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

GOVERNMENT OF THE VIRGIN ISLANDS, Plaintiff	)	Case No. 1:14-CR-41
v.	)	
JONATHAN COHEN, Defendant	)	HEARING REQUESTED

REQUEST FOR SANCTIONS AGAINST ATTORNEY TERRI GRIFFITHS FOR PROFESSIONAL MISCONDUCT

The undersigned, Denise George Counts, Esq. hereby responds to allegations pertaining to the undersigned made by Acting Attorney General Terri Griffiths in "People's Notice of Withdrawal of Plea Offer", and requests sanctions for professional misconduct as against Acting Attorney General Terri Griffiths, and further states the following:

1. The Undersigned had been the Assistant Attorney General of record since the inception of this matter in April of 2014, through May 19, 2015, when Attorney Griffiths entered her appearance.
2. The Undersigned had full authority to enter into plea negotiations, extend the plea offer and enter into the plea agreement with the Defendant in this matter on May 12, 2015, pursuant to the authority under plea bargain policies and procedures at the V.I. Department of Justice.
3. The plea agreement was entered into by the government with the defendant, signed and accepted by the Defendant on May 12, 2015, after months of plea negotiations.
4. In support of her request to withdraw the plea agreement, Acting Attorney Griffiths falsely represents that I was not authorized to enter into the agreement pursuant to VIDOJ "internal operating procedures" requiring written authorization of Attorney Griffiths and the Criminal Chief.

5. Attorney Griffiths states, *"The internal operating procedures of VIDOJ require each Assistant Attorney General to prepare a plea memorandum and obtain signed authorization from the Division Chief and the Attorney General prior to tendering a plea offer.*
6. In her description of the so called "internal operating procedures" Attorney Griffiths deceptively withheld from the Court that such procedure <u>pertains only to plea offers in felony cases.</u>
7. In misdemeanor cases assistant attorneys general are fully authorized to negotiate, tender and enter into plea agreements and continue to do so without any prior authorization or approval from the attorney general.
8. Attorney Griffiths purposely withheld this information order to mislead the court and give the false impression to the Court that the Undersigned required such authorization and approval prior entering into the plea agreement on May 12, 2015.
9. This case is a misdemeanor case. The Defendant is not charged with any felonies in this matter. The charge, "T33 V.I.C. 1524, Willful failure to file return, supply information, or pay tax is a misdemeanor with a maximum term of incarceration of one year and a maximum 10,000.00 fine. As such it does not require the approval or authorization of the Attorney General and/or Criminal Chief to enter into the plea agreement.
10. By misrepresenting the plea bargain procedure, misleading the court, withholding the material fact that authorization and approval applied to felony cases only and was not required in misdemeanor cases, Attorney Griffiths has essentially perpetrated a fraud on the court by her dishonesty and misrepresentation in an effort to maliciously undermine the Undersigned and the integrity of the proper plea bargaining process. Attorney Griffiths should be be severely sanctioned for her professional misconduct.
11. Rule 8.4 of the ABA Rules of Professional Responsibility provides in pertinent part:

    Rule 8.4 Misconduct

    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;...

12. Attorney Griffiths continued her pattern of dishonesty and misrepresentation when she claimed that she directed the Undersigned to take the Cohen plea off the table prior to when it was signed. This is false. Attorney Griffiths did not direct the Undersigned to take the Cohen plea off the table. If I had received such a directive I would have complied.

13. Additionally, when I provided Attorney Griffiths with information on the pending offer terms on about April 27, 2015, she did not express any objection, concerns or problems with the terms at all.

14. The first time Attorney Griffiths directed me to withdraw the plea was on May 15, 2015, *after* it was signed by the Defendant, at which time in a bizarre encounter with her, she repeated "*the Governor is going to have your head on a chopping block for this!"* The Undersigned had no idea what she was talking about as I had no conversation with the Governor, but I asked her why she did not tell me she had issues with it before now. Her behavior was hostile, aggressive, erratic, sometimes incoherent and somewhat desperate.

15. In the evening of May 15, 2015, Criminal Chief, Renee Gumbs-Carty, called my personal cell phone and left a voice mail message saying that the Attorney General directed me to file a motion with the Court to withdraw the plea on the grounds that I did not have the authorization to enter into the plea agreement. I declined to do so as I was not going to engage in making false statements to the Court under any circumstances and such dishonesty would amount to a breach of ethics and professional responsibility among other things. Indeed Rule 5.2 of the ABA Rules of Professional Responsibility provides, *(a) A lawyer is bound by the Rules of Professional Conduct notwithstanding that the lawyer acted at the direction of another person.*

16. Because the Undersigned declined to file the motion, in retaliation, Attorney Griffiths filed the

instant motion herself, then suspended the undersigned for insubordination for refusing to misrepresent my authority to the Court so she could get out of the plea agreement thereby joining her in her acts of professional misconduct. It is apparent from the motion that Attorney Griffiths made the motion and the false allegations about the Undersigned with motives other than for the proper administration of justice. (See ABA Rule 8.4 (d) *Supra*)

17. ABA Rule 8.3(a) provides:

> (a) A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate professional authority.

WHEREFORE, based on the foregoing, the Undersigned requests a hearing and sanctions for the professional misconduct by Terri Griffiths, Esq., or for any other relief deemed just and proper.

Date:__________________

Respectfully Submitted:

/s/Denise George Counts, Esq.
Bar no. 181
P.O. Box 301812
St. Thomas, VI 00803

CERTIFICATE OF SERVICE

I hereby certify that the foregoing pleading was delivered to the following electronically on May 21, 2015:

Terri Griffiths, Esq.
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