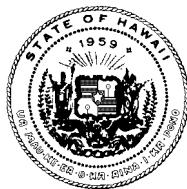


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April 1, 2024

TO: The Honorable Senator Senator Donovan Dela Cruz, Chair
Senate Committee on Ways & Means

FROM: Cathy Betts, Director

SUBJECT: **HB 1913 HD1 SD1 – RELATING TO COMPENSATION FOR COURT-APPOINTED REPRESENTATION.**

Hearing: April 3, 2024, 10:30 a.m.
Conference Room 211, 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.

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. Declares that the general fund expenditure ceiling is exceeded. Appropriates funds. (SD1)

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

The Committee on the Judiciary (SD1) amended the measure by:

- (1) Inserting an appropriation amount of \$1,500,000 for the purchase of service contracts, guardian ad litem contracts, and court-appointed counsel contracts pursuant to chapter 571, Hawaii Revised Statutes; and
- (2) Making it effective on July 1, 2024.

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.

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



The Judiciary, State of Hawai‘i

**Testimony to the Thirty-Second State Legislature
2024 Regular Session**

Committee on Ways and Means
Senator Donovan M. Dela Cruz, Chair
Senator Sharon Y. Moriwaki, Vice Chair

Wednesday, April 3, 2024 at 10:30 a.m.
Hawai‘i State Capitol, Conference Room 211

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. 1913, H.D. 1, S.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.

Judiciary's Position:

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



H.B. No. 1913, H.D. 1, S.D. 1, Relating to Compensation for Court-Appointed Representation
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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 funding of \$1,500,000. We believe this additional amount, 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.

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

TESTIMONY

Senate Committee on Ways and Means
Hearing: Wednesday April 3, 2024 (10:30 AM)

TO: Senator Donovan M. Dela Cruz, Chair
Senator Sharon Y. Moriwaki, Vice Chair

FROM: Jesse K. Souki, HSBA President

RE: HB 1913, SD1 - RELATING TO COMPENSATION FOR COURT-
APPOINTED REPRESENTATION

Chair Dela Cruz, Vice Chair Moriwaki and members of the Committee:

The Hawaii State Bar Association (HSBA) appreciates the opportunity to offer testimony in **STRONG SUPPORT** of HB 1913, SD1.

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 Ways and Means for necessary adjustments, including:

- \$150 per hour for in-court or out-of-court services provided by an attorney licensed to practice in the State.
- \$100 per hour for all services provided by a person who is now an attorney licensed to practice law in the State, whether performed in-court or out-of-court.
- Increased maximum allowable fees for Predisposition, Post Disposition review hearing, and Cases arising under chapters 560.

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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