



**REPUBLIC OF PANAMA
OFFICE OF THE PROSECUTOR
FOURTH SUPERIOR PROSECUTOR'S OFFICE
FOR THE FIRST JUDICIAL DISTRICT OF PANAMA**

*Calidonia, Edificio Saloon, Fourth Floor, across from Basilica Menor de Don Bosco
Schedule: 8:00 a.m. - 12 noon 2:00 p.m.- 6:00 p.m., Telephone 507-3175 /
3009, Telefax 507-3174 / 3176*

*Panama, January 19, 2011
Official document F4SP-461-11.*

Ms.

Yanitza Yuen

*Chief Deputy Clerk of the
Supreme Court of Justice of Panama
Hand Delivered*

Dear Chief Deputy Clerk:

*Attached hereto is a NULLITY PROCEEDING based on LACK OF SERVICE OF
PROCESS TO THE OFFICE OF THE PROSECUTOR in the TESTAMENTARY
SUCCESSION PROCEEDING of WILSON CHARLES LUCOM (R.I.P.), to be added
and decided within the main file which we understand is in that office.*

Having nothing further, I remain

/s/ Illegible

Maruquel D. Castroverde C.

**FOURTH SUPERIOR PROSECUTOR FOR THE
FIRST JUDICIAL DISTRICT OF PANAMA**

MDCC/syb

**RECEIVED AT THE CHIEF CLERK'S OFFICE OF
THE SUPREME COURT OF JUSTICE**

Today *January 20, 2011*

Is/ Illegible

**CLERK'S OFFICE
SUPREME COURT OF JUSTICE**

[Illegible]

[Seal:]

**Fourth Superior
Prosecutor's Office**



Republic of Panama
Office of the Prosecutor
Fourth Superior Prosecutor's Office
for the First Judicial District of Panama

TESTAMENTARY SUCCESSION
PROCEEDING

WILSON CHARLES LUCOM
(R.I.P.)

NULLITY PROCEEDING FOR LACK
OF SERVICE OF PROCESS TO THE
PROSECUTOR'S OFFICE

HONORABLE FIFTH CIVIL CIRCUIT COURT JUDGE IN AND FOR THE FIRST
JUDICIAL CIRCUIT OF PANAMA:

The undersigned, DAYRA I. BOTELLO O., a female, a Panamanian, of legal age, whose offices are located at Edificio Saloon, fourth floor, located at Avenida Peru and Calle 33, Calidonia Parish, District of Panama, in my capacity as Fourth Superior Prosecutor for the First Judicial District of Panama, appear before you to file a motion to nullify for failure to serve process to the Prosecutor's Office in the testamentary succession proceeding of Wilson Charles Lucom (R.I.P.)

I. Recital of preliminary considerations:

The existence of the testamentary succession proceeding of the person who while alive was Wilson Charles Lucom (R.I.P.) constitutes a public and notorious fact, which does not escape notice by this agency of the Prosecutor's Office, which has already extended from the judicial to the public sphere since it was the object of coverage by several communications media in our country (Cfr. La Prensa of August 31, 2010; La Estrella de Panama of August 16, 2010; Panama America of October 20, 2010) and which primarily stands out due to the fact that the testator bequeathed part of his assets to feed the "*children with needs in Panama.*"

It is likewise timely to indicate that this Agency of the Public Prosecutor's Office has had access by way of the Judiciary's Court Records pertaining to the month of August 2010 (pp. 129-140) that within the testamentary succession proceeding of who while living was Wilson Charles Lucom (R.I.P.), the First Civil Division of the Supreme Court of Justice issued the judgment dated August 6, 2010, thereby modifying the order that declared the opening of the testamentary succession at issue, and declared Mrs. Hilda Piza Lucom the universal heiress. The mentioned judgment is adduced as evidence in this proceeding.

With regard thereto, it is worth transcribing provisions set forth in Article 786 of the Judicial Code which literally states the following:

Article 786. "Every law, decree-law, cabinet decree, agreement, ordinance, regulation, decision, order, report, ruling, document or act of any kind issued by any authority or officer of any State Body, or of a municipality of any autonomous, semi-autonomous or decentralized entity, and published in the Annals of the Legislative Body, the Official Register, the Court Record, the Industrial Property Registry, in any recompilation or edition of an official nature, or Universidad Nacional, shall provide full evidence as to the existence and contents of the document. It is presumed that judges have knowledge of acts or official documents thus published and shall be valid in complaints, petitions, allegations and other statements of the parties without any need to be documented in the proceeding. The judge may make the desired inquiries to verify the existence or contents of such records.

The parties may, nonetheless, provide the respective document or record should they so wish.

Except for the case in which the record at issue is the object of the complaint, to which it will be provided in accordance with common regulations."

The Honorable Court that presides over this succession proceeding knows that the principal part of the estate of who while living was Wilson Charles Lucom (R.I.P.) consists of real property No.7022, registered in book 883, page 462 of the Public Registry, whose

owner is Hacienda Santa Monica, S.A. and that Wilson Charles Lucom (R.I.P.) appears as the president and legal representative of that corporation.

This Superior Prosecutor's Office was notified of the Appeal filed on Order No. 1025 of July 5, 2006, issued by the Fourth Civil Circuit Court for the First Judicial Circuit of Panama, which decided to declare open the Testamentary Succession Proceeding of Wilson Charles Lucom (R.I.P.), who died on June 2, 2006, issuing an opinion in a brief dated November 1, 2006.

There are also other elements that in our opinion justify the intervention of the Agency of the Public Prosecutor's Office in the testamentary succession proceeding of Wilson Charles Lucom (R.I.P.), which I will develop hereunder, but not before reviewing the doctrinal concept of a testamentary succession from the Panamanian point of view.

"2. Testamentary succession

Our positive laws define it as the act whereby a person gives his assets or part thereof after his death. (Art. 699 C.C.)

The truth is we are before a testamentary succession when there is a document where the volitive interest of the holder of the wealth that will be transmitted upon death. This act may also be oral, provided it complies with legal formalities.

To conclude we can state that the will of the testator produces *res inter alias acta* effects, but the will has an *erga omnes* effect to the extent it is opposable to third parties who have an interest in the succession.¹ (Underlining by the Prosecutor's Office)

¹FERNANDEZ, Oswaldo. "Proceso Sucesorio" en "Procesos Civiles" [Succession Proceedings in Civil Proceedings] by Professor Jorge Fabrega, Editora Juridica Panameña, 1999, pg. 377

From the foregoing definition we can indicate that while the will is a very personal act, its effect may have an impact on interested third parties by reason of the disposition of the assets allocated in the will, as in the instant case.

In accordance with provisions in our Procedural Code, succession proceedings are classified as non-adversarial, and in keeping with such classification, regulations can be identified which establish certain rules and which incorporate the Office of the Prosecutor. Let us see:

Article 1423. "Except as provided for special cases, non-adversarial proceedings will be subject to the following rules:

...

4. In the event it affects family relations, the civil status, or assets belonging to the disabled or absent, the Office of the Public Prosecutor will be served process with the petition and it may adduce evidence and appeal. Prior to ruling, the Court will hear its opinion;"

Article 1479. "As soon as a Municipal Judge has news that within his district a person has died and there is no one to care for and manage his assets, he will go to the place of death with his clerk and two witnesses who will likewise serve as appraisers, and having verified the accuracy of the facts, will proceed to conduct the following proceedings:

1. ...

Agents of the Office of the Public Prosecutor will request that the indicated proceedings be carried out in those cases in which they have knowledge thereof."

Article 1529. “Once the complaint with the documentary evidence or the additional requested [evidence] has been done, the Judge shall serve copies of the request to the Office of the Public Prosecutor for a period of five days.

If the Agent of the Prosecutor’s Office allows the period to lapse without responding, the Judge will demand the immediate return of the file and will issue the order object of the following article, if there is sufficient evidence.”

Article 1532. “If during the course of the edict period other heirs should appear with claims that do not exclude those of those already declared, the judge will make the pertinent determination of the heirs, after a hearing of the already declared heirs and the Agent of the Prosecutor’s Office. If there are claims to the contrary, these shall be reserved for when the indicated period lapses.”

Article 1534. “If upon lapse of the period of the edict there are requests that were reserved to be considered upon lapse thereof, the Judge will consider evidence for a common period of three days to adduce them and then to file them, and once done, the Court will serve the pertinent copies to the interested parties and to the Prosecutor’s Office, and once the respective terms have lapsed, will decide as appropriate.” (Underlining by the Prosecutor’s Office)

From the above group of transcribed rules, the common denominator that arises is that the Prosecutor’s Office intervenes in succession proceedings (non-adversarial), with the object of having the trier listen to the respective opinion from society’s representative; however, that intervention is not static, but active within the proceedings in which it participates inasmuch as it may adduce evidence, file appeals and, overall, develop the actions granted to the parties by law for a better defense of the interests of society, the State or Municipality.

To understand the participation of the Prosecutor's Office in its just dimension in civil proceedings, we believe it is timely to bring up the opinion of the eminent Panamanian jurist Luis Carlos Reyes on this subject.

"In our country, the Prosecutor's Office is the official body, collaborator of the Administration of Justice, to whose agents the Political Constitution, in Title VII, Chapter II and the Judicial, Civil, Administrative, Fiscal, Commercial Codes and other special laws vest very important powers which range from serving as preliminary investigative officers (Magistrate Judges in other countries) and to exercise public actions in criminal proceedings on behalf of the State **to representing national, municipal and social interests in civil proceedings**, in accordance with general or specific provisions.

...

Therefore we have that all of these officers have been granted a very special participation in civil proceedings relating to the State, the family, the civil registry and **the interests of minors or the disabled** and other similar [persons], precisely due to the social role the Agent of the Prosecutor's Office is called to exercise, assigned to the jurisdiction of the competent court for consideration."²
(Highlighting by the Prosecutor's Office)

In that same article, the illustrious author explains the role played by the Prosecutor's Office in civil proceedings, which is often misunderstood, as follows:

Rather commonly - unfortunately - the dominant impression in the majority of the social conglomerate is that in civil proceedings the Prosecutor's Office work must be almost decorative. This misunderstanding goes to the extreme of surprising the Agent of the Prosecutor's Office who responsibly files evidence, appears to cross

²REYES, Luis Carlos. "The Prosecutor's Office in Panamanian Civil Proceedings", in "Procedural Studies" by Professor Jorge Fabrega, Volume III, Editora Juridica Panameña, 1990, Pg. 87

examine witnesses and experts, to allege or to file appeals, etc. And there are some who think that by acting this way the Agent is going beyond its duties, when to the contrary, it is satisfactorily performing them.

We find that social recognition is very meritorious, therefore honorable, that the agent of the Prosecutor's Office who in a civil proceeding acts as our body of laws wishes; that is, actively, responsibly and diligently, without any concern for unfair criticism."³

We also find regulations in the Civil Code that indicate the participation of the State or Municipality, and therefore the Prosecutor's Office as the representative of these entities in testamentary successions, as provided hereunder:

Article 638. "If the testator should dispose of all or part of his estate for suffrage and pious works for the benefit of his soul, doing so indeterminately and without specifying application thereof, the testamentary executor will sell the assets and deliver the amount to the **Executive** for the charitable establishments in the domicile of the decedent and, in absence thereof, for those in the district."

Article 639. "The institution made in favor of a public establishment under condition or imposing a burden will only be valid if the **Executive** approves it."

Article 692. "If there are no persons who have the right to inherit in accordance with provisions in the foregoing chapters, the municipality where the decedent had his last domicile will inherit."

Article 878. "An inheritance may be accepted or repudiated by all who have the free disposition of their assets."

³Reyes, Luis Carlos, op. cit. pg. 91-92

The inheritance left to minors or the disabled may be accepted in accordance with provisions in Article 283 paragraph 4.

Acceptance of the [inheritance] left to the poor will belong to the persons designated by the testator to qualify them and distribute the assets, **and in lieu thereof the mayor of the district of the last domicile of the decedent**, and it will be understood to have been accepted for the benefit of inventory.” (Our highlighting)

From the above transcription one deduces that the legislator established the presumptions wherein the Executive as well as the Municipality may inherit the assets of a testamentary succession proceeding.

In the specific case of the testamentary succession of Wilson Charles Lucom (R.I.P.) one gleans there is a bequest earmarked for feeding the *children with needs in Panama*”, which in our opinion constitutes a truly pious deed of the decedent; however, pursuant to the judgment dated August 6, 2010 by the First Civil Division of the Supreme Court of Justice, execution thereof lies with Fundacion Wilson C. Lucom Trust (pg. 138 of the Court Record, August 2010).

Given that Fundacion Wilson C. Lucom Trust is classified a non-profit private interest artificial person, it is timely to know what the law determines with respect to the capacity of this type of artificial person to inherit.

The Civil Code provides the following in Article 879:

Article 879. The representatives of artificial persons, who are capable of acquiring, may accept or repudiate the inheritance that is left thereto; **but artificial persons included in Article 64, paragraphs 4 and 5** need court approval to repudiate **with a Public Prosecutors’ hearing**.” (Highlighting by Prosecutor’s Office)

In this same order, it is appropriate to transcribe provisions in Article 64 of the same body of laws to identify the artificial persons included in paragraphs 4 and 5 of the aforementioned code.

Article 64: "Artificial persons are:

1. . . .

4. Public interest associations recognized by the Executive;

5. Nonprofit Private interest associations that are recognized by the Executive; and"

One infers from the foregoing that upon establishing Fundacion Wilson C. Lucom Trust Fund as a private interest artificial person, to which part of the estate of decedent Wilson Charles Lucom (R.I.P.) has been bequeathed to feed "*children with needs in Panama*", this artificial person must accept or repudiate the inheritance it has been left.

Inasmuch s the beneficiaries of this bequest are the "*children with needs in Panama*" and that the position that will be assumed by Fundacion Wilson C. Lucom Trust with regard thereto is not known, we believe that representation by this segment of society lies with the Prosecutor's Office through this Agency.

The Supreme Court of Justice en banc has had the opportunity to rule and recognize the role the Prosecutor's Office has as society's representative as follows:

Let's remember that the laws set forth in our Fundamental Statute are model legal provisions that are developed by the laws, which is precisely what Article 377 does in determining the constitutional authority that **lies with the Prosecutor's Office to defend not only the interests of society, but also of the State and local governments**, but in compliance with certain requirements which would be the authorization by those who exercise legal representation of the respective government or municipal entity.

This situation in no way violates the principle of impartiality and judicial independence that governs both for officers of the Judiciary as well as staff of the Prosecutor's Office."⁴ (Our highlighting)

Another aspect to take into account is that inasmuch as minors are involved, law has provided that this vulnerable sector of society requires the State's special attention for the purpose of providing comprehensive protection so that their rights are protected. In this order [of ideas], we have that Articles 585 and 588 [sic] of the Family Code provide the following:

Article 585. "All minors, without any exception or discrimination whatsoever, shall enjoy the protection of the State, which will guarantee their recognition as persons who have rights."

Article 586. "The State has the responsibility of guaranteeing the promotion and fulfillment of the rights of minors."

In this same order, in Article 3 of Law No. 15 of 1990, whereby the Convention on the Rights of Children is ratified establishes:

Article 3

1. In all measures concerning children taken by social welfare public or private institutions, administrative authorities or the legislative bodies, attention to the superior interest of the child is a paramount consideration.
2. State Parties undertake to guarantee to the child the protection and care that are necessary for his well being, taking into account the rights and obligations of the parent, guardians or other persons

⁴Opinion of the Supreme Court of Justice en Banc on April 232, 2007.

who are legally responsible and, for such purpose will take all appropriate legislative and administrative measures.

3. The State Parties will make sure that institutions, services and establishments entrusted with caring for or protecting children comply with laws established by the competent authorities, especially with regard to safety, health, number and competence of its staff, as well as with respect to the existence of appropriate supervision.”

In accordance with provisions in Article 1 of the Convention on the Rights of Children, a child is understood to be every human being under the age of eighteen, except that by virtue of the law that he is of legal age prior thereto may be applicable.

While the concept of “*children with needs in Panama*”, set forth in Wilson Charles Lucom’s (R.I.P.) will is indeterminate, elements from such very personal act emerge that allow for such group to be determined, such as, for example, the fact that the bequest is earmarked for “*children’s schools who have no meals for lunch*” and that “*the principals of the schools are to form groups of volunteers with parents and plant gardens with seeds provided by Fundacion Wilson C. Lucom Trust.*”

In view of the foregoing, we believe that this Superior Prosecutor’s Office is the appropriate [office] to legitimately represent this segment of the Panamanian population inasmuch as we are a comprehensive part of the Office of the Public Prosecutor, who by constitutional and legal mandate represents society, the State or the Municipality.

To conclude this section, we note that Article 1526 paragraph 5 of the Judicial Code provides for the intervention of the representative of the government in testamentary succession proceedings, as well as all persons who have any interest in the testamentary succession, emphasizing that service thereon will be personal.

Article 1526. "Once the request has been received with the respective will, the Judge will issue an order that contains:

1. . . .

5. The order for **all persons with any interest therein to appear in court, including the government's representative, who will be served personally.**

Once said order has been issued, it will be posted and the edict will be published in accordance with Article 1510.

During the period the edict is posted, the pertinent injunctions or guardianships will be discerned in accordance with the will or the law.

Once said period has lapsed, the proceeding set forth in Articles 1518, 1519 and 1520 of this Code will be followed."

In our opinion, if such law establishes that all persons who have any interest in the testamentary succession proceeding are to appear based on the arguments that have been stated, we believe there are grounds, both factual and legal, for the Prosecutor's Office, through this Agency, to be duly notified so that it will act in the referenced proceeding.

Nonetheless, this Office has not been notified of any proceeding that has been considered by the competent jurisdictional body to decide the testamentary succession proceeding of Wilson Charles Lucom (R.I.P.), which is the basis for filing this motion to nullify, and which we provide hereunder:

FACTS THAT ARE THE BASIS OF OUR MOTION:

FIRST: The person who while living was Wilson Charles Lucom (R.I.P.) granted a will that is recorded in Public Deed No. 6646 of June 20, 2005, added to and modified in Public Deed No. 11191 of October 20, 2005, which was added to and modified in Public Deed No. 1131 of February 3, 2006, all from the Office of the Second Notary for the Circuit of Panama, and pursuant to these instruments established the destination of his assets af-

ter his death, as provided in Article 699 of the Civil Code.

SECOND: Part of the estate in the will of Wilson Charles Lucom (R.I.P.) was bequeathed to Fundacion Wilson C. Lucom Trust, which must execute the activities in coordination with schools and other entities to provide meals to *children with needs in Panama*, at schools in rural areas.

THIRD: After being subjected to distribution rules, the complaint was assigned to the Fourth Civil Circuit Court for the First Judicial Circuit of Panama; however, since there were grounds for impediment by the Judge in said Court, such proceeding was assigned to the Fifth Civil Circuit Court for the First Judicial Circuit of Panama.

FOURTH: Once the order that decreed the opening of the succession proceeding was issued, a series of procedural appeals were filed which gave rise to rulings, including by the First Civil Division of the Supreme Court of Justice in a ruling dated August 6, 2010; however, the Prosecutor's Office has neither been notified nor has issued any opinion whatsoever in such proceeding, in spite of the fact there are interests of the State that could be affected and that part of such estate was bequeathed to a segment of society identified as "*children with needs in Panama.*"

FIFTH: There are justified reasons to determine that the agency of the Prosecutor's Office should be brought into the testamentary succession proceeding of Wilson Charles Lucom (R.I.P.), by virtue of the fact that notices on a series of proceedings have been received, which are closely related to the assets of the estate of Wilson Charles Lucom (R.I.P.) with Wilson Charles Lucom (R.I.P.) as president and legal representative of such corporation.

SIXTH: That inasmuch as assets are in litigation where the interests of the State could be affected, this Agency of the Prosecutor's Office must be notified to intervene in the succession proceeding for the purpose of defending the interests of the State and society, distinguished as the *children with needs in Panama*.

The proceedings held within this process have incurred in a clear and evident omission by not having notified the Prosecutor's Office, which constitutes grounds for irreparable procedural nullity inasmuch as it not only affects the interests of society, identified as the *children with needs in Panama*, but also that the interests of the State or Municipality could be affected, which have not been duly represented.

SEVENTH: Article 733 of the Judicial Code provides failure to serve the Prosecutor's Office as grounds for nullity in cases established by law:

Article 733: "Commons grounds for nullity for all proceedings are:

1. . . .
6. Failure to serve notice to the Prosecutor's Office in cases as expressly established by law;"

Inasmuch as the testamentary succession proceeding is a non-adversarial proceeding, the effect of *res judicata* does not concur and therefore there is no obstacle for the trier to bring the process back to its due course, serving the Order that decrees the opening thereof to this Agency of the Prosecutor's Office and to declare the nullity of all proceedings prior to this court decision.

EIGHTH: It is necessary to indicate that Article 17 of the National Constitution stipulates that the authorities of the Republic, among them, the Prosecutor's Office, are instituted to protect the life, honor and assets of its nationals, included amongst them the *children with needs in Panama*" when it provides:

“ARTICLE 17. The authorities of the Republic are instituted to protect the lives, honor and assets of nationals wherever they may be, and aliens who are under their jurisdiction; to guarantee the enforceability of individual social rights and obligations, and to comply with and enforce compliance with the Constitution and the Law.

The rights and guarantees stipulated in this Constitution must be considered as minimal and not exclusive of others that affect the fundamental rights and dignity of a person.

NINTH: The Prosecutor’s Office has not been served with decisions issued within this proceeding as stipulated in Article 1001 of the Judicial Code, the Court having omitted the step which requires mandatory compliance since it is the institution that represents the interests of the State or the Municipality, as provided in Article 220 of the Panamanian Political Constitution, to wit:

“Article 220. The Prosecutor’s Office has the authority to:

1. Defend the interests of the State or the Municipality.
2. . . .”

Additionally, the contents of Article 347 of the Judicial Code have not been complied with, which provides:

Article 347. All agents of the Prosecutor’s Office have the following duties:

1. To defend the interests of the State or the Municipality, as the case may be, and to represent the State in proceedings that are filed against it;
2. . . .;

For this authority to defend to be effective, the procedures established by law must be complied with inasmuch as the duties assigned to the Prosecutor’s Office are an unavoid-

able and mandatory state control, established by the legislator to guarantee that the interests of the State are protected, at least, by the Prosecutor's Office.

Service of process to the parties are part of the proceeding as an indispensable requirement for a court order to be enforced, and it is thus set forth in Article 1022 of the Judicial Code which, with respect to service, details when a court order has force and effect:

“Article 1022. No court decision may have force and effect before having been legally served to the parties...”

In addition to the foregoing, inasmuch as it is the Prosecutor's Office who must defend the interests of society, the State or the Municipality, Article 1002 of the Judicial Code has provided that the State is to receive personal service of decisions.

“Article 1002. There will be personal service regarding:

1. ...

...

4. The decision that must be served to agents of the Prosecutor's Office or any other public official by reason of their duties; and

5. ...”

Therefore, by omitting measures that are so essential in the proceeding, the State has been banned not only of the right to be heard and to contradict, guarantees that are highly protected in our code of laws, but they have incurred in the grounds for nullity set forth in Article 733 of the Judicial Code.

TENTH: The representatives of the State and Municipalities are vested with a series of procedural privileges in civil proceedings that are set forth in Article 1939 of the Judicial Code which provides:

Article 1939. The State and municipalities will have the following guarantees in civil proceedings:

1. Their obligations payable by execution according to general rules will be enforced as set forth in Chapter VII, Title XIV of this Book;
2. A judgment for court costs cannot be entered against them;
3. **The representatives of the State and municipalities must be served process at their offices and during working hours. Only in the event they are not found in the office after attempting to serve them with the decision over three different days, notice by way of an edict that is also affixed to the door of the respective office will be legal.**
4. The complainant cannot exercise precautionary measures against the State and municipalities, except those relating to evidence;
5. Decisions issued against the State or a municipality shall be consulted even if the representatives of such entities have not filed an appeal; and
6. Others that stem from the provisions in this Code or a Law.

Paragraph 3 transcribed above clearly establishes the procedural formalities that must be fulfilled when a court order must be served to a representative of the State or Municipality, which have not been complied with in this proceeding.

ELEVENTH: Article 1027 of the Judicial Code regulates that notices that are served in a manner other than as stated in this Code are null and void.

With regard thereto, the First Superior Court for the First Judicial District of Panama stated in a judgment issued on April 24, 2006:

“Inasmuch as this is the context of the Prosecutor’s Office’s intervention, this Court disagrees with the opinion issued by counsel for the plaintiffs inasmuch as it is an obligation for all agents of the Prosecutor’s Office (which include the Circuit’s Prosecutors) to defend the interests of the State and the Municipality, as the case may be, and to represent the State in cases that are filed against it, without taking into account whether these do or do not have representation by counsel in the proceedings in light of stipulations in Articles 341 paragraph 1, and 361 paragraph 6 of the Judicial Code, and Article 219 of the National Constitution.

With regard thereto, it is appropriate to indicate that in our system the principle of specificity governs (*pas de nullité sans texte*) on the issue of nullities, as to the fact that procedural acts cannot be nullified for reasons other than those stipulated by Law (Art. 732 of the Judicial Code), and since the issue that has been brought up fits within the presumption indicated in Article 733 paragraph 6 of the Judicial Code, it is necessary to declare the nullity of proceedings from page 23 forward so that the normal course of the proceeding will be retaken with the due participation of the Prosecutor’s Office.”

MOTION OF PROSECUTOR’S OFFICE: Based on the foregoing, we move the Honorable Fifth Civil Circuit Court for the First Judicial Circuit of Panama to DECLARE the nullity of all proceedings based on the absence of service of process to the Prosecutor’s Office in

the Testamentary Succession Proceeding of Wilson Charles Lucom (R.I.P.) and that this Agency of the Prosecutor's Office be served notice of the Order which decrees the opening of the referenced testamentary succession proceeding and annuls all steps and proceedings subsequent to this court order.

EVIDENCE:

The file on the case in chief is adduced as evidence.

LEGAL BASIS: Articles 17, 200, paragraph 1 of the Political Constitution of the Republic of Panama. Articles 347, 585, 733, 786, 1002, 1423, 1479, 1526, 1529, 1532, 1534 of the Judicial Code. Articles 64, 638, 639, 692, 878 and 879 of the Civil Code. Articles 585 and 588 of the Family Code. Articles 1 and 3 of Law No. 15 of 1990. Decision No. 17 of March 17, 2006.

Respectfully,

[Seal of the Prosecutor's Office]

/s/ Illegible
 Atty. Dayra I. Botello O.
 Fourth Superior Prosecutor for the
 Judicial District of Panama

DIB

*RECEIVED BY THE CHIEF CLERK'S OFFICE
 SUPREME COURT OF JUSTICE*

Today **January 20, 2011**

/s/ Illegible

CHIEF CLERK'S OFFICE

SUPREME COURT OF JUSTICE

/s/ Illegible 20JAN2022 [Illegible]