

NOT FOR PUBLICATION

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS

DIVISION OF SAINT CROIX

UNITED STATES OF AMERICA,

Plaintiff,

Crim. No. 2002/125

v.

ESBOND DEGRASSE, GEORGE
OSBORNE, JAY WATSON,
ANTONIO PETERSEN

Defendants

ORDER REGARDING MOTION TO DISQUALIFY ATTORNEY MEADE

THIS MATTER is before the Court on the government's motion to disqualify Attorney Jomo Meade, counsel for defendant Jay Watson. Attorney Meade has filed a response.

In support of its motion, the government argues that Attorney Meade has represented and is currently representing two witnesses in this action. The government claims that these witnesses have interests adverse to that of Attorney Meade's current client, Jay Watson. The government further contends that it plans to call Attorney Meade as a witness. The government reasons that this scenario presents an irreconcilable conflict of interest precluding Attorney Meade from representing defendant Watson in this matter.

Attorney Meade argues that there is no conflict. First, Meade states that he was retained by the first witness, Zephir, to file a common law tort action against NSF officers Tyson and Degrasse. Meade further states that the action was dismissed for lack of prosecution. Meade states there were no claims

against Watson.

With regard to the second witness, Meade states that although he represented Christopher in a criminal action in which he was charged with the possession of drugs, Christopher entered into a plea agreement with the government against Meade's advice. Meade states that he was not present during the negotiations and discussions leading up to the plea agreement. He acknowledges that the agreement requires Christopher to testify against Watson.

Finally, Meade argues that, under the facts of this case, he is not a necessary witness because Watson was not involved with the first case, and he lacks personal knowledge of the facts of the second case. He urges dismissal of the motion.

DISCUSSION

An actual conflict of interest "is evidenced if, during the course of the representation, the defendants' interests diverge with respect to a material factual or legal issue or to a course of action." *Sullivan v. Cuyler*, 723 F.2d at 1086. To reach the level of constitutional ineffectiveness the conflict "must cause some lapse in representation contrary to the defendant's interests but such lapse need not rise to the level of actual prejudice." *Id.* A lapse in representation adversely affecting the defendant's interests can be demonstrated not only by what the attorney does, but by what he refrains from doing. *Holloway*

v. *Arkansas*, 435 U.S. 475, 489-90 (1978).

The Sixth Amendment right to effective representation is compromised where an attorney representing a criminal defendant harbors an actual conflict of interest which will adversely affect his performance. *Cuyler v Sullivan*, 446 U.S. 335, (1980).

The type of conflict which warrants removal of an attorney

Now, therefore, it is hereby ORDERED AS FOLLOWS:

- a. That defendant Petersen's motion for a bill of particulars is DENIED.

DATED: November 20, 2002 ENTER:

JEFFREY L. RESNICK
U.S. MAGISTRATE JUDGE

A T T E S T:
Wilfredo F. Morales, Clerk of Court
by: _____
Deputy Clerk

cc: Eric Chancellor, Esq.
Denise Hinds, AUSA
Asha Colianni, Esq.
Jomo Meade, Esq.
Stephen Bruschi, Esq. (FAX 776-2238)