WEST VIRGINIA CODE: §44A-2-7

§44A-2-7. Appointment of counsel.

(a) The court shall appoint legal counsel for the alleged protected person to make recommendations to the court that are in the best interests of the alleged protected person. In appointing legal counsel, the court shall consider any known preferences of the alleged protected person, or an alleged protected person may hire and pay for an attorney of his or her choice.

(b) Legal counsel shall have the following major areas of concern: (1) Whether or not a guardian or conservator is needed; (2) limitation of the role of the guardian or conservator to the protected person's specific needs -- e.g., personal supervisor, business affairs, medical consent only; (3) if needed, assure that the person or entity that will act in the best interest of the protected person is appointed; (4) if needed, assure the adequacy of the bond; and (5) if needed, assure consideration of proper placement.

(c) In responsibly pursuing the major areas of concern set forth in subsection (b) of this section, counsel may perform any or all of the following: (1) Promptly notify the individual and any caretaker of the appointment of counsel; (2) contact any caretaker, review the file and all other relevant information; (3) maintain contact with the client throughout the case and assure that the client is receiving services as are appropriate to the client's needs; (4) contact persons who have or may have knowledge of the client; (5) interview all possible witnesses; (6) pursue discovery of evidence, formal and informal, including obtaining medical and financial records; (7) file appropriate motions, including temporary protective orders; (8) obtain independent psychological examinations, medical examinations, home studies, as needed; (9) advise the client on the ramifications of the proceeding and inquire into the specific interests and desires of the individual; (10) subpoena witnesses to the hearing; (11) prepare testimony for cross-examination of witnesses to assure relevant material is introduced; (12) review all medical reports; (13) apprise the decision maker of the individual's desires; (14) produce evidence on all relevant issues; (15) interpose objections to inadmissible testimony; (16) raise appropriate questions to all nominations for guardian and conservator and the adequacy of the bond; (17) take all steps to limit the scope of guardianship and conservatorship to the individual's actual needs, and make all arguments to limit the amount of the intervention; (18) ensure that the court considers all issues as to the propriety of the individual's current or intended housing or placement and that the limitations are set forth in the order; (19) inform the client of the right to appeal, and file an appeal to an order when appropriate; (20) file a motion for modification of an order or a petition for a writ of habeas corpus if a change of circumstances occurs which warrants a modification or termination upon counsel being reappointed by the court; and (21) otherwise zealously represent the interests and desires of the client while also reporting to the court what actions are in the best interests of the client.

(d) The protected person shall have the right to an independent expert of his or her choice to

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perform an evaluation and present evidence.

(e) A person appointed by the court as counsel for a nonindigent alleged protected person shall inform the court or the mental hygiene commissioner of his or her hourly rate at the onset of the case and seek approval of his or her fee for the case by submitting it to the court or the mental hygiene commissioner for approval using forms provided by the West Virginia Supreme Court of Appeals. The hourly rate and fee for the case must be reasonable in light of the going rate for legal services, the complexity of the matter and the amount of legal work involved. The court may set the fee at the time of appointment.

WV Legislature