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§ 691.4

SUPREME COURT RULES—SECOND DEPT.

either personally or by certified mail upon the attorney or the attorney's failure to comply with any of the lawful demand of this court or the grievance committee made in connection with any investigation, hearing or disciplinary proceeding; or

(ii) a substantial admission under oath that the attorney has committed an act or acts, of professional misconduct, or

(iii) other uncontroverted evidence of professional misconduct.

(2) The suspension shall be made upon the application of the Grievance Committee to this court, after notice of such application has been given to the attorney pursuant to subdivision six of section 90 of the Judiciary Law. The court shall briefly state its reasons for its order of suspension which shall be effective immediately and until such time as the disciplinary matters before the Committee have been concluded, and until further order of this court. (Add, eff Jan 1, 1987; sub (l), par (1), opening subpar and subpar (i), am, eff Feb 21, 1989.)

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§ 691.5. Investigation of professional misconduct on the part of an attorney; subpoenas and examination of witnesses under oath.—(a) Upon application by the chairman or acting chairman of any such committee, or upon application by counsel to such committee, disclosing that such committee is conducting an investigation of professional misconduct on the part of an attorney, or upon application by an attorney under such investigation, the clerk of this court shall issue subpoenas in the name of the presiding justice for the attendance of witnesses and the production of books and papers before such committee or such counsel or any subcommittee thereof designated in such application, at a time and place therein specified.

(b) Any such committee or a subcommittee thereof is empowered to take and cause to be transcribed the evidence of witnesses who may be sworn by any person authorized by law to administer oaths.

§ 691.6. Reprimand; admonition; letter of caution; confidentiality.—(a) The chairman or acting chairman of any such committee may, after investigation and upon a majority vote of the full committee, issue a reprimand or an admonition or a letter of caution in those cases in which professional misconduct, not warranting proceedings before this court, is found. A reprimand is discipline imposed after a hearing. An admonition is discipline imposed without a hearing. A letter of caution may issue when it is believed that the attorney acted in a manner which, while not constituting clear professional misconduct, involved behavior requiring comment. In cases in which an admonition or a letter of caution is issued, the attorney to whom such admonition or letter of caution is directed may, within 30 days after the issuance of the admonition or letter of caution, request a hearing before the committee or a subcommittee thereof, and after such

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(d) The provisions for confidentiality in this or any other section of this Part shall not proscribe the free interchange of information among the committees. (Amd, dated 1/21/76.)

§ 691.7. Attorneys convicted of a serious crime.—(a) Upon the filing with this court of a certificate of conviction of a serious crime as hereinafter defined in a court of record of any State, territory or district, including this State, this court shall cause formal charges to be made and served upon the respondent and shall enter an order referring the matter to a referee, justice of the peace or judge appointed by this court to conduct forthwith proceedings, whether the conviction is based on a plea of guilty or nolo contendere or otherwise, and regardless of the pendency of an appeal.

(b) The term *serious crime* shall include any crime which results in automatic disbarment under the provisions of subdivision (4) of section 90 of the Judiciary Law; and any lesser crime a necessary element of which, as determined by the statutory definition of such crime, involves interference with the administration of justice, criminal contempt, false swearing, misrepresentation, fraud, perjury, to file income tax returns, deceit, bribery, extortion, misappropriation, theft, an attempt or a conspiracy to commit a "serious crime" involving moral turpitude.

(c) A certificate of the conviction of an attorney of any crime shall be conclusive evidence of the fact that that crime in any disciplinary proceeding against him based on the conviction, and that he may not offer evidence inconsistent with the elements of the crime for which he was convicted, as determined by the statute defining the crime. (Jan 21, 1976.)

(d) Upon the filing with the court of a certificate of conviction of an attorney of a serious crime as hereinafter defined in a court of record in any State, territory or district, including this State, this court shall either refer the matter to a committee appointed pursuant to section 691.4(a) of this Part for whatever action it may deem appropriate, or cause formal charges to be served upon the respondent and enter an order referring the matter to a referee, justice of the peace or judge appointed by this court to conduct proceedings, whether the conviction is based on a plea of guilty or nolo contendere or otherwise, and regardless of the pendency of an appeal.

(e) The clerk of any court within the jurisdiction in which an attorney admitted to practice is a member of the bar shall

In *Matter of Hernandez v. Blum*: Judgment affirmed, without costs.

In *Matter of Martin v. Blum*: Judgment appealed from and order of the Appellate Division brought up for review reversed, without costs, and the petition dismissed.



463 N.E.2d 30

61 N.Y.2d 513

In the Matter of Vernita NUYEY, an Attorney, Appellant.

Departmental Disciplinary Committee for the First Judicial Department, Respondent.

Court of Appeals of New York.

April 3, 1984.

Attorney appealed from suspension order of the Supreme Court, Appellate Division, 98 A.D.2d 659, 470 N.Y.S.2d 325. The Court of Appeals held that although the Appellate Division is vested with power and control over attorneys and counselors at law and may censure, suspend from practice, or remove from office lawyers guilty of professional misconduct or other specific acts of malfeasance, it had no authority under the Judiciary Law to issue order purporting to suspend attorney pending determination of charges under consideration before a departmental disciplinary committee.

Order reversed.

1. Attorney and Client §36(1)

Although the Appellate Divisions are vested with power and control over attorneys and counselors at law and may censure, suspend from practice, or remove from office lawyers guilty of professional misconduct or other specific acts of malfeasance, they have no authority under the

Judiciary Law to issue an order purporting to suspend an attorney pending determination of charges under consideration before a departmental disciplinary committee. McKinney's Judiciary Law § 90, subd. 2.

2. Attorney and Client §56

Finding by Appellate Division that attorney "is guilty" of professional misconduct or of one of the other statutorily specified acts is a prerequisite to interference with attorney's right to practice his or her profession. McKinney's Judiciary Law § 90, subd. 2.

3. Attorney and Client §56

Finding of attorney misconduct by the Appellate Division would not be presumed from the fact of issuance of its suspension order, absent any reference thereto in the order or any recital of the basis on which such finding could have been made, and given the explicit reference therein to continuing pendency of the matter before departmental disciplinary committee. McKinney's Judiciary Law § 90, subd. 2.

Saul Friedberg and Lennox S. Hinds, 1514
New York City, for appellant.

Alan S. Phillips and Michael A. Gentile,
New York City, for respondent.

OPINION OF THE COURT 1515

PER CURIAM.

[1] Although the Appellate Divisions, 98 A.D.2d 659, 470 N.Y.S.2d 325, are vested with power and control over attorneys and counselors at law and may censure, suspend from practice, or remove from office lawyers guilty of professional misconduct or other specific acts of malfeasance, they have no authority under subdivision 2 of section 90 of the Judiciary Law to issue an order which purports to suspend an attorney pending determination of charges under consideration before a Departmental Disciplinary Committee.

In the case of the attorney before us, following a complaint by a former client to the Departmental Disciplinary Committee

for the First Department, she appeared before counsel for the committee to answer questions on April 7, 1982. Thereafter, on June 3, 1982 she was served with a notice and statement of charges—one of improper conduct with respect to client's funds and the other of giving false testimony to the committee's counsel. After the attorney had filed an answer denying both charges, a hearing panel of the committee conducted extended hearings consuming almost a year and terminating on July 11, 1983. On the last day of the hearings the chairman of the panel announced to her that the charges had been sustained, issued an oral reprimand, and stated that the panel was going to recommend to the Appellate Division that she be disbarred. No further action had been taken, however, no formal findings had been prepared or adopted by the panel, and no application for the institution of disciplinary proceedings looking to disbarment had yet been made to the court when, on October 5, 1983, counsel for the disciplinary committee successfully moved in the Appellate Division to suspend the attorney until the matter, then still pending before the committee, was completed.

[2] A finding by the court that an attorney "is guilty" of professional misconduct or of one of the other statutorily specified acts is a prerequisite to interference with the attorney's right to practice his or her profession.* Without such an adjudication of guilt by it, made on the basis of evidence and exhibits, if any, produced at the panel hearings (which are not shown by the record to have been before the court in this instance), the action of the Appellate Division in granting the committee's request was premature. The informal conclusion by a panel of the disciplinary committee with respect to wrongdoing was no substitute for the judicial determination required by the statute before the significant disci-

* Subdivision 2 of section 90 of the Judiciary Law provides in relevant part: "2. The supreme court shall have power and control over attorneys and counsellors-at-law and all persons practicing or assuming to practice law, and the appellate division of the supreme court in each department is authorized to censure, suspend

plinary measure invoked in this case could be imposed. In the normal progress of attorney disciplinary matters the court's determination of guilt of the offending lawyer occurs only after the findings rendered by a panel or referee have been confirmed on motion on which the attorney has an opportunity to submit argument challenging the findings or in mitigation of the offense or offenses, or both.

[3] The contention made by counsel for the committee in our court that a finding of misconduct by the Appellate Division in this instance may be presumed from the fact of the issuance of its order must be rejected in the absence of any reference thereto in the court's order, the absence of any recital of the basis on which such a finding could have been made, and the explicit reference to the continuing pendency of the matter before the disciplinary committee.

For the reasons stated, the order of the Appellate Division should be reversed, without costs, the suspension vacated, and the motion of the Departmental Disciplinary Committee denied.

COOKE, C.J., and JASEN, JONES, WACHTLER, MEYER, SIMONS and KAYE, JJ., concur in *Per Curiam* opinion.

Order reversed, etc.



from practice or remove from office any attorney and counsellor-at-law admitted to practice who is guilty of professional misconduct, malpractice, fraud, deceit, crime or misdemeanor, or any conduct prejudicial to the administration of justice".

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