

**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 Q.T. NGUYEN
A MEMBER OF THE LAW SOCIETY OF ALBERTA**

ORDER OF THE HEARING COMMITTEE

UPON THE ISSUANCE OF CITATIONS by the Law Society of Alberta (“LSA”) to Austin Q.T. Nguyen pursuant to section 56 of the *Legal Profession Act* (the Act);

AND WHEREAS:

- a) Austin Q.T. Nguyen has executed a Statement of Admitted Facts and Admission of Guilt (the “Statement”) attached to this Order in relation to the following citations:
 - 1. It is alleged that Austin Q.T. Nguyen failed to honour trust conditions and that such conduct is deserving of sanction;
 - 3. It is alleged that Austin Q.T. Nguyen improperly filed a Notice of Change of Representation and that such conduct is deserving of sanction;
 - 4. It is alleged that Austin Q.T. Nguyen failed to be candid with the Law Society and that such conduct is deserving of sanction.
- b) Austin Q.T. Nguyen admits in the Statement that he is guilty of Citations 1, 3, and 4, and that his conduct is deserving of sanction;
- c) On March 19, 2019, the Conduct Committee found the Statement acceptable, pursuant to subsection 60(2) of the Act;
- d) On April 2, 2019, the Chair of the Conduct Committee appointed a single Bencher as the Hearing Committee (“Committee”) for this matter, pursuant to subsection 60(3) of the Act;
- e) Pursuant to subsection 60(4) of the Act, it is deemed to be a finding of this Committee that Austin Q.T. Nguyen’s conduct is deserving of sanction;
- f) On May 24, 2019, the Committee convened a public hearing into the appropriate sanction related to the conduct of Austin Q.T. Nguyen;

- g) The LSA and Austin Q.T. Nguyen provided a joint submission on sanction for the Committee's consideration, seeking a reprimand and fines totalling 18,000.00, payable by August 24, 2019;
- h) The parties have also agreed that it is reasonable for Austin Q.T. Nguyen to pay \$8,130.45 in costs in relation to this matter, payable by August 24, 2019;
- i) The Committee has determined that the joint submission is reasonable, consistent with sanctions in similar cases, does not bring the administration of justice into disrepute and is therefore in the public interest;
- j) The Committee has accepted the joint submission on sanction, and accepted the submission with respect to the payment of costs.

IT IS HEREBY ORDERED THAT:

1. The appropriate sanction with respect to Austin Q.T. Nguyen's conduct is as follows:
 - a. As to Citation 1: A reprimand, which was delivered orally by the Committee at the hearing, and a fine of \$8,000.00;
 - b. As to Citation 3: A reprimand, which was delivered orally by the Committee at the hearing, and a fine of \$2,000.00;
 - c. As to Citation 4, A reprimand, which was delivered orally by the Committee to at the hearing, and a fine of \$8,000.00.
2. The text of the reprimand will be attached to this Order as a schedule prior to the Order being published.
3. Austin Q.T. Nguyen must pay costs in the amount of \$8,130.45.
4. Austin Q.T. Nguyen must pay the fines and the costs by August 24, 2019.
5. No Notice to the Profession or Notice to the Attorney General is to be made.
6. The exhibits and this order 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 Austin Q.T. 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, on May 24, 2019.

Deanna Steblyk, Bencher

IN THE MATTER OF THE *LEGAL PROFESSION ACT*
-AND-
IN THE MATTER OF A HEARING REGARDING THE CONDUCT OF
AUSTIN G.T. NGUYEN
A MEMBER OF THE LAW SOCIETY OF ALBERTA
HEARING FILE NUMBER HE20180158
STATEMENT OF ADMITTED FACTS AND ADMISSION OF GUILT

INTRODUCTION

1. I was admitted as a member of the Law Society of Alberta (the “LSA”) on July 19, 1999 and have practiced in Calgary, Alberta since that time.
2. My present status with the Law Society of Alberta is Active/Practicing.
3. My practice comprises Civil Litigation (30%), Real Estate (25%), Matrimonial/Family (20%), Criminal (15%), Corporate (5%) and Immigration (5%).

CITATIONS

4. On June 19, 2018, the Conduct Committee Panel referred the following conduct to a hearing:
 1. It is alleged that Austin Q.T. Nguyen failed to honour trust conditions and that such conduct is deserving of sanction;
 2. It is alleged that Austin Q.T. Nguyen improperly requested a fee from another lawyer and that such conduct is deserving of sanction;
 3. It is alleged that Austen Q.T. Nguyen improperly filed a Notice of Change of Representation and that such conduct is deserving of sanction; and
 4. It is alleged that Austin Q.T. Nguyen failed to be candid with the Law Society and that such conduct is deserving of sanction.
5. On January 24, 2019, PHC Chair [RP] QC directed the withdrawal of Citation 2.

FACTS

6. P.H. had retained the firm of L. and Co. to handle a claim relating to personal injuries suffered in a motor vehicle accident claim in 2006 (the “2006 claim”), and a claim relating to personal injuries suffered in a motor vehicle accident claim in 2010 (the “2010 claim”). J.R. was counsel for the Defendant on the 2010 claim.
7. On March 9, 2016, I met with P.H. and agreed to review her 2010 claim file for the purposes of determining whether I was prepared to act for her on that claim.

8. On March 11, 2016, I wrote to C.S., a lawyer with L. & Co. advising that I was counsel for P.H. and requesting the 2010 claim file.
9. On April 6, 2016, C.S. sent the 2010 claim file to me with a letter that imposed a number of trust conditions on me, including the following:
 - a. Should I be unable or unwilling to accept the trust conditions, I was to return the enclosed file materials forthwith without having read or photocopied them;
 - b. Should I not return the file to C.S. within three weeks of the date of the letter, I would be deemed to have accepted the trust conditions;
 - c. I was not to make any use of the file materials until C.S.'s account for disbursements was paid in full;
 - d. I was to serve a Notice of Change of Solicitors within two weeks of my acceptance of the Trust conditions.
10. C.S.'s April 6, 2016 letter went on to address the 2006 claim file, and noted that while the claim had been settled, controversy had arisen regarding the amount owing to one of P.H.'s health providers ("the clinic"). Although P.H. had signed an Irrevocable Direction to Pay in favour of the clinic, she disputed the amount of the clinic's bill. C.S.'s letter said that if I accepted his trust conditions on the 2010 claim, he proposed to release to me the funds he had retained from the 2006 claim settlement to satisfy the clinic's account, so that I could deal with the funds in accordance with P.H.'s instructions.
11. I did not return the file to C.S. within three weeks of April 6, 2016, did not pay C.S.'s account for disbursements before making use of the file materials, and did not file a Notice of Change of Solicitors within two weeks.
12. On September 19, 2016, J.R. sent me a letter serving the Statement of Defence and requesting a Notice of Change of Representation and P.H.'s Affidavit of Records.
13. On September 27, 2016, I filed a Notice of Change of Representation with the Court of Queen's Bench which indicated that P.H. had changed her lawyer of record for the 2010 claim from L. & Co. to myself. This Notice of Representation was never served on J.R. but was sent to L. & Co.'s office by facsimile, along with a letter addressed to J.R. serving the Notice of Representation and indicating that my office would provide P.H.'s Affidavit of Record in due course.
14. On October 3, 2016, J.R. sent my office a letter via facsimile again requesting a Notice of Change of Representation and the Affidavit of Records.
15. On October 24, 2016, I returned the file for the 2010 claim to C.S. with a letter stating that I did not accept C.S.'s trust conditions. I acknowledge that it was improper for me to do so, since by the terms of C.S. trust conditions, I was deemed to have accepted the file, and I had in fact filed a Notice of Change of Representation.

16. Between October 25 and December 15, 2016, there were several communications between J.R. and I with regard to the status of my retainer on behalf of P.H.
17. On December 22, 2016, J.R. sent a letter to me and copied to C.S. asking for a properly filed Notice of Change of Representation and confirmation that C.S. was handling the file.
18. In response to J.R.'s letter, on December 22, 2016, I faxed a letter to C.S. and J.R. which attached a filed Notice of Change of Representation that I had prepared and filed which indicated that C.S. was now acting for P.H. on the 2010 claim.
19. I acknowledge that it was improper for me to file the December 22, 2016 Notice of Change of Representation because in doing so I was unilaterally appointing C.S. as P.H.'s counsel when I knew that P.H. did not want to have C.S. as her counsel. I acknowledge that the form that I should have filed was a Notice of Withdrawal of Lawyer of Record.
20. On January 11, 2017, C.S. filed a Notice of Complaint with the LSA.
21. In my written reply to the LSA I said that I spoke to C.S. on April 12, 2016 and advised him that the trust conditions in his April 6, 2016 letter were unacceptable, and that in response C.S. said not to worry about the deadline of three weeks, and that he needed my help to solve the problem with P.H. on the 2006 claim. I attached a handwritten note to my written reply to the LSA which purported to record the April 12, 2016 conversation with C.S.
22. My handwritten notes of a telephone conversation with C.S. on April 12, 2016 are not accurate in stating that C.S. had waived the trust conditions, when in fact he did not do so explicitly, and I had no valid basis to assume otherwise.
23. The LSA performed an investigation into the complaint of C.S. In the course of that investigation, I continued to insist that C.S. and I had agreed to a waiver of trust conditions. In saying so, I failed to be candid with the LSA investigators as there was no such agreement between C.S. and I.

ADMISSION OF GUILT

24. I admit that I failed to honour trust conditions and that such conduct is conduct deserving of sanction.
25. I admit that I improperly filed a Notice of Change of Representation and that such conduct is deserving of sanction.
26. I admit that I failed to be candid with the Law Society, and that such conduct is conduct deserving of sanction.

INDEPENDENT LEGAL ADVICE

27. I acknowledge that I have had the opportunity to consult legal counsel and that I have signed this Statement of Facts and Admission of Guilt voluntarily and without any compulsion or duress.

DATED THE 27th DAY OF January, 2019

"Austin Nguyen"
Austin Q.T. Nguyen

Reprimand

Mr. Nguyen, as your regulator, the Law Society of Alberta has two principal duties: to protect the interests of the public, and to protect and maintain the reputation of the legal profession. Your conduct in this matter engages both of those considerations, involving as it does significant questions with respect to both your integrity and your governability.

As lawyers, we have the great privilege of being a self-regulating profession, but that privilege can be lost if our members are not governable. Members must respond to disciplinary matters such as this by doing their utmost to avoid doing anything which attracts discipline again in the future. I have significant concerns as to whether you have done that in the past, or will do so in the future, given that this is your fifth time before us in less than ten years.

My concerns with respect to your governability are mitigated in part by your admission to the conduct here, but of course you have admitted to misconduct before, and are still doing things to warrant discipline. That said, the law says that a joint submission on sanction is to be given deference. You have admitted guilt to three citations which evidence serious misconduct, and which could have harmed the interests of your client and the justice system. If it weren't for the deference owed to the joint submission, I may well have considered the proposed sanctions insufficient in light of your discipline record.

However, your cooperation in proceeding with the process today helped to avoid unnecessary hearing costs, and avoid time and inconvenience to various parties and witnesses, as well as process costs. For those reasons, I have concluded that it is in the public interest to accept the joint submission, and I will endorse the consent order in the form presented, including the revised costs amount.

Mr. Nguyen, your conduct in this matter failed to meet the high standards required for a barrister and solicitor in this province. I expect you to do better going forward, and I expect that continued incidents of conduct deserving of sanction are likely to attract more serious consequences in the future. These incidents must stop. For these reasons you are reprimanded today.

Thank you for your cooperation with this process. Your regulator wishes you the best going forward and, with all due respect, your regulator does not wish to see you involved in this process again.