

DISTRICT COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

UNITED STATES OF AMERICA

v.

ARIM BONIFACE DAVE COMPTON,

Defendant.

1:23-cr-00021-2-WAL-EAH

TO: Javier A. Cuyar Olivo, Esq., CJA Panel Attorney
for Defendant Arim Boniface Dave Compton

Daniel H. Huston, Esq., AUSA
for the United States of America

ORDER

THIS MATTER comes before the Court on Attorney Javier Cuyar Olivo's Urgent Motion to Withdraw as Attorney, filed on September 20, 2024, on behalf of Defendant Arim Boniface Dave Compton. Dkt. No. 206. In the Motion, Attorney Cuyar Olivo states that he and his mother, whom he cares for, are experiencing medical issues that will keep him from traveling to the Virgin Islands. *Id.* He further states that he is not renewing his Criminal Justice Act ("CJA") Panel membership, which expires on December 31, 2024, because he is involved in a complex litigation matter. Dkt. No. 206-1. For those reasons, Attorney Cuyar Olivo states that he "immediately rejected the appointment in the evoucher system explaining his non availability [sic]." Dkt. No. 206.

The Court understands that emergencies occur and that even the most diligent attorneys, in rare cases, must move for relief from their obligations. However, the Court also recognizes that "[a]ttorneys are officers of the court, and are bound to render service when

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required by . . . an appointment.” *Powell v. Alabama*, 287 U.S. 45, 73 (1932) (finding such duty owed notwithstanding involuntary and unpaid appointments).

When a CJA Panel attorney receives notice of an appointment, they “are required to log-in and accept the appointment within 24 hours of receipt of the email.”¹ The guidance the Court provides to CJA Panel attorneys does not contemplate rejection of an appointment by the attorney. Indeed, per the Model Rules of Professional Conduct, to which CJA Panel Members must abide,² “A lawyer shall not seek to avoid appointment by a tribunal to represent a person except for good cause.” Model R. Pro. Conduct r. 6.2 (Am. Bar Ass’n 2019). Whether good cause exists to justify avoidance of an appointment is for the Court, not an appointed attorney, to determine. See Ronald D. Rotunda & John S. Dzienkowski, *ABA Legal Ethics, Law. Deskbook Pro. Resp.* § 6.1-1 (Nov. 2023) (“The appointing courts . . . enforce the standard of ‘good cause’ for rejecting a court appointment. A court appointed lawyer must inform the court that he or she wishes to decline the representation.”). Therefore, CJA Panel attorneys cannot simply click “Reject” on the eVoucher portal and expect to avoid an

¹CJA Felony Appointment Manual (D.V.I. April 2022), <https://www.vid.uscourts.gov/sites/vid/files/CJA%20Felony%20Appointment%20Manual%2009152023.pdf>; see also CJA eVoucher: Attorney User Manual Release 6.10 (D.V.I. July 12, 2024) (upon notification of appointment, “attorney must log in and accept.”), <https://www.vid.uscourts.gov/sites/vid/files/CJA%20Attorney%20Manual%20-%20July%2012%202024.pdf>.

² Revised Criminal Justice Act Plan (D.V.I. 2022) at 22 (CJA Panelists must conform “to the American Bar Association’s Model Rules of Professional Conduct”), <https://www.vid.uscourts.gov/sites/vid/files/CJA%20Plan-%20Revised%202022.pdf>.

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appointment. Once they have been selected, they must move to withdraw by filing a written motion.

Good cause to withdraw does not exist merely because a CJA Panel attorney's term is ending, he or she has requested to be removed from the CJA Panel and the request has been granted, or because he or she deems themselves to be busy. A CJA Panelist's obligations may extend beyond the term of their Panel membership. When applying for CJA Panel membership, applicants certify that they will continue their appointments through any appeal that may be taken and any appropriate post-appeal proceeding "unless relieved from the appointment by Order of Court."³ This means that even after membership lapses, CJA Panelists are expected to continue to advocate for their clients in pending cases.

At the time he filed his Motion to Withdraw, Attorney Cuyar Olivo was a member of this jurisdiction's CJA Panel. The same day he filed the Motion, he tendered his resignation from the CJA Panel. *In re Crim. Just Act Panel*, Misc. No. 2024-2 (D.V.I. Sept. 26, 2024). Effective September 26, 2024, the Court accepted Attorney Cuyar Olivo's resignation. *Id.* Nevertheless, this Court maintains discretion on whether to grant or to deny his Motion to Withdraw.⁴ *See*

³ Application for Membership on the Criminal Justice Act Panel for the District Court for the Virgin Islands at 6 (V.I.D. Sept. 27, 2018), https://www.vid.uscourts.gov/sites/vid/files/forms/CJA_APPLICATION_FOR_MEMBERSHIP.pdf.

⁴ In its order removing Attorney Cuyar Olivo from the CJA panel list the Court ordered that he shall conclude, or otherwise move to withdraw from, all active cases for which he was previously appointed as CJA counsel. *In re Crim. Just Act Panel*, Misc. No. 2024-2 (D.V.I. Sept. 26, 2024).

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Bayges v. Se. Pa. Transp. Auth., 887 F. Supp. 108, 110 (“The decision to grant a motion to withdraw rests within the court’s discretion.”). The Court notes that it would be within its rights to deny the present motion. The Model Rules of Professional Conduct provide three examples of good cause to avoid an appointment. Model R. Pro. Conduct r. 6.2 (“A lawyer shall not seek to avoid appointment . . . except for good cause, such as:” representation of the client likely causing the attorney to violate the Rules of Professional Conduct or other law, unreasonable financial burden, or being appointed a client so repugnant to the lawyer that the client-lawyer relationship would be impaired). None of those examples are pertinent here.

However, the Court does not take the list of examples provided by the Model Rules to be exhaustive.⁵ Therefore, based on the information provided by Attorney Cuyar Olivo in the Motion to Withdraw—specifically that he and his mother who he cares for are experiencing medical issues prohibiting his travel to the Virgin Islands—the Court finds good cause exists to justify excusing his appointment in this instance. Therefore, the Court will grant the Motion to Withdraw.

⁵ “It is a well-established canon of statutory construction that when the word ‘including’ is followed by a list of examples, those examples are generally considered illustrative rather than exhaustive.” *In re APA Transp. Corp. Consol. Litig.*, 541 F.3d 233, 241 (3d Cir. 2008). The same is true of the words “such as.” *Cirba Inc. v. VMWare, Inc.*, No. 19-742, 2019 WL 6327707 at *8 (D. Del. Nov. 26, 2019) (“‘such as’ indicates unmistakably . . . that the list of examples is non-exhaustive.”).

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The premises considered, it is hereby **ORDERED**:

1. The Motion to Withdraw as Attorney is **GRANTED**.
2. Javier Cuyar Olivo, Esq., is **TERMINATED** from this case.
3. Attorney Cuyar Olivo shall transfer to Defendant's new counsel the discovery provided by the Government, as well as the case file, and file a notice with the court that he has done so on or before **October 5, 2024**.

ENTER:

Dated: October 2, 2024

/s/ Emile A. Henderson III
EMILE A. HENDERSON III
U.S. MAGISTRATE JUDGE