

**IN THE SUPREME COURT
STATE OF MISSOURI**

IN RE:

CHELSEA KAY MERTA,
Respondent.

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Supreme Court #SC100236

INFORMANT'S BRIEF

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STATEMENT OF JURISDICTION

Jurisdiction over attorney discipline matters is established by Article 5, Section 5 of the Missouri Constitution, Supreme Court Rule 5, this Court's common law, and Section 484.040 RSMo 2000.

STATEMENT OF FACTS

INFORMATION AND STIPULATION

On February 8, 2022, Informant filed an Information against Respondent regarding the misappropriation of client and law firm data and violations of the Temporary Restraining Order (“TRO”) in the subsequent civil lawsuit. **R. 1.**

On March 14, 2023, Informant and Respondent submitted to the Advisory Committee a Joint Stipulation of Facts, Joint Proposed Conclusions of Law, and Joint Recommendations for Sanction. **R. 33.**

On July 7, 2023, the DHP adopted the facts, conclusions, and recommendations set forth in the joint stipulation. **R. 261.** Both parties notified the Advisory Committee of their acceptance of the DHP’s decision. **R. 285-86.**

On October 23, 2023, this Court rejected the DHP decision as accepted by the parties and ordered briefing and oral argument.

STIPULATED FACTS

1. Respondent, Chelsea Kay Merta, was licensed as an attorney in Missouri on or about September 17, 2014. Respondent’s Missouri Bar number is 66876. **R. 33.**

2. Respondent has no disciplinary history. **R. 33.**

3. The address Respondent designated in her most recent registration with this Court and The Missouri Bar is P.O. Box 63374, St. Louis, MO 63163. **R. 33.**

4. Respondent was employed by The Stange Law Firm from June 20, 2016, through February 9, 2018, when she resigned to open a solo practice operating under the name Lotus Law and Legal Services, LLC (the “Lotus Firm”). **R. 34.**

5. Before resigning, Respondent deleted work product she created while working for clients of The Stange Firm from her law firm-issued laptop, and client-related text messages and emails on her law firm-issued smart phone. In addition, without permission, she took Stange Firm client files and downloaded client and other information from The Stange Firm to a USB flash drive. **R. 34.**

6. At the time, all the clients were still clients of The Stange Firm. **R. 34.**

7. Upon learning of the deleted data, The Stange Firm filed a lawsuit against Respondent in Saint Louis County Circuit Court (the “Circuit Court”), being captioned Stange Law Firm, P.C. vs. Chelsea Merta, et al., Cause No. 18SL-CC00540 (the “Lawsuit”), to compel the return of all Stange Firm information and documents, and the return of all files of Stange Firm clients (collectively, the “Stange Property”). In addition, the Amended Complaint included the following four counts of alleged wrongdoing:

- a. Count 1: Violation of the Missouri Computer Tampering Act
- b. Count 2: Breach of Contract
- c. Count 3: Breach of Duty of Loyalty
- d. Count 4: Breach of Fiduciary Duty

R. 34-35.

8. Respondent retained counsel to defend her in the lawsuit filed by The Stange Firm and she relied on her counsel to manage the production of information to The Stange Firm’s counsel in compliance with the Temporary Restraining Order discussed below. **R. 35.**

9. On February 16, 2018, the Circuit Court entered a Temporary Restraining Order ("TRO") in the Lawsuit which was consented to by Respondent and required Respondent to return all The Stange Property to The Stange Firm. Specifically, Respondent was ordered to "immediately and no later than 5 pm on February 20, 2018, return to counsel for plaintiff [The Stange Firm] any and all [Stange Firm]-related files, documents and/or information in [Respondent's] possession or control . . ." However, the TRO provided that Respondent was **not** "required to return such documents if they specifically pertain[ed] to clients that [had] already retained [Respondent] as counsel [and had] terminated their relationship with [Respondent]." The TRO also required Respondent to preserve "all electronic, computer and paper records (including those being returned) constituting or containing Stange Law Firm current or former client-related files and/or information . . ." The TRO also enjoined Respondent from "accessing, viewing and/or using" any of the files, including the files pertaining to the client that had decided to retain Respondent as counsel. **(See Exh. 2, R. 159); R. 35-36.**

10. Initially, Respondent returned files for four clients. On February 22, 2018, Respondent provided hundreds of pages of law firm-related documents in response to the TRO. On June 4, 2018, Respondent's counsel informed The Stange Firm's counsel that he had in his possession the USB flash drive that Respondent was accused of using to take The Stange Firm documents. On September 28, 2018, Respondent's counsel provided the flash drive to The Stange Firm's counsel. **R. 36.**

11. The Stange Firm conducted a forensic analysis on the flash drive. The forensic analysis revealed that there were a considerable number of Stange Firm-related documents, files and information on the flash drive that had not been returned to the Stange Firm by the deadline set forth in the TRO, including upwards of 75 Stange Firm client files. **R. 36.**

12. Respondent's failure to return all the Stange Property timely was in direct violation of the TRO. As a result, on November 16, 2018, The Stange Firm filed a Motion for Civil Contempt against Respondent, and the Circuit Court issued a show cause order. **R. 36.**

13. On January 9, 2019, the Circuit Court entered an Order and Judgment of Contempt against Respondent and the Lotus Firm finding that Respondent and the Lotus Firm "had intentionally and willfully" failed to comply with the Court's TRO. **(See Exh. 3, R. 161).** The Circuit Court awarded The Stange Firm its costs and attorney's fees and ordered Respondent to turn over to The Stange Firm's forensic expert all her computer devices, cell phones and USB drives by 3:00 pm on January 11, 2019; and provide her login credentials for email and cloud accounts. **R. 36-37.**

14. On February 25, 2019, the Stange Firm filed a second Motion for Contempt and Motion to Show Cause, in which it asserted that, while Respondent had timely turned over her laptops and other devices to The Stange Firm's forensic consultant on January 10, 2019, in accordance with the Court's January 9, 2019 Order, Respondent violated the TRO because her computer still contained some of the Stange Firm's files. **(See Exh. 4, R. 169).** However, the TRO had also provided that "[Respondents] shall

preserve any and all electronic, computer & paper records (including those being returned) constituting or containing SLF current or former client-related files and/or information until further order of the court or agreement of the parties.” (See **Exh. 2, R. 159**); **R. 37**.

15. On March 3, 2019, Respondent filed for protection under Chapter 13 of the U.S. Bankruptcy laws and an automatic stay went into effect, staying all litigation against Respondent pursuant to 11 U.S.C. § 362. (See **Exh. 5, R. 179**); **R. 37**.

16. While the stay was in effect, on June 7, 2019, the Circuit Court granted The Stange Firm’s motion to show cause, ordering Respondent and her counsel to appear in the Circuit Court on June 14, 2019, at 1:30 pm to show cause why they should not be held in contempt of court again. (See **Exh. 6, R. 180**). On June 14, 2019, a hearing was held, and the Court issued an order stating that it was reserving ruling on the show cause order “pending developments from the bankruptcy court.” (See **Exh. 7, R. 185**); **R. 37**.

17. On June 25, 2019, The Stange Firm filed a notice of hearing for an evidentiary hearing on its motion for contempt, and other matters, to be heard on July 9, 2019 at 3:00 pm. Respondent failed to appear for that hearing at the advice of counsel, who was asserting that the bankruptcy stay was still in effect. The Circuit Court heard evidence at that time, over the objection of Respondent’s counsel. (See **Exh. 8, R. 186**); **R. 37-38**.

18. The following day, on July 10, 2019, the Circuit Court issued a second judgment of contempt based, in part, on the testimony it heard the previous day. (See

Exh. 9, R. 187). In that Order, Respondent was adjudged in contempt for a second time.

The Circuit Court found:

(a) Respondent delivered her laptop and other devices three months later than ordered to do so (even though The Stange Firm's motion stated that Respondent turned over her devices timely (**See Exh. 4, R. 169**));

(b) [d]espite [Respondent] having been previously ordered to provide all current account and e-mail credentials, [the forensic specialist] discovered a google drive account that he had never known about, without valid credentials, and a box account where the password had been changed (again, in violation of previous court orders), and

(c) credible the inference that [Respondent] and her legal assistant were transferring documents to the box account and the cloud account for the purpose of hiding them in advance of another motion for contempt, especially as she did not fully comply with the court's January 9, 2019, orders finding her in contempt.

(See Exh. 9, R. 187); R. 38.

19. The Circuit Court also found in the July 10, 2019, order, that Respondent's actions were "willfully and intentionally committed, [were] contumacious, insolent and directly tending to impair the respect and authority due to any court, including this one".

The Court found further that Respondent was in “flagrant and blatant contempt of [the] Court's Judgments and Orders for her willful and contumacious refusal to comply with the Judgments of [the] Court ...” In its Judgment, the Court also stated that both parties’ counsel represented that the bankruptcy court stated that it intended to issue an order remanding the case to the Circuit Court. **(See Exh. 9, R. 187); R. 38-39.**

20. As a result of Respondent’s repeated disregard of the Circuit Court’s orders, on July 10, 2019, the Circuit Court sentenced Respondent to imprisonment in the St. Louis County Department of Justice Services for a period of forty-eight (48) hours and issued a warrant for her arrest. An Amended Warrant was issued on the same day. **(See Exhs. 10 and 11, R. 194-97); R. 39.**

21. On July 15, 2019, Respondent’s counsel filed a Petition for Writ with the Missouri Court of Appeals, Eastern District, alleging that, due to the bankruptcy court proceeding, the Circuit Court lacked jurisdiction to find Respondent in contempt and to issue a warrant for her arrest. Cause No. ED 108039. On July 15, 2019, the Court of Appeals issued a Preliminary Order in Prohibition staying enforcement of the amended warrant and commitment order. **(See Exh. 12, R. 199).** The Circuit Court later quashed the Warrant pending further orders from the Court of Appeals. **(See Exh. 13, R. 201); R. 39.**

22. On July 17, 2019, the bankruptcy court remanded the case to the Circuit Court. **(See Exh. 14, R. 202).**

23. On July 26, 2019, the Court of Appeals quashed the preliminary order of prohibition and denied the Petition for Writ. **(See Exh. 15, R. 205); R. 39.**

24. On July 29, 2019, the Circuit Court issued a Second Amended Warrant and Commitment for Respondent to serve 48 hours in jail, based on the July 10, 2019, contempt order. **(See Exh. 16, R. 206).** Respondent served the 48-hour jail sentence. **R. 39.**

25. On or about August 2, 2019, The Stange firm notified its clients that one of its former attorneys had accessed and taken information associated with many clients and former clients. The firm told its clients that it had no reason to believe that the attorney who took the information had disclosed, or intended to disclose, any of the information to third parties, or had used the information or intended to use it, to anyone's personal or financial disadvantage. **(See Exh. 17, R. 209); R. 40.**

26. On September 17, 2019, the Circuit Court entered a Supplemental Order and Judgment Against Respondent and Lotus Law regarding the contempt findings, awarding the Stange Firm \$218,414.99 in costs and attorney's fees. **(See Exh. 18, R. 212); R. 40.**

27. On September 20, 2019, Respondent executed a Confession of Judgment and Permanent Injunction, filed in the Circuit Court, wherein, among other items, she confessed judgment on Counts 1- 4 of the Amended Complaint and confessed that, prior to her resignation from The Stange Firm, she:

- (a) transferred approximately 22,000 data files from [The Stange Firm] onto a portable USB flash drive without authorization from [The Stange Firm]. The data files that were transferred to the portable USB flash

drive included files from [The Stange Firm's] clients and [The Stange Firm]. [Respondent] took the flash drive containing these files and, upon her resignation (despite representations to the contrary during her exit interview with [The Stange Firm]) retained the files. Many of those files were later found to be contained on [Respondent's and the Lotus Firm's] MacBook Pro computers and cloud storage accounts.

(b) Prior to her resignation and without authorization from [Stange Firm], Respondent tampered with, deleted, and wiped her [Stange Firm] computer, her [Stange Firm]-issued smart phone, and other storage locations of all data, including data related to [Stange Firm's] clients and [Stange Firm].

(See Exh. 19, R. 220); R. 40.

28. On September 24, 2019, the Circuit Court entered an Amended Judgment and Permanent Injunction. **(See Exh. 20, R. 225); R. 41.**

29. No Notice of Appeal from the judgment was filed. **R. 41.**

30. On November 21, 2019, Respondent and The Stange firm entered into a confidential settlement agreement. **(See CONFIDENTIAL Exh. 22, R. 228); R. 41.**

STIPULATED VIOLATIONS

In addition to the preceding facts, the parties stipulated that Respondent violated:

- a. Rule 4-8.4(c) by misappropriating confidential information belonging to The Stange Law Firm and by removing client files without the knowledge or consent of all clients whose files were taken, which acts constitute conduct involving dishonesty, fraud, deceit, or misrepresentation,
- b. Rule 4-3.4(c) by knowingly and repeatedly disobeying the rules of a tribunal as evidenced by Respondent's failure to comply with the TRO and the January Order, thereby necessitating the Circuit Court's issuance of the July Order, and
- c. Rule 4-8.4(d) by knowingly and repeatedly failing to comply with orders of the Circuit Court and thereby engaging in conduct prejudicial to the administration of justice.

R. 41-42.

The parties stipulated that the most serious instance of misconduct among the violations was Respondent's intentional, willful, and contumacious failure to return the misappropriated data pursuant to the agreed-to TRO. (Rule 4-3.4(c)) (knowingly disobeying an obligation under the rules of a tribunal) and (Rule 4-8.4(d)) (engaging in conduct that was prejudicial to the administration of justice). **R. 43.**

STIPULATED AGGRAVATORS AND MITIGATORS

In addition, the parties stipulated to certain aggravating and mitigating factors:

An aggravating factor in this case is the presence of "multiple offenses."

(ABA Standard 9.22(d)). The reason there was a lawsuit was to recover the

client and law firm data which was misappropriated by the Respondent. Taking client files without permission jeopardized established lawyer-client relationships and breached client confidentiality. (Rule 8.4(c)). **R. 45-46.**

...

The following are mitigating factors as set forth under the ABA standards:

(a) Inexperience in the practice of law (ABA Standard 9.32(f)): At the time of the events related to this charge, Respondent was inexperienced. She graduated St. Louis University Law School in 2014. At the time she left The Stange Firm, she had been practicing law for about three years.

(b) Imposition of other penalties or sanctions (ABA Standard 9.32(k)):

- i. Respondent was financially sanctioned as a contempt sanction.
- ii. Respondent spent two days in St. Louis County jail as a contempt sanction.
- iii. As a result of the lawsuit with The Stange Firm, Respondent was forced to file bankruptcy.

(c) Full and free disclosure to the disciplinary board or cooperative attitude toward the proceedings (ABA Standard 9.32(e)): Respondent has made full and free disclosure to the OCDC, has hired counsel to defend her in this proceeding and has been cooperative in resolving this matter.

(d) Absence of prior disciplinary record (ABA Standard 9.32(a)): Respondent has no prior disciplinary record.

(e) Character or reputation (ABA Standard 9.32(g)):

- i. Except for her 18-month stint working for The Stange Firm, Respondent has devoted her legal career to public service. After law school, she ran for an alderman position in the 7th Ward of the City of St. Louis. When she was not successful in her campaign, she began working for Arch City Defenders in 2015 representing homeless and low-income clients in criminal and family law matters. She worked there until January 2016, when she was laid off for budgetary reasons.
- ii. After leaving the Stange Firm in February 2018, Respondent opened her own firm, Lotus Law & Legal Services, LLC. Initially, she handled criminal and family court matters. Most of those clients were referred to her by Arch City Defenders and Legal Services of Eastern Missouri. Those agencies referred clients to Respondent who did not meet the agencies' income requirements because they knew that Respondent would work with them on fees and had a low initial retainer requirement. Currently, a majority of Respondent's practice relates to civil rights matters, helping people without easy access to the justice system. Most of her clients cannot afford to pay her very much for her services, and many times she does not get paid.

- iii. Over the course of her career, Respondent has served the community as a public servant and community activist. She has spoken at events for the St. Louis Young Democrats and for the organization, Show Me Integrity, on First Amendment issues, including protester rights, Sunshine laws, and the Freedom of Information Act. She was a founding member of both the Young Friends of Operation Brightside St. Louis and the St. Louis chapter of the Red Shoe Society for Ronald McDonald House Charities. She is also the Editor-in-Chief for the St. Louis Observer, a newsletter committed to expanding and investing in coverage of the fight for police and prison reform. She has also been a board member for Young Friends of Missouri Botanical Garden.
- iv. Respondent used the two days she spent in jail to assess the inadequate conditions for inmates, and after her release, she used her observations to lobby for improved conditions. She subsequently met with Sam Page, the St. Louis County Executive, to share her observations while lobbying for better services. She was able to obtain more availability of feminine products for inhabitants of the jail and, the following holiday season, she organized a book drive for the jail.

(f) Remorse (ABA Standard 9.32(1)): Respondent is very remorseful about the events that occurred at The Stange Firm and during the subsequent litigation. She understands that she did not handle matters correctly and she wishes that she had handled matters pursuant to the ethical rules. She has learned from her mistakes, and she is determined not to repeat her mistakes.

R. 45-48.

In addition, the parties stipulated that the following factors may be considered in mitigation even though they do not necessarily fall within the *ABA Standards*:

(a) When Respondent left the Stange Firm and deleted data from her firm-issued laptop and cell phone, all client file material was preserved on The Stange Firm's cloud storage, so no client data was lost or destroyed.

(b) When Respondent left The Stange Firm, several clients requested in writing that she continue to represent them. In fact, within about 30 days after leaving the firm, she had to cover a deposition, an order of protection hearing, a pretrial conference and a default judgment hearing for clients that chose to stay with her. Respondent was able to continue to represent those clients without interruption.

(c) The Stange Firm informed its clients that none of their confidential information was at risk of being disclosed to third parties, and Respondent was not intending to use their information for anyone's personal or

financial disadvantage. There is no evidence that a client was harmed or that any client was concerned about being harmed by this incident.

(d) Respondent, and the work she has done for underserved clients, have already suffered because of the negative publicity caused by The Stange Firm lawsuit, the Circuit Court's finding of contempt, and the subsequent warrant for her arrest. As a result of that publicity, at least one federal judge stated in an order that he was removing Respondent from an appointed case. Respondent has not been appointed to a federal case since that time. As a result of the negative publicity, the Family Law Section of the Missouri Bar removed Respondent as a speaker on the panel of the annual conference in 2019 and has since stopped asking her to summarize case law for their bulletin and stopped asking her to speak at their conferences. It is likely that further negative publicity from any public sanction entered as a result of this proceeding will further hamper Respondent's ability to represent underserved clients and will be a detriment to people in that community.

(e) An actual suspension of Respondent's license or disbarment will cause great harm to the underserved clients and potential clients she represents because it is unlikely, they will find affordable counsel elsewhere. Those clients do not qualify to be represented by agencies such Arch City Defenders or Legal Services, and they cannot afford to pay fees that are charged by lawyers under traditional fee agreements. There are very few

lawyers who are willing to represent clients under the fee arrangements that Respondent accepts.

R. 49-50.

The parties presented a sanction analysis and jointly recommended that Respondent be suspended from the practice of law indefinitely with leave to apply for reinstatement in eighteen months, with the suspension stayed for a term of probation for eighteen months according to the attached Terms of Probation. (See **Exh. 23, R. 238**); **R. 51-53.**

DISCIPLINARY HEARING

On June 26, 2023, the parties appeared for the disciplinary hearing through counsel. The Respondent, Ms. Merta, was present. **Tr. 1, R. 60.** The DHP accepted as evidence the parties' Joint Stipulation of Facts, Joint Proposed Conclusions of Law, and Joint Recommendations for Sanction with Exhibits 1-23 ("Joint Stipulation"). **Tr. 13, R. 72.**

Respondent was sworn. She testified she read and signed the Joint Stipulation without duress or coercion. **Tr. 13-14, R. 72-73.** She agreed with the recommendation therein that she be suspended from the practice of law for eighteen months, with the suspension stayed, and be placed on probation for eighteen months. **Tr. 14, R. 73.**

On cross-examination by her counsel, Respondent gave additional testimony.

Respondent testified about her various post-graduate jobs. Following her sixteen months at The Stange Firm, Respondent started her own firm, Lotus Law and Legal Services, LLC. She handled smaller family court matters, occasional traffic violations, and a series of §1983 cases. **Tr. 20, R. 79.**

Respondent testified that client files were stored in the cloud, on NetSuite, and on lawyers' laptops. **Tr. 22, R. 81.** When she decided to leave the firm, Respondent "wiped" her laptop and phone, deleting whatever client information she had. **Tr. 22-23, R. 81-82.** Her reasoning was that she believed the firm would go through everything on her devices, including personal logins, emails, and social media accounts. Because "everything had been saved in the [c]loud locations...I did not feel like the firm lost anything." **Tr. 22, R. 81.**

In addition, without permission, Respondent "downloaded some client files onto a flash drive." **Tr. 22, R. 81.** Respondent believed that without her files, she would be impeded by the firm from adequately representing any clients who chose to remain with her. **Tr. 23, R. 82.** "I had depositions scheduled, I had an order of protection hearing, I had a - - numerous settlement conferences and court settings that I had to prepare for in the three weeks that followed my departure." **Tr. 23, R. 82.**

Respondent admitted that she understood her actions "to be a risk," but did not believe she was violating the rules of professional responsibility. **Tr. 24, R. 83.** She claimed her "intent at the time was just to ensure that my clients and I had access to their files when I left." **Tr. 24, R. 83.**

Respondent claimed she was unaware there were other forms or Stange information she downloaded.

I did not know that those files were on there. The documents that I was - - that I thought I had copied were what we call our templates file. It was an accessible file in the [c]loud that

everyone had access to that had, like, sample documents of, like, divorce petitions, complex TROs that had previously been filed.

...

I was under the impression that what I had saved on that flash drive was just the templates. I did not know that the firm also stored other items in the file named templates.

Tr. 25, R. 84.

Respondent testified that she has much regret and remorse for the way that she left.

I don't think I was - - I expected this sort of reaction. And I - - I - - I wish I had a better understanding of the ethical code of conduct at the time because there were so many ways that I could have avoided all of this.

...

But I very - - I very much regret the manner that I left because I understand the problems with how I did.

Tr. 25, R. 84.

Within 48 hours of her leaving the firm, "18 or 19 out of 20 [or] 21 clients" provided written permission to remain with Respondent at her new practice. **Tr. 26, R. 85.**

Following the filing of The Stange Firm lawsuit against Respondent and her new law firm, Respondent hired her neighbor, Rob Schmittgens, as her lawyer. According to Respondent, Mr. Schmittgens had been out of law school for “maybe about two years.” **Tr. 27, R. 86.**

On February 16, 2018, at a hearing with counsel present, the parties entered a consent TRO. Mr. Schmittgens signed the handwritten document. **(See Exh. 2, R. 159).** Respondent testified that she was not present in court and did not see the document before counsel signed it. **Tr. 27-28, R. 86-87.**

Respondent testified that the TRO contained a contradiction because she was allowed to keep the data for the clients that remained with her but was not allowed to access or view that data. **Tr. 29, R. 88.**

According to Respondent, Mr. Schmittgens called her and sent her a copy of the TRO. That evening, Respondent “walked over to his apartment and hand delivered [her] flash drive to him.” **Tr. 30, R. 89.** Respondent “trusted [her] attorney to follow the court order because I gave him what he needed to - - to follow through.” **Tr. 30, R. 89.**

Respondent testified that as the defendant, she recognized she had the responsibility to make sure the flash drive was returned to The Stange Firm. She “wish[ed] [she] would have followed through and checked in with [her lawyer] more often, [b]ut when [she] did speak with him, he assured [her] that everything was fine.” **Tr. 31, R. 90.**

Seven months later, on September 28, 2018, before The Stange Firm filed its motion for contempt, Mr. Schmittgens provided the flash drive to The Stange Firm's counsel. **Tr. 31, R. 90.**

For the contempt hearing, Respondent fired Mr. Schmittgens and hired attorney Eric Kayira. **Tr. 32, R. 91.** Respondent testified that Mr. Kayira advised her not to attend the hearing. She did not know why. **Tr. 32, R. 91.** On January 9, 2019, the Circuit Court entered an Order and Judgment of Contempt against Respondent and her law firm. **(Exh. 3, R. 161).**

Pursuant to the Circuit Court's order, Respondent delivered her devices and passwords to plaintiff's experts. **Tr. 32-35, R. 91-94.**

Respondent testified that on March 3, 2019, she filed for Chapter 13 bankruptcy due to the costs of the lawsuit, the clients that she served, and her full-time employee. **Tr. 35, R. 94.** Despite the automatic stay, The Stange Firm filed a second Motion for Contempt and to Show Cause that while Respondent had timely turned over her laptops and other devices on January 10, Respondent violated the TRO because her computer still contained some Stange files. **Tr. 36, R. 95.**

The Stange Firm issued a notice of an evidentiary hearing on the motion for contempt for July 9, however, Respondent testified that both Mr. Kayira and her bankruptcy attorney advised her not to attend: "[Both] told me to not appear and not dignify the jurisdiction of the Court because of the stay." **Tr. 37, R 96.** "[T]he Court heard evidence without [me] being there to explain what was going on." **Tr. 37, R 96.**

On July 10, 2019, the Circuit Court issued its second Order and Judgment of Contempt and sentenced Respondent to imprisonment in the St. Louis County Department of Justice Services for a period of forty-eight (48) hours. **(See Exh. 9, R. 187).**

Despite the inference found by the Circuit Court judge that Respondent was transferring files to the Box account and cloud, Respondent insisted she was storing only her new firm's client files to actively work those cases. Respondent denied "transferring Stange files to the [c]loud account." **Tr. 41, R. 100.**

Respondent testified she was handcuffed, marched through the courthouse, taken across the skywalk down the elevator and to booking and processing at the St. Louis County Jail. **Tr. 46, R. 105.** Respondent waited to be processed "for probably 13 hours." She went through booking and processing, turned over all her things. "They took my hair tie. And they brought me into holding where everyone else was." **Tr. 46, R. 105.** She was there from 3:30 p.m. until 6 a.m. the next morning. "I got a mugshot. I got fingerprinted. They had me strip down, take a shower. I had to do the whole bend and cough thing in front of them." **Tr. 47, R. 106.**

Respondent testified that she did not want her time in jail to be wasted. She took notes on everything she observed and heard from other inmates about the conditions, quality of food, and quality of bedding. **Tr. 47-49, R. 106-108.** After her release, "a meeting was arranged between the then interim Jail Director Troy Boyle and County Executive Sam Page, and they both let me just tell them everything that was wrong in the jail, everything that I had observed from the inside." **Tr. 49, R. 108.** Consequently, "I

know that...period products for women were no longer charged after I left. That was one thing that I raised was menstruation products were costly, and that changed. I know some produce contracts changed and some textile contracts were changed afterward.” **Tr. 49, R. 108.** Respondent testified that she did a book drive and collected “like a thousand books for the jail library.” “I recognized problems that were there and, I did what I could do to address it, because I didn’t - - I didn’t want that to be a waste of time.” **Tr. 50, R. 109.**

Respondent testified that her ordeal has negatively affected her reputation in the legal community:

I used to do presentations for the Missouri Bar for CLEs, and that got. . . I was supposed to speak at the family law - - annual family law conference, and like, three days before they contacted me and said I wasn’t going to be speaking anymore. Then they just stopped contacting me.

...

I used to write summaries for the Missouri Bar Journal of case law that had come down from the Missouri Supreme Court, volunteered my time for that, and they stopped contacting me. They don’t even, like, bother to omit my emails anymore. It’s been hard.

Tr. 55-56, R. 114-115.

Following Respondent's testimony, attorney Elizabeth Ramsey was called as a character witness and sworn. Ms. Ramsey met Respondent in law school. They "ended up working on some cases together since then." **Tr. 63, R. 122.** Ms. Ramsey elaborated:

One has been a post-conviction innocence investigation that we had been working on for quite some time. We've also worked on a criminal case that had family components in conjunction where she handled more of the family court elements, and I handled the criminal defense elements of the cases.

...

I've gotten to see her put in an incredible amount of dedication to the cases, especially the post-conviction case that we've been working on. Detail-oriented work. I've seen her comb through documents very well, put a lot of care into it. I mean, I cannot tell you the amount of unpaid hours she has put into that case simply because she believes in our client and his innocence.

...

I think that she is a lawyer who honestly cares about her clients. I think it is just to a level that I think it is hard to find. I think that she really cares about her clients and this city,

honestly. I think that she contributes something really great
and unique to the legal profession.

Tr. 64-66, R. 123-25.

Finally, two letters of good character were accepted into evidence, one from former Circuit Attorney for the City of St. Louis, Dee Joyce Hayes, and the second from attorney Ben McIntosh. **(See Exhs. C and D, R. 258-59).**

The case was submitted for decision by the DHP.

POINT RELIED ON

I.

RESPONDENT IS SUBJECT TO DISCIPLINE FOR VIOLATING THE FOLLOWING RULES OF PROFESSIONAL CONDUCT:

[A] RULE 4-8.4(C) IN THAT SHE MISAPPROPRIATED CONFIDENTIAL INFORMATION BELONGING TO THE STANGE LAW FIRM AND BY REMOVING CLIENT FILES WITHOUT THE KNOWLEDGE OR CONSENT OF ALL CLIENTS WHOSE FILES WERE TAKEN, WHICH ACTS CONSITUTE CONDUCT INVOLVING DISHONESTY, FRAUD, DECEIT OR MISREPRESENTION,

[B] RULE 4-3.4(C) IN THAT SHE KNOWINGLY AND REPEATEDLY DISOBEYED THE RULES OF A TRIBUNAL AS EVIDENCED BY RESPONDENT’S FAILURE TO COMPLY WITH THE CONSENT TRO AND THE JANUARY CONTEMPT ORDER, THEREBY NECESSITATING THE CIRCUIT COURT’S ISSUANCE OF THE JULY CONTEMPT ORDER; AND

[C] RULE 4-8.4(D) IN THAT SHE KNOWINGLY AND REPEATEDLY FAILED TO COMPLY WITH ORDERS OF THE CIRCUIT COURT AND THEREBY ENGAGED IN CONDUCT PREJUDICIAL TO THE ADMINISTRATION OF JUSTICE.

MO S. Ct. Rule 4-8.4(c)

MO S. Ct. Rule 4-3.4(c)

MO S. Ct. Rule 4-8.4(d)

POINT RELIED ON

II.

**THE COURT SHOULD SUSPEND RESPONDENT'S LICENSE, STAY THE
SUSPENSION, AND PLACE HER ON PROBATION BECAUSE PROBATION IS
REASONABLE UNDER APPLICATION OF:**

(A) ABA SANCTION STANDARDS; AND

(B) MISSOURI SUPREME COURT CASELAW.

In re Charron, 918 S.W.2d 257 (Mo. banc 1996)

In re Gardner, 565 S.W.3d 670 (Mo. banc 2019)

In re Lamberis, 443 N.E.2d 549 (Ill. 1982)

ABA Standards for Imposing Lawyer Sanctions (1991 ed.)

ARGUMENT

I.

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[B] RULE 4-3.4(C) IN THAT SHE KNOWINGLY AND REPEATEDLY DISOBEYED THE RULES OF A TRIBUNAL AS EVIDENCED BY RESPONDENT'S FAILURE TO COMPLY WITH THE CONSENT TRO AND THE JANUARY CONTEMPT ORDER, THEREBY NECESSITATING THE CIRCUIT COURT'S ISSUANCE OF THE JULY CONTEMPT ORDER; AND

[C] RULE 4-8.4(D) IN THAT SHE KNOWINGLY AND REPEATEDLY FAILED TO COMPLY WITH ORDERS OF THE CIRCUIT COURT AND THEREBY ENGAGED IN CONDUCT PREJUDICIAL TO THE ADMINISTRATION OF JUSTICE.

Respondent has stipulated that she has violated Rule 4-8.4(c), Rule 4-3.4(c), and Rule 4-8.4(d). **R. 33.**

[A] Rule 4-8.4(c) Violation

According to Rule 4-8.4(c): “It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.”

With respect to a lawyer who “secreted” files from a law firm prior to departure, this Court has made clear that the lawyer was in violation of Rule 4-8.4(c). *Matter of Cupples*, 952 S.W.3d 226, 237 (Mo. banc 1997).

In *Cupples*, this Court explained the obligations of a departing attorney regarding client files:

[T]he firm and the departing attorney have a duty to deal in good faith in winding up the firm’s business. Both the withdrawing attorney and the firm have a duty to inform clients of any *material* change in representation and to obtain the clients’ informed direction as to how the client wishes to be handled. The withdrawing attorney and the firm also have a duty to orderly maintain or transfer the clients’ files in accordance with the client’s directions and to withdraw from representing those clients by whom they are discharged. Both the withdrawing attorney and the firm have a mutual duty, not only to the client, but to each other as well, to make certain

that these tasks are completed in a competent and professional manner to the reasonable satisfaction of their clients.

Id. at 236-37.

In the instant case, Respondent failed to follow the good faith protocol announced in *Cupples*. Without permission, Respondent took Stange Firm client files and downloaded client and other information from The Stange Firm to a USB flash drive.

R. 34 (See Exh. 19, R. 220).

Consequently, Respondent is in violation of Rule 4-8.4(c).

[B] Rule 4-3.4(c)

According to Rule 4-3.4(c): “A lawyer shall not knowingly disobey an obligation under the rules of a tribunal.”

In *In re Gardner*, 565 S.W.3d 670, 677 (Mo. banc 2019), this Court held that when an attorney knowingly violated a circuit court’s order, the attorney was in violation of Rule 4-3.4(c).

Here, in the lawsuit filed by The Stange Firm, the Respondent entered a Consent TRO. Respondent was to return, no later than 5 pm on February 20, 2018, all documents, and data in her possession except for “documents if they specifically pertain to clients that have already retained Defendants as counsel and have terminated their relation with the Plaintiff.” In addition, the TRO required Respondent to preserve all data until further order of the Circuit Court or agreement of the parties. Moreover, Respondent was enjoined from accessing, viewing, and/or using the data documents or data in her possession. (See Exh 2, R. 159).

Respondent failed to turn over the USB flash drive until September 28, 2018. A forensic analysis revealed numerous Stange Firm-related documents, files, and information on the flash drive, including upwards of 75 Stange Firm client files. **(See Exh. 3, R. 161); R. 36.**

In a detailed (first) Order and Judgment of Contempt, the Circuit Court specifically held that Respondent intentionally and willfully retained and failed to return all Stange Firm-related documents, files, and information that they took from The Stange Firm by February 20, 2018, in violation of the TRO. **(See Exh. 3, R. 161).**

A subsequent computer forensic examination of Respondent's hardware and external g-mail e-mail and "box" cloud storage account revealed data transfers on the laptops between devices and the cloud accounts and/or cloud box accounts. The examiner discovered a previously unknown google drive account, without valid credentials, and a "box" account where the password had been changed. **(See Ex. 9, R. 187).**

In a detailed (second) Order and Judgment of Contempt, the Circuit Court found "credible the inference that [Respondent] and her legal assistant were transferring documents to the box account and the cloud account for the purpose of hiding them in advance of another motion for contempt, especially as she did not fully comply with the [Circuit Court's] January 9, 2019 order, finding her in contempt." **(See Ex. 9, R. 187).**

The Circuit Court specifically held that Respondent "has not followed court orders," and "[Respondent's] behaviors and actions are willfully and intentionally

committed, are contemptuous, insolent and directly tending to impair the respect and authority due to any court, including this one.” (See **Ex. 9, R. 187**).

Consequently, Respondent is in violation of Rule 4-3.4(c).

Rule 4-8.4(d)

According to Rule 4-8.4(d): “It is professional misconduct for a lawyer to engage in conduct prejudicial to the administration of justice.”

In *In re Krigel*, 480 S.W.3d 294, 300 (Mo. banc 2016), this Court held that Krigel’s failure to be candid and compliant with the trial court “hindered the administration of justice” and was a violation of Rule 4-8.4(d).

Here, Respondent’s refusal to comply with the Consent TRO by failing to timely turn over and continuing to access the misappropriated data hindered the Circuit Court’s ability to ascertain the facts and circumstances regarding Respondent’s conduct. Time was of the essence because of the threat to client confidentiality and the fiduciary duties owed to The Stange Firm’s clients. The administration of justice was prejudiced due to the necessity of the Circuit Court’s having to hold Respondent in contempt twice to obtain her compliance with its orders and respect due to the judicial system. (See **Ex. 9, R. 187**).

Consequently, Respondent is in violation of Rule 4-8.4(d).

ARGUMENT

II.

**THE COURT SHOULD SUSPEND RESPONDENT’S LICENSE, STAY THE
SUSPENSION, AND PLACE HER ON PROBATION BECAUSE PROBATION IS
REASONABLE UNDER APPLICATION OF:**

(A) ABA SANCTION STANDARDS; AND

(B) MISSOURI SUPREME COURT CASELAW.

“This Court has inherent authority to regulate the practice of law and administer attorney discipline.” *In re Gardner*, 565 S.W.3d 670, 675 (Mo. banc 2019). “The DHP’s findings of fact and conclusions of law are advisory. This Court decides the facts *de novo*, independently determining all issues pertaining to credibility of witnesses and the weight of the evidence, draws its own conclusions of law.” *In re Farris*, 472 S.W.3d 549, 557 (Mo. banc 2015) (citations and quotations omitted). “Professional misconduct must be proven by a preponderance of the evidence before discipline will be imposed.” *Id.*

“The purpose of discipline is not to punish the attorney, but to protect the public and maintain the integrity of the profession. Those twin purposes may be achieved both directly, by removing a person from the practice of law, and indirectly, by imposing a sanction which serves to deter other members of the Bar from engaging in similar conduct.” *In re Kazanas*, 96 S.W.3d 803, 807-08 (Mo. banc 2003).

“This Court determines appropriate discipline by considering its prior cases and the American Bar Association’s Standards for Imposing Lawyer Sanctions (1992) (“ABA Standards”). *Gardner*, 565 SW.3d at 677. After finding a lawyer has committed

professional misconduct, this Court considers four primary factors when applying ABA Standard 3.0 in imposing sanctions: “(a) the duty violated; (b) the lawyer’s mental state; (c) the potential or actual injury caused by the lawyer’s misconduct; and (d) the existence of aggravating or mitigating factors.” *In re Belz*, 258 S.W.3d 38, 42 (Mo. banc 2008). These four factors provide a framework for all disciplinary matters, although other ABA Standards can also “provide guidance as appropriate for specific types of misconduct.” *Id.*

“When this Court finds a lawyer has committed multiple acts of misconduct, it imposes discipline consistent with the most serious violation.” *In re Ehler*, 319 S.W.3d 442, 451 (Mo. banc 2010). In this case, the most serious misconduct was the repeated violation of the Circuit Court’s TRO by failing to timely return The Stange Firm’s misappropriated client and proprietary data and by continuing to access it. (Rules 3.4(c) and 8.4(d)). ABA Standard 6.2 provides: “Absent aggravating or mitigating circumstances . . . [d]isbarment is generally appropriate when a lawyer knowingly violates a court order or rule with the intent to obtain a benefit for the lawyer or another, and causes serious injury or potentially serious injury to a party, or causes serious or potentially serious interference with a legal proceeding.” In contrast, “[s]uspension is generally appropriate when a lawyer knowingly violates a court order or rule, and there is injury or potential injury to a client or party, or interference or potential interference with a legal proceeding.”

Regardless of the baseline of presumptive discipline, the Court always considers aggravating and mitigating factors. *Belz*, 258 S.W.3d at 42. The ABA Standards list

numerous types of mitigating factors, among which are the absence of prior discipline; the absence of a dishonest or selfish motive; timely good faith restitution or to rectify consequences of misconduct; full and free disclosure to disciplinary board or cooperative attitude toward proceedings; inexperience in the practice of law; character or reputation; imposition of other penalties or sanctions; and remorse. *ABA Standard 9.32*. The ABA Standards also list aggravating factors, among which are prior discipline; a dishonest or selfish motive; a pattern of misconduct; multiple violations; bad faith obstruction of disciplinary proceedings; submitting false evidence; and refusing to acknowledge wrongfulness. *ABA Standard 9.22*.

Respondent violated the consent TRO. **R. 36**. She agreed to return all misappropriated data in four days and to not access or use any of the data until further order of the court or agreement of the parties. **(See Exh. 2, R. 159); R. 36**. The Circuit Court held Respondent in contempt, twice, characterizing her conduct in court as willfully and intentionally committed; contemptuous, insolent, and directly tending to impair the respect and authority due to any court, including this one. **(See Exh. 3, R. 161 and Exh. 9, R. 187)**. Consequently, the Circuit Court sanctioned and jailed Respondent. The Stange Firm expended significant money to identify and reappropriate the data. The integrity of the legal profession was sullied from Respondent's repeated non-compliance. Nevertheless, Informant suggests this is not a case for disbarment.

Respondent made poor choices by not immediately returning the misappropriated data and continuing to access the data. However, as The Stange

Firm conceded, there was no evidence that Respondent used or intended to use the data to anyone's personal or financial disadvantage. (See **Exh. 17, R. 209**). According to her testimony, Respondent misappropriated the data so that she could protect those clients which would (and did) remain with her following Respondent's resignation. **Tr. 22-24, R. 81-83.**

Moreover, Respondent turned over the USB flash drive to her lawyer immediately after execution of the TRO, and assumed he would deliver it. He did not. **Tr. 30, R. 89.** And, incredibly, both of her lawyers advised Respondent not to attend any of the hearings at which Respondent could have explained what was going on. **Tr. 27-29, R. 86-89 and Tr. 37, R 96.** Respondent was not a seasoned lawyer. **R 34.** Unfortunately, neither was Mr. Schmittgens. **Tr. 27, R. 86.** Respondent's second lawyer, Mr. Kayira, has since been disbarred. (See *In re Kayira*, 614 S.W.3d 530 (Mo banc 2021)) (Kayira disbarred for egregious failure to manage his own business.)

Although Respondent cannot seek absolution for her lawyers' questionable advice, she should not suffer the penalty of disbarment. In *In re Charron*, 918 S.W.2d 257, 261 (Mo. banc 1996), Charron also violated multiple ethics provisions, including Rule 4-3.4(c), "by failing to file an annual settlement in the probate estate and by failing to complete the settlement to revocation for 14 months despite the probate division's insistence." Even though Charron misappropriated \$20,000 from the probate estate and had received a public reprimand on a previous occasion, this Court stated: "All in all, we do not believe that disbarment is warranted in this case ..." "This Court has long said, 'To disbar an attorney, it must be clear that the attorney is not fit to continue in the

profession; disbarment is reserved only for clear cases of severe misconduct.”” *In re Kayira*, 614 S.W.3d 530, 541 (Mo. banc 2021) citing *In re Mirabile*, 975 S.W.2d 936, 939 (Mo. banc 1998).

In the instant case, suspension, not disbarment, is the more appropriate baseline sanction. In *In re Gardner*, 565 S.W.3d 670 (Mo. banc 2019), Gardner, like Respondent, violated multiple ethics provisions, including a specific court order prohibiting Gardner from taking his full fee for work from the probate estate. Gardner was initially held in contempt. However, after considering multiple mitigating factors, such as remorse, good character, and no evidence of a dishonest motive, this Court determined that a stayed suspension was sufficient to protect the integrity of the legal profession. *Id.* at 680.

Respondent shares many of the mitigating factors identified in the Gardner decision. Respondent has been extremely remorseful. Respondent has settled all disputes with The Stange Firm. Respondent has acknowledged her wrongdoing, and there is no evidence Respondent intended to lure Stange Firm clients for whom she had not been the primary attorney. Unlike Gardner, Respondent was inexperienced in the practice of law, having been out of law school only four years, and had no prior discipline.

An additional mitigating factor present here is the imposition of other sanctions and penalties. Specifically, the Circuit Court sanctioned Respondent’s contumacious conduct by imposing fees and ordering Respondent to serve time in jail.

The significance of the imposition of other sanctions and penalties is seen in *In re Lamberis*, 443 N.E.2d 549 (Ill. 1982). Lamberis, a licensed lawyer and candidate for an LL.M. from Northwestern University School of law, knowingly plagiarized two

published works in a thesis submitted in satisfaction of a requirement for his master's degree. The law school initiated disciplinary proceedings and expelled Lamberis. He was then reported to the ARDC (the Illinois attorney regulatory agency). The Illinois Supreme Court held that Lamberis displayed "a lack of honesty which cannot go undisciplined, especially because honesty is so fundamental to the functioning of the legal profession." *Id.* at 552. Moreover: "The public as well as the * * * courts have an interest in [an attorney's] integrity and are entitled to require that he shun even the appearance of any fraudulent design or purpose. *In re Abbamonto*, 166 N.W.2d 62 (Ill. 1960)." Nevertheless, that Court determined something less than suspension was warranted:

All honest scholars are the real victims in this case. The respondent's plagiarism showed disrespect for their legitimate pursuits. Moreover, the respondent's conduct undermined the honor system that is maintained in all institutions of learning. These harms, however, are rather diffuse, and in any event Northwestern University has already rectified them by expelling respondent, an act which will undoubtedly ensure that the respondent will be hereafter excluded from the academic world.

...

In view of the respondent's apparently unblemished record in the practice of law and the disciplinary sanctions which have already been imposed by Northwestern University, we choose censure as the most appropriate discipline for the respondent.

Id. at 552-53.

Like Lamberis, Respondent was held to account: Lamberis, by his law school, and Respondent, by the Circuit Court. The Circuit Court fined and jailed Respondent. As a result of her misconduct, Respondent's credit has been negatively affected by filing for bankruptcy protection and her reputation in the legal community is diminished.

"This Court adheres to a practice of applying progressive discipline when imposing sanctions on attorneys who commit misconduct." *In re Forck*, 418 S.W.3d 437, 444 (Mo. banc 2014). Progressive discipline includes consideration of probation. An attorney is eligible for probation if the attorney: (1) is unlikely to harm the public during the probationary period and can be supervised adequately; (2) is able to perform legal services and practice law without causing the courts or profession to fall into disrepute; and (3) has not committed acts warranting disbarment. Rule 5.225(a)(2)(A-C).¹

Informant suggests that Respondent is eligible for probation. There is no indication that Respondent would harm the public if allowed to continue to practice. She will be under OCDC supervision for eighteen months and subject to mandatory reporting and financial audits. This Court recognizes the effectiveness of financial audits at revealing practices which threaten the public, particularly for solo practitioners. (See *In re Farris*, 472 S.W.3d 549 (Mo. banc 2015)).

Furthermore, Respondent's practicing law will not cause the courts or profession to fall into disrepute. The trial court's contempt orders have held Respondent to account.

¹All cases in which an Information is pending before January 1, 2023, shall be governed by the provisions of Rule 5 in effect of December 31, 2022. (Rule 5.34).

In addition, Respondent used her time in jail to improve the criminal justice system in St. Louis County. Moreover, Respondent consistently spends time serving underserved clients. **R. 33.**

Finally, as described herein, Respondent's misconduct does not warrant disbarment.

In summary, a suspension of eighteen months sends a message to the public and profession that violating court orders will not be tolerated. However, staying the suspension and placing Respondent on probation recognizes the significant mitigating factors present in this case.

CONCLUSION

Informant asks this Court to find that Respondent violated Rule 4-8.4(c) by misappropriating law firm client files and proprietary data; Rule 4-3.4(c) by failing to comply with Circuit Court's orders to return and not use the misappropriated data; and Rule 4-8.4(d) by prejudicing the administration of justice by the necessity of having to hold Respondent in contempt (twice) in order to obtain her compliance with its orders and the respect due the judicial system.


Informant also asks the Court to suspend Respondent's license indefinitely. She should not be eligible for reinstatement for at least eighteen months. Staying the suspension and placing Respondent on Probation for eighteen months under the terms and conditions described in the Stipulation should be favorably considered. **(See Exh. 23, R. 238).** Informant believes that the public and profession will be adequately protected during the period of probation.

Finally, Informant asks the Court to tax all costs in this matter to Respondent, including a \$1,000.00 fee pursuant to Rule 5.19(h).

Respectfully submitted,

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By:



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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Informant's Brief is being served through the Missouri e-filing system pursuant to Rule 103.08 on this 13th day of December 2023, to Respondent's counsel:

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Marc A. Lapp

CERTIFICATION: RULE 84.06(c)

I certify to the best of my knowledge, information, and belief, that this brief:

1. Includes the information required by Rule 55.03.
2. The brief was served on Respondent through the Missouri electronic filing system pursuant to Rule 103.08.
3. Complies with the limitations contained in Rule 84.06(b).
4. Contains 9,295 words, according to Microsoft Word, which is the word processing system used to prepare this brief.



Marc A. Lapp