

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

IN RE: JAMES C. GILES, )  
 )  
 Respondent, )  
 )  
 \_\_\_\_\_ )  
 ) CASE NO. 92-4942EC

RECOMMENDED ORDER

Pursuant to notice, the Division of Administrative Hearings, by its duly designated Hearing Officer, Mary Clark, held a formal hearing in the above-styled case on December 1, 1992, in Naples, Florida.

APPEARANCES

For Advocate: Craig B. Willis  
Assistant Attorney General  
Department of Legal Affairs  
The Capitol, Suite 1502  
Tallahassee, Florida 32399-1050

For Respondent: Raymond Bass, Jr., Esquire  
Bass & Chernoff  
849 7th Avenue, South, Suite 200  
Naples, Florida 33940-6715

STATEMENT OF THE ISSUES

On July 24, 1991, the State of Florida Commission on Ethics (EC) issued an order finding probable cause that Respondent, James C. Giles, as clerk of court for Collier County violated Section 112.313(6), F.S., by using his position to influence a subordinate to recall an arrest warrant issued by a judge.

The issue here is whether that violation occurred, and if so, what discipline or penalty is appropriate.

PRELIMINARY STATEMENT

On August 10, 1992, the executive director of the Commission on Ethics forwarded this case to the Division of Administrative Hearings for conduct of a public hearing and for a recommended order.

Prior to hearing and pursuant to a prehearing order, the parties submitted a prehearing stipulation with stipulation of facts, which facts are adopted here. In addition, at hearing, the Advocate presented testimony of Lorraine Stoll and Kathleen Heck. The Advocate's three exhibits were received in evidence, including a deposition of James C. Giles.

Mr. Giles testified in his own behalf and presented two exhibits, receipts of payment of fine and court costs, which were received into evidence.

No transcript was prepared, and both parties presented proposed recommended orders. The findings of fact proposed by each are addressed in the attached appendix.

#### FINDINGS OF FACT

The following facts are stipulated by the parties and are incorporated herein:

1. The Respondent has been the clerk of court for Collier County since June of 1986. The Respondent was the clerk of court at all times material to this complaint.

2. In July of 1990, the Respondent's wife was issued a citation for having glass bottles on the beach, a violation of municipal ordinance No. 16.30, City of Naples.

3. On August 21, 1990, upon failure to timely pay the fine for the violation of the above-described ordinance or to appear in court on this date, an arrest warrant for Theresa Giles was issued.

4. On August 30, 1990, on or about 4:30 p.m., police officers arrived at the Respondent's residence to arrest Ms. Giles for her failure to appear or to pay fine. The officers allowed Ms. Giles to make a telephone call to her husband at the clerk's office.

5. The Respondent went to one of his deputy clerks, Lorraine Stoll and discussed the situation with her. As a result, Ms. Stoll called the officers at the Respondent's home and informed them that the bench warrant for Ms. Giles was recalled. Ms. Giles was not taken into custody as a result of Ms. Stoll's action.

6. These facts are derived from the evidence presented, weighed and credited: Respondent, James Giles was the Collier County finance director, performing the pre-audit function for the county, when he was appointed county clerk to finish a two year term in 1986. He was then elected to a four year term ending in January 1993, and was not reelected.

His prior employment experience was as a private certified public accountant, an employee of St. Johns County, and an auditor for the State of Florida.

7. On August 30, 1990, when Theresa Giles called her husband, she was very upset. He had promised to pay the fine, but had forgotten. She was home alone with her young child and her elderly mother when the deputies came to serve the warrant and arrest her.

The ticket, or "Notice to Appear" issued to Ms. Giles for her infraction plainly provides notice that if the fine is not paid or the person fails to appear in court at the appointed time, an arrest warrant shall be issued. (Advocate Exhibit No. 2)

8. James Giles immediately called his misdemeanor division and Kathleen Heck answered the phone. After he briefly explained the situation, she went to find the supervisor, Lorraine Stoll.

As the two women were at Ms. Stoll's desk, bringing Ms. Giles' case up on the computer, Mr. Giles appeared in person.

9. This was a very unusual situation because the clerk rarely came back to the misdemeanor office. He was Lorraine Stoll's immediate supervisor. He asked if there was anything that could be done and Ms. Stoll responded that the warrant could be recalled. Before she could explain any further, he handed her a paper with his home phone and asked her to make the call. Ms. Giles answered the phone and put the deputy on; Ms. Stoll told him the warrant was recalled, and Ms. Giles was not arrested.

10. Ms. Stoll then told Mr. Giles that the fine and court costs had to be paid.

He said the whole thing was ridiculous, that he could not believe a warrant could be issued for such a minor offense.

By this time it was after 5:00 p.m. and the cashier's office was closed. Giles paid the \$36.50 fine the next day and paid the \$100.00 court costs on September 13, some two weeks later. (Respondent's exhibits nos. 1 and 2).

11. James Giles admits being upset at the time that the phone call was made, but was trying to calm down because he knew Lorraine Stoll to be excitable. He was flabbergasted that someone could be arrested for having bottles on the beach. He denies that he pressured Ms. Stoll, but claims he was trying to be rational and get sound advice. He wanted her to make the call because he felt it would "look bad" if he did.

12. James Giles did not raise his voice but both Ms. Stoll and Ms. Heck perceived he was upset and in a pressure situation.

Ms. Stoll had never been involved in a circumstance where the warrant was recalled while the deputies were getting ready to make an arrest. She has worked in the misdemeanor section of the clerk's office for eleven and a half years, as deputy clerk.

13. No ordinary citizen could have received the advantage that the clerk and his wife received.

Judge Ellis, a Collier County judge, has a written policy providing that a bench warrant may be set aside after payment of costs and fine. Another county judge, Judge Trettis, requires that his office or the State's Attorney be called, and does not have a written policy.

14. Ms. Stoll does not have the authority to recall a warrant without following the proper procedure. This situation was out of the ordinary. She made the telephone call because her boss told her to, and their main concern was that the warrant needed to be recalled so Ms. Giles would not go to jail. On the other hand, Ms. Stoll did not tell Mr. Giles that he was pressuring her, nor did she have the opportunity to tell him the proper procedure before making the telephone call.

15. James Giles' explanation that he was simply seeking advice of his staff and then acting on it without wrongful intent is disingenuous. Whatever his actual knowledge of proper procedures for recalling a warrant, he knew or should have known that what he was doing was not an opportunity available to other citizens. His experience in the clerk's office and in prior public

service should have clued him that no one else could simply get a deputy clerk to intercept an arrest with a telephone call.

#### CONCLUSIONS OF LAW

16. The Division of Administrative Hearings has jurisdiction in this proceeding pursuant to Section 120.57(1), F.S., and Florida Commission on Ethics Rule 34-5.010, F.A.C.

17. Section 112.313(6), F.S., provides:

(6) MISUSE OF PUBLIC POSITION.--No public officer or employee of an agency shall corruptly use or attempt to use his official position or any property or resource which may be within his trust, or perform his official duties, to secure a special privilege, benefit, or exemption for himself or others. This section shall be not construed to conflict with s. 104.31.

"Corruptly" is defined in Section 112.312(9), F.S.:

(9) "Corruptly" means done with a wrongful intent and for the purpose of obtaining, or compensating or receiving compensation for, any benefit resulting from some act or omission of a public servant which is inconsistent with the proper performance of his public duties.

18. James Giles was, at the time of the incident at issue, a "public officer" as defined in Section 112.313(1), F.S., and 112.312(2), F.S.

19. Respondent Giles' intent is determined from the circumstances surrounding the incident. In the pressure of the moment, his overweening impulse was to save his wife from arrest. Ignoring common sense and the experience of years of public service, including service as an auditor, he prevailed upon his subordinate to accomplish his goal in a manner inconsistent with established policy. His avowed ignorance of the actual policy does not relieve his culpability. He should have known that the warrant could not be withdrawn with a mere telephone call. He conceded the impropriety of his making the phone call personally, an impropriety unmitigated by the proxy nature of its effectuation; and he scoffed at the notion that his wife's minor offense could generate such grave legal process.

20. In this proceeding, by a preponderance of the evidence, the advocate proved that Respondent, with wrongful intent and in a manner inconsistent with the proper performance of his duties, used his position to acquire a special benefit for himself and his wife, thus constituting a violation of Section 112.313(6), F.S.

Section 112.317, F.S., provides, in pertinent part:

112.317 Penalties.--

(1) Violation of any provision of this part, including, but not limited to, any failure to

file any disclosures required by this part or violation of any standard of conduct imposed by this part, or violation of any provision of s. 8, Art. II of the State Constitution, in addition to any criminal penalty or other civil penalty involved, shall pursuant to applicable constitutional and statutory procedures, constitute grounds for, and may be punished by, one or more of the following:

\* \* \*

(d) In the case of a former public officer or employee who has violated a provision applicable to former officers or employees or whose violation occurred prior to such officer's or employee's leaving public office or employment:

1. Public censure and reprimand.
2. A civil penalty not to exceed \$5,000.
3. Restitution of any pecuniary benefits received because of the violation committed.

21. James Giles is out of office, defeated no doubt in part through the notoriety of the incident at issue. The violation was serious, as it undermines respect for public office, but he has suffered already and a token civil penalty is recommended in lieu of the more substantial penalty suggested by the Advocate.

#### RECOMMENDATION

Based on the foregoing, it is, hereby,

#### RECOMMENDED:

That the Commission on Ethics enter its final order finding that James Giles violated Section 112.313(6), F.S., and recommending a civil penalty of \$250.00.

DONE AND RECOMMENDED this 27th day of January, 1993, in Tallahassee, Leon County, Florida.

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MARY CLARK  
Hearing Officer  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-1550  
(904) 488-9675

Filed with the Clerk of the  
Division of Administrative Hearings  
this 27th day of January, 1993.

APPENDIX TO RECOMMENDED ORDER, CASE NO. 92-4942EC

The following constitute specific rulings on the findings of fact proposed by the parties:

Advocate's Proposed Findings

1. Adopted as stipulated facts in paragraphs 1-5.
6. Adopted in substance in paragraph 9.
7. Adopted in substance in paragraph 12.
- 8.-10. Adopted in substance in paragraph 10.
11. Adopted in substance in paragraph 13.

Respondent's Proposed Findings

1. A.-E. Adopted as stipulated facts in paragraphs 1-5.
- 2.A. Adopted in substance in paragraphs 8 and 12.
- 2.B. Rejected as the sequence suggested is contrary to the weight of evidence.
- 2.C. Rejected as misleading. The evidence shows the process was incorrect and both staff knew it was incorrect. The clerk was informed about the correct procedure after the phone call.
- 2.D. The procedure is set out in paragraph 13. The evidence is not clear that the fine and costs could not have been paid the same day. By the time Mr. Giles finished complaining, it was after 5:00.
- 2.E. Rejected as contrary to the greater weight of evidence, considering the totality of Ms. Stoll's testimony as well as Ms. Heck's.
- 2.F. Rejected as contrary to the greater weight of evidence.
- 2.G. Rejected as immaterial.
3. Rejected as contrary to the greater weight of evidence. More specifically, this proposed finding suggests that the culpability was Ms. Stoll's rather than Respondent's. That suggestion is supported only by Ms. Stoll's timid admissions that she should not have made the phone call without having received the payment from her boss. Ms. Stoll's acceptance of blame does not relieve the Respondent of his responsibility.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions to this Recommended Order. All agencies allow each party at least 10 days in which to submit written exceptions. Some agencies allow a larger period within which to submit written exceptions. You should contact the agency that will issue the final order in this case concerning agency rules on the deadline for filing exceptions to this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the final order in this case.