

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

M87103
E/sl

STEVEN W. FISHER, J.P.
HOWARD MILLER
JOHN M. LEVENTHAL
PLUMMER E. LOTT, JJ.

2009-02507

DECISION & ORDER ON MOTION

In the Matter of Edna Coleman, a/k/a
Edna Elizabeth Coleman, deceased.
Leo Beitner, nonparty-appellant.

(File No. 534/06)

Motion by the nonparty-appellant on an appeal from an order of the Surrogate's Court, Kings County, dated December 4, 2008, to enlarge the record to include certain documents, and for a preference in the calendaring of the appeal.

Upon the papers filed in support of the motion and no papers having been filed in opposition or relation thereto, it is

ORDERED that the branch of the motion which is to enlarge the record to include the following documents is granted: (1) an order of the Surrogate's Court, Kings County, dated December 16, 2008, in a matter entitled *Matter of Cavanaugh*, (2) a letter from the nonparty-appellant to Diana A. Johnson dated March 7, 2008, (3) a letter from the nonparty-appellant to Diana A. Johnson dated July 7, 2008, (4) a letter from Ronald Rossi to the nonparty-appellant dated July 8, 2008, (5) a letter from Ronald Rossi to the nonparty-appellant dated July 22, 2008, (6) a letter from George D. Marlow to Diana A. Johnson dated July 18, 2008, with attached Opinion 08-91 of the Advisory Committee on Judicial Ethics, and (7) Opinion 08-91 of the Advisory Committee on Judicial Ethics; and it is further,

ORDERED that the branch of the motion which is to enlarge the record to include the following documents is denied as unnecessary: (1) the order dated December 4, 2008, (2) notice of motion dated July 8, 2008, affidavit of Seth Rubenstein dated July 8, 2008, notice of cross motion dated July 15, 2008, affidavit of M. Douglas Haywoode dated July 15, 2008, and affirmation of Nora S. Anderson, and (3) transcript of the proceedings on September 4, 2008; and it is further,

May 29, 2009

MATTER OF COLEMAN, DECEASED

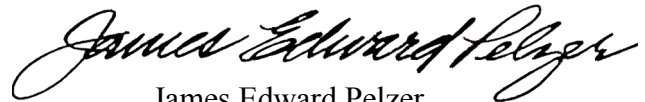
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ORDERED that the branch of the motion which is to enlarge the record to include the affidavit of the nonparty-appellant dated March 16, 2009, is denied; and it is further,

ORDERED that the branch of the motion which is for a preference in the calendaring of the appeal is granted and the appeal will be calendared after all the briefs have been filed.

FISHER, J.P., MILLER, LEVENTHAL and LOTT, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style with a large initial "J".

James Edward Pelzer
Clerk of the Court