

ing in or concerning attorneys practicing, or currently residing or having resided in the ninth judicial district at the time of their admission to practice by the Appellate Division; and the third shall have the duty and power to investigate and prosecute matters arising in or concerning attorneys practicing, or currently residing or having resided in the tenth judicial district at the time of their admission to practice by the Appellate Division. These committees shall also have the power and duty to investigate and prosecute matters concerning attorneys to whom this Part applies pursuant to section 691.1 of this Part.

(b) (1) Each grievance committee shall consist of 19 members and a chairman, all of whom shall be appointed by this court and 16 of whom shall be attorneys. The chairman shall have the power to appoint an acting chairman from among the members of the grievance committee. Appointments may be made from lists of prospective members submitted by the following county bar associations within the second judicial department: Brooklyn Bar Association, Dutchess County Bar Association, Bar Association of Nassau County, New York, Inc., Orange County Bar Association, Putnam County Bar Association, Queens County Bar Association, Richmond County Bar Association, Rockland County Bar Association, Inc., Suffolk County Bar Association and Westchester County Bar Association. This court shall, in consultation with the committees, appoint a chief counsel to each such grievance committee and such assistant counsel and supporting staff as it deems necessary.

(2) Five persons shall be appointed to each such committee for a term of one year, five persons for a term of two years, five persons for a term of three years and five persons for a term of four years. Thereafter, yearly appointments of five persons shall be made to each such committee for a term of four years. No person who has served two consecutive terms shall be eligible for reappointment until the passage of one year from the expiration of his second such term. The person appointed chairman shall serve as chairman for a term of two years and shall be eligible for reappointment as chairman for not more than one additional term of two years. (Am, eff Feb. 7, 1983.)

(c) Investigation of professional misconduct may be commenced upon receipt of a specific complaint by this court or by any such committee, or such investigation may be commenced *sua sponte* by this court or such a committee. Complaints must be in writing and signed by the complainant but need not be verified. Complainants shall be notified by the committee of actions taken by it with respect thereto.

(d) Each grievance committee shall have the power to appoint its members to subcommittees of not less than three members, two of whom shall constitute a quorum and shall have power to act. At least two members of a subcommittee shall be attorneys. The chairman of the committee shall designate a member of the subcommittee to act as its chairman. Such subcommittees may hold hearings as hereinafter authorized.

(e) Upon receipt or initiation of a specific complaint of professional misconduct, any such committee may, after preliminary investigation and upon a majority vote of the full committee:

(1) dismiss the complaint and so advise the complainant and the attorney;

(2) conclude the matter by issuing a letter of caution to the attorney and by appropriately advising the complainant of such action;

(3) conclude the matter by privately admonishing the attorney, which admonition shall clearly indicate the improper conduct found and the disciplinary rule, canon or special rule which has been violated, and by appropriately advising the complainant of such action;

(4) serve written charges upon the attorney and

hold a hearing on the matter as set forth in subdivision (f) of this section;

(5) forthwith recommend to this court the institution of a disciplinary proceeding where the public interest demands prompt action and where the available facts show probable cause for such action.

(f) Except as otherwise provided for in paragraph (5) of subdivision (e) of this section, if, after preliminary investigation, the committee shall deem a matter of sufficient importance, written charges predicated thereon, plainly stating the matter or matters charged, together with a notice of not less than 20 days, shall be served upon the person concerned, either personally, by certified mail, or in such other manner as the committee may direct. The person so served shall file a written answer at the time and place designated in the notice and the committee or a subcommittee shall proceed to hold a hearing of the case. The person concerned (hereinafter referred to as the respondent) may be represented and assisted by counsel. The committee or subcommittee shall decide all questions of evidence. Stenographic minutes of the hearing shall be kept.

(g) Whenever in the course of a hearing evidence is presented upon which another charge or charges against the respondent might be made, it shall not be necessary for the committee to prepare and serve an additional charge or charges on the respondent, but the committee or the subcommittee may, after reasonable notice to the respondent and an opportunity to answer and be heard, proceed to the consideration of such additional charge or charges as if the same had been made and served at the time of the service of the original charge or charges.

(h) If the hearing was held before a subcommittee, it shall make findings of fact and report those findings to the committee. Upon the completion of a hearing, the committee shall promptly meet and either dismiss or sustain the charges and, as to any charges sustained, shall either issue a letter of caution, admonish the respondent, or recommend that probable cause exists for the filing of disciplinary charges against the respondent in this court. A letter of caution may also be issued where the charges have been dismissed. The approval of a recommendation of the filing of disciplinary charges in this court shall be by a majority vote of the full committee.

(i) In the event that a minority of the committee disagrees with a final determination, such minority report shall be filed with this court along with any majority report and the written report of the subcommittee. Upon such filing, the committee shall await the determination of this court before otherwise disposing of the matter.

(j) Unless otherwise provided for by this court, all proceedings conducted by a grievance committee shall be sealed and be deemed private and confidential.

(k) Disciplinary proceedings shall be granted a preference by this court. (Am, filed Sept 26, 1975, Nov 27, 1978, Jan 5, 1979, eff Jan 1, 1979.)

(l) (1) An attorney who is the subject of an investigation, or of charges by a grievance committee of professional misconduct, or who is the subject of a disciplinary proceeding pending in this court against whom a petition has been filed pursuant to this section, or upon whom a notice has been served pursuant to section 691.3(b) of this Part, may be suspended from the practice of law, pending consideration of the charges against the attorney, upon a finding that the attorney is guilty of professional misconduct immediately threatening the public interest. Such a finding shall be based upon:

(i) the attorney's default in responding to the petition or notice, or the attorney's failure to submit a written answer to pending charges of professional misconduct or the attorney's failure to submit a written answer to a complaint of professional misconduct within 10 days of receipt of a demand for such an answer by the grievance committee, served

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.)

§ 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 hearing, the committee shall take such steps as it deems advisable. In cases in which a reprimand is issued, the attorney to whom such reprimand is issued, may within 30 days of the issuance of the reprimand, petition this court to vacate the reprimand. Upon such petition, this court may consider the entire record and may vacate the reprimand or impose such other discipline as the record may warrant.

(b) A copy of any admonition or letter of caution given pursuant to this section shall be filed with this court.

(c) A confidential record of the proceedings resulting in such admonition or letter of caution shall be permanently maintained by such committee (except that the complainant shall be notified of any reprimand or admonition or letter of caution which has become final and is not subject to further review) and may be considered in determining the extent of discipline to be imposed in the event other charges of misconduct are brought against the attorney subsequently.

(d) The provisions for confidentiality contained in this or any other section of this Part are not intended to proscribe the free interchange of information among the committees. (Amd, dated Apr 26, 1985.)

§ 691.7. Attorneys convicted of serious crimes; record of conviction conclusive evidence.—(a) Upon the filing with this court of a certificate that an attorney has been convicted 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 immediately referring the matter to a referee, justice or judge appointed by this court to conduct forthwith disciplinary proceedings, whether the conviction resulted from a plea of guilty or nolo contendere or from a verdict after trial or otherwise, and regardless of the pendency of an appeal.

(b) The term *serious crime* shall include any felony, not resulting 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 or common law definition of such crime, involves interference with the administration of justice, criminal contempt of court, false swearing, misrepresentation, fraud, willful failure to file income tax returns, deceit, bribery, extortion, misappropriation, theft, an attempt or a conspiracy or solicitation of another to commit a "serious crime" or a crime involving moral turpitude.

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

(d) Upon the filing with the court of a certificate that an attorney has been convicted of a crime not constituting a serious crime as hereinbefore 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 may be appropriate, or cause formal charges to be made and served upon the respondent and enter an order immediately referring the matter to a referee, justice or judge appointed by this court to conduct forthwith disciplinary proceedings, whether the conviction resulted from a plea of guilty or nolo contendere or form a verdict after trial or otherwise, and regardless of the pendency of an appeal.

(e) The clerk of any court within the judicial department in which an attorney admitted to practice in this State is convicted of a crime shall within five days of said conviction forward a certificate thereof to the clerk of this court and to the clerk of the Appellate Division of the Supreme Court in the judicial department in which said person was admitted to practice.

(f) Any such committee, upon receiving information that an attorney to whom these rules shall apply pursuant to section 691.1 of this Part, has been convicted of a crime in a court of record of any State, territory or district, shall determine whether the clerk of the court where the conviction occurred has forwarded a certificate of the conviction to this court. If the certificate has not been forwarded by the clerk, such committee shall obtain a certificate of the conviction and forward it to this court. (Section title am eff Jan 21, 1976.)

§ 691.8. Effect of restitution on disciplinary proceedings.—Restitution made by an attorney or on his behalf to a client for funds converted, or to reimburse him for losses suffered as a result of the attorney's wrongdoing, shall not be a bar to the commencement or continuance of disciplinary proceedings.