

SUPREME COURT OF LOUISIANA

No. 2020-B-00118

IN RE: KIRBY DALE KELLY

Attorney Disciplinary Proceeding

Crichton, J. additionally concurs and assigns reasons:

Self-described as “the guy with the hat” in a near half century of massive lawyer advertising in the northwest Louisiana media market, respondent was placed on interim suspension in 2019 for threat to the public. *In Re: Kelly*, 18-2113 (La. 1/14/19), 260 So.3d 1207. Thereafter, despite multiple opportunities to respond to the very serious charges filed by the Office of Disciplinary Counsel and an invitation accorded for due process by the Louisiana Attorney Disciplinary Board, respondent failed to formally answer the charges, failed to cooperate with the Office of Disciplinary Counsel’s investigation, failed to show up at any point, and failed to file anything with this Court. Respondent also failed to provide restitution to those who trusted him, his clients, or the relevant third party providers – Healthcare Express, Willis-Knighton Hospital, and the Shreveport Doctors Rehabilitation Center – evidencing an indifference to the actual harm he has caused to the victims of his acts of conversion. Unquestionably, respondent’s numerous incidents of egregious misconduct leading up to the formal charges and his utter disregard for the attorney disciplinary process thereafter demonstrate that permanent disbarment is warranted.

I have repeatedly noted that an attorney’s failure to participate in disciplinary proceedings is alarming, as it leaves little opportunity for this Court to consider mitigating evidence and, when coupled with serious misconduct, often leads to substantial sanctions. *See In re Dangerfield*, 20-B-0116 (La. 5/14/20), __ So.3d __;

(Crichton, J., additionally concurring, highlighting respondent’s “stunning indifference to the disciplinary process, resulting in no viable and reasonable choice other than permanent disbarment.”); *In re Gaubert*, 18-1980 (La. 2/11/19), 263 So.3d 408 (Crichton, J. additionally concurring, noting the troublesome nature of any attorney refusing to participate meaningfully in disciplinary proceedings); *In re Reid*, 18-0849 (La. 12/5/18), 2018 WL 6382109 (Crichton, J. dissenting, noting “lack of cooperation with ODC, the Hearing Committee, the Disciplinary Board, and this Court demonstrates [a] stunning indifference to this noble profession”); and *In re Montgomery*, 18-0637 (La. 8/3/18), 251 So.3d 401 (Crichton, J. dissenting, finding disbarment appropriate where respondent made “zero effort” to respond to any of the accusations against him); *In re Mendy*, 16-B-0456 (La. 10/19/16), 217 So.3d 260 (Crichton, J., dissenting in part and assigning reasons, stating permanent disbarment was warranted because respondent’s “evident lack of interest in defending these serious charges against him, coupled with his past sanctions, has no place in this noble profession”); *In re Hingel*, 2019-1459 (La. 11/19/19), 2019 WL 7594603 (“As serious as [respondent’s] violations are . . . by not producing mitigation evidence, we are unquestionably compelled to order disbarment.”).

I also write separately to note that while this Court has ordered respondent to pay restitution to his victims, the per curiam unfortunately does not constitute a money judgment as set forth in the Louisiana Code of Civil Procedure. *See* La. C.C.P. art. 2291; La. C.C.P. art. 2253; *see also King v Illinois Nat. Ins. Co.*, 9 So.3d 780 (La. 2009) (a cause of action on which suit has not yet been filed is a strictly personal right and, as such, is not subject to seizure under writ of fieri facias). As I wrote in *In re Dangerfield, supra*:

It is my view that as part of routine practice and policy of the Office of Disciplinary Counsel, victims of conversion or theft such as the one in this case should be advised of the specific purpose of attorney disciplinary proceedings – i.e., to protect the public, maintain high standards of conduct, preserve the integrity of the profession, and deter

future misconduct, *see Louisiana State Bar Ass'n v. Reis*, 513 So.2d 1173 (La.1987) – and that such proceeding is distinct from a civil tort action for conversion or a prosecution action for theft.

Dangerfield, 20-B-0116 (Crichton, J., additionally concurring). Moreover, I believe such victims should be advised to seek counsel to address prescriptive limitations of any applicable cause of action.