

**Testimony in Support of A-Engrossed HB 2570  
Before the Senate Judiciary Committee  
on behalf of the OSB Elder Law Section**

April 25, 2013

I am an attorney in Aloha, Oregon. I have had an active practice in protective proceedings for more than 30 years, mostly in the Portland Metropolitan area. I serve on the Elder Law Section Executive Committee of the Oregon State Bar. I am currently the Section's Chair of the Legislative Committee. I also participated in the Section's subcommittee involved in seeking the amendments to ORS 125.095 as embodied in the present form of HB 2570.

ORS 125.095 is the statute that provides for the payment from the funds of the protected person of certain fees associated with the protected proceeding, including attorney fees. Amendment of the statute has been primarily motivated by two reasons:

1. Clarification that the procedure for any award of attorney fees in protective proceeding is not controlled by the Oregon Rules of Civil Procedure. ORCP 68 governs the procedure for an award of attorney fees in civil cases. Arguably, it also applies to protective proceeding by virtue of ORS 125.050 that makes protective proceeding generally subject to the ORCP. ORCP was designed to deal with adversarial civil litigation. Protective proceedings, while they can be adversarial, do not have the same time lines and procedures as general civil litigation. Because of its lack of suitability, the practice of the attorneys and the courts has not complied with ORCP 68 when dealing with attorney fee issues.
2. The other focus of the amendment is to establish factors for the court to consider in deciding first whether or not to award attorney fees and, when attorney fees are awarded, what would be an appropriate amount to award. Just as with ORCP 68, the current controlling statute on these questions (which is ORS 20.075) is not particularly relevant to the issues that are seen in protective proceeding cases. Section 3 of the bill is designed to put the decisions about attorney fees and the amount of attorney fees in a framework that is relevant to protective proceedings.

In addition to these two primary motives, the amendment also seeks to have all attorneys fees charged to a protected person be approved by the court, whether or not the attorney services we rendered in the protective proceeding. The current statute does not specifically require court approval. The consensus of the Elder Law Section Executive Committee is that court oversight is appropriate for such fees.

Thank you for your consideration of this legislation.

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