

President, Board of Supervisors
District 3



City and County of San Francisco

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Board President David Chiu Joins with Leaders in San Francisco Legal Community to Call for Right to Civil Counsel

*Legislation Would Declare San Francisco to Be the Nation's First
"Right to Civil Counsel City" and Authorize a One-Year Pilot Program*

San Francisco, CA -- Today Board President David Chiu joined with leaders in the San Francisco legal community in calling for a local judicial system that provides representation to residents involved in civil proceedings that could deny them of basic human needs such as child custody, shelter, sustenance, safety or health. President Chiu introduced an ordinance, co-sponsored by Supervisors Jane Kim and Scott Wiener, at the Board of Supervisors meeting today that declares San Francisco the first "Right to Civil Counsel City" and authorizes a one-year Right to Counsel Pilot Program.

The legislation proposes the creation of a Right to Counsel Pilot Program that will be a partnership among the City, Court, and the private legal community. The cost of the legal services in the pilot program would be entirely borne by the private legal community. While the legislation would not immediately establish a right to counsel in civil proceedings, it would solidify San Francisco's commitment to achieving this goal.

Nationwide six of ten persons of moderate income and eight of ten who live below the poverty line are unrepresented in civil proceedings. This is sobering when one considers that the stakes in some types of civil cases can be significant and life-changing. In the United States, a person charged with a minor criminal offense has a right to legal representation, but a parent in a child custody case at risk of losing his or her child is not guaranteed such critical assistance.

"At a time when the national dialogue is largely focused on significant and systematic income inequalities and related injustices, providing a right to counsel in high-stakes civil proceedings would begin to address one aspect of the greater challenges that lower income San Franciscans face," said Board President David Chiu. "I am very proud to be a part of this partnership with

the Bar Association of San Francisco, private legal aid organizations, and other leaders in our public-spirited legal community.”

Over 4.3 million civil court users in California are self-represented, and the statistics are especially severe in family law court where 80 percent of litigants do not have counsel at the time of disposition. Statewide 90 percent of eviction defendants are self-represented, and in domestic violence and restraining order cases 90 percent are self-represented. San Francisco data reinforces the urgent need for counsel in high-stakes civil cases. In 2009, 95 percent of child support cases were filed by those who were self-represented. Legal services organizations in San Francisco are unable to meet the increased demand in eviction cases against the City’s most vulnerable, low-income families living in public housing units. The number of eviction lawsuits filed this year by the San Francisco Housing Authority has increased by 400 percent from those filed in 2010. Legal services organizations provide more than \$30 million in pro bono civil representation per year, but the need is far greater.

“It is challenging when the parties are self represented in family law cases, particularly when the issues concern the parties’ child. The court is better able to make sound decisions and the parties have a far greater understanding of the meaning of and the reasons for the decision,” said Judge Patrick J. Mahoney, Supervising Judge of the San Francisco Superior Court Unified Family Court. “Given that over seventy-five percent of the parties are self-represented in family law cases, the benefits of applying the civil Gideon concept to family law custody cases are enormous.”

“The City is showing leadership in an area of justice that will improve legal problems for thousands of people. It is long overdue and it is like San Francisco to be a national leader in an important new effort,” said James Brosnahan, a Senior Partner at Morrison & Foerster LLP.

Robert Rubin, Director of the California Voting Rights Institute, a project of the Lawyers’ Committee for Civil Rights, said, “It is high time that disparities in wealth not produce disparities in justice. It is unconscionable for our society to countenance court decisions on matters such as custody of a child when one party is able to afford counsel and be represented while the other party is not.”

Affording low-income litigants with counsel also provides relief to government and the courts themselves. Recent studies have concluded that providing civil legal services has a positive economic impact by improving the efficiency of the courts, as well as by saving state and local government millions of dollars in costs from responding to the effects of evictions, homelessness and the disruption of family life.

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

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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.

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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 and 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. 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.

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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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