

EN BANC

[A.C. No. 10196, September 09, 2014]

MELODY R. NERY, COMPLAINANT, VS. ATTY. GLICERIO A. SAMPANA, RESPONDENT.

R E S O L U T I O N

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 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 P200,000.00 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 P100,000.00, in installment: (a) P10,000.00 on 10 September 2008; (b) P50,000.00 on 2 October 2008; and (c) P40,000.00 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 P100,000.00 she paid him. Sampana agreed, but said that he would deduct the filing fee worth P12,000.00. 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 P100,000.00 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.

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 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