

File No. 111189

Committee Item No. 2
Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Rules

Date 2/16/11

Board of Supervisors Meeting

Date _____

Cmte Board

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OTHER

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Completed by: Linda Wong

Date 2/13/11

Completed by: _____

Date _____

An asterisked item represents the cover sheet to a document that exceeds 25 pages. The complete document is in the file.

1 [Administrative Code – Right to Counsel In Civil Matters]

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

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

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

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

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

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

21 3. The interests at stake in civil cases can be significant, involving human needs such
22 as child custody, shelter, sustenance, safety or health, and in such instances, there exists an
23 inherent unfairness if a case goes forward with one side represented and the other side
24 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
25

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
25

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.
3

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.

18
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.

23
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. At the conclusion of the Pilot Program, the Board of Supervisors may choose to undertake
6 an evaluation of the Pilot Program. If the evaluation finds that the Pilot Program is successful, the
7 Board of Supervisors shall consider extending, expanding, or making permanent the work of the Pilot
8 Program.

9
10 Section 3. Additional Provisions.

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

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

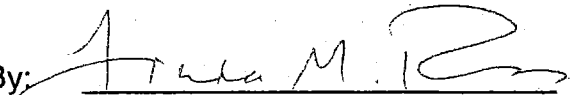
18 (c) Conflict with State or Federal Law. This ordinance shall be construed so as not to
19 conflict with applicable federal or State laws, rules or regulations. Nothing in this ordinance
20 shall authorize any City agency or department to impose any duties or obligations in conflict
21 with limitations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

23 (d) Severability. If any of the provisions of this ordinance or the application thereof to
24 any person or circumstance is held invalid, the remainder of those provisions, including the
25 application of such part or provisions to persons or circumstances other than those to which it

1 is held invalid, shall not be affected thereby and shall continue in full force and effect. To this
2 end, the provisions of this ordinance are severable.

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4 APPROVED AS TO FORM:
5 DENNIS J. HERRERA, City Attorney

6 By: 
7 LINDA M. ROSS
8 Deputy City Attorney

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LEGISLATIVE DIGEST

[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; (2) declare the intent of the Board of Supervisors to create a one-year San Francisco Right to Civil Counsel Pilot program.

Existing Law

Federal law requires states to provide counsel for the accused in a criminal proceeding when the accused cannot afford an attorney. There is no similar right in a civil proceeding.

Amendments to Current Law

The proposed ordinance includes a declaration of policy in which the City declares its intent to work with the Courts, the Bar Association of San Francisco and interested persons to provide counsel in civil proceedings whenever the court "in its discretion believes that such counsel would assist in the fair administration of justice."

The proposed ordinance further provides that within six months of its effective date, the Board of Supervisors shall consider recommendations regarding the creation of a San Francisco Right to Civil Counsel Pilot Program to be administered by the City.

The proposed ordinance includes a further declaration of City policy: in fiscal year 2012-2013, the City's fiscal commitment to the Pilot Program shall be limited to the cost of a single staff person to coordinate the program, and that the legal services provided under the Pilot Program will be provided by pro bono and legal services attorneys.

Background Information

Federal law requires states to provide counsel for the accused in a criminal proceeding when the accused cannot afford an attorney. But in many civil cases, the interests at stake are significant, involving human needs such as child custody, shelter, sustenance, safety or health. In such cases there may exist an inherent unfairness if a case goes forward with one side represented and the other side unrepresented. Therefore, the City intends to work with the Courts, Bar Association and other interested parties to provide a mechanism for the provision of legal counsel in such civil cases.