

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE. VS. SIMPLICIO VILLANUEVA, DEFENDANT AND APPELLANT.***G. R. No. L-19450. May 27, 1965*

Ponente: PAREDES, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/fa21a9b522f7/>**PAREDES, J.:**

On September 4, 1959, the Chief of Police of Alaminos, Laguna, charged Simplicio Villanueva with the crime of Malicious Mischief, before the Justice of the Peace Court of said municipality. Said accused was represented by counsel de oficio, but later on replaced by counsel de parte. The complainant in the same case was represented by City Attorney Ariston Fule of San Pablo City, having entered his appearance as private-prosecutor, after securing the permission of the Secretary of Justice. The condition of his appearance as such, was that every time he would appear at the trial of the case, he would be considered on official leave of absence, and that he would not receive any payment for his services. The appearance of City Attorney Fule as private prosecutor was questioned by the counsel for the accused, invoking the case of Aquino, et al. vs. Blanco, et al, 79 Phil. 647 wherein it was ruled that "when an attorney had been appointed to the position of Assistant Provincial Fiscal or City Fiscal and therein qualified, by operation of law, he ceased to engage in private law practice." Counsel then argued that the JP Court in entertaining the appearance of City Attorney Fule in the case is a violation of the above ruling, On December 17, 1960 the JP issued an order sustaining the legality of the appearance of City Attorney Fule.

Under date of January 4, 1961, counsel for the accused presented a "Motion to Inhibit Fiscal Fule from Acting as Private Prosecutor in this Case," this time invoking Section 32, Rule 127, now Sec. 35, Rule 138, Revised Rules, which bars certain attorneys from practicing. Counsel claims that City Attorney Fule falls under (his limitation. The JP Court ruled on the motion by upholding the right of Fule to appear and further stating that he (Fule) was not actually engaged in private law practice. This Order was appealed to the CFI of Laguna, presided by the Hon. Hilarion U. Jarencio, which rendered judgment on December 20, 1961, the pertinent portions of which read:

"The present case is one for malicious mischief. There being no reservation by the offended party of the civil liability, the civil action was deemed impliedly instituted with the criminal action. The offended party had, therefore, the right to intervene in the case and lie represented by a legal counsel because of her interest in the civil liability of the accused.

"Sec. 31, Rule 127 of the Rules of Court provides that in the court of a justice of the peace a party may conduct his litigation in person, with the aid of an agent or friend appointed by him for that purpose, or with the aid of an attorney. Assistant City Attorney Fule appeared in the Justice of the Peace Court as an agent or friend of the offended party. It does not appear that he was being paid for his services or that his appearance was in a professional capacity. As Assistant City Attorney of San Pablo he had no control or intervention whatsoever in the prosecution of crimes committed in the municipality of Alaminos, Laguna, because the prosecution of criminal cases coming from Alaminos are handled by the Office of the Provincial Fiscal and not by the City Attorney of San Pablo. There could be no possible conflict in the duties of Assistant City Attorney Fule as Assistant City Attorney of San Pablo and as private prosecutor in this criminal case. On the other hand, as already

pointed out, the offended party in this criminal case had a right to be represented by an agent or a friend to protect her rights in the civil action which was impliedly instituted together with the criminal action.

"In view of the foregoing, this Court holds that Asst. City Attorney Ariston D. Fule may appear before the Justice of the Peace Court in Alaminos, Lagunu as private prosecutor in this criminal case as an agent or a friend of the offended party.

"Wherefore, the appeal from the order of the Justice of the Peace Court of Alaminos, Laguna, allowing the appearance of Ariston D. Fule as private prosecutor is dismissed, without costs."

The above decision is the subject of the instant proceedings.

The appeal should be dismissed, for patently being without merits.

Aside from the considerations advanced by the learned trial judge, heretofore reproduced, and which We consider plausible, the fallacy of the theory of defense counsel lies in his confused interpretation of Section 32 of Rule 127 (now Sec. 35, Rule 138, Revised Rules), which provides that "no judge or other official or employee of the superior courts or of the office of the Solicitor General, shall engage in private practice as a member of the bar or give professional advice to clients." he claims that City Attorney Fule, in appearing as private prosecutor in the case was engaging in private practice. We believe that the isolated appearance of City Attorney Fule did not constitute private practice, within the meaning and contemplation of the Rules. Practice is more than an isolated appearance, for it consists in frequent or customary action, a succession of acts of the same kind. In other words, it is frequent habitual exercise (State vs. Cotner, 127, p. 1, 87 Kan. 864, 42 LRA, N.S. 768). Practice of law to fall within the prohibition of statute has been interpreted as customarily or habitually holding one's self out to the public, as a lawyer and demanding payment for such services (State vs. Bryan, 4 S. E. 522, 98 N. C. 644, 647). The appearance as counsel on one occasion, is not conclusive as determinative of engagement in the private practice of law. The following observation of the Solicitor General is noteworthy:

"Essentially, the word private practice of law implies that one must have presented himself to be in the active and continued Practice of the legal profession and that his professional services available to the public for a compensation, as a source of livelihood or in consideration of his said services."

For one thing, it has never been refuted that City Attorney Fule had been given permission by his immediate superior, the Secretary of Justice, to represent the complainant in the case at bar, who is a relative.

Conformably with all the foregoing, the decision appealed from should be, as it is hereby affirmed, in all respects, with costs against appellant.

Bengzon, C. J., Concepcion, Reyes, J. B. L., Barrera, Dizon, Regala, Makalintal, Bengzon, J. P. and Zaldivar, JJ., concur.

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