Representative Jeff Barker
Representative Andy Olson
Representative Jennifer Williamson
Representative Brent Barton
Representative Mitch Greenlick
Representative Wayne Krieger
Representative Ann Lininger
Representative Bill Post
Representative Sherrie Sprenger

March 27, 2015

Dear Chairman Barker and Members of the House Committee on Judiciary:

I strongly urge a DO NOT PASS recommendation on House Bill 2349.

I offer testimony on this Bill as a Professional Fiduciary and a National Certified Guardian. I have practiced in Oregon for 26 years and had the privilege of working with Senator (then Representative) Dembrow, during the 2013 legislative session on the passage of HB3129 – the bill that requires that all Professional Fiduciaries and Primary Decision Makers be certified by the Center for Guardianship Certification.

I am a current member and Past President of the Guardian Conservator Association of Oregon (GCA), a non profit organization that provides education and training opportunities for professional and lay guardians who are working with vulnerable and at risk populations. GCA and the National Guardianship Association (NGA) each have established Standards of Practice and Code of Ethics for Professional Fiduciaries. National Certified Guardians are obligated to adhere to the NGA Standards of Practice.

I have the pleasure of working with other stakeholder groups on Guardianship and Conservatorship regulation and reform, including the Elder Law section of the Oregon State Bar, The National Guardianship Network WINGS workgroups, legislators, current and retired Probate Judges and numerous other Advocacy groups.

The authors of this bill represent the interests of trust/bank companies. This group has, for years, successfully lobbied that the services they provide are so are *distinctly different than those of a court appointed fiduciary,* that banks and trust companies are expressly exempted from the requirements under ORS 125, yet here, they are suggesting that certain disclosures, around which they operate, should be contemplated for court monitored protective proceedings. As statutory amendments are proposed to ORS 125, it is necessary that we examine to what end the protected person and their estate might be benefited or negatively impacted.

HB2349 proposes the following changes to ORS125:

1. A petition for an appointment of a Professional Fiduciary in a protected proceeding must include information on Professional Fiduciaries (including care managers who do not manage assets) relating to the their status as licensed broker-dealers, investment advisers, and salespersons regulated by Oregon Securities Law.

Response - To the extent that any Professional Fiduciaries actually are licensed investment brokers, this information may be stated, but the relevance or benefit is absent. The time and therefore, expense to the protected persons estate, for the reporting of this information is unsupported. If there is a suggestion of a link between being a licensed broker and a potential or existing conflict of interest for fees or commissions charged, this language does not address this concern. However, *ORS125.221* currently requires Professional Fiduciaries to disclose conflicts of interest, further negating the benefits of this language.

2. The petition must include a statement of:

a. *the total expected annual compensation of the fiduciary – direct or indirect,*
b. all fees charged by the fiduciary,
c. any revenue sharing,
d. the standard fees of investment brokers, AND how an investment broker assesses its commissions.
e. the method by which compensation is assessed, any commissions or monthly charges.

Response to item (a)

At the time a petition for a protected proceeding is filed, the annual compensation can not be determined or disclosed as the fiduciary has not been appointed yet and has no authority to discover or access information sufficient to determine the scope of the work.

Due to the very nature of the vulnerable populations served and the abundance of work required to identify and marshal assets and address any number of medical, familial, legal, abuse/risk and financial/property issues during the initial phase of the appointment, it is untenable to attempt to reliably estimate the time required to perform the duties and responsibilities of the fiduciary prior to being appointed.

Response to item (b) and (e)

This is already required in ORS125.240(1)(d)(A) This language could be expanded to incorporate a statement including commissions, monthly charges or other methods of assessment not already included in the statute.

Response to (c)

This language is vague and what concern it is attempting to address is unclear. Any revenue sharing arrangements would be income already required to be disclosed as either/both a conflict of interest under ORS125.221 or as a fee. If the authors of this bill or any

other observer of a fiduciary's activities believe there is an impropriety regarding the collection of fees, then the failure is not in the current statutory language but is the failure of the fiduciary to comply with already existing requirements. Such activity should be brought to the attention of the court so that a proper investigation and subsequent remedies might take place.

Response to (d)

Any portfolio management fees are already fully disclosed in the detailed annual accountings as an expense of the investment portfolio. It cannot be determined, at the time of a petition, if a portfolio even exists, never mind what the broker's fees may be.

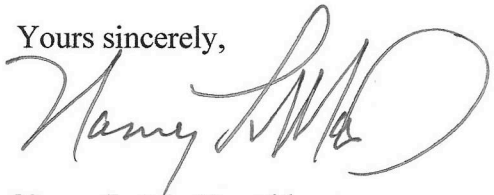
This language otherwise appears to require fiduciaries to audit and accurately report to the courts the profit-making computations of third-party broker-dealers, investment company or trust company's profit-generating activities (at the protected person's expense). This provides no additional protections for the public or persons protected by court order that fiduciaries do not already disclose under ORS 125.240 and ORS 125.221.

Significantly, and unlike trust or investment companies - guardians and conservators may not take their fee without notice to interested parties and without first obtaining prior court approval - ORS 125.095(2)(b). The professional fiduciary's fee is calculated and *submitted at the end of a period of work and is part of the public record.*

There is no reliable evidence before this Committee tending to show that this "fix" would benefit persons under a protective Order, and the additional costs of compliance are likely to be ordered chargeable to the protected person's estate.

The review of best practices of the Guardianship and Conservatorship processes – for lay persons, for the protected individuals and for Professional Fiduciaries is an evolving process. Adding the voices of other stakeholder groups can benefit the cooperative work that we see today with other common endeavors - such as: thoughtfully examining and refining ORS125 as to the roles and duties of guardians versus those of conservators (currently bundled as "fiduciaries"), clarify the appointment of corporate business entities as fiduciaries, define and identify responsible parties and primary decision makers and how/where to report a change of that party. The time, energy and commitment for these endeavors is occurring now so that vulnerable protected individuals may be better served and their rights well safeguarded. The trust company/banking institutions would be a welcome partner in these discussions.

Yours sincerely,



Nancy L. MacDonald,