

**Testimony in Support of Amending HB 2570
Before the House Judiciary Committee
on behalf of the OSB Elder Law Section**

February 6, 2013

I am an attorney that has practiced exclusively in probate litigation for over 12 years. The majority of my practice has been in the area of contested protective proceedings and I have been retained and qualified as an expert witness in contested attorney fee disputes in protective proceedings. I serve on the Elder Law Section Executive Committee of the Oregon State Bar and am a member of the sub-committee that drafted the proposed amendments to HB 2570. I offer the following points in support of amending the current form of HB 2570.

- The current form of HB 2570 allows a motion or petition for approval of attorney fees “at any time” within two years of services provided. Members of the trial bench are concerned that such language would allow a party to argue a right to file fee approval motions or petitions as frequently as they wished. Such frequent filings would require the use of extensive and valuable court resources that are simply currently not available to process such requests.
- The current form of HB 2570 use of the term “services were in furtherance of a subsequently filed protective proceeding” regarding the approval of certain fees. This provision could be read to preclude an award of attorneys fees to an attorney representing the rights of a respondent objecting to the imposition of protective proceeding over them. The amended version specifically states the respondent’s right to contest the proceeding and removes the “furtherance” language that could be construed to allow an argument that the contesting respondent’s attorney should not be fully paid.
- Many of the provisions of the current form of HB 2570 were drafted with the intent of taking protective proceedings out of the requirements of ORCP 68. ORCP 68 is in conflict with many circumstances present in protective proceedings. With the anticipated amendment of ORCP 68, many of the provisions of current HB 2570 may not be necessary. The amended version removes many of these provisions and simplifies the text of the proposed statute.
- The current form of HB 2570 uses the words “funds of the protected person” in a context that could preclude the proper approval of attorneys fees under the holding in *Derkatsch V. Thorp, Purdy, Jewett, Urness*, 248 Or. App. 185, 273 P.3d 204 (2012). The amended version instead uses the term, “person subject to the protective proceeding” in order to cover all situations that may come before the court.
- The listing of certain parties under the current form of HB 2570 does not include all parties that can file an appearance in a protective proceeding and could be construed to preclude approval of an award of fees to certain appropriate parties. The proposed amendments include the titles of any party that may file an appearance in a protective proceeding.

- The current form of HB 2570 does not address the payment of costs and disbursements, the proposed amendments authorizes such to be paid from the funds of a person subject to a protective proceeding.
- The current form of HB 2570 attempts to supplement the provisions of ORS 20.075 for protective proceedings. The proposed amendments instead incorporate all of the attorney fee considerations under ORS 20.075, but in terms that are applicable and appropriate to protective proceedings.

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