IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

PEOPLE OF THE VIRGIN ISLANDS, Plaintiff, vs. ROBERTO GUTTIEREZ, Defendant.	**CRIMINAL SX-10-CR-658** EMBEZZLEMENT BY EMPLOYEE/AGENT; EMBEZZLEMENT BY FIDUCIARY; GRAND LARCENY / POSSESSION OF STOLEN PROPERTY; CONSPIRACY
PEOPLE OF THE VIRGIN ISLANDS, Plaintiff, vs. ORAN HAMILTON, Defendant.	**CRIMINAL SX-10-CR-659** EMBEZZLEMENT BY EMPLOYEE/AGENT; EMBEZZLEMENT BY FIDUCIARY; GRAND LARCENY/POSSESSION OF STOLEN PROPERTY; CONSPIRACY;

MEMORANDUM OPINION

THIS MATTER is before the Court on Defendant Roberto Gutierrez's "Motion to Recuse Judge Julio Brady" and the People's Opposition thereto. Defendant Gutierrez's Motion came on for a Hearing on December 30, 2011. The allegations made against this Court in Gutierrez's Motion are reproduced here:

> 1 & 2: Gutierrez has heard and is concerned that Judge Brady is suffering from a medical disability, namely, that he has a propensity to sleep while on the Bench;
>
> 3. Defendant is concerned that Judge Brady has displayed that he cannot be fair and objective and he has clearly sided with the People in this matter by refusing to issues *(sic)* and conduct a hearing which involve the testimony of the Attorney General, Vincent Frazer, Todd Newman, Esq., and Governor John P. de Jongh, Jr.
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> 4. In the year 2008 the People moved to dismiss *People v. Roberto Guttierez,* SX-07-CR-538 with prejudice and Judge Julio Brady, dismissed it Without Prejudice.

5. This matter was subsequently re-filed after the prompting of Attorney Todd Newman who used his political connections with the Governor to have the criminal matter re-filed.

6. The evidence will show that this matter was re-opened in order to place Divi Carina Bay Resort and Casino in a stronger position based on the wrongful discharge arbitration matter that is pending.

7. Judge, *(sic)* Julio Brady has ignored his cases which he has allowed to languish to the detriment of the Defendant.

9. Judge Julio Brady's conduct shows a desire to be friendly with the present administration in order that he may be reappointed as a judge and not see justice.

In his December 30, 2011, testimony, through a Spanish interpreter, Defendant Gutierrez testified that he had learned of the Judge's disability from people who would approach him at the airport and commented that he (the Judge) was not in the best condition to preside over his case. (Tr. at 10, 17, 24.) Gutierrez was cross-examined by Assistant Attorney General Joseph Ponteen, Esq. When asked to do so, Gutierrez could not identify - either by name or other description - the person(s) who told him about Judge Brady's "unfitness" for judicial office. (Tr. at 24-26.) He also testified that it was Attorney Wynter who acted as the notary on the "verification" of the Motion to Recuse, thereby swearing that his statements were true. Defendant also testified that he knew that "Judge Brady is friendly with the (de Jongh) Administration and that he wants to be reappointed as a judge." (Tr. at 27.)

At the conclusion of the testimony the Court asked the Defendant a few questions, including an inquiry into how often he had appeared before this Court on his case. He replied, 4 to 5 times. Following that, the Court asked if there was ever a hearing when he or others testified.

He responded that there was no hearing and Attorney Wynter agreed with him. (Tr. at 30-31.) Gutierrez was then excused as a witness.

Subsequently, Attorney Wynter argued that the Government had displayed outrageous conduct that violated the Defendant's rights, and engaged in prosecutorial misconduct and abuse of process. Also, he pointed to the fact that he had issued subpoenas for Todd Newman, Esq., as legal counsel to Divi Carina Bay Resort, and Attorney General Vincent Frazer. Other individuals subpoenaed include Assistant Attorneys General Tonya Saafir, Esq., Wilson Campbel, Esq., Garfield Bloodman, Esq., and Casino Manager, Anton Kuippers. (Tr. at 33.) Then, the Court asked Attorney Wynter if the People had filed an opposition to the subpoenas. He replied in the affirmative. The Court then informed defense counsel that its ruling quashing the subpoenas was based on the People's Opposition which correctly stated the law on the issue. (Tr. at 33-34.[1])

Attorney Wynter next argued that under the circumstances his only choice was to withdraw from representing the Defendant or to support his assertions. Instead Attorney Wynter elected to file the Motion before this court, to recuse the judge. He went on to say that he held no personal knowledge of the matters in question stating "I can see his concern, not about the health things that he brought to my attention because he talk to people – I didn't talk to the people dem." (Tr. at 36-37.)

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[1] In addition to the People's opposition, three other oppositions were specifically made on behalf of Attorney General Frazer, Assistant Attorney General Tonya Saafir, and Divi Carina Bay Resort.

In the Prosecutor's closing remarks, counsel for the People, noted that Attorney Wynter had the option of asking this Court to reconsider the quashing of the subpoenas, but instead waited for four (4) months and then chose to file this Motion to Recuse. (Tr. at 39.) Assistant Attorney General Ponteen also noted that this case was filed in November, 2010, and thus Defendant's claims of undue delay are unfounded. Also, he also distinguished the issue most germane to this Order, that while Attorney Wynter is bound to present his client's position, he is also duty bound to consider whether what his client is saying is in fact true or has any bearing of truth . (Tr. at 40-41.) Attorney Wynter responded as follows:

> "Now I find it rather interesting that Attorney Ponteen would say that I have a duty to investigate. And I would not touch that one. At this time." (Tr. at 42.)

As the conclusion of the hearing, Attorney Wynter affirmed his commitment to his position stating that ". . . I suggest to you that I stand with the representations that my client has testified to this morning." (Tr. at 43.[2])

FACTUAL AND PROCEDURAL BACKGROUND

The matter now before the Court is Defendant Guttierez's Motion for Recusal, initiated by two arrest warrants issued by this Court on November 17, 2010, for Defendant Gutierrez and Defendant Oran Hamilton on charges of Embezzlement, Grand Larceny and Possession of Stolen Property. Bail for each was set at $25,000.00.

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2 Attorney Jeffrey B.C. Moorhead, Esq., counsel for Co-Defendant Hamilton, filed an Opposition to the Motion to Recuse Judge Brady

However, the underlying case relates to the second of two Criminal Informations filed by the People, charging Defendant Gutierrez with (the original) two charges (Grand Larceny and Possession of Stolen Property) as well as two counts of embezzlement in 2007. Both the 2007, and 2010, Informations stem from the same acts allegedly committed between November 20, 2007, and November 27, 2007. The only difference is that in the 2010, case the embezzlement charges were added and Defendant Gutierrez was charged with Defendant Hamilton. The Defendants were employees of Divi Casino & Resort. Their job titles were Floor Supervisor and Dealer, respectively. *See Ct. Ex. 1, Aff. of Special Agent Roberto L. Soto.*

The first case, where Guttierrez was the lone defendant, was filed on November 27, 2007, and captioned *People v. Roberto Gutierrez,* SX-07-CR-538. That case was assigned to the late Judge D'Eramo. In that case, the People, through Assistant Attorney General Cornelius Williams on July 2, 2008, filed a Motion to Dismiss Without Prejudice. However, the proposed Order submitted with that Motion erroneously stated "on the People's Motion to Dismiss With Prejudice." Judge D'Eramo granted the Motion as requested, but he corrected the obvious clerical error by writing in and initialing the words "dismissed without prejudice." Hence, the Motion to Dismiss Without Prejudice was granted by Judge D'Eramo exactly as requested by the movant - without prejudice. *(See Ct. Ex. 2* which was filed by the People in their Opposition.)

Yet despite the incontestable evidence in the record Attorney Wynter misrepresents that this Court dismissed the 2007 case against his client. It strains credulity that Attorney Wynter could possibly be unaware that this Court was not involved in the dismissal of the 2007, case. In point of fact, the current case was not received by this Court until about January 31, 2011 after initial processing in the Magistrate's Division.

As Assistant Attorney General Ponteen pointed out in his closing remarks at the December 30, 2011, Hearing, Attorney Wynter had "a duty to investigate" his client's accusation that this Court is afflicted by a medical disability, causing him to sleep on the Bench. Unfortunately, Attorney Wynter disregarded the timely admonition, essentially ignoring his duties and responsibilities as member of the Virgin Islands Bar Association.

Further, at the end of his arguments to this Court, Attorney Wynter aligned himself with his client's accusations, that Gutierrez had seen this Court sleeping during the two Calendar Call Hearings (on June 6, 2010, and December 5, 2010, respectively), where other defendants, their counsels, prosecutors, the public and Attorney Wynter were present. Court records establish that these two appearances are the only ones this Defendant had made before this Court in this case and that the June Calendar listed fifty (50) matters, and the December Calendar, twenty four (24) matters.

In his testimony the Defendant seemingly challenges this Court's competency to preside over this case by testifying under oath and verifying the Motion to Recuse this Court which claims - based solely on his testimony – that during the two (2) Calendar Calls he attended this Court was 'sleeping."

DISCUSSION

The Defendant's challenge to the competency of this Court is governed by section V.I. Code Ann. tit. 4, which is set forth below:

§ 286. Objection to Competency; decision

> No challenge as to the competency of any judge shall be received or allowed; but if it is plain that the judge is disqualified under the provisions of section 284 of this title, the party objecting to

> competency may, in writing, file with the judge his objection, stating the grounds therefor and the judge shall thereupon proceed with the trial or withdraw therefrom, in accordance with his determination of the question of his disqualification. His decision shall be reduced to writing and filed with the papers in the case, but no appeal or stay shall be allowed from, or by reason of, his decision in favor of his own competency until after final judgment in his court.

The only relevant case citation in the Annotations to this matter, is *McGowan v. Hodge,* 27 V.I. 16, 21. Terr. Ct. Jan. 2, 1992 (NO. CIV. 340/1988). Among other things this case dealt with a motion "to disqualify the judge." There the Court held that there was no factual basis for his disqualification even though he admitted that, while in private practice, he had represented the Plaintiffs in an action to quiet title in the same property. *Id.* Nonetheless, in 1992, Terr. Ct. Senior Sitting Judge Alphonso A. Christian made the following statement, which is highly relevant to the instant case:

> In a Motion to disqualify, we believe the Judge in question should promptly remove himself from the case if by failing to do so he would violate any provisions of the recusal statute, 4 V.I.C., Section 284. On the other hand, we are just as firmly of the opinion that he should deny the Motion to disqualify himself if to do so would amount to a dereliction of the duties he has sworn to perform. *Id.*

This Court agrees with the decision by this jurist who served on the Bench as a Municipal and Territorial Court Judge for over two (2) decades. Accordingly, I deny the Motion as lacking in merit on factual grounds, since no evidence was presented to support the testimony of the Defendant. A sworn affidavit or statement by this or any other person – without some substantiation independent of subjective perception – is insufficient to challenge the competency of a Judge of the Superior Court. This Court has found no such case, and needless to say, the

Defense has presented none. Accordingly since Defendant's testimony challenges this Court's competency to perform his judicial duties, it is denied as unfounded and unproven.

However, the thrust of the Motion to Recuse, filed by Attorney Wynter is based entirely on a claim that this Court is biased and prejudiced against the Defendant and claims that the denial by this Court of a Motion to Quash Subpoenas issued by Attorney Wynter establishes this bias. These subpoenas demanded the testimony of the Attorney General, several Assistant Attorneys General, Counsel for the Divi Casino Resort (the victim of the crimes allegedly committed by the Defenant), legal counsel, Todd Newman, Esq., and the Manager of the Casino.

Title 4, Virgin Islands Code section 284, sets forth the four (4) prerequisites to the disqualification of a judge of the Superior Court. The first three (3) reasons are usually those which cause a particular judge to voluntarily disqualify himself/herself due to a relationship either to the case itself or when he/she has previously represented or is related to a party. The fourth reason for disqualification is plainly stated:

> (4). When it is made to appear probable that, by reason of bias or prejudice of such judge, a fair and impartial trial cannot be had before him.

V.I. CODE ANN. TIT. 4 § 284(4)

In the case of *LPP Mortg. Ltd. v. Quetel* the Court was confronted with a party's dissatisfaction with the rulings by a Superior Court Judge in a case where a mortgage company sued an elderly retired couple to foreclose on another mortgage used to repair damages caused by Hurricane Marilyn. The plaintiff also made a motion to disqualify the judge. Pursuant to V.I. CODE ANN. TIT. 4 § 284(4) the court noted that the movant must allege facts "reflect[ing] a clear probability that the judge is biased against that party," *LPP Mortg. Ltd. v. Quetel,* 47 V.I. 62, 66;

2004 WL 3546283, Terr. V.I., July 16, 2004) (NO. CIV. 4/2003) (citing *Government of the Virgin Islands v. Gereau.* 11 V.I. 265; 502 F.2d 914, C.A.3 (Virgin Islands), August 15, 1974 (NO. 73-1775-73-1779, 73-1873-73-1877)). In *Gereau* Judge Warren Young's denials of the several motions by the defendants in the Fountain Valley murder trial to recuse himself, were subsequently affirmed by the Third Circuit Court of Appeals. Strikingly, this Motion to Recuse has even less credibility than the one denied by the Third Circuit.

RESPONSIBILITIES OF BAR ASSOCIATION MEMBERS

The American Bar Association's Model Rules of Professional Conduct speak to the duties and responsibilities of attorneys in this Territory. The Model Rules were adopted on January 28, 1991. V.I.S.CT.R. 203(a); *Denis v. Hess Oil Virgin Islands Corp.,* 2006 WL 3842103, V.I. Super., October 30, 2006 (NO. CIV. 606/2004).

The Virgin Islands Supreme Court exercises jurisdiction as the Court of last resort for appeals and all appellate matters, in the Virgin Islands and has assumed the role formerly held by the Superior Court in exercising oversight over the V.I. Bar Association's grievance process. The Bar has taken steps to establish a working Grievance Committee to entertain and initially decide any complaints against legal practitioners admitted as members of the Virgin Islands Bar Association.

In this Court's view, the conduct of Attorney Wynter in his written submission to this Court entitled "Motion To Recuse Judge Brady," "Omnibus Opposition To Motion To Quash Subpoenas" and his oral arguments in the Hearing held on December 30, 2011, were clear violations of the ABA Model Rules of Professional Conduct which prohibits lawyers from making knowingly false statement of fact or law to a tribunal. The relevant Rule states in pertinent part:

> (a) A lawyer shall not knowingly:
>
> (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer; or
>
> . . .
>
> (3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter that the lawyer reasonably believes is false. *Model Rules of Prof'l Conduct, R. 3.3(a)(3) (2004).*

The comment section of the Model Rules further explicates the duties of each Attorney. In describing the meaning of Rule 3.3 (a)(3), the authors state that a lawyer must refuse to offer evidence that the lawyer knows to be false, regardless of the client's wishes.

As previously noted in this Memorandum Opinion, Attorney Wynter maintained that he had no choice but to call his client as a witness to recite his tale of attending 4-5 calendar calls during which he had observed that the undersigned was "sleeping." This Court refutes that assertion.[3]

No lawyer attending – or Judge presiding over a multiple case calendar call – can afford to be in any other state but alert. Each case requires both the attorneys and the Judge to listen and to address each other and ultimately the Judge must make a decision, announced to the Court so that it will be recorded both by the Court Reporter and the Court Clerk.

The record of this case reveals that Gutierrez appeared before this Court on just two

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[3] This Court will submit an affidavit with this Memorandum to personally address Defendant's claims.

occasions, on June 9, 2010 and December 5, 2010, at calendar calls.[4] Accordingly, his testimony was – to put it plainly – false. Based on more than four decades of experience as a both a Federal (U.S. Attorney) as well as Territorial prosecutor (Attorney General), private practice trial lawyer and a Territorial and Superior Court Judge in the Virgin Islands, this Court opines that the Defendant may have committed perjury in his sworn testimony on this issue and Attorney Wynter may have participated in this questionable tactic.

RULE 8.2 - JUDICIAL AND LEGAL OFFICIALS

In the section of the rules concerning Maintaining The Integrity Of The Profession it states:

> (a) A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory officer or public legal officer, or of a candidate for election or appointment to judicial or legal office. *Model Rules of Prof'l Conduct, R. 8.2(a) (2004).*

The comment section for this Rule clarifies the intent and effect; [t]o maintain the fair and independent administration of justice, lawyers are encouraged to continue traditional efforts to defend judges and courts unjustly criticized. *Model Rules of Prof'l Conduct, R. 8.2(a) cmt. (2004).*

Moreover, it would not be unreasonable to infer that the Defendant and Attorney Wynter colluded in arranging his false testimony. This inference is supported by Attorney Wynter's admission during his arguments on the Motion to Recuse – referring to the persons who told the Defendant that Judge Brady was unfit for his judicial office – that "I didn't talk to the people dem." Tr. at 36-37. Attorney Wynter's response to his failure to investigate his client's allegations against the Court demonstrates his contempt not just for this Court, but his ethical obligations to

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4 The Order setting the Calendar Call for June 9, 2011 included a directive to all counsels to file a Pre-Trial Memo by June 6, 2011 in obvious anticipation of a trial.

"avoid reckless disregard as to the truth or falsity concerning the qualifications or integrity of a judge" prohibited by Rule 8.2. Attorney Wynter filed - along with his Motion to Dismiss - an Affidavit in which he states:

> 13. This second prosecution by the People is designed to bolster the arbitration matter that is still pending and this signals a breakdown in the integrity of the Executive Branch of the Virgin Islands Government.
>
> 14. Further, failure to dismiss this action signals a breakdown in the integrity of the Judicial Branch of the Virgin Islands."

Ct. Ex. 3, - Attorney Wynter Aff., at 2.

PROFESSIONAL MISCONDUCT OF A LAWYER

Moreover, the Model Rules of Professional Conduct admonish attorneys to be aware that:

> It is professional misconduct for a lawyer to:
> (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
> . . .
> (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
> (d) engage in conduct that is prejudicial to the administration of justice;

Model Rules of Prof'l Conduct R. 8.4 (a) (2004);Model Rules of Prof'l Conduct R. 8.4 (c) (2004); Model Rules of Prof'l Conduct R. 8.4 (d) (2004).

Additionally, in support of this inference, the Court refers the reader to the "Opposition to Defendant Gutierrez' Request For An Evidentiary Hearing On His Motion To Dismiss Information" filed by Attorney Charles E. Lockwood, Esq., of the Law Firm of Nichols Newman Logan & Grey, P.C., on behalf of the subpoenaed witness Newman. This Court had already granted the Motions to Quash the subpoenas in four (4) Orders.[5] The Court suggests that the

5 Attorney Wynter is correct in stating that this Court never did issue a formal order on the Motion to Dismiss. However, there was absolutely no merit whatsoever to Defendant's Motion

opening of the Opposition suggests Attorney Wynter's real objective in all of his filings in this case late in 2011. While he contended in his arguments to this Court in the Hearing on the Recusal Motion, held on December 30, 2011, that he was also representing his client in an arbitration which pending resolution, he discussed no demands that he had made therein. However, in his Opposition, under the heading "Facts and Procedural History," Attorney Lockwood states as follows:

> After criminal charges were first filed against Defendant Gutierrez, [Attorney Wynter] filed several civil claims against [Treasure Bay V.I. Casino] arising from the same set of facts upon which the criminal charges against the Defendants are based and demanded arbitration. Attorney Ezart A. Wynter, who represents Defendant Gutierrez in both this criminal action and the civil arbitration action, as well as the previous criminal action (SX-07-CR-538), demanded payment in the amount of $5,000,000.00 on behalf of Defendant Gutierrez. TBVI asserted a number of counterclaims against Defendant Gutierrez for stealing from TBVI, again based on the same facts underlying this criminal matter. Witness Newman represents TBVI in the pending civil matter. Opp'n. at 2.; *Ct. Ex. 4.*

This Opposition, along with the People's Opposition, citing pertinent case law and criminal prosecution principals, appropriately contravenes Attorney Wynter's various contentions of selective prosecution and claims of abuse of process under Restatement (Second) of Torts § 682. Every law student learns that the Restatement of Torts has no application to criminal prosecution. This Court finds that none of Attorney Wynter's contentions have any relevance to Defendant's pending criminal case.

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to Dismiss the criminal charges, since it was based on the same legally insufficient reasons that were proposed - and denied - for the issuance of subpoenas.

Also, one (1) of the two (2) affidavits upon which this Court issued the arrest warrants verified that the Casino had video tapes of the Defendants secreting $100.00 gambling chips on the dates charged in the Information. The affidavit also documents the recovery of these chips valued at $100.00 each from their possession. The total of the stolen chips was put at one thousand dollars ($1,000.00), thereby justifying the charges of Grand Larceny. In its Response to Attorney Wynter's Discovery Request, the People notified the Defense that it would be using "photographic evidence" at the trial. (Ct. Ex. 5.) Moreover, in a Pre-Trial Brief, the People revealed that it would be using "surveillance video" of the Casino at the trial. (Ct. Ex. 6.) These disclosures are consistent with the affidavit upon which the arrest warrants were issued.

The existence of this documented evidence was never acknowledged by Attorney Wynter's Motion To Dismiss, nor was it ever challenged or refuted by the arguments presented by him. The Court will issue a separate order denying Defendant's Motion to Dismiss to complete the record.

Attorney Wynter's settlement demand of five million dollars ($5,000,000.00) is unrealistic. Further, it suggests that he may not be operating rationally. If so, perhaps that would explain – but certainly does not excuse – the outrageous conduct by both Defendant and his advocate in their apparently false testimony and arguments. Another notable discrepancy is found in the Defendant's testimony that Governor de Jongh, Jr., was subpoenaed to testify at an evidentiary hearing on Attorney Wynter's Motion To Dismiss. That statement is patently untrue. The reality is that Attorney Wynter never issued a subpoena for Governor de Jongh's testimony, but, perhaps, the Defendant was not aware of that reality.

As noted earlier in the Memorandum Opinion our Supreme Court has instituted processes for dealing with both ethical grievances against members of the V.I. Bar, but also against judicial officers. In a case charging a Superior Court Judge with indirect contempt of a Supreme Court mandate, the three Justices (who declined to recuse themselves) upheld the contempt citation. In so doing it also addressed the ethical responsibilities of legal practitioners in this jurisdiction by quoting with approval from a Tennessee Supreme Court Opinion.

> [W]e explicitly hold that criminal contempt of court which obstructs the administration of judice includes all willful misconduct which embarrasses, hinders, or obstructs a court in ts administration of justice or derogates the court's authority or dignity, thereby bringing the administration of law into disrepute. We also emphasize that disrespectful conduct by an attorney has a greater impact upon the dignity of a court than does disrespectful conduct of a lay person. Public respect for the law derives in large measure from the image which the administration of justice presents. Lawyers play an integral role in the administration of justice and, as such, their conduct can have a great influence upon the extent to which the proceedings are perceived as fair and dignified by jurors, defendants, witnesses, and spectators. Accordingly, a lawyer's allegations of inequity and unfairness are uniquely denigrating to the dignity of the proceedings. . . . [T]he judgment of the Court of Appeals is reversed, and the trial court's judgment finding Blount guilty of two counts of contempt is reinstated.

In re Kendall, 2011 WL 4852282, V.I., October 12, 2011 (NO. CIV. 2009-0021, CRIM. 76/2008, MISC. 2009-0025, CRIM. 109/2008 STT) (citing *Black v. Blount*, 938 S.W.2d 394, Tenn., December 23, 1996 (NO. 02S01-9604-CV-00044).

Our Supreme Court also noted in the *Kendall* case that the U.S. Supreme Court held that the speech for lawyers involved in a pending matter is held to a higher standard than non-lawyers because "lawyers voluntarily accept a fiduciary relationship to the justice system and [having] a duty to protect its integrity" (*Id.* quoting *Gentile v. State Bar of Nevada*, 501 U.S. 1030, June 27, 1991 (U.S.Nev., NO. 89-1836). Additionally, the accusation by Attorney Wynter – through unsupported filings and arguments – of misconduct by the only Territorial Prosecutor, the

Attorney General, and the clear insinuations that the Governor de Jongh Administration is corrupt, are false and slanderous statements that condemn the administration of justice by both the Executive and Judicial Branches of the Government of the Virgin Islands.

CONCLUSION

The Court finds that Defendant has not proved any bias or medically based unfitness on the part of this jurist which warrants a recusal. In fact, this Court has shown restraint in the face of Defense Counsel's irascible and slanderous language which amount to disrespect of this Court and which is prejudicial to the proper administration of justice. For all the reasons herein set forth, Defendant Gutierrez's Motion to Recuse Judge Brady, and his Motion to Dismiss will be denied. A separate Order of even date will be issued in keeping with this Memorandum Opinion.

DATED: September 27, 2012

Julio A. Brady
Julio A. Brady, Judge

ATTEST:
Venetia H. Velazquez, Esq.
Clerk of the Court

By: ______________________
Court Clerk Supervisor
9/28/12

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ORDER

THE PREMISES considered, and for the reasons set forth in the Memorandum Opinion of even date, it is hereby

ORDERED that Defendant Roberto Gutierrez's "Motion To Recuse Judge Brady" is DENIED; and

ORDERED that Defendant's Motion To Dismiss is DENIED. Finally, it is

ORDERED that a copy of this Order and accompanying Memorandum Opinion be served upon the Parties.

DATED: September 27, 2012.

JULIO A. BRADY, JUDGE

ATTEST:
Venetia H. Velazquez, Esq.
Clerk of the Court

By: ______________
Court Clerk Supervisor
9/28/12

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AFFIDAVIT OF JUDGE JULIO A. BRADY

Being duly sworn and under penalty of perjury, I make the following statement in contesting the Motion To Recuse Judge Julio Brady, Defendant's testimony at the hearing on December 30, 2011 and the Affidavit of Attorney Eszart A. Wynter, Esq., in support of his Motion To Dismiss:

1. I declare that the Defendant's testimony that he observed the undersigned "sleeping on the Bench" during the two (2) calendar calls on June 6, 2010 and December 5, 2010 was false. It is patently incredible that I was asleep in these two hearings consisting of seventy-four (74) cases. Moreover, there is nothing in all of the records of proceeding that such an absurdity occurred.

2. In regard to Defendant's assertion that I "cannot be fair and objective," I again repudiate this accusation. Perhaps the best refutation of this claim can be seen in the five (5) Orders for permission to travel which I granted at Defendant's requests between February 2, 2011 and August 24, 2012. On those occasions Defendant traveled between Puerto Rico, Texas and North Carolina in connection with his job at American Airline with this Court's permission.

3. The most outrageous falsehood was that I am "friendly with the present administration in order that [I] may be reappointed as a judge." My relationship with Governor John P. de Jongh can best be described as a casual friendship – that was our relationship before he was

first elected to the Governorship and remains that way on the date of this Affidavit. I have attended several functions held by the Governor on St. Croix, for example, when I administered the oath of office to various Cabinet appointees. The Governor was in attendance at more than a few public, non-governmental functions which I also attended, but we have never met in the Governor's Offices either on St. Croix or St. Thomas. Additionally, I have not communicated with the Governor on my possible reappointment to the Bench. I have not done so due to two reasons: first, I was not appointed by Governor de Jongh, but by former Governor Charles W. Turnbull; and second, my own sense of ethics prevent me from doing so for that reason.

4. Finally, I hereby verify that my personal review of the file in this case reveals that no subpoena was requested by Attorney Wynter for Governor de Jongh to appear as a witness at a hearing which he requested in his Motion To Dismiss.

FURTHER, Affiant sayeth naught.

Julio A. Brady

SWORN AND SUBSCRIBED TO
Before me this 9th day of
September, 2012.

Notary Public
My Commission Expires: _______