

PEDRO PABIA, COMPLAINANT, VS. TEOFILO A. CABAÑERO, RESPONDENT.

A.M. No. P-1846. August 21, 1980

Ponente: AQUINO, J.

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AQUINO, J.:

Pedro Pabia, in his verified complaint dated February 8, 1978, imputed negligence and gross misconduct to Teofilo A. Cabañero, 62, a clerk in the municipal court of Cabadbaran, Agusan del Norte, in connection with the loss of the expediente of Criminal Case No. 7381 of that court, a case of serious physical injuries and damage to property through reckless imprudence wherein Pabia is one of the complainants.

After Cabañero had submitted his explanation, the case was referred to Executive Judge Fortunato A. Vailoces of the Court of First Instance of Agusan del Norte for investigation, report and recommendation.

Judge Vailoces in his report of June 11, 1980 stated that on April 25, 1980, complainant Pabia and his counsel conferred with him and manifested that he (Pabia), after seeing Cabañero (who appeared to be sickly or a "derelict"), was overcome with compassion and so he decided to withdraw his complaint.

Pabia on that date executed an affidavit of desistance. He said that, because the lost record had been reconstituted and Cabañero was sickly, he had no more desire to prosecute his administrative complaint.

Judge Vailoces found that not all the papers of the case were missing. The criminal complaint was revived and is now known as Criminal Case No. 7906 filed on November 18, 1978.

Cabañero in his testimony before Judge Vailoces denied any culpability or responsibility with respect to the loss of the missing papers. The Investigator was inclined to give credence to his denial and to respondent's surmise that the municipal judge, before whom the case was pending and who is no longer in the service, was not careful in handling the record of the case and was delaying its disposition.

While the respondent had not been very diligent and efficient in the performance of his duties, nevertheless, Judge Vailoces recommended that the case be dismissed because of respondent's "pitiful state of health".

Due to his poor health, respondent filed an application for optional retirement effective on March 31, 1979. Action on that application was suspended due to the pendency of this case.

Deputy Court Administrator Leo D. Medialdea concurs in the recommendation of Judge Vailoces.

WHEREFORE, this case is dismissed.

SO ORDERED.

Barredo, (Chairman), Concepcion, Jr., Guerrero,[*] and De Castro,[*] JJ., concur.

[*] Were designated to sit in the Second Division.

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