

Goals

The Gideon Project seeks to afford owners of seized property a fair chance in court by:

- educating judges, court clerks, and criminal defense attorneys about forfeiture claimants' statutory right to counsel; and
- providing research materials and the nation's only forfeiture training program for criminal defense attorneys and pro-se litigants, which will be made available nationwide, at low cost to participants.

Please help level the playing field for victims of overreaching forfeiture prosecutions! Visit www.fear.org to:

- purchase **FEAR's Asset Forfeiture Defense Manual** and/or **Forfeiture 101 video**
- subscribe to **FEAR's** extensive cross-indexed forfeiture **Brief Bank**; and/or
- make a tax-deductible donation to **FEAR Foundation**.

Donations and proceeds will help produce future CLE forfeiture training videos.

"Perhaps the most substantial imposition upon the government would be requiring the Plaintiff [United States] to oppose an attorney in a complicated and abstruse field where the Plaintiff normally expects to meet only pro-se litigants struggling through the claimant process."

—*United States v. Property, All Appurtenances & Improvements, etc.*,
803 F. Supp. 1194, 1197 (1992).

Endnotes:

1. A Lexis search revealed only one case in which a court appointed counsel under CAFRA's 18 U.S.C. § 983(b)(2), which requires the judge to appoint counsel for claimants whose primary residence was seized and who cannot afford a lawyer: *U.S. v. Real Prop. at 130 High Rock Acres Drive*, 2007 U.S. Dist. LEXIS 59601 (2007) — and only one case in which a court appointed counsel to represent a criminal defendant's interest in property subject to forfeiture in the related civil forfeiture pursuant to § 983(b)(1): *U.S. v. One 2000 Wells Cargo 24 Foot Long Trailer*, 2002 U.S. Dist. LEXIS 6554 (2002). See also notes 2-3 below.
2. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE H.R. 1658, Civil Asset Forfeiture Reform Act of 2000.
3. Legal Services Corporation Semiannual Report to the Congress for the Period October 1, 2003 - March 31, 2004, page 11; LSC Semi-Annual Report to Congress for the Period October 1, 2004 - March 31, 2005 (page 17).
4. While the federal government obtained 92% of the criminal convictions it sought in **Fiscal Year 2007, U.S. Attorneys vastly overreached for assets and money judgments — litigating over \$3.8 billion in assets — nearly three times the \$1.3 billion value of civil and criminal forfeiture judgments obtained** (*United States Attorneys' Annual Statistical Report: Fiscal Year 2007*). **During fiscal years 2005 and 2006, U.S. Attorneys obtained a 91% conviction rate, but pursued litigation of assets valued over four times the value of forfeiture judgments obtained** (*United States Attorneys' Annual Statistical Report: Fiscal Year 2005*, same, *Fiscal Year 2006*).
5. Quoting *Gideon v. Wainwright*, 372 U.S. 335 (1963). In Fiscal Year 2007 United States Attorneys filed asset forfeiture counts in 5,131 criminal cases, and filed 2,105 civil asset forfeiture actions, obtaining a total appraised value of \$1,323,035,714 in civil and criminal forfeiture judgments. These figures do not include assets forfeited through federal administrative procedures (in which owners lost property without any litigation). *U.S. Attorneys' Annual Statistical Report: F.Y. 2007*.
6. *U.S. v. Indoor Cultivation*, 55 F.3d 1311, 1318 (7th Cir., 1995); see also: *U.S. v. Commodity Act #549*, 219 F.3d 595, 598 (7th Cir., 2000) (quoting *U.S. v. 8136 Dobson St.*, 125 F.ed 1076, 1084: "Claimants in this forfeiture proceeding pose the question whether their former attorney's gross negligence in representing their interests entitles them to another opportunity to litigate.. The answer is No."); *U.S. v. 817 NE 29th Dr., Wilton*, 175 F.3d 1304, 1311 n.14 (11th Cir, 1999) (claimant's "only remedy for the alleged incompetence of his attorney is a suit for malpractice").

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FEAR's *Gideon Project*



"Assistance of counsel is a fundamental right essential to a fair trial."

—*Gideon v. Wainwright*, (1963)

**Implementing the right to effective
counsel for asset forfeiture victims**

FEAR's Gideon Project:

Implementing the right to effective assistance of counsel

Congress responded to numerous stories of abusive forfeitures by enacting our nation's only federal forfeiture reform, the CIVIL ASSET FORFEITURE REFORM ACT OF 2000. CAFRA's **18 U.S.C. § 983(b) requires courts to appoint counsel to indigent owners of seized homes, and allows appointment of counsel in other types of civil forfeitures** where the claimant has appointed counsel in a related criminal case. Both provisions are available only upon request.

But in most courtrooms today nobody knows to tell the judge of these provisions! Sadly, the overwhelming majority of lawyers and judges apparently still do not even know that homeowners have a right to assistance of counsel in forfeiture proceedings¹ — and many well-meaning attorneys risk malpractice suits for causing irreparable damage because they don't know the arcane rules governing forfeiture procedures.

Congress charged the Legal Services Corporation with providing attorneys for indigent claimants whose residence has been seized, and estimated it would cost \$5 million over the 2001-2005 period.² However, LSC reported to Congress only "one request from court personnel" prior to 2003, plus "several additional requests for cases in Washington DC and California" during the year ending March, 2004. Then, during their 2004-2005 reporting period "LSC obtained representation for a claimant in California."³ In February 2008, LSC said CAFRA appointments "are approaching one a month" — nationwide! That is abysmally low.

In *U.S. v. 130 High Rock Acres Drive* (2007) — the only case reported on Lexis involving CAFRA's appointment of counsel to defend claimants' primary residence — the court appointed counsel to represent two minors, whose mother did not know she could ask the court to appoint counsel.

Without attorneys, forfeiture victims are left defenseless against prosecutors, who continue to routinely overreach in seeking assets and money judgments.⁴

FEAR's first goal in the *Gideon Project* is to educate lawyers, victims, and the court system about CAFRA's appointment of counsel process.

But simply getting courts to appoint counsel achieves little without a pool of lawyers trained in forfeiture law to effectively defend the cases.

The wise judge in *130 High Rock Acres Drive* warned counsel about the complexity of forfeiture procedure:

Recognizing that Legal Services Corporation may have little experience in civil forfeiture actions, [counsel] is respectfully advised that civil forfeiture actions are governed by unique rules that require claimants to file both claims and answers within very specific time frames. Specifically, this action is governed by the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions. Such rules may be found...

The government spends "vast sums of money to establish machinery"⁵ to deprive people of their property. It offers extensive Continuing Legal Education courses on forfeiture exclusively for prosecutors — **but no CLE course on substantive forfeiture law and procedure exists for defense attorneys!**

Defense attorneys often unwittingly waive their client's right to jury trial on the forfeiture, either by failing to file a jury demand in the civil forfeiture case, or, in criminal forfeiture cases, by failing to assert the right before the jury panel is excused after the guilt phase.

Often, attorneys trying diligently to assist their clients in the new and unknown area of law, choose the administrative petition for remission process instead of filing an administrative claim, and thereby forever waive their client's rights to any hearings in court on the forfeiture case.

Even the best attorneys when handling their first forfeiture cases make mistakes that cause their clients to lose by default. Numerous courts have held that failure to file a verified claim with the court in strict compliance with the rules deprives the claimant of standing to defend against the forfeiture. "Under such circumstances, a litigant's [only] appropriate remedy is a suit against his attorney for malpractice."⁶

Now: at long last, 8 years after CAFRA's right to counsel provision took effect, we have a functioning process for appointing counsel to represent indigent homeowners! Claimants who want to request an attorney can find free sample appointment of counsel applications and forms by clicking the red "Victim Support" button on FEAR's main page at www.fear.org.

Defense lawyers new to forfeiture law should check out the free and low cost materials on FEAR's website. In addition to numerous free materials in the public section of FEAR's website, even forfeiture veterans benefit from purchasing **FEAR's ASSET FORFEITURE DEFENSE MANUAL** (500 pages, \$119). And for \$100 per year FEAR offers an on-line **BRIEF BANK** containing over 200 sample motions, forms and briefs, plus several complete Department of Justice manuals and many other research materials — all indexed by topic.

Forfeiture 101: the first in a series of CLE forfeiture law training videos on DVD, which can be purchased for low cost on the FEAR website. These materials are also designed for use by pro se litigants who fall through the cracks in CAFRA's right to counsel provisions.

Profits from sales of these materials will help produce future CLE training videos.

Please visit FEAR at www.fear.org