

**CITY AND COUNTY OF SAN FRANCISCO
BOARD OF SUPERVISORS
BUDGET AND LEGISLATIVE ANALYST**

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Policy Analysis Report

To: Supervisor Campos
From: Budget and Legislative Analyst's Office
Re: Attorney staffing needed for eviction defense services
Date: June 19, 2014



Summary of Requested Action

As a follow up to our report to you dated April 15, 2014 pertaining to the number of Unlawful Detainer eviction lawsuits filed in San Francisco Superior Court and the number of self-represented defendants, your office requested that the Budget and Legislative Analyst conduct an analysis of the level of attorney and paralegal staffing needed to provide Full Scope representation in all Unlawful Detainer cases.

You also requested that the Budget and Legislative Analyst determine the number of attorney positions needed to provide advice and consultation to residents who are not yet involved in Unlawful Detainer or eviction proceedings but need advice on harassment, buyouts, eviction notices, etc.

For further information about this report, contact Fred Brousseau at the Budget and Legislative Analyst's Office.

Executive Summary

- There are at least 14 nonprofit organizations in San Francisco that provide no or low cost legal services to tenants which includes advising tenants before an Unlawful Detainer eviction lawsuit is filed against them, providing limited assistance and representation to tenants after an Unlawful Detainer eviction lawsuit has been filed against them, and Full Scope representation in such lawsuits.
- Based on the Budget and Legislative Analyst's review of caseload and staffing data provided by 11 of the 14 organizations, it would require a net increase of 12.3 to 13.6 Full-Time Equivalent attorney positions at those 11 organizations to provide Full Scope representation to tenant defendants who are currently receiving limited legal representation or representing themselves and wish to engage in full court proceedings with complete legal representation on their Unlawful Detainer eviction cases.

Budget and Legislative Analyst

- These 12.3 to 13.6 additional positions could be added to existing Full-Time Equivalent attorney positions at the organizations that now provide Full and Limited Scope representation services to tenant defendants.
- The net staffing need identified by the Budget and Legislative Analyst is based on the Superior Court's reported 1,106 Unlawful Detainer eviction cases in Calendar Year 2013 that were scheduled for a settlement conference in Superior Court with the tenant having no legal representation.
- This Budget and Legislative Analyst's estimated net staffing need would leave approximately 11 - 12.3 Full-time Equivalent attorney positions at the service provider organizations who could continue to provide advisory services to tenants prior to an Unlawful Detainer case being filed or assistance to tenants in preparing Answers or motions after an Unlawful Detainer eviction lawsuit has been filed against them. These latter cases do not all require Full Scope services since many of them reportedly settle outside of court.
- Unlawful detainer caseload statistics maintained by the Superior Court and the 11 service providers that provided caseload and staffing data to the Budget and Legislative Analyst are inconsistent and cannot be used to readily assess the optimal level of legal services needed for these cases, or to determine case outcomes.
- Evictions in San Francisco have increased in recent years, according to San Francisco Rent Board statistics, and the current Unlawful Detainer lawsuit caseload and needed attorney staffing levels identified in this report may be subject to further increases or decreases in the future based on eviction trends and changes in the San Francisco real estate market.

Policy Options

1. The Board of Supervisors could recommend additional funding to cover a net increase of between 12.3 to 13.6 Full-Time Equivalent attorney positions to enable organizations providing legal services to tenants to provide Full Scope representation to tenant defendants in Unlawful Detainer lawsuit cases that are recorded by the Superior Court as scheduled for court settlement conferences but without legal representation for the tenant.

2. To better track actual Unlawful Detainer caseload and the level of legal staff needed to represent all tenants who are not able to afford a private attorney and wish to pursue their case fully in court, the Board of Supervisors could request that the Superior Court enhance their Unlawful Detainer caseload recording methods to include case outcomes, such as whether cases now classified as No Appearance or Self-represented were settled and had any legal representation, and request that the legal service providers that receive City funding better and more consistently track their client outcomes, particularly cases that settle outside court.

Background

Unlawful Detainer Proceedings and Caseload

Unlawful Detainers are court proceedings required by State law for landlords to evict a tenant who has not vacated a residence within a specified period of time after receiving an eviction notice.¹ Eviction notices fall into one of two categories:

- 1) 3-day Notices to Cure or Quit or to Quit only; or
- 2) 30-, 60- or 90-day Notices Terminating Tenancy.²

3-day Notices to Cure or Quit give tenants the option of vacating their rental unit or remaining if they “cure” a problem such as paying their rent, removing a pet not allowed by their rental agreement or by correcting some other violation of their rental agreements. 3-day Notices to Quit do not offer the option of “curing” the problem. 30-, 60- or 90- day notices are used in situations where the landlord is not offering a Cure or Quit option, but, instead, is terminating the tenancy. 3-day Notices to Cure or Quit are most typically used for For Cause evictions and 30-, 60- and 90-day Notices Terminating Tenancy are used for No Fault evictions such as a landlord removing a tenant while substantial rehabilitation of the rental unit is taking place or an Ellis Act eviction in which tenants must vacate their rental unit because their landlord reports that they are going out of the rental business.

In instances when a tenant has not “cured” the problem stated within the required three days of receiving a 3-day Notice to Cure or Quit and remains in the rental unit or

¹ California Civil Code Sect. 1940 et seq., Code of Civil Procedures Sect. 1166.

² 60-day notices are most common but 30-day notices are required for tenants that have been in a rental unit for less than one year. 90-day notices are required for tenants who use Section 8 vouchers for their rental.

hasn't vacated the premises by the deadline for a 3-, 30-, 60- or 90- day Notice Terminating Tenancy, the landlord cannot take possession of the rental unit without first filing a Summons and Complaint, or Unlawful Detainer lawsuit, in Superior Court. Once filed and the tenant is served with the complaint, the tenant has five days to respond, or "Answer".³ The matter then proceeds through the Court and can be disposed of after a hearing, a trial by a judge, a jury trial, or as a default judgment in instances when the tenant does not respond to the Unlawful Detainer Summons and Complaint. Some landlords and tenants settle their case without going through any court proceedings.

In the Budget and Legislative Analyst's Policy Analysis Report to Supervisor Campos dated April 15, 2014, the following San Francisco Superior Court statistics were reported showing that, in a high number of cases, defendants either represented themselves or did not appear in court. Exhibit 1 presents the Superior Court's caseload data for Calendar Years 2012 and 2013.

**Exhibit 1: Number of Unlawful Detainers Filed in San Francisco Superior Court, by Representation or No Appearance
Calendar Years 2012 and 2013**

Year	# Self-represented	# Represented by Attorneys	# No Appearance Cases	Total
2013	1,541	588	1,294	3,423
% Total	45.0%	17.2%	37.8%	100.0%
2012	1,856	478	1,361	3,695
% Total	50.2%	12.9%	36.8%	100.0%

Source: San Francisco Superior Court

Current Provision of Low or No Cost Tenant Legal Services

Many of the tenant defendants who do receive legal representation in Unlawful Detainer cases are represented by attorneys from one of the nonprofit organizations in San Francisco that provide legal services to tenants at no or low cost. However, the

³ The period to answer could be 15 days in instances where multiple attempts to serve the tenant in person have failed and the landlord obtains permission from the court to send the notice by mail.

level of service or representation provided varies, with many tenants receiving only advisory services before an Unlawful Detainer lawsuit is filed against them or Limited Scope representation after an Unlawful Detainer lawsuit is filed against them, and then representing themselves in some or all court proceedings if their cases are not settled. The services provided to tenants by these organizations are as follows:

1. Advice and consultation on eviction and other landlord/tenant issues before an Unlawful Detainer lawsuit is filed against the tenant.
2. Assistance to tenant defendants after an Unlawful Detainer lawsuit is filed against them, in preparing Answers to Unlawful Detainer Summons and Complaints or in filing motions (e.g., Motion to Quash Service of Summons,) but without an attorney representing the tenant in court and not providing representation through case disposition.
3. Limited Scope representation, in which an attorney provides some representation, potentially including some court appearances, but not necessarily through case disposition or for all of the court proceedings.
4. Full Scope representation, in which an attorney provides legal services from the outset of the case through case disposition, whether resolved outside of court, or through court proceedings such as a settlement conference or trial.

According to the legal service providers surveyed by the Budget and Legislative Analyst for this analysis, Full Scope representation includes submitting and responding to discovery (including taking and defending depositions), developing the evidence, filing motions to compel, engaging in settlement negotiations, and representation at trial, if needed. A Limited Scope Court form is supposed to be filed with the Superior Court if an attorney represents a defendant at a court appearance for an Unlawful Detainer case, knowing that they cannot represent the defendant at subsequent court appearances, if needed.

It is assumed by the Superior Court that an attorney who files a "Substitution of Attorney" Court form at any point during the case in which a court appearance is required is providing Full Scope services through disposition of the case. It should be noted that attorneys may sign retainers with defendants agreeing to provide Full or Limited Scope services, and never have to file with the Superior Court as representing the defendant because the case is disposed of prior to a court appearance such as through a settlement between the tenant and landlord.

At present there are at least 14 organizations in San Francisco that provide most, if not all, of the services listed above to tenants at low or no cost.⁴ Private attorneys who also provide these services to tenants for a fee are not covered in this analysis.

The Budget and Legislative Analyst surveyed the 14 organizations to determine their current annual caseloads, staffing and allocation of staffing between the four service categories listed above and received responses from 11 organizations. The objective of the survey was to determine caseload in each of the four service categories and: 1) the number of attorneys are currently providing Full Scope representation, 2) the number of attorneys providing Limited Scope representation, 3) the number of attorneys providing assistance with filing Answers and motions without agreeing to make any court appearances, and 4) the number of attorneys providing only advice and consultation to tenants prior to an Unlawful Detainer lawsuit being filed.

It should be noted that San Francisco Rent Board statistics show that evictions in San Francisco have been increasing in recent years. The current Unlawful Detainer lawsuit caseload and needed attorney staffing levels most likely track overall eviction patterns and the San Francisco real estate market in general. The Unlawful Detainer lawsuit caseload and legal service staffing needs may be subject to increases or decreases in the future based on changes in the number of evictions and the San Francisco real estate market in general.

While information on paralegal staffing was obtained from the service providers surveyed and analyzed by the Budget and Legislative Analyst, no changes are identified in paralegal staffing needs from the current number of paralegals that participate in legal representation services at the 11 service providers since paralegal participation is minimal.

Results

The Budget and Legislative Analyst estimates that 1,106 defendants could benefit from Full Scope representation, but do not currently receive such services. These 1,106 cases are based on the Superior Court's reported number of Calendar Year 2013 Unlawful Detainer cases that were scheduled for court settlement conferences and for which the

⁴ The Budget and Legislative Analyst attempted to contact 14 organizations, but only 11 organizations provided information on staffing and caseloads.

defendants had no legal representation. Providing Full Scope representation in these 1,106 cases would require an *additional* 12.3 to 13.6 Full-Time Equivalent attorney positions (FTEs) above and beyond the 29.2 attorney positions currently on staff at the 11 legal service organizations that provided caseload and staffing data to the Budget and Legislative Analyst.

The range of estimated FTE attorneys needed is based on an assumed caseload of 62.5 cases per FTE attorney per year and the assumption that a portion of existing attorney positions currently providing Limited Scope services could become available to provide Full Scope services if staffing for the organizations is increased to allow for Full Scope services for all tenants needing that level of service.

The Budget and Legislative Analyst assumed that existing attorney staff already providing Full Scope services would continue to do so, staff now providing Limited Scope services would convert their efforts to Full Scope services, and the rest of the existing attorney staff would continue to provide advice, counseling, or help with tenant Answers or motions but would not appear in court in conjunction with these services.

The estimated net need in staffing is summarized in Exhibit 2 under two scenarios with different assumptions about the level of staff available to convert their services to Full Scope (either 25 or 33 percent).

Exhibit 2: Key Estimates for Determining Additional Full Time Equivalent (FTE) Attorneys Needed to Provide Full Scope Tenant Representation

Need for Full Scope (Cases) (a)	Ideal Caseload per FTE (b)	FTE's Needed for Full Scope (c)=(a)/(b)	Existing FTEs NOT Providing Full Scope (d)	% FTEs		Needed FTE's (g) = (c)-(f)
				Available to Change to Full Scope (e)	Available FTE's to Change to Full Scope (f) = (d)*(e)	
1,106	62.5	17.7 FTE	16.4 FTE	25%	4.1 FTE	13.6 FTEs
1,106	62.5	17.7 FTE	16.4 FTE	33%	5.4 FTE	12.3 FTEs

Source: Budget and Legislative Analyst estimates based on information provided by the Superior Court and 11 legal service providers for Unlawful Detainer cases.

The method for how each estimate in Exhibit 2 was obtained is further described below.

Determining Need for Full Scope Services

As previously stated, 11 of the 14 organizations surveyed by the Budget and Legislative Analyst provided information on the number of tenants⁵ that received legal services in 2013, by type of service. As illustrated in Exhibit 3, there are significant differences between Unlawful Detainer caseload statistics reported by the Superior Court and the service providers. For example, 258 more tenants received legal services from the providers than cases recorded by the Superior Court in 2013. Further, the Superior Court reported 543 cases receiving Full Scope services and 45 cases receiving Limited Scope services compared to 801 and 916 recorded by the providers, respectively.

Exhibit 3: Unlawful Detainer Cases Filed as Reported by the Superior Court Compared to Caseload Reported by Service Provider Organizations, 2013

Superior Court Statistics		Statistics from Service Providers ²		Variance
Full Scope Representation ¹	543	Full Scope Representation	801	258
Limited Scope Representation	45	Limited Scope Representation	916	871
<i>Subtotal Legal Representation</i>	<i>588</i>	<i>Subtotal Legal Representation</i>	<i>1,717</i>	<i>1,129</i>
Self-Representation	1,541	Answers and Motions	1,962	N/A
No Appearance	1,294			
Total Cases	3,423	Total Cases	3,679	256

Sources: Superior Court and 11 organizations that provided legal services in 2013

1. The Superior Court provided statistics on total legal representation and Limited Scope representation filed. It is assumed that the difference between total legal representation and Limited Scope representation filed represents the number of cases in which attorneys provided Full Scope representation.
2. These statistics exclude 1,393 cases in which attorneys provided legal advice and counseling to cases prior to an Unlawful Detainer being filed.

The differences in caseload counts and classifications are explained by limitations in the Court's and the providers' methods of counting caseload. Two key limitations are that: 1) neither the Court or the providers adequately track case outcomes, and 2) the providers appear to count some cases more than

⁵ In this report, one tenant is equivalent to one household or one case, even though several tenants in a single household may be included in an Unlawful Detainer case.

once in instances when defendants are represented by more than one provider organization. These limitations can lead to seemingly different conclusions: cases classified as No Appearance by the Superior Court may have actually settled outside of court, and cases classified as Self-represented by the Court, may have received advisory services or assistance preparing an Answer or motions from the providers though their attorneys did not appear on behalf of these defendants in court. Of the 3,423 Unlawful Detainer cases reported by the Superior Court for Calendar Year 2013, the Court reported that 1,541 cases were Self-represented cases and that 1,294 were No Appearance. As mentioned, the Court does not track case dispositions but it is likely that many of these cases were settled by the landlord and tenant outside of court and therefore would not require Full Scope services even if the service providers had sufficient staff to provide Full Scope service to all of their clients. The provider organizations do not maintain adequate, consistent outcome data for their clients.

Various reasons were provided by the organizations and the Superior Court for the discrepancies in the number of cases with legal representation:

- Unlawful Detainer cases were resolved prior to when an attorney had to make a court appearance and file documentation with the Court that he or she was providing legal representation.
- Tenant defendants arrived at a settlement conference without legal representation, were subsequently assigned a pro-bono attorney for the day of the settlement conference only (Limited Scope representation), but this form of representation was not captured in the Superior Court's statistics.
- There are duplications of reported cases among the statistics provided by the provider organizations because a tenant could have received help with filing an Answer or motions from one service organization then received legal representation for the remainder of the case from another organization.
- The service providers also represent tenants in forums other than the Superior Court, such as before administrative law judges for Section 8 tenants.

As a result of these practices, data discrepancies and limitations, the Budget and Legislative Analyst used the 1,106 settlement conferences scheduled⁶ in 2013 in which the tenant did not have legal representation recorded by the Superior Court as the basis for determining the need for Full Scope services.

Determining Caseload per FTE and Total FTE Needed

Six organizations provided the Budget and Legislative Analyst with an ideal Full Scope annual caseload per FTE attorney, ranging from 50 – 100 cases per FTE attorney. The median ideal caseload reported by the providers was 62.5 cases per FTE attorney per year. Therefore, the Budget and Legislative Analyst estimates that 17.7 FTE attorneys are needed to provide full scope services for 1,106 cases (1,106 cases divided by 62.5).

Estimates of Existing FTE Attorneys Providing Services and Net New Positions Needed

Several organizations reported using a combination of full-time, part-time, and volunteer attorney staff to provide the following legal services to tenants: 1) advice/counseling, 2) assistance with Answers and motions (without an attorney providing representation at court appearances), 3) Limited Scope representation, and 4) Full Scope representation. Further, several organizations reported that their staff attorneys do not spend 100 percent of their time providing legal services for unlawful detainer/eviction cases.

Using positions, percentage of time, and FTE counts provided by the surveyed providers, the Budget and Legislative Analyst determined that there are 29.2 FTE attorneys providing legal services for Unlawful Detainer cases at the 11 service provider organizations. This estimate is likely an undercount of all tenants receiving legal services due to the following:

- It does not include attorneys that provide services for the three organizations that did not provide responses to the Budget and Legislative Analyst's survey or private attorneys that provide representation paid for by the tenant defendants; and,

⁶ The Superior Court notes that tenant and landlords may not have attended scheduled conferences due to the matter being resolved outside of the Court.

- Some organizations that responded to the Budget and Legislative Analyst's survey did not provide enough information to determine their volunteer and panel attorney FTE count.

According to the surveyed service providers, the total number of tenants that received Full Scope representation in 2013 was 801. Therefore, the Budget and Legislative Analyst estimates that 12.8 FTE attorneys are currently providing Full Scope services at the 11 provider organizations that responded to the Budget and Legislative Analyst's survey (801 cases divided by an annual caseload of 62.5 cases per attorney = 12.8 attorneys). As shown in Exhibit 3 above, this leaves 16.4 FTE attorneys (29.2 total attorneys less 12.8 providing Full Scope) who are providing less than Full Scope legal services such as advice/counseling, help with preparing Answers and motions, and Limited Scope representation.

Using caseload statistics, FTEs and percentage of time devoted to specific work reported by service providers, the Budget and Legislative Analyst estimates that between 25 and 33 percent of the remaining 16.4 FTE attorneys that currently provide Limited Scope representation, advisory services and assistance with Answers and motions could convert their efforts to Full Scope representation if all organizations were able to provide Full Scope services to all tenants needing that level of service. This translates to between 4.1 and 5.4 existing FTE attorneys that could convert their efforts to providing Full Scope representation (16.4 FTE attorneys x 25 and 33 percent, respectively). The remaining 11 to 12.3 FTE attorney positions could continue to provide advice and counseling and support with filing Answers or motions for cases that do not end up going through full court proceedings.

Because there are 4.1 FTE to 5.4 FTE attorneys currently on staff that would convert their time to Full Scope representation, the Budget and Legislative Analyst estimates that the net FTEs needed to fill existing service gaps is between 12.3 to 13.6 FTE attorneys (17.7 positions needed for the 1,106 additional cases less 5.4 or 4.1 results in a net need for 12.3 or 13.6, respectively).

Policy Options

1. The Board of Supervisors could recommend additional funding to cover a net increase of between 12.3 to 13.6 Full-Time Equivalent attorney positions to enable organizations providing legal services to tenants to provide Full Scope

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representation to tenant defendants in Unlawful Detainer lawsuit cases now recorded by the Superior Court as scheduled for court settlement conferences but without legal representation for the tenant.

2. To better track actual Unlawful Detainer caseload and the level of legal staff needed to represent all tenants who are not able to afford a private attorney and wish to pursue their case fully in court, the Board of Supervisors could request that the Superior Court enhance their Unlawful Detainer caseload recording methods to include case outcomes, such as whether cases now classified as No Appearance or Self-represented were settled and had legal representation, and request that the legal service providers that receive City funding better and more consistently track their client outcomes, particularly cases that settle outside court.