

COMPLAINT

DR. MARIO VELASQUEZ CHIZMAR

VS

JUSTICES OYDEN ORTEGA

DURAN, ALBERTO CIGARRUISTA C.

AND HARLEY J. MITCHELL D.

HONORABLE CHAIR OF THE NATIONAL CONGRESS:

The undersigned, **DR. MARIO VELASQUEZ CHIZMAR**, a male, Panamanian, identity card No. 8-176-422, a practicing attorney, acting on my own behalf as a victim, and in my capacity as an attorney, Bar No. 724 and whose law office is located at Edificio Victoria Eugenia, No. 2, Calle Juan XXIII and Via Italia, Punta Paitilla (Tel. 2151538), District of San Francisco, place where I accept personal service, hereby appear before you for the purpose of filing a **FORMAL CRIMINAL COMPLAINT** against the following Justices of the Supreme Court of Justice: **OYDEN ORTEGA DURAN**, identity card No. 8-126-900 and who may be located at Palacio Gil Ponce, Third Floor, Ancon District; **ALBERTO CIGARRUISTA C.**, identity card No. 7-76-566 and who may be located at Palacio Gil Ponce, Third Floor, Ancon District; and **HARLEY J. MITCHELL D.**, identity card No. 1-17-275 and who may be located at Palacio Gil Ponce, Third Floor, Ancon District, for the commission of an act in the performance of their duties in violation of the Political Constitution, the law and which is a crime.

I - PARTIES IN THIS COMPLAINT

The **COMPLAINANT** is **DR. MARIO VELASQUEZ CHIZMAR**, identity card No. 8-176-422, who acts herein on his own behalf in his capacity as a practicing attorney. The complainant is the **AGGRIEVED PARTY**, inasmuch as being the Second Notary Public received the will object of the act committed by the accused, which injured his credibility and professional prestige.

The **ACCUSED** consist of the following Justices: **OYDEN ORTEGA DURAN**, **ALBERTO CIGARRUISTA C.** and **HARLEY J. MITCHELL D.**

II - JURISDICTION

Pursuant to our Constitution, the Legislative Assembly (National Congress) is the body who has jurisdiction to investigation and judge members of the Supreme Court of Justice (Art. 154 of the Political Constitution and Art. 2478 of the Judicial Code).

III - VIOLATIONS

- 1) Violation of the Political Constitution: The accused Justices have violated the Political Constitution, specifically Article 17 (Title III, Chapter 1), upon jeopardizing the honor and assets of the deceased Wilson Charles Lucom and the honor of the undersigned.
- 2) Violation of the law: The accused Justices have violated the law, specifically Articles 707, 778, 854, 864 paragraph 3, 1715 and 1727 of the Civil Code upon replacing the last will and testament of decedent Wilson Charles Lucom and disavowing the nature of the duties of a Notary in certifying the authenticity of a document.
- 3) Crime: The conduct of the Justices is an offense according to criminal law (Article 351, Criminal Code), upon using their positions to give a final and binding nature to a false version of the last will and testament of decedent Wilson Charles Lucom, which constitutes an arbitrary act that harms the testator and is directly prejudicial to the undersigned, inasmuch as such conduct is a legal block to the legal duties of the Notary Public as the person who receives the acts and statements that individuals wish to authenticate for enforcement thereof in its everyday legal traffic, mocking the enforceability of this duty and the legal importance of the notarial proceeding in a will, hurting its usefulness and safety inasmuch as if this conduct is allowed, it would be best for no person to make a will because the Supreme Court of Justice will always be able to change and alter anyone's will.

IV - PLACE AND DATE OF THE OFFENSE

The act committed by the accused Justices which is the object of this action took place in the Civil Division of the Supreme Court of Justice at Palacio Gil Ponce, Ancon District and occurred by issuing the Legal Decision dated August sixth (6) two thousand ten (2010), styled "ENTRY: 198-07."

V - BASIS OF THIS COMPLAINT WITH THE FOLLOWING FACTS AND CONSIDERATIONS:

FIRST: Pursuant to the Decision dated December 7, 2007, the Civil Division of the Supreme Court of Justice admitted the Appeal for Annulment filed by Hilda Antonia Piza Blondet (the widow of the decedent, also known as HILDA PIZA LUCOM), in respect of the testamentary succession proceeding of Wilson Charles Lucom (R.I.P.).

SECOND: Such Appeal for Annulment was filed against the Decision dated May 4, 2007, issued by the First Superior Court for the First Judicial District, which

modifies Order No. 1025/173-06 dated July 5, 2006, issued by the Fourth Civil Circuit Court for the First Judicial Circuit of Panama.

THIRD: In all of the referenced court decisions, the conflictive issue relates to the appointment of the Executor in the testamentary succession of Wilson Charles Lucom (R.I.P.), and as a general matter includes the stated will of the testator. **In accordance with the respective will, the estate consists of assets worth over fifty million dollars.**

FOURTH: In Oder No. 1025/173-06 dated July 5, 2006, issued by the Fourth Civil Circuit Court for the First Judicial Circuit of Panama, with respect to the matter at issue the following was established: *"APPOINTED as Executor of the estate is Mr. RICHARD LEHMAN, a American citizen, identification number L 550-757-44-081-0, who must appear before the Court to be installed."*

FIFTH: In the Decision dated May 4, 2007, issued by the First Superior Court for the First Judicial District with respect to the matter at issue, the true will of the testator is established and in the dispositive part of the ruling orders what was stated to me, as the Notary Public before whom he granted his will, as follows: *"APPOINTED as EXECUTORS AND TRUSTEES of the estate are Messrs. RICHARD SAM LEHMAN, CHRISTOPHER RUDY and HILDA PIZA LUCOM, so that jointly, in accordance with Articles 857 and 858 of the Civil Code they will exercise the position of executors and trustees, who must appear before the Court to be installed; ..."*

SIXTH: The Civil Division of the Supreme Court of Justice in the Decision on Annulment dated August sixth (6) two thousand ten (2010), styled "ENTRY: 198-07", ordered the opposite to the last will and testament of Mr. CHARLES WILSON LUCOM (R.I.P.) and what he had set forth in his will upon imposing a proceeding for execution over the instructions of the decedent, to wit: *"APPOINTED as EXECUTOR and TRUSTEE of the estate is Mrs. HILDA ANTONIA PIZA BLONDET, so that in accordance with Article 864 of the Civil Code she will exercise the position of executor and trustee, who must appear before the Court to be installed;..."*

SEVENTH: The Civil Division of the Supreme Court of Justice, pursuant to the Decision dated August sixth (6) two thousand ten (2010), styled "ENTRY: 198-07", added the following with respect to the general matter: *"DECLARES Mrs. HILDA PIZA LUCOM the UNIVERSAL HEIR."* This was never the will of the decedent, who reiterated to me that his estate was to be managed by several persons.

EIGHTH: The matter at issue has been dealt with at three judicial stages: in the first, the Judge presiding over the matter issued an order appointing an executor, who was not the widow; at the appellate level, the Superior Court

issued a decision appointing three executors, among them, the widow; and on Annulment, the Supreme Court of Justice issued a decision that appointed only the widow as the executor, and furthermore, affirmed that the widow was the universal heir. The will is the perfect instrument so that [a person] can name heirs, legatees and executors, aside from who can legally hold said rights. Therefore, the "appointment" that a jurisdictional body makes is strictly a formalism that a succession proceeding must go through for validity thereof. That is, the "appointment" by the judge cannot contradict the will of the testator.

NINTH: The last will of Mr. Wilson Charles Lucom was set forth in his Will, which consists of three (3) public deeds (as reiterated by all of the referenced judicial levels). The first of these is No. 6646 dated June 20, 2005; the second public deed is No. 11191 dated October 20, 2005; and the last is No. 1131 dated February 3, 2006, all from the Office of the Second Notary Public for the Circuit of Panama, for which I was in responsible on those dates.

TENTH: Such will was expressed in these three Public Deeds inasmuch as that was the testator's wish, stating so clearly upon declaring in the two modifications to the content of the first that, "*It is my will that the nuncupative will granted by me in Public Deed No. six thousand six hundred forty-six (6646) on June twentieth (20) two thousand five (2005) before the Second Notarial Office in and for the Circuit of Panama, remain in force and effect for all legal purposes, in its entirety, that is, that at this time I expressly reiterate all clauses in the referenced document, with the only exception I am stating hereunder.*" (our underlining). Therefore, the Second Clause in the first public deed (6646 of June 20, 2005), wherein the testator expressly states that his wish is that it remain in force and effect "*for all legal purposes, in its entirety*" begins as follows: "*My appointed executors in this will must...*" (our underlining). The clear and express will of the testator is that the desired force and effect is FOR ALL LEGAL PURPOSES, IN ITS ENTIRETY, wherefor in all testamentary provisions he states that his wish is that they remain in force FOR ALL LEGAL PURPOSES, IN THEIR ENTIRETY; plural not singular.

ELEVENTH: Furthermore, the comprehensiveness expressly required by the testator again sheds light regarding his will with respect to the matter at issue when he stated that, "*As payment for execution of this will, each Executor must receive the sum of FIFTY THOUSAND DOLLARS (US\$ 50,000.00).* -----
----- *If Mr. **RICHARD LEHMAN** reaches three hundred hours of work in executing this will, then Mr. **RICHARD LEHMAN** must receive payment pursuant to his regular fee schedule.*" (our underlining).

TWELFTH: In the event the will of the testator in the Will of Wilson Charles Lucom (R.I.P.) must be interpreted in respect of a specific issue, what is correct is to analyze the referenced three public deeds together, because that was the

will of the testator who clearly stated that the last two of the aforementioned public deed were only partial modifications or codicils (which means an addition to a will). That is, the content of the latter two public deeds was not to revoke the content of the first public deed or to make a new will. If that were the case, the testator always states so to preclude any doubt (in fact, it is thus set forth in all forms for wills applied by the undersigned Notary Public with nine years of experience).

TWELFTH: In recording his will, testator Wilson Charles Lucom (R.I.P.) stated in the FIRST CLAUSE in Public Deed No. 6646 dated June 20, 2005 granted by the Office of the Second Notary Public for the Circuit of Panama, the first one that was granted, "As Executors, I appoint Richard Lehman from Boca Raton, Florida, USA; Ruben Carles from Panama, in the Republic of Panama and my beloved wife Hilda Piza Lucom, formerly Hilda Piza Arias.... In the event Mr. Ruben Carles cannot continue as an Executor for any reason, I appoint Mr. Christopher Rudy as the Executor in his stead." (our underlining).

THIRTEENTH: In recording his will, testator Wilson Charles Lucom (R.I.P.) maintained in the SECOND CLAUSE in Public Deed No. 11191 dated October 20, 2005, granted second by the Office of the Second Notary Public for the Circuit of Panama, that "It is my will that the **FIRST CLAUSE** in the referenced Will read as follows: **FIRST: I, Wilson C. Lucom, a resident in...as Executors, I appoint Richard Lehman of Boca Raton, Florida, USA; Christopher Rudy of Florida, USA, and my beloved wife Hilda Piza Lucom..." (our underlining).**

FOURTEENTH: In Public Deed No. 1131 dated February 3, 200, testator Wilson Charles Lucom (R.I.P.) granted by the Office of the Second Notary Public for the Circuit of Panama, he expressly adds a codicil to his Will (an addition to a will), only set forth a bequest, leaving out, in the clause that he modified, the appointment of executors, but expressly retaining "the force and effect" of the will "for all legal purposes, in its entirety, ..." (our underlining).

FIFTEENTH: The fundamental reason for granting a will lies in clearly providing for his assets, after his death, for the purpose of substituting application of legal provisions that govern the subject in such a manner that the will of the testator is, specifically, that the respective distribution will be made independently from legal regulations or the intervention of authorities. Wherefor both interventions, either common legal provisions or the authorities are contrary to the will of the testator and only constitute an alteration of that will.

SIXTEENTH: In none of the Public Deeds that comprise the will of Wilson Charles Lucom (R.I.P.) does the testator set forth the statements that determine the decision of the accused Justices, such as appointing the widow as the executor and trustee exclusively and conferring the category of universal heir to her. The testator left most of his fortune to a foundation that existed at the time

of his death or was to be created; both possibilities are permitted in a will, which, considering the amount and its purpose, required the capacity of several persons, not just one who is 89 years old. This characteristic motivated the testator to appoint three persons so that they would jointly carry out his plan. The express will of the testator was that the distribution of tens of millions of dollars among several non-profit organizations was to be done as efficiently as possible, which he felt would be guaranteed by appointing three executors that he trusted. And not only did he state so in Public Deed No. 6646 dated June 20, 2005 granted by the Office of the Second Notary Public for the Circuit of Panama, but he also said so to me so on two occasions, telling me with respect thereto that *"with three persons my will can be carried out"* (referring to RICHARD SAM LEHMAN, CHRISTOPHER RUDY and HILDA PIZA LUCOM), and furthermore, asking me to assist him with *"what was legally necessary for my will to be carried out."*

SEVENTEENTH: In our laws and in everyday practice, the executor not only manages the estate but also defends it, and at all times secures its validity. Well then, the aforementioned widow filed a legal action to annul the will (Case 349-07, Fifth Civil Circuit Court for the First Judicial Circuit of Panama), and a criminal complaint adducing falsehood in the will (Case, Seventh Criminal Circuit Court for the First Judicial Circuit of Panama). That is, the accused Justices decided that a widow with such characteristics was the only executor of an estate that she not only does not defend but attempts to invalidate. **(absolutely contrary to her legal obligation).**

EIGHTEENTH: The testator, Wilson Charles Lucom (R.I.P.) also granted before me as the Second Notary Public for the Circuit of Panama, Public Deed No.3880 dated April 21, 2006, whereby he granted a General Power of Attorney to RICHARD SAM LEHMAN, CHRISTOPHER RUDY and HILDA PIZA LUCOM to exercise jointly. For the purpose of clearly documenting his will, he insisted that each of the attorneys-in-fact sign such document as an indication of acceptance; they did so, one after the other.

NINETEENTH: The same testator also granted before me Public Deed No. 3882 dated April 21, 2006, whereby he appointed RICHARD SAM LEHMAN, CHRISTOPHER RUDY and HILDA PIZA LUCOM, so that they would jointly care for him in the event of his disability, including decisions regarding disconnecting him from machines that would keep him breathing artificially. Appointing persons to take care of you in the event of any physical or mental disability arises is a true act of trust, **and it so happens this trust was deposited with the three mentioned persons, not exclusively with the widow, notwithstanding how "beloved a wife" she was** (a term that is impossible to apply to the other two "executors" for obvious reasons). **I bring up**

this term because it was used by the accused Justices as the basis for their decision.

TWENTIETH: In spite of the Will that was left by Wilson Charles Lucom (R.I.P.) it is very, very clear, in the sense that his executors are three (3) persons and that there is no universal heir and he left none, that Article 707 of the Civil Code provides a principle that serves as a guide when obscurity invades the testator's terminology. It so happens this text limits the understanding of testamentary provisions to the "literal sense of his words, unless it is clear that the will of the testator was different" (our underlining). How did the accused Justices apply this legal mandate? The answer is found by reading the decision on annulment dated August 6, 2010. In fact, the [decision] itself maintains the prevalence of the literal tenor over the will of the testator, clearly expressed. That is, they completely bent this rule because this same provision stipulates that if the will is other than the literal tenor thereof, then the will prevails. Of course that will must surface clearly, as fulfilled in the case of the will of Wilson Charles Lucom (R.I.P.).

TWENTY-FIRST: The undersigned, DR. MARIO VELASQUEZ CHIZMAR, has a duty and commitment in respect of the decedent WILSON CHARLES LUCOM, in the sense that he trusted me and, furthermore, I gave him my word that I would cooperate as allowed by my position so that his last Will would be accurately executed, which was his objective in looking for a Notary to formalize his Will. He sought the same security that everyone looks for when they go to a Notary Public, which is today attacked by the accused Justices, for whom this guarantee to citizens, delegated by the State to the notaries, no longer has any importance.

Based on all of the foregoing, I demand the Justices of the Civil Division of the Supreme Court of Justice be prosecuted, tried and sentenced, who have demolished the legal institution of the will and have fiercely attacked Panamanian Notaries Public, in addition to having disseminated among the population the idea that the last Will of an individual can be altered at any time by jurisdictional bodies, without any concern for the security that a notary provides by law.

MOTION FOR CRIMINAL ATTACHMENT:

I move the Congressmen of the National Congress, by way of the Credentials Committee, to admit this Criminal Complaint, and in accordance with Article 2053 and the other concurring articles in the Judicial Code, to order the CRIMINAL ATTACHMENT of the properties that comprise HACIENDA SANTA MONICA, inasmuch as its sale is the source of the funds that comprise the

personal fortune of WILSON CHARLES LUCOM (R.I.P.), earmarked for the poor and needy children in Panama, which are specified hereafter: 1) Property 11270, Roll 1, Document 1; 2) Property 11272, Roll 1, Document 1; 3) 11274, Book 1561, Page 156; 4) Property 3008, Roll 1, Document 1; y 5) Property 7022, Roll 1, Document 2; all these real properties are located in Coclé Province.

The object of this measure is to prevent the squandering of the fundamental assets that comprise the estate, which have been jeopardized by the act committed by the accused Justices, mocking the clear and express Will of the testator as well as the seriousness and enforceability of the duties of the Notary (the undersigned), upon receiving and formalizing a Will.

EVIDENCE:

Documentary:

- 1- Certified copy of the judgment on Annulment dated August 6, 2010 issued by the Civil Division of the Supreme Court of Justice, pertaining to "Entry 198-07". By virtue of the fact that the Justices of the Supreme Court of Justice only act by way of their rulings or decisions, this is where their criminal offense is perfected, wherefor it is the summary evidence.
- 2- Certified copy of the decision by this same court dated September 30, 2010, whereby the accused Justices decide appeals for clarification of the judgment.
- 3- Certified copy of Public Deed No. 6646 dated June 20, 2005 granted by the Office of the Second Notary Public for the Circuit of Panama.
- 4- Certified copy of Public Deed No. 3880 dated April 21, 2006, whereby the decedent Wilson Charles Lucom grants a General Power of Attorney to RICHARD SAM LEHMAN, CHRISTOPHER RUDY and HILDA PIZA LUCOM.
- 5- Certified copy of Public Deed No. 3882 dated April 21, 2006, whereby the decedent Wilson Charles Lucom appoints RICHARD SAM LEHMAN, CHRISTOPHER RUDY and HILDA PIZA LUCOM, to jointly take care of him in the event of his disability.

SPECIAL MOTION

We move that Justices **OYDEN ORTEGA DURAN, ALBERTO CIGARRUISTA C.,** y **HARLEY J. MITCHELL D.** be tried and removed from their positions as Justices and that they be required to deliver the main file which is physically kept at the Panamanian legal body in accordance with provisions in Article 2473 of the Judicial Code which literally states:

"When the act for which the criminal liability of a public employee is sought refers to a judgment, order or judicial decision, the Legislature, the Supreme Court of Justice or the trial court must request the proceeding which has the judicial decision which gives rise to the liability if the case has ended, and if it has not, a copy of the pertinent part at the expense of the interested party or sua sponte."

LAW

Article 154 of the Political Constitution; Article 2478 of the Judicial Code; Articles 707, 778, 854, and 864 paragraph 3; 1715 and 1727 of the Civil Code and Article 351 of the Criminal Code.

Panama, October 6, 2010.

DR. MARIO VELASQUEZ CHIZMAR