



The Judiciary, State of Hawai‘i

Testimony to the Thirty-Third Legislature, 2025 Regular Session

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

Thursday, March 13, 2025, 9:45 a.m.
State Capitol, Conference Room 016

By

Ronald G. Johnson
Deputy Chief Judge, Criminal Administrative Judge
Circuit Court of the First Circuit

Bill No. and Title: House Bill No. 396, HD1, Relating to Compensation for Court-Appointed Counsel.

Purpose: Increases the rate of compensation and maximum allowable amounts per case for court-appointed counsel in criminal proceedings. Appropriates funds. Effective 7/1/3000. (HD1)

Judiciary's Position:

The Judiciary **strongly supports** this measure.

Over the last decade there has been a dramatic decrease in qualified applicants to the court-appointed lists of each circuit, which has in turn caused a shortage of available qualified and competent counsel to take indigent defendant criminal cases statewide. The primary factor driving this reduction is the low hourly rate of pay offered for these cases. In order to attract skilled and experienced individuals to serve as appointed counsel for these defendants, we must ensure that appointed counsel are adequately compensated for their work. This measure will greatly aid in recruiting and retaining counsel who are qualified, experienced, and willing to be appointed in criminal proceedings.

Indigent criminal defendants have a constitutional right to representation by competent counsel appointed by the court. Once qualified, these defendants are usually represented by the Office of the Public Defender. However, in cases where there is, or there arises, a conflict



House Bill 396, HD1, Relating to Compensation for Court-Appointed Counsel
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between the defendant and the Office of the Public Defender, the defendant has a right to the appointment of a private defense counsel. These private defense counsel are appointed by the court from lists of qualified applicants maintained by the court.

On Oahu, the courts maintains separate lists for appellate cases, misdemeanors, “A”, “B”, and “C” felonies, sexual assaults, and murder cases. Private counsel are placed on the list, or lists, appropriate to their level of skill and experience. Currently there are only thirteen qualified attorneys on the Circuit Court of the First Circuit’s “A” felony list. The same thirteen are on the murder case appointment list and only eleven of those are willing to take “A” felony sexual assault cases. Our largest list, those willing to take “C” felony cases, contains only twenty-five qualified attorneys and we only have nine attorneys willing to take appeals to the appellate courts. There are simply not enough qualified attorneys willing and able to take indigent criminal cases, especially the serious felony cases.¹

The situation on the neighbor islands is more critical, with courts in the other circuits often forced to appoint, and pay the travel costs, for attorneys from the First Circuit in order to meet the demand for court-appointed counsel. The situation is exacerbated on Hawai‘i Island as, due to their own shortage of attorneys, the Office of the Public Defender is no longer able to take any “A” felony or operating a vehicle under the influence of an intoxicant (“DUI”) cases out of the Kona District. It is currently taking the court between three to four weeks to find counsel willing to accept the appointments and as of last fall there were 35 defendants awaiting appointment of counsel between Kona’s District and Circuit Court.

The current rate of pay of \$90 per hour has not been adjusted in twenty years and went into effect on July 1, 2006. In stark contrast, on the federal level during that same time period, the rate has been increased every year and currently the non-capital case rate is \$175 per hour and \$223 per hour in capital cases, with maximum per-case amounts of \$13,600 for felony cases, \$3,900 for misdemeanors, and \$9,700 for appeals.² There are several private attorneys who will only take federal court appointed cases for this very reason. This measure raises the compensation rates and maximums to those similar to the federal rates in order to safeguard the rights of indigent State defendants, by ensuring the demand for competent and qualified court-appointed private counsel can be met.

The Judiciary respectfully requests that the appropriation of \$2,890,000 be included in Section 2 of the proposed legislation.

Thank you for the opportunity to testify on this measure.

¹ For context, in 2024, there were approximately 1468 Circuit Court Criminal and 1374 Family Court Criminal felony and misdemeanor cases filed in the First Circuit. Therefore, not even counting the District Court misdemeanor and petty misdemeanor cases, there were 2842 cases filed in the First Circuit where a defendant had the constitutional right to counsel. The vast majority of these defendants qualify for court appointed counsel.

² There is no maximum in capital cases on the federal level.



The Judiciary, State of Hawai‘i

Testimony to the Thirty-Third Legislature, 2025 Regular Session

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

Thursday, March 13, 2025, 9:45 a.m.
State Capitol, Conference Room 016 and Videoconference

by

Robert D.S. Kim
Chief Court Administrator, Third Circuit Court

Bill No. and Title: House Bill No. 396, HD1, Relating to Compensation for Court-Appointed Counsel; House Bill No. 398, HD1, Relating to Compensation for Court-Appointed Representation

Purpose: HB396, HD1 – Increases the rate of compensation and maximum allowable amounts per case for court-appointed counsel in criminal proceedings. Appropriates funds.

HB398, HD1 – Increases the rate of compensation and maximum allowable amounts per case for court-appointed counsel and guardians ad litem in family proceedings.

Judiciary’s Position:

Chair Rhoads and Vice Chair Gabbard, and Members of the Senate Committee on Judiciary. I am the Chief Court Administrator for the Third Circuit on the Island of Hawai‘i. I had previously served as Chief Judge for the Third Circuit.

On behalf of the Third Circuit, I am earnestly requesting your support for HB396, HD1 and HB398, HD1, which would increase the rate of compensation for court-appointed counsel in criminal cases, and the rate of compensation for guardians ad litem and appointed counsel in family court matters. These measures would also increase the maximum cap on the total fees allowed in each case. These bills are critically important



to ensuring the fair administration of justice in the Third Circuit, and their importance cannot be overstated.

We are experiencing an unchecked crisis in the Third Circuit, where the number of attorneys willing to accept court appointments has dwindled to only a handful. The Third Circuit courts are struggling to secure counsel for some of the most vulnerable members of our community, including indigent criminal defendants, indigent parents, and guardians ad litem (“GAL”) for children. GAL’s are a vital component in our legal system as they independently represent the interest of children. Family court judges rely on the GAL’s to conduct investigations, check on the well-being, health, and safety of the children who do come before the court. GAL’s insure that at all proceedings, the best interest of the children is being advocated and advanced. The shortage of court-appointed attorneys and GALs has led to significant delays in proceedings; to tremendous waste of judicial resources; and to many individuals, including children, going unrepresented for extended periods of time, despite having a constitutional or statutory right to representation.

We are facing a crisis in our criminal courts. The situation in West Hawai`i is particularly serious, where a severe staffing shortage at the Kona public defender’s office has resulted in an influx of cases requiring the court to appoint counsel. To illustrate the extent of the present crisis, there are currently eighty-six (86) criminal cases needing court-appointed counsel in Kona District Court. At the end of February, this number was at a staggering 137 cases needing counsel. Luckily, a pair of Maui attorneys recently agreed to take twenty (20) DUI cases each. Many of these defendants have been waiting several months to have a lawyer appointed—some have even been waiting as long as six (6) months, and have had five (5) or more continuances of their cases for the purposes of finding counsel. A few cases in the Kona District Court have even been dismissed, simply because of the inability to find court-appointed counsel. Most concerning, a number of defendants have chosen to waive their right to counsel and proceed without an attorney, rather than wait an indefinite period of time for the court to find a lawyer to represent them. In other words, some defendants are feeling pressured to give up their constitutional rights because of this situation.

It regularly takes dozens of calls before court staff can find an attorney willing to take a single case—assuming court staff is able to find an attorney at all. Court clerks in the Third Circuit are now frequently cold-calling attorneys on other islands to try to find lawyers willing to take cases, because there are no longer any attorneys who reliably take



court appointments for certain types of cases, such as DUIs. Most attorneys outright state that they won't take appointments for DUI cases because of the fee cap. The lack of available attorneys is not limited to criminal matters. In one recent family court matter in Kona, a court clerk called over fifty (50) attorneys, before finally finding a lawyer willing to represent an indigent parent. While court staff was undertaking these efforts, this individual went without representation for over a month.

Many attorneys are unwilling to accept court appointments because they simply cannot afford to take these cases at the current compensation rates. The compensation for court-appointed attorneys in criminal cases has not increased in twenty (20) years, and the current rate of \$90 per hour is far below the average hourly rate charged by private defense counsel (who generally charge between \$350-\$400 per hour for private clients). It is even significantly less than the rate paid to court-appointed counsel in other jurisdictions. For example, in federal criminal cases, appointed attorneys are currently paid at a rate of \$175 per hour. Consequently, a number of defense attorneys who used to accept criminal appointments in the Third Circuit now primarily accept appointments from the federal court in Honolulu. Likewise, the compensation rates for court-appointed counsel and GALs in family court cases have not been increased for eighteen (18) years, and as such, the number of attorneys willing to serve as GALs or appointed counsel in the Third Circuit has shrunk to a small handful of attorneys.

While compensation rates have remained stagnant for decades, the costs of legal practice continue to rise. The majority of attorneys who take court appointed-cases and GAL appointments are solo practitioners who must pay for their own office expenses, staffing, taxes, professional liability insurance, and other overhead. After accounting for these costs, attorneys are often left with negligible income from court-appointments. Indeed, many attorneys who continue to take court appointments do so almost exclusively out of a sense of civic duty. While the commitment of these attorneys is truly commendable, the system cannot be sustained on their shoulders alone—they are too few, and they are burning out.

The consequences of failing to raise compensation rates are dire. Our system provides a right to court-appointed counsel for indigent and vulnerable individuals, because we recognize that competent representation is the only way that certain fundamental rights can be advanced and protected. If the court-appointed counsel system collapses, we risk our system becoming one where justice depends upon one's financial means instead of on fairness and due process.



House Bill No. 396, HD1, Relating to Compensation for Court-Appointed Counsel
House Bill No. 398, HD1, Relating to Compensation for Court-Appointed Representation
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By increasing the compensation for court-appointed attorneys and GALs, these bills will ensure that qualified lawyers remain willing to accept court appointments. I respectfully urge you to pass HB396, HD1 and HB398, HD1 and to show your support for a fee structure that adequately compensates court-appointed attorneys and GALs for the truly essential work that they do.

Thank you for your time and consideration.

JON N. IKENAGA
STATE PUBLIC DEFENDER

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

March 13, 2025

H.B. 396 HD1: RELATING TO COMPENSATION FOR COURT-APPOINTED COUNSEL.

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

The Office of the Public Defender **strongly supports H.B. 396 HD1.**

This measure would increase the compensation that a court-appointed attorney would receive for legal services in our Statewide justice system. This rate increase is necessary to ensure the quality and availability of attorneys willing and able to provide these essential services across the State of Hawaii. The current fee structure has rendered it difficult to recruit and maintain attorneys qualified to provide these services. The Judiciary and the criminal justice system need dedicated qualified attorneys to provide these constitutionally mandated services and we submit this measure is long overdue and necessary for the administration of justice.

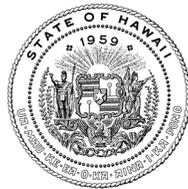
Court-appointed attorneys must be qualified and have the requisite specialized legal knowledge and skills to provide zealous and competent counsel to adults and juveniles charged with criminal offenses and law violations in every Circuit, District and Family Courts across our State. There is an acute shortage of attorneys available to provide these services based on a variety of factors – but the most pressing factor is the low pay. Attorneys who may be qualified and who have the requisite experience levels are refusing to accept court-appointments or they have simply

removed their names from the list of available counsel because they can find other work that pays a living wage and compensates them more fairly for their time and work. Attorneys are skilled professionals and the practice of criminal defense for adult defendants and juvenile defendants is highly specialized – requiring extensive knowledge on trial rules and procedures, evidentiary rules and objections, motions practice, practical knowledge on the workings of the different Circuit, District and Family Courts, and the ability to communicate effectively with clients of all ages, all backgrounds, and levels of criminality. Court-appointed attorneys are a necessity in any case involving multiple defendants to protect a defendant’s right to independent and conflict-free counsel. Court-appointed attorneys are often the last resort when working with a mentally ill defendant with communication challenges and trust issues because of past trauma, cognitive damage, recurring bouts of decompensation, drug use, and other serious personality and stability challenges. Court-appointed attorneys often work with the most difficult and time-consuming clients in the criminal justice system and their work and skills with this population is essential and must be compensated fairly. Court-appointed attorneys are essential when the Office of the Public Defender cannot represent an indigent person because of any legal conflict, and they provide a critical safety net for defendants in need of independent legal advice and counsel.

It should be noted that the criminal justice system has become more complex with advancements in forensic science, there has been a steady increase in materials to review as cases become more involved requiring more time and more expertise – including access to hours of body worn camera videos and other types of surveillance, the need to do legal research and keep up with advancements in science, and the constant need to maintain current knowledge of the laws – statutory and case law. Qualified court-appointed attorneys should be considered essential and valuable assets in the administration of justice.

Constitutionally mandated Due Process and the Right to Counsel require skilled competent professionals be made available to any person accused of a crime. Court-appointed attorneys deserve fair pay and should be compensated appropriately for their time, knowledge, skills, and dedication to the administration of justice. This measure is necessary to alleviate the acute shortage of attorneys able and willing to accept court-appointments Statewide.

Thank you for the opportunity to comment on this measure.



JOSH GREEN, M.D.
GOVERNOR

SYLVIA LUKE
LIEUTENANT GOVERNOR

EMPLOYEES' RETIREMENT SYSTEM
HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND
OFFICE OF THE PUBLIC DEFENDER

LUIS P. SALAVERIA
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ADMINISTRATIVE AND RESEARCH OFFICE
BUDGET, PROGRAM PLANNING AND MANAGEMENT DIVISION
FINANCIAL ADMINISTRATION DIVISION
OFFICE OF FEDERAL AWARDS MANAGEMENT

WRITTEN ONLY
TESTIMONY BY LUIS P. SALAVERIA
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
TO THE SENATE COMMITTEE ON JUDICIARY
ON
HOUSE BILL NO. 396, H.D. 1

March 13, 2025
9:45 a.m.
Room 016 and Videoconference

RELATING TO COMPENSATION FOR COURT-APPOINTED COUNSEL

The Department of Budget and Finance (B&F) offers comments on this bill.

House Bill No. 396, H.D. 1, amends Section 802-5, HRS, to increase the rate of compensation to appointed counsel from \$90 an hour to \$150 an hour; and doubles the maximum allowable amounts for all case types except appeals, which is instead, increased by 80% from \$5,000 to \$9,000. This bill also appropriates an unspecified amount in general funds in both FY 26 and FY 27 to fund these increases.

B&F is annually appropriated \$5,205,164 in general funds to pay for court-appointed counsel. Should this amount be reached, payments are then halted and deferred to the next fiscal year. As such, any statutory increase in court-appointed counsel compensation will require a proportionate appropriation increase in order for B&F to disburse these funds in a timely manner.

Thank you for your consideration of our comments.



TESTIMONY
Senate Committee on Judiciary
Hearing: Thursday, March 13, 2025

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

FROM: Mark M. Murakami, HSBA President

RE: HB 396, HD1 - RELATING TO COMPENSATION FOR COURT-APPOINTED COUNSEL

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

Thank you for this opportunity to provide strong support for HB 396, HD1 which would increase the rates of compensation for court appointed counsel in criminal proceedings. Currently, there is a small pool of qualified applicants to serve as court-appointed counsel. The rate of pay for court-appointed counsel has not been adjusted in twenty years, which makes it difficult for the judiciary to recruit and retain qualified counsel to represent indigent defendants in criminal cases across the state.

Mahalo for this opportunity to provide testimony in support.

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Testimony to the Thirty-Third Legislature, 2025 Regular Session

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

Hearing: March 13, 2025, 9:45 a.m.

State Capitol Building
415 South Beretania Street
Honolulu, HI 96813

**Re: House Bill 401, HD 1 - Relating to District Court Judges
House Bill 396, HD1 - Relating to Compensation for Court Appointed Counsel
House Bill 398, HD1 – Relating to Compensation for Court Appointed
Representation**

Honorable Chair Rhoads, Honorable Vice Chair Gabbard, and Members of the Senate Committee on Judiciary:

As president of the West Hawaii Bar Association, I am testifying in support of three bills: HB 401, which would establish an additional district court judge in the Third Circuit, for the Kona District Court, and HB 396 and HB 398, which would increase the rate of pay for court appointed attorneys and guardians ad litem to \$150 per hour. As an organization, we passed two resolutions supporting these measures and I have attached them for your consideration.

The West Hawaii Bar Association is encouraged that these measures have come before the Senate Committee on Judiciary. We urge you to seriously consider the plight of the legal community in West Hawaii and pass these measures to the next phase of consideration.

The West Hawaii Bar is a small but close-knit legal community that covers from Hawi, North Kohala, all the way to Pahala, Ka'u – half of the largest island, servicing rural and urban populations of approximately 82,000 people as of the 2020 census. The Office of the Public Defender cannot represent everyone who needs a lawyer in the criminal justice system. Privately appointed counsel is asked to step in on a case-by-case basis by the judiciary, often at a moment's notice for arraignments or preliminary hearings. This includes appointments for new cases, children in juvenile delinquency proceedings, probationers, mental health cases, and also conflict matters where the Office of the Public Defender is ethically unable to proceed with representation.

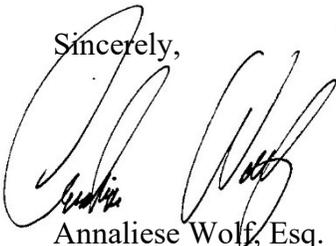
There are only a handful of attorneys available to take criminal cases, family court cases, and even fewer to act as guardian ad litem. Many attorneys are solo practitioners who carry significant overhead – office space, professional and personal insurance, travel expenses – all of which is not adequately covered within a rate of compensation of \$90/hour. That rate has not changed in 20 years; this has forced attorneys to decline court appointed cases so they can make a living outside court appointments. If the rate of pay does not increase, the situation will become even more dire; some attorneys are only taking federal criminal cases as appointments because

they pay \$175/hour which is almost double a state case. Given how few attorneys are available in West Hawaii, the rate of appointed pay makes finding counsel for anyone incredibly difficult. Raising the rate of pay for the hardworking attorneys in our community will encourage more attorneys to be available for court appointments and make it possible for other attorneys to relocate to our island.

The Kona District Court may hold the distinction of being the busiest district court in the entire state – as a single judge handles a caseload of almost 16,000 cases each year. Currently, because of a Circuit Court vacancy, the permanent district court judge is sitting in Circuit Court while per diem judges strive to manage a large, strained docket. Because of how many cases are before a single judge, there is a significant backlog which creates significant delays in setting cases for hearings or trial. This keeps people in custody longer, sometimes even past the maximum sentence they could serve on their charges. This also compounds the stress and emotional toll on all parties in a case – defendants, their counsel, witnesses or victims of a crime. Even civil matters are dragged out and people cannot receive resolution to restraining orders, evictions, small claims. District Court is truly the people’s court – it is where people from the community come to seek answers and redress, their personal encounters with the justice system. The quality of justice is diminished as judges, staff and attorneys and litigants are forced to choose between a quicker resolution or truly working through a case on the merits. I urge you to support this critical request to enhance the efficiency and fairness of our judicial system in the Third Circuit.

Please pass HB 401 for an additional District Court judge in Kona. Please pass HB 396 and 398 to increase the rate of pay for court appointed counsel in criminal and family law matters. These are crucial to increasing access to justice and appropriate representation on Big Island.

Sincerely,

A handwritten signature in black ink, appearing to read 'Annaliese Wolf', written over a white rectangular background.

Annaliese Wolf, Esq.

West Hawaii Bar Association President 2025



Resolution No.: 2025-01

Introduced by: Annaliese H. Wolf, WHBA President

Passed: February 19, 2025

**A RESOLUTION IN SUPPORT OF
HOUSE BILL 401, HD1;
SENATE BILL 267;
AND THE HAWAI'I STATE JUDICIARY'S
2025 GENERAL FUNDS REQUEST**

WHEREAS, the West Hawai'i Bar Association serves the public and legal community of West Hawai'i through its mission to expand legal resources and improve the legal profession;

WHEREAS, there has been only one District Court Judge sitting in the Kona District Court of the Third Circuit since the first Kona District Court judge was sworn in nearly forty years ago, notwithstanding the significant increase in the population of West Hawai'i and the corresponding increase in the Court's caseload;

WHEREAS, the aforesaid existing judicial resources are severely inadequate to handle the current overwhelming caseload of nearly 16,000 new cases docketed each year in the Kona District Court;

WHEREAS, the chronic backlog of cases in the Kona District Court has placed undue burdens on litigants, attorneys, court personnel, and the public at large, and has led to court congestion, delays in the resolution of cases, and has ultimately impeded access to justice in West Hawai'i;

WHEREAS, the addition of a second District Court Judge and support staff in the Kona District Court would alleviate this longstanding court congestion, enhance the Court's ability to manage its docket efficiently, and improve the delivery of justice to the West Hawai'i community; and

WHEREAS, the proposed legislation HB401, HD1 and SB267 currently pending before the Thirty-Third Legislature, 2025 Regular Session would establish one additional District Court Judge in the Third Circuit;

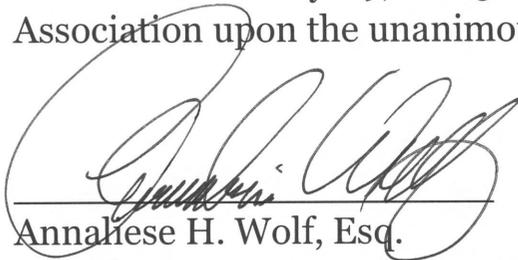
WHEREAS, the Judiciary's 2025 General Funds Request seeks funding for an additional District Court Judge position in Kona, including support staff; and

WHEREAS, the members of the West Hawai'i Bar Association recognize the critical need for increased judicial capacity to ensure the proper functioning of the legal system in West Hawai'i;

NOW, THEREFORE, BE IT RESOLVED, that the West Hawai'i Bar Association strongly supports HB401, HD1 and SB267, and the Judiciary's corresponding General Funds Request, and the members of the West Hawai'i Bar Association urge this Thirty-Third Legislature to approve these measures and General Funds Request; and

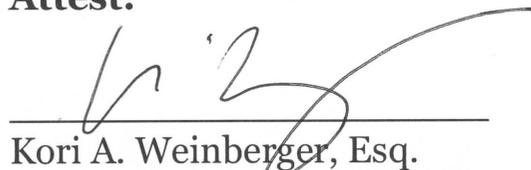
BE IT FURTHER RESOLVED, that copies of this Resolution shall be transmitted to members of the Thirty-Third Legislature and the Judiciary to express our unified support for the addition of an additional judge for the Kona District Court and our steadfast commitment to improving legal resources in West Hawai'i.

Passed: February 19, 2025 at the General Meeting of the West Hawai'i Bar Association upon the unanimous vote of all members present.



Annahese H. Wolf, Esq.
President, West Hawai'i Bar Association

Attest:



Kori A. Weinberger, Esq.
First Vice President, West Hawai'i Bar Association





Resolution No.: 2025-02

Introduced by: Annaliese H. Wolf, WHBA President

Passed: February 19, 2025

**A RESOLUTION IN SUPPORT OF
HOUSE BILLS 396, HD1; 398, HD1 and
SENATE BILL 263, SD1**

WHEREAS, the West Hawai'i Bar Association serves the public and legal community of West Hawai'i through its mission to expand legal resources and improve the legal profession; and

WHEREAS, court-appointed counsel in criminal cases and guardians ad litem in family law cases play a critical role in protecting the rights of indigent defendants, children, and other vulnerable individuals; and

WHEREAS, the compensation rate for court-appointed counsel in criminal cases has not increased in over 20 years, and the compensation rate for guardians ad litem has not increased in over 17 years; and

WHEREAS, the current compensation rates are so low that they fail to adequately compensate attorneys for their time, expertise, and professional obligations, thereby discouraging qualified attorneys from accepting these essential cases;

WHEREAS, the shortage of attorneys willing to accept these appointments has resulted in delay of resolution of these cases, increased caseloads for the few attorneys who do provide representation, and diminished the quality of legal representation available to indigent individuals and children in need; and

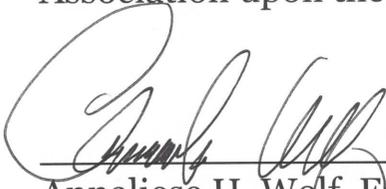
WHEREAS, the proposed legislation HB396, HD1, HB398, HD1, and SB263, SD1 currently pending before the Thirty-Third Legislature, 2025 Regular Session, seeks to address this pressing issue by increasing the compensation rates for court-appointed counsel and guardians ad litem to a level that reflects the professional responsibilities and dedication required for these roles; and

WHEREAS, the members of the West Hawai'i Bar Association strongly support the passage of legislation to increase the compensation rates for court-appointed counsel in criminal cases and for guardians ad litem in family law cases; and

NOW, THEREFORE, BE IT RESOLVED, that the West Hawai'i Bar Association strongly supports HB396, HD1, HB398, HD1, and SB263, SD1, and urges this Thirty-Third Legislature to approve these critical measures; and

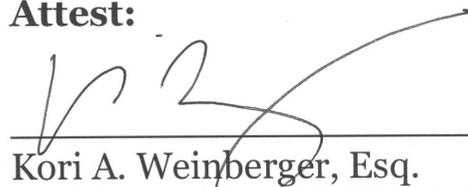
BE IT FURTHER RESOLVED, that copies of this Resolution shall be transmitted to members of the Thirty-Third Legislature and the Judiciary to express our unified support for an increase in the rate of compensation for court-appointed attorneys in criminal cases and for guardians ad litem in family law cases.

Passed: February 19, 2025 at the General Meeting of the West Hawai'i Bar Association upon the unanimous vote of all members present.



Annaliese H. Wolf, Esq.
President, West Hawai'i Bar Association

Attest:



Kori A. Weinberger, Esq.
First Vice President, West Hawai'i Bar Association



Testimony to the Thirty-Third Legislature, 2025 Regular Session

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

Hearing: March 13, 2025, 9:45 a.m.

State Capitol Building
415 South Beretania Street
Honolulu, HI 96813

**Re: House Bill 396, HD1 - Relating to Compensation for Court Appointed Counsel
House Bill 398, HD1 – Relating to Compensation for Court Appointed
Representation**

Honorable Chair Rhoads, Honorable Vice Chair Gabbard, and Members of the Senate Committee on Judiciary:

I am submitting this testimony as a practicing attorney in Hawaii County. I support HB 396 and HB 398 which would increase the rate of pay for appointed counsel and guardian ad litem from \$90/hour to \$150/hour. In the past several years, there has been a dramatic decrease in the Third Circuit of available court-appointed counsel to represent indigent members of our community in criminal matters and to protect the interests of our keiki who require a guardian ad litem. Increasing the statutory rate of pay would help attract attorneys who want to live, work, and help in our community. Although Hawaii has one of the highest costs of living, our attorneys are paid some of the lowest wages in the nation. It is necessary for the morale and quality of life that we are compensated for our hard work and appreciated.

The Office of the Public Defender cannot represent everyone who needs a lawyer in the criminal justice system. Privately appointed counsel is asked to step in on a case-by-case basis by the judiciary, often at a moment's notice for arraignments or preliminary hearings. This includes appointments for new cases, children in juvenile delinquency proceedings, probationers, mental health cases, and also conflict matters where the Office of the Public Defender is ethically unable to proceed with representation.

The current compensation rate of \$90/hour does not adequately compensate an attorney for the significant responsibilities they shoulder while handling a criminal case or acting as a guardian ad litem, and it does not even cover the costs of overhead for many attorneys. The statutory rate of pay has not increased in almost 20 years. Federal cases pay a substantially higher rate, and as of January 2025, was at least \$175/hour. The situation in the Third Circuit is so dire that judges are asking attorneys to come from other islands to assist our community. The rate of compensation must be raised to a viable wage to ensure that attorneys who live on Hawaii Island can afford to assist their community by providing representation to those in need.

Sincerely,

Jennifer A. Wharton, Esq.



Testimony to the Thirty-Third Legislature, 2025 Regular Session

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

Hearing: March 13, 2025, 9:45 a.m.

State Capitol Building
415 South Beretania Street
Honolulu, HI 96813

**Re: House Bill 396, HD1 - Relating to Compensation for Court Appointed Counsel
House Bill 398, HD1 - Relating to Compensation for Court Appointed
Representation**

Honorable Chair Rhoads, Honorable Vice Chair Gabbard, and Members of the Senate Committee on Judiciary:

I am submitting this testimony as a practicing attorney in Maui County. I support HB 396 and HB 398 which would increase the rate of pay for appointed counsel and guardian ad litem from \$90/hour to \$150/hour. In the past several years, there has been a dramatic decrease in the Second Circuit of available court-appointed counsel to represent indigent members of our community in criminal matters and to protect the interests of our keiki who require a guardian ad litem. Increasing the statutory rate of pay would help attract attorneys who want to live, work, and help in our community.

The Office of the Public Defender cannot represent everyone who needs a lawyer in the criminal justice system. Privately appointed counsel is asked to step in on a case-by-case basis by the judiciary, often at a moment's notice for arraignments or preliminary hearings. This includes appointments for new cases, children in juvenile delinquency proceedings, probationers, mental health cases, and also conflict matters where the Office of the Public Defender is ethically unable to proceed with representation.

Like most private defense attorneys who currently accept State court-appointed cases, I am a solo criminal defense attorney. My law firm is a small business. To continue serving the community, my firm must make enough profit to continue operating. On Maui, as on other islands, there is a shortage of private defense attorneys. It is not difficult to obtain higher paying private work in criminal defense and TRO cases. My hourly private rate is \$350/hour, which is on par with the average private defense rate in this State. Logically, to run a successful law firm, it makes

the most sense to bill as many hours as possible at the highest rate possible. Time is the most valued asset in the business of law.

However, I spend time on some court-appointed cases because access to justice is very important to me. I also deeply enjoy serving indigent and underserved clientele. But from a business perspective, it does not make sense to accept a high number of court-appointed cases. After business taxes and expenses are subtracted from the meager \$90/hour rate, the State is essentially asking experienced criminal defense attorneys to work at \$15-\$25/hour.

I firmly believe that the court-appointed attorney lists are shrinking because this is not a fair rate of compensation for the important work that court-appointed counsel provides. A business cannot survive, much less thrive, on such a low rate of compensation. There are not enough attorneys, particularly on the neighbor islands, who will be willing to accept a meaningful number of cases at this rate. Moreover, relying on attorneys from other islands to take court-appointments is not a strong plan either. It is taxing on time and energy for attorneys to travel to different islands for daily work. Again, time is money for attorneys. The neighbor islands, in particular, will suffer from the lack of quality court-appointed attorneys.

Moreover, collecting on court-appointed work is also cumbersome and time-consuming for court-appointed counsel. We cannot bill for the time it takes to submit payment requests. It is much easier and less time-consuming to collect payment from private clients. Oftentimes, after a bill is submitted to the State, payment is significantly delayed and not received for 2-3 months.

If access to justice is a priority to this Committee, then the rate of compensation must be increased in order to attract and keep more court-appointed counsel. Although \$150/hour pales in comparison to the \$350/hour average private billing rate, it is closer in the direction of an acceptable rate for court-appointed matters. The current compensation rate of \$90/hour does not adequately compensate an attorney for the significant responsibilities they shoulder while handling a criminal case or acting as a guardian ad litem, and it does not even cover the costs of overhead for many attorneys. The statutory rate of pay has not increased in almost 20 years. Federal cases pay a substantially higher rate, and as of January 2025, was at least \$175/hour. The rate of compensation must be raised to a viable wage to ensure that attorneys who live on Hawaii Island can afford to assist their community by providing representation to those in need.

Sincerely,



Joanne S.C. Hicks, Esq.

Testimony to the Thirty-Third Legislature, 2025 Regular Session

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

Hearing: March 13, 2025, 9:45 a.m.

State Capitol Building
415 South Beretania Street
Honolulu, HI 96813

**Re: House Bill 396, HD1 - Relating to Compensation for Court Appointed Counsel
House Bill 398, HD1 – Relating to Compensation for Court Appointed
Representation**

Honorable Chair Rhoads, Honorable Vice Chair Gabbard, and Members of the Senate Committee on Judiciary:

I am submitting this testimony as a practicing attorney in Hawaii County. I support HB396 and HB 398 which would increase the rate of pay for appointed counsel and guardian ad litem from \$90/hour to \$150/hour. In the past several years, there has been a dramatic decrease in the Third Circuit of available court-appointed counsel to represent indigent members of our community in criminal matters and to protect the interests of our keiki who require a guardian ad litem. Increasing the statutory rate of pay would help attract attorneys who want to live, work, and help in our community.

The Office of the Public Defender cannot represent everyone who needs a lawyer in the criminal justice system. Privately appointed counsel is asked to step in on a case-by-case basis by the judiciary, often at a moment's notice for arraignments or preliminary hearings. This includes appointments for new cases, children in juvenile delinquency proceedings, probationers, mental health cases, and also conflict matters where the Office of the Public Defender is ethically unable to proceed with representation.

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Sincerely,

Victor M. Cox, Esq.

HB-396-HD-1

Submitted on: 3/10/2025 10:16:05 AM

Testimony for JDC on 3/13/2025 9:45:00 AM

| Submitted By | Organization | Testifier Position | Testify |
|---------------------|---------------------|---------------------------|------------------------|
| john knoebber | Individual | Support | Written Testimony Only |

Comments:

Testimony to the Thirty-Third Legislature, 2025 Regular Session

Senate Committee on Judiciary

Senator Karl Rhoads, Chair

Senator Mike Gabbard, Vice Chair

Hearing: March 13, 2025, 9:45 a.m.

State Capitol Building

415 South Beretania Street

Honolulu, HI 96813

Re: House Bill 396, HD1 - Relating to Compensation for Court Appointed Counsel

House Bill 398, HD1 – Relating to Compensation for Court Appointed

Representation

Honorable Chair Rhoads, Honorable Vice Chair Gabbard, and Members of the Senate Committee on Judiciary:

I am submitting this testimony as a practicing attorney in Hawai'i County. I support HB 396 and HB 398 which would increase the rate of pay for appointed counsel and guardian ad litem from \$90/hour to \$150/hour. In the past several years, there has been a dramatic decrease in the Third Circuit of available court-appointed counsel to represent indigent members of our community in criminal matters and to protect the interests of our keiki who require a guardian ad litem. Increasing the statutory rate of pay would help attract attorneys who want to live, work, and help in our community.

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Sincerely,

Attorney John Knoebber

**Testimony of Emil A. Macasinag, Esq. to the Thirty-Third Legislature,
2025 Regular Session**

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

Hearing: March 13, 2025, 9:45 a.m.

State Capitol Building
415 South Beretania Street
Honolulu, HI 96813

**Re: House Bill 396, HD1 - Relating to Compensation for Court Appointed Counsel
House Bill 398, HD1 - Relating to Compensation for Court Appointed
Representation**

Honorable Chair Rhoads, Honorable Vice Chair Gabbard, and Members of the Senate
Committee on Judiciary:

I write to provide support for HB 396 and HB 398 which would increase the rate of pay
for court-appointed counsel and guardians ad litem from \$90/hour to \$150/hour.

I have been licensed to practice law in Hawaii since 2021, and in California since 2008. I
currently practice real estate and business litigation in Hawaii County. I have considered
expanding my practice to the areas addressed by HB 396 and HB 398, because there is a shortage
of attorneys willing to accept appointments. I appreciate my colleagues who take those court
appointments, because they provide a critical service to our community. I also know that those
practice areas are extremely challenging, and it would take a substantial investment of time and
money for me to competently practice in those areas. Ultimately, it does not make financial sense
for me to make that investment when the rate for those appointments is \$90/hour.

Please note that the pay rate for court-appointed commissioners to handle foreclosure
matters is \$200/hour. I have accepted those appointments because it is a way for me to help the
courts and serve the community, and it makes financial sense for me. I urge the Committee to
consider raising the rate for court-appointed criminal defense counsel and guardians ad litem to
at least \$200/hour. Doing so would not only incentivize qualified attorneys to accept those
appointments; but also encourage otherwise experienced attorneys to make the necessary
investment to expand their practices in order to competently represent indigent defendants,
children, and other vulnerable individuals.

Sincerely,



Emil A. Macasinag, Esq.

HB-396-HD-1

Submitted on: 3/11/2025 6:25:30 AM

Testimony for JDC on 3/13/2025 9:45:00 AM

| Submitted By | Organization | Testifier Position | Testify |
|---------------------|---------------------|---------------------------|---------------------------|
| Frank Schultz | Individual | Support | Written Testimony Only |

Comments:

I support this initiative.

Testimony to the Thirty-Third Legislature, 2025 Regular Session

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

Hearing: March 13, 2025, 9:45 a.m.

State Capitol Building
415 South Beretania Street
Honolulu, HI 96813

**Re: House Bill 396, HD1 - Relating to Compensation for Court Appointed Counsel
House Bill 398, HD1 – Relating to Compensation for Court Appointed
Representation**

Honorable Chair Rhoads, Honorable Vice Chair Gabbard, and Members of the Senate Committee on Judiciary:

I am submitting this testimony as a practicing attorney in Hawaii County. I support HB 396 and HB 398 which would increase the rate of pay for appointed counsel and guardian ad litem from \$90/hour to \$150/hour. In the past several years, there has been a dramatic decrease in the Third Circuit of available court-appointed counsel to represent indigent members of our community in criminal matters and to protect the interests of our keiki who require a guardian ad litem. Increasing the statutory rate of pay would help attract attorneys who want to live, work, and help in our community.

The Office of the Public Defender cannot represent everyone who needs a lawyer in the criminal justice system. Privately appointed counsel is asked to step in on a case-by-case basis by the judiciary, often at a moment's notice for arraignments or preliminary hearings. This includes appointments for new cases, children in juvenile delinquency proceedings, probationers, mental health cases, and also conflict matters where the Office of the Public Defender is ethically unable to proceed with representation.

The current compensation rate of \$90/hour does not adequately compensate an attorney for the significant responsibilities they shoulder while handling a criminal case or acting as a guardian ad litem, and it does not even cover the costs of overhead for many attorneys. The statutory rate of pay has not increased in almost 20 years. Federal cases pay a substantially higher rate, and as of January 2025, was at least \$175/hour. The situation in the Third Circuit is so dire that judges are asking attorneys to come from other islands to assist our community. The rate of compensation must be raised to a viable wage to ensure that attorneys who live on Hawaii Island can afford to assist their community by providing representation to those in need.

Sincerely,

Kori A. Weinberger, Esq.

Law Office of Georgette A. Yaindl, LLLC
Georgette Anne Yaindl 8940
P.O. Box 307
Kailua-Kona Hawai`i 96745-0307
(808) 224-0219 v/txt (877) 300-8869 fax
gyaindl@gyattorney.com

March 12 2025

Senator Karl Rhoads, Chair
Senator Mike Gabbard, Vice Chair
Committee on Judiciary
The Senate
33rd legislature, State of Hawai`i

via: <http://www.capitol.hawaii.gov>

Dear Committee leadership and members,

Re: **STRONG SUPPORT FOR HB396 HD1 RELATING TO COMPENSATION
FOR COURT APPOINTED COUNSEL**

Hearing Date: Tuesday, February 25, 2025
Time: 9:45 a.m.
Location: Conference Room 016
State Capitol
415 South Beretania Street

I write in strong support of this proposed legislation and request that language in the original draft providing for an appropriation of \$2.89 million and an effective date of July 1, 2025 is restored.

In support of last year's similarly intended HB1914 HD1, the legislature received compelling testimony, including from the Judiciary, "The compensation rate for court-appointed criminal defense counsel has not been adjusted in twenty years"; from the ACLU-Hawai`i, "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"; from HSBA, "The current compensation rates for court-appointed counsel in Hawai`i does not reflect the challenging nature of their work, the time and effort invested in each case, and the significant responsibilities they shoulder"; and from Hawaii County Deputy Prosecuting Attorney Chase Murray, "Here on Hawaii Island, our legal community is already facing a shortage of attorneys more generally, which only compounds the difficulties in recruiting competent counsel for indigent criminal defendants. Without the fee increase proposed in [last year's] HB 1914, these difficulties, and the delays caused by them, will continue and grow. In practical terms, this means cases will take longer to resolve cases, it means

cases will take up more court and community resources, and it means both defendants and victims will wait for justice to be served.”

Since 2012, I have served as court-appointed counsel in the 3rd circuit criminal courts. While increasing the hourly compensation to \$150/hr. not only is fair and reasonable after 20 years, it is equally important that the maximum amounts set for handling each case is increased, as again proposed in this year’s bill. That is because any felony case can be comprised of a single or multiple felony offense(s), and the present ceiling of \$6,000.00 set as maximum fee in “a felony case” simply does not account for providing defense representation in a complex multi-count case. Additionally, any felony or misdemeanor case going to jury trial involves additional complexities and expense for which the current compensation ceilings are inadequate.

Also, HB396 HD1 allows for an attorney to expend more time on a case without having to motion the court for an allowance of extraordinary fee, which typically must be done before counsel reaches the statutory threshold. Under the current regime, a \$6,000 felony representation at @ \$90/hour, for example, therefore contemplates counsel expending only 66.66 hours in the representation. HB396 HD1’s proposed cap of \$12,000 at \$150.00/hour contemplates a more realistic 80 hours will be expended in a felony representation.

Thank you, Honorable committee members, for your attention to this issue and consideration of my letter. Mahalo.

Sincerely,

/s/ Georgette A. Yaindl
GEORGETTE ANNE YAINDL

LATE

Testimony to the Thirty-Third Legislature, 2025 Regular Session

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

Hearing: March 13, 2025, 9:45 a.m.

State Capitol Building
415 South Beretania Street
Honolulu, HI 96813

**Re: House Bill 396, HD1 - Relating to Compensation for Court Appointed Counsel
House Bill 398, HD1 – Relating to Compensation for Court Appointed
Representation**

Honorable Chair Rhoads, Honorable Vice Chair Gabbard, and Members of the Senate Committee on Judiciary:

I am submitting this testimony as a practicing attorney in Family Court and District Court in Kona. I support HB 396 and HB 398 which would increase the rate of pay for appointed counsel from \$90/hour to \$150/hour and guardian ad litem from \$60 (out of court)/\$90(in court) to \$150/hour.

I have been practicing in Family Court in Kona for the past ten years. I represent children who are in foster custody, parents who have children in foster custody, and children whose parents are going through a divorce. As a guardian ad litem, I determine what is in the best interest of the child/children. This requires me to keep in contact with the child, speak with the child's resource caregivers (foster parents), speak to the child's teacher and counselor at school, get report cards, speak to the child's therapist, monitor whether the child is seeing a doctor and dentist and whether the child is receiving the care the child needs, check on the parent's progress with services, discuss the case with the child's social worker and Deputy Attorney General, discuss the case with the other attorneys involved in the case, attend Ohana Conferences, and when the child has special needs, which many of them do, attend Individualized Education Plan (IEP) meetings, attend monthly treatment team meetings with the Department of Health, and write reports to provide this information to the Court. These tasks are repeatedly done throughout the case. In addition, I file motions and responses to motions, and participate in adjudication hearings, review hearings, and termination of parental rights hearings that are often contested hearings in court that last for days, months, and, in a few cases, years.

In the past several years, there has been a dramatic decrease in the Third Circuit of available court-appointed counsel to represent children in foster care, parents whose children are in foster care, and guardian ad litem for children. This is due to the fact that the pay for guardian ad litem who do work in Family Court in the Third Circuit is not enough to sustain a law practice. Attorneys have chosen to work in other areas of law. Children need representation in court, so their needs are addressed, and they are not forgotten.

The current compensation rate of \$60/hour (out of court)/\$90/hour (in court) does not adequately compensate an attorney for the significant responsibilities they shoulder as a guardian ad litem, and it does not even cover the costs of overhead for many attorneys. The statutory rate of pay has not increased in almost 20 years. Federal cases pay a substantially higher rate, and as of January 2025, was at least \$175/hour. The situation in the Third Circuit is so dire that judges are asking attorneys to come from other islands to assist our community. The rate of compensation must be raised to a viable wage to ensure that attorneys who live on Hawaii Island can afford to assist their community by providing representation to children in need.

Sincerely,

Carol S. Kitaoka, Esq.