

CASES INVOLVING PANAMA UNCONSTITUTIONAL ORDER
INTRODUCED IN FLORIDA

(1) On November, 2007, the Panamanian Probate Judge, Juan Bosco Molina, appointed an Administrator for the Estate of Wilson C. Lucom even though Lehman was appointed the Executor by the Court. The Administrator replaces the Executor.

(2) On August 25, 2008, without a hearing, Judge Molina ruled that everything Lehman had done from his appointment in July of 2006, as Executor, was null and void (Order No. 952). Exhibit A

(3) In June of 2009, Judge Molina admitted in his own words that he had no jurisdiction to rule on any matters involving the Executor. In an order wherein Judge Molina refused to rule on the appointment of another named Executor in the Lucom Estate, Christopher Ruddy, Judge Molina stated that he had no jurisdiction to rule on issues involving the Executor since it is on appeal at the Supreme Court. Exhibit B

(4) In July of 2009 Judge Eva Cal stated that Judge Molina had issued Order No. 952 without giving Lehman any due process, and based upon a motion that was legally not supportable. Exhibit C

(5) In August of 2009 Judge Eva Cal ruled that the appointment of Marta Canola as the Administrator of the Estate was illegal since Lehman was the appointed Executor at that time. Judge Eva Cal stated it was illegal because Judge Molina had no jurisdiction to rule on anything that would interfere with Lehman's appointment. Exhibit D

(6) In September of 2009, Lehman filed an emergency motion to the Panama Superior Court based on the illegality and unconstitutionality of Order No. 952. Exhibit E

(7) October 12th, 2009 the First Superior issued an Edict suspending Order No. 952 in response to the motion that Order No. 952 is unconstitutional. Exhibit F

(8) On November 17th, 2009 the First Superior Court withheld its decision on the order that suspended Order No. 952. The Superior Court believed the case should be ruled upon by the Supreme Court. Exhibit G

(9) On November 26th, 2009, Lehman appealed the November 17th opinion of the Superior Court to the Panama Supreme Court. This is an emergency appeal on constitutional grounds. Exhibit H

(10) The Edict of the Superior Court that suspended Order No. 952 is therefore still valid as a result of the appeal to the Panama Supreme Court entered on November 26th. The appeal to the Supreme Court reinstates the parties to the position prior to that appeal. Prior to the Supreme Court appeal, Order No. 952 was in suspension and not valid. Therefore, there are no legal impediments against Lehman from exercising his duties as Executor almost four years later. Exhibit I

A

Molina

FIFTH CIVIL COURT OF THE FIRST JUDICIAL CIRCUIT OF PANAMA. Panama, this twenty-ninth (29th) day of August, two thousand and eight (2008).

ORDER No. 952

HAVING SEEN:

HILDA ANTONIA PIZA BLONDET, represented in these testate estate proceedings involving the late WILSON CHARLES LUCOM by INFANTE & PEREZ ALMILLANO, has filed a formal motion to declare null and void the installation of Executor RICHARD SAM LEHMAN, designated by the late WILSON CHARLES LUCOM.

In essence, this Court is being asked to order the nullity of Mr. RICHARD SAM LEHMAN's installation in the office of executor and to render his acts without effect by virtue of the fact that as of July 6, 2006, the date on which the latter was installed in his office before the Court, notice of the resolution designating him, i.e., Order No. 1025 of July 5, 2006, had not been duly served upon the interested parties and, therefore, could not have any effect whatsoever.

The required process having been served service upon the interested parties, RICHARD SAM LEHMAN, represented by Tapia, Linares & Alfaro, and FUNDACION C. LUCOM TRUS [sic.] FUND, represented by Tapia, Linares & Alfaro, they filed their formal objection to the present motion. At this stage of the proceedings, the objecting parties asked the Court to flatly dismiss the motion to declare null and void that is before it, on the basis of Article 701 of the Judicial Code, inasmuch as the fact that gives rise to the motion was known to the moving party,

[Seal:]
REPUBLIC OF PANAMA
FIFTH CIVIL COURT CIRCUIT OF PANAMA
(Coat of Arms)
DONS 2/4/2006
JUDICIARY



which did not proceed to question it; nor is it a flaw that would render the proceedings null and void; nor is it essential for the prosecution thereof.

Without going into further considerations as to substance, a review of the evidence in the record shows that, indeed, Order No. 1025 of July 5, 2006, among other provisions, appointed RICHARD SAM LEHMAN as the executor of the estate of the late WILSON CHARLES LUCOM, and urged him to appear before the Court to be sworn into office.

On July 6, 2007 [*sic.*], RICHARD SAM LEHMAN was installed, in the Court's courtroom, as the executor of the estate of the late WILSON CHARLES LUCOM. p. 33

It so happens, however, as the mover of the motion points out, that as of July 6, 2006, the resolution designating the office of executor of the estate was in the process of being served; let us see:

- Only RICHARD SAM LEHMAN, through his judicial attorney-in-fact, had been formally been notified of said resolution. (p. 28 and back)
- Summoning Edict No. 088 had been withdrawn on July 5, 2006, to be published in the press (which publication took place on the 12th, 13th, and 14th days of July).
- HILDA PIZA BLONDET or HILDA LUCOM was notified on July 12, 2006, and she appealed from said resolution on July 14, 2006.
- A regular summoning edict was posted on August 9, 2006, and removed on August 17, 2008.

Now the, inasmuch as the provisions in Order No. 1025 of July 5, 2006, including the appointment of an executor, cannot become effective until such time as the parties are duly given notice of it (Article 1022 of the J.C.), the mover of the motion is right that it is appropriate to declare null and void the installation of Executor RICHARD SAM LEHMAN, and to render without effect all which he did by virtue of said office.

Therefore, based upon the foregoing, the undersigned **FIFTH CIVIL JUDGE OF THE FIRST JUDICIAL CIRCUIT OF PANAMA**, DECREES the NULLITY of the installation of Executor RICHARD SAM LEHMAN in the testate estate proceedings of the late WILSON CHARLES LUCOM, and, therefore, **ORDERS TO RENDER WITHOUT EFFECT** all which he might have done by virtue of said office.

Once the present resolution has been entered, let these pages be added to main case file.

LEGAL GROUNDS: Articles 710 and 1022 of the Judicial Code.

Let it be notified.

[Illegible signature]

JUAN BOSCO MOLINA R.
Fifth Civil Judge of the
First Judicial Circuit of Panama

[Illegible signature]

HEYSELL ACOSTA
Clerk

[Rubber stamp:]

I CERTIFY: That, in order to notify the parties of the foregoing Resolution, I am posting Edict number 1143 on a public location in these offices.
This 1st day of September, two thousand and 08 at 3:00 p.m.

[Illegible signature]

Clerk

[Rubber stamp:]

At 2:54 in the afternoon of this 2nd day of September, two thousand and 08
I notified Infante & Pérez Almillano (Mr. Núñez)
of the foregoing resolution dated 29/8/08 - Order No. 952

Clerk

[Illegible signature]

[Rubber stamp:]

I, THE UNDERSIGNED CLERK OF THE
FIFTH CIVIL COURT OF THE PANAMA CIRCUIT,
CERTIFY: that all of the foregoing is a true copy of [sic.]
Panamá, September 2, 2008

[Illegible signature]

Clerk

[Seal:]

REPUBLIC OF PANAMA
FIFTH CIVIL COURT CIRCUIT OF PANAMA
(Coat of Arms)
DONE 2/4/2008
JUDICIARY

B

FIFTH CIVIL CIRCUIT COURT FOR THE FIRST JUDICIAL CIRCUIT OF PANAMA.-
Panama, June ten (10) two thousand nine (2009).

ORDER No. 587

HAVING CONSIDERED:

Within the testamentary succession proceeding of Wilson Charles Lucom (R.I.P.), Mr. CHRISTOPHER WILLIAM RUDDY files a motion through legal counsel, the MIZRACHI, DAVARRO & URRIOLO law firm, to be recognized as a legatee and executor as set forth in the will granted by the decedent.

The factual statements used as the basis for the claim by the party against whom a judgment has been entered can be summarized as follows: As set forth in the will granted by WILSON CHARLES LUCOM (R.I.P.), CHRISTOPHER WILLIAM RUDDY has been designated as a legatee and executor; however, when the Fourth Civil Circuit Court for the First Judicial Circuit of Panama issued the order opening the succession proceeding, [the court] only appointed RICHARD LEHMAN as the executor, ignoring the will of the decedent to appoint three executors.

The moving party attached documentary evidence to his motion, visible at pages 7-18 of the file.

Pursuant to a decision dated September 18, 2006, notice of this motion was given, providing a three (3) day period [for response].

With respect to this motion, the INFANTE & PEREZ ALMILLANO law firm, on behalf of Hilda Antonia Piza Blondet, filed a brief in answer thereto challenging the motion, indicating that on the issue there is an ongoing appeal that has not been decided; therefore, all matters relating thereto

are the object of an appeal and the Court is barred from entering a decision (pp. 21-26).

By way of Order No. 1139 dated November 21, 2007, the evidence filed by the moving party is admitted which, by nature is documentary, in ratification and testimonial evidence.

A period of six (6) days was granted by way of the order dated November 21, 2007 (pg. 30) for processing the admitted evidence.

The moving party reported as evidence the file of the testamentary succession proceeding of Wilson Charles Lucom (R.I.P.), as well as the sworn statement of ISRAEL TEJADA CUERVO before the Ninth Notary Public for the Circuit of Panama on September 14, 2006, a photocopy of Public Deed No. 3880 from the Office of Second Notary Public for the Circuit of Panama whereby Mr. WILSON CHARLES LUCOM grants a special power of attorney to HILDA P. LUCOM, RICHARD LEHMAN and CHRISTOPHER RUDDY on April 21, 2006, and a photocopy of public deed No. 3881 from the Office of the Second Notary Public for the Circuit of Panama, whereby Mr. Wilson Charles Lucom (R.I.P.) appoints his healthcare surrogates on April 21, 2006 (pp. 8-18).

Once the procedural requirement was fulfilled in respect of this motion, the undersigned Judge proceeds to the considerations the case merits in accordance with provisions in our legal code inasmuch as there is no showing of cause for nullity whatsoever or procedural pretermission that prevents issuing a decision on the merits. That is, this jurisdictional court proceeds to decide on the merits of this motion.

The claim set forth in the motion is reduced to the following: for this Court to recognize that CHRISTOPHER WILLIAM RUDDY is a legatee in the succession of WILSON CHARLES LUCOM (R.I.P.) and, further, to declare that he is also an executor in that succession [proceeding].

The subjective right sought by the moving party is legally based on the substantive provision in Article 707 of the Civil Code, which is of the following tenor:

Article 707. All testamentary provisions must be understood within the literal meaning of its words, unless it clearly appears that the intention of the testator was different. In the event of doubt, what appears to be closest to the intention of the testator will be observed, in keeping with the tenor of the will itself.

The testator cannot forbid a challenge of the will in the event nullity has been established by law."

With respect to the request of the moving party to be recognized as a legatee, in the main file there is a decision issued by the Fourth Civil Circuit Court for the First Judicial District of Panama in Order No. 1025 dated July 5, 2006, thereby declaring the opening of the testamentary succession proceeding of **WILSON CHARLES LUCOM (R.I.P.)**, and that legatees, without prejudice to third parties, are **CHRISTOPHER RUDDY, among others**, wherefor the Court finds this motion is not viable inasmuch as **CHRISTOPHER RUDDY** was already declared a legatee within the succession proceeding at issue, as stated by the deceased **WILSON CHARLES LUCOM (R.I.P.)** in a nuncupative will granted by the Office of the Second Notary Public for the Circuit of Panama in Public Deed 6646 dated June 20, 2005.

Therefore, the moving party must note that in testamentary succession proceedings, contrary to what happens in an intestate succession proceeding, motions for inclusion of heirs are not viable by virtue of the fact that the last will of the testator is executed in testamentary successions, and therein he states who he appoints as his successors or legatees.

As to a declaration as "executor", it is worth noting that this situation was decided by the Superior Court of Justice in the decision dated May 4, 2007, which modified the Order declaring the opening of the

instant testamentary succession proceeding issued by the Fourth Civil Circuit Court for the First Judicial Circuit of Panama, as to appointing Messrs. **RICHARD SAM LEHMAN, CHRISTOPHER RUDDY and HILDA PIZA LUCOM** as executors and trustees of the estate left by **WILSON CHARLES LUCOM (R.I.P.)**, regarding which there was an announcement of an Appeal for Reversal (Cassation) before the Civil Division of the Supreme Court of Justice and which, to date, has not been decided.

For said reason, this Court finds that the motion filed by the moving party is not in accordance with law inasmuch as the appeal on the matter has not been decided, a situation that prevents the Court presiding over the matter from deciding on any motion relating to the said succession [proceeding].

In view of these concepts, the [Court] can only find that this motion was not proven for the reasons set forth above.

The Court finds there will be no judgment for court costs inasmuch as the moving party acted in good faith upon filing the motion.

Based on the foregoing reasons, the undersigned **FIFTH CIVIL CIRCUIT JUDGE FOR THE FIRST JUDICIAL CIRCUIT OF PANAMA**, with respect to the Testamentary Succession proceeding of **Wilson Charles Lucom (R.I.P.)** **DENIES** the motion for recognition as legatee and appointment as Executor filed by **CHRISTOPHER WILLIAM RUDDY**.

No judgment on court costs as set forth in the bases for the decision.

LEGAL BASIS: Articles 701 and 465 and 466 of the Judicial Code.

JUDGE,

/s/ Illegible
ATTY. JUAN BOSCO MOLINA R.

CLERK,

/s/ Illegible
ATTY. LUCENIA HAWKINS

Enc. 1 File 304/07

[Court seal]

[Partially legible stamp:]
THE UNDERSIGNED CLERK OF THE FIFTH
CIVIL CIRCUIT COURT FOR THE CIRCUIT
OF PANAMA, CERTIFIES [illegible]...
OF THE ORIGINAL
[Illegible] 24 June 09
/s/ Illegible

I HEREBY CERTIFY: THAT TO NOTIFY THE PARTIES OF
THE FOREGOING ORDER, I POSTED EDICT NUMBER 776
IN A PUBLIC PLACE IN THIS OFFICE.
[Illegible date and signature]

EDICT No. 776 FILE 304-07

In the motion to be recognized as a legatee and to be declared an executor pursuant to the terms set forth in the will granted by WILSON CHARLES LUCOM (R.I.P.) filed by CHRISTOPHER WILLIAM RUDDY, a court order of the following tenor has been issued:

"FIFTH CIVIL CIRCUIT COURT FOR THE FIRST JUDICIAL CIRCUIT OF PANAMA, June ten (10) two thousand nine (2009).

ORDER No. 587

HAVING CONSIDERED
Based on the foregoing considerations, the undersigned **FIFTH CIVIL CIRCUIT JUDGE FOR THE FIRST JUDICIAL CIRCUIT OF PANAMA** with respect to the Testamentary Succession proceeding of Wilson Charles Lucom (R.I.P.) **DENIES** the motion for recognition as legatee and appointment as Executor filed by CHRISTOPHER WILLIAM RUDDY.

No judgment on court costs as set forth in the bases for the decision.

LEGAL BASIS: Articles 701 and 465 and 466 of the Judicial Code.

Provide notice.

(Signed) **JUDGE, ATTY. JUAN BOSCO MOLINA R.**

(Signed) **CLERK, ATTY. LUCENIA HAWKINS**

Therefore, to provide notice to the parties based on Article 1001 of the Judicial Code, this edict is posted at the Courthouse steps for a period of five (5) working days, today, Friday (12) of June 2009 at 8:00 in the morning.

/s/ Illegible
ATTY. LUCENIA HAWKINS
CLERK

Eng.1
/df

Upon lapse of the period for the foregoing Edict, at 8:00 in the morning, today 18 19 June in two thousand 2009, I remove it and add it to the file.

/s/ Illegible

e

ENTRY No. 09AA.019

DECISION WRITTEN BY JUDGE EVA CAL

Motion to Declare Null and Void the Installation of the Executor, filed by HILDA ANTONIA PIZA BLONDET in the testamentary estate proceedings of the late WILSON CHARLES LUCOM.

ORDER CURING PROCEDURAL DEFECTS

FIRST SUPERIOR COURT FOR THE FIRST JUDICIAL CIRCUIT.

Panama, this twelfth (15th) day of July, two thousand and nine (2009)

HAVING SEEN:

This Superior Court has received, at the level of an appeal, the Motion to Declare Null and Void the Installation of the Executor, filed by HILDA ANTONIA PIZA BLONDET in the testamentary estate proceedings of the late WILSON CHARLES LUCOM, by virtue of the appeals filed by LUCOM WORLD PEACE LIMITED and RICHARD SAM LEHMAN against Order No. 952 of August 29, 2008, issued by the Fifth Civil Circuit Court for the First Judicial Circuit of Panama, whereby said Judge "DECREES the NULLITY of the installation of Executor RICHARD SAM LEHMAN in the testate estate proceedings of the late WILSON CHARLES LUCOM, and, therefore, ORDERS TO RENDER WITHOUT EFFECT all which he might have done by virtue of said office."

After being subjected to the rules governing assignment, said Motion was referred to the trier of fact to proceed to cure procedural defects, as provided in Article 1151 of the Judicial Code.

Pursuant to the last paragraph of Article 1136 of the Judicial Code, the Superior Court, when considering an appeal, must review whether the appeal has been admitted according to law and, therefore, it is proper to verify whether the Order appealed from admits an appeal.

As we have noted, Order No. 952 from the judge under appeal rules on a motion to declare null and void the installation of Mr. RICHARD SAM LEHMAN in the office of executor and, as consequence, it renders without effect all which he might have done by virtue of said office. Although it is true that said Motion has no legal foundations whatever and it nullifies legal matters without specifying what matters are those and without hearing the opposing party in those matters, it is no less true that it is an order issued in connection with a motion filed in estate proceedings and that, consequently, said Order No. 952 was issued in non-adversarial proceedings, as estate proceedings are not adversarial.

And as it happens, in non-adversarial proceedings the filing and decision of all appeals shall be subject to the procedures established for summary proceedings, according to the provisions of paragraph 11 of Article 1423 of the Judicial Code; and, pursuant to paragraph 9 of Article 1436, *ibidem*, in summary proceedings only a resolution dismissing the complaint or the answer or a resolution involving their dismissal, a resolution denying the commencement of discovery, or a resolution putting an end to the proceedings or making it impossible to pursue them is appealable. Moreover, in estate proceedings specifically, only the order declaring heirs, the order of adjudication, the order to partition the estate, and the order to sell estate property are subject to appeal, according to Articles 1510, 1520, 1565, and 1580 of the Judicial Code, respectively.

It is clear from the foregoing, therefore, that Order No. 952 does fit any of those resolutions. This means, then, that Order No. 952 is not appealable.

Inasmuch as Order No. 952 raised in appeal is not appealable, the proper course of action is to decline to hear said appeal and to return the aforesaid Motion to the lower court.

Wherefore, the FIRST SUPERIOR COURT OF THE FIRST JUDICIAL DISTRICT, administering justice in the name of the Republic and by the authority vested in it by law, DECLINES to hear the appeal filed against Order No. 952 of August 29, 2008, issued by the Fifth Civil Circuit Court for the First Judicial Circuit of Panama, and ORDERS to return the aforesaid MOTION to the lower court.

LET IT BE NOTIFIED.

JUDGE EVA CAL

JUDGE MIGUEL A. ESPINO

CLERK OF THE COURT

D

ENTRY No. 09AA.201

DECISION WRITTEN BY MAGISTRATE EVA CAL

Motion to Remove Administrator filed by RICHARD SAM LEHMAN and LUCOM WORLD PEACE LIMITED in the testamentary estate proceedings of the late WILSON CHARLES LUCOM.

ORDER APPEALED FROM

FIRST SUPERIOR COURT FOR THE FIRST JUDICIAL CIRCUIT.

Panama, this twelfth (12th) day of August, two thousand and nine (2009)

HAVING SEEN:

In Order No. 203 of February 19, 2009, the Fifth Civil Circuit Court for the First Judicial Circuit of Panama decided to deny the Motion to Remove the Administrator filed by RICHARD SAM LEHMAN and LUCOM WORLD PEACE LIMITED in the testamentary estate proceedings of the late WILSON CHARLES LUCOM.

Inasmuch as the firm of TAPIA, LINARES Y ALFARO, the movers' judicial attorney-in-fact, filed an appeal before said order became final and timely supported its appeal, the court whose decision was being appealed admitted the appeal and forward the case file to this Superior Court.

It should be stated that Ms. Marta Lucía Cañola, acting in her own behalf and in her capacity as court-appointed administrator in the Testamentary Estate Proceedings of the late WILSON CHARLES LUCOM, filed a pleading opposing the appeal.

After the assignment of the appeal to the court and the curing of any procedural defects, it is fitting, therefore, to address the appeal that has been filed and to this effect we shall first make

a brief summary of the appeal filed, of the order being appealed from, and of the arguments raised, and then we shall issue our decision.

THE APPEAL FILED

The firm of TAPIA, LINARES Y ALFARO, acting in its capacity as judicial attorney-in-fact for RICHARD SAM LEHMAN in his capacity as executor designated in the will, and of LUCOM WORLD PEACE LIMITED, trustee of the FUNDACION WILSON C. LUCOM trust, filed the Motion to Remove the Administrator appointed by Order No. 1147 of November 21, 2007, Ms. Marta Lucía Cañola.

The Motion sets forth the following facts: that Order No. 229 of March 6, 2006, issued by the Fourth Circuit Judge, had designated Rubén Darío Carles as court-appointed administrator of the estate of the late WILSON CHARLES LUCOM, which appointment had been stayed as the result of the appeal filed against said order; that Order No. 1147 of November 21, 2007, issued by the Fifth Court, had designated Ms. Marta Lucía Cañola as court-appointed administrator of said estate; that under Article 552 of the Judicial Code, applicable by analogy, the administrator may be removed for ineptitude, embezzlement or abuse in the discharge of his or her office; that the fees set for the administrator have not been set following the legal procedure established in paragraph 4 of Article 1057 of the Judicial Code, in addition to the fact that said fees do not comport with the monthly income; that the administrator has arrogated to herself functions beyond those of an administrator by having conducted an investigation into and rendered an opinion on alleged irregularities engaged in by Mr. RICHARD SAM LEHMAN in his capacity as executor; that Article 1610, nowadays Article 1584, of the Judicial Code establishes that administrators of estates shall have such powers as the law bestows upon executors, among them: “monitoring the execution of everything else ordered in the will and, if fair, upholding its

validity in and out of court” and “taking the necessary precautions for the conservation and custody of the property, with the intervention of the present heirs”; that the administrator has not performed those functions as she has not taken steps to defend the will but, to the contrary, has adopted a passive stance, before and after the Fifth Judge issued Order No. 716 of July 3, 2008, in the Motion to Disencumber Property filed by Hilda Piza Lucom, in which it was ordered to disencumber monies in foreign banks in the amounts of B/. 3,400,000.00 and B/. 370,000.00 belonging to the estate; that the administrator adopted a similar passive stance when the attempt was made to put B/. 4,000,000.00, also belonging to the estate, in the hands of third parties; that inasmuch as the legal representation of the estate has been held in abeyance and the administrator cannot discharge that function, her mission is to make known to the trier of fact that he may not proceed to issue an order to lift [*sic.*] or to admit acts against the estate, as these would be null and void; and that the appointment of an administrator is a jurisdictional act of the judge responsible for said appointment under the law, an appointment which he can make freely and in his absolute discretion, but that, under Article 1582 of the Judicial Code, administration of the estate in testamentary proceedings is incumbent upon the executor, and that, therefore, the appointment of Ms. Marta Lucía Cañola is in contravention of the aforesaid legal provision.

Said Motion was admitted and referred to the court under resolution of November 25, 2008. Ms. Marta Lucía Cañola answered the Motion in question and admitted that she had been appointed administrator but denied all of the charges made against her and described the strenuous efforts she was making as administrator.

THE ORDER UNDER APPEAL

In Order No. 203 of February 19, 2009, which is the resolution being appealed from, the Fifth Civil Circuit Judge for the First Judicial Circuit of Panama denied the removal of the

administrator of the estate of the late WILSON CHARLES LUCOM designated by the judge himself in Order No. 1147 of November 21, 2007.

In the whereas clauses of said order, the judge whose decision is being appealed from states, in the first place, that contrary to what the mover represents, his court has not, to date, set the fees of Ms. Marta Lucía Cañola in her office as administrator and that the mover is therefore lying.

He also states that, contrary to what the mover indicates, Ms. Marta Lucía Cañola has not overstepped her functions as administrator, as the report rendered by her resulted from the fact that it followed from numerous documents filed by Sam Lehman that he administered property belonging to the estate and that therefore she was indeed entitled to issue an opinion in connection therewith. He adds that it was the attorney-in-fact himself, Sam Lehman, who informed of the existence of a bank account in the United States which belonged to the estate, and that for this reason the court instructed the administrator to conduct investigations and, should this turn out to be true, to take the necessary steps to bring him [*sic.*] into the process. He concludes that the administrator's activities are in keeping with her functions.

With respect to the alleged passive attitude of the administrator, the lower court judge defends it by pointing out that this does not show ineptitude on the part of the administrator as she was not obligated to oppose the motion to disencumber property that was filed, and that ineptitude cannot be determined from an isolated fact but rather from a series of actions or omissions constituting a pattern of behavior that may be termed inept, and that this is not the case with Ms. Cañola who, to the contrary, has done a huge amount of work inventorying, conserving, and defending the assets of the estate, which translates into an active work of administration and

defense of said assets before administrative and judicial authorities, as reflected in the reports that have been filed and are known to the parties.

This being so, the judge whose decision is under appeal states that he can find no grounds to remove the administrator and therefore denies the motion.

ARGUMENTS BY THE PARTIES

The firm of TAPIA, LINARES Y ALFARO, judicial attorney-in-fact for RICHARD SAM LEHMAN and LUCOM WORLD PEACE LIMITED, trustee of the FUNDACION WILSON C. LUM trust, argues that the testator intended most of the corpus of the estate for the latter, for the benefit of poor children in Panama.

The aforementioned firm goes on to argue that the grounds for the present motion are the inept and abusive acts of the provisional court-appointed administrator, Marta Lucía Ceñola, has engaged in, and that it had so been set forth in the motion with facts supported by documents and proceedings in the estate file, but that notwithstanding this, the order under appeal ruled that the administrator had not overstepped her functions.

As regards ineptitude, in view of the passive stance adopted by the administrator with respect to the [motion to] disencumber property filed by Hilda Piza Blondet, the appellant firm states that the judge whose order is being appealed from found that there was not ineptitude but, that, rather, the administrator had made strenuous efforts; however, it [the firm] dissents from said finding as the judge ignored the evidentiary force of the proceedings and the omissions.

The attorney-in-fact states in its appeal that there exists a serious problem with the administration of the property and the execution of the will as set forth in the testament which is indeed being challenged by a motion to declare it null and void filed by Hilda Piza Blondet in spite of the fact that she had been appointed executrix by her husband.

It goes on to say that while the designation, appointment, and installation of the designated testamentary executors, RICHARD LEHMAN, CHRISTOPHER RUDY, and HILDA PIZA BLONDET, was being discussed, an individual of the moral standing, good reputation, and experience of Professor Rubén Darío Carles was designated as administrator, but that Executrix HILDA PIZA BLONDET has not allowed him to discharge that office and this has led to the designation of Marta Lucía Cañola to administer and conserve the corpus of the estate until such a time as it is possible to dispose of it in the manner contemplated by the testator.

The appellant attorney-in-fact continues saying that in view of the evidence in the case file, it is not possible to ignore that Cañola's administration has been lacking in positive results and it has rather unfolded in troubled fashion and not for the benefit of the interest pursued, not only because of her ineptitude but also because she has arrogated functions and powers that are not incumbent upon her.

The appellant firm adds that the very reports submitted by the administrator reveal their partial nature, as they focus only on such aspects as she deems relevant, but that Executrix Hilda Piza Blondet herself, in view of the lack of a full and detailed report, is asking that she render an accounting of the status of the bank accounts.

The appellant firm also says that the administrator has arrogated functions that are not incumbent upon her and that the best of example of this is the investigation of the designated executor she carried out under the pretext of complying with a court order, while an investigation such as the one that was carried out, involving property that is in a jurisdiction other than Panama's, has to be conducted through legally established channels and not through the assigning of the administrator and the use of private firms.

The attorney-in-fact filing the appeal notes that such activities of the administrator tend to prevent the executor of the estate from discharging his obligations or from being reinstated in his functions, and are evidence of the administrator's partiality in favor of Mrs. Hilda Piza Blondet, who has kept the executor from performing his functions and who had also been designated as executrix by the testator but is now seeking to have the will voided.

With respect to the monthly reports, the appellant states that they fail to include a full report on all of the property bequeathed by the testator, a fact which in and of itself constitutes ineptitude, in addition to the fact that the Judge himself acknowledged in Order No. 203 of February 19, 2009, that he has not even set the administrator's fees, something which is inconceivable.

The appellant argues that the administrator has applied for authorization to sell an apartment in Punta Paitilla, of high monetary and social value, alleging --but not establishing-- that it is in a deteriorated state, and asks how could the apartment have come to be in such a state is she has been administering [it] since a year after estate proceedings were opened, which proves ineptitude in administering and conserving the property of the estate and also shows her liquidating capacity, for she has also sold other properties, such as cars she has described as junk, something which does not comport with or is included within her functions.

The appellant firm asks that the evidence offered in support of the appeal be analyzed and reviewed in order to ascertain that, although the administrator alleges she received the Hacienda Santa Mónica in poor conditions, she has also hired [personnel] and purchased horses with resulting problems and losses for the farm because, as she herself points out, the horses were not suitable for what was required and are sick, and this is a good example of the ineptitude the lower court overlooked in concluding that it may not be deemed that the administrator was

remiss and passive in the defense of the interests of Valores Globales, S.A., in the motion to disencumber property filed by HILDA PIZA BLONDET, the shares of which [corporation] should be considered as assets of the estate and which only Executor Richard Sam Lehman is defending for the benefit of the estate.

The attorney-in-fact concludes its appeal by pointing out that there exist numerous situations or facts which show the appeal to have grounds and that Administrator Marta Lucía Cañola should be removed and asks, therefore, that the appeal be granted.

On the other hand, Ms. Marta Lucía Cañola, in her extensive pleading opposing the appeal, begins by recounting the events that have transpired in the estate proceedings and says that Richard Lehman was declared to be the sole executor in the Order Declaring Heirs, despite the fact that testator had appointed three executors; that said order had been appealed from and rendered without effect but, that despite that, Lehman continued to act and incorrectly used estate funds in Florida, for which he must answer, and narrates acts carried out by Lehman which run contrary to the orders of the Panama court; she claims that Lehman has unduly spent in excess of B/. 600,000.00 from the accounts of the decedent in expenses which did not benefit the estate. She adds that credible evidence showed that Lehman is a greedy opportunist who seeks personal advantages and control of the assets of both the domiciliary and the ancillary estate in the United States and that therefore the expenses incurred in connection with the objections to Lehman's expenses are justified and proper. She states that Lehman is not entitled to any fees from the estate. Opposing counsel also brings up the resolution issued by a Florida judge in connection with the LUCOM estate, declaring Richard S. Lehman's appointment as ancillary Personal Representative of the Estate in Florida to be null and void, and ordering him to pay damages to the estate in excess of B/. 1,000,000.00, plus interest, and states that therefore he lacks moral

standing to accuse her. She advises that she has been constantly submitting reports to the court. She next lists all of the instances where she has had to intervene to prevent other persons from being adjudicated beaches belonging to HACIENDA SANTA MONICA which, in turned, is owned by the estate. She also alleges that she has had to defend sixteen (16) hectares occupied by Buenaventura Development, which refuses to turn over occupied land belonging to the estate, as well as labor cases which, due to bad advice by Mr. Crosbie, were not closed before the decedent's death and had to be attended to as the firm was in danger of being attached. She points out that the foregoing attests before the Court to the hard work she has had to contend with in administering the estate, in addition to attending to cases of cattle rustling, equine fever affecting the horses, maintenance of fences, claims by neighbors, not to mention her daily [*sic.*] trips to the farm three to five times a week to take care of it and attend to matters. She also alleges that cattle ranching is another area which was neglected for a long time, and this explains why there are problems with the animals to date, and that the lands were not made ready. With respect to apartment in Punta Paitilla, she states that at one time it was requested for the benefit of the estate, taking advantage of the fact that the national economy was experiencing a real estate boom, but that it has gone down. As regards fees, she indicates that the court has already set her fees as established by the rules, and with respect to the performance bond, that there is a petition pending before the court and that she will abide by whatever the court should decide.

Counsel opposing the appeal concludes by stating that the appellant is attempting to surprise the Court by pointing to the mote in somebody else's eye and not the beam in its client's, as may be seen in the judgment against its client from the Florida Judge. She states that by dint of all her acts, the care she has displayed, and the maintenance she has performed, she has been able to increase the value of the real estate, and that while Mr. Lehman speaks of 25 –

50 million, the assessed value of the farms at this time is much higher than those amounts. She says that the cars are indeed junk, as evidenced by the fact that they have not been moved for ten years; that is the case of the RR, which she has offered on the internet without getting any response, as it qualifies as an antique, and this has been stated by the mechanics who have inspected it, as well as the other cars.

The appellant administrator concludes by asking the court, with all due respect, to uphold the appealed order and to order the mover of the motion to pay punitive costs.

OPINION OF THE COURT

It should be made clear at the outset that although few resolutions are appealable in estate proceedings and that the order ruling on a motion to remove an administrator is not expressly established as an appealable resolution, this Superior Court considered that it should hear the present appeal in view of the fact that the order declaring heirs is appealable, and an executor, which in the ultimate analysis is the same thing as an administrator, was instituted in said declaration of heirs. In this regard, whatever is decided on in connection with the motion also affects the order declaring heirs and therefore, it must also be appealable.

In Order No. 203 of February 19, 2009, embodying the resolution under appeal, the Fifth Civil Circuit Court for the First Judicial Circuit of Panama --which is hearing the testamentary estate proceedings of the late WILSON CHARLES LUCOM a result of the disqualification of the Fourth Civil Circuit Judge-- decided to deny the Motion to Remove the Administrator designated by it in Order No. 1147 of November 21, 2007.

It is the opinion of this Superior Court that such decision must be revoked and, in its stead, the removal of the designated administrator, Marta Lucía Cañola, must be granted, albeit without considering the charges levies against her, *i.e.*, without weighing whether or not there

was any ineptitude on her part or whether or not she arrogated to herself functions that were not incumbent upon her as the administrator. We shall also dispense with Ms. Marta Lucía Cañola's defense, *i.e.*, we will not take into account the strenuous efforts which, according to her and to the Judge hearing the case, Ms. Marta Lucía Cañola has been making. It should also be made clear that we will pay no attention to Ms. Marta Lucía Cañola's comments about Mr. Richard S. Lehman, for what is at issue here is not that gentleman's behavior.

Let us see, then, why it is proper to revoke the appealed order.

This Superior Court knows that Order No. 1025 of July 15, 2006, from the Fourth Civil Circuit Court of the First Judicial Circuit of Panama declared opened the testamentary estate proceedings of the late WILSON CHARLES LUCOM and appointed RICHARD SAM LEHMAN as executor; Mr. Lehman appeared in the will as one of the executors. Said order was appealed from and the appeal was admitted, execution of the order being stayed pending the appeal. And, indeed, the first aspect challenged in the appeal has to do with the designation of the executor, an office which the judge under appeal considered was vested exclusively in Mr. Richard Sam Lehman, while Messrs. Richard Lehman and Christopher Rudy and Mrs. Hilda Piza Lucom had been designated as executors in the will, a conclusion at which this Superior Court arrived in its resolution of May 4, 2007, issued as a result of the appeal filed against Order No. 1025 of July, 2006. This Superior Court also knows that Order No. 229-2007 of March 6, 2007, from the Fourth Civil Circuit Court ruled to designate RUBEN CARLES as court-appointed administrator in the Testate Estate Proceedings of the late WILSON CHARLES LUCOM and ordered him to appear before the court to be installed in office. Said order was likewise appealed from and the appeal was admitted, without indicating whether the order was stayed or not pending the appeal.

It is readily evident from the foregoing that when the Fifth Circuit Judge took over the present Testamentary Estate Proceedings and when he issued Order No. 1147 of November 21, 2007, designating Ms. Marta Lucía Cañola as administrator of the Testamentary Estate of the late WILSON CHARLES LUCOM, there already existed a resolution designating RICHARD SAM LEHMAN as executor, and another resolution which had appointed RUBEN DARIO CARLOS as administrator, and that both resolutions were under appeal.

Pursuant to the provisions of Article 854 of the Civil Code, a testator may appoint one or more executors who may be heirs or parties not related to the estate, and pursuant to paragraph 4 of Article 864, *ibidem*, if the testator has not established the powers of the executor, the latter has among his powers the power “to take the necessary precautions for the conservation and custody of the property ...” In other words, the executor is an administrator of the estate designated by the testator in his will. This is confirmed by the definition in the Dictionary of the Royal Spanish Academy, twenty-first edition, which states that an executor is the “Person charged by the testator or the Judge with complying with the decedent’s last will, having custody of his property and disposing of it as appropriate in accordance with the estate.” The foregoing is also ratified by Article 1582 of the Judicial Code, which provides that “In testamentary estates, the administration of the property of the estate is incumbent upon the executor and, in his absence, upon the heirs, and in intestate estates, [it is incumbent] upon the heirs as they present themselves.” In turn, Article 1584, *ibidem*, establishes that “Administrators of estates shall have the powers bestowed by law upon executors.” This means, therefore, that both the administrator of an estate and the executor of an estate are the parties in charge of administering the property of the estate, but that the executor is designated by the decedent in his will and, therefore, is present only in testamentary estates, while the administrator is designated by the judge and, in

retains competence in the case, he does so only with respect to that which is not necessarily dependent upon the resolution under appeal. In other words, if what is at issue in the resolution under appeal is the designation of the executor, the court under appeal can hardly make a decision in connection with that issue. The sensible thing in this case would have been for the legatees appealing Order No. 1025 of July 5, 2006, to have gone before the court under appeal or, in fact, before the higher court, to ask that the appeal of said Order No. 1025 be admitted without staying the proceedings and not with the effect of staying them, as it was admitted. For if the judge under appeal admitted the appeal with a stay of the proceedings, the appellant, on the basis of paragraph 2, Article 1139 of the Judicial Code, could have asked that it be admitted without staying the proceedings, so as to avoid the estate being left without an executor pending a decision on the appeal.

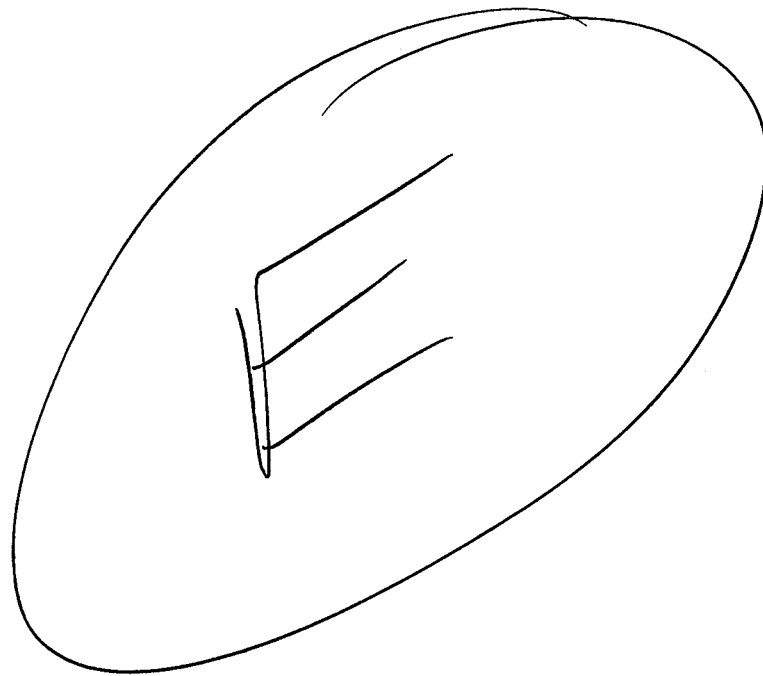
Therefore, on the basis of the foregoing, the **FIRST SUPERIOR COURT OF THE FIRST JUDICIAL CIRCUIT**, administering justice in the name of the Republic and by the authority vested in it by law, **REVOKES** Order No. 203 of February 19, 2009, issued by the Fifth Civil Circuit Judge of the First Judicial Circuit of Panama in the Motion to Remove the Administrator filed by RICHARD SAM LEHMAN and LUCOM WORLD PEACE LIMITED in the Testamentary Estate Proceedings of the late WILSON CHARLES LUCOM and, in its stead, **REMOVES** Ms. Marta Lucía Cañola as administrator of the aforesaid Testamentary Estate inasmuch as her appointment violated the provisions of Article 1582 of the Judicial Code as well as of paragraph 3 of Article 1138 of the Judicial Code.

LET IT BE NOTIFIED.

Judge EVA CAL

Judge MIGUEL A. ESPINO G.

JOSE JUAN KARAMAÑITES
Clerk of the Court



MOTION

MOTION TO ENFORCE CONSTITUTIONAL GUARANTEES

RICHARD SAM LEHMAN

v.

FIFTH CIVIL CIRCUIT COURT OF
THE FIRST JUDICIAL CIRCUIT OF PANAMA

HONORABLE JUDGE PRESIDING OVER THE FIRST SUPERIOR COURT OF JUSTICE
OF THE FIRST JUDICIAL CIRCUIT

I, VICTOR A. CROSBIE C., a practicing attorney, the bearer of personal identity card No. 8-155-1933, with professional offices on Via España, Bank of Boston Building, 13th floor, suite 13-01, in the city of Panama, where I receive personal notices, telephone number 263-8225, acting in my capacity as General Attorney-in-Fact for Mr. RICHARD SAM LEHMAN, the bearer of the passport of the United States of America bearing number 155423307 and identification number L550-757-44-081-0, domiciled at suite 2702600, North Military Trail, Boca Raton, Florida, United States of America, as reflected in, most respectfully appear before you and file a MOTION TO ENFORCE CONSTITUTIONAL GUARANTEES with the purpose that your high court REVOKE the Order to Do contained in Order No. 952 of August 29, 2008, issued by the Fifth Civil Circuit Court of the First Judicial Circuit of Panama on August 29, 2008, declaring null and void the installation of Executor RICHARD SAM LEHMAN in the Testate Estate Proceedings of the late WILSON CHARLES LUCOM and ordering to render without effect everything he may have done by virtue of said office. The Order to Do which is the subject of these constitutional proceedings was timely appealed from to your Court, which declined to hear the appeal as the Resolution was not appealable. Not being in

agreement with that the decision, the Attorney-in-Fact for Executor LEHMAN gave notice a Motion to Vacate, which notice was dismissed by the First Superior Court of Justice on August 10, 2009, by not granting the term for the motion to be formally filed, the file containing the motion having been returned to the lower court.

The Order to Do being challenged violates my constituent's fundamental guarantees which, because of their urgent nature and the irreparable damages it is causing, must be redressed through this action seeking the enforcement of constitutional guarantees.

PROCEDURAL VIABILITY OF THE MOTION

The action being filed seeks to quash an arbitrary Order to Do which violates the fundamental guarantee of due process and which at the same time requires that it be immediately revoked in view of the seriousness and imminence of the damages it is causing. The Order to Do being challenged separates from the administration or management of the property of the estate the executor designated by the testator, a position held by my client, RICHARD SAM LEHMAN, under Order No. 1025 of July 5, 2006, in compliance with the provisions in the decedent's will, an appointment appealed from to the higher court by means of an appeal the admission of which stayed the proceedings.

The seriousness of the damages caused by the Order to Do issued by the Fifth Civil Circuit Court of the First Judicial Circuit of Panama, who arrogated to itself a competence it lost when it admitted the appeal, is manifest.

On several occasions, the Supreme Court of Justice has addressed, *en banque*, the need to move away from the rigidity with which legal provisions used to be applied to dismiss motions to enforce constitutional guarantees. The highest court of justice endeavors to effectively protect fundamental rights and guarantees when these are injured by any public servant, applying the

principles contained in norms of International Law Panama is obligated to abide by under Article 4 of the Political Constitution of the Republic of Panama. Thus, our highest court of justice finds support in the American Convention on Human Rights ratified by our country through Law 15 of October 28, 1977, which posits that one of the fundamental rights is the right to Effective Judicial Protection. In order to render said judicial protection truly effective, our highest court of justice states that, despite the necessary requirements of the legal norm, in seeking acknowledgement of that effective judicial protection, the principle of the restoration of the fundamental guarantee that has been injured is paramount. Thus, it states: **“What this is about, is about being able to have access whenever an infraction is evident to the effective constitutional protection of a fundamental right recognized in the National Constitution or in an International Agreement or Treaty ratified and approved by Panama so as to ensure the effectiveness of the National Constitution and thus preserve the rule of law.”** (*En banque* opinion of July 14, 2008, Motion to Enforce Constitutional Guarantees).

Honorable Judges of the First Superior Court of Justice, the [Supreme] Court *en banque* and unanimously, both in the decision transcribed above and in others transcribed below, has held that the failure to sensibly use a motion in exhausting ordinary means does not affect in the least the procedural viability of the Motion to Enforce Constitutional Guarantees. Thus, the Court writes:

“Although it is true that the plaintiff moved to vacate the decision it now seeks to challenge with a motion to enforce constitutional guarantees, a motion which was denied by the First Division of the Supreme Court of Justice, as reflected in the resolution dated January 12, 2007, at page 428 of the case file, this higher court deems it prudent to mention this Court’s reiterated jurisprudence dealing with the requirements that must be met by a motion to enforce constitutional guarantees against orders issued by an authority, among which [requirements] the following has been cited:

... the revocation of these orders cannot be obtained by any other means because either there are no other ordinary means to challenge them or these have been exhausted ... (see the resolution dated September 29, 2000, issued by the Court *en banque* in the action to enforce constitutional guarantees filed by Avilio Rodríguez, Esq., acting in representation of Oriosto Manrique Herrera, against the Eight Civil Judge, pages 75 70 77 of the Judicial Register for the month of September, 2000).

It may be clearly inferred from the foregoing that what is sought is to exhaust ordinary means. It may not be understood at any time that the mover of the motion must absolutely have availed himself previously of all possible means enshrined in Panamanian law to challenge a result. If this were so, virtually no motions to enforce constitutional guarantees could be admitted, as it would always be possible to say that, for instance, a motion to declare a resolution unconstitutional or unlawful could be attempted.” (*En banque* opinion of May 2, 2008, Motion to Enforce Constitutional Guarantees moved by Teófanés López, Esq., in behalf of Alicia Araúz Santos against the Superior Court of the Third Judicial District).

It should be noted that the above transcription of the Court’s opinion *en banque* acknowledges that the order issued by the Superior Court for the Third Judicial District was the subject of a motion to vacate filed with the First Division of the Supreme Court of Justice. Said motion to vacate was denied, as reflected in the resolution issued by that Division on January 12, 2007, and mentioned by the full Court. It is appropriate to highlight that the Civil Division establishes in said ruling that “... the resolution against which the motion has been filed is of the sort allowed by law, and the motion was timely filed,” and that it was denied because the appellant made a series of mistakes which rendered the motion unintelligible. For the Court as a whole, however, and as we indicated earlier in this discussion of procedural viability, rigidity with respect to the exhaustion of appeals has given way to the Effective Judicial Protection of Fundamental Rights enshrined in Article 54 of the Political Constitution of the Republic of Panama, and it [the Court] admitted the Action to Enforce Constitutional Guarantees in which the opinion of the Court *en banque* was handed down on May 2, 2008. Therefore, in the present

case, the effort by Executor RICHARD SAM LEHMAN through its attorney of record, notwithstanding not having been considered by your Court, which declined to hear the appeal from Order 952 issuing the Order to Do being challenged in the instant Motion, would not, according the precedents transcribed above, stand in the way of admitting the constitutional action being attempted.

THE PARTIES

1. PLAINTIFF

The plaintiff is RICHARD SAM LEHMAN, the bearer of passport number 155423307 of the United States of America, identification number L550-757-44-081-0, domiciled at Suite 2702600, North Military Trail, Boca Raton, Florida 33431, United States of America, whose judicial attorney-in-fact is VICTOR A. CROSBIE C., Esq., a practicing attorney, the bearer of personal identity card No. 8-1455-1933, with professional offices on Vía España, Bank of Boston Building, 13th floor, Suite 13-01, in the city of Panama, where I receive personal notices, telephone number 263-8225.

2. DEFENDANT

The party defendant is the Fifth Civil Circuit Judge for the First Judicial Circuit of Panama, IVAN BOSCO MEDINA, with chambers in the Justice Building located in Ancón, in the city of Panama.

ORDER TO DO BEING CHALLENGED

The Order to Do we are asking your august Court to revoke as being a violation of the rights and guarantees enshrined in the Political Constitution of the Republic of Panama is contained in Order No. 952, issued by the Fifth Civil Court for the First Judicial Circuit of Panama on August 29, 2008, the tenor of which is as follows:

“[IT] DECREES the NULLITY of the installation of Executor RICHARD SAM LEHMAN in the testate estate proceedings of the late WILSON CHARLES LUCOM, and, therefore, ORDERS TO RENDER WITHOUT EFFECT all which he might have done by virtue of said office.”

GROUND FOR THE MOTION

FIRST: Order No. 1025/173-06 of July 5, 2006, issued by the Fourth Civil Judge of the First Judicial Circuit of Panama, opened the Testate Estate Proceedings of WILSON CHARLES LUCOM, who died on June 2, 2006, designated the legatees of this estate, among them Mrs. HILDA PIZA LUCOM, and appointed Mr. RICHARD SAM LEHMAN as executor of the estate, who was to appear before the court to be installed in office.

SECOND: Mr. RICHARD SAM LEHMAN appeared before the Fourth Civil Court for the First Judicial Circuit of Panama on July 6, 2006, and was installed as executor designated in the Testate Estate Proceedings of the late WILSON CHARLES LUCOM.

THIRD: Order No. 1025 opening the testamentary estate proceedings of WILSON CHARLES LUCOM was appealed from by Mrs. HILDA ANTONIA PIZA BLOUNDET, legatee, which appeal was admitted with the effect of staying the proceedings.

FOURTH: The Superior Court ruled on the appeal from Order No. 1025 in a Resolution of May 4, 2007, amending the Order to designate as executors the three (3) individuals designated in the will, among them Mr. RICHARD SAM LEHMAN. This ruling was the subject of a motion to vacate filed by legatee HILDA ANTONIA PIZA BLOUNDET which is pending before the First Division of the Honorable Supreme Court of Justice.

FIFTH: Order No. 1147 of November 21, 2007, issued by the Fifth Civil Court for the First Judicial Circuit of Panama, the court which assumed competence to continue hearing estate proceedings upon the Fourth Civil Judge being impeded from doing so, designated Ms. MARTA

LUCIA CAÑOLA as court-appointed administrator of the testamentary estate of WILSON CHARLES LUCOM.

SIXTH: RICHARD SAM LEHMAN, in his capacity as executor designated in the will, and LUCOM WORLD PEACE LIMITED, trustee of the FUNDACION WILSON C. LUCOM trust, filed a motion to remove [*sic.*] the appointment of Ms. MARTA LUCIA CAÑOLA as administrator of the testate estate of WILSON CHARLES LUCOM; this motion was denied by Order No. 203 of February 19, 2009, from the Fifth Civil Court for the First Judicial Circuit of Panama.

SEVENTH: The order of August 12, 2009, issued by the First Superior Court for the First Judicial Circuit, revoked Order No. 203 of February 19, 2009, issued by the Fifth Civil Judge for the First Judicial Circuit of Panama, declaring that it **“REMOVES Ms. Marta Lucía Cañola as administrator of the aforesaid Testamentary Estate inasmuch as her appointment violated the provisions of Article 1582 of the Judicial Code as well as of paragraph 3 of Article 1138 of the Judicial Code.”**

EIGHTH: In a pleading of January 19, 2007, legatee HILDA ANTONIA PIZA BLOUNDET filed a Motion to Declare Null and Void the installation of Executor RICHARD SAM LEHMAN designated in the testate estate proceedings of Mr. WILSON CHARLES LUCOM.

NINTH: The motion filed by the judicial attorney-in-fact for HILDA ANTONIA PIZA BLOUNDET having been processed, the Fifth Civil Court for the First Judicial Circuit ruled in Order No. 952 of August 29, 2008, on the motion filed by Mrs. HILDA ANTONIA PIZA BLOUNDET that it **“DECREES the NULLITY of the installation of Executor RICHARD SAM LEHMAN in the testate estate proceedings of the late WILSON CHARLES LUCOM,**

and, therefore, ORDERS TO RENDER WITHOUT EFFECT all which he might have done by virtue of said office.”

TENTH: Counsel for RICHARD SAM LEHMAN timely filed and supported an appeal against Order No. 952 of August 29, 2008, described in the previous paragraph.

ELEVENTH: On July 15, 2009, the First Superior Court for the First Judicial District, in a Resolution of July 15, 2009, declined to hear the appeal filed against Order 952 issued on August 29, 2008, by the Fifth Civil Court for the First Judicial Circuit.

TWELFTH: The declaration that the installation of RICHARD SAM LEHMAN as executor in the testate estate proceedings of WILSON CHARLES LUCOM was null and void, and the order to render without effect all which he might have done by virtue of said office, contained in Order No. 952, previously referred to, inasmuch as it was issued with knowledge of the existence of the appeal from Order No. 1025/173-06 designating him, the admission of which appeal had the effect of staying the proceedings, is a legal aberration or a wayward application of competence on the part of the judicial officer making said declaration, as the issue of the appointment of the executor fell under the jurisdiction of his or her hierarchical superiors.

**FUNDAMENTAL GUARANTEES VIOLATED
AND GROUNDS FOR ALLEGING THEIR VIOLATION**

1. The order being challenged in this Motion to Enforce Constitutional Guarantees violates the due process referred to in Article 32 of the Political Constitution of the Republic of Panama which provides:

“Article 32. No one shall be tried except by a competent authority and in accordance with legal process, and not more than once for the same criminal, administrative, police, or disciplinary cause.”

The article transcribed above establishes basic and fundamental principles guaranteeing to the parties that every process must be heard by a competent, independent, and impartial court, designated by law, within a framework previously established, *i.e.*, in accordance with legal procedures. The jurisdictional function must be performed in a process where Judicial Protection allows both parties indistinctly to assert their rights within the postulates or procedures established by law.

The Order to Do being challenged in this constitutional action was issued by the Fifth Civil Judge for the First Judicial Circuit of Panama in a non-adversarial proceeding where a testamentary estate is being processed, forgetting that he or she had lost as that time his or her competence with respect to anything having to do with the designation of the executor, as the appeal from the order designating RICHARD SAM LEHMAN as executor in that estate was pending. That appeal was filed by the same person who subsequently moved to declare the executor's installation null and void, a motion granted by the trier of fact in the order being challenged in the present motion for enforcement of constitutional guarantees.

Article 1138 of the Judicial Code deals with the effect appeals may have when admitted.

It reads literally:

“Article 1138. Appeals may be admitted with the following effects:

1. Suspending the proceedings [suspensive effect], in which case the lower court's competence shall be suspended from the moment the resolution admitting the appeal becomes firm until the moment the order to obey the higher court's resolution is issued. However, the judge may hear any matters pertaining to the sequestration and conservation of property, provided that the appeal does not refer to any of these issues.
2. Not staying the proceedings [devolutive effect], in which case compliance with the resolution under appeal or the course of the process shall not be stayed.

3. Staying the proceedings [deferred effect], in which case compliance with the resolution under appeal shall be stayed, but the process shall continue before the lower judge with respect to that which is not necessarily dependent upon it.

As we expressly said previously, in the order opening estate proceedings, the trier of fact designated RICHARD SAM LEHMAN as executor. That order was appealed from to the Superior Court, so that upon the appeal having been admitted with a stay of proceedings, he was not permitted, under the last portion of paragraph 3 of the article transcribed above, to refer to anything related to the executor as the Fifth Civil Judge for the First Judicial Circuit of Panama had lost his competence over that aspect.

The declaration that the installation of the executor designated by the testator and included in Order 1025 was null and void was an issue that the Fifth Judge could no order under the provisions of the aforesaid paragraph 3, and his competence in that process was only feasible in matters which did not depend upon the resolution under appeal. The violation of due process becomes obvious. It was so recognized in the Resolution issued by the First Superior Court of the First Judicial Circuit on August 12, 2009: **“... in addition to the fact that paragraph 3 of Article 1138 of the Judicial Code establishes that when an appeal is admitted and the order is stayed, although he [the judge] retains competence in the case, he does so only with respect to that which is not necessarily dependent upon the resolution under appeal. In other words, if what is at issue in the resolution under appeal is the designation of the executor, the court under appeal can hardly make a decision in connection with that issue.”**

DOCUMENTARY EVIDENCE:

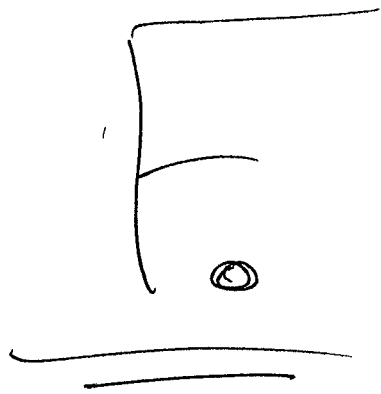
1. Certificate issued by the Public Records Office reflecting the general power of attorney given to me by RICHARD SAM LEHMAN.

2. Authentic copy of Order No. 1025/173-06 of July 5, 2006, issued by the Fourth Civil Circuit Judge for the First Judicial Circuit of Panama.
3. Authentic copy of the order of May 4, 2007, issued by the Superior Court for the First Judicial District.
4. Authentic copy of Order No. 1147 of November 21, 2007, issued by the Fifth Civil Court for the First Judicial Circuit of Panama.
5. Authentic copy of Order No. 203 of February 19, 2009, issued by the Fifth Civil Court of the First Judicial Circuit of Panama.
6. Authentic copy of the order of August 12, 2009, issued by the First Superior Court for the First Judicial District.
7. Authentic copy of Order No. 952 of August 29, 2008, issued by the Fifth Civil Court for the First Judicial Circuit of Panama.
8. Authentic copy of the order of July 15, 2009, issued by the First Superior Court for the First Judicial Circuit.

LEGAL BASIS: Articles 4, 32, and 54 of the Political Constitution of the Republic of Panama, and Articles 1138, 2615, 2616, 2619, 2620, and related articles of the Judicial Code.

Panama, September 10, 2009

VICTOR A. CROSBIE C., Esq.



FIRST SUPERIOR COURT

JUDICIARY

EDICT No. 09-2036

In the process for Protection of Constitutional Guarantees filed by **RICHARD SAM LEHMAN** against the **FIFTH CIVIL CIRCUIT COURT FOR THE FIRST JUDICIAL CIRCUIT OF PANAMA**, the following resolution has been issued:

“FIRST SUPERIOR COURT OF THE FIRST JUDICIAL DISTRICT.
Panamá, the twenty-fourth (24th) day of September, two thousand and nine (2009).

HAVING SEEN:.....

On the basis of the foregoing considerations, the **FIRST SUPERIOR COURT OF THE FIRST JUDICIAL CIRCUIT OF PANAMA**, administering justice in the name of the republic and by the authority vested in it by law, **DOES NOT ACCEPT** the impediment represented by Magistrate **MIGUEL A. ESPINO G.** in the Action for Protection of Constitutional Guarantees filed by **RICHARD SAM LEHMAN** against the Fifth Civil Judge for the First Judicial Circuit of Panama.

Let it be notified; let it be done,

(signed) MAG. NODIER JARAMILLO
(signed) MAG. NELSON H. RUIZ C.
(signed) JOSE JUAN KARAMAÑITES, CLERK OF THE COURT”

That the parties concerned may be notified of the above resolution, the present edict is posted in a conspicuous place at the Office of the Clerk of the Court this day, **FRIDAY**, the **TWENTY-EIGHTH (28th)** day of **SEPTEMBER, TWO THOUSAND AND NINE (2009)** at nine o'clock in the morning, for a term of five (5) business days.

[Illegible signature]

CLERK OF THE COURT

REPUBLIC OF PANAMA
JUDICIARY
FIRST SUPERIOR COURT

Panama, October 12, 2009
Official Communication No. 09-2155

JUAN BOSCO MOLINA
Fifth Civil Judge of the
First Judicial Circuit
In chambers

[Rubber stamp:] 2009 OCT 12 PM 3:16

Judge:

Be advised that through a resolution dated the ninth (9th) day of October, the Action for Protection of Constitutional Guarantees filed by RICARDO [sic.] SAM LEHMAN against the FIFTH CIVIL COURT OF THE FIRST JUDICIAL CIRCUIT has been admitted; therefore, under the provisions of Article 2620, paragraph 1, and Article 2621 of the Judicial Code, you are requested to forward to this office the proceedings or, alternatively, a report on the facts that are the subject of the action within the two (2) hours following receipt of the present request for production.

You are also advised that **Order No. 952, dated August 29, 2008**, issued by the Fifth Civil Court of the First Judicial Circuit in the testate estate proceedings of CHARLES WILSON LUCOM **has been stayed**.

There being nothing further, I remain,

JOSE JUAN KARAMAÑITES
Clerk of the First Superior Court
of the First Judicial Circuit

12/10/09
[Illegible signature]

[Rubber stamp:]

FIRST SUPERIOR COURT OF JUSTICE

Today, the twelfth (12th) of October
2009, at three thirty
in the afternoon (3:30 p.m.)
I notified Mr. Juan B. Molina
of the foregoing resolution.

[Illegible signature]

15

Entry No.09AMP1,134
JUDGE WRITING THE DECISION: MIGUEL A. ESPINO G.
APPEAL FOR CONSTITUTIONAL RELIEF FILED BY
RICHARD SAM LEHMAN AGAINST THE FIFTH CIVIL CIRCUIT COURT
JUDGE FOR THE FIRST JUDICIAL CIRCUIT OF THE PROVINCE OF
PANAMA.
APPEAL FOR CONSTITUTIONAL RELIEF 1

FIRST SUPERIOR COURT FOR THE FIRST JUDICIAL DISTRICT

Panama, November seventeenth (17) two thousand nine (2009).

HAVING CONSIDERED:

This Superior Court, seated as a constitutional court, entertains the Appeal for Constitutional Relief filed by Richard Sam Lehman against the Fifth Civil Circuit Court Judge for the First Judicial Circuit of the Province of Panama by reason of the order to do issued in Order No. 952 dated August 29, 2008, issued within the framework of the Motion to Nullify the Taking of Office of the Executor filed by legal counsel for Hilda Antonia Piza Blondet in the Testamentary Succession Proceeding of Wilson C. Lucom (R.I.P.).

The appealed order is of the following tenor:

“Based on the foregoing, the undersigned FIFTH CIVIL CIRCUIT COURT JUDGE FOR THE FIRST JUDICIAL CIRCUIT OF PANAMA, DECREES the NULLITY of the installation of executor RICHARD SAM LEHMAN in the testamentary succession proceeding of WILSON CHARLES LUCOM (R.I.P.), and, therefore, ORDERS THE DISMISSAL of everything he would have done by virtue of said office.

*Once this order has been executed, **add** this record to the case in chief.”*

As stipulated in the Judicial Code, this High Court, in a decision dated October 9, 2009, granted the appeal for constitutional relief and ordered the proceedings or a report on the facts object of the appeal; thus, the accused judicial officer rendered a report within the period established in the procedural rule and indicated that the file containing Order No. 952 is before this Superior Court for the appeal and that, to date, it had not been returned to his chambers. The Clerk of Court for this instance of the administration of justice verified that information and confirmed that, in fact, the Motion to Nullify the Taking of Office of the Executor is suspended before this Civil Court pursuant to an appeal for review of the facts as well as the law filed by counsel for Mr. Richard Sam Lehman.

This Court has proceeded to the necessary review of the background of the constitutional action at hand, inasmuch as the order to do hereby challenged is part of a court order and the Code of Civil Procedure has established in Article 2615 paragraph 2, as a specific requirement for its viability, "*...that all means and procedures stipulated by law have been exhausted to challenge the pertinent court order.*"

The file on the Motion to Nullify the Taking of Office of the Executor filed by Hilda Antonia Piza Blondet in the Testamentary Succession Proceeding of Wilson Charles Lucom reveals that the aforementioned Order No. 952 dated August 29, 2008 was the object of a motion to appeal, filed

precisely by legal counsel for the plaintiff on appeal, for purposes of obtaining a reversal thereof and, in its stead, a decision which denies the motion inasmuch as it has not been proven and was filed extemporaneously.

Now then, this procedural activity gave rise to issuance by this Superior Court of the decision dated July 15, 2009, whereby it decided to recuse itself from entertaining the appeal on Order No. 952 and ordered the return of the motion to the court of origin. The appellant, within the executory period, announced an appeal for annulment on this appellate decision; therefore, this jurisdictional seat issued the decision dated August 10, 2009, whereby it denied granting the period to formalize this extraordinary appeal. This new decision gave rise to a request from the appellant for copies to file an appeal for review of factual and legal issues, which copies were placed at its disposal by the Clerk of the First Superior Court of Justice as set forth in the Judicial Code, and in fact these were picked up on August 28, 2009.

Having considered the background, this Superior Court concludes that in this case, the principal factual element required for the appeal for constitutional relief to proceed on a court order containing an order to do that is considered to have violated fundamental rights does not concur, which is that all means and procedures stipulated by law for challenging were not exhausted. As was shown, available still is the procedure established by pro-

cedural rules to appeal Order No. 952 dated August 29, 2008; that court order is not yet final or firm, which implies there is the underlying possibility of a review of its lawfulness within the regular jurisdictional level.

The appellant affirmed the procedural viability of his complaint by stating the Supreme Court of Justice en banc, unanimously, has found that the incorrect use of an appeal for purposes of exhausting the ordinary means does not affect the procedural viability of an appeal for relief. However, as to the case at hand, one cannot ignore that in the file on the motion wherein Order No. 952 was issued, there is still no decision on the lawfulness or unlawfulness of the announced appeal for annulment which, if found to be lawful, would result in a review on appeal of the aforementioned Order No. 952.

Its inviability will be declared inasmuch as in in this proceeding it has been established that the procedural presumption required to find that an appeal for constitutional relief is viable has not been satisfied, without the existence of emergency, serious and imminent circumstances which would recommend said requirement need not be fulfilled.

Based on the foregoing, the **FIRST SUPERIOR COURT FOR THE FIRST JUDICIAL DISTRICT OF PANAMA**, administering justice for and on behalf of the Republic and as vested by Law, **DECLARES INVIALE** the Appeal for Constitutional Relief filed by Richard Sam Lehman against the

Fifth Civil Circuit Court Judge for the First Judicial Circuit of the Province of Panama for issuing the order to do set forth in Order No. 952 dated August 29, 2008 and, therefore, **DISMISSES** the order to suspend the said order that was adopted in the decision dated October 9, 2009.

SERVE NOTICE,

JUDGE MIGUEL A. ESPINO G.

JUDGE NODIER JARAMILLO

JUDGE NELSON H. RUIZ C.

CLERK

H.

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ANNOUNCEMENT
OF APPEAL, AND
SUBSTANTIATION OF
THE APPEAL

APPEAL FOR CONSTITUTIONAL RELIEF
RICHARD SAM LEHMAN
v.
THE FIFTH CIVIL COURT FOR THE
FIRST JUDICIAL CIRCUIT OF PANAMA

HONORABLE JUDGES OF THE FIRST SUPERIOR COURT OF JUSTICE FOR THE FIRST
JUDICIAL DISTRICT:

I, VICTOR A. CROSBIE C., a practicing attorney, holder of personal identity card No. 8-155-1933, whose law office is located at Via España, Edificio Bank Boston, 13th Floor, Suite 13-01 in Panama City, place where I accept personal service of process, telephone 263-8225, in my capacity as Attorney-in-Fact for Mr. RICHARD SAM LEHMAN, holder of United States passport number 155423307 and identification number L550-757-44-081-0, domiciled at 2600 North Military Trail, Suite 2702, Boca Raton, Florida 33431, United States of America, appear before your Court to state that I am appealing the Order issued on November 17, 2009, thereby declaring unviable the action for Constitutional Relief filed by RICHARD SAM LEHMAN against the Fifth Civil Judge for the First Judicial Circuit of the Province of Panama.

Pursuant to Article 2625 of the Judicial Code, now I will substantiate the appeal I have filed in this brief.

HONORABLE PRESIDING JUSTICE OF THE SUPREME COURT OF JUSTICE, EN
BANC

I appear before this High Court with the utmost respect in my capacity as Legal Counsel for Mr. RICHARD SAM LEHMAN to substantiate the appeal that I filed on the Order issued by the Superior Court for the First Judicial District on November 17, 2009, wherein that respected Court declared unviable the action for Constitutional Relief that I filed on behalf of RICHARD SAM LEHMAN to dismiss the order to do set forth in Order No. 952 dated August 29, 2008, issued by

the Fifth Civil Court for the First Judicial Circuit of Panama inasmuch as it violates my principal's fundamental guarantees.

I move the Honorable Supreme Court of Justice en banc to revoke, in all its parts, the Order appealed before you, issued by the First Superior Court of Justice, and in its stead, order that Court to decide on the merits of the appeal for constitutional relief that my principal filed on the order to do set forth in Order No. 952 dated August 29, 2008 issued by the Fifth Civil Circuit Court for the First Judicial Circuit of the Province of Panama.

The basis used by First Superior Court for not entertaining a decision on whether the order to do, attacked as a violation of fundamental rights, was substantiated on the fact that Order No. 952 which contains the appealed order to do was the object of appeal and the Court that entertained the appeal decided to disqualify itself from entertaining the appeal and order return of the motion to the Court of origin. This decision was the object of an appeal for reversal, but the fact is that the Court, in a decision dated August 10, 2009, denied granting the period to formalize the announced Appeal for Reversal. Based on this denial, the appellant on cassation requests copies for the purpose of filing an appeal for review of legal and factual issues before the Civil Division, and those copies were placed at his disposal and picked up on August 28, 2009. The Order issued by the First Superior Court to declare this Appeal for Constitutional Relief is unviable indicates that since procedures established in procedural rules are pending a decision on the challenged Order No. 952 dated August 29, 2008, which includes the order to do challenged in the appeal for protection, "...the firmness and final [status] of the court decision is still pending, which implies there is an underlying possibility for review of its lawfulness in the regular jurisdictional sphere." This presumption used as the basis of the decision issued November 17, 2009, appealed before the Court en banc, does not have the

necessary legal solidity to prevent that Court from going forward to recognize the violation of fundamental rights granted by the Panamanian Constitution to RICHARD SAM LEHMAN, violated by the order to do set forth in Order No. 952 of August 29, 2008, issued in the Incidental proceeding to Nullify the taking of office of the Executor by the Fifth Civil Judge for the First Judicial Circuit of the Province of Panama.

It is worth noting that in the appealed Order, the Fifth Civil Judge for the First Judicial Circuit, upon being asked to send the proceeding, or in lieu thereof, to report on the facts object of the Appeal, proceeds to provide a report therein clarifying that the file containing the Order on appeal for relief is before the Superior Court on appeal with said Court and that, at that time, it had not been returned to his chambers. The Order on appeal before the Honorable Court en banc adds, "The Clerk of that Court and administration of justice verified that information and confirmed that, in fact, the Motion to Nullify the Taking of Office of the Executor or appeal on legal and factual issues was suspended before that Civil Division, filed by legal counsel for Mr. Richard Sam Lehman."

From the foregoing, one deduces that the declaration of inviability of the appeal for relief on the part of the First Superior Court for the First Judicial District, in the appealed decision, limits itself to the false appraisal by the Superior Court of the alleged appeal for review of legal and factual issues. However, in that interpretation, the Superior Court forgets that although copies were requested in a timely manner for filing the appeal on legal and factual issues, in itself that does not imply that the appeal has been filed and admitted by the Civil Division of the Supreme Court of Justice. Only then does the lower court suspend all proceedings and send the file, or the respective part thereof, as requested by the higher court. The truth is, Honorable Justices of the Court en banc,

that in the instant case the appeal on legal and factual issues was filed before the Civil Division and subsequently withdrawn. Therefore, in view of this fact, there is no impediment as indicated in the appealed Order inasmuch as the appeal that was filed on legal and factual issues was withdrawn, and it cannot be held the effect of a procedure established by procedural rules provides the possibility of a review of its lawfulness within the regular jurisdictional area.

The Honorable Court en banc decided as follows in a Judgment dated March 13, 2002:

“In that regard, initially we note that the basic presumption for admission of the constitutional initiative and the resulting review of the claim and eventual recognition of a right rests on satisfactory compliance with requirements set forth therefor in the Constitution and the Law.

Notwithstanding the foregoing, it is necessary that the task of proving compliance with those requirements not establish the restrictive procedural practice of conceiving the action for relief as an extremely formalistic institution.

Doctrine teaches us that the action for relief is a *Procedure of a special jurisdictional nature, and has great formal flexibility for the protection of rights granted by the constitution, tending to reestablish these in an effective and immediate manner* (GARCIA RUIZ, Luis. The Appeal for Relief in Spanish Law, Torregalingo, Madrid, Pg. 20). The appeal for relief is a concept that guarantees fundamental rights and the defense of the Constitutional hierarchy. This quality indicates that the procedural requirements, far from projecting themselves as rigorous and inflexible, must be handled with prudence and accessibility because the opposite would restrict the right to protection and ignore, merely as a matter of formalism, the duty to guarantee the supremacy of constitutional rules that stipulate fundamental guarantees.”

On that occasion the Honorable Court of Justice emphasized that said Court seeks jurisdictional recognition of the law when faced with an act that violates fundamental guarantees, wherefor full compliance with formal requirements for granting appeals for relief is proportional to the seriousness of the attributed offenses, the overt violation of fundamental guarantees, which

purpose is to prevent the defenselessness of the party who alleges the right and, a matter of vital importance, the need to obtain an expeditious, immediate and enforceable answer from the Court.

The Honorable Justices can see this is a non-adversarial testamentary succession proceeding which was begun pursuant to the Order that declares the succession proceeding is open, the existence of the legatees is recognized, as set forth in the will and grants the appointment of one of the executors, my client, who takes office as appointed. That Order is appealed by one of the people mentioned as a legatee, which appeal was granted under the deferred effect. Subsequently, the presiding Judge appoints an administrator of the assets of the estate, a decision that was appealed and, in another decision, Order No. 952 dated August 29, 2008, nullifies the taking of office by my principal RICHARD SAM LEHMAN as the executor, ignoring and not taking into account that when the Court granted the appeal on the Order that appointed Mr. LEHMAN as the executor, he, as the presiding Judge, had lost competence over that matter in respect of everything that necessarily depended on the decision to be issued by the higher court, as was the case of the appointment of the executor. The Appeal for Relief is filed based on “the need to obtain an expeditious, immediate and enforceable answer from the Court,” as correctly indicated in the transcribed Jurisprudence.

It is vital, Honorable Justices en banc, inasmuch as it involves the inexcusable violation by the Circuit Judge of the procedural principles that guarantee due process, to frame the activity of the Court within parameters that are allowable for the adequate execution of the administration of justice. In keeping with these principles, we again respectfully move the Honorable Supreme Court of Justice en banc to reverse the order you are reviewing and order the First Superior Court for the First Judicial District of Panama to issue a decision on whether the order to do set forth in Order 952 dated August 29, 2008, issued by the Fifth Civil Judge for the First Judicial Circuit of Panama

violates due process as stipulated in Article 32 of the Constitution of the Republic of Panama.

Panama, November 26, 2009

VICTOR A. CROSBIE C.

I

TESTAMENTARY SUCCESSION PROCEEDING OF
WILSON CHARLES LUCOM

BACKGROUND.

On July 5, 2006, the Fourth Civil Court for the First Judicial Circuit of Panama issued Order No. 1025/173-06, deciding:

1. Declares the Testamentary Succession Proceeding of WILSON CHARLES LUCOM (R.I.P.), who died on June 2, 2006, is open.
2. His legatees are, without prejudice to third parties, Mrs. HILDA PIZA LUCOM, ISABEL MARIA CLARK, ROBERT CLARK, I.D. No. 224-13-7992, ALEXANDER CLARK, I.D. No. 230-13-714, LANNY CLARK, I.D. No. 552-69-3776, CASSANDRA CLARK, I.D., No.557-758741, THE MAYO CLINIC OF ROCHESTER, MINNESSOTA, MELINDA MORRICE, HILDA ABDELNOUR, MADELINE ARIAS, GILBERTO ARIAS, MARGARITA ARIAS ALLISON, NORA GARNER, JAMES GIBBONS, ANN SMITH, WALTER GARNER, GABY ELKIS, CHRISTOPHER RUDDY, DR. PETER HIBBERD, MARIO BOYD, ANDREA OSPINA, TANYA RAMOS, ISRAEL TEJADA, EDILBERTO SOTO.

*CONDITIONAL FUNDACION END WAR TRUST.

Fundación WILSON C. LUCOM TRUST FUND is an heir.

3. Mr. RICHARD SAM LEHMAN, a United States citizen, identification No. L 550-757-44-081-0, is appointed Executor of the estate, who must appear before the Court to take office.
4. ORDERS all persons who have an interest therein to appear in accordance with law, and that the Summons be POSTED and PUBLISHED as provided in Article 1526 of the Judicial Code.

On July 6, 2006, Mr. RICHARD SAM LEHMAN appeared before the Fourth Civil Court for the First Judicial District of Panama and was sworn in as the executor in accordance with the appointment which had been recognized by the Court in Order No. 1025, in keeping with the appointment set forth in the will of WILSON CHARLES LUCOM.

Counsel for legatee HILDA PIZA LUCOM appealed Order No.1025/173-06 issued by the Fourth Civil Judge for the First Judicial Circuit of Panama. The Court granted the appeal announced by HILDA PIZA LUCOM under the deferred effect.

The First Superior Court for the First Judicial District, in the Decision issued on May 4, 2007, concluded that the appointment of the executors who should be recognized in the testamentary succession proceeding of WILSON CHARLES LUCOM applied not only to RICHARD SAM LEHMAN, but to CHRISTOPHER RUDDY and HILDA PIZA LUCOM as well. An appeal for annulment on this decision was filed before the First Division of the Supreme Court of Justice by legatee HILDA PIZA LUCOM.

The Fourth Civil Court for the First Judicial Circuit of Panama, by way of Order No. 229-2007 dated March 6, 2007 appointed Mr. RUBEN DARIO CARLES as the court appointed administrator and ordered him to appear before the Court to take office. This Order was appealed, and the appeal was granted without indicating under which effect it was granted.

The Fifth Civil Court for the First Judicial Circuit of Panama began entertaining the testamentary succession proceeding of WILSON CHARLES LUCOM based on the impediment of the Fourth Civil Judge in that Circuit and decided to appoint, by way of Order No. 1147 dated November 21, 2007, Atty. MARTA LUCIA CAÑOLA as the Administrator. This order appointing Atty. MARTA LUCIA CAÑOLA as the Administrator of the testamentary succession proceeding of WILSON CHARLES LUCOM was reversed by the First Superior Court for the First Judicial District of Panama by way of an Order dated August 12, 2009.

Subsequently, the Fifth Civil Court for the First Judicial Circuit of Panama, by way of Order No. 952 dated August 29, 2008, decreed the nullity of the taking of office of executor RICHARD SAM LEHAMAN in the testamentary succession proceeding of WILSON CHARLES LUCOM. This order was appealed before the First Superior Court of Justice for the First Judicial District and said Court disqualified itself from entertaining that appeal based on the fact that appeal could not be admitted. Attorneys for RICHARD SAM LEHMAN announced they would file an appeal for annulment of the decision of the Superior before the Civil Division of the Supreme Court of Justice, which announcement

was rejected by that same Superior Court of Justice, wherefor, on behalf of appellant LEHMAN, copies were requested for the purpose of filing an appeal, as in fact was done, on legal and factual issues before the Civil Division. This appeal on legal and factual issues was subsequently withdrawn.

Counsel for RICHARD SAM LEHMAN appeared before the First Superior Court for the First Judicial District and filed an Appeal for Constitutional Relief to remove the order to do set forth in Order No. 952 dated August 29, 2008, issued by the Fifth Civil Judge for the First Judicial Circuit of Panama, which declared the nullity of the taking of office to which RICHARD SAM LEHMAN had been sworn in as the executor.

The Appeal for Constitutional Relief was declared unviable by way of a Decision dated November 17, 2009, issued by the Superior Court for the First Judicial District, and therein lifts the order suspending Order 952 dated 29, 2008 that had been issued. This decision of the Superior can be appealed before the Honorable Supreme Court of Justice en banc. The appeal filed on this Order is granted under the suspensive effect.

SWORN STATEMENT

I, LUIS CARLOS VIDAL, a male, a Panamanian, date of birth,, a practicing attorney, who graduated from UNIVERSIDAD DE PANAMA on....., and who has practiced Law in the Republic of Panama for years, issue my legal opinion on certain aspects of the Intestate Succession proceeding of WILSON CHARLES LUCOM relating to the appointment of executors.

1. The Fourth Civil Court for the First Judicial Circuit of Panama, by way of Order No. 1025/173-06 dated July 5, 2006, in compliance with provisions of the Testator, appoints Mr. RICHARD SAM. LEHMAN as the executor of the Succession proceeding of WILSON CHARLES LUCOM. This position as executor was awarded to Mr. LEHMAN; that is, Mr. LEHMAN was installed in said position before the Court.

The authority to appoint one or several executor belongs to the Testator for compliance with his last wishes, as set forth in Article 854 of the Panamanian Civil Code. In a judgment dated January 27, 1972, the Supreme Court of Justice defined the concept of the executor, adopting the definition made by JOSE MARIA MANRESA

unviability of the appeal for relief and dismissed the order suspending the Order dated October 9, 2009, this decision is not firm if it is appealed, and in the event it is, the appeal is under the suspensive effect, that is, the Superior Court loses competence until its superior issues a decision; that is, what the Supreme Court of Justice en banc decides, therefore, the suspension decreed in the Order dated October 9, 2009 remains in force pending the decision of the Court en banc.