

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : FIRST DEPARTMENT

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In the Matter of the Application of
HYMAN RAFFE, GEORGE SASSOWER, ESQ.,
and SAM POLUR, ESQ.,

Petitioners,

- against -

AFFIDAVIT IN OPPOSITION

HON. ALVIN F. KLEIN and HON. DAVID B.
SAXE,

Respondents.

Pursuant a Writ of Prohibition and a
Bill in Equity (Sic.)

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STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)

MICHAEL J. GERSTEIN, being duly sworn, deposes
and says:

1. I am a member of the firm of Kreindler & Relkin,
P.C., attorneys for Jerome H. Barr and Citibank, N.A. individually
and as Executors of the Will of Milton Kaufman, movants in pro-
ceedings which resulted in the issuance of the order of Justice
Alvin F. Klein, dated June 26, 1985, finding peititoners herein
in contempt of Court. My firm and two of its partners, Donald
B. Relkin and I, were also movants in the underlying proceeding
resulting in the order of Justice Klein. I am fully familiar
with the facts set forth hereinbelow, and submit this affidavit
in opposition to the instant proceeding commenced by petitioner
for a writ of prohibition.

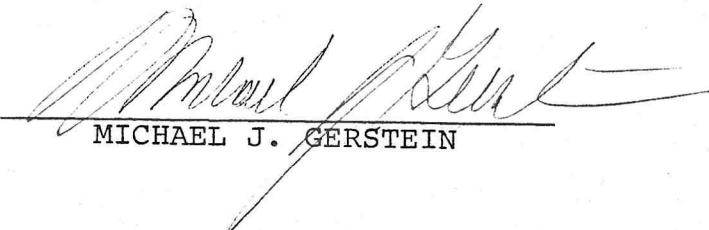
2. The petition herein should be dismissed as being utterly without merit. The facts and actions resulting in petitioners herein being held in contempt by Justice Klein are not the subject of any other proceedings, and thus cannot possibly constitute double jeopardy.

3. The acts of the petitioners resulting in Justice Klein's finding of contempt consisted of commencement of three separate actions in April, 1985, against Kaufman's Estate, Kreindler & Relkin, P.C., and two of its partners. (See order of Justice Klein annexed as Exhibit "A" to petition). Although petitioners assert the existence of various other contempt proceedings, these acts resulting in Justice Klein's order were not the subject of any of those proceedings. Petitioners do not, and cannot, articulate any other contempts resulting from their service of the three summonses for which they were punished by Justice Klein.

4. Petitioners have in fact been held in contempt on numerous occasions for their acts arising from the litigation of Kaufman's Estate and Puccini Clothes, Ltd. ("Puccini"). However, those contempts all arose from different acts, as more fully demonstrated in the affidavit of Donald F. Schneider, Esq. sworn to August 2, 1985, submitted in opposition to this petition. In the interest of brevity, the arguments contained in the Schneider affidavit are incorporated herein by reference.

5. This Court is by now familiar with the numerous attacks on the order of Justice Klein. These attacks, now aggregating fourteen separate requests for stays, vacatur or habeas corpus have been denied by every jurist to rule upon them, including a full bench of this Court. The within petition should similarly be denied as meritless.

WHEREFORE, it is respectfully requested that the within petition be denied in its entirety.


MICHAEL J. GERSTEIN

Sworn to before me this
12th day of August, 1985.


Notary Public

RICHARD H. BREGMAN
NOTARY PUBLIC, State of New York
No. 31-4784724
Qualified in New York County
Commission Expires March 30, 1985