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**Testimony of the Office of the Public Defender,
State of Hawai'i to the House Committee on Finance**

February 25, 2025

H.B. 398 HD1: RELATING TO COMPENSATION FOR COURT-APPOINTED REPRESENTATION.

Chair Yamashita, Vice Chair Takenouchi, and Members of the Committee:

The Office of the Public Defender **strongly supports H.B. 398 HD1.**

This measure would increase the compensation that a court-appointed attorney and a court-appointed Guardian Ad Litem would receive for legal services in Family Court. 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 and Guardian Ad Litem 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 Family Court 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 Family Courts, and the ability to communicate effectively with clients of all ages, all backgrounds, and levels of criminality.

Constitutionally mandated Due Process and the Right to Counsel require skilled competent professionals be made available to any person accused of a crime and it has become increasingly essential to provide legal services in other proceedings before the Family Courts. Court-appointed attorneys and court-appointed Guardian ad Litem 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 in our Family Courts Statewide.

Thank you for the opportunity to comment on this measure.

JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA



RYAN I. YAMANE
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
Office of the Director
P. O. Box 339
Honolulu, Hawaii 96809-0339

TRISTA SPEER
DEPUTY DIRECTOR
KA HOPE LUNA HO'OKELE

February 23, 2025

TO: The Honorable Representative Kyle T. Yamashita, Chair
House Committee on Finance

FROM: Ryan I. Yamane, Director

SUBJECT: **HB 398 HD1 – RELATING TO COMPENSATION FOR COURT-APPOINTED REPRESENTATION.**

Hearing: February 25, 2025, 12:00 p.m.
Conference Room 308 & Videoconference, State Capitol

DEPARTMENT'S POSITION: The Department of Human Services (DHS) supports the Judiciary's measure for funds to increase the compensation of court-appointed counsel and guardian ad litem in family court proceedings.

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. Effective 7/1/3000. (HD1)

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

- (1) Changing the effective date to July 1, 3000, to encourage further discussion; and
- (2) Making technical, nonsubstantive amendments for the purposes of clarity, consistency, and style.

The legal representation provided by court-appointed counsel and guardian ad litem is necessary at every point of decision-making, especially in child welfare cases pursuant to Chapters 587A and 346, Hawaii Revised Statutes. Increasing compensation will assist counsel

February 23, 2025

Page 2

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.



STATE OF HAWAII
STATE COUNCIL
ON DEVELOPMENTAL DISABILITIES
PRINCESS VICTORIA KAMĀMALU BUILDING
1010 RICHARDS STREET, Room 122
HONOLULU, HAWAII 96813
TELEPHONE: (808) 586-8100 FAX: (808) 586-7543
February 25, 2025

The Honorable Representative Kyle T. Yamashita, Chair
House Committee on Finance
The Thirty-Third Legislature
State Capitol
State of Hawai'i
Honolulu, Hawai'i 96813

Dear Representative Yamashita, and Committee Members:

SUBJECT: HB398 HD1 Relating to Compensation for Court-Appointed Representation

The Hawaii State Council on Developmental Disabilities **SUPPORTS HB398 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. Effective 7/1/3000. (HD1)

The Council serves as an advocate and resource to ensure that individuals with intellectual and developmental disabilities (I/DD) in Hawai'i have access to services and supports that promote independence, self-determination, and community inclusion. Court-appointed counsel and guardians ad litem (GALs) play a critical role in protecting the rights of individuals with I/DD, particularly in cases involving guardianship, family court proceedings, and other legal matters where their interests must be represented.

For individuals with I/DD, the presence of qualified and adequately compensated legal representatives is essential. These professionals ensure that the unique needs, preferences, and rights of individuals with I/DD are appropriately considered in court decisions. Competitive compensation rates are vital for attracting attorneys and GALs with the specialized knowledge necessary to address the complexities associated with I/DD cases. Higher rates will also allow court-appointed representatives to dedicate the time and resources needed for comprehensive case preparation, resulting in better advocacy and outcomes for individuals with I/DD. Furthermore, well-compensated representatives can more thoroughly explore and present less restrictive alternatives to guardianship, such as Supported Decision-Making (SDM), ensuring that the autonomy and decision-making rights of individuals with I/DD are preserved whenever possible. Cases involving individuals with I/DD often intersect with sensitive family matters. Experienced representatives who are fairly compensated are better positioned to navigate these complexities and advocate effectively for the best interests of the individual.

Thank you for the opportunity to submit testimony in **support of HB398 HD1**.

Sincerely,

Daintry Bartoldus, Executive Administrator



The Judiciary, State of Hawai‘i

Testimony to the Thirty-Third State Legislature, 2025 Regular Session

House Committee on Finance

Representative Kyle T. Yamashita, Chair
Representative Jenna Takenouchi, Vice Chair

Tuesday, February 25, 2025 at 12:00 p.m. (Agenda #2)
Hawai‘i State Capitol, Conference Room 308 & Videoconference

by

Dyan M. Medeiros
Senior Judge, Deputy Chief Judge
Family Court of the First Circuit

Bill No. and Title: House Bill No. 398, 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.

Judiciary's Position:

The Judiciary offers this testimony in strong support of House Bill No. 398, H.D. 1.

Guardians Ad Litem (“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 be appointed to represent the best interests of children in child custody and visitation matters, such as in divorce and paternity cases. They may also be appointed to represent the interests of a defendant in a divorce, annulment, or separation case if the court believes the defendant is not fully competent pursuant to HRS § 580-6. They may be appointed for incapacitated adults or minor children in guardianship 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. They are sometimes appointed to represent minors in CPA cases as well. They are also required under federal law to protect the interests of absent military members in all cases if a default is being requested.

The work court-appointed GALs and attorneys perform in family court cases is extremely important. The cases can be extremely complex. The work 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 cases. There is only one individual who is consistently willing and available to be appointed as a GAL in assisted community treatment cases down from two individuals last year. There are three attorneys (down from four) who are consistently willing and available to take on juvenile law violator cases without limitation. (Other attorneys may be able to take on cases but limit the types of cases they will accept.) 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 four attorneys who are under contracts to represent parents (down from six last year), and we are concerned that number may drop even more. There is one attorney who is not under contract but it is unclear whether he will continue to accept cases. 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. A local non-profit law firm has graciously agreed to accept appointments as counsel in CPA cases but they can only represent Native Hawaiian parents and the number of cases they can accept is limited by the fact that they only have one attorney to accept the appointments.

While these efforts have had some success, 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 encourage



attorneys to be willing to undertake this demanding work is to ensure that they are adequately compensated for that work.

The last time the statutory compensation rates for family court appointed attorneys and GALs was increased was in 2007, approximately eighteen 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. In contrast, attorneys in private practice who specialize in family court cases routinely charge between \$250 and \$450 per hour regardless of whether they are working in court or out of court.

A significant increase 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. (Out of court work includes but is not limited to drafting court pleadings, preparing clients for court, making sure parents in CPA cases are following their service plan, etc.) This, in turn, will ensure that the parties in these important cases have access to representation and will allow the family courts to hear these cases without unnecessary delay.

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

HB-398-HD-1

Submitted on: 2/24/2025 7:35:30 AM

Testimony for FIN on 2/25/2025 12:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Marilyn Yamamoto	Hawaii Coalition for Child Protective Reform	Support	Written Testimony Only

Comments:

Chair Yamashita and committee members,

The HCCPR fully supports HB398 but wishes to express disappointment that the Judiciary and DHS failed to take advantage of federal funding available since 2018 for legal services to both parents and children who qualify for Title IVE.



THE LAW OFFICE OF AARON K. WILLS, LLC.



A Limited Liability Law Company

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Testimony to the Thirty-Third Legislature, 2025 Regular Session

House Committee on Finance
Representative Kyle Yamashita, Chair
Representative Jenna Takenouchi, Vice Chair

Hearing: February 25, 2025, 12:00 p.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 Yamashita, Honorable Vice Chair Takenouchi, and Members of the House Committee on Finance:

I am submitting this testimony as a practicing attorney in Hawaii County and the City and County of Honolulu. I support HB396 and HB398, 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 and the First Circuit of available court-appointed counsel to represent indigent members of our community in criminal matters.

Increasing the statutory rate of pay would help attract attorneys who want to live, work, and help in our community. In 2022, I was hired to represent an individual who was charged with murder in the Third Circuit (Hilo) who was eventually acquitted after trial. At that time, I had just finished representing 100 individuals “pro-bono” in both the First and Third Circuit and my family decided to move to the Third Circuit to live, work, and help in the community on the Big Island as a whole.

I am currently on the Felony A/Murder Court-appointed list for the First Circuit Court on Oahu, Third Circuit Court in Hilo, and Third Circuit Court in Kailua-Kona. Over the past four years, I have accepted and completed many of the high-profile cases in both the First and Third Circuits. Travel Cost and Overhead business expenses can be very high given the amount of travel needed to cover the areas of Oahu, Hilo, and Kailua-Kona.



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My practice is based upon a heavy case load of court-appointed criminal cases for indigent individuals. In order to practice law and to afford all of the expenses of running a law business for expenses such as “professional liability insurance, car insurance, legal research applications, hiring of investigators, taking depositions plus cost of transcription, food, gas, etc.” the bottom hour private rate that can be agreed to in criminal cases, to cover all the expenses, where A Felony or more is charged, is **\$350/hr.**

At the current rate of \$90 an hour, many times I have to front the cost of most if not all of these services. I then will have to submit a request for reimbursement for costs, which must be reviewed for reasonableness and could be denied. Nevertheless, if the Costs are approved it will be sent in a “paper check” through the USPS mail at an average of 8-9 weeks after the request is submitted. Many times, you need to have a hefty caseload to be able to produce any profit at all, but the most debilitating part is having to have a healthy amount of available “cash” on hand to be able to pay for the expenses (up front), for multiple cases, that will inevitably occur when you represent indigent criminal defendants who have been charged with a Felony A or Murder.

Because of the low hourly pay (\$90) and the delay in cost reimbursement for work completed, my firm has weathered through serious financial hardship while continuing to work and accept court-appointed cases for indigent Defendants from both the First and Third Circuits. My commitment to court-appointed cases will remain strong and steadfast because we are a vital part of the criminal justice system in Hawaii. I have witnessed the mass exodus of terrific defense attorneys who refuse to accept or work for the State of Hawaii, because they feel the pay is insulting, when right across the street at the Federal building, they are offering \$175 an hour to do the same criminal defense services you would provide to the State. Many attorneys have left and have never returned to accept any further State court-appointed cases. I also have felt the temptation to go across the street to the Federal side and start working some cases as well.

However, my commitment will remain with the State of Hawaii and the Court-Appointed indigent clients, because I feel it is a critical area in our criminal justice system that needs robust advocacy and defense. The approving of this bill will allow for the continuing of robust legal representation of the same clients, without suffering the financial hardship that is happening now with the low pay rate and delay in reimbursement for fees and costs.

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



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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,

Aaron K. Wills, Esq.

Testimony to the Thirty-Third Legislature, 2025 Regular Session

House Committee on Finance
Representative Kyle Yamashita, Chair
Representative Jenna Takenouchi, Vice Chair

Hearing: February 25, 2025, 12:00 p.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 Yamashita, Honorable Vice Chair Takenouchi, and Members of the House Committee on Finance:

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.

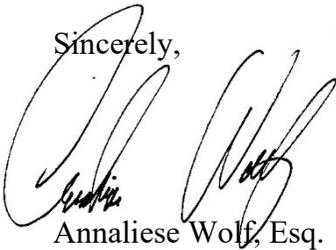
The West Hawaii Bar is a small but close-knit legal community that covers from Hawi, North Kohala, all the way to Pahala, Ka'u – half of the largest island, servicing rural and urban populations of approximately 82,000 people as of the 2020 census. The Office of the Public Defender cannot represent everyone 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 in a cursive style.

Annaliese Wolf, Esq.

West Hawaii Bar Association President 2025

**House Committee on Finance
Representative Kyle T. Yamashita, Chair
Representative Jenna Takenouchi, Vice Chair**

**Tuesday, February 25, 2025
12:00 p.m. (Agenda #2)
Hawaii State Capitol, Room 308**

**Testimony in Support of House Bill No. 398, H.D. 1
Relating to Compensation for Court-Appointed Representation**

by

**Annaliese H. Wolf
President, West Hawaii 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

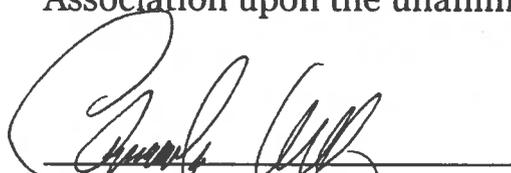
WHEREAS, the proposed legislation HB396, HD1, HB398, HD1, and SB263, SD1 currently pending before the Thirty-Third Legislature, 2025 Regular Session, seeks to address this pressing issue by increasing the compensation rates for court-appointed counsel and guardians ad litem to a level that reflects the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

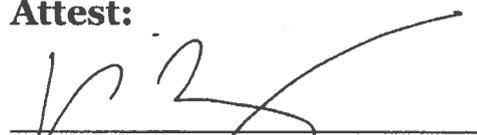
BE IT FURTHER RESOLVED, that copies of this Resolution shall be transmitted to members of the Thirty-Third Legislature and the Judiciary to express our unified support for an increase in the rate of compensation for court-appointed attorneys in criminal cases and for guardians ad litem in family law 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
House Committee on Finance
Hearing: Tuesday, February 25, 2025 (12:00 PM)

TO: Representative Kyle T. Yamashita, Chair
Representative Jenna Takenouchi, Vice Chair

FROM: Mark M. Murakami, HSBA President

RE: HB 398, HD1 - RELATING TO COMPENSATION FOR
COURT-APPOINTED COUNSEL

Chair Yamashita, Vice Chair Takenouchi, and Members of the
Committee on Finance:

Thank you for this opportunity testify in **STRONG SUPPORT** of HB 398,
HD1 – Relating to Compensation for Court-Appointed Representation.
This measure would increase the rate of compensation for court-appointed
counsel and guardians ad litem (GAL) in family court proceedings.

Qualified legal representation is necessary and critical in family court
proceedings. The rates of compensation have remained stagnant for this
critical work, which makes it increasingly difficult to recruit and retain
qualified counsel to provide these services. Court-appointed counsel and
GAL serve a critical role in ensuring children’s best interest are served and
family safety remains a priority.

Mahalo for this opportunity to provide testimony in strong support.

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Regan Iwao
President, Board of Directors

David Kauila Kopper
Executive Director

TESTIMONY OF THE LEGAL AID SOCIETY OF HAWAII
TO THE HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS ON
HB398

Rep. Kyle T. Yamashita, Chair
Rep. Jenna Takenouchi, Vice-Chair

Tuesday, February 25, 2025

The Legal Aid Society of Hawai'i **strongly supports** HB398 – Relating to Compensation for Court-Appointed Representation.

For over 20 years, Legal Aid has been providing guardian ad litem and parent counsel services across the state, assisting close to 4,000 children in the child welfare system and representing over 500 parents. Increasing the compensation for providers of these critical services is vital to ensuring that Hawai'i's 'ohana continue to receive the highest quality services by recruiting, retaining, and adequately compensating the attorneys and advocates who serve our communities through these roles.

Guardian ad litem contracts plays a critical role in ensuring the safety and wellbeing of children in child welfare cases by providing an independent fact finder whose sole role is to safeguard the welfare and best interests of children as required by state and federal law. Parents' counsel are also necessary to assert the rights of parents when a child is wrongfully removed, and also to counsel parents to enter treatment, counseling or receive other services to reunify with their children. When done right with the right support and compassion, we've seen amazing changes and growth in parents who are now able to provide safe family homes for their children.

This bill proposes to increase the current in-court and out-of-court hourly rates from \$90/\$60 to \$150/\$122, and the caps on the totals that can be paid. These increases are much needed and overdue. The last time the rates were raised was in 2007 (17 years ago), when Act 218 (2007) increased the rates to \$90/\$60 from \$60/\$40.

If the current rates were adjusted for inflation (based on the consumer price index), this measure increase those inflation-adjusted rates by \$13.20 and \$30.80, respectively. These are reasonable increases that will go directly to helping Hawai'i's 'ohana.

A comprehensive 2003 study into Hawai'i's guardian ad litem and court appointed counsel services underscores the need for this bill and still rings true today:

Adequate compensation for guardians ad litem is necessary to ensure adequate services are provided. To some extent, the amount spent reflects the priority put on the representation of children. Attorneys providing guardian ad litem services should be compensated equivalent to other "public service" attorneys. Insufficient compensation leads to guardians ad litem being overextended, as they take on more cases, but without adequate time and resources to devote sufficient attention to each case. This compromises the entire system of guardian ad litem services to children. States must set compensation at realistic levels that will result in the provision of decent services.

Legislative Reference Bureau Report No. 2, 2003. It also remains true that “sufficient resources” are vital to “ensure quality guardian ad litem services are provided to Hawaii's children.”

Thank you for this opportunity to provide testimony.

Respectfully,

David Kauila Kopper, Executive Director
Makia Minerbi, Managing Attorney, Family Unit
For the Legal Aid Society of Hawai‘i

Testimony to the Thirty-Third Legislature, 2025 Regular Session

House Committee on Finance
Representative Kyle Yamashita, Chair
Representative Jenna Takenouchi, Vice Chair

Hearing: February 25, 2025, 12:00 p.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 Yamashita, Honorable Vice Chair Takenouchi, and Members of the House Committee on Finance:

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,



Rachel L. Thompson, Esq.

Testimony to the Thirty-Third Legislature, 2025 Regular Session

House Committee on Finance
Representative Kyle Yamashita, Chair
Representative Jenna Takenouchi, Vice Chair

Hearing: February 25, 2025, 12:00 p.m.

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I am one of the lawyers who previously accepted court appointed cases and who has the qualifications to accept court appointed cases and to serve as a guardian ad litem. However, after I started looking at the costs of accepting these cases I realized I was effectively paying out of pocket to accept them. Since I have a family and my own expenses, I realized I could not afford them and I reluctantly stopped accepting these cases several years ago.

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,

Mirtha Oliveros, Esq.

Testimony of David H. Lawton, Esq. to the Thirty-Third Legislature, 2025 Regular Session

House Committee on Finance
Representative Kyle Yamashita, Chair
Representative Jenna Takenouchi, Vice Chair

Hearing: February 25, 2025, 12:00 p.m.

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

Honorable Chair Yamashita, Honorable Vice Chair Takenouchi, and Members of the House Committee on Finance:

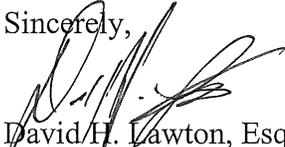
I am submitting this testimony on my own behalf as a practicing attorney in Hawaii County. I support HB 396 and HB 398 which would increase the rate of pay for appointed counsel and guardians ad litem from \$90/hour to \$150/hour, although I believe that \$150.00 is still too low for the work performed by guardians ad litem and criminal court appointed attorneys.

Although I do not practice in the areas covered by House Bill 396 or House Bill 398, and don't take court appointments in those areas of practice, I did from 2000 until approximately 2010. Handling these areas of practice is challenging, and the attorneys who take these cases provide an important service.

In making your decision regarding the proposed rate of \$150/hour, please consider that this is a billable rate for work actually performed, which is only part of attorney's long day when administering even a solo law firm. The attorneys handling these cases have overhead for office space, parking, staff, IT, computerized legal research, internet, equipment, continuing legal education, errors and omission insurance, and health insurance, just to name a few expenses. By no means should you contemplate that an attorney who takes court appointed cases at \$150/hour will gross \$150/hour for the time spent per week in the practice of law.

The rate of compensation should be raised to so that your constituents continue to be afforded competent, and engaged legal representation.

Sincerely,


David H. Lawton, Esq.

HB-398-HD-1

Submitted on: 2/24/2025 11:03:57 AM

Testimony for FIN on 2/25/2025 12:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Heather McVay	Individual	Support	Written Testimony Only

Comments:

Support.

Testimony to the Thirty-Third Legislature, 2025 Regular Session

House Committee on Finance
Representative Kyle Yamashita, Chair
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Representation**

Honorable Chair Yamashita, Honorable Vice Chair Takenouchi, and Members of the House Committee on Finance:

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 \$60 and 90/hour to \$150/hour.

The rates have not been raised in many years, and the \$60 and \$90/hour rates severely limit Hawai‘i attorneys in their ability to take court appointments, because these rates do not translate into a meaningful wage. Simply put, we cannot run a law firm on these hourly rates. Our community suffers as a result.

In a time when our justice system is under attack, this is an opportunity for the Hawai‘i Legislature to support the rule of law and a strong, functioning Judiciary.

Sincerely,

Dawn H. Laird, Esq.

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

House Committee on Finance
Representative Kyle Yamashita, Chair
Representative Jenna Takenouchi, Vice Chair

Hearing: February 25, 2025, 12:00 p.m.

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Honolulu, HI 96813

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

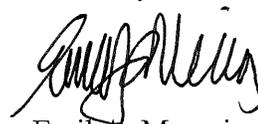
Honorable Chair Yamashita, Honorable Vice Chair Takenouchi, and Members of the House Committee on Finance:

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.