

## Preference Given to Nominee of Relatives of Incompetent

St. John's Law Review

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only prevented the abatement of the action, but also precluded the Pennsylvania Insurance Commissioner (receiver) from suing to recover the assets of the defendant in New York (the bond). Thus, the decision appears to be in accord with the underlying philosophy of the UILA.

#### ARTICLE 12 — INFANTS AND INCOMPETENTS

*Preference given to nominee of the relatives of incompetent when appointing a committee.*

In a recent case, the appellate division, first department,<sup>123</sup> modified the decision of the lower court which had granted a petition for the appointment of a committee for an incompetent. The appellate court removed the court-designated committee and replaced her with the committee which had been recommended to the lower court by the relatives of the incompetent. The modification was based upon the fact that the two nominees (the one proposed by the relatives and the one appointed by the court) appeared to be equally acceptable, and, therefore, the one nominated by the relatives should have prevailed.

The court's ruling is in accord with prior law. The fourth department stated the rule well when it held that "consanguinity is considered . . . in the selection of a committee . . . and will not be disregarded except upon valid grounds."<sup>124</sup>

This rule appears to be in the best interests of the incompetent. Since it thus helps to fulfill the primary purpose for which committees are appointed, courts should not be loath to remove the court-appointed committee if there appears to be no substantial objection to the committee preferred by the incompetent's next of kin.<sup>125</sup>

#### ARTICLE 14 — ACTIONS BETWEEN JOINT TORT-FEASORS

*CPLR does not specify when motion for contribution may be made.*

Contribution among joint tort-feasors is dealt with in Sections 1401 and 1402 of the CPLR. These sections provide the "how" and "why" of bringing an action for contribution, but do not specify "when" the action may be commenced.

<sup>123</sup> *In re Beatty*, 21 App. Div. 2d 969, 252 N.Y.S.2d 953 (1st Dep't 1964).

<sup>124</sup> *In re West*, 13 App. Div. 2d 599, 600, 212 N.Y.S.2d 832, 833 (3d Dep't 1961). For additional cases in support of this point, see those cited in *West* at 600, 212 N.Y.S.2d at 834.

<sup>125</sup> The appointment of a committee, formally governed by CPA §§ 1356-84, is now governed by N.Y. MENTAL HYGIENE LAW §§ 100-13.