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**Testimony of the Office of the Public Defender,
State of Hawaii to the House Committee on Finance**

February 25, 2025

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

Chair Yamashita, Vice Chair Takenouchi, 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.



The Judiciary, State of Hawai‘i

Testimony to the Thirty-Third Legislature, 2025 Regular Session

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

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

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



House Bill No. 396, HD1, Relating to Compensation for Court-Appointed
Counsel
House Committee on Finance
Tuesday, February 25, 2025
Page 2

Office of the Public Defender. However, in cases where there is, or there arises, a conflict 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 maintain 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 outer 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.

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.



House Bill No. 396, HD1, Relating to Compensation for Court-Appointed
Counsel
House Committee on Finance
Tuesday, February 25, 2025
Page 3

Thank you for the opportunity to testify on this measure.



Committee on Finance
Chair Kyle Yamashita, Vice Chair Jenna Takenouchi

February 25, 2025, 12:00 pm, CR 308 via Videoconference
HB 396 Relating to Compensation for Court-Appointed Counsel

TESTIMONY

Stephen Munkelt, Legislative Committee, League of Women Voters of Hawaii

Chair Yamashita, Vice Chair Takenouchi, and Committee Members:

The League of Women Voters of Hawaii supports BILL NUMBER HB 396

The League of Women Voters of Hawaii **SUPPORTS** HB 396 which will raise the fees for court-appointed counsel in criminal cases from \$90/hr to \$150/hr. This bill is part of the Judiciary package and is also supported by the Public Defender, the Kaua'i Prosecutor, and the Hawaii State Bar Association. These pillars of the justice system all recognize the critical need for attorneys with the experience and passion needed for competent and effective representation of the accused.

I personally served as counsel in criminal cases in California for over 45 years. As noted in the testimony of William B. Heflin the attorneys who accept court appointments must carry their own office rent, malpractice insurance, staff salaries and overhead. Today these expenses can easily amount to \$100/hr for each of the hours billed by counsel during the year. As highly skilled professionals not many can afford to take these stressful cases just to cover overhead. Nor should they. The proposed increase to \$150/hr is appropriate and still far below the rates charged by private retained counsel at \$300/hr and up. Attorneys who agree to accept appointments will still be making a contribution to the community, but they will also get something for their time and effort.

The League of Women Voters of Hawaii advocates for a justice system that is equitable, effective, just, and that fosters public trust in the courts and the law. Our founding fathers placed the right to counsel in the Constitution, and the Supreme Court in *Gideon v. Wainwright* (1963) made clear that the states must provide counsel for those who cannot afford one on their own. In the economy of today 70% or more of the accused are unable to afford counsel. The public defender shoulders much of this load, but there are conflicts they can't handle, and maximum caseloads that cannot be exceeded without reducing the effectiveness of their representation. Private counsel willing to accept cases at the (still reduced) rate of \$150/hr are essential to the justice system.

Thank you for the opportunity to submit testimony on HB 396.

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.

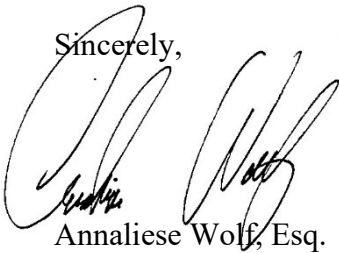
The West Hawaii Bar is a small but close-knit legal community that covers from Hawi, North Kohala, all the way to Pahala, Ka'u – half of the largest island, servicing rural and urban populations of approximately 82,000 people as of the 2020 census. The Office of the Public Defender cannot represent everyone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

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. 396, H.D. 1
Relating to Compensation for Court-Appointed Counsel**

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 396, 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 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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February 24, 2025

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

**RE: Testimony to the Thirty-Third Legislature, 2025 Regular Session
House Bill 396, HD1 – Relating to Compensation for Court Appointed Counsel**

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

I am submitting testimony with respect to House Bill 396, HD1 – Relating to Compensation for Court Appointed Counsel.

I am an attorney on the Kona side of the Big Island and a partner with the law firm of Schlueter, Kwiat & Kennedy LLLP. I have served as the president of the West Hawai'i Bar Association in 2015 and 2024, and currently serve as section co-chair to the Hawai'i State Bar Association Criminal Justice and Corrections Section.

I have represented indigent persons through court appointed programs since 2008. This includes time in other jurisdictions on the east coast, time as a state deputy public defender, and court appointed counsel in both state and federal capacities in Hawai'i. I hope that this testimony sheds some light as to the realities that face attorneys willing to accept court appointed criminal cases and how the current rate makes such work untenable.

When I first began representing indigent defendants at the federal level in the First Circuit, the hourly rate for federal court appointed attorneys was \$100 per hour (2008) and increased to \$110 per hour in 2009. At that time, the Hawai'i state court appointed rate was in line with this rate at \$90 per hour.¹ The current rate for a court appointed attorney in the federal system is \$175 per hour, with an increased rate of \$223 per hour for the more serious crimes (capital cases). The Hawai'i rate has not changed.

¹ At the same time, the New York 18-b court appointed rate was \$60 for misdemeanors and \$75 per hour for all other cases. That rate as of 2023 has increased to \$158 per hour for all cases.

SCHLUETER, KWIAT & KENNEDY LLLP

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Running a law firm is the same as many small businesses. There is great overhead. Staffing costs, malpractice insurance, bar dues, supplies, office rent and electricity all add up, and these costs have all increased over the past few years. Our firm currently employs three wonderful clerical/paralegals, which costs money not only in salary but in office space and resources. It is not realistic for a law firm to pass on cases that are paying market rate in order to regularly accept court appointed cases at the rate of \$90 and be able to meet monthly overhead expenses. Our firm generally does its best to try to assist the court and accept cases, but the hours spent on state court appointed work comes at the expense of hours spent on cases that pay market rate. Accepting court appointed cases makes running a business difficult.

Another example of how unrealistic the hourly rate is for this field is a comparison to the paralegal rate for federal cases versus the attorney rate for state appointed cases. A court appointed paralegal for a federal case ranges between \$65-\$90 per hour (\$90 is for "special skill" paralegals such as those with J.D.s or with increased computer or language skills). These paralegals generally don't carry overhead. A person with a juris doctorate willing to work as a federal paralegal will net more income than an attorney who accepts state court criminal appointments but requires the overhead of running a small business. Non-special skill paralegals with no overhead and limited administrative responsibilities will often net the same amount per hour by working on federal cases as an attorney accepting state court appointed criminal cases.

Representing indigent persons accused of crimes as they navigate the legal system is something the State of Hawai'i should view as an honorable task. It is not, nor will it ever be, the most lucrative practice of law. These can be some of the most stressful cases that an attorney works on over the course of a year, often carrying serious consequences for the client if the case goes poorly.

Members of the community deserve competent representation, even those who cannot afford to pay for a lawyer. In law school we learn about the honor of using one's law degree to help those in need, including acting as the guiding hand of counsel at every step in the proceedings against the accused as noted in *Gideon v. Wainwright*. It is unfortunate that the state compensation system for indigent representation in Hawai'i has fallen to a point where attorneys willing to help cannot realistically do so while trying to maintain a small business.

Regards,
Schlueter, Kwiat & Kennedy LLP



Andrew Kennedy

SCHLUETER, KWIAT & KENNEDY LLP

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HB-396-HD-1

Submitted on: 2/24/2025 9:43:50 AM

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

Submitted By	Organization	Testifier Position	Testify
Aaron Masser	Individual	Support	Written Testimony Only

Comments:

Greetings,

I am writing in support of HB396. I work in Kona and know that criminal cases are routinely impacted by the lack of attorneys willing and/or able to take court appointed conflict cases. The current hourly rate is so low that it may not be financially realistic for private attorneys to take on such cases. As a result, cases are languishing without any progress due to lack of appointed counsel. I am concerned that this will eventually lead to cases being dismissed by the courts as a result of the lack of counsel.

A somewhat similar situation occurred in Oregon within the past few years. In Oregon, the issue was more pertaining to lack of funding for public defenders (which is also an issue in Hawaii). Courts started dismissing cases as a result of the lack of available defense attorneys. Additionally, the courts began releasing defendants held on bail after seven days if no counsel had been appointed. It seems reasonable to expect that courts may be pressed to take similar action in Hawaii if this issue is not resolved. This will lead to crimes not being punished and decreasing public safety.

Thank you for your consideration (and I am not a defense attorney).

Aaron Masser

HB-396-HD-1

Submitted on: 2/24/2025 9:49:44 AM

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

Submitted By	Organization	Testifier Position	Testify
Frank Miller	Individual	Support	Written Testimony Only

Comments:

Thank you for this chance to "testify."

It must be about 20 years since Court-appointed counsel compensation increased to \$90/hr without any changes since. I continue to assist criminal defendants as court appointed counsel 30 years after I served 10 years as a Public Defender. The pay remains inadequate. I have to work at home with no office help to begin to afford this kind of hourly. Furthermore, the caps on cases are miserly : a DUI as a petty misdemeanor pays maximum \$900 for 10 hours of work. (1) Only the simplest of cases -- review discovery, make a deal, plead out -- are done in 4-6 hours (now often including the viewing of long videos from officer-worn-cameras) and (2) Where more inquiry is needed, a motion for extra fees is now required. The PD office in Kona has only 3 attys. When I left in '95, it had 4. Should have 8. As it is, the PD's conflict out of ALL DUI cases with judicial permission. Now, the court in Kona is lining 4-5 defendants up in the front of the bench to tell them all at one time there are no attorneys yet for them. If I was paid \$200 an hour it might be worth taking on a lot more cases and help the backlog. Clients who retain me are very few and I probably have the lowest fees. (One firm here is asking for a \$75,000 retainer for a sex assault case.) So we need our fees raised a bit too, please.

On a slightly related matter: I sometimes do the ADLRO hearing connected to a DUI **pro bono** because it's not a "criminal" matter, but the courts might think about allowing representation there for a fee, too. I had one client recently who did not even know his license had been revoked; and he was lucky because he didn't get caught driving: he didn't get a court-appointed attorney until 4 months after his arrest due to the lack of counsel..

Aloha,

Frank Miller, atty 2280.

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

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

I am writing to support HB401, which would establish an additional district court judge in the Third Circuit, for the Kona District Court. Currently, there is only a single judge sitting in the Kona District Court. As an attorney practicing in the Third Circuit, I have seen how the overwhelming caseload in this court—nearly 16,000 cases annually—adversely impacts the community and the court’s ability to administer justice efficiently and fairly.

The extraordinary volume of cases handled by the sole District Court judge causes significant delays in obtaining trial and hearing dates, with incarcerated individuals waiting longer for their cases to be resolved. This results in unnecessary pretrial detention costs and emotional strain on defendants and their families. Overcrowded court calendars frequently lead to hours of waiting for hearings, wasting time and resources for attorneys, litigants and their families, and witnesses—including victims. The overburdened court system also affects the quality of justice. Judges and staff may be forced to prioritize speed over thoroughness, leaving little time for careful preparation for cases.

Adding a second District Court Judge would reduce delays, improve scheduling, and ensure timely hearings. It would alleviate the burden on pretrial detainees, lower costs for taxpayers, and provide better access to justice for all. I urge your support for this critical request to enhance the efficiency and fairness of our judicial system in the Third Circuit.

Sincerely,



Rachel L. Thompson, 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.

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:

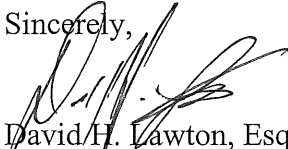
I am submitting this testimony on my own behalf as a practicing attorney in Hawaii County. I support HB 396 and HB 398 which would increase the rate of pay for appointed counsel and guardians ad litem from \$90/hour to \$150/hour, although I believe that \$150.00 is still too low for the work performed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

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February 24, 2025

Rep. Kyle T. Yamashita, Chair
Rep. Jenna Takenouchi, Vice Chair
Committee on Finance
House of Representatives
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: 12:00 p.m.
Location: Conference Room 308
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

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.

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.

HB-396-HD-1

Submitted on: 2/24/2025 11:03:35 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 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.

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**

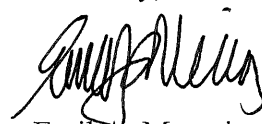
Honorable Chair Yamashita, Honorable Vice Chair Takenouchi, and Members of the House Committee on Finance:

I 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,

A handwritten signature in black ink, appearing to read 'Emil A. Macasinag', written in a cursive style.

Emil A. Macasinag, 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 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:

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Sincerely,

Judy Howard, Esq.

HB-396-HD-1

Submitted on: 2/24/2025 12:32:37 PM

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

Submitted By	Organization	Testifier Position	Testify
William Heflin	Individual	Support	Remotely Via Zoom

Comments:

My name is WILLIAM HEFLIN, and I am the current President of the Hawaii County Bar Association and have previously submitted written testimony strongly in support of HB 396, and would like to also provide live testimony either in person or via video conference.