

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

ENGROSSED

House Bill 2147

2015 Carryover

(BY DELEGATE FOLK, HAMILTON, FRICH, SHOTT,
HOUSEHOLDER, IRELAND, WELD, GEARHEART, HANSHAW
AND AZINGER)

[Introduced January 13, 2016; referred to the
Committee on the Judiciary.]

1 A BILL to amend and reenact §44A-2-7 of the Code of West Virginia, 1931, as amended, relating
2 to appointing counsel for an alleged protected person; and requiring the circuit court to
3 make appointments from a listing of all interested and qualified attorneys in the circuit and
4 on a rotating basis.

Be it enacted by the Legislature of West Virginia:

1 That §44A-2-7 of the Code of West Virginia, 1931, as amended, be amended and
2 reenacted to read as follows:

ARTICLE 2. PROCEDURE FOR APPOINTMENT.

§44A-2-7. Appointment of counsel.

1 (a) The court shall appoint legal counsel for the alleged protected person to make
2 recommendations to the court that are in the best interests of the alleged protected person. In
3 appointing legal counsel, the court shall consider any known preferences of the alleged protected
4 person, or an alleged protected person may hire and pay for an attorney of his or her choice.
5 Attorneys for alleged protected persons shall be appointed by the circuit court from a listing of all
6 interested attorneys in the circuit. These appointments shall be made on a rotating basis:
7 Provided, That if no interested counsel are available, the court shall appoint any competent
8 counsel it deems proper.

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

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

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

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

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

- 16 (5) If needed, assure consideration of proper placement.
- 17 (c) In responsibly pursuing the major areas of concern set forth in subsection (b) of this
18 section, counsel may perform any or all of the following:
- 19 (1) Promptly notify the individual and any caretaker of the appointment of counsel;
- 20 (2) Contact any caretaker, review the file and all other relevant information;
- 21 (3) Maintain contact with the client throughout the case and assure that the client is
22 receiving services as are appropriate to the client's needs;
- 23 (4) Contact persons who have or may have knowledge of the client;
- 24 (5) Interview all possible witnesses;
- 25 (6) Pursue discovery of evidence, formal and informal, including obtaining medical and
26 financial records;
- 27 (7) File appropriate motions, including temporary protective orders;
- 28 (8) Obtain independent psychological examinations, medical examinations, home studies,
29 as needed;
- 30 (9) Advise the client on the ramifications of the proceeding and inquire into the specific
31 interests and desires of the individual;
- 32 (10) Subpoena witnesses to the hearing;
- 33 (11) Prepare testimony for cross-examination of witnesses to assure relevant material is
34 introduced;
- 35 (12) Review all medical reports;
- 36 (13) Apprise the decision maker of the individual's desires;
- 37 (14) Produce evidence on all relevant issues;
- 38 (15) Interpose objections to inadmissible testimony;
- 39 (16) Raise appropriate questions to all nominations for guardian and conservator and the
40 adequacy of the bond;

41 (17) Take all steps to limit the scope of guardianship and conservatorship to the
42 individual's actual needs, and make all arguments to limit the amount of the intervention;

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

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

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

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

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

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