



The Judiciary, State of Hawai‘i

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

House Committee on Judiciary & Hawaiian Affairs

Representative Mark M. Nakashima, Chair
Representative Scot Z. Matayoshi, Vice Chair

Wednesday, February 16, 2022, 2:00 P.M.
State Capitol, Conference Room 325
VIA VIDEOCONFERENCE

WRITTEN TESTIMONY ONLY

by

Matthew J. Viola

Senior Judge, Deputy Chief Judge
Family Court of the First Circuit

Bill No. and Title: House Bill No. 1841, 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.

Judiciary's Position: The Judiciary offers this testimony in support of House Bill No. 1841.

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 § 571-87, which sets their compensation at \$60 per hour for out-of-court work and \$90 per hour for in



House Bill No. 1841, Relating to the Judiciary
House Committee on Judiciary & Hawaiian Affairs
Wednesday, February 16, 2022 at 2:00 p.m.
Page 2

court 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. The Judiciary appreciates the appropriation of an additional \$2,300,000 to fund the increase in purchase of service contracts including GAL and court-appointed counsel contracts pursuant to HRS chapter 571, and the Judiciary understands that this additional sum is not intended to supplant the Judiciary's existing funding or budget requests.

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



LEGAL AID
SOCIETY OF HAWAII

Telephone: (808) 536-4302 • Fax: (808) 527-8088
Mailing Address: P.O. Box 37375 • Honolulu, Hawaii 96837-0375
924 Bethel Street • Honolulu, Hawaii 96813

J. Blaine Rogers, Esq.,
President, Board of Directors

M. Nalani Fujimori Kaina, Esq.,
Executive Director

TESTIMONY ON HB1841

Committee on Judiciary & Hawaiian Affairs

Representative Mark M. Nakashima, Chair
Representative Scot Z. Matayoshi, Vice-Chair

February 16, 2022 at 2:00 p.m.

The Legal Aid Society of Hawaii submits testimony in strong support of HB1841 – 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 were significantly cut in FY21 and continue 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 who were 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 guardian ad litem and parent counsel attorneys.

Guardian ad litem 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 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.

During the first shutdown, our guardian ad litem did not stop working and meeting our statutory requirements. We found ways to ensure that children remained safe and that we knew how the pandemic was impacting the children in the child welfare system. To this end, we also headed up a campaign to get reusable masks donated



www.legalaidhawaii.org
A UNITED WAY AGENCY

so that each and every child in the foster care system had at least one. Our work did not stop because of the pandemic and became even more critical.

As parent counsel, our staff is dedicated and committed to working with parents to explain to them how the child welfare system works and to provide representation. While our representation includes defending parents in these cases, so much of this work is between hearings and helping parents get the services they need to provide a safe family home for their children.

As such, we are in strong support of this bill.

Thank you for this opportunity to provide testimony.

Sincerely,

M. Nalani Fujimori Kaina
Executive Director

HB-1841

Submitted on: 2/15/2022 1:50:17 PM

Testimony for JHA on 2/16/2022 2:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Jacob Delaplane	Law Office of Jacob G Delaplane	Support	Yes

Comments:

I support this Bill. The Judiciary cut compensation for Guardians Ad Litem by 30% and Parent's Counsel by 19% in December 2020 due to "an emergency need due to COVID-19". This cut only occurred in the First Circuit. All other Circuits maintained their pre-covid pay rates. Shortly after this cut took place, the judiciary's budget was restored due to availability of Federal COVID relief funds.

Although the judiciary's budget was restored, the judiciary of the First Circuit, without justification or explanation, maintained the emergency covid rate pay rates for appointed Guardian Ad Litem and Parent Counsel. Both Guardian Ad Litem and Parent Counsel have asked the Judiciary to meet to discuss this unjustifiable pay cut, but the Judiciary has repeatedly refused to meet or discuss this matter with these groups. Legislative intervention is necessary, as it appears that the Judiciary has used the Covid-19 pandemic as a pretext to cut pay rates for an already underpaid service provided by Court-Appointed Counsel. Due to the cut, the Judiciary has already lost several skilled and experienced Counsels, as the extremely low "covid emergency rate" is far too low to justify continued appointment on these cases.

There are already too few attorneys willing to accept appointments for this important and challenging area of law. Now that pay has been cut well-below previous statutory levels, attracting new experienced and skilled attorneys to this area is virtually impossible and maintaining the few practicing attorneys in this area has become increasingly difficult. Passing this Bill would be extraordinarily helpful in resolving both of these issues.

LATE

HB-1841

Submitted on: 2/15/2022 6:54:43 PM

Testimony for JHA on 2/16/2022 2:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Rebecca Lester	Individual	Support	No

Comments:

My name is Rebecca Lester and I have been a court-appointed GAL for approximately three years and a court-appointed parent counsel attorney for approximately five years. In December 2020, the parent counsel contract was cut by 19% due to the COVID pandemic and anticipated judiciary budget cuts. These budget cuts never occurred and the parent counsel contract rate was never restored, to this date, to its original amount. My GAL contract amount was also significantly reduced by approximately the same amount. It is my understanding that these contract reductions have only occurred on the island of Oahu and not statewide.

A group of parent counsel court-appointed attorneys have asked, over the years, to meet with the first circuit family court to discuss our reduced contract rate and other issues related to the contract, but our requests for a meeting have been ignored.

Obviously from recent events, parent counsel attorneys and GALs are faced with many difficult challenges and decisions in handling issues regarding the best interest of the child. Much time and dedication is devoted by these individuals to ensure that the best interest of the child is being met. Unfortunately, due to the reduced pay as court-appointed counsel or GAL many experienced GALs and attorneys left for more profitable positions. Being a GAL is not something one can do right out of law school and no training is offered by the judiciary to give new court appointed counsel or GALs the necessary tools to handle the difficult issues involved in CPS cases. Specialized knowledge and experience is required to be a court appointed parent counsel attorney and/or GAL. Moreover, there isn't a long line of people out the door looking to do this type of work. As such, I am in support of this bill to increase the rate for the people who have dedicated their lives and career in pursuit of the best interest of a child.