



*The Judiciary, State of Hawai‘i*

**Testimony to the Thirty-First Legislature, Regular Session of 2022**

**Senate Committee on Judiciary**  
Senator Karl Rhoads, Chair  
Senator Jarrett Keohokalole, Vice Chair

Thursday, March 17, 2022, 9:35 a.m.  
Conference Room 016 & Videoconference

by  
Matthew J. Viola  
Senior Judge, Deputy Chief Judge  
Family Court of the First Circuit

**WRITTEN TESTIMONY ONLY**

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**Bill No. and Title:** House Bill No. 1841, H.D. 2, Relating to the Judiciary

**Purpose:** Increases the rate of compensation and maximum allowable amounts per case for court-appointed counsel and guardian ad litem. Appropriates funds. (HD2)

**Judiciary's Position:** The Judiciary offers this testimony in support of House Bill No. 1841, H.D. 2.

Guardians ad litem (GALs) perform a critical role in many family court cases, including, for example, child abuse and neglect cases, involuntary hospitalization proceedings, and assisted community treatment proceedings. The subjects of these proceedings are among the most vulnerable members of our community and they frequently are unable to advocate for themselves or meaningfully participate in court proceedings that may significantly impact their lives. It is in our community's interest to attract and retain competent individuals to act as GALs to represent their best interests. One important way to help accomplish this goal is to ensure that GALs are adequately compensated for their work.

Presently, GALs are paid at rates prescribed under Hawai‘i Revised Statutes (HRS) § 571-87, which sets their compensation at \$60 per hour for out-of-court work and \$90 per hour for in court



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work. An enhancement in the rates at which the Judiciary can compensate GALs should help to increase the pool of individuals willing and able to perform this critical work by ensuring that they are adequately compensated for their work.

Paying GALs more will, of course, require additional funding. We therefore believe it was appropriate for the House Finance Committee to retain an appropriations clause in HB1841 H.D. 2. We also understand the Finance Committee's decision to leave the hourly compensation rates unspecified at this juncture. We urge the Judiciary Committee, however, to reinsert the hourly compensation rates contained in HB1841 H.D. 1, as well as the additional \$2.3 million appropriation to ensure that the increases in GAL compensation and parent counsel contracts are adequately funded.

For the Committee's awareness, this does not address reductions (approximately \$2.75m in First Circuit alone) to budgets for guardians ad litem and court-appointed counsel that have been necessitated by reduced appropriations during the pandemic. We would of course be open to the restoration of that funding in whole or in part, if possible.

The Judiciary understands that the additional appropriations amount is not intended to supplant the Judiciary's existing funding and budget requests.

Thank you for the opportunity to provide testimony on this matter.

**HB-1841-HD-2**

Submitted on: 3/14/2022 3:47:50 PM

Testimony for JDC on 3/17/2022 9:35:00 AM

Submitted By	Organization	Testifier Position	Testify
Marilyn Yamamoto	Testifying for Hawaii Family Advocacy Team	Support	Written Testimony Only

Comments:

Senator Rhoads,

*When one of the federal acts to provide money to the states for foster care, a penner made the comment that "it's up to the parent lawyers to be the checks and balances." Unfortunately, there was no foresight on the number of families who would qualify for court appointed representation. The result is this:*

*Parents*

*\_\_are advised to stipulate to abuse or neglect, to do what CPS wants, to get their children returned faster*

*\_\_are not advised that they have the right to a trial/adjudication.*

*\_\_experience lack of return phone calls*

*\_\_hardly ever have copies of the court reports prior to 5 minutes before each hearing and have no idea that they have the right to dispute caseworker allegations*

*\_\_have no idea that a confirmed disposition of abuse or neglect means entry onto the state Child Abuse Registry*

*\_\_relate stories of difficulty in getting answers to concerns from their caseworkers, when they don't realize that it's the duty of their lawyer to communicate with CWS*

The current fee of 120 dollars per month per case is outrageous. That doesn't even cover a round-trip to the court for a single hearing.

Previous testimonies seemed to focus more on the role of the GAL. From my perspective, there are parents in the system whose issues, if any, did not rise to the level of foster care and court involvement.

The legislature wants to fund additional caseworkers for CWS in light of the recent Ariel case. I want CWS to be trained and comply with 4th amendment rights to prevent needless child

removals that inflate the number of court cases. If I were given a third option, my choice would be to significantly increase the stipend for court appointed lawyers in child welfare cases.

**I strongly support HB1841 to provide the constitutional right of every accused citizen to a diligent defense.**



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Executive Director

## TESTIMONY ON HB1841 HD2

Committee on Judiciary

Senator Karl Rhoads, Chair  
Senator Jarrett Keohokalole, Vice-Chair

March 17, 2022 at 9:35 a.m.

The Legal Aid Society of Hawaii submits testimony in strong support of HB1841 HD2 – Relating to the Judiciary. This bill would increase the compensation to be paid to appointed counsel and guardian ad litem and provide an appropriation of funds for the purchase of service contracts for guardian ad litem and court-appointed counsel. I apologize that I am unable to appear to testify.

Legal Aid provides guardian ad litem services on ‘Oahu, Hawai‘i Island and in Maui County and also provides court-appointed counsel representation to parents on Kauai, Hawai‘i Island and in Maui County. We have been providing these services to the state for almost 25 years and are the only statewide agency providing this breadth of services. These contracts provide a critical piece in ensuring the safety of children in child welfare cases by providing an independent fact finder in child welfare cases who is sole interest is the welfare of the child as required by state and federal law.

We are in support of this bill as contracts to provide these services were significantly cut in FY21 and continue to be in FY22. In the First Circuit, where contracts for guardian ad litem services are provided by courtroom, the contract was cut by 30%, retroactively to July 1, 2020 in January 2021. This cut resulted in a significant loss of funding to provide services and an effective drop in rate to approximately \$29/hour with respect to the actual hours our dedicated staff commits to providing these services. This cut also led to the loss of independent guardian ad litem services who we contracted to provide services in conflict cases, as they could no longer afford to provide this critical service.

In addition, adjustments were made to the billing structure in the Third Circuit, which we understand led to the loss of a number of guardian ad litem and parent counsel attorneys.

Guardian ad litem services are appointed for a child to serve throughout the pendency of the child protective proceeding (HRS 587A-16). The statute further requires that guardian ad litem services visit with the child at least once every three months as well as submit reports to the court every six months.

In actuality, depending on the status of the case or the breadth of concerns for the child, we may write reports on a more frequent basis (once every 2-3 months) or visit with the child multiple times per week or once a month. In addition to our meetings with the children, we participate in various meetings throughout the pendency of the case: Ohana Conferences, Department of Education IEP or 504 meetings, Department of Health treatment team meetings (which occur on a monthly basis). We also have regular contact with individuals relating to the child: their medical providers, educational contacts (counselors, teachers, principals), the resource caregivers, the social worker, attorney general and the parents (and parents’ counsel) in the case.

The role of the guardian ad litem is critical to ensuring the safety of children entrusted to the state and who have been victims of child abuse and neglect. Not paying an adequate rate for these services, puts children at risk.

In addition, the role of parent counsel is important to helping parents who are also in crisis better understand their rights and responsibilities to create a safe family home for their children. Some of the most meaningful cases that our staff does is working with parents who take enormous steps to become clean, end relationships that have impacted the safety of their children, and make other gains to regain custody of their children and end state intervention. Paying adequate rates for counsel to really put in the time to help parents achieve these goals is also critically important.

As such, we ask that this Committee continue to support this bill.

Thank you for this opportunity to provide testimony.

Sincerely,

M. Nalani Fujimori Kaina  
Executive Director



**TESTIMONY**  
Senate Committee on Judiciary  
**Hearing: Thursday, March 17, 2022 (9:35 a.m.)**

**TO:** The Honorable Karl Rhoads, Chair  
The Honorable Jarrett Keohokalole, Vice Chair

**FROM:** Shannon S. Sheldon  
HSBA President

**RE:** House Bill No. 1841, HD2  
Relating to the Judiciary

Guardians Ad Litem are appointed by a court to act in a court proceeding on behalf of an individual, usually a child or an adult who is deemed to be incapable of representing oneself. A Guardian Ad Litem is a factfinder for the court, not an advocate, and must always consider the best interests of the individual being represented. Guardians Ad Litem are instrumental in the fair, timely, and equitable disposition of matters of individuals identified by the court.

This bill reviews the hourly fees and the maximum case management fees of Guardians Ad Litem. Specifically, as suggested in a prior draft, the fees would be increased as follows:

- \$90 an hour for in-court services provided by a licensed attorney.
- \$60 an hour for out-of-court services provided by licensed attorney.
- \$4,500 maximum for pre-disposition.
- \$4,500 maximum for post-disposition review.

Guardians Ad Litem covered by this bill would be those appointed to represent the interests of the following:

- Children; or
- Incapacitated adults in probate proceedings and family court matters such as parentage, or divorce or separation proceedings.

Attorneys licensed to practice law in Hawaii have long been under-compensated for the vital work they do on behalf of individuals deemed by the court in need of neutral objective services. This measure is needed to maintain court lists of qualified and available individuals for appointment, especially on the Neighbor Islands where the private practice attorney populations are small in comparison to Oahu.

The HSBA requests that new funding be provided for these court appointments, which will not detract from existing appropriations or the Judiciary’s priorities in its 2022 legislative package.

Thank you for the opportunity to submit comments in **STRONG SUPPORT** of this bill.

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