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Let a copy of this decision be entered in respondent's personal records.

SO ORDERED.

Castro, C.J., Fernando, Teehankee, Barredo, Makasiar, Antonio, Aquino, Concepcion Jr., Santos, and *Fernandez, JJ.*, concur.

EN BANC

[A.M. No. P-1818. January 15, 1979]

HON. JOSE S. ARCILLA, *complainant, vs.* **ALFREDO SABIDO**, *respondent.*

SYLLABUS

1. **ADMINISTRATIVE LAW, PUBLIC OFFICERS AND EMPLOYEES; MUNICIPAL CLERK OF COURT; REMOVAL FROM OFFICE; WHEN WARRANTED.** — Where the municipal clerk of court was seen gambling inside the courthouse during office hours, had disobeyed the orders of the presiding judge and had failed to attend official meetings and to perform his official duties and obligations, said circumstances reflect gross irresponsibility, lack of discipline and a patent unfitness for the position he is presently occupying.

2. **ID.; ID.; ID.; HAS NO POWER TO APPROVE THE BAIL OF AN ACCUSED AND ORDER HIS RELEASE.** — There is no question that the approval of the bail of an accused person and the authority to order his release is purely a judicial function. A municipal clerk of court who ordered the release of the accused from custody unduly unsurped the judicial prerogative of the Presiding Judge.

3. **ID.; ID.; ID.; HAS NO POWER TO SETTLE SMALL CLAIMS.** — A municipal clerk of court's practice of summoning persons to the court for collection of debts and for settlement of small claims without authority from the Presiding Judge is a clear case of usurpation. Pursuant to Section 17, Rule 5 of the Revised

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Rules of Court, the settlement of small claims should be done by the judge himself.

4. ID.; ID.; FISCALS; HAVE NO POWER TO ORDER OR RELEASE A PERSON ON BAIL. — A fiscal, unlike a judicial authority, has no power to order either the commitment or the release on bail of persons charged with penal offenses, and the confinement of such persons after their case had been referred to the City Fiscal was but a mere continuation of their illegal detention by the police officers.

D E C I S I O N

ANTONIO, *J.*:

This complaint of August 12, 1977 by Judge Jose S. Arcilla, Acting Municipal Judge of the Municipal Court of Virac, Catanduanes, charged Municipal Clerk of Court Alfredo Sabido of the same court with:

(1) Violation of existing laws and regulations — This refers to the case filed by Assistant Fiscal Eleuterio T. Decena for Grave Coercion against Pedro San Roque (Criminal Case No. 2473) wherein the court, after conducting the requisite preliminary investigation, issued the corresponding warrant of arrest. After the accused was arrested, respondent Alfredo Sabido issued an order, signed by him, dated March 31, 1976 ordering the release of said accused from custody by the PC;

(2) Misconduct — During the hearing of Civil Case No. 240 (*Suarez v. Panti*), respondent Alfredo Sabido received ₱200.00 in connection with said case from defendant Editha Concepcion Panti allegedly without any authority from the court;

(3) Neglect of duty — During the hearing of Criminal Case No. 2591 (*People v. Belen Santiago*) the Presiding Judge discovered court records in the custody of said clerk, such as those of *People v. Mendoza*, *People v. De Dios*, *People v. Tria,* and *Lim v. Tura*, as well as some law books of the court, missing from the files;

(4) Conduct prejudicial to the best interest of the service — Respondent Alfredo Sabido summoned parties in cases pending

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with the Municipal Court for the collection of debts without the sanction or authority of the Presiding Judge;

(5) Gross inefficiency in the performance of official duties — Respondent Alfredo Sabido, because of his absence and tardiness, failed to bring out the *expedientes* of cases on time during court hearings causing, as a result thereof, undue delay the termination of those cases;

(6) Gambling during office hours — Respondent has been seen gambling inside the Judge's chambers during office hours;

(7) Insubordination — Despite directives or written orders of the incumbent judge, respondent failed to keep the files of the court in order or to post the daily court calendar for the information of the lawyers and parties, refused to update the submission of annual or monthly reports, and failed to attend the meetings of clerks of court called by the Judge of the Court of First Instance at Catanduanes:

(8) Frequent unauthorized absences and tardiness — Absence or tardiness of respondent was noted on January 22, July 9, August 12, August 13, August 17 and September 7, 1977, causing undue delay in the hearings on said dates, since the court records were kept by respondent in his locked cabinet;

(9) Arrogance and discourtesy in his dealings with the Presiding Judge; and

(10) Physical disability due to vicious habits.

Pursuant to a Resolution of this Court, the Executive Judge of the Court of First Instance of Catanduanes, Hon. Graciano P. Gayapa, Jr., investigated the case on September 5, 8, 18 and 19, 1978. After conducting the investigation, said Investigating Judge submitted his findings and recommendations, as follows:

"Respondent without authority of law issued and signed an order releasing from custody the accused in Criminal Complaint No. 273 entitled '*People of the Philippines vs. Pedro San Roque.*'

"The receipt by respondent of the sum of ₱200.00 in civil case No. 240 was by and upon the authority of the plaintiff, which was in accordance with the compromise agreement signed by the parties.

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"No evidence was presented to substantiate the charge of missing documents. Likewise, no evidence was presented to show that a book in legal forms ever existed at all and that there was no court calendar for two (2) years.

"Respondent settled small money claims without any authority from the complainant. In accordance with Sec. 17, Rule 5 of the New Rules of Court, small claims should be settled by the judge himself.

"Respondent gambled with some people on certain afternoons inside the courthouse. However, there was no evidence presented to prove that Sabido maintains a gambling den in his house.

"The respondent in some instances disobeyed the orders of the Judge and failed to attend meetings called by the former CFI Judge of the Court of First Instance of Catanduanes.

"There was no evidence presented to substantiate the charge that court proceedings were delayed due to frequent unauthorized absences of respondent. However, respondent was found late in going to the office on the occasion of the official visit of CFI Judge Jose Nepomuceno to the Municipal Court of Virac, Catanduanes sometime in 1975.

"The matter of reading newspaper during session was not so serious a character to have disturbed the proceedings, otherwise respondent should have been held in contempt of court at the time the afore-mentioned act was done.

"There was no evidence to the effect that respondent's illness was precipitated by his vicious habits or on account of his being addicted to gambling." (Memorandum for the Chief Justice, dated December 13, 1978, of Atty. Demetrio B. Macapagal).

The Investigating Judge consequently recommends that respondent be reprimanded for Charges Nos. 1, 4, 6, 7, 8 and 9, and exonerated with respect to Charges Nos. 2, 3, 5 and 10.

There is no question that the approval of the bail of an accused person and the authority to order his release is purely a judicial function. Thus, this Court said in a previous case that the fiscal, unlike a judicial authority, has no power to order either the commitment or the release on bail of persons charged with penal offenses, and the confinement of such persons after their

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case had been referred to the City Fiscal was but a mere continuation of their illegal detention by the police officers.[1] In releasing the accused from custody, therefore, respondent unduly usurped the judicial prerogative of the Presiding Judge.

Respondent's practice of summoning persons to the court for collection of debts and for settlement of small claims without authority from the presiding judge is again a clear case of usurpation. Pursuant to Section 17, Rule 5 of the Revised Rules of Court, the settlement of small claims should be done by the judge himself.

Further, the circumstances, that respondent was seen gambling inside the courthouse during office hours, had disobeyed the orders of the judge, and had failed to attend official meetings and to perform his official duties and obligations reflect gross irresponsibility, lack of discipline and a patent unfitness for the position he is presently occupying.

WHEREFORE, in view of the afore-mentioned gross misconduct, this Court hereby *DISMISSES* respondent Alfredo Sabido from the service, effective upon receipt of a copy of this decision, with forfeiture of retirement, gratuity, if any.

Castro, C.J., Fernando, Teehankee, Barredo, Makasiar, Aquino, Concepcion Jr., Santos, Fernandez, and *Guerrero, JJ.*, concur.

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[1] *Lino v. Fugoso*, L-1159, January 30, 1947, 77 Phil. 933.