

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)

ANSWER BRIEF

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SYMBOLS AND REFERENCES

For the purpose of this brief, Robert D. Adams, Respondent, will be referred to as “Respondent” or as “Adams.” The Florida Bar, Complainant, will be referred to as “The Florida Bar” or as “the Bar.” The referee will be referred to as the “Referee.” Additionally, “Rule” or “Rules” will refer to the Rules Regulating The Bar. “Standard” or “Standards” will refer to Florida Standards for Imposing Lawyer Sanctions.

“RR” will refer to the Report of Referee entered on August 27, 2015, followed by the appropriate page number (e.g., RR 10). References to specific pleadings will be made by title. “TR” will refer to the transcript of the final hearing before the Referee, followed by the volume, the appropriate page number, and line number (e.g., TR I, P 100, L 1). “SHTR” will refer to the transcript of the sanctions hearing held before the Referee, followed by the volume, the appropriate page number, and line number (e.g., SHTR I, P 100, L 1).

“TFB Exh.” will refer to The Florida Bar’s exhibits admitted during the final hearing, followed by the appropriate exhibit number (e.g., TFB Exh. 1). “SHTFB Exh.” will refer to The Florida Bar’s exhibits admitting during the sanctions hearing, followed by the appropriate exhibit number (e.g., SHTFB Exh. 1). “SHR

Exh.” will refer to Respondent’s exhibits admitted during the Sanctions Hearing, followed by the appropriate exhibit number (e.g., SHR Exh. 1).

“IB” will refer to Respondent’s Initial Brief, dated January 21, 2016.

STATEMENT OF THE CASE AND OF THE FACTS

This case arose out of the disciplinary proceeding against Robert D. Adams, Respondent, and is related to cases against Stephen Christopher Diaco, Supreme Court Case No. SC14-1052, and Adam Robert Filthaut, Supreme Court Case No. SC14-1056. All three matters were assigned to The Honorable W. Douglas Baird, a retired circuit court judge who previously presided over civil, criminal, and probate divisions of the Sixth Judicial Circuit, in Pinellas County. Respondent, Diaco and Filthaut were all represented by Gregory W. Kehoe, Danielle S. Kemp, and Joseph A. Corsmeier during the disciplinary proceedings. Judge Baird consolidated the three cases. On May 8, 2015, William F. Jung filed a Notice of Co-Counsel for Adams.

The Referee conducted the final hearing to determine guilt on May 11 – 15, 2015, and on May 21, 2015. The Referee found Respondent guilty of violating ten (10) of the Rules Regulating The Florida Bar. (RR 46-48). Based on the findings of guilt, the Referee conducted a sanctions hearing on August 6 – 7, 2015, at which time Respondent presented mitigation evidence.

The Referee filed his Report of Referee with this Court on August 27, 2015. The Referee found Adams guilty of violating the following R. Regulating Fla. Bar: 3-4.3 (Misconduct and Minor Misconduct); 4-3.4(a) (unlawfully obstruct another

party's access to evidence); 4-3.4(g) (present, participate in presenting, or threaten to present criminal charges solely to obtain an advantage in a civil matter); 4-3.5(c) (conduct intended to disrupt a tribunal); 4-4.4(a) (means that have no substantial purpose other than to embarrass, delay, or burden); 4-5.1(c) (Responsibilities of Partners, Managers, and Supervisory Lawyers); Rule 4-5.3(b) (Responsibilities Regarding Nonlawyer Assistants); 4-8.4(a) (A lawyer shall not 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); 4-8.4(c) (A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation); and 4-8.4(d) (A lawyer shall not engage in conduct in connection with the practice of law that is prejudicial to the administration of justice). (RR 46-48). The Referee recommended that Adams be permanently disbarred and awarded costs to the Bar in the amount of \$14,558.66. (RR 47-50).

Adams filed a petition for review of the Report of Referee on October 23, 2015, a request for oral argument on January 18, 2016, and his Initial Brief on January 21, 2016. Adams does not contest the Referee's findings of fact and conclusions of law as to guilt. (IB 36). Adams only seeks review of the Referee's recommended discipline of permanent disbarment, and instead argues that disbarment with leave to reapply is the appropriate sanction. (IB 1, 37).

The facts are uncontested. Respondent and Diaco were equity partners/shareholders in the law firm Adams & Diaco, P.A., which was located in the Bank of America building in downtown Tampa. (RR 4; TR I, P 94, L 1-6, P 107, L 16-17; TFB Exh. 34). Adam Robert Filthaut was a non-equity partner in the firm and considered Respondent as his mentor. (RR 4; TR I, P 21, L 3-4, P 94, L 7-10, P 107, L 9-11, P 175, L 18-22; TFB Exh. 31, P 79, L 25, P 80, L 1-2). The firm defended a local radio personality, Bubba Clem, and Bubba Radio Network in a years-long, contentious, and highly-publicized defamation suit. (RR 6; TR III, P 305, L 18-25; TR 306, L 1; TR IV, P 563 L 13-15; P 567, L 17-20, P 570, L 4-6; TR VII, P 992, L 23-24, P 993, L 1-22; TFB Exh. 34, 38). Charles Philip Campbell, Jr. was the lead attorney for the Plaintiffs, Todd and Michele Schnitt. (RR 6; TR III, P 304, L 18-20; P 334, L 23-25; TR IV, P 541, L 3-5, P 552, L 17-24). Campbell's firm, Shumaker, Loop & Kendrick, LLP, was also located in the Bank of America building. (RR 6; TR III, P 304, L 10-17; TR IV, P 540, L 24-25, P 541, L 1-2; TFB Exh. 14, P 65, L 21-23).

Filthaut had a close friend, Sergeant Raymond Fernandez, who worked in the Tampa Police Department DUI division. (RR 5; TR VII, P 1003, L 17-22; TFB Exh. 16, P 22, L 15-23; TFB Exh. 18, P 67, L 6-11; TFB Exh. 28, P 2, L 12-22, P 5, L 5-18; TFB Exh. 34, 41). On the evening of November 29, 2012, Filthaut called

Fernandez and told him that an attorney named Phil Campbell who worked in the same office building got drunk all the time and drove. Filthaut told Fernandez that Mr. Campbell was drinking at Malio's, a restaurant located in downtown Tampa. (RR 7; TFB Exh. 16, P 21, 12-23; TFB Exh. 18, P 79, L 7-14, P 80, L 18-25, P 81, L 1-2, P 83, L 25, P 84, L 1-5, P 87, L 20-25, P 88, L 1-25, P 89, L 1-14; TFB Exh. 28, P 8, L 4-17, P 9, L 4-23). Filthaut did not tell Sergeant Fernandez that Mr. Campbell was opposing counsel in a case being handled by his firm. (RR 7; TFB Exh. 16, P 22, 4-14; TFB Exh. 18, P 72, L 5-25, P 73, L 1-2, P 86, L 8-16; TFB Exh. 28, P 11, L 15-25, P 12, L 1-25, P 13, L 1, P 57, L 1-25).

Sergeant Fernandez gave a DUI officer a general description of Mr. Campbell and his car and sent the officer to stakeout Malio's; however no arrest was made that night. (RR 7; TR VII, P 916, L 23-25, P 917, L 1-25, P 918, L 1-5, P 919, L 3-20; TFB Exh. 28, P 9, L 21-25, P 10, L 1-19, P 11, L 11-13; TFB Exh. 42A; TFB Exh. 46S, P 28, L 20-25, P 29, L 1-25, P 30, L 1-25, P 31, L 1-16, P 32, L 1-8). Respondent was out of town when this incident occurred, subsequently learned about it, and took no action. (RR 8; TR I, P 102, L 25, P 103, L 1-7, P 153, L 25, P 154, L 1-4).

The *Schnitt v. Clem* case went to a two-week jury trial before the Honorable James Arnold. (TR VII, P 992, L 20-22; TFB Exh. 38) After a full day of trial on

January 23, 2013, Mr. Campbell walked to Malio's to meet his co-counsel, Jonathan Ellis, for dinner and drinks. (RR 8; TR III, P 308, L 5-16). Around the same time, Melissa Personius, a paralegal at Adams & Diaco, who primarily worked for Respondent, also went to Malio's to meet a friend, Vanessa Fykes. (RR 4, 8; TR I, P 94, L 11-13; TR IV, P 469, L 15-25, P 470, L 1-14; TFB Exh. 31, P 2, L 11-23; TFB Exh. 34). Ms. Personius recognized Mr. Campbell at the bar as she was leaving Malio's. (RR 8; TR IV, P 473, L 9-14; TFB Exh. 31, P 5, L 22-25, P 6, L 1-18, P 14, L 22-25, P 15, L 1-8, P 16, L 16-22). Ms. Personius sent a text to Respondent telling him that she had seen Mr. Campbell at Malio's. (RR 8; TR I, P 104, L 10-21; TFB Exh. 31, P 16, L 12-22). Respondent then contacted Diaco and disclosed the information to him. (RR 8; TR I, P 106, L 2-8, P 107, L 16-17; TFB Exh. 31, P 17, L 17-21, P 18, L 10-25; TFB Exh. 50, 51, 59). Respondent then called Ms. Personius back and questioned her about what she saw. (RR 8; TR I, P 103, L 13-25, P 104, L 1-9; TFB Exh. 31, P 17, L 17-25, P 18, L 1-7; TFB Exh. 50, 53, 59). After speaking with Respondent, Ms. Personius returned to Malio's to spy on Mr. Campbell. (RR 9; TFB Exh. 31, P 21, L 3-25).

Respondent called Filthaut and told him Mr. Campbell was at Malio's, so Filthaut could call his friend, Sergeant Fernandez. (RR 9; TR I, P 106, L 9-25). Filthaut called Fernandez again and this time told him the attorney's name was

“Charles Campbell.” Again, Filthaut failed to tell his friend that Mr. Campbell was the opposing counsel in the highly-publicized *Schnitt v. Clem* trial. (RR 9; TFB Exh. 16, P 22, L 4-14; TFB Exh. 18, P 72, L 5-25, P 73, L 1-2, P 86, L 8-16; TFB Exh. 28, P 11, L 15-25, P 12, L 1-25, P 13, L 1, P 14, L 1-9, P 17, L 14-22, P 18, L 16-25, P 19, L 1, P 57, L 1-16)

At approximately 8:15 p.m. Sergeant Fernandez dispatched a DUI officer to stakeout Malio’s for Mr. Campbell’s black BMW. (RR 10; TR VII, P 927, L 18-25, P 928, L 1-22, TFB Exh. 16, P 25, L 4-25, P 26, L 1-4, P 26, L 2-25, P 27, L 1-11; TFB Exh. 18, P 96, L 19-25, P 97, L 1; TFB Exh. 28, P 19, L 9-25, P 20, L 1-5; TFB Exh. 41, 42B; TFB Exh. 46S, P 33, L 5-25, P 34, L 1-5, P 35, L 7-25, P 36-37). When Ms. Personius and Ms. Fykes returned to Malio’s, they took seats next to Mr. Campbell in the bar area. (RR 10; TR IV, P 475, L 8-14, P 545, L 9-14; TR V, P 714, L 24-25, P 715, L 1-6; TR VI, P 753, L 5-19, P 800, L 2-6; TFB Exh. 13, P 5, L 16-20; TFB Exh. 31, P 39, L 18-20, P 47, L 3-8; TFB Exh. 34; TFB Exh. 46R, P 20, L 12-17). Between 7:00 p.m. and 9:45 p.m., Ms. Personius socialized with Mr. Campbell, Mr. Ellis, and another attorney, Michael Trentalange. (RR 10; TR III, P 315, L 1-8; TR IV, P 546, L 12-15; TR V, P 715, L 16-22; P 716, L 1-25, P 717, L 1-25, P 718, L 1-25; TFB Exh. 13, P 5, L 16-22; TFB Exh. 31, P 41, L 17-25, P 45, L 1-7; TFB Exh. 34). Ms. Personius falsely stated that she worked as a

paralegal for Nathan Carney, an attorney with Trenam Kemker. (RR 10, 20; TR III, P 315, L 6-13; TR IV, P 547, L 16-25; TR V, P 649, L 6-12; TFB Exh. 13, P 5, L 22-24; TFB Exh. 14, P 19, L 13-25). Ms. Personius was overly flirtatious with Mr. Campbell, bought drinks for him, and encouraged him to drink. (RR 10; TR IV, P 42, L 25, P 483, L 1-5, P 514, L 19-22; TR V, P 725, L 9-24, P 731, L 16-25, P 732, L 1-17; TR VI, P 755, L 13-17, P 761, L 9-14; TFB Exh. 31, P 50, L 2-21; TFB Exh. 46R, P 22, L 17-22; TFB Exh. 47).

Throughout the evening, Ms. Personius exchanged text messages and phone calls with Respondent, Diaco, and Filthaut. (RR 10; TFB Exh. 31, P 19, L 8-13, P 88-89; TFB Exh. 50, 51, 52, 53, 59). Between 6:30 p.m. and 9:30 p.m., Ms. Personius exchanged 17 communications with Respondent; 19 communications with Filthaut; and 11 communications with Diaco. (RR 10-11; TFB Exh. 50, 51, 52, 53, 59). Filthaut sent updates about Mr. Campbell to Sergeant Fernandez. (RR 10; TR VII, P 943, L 10-25, 944, L 1-10; TFB Exh. 16, P 28, L 16-25, P 29, L 1-16, P 30, L 13-17, P 31, L 14-25; P 32, L 1-9, P 34, L 4-22, P 56, L 12-25; TFB Exh. 18, P 42, L 11-15, P 97, L 9-12, P 101, L 11-15; TFB Exh. 28, P 21, L 25, P 22, L 1-22, P 32, L 16-25, P 33, L 5-11; TFB Exh. 41). The substance of the text messages is unknown because Respondent, Diaco, and Filthaut erased the messages and got rid of their phones. (RR 11, 39, 64; TR I, P 134, L 8-25, P 135, L 1-4; TFB

Exh. 34). The Tampa Police MDT messages between patrol vehicles, however, corroborate that Ms. Personius provided Filthaut with frequent updates during that evening which he then relayed to Sergeant Fernandez, who in turn, relayed the information to two DUI officers, Sustek and McGinnis. (RR 11; TR VII, P 943, L 18-25, P 944, L 1-10; TFB Exh. 28, P 26, L 1-9; TFB Exh. 41, 42B, 42C).

Ms. Fykes, Mr. Ellis, and Mr. Trentalange all left Malio's by around 9:30 p.m. (RR 12; TR IV, P 516, L 13-15, P 550, L 11-20; TR V, P 712, L 10-25, P 713, L 1-5). Ms. Fykes believed Ms. Personius was intoxicated and before leaving, advised her not to drive and to call a cab. (RR 12; TR IV, P 483, L 18-25). Mr. Campbell planned to walk home, to be in bed by 10:00 p.m. and to get up at 2:00 a.m. to prepare for the next day of trial. (RR 12; TR III, P 308, L 5-7; TR V, P 721, L 10-18). Mr. Campbell also thought Ms. Personius should not drive and offered to call a cab for her. (RR 12; TR III, P 317, L 25, P 318, L 1-21, P 323, L 11-18, P 367, L 13-24). Ms. Personius told him that her car was parked at the valet. (RR 12; TR III, P 318, L 11-13, P 321, L 20-24).

Cell phone records show Ms. Personius maintained constant contact with Diaco and Filthaut. (RR 14; TFB Exh. 51, 52, 53, 59). At 9:28 p.m., Ms. Personius sent a text to Diaco. In turn, Diaco called Filthaut and Filthaut sent a text to Sergeant Fernandez. (RR 13, 14; TFB Exh. 51, 52, 53, 59). At 9:29 p.m., Sergeant

Fernandez sent an MDT text message to Officer McGinnis, which read, “leaving bar now.” (RR 14, TFB Exh. 41, 42B). The MDT messages also show that Mr. Campbell would be driving Ms. Personius’ Nissan. (RR 14, 15; TFB Exh. 18, P 101, L 16-25, P 102, L 1-16; TFB Exh. 28, P 34, L 24-25, P 35, L 1-10, P 36, L 17-25; TFB Exh. 41, 42B, TFB Exh. 46S, P 38, L 8-25, P 39, L 1-23, P 41, L 7-11).

The video of the Malio’s parking lot between 9:40 p.m. and 9:57 p.m. shows Mr. Campbell and Ms. Personius at the valet. Mr. Campbell tried to convince Ms. Personius to leave her car overnight but she refused. (RR 13; TR III, P 321, L 12-25, P 322, L 1-6, P 323, L 2-7). Out of frustration, Mr. Campbell planned to move the car to a parking lot a few blocks away and call a cab because he felt a responsibility to help a woman who appeared too impaired to drive. (RR 13; TR III, P 323, L 19-25, P 324, L 1-8, P 325, L 21-25, P 326, L 1, P 388, L 21-25, P 389, L 1-3, P 390, L 5-10). Immediately after Mr. Campbell pulled out of the parking lot, Sergeant Fernandez, who was off-duty and in an unmarked car that evening, followed Mr. Campbell and pulled him over for allegedly making an improper right-hand turn and for violating the right-of-way of another vehicle. (RR 11, 16; TR III, P 326, L 2-7; TR VII, P 938, L 11-25, P L 1-6; TFB Exh. 16, P 44, L 20-24, P 45, L 5-25, P 46, L 1-25, P 66, L 12-22; TFB Exh. 18, P 112, L 1-17; TFB Exh. 28, P 37, L 9-25, P 38, L 1-25, P 39, L 1-25, P 40, L 1-23; TFB Exh. 3,

34, 39, 41). Officer McGinnis then arrived at the scene and began his DUI investigation of Mr. Campbell. (RR 16; TR III, P 378-388; TR VII, P 936, L 2-11; TFB Exh. 16, P 49, L 16-25, P 50, L 1-7, P 65, L 5-18, P 66, L 12-25, P 67, L 1-25, P 68, L 1-20, TFB Exh. 18, P 117, L 2-5; TFB Exh. 28, P 41, L 4-6; TFB Exh. 39). Officer McGinnis arrested Mr. Campbell for DUI and took him to the county jail. (RR 16; TR III, P 326, L 8-15, P 377, L 15-17; TR VII, P 936, L 12-16; TFB Exh. 3; TFB Exh. 16, P 68, L 4-20; TFB Exh. 18, P 117, L 2-5; TFB Exh. 28, P 42, L 2-7, P 43, L 13-25; TFB Exh. 34, 39). During this time period, Ms. Personius exchanged an additional 7 communications with Respondent; 12 communications with Filthaut; and 2 communications with Diaco. (RR 10-11; TFB Exh. 50, 51, 52, 53, 59).

After Mr. Campbell was arrested, Sergeant Fernandez advised Filthaut that he could not release the car to Ms. Personius because her license was suspended. (RR 16; TFB Exh. 16, L 18-22; TFB Exh. 28, P 45, L 15-23, P 48, L 1-8, P 49, L 5-12) Ms. Personius called Respondent and then called Brian Motroni, an associate at Adams & Diaco, P.A., who picked up Ms. Personius, drove her home in her car, and then took a cab home. (RR 16-17; TR I, P 117, L 25, P 118, L 1-4; TR VI, P 892, L 2-22, P 893, L 3-5; TFB Exh. 16, P 50, L 25, P 51, L 1-16; TFB Exh. 28, P 48, L 7-22, P 49, L 5-20; TFB Exh. 31, P 75, L 6-25, P 76, L 1-7; TFB Exh. 50, 53,

54, 59). Once home, Ms. Personius disclosed the events of the evening to her ex-husband and roommate, Kristopher Personius. (RR 17; TR VI, P 797, L 11-25, P 798, L 1-4). Ms. Personius told Kristopher Personius many things about what had transpired, to wit: (1) that Respondent had instructed her to return to Malio's to spy on Mr. Campbell and to "get him to stay longer and drink more" (RR 17; TR VI, P 799, L 13-25, P 800, L 1-25, P 801, L 16-23); (2) Respondent and Diaco then contacted Filthaut "to get the cop in place" (RR 17; TR VI, P 800, L 15-24); (3) then Ms. Personius made Mr. Campbell drive her car (RR 17; TR VI, P 801, L 15-21, P 872, L 14-25, P 873, L 1-19); and finally (4) Ms. Personius stated Diaco was going to give her a large bonus and that she would be the best-paid paralegal. (RR 17; TR VI, P 803, L 15-20). Phone records show that Ms. Personius contacted Respondent at 10:55 p.m., and spoke to him for approximately one minute. (TFB Exh. 50, 53, 59). Respondent told Ms. Personius not to come to work the next day. (TR I, P 116, 17-11, 15-24).

Mr. Campbell was released from jail at around 6:30 a.m. the next morning. Mr. Ellis picked him up. (RR 32; TR III, P 326, L 16-21; TR IV, P 556, L 6-16). When Mr. Campbell was arrested, he left his trial briefcase containing his trial notes and witness preparation documents for the morning's testimony in Ms. Personius' car. (RR 29; TR III, P 324, L 9-15; TR IV, P 557, L 6-14; TR V, P 649,

L 13-19; TFB Exh. 13, P 5, L 4-7, P 6, L 21-25). By 8:00 a.m., Mr. Ellis had contacted the law office of Trenam Kemker to find “Melissa,” but was unsuccessful. (RR 32; TR III, P 330, L 4-6, TR IV, P 558, L 1-25, P 559, L 1-18; TR V, P 649, L 6-12; TFB Exh. 13, P 6, L 5-17).

At 9:00 a.m., the *Schnitt v. Clem* trial reconvened but Mr. Campbell had not yet found his trial bag. (RR 32; TR IV, P 559, L 7-15, P 560, L 3-5; TFB Exh. 17).

Mr. Ellis disclosed the arrest to Judge Arnold, and as a professional courtesy, all parties agreed to a recess, and to resume testimony on the next day. (RR 30, 32-33; TR III, P 391, L 1-7; TR IV, P 560, L 22-25, P 561, L 1-13, P 568, L 13-20; TR VII, P 994, L 21-25, P 995, L 1-15; TFB Exh. 13, P 7, L 4-17, P 12, L 21-25, P 13, L 1-2). Mr. Campbell’s colleagues continued to search for his trial bag. (RR 30, 33; TR III, P 329, L 15-22, P 330, L 7-12; TR IV, 557, L 18-23, P 574, L 9-25, P 575, L 1-3; TR V, P 649, L 6-19).

Around noon, Ms. Personius allegedly discovered Mr. Campbell’s “briefcase” in her car and contacted Respondent. (RR 34; TR I, P 126, L 22-25; P 127, L 1-7; TFB Exh. 14, P 127, L 5-18; TFB Exh. 31, P 68, L 12-25, P 69, L 1-2). Respondent claimed that he was too busy to handle the matter, and relegated it to Diaco to handling. (RR 34; TR I, P 127, L 4-25, P 128, L 1-25, P 129, L 1-11, P 130, L 5-8). Diaco instructed Mr. Motroni to pick up the “briefcase” from Ms.

Personius' home and bring it back to the office. (RR 34; TR I, P 130, L 9-25, P 131, L 1-12; TR VI, P 893, L 6-25, P 896, L 3-7; TFB Exh. 14, P 55, L 3-25, P 56, L 1-8). When Mr. Motroni arrived at Ms. Personius' house, he discovered that the "briefcase" was Mr. Campbell's trial briefcase and called Diaco. (RR 34, TFB Exh. 14, P 40, 5-14, P 40, L 21-25, P 130, L 10-16). Diaco instructed Mr. Motroni to bring the trial briefcase back to the office. (RR 34-35; TR V, P 652, L 8-25, P 653, L 1-2; TFB Exh. 14, P 56, L 6-21, P 131, L 5-11, P 132, L 19-25, P 133, L 1-6). Mr. Motroni returned to the office and an hour and a half later, Mr. Motroni and Diaco drove back to Ms. Personius's home and returned the trial briefcase to her. (RR 35; TR I, P 130, L 20-25, P 131, L 1-16; TR V, P 657, L 16-24, P 660, L 12-25, P 661, L 1; TR VI, P 896, L 3-7; TR V, P 652, L 8-25, P 653, L 1-2; TFB Exh. 4, 10; TFB Exh. 14, P 56, L 9-21, P 68, L 17-25). Diaco instructed Ms. Personius to take a cab to the Bank of America building and to return the trial briefcase to the security officer. (RR 35; TR V, P 652, L 8-25, P 653, L 1-2, P 662, L 7-18; TR VI, P 803, L 7-14; TFB Exh. 13, P 8, L 5-16; TFB Exh. 14, P 58, L 5-24, P 66, L 3-21, P 67, L 8-12).

At approximately 4:00 p.m., Mr. Ellis and Mr. Campbell discovered the true identity of "Melissa." (RR 33; TR IV, P 574, L 9-25, P 575-578, P 579, L 1-6; TFB Exh. 58, 64). Diaco and Mr. Motroni arrived back at the office at 4:21 p.m.

(RR 36; TFB Exh. 4, 10). Ms. Personius took a cab back to the Bank of America building, and video shows that at about 5:15 p.m. she brought the trial briefcase into the lobby, left the lobby with the trial briefcase, and then the cab driver returned with the trial briefcase and delivered it to Shumaker, Loop & Kendrick, LLP. (RR 36; TR V, P 649, L 20-25, P 650, L 1-25, P 651, L 1-13, P 652, L 4-7, P 662, L 1-6, P 663, L 7-21; TFB Exh. 14, P 43, L 1-25, P 44, L 1; TFB Exh. 4, 12).

After Shumaker, Loop & Kendrick, LLP pieced together what had happened to Mr. Campbell, they filed a motion for mistrial and disqualification of the Adams & Diaco law firm on behalf of the Schnitts. On the morning of January 25, 2013, Judge Arnold held an evidentiary hearing on the plaintiffs' motions. (RR 37-38; TR III, P 331, L 15-19; TR IV, P 584, L 10-22, P 585, L 1-19, P 593, L 1-23; TR V, P 665, L 18-25, P 666-667; TR VII, P 995, L 20-25, P 996, L 1-21, P 1005, L 17-25; TFB Exh. 13, P 4-12; TFB Exh. 5, 6, 34). Judge Arnold was primarily concerned that the jury may have been contaminated by the extensive media coverage and felt bound to question each juror regarding whether they had heard anything about Mr. Campbell's arrest. (RR 31; TR VII, P 996, L 7-17, P 997, L 2-5; TFB Exh. 13, P 20, L 2-19). After determining that the jury had not been contaminated, Judge Arnold allowed the trial to proceed. (RR 31; TR III, P 331, L 6-7; TR V, P 703, L 15-23; TR VII, P 997, L 6-18; TFB Exh. 13, P 47-51, 57).

Judge Arnold reserved ruling on the motion for mistrial and placed a temporary ban on performing discovery. (RR 39; TR V, P 677, L 18-25, P 678, L 1-3; TR VII, P 999, L 1-5, P 1004, L 12-25, P 1005, L 11-16, P 1006, L 1-25, P 1007, L 1-17; TFB Exh. 14, P 153, L 5-15, P 160, L 17-22; TFB Exh. 15).

On January 30, 2013, Shumaker, Loop & Kendrick, LLP served preservation letters on Respondent, Diaco, and Filthaut to preserve their cell phone records and data. (RR 39; TR V, P 675, L 20-25, P 676, L 1-25, P 677, L 1-17; TR VII, P 12-17; TFB Exh. 34, 37). Respondent, Diaco, and Filthaut had already erased their cell phone messages. (RR 39). Respondent, Diaco, Filthaut, and Ms. Personius also relinquished their cell phones to attorney Lee D. Gunn, IV, and when asked why, Respondent invoked the attorney-client privilege. (RR 39; TR I, P 132, L 21-25, P 133, L 1-7, L 21-25, P 134, L 1-7).

The *Schnitt v. Clem* jury trial resulted in a verdict for the defendants. (RR 42; TR IV, P 592, L 18-25, P 593, L 13-17, P 636, L 4-8; TR V, P 671, L 3-6; TR VII, P 1005, L 4-16). On February 4, 2013, Judge Arnold lifted the ban on the discovery for the allegations of misconduct, and the plaintiff's motion for mistrial was converted into a motion for new trial. (RR 42; TR IV, P 593, L 1-17; TFB Exh. 15, P 4, L 15-18, P 5, L 1-16). The parties went to mediation and agreed to

settle before an evidentiary hearing on the misconduct was held. (RR 42; TR VII, P 1007, L 1-17; TFB Exh. 38).

SUMMARY OF ARGUMENT

Permanent disbarment is the appropriate sanction for Respondent's misconduct. Respondent's vast misconduct, including utilizing non-lawyer staff and engaging in conduct prejudicial to the administration of justice, warrants permanent disbarment. The Referee's uncontested findings of fact and guilt support permanent disbarment. The case law and the applicable Florida Standards for Imposing Lawyer Discipline support permanent disbarment when an attorney is beyond rehabilitation. Respondent's conduct warrants a harsher sanction than disbarment with leave to reapply for admission because Respondent engaged in misconduct during the disciplinary proceeding and is beyond redemption.

STANDARD OF REVIEW

A referee's recommended sanction in an attorney disciplinary proceeding is persuasive, but this Court has the ultimate responsibility to determine the appropriate sanction. *Florida Bar v. Kossow*, 912 So. 2d 544, 546 (Fla. 2005). A referee's recommended discipline must have a reasonable basis in existing case law or the standards for imposing lawyer sanctions. *Florida Bar v. Sweeney*, 730 So. 2d 1269 (Fla. 1998); *Florida Bar v. Lecznar*, 690 So. 2d 1284 (Fla. 1997). A referee's findings of mitigation and aggravation are presumed to be correct and are upheld unless they are clearly erroneous or not supported by the record. *Florida Bar v. Del Pino*, 955 So. 2d 556, 560 (Fla. 2007). Finally, this Court will not second-guess a referee's recommended discipline as long as that discipline has a reasonable basis in existing case law. *Florida Bar v. Kossow*, 912 So. 2d 544, 546 (Fla. 2005) (citing *Florida Bar v. Temmer*, 753 So. 2d 555, 558 (Fla. 1999)).

ARGUMENT

PERMANENT DISBARMENT IS THE APPROPRIATE SANCTION FOR RESPONDENT'S MISCONDUCT

A. Respondent's Misconduct Warrants Permanent Disbarment Despite the Mitigating Factors.

Respondent correctly states that permanent disbarment is warranted only where the conduct of a respondent indicates that he is beyond redemption. *Florida Bar v. Norkin*, 2015 WL 5853915 (October 8, 2015), citing *Florida Bar v. Carlson*, 183 So. 2d 541, 542 (Fla. 1966). (IB 39). Respondent does not contest that he was found guilty of violating ten (10) Rules. (RR 46-48). Respondent attempts to downplay his involvement in the events at issue, alleging that his misconduct was the result of a lapse in judgement that occurred over a 3 1/2 hour span. (RR 63; TR I, P 95, L 14-22, P 102, L 16-24, P 104, L 6-9, P 159, L 24-25, P 160, L 1-6). The Referee, however, found that Respondent was a key participant in the conspiracy against Mr. Campbell. (RR 24).

The Referee found that only two mitigating factors applied to Respondent: the absence of a prior disciplinary history; and character or reputation. (RR 67). Respondent presented affidavits and witnesses at the sanctions hearing who testified about his loyalty as a friend, his mentorship, and his generosity. The witnesses, however, had little to no knowledge about Adams' misconduct in this matter. (RR

59; SHTR I, P 126, L 9-25, P 174, L 9-18, P 186, L 24-25, P 187, L 1-4, P 201, L 16-25, P 202, L 1-25, P 203, L 1-4; SHTR II, P 238, L 23-25, P 239, L 1-6; SHR Exh. 4, 5, 6, 7, 8, 9, 11, 12, 13). This Court has held that an attorney's good works cannot be used as a "credit" to overcome a pattern of severe misconduct. *Florida Bar v. Travis*, 765 So. 2d 689, 691 (Fla. 2000)

B. The Uncontested Findings of Fact and Guilt Support Permanent Disbarment as the Appropriate Sanction

The uncontested facts shows that Respondent was acutely aware at each stage of the scheme to affect the arrest of Mr. Campbell as it developed and the attempted cover up thereafter. Respondent was the first person Ms. Personius contacted when she spotted Mr. Campbell at Malio's. (RR 63; TFB Exh. 50, 53, 59). Respondent allowed Ms. Personius, an employee, to go to Malio's and to relay information to Diaco and Filthaut. (RR 24; TR I, P 103, L 13-19). Respondent also allowed Filthaut, another employee, to relay information to Sergeant Fernandez. (RR 24; TR I, P 102, L 19-21, P 107, L 18-22). Respondent could have prevented the whole sordid encounter by instructing Ms. Personius to stay away from Malio's, and by choosing not to tell Diaco and Filthaut that Mr. Campbell was at Malio's again. Instead, Respondent maintained frequent contact with Diaco and Filthaut throughout the evening, and failed to do anything to stop Mr. Campbell's arrest.

(RR 24-25; TR I, P 102, L 19-24, P 104, L 6-9, P 105, L 1-7, P 107, L 18-22, P 108, L 12-16, P 145, L 7-12; TFB Exh. 50, 51, 52, 59). Respondent communicated with Ms. Personius before she got in the car with Mr. Campbell, while she was in the car, and after Mr. Campbell's arrest. (RR 63; TR I, P 113, L 1-25, P 114, L 1, 20-25, P 115, L 1; TFB Exh. 50, 53, 59). Respondent called Filthaut and prompted him to coordinate a police stakeout at Malio's instead of prohibiting Filthaut from exploiting his friendship with Sergeant Fernandez. (RR 24; TR I, P 107, L 18-22; TFB Exh. 50, 52, 59).

Contrary to Respondent's assertion that his misconduct was the result of a 3 ½ hour lapse in judgment, the evidence shows that the Respondent has engaged in a pattern of misconduct over a long period of time. (RR 63; TR I, P 95, L 14-22, P 102, L 16-24, P 104, L 6-9, P 159, L 24-25, P 160, L 1-6) In 2009, Respondent engaged in improper discovery methods by using non-lawyer employees to covertly take photographs of Dr. Frankl's office for use in trial.

Also, Respondent failed to take any action after he learned of the first attempt to effectuate the arrest of Mr. Campbell on November 29, 2012. (RR 8, 24; TR I, P 102, L 25, P 103, L 1-7). Respondent had weeks to contemplate the first failed arrest attempt before the next attempt on January 23, 2013, and Respondent again

failed to object or caution against it. (RR 64; TR I, P 102, L 19-24, P 159, L 24-25, P 160, L 1-6).

Respondent had supervisory authority over Mr. Filthaut and Ms. Personius, and failed to properly supervise their conduct on January 23, 2013, and thereafter. (RR 4, 25, 48; TR I, P 107, L 9-17, P 174, L 23-25, P 175, L 1-3; TFB Exh. 31, P 2, L 20-23). On January 24, 2013, Respondent was the first person Ms. Personius contacted upon her discovery of Mr. Campbell's trial briefcase in her car. (RR 64; TR I, P 26, L 22-25, P 127, L 1-7; TFB Exh. 50, 53, 59). Respondent claimed he was too busy to deal with the matter and relegated it to Diaco to handle. (RR 64; TR I, P 126, L 22-25, P 127, L 1-25, P 128, L 1-25, P 129, L 1-11). Respondent knew one of his employees had the briefcase, yet he made no effort to contact or advise Mr. Campbell or his firm. The briefcase was returned only after Mr. Ellis demanded the briefcase from Mr. Diaco. (RR 36-37; TFB Exh. 13, P 7, L 25, P 8, L 1-16; TFB Exh. 14, P 59, L 5-20, P 60, L 5-15; TFB Exh. 34). The Referee found that there was no logical explanation offered by a member of Adams & Diaco, P.A. as to why someone could not simply walk the briefcase over to the Shumaker firm, which was located in the same building, or why Mr. Campbell or anyone at Shumaker, Loop & Kendrick, LLP and Kendrick was not notified. (RR 35; TR I, P 131, L 17-21; TFB Exh. 14, P 60, L 5-15, P 65, L 21-25, P 66, L 1-11,

P 68, L 9-25). Respondent then erased his cell phone records and got rid of his phone. (RR 39, 64; TR I, P 132, L 21-25, P 133, L 1-2, P 134, L 12-25, P 135, L 1-4).

C. The Standards for Imposing Lawyer Sanctions and Case Law Support Permanent Disbarment as the Appropriate Sanction

The Standards for Imposing Lawyer Sanctions serve as guidelines for the referee in determining the appropriate sanction. The Standards do not distinguish between permanent disbarment versus disbarments of varying lengths of time. In recommending permanent disbarment, the Referee considered the duties violated to the public and the legal system, and the potential or actual injury caused by Respondent' misconduct. (RR 57-58). The Referee properly relied on the following Standards:

Standard 5.1 Failure to Maintain Personal Integrity

5.11 Disbarment is appropriate when:

(f) a lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice.

Standard 6.1 False Statements, Fraud, and Misrepresentation

6.11 Disbarment is appropriate when a lawyer:

(a) with the intent to deceive the court, knowingly makes a false statement or submits a false document; or

(b) improperly withholds material information, and causes serious or potentially serious injury to a party, or causes a significant or potentially significant adverse effect on the legal proceeding.

Standard 7.0 Violations of Other Duties Owed as a Professional

7.1 Disbarment is appropriate when a lawyer intentionally engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the lawyer or another, and causes serious or potentially serious injury to a client, the public, or the legal system.

Respondent incorrectly states that the Referee relied on Standard 4.0 (“Violations of Duties Owed to Clients”). (IB 41). The Report of Referee does not mention that the Referee considered Standard 4.0. Therefore, Respondent’s argument that the facts in this case do not support the failures indicated in Standard 4.0 is without merit.

The evidence also supports the aggravating factors found by the Referee pursuant to Standard 9.0. The Referee found five (5) aggravating factors: (1) Respondent displayed a dishonest or selfish motive in that he acted solely to gain an advantage in the *Schnitt v. Clem* case (RR 58; Fla. Stds. Imposing Law. Sancs. 9.22(b)); (2) Respondent exhibited a pattern of misconduct (RR 58; Fla. Stds. Imposing Law. Sancs. 9.22(c)); (3) Respondent committed multiple offenses (RR 58; Fla. Stds. Imposing Law. Sancs. 9.22(d)); (4) Respondent submitted false evidence, false statements, or committed other deceptive practices during the

disciplinary process (RR 58; Fla. Stds. Imposing Law. Sancs. 9.22(f)); and (5) Respondent has substantial experience in the practice of law. (RR 57, 58; Fla. Stds. Imposing Law. Sancs. 9.22(i)). As a result, Respondent's conduct warrants permanent disbarment.

D. Respondent's Conduct Warrants a Harsher Sanction than Disbarment with Leave to Apply.

Respondent's choices directed not only the events on January 23, 2013, and January 24, 2013, but also the disciplinary proceeding. The evidence shows the Respondent destroyed and/or concealed evidence to obstruct the truth and made misrepresentations and omissions of material fact to the court, to third parties, and to the Bar. Respondent failed to disclose a key witness, Kristopher Personius, in response to The Bar's interrogatories. (RR 18, 64). This was unlikely an oversight since Mr. Personius' knowledge of the events was apparently important enough for Respondent's firm to pay \$2,500 to an attorney to represent Mr. Personius with regard to the FBI investigation. (RR 18; TR VI, P 867, L 17-19, P 868, L 7-23, P 869, L 18-25, P 870, L 1-4; TFB Exh. 65). In *Florida Bar v. Williams*, 604 So. 2d 447 (Fla. 1992), this Court disbarred Williams for making false and misleading statements during the disciplinary process and for failing to maintain personal

integrity. The Court stated that dishonesty and a lack candor cannot be tolerated in a profession that is built upon trust and respect for the law. *Id.* at 451.

The Bar attempted to depose Respondent twice, but he refused to answer any questions regarding his conduct. (RR 4, 25; TR I, P 95, L 4-11). It was not until the morning of the final hearing that Respondent claimed to have fully grasped that his privilege to practice law was in jeopardy, and decided to testify. (RR 64; TR I, P 95, L 12-22). The Referee found that Respondent's testimony at the trial was constructed to admit only those facts revealed during discovery, which Respondent knew he could not deny, and which presented Respondent in the most favorable light. (RR 25; TR I, P 101-183). Respondent testified about text messages and phone communications between Mr. Diaco, Mr. Filthaut, and Ms. Personius, which he had deleted from his phone. (RR 25-26; TR I, P 134, L 12-25, P 135, L 1-4). The Referee found that the Respondent's testimony at the eleventh hour was unverifiable, defied logic, and was inconsistent with the other evidence presented at the trial. (RR 26). This Court has held that the referee is in the best position to evaluate the demeanor and credibility of the witnesses and to evaluate the weight of the evidence introduced at trial. *Florida Bar v. Forrester*, 656 So. 2d 1273 (Fla. 1995) (quoting *Florida Bar v. Marable*, 645 So. 2d 438 (Fla. 1994)). The Referee found Respondent's testimony was not credible. (RR 26).

The Bar called Robert S. Frankl, a chiropractor from Miami Shores, to testify against Respondent at the sanctions hearing. (RR 59, SHTR I, P 10, L 8-11). Dr. Frankl contacted Mr. Campbell after reading a newspaper article regarding Mr. Campbell's DUI arrest and the involvement of Adams & Diaco, P.A. (RR 61; SHTR I, P 54, L 21-23, P 91, L 2-25, P 92, L 1-2). Dr. Frankl recounted an encounter with Respondent in September 2009, when Respondent represented Progressive Insurance Company in a suit by Dr. Frankl over unpaid fees. (RR 59-60; SHTR I, P 11, L 3-23). Two days before the trial in the case, two young women arrived at Dr. Frankl's office for chiropractic consultations, allegedly for auto accident injuries. (RR 60, SHTR I, P 13, L 19-25, P 14, L 1-25, P 15, L 1-3, P 16, L 17-25, P 17, L 1-22). The women gave false names and phone numbers and said they did not have insurance. (RR 60; SHTR I, P 18, L 9-22, P 20, L 1-5). Dr. Frankl made appointments for both women to return the following week, but neither appeared for the appointment. (RR 60; SHTR I, P 18, L 23-25, P 19, L 1-6). (RR 60; SHTR I, P 22, L 6-18). The next week, Dr. Frankl arrived at the Progressive trial and noticed the defense had large blown-up photos of his office which had been taken recently. (RR 60; SHTR I, P 23, L 15-25, P 24, L 1-10). The trial ended in a verdict for Progressive Insurance. (SHTR I, P 45, L 5-8).


When Dr. Frankl returned to his office after trial, due to curiosity he checked his phone log to find the initial call from one of the women. (RR 60; SHTR I, P 24, L 16-25, P 25, L 1-17). Dr. Frankl then searched the name on the internet and found a picture of one of the women, who he discovered was a paralegal in the Miami office of Adams & Diaco, P.A. (RR 60; SHTR I, P 25, L 18-25, P 26, L 1-25, P 27, L 1-6). Dr. Frankl immediately suspected that the purpose of the women's visit was to attempt to lure him into committing insurance fraud by agreeing to reduce his fee. (RR 60-61; SHTR I, P 27, L 4-17). Dr. Frankl filed a complaint with the Division of Consumer Services of the Florida Department of Financial Services. In its response to Dr. Frankl's complaint, Progressive Insurance acknowledged that two non-attorney employees of Respondent took pictures of Dr. Frankl's office. (RR 61-62; SHTR I, P 53, L 6-19; SHTFB Exh. 3).

Respondent's conduct shows that he will use any means to gain an advantage. Respondent is willing to resort to underhanded and unethical methods in order to accomplish an objective. (RR 62-63). Respondent's pattern of misconduct spans years and such behavior is not amenable to change. Based on Respondent's misconduct, the evidence presented, and the testimony at trial, the Referee correctly concluded that Respondent be permanently disbarred.

As set forth above and in detail in the Report of Referee, the record contains substantial, competent evidence that clearly and convincingly supports the Referee's recommended discipline of permanent disbarment. This Court has stated, "[I]f the discipline does not measure up to the gravity of the offense, the whole disciplinary process becomes a sham to the attorneys who are regulated by it." *Florida Bar v. Wilson*, 425 So. 2d 2, 4 (Fla. 1983). The taxation of costs is also within the discretion of the referee. *Florida Bar v. Carr*, 574 So. 2d 59 (Fla. 1990). Respondent has failed to show that the referee's decision to assess costs is an abuse of discretion.

CONCLUSION

This Court should adopt the referee's recommendation of discipline. This recommendation of permanent disbarment and payment of The Bar's costs is consistent with existing case law and The Florida Standards for Imposing Lawyer Sanctions.



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CERTIFICATE OF SERVICE

I certify that this document has been E-Filed with The Honorable John A. Tomasino, Clerk of the Supreme Court of Florida, using the E-Filing Portal and that a copy has been furnished via electronic mail to William F. Jung, Counsel for Respondent, to his record Bar e-mail address of wjung@jungandsisco.com; via electronic mail to Gregory W. Kehoe and Danielle S. Kemp to their official Bar e-mail addresses of kehoeg@gtlaw.com and kempd@gtlaw.com, and to meyerp@gtlaw.com, rechtinh@gtlaw.com and flservice@gtlaw.com; via electronic mail to Joseph A. Corsmeier, to his record Bar email address of jcorsmeier@jac-law.com; via electronic mail to Mark J. Brien, to his record Bar email address of mjo@markjobrien.com; and via electronic mail to Adria E. Quintela, Staff Counsel, The Bar, to her designated email address of aquintel@floridabar.org on this 10th day of February, 2016.



Jodi Anderson Thompson, Bar Counsel

CERTIFICATE OF TYPE, SIZE AND STYLE AND ANTI-VIRUS SCAN

Undersigned counsel does hereby certify that this Brief is submitted in 14 point proportionately spaced Times New Roman font, and that this brief has been filed by e-mail in accord with the Court's order of October 1, 2004. Undersigned counsel does hereby further certify that the electronically filed version of this brief has been scanned and found to be free of viruses, by Norton AntiVirus for Windows.



Jodi Anderson Thompson, Bar Counsel