



ADMINISTRATIVE OFFICE OF THE COURTS
INTER-OFFICE

MEMO 2016-26

TO: Honorable Carolyn Timmann
Honorable Sharon Robertson
Honorable Joseph E. Smith
Honorable J.R. Smith

FROM: Thomas Genung, Trial Court Administrator

A handwritten signature in black ink, appearing to be "T. Genung", written over the name in the FROM field.

DATE: August 29, 2016

RE: **Administrative Order 2016-04**
RE: UNIFORM PROCEDURES FOR THE FLORIDA CONTRABAND FORFEITURE ACT

Attached please find an original **Administrative Order 2016-04** for filing with the Court.

If you have any questions regarding the above, please do not hesitate to contact me.

TAG/js
Attachment

cc w/attach: All Judges in the Nineteenth Judicial Circuit
All Magistrates and Hearing Officers in the Nineteenth Judicial Circuit
All Staff Attorneys in the Nineteenth Judicial Circuit
Honorable Bruce Colton, State Attorney's Office
Honorable Diamond Litty, Public Defender's Office
All County Attorneys in the Nineteenth Judicial Circuit
All Local Law Libraries
All Local Bar Presidents
IT

IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT IN AND FOR
INDIAN RIVER, MARTIN, OKEECHOBEE, AND ST. LUCIE COUNTIES, FLORIDA

ADMINISTRATIVE ORDER NO. 2016-04

RE: UNIFORM PROCEDURES FOR THE FLORIDA CONTRABAND FORFEITURE ACT

WHEREAS, The Florida Contraband Forfeiture Act, §§ 932.701-932.7062, Florida Statutes (the “Act”), sets forth procedural requirements governing the forfeiture of personal and real property; and

WHEREAS, recent statutory changes to the Act require supplementation of the provisions of the Act and applicable Rules of Court in order to ensure that civil proceedings are conducted throughout the Nineteenth Judicial Circuit in a uniform manner which complies with the Act and which facilitates the proper and efficient administration of such proceedings.

It is, therefore,

ORDERED that the procedures set forth in this administrative order are necessary to administer the Court’s affairs and shall be followed whenever property is the subject of civil proceedings under the Act. These procedures complement but are not intended to and do not supersede any provisions of the Act and the Rules of Court which are applicable to civil forfeiture actions.

A. Circuit Civil Forfeiture Proceedings Generally

Assigned Judge. In accordance with section 932.704(2), Florida Statutes, of the Florida Contraband Forfeiture Act, all civil forfeiture cases shall be heard before a judge of the civil division. In each county, the Judge assigned to hear civil jury cases is hereby designated as the primary Circuit Court Judge for all forfeiture cases.

Court Reporter. Because forfeiture proceedings are civil proceedings, court reporters shall not be provided at public expense. The seizing agency and/or claimant(s) are responsible for securing the services of and paying the cost of court reporting services.

B. Initial Proceedings Prior to Filing a Complaint

Section 932.703(2)(a), Florida Statutes, requires that within 10 business days after the seizure that the seizing agency apply to the Circuit Court for an order determining the existence of probable cause. There is also a requirement under section 932.703(3), Florida Statutes, that

the agency provide notice of the right to an adversarial preliminary hearing and that such a hearing may be required prior to filing a complaint. To insure an adequate record of these initial documents is maintained and a civil case number is available for these filings the following procedures apply:

1. Application for an Ex-Parte Order Finding Probable Cause for Seizure

In order to obtain a ruling pursuant to section 932.703(2)(a), Florida Statutes, the seizing agency shall, within 10 business days of the seizure, submit an *Application for Seizure Probable Cause Determination* with an accompanying Affidavit to the court for ex-parte review and ruling. The submission packet must include a proposed *Order Finding Probable Cause for Seizure* and, as an alternative, a proposed *Order Denying Probable Cause for Seizure*. The *Application for Seizure Probable Cause Determination* and the proposed orders shall be substantially the same format as Attachment A of this Order. In addition to an original order, copies, and envelopes should be included for distribution by the court.

If there has not yet been a complaint filed or a circuit civil number issued for the action by the Clerk, the seizing agency shall obtain a civil case number from the Clerk of Court to be used on these papers submitted for ex-parte review.

2. Determination of Probable Cause

Unless a claimant requests an adversarial hearing, upon a finding by the Court that: (1) the requirements of section 932.703(1)(a), Florida Statutes, have been met, or that an exception applies; and, (2) probable cause exists for the seizure, the forfeiture may proceed as set forth in the Act.

If the Court finds that the requirements in section 932.703(1)(a), Florida Statutes, have not been met, or that probable cause does not exist for the seizure, any forfeiture hold, lien, lis pendens, or other civil encumbrances must be released within five (5) days.

After the Court has made his/her findings, the Court will file the original Application and the attached Affidavit with the Clerk of Court. The original signed Order regarding the probable cause determination will also be filed with the Clerk of Court by the Court and copies of the order, the application and the affidavit will be mailed to the parties using the return envelopes that were provided by the agency.

A party should file a notice when appropriate to seal any record or proceeding under the Act which is exempt, or confidential and exempt, from section 119.07(1), Florida Statutes, and section 24(a), Article I of the Florida Constitution, pursuant to Florida Rule of Judicial Administration 2.420.

3. Notice of Seizure and Right to Adversary Probable Cause Hearing

Section 932.703(3)(a), Florida Statutes, includes a right to an adversarial preliminary hearing upon request. Pursuant to this statute a specific notice of this right must be provided at the time of seizure of the property or provided by certified mail sent within 5 working days after the seizure. All law enforcement agencies within the Nineteenth Judicial Circuit shall use a *Notice of Seizure and Right to Adversary Probable Cause Hearing* in substantially the same format as Attachment B of this Order. The seizing agency shall complete the notice(s) containing the name and address of the person(s) who may have an interest in the property and who are known to the seizing agency.

The seizing agency must make a diligent search and inquiry to determine the names and addresses of the owners of the seized property and all persons and entities having any interest under the Act. If any such notice was sent by certified mail, the seizing agency shall also verify that notice was sent within 5 working days of the seizure, and the return receipt pertaining to such notice shall be attached a copy of the Notice filed with the Clerk. For the purpose of complying with this subsection, in order to account for mailing of the request for hearing, the seizing agency must wait a period of at least 5 days after the 15 days prescribed by § 932.703(3)(a), Florida Statutes before attesting to the absence of a request for hearing.

When any person receiving the notice requests an adversary hearing in conformity with the statute, the seizing agency is then required to set and notice a hearing. The seizing agency shall file both the *Notice of Seizure and Right to Adversary Probable Cause Hearing* and the responding party's *Request for Adversary Hearing* (and any envelope showing a postmark) with the Clerk of Court and provide a copy to the Court and request a hearing time from the Court. A hearing shall be scheduled so that it is held within 10 days after the request for hearing was received by the seizing agency, or as soon as practicable thereafter, as contemplated by § 932.703(3)(a), Florida Statutes.

4. Adversarial Probable Cause Hearing

At the adversarial preliminary hearing, in addition to the verified supporting affidavits, the seizing agency and the party contesting probable cause may offer other affidavits, testimony and documents in support of and in opposition to a finding of probable cause for forfeiture under the Act. Witnesses may be cross-examined as deemed appropriate by the Court.

5. Notice of Resolution

For administrative purposes, it is necessary that the Court be made aware of the resolution of any seizure proceedings that occur prior to filing the complaint. Accordingly, if the seizing agency and the persons claiming an interest in the property reach an agreement concerning seizure, or the Court has not found probable cause, or the seizure proceedings are otherwise resolved prior

to the filing of the complaint, the seizing agency shall provide a *Notice of Resolution* including therein the *Order of Dismissal* in substantially the same format as the Attachment E to this order.

C. Complaint for Forfeiture and § 932.704(5)(c), Florida Statutes

There is a deadline of 45 days after the seizure to file a formal civil action. This deadline may be extended to 60 days for good cause. The following procedures apply:

1. Filing of the Complaint

Upon filing of the Complaint, affidavit and payment of the appropriate filing fee and posting of a bond pursuant to section 932.704(4), Florida Statutes, to the Clerk of Court, the Clerk of Court shall cause the opening of a circuit civil proceeding which shall be treated in all regards in like manner. Counsel representing seizing agencies seeking forfeiture in the Nineteenth Judicial Circuit shall use a *Complaint for Forfeiture* in substantially the same format as Attachment C of this Order.

2. Notice to Claimant

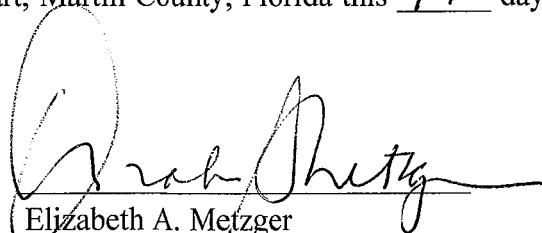
Section 932.704(5)(c), Florida Statutes, indicates the court shall require any claimant who desires to contest the forfeiture to file and serve upon the attorney for the seizing agency any responsive pleading and affirmative defenses within 20 days after the receipt of the complaint. To comply with this provision, counsel for the serving agency shall include a copy of the *Notice to Claimants of Seizure and Filing Requirements under Section 932.704(5)(c), Florida Statutes* included as Attachment D, with the complaint and summons to be served upon the claimant.

3. Proceedings after Service of Complaint

After service of the summons and complaint, a civil forfeiture action will proceed as other civil actions and shall be governed by the Florida Rules of Civil Procedure except as otherwise specified under the Florida Contraband Forfeiture Act.

Attachments to this Administrative Order may be modified without further changes to this Administrative Order.

DONE AND ORDERED in quadruplicate at Stuart, Martin County, Florida this 17th day of August, 2016.


Elizabeth A. Metzger
Chief Judge

Attachment A: Ex- Parte Application for Seizure Probable Cause Determination, Ex-Parte Order Finding Probable Cause for Seizure and Ex-Parte Order Denying Probable Cause for Seizure

Attachment B: Notice of Seizure and Right to Adversary Probable Cause

Attachment C: Forfeiture Complaint

Attachment D: Notice to Claimants of Seizure and Filing Requirements

Attachment E: Notice of Resolution

**IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT
IN AND FOR _____ COUNTY, FLORIDA**

IN RE: FORFEITURE OF:

Case No.: _____

(Description of Property)

EX-PARTE APPLICATION FOR SEIZURE PROBABLE CAUSE DETERMINATION

COMES NOW the Petitioner (insert agency) by and through undersigned counsel pursuant to section 932.703(2), Florida Statutes, and says:

1. On ___ (date) ___ (insert agency) ___, seized for forfeiture ___ (describe property) ___ as more fully set forth in the attached Notice of Seizure. This application is being presented within 10 business days of seizing that property.
2. The seizing agency has made a diligent search and inquiry to determine the names and addresses of the owners of the seized property and all persons and entities having any interest therein.
3. The requirements specified in paragraph (1)(a) of section 932.703, Florida Statutes, have been satisfied based on the fact that one of the following facts exist:

_____ The owner of the property was arrested for a criminal offense that forms the basis for determining that the property is a contraband article under section 932.701, Florida Statutes;

_____ The owner of the property cannot be identified after a diligent search or the person in possession of the property denies ownership and the owner of the property cannot be identified by means that are available to the employee or agent of the seizing agency at the time of the seizure;

_____ The owner is a fugitive from justice or is deceased;

_____ An individual who does not own the property is arrested for a criminal offense that forms the basis for determining that the property is a contraband article under section 932.701, Florida Statutes, and the owner of the property had actual knowledge of the criminal activity;

_____ The owner of the property agrees to be a confidential informant as defined in section 914.28, Florida Statutes; or

_____ The property is a monetary instrument.

4. The facts and circumstances surrounding the seizure are contained in the attached affidavit, which is incorporated as if fully set forth herein.

Attachment "A"

5. The seizing agency has made a diligent effort to notify all persons and entities entitled to notice under the Florida Contraband Forfeiture Act of the seizure, of the forfeiture proceedings, and of the right to an adversarial preliminary hearing. A copy of such notice(s) is (are) attached to this application.

6. A notice of seizure, forfeiture proceedings, and right to adversarial preliminary hearing was (check one):

_____ Hand delivered on the date of seizure;

_____ Sent by certified mail within 5 working days of the seizure, and the return receipt(s) pertaining to such notice(s) is (are) attached to this application; or

_____ Sent by certified mail within 5 working days of the seizure, and the return receipt(s) pertaining to such notice(s) have not been received.

7. The seizing agency (check one):

_____ Did not receive written request for adversarial preliminary hearing yet. Receipts received hereafter will be filed with the Clerk of Court; or

_____ Did receive request(s) for adversarial preliminary hearing, copy(ies) of which is (are) attached to this Certificate of Compliance.

WHEREFORE, Petitioner requests an Order Finding Probable Cause for Seizure pursuant to section 932.703(2), Florida Statutes.

ATTESTATION

I HEREBY ATTEST that a copy of this Motion and attached affidavit has been submitted to the Judge this _____ day of _____, 20____.

(Attorney signature block)

**IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT
IN AND FOR _____ COUNTY, FLORIDA**

IN RE: FORFEITURE OF:

Case No.: _____

(Description of Property)

EX-PARTE ORDER FINDING PROBABLE CAUSE FOR SEIZURE

THIS MATTER having come before this Court pursuant to section 932.703(2), Florida Statutes, by the __ *(Seizing Agency)* __, and the Court having reviewed the sworn affidavit, **FINDS:**

1. The agency applied for probable cause determination within 10 business days after seizure.
2. The requirements specified in paragraph (1)(a) of section 932.703, Florida Statutes, have been satisfied based on the fact that one of the following facts exist:

_____ The owner of the property was arrested for a criminal offense that forms the basis for determining that the property is a contraband article under section 932.701, Florida Statutes;

_____ The owner of the property cannot be identified after a diligent search or the person in possession of the property denies ownership and the owner of the property cannot be identified by means available to the agent of the seizing agency at the time of the seizure;

_____ The owner is a fugitive from justice or is deceased;

_____ An individual who does not own the property is arrested for a criminal offense that forms the basis for determining that the property is a contraband article under section 932.701, Florida Statutes, and the owner of the property had actual knowledge of the criminal activity;

_____ The owner of the property agrees to be a confidential informant as defined in section 914.28, Florida Statutes; or

_____ The property is a monetary instrument.

3. A notice of seizure, forfeiture proceedings, and right to adversarial preliminary hearing was given as required by paragraph (3)(a) of section 932.703.

4. Probable cause exists to seize the property under the Florida Contraband Forfeiture Act.

Therefore the Court having found that the requirements of section 932.703(1)(a), Florida Statutes, were satisfied and that probable cause exists for the seizure, it is **ORDERED** that the property shall be held in conformity with the statute until further order of the Court.

DONE AND ORDERED in Chambers, in _____ County, Florida, this _____ day of _____, 20____.

Copies to: *(Attorney for Petitioner), (Claimant(s))*

CIRCUIT COURT JUDGE

**IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT
IN AND FOR _____ COUNTY, FLORIDA**

IN RE: FORFEITURE OF:

Case No.: _____

(Description of Property)

EX-PARTE ORDER DENYING PROBABLE CAUSE FOR SEIZURE

THIS MATTER having come before this Court pursuant to section 932.703(2), Florida Statutes, upon seizure of the above-described property by the ____ *(Seizing Agency)* ____ and the Court having reviewed the sworn affidavit, FINDS:

____ The Agency did not apply for the probable cause determination within 10 business days after the date of the seizure; AND/OR

____ The requirements specified in paragraph (1)(a) of section 932.703, Florida Statutes, have not been satisfied; AND/OR

____ The Agency has not established probable cause for the seizure based on a review of the attached affidavit; AND/OR

____ A notice of seizure, forfeiture proceedings, and right to adversarial preliminary hearing was not given as required by paragraph (3)(a) of section 932.703.

Therefore the Court having found that the requirements of Florida Statute section 932.703 were not satisfied and/or that probable cause does not exist for the seizure, it is

ORDERED that any forfeiture hold, lien, lis pendens, or other civil encumbrance shall be released in conformity with the statute within 5 days.

DONE AND ORDERED in Chambers, in _____ County, Florida, this ____ day of _____, 20 ____.

CIRCUIT COURT JUDGE

Copies to:
(Attorney for Petitioner)
(Claimant)

NOTICE OF SEIZURE AND RIGHT TO ADVERSARY PROBABLE CAUSE HEARING

REPORT NO.: _____

CASE NO.: _____

DATE: _____

TO: _____ *(Claimant's Name)*

ADDRESS: _____

RE: *(Description of Seized Property)*

THIS IS to advise you that on ____ *(Date)* ____ the ____ *(Seizing Agency)* ____ seized the above-referenced property for a violation of the Florida Contraband Forfeiture Act, §§ 932.701–932.7062, Florida Statutes.

YOU ARE HEREBY NOTIFIED that you are entitled by law to request an adversarial preliminary hearing to determine whether there is probable cause to believe the property was used in violation of the Act.

PLEASE NOTE that the adversarial preliminary hearing is not mandatory and you need not request a hearing to later contest the action taken against the property described herein. Each claimant will be given the opportunity to appear in court before final disposition of this matter.

IF YOU DESIRE SUCH A HEARING, you must make a request in writing certified mail, return receipt requested, to ____ *(Seizing Agency)* _ at the address listed below, within fifteen (15) days of receiving this Notice. This request must be accompanied by a copy of this Notice. The seizing agency will notify you of the time, date, and place of that hearing.

I HEREBY CERTIFY that I have:

____ provided a copy of this Notice to the person named above, OR

____ Forwarded a copy of this Notice by certified mail, return receipt requested, to

(person or entity to which Notice was sent) this ____ day of _____, 20__.

Seizing Officer/Person Sending Notice

I HEREBY CERTIFY that I have received the foregoing Notice apprising me of my right to post-seizure adversarial hearing on _____, 20__.

Attachment "B"

**IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT
IN AND FOR _____ COUNTY, FLORIDA**

IN RE: FORFEITURE OF:

Case No.:

(Description of Property)

COMPLAINT FOR FORFEITURE

COMES NOW Complainant, _____, for the use and benefit of the (*seizing Agency*), by and through the undersigned attorney, and files this Complaint for Forfeiture under the Florida Contraband Forfeiture Act (the Act), and says:

1. This is an action for forfeiture pursuant to sections 932.701–932.7062, Florida Statutes; jurisdiction in this Court pursuant to section 932.704, Florida Statutes.

2. _____ is a seizing agency as set forth in section 932.704, Florida Statutes.

3. A description of the property that is the subject of this action is as follows:

(Description of all property)

4. On or about (*date property was used in violation of the Act*), said property was in violation of the Act by virtue of one or more of the following:

a) _____ Florida Statutes.

b) _____ The property is a contraband article as defined in section 932.701(2)(a); The property was used to transport, carry, convey, conceal, or possess a contraband article in violation of section 932.702(1) or (2), Florida Statutes.

c) _____ The property was used to facilitate the transportation, carriage, conveyance, concealment, receipt, possession, purchase, sale, barter, exchange, or giving away of any contraband article, or used as an instrumentality in the commission of or in aiding or abetting in the commission of a felony or violation of the Act, pursuant to sections 932.702(3) and (4), Florida Statutes.

d) _____ The property was acquired by the use of proceeds obtained in violation of the Act in violation of section 932.701 or 932.702(5), Florida Statutes.

e) _____ The property is subject to forfeiture pursuant to:

(This section is for other statutory violations which authorize forfeiture under the Act; e.g., felony littering, VIN-HIN violations, aircraft violations, fleeing in a vessel, etc.)

Attachment "C"

5. On or about *(date property was actually seized)*, the (name of seizing law enforcement agency) discovered and seized the property described in paragraph 3 above at or near (address or location where property was seized).

6. The Complainant has conducted a reasonably diligent search for all persons or entities who may have an interest in the property described in paragraph 3 above by virtue of possession, ownership, registration law, or perfected lien, and who are known to the Complainant as: *(names of persons or entities)* and all others who claim an interest in the following described property: *(describe property)*

7. Complainant has complied with the Notice requirements of the Act.

8. Pursuant to 932.703(2)(b), Florida Statutes, on _ (date) , the seizing agency submitted an affidavit setting forth the facts and circumstances upon which the seizure was based and which support the forfeiture of the property and obtained an Order Finding Probable Cause for Seizure.

WHEREFORE, *(Name of Petitioner)*, having provided to the persons or entities listed in Paragraph 6 above, and any other persons or entities who claim an interest in the property described in Paragraph 3 above a copy of the Notice to Claimant Forfeiture of Personal Property, and after hearing upon the Complaint for Forfeiture, requests this Court to enter a Final Order of Forfeiture perfecting the right, interest, and title to said property for the use or benefit of the *(name of law enforcement agency)*

(Signature of Attorney) (Name of Attorney) (Address)

(Telephone Number)

(Person ID/Florida Bar Number (E-mail Address

**IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT
IN AND FOR _____ COUNTY, FLORIDA**

**RE: NOTICE TO CLAIMANTS OF SEIZURE AND FILING
REQUIREMENTS UNDER SECTION 932.704(5)(c), FLORIDA STATUTES**

The Florida Contraband Forfeiture Act sets forth the procedural requirements governing the forfeiture of contraband articles. *See* §§ 932.701–932.7062, Florida Statutes. Pursuant to section 943.704(5)(c), Florida Statutes, any claimant who desires to contest the forfeiture action shall file and serve upon the attorney representing the seizing agency any responsive pleadings and affirmative defenses. It is therefore

ORDERED:

THAT YOU HAVE BEEN SERVED WITH A FORMAL COMPLAINT AND AS A PERSON WHO CLAIMS AN INTEREST IN THE SEIZED PROPERTY, YOU HAVE TWENTY (20) DAYS FROM SERVICE OF A COPY OF THE COMPLAINT FOR FORFEITURE TO FILE IN THIS COURT ANY RESPONSIVE PLEADING, ANSWER, AND/OR AFFIRMATIVE DEFENSES TO THE COMPLAINT FOR FORFEITURE.

YOU ARE FURTHER COMMANDED TO SERVE A COPY OF SUCH ANSWER OR RESPONSIVE PLEADING WITHIN SAID TIME PERIOD UPON THE ATTORNEY WHO FILED THE COMPLAINT FOR FORFEITURE. FAILURE TO FILE AND SERVE SUCH ANSWER OR PLEADING WITHIN SAID TIME PERIOD SHALL RESULT IN THE ENTRY OF A DEFAULT PURSUANT TO FLORIDA RULE OF CIVIL PROCEDURE 1.500(a), AND A FINAL ORDER OF FORFEITURE.

cc:

Attachment "D"

**IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT
IN AND FOR _____ COUNTY, FLORIDA**

IN RE: FORFEITURE OF:

Case No.: _____

(Description of Property)

NOTICE OF RESOLUTION

COMES NOW the Petitioner ____ (*insert agency*) ____, by and through undersigned counsel, and gives notice to the Court that:

1. The seizure proceedings pursuant to section 932.703, Florida Statutes, concerning ____ (*describe property*) ____ have been resolved in the following manner:

2. Accordingly, ____ (*insert agency*) ____ will not be filing a complaint in this matter, and no further action of the Court is requested.

(attorney signature block)

ORDER OF DISMISSAL

Based on the foregoing Notice of Resolution, the proceedings regarding the seizure of the aforementioned property having been resolved prior to filing of a complaint for forfeiture are hereby dismissed.

DONE AND ORDERED in Chambers, in _____ County, Florida, this ____ day of _____ 20____.

CIRCUIT COURT JUDGE

Copies to:
(Attorney for Petitioner)
(Claimant)

Attachment "E"