

09/29/2020 "See News Release 035 for any Concurrences and/or Dissents."

SUPREME COURT OF LOUISIANA

No. 2020-B-00869

IN RE: JOHN EDWARD WHALEN, JR.

ATTORNEY DISCIPLINARY PROCEEDING

Crichton, J., dissents from the discipline imposed. I dissent from the majority solely as to the discipline imposed, and would impose permanent disbarment. To date, respondent has failed to provide a truthful accounting of the apparent conversion of a staggering \$280,475.00 in client funds. Additionally, he has displayed indifference toward defending himself against these very serious charges, including failing to answer the formal charges, failing to file any documentary evidence or appear before the hearing committee to offer mitigation evidence, and failing to participate in the proceedings before this Court. *See In re: Kelly*, 20-118 (La. 6/3/20), 298 So. 3d 161 (permanently disbarring respondent who was found to have converted up to \$230,000 in funds from clients and third parties); *In re: Mendy*, 16-0456 (La. 10/19/16), 217 So. 3d 260 (Crichton, J., dissenting from the Court's disbarment of respondent for conversion of client funds, and would impose permanent disbarment). Under these factual circumstances, I believe permanent disbarment is a more appropriate sanction. *See In re: Perricone*, 18-1233 (La. 12/5/18), 263 So. 3d 309 (Crichton, J., additionally concurring and explaining the difference between permanent disbarment and regular disbarment).

I also write to note 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. *See Kelly*, 298 So. 3d at 167 (Crichton, J., additionally concurring); *In re: Dangerfield*, 20-0116 (La. 5/14/20), 296 So. 3d 595 (Crichton, J., additionally concurring); *In re: Breeden*, 20-0315 (La. 4/27/20), 295 So. 3d 391 (Crain, J., concurring).