

The Maui News

Judges required to uphold the rule of law, vital to free and just society

Viewpoint

These are turbulent times. Recent events at the local, national and global level, including the COVID-19 pandemic, have highlighted the critical need for accurate information, and the important role the rule of law plays in today's society.



Against this backdrop, the American Bar Association selected *“Advancing the Rule of Law Now”* as the theme for Law Day 2021. Law

Day is an annual event, originally conceived in 1957 when American Bar Association President Charles Rhynes envisioned a national day to mark our commitment to the rule of law. The following year, President Dwight D. Eisenhower established the first Law Day. In 1961, Congress issued a joint resolution designating May 1 as the official date.

To maintain a free and just society, especially in trying times, we must be firm in our commitment to the rule of law — the belief that no one, regardless of wealth or power, is above the law, that everyone is legally responsible for their actions and that all people must be treated equally.

This principle is particularly important when it comes to criminal matters. Many in our community may not be fully aware of the rights of those involved in criminal cases and how the courts must handle these cases to ensure fair treatment under the law.

Perhaps it might be helpful to understand the role a judge plays in upholding the rule of law for criminal cases in Hawaii:

- Judges are required to apply the laws passed by the people's elected representatives in the Legislature. The Legislature has recognized that in certain situations, judges must have reasonable and appropriate discretion in applying the law.
- Judges are directly responsible for ensuring both the constitutionally protected rights of the defendant to a fair trial, and also society's right to justice through a properly conducted trial.
- At trial, the accused is presumed innocent until proven guilty beyond a reasonable doubt. This is true in both nonjury trials before a judge, and jury trials where 12 jurors, who are members of our community, all agree to a guilty verdict. Under our state and U.S. Constitutions, no one can be sentenced to jail without first being lawfully convicted in court.

- State law requires judges to consider many things before sentencing, including, but not limited to, the circumstances of the crime, the history and characteristics of the defendant, how best to protect the public from further crimes by the defendant and how to provide the defendant with other correctional treatment, such as drug treatment programs. Every person's sentence is individualized.
- While certain cases may sound similar in the news, no two cases are the same. Each has its own set of unique facts and circumstances. What might look like inconsistencies in sentencing is really because of different facts in the cases.
- By law, certain court records are confidential. Because the law allows some flexibility in sentencing, judges need all relevant facts to do this rationally. This may require reports on the defendant's physical and mental health, family situation, economic status and other information which is protected from public disclosure.
- Judges try to explain the reasons for their decisions (verbally or in writing) in the public record. Anyone who wants to know more about a case may observe court proceedings (most of which are open to the public), purchase copies of nonconfidential case documents from the courthouse legal documents branch or purchase audio recordings of the proceedings.

This year's Law Day theme reminds us that we, the people, must uphold the rule of law to protect our rights, champion justice and secure the liberties of present and future generations.

It takes all of us working together to maintain a just and orderly society. This responsibility is our great privilege. It's why we celebrate Law Day.

* The Honorable Blaine J. Kobayashi is the Deputy Chief Judge of Hawaii's Second Judicial Circuit.

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