



February 9, 2015

TO: Senator Floyd Prozanski, Chair
Senate Judiciary Committee
FR: Bob Joondeph, Executive Director
RE: SB 471

Disability Rights Oregon is Oregon's federally-funded *Protection and Advocacy* office and "the system described in ORS 192.517 (1)" as referenced in ORS 125.060 and other state statutes. DRO supports passage of SB 471.

One day, in 1990, DRO received an anonymous telephone call from a nurse working on the psychiatric ward of a Portland hospital. She was concerned about a patient who had been admitted to the ward by her husband with strict instructions not to allow the patient to have any visitors or communicate by phone or letter with anyone but him. The husband had presented the hospital with a court order of temporary guardianship giving him the authority to make all medical decisions for his wife. The husband had not been heard from for almost a week.

DRO investigated and found that the husband had obtained the court order without notice to his wife or a hearing. This was done in conformance with then Oregon law. Once she was hospitalized, he had cleaned out their joint banking accounts and left the state. DRO was able to secure the wife's release and brought suit seeking a declaration that the state law that permitted the appointment of a temporary guardian without notice or hearing was unconstitutional. Judge Helen Frye ruled that the statute violated our client's due process rights.

In 1993, the law was amended to require prior notice and opportunity to be heard to and for a person subject to a temporary guardianship. In 1995, the entire guardianship Oregon law was rewritten. Among other things, the rewrite expanded notice requirements as well as the role of the court visitor in order to protect against abuse of the law. It stopped short, however, of requiring mandatory hearings or the right to appointed counsel.

In numerous legislative sessions, DRO joined other advocates in supporting changes that would require hearings with appointed counsel for those subject to guardianships. Not meeting with success, DRO collaborated with the state Long Term Care Ombudsman to suggest a new oversight role for both our agencies in order to add protection against the most significant risks of a person being deprived of their freedom without thorough review.

The result was the 1999 passage of HB 2760 [Oregon Laws Chapter 775] which requires proposed and appointed guardians to notify DRO or the LTCO if s/he intends to place the protected person in a mental health facility, developmental disabilities facility or nursing home. The legislature did not provide any resources for our agencies to conduct this oversight function but it is one we have undertaken for the past sixteen years.

As every other state has recognized, guardianship can result in a massive deprivation of rights and liberty, usually for the remainder of a person's life. Meaningful oversight of appointed guardians by a court is difficult if not impossible unless there is a mechanism to reliably bring problems to a court's attention. This is why the role of an attorney is so important. His or her job is to understand the individual's condition and circumstances and to make sure the court is aware of the facts, the underlying legal standards and the practical alternates to guardianship or the appointment of a specific guardian. Without legal counsel or a hearing, the court is asked to make judgments based upon the report of a court visitor and the assertions of the petitioner without seeing the individual, witnesses or even the proposed guardian.

In the years DRO has conducted oversight, we have met many clients for whom the present procedural structure has not allowed them full participation in guardianship proceedings. Some report that they didn't understand the information provided by the court visitor, that they were particularly vulnerable, tired or disoriented when the court visitor met them, that they were subject to undue influence by family or others with a financial interest in their affairs, or that inappropriate conclusions about their abilities were drawn from their diagnosis. Most also report that once a guardian is appointed, there are high barriers, both procedurally and financially, to having the guardian removed or changed.

DRO supports passage of SB 471 as a modest step toward assuring that individuals who are most clearly in need of legal counsel in a guardianship proceeding have a lawyer to protect their freedom and rights and a forum to raise their concerns.

As a point of clarity, we direct this committee to Section 1, subsection (4)(a)(B) on line 15 of the printed bill. It states that the court shall appoint counsel when "an objection is filed to the *petition or motion* by any person." In Section 1, subsection (2), line 8 of the printed bill, a hearing must be held if an objection "*is made or filed.*" The amendment on line 8 conforms this section with ORS 125.075(2) which states that "*objections to a petition may be either written or oral.*" DRO suggests that Section 1, subsection (4)(a)(B) on line 15 of the printed bill either be amended or that lawmaker specifically state that it is intended to conform with ORS 125.075(2).

Thank you for this opportunity to testify on this important protection for the rights and liberty of Oregonians.