

**ANTONIO C. RAMOS, ROSALINDA M. PEREZ, NORMA C. CASTILLO
AND BALIUAG MARKET VENDORS ASSOCIATION, INC.,
PETITIONERS, VS. COURT OF APPEALS, HON. CAMILO O. MONTESA,
JR., IN HIS CAPA...**

G.R. No. 99425. March 03, 1997

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

Who has the legal authority to represent a municipality in lawsuits? If an unauthorized lawyer represents a municipality, what is the effect of his participation in the proceedings? Parenthetically, does a motion to withdraw the appearance of the unauthorized counsel have to comply with Rule 15 of the Rules of Court regarding notice and hearing of motions?

These questions are answered by this Court in resolving this petition for review under Rule 45 of the Rules of Court of the Decision[1] of public respondent[2] in CA-G.R. SP No. 23594 promulgated on March 15, 1991, which denied due course to and dismissed the petition therein. Also assailed is the Resolution[3] of public respondent promulgated on May 9, 1991, which denied the motion for reconsideration for lack of merit.

The Facts

The facts as found by public respondent are undisputed, to wit:[4]

"On April 18, 1990, petitioners Antonio C. Ramos, Rosalinda M. Perez, Norma C. Castillo, and the Baliuag Market Vendors Association, Inc. filed a petition before the court a quo docketed as Civil Case No. 264-M-9 for the Declaration of Nullity of Municipal Ordinances No. 91 (1976) and No. 7 (1990) and the contract of lease over a commercial arcade to be constructed in the municipality of Baliuag, Bulacan.

On April 27, 1980, during the hearing on the petitioners' motion for the issuance of preliminary injunction, the Provincial Fiscal appeared as counsel for respondent Municipality of Baliuag, which opposed the petition. Whereupon, a writ of preliminary injunction was issued by the court a quo on May 9, 1990.

Meanwhile, on May 3, 1990, the Provincial Fiscal and the Provincial Attorney, Oliviano D. Regalado, filed an Answer in (sic) behalf of respondent municipality.

At the pre-trial conference scheduled on May 28, 1990, Atty. Roberto B. Romanillos appeared, manifesting that he was counsel for respondent municipality. On the same date, and on June 15, 1990, respectively, Atty. Romanillos filed a motion to dissolve injunction and a motion to admit an Amended Answer with motion to dismiss.

On June 18, 1990, Provincial Attorney Oliviano D. Regalado appeared as collaborating counsel of Atty. Romanillos. The Provincial Fiscal did not appear. It was Atty. Romanillos who submitted the Reply to petitioners' Opposition to respondents' motion to dissolve injunction. It was also Atty. Romanillos who submitted a written formal offer of evidence on July 17, 1990 for respondent municipality.

During the hearing on August 10, 1990, petitioners questioned the personality of Atty. Romanillos to appear as counsel of (sic) the respondent municipality, which opposition was reiterated on August 15, 1990, and was put in writing in petitioners' motion of August 20, 1990 to disqualify Atty. Romanillos from appearing as counsel for respondent municipality and to declare null and void the proceedings participated in and undertaken by Atty. Romanillos.

Meanwhile, Atty. Romanillos and Atty. Regalado filed a joint motion dated August 22, 1990 stating, among others, that Atty. Romanillos was withdrawing as counsel for respondent municipality and that Atty. Regalado, as his collaborating counsel for respondent municipality, is adopting the entire proceedings participated in/undertaken by Atty. Romanillos.

On September 19, 1990 respondent Judge issued the Order now being assailed which, as already stated, denied petitioners' motion to disqualify Atty. Romanillos as counsel for respondent municipality and to declare null and void the proceedings participated in by Atty. Romanillos; and on the other hand, granted Atty. Regalado's motion 'to formally adopt the entire proceedings including the formal offer of evidence'. In support of his foregoing action, respondent Judge reasoned:

'Petitioners' motion for the disqualification of Atty. Romanillos as respondent municipality's counsel is deemed moot and academic in view of his withdrawal as counsel of said municipality pursuant to a joint motion dated August 22, 1990, although he shall remain as counsel on record of private respondent Kristi Corporation. Atty. Oliviano Regalado under the same joint motion moved for the adoption of the entire proceedings conducted by collaborating counsel, Atty. Romanillos.

It is noted that Atty. Romanillos initially entered his appearance as collaborating counsel of the Provincial Prosecutor and the Provincial Attorney when he filed a motion to dissolve injunction under motion dated May 30, 1990 and since then despite his active participation in the proceedings, the opposing counsel has never questioned his appearance until after he made a formal offer of evidence for the respondents. The acquiescence of petitioners,' counsel of (sic) his appearance is tantamount to a waiver and petitioners are, therefore, estopped to question the same. In all the pleadings made by Atty. Romanillos, it was clearly indicated that he was appearing as the collaborating counsel of the Provincial Attorney. Besides, petitioners' counsel failed to submit their comment and/or objection to the said joint motion of respondents' counsel as directed by the Court within the reglementary period. By virtue of these circumstances, all the proceedings attended to and participated in by said collaborating counsel is a *fait accompli* and the Court finds no cogent justification to nullify the same.'

Petitioners' motion for reconsideration of the foregoing Order was denied by respondent Judge in his Order dated October 19, 1990, the second Order now being assailed. Respondent Judge reiterated the observations which he made in the Order of September 19, 1990 that Atty. Romanillos, while actively handling the said case was merely appearing as the collaborating counsel of both the Provincial Prosecutor and the Provincial Attorney of Bulacan; that Atty. Romanillos' appearance was 'never impugned by petitioners' and was only questioned after his (Atty. Romanillos') submission of the formal offer of evidence for respondent; and that therefore, said court proceedings 'is (sic) a *fait accompli*'. Respondent Judge went on to say that the declaration of nullity of said proceedings and the re-taking of the same evidence by the same parties is (sic) 'apparently an exercise in futility'. He added that in the absence of untimely objection by petitioners to Atty. Romanillos' appearance as the collaborating counsel, petitioners are guilty of laches for having slept on (sic) their rights and are estopped as their acquiescence may be considered as waiver of such right. Furthermore, according to respondent Judge, assuming that the proceedings had been 'tainted with frailness to render the same legally objectionable', the same has been 'legally remedied' by its formal adoption upon motion of the Provincial Accorney (sic), Atty. Regalado, who is not disqualified to appear as counsel for the municipality of Baliuag, for the reason that by virtue of Section 19 of R.A. No. 5185 (The Decentralization Act of 1967), the authority to act as legal officer/adviser for (sic) civil cases of the province of Bulacan, of which the municipality of Baliuag is a political subdivision, has been transferred from the Provincial Fiscal (now Provincial Prosecutor) of Bulacan to the Provincial Attorney thereof."

As earlier stated, the Court of Appeals dismissed the petition and denied the motion for reconsideration. Hence this recourse.

The Issues

The issues raised by petitioners in their Memorandum are:[5]

- "1) Under present laws and jurisprudence, can a municipality be represented in a suit against it by a private counsel?
- 2) If not, what is the status of the proceedings undertaken by an unauthorized private counsel;
- 3) Can the provincial attorney of a province act as counsel of a municipality in a suit;
- 4) Can the provincial attorney adopt with legal effect the proceedings undertaken by an unauthorized private counselof (sic) a municipality;
- 5) May a court act on an alleged motion which violates Sections 4 and 5 of Rule 15 and Section 26, Rule 128 of the Rules of Court."

Petitioners contend that the assailed Decision which affirmed the Orders of the trial court is void for being violative of the following laws:[6]

"VI-1 The respondent court violated Section 1683 of the Revised Administrative Code; Section 3, paragraph 3 (a) of Republic Act No. 2264, otherwise known as the Local Autonomy Act; and Section 35; Book IV, Title III, Chapter 12, Administrative Code of 1987 (Executive Order No. 292) when it authorized Atty. Oliviano D. Regalado, the Provincial Attorney of Bulacan, to appear as counsel for respondent Municipality of Baliuag.

VI-2 The respondent court violated Section 1683 of the Revised Administrative Code; Section 3, paragraph 3 (a) of Republic Act No. 2264, otherwise known as the Local Autonomy Act; Section 35, Book IV, Title III, Chapter 12, Executive Order No. 292, otherwise known as the Administrative Code of 1987; and Article 1352 of the New Civil Code, when it denied the petitioners' motion to declare the proceedings undertaken or participated in by said Atty. Roberto B. Romanillos, as private counsel of respondent Municipality, null and void.

VI-3 The respondent court acted in excess of its jurisdiction and in grave abuse of discretion when it acted and granted the respondent's JOINT MOTION dated August 22, 1990 (Annex 'H') which, as a rule, is a mere worthless piece of paper which the respondent judge/court has no authority to act upon, considering that said motion was filed in court in patent violation of or without complying with the mandatory requirements provided for by Sections 4 and 5 of Rule 15 and Section 26 of Rule 138 of the Rules of Court."

Public respondent did not give due course to the petition "because it does not prima facie show justifiable grounds for the issuance of certiorari.[7] Public respondent adds that:[8]

"Considering the foregoing jurisprudence, the logical conclusion is that the Provincial Attorney of Bulacan has now the authority to represent the municipality of Baliuag in its law suits.

It follows that respondent Judge was correct in ruling in the assailed Order of October 19, 1990 that even assuming, arguendo, that the proceedings by the court a quo which had been participated in by Atty. Romanillos are legally objectionable, this was legally remedied by the formal adoption by the provincial Attorney, Atty. Regalado, of the said proceedings, considering that the provincial attorney is not disqualified from representing the municipality of Baliuag in civil cases.

In the second place, the record discloses that Atty. Romanillos had appeared as counsel for respondent municipality of Baliuag in collaboration with the Provincial Prosecutor and the Provincial Attorney, as shown

in the motion to dissolve injunction dated May 28, 1990 which Atty. Romanillos had filed for respondent municipality. Accordingly and pursuant to the aforesaid provisions of law, it cannot correctly be said that respondent Judge had acted with grave abuse of discretion when he allowed Atty. Romanillos to act as private counsel and Atty. Regalado, Provincial Attorney of Bulacan, to appear as counsel for respondent Municipality of Baliuag. Perforce, it also cannot be correctly said that respondent Judge violated the aforesaid provisions when he denied petitioners' motion to declare null and void the proceedings undertaken by and participated in by Atty. Romanillos as private counsel of the municipality of Baliuag.

At any rate, even granting, only for the sake of argument, that Atty. Romanillos' appearance as counsel for the municipality could not be legally authorized under the aforesaid provisions of law, the fact that Atty. Regalado as Provincial Attorney of Baliuag had formally adopted the proceedings participated in by Atty. Romanillos as counsel for the municipality of Baliuag had served, as already stated, to cure such a defect.

Thirdly, We are likewise unable to see grave abuse of discretion in respondent Judge's actuation in granting the joint motion filed by Atty. Romanillos and Atty. Regalado for the withdrawal of the former as private counsel of respondent municipality, and the adoption by the latter of the proceedings participated in/undertaken by the former, including the formal offer of evidence submitted by the former."

Public respondent likewise found that the "joint motion does not partake of the nature of an adversarial motion which would have rendered non-compliance with Sections 4 and 5 of Rule 15 of the Rules of Court fatal to the motion." [9] It is to be emphasized that petitioners "sought the disqualification of Atty. Romanillos x x x (Thus,) what petitioners had sought to (be) achieve(d) in their said motion was in fact what Atty. Romanillos had sought x x x in the joint motion dated August 22, 1990." [10]

Respondent municipality submits that Section 19 of RA 5185:

"is not meant to prohibit or prevent the Provincial Attorney to act as legal adviser and legal officer for municipalities and municipal districts because such interpretations would be to say the least, absurd (sic). In this jurisdiction, a province is composed of municipalities and municipal districts, and therefore they are deemed included in the provisions of Section 19 of Republic Act 5185. It is also impractical and contrary to the spirit of the law to limit the sphere of authority of the Provincial Attorney to the province only." [11]

The different allegations boil down to three main issues: (1) Who is authorized to represent a municipality in a civil suit against it? (2) What is the effect on the proceedings when a private counsel represents a municipality? Elsewise stated, may the proceedings be validated by a provincial attorney's adoption of the actions made by a private counsel? (3) Does a motion of withdrawal of such unauthorized appearance, and adoption of proceedings participated in by such counsel have to comply with Sections 4 and 5 [12] of Rule 15 of the Rules of Court?

The Court's Ruling

We affirm the Decision and Resolution of public respondent.

First Issue: Who Is Authorized to Represent a

Municipality in Its Lawsuits?

In the recent case of *Municipality of Pililla, Rizal vs. Court of Appeals*, [13] this Court, through Mr. Justice Florenz D. Regalado, set in clear-cut terms the answer to the question of who may legally represent a municipality in a suit for or against it, thus: [14]

"x x x The matter of representation of a municipality by a private attorney has been settled in *Ramos vs. Court of Appeals, et al.*, [15] and reiterated in *Province of Cebu vs. Intermediate Appellate Court, et al.*, [16] where we ruled that private attorneys cannot represent a province or municipality in lawsuits.

Section 1683 of the Revised Administrative Code provides:

'Section 1683. Duty of fiscal to represent provinces and provincial subdivisions in litigation. — The provincial fiscal shall represent the province and any municipality or municipal district thereof in any court, except in cases whereof (sic) original jurisdiction is vested in the Supreme Court or in cases where the municipality or municipal district in question is a party adverse to the provincial government or to some other municipality or municipal district in the same province. When the interests of a provincial government and of any political division thereof are opposed, the provincial fiscal shall act on behalf of the province.

When the provincial fiscal is disqualified to serve any municipality or other political subdivision of a province, a special attorney may be employed by its council.'^[17]

Under the above provision, complemented by Section 3, Republic Act No. 2264, the Local Autonomy Law,^[18] only the provincial fiscal and the municipal attorney can represent a province or municipality in their lawsuits. The provision is mandatory. The municipality's authority to employ a private lawyer is expressly limited only to situations where the provincial fiscal is disqualified to represent it.^[19]

For the aforementioned exception to apply, the fact that the provincial fiscal was disqualified to handle the municipality's case must appear on record.^[20] In the instant case, there is nothing in the records to show that the provincial fiscal is disqualified to act as counsel for the Municipality of Pililla on appeal, hence the appearance of herein private counsel is without authority of law."

The provincial fiscal's functions as legal officer and adviser for the civil cases of a province and corollarily, of the municipalities thereof, were subsequently transferred to the provincial attorney.^[21]

The foregoing provisions of law and jurisprudence show that only the provincial fiscal, provincial attorney, and municipal attorney should represent a municipality in its lawsuits. Only in exceptional instances may a private attorney be hired by a municipality to represent it in lawsuits. These exceptions are enumerated in the case of *Alinsug vs. RTC Br. 58, San Carlos City, Negros Occidental*,^[22] to wit:^[23]

"Indeed, it appears that the law allows a private counsel to be hired by a municipality only when the municipality is an adverse party in a case involving the provincial government or another municipality or city within the province. This provision has its apparent origin in the ruling in *De Guia v. The Auditor General* (44 SCRA 169, March 29, 1979) where the Court held that the municipality's authority to employ a private attorney is expressly limited only to situations where the provincial fiscal would be disqualified to serve and represent it. With Sec. 1683 of the old Administrative Code as legal basis, the Court therein cited *Enriquez, Sr. v. Gimenez* [107 Phil. 932 (1960)] which enumerated instances when the provincial fiscal is disqualified to represent in court a particular municipality; if and when original jurisdiction of case involving the municipality is vested in the Supreme Court, when the municipality is a party adverse to the provincial government or to some other municipality in the same province, and when, in a case involving the municipality, he, or his wife, or child, is pecuniarily involved, as heir legatee, creditor or otherwise.

Thereafter, in *Ramos vs. Court of Appeals* (108 SCRA 728, October 30, 1981), the Court ruled that a municipality may not be represented by a private law firm which had volunteered its services gratis, in collaboration with the municipal attorney and the fiscal, as such representation was violative of Sec. 1683 of the old Administrative Code. This strict coherence to the letter of the law appears to have been dictated by the fact that 'the municipality should not be burdened with expenses of hiring a private lawyer' and that 'the interests of the municipality would be best protected if a government lawyer handles its litigations.'" (Underscoring supplied.)

None of the foregoing exceptions is present in this case. It may be said that Atty. Romanillos appeared for respondent municipality inasmuch as he was already counsel of Kristi Corporation which was sued with

respondent municipality in this same case. The order of the trial court dated September 19, 1990, stated that Atty. Romanillos "entered his appearance as collaborating counsel of the provincial prosecutor and the provincial attorney." [24] This collaboration is contrary to law and hence should not have been recognized as legal. It has already been ruled in this wise:

"The fact that the municipal attorney and the fiscal are supposed to collaborate with a private law firm does not legalize the latter's representation of the municipality of Hagonoy in Civil Case No. 5095-M. While a private prosecutor is allowed in criminal cases, an analogous arrangement is not allowed in civil cases wherein a municipality is the plaintiff." [25]

As already stated, private lawyers may not represent municipalities on their own. Neither may they do so even in collaboration with authorized government lawyers. This is anchored on the principle that only accountable public officers may act for and in behalf of public entities and that public funds should not be expended to hire private lawyers.

Petitioners cannot be held in estoppel for questioning the legality of the appearance of Atty. Romanillos, notwithstanding that they questioned the witnesses of respondent municipality during the hearing of its motion to dissolve the preliminary injunction. Municipality of Pililla, Rizal vs. Court of Appeals [26] held that the legality of the representation of an unauthorized counsel may be raised at any stage of the proceedings. This Court stated that: [27]

"The contention of Atty. Mendiola that private respondent cannot raise for the first time on appeal his lack of authority to represent the municipality is untenable. The legality of his representation can be questioned at any stage of the proceedings. In the cases hereinbefore cited, the issue of lack of authority of private counsel to represent a municipality was only raised for the first time in the proceedings for the collection of attorney's fees for services rendered in the particular case, after the decision in that case had become final and executory and/or had been duly executed."

Elementary fairness dictates that parties unaware of the unauthorized representation should not be held in estoppel just because they did not question on the spot the authority of the counsel for the municipality. The rule on appearances of a lawyer is that

"(u)ntil the contrary is clearly shown, an attorney is presumed to be acting under authority of the litigant whom he purports to represent. (Azotes v. Blanco, 78 Phil. 739) His authority to appear for and represent petitioner in litigation, not having been questioned in the lower court, it will be presumed on appeal that counsel was properly authorized to file the complaint and appear for his client. (Republic v. Philippine Resources Development Corporation, 102 Phil. 960)" [28]

Second Issue: Effect on Proceedings by Adoption of Unauthorized Representation

Would the adoption by Atty. Regalado of the proceedings participated in by Atty. Romanillos validate such proceedings? We agree with public respondent that such adoption produces validity. Public respondent stated the reasons [29] to which we agree:

"Moreover, it does not appear that the adoption of proceedings participated in or undertaken by Atty. Romanillos when he was private counsel for the respondent municipality of Baliuag — such as the proceedings on the motion to dissolve the injunction, wherein petitioners had even cross-examined the witnesses presented by Atty. Romanillos in support of said motion and had even started to present their witnesses to sustain their objection to the motion — would have resulted in any substantial prejudice to petitioners' interest. As We see it, to declare the said proceedings null and void — notwithstanding the formal adoption thereof by Atty. Regalado

as Provincial Attorney of Bulacan who is authorized to represent respondent municipality of Baliuag in court — and to require trial anew to cover the same subject matter, to hear the same witnesses and to admit the same evidence adduced by the same parties cannot enhance the promotion of justice."

This Court believes that conferring legitimacy to the appearance of Atty. Romanillos would not cause substantial prejudice on petitioners. Requiring new trial on the mere legal technicality that the municipality was not represented by a legally authorized counsel would not serve the interest of justice. After all, this Court does not see any injustice committed against petitioners by the adoption of the work of private counsel nor any interest of justice being served by requiring retrial of the case by the duly authorized legal representative of the town.

In sum, although a municipality may not hire a private lawyer to represent it in litigations, in the interest of substantial justice however, we hold that a municipality may adopt the work already performed in good faith by such private lawyer, which work is beneficial to it (1) provided that no injustice is thereby heaped on the adverse party and (2) provided further that no compensation in any guise is paid therefor by said municipality to the private lawyer. Unless so expressly adopted, the private lawyer's work cannot bind the municipality.

Third Issue: "Joint Motion" Need Not Comply with Rule 15

We also agree with the justification of public respondent that a motion to withdraw the appearance of an unauthorized lawyer is a non-adversarial motion that need not comply with Section 4 of Rule 15 as to notice to the adverse party. The disqualification of Atty. Romanillos was what petitioners were really praying for when they questioned his authority to appear for the municipality. The disqualification was granted, thereby serving the relief prayed for by petitioners. Such being the case, no "notice directed to the parties concerned and served at least 3 days before the hearing thereof"[30] need be given petitioners, the questioned motion not being contentious. Besides, what petitioners were questioning as to lack of authority was remedied by the adoption of proceedings by an authorized counsel, Atty. Regalado. The action of the trial court allowing the motion of respondent municipality effectively granted petitioners' motion to disqualify Atty. Romanillos. In *People vs. Leviste*,^[31] we ruled that:

"While it is true that any motion that does not comply with the requirements of Rule 15 should not be accepted for filing and, if filed, is not entitled to judicial cognizance, this Court has likewise held that where a rigid application of the rule will result in a manifest failure or miscarriage of justice, technicalities may be disregarded in order to resolve the case. Litigations should, as much as possible, be decided on the merits and not on technicalities. As this Court held in *Galvez vs. Court of Appeals*, 'an order of the court granting the motion to dismiss despite the absence of a notice of hearing, or proof of service thereof, is merely an irregularity in the proceedings x x x (which) cannot deprive a competent court of jurisdiction over the Case.'"(Citations omitted).

It should be remembered that rules of procedure are but tools designed to facilitate the attainment of justice, such that when rigid application of the rules tend to frustrate rather than promote substantial justice, this Court is empowered to suspend their operation.^[32]

WHEREFORE, premises considered, the Petition is DENIED and the assailed Decision and Resolution are AFFIRMED. No costs.

SO ORDERED.

Narvasa, C.J., (Chairman), Davide, Jr., Melo, and Francisco, JJ., concur.

[1] Rollo, pp. 28-35.

[2] Eighth Division composed of Justice Lorna S. Lombos-De La Fuente, ponente, and Justices Alfredo M. Marigomen and Jainal D. Rasul, concurring.

[3] Rollo, p. 37.

[4] Ibid., pp. 28-31.

[5] Ibid., p. 212.

[6] Ibid., pp. 10-11.

[7] Ibid., p. 31.

[8] Ibid., pp. 33-34.

[9] Ibid., p. 34.

[10] Ibid.

[11] Ibid., pp. 166-167.

[12] "Section 4. Notice. — Notice of a motion shall be served by the applicant to all parties concerned, at least three (3) days before the hearing thereof, together with a copy of the motion, and of any affidavits and other papers accompanying it. The court, however, for good cause may hear a motion on shorter notice, specially on matters which the court may dispose of on its own motion."

"Section 5. Contents of notice. — The notice shall be directed to the parties concerned, and shall state the time and place for the hearing of the motion."

[13] 233 SCRA 484, June 28, 1994.

[14] at pp. 490-491.

[15] 108 SCRA 728, October 30, 1981.

[16] 147 SCRA 447, January 29, 1987.

[17] The Administrative Code of 1987 (E.O. No. 292) provides:

"SEC. 9. Provincial/City Prosecution Offices. — The Provincial and City Fiscal's Office established in each of the provinces and cities pursuant to law, is retained and renamed Provincial/City Prosecution Office. It shall be headed by a Provincial Prosecutor or City Prosecutor, as the case may be, assisted by such number of Assistant Provincial/City Prosecutors as fixed and/or authorized by law. The position titles of Provincial and City Fiscal and of Assistant Provincial and City Fiscal are hereby abolished.

All provincial/city prosecution offices shall continue to discharge their functions under existing law.

All provincial and city prosecutors and their assistants shall be appointed by the President upon the recommendation of the Secretary."

[18] This section states that the municipal attorney, as the head of the legal division or office of a municipality, "shall act as legal counsel of the municipality and perform such duties and exercise such powers as may be assigned to him by the council."

[19] Municipality of Bocaue, et al. vs. Manotok, 93 Phil. 173 (1953); Enriquez, Sr. vs. Gimenez, etc., 107 Phil. 932 (1960); De Guia vs. The Auditor General, et al., 44 SCRA 169, March 29, 1972.

[20] De Guia vs. The Auditor General, et al., ante.

[21] Section 19 of RA 5185, provides:

"SEC. 19. Creation of Positions of Provincial Attorney and City Legal Officer. — To enable the provincial and city governments to avail themselves of the full time and trusted services of legal officers, the positions of provincial attorney and city legal officer may be created and such officer shall be appointed in such manner as is provided for under Section four of this Act. For this purpose the functions hitherto performed by the provincial and city fiscals in serving as legal adviser and officer for civil cases of the province and city shall be transferred to the provincial attorney and city legal officer, respectively."

[22] 225 SCRA 553, August 23, 1993.

[23] at pp. 557-559.

[24] Rollo, p. 30.

[25] Ramos vs. Court of Appeals, supra, at p. 733.

[26] Supra.

[27] at p. 492.

[28] Province of Cebu vs. Intermediate Appellate Court, 147 SCRA 447, 458, January 29, 1987.

[29] Ibid., p. 34.

[30] Rollo, p. 17. Actually, the "joint motion" included a notice of hearing (see rollo, p. 97). The records do not show whether the motion was served three (3) days prior to the hearing. However, the presumption of regularity in the performance of official duty (Section 3 [m] of Rule 131 of the Rules of Court) causes us to assume it was served on time. The apparent defect in the motion is its failure to state the "time" of hearing as required by Section 5, Rule 15 of the Rules of Court.

[31] 255 SCRA 238, 247-248, March 28, 1996.

[32] Buan vs. Court of Appeals, 235 SCRA 424, 431, August 17, 1994; citing cases.

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