



*The Judiciary, State of Hawai'i*

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

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

Tuesday, January 30, 2024 at 9:45 a.m.  
Conference Room 016 & Videoconference

by

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

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**Bill No. and Title:** Senate Bill No. 2377, 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. Declares that the appropriation exceeds the state general fund expenditure ceiling for 2024-2025.

**Judiciary's Position:**

The Judiciary **strongly supports** this measure as it will greatly aid in recruiting and retaining competent and qualified counsel willing to be appointed in criminal proceedings. Appointed counsel represent indigent criminal defendants whenever the Office of the Public Defender determines that they have a conflict.

Most indigent criminal defendants have a right to representation by competent counsel appointed by the court. Once qualified, they are usually represented by the 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 a list of qualified applicants maintained by the court.

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 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 competent individuals to serve as appointed counsel for these defendants, we must ensure that appointed counsel are adequately compensated for their work.

The current rate of pay has not been adjusted in almost twenty years. For comparison, on the federal level, the non-capital case rate is \$164 per hour, with maximum per-case amounts of \$12,800 for felony cases, \$3,600 for misdemeanors, and \$9,100 for appeals. This measure raises the compensation rates and maximums to those similar to the federal rates in order to safeguard the rights of indigent defendants, by ensuring the demand for competent court-appointed private counsel can be met.

Thank you for the opportunity to testify on this measure.

State of Hawai‘i  
The Office of the Public Defender

S.B. No. 2377: RELATING TO COMPENSATION FOR COURT-  
APPOINTED COUNSEL

Chair Karl Rhoads  
Vice Chair Mike Gabbard  
Honorable Committee Members

The Office of the Public Defender **supports** this bill.

The Office of the Public Defender’s main and primary role in our criminal justice system is to ensure that people who cannot afford an attorney will be represented by competent and effective counsel. Our attorneys are dedicated public servants who believe that zealous representation is one of the pillars of a true system of justice.

But our office cannot represent everyone who needs a lawyer. There are times when the rules of professional conduct or breakdowns in the attorney-client relationship prevent our attorneys from representing a client. In those cases, the OPD will withdraw and judges will appoint new counsel, a Hawai‘i licensed attorney willing to take on the case. Their fees are dictated by statute and have been fixed at \$90.00 for more than twenty years.

Judges—especially on the Neighbor Islands—struggle to find private counsel willing to take on difficult and challenging cases at a fraction of their going rate. Sadly, those who do take court-appointed cases resort to taking them in bulk to make ends meet and run the risk of being constitutionally ineffective.

Ineffective defense counsel is costly for not only clients and the justice system, but for the Judiciary and our State. It leads to more litigation, more attorneys, and is highly inefficient. Our system is built on the premise that things should be done correctly the first time around. Raising the rate will attract more attorneys to court-appointed cases and will ease the pressure on an ever-increasing caseload for criminal defense attorneys and prosecutors.



**TESTIMONY**

Senate Committee on Judiciary  
**Hearing: Tuesday, January 30, 2024 (9:45 a.m.)**

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

**FROM:** Jesse K. Souki  
HSBA President

**RE:** Senate Bill No. 2377 - Relating to Compensation for Court-Appointed Counsel

Chair Rhoads and members of the Senate Committee on Judiciary, the Hawaii State Bar Association appreciates the opportunity to offer testimony in **STRONG SUPPORT** of Senate Bill No. 2377.

I am writing to express my strong support for increased rates for court-appointed public defenders in Hawaii, as proposed in Chapter 802 of the Hawaii Revised Statutes. Adequate compensation for public defenders is essential to ensuring the fair administration of justice and upholding the constitutional right to legal representation for all individuals, regardless of their financial means.

Appointed counsel represent indigent criminal defendants in cases where there is, or there arises, a conflict between the defendant and the Office of the Public Defender. These private defense counselors are appointed by the court from a list of qualified applicants and have committed to ensuring that every person receives a fair trial, which is a Constitutional right and fundamental to the principles of justice and due process.

The current compensation rates for court-appointed counsel in Hawaii does not reflect the challenging nature of their work, the time and effort invested in each case, and the significant responsibilities they shoulder. Accordingly, there has been a dramatic decrease in available court-appointed private counsel to represent indigent defendants throughout the state. In order to attract competent individuals to serve as appointed counsel for these defendants.

For these reasons, HSBA **STRONGLY SUPPORTS** SB 2377 to increase the compensation of court-appointed counsel as provided in the bill. Mahalo for your consideration.

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Lyn Flanigan

# Hawai'i Association of Criminal Defense Lawyers

January 27, 2024

S.B. No. 2377: RELATING TO COMPENSATION FOR COURT-APPOINTED COUNSEL

Chair Karl Rhoads  
Vice Chair Mike Gabbard  
Honorable Committee Members

The Hawai'i Association of Criminal Defense Lawyers (HACDL) is a local organization of lawyers practicing in state and federal courts. HACDL members include public defenders and private counsel who represent people accused of committing crimes.

HACDL fully supports this bill. The rates for court-appointed counsel has been fixed for decades, while the cost of living, fine schedules, and other costs have increased. This bill is overdue and is a step in the right direction.

Judges in criminal cases all over the State have struggled to find competent counsel willing to represent people who cannot, either under the law through conflicts of interest matters or other ethical issues, be represented by attorneys at the Office of the Public Defender. Raising the rates will help encourage attorneys to take on these cases.

HACDL hopes this much-needed bill becomes law.

# Hawai'i Association of Criminal Defense Lawyers

January 29, 2024

By Myles Breiner  
Vice-President, Hawaii Association of Criminal Defense Lawyers  
State of Hawaii

S.B. No. 2377: RELATING TO COMPENSATION FOR COURT-  
APPOINTED COUNSEL

Chair Karl Rhoads  
Vice Chair Mike Gabbard  
Honorable Committee Members

The Hawai'i Association of Criminal Defense Lawyers (HACDL) is a local organization of lawyers practicing in state and federal courts. HACDL members include public defenders and private counsel who represent people accused of committing crimes.

HACDL fully supports this bill. The rates for court-appointed counsel has been fixed for decades, while the cost of living, fine schedules, and other costs have increased. This bill is overdue and is a step in the right direction.

Judges in criminal cases all over the State have struggled to find competent counsel willing to represent people who cannot, either under the law through conflicts of interest matters or other ethical issues, be represented by attorneys at the Office of the Public Defender. Raising the rates will help encourage attorneys to take on these cases.

The current compensation rate has not been adjusted in almost twenty years and is a fraction of the prevailing rate for competent trial counsel. Raising this rate will greatly assist in the safeguarding of the rights of indigent defendants and ensuring the health of our criminal justice system.

HACDL hopes this much-needed bill becomes law.

**LARS ROBERT ISAACSON**  
**ATTORNEY AT LAW**

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January 29, 2024

Senator Karl Rhoads, Chair  
Senator Mike Gabbard, Vice Chair  
Committee on Judiciary  
Thirty-Second Legislature, Regular Session of 2024

Re: *SB2377: Testimony in Support of bill Relating to Compensation for Court-Appointed Representation*

Dear Chair Rhoads, Vice Chair Gabbard and Committee Members,

I wish to submit my testimony and strong support of SB2377 relating to compensation for court-appointed representation.

By way of background, I have been a licensed attorney in the state of Hawai'i since 1990 and for a number of years was on the court-appointed criminal defense list for both the District and Circuit Court's in Honolulu. I have been practicing criminal defense exclusively since 2004 on the mainland and in Hawai'i courts.

The amount of money per hour that is currently being paid, \$90.00 per hour, has not been changed since at least 2010. This has occurred while the cost of living in Hawai'i has gone up dramatically during that time.

When rates are so low, it dissuades attorneys from taking these cases, and also reinforces the erroneous concept that court appointed criminal defense attorneys are somehow lower level attorneys, or deserve to be treated with disdain. A substantial increase in the hourly rate is justified for those who practice this very difficult area of law.

Sincerely yours,

  
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LARS ROBERT ISAACSON

**SB-2377**

Submitted on: 1/29/2024 8:58:55 AM

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

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

Comments:

Aloha, I write to strongly support SB2377, which requests an increase in compensation for court-appointed attorneys. I am a former prosecutor with the County of Maui, and currently a criminal defense attorney practicing in Hawaii. There is a critical need for attorneys to represent indigent defendants who otherwise do not qualify for the services of the public defender. These court-appointed services are important for our judicial system to serve the needs of all parties and to ensure justice is administered fairly.



**SB-2377**

Submitted on: 1/29/2024 12:01:42 PM

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

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Jeremy J.K. Butterfield	Testifying for The Law Office of Jeremy J.K. Butterfield LLLC	Support	Written Testimony Only

Comments:

Thank you for considering my testimony. I have been a licensed attorney in Hilo, Hawaii for over 6 years. I previously was an associate of the late Brian J. Delima Esq. Since his passing, I have started my own practice which has been active for nearly two years. My practice is made up primarily of criminal court appointed matters and family law as a close second. I spend most of my time doing criminal court appointed matters, however, the revenue generated by those criminal appointments is substantially less than the family law portion of my practice. If I did not have the family law portion of my practice, I would not be able to sustain my business.

In Hilo, the going rate for privately retained counsel is between \$300 and \$350 per hour. The court appointed rate of \$90 makes it very difficult for attorneys to take on court appointed matters. At times, taking court appointed criminal cases feels like a service to the community instead of a reasonable business decision. \$90 per hour may seem high if it were the hourly pay rate for an employee. This \$90 per hour must cover my legal malpractice insurance, employees, professional licensing and continuing legal education fees in addition to normal business operating cost. Furthermore, the current requirements for providing our bills for the court to review, requires unbillable staff time to transfer my bill to the court appointed form. In essence, the effective pay rate diminishes quickly.

There are many occasions where I take on court appointments that I would prefer not to. The court, at times, has difficulty finding counsel to appoint. So they request that I take on a matter. I agree because if I don't, the hardship will fall on the court.

As a business owner, it is difficult to agree to take a matter that will pay less than one third of what I could otherwise bill. The concern is that if the rate is not increased, attorney business owners will need to start moving away from court appointments because it simply won't pay the bills.

Thank you

Jeremy J.K. Butterfield



**SB-2377**

Submitted on: 1/27/2024 1:38:19 PM

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

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
David Pullman	Individual	Support	Remotely Via Zoom

Comments:

Aloha, I am a public defender on Maui. I have watched helplessly as clients who cannot be represented by our office are handed over to appointed attorneys with no qualifications. I've watched clients go to prison on cases that any competent criminal defense attorney could've gotten dismissed. The average court-appointed attorney is doing a sub-par job compared to the public defenders. A big part of this is the fact that the compensation rates are relatively low and haven't been raised in years. This makes it so that failed lawyers in other practice areas take these cases to stay afloat and then they just plead out their clients without doing due diligence. They never file motions. They never go to trial. There are likely many innocent people in prison because of them.

Raising the rate is a no-brainer and is the easy part. The harder part is establishing some minimum qualification guidelines. When I was an appointed attorney in California, you had to have done two misdemeanor jury trials before being appointed a felony case. Then you could be appointed the lowest level of felonies, until you'd had enough jury trials at each level to move up. You had to submit quality writing samples to even make it onto the misdemeanor appointment list. This would be even more important of a fix than simply raising the rate and paying incompetent attorneys at a greater rate.

January 27, 2024

**SENATOR KARL RHOADS**, Chair  
**SENATOR MIKE GABBARD**, Vice Chair  
Committee on Judiciary  
Thirty-Second Legislature, Regular Session of 2024

*RE: SB2377: Testimony in support of bill Relating to Compensation for Court-Appointed Representation*

Dear Chair Rhoads, Vice Chair Gabbard, and Committee Members:

I write to submit my testimony in strong support of SB2377 Relating to Compensation for Court-Appointed Representation.

By way of background, for nearly ten years I worked as a Deputy Prosecuting Attorney for the City and County of Honolulu. Before I left that position, I enjoyed the even greater honor of serving as the Team Captain of the Career Criminal Unit, tasked with prosecuting repeat felony offenders. I have litigated felony cases since December 2012.

As to my interest in this particular bill, presently, I am in my third year of private practice with the Law Office of Myle S. Breiner & Associates, focusing in large part on criminal defense. Nearly all of our clients privately retain our services. I can think of only one case where the firm accepted court-appointment for a matter on the Big Island, due to special circumstances.

Nevertheless, my support for this bill comes from the many conversations I have had with my fellow defense counsel peers. From those discussions, I have learned that a significant number of *very skilled* trial attorneys, do not do court-appointed work for the state, because the pay does not make it financially viable. Instead, some prefer doing court-appointed work for the federal government, while others direct their time and talent to other matters (*e.g.*, family law).

Raising the court-appointed fees as contemplated would, without question, strengthen and increase the ranks of attorneys who wish to provide their training and experience to those who cannot afford counsel. As we are all aware, one of the sacrosanct constitutional principles in our country is the guarantee of court-appointed counsel, and SB2377 meaningfully reinforces this right for those in our communities here in Hawaii.

Respectfully,



Kyle T. Dowd  
[kyle.timothy.dowd@gmail.com](mailto:kyle.timothy.dowd@gmail.com)



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January 29, 2024

No. 2377: RELATING TO COMPENSATION FOR COURT APPOINTED COUNSEL

Chair Karl Rhoads  
Vice Chair Mike Gabbard  
Honorable Committee Members

I'm a criminal defense attorney, living and working on Maui. I was a Public Defender for over 18 years and have been in private practice for 7 years now.

I fully support this bill. The rates for court-appointed counsel has been fixed for decades, while the cost of living, fine schedules, and other costs have increased. This bill is overdue and is a step in the right direction.

Judges in criminal cases all over the State have struggled to find competent counsel willing to represent people who cannot, either under the law through conflicts of interest matters or other ethical issues, be represented by attorneys at the Office of the Public Defender. Raising the rates will help encourage attorneys to take on these cases.

As an example, my hourly rate is \$350, yet the court appointed rate is \$90/hr. I am extremely reluctant to take court appointed cases because of the huge discrepancy. I handle A level felonies and \$90/hr is simply not enough to support me or my practice in these cases. I sincerely hope this much-needed bill becomes law.

Very truly yours,

*/s/ Wendy A. Hudson*

Wendy A. Hudson









**SB-2377**

Submitted on: 1/29/2024 9:04:58 AM

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

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Joshua James	Individual	Support	Written Testimony Only

Comments:

Aloha, my name is Josh James. I became a lawyer in order to help those who can't help themselves. My passion has always been Defense because I have a love for the constitution and the freedom and security it provides. Most of those whom I have represented and even consulted with cannot afford to hire attorneys on their own. Even those who are charged with simple traffic crimes would have to choose between paying bills or lawyers. Court appointments have not compensated enough for me to run my practice doing. In 7 years I've had only a dozen or so clients who could afford to pay for a private attorney. Because of the low compensation, I often have to decline court appointments so that I can generate enough revenue to pay my bills. I have to provide services in other areas of law to supplement my criminal cases. Raising the rate would allow for me to take on more cases, help more people navigate the system, and protect their rights.



# THE LAW OFFICE OF RICHARD H.S. SING

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January 29, 2024

SENATOR KARL BROADS, Chair  
SENATOR MIKE GABBARD, Vice Chair  
Senate Committee on Judiciary  
Thirty-Second Legislature, Regular Session of 2024

RE: **SB2377**: Testimony in **STRONG SUPPORT** of Bill Relating to Compensation for Court Appointed Representation.

## WRITTEN TESTIMONY ONLY

Dear Chair Rhoads, Vice Chair Gabbard, and Committee Members:

I am a solo practitioner concentrating in criminal defense who has appeared in the District, Family, Circuit, and Federal Courts, on a regular basis over the past 25 years. I am familiar with the history, procedures, and personalities of the Hawaii Judiciary and the practice of criminal law in the State of Hawaii. I have not accepted court appointed cases for over a decade.

However, I am in **STRONG SUPPORT** of this Bill as it will substantially increase the compensation rate for court appointed attorneys in criminal matters and will greatly assist in the recruitment and retention of qualified private counsel. Through doing this, our local criminal justice system will see vast improvement in its quality and efficiency.

Raising this compensation rate will expand and strengthen the ranks of those attorneys willing and able to accept cases in this area of critical need. This rate has not been increased in many years and the current rate is so low that the Judiciary has struggled to maintain enough competent attorneys on the list of those willing to accept these cases. Without a significant increase in this rate, the problem of having enough qualified applicants to accept cases will never improve.

RICHARD H.S. SING

*/s/ Richard H. S. Sing*

LAW OFFICE OF RICHARD H.S. SING

**SB-2377**

Submitted on: 1/29/2024 10:30:58 AM

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

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
David Lawton	Individual	Support	Written Testimony Only

Comments:

I support SB2377 which is important step to providing necessary financial resources to court appointed criminal defense attorneys who serve a very important function, and have a very difficult job. David Lawton

**SB-2377**

Submitted on: 1/29/2024 12:04:47 PM

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

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Matthew S. Kohm	Individual	Support	Written Testimony Only

Comments:

The availability of court appointed attorneys is essential for our state citizens. I am an attorney and have practiced in Hawaii for 30 years. During most of this time I have taken some court appointed work, with most of it on the appellate level. My primary work is in civil litigation, but I try to help when I can. There is no doubt that court appointed work is demanding and can involve deep issues. This can involve going to trial or challenging matters on appeal. I have been fortunate to be involved in criminal cases argued before the Hawaii Supreme Court, and had a hand in shaping issues of law. Increasing payment(s) will help attorneys practicing in this area and encourage more practitioners. There are times that the court can not find enough options for court appointed counsel, and this will help. I urge you to pass this bill so that it can become law.

Matthew S. Kohm Bar ID 6103

808-249-8968

**SB-2377**

Submitted on: 1/29/2024 12:35:23 PM

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

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Dawn Henry Laird	Individual	Support	Written Testimony Only

Comments:

As a family lawyer on the Big Island, I write in strong support of the passage of S.B. No. 2377, which would bring compensation of court-appointed attorneys forward into the post-COVID, high inflation world in which we find ourselves, and support the State of Hawai`i's attorneys in our efforts to represent those members of our community who cannot afford their own attorneys. In the family law arena, this includes children who are caught up in custody battles between their parents and for whom a family court judge decides it is in their best interest to have a guardian ad litem or attorney appointed on their behalf. At the present time, attorneys who take on these time-intensive and sensitive matters involving families that may be dealing with domestic violence, sexual abuse or drug use, make only \$60 an hour. Normal attorney rates for private-paid clients can range from \$250-\$450 an hour, so the \$60-an-hour rate is far from reasonable. On our rural island, we have a shortage of attorneys to handle the legal needs of our community. Court-appointment rates are so low that many attorneys cannot afford to take the cases and still maintain office staff or pay themselves a decent wage. The result is that attorneys who would like to provide more support for the Judiciary and our community members have no recourse but to say no to taking on this important work. Raising the hourly rate to \$150 an hour, and raising maximum allowable fees on criminal cases, will allow our local bar to step up in a way that we desire to both represent the less advantaged amongst us and to allow attorneys to support our own families and offices. This legislation is supported by both the Judiciary and Hawai`i's lawyers. We are asking for your support to allow us to better serve the people of Hawai`i.

Thank you for your time and consideration of this request.

Sincerely,

Dawn H. Laird, Esq.

BFL Law

75-127 Lunapule Road, Suite 8B

Kailua-Kona, Hawai`i 96740

**SB-2377**

Submitted on: 1/29/2024 1:18:08 PM

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

Submitted By	Organization	Testifier Position	Testify
JASON R KWIAT	Individual	Support	Written Testimony Only

Comments:

Dear Esteemed Legislators,

I am writing to you today as a partner of Schlueter, Kwiat & Kennedy LLLP, a law firm deeply committed to the principles of justice and equitable legal representation. It has come to our attention that the Legislature is considering a proposal to increase the court-appointed attorney billing fee from \$90/hr to \$150/hr, as outlined in SB2377. We wish to express our unequivocal support for this vital measure.

Since the inception of our firm in 2015, we have consistently undertaken court-appointed cases, driven by a profound belief in the right to competent legal representation for all, irrespective of financial standing. These appointments are not merely professional obligations; they are integral to the fabric of a fair and just legal system.

However, the current billing rate, which has remained stagnant for years, is no longer reflective of the economic realities and the escalating costs of providing high-quality legal services. As our firm has grown, with an increase in privately retained work, we have been compelled to reevaluate our capacity to accept court-appointed cases at the existing rates. This has been a source of significant concern, not just for us but for the legal community.

The proposed increase to \$150/hr is not simply a financial adjustment; it is a much-needed reform. This enhancement in compensation will undoubtedly incentivize a greater number of competent attorneys to accept court appointments. The result will be twofold: first, it will alleviate the current challenges faced by the courts in finding available counsel, ensuring that legal representation is both swift and efficient. Second, it will provide much-needed relief to the already overburdened public defender's office, which is itself in dire need of additional funding and resources.

This increase would be a recognition of the invaluable service that court-appointed attorneys provide to the justice system. By ensuring fair compensation, we are upholding the dignity of the legal profession and reinforcing our collective commitment to the principles of justice and equality under the law.

SB2377 is not merely a legislative proposal; it is a crucial step towards strengthening our legal system and ensuring that justice is accessible to all, regardless of economic status. We urge the

Legislature to approve this bill, recognizing its profound impact on the quality of legal representation in our state and its contribution to the broader ideals of justice and fairness.

Thank you for your consideration of this important issue.

Sincerely,

Jason R. Kwiat

**SB-2377**

Submitted on: 1/29/2024 2:15:59 PM

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

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
john knoebber	Individual	Support	Written Testimony Only

Comments:

Aloha,

My name is John Knoebber. I am a solo-practitioner in Kona. I write in support of SB2377. I believe it has been approximately 18 years since the current rates and caps took effect. I have lived in Kona since January, 2013. During the past 10 years I have handled several hundred criminal appointments. While I cannot speak for the entire state of Hawai'i, I have seen the cost of living rise dramatically in Kona during that time. For example, rent has at least doubled. I have always tried to maintain reasonable overhead, but this has really become challenging since the more recent hyper-inflation. Essentially, the cost of everything has risen. I am sure the committee members have felt this as well.

Similarly, in my humble opinion, I believe that the quality of the practice of law in Kona has risen as well along with the expectations of all parties involved, including the clients, judges, probation officers, prosecutors, police, etc. I see defense attorneys put more thought into their cases, file more and better motions, take cases to trial, get drug addicts into appropriate programs and fight hard for fair deals. I truly believe this adds credibility to our system as a whole. Also, it ensures that the police and the prosecutor are using appropriate procedure which thereby benefits the entire community.

In sum, everything has increased in the last decade except the pay. Therefore, I support SB2377.



R. HERMANN HEIMGARTNER  
ATTORNEY AT LAW LLC



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COMMITTEE ON JUDICIARY  
CHAIR KARL RHOADS

JANUARY 29, 2024

*RE: SB2377 – Relating To Compensation For Court-Appointed Counsel.  
Hearing: January 30, 2024 at 9:45 AM*

**IN SUPPORT**

Dear Chair Rhoads and the Committee on Judiciary,

I am an attorney in Kailua-Kona, Hawai'i, and I have been in private practice for over 8 years. Previously, I worked as a deputy public defender and a deputy prosecuting attorney. Over the last 8 years, I have taken a number of court-appointed criminal defense cases as appointments.

I am testifying in favor of SB2377 and the increase in compensation for court-appointed attorneys. Court-appointed attorneys serve an important role in the judicial system, and we provide legal representation to indigent persons accused of crimes. These cases can be very challenging as the client's freedom and liberty are at stake.

It is critical for all criminally accused persons to have effective, experienced, and capable attorneys. First, effective, experienced, and capable attorneys are needed to safeguard against innocent persons from being wrongfully imprisoned or found guilty of crimes. Second, effective, experienced, and capable attorneys are needed for the smooth function of the courts and criminal justice system. Third, effective, experience, and capable attorneys are needed to avoid collateral attack when the State secures a conviction.

As a solo attorney in Kona, I must balance accepting court-appointed cases with making a livelihood. The inflation of costs, rent, and housing has made it very difficult to sustain a livelihood at the current rate of compensation. Just like any other businesses, I have many costs to run my business. There is rent, insurances (professional liability insurance is thousands of dollars a year), utilities, online research subscriptions, professional printer lease, utilities, and secretary/paralegal salaries. I am fortunate enough not to bear law school loans. My point is that attorneys and law firms must pay various costs before making personal income.

My understanding is that the court-appointed compensation rate has not increased since 2006. The increase to \$150 per hour is still well below the hourly rated for most privately retained attorneys. The current rate is far below a competitive rate. For the State and the judiciary to provide indigent persons with effective, experienced, and capable court-appointed attorneys, the rate must increase. Thank you for your time and consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read 'R. Heimgartner', is written over a horizontal line. The signature is fluid and cursive.

R. Hermann Heimgartner

**SB-2377**

Submitted on: 1/29/2024 5:22:05 PM

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

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Martin H Bento	Individual	Support	Written Testimony Only

Comments:

Dear committee members,

My name is Martin H. Bento, my law practice is mostly in the Third Circuit, (Hilo, Kona, and Waimea) and I have been accepting court appointed criminal cases for almost 20 years. I fully support the proposed rate increase for court appointed attorneys in criminal cases and proposed limit increases for felony, jury demand misdemeanors, misdemeanors, petty misdemeanors, and criminal appeals. I stopped accepting new court appointed criminal cases a few years ago because I could not justify the time, effort, and cost required to provide legal services to court appointed criminal clients for such a low rate of return. As a business, my expenses go up almost every year, office rent, insurance, professional insurance, licensing, investigation costs, billing expenses, taxes, as well as client expectations and dissatisfaction with negative outcomes which increases financial risk to attorneys who accept court appointed criminal cases. In the past, I would accept court appointed criminal cases as a favor to the court because the court could not find other attorneys to accept these types of cases. If the proposed rate and limit increases are approved, I would accept more court appointed criminal cases in the Third Circuit.

Respectfully,

Martin H. Bento, Esq.

# A|N|H

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January 29, 2024

Senator Karl Rhoads, Chair  
Senator Mike Gabbard, Vice Chair  
Senator Brandon J.C Elefante  
Senator Joy A. San Buenaventura  
Senator Brenton Awa  
Judiciary Committee

Re: SB 2377/HB 1914 Relating to Compensation for Court Appointed Counsel

Senator Karl Rhoads, Senator Mike Gabbard, and Judiciary Committee Members:

I write to you in strong support of Senate Bill 2377 (House Bill 1914) *Relating to Compensation for Court Appointed Counsel* both as the current President of the Hawaii County Bar Association which represents many court-appointed attorneys (criminal and family) but also as an attorney who does criminal court-appointed attorney work. This change in court appointed criminal attorney compensation is long overdue, having last been adjusted in 2006, or almost eighteen years ago.

In 2006, the compensation for court-appointed attorneys for State cases in Hawaii was raised to \$90 an hour and was similar to the then rate Federal court-appointed criminal attorneys made or \$92 an hour. (See attached pages 1-3 of *Chapter 2, § 230; Compensation and Expenses of Appointed Counsel*, with relevant portions highlighted.)

Per Federal Statutes, the Federal compensation has automatically risen, and Federal court-appointed criminal attorneys now make **\$172** an hour vs. \$90 an hour. According to the official U.S. Consumer Price, it now takes \$135.666 to buy what \$90 would buy in July 2006. (See attached *Printout of U.S. Consumer Price Index Calculator* from July 2006 to December 2023, relevant portions highlighted.)

This increase is necessary because Hawaii Courts are having an increasingly difficult time getting attorneys to do court-appointed work as the compensation rate is so low, and the work is so immediate and demanding. (For example, my current hourly rate for Family Court cases is currently \$350 an hour.) This is especially a problem on the Big Island, because the pool of attorneys doing court-appointed work is so small and shrinking. Often, my partner and I will get calls from the Courts in Waimea and Kona as multiple conflicts may exist, and no other attorneys are available. We sometimes take these cases as a public service, but they are a financial hardship (in addition to the low rates, we are not compensated at an hourly rate to drive to and from Waimea or Kona) and are often time pressing if the client is in custody.

Not having an adequate number of attorneys willing to do court-appointed criminal work due to low compensation eventually costs everyone more, as innocent people can get ground up by the system, cases take longer to resolve, and can be a cause of increased incarceration. Furthermore, if shoddy criminal defense work is done, it can further clog up the system with unnecessary appeals. Hawaii's court-appointed criminal defense rate has not risen in almost twenty years, all the while local cost of living has sky-rocketed. This increase is long past due, and hopefully it will not take this long to re-examine this issue in the future.

The \$150 an hour for criminal court-appointed rate is in many ways reasonable and cost effective. As a court-appointed attorney, the State of Hawaii does not pay my medical insurance, my rent, or my retirement. Respectfully, the compensation for court-appointed attorneys in criminal cases in Hawaii should have been increased a long time ago, \$150 an hour is a reasonable increase, and it should not take almost twenty years to re-address this issue in the future, and I strongly urge this committee to support the increase.

Truly yours,



William B. Heflin

Encl: Pages 1-3 of *Chapter 2, § 230; Compensation and Expenses of Appointed Counsel*, relevant portions highlighted.

Printout of U.S. Consumer Price Index Calculator from July 2006 to December 2023.

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# Chapter 2, § 230: Compensation and Expenses of Appointed Counsel

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*Guide to Judiciary Policy, Vol 7 Defender Services, Part A Guidelines for Administering the CJA and Related Statutes, Chapter 2: Appointment and Payment of Counsel*

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[§ 230.10 Forms for Compensation and Reimbursement of Expenses](#)

[§ 230.13 Time Limits](#)

[§ 230.16 Hourly Rates and Effective Dates in Non-Capital Cases](#)

[§ 230.20 Annual Increase in Hourly Rate Maximums](#)

[§ 230.23 Case Compensation Maximums](#)

[§ 230.26 Case Budgeting](#)

[§ 230.30 Supporting Memorandum Justifying Compensation Claimed](#)

[§ 230.33 Review and Approval of CJA Vouchers](#)

[§ 230.40 Payments by a Defendant](#)

[§ 230.43 Approval Authority of U.S. Magistrate Judges](#)

[§ 230.46 Prior Authorization for Appointed Counsel to Incur Expenses](#)

[§ 230.50 Proration of Claims](#)

[§ 230.53 Compensation of Co-Counsel](#)

[§ 230.56 Substitution of Counsel](#)

[§ 230.60 Attorney Compensation for Travel Time](#)

[§ 230.63 Reimbursable Out-of-Pocket Expenses](#)

[§ 230.66 Non-Reimbursable Expenses](#)

[§ 230.70 Writ of Certiorari](#)

[§ 230.73 Interim Payments to Counsel](#)

[§ 230.76 Record Keeping](#)

[§ 230.80 Annual Report of Attorney Compensation Exceeding 1,000 Hours](#)

## **§ 230 Compensation and Expenses of Appointed Counsel**

### **§ 230.10 Forms for Compensation and Reimbursement of Expenses**

The eVoucher system is the judiciary's primary method for CJA panel voucher submission and processing. **See:** [Guide, Vol. 7A, § 140 \(/rules-policies/judiciary-policies/cja-guidelines/chapter-1-ss-140-criminal-justice-act-cja-forms\)](#). Legacy forms for the compensation and reimbursement of expenses to appointed counsel, together with instructions for their use, may be found on the [public judiciary website \(/services-forms/forms\)](#). A copy of all supporting documents that itemize or expand the amounts shown on the face of [Form CJA 20 \(/forms/vouchers/appointment-and-](#)

[authority-pay-court-appointed-counsel](#)) must be attached when submitting vouchers in the eVoucher system.

### § 230.13 Time Limits

(a) Vouchers should be submitted no later than 45 days after the representation concludes, unless good cause is shown. The clerks or CJA supervisory attorneys of the concerned courts should ensure that panel attorneys comply with the prescribed limits. Every effort should be made to have counsel submit the claim as soon as possible upon completion of services rendered. While extremely late submissions may impact the ability to adequately substantiate claims, voucher reductions based solely on submissions outside of the 45-day time limit are not authorized. **See:** [§ 230.33.10 \(Standard for Voucher Review\)](#).

(b) Absent extraordinary circumstances, judges should act upon panel attorney compensation claims within 30 days of submission.

### § 230.16 Hourly Rates and Effective Dates in Non-Capital Cases

(a) Except in federal capital prosecutions and in death penalty federal habeas corpus proceedings, compensation paid to appointed counsel for time expended in court or out of court or before a U.S. magistrate judge may not exceed the rates in the following table. For information on compensation of counsel in federal capital cases and death penalty federal habeas corpus proceedings, **see:** [Guide, Vol 7A, § 630 \(/rules-policies/judiciary-policies/cja-guidelines/chapter-6-ss-630-compensation-appointed-counsel#a630\)](#).

#### § 230.16(A) NON-CAPITAL HOURLY RATES

If services were performed between...	The maximum hourly rate is...
01/01/2024 to present	\$172
01/01/2023 through 12/31/2023	\$164
01/01/2022 through 12/31/2022	\$158
01/01/2021 through 12/31/2021	\$155
01/01/2020 through 12/31/2020	\$152
02/15/2019 through 12/31/2019	\$148
03/23/2018 through 02/14/2019	\$140
05/05/2017 through 03/22/2018	\$132
01/01/2016 through 05/04/2017	\$129
01/01/2015 through 12/31/2015	\$127

If services were performed between...	The maximum hourly rate is...
03/01/2014 through 12/31/2014	\$126
09/01/2013 through 02/28/2014	\$110
01/01/2010 through 08/31/2013	\$125
03/11/2009 through 12/31/2009	\$110
01/01/2008 through 03/10/2009	\$100
05/20/2007 through 12/31/2007	\$94
01/01/2006 through 05/19/2007	\$92
05/01/2002 through 12/31/2005	\$90

(b) For rates applicable to services performed prior to May 1, 2002 for non-capital cases, please contact the AO's Defender Services Office, Legal and Policy Division Duty Day Attorney, at 202-502-3030 or via email at [DSO\\_LPD@ao.uscourts.gov](mailto:DSO_LPD@ao.uscourts.gov) ([mailto:DSO\\_LPD@ao.uscourts.gov](mailto:DSO_LPD@ao.uscourts.gov)).

### § 230.20 Annual Increase in Hourly Rate Maximums

Under [18 U.S.C. § 3006A \(d\)\(1\)](http://www.law.cornell.edu/uscode/text/18/3006A#d_1), ([http://www.law.cornell.edu/uscode/text/18/3006A#d\\_1](http://www.law.cornell.edu/uscode/text/18/3006A#d_1)) the Judicial Conference is authorized to increase annually all hourly rate maximums by an amount not to exceed the federal pay comparability raises given to federal employees. Hourly rate maximums will be adjusted automatically each year according to any federal pay comparability adjustment, contingent upon the availability of sufficient funds. The new rates will apply with respect to services performed on or after the effective date.

### § 230.23 Case Compensation Maximums

#### § 230.23.10 Applicability and Exclusions

(a) In General

All compensation limits apply to each attorney in each case.

(b) Federal Death Penalty Cases and Federal Capital Habeas Corpus Proceedings

The case compensation limits are not applicable in federal death penalty cases and federal capital habeas corpus proceedings. **See:** [Guide, Vol 7A, § 630.10.20 \(/rules-policies/judiciary-policies/cja-guidelines/chapter-6-ss-630-compensation-appointed-counsel#a630\\_10\\_20\)](#).

(c) Excess Compensation Vouchers

## CPI Inflation Calculator

### CPI Inflation Calculator

\$ 90.00

in July 2006

has the same buying power as

\$135.66

in December 2023

Calculate

### About the CPI Inflation Calculator

The CPI inflation calculator uses the [Consumer Price Index](#) for All Urban Consumers (CPI-U) U.S. city average series for all items, not seasonally adjusted. [This data](#) represents changes in the prices of all goods and services purchased for consumption by urban households.



**SB-2377**

Submitted on: 1/29/2024 8:25:58 PM

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

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Catherine Gibson	Individual	Support	Written Testimony Only

Comments:

I am writing to support the passage of S.B. No. 2377. Many attorneys recognize that taking court appointments is an important public service but, to keep their businesses afloat, must severely limit or decline such cases altogether.

As a result, those who suffer are not the attorneys but the people of Hawaii who cannot afford attorneys, from children whose parents are separating and need a guardian ad litem to protect their interests to people facing criminal charges and need an advocate to provide counsel and protect their constitutionally- guaranteed rights.

The compensation rate for appointed counsel has not been raised in nearly 18 years. It is high time that this change. Passing this bill will support the crucial work of the judiciary, will benefit the least advantaged in our communities, and enable attorneys to take on public service work that is essential to a vibrant and functioning society. Thank you for thoughtfully considering this important bill.



Committee: Judiciary  
Hearing Date/Time: Tuesday, January 30, 2024 at 9:45am  
Place: Conference Room 016 & Videoconference  
Re: **Testimony of the ACLU of Hawai'i in SUPPORT of S.B. 2377 Relating to Compensation for Court Appointed Counsel**

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

The American Civil Liberties Union of Hawai'i **SUPPORTS S.B. 2377** which increases the rate of compensation for court appointed counsel and the maximum allowable amounts per case for court-appointed counsel in criminal proceedings.

The U.S. Supreme Court's landmark case of *Gideon v. Wainwright*<sup>1</sup> established the fundamental right to an attorney for people accused of crimes and facing incarceration, regardless of their wealth or poverty. Since *Gideon*, the right to counsel has been expanded to include [children](#) in juvenile delinquency proceedings, [probationers](#) in probation revocation proceedings, and people charged with [misdemeanors](#). The Supreme Court has established that the right includes an obligation for lawyers to correctly advise their clients about certain [immigration consequences](#) of criminal convictions, and that the right includes effective assistance of counsel during [plea bargaining](#).

The overwhelming majority of criminal cases in Hawai'i proceed against people who cannot afford to hire their own attorney, and disproportionately impacts Native Hawaiians and Pacific Islanders. **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.** Without adequate public defense, most people in the criminal legal system face the full force of government power with nothing more than illusory rights.

The right to counsel also protects other constitutional rights. When we don't protect the right to counsel, we also sacrifice our rights against unreasonable searches and seizures, against excessive bail, to confront one's accusers, to have prosecutors disclose exculpatory evidence before trial, and many others.

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<sup>1</sup> <https://supreme.justia.com/cases/federal/us/372/335/>

Court-appointed counsel protect the rights of indigent persons enshrined in our federal and Hawai'i Constitutions and deserve fair compensation.

For these reasons, we respectfully request that you pass **S.B. 2377** and increase the rate of compensation and maximum allowable amount per case for court-appointed counsel in criminal proceedings.

Sincerely,

**Carrie Ann Shirota**

Policy Director  
ACLU of Hawai'i  
cshirota@acluhawaii.org

*The mission of the ACLU of Hawai'i is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawai'i fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawai'i is a non-partisan and private non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawai'i has been serving Hawai'i for over 50 years.*

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**SB-2377**

Submitted on: 1/30/2024 7:07:15 AM

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

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
FRANCIS ALCAIN	Individual	Support	Written Testimony Only

Comments:

**January 30, 2024**

**Committee on the Judiciary**

**Chair Senator Karl Rhoads**

**Re: Testimony in Support of SB2377**

**Dear Committee on the Judiciary,**

**Thank you for this opportunity to provide comments regarding SB2377. I strongly support SB2377. Court-appointed counsel performs a necessary role that ensures the Hawaii Criminal Justice system meets its obligations to the citizens of Hawaii. Concepts of equal rights and due process are only met when the criminal defense bar has similar support that prosecutors enjoy.**

**Adjusting the rate of compensation, which has remained unchanged for nearly two decades, is a step towards those constitutionally protected concepts.**

**Lowering the gap between privately retained attorney hourly rates and the court-appointed hourly rate will entice more counsel to perform legal service for a reduced rate, and will help secure an adequate pool of competent attorneys for our least protected members of our community, indigent individuals accused of a crime.**

**I strongly support the passing of SB2377.**

**Sincerely,**

**/s/Francis Alcain**

**Francis R. Alcain**

**Attorney at Law**