



State of New York
Court of Appeals

Donald M. Sheraw
Clerk of the Court

Clerk's Office
Albany, New York 12207

April 3, 1991

George Sassower, Esq.
16 Lake Street
White Plains, New York 10603

Re: Estate of Eugene Paul Kelly, deceased
(Accounting of Mastroianni)

Dear Mr. Sassower:

The Court has received your 500.2 jurisdictional statement and may examine its subject matter jurisdiction sua sponte with respect to whether a substantial constitutional question is directly involved to support an appeal as of right and with respect to whether the order dated February 5, 1991 finally determines the proceeding within the meaning of the Constitution.

This communication is without prejudice to any motion any party may wish to make. If you conclude that the order is not appealable as of right, please arrange for the execution of a stipulation consenting to a dismissal of the appeal and transmit that paper to my office. If a stipulation is to be forthcoming, please inform me immediately.

On the other hand, if you wish to persevere in the appeal, you are invited to present to the Court in writing within ten days of this letter's date your comments justifying the retention of subject matter jurisdiction, including references to the record demonstrating that a constitutional question was raised in the court of original instance. Also please enclose a copy of each brief filed in the Appellate Division, as well as a copy of the Record on Appeal or Appendix filed in that court. Your adversary is likewise afforded the opportunity to comment in writing on the subject matter jurisdiction.

If this sua sponte inquiry is terminated by the Court, the Clerk will notify counsel in writing and set a new schedule for normal perfecting of the appeal.

Very truly yours,

Donald M. Sheraw

Donald M. Sheraw

DMS:mec

cc: Cahn, Wishod, Wishod and Lamb, Esqs.
U.S. Attorney Andrew J. Maloney