BY: Nicholas C. Cooper

Seeking Reinstatement: The Right to a Due Process Hearing

You are an attorney facing serious charges of professional misconduct, which may very likely result in disbarment. You have the option of submitting a resignation thereby terminating the proceeding. Should you exercise that option? Before reaching a decision, consider the threshold question of whether you will be afforded the right to a due process hearing should you later seek reinstatement to the Bar.[1] The answer is that most likely you will not.

The currently prevailing authority is set forth in four cases decided by the Appellate Division, First Judicial Department, which demonstrate the differing treatment given resigned attorneys who seek reinstatement to the bar. *In Matter of Levine*[2] and in *Matter of Mairs*[3], the Court directed a hearing; in *Matter of Frank*[4] and in *Matter of Licato*[5], the Court denied the application for reinstatement without hearing.[6] In so denying the applications in *Frank* and *Licato*, did the Appellate Division abuse its statutory discretion (Judiciary Law, section 90)? The exercise of that discretion has its limitations.

The United States Supreme Court has consistently held that although the States have a compelling interest in regulation of the practice of law,[7] that power may not be exercised in an arbitrary or discriminatory manner,[8] nor may it be exercised so as to abrogate federally protected rights.[9] One of these "federally protected rights" is an attorney's right to procedural due process in a disciplinary proceeding.[10]

Recognizing these same principles the United states Supreme Court has stated in *Willner v. Committee on Character*[11] that the requirements of procedural due process must be met before a state can exclude a person from practicing law.[12]

Similarly, the Court of Appeals has long recognized that members of the bar – prospective or actual – cannot be deprived of the right to practice law without due process.[13]

In *Matter of Mitchell*[14], the Court of Appeals, citing both *Willner* and *Schware v. Board of Bar Examiners*,[15] stated that "the starting point for a discussion of appellant's due process claim must be the well-accepted rule that "the requirements of

procedural due process must be met before the State can exclude a person from practicing law".[16]

In *Mitchell*, the former Attorney General's name was stricken from the roll of attorneys by the Appellate Division based upon his criminal conviction in the "Watergate" affair, pursuant to Judiciary Law, section 90(4), which provides for the automatic disbarment of an attorney convicted of a felony.[17] On appeal, the Court of Appeals rejected Mitchell's claim that he could not be disbarred without a hearing, or at least until his conviction was "made final by appropriate appellate review":

Due process considerations do not require that a person convicted of a crime after a full and fair trial on the merits be afforded appellate review. (See *Griffin v. Illinois*; 351 US 12, 18; cf. *Lindsey v. Normet*, 405 US 56, 77.) . . . Thus, we are of the view that an attorney convicted of a felony has no constitutional right to practice law pending an appeal of his conviction, any more than any other convicted person has a constitutional right to be at liberty pending an appeal. (See *People ex rel. Epton v. Nenna*, 25 AD2d 518).

We therefore conclude that appellant has not suffered a deprivation of due process of law by the fact that he has been disbarred during the pendency of an appeal of his conviction of a felony which formed the basis for his disbarment. Accordingly, the order of the Appellate Division should be affirmed.[18]

Similarly, the Court of Appeals in *Matter of Nuey*[19] reaffirmed its position that the right of an attorney to practice his or her profession may not be interfered without a finding of guilt following an evidentiary hearing.[20]

Seeking Reinstatement

The "right" of an attorney to seek reinstatement to the bar following a disbarment or resignation is a "right" only to the extent that it is conferred by the respective states and is not a "right" mandated by the United States Constitution.

In Ohio, for example, an attorney who was disbarred or who resigned is permanently disbarred and has no right thereafter to seek reinstatement to the Ohio bar, as expressly provided by the Ohio Supreme Court Rules (in effect February 28, 1972): "*(7) Effect of Discipline*. A person disbarred or a person who has voluntarily surrendered his license to practice shall never thereafter be readmitted to the practice of law in this State."[21]

Edgar I. Schott, a Cincinnati attorney, was "permanently" disbarred by the Ohio Supreme Court in 1967 based upon his felony

conviction of violating state usury laws – a crime found to involve "moral turpitude."[22] He sought to challenge the constitutionality of Ohio's permanent disbarment rule in his 1977 petition to the United States Supreme Court for writ of certiorari, which petition the Court denied.[23] In denying certiorari the Supreme Court implicitly found that a constitutional right to seek reinstatement by a disbarred lawyer does not exist.

Where a state confers the right to seek reinstatement upon a disbarred or resigned attorney, arguably that right may not be denied without due process of law. Thus, Pennsylvania, California, Illinois and Texas, for example, afford a disbarred or resigned attorney who seeks reinstatement as allowed by the rules of each of these states, a mandatory hearing upon such application, as follows:[24]

Pennsylvania

In Pennsylvania: Rule 215. Resignations by Attorneys Under Disciplinary Investigation

(a) An attorney who is the subject of an investigation into allegations of misconduct by the attorney may submit a resignation, but only by delivering to the Board a verified statement stating that the attorney desires to resign. . .[25]

(b) Upon receipt of the required statement, the Board shall file it with the Supreme Court and the Court shall enter an order disbarring the attorney on consent.

Rule 218. Reinstatement.

(b) A person who has been disbarred may not apply for reinstatement until the expiration of at least five years from the effect date of the disbarment, . . .

(c) (1) Petitions for reinstatement by formerly admitted attorneys shall be filed with the Board.

(2) Upon receipt of the petition the Board shall refer the petition to a hearing committee. .

(3) The hearing committee shall promptly schedule a hearing . . .[26]

California

Chapter 10. Reinstatement Proceedings Article 1. Petition for Reinstatement Rule 660. Petition; Requirements

The petition for reinstatement shall be verified by the petitioner, shall be addressed to the State Bar Court. . .

Rule 662. Earliest Time for Filing Petition:

No petition shall be filed within five years after the effective date of interim suspension or disbarment or resignation whichever first occurred, nor within two years next after an adverse decision upon a prior

petition. Upon application and good cause shown, the committee of the Board of Governors, in its discretion, may shorten the time for filing the petition to a time less than five years but not less than three years, except that in the case of a petition following resignation with no charges pending, the time may be shortened to less than three years.

Article 2. Formal Proceeding Before Hearing Panel

Rule 663. Reference to Division of Trial Counsel:

If the petition is in proper form, it shall be referred to the Division of Trial Counsel for investigation. . . .

Rule 664. Time Period for Investigation – Referral To Hearing Panel:

The Division of Trial Counsel shall investigate petitions referred to it pursuant to Rule 663 of these rules. . . . Upon the expiration of the investigation period or upon the filing of a written stipulation of the parties that the petition be referred to a hearing panel, whichever first occurs, the state Bar Court Clerk's Office shall refer the petition to a hearing panel to conduct a formal proceeding.[27]

Illinois

Rule 767. Reinstatement

(a) Petition. An attorney who has been disbarred, disbarred on consent or suspended until further order of the court may file his verified petition with the clerk of the court seeking to be reinstated to the roll of attorneys admitted to practice law in this state.

(f) Factors to be Considered. The petition shall be referred to a hearing panel.

(h) Hearing and Review Procedure. The hearing and review procedure shall be the same as provided in Rule 753 for disciplinary cases.[28]

Texas

Section 28. Reinstatement After Disbarment

(A) Eligibility and Venue. A disbarred attorney may, at any time after the expiration of five (5) years from the date of final judgment of disbarment or acceptance of resignation, apply to the district court of the county of his or her residence for reinstatement. Provided, however, that when the attorney has been disbarred or has resigned based upon conviction of a criminal offense, such person may not make application for reinstatement until five (5) years from the date of completion of sentence.

Section 29. Notice, Hearing, and Judgment:

(A) Generally. After the filing of the application in the district court, the Texas Rules of

civil Procedure shall govern the procedure in all proceedings for reinstatement except where in conflict with specific provisions hereof. All questions of fact and law in such proceedings for reinstatement shall be determined by the court without the aid of a jury.

(D) Judgment: Conditions. If the court is satisfied after hearing all of the evidence both for and against the applicant, that all the material allegations are true and that the ends of justice will be served, the court may enter judgment authorizing the applicant to be reinstated upon his or her obtaining of a passing grade on a bar examination regularly administered by the Texas Board of Law Examiners within eighteen (18) months from the date of judgment.[29]

The 'Rowe' Decision

Recently, the New York Court of Appeals, although holding that a disbarred attorney has no right to a hearing on reinstatement, recognized such a right for an attorney removed for mental disability:

It is settled that a State cannot exclude a first time applicant from the practice of law in a manner that contravenes due process. When the criteria for admission have been met, an application should not be rejected upon charges of unfitness without an opportunity by notice for a hearing and an answer (*Willner v. Committee on Character*, 373 U.S. 96, 102- 108, 83 S.Ct. 1175, 1179-80, 10 L.Ed.2d 224). In contrast, an attorney once admitted but subsequently disbarred for professional misconduct or commission of a felony cannot claim a similar right to reinstatement.

The disbarred attorney has been granted the right to practice law *but has been proven unfit because of some violation of the public trust*. He or she has no right to a hearing on restatement, therefore, and approval or denial of the application is a matter wholly within the discretion of the Appellate Division.

An attorney suspended because of mental disability does not fit within either of these categories. The suspension is not a punishment or sanction, it is a necessary precaution taken by the court to protect the public and further its confidence in and reliance upon the integrity and responsibility of the legal profession. . .

Inasmuch as petitioner was suspended because of his disability and his application for reinstatement presents prima facie proof, by clear and convincing evidence, that the disability has been removed, due process requires a hearing to resolve that question of fact, and to enable the court to determine on the whole record whether he is fit to practice law.

(*Matter of Rowe*, 73 NY2d 336, 339, 340, 540 NYS2d 231, 233 [1989], emphasis added).

Similarly, a resigned attorney has neither been found guilty of professional misconduct, nor has he been "proven unfit because of some violation of public trust." Therefore, his right to a hearing on reinstatement should be no less valid than that of an attorney removed for mental disability, as in Rowe.

In New York Levine Frank and Licato Cases,[30] each of these resigned attorneys met the threshold criteria to apply for reinstatement to the New York Bar (at least seven years since resignation was accepted). Yet, the same court (Appellate Division, First Department) granted hearings in two cases and denied hearings in the other two. An examination of the opinions give some insight into the Court's rationale.[31]

Frank H. Levine

In April 1984 the Appellate Division, in a unanimous one sentence decision, granted Levine's petition for reinstatement, made some seven and one-half years after his resignation, "to the extent of referring the matter. . . for a hearing. . .[32] Both Presiding Justice Francis T. Murphy and Associate Justice Theodore R. Kupferman participated in this decision, a fact which becomes relevant in view of the respective positions taken by the two judges in the later cases.

William N. Mairs, Jr.

Mairs initially applied for reinstatement in 1980, some 12 years after his resignation was accepted by the Court. That application was denied without a hearing.[33] His second application for reinstatement was likewise denied without hearing in 1983, notwithstanding that the Court's Disciplinary Committee recommended hearings on Mairs' claim of alcoholism at the time of the original misconduct and on the issue of restitution of the funds he had converted.[34] Mairs moved for reargument of the Court's latest denial order "or at least for an explanation for [the] denial of a hearing.[35] In June 1984 by a divided Court (three to two), with Associate Justice Kupferman joining the majority and Presiding Justice Murphy writing a strongly worded dissenting opinion, the motion was granted and "he matter [was] referred to the Departmental Disciplinary Committee for further investigation and recommendations. . ."[36]

In ruling in favor of the applicant, the majority made the following observations:

> If the law and rules permit a reinstatement application, which we are required to entertain, then in most cases the applicant should be entitled to a hearing (22 NYCRR 603.14). . . .
>
> There is plainly a question of fact as to the extent of restitution and the efforts to conclude a disposition with respect thereto. . . . An evidentiary

> hearing is required to resolve the issue. Granting a hearing does not imply that reinstatement will follow, as the dissent suggests. Our obligation to conform to procedural safeguards in disciplinary proceedings is now beyond doubt (*Matter of Nuey*, 61 NY2d 513).
>
> We must, to the extent possible, apply the rules and guidelines consistently. In *Matter of Levine* (100 AD2d 823), we held the application for reinstatement in abeyance and directed a hearing to determine whether the applicant now possessed the requisite character and fitness to practice law. . . .
>
> The differences between the two cases would seem to militate more strongly in favor of a further hearing in this case. Whereas petitioner herein was convicted of a class A misdemeanor of petit larceny as a result of his conversion of funds, Levine was disbarred after conviction for the Federal felony of bribing a public official (US Code, tit 18, A 201). Obviously, one who bribes a public official cannot make restitution. But, as we have held, he is entitled to a hearing on his application for reinstatement.
>
> Ours is not an arbitrary function. We cannot foreclose the possibility of reinstatement where disbarment has resulted from conversion of clients' funds. Our rules (22 NYCRR 603.11, 603.14[a]) applicable to attorneys whose disbarment is premised upon their resignation from the Bar, like section 90 (subd 5, par b) of the Judiciary Law, applicable to attorneys disbarred upon conviction for a felony, require that we entertain applications for reinstatement after seven years. As long as the rules permit reinstatement in such cases, then due process must afford a hearing in an appropriate case involving genuinely disputed factual issues. This is such a case.[37]

In his dissenting opinion, Presiding Justice Murphy essentially took the position that no hearing was warranted since the applicant "has not sustained the burden of proof or made a probative showing in his papers that would entitle him to such a hearing."

> We in the dissent believe that the petitioner should not be reinstated unless he convincingly demonstrates that restitution has been effected. Until this matter [the extent of restitution] is clarified by appropriate affidavits and documentation, no hearing is warranted upon petitioner's application for reinstatement.
>
> It should be further stressed that petitioner is attempting to entangle this court in his repayment problems. The court should reject such involvement and only consider petitioner's application for reinstatement when he candidly makes an evidentiary

showing of eligibility for consideration for reinstatement.

> When and if the petitioner meets this burden, a hearing may then be ordered. At that time, questions relating to petitioner's restitution and his alcoholism may be considered by a panel of the Departmental Disciplinary Committee. In the instant papers, petitioner has not made a prima facie showing that would justify such a hearing.[38]

Martin M. Frank

Several months after the *Mairs* decision was rendered, the Appellate Division in October 1984, in a unanimous one-sentence decision (in which Justice Kupferman participated and Justice Murphy did not) “denied in its entirety” the application of Martin M. Frank for "reinstatement. . . or for a hearing."[39]

Frank's subsequent motion to the Appellate Division for, among other things, reargument, or in the alternative, to be informed of the basis of the Appellate Division's denial of his application without hearing or opinion, was denied without opinion on December 27, 1984.[40] Leave to appeal to the Court of Appeals was also denied.[41]

In another case, Alfred Licato initially sought reinstatement in 1982, more than 15years after he resigned. His application was denied without hearing.[42] In 1984 he moved for reargument "in light of [the Appellate Division's] recent opinion in *Matter of William N. Mairs. Jr.*" or for an explanation of the Court's denial of his prior application.[43] By a divided court (Presiding Justice Murphy joining the majority and Justice Kupferman writing the dissenting opinion) Licato's motion was denied, the majority finding:

> Section 603.14 (b) of the rules of this court conditions the grant of an application for reinstatement, inter alia, upon the "applicant establish[ing] * * * by clear and convincing evidence that * * * he possesses the character and general fitness to practice law". One such application the rule permits consideration of the misconduct for which the applicant was originally disbarred.
>
> As he did on his prior application, petitioner fails to address the misconduct that led to his disbarment other than to assert, in conclusory manner, as pointed out above, that ‘the basic problems that resulted in [his] indictment have been solved and [he did] not believe that [he had] any remaining problems that would adversely effect [his] admission to the New York Bar.’

> In point of fact, the sole basis advanced for this reapplication is that the court should reconsider its prior order denying reinstatement 'in the light of the recent opinion * * * in the *Matter of William N. Mairs*, Jr.'(see 102 AD2d 146). In *Mairs*, the court found that an issue of fact existed as to whether or not petitioner had made adequate efforts to make restitution of the converted funds, which issue could only be resolved at a hearing. The hearing would also address the issue of petitioner's claim to alcoholism during the period in which client's funds were converted. The dissenters in main would have a hearing because of an inadequate demonstration that 'restitution has been effected'. The court pointed out that if reinstatement applications are permitted and must be entertained, "then in most cases the applicant should be entitled to a hearing" (*Matter of Mairs*, supra, p. 149). However, this statement must be read in connection with the implicitly qualifying language at page 150, viz., '[a]s long as the rules permit reinstatement in such cases [disbarment for conversion of client's funds and/or upon conviction of a felony], then due process must afford a hearing in an *appropriate case involving genuinely disputed factual issues.*' (emphasis added).
>
> It is manifest here, considering the reasons for which petitioner was disbarred that there is not even a prima facie showing of fitness and character to practice law. Thus, no hearing is warranted.[44]

Justice Kupferman in his dissenting opinion suggested that "perhaps" a hearing would be appropriate in all reinstatement cases:

> Kupferman, J. (dissenting). The Judiciary Law provides for an application for reinstatement after seven years. (Judiciary Law, A 90, subd 5, par b.)
>
> In the case of *Matter of Mairs* (99 AD2d 692), we provided on reargument (102 AD2d 146) for a hearing before the Departmental Disciplinary Committee.
>
> In this case, counsel for the Disciplinary Committee asks that the matter be referred for a hearing in accordance with the *Mairs* determination.
>
> In Matter of Nuey (61 NY2d 513), the Court of Appeals recently emphasized the need for a hearing before suspension. Perhaps the same approach should apply on reinstatement. Accordingly, I dissent and would direct that a hearing be held as requested by the Departmental Disciplinary Committee.[45]

Conclusion

These four cases appear to reflect a transition in the approach of the Appellate Division, First Department to reinstatement cases. Levine and Mairs, who were, respectively, guilty of bribing a public official and conversion of estate funds, seem no more entitled to reinstatement than Frank (guilty of conspiracy and tax evasion) or Licato (guilty of contempt and taking unlawful fees). Yet the former were granted hearings, thereby affording them the opportunity of establishing that they are fit to be reinstated, whereas the latter were denied that opportunity. Moreover, Licato, although denied a hearing, was at least given an explanation of the court's reasoning for the denial; Frank was given neither a hearing nor an explanation. Although the view expressed by Associate Justice Kupferman in his dissenting opinion in *Licato*, namely that hearings should be granted in all reinstatement cases, seems more in line with recognized principles of due process, the majority of the Court have clearly taken a more restrictive position.

~

Published: New York Law Journal, “Outside Counsel”,
January 16, 1990

---

[1] Reinstatement procedures are set forth, respectively, in sections 603.14 and 691.11 of the Rules of the Appellate Divisions, First and Second Departments.

[2] 100 AD2d 823 [1984].

[3] 102 AD2d 146 [1984].

[4] 104 Ad2d 20 [1984].

[5] 104 Ad2d 20 [1984].

[6] As noted above, an application for reinstatement by a resigned or disbarred attorney in the Appellate Division, First Department is brought pursuant to section 603.14 and may not be made until the expiration of at least seven years from the effective date of such disbarment or resignation [22 NYCRR 603.14(a)]. This section of the rules, which was promulgated effective February 18, 1975, places the burden on the applicant attorney of establishing that he is qualified for reinstatement, as follows:

(b) Such application may be granted by this court only if the applicant establishes (i) by clear and convincing evidence that he has fully complied with the provisions of the order of disbarment or suspension or order striking his name from the roll of attorneys, and

that he possesses the character and general fitness to to practice law. . .(22 NYCRR 603.14(b).

[7] *Goldfarb v. Virginia St. Bar*, 421 U.S. 773, 792 [1975].

[8] *Konigsberg v. Bd. of Examiners*, 353 U.S 252, 273 [1957].

[9] *Bates v. St. Bar of Arizona*, 433 U.S. 350 [1977], *Johnson v. Avery*, 393 U.S. 544, 551 [1969]; see also: *Erdmann v. Stevens*, 458 F.2d 1205, 1210 [1972]; *Matter of Ming*, 459 F.2d 1352 [1335].

[10] *Matter of Ruffalo*, 390 U.S. 544, 550 [1967]. In Ruffalo the Supreme Court recognized that procedural due process "includes fair notice of the charge. . . and opportunity afforded [to] him for explanation and defense" (supra, citing in part *Randall v. Brigham*, 7 Wall. 523, 540).

[11] 373 U.S. 96, 102; see also: *Schware v. Board of Bar Examiners*, 353 U.S. 232, 238-239.

[12] Willner successfully passed the New York bar examination in the late 1930's. His attempts to secure admission to the New York Bar had a long and tortuous history (supra note 11 at 110). In 1961 his seventh de novo application for admission was denied by the Appellate Division (Second Department) without a hearing (supra note 11 at 100). The Court of Appeals, after granting leave to appeal, affirmed the Appellate Division's latest order of denial, stating that:

> Upon the appeal herein there was presented and necessarily passed upon a question under the Constitution of the United States, viz: Appellant contended that he was denied due process of law in violation of his constitutional rights under the Fifth and Fourteenth Amendments of the Constitution(11 NY2d 866, 172 N.E.2d 288).

The Court of Appeals held that appellant was not denied due process in violation of such constitutional rights. The Supreme Court, which granted certiorari (370 U.S. 934), reversed, holding in part, as follows:

> Petitioner was clearly entitled to notice of and a hearing on the grounds for his rejection either before the Committee or before the Appellate Division. *Goldsmith v. Board of Tax Appeals*, supra; cf. *In re Oliver*, 333 U.S. 257, 273.
>
> If the Court of Appeals based its decision on the ground that denying petitioner the right of confrontation did not violate due process, we also hold that it erred for the reasons earlier stated.
>
> We hold that petitioner was denied procedural due process when he was denied admission to the Bar by the Appellate Division without a hearing on the charges filed against him before either the Committee or the Appellate Division. (Supra note 11 at 105, 106).

[13] *Matter of Eldridge*, 82 N.Y. 161 [1880] see also: *Matter of Kimball*, 33 NY2d 586, in which the Court of Appeals reversed the Appellate Division's denial of an applicant for admission who had previously been disbarred in the State of Florida.

[14] 40 NY2d 153.

[15] Supra note 11.

[16] Supra note 14 at 156; see also: *Matter of Levy*, 37 NY2d 279, in which it was stated that an attorney must be assured of "full due process and fairness in recognition of the substantial interest that is his in his right to practice law" (supra at 282).

[17] 48 AD2d 410.

[18] 40 NY2d 153, 154, 157. The Court of Appeals based its

1976 *Mitchell* decision in part on then existing Judiciary Law, section 90(5), which allowed for modification of an automatic disbarment based upon a felony conviction only upon a reversal of the conviction or a pardon:

Indeed, subdivision 5 of section 90, which empowers the Appellate Division to vacate or modify the order of disbarment in the event of a reversal upon appeal or an executive pardon, leaves no doubt that the Legislature intended that an attorney be automatically disbarred the moment that a judgment of conviction of a felony is entered by a trial court.

(Supra at 156.)

Therefore, absent those two limited circumstances, the 'automatically' disbarred/convicted felon attorney had no "right" to seek reinstatement to the bar, his disbarment being in effect permanent (See: *Matter of Suqarman*, 58 AD2d 328; *Matter of Glucksman*, 57 AD2d 205; *Matter of Barash*, 20 NY2d 154). The Appellate Division's discretionary power to vacate or modify disciplinary orders was in this situation completely foreclosed.

However, in 1979 Judiciary Law, Section 90(5) was amended to give the 'automatically' disbarred attorney the same 'right' as the resigned attorney, or the attorney disbarred after hearings, namely, the right to seek reinstatement after seven years:

b. If such removal or debarment was based upon conviction for a felony as defined in subdivision four of this section, the appellate division shall have power to vacate or modify such order or debarment after a period of seven years provided that such person has not been convicted of a crime during such seven-year period. [Judiciary Law, Section 90(5)(b)].

[19]61 NY2d 513 [1984].

[20] In *Nuey* the Court of Appeals reversed the Appellate Division, First Department's order temporarily suspending the attorney from the practice of law (*Matter of Nuey*, 98 AD2d 659), since that order was not based upon an adjudication of guilt supported by a record of evidence adduced at an adversarial hearing:

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 disciplinary 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.

(Supra note 19 at 515, 516.)

The *Nuey* decision was subsequently interpreted by the Court

of Appeals to allow for an immediate suspension from practice, without hearing, under limited circumstances where: 1) the attorney admitted or failed to controvert or deny a serious charge of professional misconduct, and 2) the attorney represented a threat to the public interest (*Matters of Padillo and Gray*, 67 NY2d 440, 503 NYS2d 550 [1986]). The Court found that "requirements of due process were plainly satisfied . . . where the attorneys . . . had notice of the applications for (immediate) suspension and the evidence upon which those applications were based, as well as ample opportunity to respond" (503 NYS2d 550 at 554).

[21] The Supreme Court Rules for Government of the Bar of Ohio, Rule V(7), cited at 29 Ohio 2d xxxiii.

[22] 10 Ohio St. 2d 117.

[23] *Schott v. Startzman*, 434 U.S. 922.

[24] The rules of these four states are noted for comparison purposes only. This is not to suggest that these are the only states which grant mandatory hearings.

[25] "Board" refers, to the Disciplinary Board of the Supreme Court of Pennsylvania (Pa. R.D.E., Rule 102).

[26] Pennsylvania Rules of Disciplinary Enforcement, Rules 215(a)(b), 218(b)(C)(1), (2) and (3).

[27] West's California Rules of Court, 1987, Rules of Procedure of The State Bar of California, Chapter 10, Rules 660, 662, 663, 664.

[28] Rules of the Supreme Court of Illinois, Article VII-- "Rules on Admission and Discipline of Attorneys," Part B. "Registration and Discipline of Attorneys", Rule 767(a)(f)(h). Rule 753 provides for adversarial hearings before panels of the hearing Board, members of which are appointed by the Attorney Registration and Disciplinary Commission, designated by Illinois Supreme Court.

[29] Texas state Bar Rules, Article 10, sections 28(A),29(A)(D).

[30] *Supra* notes 2, 3, 4 and 5.

[31] Levine resigned in approximately 1976 following his Federal conviction for bribing a public official (supra note 3, at 150). Mairs resigned in 1968 while the subject of a complaint that he had converted "a considerable sum of money" from a decedent's estate. In 1971 he pleaded guilty to misdemeanor petit larceny charges in connection with the same estate (supra, at 147). Licato, an official of the New York State Liquor Authority, resigned in 1966. He had been the subject of an investigation into corrupt activities at the authority and was convicted of criminal contempt and conspiracy to take unlawful fees (supra note 4 at 20, 21). Frank resigned in February 1976 following his conviction of conspiracy to violate Federal securities laws (order unpublished). In June 1976 he pleaded guilty to Federal charges of filing false United states tax returns.

[32] Supra note 2.

[33] 79 AD2d 550.

[34] 99 AD2d 692. By tendering a resignation, which terminates any pending disciplinary proceeding, the resigning attorney waives any right he might otherwise have to a hearing on charges of professional misconduct and factors in mitigation.

[35] Supra note 3, at 146, 148.
[36] ld. at 153.
[37] ld. at 149, 150.
[38] ld. at 150, 151, 152.
[39] Supra note 4.
[40] 106 AD2d 362.
[41] 64 NY2d 610.
[42] Supra note 5, at 21.
[43] Ibid.
[44] Supra note 5, at 21, 22.
[45] Id. at 22, 23.