

IN THE CIRCUIT COURT OF THE
EIGHTEENTH JUDICIAL CIRCUIT
IN AND FOR BREVARD COUNTY,
FLORIDA

ADMINISTRATIVE ORDER NO.:
19-41-B

IN RE: CIRCUIT CIVIL - CONTRABAND FORFEITURE ACT PROCEDURES

WHEREAS, The Florida Contraband Forfeiture Act sets forth the procedural requirements governing the forfeiture of contraband articles. See Sections 932.701–932.7062, Florida Statutes, and

WHEREAS, Section 932.703, Florida Statutes (2016), now provides that when a seizure of property is made under the Florida Contraband Forfeiture Act, Florida Statutes (2016), the seizing agency shall apply, within 10 business days after the date of seizure, to a court of competent jurisdiction, for an order determining whether probable cause exists for the seizure of the property, and

WHEREAS, in most instances involving property forfeiture a criminal arrest involving the claimant or potential claimant has been made and a related Circuit Criminal Case number exists, and

WHEREAS, Civil Forfeiture involves court proceedings which occur prior to the filing of a Forfeiture Complaint and therefore prior to the assignment of a Civil Court Case number associated with the Forfeiture, and

WHEREAS, an Administrative Order will assist in the provision of uniform procedures, address the filing and maintenance of documentation and provide for the uniform disposition of forfeiture proceedings and ensure consistency amongst all seizing agencies within the courts of the Eighteenth Judicial Circuit- Brevard County.

NOW, THEREFORE, I, Lisa Davidson, in order to facilitate the efficient operation of the administration of justice, and pursuant to the authority vested in me as Chief Judge of the Eighteenth Judicial Circuit of Florida, Brevard County in accordance with Article V, section 2, Florida Constitution, pursuant to Rule of Judicial Administration 2.215, and section 43.26, Florida Statutes, hereby order the following, effective for forfeiture seizures of property which occur on or after November 20, 2019, within Brevard County, and to continue until further order:

It is hereby ORDERED:

A. Circuit Civil Forfeiture Proceedings Generally

1. In accordance with section 932.704(2), Florida Statutes, of the Florida Contraband Forfeiture Act, all civil forfeiture cases shall be heard before a Circuit Judge. In Brevard County, Complaints filed seeking forfeiture shall be assigned to any civil section judge in the same manner other circuit civil cases are assigned.

B. Notice of Seizure & Right to Adversary Preliminary Hearing

1. Section 932.703(3), 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 by the seizing agency. All law enforcement agencies within the Eighteenth Judicial Circuit - Brevard County shall be responsible for providing such Notice of Forfeiture Seizure/Right to Adversarial Preliminary Hearing.
2. When any person receiving the Notice of Forfeiture Seizure/ Right to Adversarial Preliminary Hearing, requests an Adversarial Preliminary Hearing in conformity with the statute, the seizing agency is then required to set the hearing within 10 days of receipt of said request, or as soon as practicable thereafter. Adversarial Preliminary Hearings held prior to the filing of a Forfeiture Complaint shall be scheduled with a Circuit Judge assigned to the Civil Court Division and heard pursuant to the Judicial rotation schedule set by the Civil Court Judges. For the purpose of documenting proper notice of the hearing, in the absence of an existing Civil case number, the Notice of Hearing shall be filed under the Criminal Clerk Case number and filed in the Criminal Case file. The attorney setting the hearing shall make sure the hearing is coordinated with the Civil Court Judge and that the notice is also provided to the Civil Judge who will be hearing the matter. If a criminal case is not filed, the document should be filed in the same manner as a search warrant.
3. Upon the filing of a Complaint for Forfeiture, all documents pertaining to an Adversarial Preliminary Hearing regarding the same Property shall be transferred by the clerk to the Court file maintained for the Complaint. The Seizing agency shall be responsible for filing a Notice with the Court under the criminal case number indicating the need for the transfer of paperwork to the civil case file listed by civil case number and no further Order is needed by the Court to authorize the transfer. The seizing agency shall identify each document by title and document number. If an Adversarial Preliminary Hearing is conducted and no Complaint for Forfeiture is subsequently filed, the documents pertaining to the Adversarial Preliminary Hearing shall remain filed under the Circuit Criminal Case number.

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

1. Effective July 1, 2016, 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 Ex-Parte Application for a 10-day Probable Cause Forfeiture Seizure Determination with an accompanying affidavit to the court for ex-parte review and ruling. The submission packet must include both a proposed Ex-Parte Order Finding Probable Cause for Seizure and a proposed Ex-Parte Order Denying Probable Cause for Seizure. The Ex-

Parte Application for the 10-day Probable Cause Determination and the proposed orders shall be in substantially the same format.

2. Submission of such Application and Proposed Orders may be by use of the e-warrant system in the same manner that search warrants and arrest warrants are submitted. The submission by the e-warrant system shall indicate “Search Warrant” and also identify the submission as a Civil Forfeiture. Ex parte probable cause affidavits shall not be submitted after business hours to the Court for review but shall be submitted during regular business hours to a Circuit Judge assigned to the Civil Court Division pursuant to Judicial rotation set by the Civil Court Judges. All 10-day Probable Cause Applications, supporting affidavits and Orders determining Probable Cause shall include the agency case number if there is a corresponding agency case number and under the case number the terms “Civil Forfeiture.”
3. After the assigned Judge has made his/her findings, the Application for Probable Cause, the affidavit in support of such application, and the court order determining probable cause shall be retained by counsel for the submitting seizing agency or the submitting agency affiant in the absence of counsel and shall be filed as further provided in this Administrative Order. If a formal Complaint for forfeiture is filed with the Clerk of the Court – Circuit Civil Division, the Application for Probable Cause, the affidavit in support of such application and the Court Order Finding Probable Cause shall be filed as attachments to the Civil Forfeiture Complaint. The affidavit used in support of the Probable Cause Order shall be sufficient to support the Complaint for Forfeiture, however a supplemental affidavit containing additional facts may also be submitted.
4. If a Civil Forfeiture Complaint is not filed with the Clerk of the Court – Circuit Civil Division, then the Application for Probable Cause, the affidavit in support of such application and the Court Order determining Probable Cause shall be filed with the Clerk of the Court- Criminal Division within 60 days of the seizure where a corresponding criminal arrest was made. The filing shall be in the clerk case which corresponds to the agency case number and such case number shall be clearly noted. If a criminal case is not filed, the document should be filed in the same manner as a search warrant.
5. If a Civil Forfeiture Complaint is not filed with the Clerk of the Court – Circuit Civil Division, and there is also no corresponding criminal case filed with the Circuit Criminal Division, then the Probable Cause Application, supporting affidavit and Court Order determining Probable Cause shall be retained by the submitting agency pending direction from the Court issuing the Probable Cause Order.

6. In all cases where a Forfeiture Complaint is not filed, a Civil Forfeiture Return shall be prepared indicating that a Formal Forfeiture Complaint was not filed. If an agreement with the owner/claimant was reached in lieu of the filing of a Forfeiture Complaint, then such disposition shall also be reflected on the Civil Forfeiture Return. The Civil Forfeiture Return shall be filed or maintained in the same manner as the Application for Probable Cause and other related documents when a Formal Complaint for Forfeiture is not filed.
7. Pursuant to State Statute, no additional Probable Cause determination will be required if a 10-day Ex Parte Order Finding Probable Cause for Forfeiture Seizure has been entered. The entry of an Order finding Probable Cause for seizure does not negate a claimant's right to request an Adversarial Preliminary Hearing.
8. No filing fee is required for submission of a 10-Day Application for Probable Cause Finding as these are handled as ex parte requests similar to arrest and search warrants. No filing fee is required for the scheduling and handling of the Adversarial Preliminary Hearing unless a Circuit Civil Case number is requested.

D. Complaint for Forfeiture and § 932.704(5)(c), Florida Statutes, Administrative Order

1. Section 932.704(5)(c), Florida Statutes, states that 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, the court shall include this notifying language advising the claimant of the responsive pleading requirements in any Order finding Probable Cause for Seizure. The seizing agency shall include a copy of the Order Finding Probable Cause with the Complaint and summons to be served upon the claimant.
2. Upon filing of the Complaint and accompanying documents as set forth in Section C.3 of this order and payment of the appropriate filing fee, clerk fees and posting of bond pursuant to section 932.704(4), Florida Statutes, the Clerk of the Court shall open a circuit civil case which shall be treated in all regards as a civil proceeding.
3. Bond may be by surety or by cash. Upon resolution of the Forfeiture Complaint, the court shall direct disposition of the bond. If the Court orders payment of bond to the claimant, and the seizing agency deposited surety bond, the seizing agency shall deposit the payment with the clerk along with any authorized clerk fees so that payment may be provided to the claimant by the clerk. Upon payment to the clerk by the seizing agency, the clerk shall release the surety from further obligation.

DONE AND ORDERED this 20th day of November, 2019.

LISA DAVIDSON
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CHIEF JUDGE

Distribution:

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