, and twice saw a vehicle matching the housekeeper's description of LeFande's car make "a U-turn at the top of the cul-de-sac" once it was close enough to see the process server's car waiting near LeFande's house. *See* S.A. 229-30. When District Title sought to schedule the deposition without formal service, LeFande refused to cooperate and failed to appear for the noticed deposition. *See* S.A. 213.

The magistrate judge then ordered the parties to appear for a September 15, 2017, status conference. At that conference, with LeFande present and represented by counsel, the magistrate judge ordered LeFande to appear in court for his deposition on September 21, 2017—a date agreed to by both

parties' counsel—and reiterated the court's earlier instruction that the basis for any privilege objection to a particular question be stated on the record at that time. The magistrate judge made that order orally in open court, then memorialized it in a minute order, and also issued a separate written order to the same effect.

Three days later, LeFande moved to dismiss the post-judgment proceedings with respect to Day, asserting that District Title's failure to identify a personal estate representative to replace Day within ninety days following the notice of his death warranted dismissal of the underlying action under Federal Rule of Civil Procedure 25(a). The district court entered an order noting that it would "rule on the motion in due course," but that the order directing LeFande to testify remained in effect because the post-judgment discovery District Title sought from LeFande related to claims against both judgment creditors and no grounds had been raised to dismiss the case against Warren. Joint Appendix (J.A.) 85. The next day, LeFande filed for bankruptcy on Warren's behalf, triggering an automatic stay of any attempt to enforce the judgment against her. *See* 11 U.S.C. § 362.

The day before LeFande's scheduled deposition, the district court denied the motion to dismiss the claims against Day's estate, noting that it appeared "to be one of a number of recent steps taken by [LeFande] in an effort to avoid complying with orders of this Court." *Dist. Title v. Warren*, No. 14-1808 (ABJ), 2017 WL 6816482, at *1 (D.D.C. Sept. 20, 2017). Because neither LeFande nor his counsel, who filed the motion, represented Day's estate, the court held that they lacked standing to seek dismissal under Rule 25(a), and that a death notice neither filed by nor identifying a successor or representative of the estate did not trigger Rule 25(a)'s ninety-day time limit. *See id.* at *3-4. The court concluded that

LeFande "remain[ed] under Court order to appear for a deposition" in court the next day. *Id.* at *4. The court cautioned that "[f]ailure to attend and to respond on a question by question basis will be a direct violation of the Magistrate Judge's September 15, 2017 order, and this Court's orders of September 18 and today." *Id.* at *3.

LeFande appeared in court, but repeatedly refused the court's orders to take the stand to be questioned. *See* J.A. 95-100. He said: "I appear here under duress. I have never been served in this case. I am not a party in this case." J.A. 98-99. After offering him multiple opportunities to comply with the order to testify, the magistrate judge held LeFande in criminal contempt and imposed a $5,000 criminal contempt fine under 28 U.S.C. § 636(e)(2).

LeFande moved the district court to vacate the criminal contempt order; the district court affirmed the magistrate judge's order. *In re Deposition of LeFande*, 297 F. Supp. 3d 1 (D.D.C. 2018). The district court explained that LeFande could "not avoid appearing at the deposition entirely with a blanket assertion of attorney-client privilege," but instead "was required to take the stand and to assert both the Fifth Amendment privilege and the attorney-client privilege on a question-by-question basis." *Id.* at 5. The court further found that "all of the elements required to uphold the criminal contempt order" were met. *Id.* LeFande "not only disobeyed the Magistrate Judge's multiple orders in the courtroom in her presence, but he also failed to comply with the opinions and orders of this Court which required him to appear to and respond to the questions on an individual basis," impeding the administration of justice. *Id.* at 5-6. The court added that the evidence in the case was "sufficient to establish beyond a reasonable doubt that LeFande had the necessary intent, and

that his actions were both calculated and willful." *Id.* at 6 (internal quotation marks omitted).

LeFande timely appealed to this court, and then moved to strike District Title as an appellee, contending that the United States was the only proper appellee to defend the validity of a criminal contempt order. *See* Mot. to Strike Named Appellee, No. 18-7031 (D.C. Cir. Mar. 19, 2018). We granted the United States' motion to substitute itself for District Title on the contempt appeal. *See* Order, No. 18-7031 (D.C. Cir. Aug. 22, 2018).

## II. Analysis

Magistrate judges "have the power to punish summarily by fine or imprisonment, or both, such contempt of the authority of such magistrate judge constituting misbehavior of any person in the magistrate judge's presence so as to obstruct the administration of justice." 28 U.S.C. § 636(e)(2). We review a criminal contempt citation by asking "whether a fair-minded and reasonable trier of fact could accept the evidence as probative of a defendant's guilt beyond a reasonable doubt." *In re Sealed Case*, 627 F.3d 1235, 1237 (D.C. Cir. 2010) (internal quotation marks and alterations omitted) (quoting *In re Holloway*, 995 F.2d 1080, 1082 (D.C. Cir. 1993)).

That standard is readily met here. LeFande does not dispute that, in the magistrate judge's presence, he willfully violated her orders to submit to in-court questioning on the record. He argues instead that (1) the district court lacked subject-matter jurisdiction over the underlying post-judgment discovery proceedings; (2) the court lacked personal jurisdiction over him because he was never served with a subpoena; (3) the order to testify violated the attorney-client privilege; and (4) the discovery was "inappropriate" and sought

for an "improper" purpose. Appellant's Br. 17, 30, 34, 41, 44. Each argument is without merit.

*First*, the district court indisputably had jurisdiction over the underlying action, *see* S.A. 1 (notice of removal, filed by LeFande, setting forth the basis for removal jurisdiction based on diversity of citizenship), which included proceedings to enforce that judgment, *see* Federal Rule of Civil Procedure 69(a)(2). In any event, subject-matter jurisdiction over an underlying action is not a precondition of a federal court's authority to sanction those who violate its orders. LeFande argues that judgment cannot be executed against a debtor in bankruptcy or a dead party, and that the district court therefore lacked subject-matter jurisdiction to pursue discovery in aid of its judgment against his clients. Leaving the merits of those claims aside, the Supreme Court has specifically "upheld a criminal contempt citation even on the assumption that the District Court issuing the citation was without jurisdiction over the underlying action." *Willy v. Coastal Corp.*, 503 U.S. 131, 137 (1992) (citing *United States v. United Mine Workers*, 330 U.S. 258 (1947)) (upholding Rule 11 sanctions imposed by a court found in the interim to have lacked subject-matter jurisdiction). That is because a criminal contempt charge is "a separate and independent proceeding at law that is not part of the original action," enabling a court to "make an adjudication of contempt and impose a contempt sanction even after the action in which the contempt arose has been terminated." *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 396 (1990) (internal quotation marks omitted). So, even when "the basic action has become moot," "[v]iolations of an order are punishable as criminal contempt." *United Mine Workers*, 330 U.S. at 294; *accord Gompers v. Buck's Stove & Range Co.*, 221 U.S. 418, 451 (1911). LeFande's violation of the district court's orders are likewise punishable as criminal contempt,

regardless of the court's subject-matter jurisdiction over post-judgment discovery.

*Second*, there is no question that the district court has personal jurisdiction over LeFande based on his nexus with the forum and the case. His objection is that, "[a]bsent service of process, the District Court was without personal jurisdiction over Attorney LeFande." *See* Appellant's Br. 30. That is his central service-based objection, and it is entirely misdirected. "Although questions of service of process" and personal jurisdiction "often are closely intertwined, service of process is merely the means by which the district court, having a sufficient basis for jurisdiction . . . asserts [it] over the party . . . and affords her due notice of the commencement of the action." 4A Charles A. Wright & Arthur R. Miller, *Federal Practice & Procedure* § 1083 (4th ed. 2018). This is not a case in which service within the forum was the basis of the court's personal jurisdiction. *Cf. Burnham v. Superior Court*, 495 U.S. 604 (1990). Contrary to LeFande's contention, the lack of a subpoena had no effect on the court's personal jurisdiction over him, which is well established in accordance with statutory and constitutional requirements.

As a statutory matter, "[i]n a diversity case, the federal district court's personal jurisdiction over the defendant is coextensive with that of a District of Columbia court." *Helmer v. Doletskaya*, 393 F.3d 201, 205 (D.C. Cir. 2004). The District of Columbia's long-arm statute gives the courts here jurisdiction "over a person" such as LeFande "as to a claim for relief arising from the person's . . . transacting any business in the District of Columbia," including the business of representing clients. *See* D.C. Code § 13-423(a)(1). As a member of the District of Columbia bar, LeFande voluntarily appeared in our courts as counsel of record for Day and Warren in *District Title*, and it was his representation in that case that

gave rise to the court's order to submit to questioning on the record. The long-arm provision constitutionally applies here. LeFande's acts of deliberately transacting business in the District—by joining the D.C. bar and appearing as counsel for private clients in courts within the District—established "minimum contacts with [the District of Columbia] such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice." *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (internal quotation marks omitted).

LeFande's briefs in this court do not clearly object to the absence of subpoena service *per se*, other than as a ground for want of personal jurisdiction, but to the extent that he raises it, the argument fails in any event on the unusual facts of this case. For an ordinary deposition of a witness with no other involvement in a case, service of a subpoena is the means by which compulsory jurisdiction is formally asserted over the deponent and notice given. *See* 9A Wright & Miller, *supra*, § 2460. But this was not an ordinary deposition. LeFande, an officer of the court and counsel in the underlying case, had repeatedly failed to cooperate in scheduling his deposition. In that rare and confounding context, the magistrate judge on September 15 issued her oral, in-court order to LeFande, as he personally stood before her, and confirmed both by minute order on the docket and separate written order the requirement that he appear on September 21 for his in-court deposition.

We recognize that "[w]hen as here, the issue is the propriety of a particular technique of serving a particular type of process"—such as compelling a witness to appear to testify—"neither subject matter jurisdiction nor personal jurisdiction in either the 'power' or the 'notice' sense is directly at issue." *FTC v. Compagnie De Saint-Gobain-Pont-a-Mousson*, 636 F.2d 1300, 1319 (D.C. Cir. 1980). For the

reasons just described, the court had "power"—jurisdiction—over LeFande. And it also gave LeFande clear notice of the purpose for which the court sought his appearance, far enough in advance to permit him to procure representation, prepare, and file a motion to quash. LeFande does not claim otherwise. Yet he did not object to the oral order directing his appearance even though his personal counsel was present with him, *see* Supplemental Order (Regarding the Appearance of Counsel for Mr. LeFande) (Sept. 15, 2017) (S.A. 234), nor did he file a motion to quash the order directing his appearance. In fact, he timely appeared on the appointed date with counsel, and was physically present in court at the time of the disputed contempt citation.

Again, although LeFande did not specifically raise the point on appeal, we think the form of the judge's in-person order sufficed to compel LeFande to give testimony. *Cf. Murphy Bros. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 350 (1999) ("One becomes a party officially . . . only upon service of a summons *or other authority-asserting measure* . . . .") (emphasis added). Compulsory process—in contrast to a civil complaint—generally "may be served upon an unwilling witness only in person," because, should a witness fail to comply with a properly served subpoena, "the full enforcement power of the federal courts may immediately be brought to bear upon him" in the form of contempt proceedings. *Compagnie De Saint-Gobain-Pont-a-Mousson*, 636 F.2d at 1313. Here, no subpoena was successfully served on LeFande's person. *See* J.A. 71-72 (affidavit regarding multiple service attempts). Instead, the judge issued an order to LeFande in person summoning him to return at the specified time to give his deposition testimony under the court's supervision. As every lawyer knows, a court order is backed by the contempt power. LeFande points to nothing at the hearing or in the intervening six days reflecting any objection to the order to appear on

grounds of lack of personal subpoena service. Given LeFande's recalcitrance and his status as an officer of the court, the court's in-person issuance of the deposition order was a sufficiently formal way to assert the compulsory power of the court over him such that the lack of a personally served subpoena under Rule 45 has no effect on the validity of the court's contempt citation. We express no general approval, beyond the unusual circumstances of this case, of a court order as an adequate substitute for a subpoena.

*Third*, LeFande's objection that the order to testify violated the attorney-client privilege is contrary to circuit law, and to the magistrate judge's and district judge's prior orders applying that precedent to LeFande. LeFande bore the burden to establish any claim of privilege in the context of a specific pending question from District Title; a "blanket assertion of the privilege [does] not suffice." *In re Lindsey*, 158 F.3d 1263, 1270 (D.C. Cir. 1998). LeFande did not come close to meeting his burden. He made no showing that he could not have preserved any claims of privilege his clients may have had while also complying with the court's order. As the court had earlier specified in rejecting LeFande's blanket assertion of privilege, the correct process for asserting any relevant privileges was to take the stand and assert the claim and its basis in response to questions eliciting information LeFande believed to be privileged. LeFande did not even attempt to defend his wholesale refusal by showing, for example, that District Title sought only privileged information—nor could he have, as the discovery plainly swept more broadly. *See* S.A. 226-28, 244-53 (District Title sought documents and proposed questions probing information other than communications between LeFande and his clients).

LeFande asserts that District Title failed to establish the crime-fraud exception to the attorney-client privilege, but the

existence of a privileged communication is a precondition to any need to establish the crime-fraud exception. *See In re Sealed Case*, 107 F.3d 46, 49 (D.C. Cir. 1997). District Title had no obligation to establish any exception unless and until LeFande appeared and properly asserted a valid claim of privilege. The criminal contempt order addresses LeFande's refusal at that predicate step, to which his crime-fraud argument is no defense.

*Fourth*, the validity of the contempt order is unaffected by LeFande's assertion that District Title sought to depose him for the "improper purpose" of driving a "wedge between Attorney LeFande and the then remaining indigent co-Defendant, in order to deprive that party of legal representation." Appellant's Br. 41-42. As we explained when we substituted the United States for District Title to defend the contempt order, the contempt citation is not about District Title; it "was entered to vindicate the judicial power of the United States." Order at 1, No. 18-7031 (D.C. Cir. Aug. 22, 2018) (citing *United States v. Providence Journal Co.*, 485 U.S. 693, 700 (1988)). In any event, there is no record basis for LeFande's effort to impugn District Title's purpose for questioning him.

*Finally*, LeFande's argument that discovery as to the Saint Mary's County property transaction is "inappropriate" makes no sense. Appellant's Br. 44. Whatever the merit—or not—of LeFande's objections to particular discovery orders, he may not refuse to comply with an order of the court just because he disagrees with it. As spelled out above, a "criminal contempt charge is . . . a separate and independent proceeding at law that is not part of the original action." *Cooter & Gell*, 496 U.S. at 396 (internal quotation marks omitted).

* * *

Because none of LeFande's objections has merit, we affirm the order holding him in criminal contempt of court.

*So ordered.*

**UNITED STATES COURT OF APPEALS**
**FOR THE DISTRICT OF COLUMBIA CIRCUIT**

| | |
|---|---|
| **MATTHEW AUGUST LEFANDE**<br><br>**Appellant**<br><br>**v.**<br><br>**DISTRICT TITLE**<br><br>**Appellee** | **Appeal Number**<br>**18-7163**<br><br>**1:14-cv-1808 ABJ**<br>**1:17-mc-2466 ABJ DAR** |

In accordance with D.C. Circuit Rule 28(a)(1), the Appellant hereby submits the following information.

## Parties and Amici.

The Appellant was the Defendants' named attorney in the underlying proceeding, a resident of the Commonwealth of Virginia.

The named Appellee is District Title, a corporation organized under the laws of the District of Columbia, believed to be closely held and not publicly traded.

There are no amici.

## Ruling Appealed

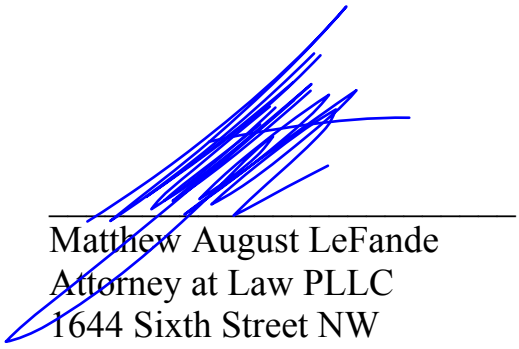
The Appellant appeals a finding of civil contempt and and an award of sanctions and costs dated October 1, 2018. ECF Docket # 146.

## Related cases

*In re Matthew August LeFande*, 17-5212 (D.C. Cir.).

*In re Matthew August LeFande*, 18-7031 (D.C. Cir.).

Respectfully submitted, this sixth day of December, 2018,



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