

CPLR 1201: Court May Appoint Guardian Ad Litem in Instances Where Conflict of Interest Might Arise Between Incompetent and Committee

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ARTICLE 12 — INFANTS AND INCOMPETENTS

CPLR 1201: Court may appoint guardian ad litem in instances where conflict of interest might arise between incompetent and committee.

In *Berman v. Grossman*,⁷⁴ a judicially declared incompetent, on his own initiative, retained an attorney to obtain (1) an adjudication of competency, (2) a discharge of his committee and (3) a return of his property. The court recognized the fact that, as a general rule, the judicially declared incompetent cannot invoke the jurisdiction of the court except by means of his committee.⁷⁵ However, the court, relying on Mental Hygiene Law, Section 100(1) which gives the supreme court jurisdiction over such persons and their property, utilized CPLR 1201 to appoint a guardian *ad litem* in addition to the attorney retained by the incompetent. The Court of Appeals, in *Sengstack v. Sengstack*,⁷⁶ has established precedent which allows an appointment of a guardian *ad litem* under special circumstances such as a conflict of interest. A clear example of such a conflict warranting the utilization of CPLR 1201 is found when the incompetent seeks to sue his committee directly for fraud.⁷⁷

The problem presented in the instant case is whether the circumstances warranted the multiple representation of the incompetent. Under the existing facts, there was an obvious interest of the committee to preserve its own existence, possibly to the detriment of the incompetent. From the majority's holding it would seem that any apparent conflict of interest will suffice to empower the court to appoint a guardian *ad litem*. In opposition, the dissent questioned the propriety of the appointment of the guardian *ad litem* in view of the fact that an attorney was retained to protect the incompetent's interests.

ARTICLE 14 — ACTIONS BETWEEN JOINT TORT-FEASORS

CPLR 1401: Contribution among joint tort-feasors.

CPLR 1401, which provides for contribution among joint tort-feasors, is, as was its analogue,⁷⁸ in derogation of the common law.⁷⁹

⁷⁴ 24 App. Div. 2d 432, 260 N.Y.S.2d 736 (1st Dep't 1965).

⁷⁵ *In re McGuinness*, 290 N.Y. 117, 48 N.E.2d 286 (1943); see also *Shatsky v. Sea Gate Ass'n*, 11 Misc. 2d 905, 172 N.Y.S.2d 947 (Sup. Ct. Kings County 1958).

⁷⁶ 4 N.Y.2d 502, 151 N.E.2d 895, 176 N.Y.S.2d 337 (1958).

⁷⁷ *Mathews v. Mathews*, 25 Misc. 2d 250, 203 N.Y.S.2d 475 (Sup. Ct. Broome County 1960).

⁷⁸ CPA § 211-a.

⁷⁹ 2 WEINSTEIN, KORN & MILLER, NEW YORK CIVIL PRACTICE ¶ 1401.01 (1965).