



The Judiciary, State of Hawai‘i

Testimony to the Thirty-Second State Legislature 2024 Regular Session

Committee on Judiciary
Senator Karl Rhoads, Chair
Senator Mike Gabbard, Vice Chair

Tuesday, March 12, 2024 at 10:00 a.m.
Hawai‘i State Capitol, Conference Room 016

by

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

Bill No. and Title: House Bill No. 1913, H.D. 1, Relating to Compensation for Court-Appointed Representation.

Purpose: Increases the rate of compensation and maximum allowable amounts per case for court-appointed counsel and guardians ad litem in family court proceedings. Appropriates funds.

Judiciary's Position:

The Judiciary offers this testimony in strong support of House Bill No. 1913, H.D. 1.

GALs perform a critical role in a wide range of family court cases. They represent the best interests of children who have been abused or neglected in Child Protective Act (CPA) cases brought under Hawai‘i Revised Statutes (HRS) Chapter 587A. They are appointed in many involuntary hospitalization proceedings initiated pursuant to HRS § 334-60.3 and in all assisted community treatment proceedings initiated pursuant to HRS § 334-123. They may also be appointed to represent the best interests of children child custody matters, such as in divorce and paternity cases. 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. GALs give a voice to and advocate for their best interests.

Court appointed attorneys play a similarly critical role in family court cases. They provide constitutionally-mandated representation to individuals whose parental rights are at stake in CPA cases and to minors who have been charged with law violations.



The work family court appointed GALs and attorneys perform in cases that can be quite complex is extremely important. It requires expertise and experience. It is in our community's interest to attract and retain highly competent individuals to serve as GALs and attorneys in family court cases.

The pool of individuals who are willing and able to serve as GALs and court appointed attorneys is small. For example, in the first judicial circuit, there are only two individuals who are consistently willing and available to be appointed as GALs in involuntary hospitalization or assisted community treatment cases. There are four attorneys who are consistently willing and available to take on juvenile law violator cases. In CPA cases, the limited number of attorneys who are willing to serve as parent counsel is particularly concerning. In the first judicial circuit, for example, there are only six attorneys who are under contracts to represent parents, and we are concerned that number may drop. The other judicial circuits have similarly limited pools of available GALs and attorneys.

The Judiciary has taken steps to recruit more GALs and court-appointed attorneys. For example, the family court, in partnership with several government and community-based organizations and attorneys, has held training sessions for potential GALs in assisted community treatment cases and for parent counsel in CPA cases.

While those efforts have been marginally successful, the need is still significant. The Judiciary is very concerned that, unless the number of individuals who are willing and available to serve as GALs and court-appointed attorneys increases, there will be delays in these cases. In addition, we are concerned that increasing the workload of the available GALs and attorneys may negatively impact the quality of the representation they are able to provide.

The number of individuals and attorneys who are willing and able to serve as family court appointed GALs and attorneys needs to increase. One important way to help accomplish this goal is to ensure that they are adequately compensated for their work.

The last time that the statutory compensation rates for family court appointed attorneys and GALs was increased was in 2007, more than fifteen years ago. Presently, family court appointed attorneys and GALs are paid at rates prescribed under HRS § 571-87, which sets their compensation at \$60 per hour for out-of-court work and \$90 per hour for in-court work.

A significant enhancement in the rates at which the Judiciary can compensate GALs and attorneys and the elimination of the compensation distinction between in-court and equally valuable out-of-court work should help increase the pool of individuals willing and able to perform this critical work. This, in turn, will allow the family courts to hear these cases without unnecessary delay.

Paying GALs and attorneys more will require additional funding. The Judiciary sincerely appreciates the Legislature's recent and generous increases in the appropriations to the Judiciary to pay GALs and court appointed counsel. Mindful of the State's very challenging current fiscal situation, we are respectfully requesting an additional sum of \$1,500,000, which would be inserted into the blank appropriations amount in Section 3 of this bill. We believe this additional amount,



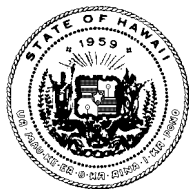
House Bill No. 1913, H.D. 1, Relating to Compensation for Court-Appointed Representation.
Senate Committee on Judiciary
Tuesday, March 12, 2024 at 10:00 a.m.
Page 3

which is not intended to supplant the Judiciary's existing funding or budget requests, will be sufficient to fund the proposed increase in the statutory compensation rates.

The Judiciary respectfully requests that the effective date of July 1, 3000 on Page 3, Section 5 of this bill be amended to take effect on July 1, 2024.

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

JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA



CATHY BETTS
DIRECTOR
KA LUNA HO'OKELE

JOSEPH CAMPOS II
DEPUTY DIRECTOR
KA HOPE LUNA HO'OKELE

STATE OF HAWAII
KA MOKU'ĀINA O HAWAI'I
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TRISTA SPEER
DEPUTY DIRECTOR
KA HOPE LUNA HO'OKELE

March 10, 2024

TO: The Honorable Senator Karl Rhoads, Chair
Senate Committee on Judiciary

FROM: Cathy Betts, Director

SUBJECT: **HB 1913 HD1 – RELATING TO COMPENSATION FOR COURT-APPOINTED REPRESENTATION.**

Hearing: March 12, 2024, 10:00 a.m.
Conference Room 016, State Capitol & Video Conference

DEPARTMENT'S POSITION: The Department of Human Services (DHS) supports increasing the compensation of court-appointed counsel who represent parents and guardian ad litem who represent the best interest of children involved in child welfare cases. The legal representation provided by court-appointed counsel and guardian ad litem is necessary at every point of decision-making in the child welfare process; increasing compensation will assist counsel with keeping up with the cost of doing business in Hawaii and may encourage more counsel to provide these essential services.

PURPOSE: This bill increases the rate of compensation and maximum allowable amounts per case for court-appointed counsel and guardians ad litem in family court proceedings. Appropriates funds. Effective 7/1/3000. (HD1)

The Committee on Judiciary & Hawaiian Affairs amended the measure by:

- (1) Changing the appropriation to an unspecified amount;
- (2) Changing the effective date to July 1, 3000, to encourage further discussion; and

March 10, 2024

Page 2

(3) Making technical, nonsubstantive amendments for the purposes of clarity, consistency, and style.

Thank you for the opportunity to provide testimony in support of this measure.



TESTIMONY
Senate Committee on Judiciary
Hearing: Tuesday March 12, 2024 (10:00 AM)

TO: Senator Karl Rhoads, Chair
Senator Mike Gabbard, Vice Chair

FROM: Jesse K. Souki, HSBA President

RE: HB 1913, HD1 - RELATING TO COMPENSATION FOR COURT-APPOINTED REPRESENTATION

Chair Rhoads, Vice Chair Gabbard and members of the Senate Committee on Judiciary, the Hawaii State Bar Association (HSBA) appreciates the opportunity to offer testimony in **STRONG SUPPORT** of HB 1913, HD1.

Guardians Ad Litem are court appointed representatives that play a crucial role in legal proceedings on behalf of individuals, typically children or adults deemed incapable of self-representation. Operating as factfinders rather than advocates, Guardians Ad Litem are bound by the duty to always prioritize the best interests of the individuals they represent. Their involvement is instrumental in ensuring the fair, timely, and equitable resolution of matters identified by the court.

This bill addresses the hourly fees and maximum case management fees for Guardians Ad Litem, with recommendations from the Senate Committee on Judiciary for necessary adjustments, including:

- \$150 per hour for in-court services provided by a licensed attorney.
- \$100 per hour for out-of-court services provided by a licensed attorney.

Attorneys licensed to practice law in Hawaii have historically faced inadequate compensation for their vital work in providing neutral and objective services on behalf of individuals designated by the court as needing assistance. This measure is crucial for maintaining a roster of qualified and available individuals for appointment, particularly on the Neighbor Islands where the private practice attorney populations are smaller than on Oahu. I appreciate the opportunity to express strong support for this bill and thank you for considering these comments.

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Committee: Judiciary
Hearing Date/Time: Tuesday, March 12, 2024, at 10:00am
Place: Conference Room 016 & Via Videoconference
Re: **Testimony of the ACLU of Hawai'i in SUPPORT of HB1913 HD1 Relating to Compensation for Court-Appointed Representation**

Dear Chair Rhoads, Vice Chair Gabbard, and Members of the Committee:

The ACLU of Hawai'i supports **HB1913 HD1** which increases the rate of compensation and maximum allowable amounts per case for court-appointed counsel and guardians ad litem in family court proceedings and appropriates funds.

In *Gideon v. Wainwright*,¹ the U.S. Supreme Court established the fundamental right to an attorney for people accused of crimes and facing incarceration, regardless of their wealth or poverty. Since *Gideon*, the right to counsel has been expanded to include [children](#) in juvenile delinquency proceedings, [probationers](#) in probation revocation proceedings, and people charged with [misdemeanors](#). The Supreme Court has established that the right includes an obligation for lawyers to correctly advise their clients about certain [immigration consequences](#) of criminal convictions, and that the right includes effective assistance of counsel during [plea bargaining](#).

The overwhelming majority of criminal cases in Hawai'i proceed against people who cannot afford to hire their own attorney, and disproportionately impacts Native Hawaiians and Pacific Islanders. **Roughly [four out of five](#) criminal defendants do not have the means to hire a lawyer and rely on public defenders or court-appointed lawyers.** Without adequate public defense, most people in the criminal legal system face the full force of government power with nothing more than illusory rights.

The right to counsel also protects other constitutional rights. When we don't protect the right to counsel, we also sacrifice our rights against unreasonable searches and seizures, against excessive bail, to confront one's accusers, to have prosecutors disclose exculpatory evidence before trial, and many others.

Court-appointed counsel protect the rights of indigent persons enshrined in our federal and Hawai'i Constitutions and deserve fair compensation.

Additionally, Guardian Ad Litem play a critical role within family court proceedings. Under Hawai'i Revised Statutes (HRS) Chapter 587A, they represent the best interests of children who

¹ <https://supreme.justia.com/cases/federal/us/372/335/>

have been abused or neglected in Child Protective Act (CPA) cases and on occasion, in child custody matters. They are appointed in many involuntary hospitalization proceedings and in assisted community treatment proceedings.

For these reasons, we respectfully request that you pass **HB1913 HD1** and increase the rate of compensation and maximum allowable amount per case for court-appointed counsel in criminal proceedings and guardian ad litem in family court proceedings.

Sincerely,

Carrie Ann Shirota

Carrie Ann Shirota

Policy Director

ACLU of Hawai'i

cshirota@acluhawaii.org

The mission of the ACLU of Hawai'i is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawai'i fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawai'i is a non-partisan and private non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawai'i has been serving Hawai'i for over 50 years.

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March 11, 2024

**TESTIMONY OF THE OFFICE OF THE PUBLIC DEFENDER STATE OF HAWAII
TO THE COMMITTEE ON JUDICIARY**

**HB 1913, HD1: RELATING TO COMPENSATION FOR COURT-APPOINTED
REPRESENTATION**

March 12, 2024 at 10:00 a.m.

**Chair Karl Rhoads
Vice Chair Mike Gabbard
Honorable Committee Members**

The Office of the Public Defender (OPD) supports this bill.

In regard to court-appointed counsel, in instances where the OPD cannot represent a person due to a conflict it is necessary for the court to appoint counsel. For the majority of attorneys, the current rate of \$90 per hour is simply insufficient to justify the time and resources which are required to represent a client in even simple Family Court cases. On average, family law attorneys in Hawai'i bill at approximately \$325/hour.¹ Obviously this rate varies but generally experienced attorneys command higher hourly rates.²

Due to the lower-than-average rate of \$90 per hour which has not changed in approximately twenty years, the Judiciary has experienced a decrease in the number of attorneys who are willing to take court-appointed cases. Notably, the rate for federal court-appointed attorneys is \$172, almost twice

¹ "How Much Does a Family Law Attorney Cost?" Talking Parents, Jan. 13, 2023. [See https://talkingparents.com/parenting-resources/family-law-attorney-cost](https://talkingparents.com/parenting-resources/family-law-attorney-cost)

² Brock, C., [Lawyer Hourly Rate & Fees by State](#), LawPay, April 24, 2023. This author estimates that average lawyer hourly rates around the country range from \$211 to \$424 per hour with a median hourly rate in 2022 of \$261 per hour and an average rate of \$269 per hour. [See https://www.lawpay.com/about/blog/lawyer-hourly-rate-by-state/](https://www.lawpay.com/about/blog/lawyer-hourly-rate-by-state/)

the current state rate and still above what this bill is seeking. In order to attract more experienced, competent individuals to serve as court-appointed counsel, the rate of compensation must be increased.

Guardians ad litem (GAL) are also appointed in OPD juvenile and involuntary civil commitment cases. GALs serve a critical role in investigating and making a recommendation on the clients' best interests in these cases. Many GALs are also attorneys and the low rate of compensation is a disincentive to accept appointments on these cases. The Judiciary also experiences significant challenges in finding persons who are willing to serve as GALs, due in large part to the substandard rate of compensation. In order to attract competent individuals to serve as GALs, the rate of compensation must be increased.

The OPD supports this bill. Thank you for the opportunity to comment on HB 1913, HD1.

HB-1913-HD-1

Submitted on: 3/8/2024 2:03:32 PM

Testimony for JDC on 3/12/2024 10:00:00 AM

| Submitted By | Organization | Testifier Position | Testify |
|------------------------|--------------|--------------------|------------------------|
| Madeline Tomasino-Reed | Individual | Support | Written Testimony Only |

Comments:

Chair Tarnas, Vice-Chair Takayama, and members of the Committee:

I am writing in **strong support** of House Bill 1913 increasing compensation for Guardians *ad Litem* in Family Court proceedings.

I am an attorney who has worked as a court-appointed Guardian *ad litem* in the Third Circuit since 2010. I have served as GAL in solo practice and as a firm member of both The Legal Aid Society of Hawai'i and The Children's Law Project of Hawai'i.

Serving the court as a Guardian *ad litem* can be a taxing and difficult role. It involves intervention in the lives of families during times of profound crisis. It requires having difficult and often technical conversations with children of all ages, as well as their parents. The work requires a significant investment of time in establishing and maintaining trusting relationships, with not just the child, but also their caregivers, service providers, and the family as a whole. Emergencies occur on a regular basis, often requiring urgent action. On top of this difficult emotional landscape, child welfare cases by nature involve complex multi-party civil litigation involving an administrative agency. A deep pool of competent, well-prepared, properly-trained attorneys is essential for justice to be served for these children and their families. Currently, due in large part to the compensation structure, no such pool exists.

This bill represents a good starting place for meaningful positive change in this system. I appreciate your time in considering my **strong support** of the measure.