

## EN BANC

[ A.M. No. P-20-4090 (FORMERLY OCA IPI NO. 18-4826-P), March 16, 2021 ]

**BRYAN T. MALABANAN, COMPLAINANT, VS. REUEL P. RUIZ,  
SHERIFF IV, BRANCH 84, REGIONAL TRIAL COURT, MALOLOS  
CITY, BULACAN, RESPONDENT.**

### DECISION

#### PER CURIAM:

This administrative case stemmed from an Affidavit-Complaint<sup>[1]</sup> dated May 18, 2018 filed by complainant Bryan T. Malabanan (Malabanan), Paralegal Officer of UCPB Savings Bank (UCPB), against respondent Reuel P. Ruiz, Sheriff IV of the Regional Trial Court (RTC) of Malolos City, Bulacan, Branch 84, before the Office of the Court Administrator (OCA) for grave misconduct and violation of Republic Act No. (R.A.) 6713 or the Code of Conduct and Ethical Standards for Public Officials and Employees.

#### Facts of the Case

In his Affidavit-Complaint, Malabanan said that on February 22, 2018 he filed a petition for extra-judicial foreclosure of mortgage, in behalf of UCPB, before the RTC of Malolos City, Bulacan, against the properties of Francisco Allarilla and the members of the latter's family, consisting of 98 titles. The case was entitled *UCPB Savings Bank v. Allarilla, et al., represented by Francisco J. Alarilla, Attorney-in-Fact*, docketed as EJP No. 28-2018,<sup>[2]</sup> and was raffled to respondent for the conduct of the auction sale on the mortgaged properties. On April 12, 2018, the auction sale proceeded and UCPB was declared as the highest bidder.<sup>[3]</sup> Subsequently, respondent gave complainant a Billing for Sheriff's Fee,<sup>[4]</sup> which provides:

#### BILLING FOR SHERIFF'S FEE

UCPB SAVINGS BANK

vs. ALARILLA ET.AL. represented by  
FRANCISCO J. ALARILLA  
(Attorney-In-Fact)

EXTRAJUDICIAL FORECLOSURE NO. 28-2018

Sir,

In connection with the Auction Sale of the above captioned cases, undersigned Sheriff hereby tenders his billing as hereunder itemized.

ninety-eight (98) Titles  
Five thousand (P5,000.00)  
per  
Title

Note: The subject amount is based on the prevailing amount being paid by any Petitioner."

Malolos City, Bulacan. 12 April 2018.

(Sgd.)  
Reuel P. Ruiz  
Sheriff-In  
Charge<sup>[5]</sup>

Complainant said that UCPB is willing to pay the mandated and authorized fees and expenses incidental to the petition for extra-judicial foreclosure of mortgage, but the sum of P490,000.00, which respondent seeks to collect is so unconscionable to be considered as expenses for the posting and service of the petition and conduct of the auction sale. He further said that respondent's billing was without any basis and approval from the court as mandated by Rule 141 of the Rules of Court. Hence, it is a form of solicitation of money punishable by dismissal from the service.<sup>[6]</sup>

In his Comment<sup>[7]</sup> dated August 9, 2018, respondent denied the accusation that he is attempting to collect money from complainant. Respondent admitted that he gave the questioned billing to the complainant but explained that the same is only a guide for UCPB in estimating the amount to be paid. To support his claim of innocence, respondent averred that:

- (a) there was no amount indicated in the billing because, as agreed upon, such fee shall depend upon the sole discretion of the bank, as practiced. He said that:

If indeed I demanded a huge amount, I would have conveniently stated the same in the Billing itself as what I did and still doing in my executions, but such was not my intention.<sup>[8]</sup>

- (b) he made the wrong choice of words and his billing is only a guide to payor bank in forming their estimates regarding the fees payable to sheriffs. He then stated that:

This same amount is being paid by most Banks, with or without the required estimate of expenses, in fact, even the Land Bank of the Philippines pays only the amount of ONE THOUSAND PESOS per title, meaning per transaction. A common practice by Banks being tolerated and this same practice is what I expected and presumed to happen in this transaction with sir-Malaban.<sup>[9]</sup>

- (c) he was expecting that complainant will agree to the same tolerated practice among bank in terms of sheriff's fees. He

said that he and complainant agreed that the latter will communicate to him the bank's approval or denial thereof and only then that the proper and required estimate of the expenses will be made for its eventual approval by the authorities Concerned;[10]

(d) the instant complaint is premature because the complainant could have availed of certain remedies, such as notifying him of the denial of the bank and submitting counter proposals or notifying and seeking the intervention of the Ex-Officio Sheriff or bringing the matter to the attention of the Executive Judge;[11]

(e) he has not received any amount which will only happen when the billing is approved.[12]

### **Report and Recommendation of the OCA**

In its Memorandum<sup>[13]</sup> dated August 19, 2020, the OCA found respondent guilty of soliciting money which is a violation of Section 50(A)(10)<sup>[14]</sup> of the 2017 Rules on Administrative Cases in the Civil Service (2017 RACCS). The OCA recommended that the instant administrative case be re-docketed as a regular administrative matter, and that respondent be dismissed from service with forfeiture of all his retirement benefits, excluding accrued leave credits, and with prejudice to re-employment in the government, including government-owned or controlled corporations.<sup>[15]</sup>

The OCA held that respondent's Billing for Sheriff's Fee is an attempt to solicit money from UCPB. The said billing statement is complete in all the necessary details for complainant to conclude that he has to pay respondent. It need not indicate the specific amount sought to be collected since it can easily be computed by multiplying 98 titles by P5,000.00.<sup>[16]</sup>

The OCA elucidated that respondent's billing is not authorized by any law since Section 6 of A.M. No. 99-10-05-0 (Re: Procedure in the Extra-Judicial Foreclosure Mortgages) provides only one fee which can be collected after an auction sale, to wit:

After the sale, the Sheriff shall collect the appropriate fees pursuant to Section 9(1), Rule 141, as amended by A.M. No. 00-2-01-SC, computed on the basis of the amount actually collected by him, which shall not exceed P100,000.00 (A.M. No. 99-10-05-0, March 1, 2001, 2[d]). The amount shall not be subject to a refund even if the foreclosed property is subsequently redeemed.<sup>[17]</sup>

Section 9(1) has already been transposed to Section 10(1) of Rule 141, as amended by A.M. No. 04-2-04-SC (Proposed Revision of Rule 141, Revised Rules of Court Legal Fees) which provides that:

Section 10. Sheriffs, Process Servers and other persons serving processes. –

x x x x

(1) For money collected by him actual or constructive (when highest bidder is the mortgagee and there is no actual collection of money) by order, execution, attachment, or any other process, judicial or extrajudicial which shall immediately be turned over to the Clerk of Court, the following sums shall be paid to the clerk of court, to wit:

(1) On the first Four Thousand (P4,000.00) Pesos, five and a half (5.5%) per centum;

(2) On all sums in excess of Four Thousand (P4,000.00) Pesos, three (3%) per centum; x x x

Contrary to respondent's argument that his billing statement was merely a suggestion or a guide for complainant in estimating the fee which shall depend upon the sole discretion of UCPB, the OCA emphasized that the payee or the payor is never allowed to exercise any discretion in determining the amount to be paid because all the fees authorized to be collected under A.M. No. 99-10-05-0 or in Rule 141 are based on a fixed base amount and rate.<sup>[18]</sup>

The OCA further said that even if the complainant did not agree to respondent's suggestion and did not give any money to him, it will not exempt respondent from punishment<sup>[19]</sup> because Section 50(A)(10), Rule 10 of the 2017 RACCS provides that:

10. Soliciting or accepting directly or indirectly, any gift, gratuity, favor, entertainment, loan or anything of monetary value in the course of one's official duties or in connection with any operation being regulated by, or any transaction which may be affected by the functions of one's office. The propriety or impropriety of the foregoing shall be determined by its value, kinship, or relationship between giver and receiver and the motivation. A thing of monetary value is one which is evidently or manifestly excessive by its very nature;

Lastly, the OCA said that respondent's 24 years in the service will not be considered a mitigating circumstance in his favor since it appears that his offense is not an isolated case. Respondent's Billing for Sheriff's Fee is proof enough of this as it states the subject amount is based on the prevailing rate being paid by any petitioner.<sup>[20]</sup> The OCA noted that paragraph 5 of respondent's Comment is replete with statements pointing to a customary practice, to wit:

[N]o amount was computed or reflected thereon because as agreed upon such fee shall depend upon the sole discretion of the Bank, **as practiced**. If indeed I demanded such huge amount, I would have conveniently stated the same in the Billing itself **as what I did and still doing in my executions** but such was not my intention

This same amount is being paid by most Banks, with or without the required estimate of expenses, in fact even the Land Bank of the Philippines pays only the amount of ONE THOUSAND PESOS per title, meaning per transaction. **A common practice by Banks being tolerated and this same practice is what I expected and presumed to happen in this transaction with sir-Malabanan.**

The word 'per Title' only meant per transaction as it is a **tolerated**