

SECOND DIVISION

[A.M. No. P-00-1362, February 15, 2000]

**ORLANDO LAPEÑA, COMPLAINANT, VS. JOVITO PAMARANG,
SHERIFF IV, REGIONAL TRIAL COURT - OFFICE OF THE CLERK OF
COURT, URDANETA, PANGASINAN, RESPONDENT.**

D E C I S I O N

MENDOZA, J.:

This is a complaint,^[1] filed against respondent Jovito Pamarang, Sheriff IV of the Regional Trial Court at Urdaneta, Pangasinan, charging him with ignorance of the law, gross misconduct, and willful neglect of duty.

Complainant Orlando Lapeña, as attorney-in-fact of one Fidencio Mara, filed an action for unlawful detainer in the Municipal Trial Court, Urdaneta, Pangasinan, where it was docketed as Civil Case No. 4099. On June 13, 1995, judgment was rendered in favor of complainant ordering the defendant therein to vacate the subject premises and surrender possession of the same to complainant and pay the latter P5,000.00 in attorney's fees. A writ of execution was issued by the court and the same was delivered to respondent sheriff for execution on August 2, 1995, but it was only on October 5, 1995 when respondent made his return stating that "the Writ of Execution is hereby returned DULY SERVED but not satisfied." Under Rule 39, §11, a writ of execution must be returned to the court issuing the writ not more than 60 days after its receipt by the sheriff.^[2] Since the writ of execution in this case was received by respondent on August 2, 1995, he had only until October 1, 1995 within which to make his return. His return, made on October 5, 1995, was thus filed four days late.

Upon the recommendation of the Office of the Court Administrator, the complaint in this case was referred to the Executive Judge^[3] of the Regional Trial Court at Urdaneta, Pangasinan, for investigation, report, and recommendation.

It appears that the case was set for hearing thrice: first on November 8, 1999, then on November 15, 1999, and later on December 7, 1999. On November 8, 1999, prior to the hearing, the complainant informed Executive Judge Joven B. Costales that he was no longer interested in pursuing his complaint,^[4] and when the case was called at 1:00 p.m., complainant and his counsel were absent. Judge Costales reset the case to November 15, 1999. Despite due notice, however, complainant and his counsel were again absent on said date. Respondent then moved for the dismissal of the case against him in view of the successive failures of complainant and his counsel to appear. Judge Costales, however, reset the hearing to December 7, 1999, with warning that if complainant and his counsel again failed to appear, he (Judge Costales) would consider the case submitted for decision and then make his report and recommendation to the Court.^[5]

At the hearing on December 7, 1999, respondent and complainant appeared, although the latter's counsel, Atty. Loreto A. Bañaga, was absent. Complainant manifested that it was actually Atty. Bañaga who persuaded him to file this complaint against respondent, claiming that this was the express wish of complainant's principal, Fidencio Mara; that he later learned through an overseas call that Mara had not authorized the filing of this case; that he no longer had an interest in the case; and that he wanted the complaint dismissed.

In his report, dated January 14, 2000, Judge Costales recommends that the complaint be dismissed on the following grounds:

1. The complainant, on several occasions, to wit: November 11, 1998, before the Honorable Supreme Court; June 22, 1999, before Judge Decano; on November 8, 1999 and on December 7, 1999, before the undersigned, requested for the dismissal of the herein complaint as he is no longer interested in the further prosecution of the herein case filed against the respondent Pamarang;
2. That the respondent's evidence further shows that he received a copy of the writ of execution on August 2, 1995 as per Annex "A" and this has not been rebutted by the complainant, there being no proof to this but only the assertion of Atty. Bañaga [complainant's lawyer] in the complaint that he furnished a copy of the Decision only to the respondent.
3. That it is true that the respondent has violated Section 11, Rule 39 of the Rules of Court that he must have to submit his return within sixty (60) days, yet the return was only submitted four (4) days after the 60 day period given to him. Nevertheless, respondent Pamarang might have been under mental torture for more than four (4) years because of the pending administrative case filed against him for his dismissal from the service. This is believed to be enough as his appropriate punishment for not complying with the rule regarding the return of a service of a writ within a period of sixty (60) days.

The withdrawal of a complaint for lack of interest of a complainant does not necessarily warrant the dismissal of an administrative complaint.^[6] The Court cannot be bound by the unilateral decision of a complainant to desist from prosecuting a case involving the discipline of parties subject to its administrative supervision.^[7] The need to maintain the faith and confidence of our people in the government and its agencies and instrumentalities demands that proceedings in administrative cases against public officers and employees should not be made to depend on the whims and caprices of complainants who are, in a real sense, only witnesses.^[8]

In his return made on October 5, 1995, respondent stated:^[9]

I HEREBY CERTIFY that on August 3, 1995, I served a copy of the decision and the Writ of Execution issued by the Hon. Orlando Ana F. Siapno, Judge of the Municipal Trial Court, Urdaneta, Pangasinan, on June