

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

ROBERT D. ADAMS,

Respondent.

Supreme Court Case
No. SC14-1054

The Florida Bar File
No. 2013-10,736 (13F)

**APPEAL FROM REPORT OF REFEREE IN A DISCIPLINARY
PROCEEDING**

INITIAL BRIEF OF RESPONDENT ROBERT D. ADAMS

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STATEMENT OF THE CASE AND FACTS

Adams does not contest facts or recommendations as to guilt. He only seeks review of the sanction, arguing that disbarment may be appropriate but permanent disbarment is not.

The relevant facts revolve around a three-day period from January 23-25, 2013. The underlying case was a high-profile and contentious defamation suit between two FM “disc jockey” personalities in the Thirteenth Judicial Circuit. Respondent Adams did not participate in or attend the underlying trial; nor did he participate in pretrial matters of any substance. R 433-I at 154.

During the day on January 23, 2013, Philip Campbell had been in trial representing the plaintiffs, in *Schnitt v. Clem*, Case No. 08-CA-05738, in Hillsborough County, Florida. R 433-I at 306. After trial ended, unbeknownst to the Respondents, Campbell and his co-counsel, Jonathan Ellis, decided to meet at Malio’s Steakhouse for dinner and drinks. R 433-I at 352. Ellis arrived at Malio’s at approximately 5:18p.m. and sat at the end of the bar, joined by Campbell. R 429-47; R 433-I at 309, R 433-I at 543, & R 433-I at 544.

Around the same time, in a separate area of Malio’s, Melissa Personius and Vanessa Fykes also met to have a drink. R 433-I at 471; R 429-21 at ¶2. Personius and Fykes had remained friends after Fykes was fired from Adams & Diaco in 2010. R 433-I at 151– 152; R 433-I at 469; R 433-I at 484, 499. After

having two drinks Personius and Fykes left Malio's, but as they were leaving Personius recognized Campbell drinking at the bar. R 429-31 at 12 & 14– 15.¹ At 6:20 p.m., Personius sent a text message to her boss, Adams, informing him of what she saw because she was “shocked” that Campbell was drinking at Malio's during trial. R 433-I at 103 – 104; R 429-31 at 16– 17. After receiving Personius' text at 6:20 p.m., Adams communicated with Diaco expressing surprise that Campbell was drinking at Malio's. R 433-I at 106; R 429-50.² Diaco asked Adams to call Filthaut because Diaco did not have Filthaut's phone number. R 433-I at 106 & 160. Adams and Diaco were Filthaut's supervisors. R 433-I at 107.

At approximately 6:30p.m., Adams had a 14 second phone call with Filthaut. R 429-52.³ Although Adams did not ask Filthaut to call his friend at the Tampa Police Department (“TPD”), Adams testified that he assumed Filthaut would do so. R 433-I at 107. Adams testified that he takes responsibility for his “lapse in judgment in not prohibiting Mr. Filthaut in calling Officer Fernandez that night.

¹ Personius asserted her Fifth Amendment privilege during the Final Hearing. The Bar offered as evidence Exhibit 31, which was an immunized statement made by Personius to the Pinellas County State Attorney's Office (“SAO”) on May 23, 2013.

² Adams' phone records reflect calls in Eastern Time and text in Pacific Time. R 433-I at 443.

³ Filthaut's phone records reflect telephone calls and in Greenwich Mean Time. R 433-I at 272.

That's a mistake that I made that evening, an awful mistake, one of the worst mistakes that I have made in 46 years on this planet." R 433-I at 102. Adams' last communication with Filthaut that evening was at 7:26p.m. R 433-I at 107; R 429-50.

At 6:32p.m., Filthaut talked to Diaco for 34 seconds. R 429-52. Sometime after 7:00p.m., Filthaut called his friend Raymond Fernandez, a sergeant in the TPD traffic enforcement unit. R 429-28 at 14 -15; R 429-16 at 18.⁴ According to Sergeant Fernandez, Filthaut told him that Campbell was at Malio's drinking and may drive drunk. R 429-28 at 26. Sergeant Fernandez also testified that Filthaut had called him to report potential drunk drivers on three to five other occasions. R 429-16 at 24. One of these prior reports was on Campbell.

After leaving Malio's, Personius and Fykes went to The Fly Bar. R 429-31 at 13; R 433-I at 471. While there, Personius had another glass of wine. R 429-31 at 29. Prior to returning to Malio's, Personius spoke to Adams on the telephone. R 429-31 at 18. They were both surprised that Campbell would be out drinking during a highly publicized trial, so Personius told Adams that she was going to return to Malio's to confirm that it was Campbell. R 433-I at 103– 104; R 429-31 at 16– 17 & 25; R 429-14 at 53. Adams testified that not intervening in Personius'

⁴ Sergeant Fernandez asserted the Fifth Amendment during the Final Hearing, however, the Bar introduced five prior statements of Sergeant Fernandez. *See* R 429-14, R 429-16, R 429-18, R 429-28 & R 429-41. On each occasion he testified consistently to the events that occurred on January 23, 2013.

decision to return to Malio's along "with the conversation with Adam [Filthaut]...rank up there as the worst decision of my life." R 433-I at 160.

Personius and Fykes arrived back at Malio's around 7:00 p.m. R 429-47; R 433-I at 515- 516. Fykes testified that by the time they returned to Malio's Personius was "tipsy." R 433-I at 510. By this time, Campbell had already drunk three vodkas on the rocks. R 429-47; R 433-I at 356; 756; 759. When Personius and Fykes arrived they sat in the only two open seats at the bar, which happened to be next to Campbell. R 429-31 at 37; R 433-I at 511. Personius unsuccessfully sought the bartender's attention to order a drink, prompting Campbell to order and pay for two glasses of wine for Personius and Fykes. R 433-I at 545; R 429-31 at 40; R 429-21 at ¶4. In addition to the glass of wine purchased by Campbell (Personius' fourth of the night), Personius had an additional glass of wine (also purchased by Campbell), a shot of whisky, and mozzarella sticks. R 429-47 at 2878-80; R 429-31 at 44. Along with the three vodkas Campbell had by 7:00 p.m., Campbell drank two more vodkas, and a shot of whiskey (purchased by Personius). R 429-47 at 2878-81; R 433-I at 355. According to Fykes, Campbell's trial partner John Ellis encouraged Campbell to drink the whiskey shot. R 433-I 522.

Over the next two and a half hours, Personius intermittingly engaged in conversation with Campbell, Ellis and an unrelated lawyer. R 433-I at 548 & 549 & 550. Campbell testified that Ellis was the person who mostly spoke with

Personius. R 433-I at 359. Fykes testified that Personius was being flirtatious with both Campbell and Ellis. R 433-I at 514. When Ellis asked where she worked, Personius lied and told him she was a paralegal at another Tampa firm. R 433-I at 547. Personius testified in a transcript in evidence that “[n]o one at Adams & Diaco instructed me to lie about where I worked to Jon Ellis and/or Phil Campbell.” R 429-21 at ¶9. Fykes left Malio’s and told Personius “to be careful and call a cab.” R 433-I at 483. After the others had departed, Campbell elected to stay at Malio’s to converse with Personius. R 433-I at 317.

While Personius was at Malio’s bar, from 7:24p.m. to 9:27p.m., she contacted the Respondents only two (2) times, including one text to Diaco and one text to Adams. R 429-53.⁵ During this same time period, Filthaut exchanged 32 text messages with Sergeant Fernandez. R 429-52. Fernandez had set up a police surveillance outside Malio’s bar after Filthaut’s call to him about Campbell. Sergeant Fernandez testified that he and Filthaut “were texting back and forth. A lot of it – some of it was joking around about our wives and the cars they had. Some of it was just friendly banter.” R 429-16 at 32. At other times during the night, Filthaut provided Sergeant Fernandez with information about Campbell buying drinks and leaving Malio’s. R 429-16 at 34. None of this information came from Adams, whose last contact with Filthaut was 7:26 p.m.

⁵ Personius’ phone records reflect telephone calls recorded in Eastern Time and text messages recorded in Central Time. R 433-I at 222.

Adams was not in Tampa that evening. Adams was watching his son's football game about 25 miles away in south St. Petersburg and texting his wife, uncle, and his son's quarterback coach. R 433-I at 157& 158. Adams was also going through new PIP cases that came into the firm that day to ensure coverage. R 433-I at 156– 157. Although Adams did not work on the *Schnitt v. Clem* case, other than briefly attending one deposition, R 433-I at 101, he exchanged numerous texts with the trial lawyer Joseph Diaco (Respondent Diaco's brother) that evening regarding newly discovered impeachment evidence. R 433-I at 109 & 157– 158.

At 9:29 p.m., Personius texted Adams and informed him that Campbell had left Malio's. R 429-53; R 433-I at 113. At approximately 9:32 p.m. Campbell was observed on security video walking through the lobby of the building where Malio's is located. R 429-1. Soon thereafter, Campbell returned to Malio's, and took Personius' valet ticket because he "felt that she shouldn't drive." R 433-I at 317– 318 & 319. Campbell confirmed with the valet that Personius' car could be left overnight. R 433-I at 321& 989. Campbell stated his plan was to take Personius to his condo building to permit her to sober up and call a taxi, which was several blocks from Malio's. R 433-I at 325– 326. Personius insisted that she needed access to her car in a secure lot. R 433-I at 321. Personius testified that she needed her car because she had to take her children someplace the next

morning. R 429-31 at 63– 64. So, Campbell told the valet to retrieve Personius’ car. R 433-I at 320.

After speaking with Personius on the phone at 9:49 p.m., and hearing how intoxicated she was, Adams told her not drive. R 433-I at 166. Adams then called Diaco who said to make sure Personius did not drive, so Adams followed-up with a text to Personius and told her to take a cab home and offered to pay for it. R 433-I at 167; R 429-50. Campbell, stated that he “took on the responsibility of trying to get her home safely.” R 433-I at 423 & 369. Personius’ affidavit stated “[n]o one at Adams & Diaco, including Stephen Diaco, instructed me to get in a vehicle with Phil Campbell or have Phil Campbell drive my car. Phil Campbell insisted on driving and got into the driver’s seat of the vehicle at the valet stand.” R 429-21 at ¶¶8-9. Diaco testified before the *Schnitt* trial judge (Hon. James Arnold) that he did not instruct Personius to get Campbell to drive her car. R 429-14 at 69. There is no evidence that Adams knew that Personius was getting into a car with Campbell, and the vast majority of contact was prior to 7:30 p.m. and after the stop. Campbell testified that Personius never asked him to drive her car. R 433-I at 370 & 371.

At approximately 9:53p.m. Officer Timothy McGinnis, a TPD officer who was on the surveillance with Sergeant Fernandez, drove by Malio’s valet area and informed Sergeant Fernandez that a female was driving the car. R 433-I at 950.

At 9:54 p.m., Campbell drove Personius' car from Malio's; R 433-I at 325& 372. On the way to the lot, Campbell was pulled over by Sergeant Fernandez for cutting off a SUV when making an illegal right hand turn from the middle lane. R 429-28 at 39. Sergeant Fernandez testified via earlier transcript that he "didn't think Adam Filthaut was -- he gave me information that got me to the area for the DUI, but first off, he -- it wasn't the basis for the stop. The basis for the stop was a traffic infraction." R 429-18 at 411.

Sergeant Fernandez was surprised to see a man emerge from the driver's side of the car because he believed it was going to be a female driver. R 433-I at 952. In his report, Sergeant Fernandez stated, "[t]he defendant exited the vehicle prior to me approaching and appeared to be unsteady. I approached the defendant and observed him to have glassy/bloodshot eye's (sic) and had the distinct odor of an alcoholic beverage on his breath. I asked how much he had to drink and he said 'zero.'" R 429-39 at 1618; R 433-I at 953. Campbell falsely denied drinking.

Officer McGinnis came to the scene. R 433-I at 936. Officer McGinnis testified that Campbell exhibited the clues of impairment also noted by Sergeant Fernandez. Campbell appeared to acknowledge why he had been pulled over – the traffic infraction. R 433-I at 955 – 957. Officer McGinnis then asked Campbell to complete the field sobriety exercises. R 433-I at 958. After providing apparently false information regarding an undiagnosed speech impediment, Campbell refused

to complete the field sobriety exercises and was arrested at 10:08p.m. R 433-I at 388 & 963– 964; R 429-39 at 1617; R 429-3. At the jail, Mr. Campbell refused to take a breathalyzer test. R 433-I at 967& 968. Officer McGinnis testified that if he had not determined that Campbell was driving impaired, he would not have arrested him even if Sergeant Fernandez requested that he do so. R 433-I at 967.

At 9:55 p.m., Personius sent a text to Adams and told him that she “got pulled over.” R 433-I at 168; R 429-53. At 9:57 p.m., Personius called Adams and talked to him for twenty (20) seconds, reiterating that she got pulled over. R 433-I at 168; R 429-53. At 9:58 p.m., Personius called Fykes and during the 105 second call told Fykes that she had been pulled over. R 433-I at 525; R 429-53. Both Fykes and Adams testified consistently on this point as to what Personius said.

At 10:01p.m., Personius called Adams again and for the first time explained that Campbell had been driving her car when it was pulled over. R 433-I at 168 – 169 & 170; R 429-53. Adams testified that he was stunned to learn that Campbell was arrested for DUI while driving Personius in her car. R 433-I at 169.

Once Campbell had been arrested, Officer Fernandez told Personius that she needed to have someone come get her. R 429-28 at 44. Personius called a number of people to find a ride home. R 429-31 at 74– 75; R 429-53. Brian Motroni, an associate with Adams & Diaco firm, agreed to pick-up Personius. R 429-31 at 75. He lived downtown and was coming home from dinner with his fiancé. R 433-I at

892. Adams did not speak to Motroni prior to Motroni picking up Personius. R 433-I 119 & 169.

Campbell was released from jail the morning of January 24, 2013 and falsely informed Ellis that Personius had asked Campbell to her car. R 433-I at 622. He also informed Ellis that he had left his trial bag in the car when he was arrested. R 433-I at 556 & 557. Ellis took responsibility for locating Campbell's bag, but he was unable to locate it before the *Schnitt* trial resumed that morning before Judge Arnold. R 433-I at 557; R 433-I at 560. The trial had previously been scheduled to only go for half the day because of a robing ceremony scheduled that afternoon, so the parties agreed to continue the morning session until the next day so the parties could work on jury instructions and the verdict form. R 433-I at 1014 – 1015.

Also that morning, Respondent Diaco made highly inflammatory public statements about Campbell to the media. R 429-5; R 433-I at 563. None of these statements were with the knowledge or involvement of Mr. Adams.

The following day, Judge Arnold questioned each juror to determine if they had been exposed to the news coverage about Campbell's arrest. R 433-I at 1005. Judge Arnold determined that the jurors had not been affected by the media coverage of Campbell's DUI. R 433-I at 1005 & 1015 - 1016.

On January 24, 2013, around noon Personius went out to her car and saw Campbell's bag. R 429-31 at 68. At 12:16p.m., Personius called Adams and informed him that Campbell left property in her car, not identifying a "trial bag". R 433-I at 126– 127; R 429-53. Adams was in a meeting, so he contacted Diaco and asked him to retrieve Campbell's personal effects. R 433-I at 127. Diaco said he could handle this. Referee Report at 34. *That was the entire Adams involvement with the briefcase.*

Diaco sent associate Motroni to retrieve Campbell's personal effects from Personius' house. R 429-14 at 54 – 55. Diaco and Motroni engaged in various "scurrying around" as they sought to return the trial bag to Campbell without being noticed. R 429-14 at 130- 133; R 429-54. The record is clear that Adams had nothing to do with the back and forth surrounding the return of Campbell's briefcase. R 433-I at 129.

Diaco testified before Judge Arnold, the *Schnitt* trial judge, that "no one touched that bag or opened that bag or looked at the contents of the bag." R 429-14 at 67 & 76- 77. Diaco also testified that the bag was never opened in his presence and he "asked that question of Brian Motroni and Melissa Personius, and they both said that they hadn't opened it." R 429-14 at 78. Motroni stated that at no point in time did he ever open Campbell's briefcase, nor did he observe anyone from Adams & Diaco open the briefcase. R 429-14 at 125– 126 & 128. Judge

Arnold testified that there was no evidence presented before him that anyone looked in or tampered with the briefcase. R 433-I at 1014.

The jury trial continued and a verdict was rendered against Campbell's clients the Schnitts. The Motion for Mistrial filed by Campbell's firm on the day after his arrest was converted to a Motion for New Trial. R 433-I at 1004. Campbell's clients got new counsel. The case was settled as to all matters shortly after a post-verdict mediation.

The Bar Trial: Adams and the Bar agreed to a 91-day rehabilitative suspension, but the Referee declined to accept the plea. R 333 at 1 -5. The Florida Bar complaint against Respondents was tried June, 2015. The Bar called Diaco and Filhaut, who invoked the fifth amendment as to all questions. Respondent Adams testified as to all questions.⁶ R 433-I at 93 – 183.

Adams was not involved in the underlying *Schnitt* trial and had never attended trial, filed a motion, or filed a written appearance. R 433-I at 154. At trial Adams admitted the severe lack of appropriate judgment in not prohibiting Personius from returning to Malio's, and in informing Adam Filhaut at Diaco's instruction that Campbell was drinking at Malio's. R 433-I at 160. He admitted

⁶ Adams had earlier asserted a Fifth Amendment privilege in the Bar's pre-hearing depositions. He then retained new counsel. When it became evident at the final hearing that, advised by new counsel, Mr. Adams would not invoke the Fifth Amendment, the Referee permitted a short adjournment to permit the Bar to take Mr. Adams' deposition. The deposition was entirely uneventful, and Adams resumed the stand.

these severe breaches in ethical behavior, R433-I at 95, 102, 104, 105, 160, which he noted as such.

Adams testified that he suspended Personius from work the next day until she completed a drug and alcohol rehabilitation program. R 433-I at 122. Adams explained that he was preparing for trial that next morning, and had a client's board meeting that day. When Personius informed him that Campbell had left personal effects in her car; she did not say it was a trial briefcase R 433-I at 170. Adams was busy, and left the matter with Diaco to resolve, as Diaco had been attending the trial and had the cellphone numbers of all the opposing counsel. Diaco said he would handle it. Referee Report at 34. In retrospect, it appeared to Adams that Diaco was "in a bit of a panic" the day following the arrest when dealing with the briefcase. R 433-I at 131.

Adams did not participate in, and was not aware of, Diaco's testimony before Judge Arnold two days after the arrest. Nor did Adams participate in or have awareness of Diaco's inflammatory statements to the media. R 433-I at 172.

Some days after the evening in question, when Adams received a "spoliation letter" from opposing counsel on January 30, 2013, R429 - 37, which mentioned his telephone, he turned it over to counsel and never saw it again. R 433-I at 144. His practice is to delete texts as he receives them, and he testified that is what he

did the evening in question. R 433-I at 134. His counsel informed the Bar of these deletions in writing, early in the Bar's investigation.

Adams explained on cross that the nature of his practice was supervising a large "PIP" defense team, statewide with up to 10,000 open cases pending at the time. One reason for his being occupied on the night in question was because he had to field dozens of incoming cases from the PIP client. Some of these had pretrials on very short notice.

Mr. Campbell and Adams' firm (with Personius on staff) use the same elevator bank in their office building to access their offices. This made it unlikely to Adams that anyone could actually think a conspiracy to entrap Campbell using Personius would actually succeed. R 433-I at 152. As Adams stated, concerning Personius and Campbell drinking together, he could not image such a scenario, and Personius never said to him she was sitting next to Campbell. R 433-I at 160.

Mr. Filthaut had the contact with the police officer. Adams had a total of 53 seconds phone contact with Filthaut all night. R 433-I at 161. Adams also had 4 texts with Filthaut, the last one being at 7:26 pm – 2 ½ hours before the arrest. Adams testified "I never relayed any information to him [Filthaut] [about the bar happenings]. I didn't get any information from her." R 433-I at 161& 162. From 8:19 pm to 9:29 pm Adams had zero contact with Personius of any sort. R 433-I at

433-I at 162. He admitted that “I should have been more engaged with her and asked her what she is doing.” R 433-I at 162. Adams testified that he thought Personius was sitting in the bar area, watching Mr. Campbell, not interacting with him on adjoining bar stools. R 433-I at 163.

During this evening time frame, the phone records show that Mr. Adams had 17 texts with his son’s quarterback coach, 3 to 5 texts with his wife, and 4 to 5 with his uncle. R 433-I at 165. Meanwhile new case assignments from the PIP insurance company kept coming in. R 433-I at 18 & 19.

Adams testified that he had no knowledge that evening that Personius had been interacting with Campbell. When Personius called him and said that “I got pulled over” and that she was with Campbell, “I was stunned.” R 433-I at 113, 114 & 169.

The Bar called Mr. Campbell, who testified as described above. He admitted that the Malio’s bill shows that he was buying another drink for Personius and himself, at the time Personius was drunk. R 433-I at 366. He testified that she was flirtatious generally, but he did not feel she had singled him out for flirtation. R 433-I at 367. He testified that he intended to call a car service for Personius, so ignored the taxicab that they were shown walking past on the security video. R 433-I at 368. Thereafter he drove her car voluntarily, although she did not ask him

to drive her car. R 433-I at 370, 371 & 396. He later testified he was “induced” to drive because Personius asked to have her car moved to a place where she would have access to it, although she did not ask Campbell to drive it. R 433-I at 403; 404 & 409. He admitted that he did not tell the State’s Attorney about Personius’ driving inducement, but told the State’s Attorney she did not ask him to drive. R 433-I at 404 & 405.

Campbell testified that the half-day continuance the morning after his arrest was used for jury instruction, and from his perspective, no time was wasted due to the continuance. R 433-I at 392. Mr. Campbell testified at the disciplinary trial (as did Adams the day before) that he had never experienced any personal animosity or problem with Mr. Adams. R 433-I at 413 - 414. He never recalled seeing Mr. Adams in the *Schnitt* courtroom, in a case that stretched five years. R 433-I at 414.

The Bar presented Personius’ estranged husband, Kristopher, to testify about what Personius stated after arriving home the night of Campbell’s arrest. R 433-I at 773. Kristopher Personius had violated the Referee’s rule of witness sequestration by receiving from his parent’s information from the televised “live-streamed” Bar trial. Personius became aware of trial events preceding his testimony before the Referee. He stated that Mr. Adams’ testimony “slandered” him when Adams related in response to Bar questions at the hearing that Ms.

Personius was a victim of physical spousal abuse at her husband's hand. Mr. Personius stated that his father relayed to him what was going on in the courtroom and Personius agreed that "Like a good parent, he is trying to protect his son," saying "Listen, this is what these lawyers are saying about you. Be prepared for it." R 433-I at 784. Adams' counsel proffered to the Court that Personius now evinced a more-focused bias against Adams (post-Rule violation) than in a prior deposition and affidavit. The Referee did not sanction Mr. Personius for this obvious violation of witness sequestration, but stated he would consider the matter in assessment of the witness. R 433-I at 786.

Mr. Personius testified that when his former wife arrived home the evening in question, she appeared panic-stricken and intoxicated. He testified that she told him she saw Mr. Campbell at Malio's, and went to another Bar. Mr. Personius testified she stated that Adams told her to go back to Malio's (this detail was missing from Kristopher's prehearing affidavit prepared by the Bar) R 433-I at 857, and there were two seats open at the bar so she and her friend sat next to Campbell. Kristopher said his ex-wife stated that her role was to spy and "make sure he drinks more to get the cop in place" because they were going to get Adam Filthaut to get the cop in place. R 433-I at 800. She told him that she was instructed to "set this guy up" and "she made him drive." R 433-I at 801. This was "going to help them win the case." R 433-I at 811. He stated that Ms.

Personius told him “they had a plot in place before” to do the same earlier. R 433-I at 802.

Concerning discovery of the briefcase, he stated Ms. Personius told him that upon its discovery, Adams told Ms. Personius to get in a taxi and bring the suitcase to Campbell’s office, a detail omitted from his pre-hearing affidavit prepared by the Bar. R 433-I at 803. Further, Kristopher said that she said Stephen Diaco whispered in her ear and promised her a big bonus for these acts, a detail omitted from his pre-hearing affidavit prepared by the Bar. R 433-I at 803, 855 & 856. He testified that his ex-wife received a credit card and money, and got assistance with a suspended license. R 433-I at 805 & 806.

Sometime later the family was visited in the early morning by the FBI who confiscated Ms. Personius’ cellular telephone. R 433-I at 807. Mr. Personius got an attorney when he was contacted by the FBI. The attorney was referred by his wife’s lawyer and paid for by the firm. R 433-I 807.⁷

Mr. Personius showed significant bias against his ex-wife. He stated that his lawyer had to write her lawyer “because Melissa is kind of – just always kept going at me and at me.” He told his lawyer “I was just like, please, tell her to back off of me.” R 433-I at 810. He stated that his ex-wife threatened him, stating that

⁷ His lawyer established this was entirely proper, commonplace, and no person asked her about her representation or advice. R 433-I at 869, 870 & 878.

“she is going to get me back no matter what cost it takes and make sure something happens to me.” She stated “look what we did to Phil Campbell. Imagine what we could do to you.” Mr. Personius said that both he and his wife’s present boyfriend are in fear of her. R 433-I at 823.

His bias against Ms. Personius was longstanding. They were first divorced in 2005; Mr. Personius would leave her “because she would flip out,” and then she would come back. R 433-I at 822. When confronted with a temporary injunction that had been issued against him for domestic violence, Mr. Personius denied it. R 433-I at 825. As to a final injunction against him for protection against domestic violence, issued three years later, he denied its merits, stating that he attended the wrong courthouse, suggesting he was enjoined in error. R 433-I at 826 & 827. He agreed there were probably other anti-violence injunctions entered against him, but noted that “if I beat her, then why did I live with her? If she was so scared, why did she move into my apartment after this?” R 433 at 828. As to another temporary injunction issued against him for domestic violence, Mr. Personius stated Ms. Personius obtained it out of hate, and two weeks later would move back in with him. R 433-I at 830. Likewise, Mr. Personius claimed innocence on his adult felony firearm conviction (adjudication withheld) with later violation of probation. His probation was violated because of physical violence. R 433-I at 831.

Mr. Personius also showed significant bias against Respondents throughout his testimony. He referred to them as “scumbags” and “crooked.” R 433-I at 820 & 854. One of the associates at Adams & Diaco was having an affair with his wife. R 433-I at 820. Relevant only to his bias while being televised at the hearing, Mr. Personius blurted out inflammatory, irrelevant statements about Mr. Adams personally. R 433-I at 820.

Mr. Personius owed his wife \$76,034 in back child support. R 433-I at 847. He stated he became “upset and angry” against his wife because she used an Adams & Diaco law firm letterhead to send a wage garnishment order to his employer for back child support owed. R 433-I at 838 & 839. R 429- 65 at 3111. It was established that Ms. Personius sent this letter on law firm letterhead without firm approval, like she sent a job recommendation letter for witness Fykes, without law firm approval. R 433-I at 181 & 182. Concerning the Adams & Diaco garnishment letter, Mr. Personius noted that “I was getting railroaded. She came at me with this,” R 433-I at 839, and he was “upset because she was taking advantage of me.” R 433-I at 843. Mr. Personius left an angry voicemail message in response, noting that the garnishment of his wages for support was “ridiculous” and he may go see Phil Campbell in response. R 433 at 844 & 845.

Two months after the wife sent the wage garnishment letter on Adams & Diaco letterhead, Mr. Personius took the surreptitious tape of his wife to Mr.

Campbell, in May, 2014. R 433-I at 848 & 849. He first testified falsely, that he went to Mr. Campbell out of altruism, because “it was wrong what they did... it’s the right thing to do...” R 433-I at 850, 851, 852 & 853. He then conceded he took this surreptitious tape to Mr. Campbell because “if she would have just left me alone and let me see my kids, we wouldn’t be here right now.” R 433-I at 853. His testimony makes fairly clear, despite false denials, that his act of visiting Mr. Campbell with the surreptitious tape was for revenge against his estranged wife pursuing back child support. R 433-I at 852, 853 & 854.

The Bar’s case included calling Mr. Personius’ lawyer. She related what Mr. Personius had told her concerning his ex-wife’s statements. R 433-I at 870, 871 & 872. He informed her of the surreptitious tape he had made of his wife, and the lawyer informed Mr. Personius that it could be a felony under Florida law. R 433-I at 873. The lawyer concluded that the tape did constitute a felony as she understood the facts. R 433-I at 880, 881& 883. She did not listen to the tape, and stated that Mr. Personius’ testimony otherwise was incorrect. R 433-I at 881.

When the ex-wife sent the garnishment letter, Mr. Personius recontacted his lawyer and was “very upset,” “pretty outraged that she had done this.” R 433-I at 874, 875 & 881. The lawyer informed Ms. Personius’ lawyer that Ms. Personius “was making threats to him with her law firm [Adams & Diaco]” and “trashing him to the kids” R 433-I at 876. As a result, Mr. Personius “may decide he wants

to come forward with whatever information he may have.” R 433-I at 876. When Mr. Personius told his lawyer he might go to Mr. Campbell, she suggested that he should contact the FBI instead. R 433-I at 877.

The Bar also called as witness the lawyer who did the disciplinary committee investigation. He related statements made by the Adams & Diaco associate, Motroni, who drove Melissa Personius home from the Campbell traffic stop that evening and assisted Diaco in his panic with the briefcase the next day. R 433-I at 892. Mr. Adams was not involved in any way with Motroni’s pick-up of Ms. Personius or the machinations with the briefcase delivery, and his name was not mentioned. R 433-I at 892 – 896.

The Bar called a series of police officers. Officer McGinnis’ testimony established probable cause for the arrest of Mr. Campbell, which was independent of any pre-existing misconduct. R 433-I at 957. At the time the car was stopped for a bad turn, the police officers thought a female was driving and were surprised to then learn that Campbell was the driver. R 433-I at 952.

Another officer testified that earlier on November 29, 2012 he was on DUI traffic surveillance of Mr. Campbell at Malio’s, per the request of Sergeant Fernandez. R 433-I at 915 - 923. This was a prior surveillance set in motion by Mr. Diaco and Mr. Filthaut. Mr. Adams testified before the Referee that he was

unaware of this incident at the time, and was out of town. Adams became aware of it after the fact, upon his return to Tampa. R 433-I at 153 & 154. This testimony is not contradicted.

The Bar called the presiding Circuit Court Judge in the underlying trial, Hon. James Arnold. R 433-I at 991. Upon his polling the jury about the events and Mr. Diaco's public statements, Judge Arnold testified, "Everybody agreed that we did not have a problem with the jury," R 433-I at 1005, and there was "no problem with the jury and that the case would go forward." R 433-I at 1006.

At conclusion of testimony in the underlying trial, Judge Arnold found, "totally insufficient evidence in front of me to make any determination as to whether [the activities] would have constituted a mistrial. So I decided to take it under advisement R 433-I at 998. It [the mistrial motion by Campbell's firm] turned into a motion for new trial." Judge Arnold confirmed that Adams' name was never mentioned in the proceedings. R 433-I at 1011 & 1012.

Judge Arnold stated he called a status conference four days after verdict in the *Schnitt* trial, at which time he stated he was going to have a hearing on the motion for new trial, based upon the allegations of misconduct. An attorney for the Diaco firm, Lee Gunn, appeared on the case and requested a mediation. R 433-I at 1006. The case was then settled shortly thereafter. R 433-I at 1007. Judge

Arnold stated he considered bringing criminal contempt court proceedings against Respondents. R 433-I at 1007 - 1008. “I have never had an allegation of misconduct anywhere like this.” R 433-I at 1009. The judge stated that the proceedings were disrupted. He stated, “there was no evidence presented to me” that anybody looked in or tampered with the briefcase, and “no evidence in front of me that anybody opened it up.” R 433-I at 1014.

Respondent Diaco called a police practices expert. The expert opined without contradiction that the arresting officer, Officer McGinnis, performed his duties admirably at the time he arrested Mr. Campbell. R 433 at 1068; R 430-42.

The Sanctions Phase: After the Referee made interim adverse findings on July 7, 2015 (summarized below), he held a penalty phase hearing later that month. The Bar’s first witness was Miami chiropractor Robert Frankl. Frankl stated he “repeatedly” files Florida Bar complaints and they are repeatedly rejected. He stated that he may have filed as many as 20 unsuccessful Florida Bar complaints over the years against Florida lawyers, usually for unpaid chiropractic fees. R433-J-1 at 55, 59 – 61. Dr. Frankl explained in a speech spanning three pages of transcript that the Bar is corrupt in the manner it regulates attorneys, and has been so since the 1930’s. R433-J-1 at 55 - 58. R433-J-1 at 60 - 61.

Frankl ran a litigation-based chiropractic practice out of a blighted store front, see R 432:10, in North Miami, that bears a neon sign “Auto Accidents,” He testified he had only four to six active patients at the time. He stated it is possible his chiropractic office, where he is the entire staff , R 433-J-1 at 65 & 79, has brought over 100 PIP law suits to collect fees. R433-J-1 at 68 (“100 [law suits]...[i]t could be more. [i]t could be less”). Besides litigating frequently, part of his business model is to provide depositions for a fee. R433-J-1 at 70.

Frankl testified that on a prior occasion two female employees of Adams & Diaco visited his office under alias names, ostensibly to seek treatment, but actually to see if he would commit billing violations and to take photographs surreptitiously. R433-J-1 at 20 – 27. This was during the time he was set to be a trial witness in a PIP case defended in Miami by Mr. Adams. This matter had nothing to do with the Campbell matter, but was offered by the Bar as a prior incident of misconduct.

Several years before the present hearing, Dr. Frankl had filed a Bar complaint on these facts, and the Bar rejected it with a letter, declining to investigate. R433-J-1 at 32 - 35. Frankl testified concerning his rejected Bar complaint against Adams, noting that the Bar did not shut him off or preclude him from providing any information in support of it he wished. R433-J-1 at 51. The letter from Bar counsel stated in part, “After careful consideration, I conclude that

the matters referenced in your inquiry do not constitute violations of the Rules of Professional Conduct. And, accordingly, your inquiry does not fall within the purview of the grievance system framework.” R433-J-1 at 52. After receiving this rejection letter from Bar investigating counsel, Frankl did not seek review to a Bar supervisor or otherwise pursue it. His complaint against Adams was denied and he did not pursue it further with the Bar.

Dr. Frankl also filed a fruitless complaint on the same matter with the Florida Department of Financial Services, in 2010 on the same facts. No action was taken on that complaint whatsoever. R433-J-1 at 53.

Dr. Frankl also presented the issue unsuccessfully to a third agency, the Florida Department of Law Enforcement. R433-J-1 at 53 & 54. He provided them all the relevant information, and that agency declined to pursue the matter. R433-J-1 at 54.

After being rebuffed by three agencies in his pursuit of Mr. Adams and Adams’ firm, at some point Dr. Frankl phoned Phillip Campbell to provide Campbell “relief and consolation.” R433-J-1 at 54 & 91. Campbell’s office put Frankl in touch with Campbell’s “media investigator,” R433-J-1 at 92, who put a newspaper reporter in touch with Frankl. R433-J-1 at 92 & 93. After newspaper

coverage was achieved of Frankl's complaints against Adams, the FBI and the Florida Bar contacted Dr. Frankl. R433-J-1 at 94.

Dr. Frankl testified that he did not see either female take a photograph in his office, but concluded they must have because of the photographs' angle, and he saw photographs at the trial that had a recently-acquired refrigerator. R433-J-1 at 40 - 42. Frankl had no physical evidence as the date the refrigerator was acquired, other than "my word – the truthfulness of my word." R433-J-1 at 90. He testified before the Referee that he did not observe Robert Adams taking photographs at his office when Adams took his deposition there. R433-J-1 at 12. But Frankl then admitted that in earlier testimony he said Adams did take photographs. When asked to explain this flat contradiction, Dr. Frankl said he "felt" that Mr. Adams took photos while Adams was at his office, although Frankl did not actually see that being done. R433-J-1 at 42 - 44.

Adams tried the jury trial for his client and Frankl got nothing, losing \$5000 - \$6000 in chiropractic fees. Frankl first took an assignment of the case as plaintiff, but then reassigned it back to the injured actual plaintiff, to avoid having to sit through trial, and to avoid the downside risk of being liable for fees. At his pre-hearing deposition Frankl could not recall if he was an (unpaid) expert in the PIP case for his fees. Fifteen hours later while testifying before the Referee Frankl stated his memory had revived, and he was. R433-J-1 at 46 & 47.

The gist of Frankl's complaint was that photographs were taken surreptitiously by the two females whom Frankl did not see photographing. Yet at the underlying PIP trial involving Adams, Frankl's lawyer did not object to admission of any photograph, nor was the subject of taking pictures brought up at all. This lawyer had represented Frankl on dozens of PIP suits that Frankl had brought. R433-J-1 at 63. Frankl was unable to state and was unaware of any causal connection or relationship the alleged activities of the females had on his adverse PIP verdict. R433-J-1 at 76 & 78. Frankl testified that during the PIP trial he was somewhat distracted because he was party plaintiff at that time in 20 to 50 of his pending law suits. R433-J-1 at 78.

Sharon Engert testified for Mr. Adams during the sanctions phase. Adams was her boss. She related that he showed her respect, kindness, and honesty. R433-J-1 at 170. She testified how Adams accommodated her and her family, due to her sons' exceptional needs. R433-J-1 at 170. He contributed to her son's team in the walk for autism. R433-J-1 at 176. She further testified that Adams had a strong sense of community duty, and gave his time and much money to worthy causes such as fallen officers, the University of Florida, and the Catholic Church. She testified Mr. Adams does not make public proclamations about his charitable giving. R433-J-1 at 175. She testified that during the 2 ½ years the underlying matter progressed, Mr. Adams' main concern has been for his employees and how

this could or was affecting the employees. “Above all else in this situation, Rob wanted to make sure that we were all okay.” R433-J-1 at 171. She stated that Mr. Adams was the kind of person that people rally around. R433-J-1 at 172.

Ivan Nikolov, a recent immigrant from Bulgaria who became naturalized, also testified for Mr Adams at the sanctions hearing. Nikolov related how several attorneys had attempted to help him with immigration papers, unsuccessfully, for \$19,000. R433-J-1 at 180. As he neared a forced-return to Bulgaria, he met Mr. Adams, and Adams volunteered to help, gratis. R433-J-1 at 180 & 181.

Mr. Adams secured proper immigration papers for Nikolov, and saved him from deportation. Although Mr. Adams was a partner at a 100-lawyer firm, and Mr. Nikolov was an impecunious immigrant working menial jobs and then as a gym trainer, Mr. Adams befriended Nikolov and treated him as an equal. R433-J-1 at 179. Nikolov, who had no plans to honeymoon with his new bride, related how Adams provided them a deluxe, short honeymoon in Orlando upon learning Nikolov had wed. Mr. Adams put them up in the Peabody Hotel in Orlando, because Adams worked there as a valet putting himself through school. R433-J-1 at 182. As Nikolov said, “He parked cars there. He knew that I was going through some tough times and wanted me to know that he has gone through the same times himself.” R433-J-1 at 182. Mr. Adams lent Nikolov money, on a handshake, to help him get on his feet. R433-J-1 at 182 - 183. Not unlike Sharon Engert, Mr.

Nikolov thought of the traits of integrity, true friendship, loyal, supportive, curious, dependable, and down-to-earth, to describe Mr. Adams. R433-J-1 at 185. Nikolov closed by saying that Mr. Adams served as a role model for him, and whenever he faced an uncertain decision, he would try to emulate what Rob Adams would do. R433-J-1 185 & 186.

Kevin Hirsch, M.D. also testified for Mr. Adams at the sanctions hearing. Dr. Hirsch, a trauma surgeon, testified that he did not consider Robert a close personal friend or social associate. He had a chance to first encounter Mr. Adams in the professional field when Adams was opposing him on a case deposition. R433-J-1 at 203. Dr. Hirsch did not know who Adams was, but he was impressed. He stated, "I went home and actually made a comment at my house, you know, I met this guy today. There is just something about it. I thought he was a very professional, smart, you know, young guy. Not what I'm used to seeing." Dr. Hirsch was impressed with Adams' manner. R433-J-1 at 196. "[H]is manner was simple. He was to the point, He was very clear in his questions....I was impressed. I liked him." R433-J-1 at 197. This positive impression carried over into a few other later professional encounters. R433-J-1 at 203 & 204.

Over the next 20 years, Dr. Hirsch encountered Mr. Adams infrequently, with Adams behaving in a similar, impressive way. R433-J-1 at 204. Although Hirsch is not a close friend of Adams, for some time now they have lived in the

same neighborhood. Mr. Adams was the proverbial good neighbor. His reputation among his neighbors is strong, and he is well regarded in his neighborhood, and liked. R433-J-1 at 198 & 199.

James Craig also testified for Mr. Adams in the sanctions phase. Mr. Adams was a friend and mentor of Craig's in law school. Besides clerking at a large law firm, one way Mr. Adams worked himself through law school was as a teaching assistant. R433-J-2 at 235. Adams was a T.A. for one of James Craig's first classes. R433-J-2 at 234. Mr. Adams mentored Mr. Craig by assisting him in class presentation, "an academic standpoint, class standpoint, presentation, putting myself out there a little bit more" and organizational skills with studying. R433-J-2 at 234. Mr. Craig's observed Mr. Adams with his firm employees, noting that it was a family atmosphere. R433-J-2 at 237. The only persons Mr. Craig would entrust his children to would be his wife and Robert Adams. R433-J-2 at 237.

In the interest of saving court time, Mr. Adams also submitted several witnesses by affidavit in the sanctions phase. They are in this record at R432:4 – 9 & 11 - 13. They echo and amplify the statements made by the witnesses on Mr. Adams behalf described above. For example, Mr. Adams' paternal cousin described his humble beginnings to get himself through college and law school, working as a laborer, crabber, roofer, etc. R432:12. She noted that he has had an immeasurable positive impact upon her life and growth as a human being. A

former employee of the law firm noted Mr. Adams' unstinting personal and financial support for him when his child was born with a congenital heart defect.

R432:13.

Another affiant, Rebecca Brock, testified:

I have become a better lawyer because of Mr. Adams, not just because of his accessibility, but because he truly believes in his associates. As a young female attorney, I can tell you this is rare. I remember dreading emailing him the news that I had lost an important hearing in Miami-Dade against a prominent attorney. I will never forget the way he responded when I informed him that I did not feel I was the best person to argue against that particular counsel. He told me that he didn't want to hear that from me and he was sure I could hold my own against any opponent.... I had never worked under someone who had that kind of faith in me that Mr. Adams instilled. He has been such a positive influence on my career....R 432:7.

The Referee's Report and Findings: The Referee issued preliminary findings of fact on July 7, 2015. As to Adams he found that Adams conspired with Filthaut, Diaco, and others to maliciously effect the arrest of Mr. Campbell, for advantage in an ongoing trial. He further found that Adams did not make an effort to immediately return the briefcase to Campbell or advise him of their possession of it. He further found that Adams and Diaco failed properly to supervise Filthaut, Motroni, and Personius. Finally, the Referee concluded that the respondents' actions were intended to disrupt and prejudice the underlying tribunal.

The Final Report of the Referee, issued August 27, 2015, was lengthy and scathing. R434. The Referee rejected the Bar's recommendation as to Adams of disbarment with leave to reapply, and recommended permanent disbarment as sanction. The Referee found for the Bar on all issues it had presented.

The Referee, no doubt driven by a righteous distaste for the lamentable facts before him, did make some statements in the Report that are not entirely accurate or fairly colored. As they might touch upon the appropriate sanction for Mr. Adams, we discuss a few of them here.

The Report suggests on page 4 that Mr. Adams did not permit himself to be deposed⁸. Adams asserted the Fifth Amendment privilege when the Bar sought to depose him, but then retained the undersigned trial counsel and did testify. Adams was deposed immediately prior to his trial testimony by the Bar. He answered, fully, every question the Bar put to him both then and during the trial.

The Report states without further detail that an Adams & Diaco associate was "dropped off at the scene" to pick up Mr. Personius after the arrest, suggesting something surreptitious. R434, Referee Report at 16. The fuller facts are that Personius called several people and eventually reached Brian Motroni, an Adams

⁸This is more fairly and fully elucidated at Referee Report at 25, R434.

& Diaco associate, who lived downtown. Motroni was coming back downtown in a car from a dinner with his fiancé. R 429-31 at 74 – 75; R 429-53; R 433-I at 892.

The Report states that the Adams & Diaco associate who picked up Ms. Personius witnessed the statements she allegedly made back at the house to her husband about the alleged conspiracy, which the husband testified about at trial. R434, Referee Report at 17. There is no evidence that the associate heard these statements.

The Referee Report at 19 states that Kris Personius voiced no animosity toward his ex-wife or her employer during his statements to his lawyer Goudie. This is inaccurate, as the citations above show.

The Referee Report at 20 suggests that Personius called her friend Fykes and said an investigator from Adams & Diaco would be calling to “prep her” regarding questions she might be asked about the evening. This is also inaccurate. Fykes testified that Ms. Personius called and left a message that an investigator would be contacting her. Personius herself wanted to “prep” Fykes before she talked to the Adams & Diaco investigator. This would suggest a contrary inference, that Personius was acting on her own initiative, wanting to control or prepare how facts were to be shared with the law firm. R 433-I at 490 & 533.

The Referee Report at 21 – 22 cites a bonus Ms. Personius received and financial benefit, but omits a complete picture. The un rebutted record shows that she received less benefit than other similar Adams & Diaco employees, and her bonus was smaller than similar employees and smaller in 2013 than it was the year before. R 433-I at 138 – 140, 153, 177.

The Referee Report at 39 can be read to suggest that Mr. Adams destroyed or secreted his cellular telephone. The entire evidence in this record is that Mr. Adams received a “spoliation letter” from opposing counsel and contemporaneous with this letter turned his phone over to his lawyer, Lee Gunn, who had appeared on the case; which was the last time Adams saw the phone. There is zero other evidence about the phone. R 429-37; R433-I at 132 – 135, 144.

As to the text messages, Mr. Adams stated that he routinely deleted them contemporaneously. R 433-I at 134. Although there was no contrary evidence, and this practice is not unusual, the Referee did not credit this testimony. The matter as to phone texts first came up early in discovery, upon a Bar request, and Mr. Adams through counsel told the Bar in a letter that Adams had deleted his texts contemporaneously under his normal practice. R 429-43 at 1690-1695.

The Report makes clear factually that Adams had nothing to do with “the bizarre travels of Mr. Campbell’s briefcase.” All the report says factually as to

Adams was that Adams got the call from Ms. Personius, and Diaco told Adams he would take care of it. R 434, Referee Report at 34. There is nothing more as to Adams.

The Referee suggested, R 434, Referee Report at 40, that the Respondents sought to adopt an air of “anti-drunk driving” crusaders at trial below. Mr. Diaco did; Mr. Adams did not. Neither Mr. Adams during his testimony, nor Adams’ trial witnesses, nor his undersigned trial counsel, suggested such a “MADD defense” directly or tacitly.

SUMMARY OF THE ARGUMENT: Adams seeks no review of facts found or recommendations on guilt. The sanction of non-permanent disbarment may be appropriate and is not contested by Mr. Adams. *Permanent* disbarment is not called for, and is an unjust punishment on these facts as to Robert Adams. The Referee’s recommendation of permanent disbarment is devoid of any discussion or analysis of why that enhanced form of disbarment is appropriate over standard disbarment. Accordingly, the recommended sanction of permanency is due no weight or deference on appeal. Permanent disbarment is contrary to this Court’s attorney discipline jurisprudence, and detracts from that clear and firm line of law.

ARGUMENT

PERMANENT DISBARMENT, WITHOUT LEAVE TO REAPPLY, IS UNJUST

The ultimate sanction of permanent disbarment, without leave to re-apply, is unjust, unfair to Mr. Adams, and contrary to this Court's prior precedent. This recommendation does not have a reasonable basis in existing case law, and is contrary to existing case law. Mr. Adams does not contest disbarment with leave to reapply.

While a referee's recommendation for attorney discipline is persuasive, it is ultimately the Supreme Court's task to determine the appropriate sanction. *The Florida Bar v. Reed*, 644 So.2d 1355, 1357 (Fla. 1994). The appropriate sanction is a legal question. Legal questions should be reviewed *de novo*. *Scott v. Williams*, 107 So.3d 379, 384 (Fla. 2013).

In past precedent this Court has affirmed disbarment, but rejected the Referee's recommendation of permanency. *E.g., The Florida Bar v. Bailey*, 803 So.2d 683, 694 n. 4 (2001).

A. Robert Adams is Not Deserving of the Ultimate, Permanent Sanction

Permanent disbarment is unjust given the nature and history of Respondent Adams. The referee below quite rightly found the two mitigating factors of a) absence of prior disciplinary record; and b) character or reputation. Referee Report at 59.

The record shows that in his 19 years of practice, Mr. Adams was free from discipline. *Id.* at 59. Likewise, the 80+ lawyers supervised by Mr. Adams over the years at his firm never had an adverse disciplinary finding. R433-I at 150.

Mr. Adams testified how he respected the privilege to practice law. Born to mill workers, he was the first person in his family to graduate from college R 433-I at 147 - 148. He put himself through both undergraduate and law school by working while taking classes. R 432 at 12; R 433-J-1 at 182, R 433-J-2 at 234 - 235. He conducted himself discipline-free for decades, until he made several serious mistakes made in a short, unplanned, unexpected affair when his colleagues were overexcited in the middle of a high-profile trial.

Beyond being discipline-free, however, Mr. Adams was a solid member of the Bar, and a fine and worthy mentor to young lawyers. His high repute is found as a mitigator by the Referee. The Referee stated that witnesses supported Adams as a loyal friend, a worthy mentor to young lawyers, and a generous and competent professional. Referee Report at 59. The Referee found Adams was an “experienced, competent litigator”. *Id.* at 63. The multiple witnesses in this record show that he generally was known in his community and among fellow professionals to be a worthy and stalwart counsel, earning their respect and admiration. Good reputation bears on the appropriate sanction. Mr. Adams’ proven good character for decades provides assurances to this Court that

permanent disbarment is not necessary to protect the public from a recidivist violator. This evidence shows Mr. Adams is not beyond redemption and is amenable to rehabilitation. *Cf., The Florida Bar v. Norkin*, 2015 WL 5853915 (Fla. 10/8/15) (permanent disbarment is warranted when attorney is beyond redemption and not amenable to rehabilitation).

B. The Facts do not Support Disbarment with Permanency

Mr. Adams' understands that facts found by the Referee are rarely disturbed on appeal, and he does not ask for any factual findings to be overturned. However, even beyond the uncontested mitigation discussed above, the clear facts below do not support disbarment with permanency.

First, Mr. Adams' misconduct occurred over a short period of time, in something he was not extensively involved in. He had almost nothing to do with the *Schnitt* trial. He was nowhere near the scene when Personius surprisingly saw Mr. Campbell at the bar. The events unfolded unexpectedly, and quickly. Adams had no contact whatsoever with or control whatsoever over the police Sergeant, one of the more disturbing aspects of the case. Mr. Adams had no involvement whatsoever in the two other disturbing aspects of the case: Diaco's inflammatory media statements and Diaco's courtroom testimony before Circuit Judge Arnold.

Mr. Adams' admitted his wrongful acts before the referee under oath, answering all questions put him. He did not flinch from describing them as the

worst decisions he has ever made on this Earth: not stopping Personius from returning to the bar; and following Diaco's instructions to call Filthaut with that news.

Mr. Adams had basically nothing to do with the briefcase matter: the Referee found only (as to Adams) that Adams got the call from Personius and Diaco said he would handle it. Nothing more was found. R 434, Referee Report at 34-37. The Referee expressly credited Adams testimony in this regard. *Id.* at 34. And the prior attempt to call the police Sergeant on Campbell had nothing to do with Adams: Adams was out of town and unaware of it when it happened.

The Referee was properly incensed by the facts, and was aware of the high-intensity media focus locally. In order to reach for the result, he had to credit two dodgy witnesses below, both who were remarkably self-impeaching: the angry Kristopher Personius and litigation-crazed chiropractor Frankl. Although this Court defers to fact finding from below, reliance on these witnesses shows a stretch. The Referee had to hang his factual findings on these two characters to bolster the recommendation of a permanency sanction, a legal conclusion which of course is entitled to no deference on review whatsoever. Any legal conclusion based on the likes of Kristopher Personius and Dr. Frankl is infirm indeed.

C. The Case Law and This Court's Precedent Do Not Support Permanent Disbarment

The Referee below did not discuss case law or even contemplate the

standards for permanent versus non-permanent disbarment. Accordingly, his recommendation as to permanency should carry no weight. Had the Referee consulted the law before making this recommendation, he would not have recommended permanent disbarment. The law clearly counsels against this sanction.

Many of the most severe wrongs of lawyer misconduct are not present in Adam's case. The failures indicated in Standard 4.0 ("Violations of Duties Owed to Clients") are generally absent on these facts. There is no financial defalcation, no conflict with clients, disclosure of client confidences, or betrayal of fiduciaries.

Although Mr. Adams' wrongs establish violations of duties owed to the public and the legal system (Standards 5.0 and 6.0), a simple comparison of discipline meted out to convicted lawyer-felons shows that permanent disbarment is not just. *E.g., Florida Bar v. Greene*, 926 So.2d 1195, 1196 – 1198 & n. 1 (2006). Those felons violated Standards 5.0 and 6.0. Mr. Adams did not commit any felony, whatever his failures below. Yet many felon lawyers in this state, including recently, have been permitted to receive disciplinary revocation (Rule 3-712, Rules of Discipline) or disbarment with leave to reapply after five years, like the securities fraud perpetrator in *Greene*.

Also typical of these cases is Order No. SC14-2508, *The Florida Bar v. Airan-Pace*, 163 So.3d 514 (2015) (Order granting disciplinary revocation with

leave to reapply after five years to Rashmi Airan-Pace). Airan-Pace committed mortgage fraud against the United States in her role as lawyer, and also distributed fraud proceeds. She now resides in the federal penitentiary on her underlying felony from the Southern District of Florida, Case No. 9:14-cr-80067.

These attorneys, who have been convicted of million-dollar frauds and are often sentenced to the penitentiary for matters done in their roles as attorneys, receive a lesser sanction than recommended for Mr. Adams. Adams' more severe sanction than these felon-lawyers is unjust and without precedent.

This Court's reported cases show that permanent disbarment here is unprecedented and unwarranted. For example, *The Florida Bar v. Tipler* involved a lawyer with "extensive disciplinary history in three states" who traded carnal knowledge for fees, misused client money seven times, stole from clients, sought to defraud creditors of \$487,714, suborned a client's unknowing perjury by altering evidence, failed to maintain a trust account, perpetrated a fraud on a federal court, pled to misdemeanor obstruction, was held in criminal contempt, *ad nauseum*. 8 So.3d 1109, 1119 – 1121 (Fla. 2009). By *any* reading, Tipler's conduct was much, much worse than Mr. Adams' short-term, aberrant conduct. Yet Adams got a worse sanction recommendation.

In *Bailey, supra*, a somewhat notorious case, this Court found that "Bailey has committed some of the most egregious rules violations possible, evidencing a

complete disregard for the rules governing attorneys.” 803 So.2d at 694. This was a laundry list of lawyer misdeeds: stealing client money, perjury, cumulative misconduct, compromise of client confidences, and obstructing a judge. Yet this Court declined to follow the Referee’s recommendation of permanent disbarment. *Id.*, note 4. No fair reader of the *Bailey* case can say that Robert Adams behaved worse than F. Lee Bailey.

Even more persuasive is *The Florida Bar v. Gross*, 896 So.2d 742 (2005). Gross committed a series of egregious violations such that this Court said it is difficult to find a case with so much misconduct. *Id.* at 746. Gross stole over \$100,000 from clients including forging a client’s name on check, forged judge’s signatures twice, forged a client signature on a written guilty plea, failed to defend a client resulting in a money judgment against the client, ignored a Bar subpoena, committed mortgage fraud, stole from the trust account without restitution, and concealed a trust account from the Bar. *Id.* at 743 - 745. Yet Gross received a disbarment without permanency. Gross sought mitigation because he was a drug and alcohol addict, but only entered rehabilitation 11 months after the first Bar complaint was filed. *Id.* at 744 & n. 2.

A similar case is *The Florida Bar v. Massari*, where a lawyer created a forgery scheme in order to steal trust monies from a client and then sought to conceal the crime by fraud. 832 So.2d 701 (Fla. 2002). This Court affirmed

disbarment for five years.

No objective observer of the facts in *Bailey*, *Gross*, *Tipler*, or *Massari*, can say that Mr. Adams acted worse than those respondents. Yet Adams has an entirely worse recommended sanction. This Court should not approve this dichotomy. This dichotomy impairs and cast doubt upon this Court's firm and clear disciplinary jurisprudence. This unjust recommendation from the Referee is likely caused by the intense local publicity and high drama surrounding the entire "Shock Jock DUI Setup" affair below, that the daily newspaper clippings in the Bar's evidence floridly describe. R431-4.

Had the Referee consulted this Court's jurisprudence on the issue, he would have encountered this Court's wisdom that the hallmark of permanent disbarment is "cumulative misconduct and a persistent course of unrepentant misconduct." *The Florida Bar v. Behm*, 41 So.3d 136, 151 (Fla. 2010). That hallmark is entirely absent from this record concerning Robert Adams.

Under this Court's longstanding *Pahules* criteria, the sanction must be (1) fair to the disciplined attorney, being sufficient to punish while at the same time encouraging rehabilitation; (2) fair to society, both in terms of protecting the public from unethical conduct and at the same time not denying the public the service of a qualified lawyer as a result of undue harshness' and (3) severe enough to deter others who might be tempted to engage in like violations. *The Florida Bar v.*

Pahules, 233 So.2d 130, 132 (Fla. 1970), cited in *The Florida Bar v. Liberman*, 43 So.3d 36, 39 (Fla. 2010).

This Court describes the *Pahules* criteria as “well established principles.” *Florida Bar v. St. Louis*, 967 So.2d 108, 124 (2007). The Referee was entirely unaware of these well established principles.

D. Disbarment “Not Permanent” Is Far from any Win for Adams

This affair has been a nightmare and professional and personal train wreck for Mr. Adams. He drove his own train into this ditch by these mistakes. Mr. Adams understands that disbarment is permanent termination as a lawyer. Lawyer Sanction Standard 2.2. He understands that disbarment with possible leave to reapply is far from any indication or suggestion that any petition he might file sometime after 2021 might be successful. Indeed, the cases are many where later reapplication is denied. But if he is to be treated similarly as other Florida lawyers, and this Court’s clear teachings evenly applied, disbarment “not permanent” is the just result.

CONCLUSION

Although the Referee’s recommendation of disbarment may be appropriate, *permanent* disbarment is not, and should not be imposed.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on January 21, 2016, I placed the foregoing on the electronic docket of this Court for service to all counsel of record, and a copy of the foregoing was served on the following by e-mail:

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