

FIRST DIVISION

[A.C. No. 3452, June 23, 2014]

**HENRY SAMONTE, PETITIONER, VS. ATTY. GINES ABELLANA,
RESPONDENT.**

DECISION

BERSAMIN, J.:

A lawyer who willfully resorts to any falsehood in order to mislead the courts or his clients on the status of their causes exhibits his unworthiness to remain a member of the Law Profession. This is because he is always expected to be honest and forthright in his dealings with them. He thereby merits the condign sanction of suspension from the practice of law, if not disbarment.

Antecedents

On February 16, 1990, complainant Henry E. Samonte brought this administrative complaint against respondent Atty. Gines N. Abellana who had represented him as the plaintiff in Civil Case No. CEB-6970 entitled *Capt. Henry E. Samonte v. Authographics, Inc., and Nelson Yu* of the Regional Trial Court in Cebu City.^[1] In the administrative complaint, Samonte enumerated the serious acts of professional misconduct by Atty. Abellana, to wit:

1. Falsification of documents, when Atty. Abellana made it appear that he had filed Civil Case No. CEB-6970 on June 10, 1988, conformably with their agreement, although the complaint was actually filed on June 14, 1988;
2. Dereliction of duty, when Atty. Abellana failed to: (a) file the reply vis-à-vis the answer with counterclaim, with his omission having delayed the pre-trial of the case; (b) inform the trial court beforehand that Samonte could not be available on a scheduled hearing, thereby incurring for the plaintiff's side an unexplained absence detrimental to Samonte as the plaintiff; and (c) submit an exhibit required by the trial judge, only to eventually submit it three months later;
3. Gross negligence and tardiness in attending the scheduled hearings; and
4. Dishonesty for not issuing official receipts for every cash payments made by Samonte for his court appearances and his acceptance of the case.

To support his administrative complaint, Samonte attached the following annexes, namely:

1. Comparative photocopies of the cover page of the complaint on file in the RTC and of the cover page of the complaint Atty. Abellana furnished him;^[2]
2. A photocopy of the order issued on January 16, 1989, and a photocopy of the order issued on January 19, 1990 in which the RTC observed that "[t]he formal offer of plaintiff's exhibits is rather very late;"^[3] and
3. The motion to change counsel, in which Samonte stated that Atty. Abellana had failed to promptly attend court hearings and to do other legal services required of him as the counsel. In the lower left portion of the motion, Atty. Abellana noted the motion subject to the reservation that his attorneys fees should still be paid.^[4]

On March 12, 1990, the Court required Atty. Abellana to comment on the administrative complaint.

In his comment dated April 6, 1990,^[5] Atty. Abellana denied the charge of falsification of documents, clarifying that the actual filing of the complaint could be made only on June 14, 1988 instead of on June 10, 1988 because Samonte had not given enough money to cover the filing fees and other charges totaling P5,027.76; and that Samonte shelled out only P5,000.00, contrary to their agreement in April 1988 on paying to him P10,000.00 as the acceptance fee in addition to the filing fees. He asserted that the charge of dereliction of duty was baseless, because he had filed the reply on December 2, 1988 after receiving the answer with counterclaim of the defendants on August 2, 1988, attaching as proof the copies of the reply (Annex 8 and Annex 9 of his comment);^[6] and that it was the RTC, not him, who had scheduled the pre-trial on January 16, 1989.^[7] Anent his non-attendance at the hearings in Civil Case No. CEB-6970, he explained that although he had informed the RTC of his having been either stranded in another province, or having attended the arraignment of another client in another court, the presiding judge had opted not to await his arrival in the courtroom. He blamed Samonte for his inability to submit the formal offer of exhibits on time, pointing out that Samonte had failed to give the duplicate originals of the documentary exhibits despite his request because of the latter's absence from the country. He countered that it was Samonte who had been dishonest, because Samonte had given only the filing fees plus at least P2,000.00 in contravention of their agreement on the amount of P10,000.00 being his acceptance fees in addition to the filing fees; that the filing fees paid were covered by receipts issued by the Clerk of Court; that no receipts were issued for the P200.00/appearance fee conformably with the practice of most lawyers; and that Samonte had not also demanded any receipts.

Atty. Abellana branded as unethical Samonte's submission of a motion to change counsel,^[8] stating that the latter did not thereby exhibit the courtesy of informing

him beforehand on the intention of not meeting his obligation to him as the counsel; that Samonte had been forced to issue to him a check after the Branch Clerk of Court had told him that his motion to change counsel would not be acted upon unless it carried Atty. Abellana's conformity as the counsel; and that he had duly acknowledged the check.^[9]

On May 23, 1990, the Court received Samonte's letter dated May 8, 1990^[10] embodying additional charges of falsification of documents, dereliction of duty and dishonesty based on the reply and the annexes Atty. Abellana had filed. Samonte noted in the letter that the reply attached to the comment of Atty. Abellana was not authentic based on the categorical statement of the Branch Clerk of Court of Branch 5 of the RTC in Cebu City to the effect that no such reply had been filed in behalf of Samonte; and that the rubber stamp affixed on the reply supposedly filed by Atty. Abellana in Samonte's behalf was not also the official rubber stamp of Branch 5.^[11] Samonte denied being the cause of delay in the submission of the formal offer of exhibits, and reminded that the documentary exhibits concerned had been shown to the trial court during his testimony, with the opposing party not even objecting to their authenticity.

Samonte declared that his agreement with Atty. Abellana on the fees for all his legal services stipulated the equivalent of 20% of the awarded damages; that the amount demanded was P1.12 Million;^[12] that he paid Atty. Abellana a total of P7,027.00 for filing expenses, plus P5,000.00 that he gave as a token payment for Atty. Abellana's services after discovering the latter's inefficiency and fraudulent practices.

On May 30, 1990^[13] and July 30, 1990,^[14] the Court referred the administrative complaint to the Integrated Bar of the Philippines (IBP) for investigation.

Proceedings in the IBP

On November 3, 1994, the IBP notified the parties to appear and present their evidence at 10:00 am on November 18, 1994.^[15] However, the parties sought postponements.^[16] The hearing was reset several times more for various reasons, namely: on December 9, 1994 due to the IBP Commissioner being out of town, but telegrams were sent to the parties on December 6, 1994;^[17] on April 12, 2002, with the hearing being cancelled;^[18] and on March 7, 2003, with the hearing being cancelled until further notice.^[19]

On February 7, 2005, the IBP received a motion to quash dated January 7, 2005 from Atty. Abellana,^[20] seeking the dismissal of the administrative complaint because of the lack of interest on the part of Samonte. Atty. Abellana observed therein that Samonte had always sought the postponement of the hearings.

Reacting to the motion to quash, Samonte requested an early hearing by motion filed on February 9, 2005,^[21] declaring his interest in pursuing the administrative complaint against Atty. Abellana.

On March 22, 2005,^[22] IBP Commissioner Victoria Gonzalez-De Los Reyes set the mandatory conference on June 22, 2005. In that conference, only Samonte

appeared;^[23] hence, the IBP just required the parties to submit their verified position papers within 30 days from notice. Nonetheless, the IBP scheduled the clarificatory hearing on August 18, 2005.^[24]

Samonte submitted his position paper on August 2, 2005.^[25] On August 9, 2005, Atty. Abellana requested an extension of his period to submit his own position paper allegedly to allow him to secure relevant documents from the trial court.^[26]

On August 18, 2005, the parties appeared for the clarificatory hearing. The case was thereafter deemed submitted for resolution.

On August 29, 2005, Samonte presented a verified amended position paper, reiterating his allegations against Atty. Abellana.^[27]

Also on August 29, 2005, Atty. Abellana submitted his verified position paper dated August 17, 2005,^[28] in which he represented that although he had been at times late for the hearings he had nonetheless efficiently discharged his duties as the counsel for Samonte; that he had not caused any delay in the case; that it was Samonte who had been unavailable at times because of his work as an airline pilot; that the complainant had discharged him as his counsel in order to avoid paying his obligation to him; and that the complainant filed this disbarment case after he lost his own civil case in the RTC. He attached all the pleadings he had filed on behalf of the complainant, except the above-stated replies.

On May 1, 2008,^[29] the IBP Commission on Bar Discipline found Atty. Abellana negligent in handling certain aspects of his client's case, like not filing a reply to the defendants' answer with counterclaims in order to deny the new matters raised in the answer; resorting to falsehood to make it appear that he had filed the reply; and being considerably late in submitting the formal offer of exhibits for Samonte, as noted even by the trial judge in the order dated January 19, 1990. It observed that although the negligence of Atty. Abellana did not necessarily prejudice his client's case, his lack of honesty and trustworthiness as an attorney, and his resort to falsehood and deceitful practices were a different matter;^[30] noted that he had twice resorted to falsehood, the first being when he tried to make it appear that the complaint had been filed on June 10, 1988 despite the court records showing that the complaint had been actually filed only on June 14, 1988; and the second being when he had attempted to deceive his client about his having filed the reply by producing a document bearing a rubber stamp marking distinctively different from that of the trial court's; that he did not dispute the pieces of material evidence adduced against him; that he had explained that the reason for his delay in the filing of the complaint had been the complainant's failure to pay the agreed fees on time; and that he had only stated that he had filed a reply, without presenting proof of his having actually filed such in court.

The IBP Commission on Bar Discipline recommended the disbarment of Atty. Abellana, observing as follows:

x x x Apart from his negligent handling of portions of the civil case, **said respondent has shown a facility for utilizing false and deceitful**

practices as a means to cover-up his delay and lack of diligence in pursuing the case of his client. Taken together as a whole, the respondent's acts are nothing short of deplorable.

WHEREFORE, premises considered, it is respectfully recommended that **respondent Atty. Gines Abellana be disbarred from the practice of law for resorting to false and/or deceitful practices, and for failure to exercise honesty and trustworthiness as befits a member of the bar.** (Bold emphasis supplied)

On June 5, 2008, the IBP Board of Governors, albeit adopting the findings of the IBP Investigating Commissioner, suspended Atty. Abellana from the practice of law for one year, to wit:

RESOLVED to ADOPT and APPROVE, as it is hereby unanimously ADOPTED and APPROVED, with modification, the Report and Recommendation of the Investigating Commissioner of 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 for resorting to falsehood and/or deceitful practices, and for failure to exercise honesty and trustworthiness as befits member of the Bar, Atty. Gines N. Abellana is hereby **SUSPENDED from the practice of law for one (1) year.**^[31] (Bold emphasis supplied)

On September 25, 2008, Atty. Abellana moved for reconsideration based on the following grounds:^[32]

- A. That the imposition of sanction for the suspension of the undersigned from the practice of law for one (1) year is too stiff in relation to the alleged unethical conduct committed by the respondent;
- B. That the findings of the investigating commissioner is not fully supported with evidence;
- C. That the complaint of the complainant is not corroborated by testimonial evidence so that it is hearsay and self-serving.

In support of his motion, Atty. Abellana rehashed most of his previous arguments, and stated that the "enumerations of failures are belied by the existence of Reply to counterclaims, which were attached as Annexes "8" and "9" of the Position Paper of respondent."^[33] It is noted, however, that Annex 8 and Annex 9 of Atty. Abellana's position paper were different documents, namely: Annex 8^[34] (*Manifestation and Opposition to Plaintiff's Motion to Change Counsel*); and Annex 9^[35] (*Manifestation*). Nonetheless, he argued that both documents were already part of the records of the case, and that anyway Atty. Geronimo V. Nazareth, the Branch