

**HB1669**

**HD2**



*The Judiciary, State of Hawai'i*

**Testimony to the Senate Committee on Judiciary and Labor**

The Honorable Clayton Hee, Chair

The Honorable Maile S. L. Shimabukuro, Vice Chair

Friday, March 14, 2014, 10:00 a.m.  
State Capitol, Conference Room 016

by

R. Mark Browning  
Senior Judge, Deputy Chief Judge  
Family Court of the First Circuit

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**Bill No. and Title:** House Bill No. 1669, House Draft 2 Relating to Family Court

**Purpose:** Provides funds to the judiciary for an additional full-time family court judge position and staff positions for the family court of the first judicial circuit. (HD2)

**Judiciary's Position:**

The Judiciary submits this testimony in strong support of this bill.

The Preamble of this bill captures well the urgency of the need to fund an additional family district court judge and supporting staff in the family court of the first judicial circuit. This urgency must be viewed as urgency on behalf of the community rather than just the judiciary. The judges and staff of the family court are accustomed to the need to work at, over and above capacity. They have worked not only by smoothly and efficiently processing and hearing cases with great determination. They also continue to seek ways to streamline the process for the public. The judges and staff will continue to do so no matter what the outcome of this bill. The passage of this bill would greatly assist the Family Court of the First Circuit in providing critical judicial services to the community.

This family district court judge position was created by the Legislature five years ago. We respectfully submit that it is time to fund that position.



The Preamble already enumerates the startling overall numbers faced by the family court. Here, we will provide a deeper glimpse into those numbers so there can be a greater understanding of the context for the numbers.

“[T]he four juvenile division judges handled over two thousand one hundred juvenile and child abuse cases.” This number alone cannot capture the enormity of the work faced by these judges and family court staff. In 2013 alone, 892 juvenile cases and 1,221 child abuse and neglect cases were filed. The overall total of 2,113 cases reflect an exponential number of actual hearings; besides the initial hearings and trials, adjudicated cases require many subsequent hearings, over a number of subsequent years. In addition, these 4 judges also manage and preside over our successful “specialty” courts: Juvenile Drug Court, Zero to Three Court, Girls Court, and the specialized drug court for parents in child abuse and neglect cases. In July of this year, we will also take on the Voluntary Care to 21 Court - - mandated by the Legislature but enacted without funding.

“[T]he three special division judges handled eleven thousand five hundred restraining order, paternity, adoption, involuntary commitment, and guardianship hearings.” Here is the simple and startling math: 11,500 divided by 3 equals 3,833 (per judge). These are not simple hearings. Even when the hearing is not a trial, every hearing represents a family with all the complexities found in any family, except these families have additional burdens that require court actions, such as domestic violence.

“[T]he three domestic division judges handled approximately four thousand divorce and custody cases.” As with the other divisions, domestic division judges also have more hearings than just the number of cases in addition to taking every opportunity to help the parties reach agreement in order to avoid court battles. The contested pre-trial and post-trial hearings are often full evidentiary hearings and the trials are always evidentiary hearings--similar to the cases in the civil division but without sufficient staff support, no jury making the dispositive decisions, and not enough time. Divorce cases, like civil cases, can involve millions of dollars and multiple pieces of property. Unlike civil trials, divorce trials also involve gut-wrenching child custody decisions.

Every hearing and every case in family court require preparation time, time spent on dealing with non-hearing motions and requests, and many other duties that the public does not witness. For example, each judge takes a turn as the 24 hours off-duty on-call judge for emergency mental health commitments. Yet, family court judges and staff are nevertheless able to provide quality services to the community to create solutions for problems facing our kids, speak at schools, and volunteer their time, after-hours, for mock trials and moot courts. Although there are delays due to sheer overwhelming numbers, these same realities are felt across the nation and many other courts have far graver delays. The fact that we are doing as well as we do is a testament to the hard work and creativity of our current judges and staff. Time and again, the judges and staff of family court step up to demonstrate their resolve to serve the



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Senate Committee on Judiciary and Labor  
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community with the available resources. It is now crucial for the Legislature to expand those resources for the good of the community.

We note, however, that any appropriation from this bill should be in addition to the Judiciary's current budget requests. If the Legislature is inclined to move forward with this funding, we would respectfully request that the appropriation in Section 2 of the bill be amended to read "\$299,016." This amended figure reflects salary levels for the district family court judge and staff that will take effect on July 1, 2014.

We urge favorable consideration for the passage of this bill. Thank you for the opportunity to testify.

DEPARTMENT OF THE PROSECUTING ATTORNEY  
**CITY AND COUNTY OF HONOLULU**

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**THE HONORABLE CLAYTON HEE, CHAIR**  
**SENATE COMMITTEE ON JUDICIARY AND LABOR**  
**Twenty-Seventh State Legislature**  
**Regular Session of 2014**  
**State of Hawai'i**

March 14, 2014

**RE: H.B. 1669, H.D. 2; RELATING TO FAMILY COURT.**

Chair Hee, Vice-Chair Shimabukuro and members of the Senate Committee on Judiciary and Labor, the Department of the Prosecuting Attorney of the City and County of Honolulu submits the following testimony in support of House Bill 1669, H.D. 2, if such funds are provided to the Family Court's Criminal Division of the First Circuit, to conduct jury trials for misdemeanor domestic violence cases.

In 2012, the Department included in its legislative package—and strongly advocated for the passage of—two companion bills (H.B. 2351 & S.B. 2949), which would have appropriated grant-in-aid funds to the Judiciary for the hiring of two judges and necessary staff in the Family Court of the First Circuit, to conduct jury trials for misdemeanor domestic violence cases. Given the backlog of domestic violence cases in our courts—then and now—our office is gravely concerned by the number of cases that end up getting dismissed simply because there are not enough Family Court judges to preside over the cases awaiting trial.

While our bills were not passed in 2012—and no additional judges were added to the misdemeanor domestic violence courts—additional funding was ultimately budgeted to the Judiciary that year, to fill some then-existing-but-vacant judge positions within Family Court. While the judge positions to be filled would not specifically hear misdemeanor domestic violence cases, the Judiciary maintained that filling these vacant positions would alleviate pressure on the entire Family Court system, thus allowing those judges who do hear domestic violence cases to focus more of their time on these cases.

Since 2012, the Department has seen no noticeable lessening of the backlog of domestic violence cases in Family Court, nor any noticeable decrease in the number of cases that get dismissed while awaiting trial. While the Department appreciates efforts to alleviate overall caseloads at Family Court, the Department feels that a certain level of importance should be

given to domestic violence cases, particularly because many domestic violence victims are willing to proceed with prosecution, but are then forced to appear at court time and time again for this purpose; on top of this hardship, the dismissal of these cases can cause significant setbacks in the victims' recovery and/or healing process.

For these reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu supports H.B. 1669, H.D. 2, if the appropriation is limited to hiring a judge and staff for misdemeanor domestic violence cases. Thank you for the opportunity to testify on this matter.



**Office of the Public Defender  
State of Hawaii  
Timothy Ho, Chief Deputy Public Defender**



**Testimony of the Office of the Public Defender,  
State of Hawaii to the Senate Committee on Judiciary & Labor**

February 19, 2014, 3:00 p.m.

H.B. No. 1669, HD2: RELATING TO FAMILY COURT

Chair Hee and Members of the Committee:

This measure adds one full-time district court judge and additional support staff to the Family Court of the First Circuit. The Office of the Public Defender supports this measure.

Family court judges preside over a varied but critical subject matter. They hear divorce cases, CPS, adoptions, juvenile proceedings and involuntary commitment hearings, to name a few. Their calendars are heavy, in volume and emotion. A full-time family court judge is preferable to per-diem judges because family court cases tend to have a higher number of scheduled court hearings than their counterparts in the circuit and district courts. An additional full-time judge will allow more cases to have a single judge follow the case from start to finish.

Full-time judges are selected by the chief justice from a list of names provided to him by the Judicial Selection Commission, with Senate confirmation. Per diem judges are not subjected to any confirmation or selection process, and are chosen by the chief justice. The cost for funding this position will be offset by a similar reduction in salary, which would have been paid to a per diem judge.

We support the passage of H.B. No. 1669, HD2. Thank you for the opportunity to be heard on this matter.

**FAMILY LAW SECTION  
OF THE  
HAWAII STATE BAR ASSOCIATION**

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March 13, 2014

TO: Senator Clayton Hee, Chair  
Senator Maile S. L. Shimabukuro, Vice-Chair  
Committee on Judiciary and Labor

FROM: Dyan K. Mitsuyama, Legislative Committee Chair of the  
HSBA Family Law Section  
E-Mail: [dyan@mitsuyamaandrebman.com](mailto:dyan@mitsuyamaandrebman.com)  
Phone: 545-7035

HEARING DATE AND TIME: March 14, 2014 at 10:00 a.m.

RE: Testimony in Support of HB1669 HD2

Good Morning Senator Hee, Senator Shimabukuro, and members of the Committee on Judiciary and Labor.

My name is Dyan K. Mitsuyama, a licensed attorney here in the State of Hawaii. I have practiced here in Hawaii for about 15 years now mostly concentrating in Family Law matters.

Today I not only speak for myself, but for the Family Law Section (FLS) of the Hawaii State Bar Association, which is comprised of approximately 136 licensed attorneys statewide all practicing or expressing an interest in practicing family law. I serve as the current Legislative Committee Chair as well as Treasurer of FLS.

The Family Law Section is in strong support of HB 1669 HD2 with one minor criticism as to the effective date. HB1669 HD2 would provide funding for an additional Family Court judge and staff in the Family Court of the First Circuit, which is much needed now.

It is our understanding that the Family Court intends to use this funding for an additional Judge in the Domestic Division, which currently has only three (3) Judges that handle approximately 4,000 cases each year. Another Judge in this division is much needed.

In 2013, those Domestic Division Judges handled 4,560 hearings and conferences. There are four (4) Juvenile Division judges who handled 2,113 cases and 7,339 hearings in 2013. There are three (3) Special Division judges who handled 11,500 hearings in 2013. Of



course, judges also need to process paperwork and handle other case-related matters (such as reviewing files and reports). This work is not done during a hearing and must be performed at other times.

Clearly, the sheer volume of cases and hearings handled by the Family Court each year requires each judge to carry a heavy caseload. Increasing caseloads cause delays in case processing and overwhelming backlogs in the Court's ability to hold hearings and conferences. Divorce cases last much longer than they need to because of the court's backlog. For example, one could be ready to go to trial today, but the court could not schedule one until at least 4-6 months from today.

And even if there is a trial or a hearing scheduled today, there is no guarantee it will be concluded today. This affects parties and witnesses who have to appear in Family Court. Many have to take off from work for the entire day because we, as family law practitioners, cannot anticipate when/if a hearing will be heard on that day or at what time. On occasions, participants have to return on another day because the Judges are not able to conclude hearings or trials in the time given. This causes not only extreme emotional distress to the litigants who wait patiently for results or Judges' rulings, but it significantly increases the cost of litigation while the parties and/or witnesses lose time/money away from work.

Another full-time Family Court judge would definitely help cure some of the delays that currently exist in Family Court cases.

Because the backlog exists now, the criticism we have is the effective date should be July 1, 2014, not July 1, 2030.

Thank you for the opportunity to testify in support of HB1669 HD2.

*NOTE: The comments and recommendations submitted reflect the position/viewpoint of the Family Law Section of the HSBA. The position/viewpoint has not been reviewed or approved by the HSBA Board of Directors, and is not being endorsed by the Hawaii State Bar Association.*



TO: Chair Clayton Hee  
Vice Chair Maile Shimabukuro  
Members of the Committee

FR: Nanci Kreidman, M.A.  
Chief Executive Officer

RE: H.B. 1669 HD2 Support

Aloha. Please accept this testimony in support of the Bill before the Committee to support a currently unfunded position for a Judge in the First Circuit Family Court.

The Domestic Violence Action Center has its entire legal practice in the Family Court of the First Circuit. The calendars are unbearably crowded with intense matters, impacting the most serious issues in people's lives.

It has always struck us that there is insufficient time and extraordinary pressure on the judges to make the right decisions. We must ask how that can be done with the volume of cases they must assume responsibility for.

Judges are people, too. The rancor and the suffering, the factors they must weigh and the burden of the decisions they must make are enormous. The funds requested would be a very good investment.

Thank you very much for your consideration.

**TESTIMONY OF THOMAS D. FARRELL**  
Regarding House Bill 1669, HD 2, Relating to Family Court

Committee on Judiciary and Labor  
Senator Clayton Hee, Chair  
Friday, March 14, 2014 10:00 a.m.  
Conference Room 016, State Capitol

Dear Senator Hee and Members of the Committee:

I strongly support HB 1669, HD 2 which would establish and fund an additional Family Court Judge in the First Circuit, together with the usual complement of judge's staff.

Litigants in the Family Court on Oahu are faced with the tyranny of time. It takes far too long to get their cases heard by a judge, and when they finally get to court, the judge seldom has enough time to devote to the case. Imagine, for example, an important hearing on temporary custody of a child that the parties have to wait six or eight weeks for, and then finding that the judge has five or six similar cases that day on a docket that runs only three hours. This is no way to run a court, but there are only so many judges and so many hours in a day.

We can't expect you to add hours to the day, but you can surely add judges. Frankly, we could easily double the number of Family Court judges, but all of us understand that state funds have many worthy claimants. Even the addition of one judge, if assigned to the domestic division where I practice, would give us a third again the capacity that we presently have. Stated differently, we would spread 5,000 divorce cases among four judges, instead of three. That would be a significant improvement.

You don't need to do this for lawyers like me, and I'm not writing for my own benefit. This is about my clients, who aren't government or corporate big shots---they're average people and our fellow citizens. Many of them are in crisis and depend on the timely intervention of the judicial system that their taxes support. This would be a wise allocation of their taxes, and will directly impact hundreds of families.

Please report favorably on this bill, and in your discussions with your colleagues on the money committees, please give this your highest priority.

Thank you for your consideration.

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Divorce ♦ Paternity ♦ Custody ♦ Child Support ♦ TROs ♦ Arbitration  
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**Cc:** [breaking-the-silence@hotmail.com](mailto:breaking-the-silence@hotmail.com)  
**Subject:** \*Submitted testimony for HB1669 on Mar 14, 2014 10:00AM\*  
**Date:** Wednesday, March 12, 2014 11:13:45 AM

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**HB1669**

Submitted on: 3/12/2014

Testimony for JDL on Mar 14, 2014 10:00AM in Conference Room 016

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Dara Carlin, M.A.	Individual	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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TO: Senator Clayton Hee, Chair  
Senator Maile S.L. Shimabukuro, Vice-Chair  
Senate Committee on Judiciary and Labor

FROM: Jessi L.K. Hall  
E-Mail: [jhall@coatesandfrey.com](mailto:jhall@coatesandfrey.com)  
Phone: 524-4854

HEARING DATE: March 14, 2014 at 10:00 a.m.

RE: Testimony in Support of HB1669, HD2

Good day Senator Hee, Senator Shimabukuro, and members of the Committee. My name is Jessi Hall. I am an attorney whose practice concentrates in Family Law. I am also a past Chair of the Family Law Section of the Hawaii State Bar Association. I am writing in support of HB1669, HD2, regarding funding for a new Family Court judge.

In my fourteen years of practicing in Family Court I have personally witnessed the number of filings and delay in hearings dramatically increase. It is difficult for litigants to wait months for an opportunity for their case to be heard. This delay is an injustice when you consider that Family Court is dealing with one of the most important things in this world, people's families. How these cases are handled often have a direct effect on the children. Many children in the juvenile system come from broken homes.

Delays in the system cause parents to go without seeing their children, parents and/or the children become financially strapped, and/or assets not being protected. To the extent that this delay can be reduced would have a direct effect on other state resources, to include but not limited to, the judiciary and public assistance.

Family Court matters are emotional cases that touch every part of our community. In 2013, approximately 50,000 litigants came to Family Court. Family Court has far more motions and cases filed than any other court in Hawaii and the number is increasing each year.

Most Family Court hearings are evidentiary hearings. Judges need to take, hear, and consider testimony and evidence and currently they often do not have enough time to do so, causing hearings to be continued prolonging the process further. Judges are only as good as the information presented to them in court. In order to receive all pertinent testimony and evidence and make informed decisions, Judges need more court time than they are currently given. A new Family Court Judge position would give Judges more court time and the workload would be spread out.

In the Family Court of the First Circuit (Honolulu), there are currently three Domestic Division Judges who handle approximately 4000 cases each year. In 2013, there were about 630 motions to set hearings and 630 settlement conferences. Additionally, there were approximately 3,300 pre and post-divorce hearings in 2013. At one point in 2013, the wait time for a post-divorce motion hearing was 5 months. The Family Law Bar is so concerned about the situation that several are volunteering their time to act as Settlement Masters to assist in an attempting to relieve the docket. Others volunteer their time to assist in mediating cases that are set for trial. Unfortunately though, all of this volunteer time is only a temporary fix.

The above numbers depict the sheer volume of cases that Family Court judges hear each day. Funding the current existing, but unfunded position for a Family Court judge would decrease the wait time for hearings and give judges more time in court to consider evidence with their increasingly heavy caseload.

It is for all of the above reasons that I believe it is essential that funding be provided for the appointment of a new Family Court judge. Thank you for the opportunity to testify in favor of HB1669, HD2.

March 13, 2014

TO: Senator Clayton Hee, Chair  
Senator Maile S.L. Shimabukuro, Vice-Chair  
Senate Committee on Judiciary and Labor

FROM: P. Gregory Frey  
E-Mail: [pgfrey@coatesandfrey.com](mailto:pgfrey@coatesandfrey.com)  
Phone: 524-4854

HEARING DATE: March 14, 2014 at 10:00 a.m.

RE: Testimony in Support of HB1669, HD2

Aloha, Senator Hee, Senator Shimabukuro, and members of the Committee. My name is P. Gregory Frey, Managing Attorney of Coates & Frey, AAL, LLLC, Hawaii's largest Family Law firm. I am also a former Chair of the Family Law Section of the Hawaii State Bar Association, and former Board member of the Hawaii State Bar Association. I have practiced for about 27 years in Hawaii's Family Court. I am writing in support of HB1669, HD2, regarding funding for a new Family Court judge.

My firm handles more divorces every year than any other firm in Hawaii. It is difficult for our clients that have to wait for months for an opportunity for their case to be heard. This delay is an injustice when you consider that Family Court is dealing with one of the most important things in this world, people's families. Delays cause parents to go without seeing their children, parents and/or the children become financially strapped, and/or assets not being protected.

Family Court matters are emotional cases that touch every part of our community. In 2013, approximately 50,000 litigants came to Family Court. Family Court has far more motions and cases filed than any other court in Hawaii and the number is increasing each year.

Most Family Court hearings are evidentiary hearings. Judges need to take, hear, and consider testimony and evidence and often do not have enough time to do so, causing hearings to be continued prolonging the process further. Judges are only as good as the information presented to them in court. In order to receive all pertinent testimony and evidence and make informed decisions, Judges need more court time than they are currently given. A new Family Court Judge position would give Judges more court time and the workload would be spread out.

Senator Clayton Hee, Chair  
March 13, 2014  
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The above numbers depict the sheer volume of cases that Family Court judges hear each day. Funding the current existing, but unfunded position for a Family Court judge would decrease the wait time for hearings and give judges more time in court to consider evidence with their increasingly heavy caseload.

It is for all of the above reasons that I believe it is essential that funding be provided for the appointment of a new Family Court judge. Thank you for the opportunity to testify in favor of HB1669, HD2.



**TESTIMONY OF DEAN A. SOMA**  
Regarding House Bill 1669, Relating to Family Court

Committee on Judiciary and Labor  
Senator C Clayton Hee, Chair  
Senator Maile S.L. Shimabukuro, Vice-Chair

Friday, . March 14, 2014 at 10:00 a.m  
Conference Room 016, State Capitol

From: Dean A. Soma  
E-Mail: [dsoma@coatesandfrey.com](mailto:dsoma@coatesandfrey.com)  
Phone: 524-4854

Dear Senator Clayton Hee, Senator Maile S.L. Shimabukuro and members of the Committee:

My name is Dean A. Soma and I have been a family law attorney at Coates & Frey, AAL, LLLC for many years. I have also been on the Family Court/Hawaii State Bar Association-Family Law Section Civil Unions Task Force and also participated in the Governors Civil Unions Task Force. I am writing in support of HB 1669, regarding funding for a new Family Court judge.

Working for the largest family law firm in Hawaii, we handle more divorces a year than any other firm in Hawaii. Many times our clients would be frustrated waiting for months for their cases to be heard. Such delays impact the entire family, placing not only the divorcing parties but also the children in limbo. Decisions regarding child custody and visitation, support for the children and possibly the non-working spouse, and other crucial and time-sensitive matters may be heard months after filing.

With approximately 10% of Hawaii's residents filing for divorce every year, the backlog can be enormous. In 2013, approximately 50,000 litigants went through Family Court, and with numbers on the rise, due in part to more people getting married under the new Marriage Equality Act, the Family Court hears more motions and cases than any other court in the State. In 2013, our three domestic division judges on Oahu handled approximately four thousand divorce and custody cases. Because of this, in 2013, a post-decree motion was set for hearing five months after filing.

To alleviate this backlog and to allow the Family Court to properly hear and evaluate such cases-cases which may have lasting impacts upon Hawaii's families and children, it is imperative that the legislature fund an additional family court judge and the support staff necessary in the first judicial circuit. The will assist in Family Court meeting the heavy caseloads to make rulings on important matters in an expeditious and cost-effective matter.

For all the above reasons, I believe it is necessary that funding be provided for the appointment of a new Family Court judge. Thank you for the opportunity to testify in favor of HB 1669.