

[Administrative Code – Right to Counsel In Civil Matters]

Ordinance amending the San Francisco Administrative Code by adding Article 58, Sections 58.1 through 58.3, to: 1) declare San Francisco to be a Right to Civil Counsel City; and 2) declare the intent of the Board of Supervisors to create a one-year San Francisco Right to Civil Counsel pilot program.

NOTE: Additions are *single-underline italics Times New Roman*;
deletions are ~~*strike-through italics Times New Roman*~~.
Board amendment additions are double-underlined;
Board amendment deletions are ~~strike-through normal~~.

Be it ordained by the People of the City and County of San Francisco:

Section 1. Findings. The Board of Supervisors finds and declares as follows:

1. The United States Supreme Court has declared that "there can be no equal justice where the kind of trial a [person] gets depends on the amount of money [s]he has," Griffin v. Illinois, 351 U.S. 12, 19 (1956), and that "there are fundamental principles of liberty and justice which lie at the base of all our civil and political institutions . . . The right to the aid of counsel is of this fundamental character," Powell v. Alabama, 287 U. S. 45, 67-68 (1932).

2. The adversary system of justice allocates to the parties the primary responsibility for discovering the relevant evidence and legal principles and presenting them to a neutral judge or jury, and discharging these responsibilities requires the knowledge and skill of a legally trained professional.

3. The interests at stake in civil cases can be significant, involving human needs such as child custody, shelter, sustenance, safety or health, and in such instances, there exists an inherent unfairness if a case goes forward with one side represented and the other side unrepresented.

1 4. In 1978, President Jimmy Carter reminded the national legal community that 90
2 percent of American lawyers serve the top 10 percent of all Americans, a statistic that has
3 only skewed worse over the past three decades.

4 5. Over 4.3 million court users in California are self-represented and the barriers to
5 justice are especially severe in family law court where 80 percent of litigants do not have
6 counsel at the time of disposition, in unlawful detainer (housing) cases where over 90 percent
7 of defendants are self-represented and in domestic violence and restraining order cases
8 where litigants are reported to be pro se over 90 percent of the time.

9 6. Six of ten persons of the middle class and eight of ten who live below the poverty
10 line nationwide are unrepresented in civil proceedings, including proceedings with as dire
11 circumstances as losing custody of a child.

12 7. The trial courts are in the best position to determine, in the exercise of their
13 discretion, when counsel in civil cases should be provided to ensure the litigants have equal
14 access to justice.

15 8. Affording low-income litigants with counsel provides both equal justice to low-
16 income persons entangled in civil proceedings and also provides relief to the courts
17 themselves.

18 9. Indeed, recent studies have concluded that providing civil legal services “will have a
19 positive, net economic impact” by improving the efficiency and effectiveness of not only the
20 courts but saving state and local government millions of dollars in costs from responding to
21 the effects of evictions, homelessness and disruption of family life. “Report to the Chief Judge
22 of the State of New York.” (November 2010). Another study found that “for every direct dollar
23 expended in the state for indigent civil legal services, the overall annual gains to the economy
24 are found to be \$7.42 in total spending which, in turn, generates approximately \$30.5 million
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1 in yearly fiscal revenues to state and local government entities.” “The Impact of Legal Aid
2 Services on Economic Activity in Texas” (February 2009).

3 10. In *Gideon v. Wainwright*, 372 U.S. 335 (1963), the Supreme Court unanimously
4 ruled that state courts are required under the Sixth Amendment of the Constitution to provide
5 counsel in criminal cases for defendants who are unable to afford their own attorneys. The
6 stakes at issue in some civil matters involving human needs can be more serious than minor
7 criminal offenses in which the person enjoys a constitutional right to counsel at public
8 expense. Therefore, many have called for a corresponding “Civil Gideon.”

9 11. San Francisco statistics suggest the need for counsel in civil cases. In the San
10 Francisco Unified Family Court, more than 2,800 dissolution (divorce) actions were filed in
11 2009. Of those actions, both parties were represented in only 8 percent of the cases. In that
12 same year, 95 percent of child support cases were filed by those who were self-represented.

13 12. Legal services organizations in San Francisco are unable to meet the increased
14 demand in unlawful detainer (eviction) cases against the City’s most vulnerable, low-income
15 families living in public housing units. The number of eviction lawsuits filed by the San
16 Francisco Housing Authority has increased by 400 percent from those filed in 2010.

17 13. The Sargent Shriver Civil Counsel Act (AB590) provides that pilot projects selected
18 by the Judicial Council of California will be funded to provide legal representation and
19 improved court services to low income parties on critical legal issues affecting basic human
20 needs. One of seven pilot projects selected by the Judicial Council is based out of the
21 Superior Court of San Francisco County’s Unified Family Law Court. In 2006, the American
22 Bar Association issued a statement backing civil Gideon.

23 14. The two top legal service organizations in San Francisco – the Bar Association of
24 San Francisco Voluntary Legal Services Program and the Lawyers Committee for Civil Rights
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1 – estimate that the legal community, through these two organizations alone, provided the
2 equivalent of approximately \$30 million in pro bono legal services in civil cases in 2010.

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4 Section 2. The San Francisco Administrative Code is hereby amended by adding
5 Article 58, Sections 58.1 through 58.3, to read as follows:

6 **SEC. 58.1. DECLARATION OF POLICY.**

7 The City and County of San Francisco hereby declares itself the first “Right to Civil Counsel
8 City” in the United States. This title is intended to represent the City and County’s firm commitment to
9 creating a local judicial system that provides representation to all residents involved in civil
10 proceedings that could deny them basic human needs, such as child custody, shelter, sustenance, safety
11 or health, regardless of their income or ability to pay.

12 The City and County of San Francisco declares its intent to work with the Courts, the Bar
13 Association of San Francisco, and interested persons to progress steadily toward the goal of providing
14 counsel whenever the court, in its discretion, believes that such counsel would assist in the fair
15 administration of justice. This declaration is not intended to immediately establish a right to counsel in
16 civil proceedings, but rather it is a codification of the beginning of a firm commitment to this eventual
17 goal.

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19 **SEC. 58.2. ESTABLISHMENT OF RIGHT TO CIVIL COUNSEL PILOT PROGRAM.**

20 Within six months of the effective date of this ordinance, the Board of Supervisors shall consider
21 recommendations regarding the creation of a San Francisco Right to Civil Counsel Pilot Program
22 (“Pilot Program”) to be administered by the City and to take place for one year in FY 2012-2013.

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24 **SEC. 58.3. RIGHT TO CIVIL COUNSEL PILOT PROGRAM FUNDING, ADMINISTRATION,**
25 **AND EVALUATION.**

1 It shall be City policy that in FY 2012-2013, the City's fiscal commitment to the Pilot Program
2 shall be limited to the cost of a single staff person for supporting program coordination among the
3 City, the Superior Court, non-profit organizations and others involved in the Pilot Program. The legal
4 services provided pursuant to the Pilot Program will be provided by pro bono and legal services
5 attorneys. Prior to the commencement of the Pilot Program, a workplan and a process for
6 independent evaluation of the Pilot Program shall be developed, and all parties involved in the
7 Pilot Program will be required to participate in its evaluation. At the conclusion of the Pilot
8 Program the Board of Supervisors may choose to undertake an evaluation of the Pilot
9 Program. The evaluation described in this section shall be submitted to the Board of
10 Supervisors within six months of completion of the Pilot Program. The evaluation will include
11 (a) analysis of relevant data collected regarding impact of Pilot Program on demand for
12 services (b) consider the effectiveness and continued need for the Pilot Program as it pertains
13 to equal access to justice, and (c) strategies and recommendations for maximizing the benefit
14 of that representation in the future. If the evaluation finds that the Pilot Program is successful, the
15 Board of Supervisors shall consider extending, expanding, or making permanent the work of the Pilot
16 Program.

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18 Section 3. Additional Provisions.

19 (a) Effective Date. This ordinance shall become effective 30 days from the date of
20 passage.

21 (b) General Welfare. In adopting and implementing this ordinance, the City and
22 County of San Francisco is assuming an undertaking only to promote the general welfare. It
23 is not assuming, nor is it imposing on its officers and employees, an obligation for breach of
24 which it is liable in money damages to any person who claims that such breach proximately
25 caused injury.

1 (c) Conflict with State or Federal Law. This ordinance shall be construed so as not to
2 conflict with applicable federal or State laws, rules or regulations. Nothing in this ordinance
3 shall authorize any City agency or department to impose any duties or obligations in conflict
4 with limitations on municipal authority established by State or federal law at the time such
5 agency or department action is taken.

6 (d) Severability. If any of the provisions of this ordinance or the application thereof to
7 any person or circumstance is held invalid, the remainder of those provisions, including the
8 application of such part or provisions to persons or circumstances other than those to which it
9 is held invalid, shall not be affected thereby and shall continue in full force and effect. To this
10 end, the provisions of this ordinance are severable.

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12 APPROVED AS TO FORM:
13 DENNIS J. HERRERA, City Attorney

14 By: _____
15 LINDA M. ROSS
16 Deputy City Attorney