

IN THE CIRCUIT COURT, EIGHTH JUDICIAL CIRCUIT,  
IN AND FOR ALACHUA COUNTY, FLORIDA.  
DIVISION "J"

THE FLORIDA BAR,  
Complainant,  
versus

GARY G. SMIGIEL,  
Respondent.

**FILED**  
MAY 22 1985  
CLERK, SUPREME COURT  
CONFIDENTIAL  
By: Chief Deputy Clerk  
CASE NO. 65,333

REPORT OF REFEREE

I. Summary of Proceedings: Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to Article XI of the Integration Rule of The Florida Bar, hearings were held on January 3, 1985. The Pleadings, Notices, Motions, Orders, Transcripts and Exhibits all of which are forwarded to The Supreme Court of Florida with this report, constitute the record in this case.

The following attorneys appeared as counsel for the parties:

For The Florida Bar: David G. McGunegle

For the Respondent: Scott K. Tozian

II. Findings of Fact as to Each Item of Misconduct of which the Respondent is charged: After considering all of the pleadings and evidence before me, pertinent portions of which are commented upon below, I find:

Respondent was charged in an information on October 29, 1981 with Tampering with Evidence, a third degree felony pursuant to Section 918.13, Florida Statutes, in the case of State of Florida v. Gary George Smigiel and Larry Deemer, Circuit Court, Seventh Judicial Circuit, Volusia County, Florida, Case No. 31-3446. He was convicted and adjudicated guilty on March 15, 1982 and received a sentence of three (3) years in the Department of Corrections. Respondent before this court stipulated to the facts as contained in the Complaint in this action.

III. Recommendations as to whether or not the Respondent should be found guilty: As to each count of the Complaint I make the following recommendations as to guilt or innocence:

By reason of the foregoing conduct, conviction and facts underlying the conviction, I recommend that the Respondent be found guilty and specifically be found guilty of violating the following Integration Rules of The Florida Bar and Disciplinary Rules of the Code of Professional Responsibility, to-wit: Article XI, Rule 11.02(3)(a) and 11.02(3)(b) of The Florida Bar's Integration Rule for criminal conduct contrary to honesty, justice and good morals. Disciplinary Rules of The Florida Bar's Code of Professional Responsibility 1-102(A)(3) for engaging in illegal conduct involving moral turpitude, 1-102(A)(4) for dishonest and deceitful conduct, 1-102(A)(5) for conduct prejudicial to the administration of justice, 1-102(A)(6) for engaging in other misconduct that reflects adversely on his fitness to practice law, 7-102(A)(3) for concealing evidence, 7-102(A)(4) for falsifying evidence, 7-102(A)(6) for destroying evidence by assisting and erasing the tapes, 7-102(A)(7) for counseling and assisting his client in conduct the lawyer knows to be illegal, 7-102(A)(8) for knowingly engaging in other illegal conduct or conduct contrary to a Disciplinary Rule, 7-102(B)(1) for failing to correct a fraud perpetrated on a court by his client, 7-102(B)(2) for failing to correct a fraud perpetrated on a tribunal by himself, 7-106(C)(7) for intentionally violating Rules of Evidence by assisting in the destruction of evidence and 7-109(A) for assisting in the destruction of evidence.

IV. Recommendation as to Disciplinary measures to be applied: I recommend that the Respondent be disbarred from the practice of law in Florida. For the conduct which the Respondent stands convicted, he should face the ultimate discipline which can be imposed. This conduct, if any, directly contributes to the public's adverse perception of the legal profession. The public and all members of The Florida Bar should be on notice that such conduct will not under any circumstances be permitted and will in fact be dealt with in a forcible manner and with severe consequences.

V. Personal History and Past Disciplinary Record: After finding of guilty and prior to recommending discipline to be recommended pursuant to Rule 11.06(9)(a)(4), I considered the following personal history and prior disciplinary record of the Respondent, to-wit:

Gary George Smigiel is 40 years of age and was admitted to The Florida Bar November 10, 1972. He was employed in the State Attorney's Office in Daytona Beach, Florida for some four and one-half years before entering private practice in the same

area. The testimony before this court clearly demonstrates his continued interest in being able to devote his efforts to the practice of law.

From December 1982 to the date of the trial, Respondent has worked as a "para-legal/investigator" for Charles A. Sullivan, Jr. and Mr. Sullivan has given a strong endorsement of Mr. Smigiel's legal ability and dedication to the legal profession. In March 1981, the Respondent received a Board level private reprimand upon a referee's recommendation that he be found guilty of violating Disciplinary Rule 1-102(A)(6) for engaging in conduct which otherwise reflects on his fitness to practice law and 11.02(3)(a) for conduct contrary to honesty, justice and good morals.

The Respondent having been punished for his criminal conduct now contends that he has been rehabilitated and the punishment of disbarment as suggested by the Bar is to extreme for his conduct in this case. This Court has no reason to believe that what Respondent says as to his desire to demonstrate his rehabilitation is anything but an honest and sincere expression on his part. However, any punishment less than disbarment under the circumstances of this case would, I believe, be to lenient and would be viewed by the public and fellow lawyers as a meaningless form of discipline. See The Florida Bar v. Randolph Stewart Wilson, 425 So2d 2 (Fla. 1983).

VI. Statement of costs and manner in which cost should be taxed: I find the following costs were reasonably incurred by The Florida Bar.

It is recommended that all costs and expenses be charged to the Respondent, and that interest at the statutory rate shall accrue and be payable beginning thirty (30) days after the judgment in this case becomes final unless a waiver is granted by the Board of Governors of The Florida Bar.

Dated this 10th day of May, A. D. 1985.

  
ELZIE S. SANDERS, REFEREE