



The Judiciary, State of Hawai'i

Testimony to the Senate Committee on Judiciary

Senator Karl Rhoads, Chair
Senator Mike Gabbard, Vice Chair

Tuesday, January 30, 2024 at 9:45 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: Senate Bill No. 2376, Relating to Compensation for Court-Appointed Representation.

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

Judiciary's Position:

The Judiciary offers this testimony in strong support of Senate Bill No. 2376.

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 in 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. We respectfully request an additional sum of \$1,500,000, (which is not intended to supplant the Judiciary's existing funding or budget requests). We believe this additional amount will be sufficient to fund the proposed increase in the statutory compensation rates.

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

STATE OF HAWAI‘I
OFFICE OF THE PUBLIC DEFENDER

**Testimony of the Office of the Public Defender,
State of Hawai‘i to the Senate Committee on Judiciary**

January 30, 2024

S.B. 2376: RELATING TO COMPENSATION FOR COURT-APPOINTED REPRESENTATION.

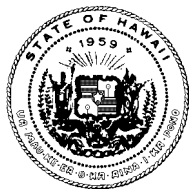
Chair Rhoads, Vice Chair Gabbard, and Members of the Committee:

The Office of the Public Defender strongly supports the intent of S.B. 2376.

This measure would increase the compensation that a court-appointed attorney and a court-appointed guardian ad litem would received for legal services in Family Court. This rate increase is necessary to insure the quality and availability of attorneys willing and able to provide these services across the State of Hawaii. The current fee structure has rendered it difficult to recruit and difficult to maintain attorneys qualified to provide these services. The Judiciary is in need of qualified attorneys to provide these essential services and we submit this measure is long overdue and necessary for the administration of justice.

Thank you for the opportunity to comment on this measure.

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
DEPARTMENT OF HUMAN SERVICES
KA 'OIHANA MĀLAMA LAWELAWE KANAKA
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TRISTA SPEER
DEPUTY DIRECTOR
KA HOPE LUNA HO'OKELE

January 27, 2024

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

FROM: Cathy Betts, Director

SUBJECT: **SB 2376 – RELATING TO COMPENSATION FOR COURT-APPOINTED REPRESENTATION.**

Hearing: January 30, 2024, 9:45 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: The purpose of this bill is to increase the rate of compensation and maximum allowable amounts per case for court-appointed counsel and guardian ad litem in family court proceedings. Appropriates moneys. Declares that the appropriation exceeds the state general fund expenditure ceiling for 2024-2025.

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



TESTIMONY

Senate Committee on Judiciary

Hearing: Tuesday, January 30, 2024 (9:45 a.m.)

TO: The Honorable Karl Rhoads, Chair
The Honorable Mike Gabbard, Vice Chair

FROM: Jesse K. Souki, HSBA President

RE: Senate Bill No. 2376 - Relating to Compensation for Court-Appointed Representation

Chair Rhoads and members of the Senate Committee on Judiciary, the Hawaii State Bar Association (“HSBA) appreciates the opportunity to offer testimony in **STRONG SUPPORT** of Senate Bill No. 2376.

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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Lyn Flanigan

January 28, 2024

To: Senate Judiciary Committee

From: Shana Kukila
Hilo, Hawai'i

Re: SB2376
Relating to Compensation for Court-Appointed Representation

Position: OPPOSE

Testimony:

The State of Hawai'i Judiciary should not increase the rates of compensation for Court-Appointed Representation until it seriously considers and can answer and resolve the following important issues:

- 1) Conflicts of Interest under Rule 1.7 of the Hawai'i Rules of Professional Conduct are of issue for state-contracted attorneys who operate in an inherent conflict of interest with their indigent clients who are not paying for their own representation due to a lack of financial resources. Since the State pays for their legal services contract, there is a question of the attorneys' duty of loyalty and just who the "client" is, when there is no contract between the court-appointed attorney and those they are assisting to represent in court. No contract between attorney and client is a glaring issue. This is especially concerning when impoverished indigent clients are forced into plea deals or admitting to crimes they did not commit because their court-appointed attorney was not motivated to fight for them in courtrooms with judges who are also the attorneys' quasi-employers. This conflict happens every day, in my own experience and observations, where state-contracted attorneys do not show a real duty of loyalty to those they are contracted to represent and therefore are not always providing effective counsel, possibly for fear of losing their state contract, and do not seem as concerned about the outcome of their case. They would often rather betray their client and lose their case then fight for their client, and thereby risk angering the judge/judiciary, and in turn, potentially lose their contract or get a reduced caseload (aka, income).
- 2) Lack of accountability to their clients is a major problem. What is the recourse or complaint process for indigent clients? What do they do when they are not treated with professionalism by their court-appointed attorneys, have questions about their legal rights in terms of their legal counsel, or to file complaints that their attorney is violating or is allowing their civil and constitutional rights to be violated by the court? What is the accountability or evaluation process for justifying their increased income? Are they doing their jobs, or are they just putting in time, getting paid regardless of the outcome?
- 3) Court-Appointed attorneys are often uneducated in the cases they are assigned, which hinders access to justice and in fact endangers vulnerable individuals which they have a

fiduciary and legal duty of care for. What special training do these contracted attorneys working in the family courts have in the areas of focus their clients need, particularly disability rights law, family violence law and domestic violence dynamics, mental health law, indigenous rights law, and parents and childrens' rights law? Do they know about federal protections such as the ADA (Americans with Disabilities Act) and VAWA (Violence Against Women Act)? Without this specialized knowledge, they are providing ineffective counsel for the populations they serve, and thus, imperil these vulnerable individuals with their inability to serve them properly within the context of the judicial system.

- 4) Court-appointed representatives in state-contracted positions should not be a way for novice lawyers to gain experience at the expense of their indigent clients. If these attorneys do not know the specific laws and procedures of the court enough to properly and effectively protect and defend their clients, they are denying these clients equal access to justice.
- 5) Lack of effective legal counsel is one of the most significant reasons why so many Hawaiians and other vulnerable populations are incarcerated, in the child welfare system, or in poverty and homelessness both today and historically. They have no one to effectively represent them in court, no one to take their side against the state, and therefore many have suffered because of it. Raising the pay of our own state-contracted legal representatives (who are paid for by our tax dollars but serving their clients without a contract) are largely responsible for this discriminatory practice within the judiciary and should not get a pay raise, they should get an audit. It is imperative that they receive far more training and education to more effectively serve in their prospective positions as court-appointed attorneys.

These are the reasons I oppose this measure at this time. Once an audit is done and these issues are resolved, then a raise would be warranted for these extremely important positions.

Mahalo for your time in reading my testimony on behalf of myself, my family, and my community.

SB-2376

Submitted on: 1/28/2024 3:50:36 PM

Testimony for JDC on 1/30/2024 9:45:00 AM

Submitted By	Organization	Testifier Position	Testify
Doris Lum	Individual	Support	Written Testimony Only

Comments:

When I started my legal career as a lawclerk, the rate for court appointed attorneys was \$90/hour. I have been practicing law now for 18 years. The rate has not changed. This rate certainly has not kept up with inflation or fairness. I know attorneys that have pivoted to only doing federal court appointed work because of the stark difference between their rate and the State rate of \$90/hour. I know attorneys who have simply chosen not to even apply to the court appointed list because of the rate. As a result, I have seen first hand how the circuit court struggles with finding attorneys from its court appointed list for cases, especially for Class A felonies. The judicial system suffers as a result. There should be no reason that governmental agencies provide raises to its attorneys each year, but court appointed attorneys doing the same work are saddled with compensation rates from decades ago. I believe taking a look at the court appointed list, along with the number of cases that need conflict counsel will show that raising the rate is necessary.

TESTIMONY IN STRONG SUPPORT OF S.B. 2376 RELATING TO COURT APPOINTED
REPRESENTATION

Testimony in Support by William C. Bagasol, Esq.

Senate Committee on Judiciary

Tuesday, January 30, 2024, at 9:30 AM, Conference Room 016 & Videoconference

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

I have been a practicing criminal defense lawyer and have been involved with the criminal justice system for over 36 years. A good criminal justice system requires effective assistance of counsel and a competent indigent criminal delivery system. The protection of the constitutional rights of all people depends on it.

When the Office of the Public Defender cannot act as counsel, private attorneys on the court appointed lists must be appointed. The current compensation of \$90 per an hour for court-appointed legal work is extremely low. This threatens the right to effective assistance of counsel and the operation of our criminal justice system. The compensation amount does not reflect the current fair market value and requires just compensation for effective legal representation. Considering high overhead costs and expenses for private practitioners, along with the high cost of living in Hawaii, the current compensable amount is badly insufficient. As such, there is a growing sentiment among experienced and competent practitioners that state court-appointed cases simply cannot support the needs and costs of running a business.

There is a need to keep good criminal defense attorneys working on State cases. Currently Federal compensation for court-appointed cases is nearly double at \$172.00 per hour. Private practice criminal practitioners often charge \$350 an hour and much more. This Bill is necessary to level the playing field.

This measure has been sorely needed for many years. Thank you for the opportunity to comment on this measure.

SB-2376

Submitted on: 1/29/2024 9:01:10 AM

Testimony for JDC on 1/30/2024 9:45:00 AM

Submitted By	Organization	Testifier Position	Testify
Brandon Segal	Testifying for Segal Law - A Hawaii Law Corporation	Support	Written Testimony Only

Comments:

Aloha, I write to strongly support SB2376, which requests an increase in compensation for court-appointed attorneys. I am a former prosecutor with the County of Maui, and currently a criminal defense attorney practicing in Hawai‘i. There is a critical need for attorneys to represent indigent defendants who otherwise do not qualify for the services of the public defender. These court-appointed services are important for our judicial system to serve the needs of all parties and to ensure justice is administered fairly.

SB-2376

Submitted on: 1/29/2024 10:26:59 AM

Testimony for JDC on 1/30/2024 9:45:00 AM

Submitted By	Organization	Testifier Position	Testify
David Lawton	Individual	Support	Written Testimony Only

Comments:

I support SB2376. This increase is needed in order to obtain and keep competent court appointe family law attorneys. David Lawton

SB-2376

Submitted on: 1/29/2024 5:50:42 PM

Testimony for JDC on 1/30/2024 9:45:00 AM

Submitted By	Organization	Testifier Position	Testify
Martin H Bento	Individual	Support	Written Testimony Only

Comments:

Dear committee members,

My name is Martin H. Bento, my law practice is mostly in the Third Circuit, (Hilo, Kona, and Waimea) and I have been accepting court appointed family law cases as legal counsel for parents and guardian ad litem for children under a contract with the Judiciary for the past three years. I fully support the proposed limit increase for court appointed attorneys in these matters.

Respectfully,

Martin H. Bento, Esq.