



May 6, 2015

TO: Senator Floyd Prozanski, Chair
Senate Judiciary Committee
FR: Bob Joondeph, Executive Director
RE: HB 2362

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 is a 501(c)(3) nonprofit.

DRO supports passage of HB 2362.

In 2013, the legislature enacted HB 2570 that lists factors for a court to consider when determining whether and how to award attorney fees in protective proceedings. The resulting statute, ORS 125.098, sets out ten factors for a court to consider when determining whether to award fees, and an additional six factors (for a total of 16 factors) to consider when determining the amount of fees to award. It also states that none of the 16 factors "shall be controlling in the court's determination regarding attorney fees."

HB 2362 would elevate one factor, "the benefit to the person subject to the protective proceeding by the party's actions in the proceeding", to the most important consideration for the court to consider.

This change would acknowledge that when disputes arise in protective proceedings, fees are often awarded out of the assets of the protected person. Many interests can be represented in these proceedings including the protected person, the fiduciary, family members and other interested persons. Sometimes the dispute can involve a challenge to the actions, or failures to act, of the fiduciary, whether a fiduciary should be replaced or whether the protected person continues to need a fiduciary.

If a protected person is dissatisfied with the performance of his or her fiduciary, or believes s/he no longer needs their assistance, the costs of bringing this concern to a court can be prohibitive due to the need to pay fees to all affected parties. While fees may be appropriate in such a case, any award should fully consider their effect upon the well-being of the protected person.

HB 2362 contains a simple reminder to courts and involved parties that protective proceedings exist to protect vulnerable individuals.

Thank you for this opportunity to testify.