

**IN THE MATTER OF PART 3 OF THE
LEGAL PROFESSION ACT, RSA 2000, c. L-8**

AND

**IN THE MATTER OF A HEARING REGARDING
THE CONDUCT OF AUSTIN NGUYEN
A MEMBER OF THE LAW SOCIETY OF ALBERTA**

Hearing Committee

Barbara McKinley – Chair and Bencher
Sandra Mah – Bencher
Salimah Walji-Shivji – Bencher

Appearances

Karen Hansen – Counsel for the Law Society of Alberta (LSA)
Austin Nguyen – Self-Represented

Hearing Date

June 17, 2021

Hearing Location

Virtual Hearing

HEARING COMMITTEE REPORT

Overview

1. Mr. Nguyen is a lawyer practicing in Calgary Alberta. He was admitted as a member of the Law Society in 1999. His practice areas are criminal law, civil litigation and family law. Between 2011 and 2017, Mr. Nguyen acted for D.S. on several criminal, civil and real estate matters. During this time, Mr. Nguyen breached several Accounting Rules, failed to be candid with the LSA, and assisted his client in an improper purpose.
2. On June 17, 2020¹ the Hearing Committee (Committee) convened a hearing into the conduct of Mr. Nguyen based on six citations:
 - 1) It is alleged that Austin Nguyen breached Rule 119.36 by failing to ensure that the records of his law firm recorded in a timely fashion the receipt of funds relating to the provision of legal services to D.S. and that such conduct is deserving of sanction;
 - 2) It is alleged that Austin Nguyen breached the accounting rules of the Law Society of Alberta by failing to deposit into trust funds received from or on behalf of client D.S. and for which no accounts for services had been rendered, and that such conduct is deserving of sanction;

- 3) It is alleged that Austin Nguyen failed to issue accounts for services rendered to D.S. in a timely fashion, and that such conduct is deserving of sanction;
 - 4) It is alleged that Austin Nguyen failed to issue receipts for retainers received from or for the benefit of D.S., and that such conduct is deserving of sanction;
 - 5) It is alleged that Austin Nguyen failed to be candid with the LSA regarding accounting records and accounts, and that such conduct is deserving of sanction; and
 - 6) It is alleged that Austin Nguyen assisted his client D.S. with an improper purpose in evading a Maintenance Enforcement Program garnishee, and that such conduct is deserving of sanction.
3. After reviewing all of the evidence and exhibits, including the Statement of Admitted Facts and Admission of Guilt (Statement), and hearing the submissions and arguments of the LSA and Mr. Nguyen, for the reasons set out below, the Committee finds Mr. Nguyen guilty of conduct deserving of sanction on six citations, pursuant to section 71 of the *Legal Profession Act* (the *Act*). The Committee also finds that, based on the facts of this case and the joint submission by the parties, the appropriate sanction is a suspension. In accordance with section 72 of the *Act*, the Committee orders that as of June 21, 2021, Mr. Nguyen be suspended from practicing law for a period of five months.
4. In addition, pursuant to section 72(2) of the *Act*, the Committee orders Mr. Nguyen to pay the LSA \$17,575.50 in costs within 60 days of the hearing.

Preliminary Matters

5. There were no objections to the constitution of the Committee or its jurisdiction, and a private hearing was not requested, so a public hearing into Mr. Nguyen's conduct proceeded.
6. After the hearing concluded, in which an oral decision was rendered, but prior to these written reasons being issued, Ms. Mah was appointed to the Provincial Court of Alberta. Pursuant to section 66 of the *Legal Profession Act*, the remaining two members of the Committee continued to issue these reasons.

Statement of Admitted Facts/Background

7. The first four citations involve breaches of accounting rules and the fifth citation refers to Mr. Nguyen's lack of candour regarding those breaches. The Statement sets out the following background facts:
8. Between 2011 and 2017, Mr. Nguyen represented D.S. on a number of matters. In April 2016, D.S. signed a promissory note and charge against property in the amount of \$120,000 payable to Mr. Nguyen for legal services rendered. Mr. Nguyen filed a caveat against property belonging to D.S. based on that promissory note and received a cheque for \$120,000. Mr. Nguyen deposited that cheque into his personal account and did not record receipt of the funds into the firm's accounting records.

9. In November 2016, D. S. signed another promissory note and charge against property in the amount of \$30,000 payable to Mr. Nguyen for legal services rendered. Mr. Nguyen filed a caveat for that amount against the title of two properties owned by D.S. on that promissory note. Mr. Nguyen received the \$30,000 in January 2017 and deposited it into his personal account and did not record receipt of the funds into the firm's accounting records.
10. Between 2011 and 2016, Mr. Nguyen received cash retainers from D.S. in the amount of \$4,500, but did not issue a receipt as required by Rule 119.39. In September 2017, Mr. Nguyen issued a handwritten receipt for \$2,000 for cash received from D.S. as a retainer. Mr. Nguyen did not record receipt of any of these funds.
11. Each of the above amounts fall within the definition of trust money in Rule 119, as each had been received for legal services at a time when no account had been rendered. Mr. Nguyen breached Rules 119.19 and 119.21(4) by failing to deposit the funds into trust and not dispersing them until an account had been rendered.
12. Accounts relating to the amounts of \$120,000, \$30,000 and \$4,500 were not rendered within a reasonable time after completion of the services, contrary to section 3.6-3 of the Code of Conduct.
13. The LSA commenced an investigation of Mr. Nguyen's practice in February 2018. Upon being served with an Investigation Order, he provided the Investigator with a back-up copy of the firm's PCLaw records ("the first back up copy").
14. In February 2018 Mr. Nguyen amended his tax return for 2016 to include the \$124,500 and instructed his bookkeeper to record that amount into the firm's PCLaw records for 2016. He then provided the LSA Investigator hard copies of documents, including a client accounting ledger for D.S. showing entries for a November 30, 2016 account for \$124,500 and receipt of payment on account on that date. He did not advise the Investigator that the November 30, 2016 entries had been made in February 2018.
15. On February 26, 2018 Mr. Nguyen provided the LSA Investigator with a second back-up copy of the firm's PCLaw files, which had additional entries not recorded in the first back-up copy. These entries were dated November 30, 2016 and related to the \$124,500.
16. The Investigator retained a forensic accountant who provided an opinion that the account addressed to D.S. for \$124,500 dated November 30, 2016 was created after February 7, 2018.
17. Mr. Nguyen confirmed to the Investigator in June 2018 that D.S. paid his legal fees from September 2011 to May 2016 without receiving a statement of account.
18. On August 10, 2018 Mr. Nguyen provided the Investigator with the firm's PCLaw records and a client ledger for D.S. showing a receipt dated January 30, 2017 for \$30,000 received from D.S. and a cheque dated January 27, 2017 for \$30,000 payable to Mr. Nguyen. He did not tell the Investigator at that time that these records had been created in August 2018 but backdated to January 30, 2017.
19. Mr. Nguyen failed to advise the LSA Investigator on February 14, 2018, February 27, 2018,

August 10, 2018 and August 28, 2018 that the PCLaw records for the accounts and receipts of payment of \$124,500 and \$30,000 were backdated.

20. The sixth citation involves assisting the client D.S. with an improper purpose. D.S. owed \$76,221.67 in arrears for child support which resulted in a Maintenance Enforcement Program garnishee in December 2016.
21. D.S. was entitled to funds in the amount of \$62,319.64 as the beneficiary of an estate. Mr. Nguyen prepared an Irrevocable Direction to Pay for D.S. to sign regarding these estate funds. D.S. signed the Irrevocable Direction to Pay on January 26, 2017 at another law firm, which directed that Mr. Nguyen receive the estate funds and pay \$30,000 of the funds to himself for legal services rendered as well as another \$4,000 as a retainer regarding an application to reduce the maintenance arrears. The balance was to be paid to D.S.'s associate J.O.
22. On January 27, 2017 Mr. Nguyen met D.S. at a bank, where D.S. cashed the bank draft payable to his name and requested bank drafts payable in accordance with the Irrevocable Direction to Pay.
23. On April 24, 2017 Mr. Nguyen obtained a court order terminating D.S.'s ongoing obligation for child support and reducing his arrears to \$9, 558.60.

Analysis and Decision

Legislation, Rules, Guidelines

24. For an admission of guilt to be acceptable, the admission must have the following elements:
 - 1) the admission must be made voluntarily and free of undue coercion;
 - 2) the lawyer must unequivocally admit guilt to the essential elements of the citations;
 - 3) the lawyer must understand the nature and consequences of the admission; and
 - 4) the lawyer must understand that the Committee is not bound by any submission advanced jointly by the lawyer and the LSA.
25. The panel finds the Statement is in the appropriate form pursuant to section 60 of the *Act* and accepts the admissions therein. Each admission is deemed to be a finding of this Committee that Mr. Nguyen's conduct is deserving of sanction.

Joint Submission on Sanction

26. The parties agreed that the appropriate sanction is a five-month suspension. In addition, they agreed that Mr. Nguyen should pay costs in the amount of \$17,575.50 within 60 days of this decision.
27. While hearing committees are not bound to accept joint submissions as to sanction, such submissions carry significant weight, and the case authorities indicate that they should be accepted unless they are demonstrably unfit and contrary to the public interest.
28. The leading authority on joint submissions on sanction is *R. v. Anthony-Cook*, 2016 SCC

43. In that decision, the Supreme Court of Canada held that a joint submission should be accepted unless the proposed sanction “would bring the administration of justice into disrepute or is otherwise contrary to the public interest” (at paragraph 32). While *Anthony-Cook* is a criminal case, it has been applied in the regulatory context, including in other LSA conduct matters.

29. According to paragraph 187 of the LSA Pre-Hearing and Hearing Guideline (Guideline), the “fundamental purposes of sanctioning are to ensure the public is protected from acts of professional misconduct and to protect the public’s confidence in the integrity of the profession. The Guideline sets out additional purposes such as specific and general deterrence (paragraph 188) and a number of factors that should be taken into account when determining sanction (paragraph 200).

LSA Submissions

30. After referring to some of the foregoing principles, counsel for the LSA argued that there are aggravating circumstances in this matter, including Mr. Nguyen’s discipline record. In particular, Mr. Nguyen was found guilty of failing to be candid four previous times and of breaching trust conditions twice. In these previous cases, sanction included fines and reprimands. LSA Counsel also referred to concerns regarding integrity and governability.
31. Mitigating circumstances include Mr. Nguyen’s provision of a Statement of Admitted Facts and Admission of Guilt, thereby avoiding a lengthy hearing.
32. LSA Counsel referred to six other similar cases where the sanction ranged from a two-month suspension to a six-month suspension. Unlike Mr. Nguyen, none of the other cases presented a recent discipline history.
33. The Committee concluded that the jointly recommended sanction is sufficient and appropriate in the circumstances of this case. It falls within the range suggested by the cases cited.

Concluding Matters

34. Pursuant to section 72 of the *Act*, Mr. Nguyen is suspended for five months and must pay the LSA \$17,575.50 in costs within 60 days of the hearing date.
35. A Notice to the Profession shall be issued, as required by section 85 of the *Act* in the circumstances of a suspension.
36. There shall be no referral to the Solicitor General.
37. The exhibits, other hearing materials, and this report will be available for public inspection, including the provision of copies of exhibits for a reasonable copy fee, except that identifying information in relation to persons other than Mr. Nguyen will be redacted and further redactions will be made to preserve client confidentiality and solicitor-client privilege (Rule 98(3)).

Dated at Calgary, Alberta, July 19, 2021.

Barbara McKinley

Salimah Walji-Shivji