



1 the alleged protected person, or an alleged protected person may  
2 hire and pay for an attorney of his or her choice. Attorneys for  
3 alleged protected persons shall be appointed by the circuit court  
4 from a listing of all interested and qualified attorneys in the  
5 circuit. These appointments shall be made on a rotating basis.

6 (b) Legal counsel shall have the following major areas of  
7 concern:

8 (1) Whether or not a guardian or conservator is needed;

9 (2) Limitation of the role of the guardian or conservator to  
10 the protected person's specific needs -- e.g., personal supervisor,  
11 business affairs, medical consent only;

12 (3) If needed, assure that the person or entity that will act  
13 in the best interest of the protected person is appointed;

14 (4) If needed, assure the adequacy of the bond; and

15 (5) If needed, assure consideration of proper placement.

16 (c) In responsibly pursuing the major areas of concern set  
17 forth in subsection (b) of this section, counsel may perform any or  
18 all of the following:

19 (1) Promptly notify the individual and any caretaker of the  
20 appointment of counsel;

21 (2) Contact any caretaker, review the file and all other  
22 relevant information;

23 (3) Maintain contact with the client throughout the case and  
24 assure that the client is receiving services as are appropriate to

1 the client's needs;

2 (4) Contact persons who have or may have knowledge of the  
3 client;

4 (5) Interview all possible witnesses;

5 (6) Pursue discovery of evidence, formal and informal,  
6 including obtaining medical and financial records;

7 (7) File appropriate motions, including temporary protective  
8 orders;

9 (8) Obtain independent psychological examinations, medical  
10 examinations, home studies, as needed;

11 (9) Advise the client on the ramifications of the proceeding  
12 and inquire into the specific interests and desires of the  
13 individual;

14 (10) Subpoena witnesses to the hearing;

15 (11) Prepare testimony for cross-examination of witnesses to  
16 assure relevant material is introduced;

17 (12) Review all medical reports;

18 (13) Apprise the decision maker of the individual's desires;

19 (14) Produce evidence on all relevant issues;

20 (15) Interpose objections to inadmissible testimony;

21 (16) Raise appropriate questions to all nominations for  
22 guardian and conservator and the adequacy of the bond;

23 (17) Take all steps to limit the scope of guardianship and  
24 conservatorship to the individual's actual needs, and make all

1 arguments to limit the amount of the intervention;

2       (18) Ensure that the court considers all issues as to the  
3 propriety of the individual's current or intended housing or  
4 placement and that the limitations are set forth in the order;

5       (19) Inform the client of the right to appeal, and file an  
6 appeal to an order when appropriate;

7       (20) File a motion for modification of an order or a petition  
8 for a writ of habeas corpus if a change of circumstances occurs  
9 which warrants a modification or termination upon counsel being  
10 reappointed by the court; and

11       (21) Otherwise zealously represent the interests and desires  
12 of the client while also reporting to the court what actions are in  
13 the best interests of the client.

14       (d) The protected person ~~shall have~~ has the right to an  
15 independent expert of his or her choice to perform an evaluation  
16 and present evidence.

17       (e) A person appointed by the court as counsel for a  
18 nonindigent alleged protected person shall inform the court or the  
19 mental hygiene commissioner of his or her hourly rate at the onset  
20 of the case and seek approval of his or her fee for the case by  
21 submitting it to the court or the mental hygiene commissioner for  
22 approval using forms provided by the West Virginia Supreme Court of  
23 Appeals. The hourly rate and fee for the case must be reasonable  
24 in light of the going rate for legal services, the complexity of

1 the matter and the amount of legal work involved. The court may  
2 set the fee at the time of appointment.

NOTE: The purpose of this bill is to require the circuit courts, when appointing counsel for alleged protected persons, to make appointments from a listing of all interested and qualified attorneys in the circuit and on a rotating basis.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.