MEMORANDUM CIRCULAR
NO. 04
Series of 2010

STANDARD OFFICE PROCEDURES IN EXTENDING LEGAL ASSISTANCE TO DELINQUENT CREDIT CARD HOLDERS

ARTICLE I
PURPOSE

Section 1- Purpose – This circular is issued for the purpose of setting forth and defining the policies, rules and procedures to be observed by Public Attorneys in providing legal assistance to credit card holders.

ARTICLE II
DEFINITION OF TERMS

Section 1. Terms Used. – The definition of terms, provided under Republic Act No. 8484, otherwise known as the Access Devises Regulation Act of 1998, Bangko Sentral ng Pilipinas Circular No. 398 Series of 2003 and such other related laws, is hereby adopted.

a. "***Credit Card***" means any card, plate, coupon book or other credit device existing for the purpose of obtaining money, property, labor or services on credit;

b. ***"Credit Card Holder"*** means any person who was duly issued a credit card or a pre-approved credit card by a credit card company[1];

c. "***Credit Card Receivables***" represents the total outstanding balance of credit card holders arising from purchases of goods and services, cash advances, annual membership/renewal fees as well as interest, penalties, insurance fees, processing/service fees and other charges;

d. **"*Minimum Amount Due*" or " *Minimum Payment Required*"** means the minimum amount that the credit card holder needs to pay on or before the payment due date for a particular billing period/cycle as defined under the terms and conditions or reminders stated in the statement of account/billing statement which may include: (a) total outstanding balance multiplied by the required payment percentage or a fixed amount whichever is higher; (b) any amount which is part of any fixed monthly installment that is charged to the card; (c) any amount in excess of the credit line; and (d) all past due amounts, if any;

e. **"*Default*" or "*Delinquency*"** shall mean non-payment of, or payment of any amount less than, the "Minimum Amount Due" or "Minimum Payment Required" within two (2) cycle dates, in which case, the Total Amount Due for the particular billing period as reflected in the monthly statement of account may be considered in default or delinquent;

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[1] Proposed definition

f. ***"Acceleration Clause"*** shall mean any provision in the contract between the bank and the card holder that gives the bank the right to demand the obligation in full in case of default or non-payment of any amount due or for whatever valid reason;

g. "***Finance charges*"** The amount of finance charges in connection with any credit card transaction and such amount to be paid by the debtor incident to the extension of credit such as interest or discounts, collection fees, credit investigation fees, and other service charges;

h. "***Delinquent Credit Card Holders***" shall mean a credit card holder who has not paid his account for more than two (2) billing periods and whose monthly statement of account is considered in default or delinquent; and,

i. ***"Credit Limit Applied"*** shall mean the amount of credit limit applied for by the client and approved by the credit card company.

ARTICLE III
CLIENTELE

Section 1. Clients – Pursuant to the mandate under the Administrative Code of 1987 and in relation to Republic Act No. 9406, the Public Attorneys Office shall provide free legal services to qualified credit card holders as set forth under Memorandum Circular No. 18, series of 2002, as amended.

Section 2. Prohibition. – The Public Attorneys are prohibited from assisting the following:

a. Those already represented by *counsel de parte; and*

b. Those who do not pass the indigency test.

ARTICLE IV
LEGAL ASSISTANCE TO DELINQUENT CREDIT CARD HOLDERS

Section 1. Legal Assistance Includes – The legal assistance that the Public Attorneys shall extend to qualified credit card holders, include, but is not limited to the following:

a. Legal advice and documentation;

b. Legal representation

Section 2. Provisional Legal Assistance – Pending qualification on the Merit and Indigency Tests, Public Attorneys shall provide legal assistance to credit card holders under the circumstances enumerated in Section 4, Article II of MC No. 18[2].

[2] Sec. 4. Cases Which May Be Provisionally Accepted. – In the following instances, PAO Lawyers may accept or handle cases provisionally pending verification of the applicant's indigency and an evaluation of the merits of his case:

ARTICLE V
STAGES IN THE RENDITION OF LEGAL ASSISTANCE

CHAPTER I
FORMAL DEMAND FOR PAYMENT

Section 1. ***Duties of the Public Attorney*** – When a credit card holder seeks legal advice after receiving a demand letter to pay, the public attorney shall:

a. Interview the credit card holder regarding his/her qualifications to avail of the services of the PAO and instruct him/her to provide proof of indigency;

b. Require the credit card holder to present a copy of the credit card agreement, the statement of accounts/billing statement and other pertinent documents, such as, but not limited to receipts, bank transfers or other documents evidencing payment;

c. The PAO lawyer shall acquaint himself/herself with the specifics of the credit card obligation of the holder; such as:

   1. The credit limit applied for and granted to the client;
   2. The application of credit card extension, if any;
   3. The total credit card receivables; or amount due;
   4. The *Minimum Amount Due*" or " *Minimum Payment Required;*
   5. The total finance charges and interest applied to the account;
   6. The total amount of purchases of the client using the credit card;
   7. The demand letter, if any;
   8. The amount paid by the client; and,
   9. Such other pertinent information regarding the obligation.

d. Consider and discuss with the holder; possible means and terms of payment or settlement of the credit card obligation;

e. Where advisable, draft, sign and serve a response to the demand letter taking into consideration applicable jurisprudence, provisions of the Civil Code, Republic Act No. 3765 (An Act to Require the Disclosure of Finance Charges in Connection with Extension of Credit) and such other applicable laws, jurisprudence and government policies. The Public Attorney shall, as far as practicable, incorporate in the response, a fair, just and feasible offer/proposal for settlement;

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1. Where a warrant for the arrest of the applicant has been issued;
2. Where a pleading has to be filed immediately to avoid adverse effect to the applicant;
3. Where an appeal or petition for certiorari or prohibition has to be perfected or filed immediately;
4. Where the PAO lawyer is appointed by the court as counsel *de oficio* to represent the defendant during the trial of the case, provided however that if a subsequent investigation discloses that the client is not an indigent, the lawyer should respectfully request the court to relieve him;
5. Where the PAO lawyer is designated on the spot as counsel *de oficio* for the purpose only of arraignment, pre-trial or promulgation of the decision; and,
6. Other similar urgent cases.

f. Where there is an agreement between the credit card issuer and the holder regarding the settlement of the obligation, discuss with the holder the terms thereof and its effects/ consequences;

g. Where the holder is insolvent, said fact and its legal effects shall be raised in the response.

Section 2. ***Latest Jurisprudence as Guide*** **–** In giving advice, drafting the response and discussing the practicability of and the terms of the proposal/offer of settlement, the Public Attorney should be guided by the principles enunciated by latest jurisprudence as regards to excessive and unconscionable interest rates[3].

CHAPTER II
WHERE A CASE FOR COLLECTION IS FILED IN COURT

Section 1. Where the amount payable is not in excess of Php 100,00.00 and the Rules of Procedure for Small Claims Cases[4] is applicable – The Public Attorney shall assist the credit card holder in making responses or the drafting of the Verified Response of the holder, ensuring that all necessary documents are attached thereto[5] and seasonably filed.

Section 2. Where the ordinary rules of procedure apply – The Public Attorney shall prepare and file the necessary Answer to the Complaint. When grounds exist therein, Counterclaims shall be pleaded in the Answer. The Public Attorney shall likewise include in the Counterclaim the allowable claims for Attorney's Fees pursuant to the PAO Law (R.A. 9406).

Section 3. Where the credit card holder is insolvent – In every case of collection filed against the credit card holder where he/she is insolvent, the said fact shall be raised as a defense, and proof of such insolvency shall be attached and made an integral part of the Verified Response or Answer, as the case may be.

CHAPTER III
WHERE THE CREDIT CARD HOLDER IS CRIMINALLY PROSECUTED

Section 1. Complaint Filed Before Prosecutor's Office/Information Filed in Court – Where a complaint is filed before the Prosecutor's Office or an information is filed in Court against a

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[3] Macalinao vs. BPI, G.R. No. 175490(9/17/09), Medel vs. CA G.R. No. 131622 (11/27/98), Solangon vs. Salazar, GR No. 125944 (12/29/01); BPI Express Card Corp. vs. Olalia, GR No. 11086 (12/17/01), Sps. Castro vs. De Leon Tan GR No. 168940 (11/24/09), and other cases

[4] Sec. 2. **Scope** - This Rule shall govern procedure in actions before the Metropolitan Trial Courts, Municipal Trial Court in Cities, Municipal Trial Courts and Municipal Circuit Trial Courts for payment of money where the value of the claim does not exceed One Hundred Thousand Pesos P 100,000.00 exclusive of interests and costs.

[5] Section 11. **Response**. - The defendant shall file with the court and serve on the plaintiff a duly accomplished and verified Response within a non-extendible period of ten (10) days from receipt of summons. The Response shall be accompanied by certified photocopies of documents, as well as affidavits of witnesses and other evidence in support thereof. No evidence shall be allowed during the hearing which was not attached to or submitted together with the Response, unless good cause is shown for the admission of additional evidence.
The Grounds for the Dismissal of the Claim, Under Rule 16 of the Rules of Court, should be pleaded.

credit card holder for a credit card related offense[6], the provisions of Memorandum Circular No. 003 Series of 2008[7] shall be observed in the handling of the case.

ARTICLE VI
MISCELLANEOUS PROVISIONS

Section 1. Supplemental application of MC No. 18, Series of 2002 as Amended – The provisions of Memorandum Circular No. 18, Series of 2002 [Amended Standard Office Procedures in Extending Legal Assistance] shall be suppletorily applicable.

Section 2. Effectivity – This Memorandum Circular shall take effect immediately.

Quezon City, Metro Manila, January 27, 2010

(Sgd.) PERSIDA V. RUEDA-ACOSTA

Chief Public Attorney

WE, the undersigned officials of the **PUBLIC ATTORNEY'S OFFICE (PAO),** pursuant to existing laws, rules and regulations, do hereby ratify Memorandum Circular No.004, series of 2010, **Standard Office Procedures in Extending Legal Assistance to Credit Card Holders,** on the occasion of the Public Attorney's Office Management Strategies and Core Planning Seminar with Regional Public Attorneys and Senior Officials, held on January 25-27, 2010 at Bayview Park Hotel Manila

Done at the City of Manila, January 27, 2010.

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[6] Sec. 9 (d) R.A. 8484 (using an access devise fraudulently applied for); Sec. 9 (j) R.A. 8484 (obtaining money or anything of value through the use of an access device, with intent to defraud or with intent to gain and fleeing thereafter) and other applicable laws

[7] Guidelines to be Observed by the Public Attorneys in Handling Criminal Cases Pursuant to the Provisions of the Speedy Trial Act and its Implementing Rules

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APPROVED:

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February 8, 2010
Date

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