



Republic of the Philippines
Supreme Court
Manila

EN BANC

MELODY R. NERY,
Complainant,

A.C. No. 10196

Present:

SERENO, C.J.,
CARPIO,**
VELASCO, JR.,
LEONARDO-DE CASTRO,
BRION,
PERALTA,
BERSAMIN,
DEL CASTILLO,
VILLARAMA, JR.,
PEREZ,
MENDOZA,**
REYES,
PERLAS-BERNABE,
LEONEN, and
JARDELEZA, JJ.

- versus -

ATTY. GLICERIO A. SAMPANA,
Respondent.

Promulgated:
SEPTEMBER 09, 2014

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RESOLUTION

CARPIO, *Acting C.J.*:

The Case

This is a disbarment complaint filed by Melody R. Nery (Nery) against Atty. Glicerio A. Sampana (Sampana) for failing to file the petition

* On official leave.

** Acting Chief Justice per Special Order No. 1770 dated 28 August 2014.

*** On official leave.

for adoption despite receiving his legal fees and for making Nery believe that the petition was already filed.

The Facts

In her verified complaint filed on 18 June 2010,¹ Nery alleged that in June 2008, she engaged the services of Sampana for the annulment of her marriage and for her adoption by an alien adopter. The petition for annulment was eventually granted, and Nery paid ₱200,000.00 to Sampana. As for the adoption, Sampana asked Nery if she had an aunt, whom they could represent as the wife of her alien adopter. Sampana then gave Nery a blurred copy of a marriage contract, which they would use for her adoption. Thereafter, Nery paid Sampana ₱100,000.00, in installment: (a) ₱10,000.00 on 10 September 2008; (b) ₱50,000.00 on 2 October 2008; and (c) ₱40,000.00 on 17 November 2008. Nery no longer asked for receipts since she trusted Sampana.

On 14 February 2009, Sampana sent a text message informing Nery that he already filed the petition for adoption and it was already published. Sampana further informed Nery that they needed to rehearse before the hearing. Subsequently, Sampana told Nery that the hearing was set on 5 March 2010 in Branch 11 of Malolos, Bulacan. When Nery asked why she did not receive notices from the court, Sampana claimed that her presence was no longer necessary because the hearing was only jurisdictional. Sampana told Nery that the hearing was reset to 12 March 2010.

On 11 March 2010, Nery inquired from Branch 11 of Malolos, Bulacan about the status of the petition for adoption and discovered that there was no such petition filed in the court.² Thus, in the afternoon of the same day, Nery met Sampana and sought the reimbursement of the ₱100,000.00 she paid him. Sampana agreed, but said that he would deduct the filing fee worth ₱12,000.00. Nery insisted that the filing fee should not be deducted, since the petition for adoption was never filed. Thereafter, Nery repeatedly demanded for the reimbursement of the ₱100,000.00 from Sampana, but the demands were left unheeded.

In an Order dated 25 February 2011,³ the Integrated Bar of the Philippines Commission on Bar Discipline (IBP-CBD), through Commissioner Atty. Eldrid C. Antiquiera (Commissioner Antiquiera), stated that Sampana failed to file his answer to the complaint and to appear during the mandatory conference. Thus, both parties were directed to submit their position papers.

¹ *Rollo*, pp. 2-5.

² *Id.* at 8. Certification issued by the Office of the Clerk of Court dated 6 April 2010.

³ *Id.* at 16.

In her position paper,⁴ Nery reiterated her allegations in the complaint.

On the other hand, in his position paper dated 25 March 2011,⁵ Sampana argued that Nery's allegations were self-serving and unsubstantiated. However, Sampana admitted receiving "one package fee" from Nery for both cases of annulment of marriage and adoption. Sampana alleged that he initially frowned upon the proposed adoption because of the old age, civil status and nationality of the alien adopter, but Nery insisted on being adopted. Thus, Sampana suggested that "if the [alien] adopter would be married to a close relative of [Nery], the intended [adoption by an alien] could be possible." Sampana, then, required Nery to submit the documents, including the marriage contracts and the certification of the alien's qualification to adopt from the Japanese Embassy (certification). Nery furnished the blurred marriage contract, but not the certification. Sampana alleged that he prepared the petition for adoption but did not file it because he was still waiting for the certification.

Sampana denied that he misled Nery as to the filing of the petition for adoption. Sampana claimed that Nery could have mistaken the proceeding for the annulment case with the petition for adoption, and that the annulment case could have overshadowed the adoption case. In any case, Sampana committed to refund the amount Nery paid him, after deducting his legal services and actual expenses.

The IBP's Report and Recommendation

In his Report and Recommendation,⁶ Commissioner Antiquiera found Sampana guilty of malpractice for making Nery believe that he already filed the petition for adoption and for failing to file the petition despite receiving his legal fees. Thus, Commissioner Antiquiera recommended a penalty of three (3) months suspension from the practice of law.

In Resolution No. XX-2013-217 passed on 20 March 2013, the IBP Board of Governors adopted and approved Commissioner Antiquiera's report and recommendation, as follows:

RESOLVED to ADOPT and APPROVE, as it is hereby unanimously ADOPTED and APPROVED, with modification, [t]he Report and Recommendation of the Investigating Commissioner in the above-entitled case, herein made part of this Resolution as Annex "A", and finding the recommendation fully supported by the evidence on record and the applicable laws and rules and considering that Respondent is guilty of malpractice by his failure to file a petition for adoption and made complainant

⁴ Id. at 17-19.

⁵ Id. at 23-27.

⁶ Id. at 33-34.

believe that he filed the petition in Court, Atty. Glicerio Sampana is hereby SUSPENDED from the practice of law for three (3) months and ORDERED to RETURN to complainant the amount of One Hundred Thousand (₱100,000.00) Pesos with legal interest within thirty days from receipt of notice.⁷

The Ruling of the Court

The recommendation of the IBP Board of Governors is well-taken, except as to the penalty.

Acceptance of money from a client establishes an attorney-client relationship and gives rise to the duty of fidelity to the client's cause.⁸ Every case accepted by a lawyer deserves full attention, diligence, skill and competence, regardless of importance.⁹ A lawyer also owes it to the court, their clients, and other lawyers to be candid and fair.¹⁰ Thus, the Code of Professional Responsibility clearly states:

CANON 15 - A lawyer shall observe candor, fairness and loyalty in all his dealings and transactions with his client.

CANON 16 - A lawyer shall hold in trust all moneys and properties of his client that may come into his possession.

Rule 16.03 - A lawyer shall deliver the funds and property of his client when due or upon demand. x x x.

CANON 17 - A lawyer owes fidelity to the cause of his client and he shall be mindful of the trust and confidence reposed in him.

CANON 18 - A lawyer shall serve his client with competence and diligence.

Rule 18.03 - A lawyer shall not neglect a legal matter entrusted to him and his negligence in connection therewith shall render him liable.

In the present case, Sampana admitted that he received "one package fee" for both cases of annulment and adoption. Despite receiving this fee, he unjustifiably failed to file the petition for adoption and fell short of his duty of due diligence and candor to his client. Sampana's proffered excuse of waiting for the certification before filing the petition for adoption is

⁷ Id. at 32.

⁸ *Yutuc v. Penuela*, A.C. No. 7904, 22 September 2008 (Unsigned Resolution), citing *Adrimisin v. Javier*, 532 Phil. 639 (2006); *Rollon v. Naraval*, 493 Phil. 24 (2005), citing *Pariñas v. Paguinto*, 478 Phil. 239 (2004); *Fernandez v. Cabrera II*, 463 Phil. 352 (2003); *Emiliano Court Townhouses Homeowners Association v. Dioneda*, 447 Phil. 408 (2003).

⁹ *Yutuc v. Penuela*, A.C. No. 7904, 22 September 2008 (Unsigned Resolution), citing *In Re: Atty. David Briones*, 415 Phil. 203 (2001); *Rollon v. Naraval*, 493 Phil. 24 (2005), citing *Schulz v. Flores*, 462 Phil. 601 (2003).

¹⁰ The Code of Professional Responsibility, Canon 15.

disingenuous and flimsy. In his position paper, he suggested to Nery that if the alien adopter would be married to her close relative, the intended adoption could be possible. Under the Domestic Adoption Act provision, which Sampana suggested, the alien adopter can jointly adopt a relative within the fourth degree of consanguinity or affinity of his/her Filipino spouse, and the certification of the alien's qualification to adopt is waived.¹¹

Having no valid reason not to file the petition for adoption, Sampana misinformed Nery of the status of the petition. He then conceded that the annulment case overshadowed the petition for adoption. Verily, Sampana neglected the legal matter entrusted to him. He even kept the money given him, in violation of the Code's mandate to deliver the client's funds upon demand. A lawyer's failure to return upon demand the funds held by him gives rise to the presumption that he has appropriated the same for his own use, in violation of the trust reposed in him by his client and of the public confidence in the legal profession.¹²

This is not the first administrative case filed against Sampana. In *Lising v. Sampana*,¹³ we already found Sampana guilty of violating Canon 1 of the Code of Professional Responsibility for his unethical and illegal act relative to his double sale of a parcel of land. We imposed upon him the penalty of suspension from the practice of law for one (1) year and warned him that a *repetition of a similar act shall be dealt with more severely*.

In *Rollon v. Naraval*,¹⁴ we imposed upon the respondent therein the penalty of suspension from the practice of law for two (2) years for failing to render any legal service after receiving the filing and partial service fee. Considering the serious consequence of disbarment and the previous rulings of this Court, we deem it proper to increase the penalty for Sampana's malpractice and violation of the Code of Professional Responsibility to suspension from the practice of law for three (3) years.

WHEREFORE, we **SUSPEND** Atty. Glicerio A. Sampana from the practice of law for **THREE (3) YEARS** with a stern warning that a repetition of a similar act shall be dealt with more severely. We also **ORDER** Atty. Glicerio A. Sampana to **RETURN** to complainant Melody R. Nery the amount of One Hundred Thousand Pesos (₱100,000.00), with 12% interest per annum from the time of his receipt of the full amount of money on 17 November 2008 until 30 June 2013, then 6% interest per annum from 1 July 2013 until fully paid.

Let a copy of this resolution be furnished the Bar Confidant to be included in the records of the respondent; the Integrated Bar of the

¹¹ Republic Act No. 8552 or the Domestic Adoption Act of 1998, Section 7(b)(iii).

¹² *Dhaliwal v. Dumaguing*, A.C. No. 9390, 1 August 2012, 678 SCRA 68.

¹³ A.C. No. 7958, 3 March 2014, citing *Adrimisin v. Javier*, 532 Phil. 639 (2006).

¹⁴ *Supra* note 8.

Philippines for distribution to all its chapters; and the Office of the Court Administrator for dissemination to all courts throughout the country.

SO ORDERED.

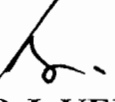


ANTONIO T. CARPIO
Acting Chief Justice

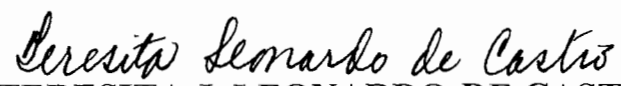
WE CONCUR:

(On official leave)


MARIA LOURDES P. A. SERENO
Chief Justice




PRESBITERO J. VELASCO, JR.
Associate Justice




TERESITA J. LEONARDO-DE CASTRO
Associate Justice



ARTURO D. BRION
Associate Justice



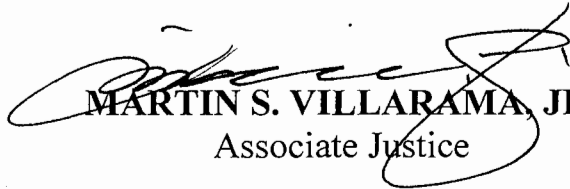
DIOSDADO M. PERALTA
Associate Justice




LUCAS P. BERSAMIN
Associate Justice



MARIANO C. DEL CASTILLO
Associate Justice




MARTIN S. VILLARAMA, JR.
Associate Justice



JOSE PORTUGAL PEREZ
Associate Justice

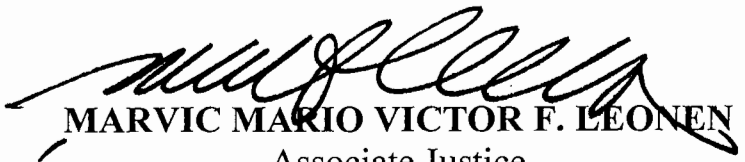
(On official leave)
JOSE CATRAL MENDOZA
Associate Justice



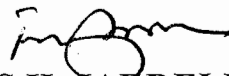
BIENVENIDO L. REYES
Associate Justice



ESTELA M. PERLAS-BERNABE
Associate Justice



MARVIC MARIO VICTOR F. LEONEN
Associate Justice



FRANCIS H. JARDELEZA
Associate Justice