

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

ADMINISTRATIVE ORDER NO.:
16-31-S

IN RE: CIVIL - CONTRABAND FORFEITURE ACT PROCEDURES

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

WHEREAS, Florida Statute 932.703(2016), now provides that when a seizure of property is made under the Florida Contraband Forfeiture Act, 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- Seminole County.

NOW, THEREFORE, I, John D. Galluzzo, 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, Seminole 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 July 1, 2016 within Seminole 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 Seminole 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 - Seminole County shall use "Attachment A" - Notice of Forfeiture Seizure/Right to Adversarial Preliminary Hearing in substantially the same format.
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/Family Court Division and heard pursuant to the Judicial rotation schedule set by the Civil/Family 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.
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. 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 "Attachment B" 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 "Attachment C-1" and a proposed Ex-Parte Order Denying Probable Cause for Seizure "Attachment C-2" 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 Applications 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/Family Court Division pursuant to Judicial rotation set by the Civil/Family 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.
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 “Attachment B-1” 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, the seizing agency shall deposit 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 4th day of August, 2016.

JOHN D. GALLUZZO
JOHN D. GALLUZZO
CHIEF JUDGE

Distribution:

All Circuit and County Judges (Seminole County)
Court Administration (Brevard and Seminole Counties)
Clerk of Court (Seminole County)
State Attorney (Seminole County)
Public Defender (Seminole County)
Sheriff (Seminole County)
Bar Association (Seminole County)
Law Library (Seminole County)
Altamonte Springs Police Department
Casselberry Police Department
Longwood Police Department
Oviedo Police Department
Sanford Police Department
Winter Springs Police Department

“ATTACHMENT A”

NOTICE OF FORFEITURE SEIZURE AND RIGHT TO ADVERSARIAL PRELIMINARY HEARING



SEMINOLE COUNTY SHERIFF'S OFFICE
Sheriff Donald F. Eslinger

NOTICE OF SEIZURE OF PROPERTY FOR FORFEITURE
AND RIGHT TO ADVERSARIAL PRELIMINARY HEARING

DATE: _____ AGENCY NO.: _____
 TO: _____
(Name)

(Address) (City/State/Zip)

RE: _____
(List of all property seized for forfeiture, i.e. currency, guns, tools, etc.)

OR, if vehicle seized, insert information below:
 (Year) _____ (Make) _____ (Model) _____ (Color) _____
 (Vehicle Identification Number) _____

On _____, 201____ the above-described property was seized from _____,

_____, Seminole County, Florida, by the Seminole County Sheriff's Office pursuant to the provisions of the Florida Contraband Forfeiture Act, Florida Statutes 932.701-932.7062. This is separate from any seizure for evidentiary purposes. Although an ex parte probable cause determination by a judge will be sought within 10 days of seizure by the seizing agency, you are advised that you have a right to request an adversarial preliminary hearing to determine whether probable cause exists to believe that said property has been or is being used in violation of the Florida Contraband Forfeiture Act. If you do not request an adversarial preliminary hearing you still have the right to contest the forfeiture action at a later date. If you would like to request a post seizure adversarial hearing, you must request the hearing in writing, by certified mail, return receipt requested, within fifteen (15) days of your receipt of this notice. You must send your request to the Seminole County Sheriff's Office, Attention: General Counsel, 100 Bush Boulevard, Sanford, Florida 32773. A court hearing will be set within ten (10) days after your request is received or as soon as practicable thereafter.

SHERIFF DONALD F. ESLINGER

By: _____
 Deputy Sheriff / ID #

 Supervisor Authorizing/Reviewing Probable Cause for Seizure
 Supervisor / ID #

The undersigned acknowledges receipt of a copy of this notice.

 Signature of Recipient

 Witness to Claimant Receiving a Copy of this Notice

 Date Received

If claimant refuses to sign, please indicate the refusal in the signature line.
(If the Notice is mailed it must be sent by certified mail, return receipt requested within 5 working days after the seizure.)

Certified Mail Receipt #: _____ Date Mailed: _____

“ATTACHMENT B”
IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
IN AND FOR SEMINOLE COUNTY, FLORIDA

Agency Case No: _____
CIVIL FORFEITURE

**EX-PARTE APPLICATION FOR 10 DAY PROBABLE CAUSE
FORFEITURE SEIZURE 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 the following described property:(Property Description) _____
2. This application is being presented within 10 business days of seizing that property;
3. The requirements specified in 932.703(1)(a) Florida Statutes, have been satisfied based on the fact that one or more of the following facts as indicated below 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 were available to the employee or agent of the seizing agency at the time of the seizure;
 - _____ The owner of the property is a fugitive from justice or is deceased;
 - _____ An individual who does not own 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, and the owner of the property, had actual knowledge of the criminal activity;
 - _____ The owner of the property has agreed to be a confidential informant as defined in section 914.28, Florida Statutes;
 - _____ The property is a monetary instrument.
4. The description of the property and the facts and circumstances surrounding the seizure are contained in the attached affidavit of _____ (Name of Officer), which is incorporated as if fully set forth herein.

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 Application and attached affidavit has been submitted to a Judge of the Circuit Court, Seminole County, Florida this ____ day of _____, 20__.

Attorney signature block

“ATTACHMENT B-1”

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

CIVIL FORFEITURE RETURN

AGENCY: _____

AGENCY CASE NUMBER: _____

IF ARREST- NAME OF ARRESTEE IN CRIMINAL CASE:

FORFEITURE FILING DETERMINATION:

_____ Forfeiture proceeding authorized by Agency Head and Complaint Filed
Civil Court Case Number: _____

_____ Forfeiture Complaint will not be filed.

_____ Settlement Agreement Reached

DATED this ____ day of _____, 20__.

Attorney Name
Florida Bar No.
Contact Information

“ATTACHMENT C-1”

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

IN RE: FORFEITURE OF: _____ **AGENCY CASE NO.** _____
(Description of Property) _____ **CIVIL FORFEITURE**

EX-PARTE ORDER FINDING PROBABLE CAUSE FOR SEIZURE

THIS MATTER having come before this Court pursuant to section 932.703(2), Florida Statutes, within ten (10) business days of seizure of the above-described property by the (insert name of seizing Law Enforcement Agency) and the Court having reviewed the sworn affidavit of (Insert LEO Name), FINDS:

- 1. The seizing agency applied for the probable cause determination within 10 business days of the date of the seizure.
- 2. The requirements specified in paragraph (1)(a) of section 932.703, Florida Statutes, have been satisfied based on the fact that one or more of the following facts exist as indicated below:
 - A. _____ 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; and/or
 - B. Exception to Owner of Property Arrest requirement exists as indicated:
 - _____ Regardless of whether an arrest of the owner of the property was or was not made, 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 were available to the employee or agent of the seizing agency at the time of the seizure;
 - _____ Regardless of whether an arrest of the owner of the property was or was not made the owner is a fugitive from justice or is deceased;
 - _____ Regardless of whether an arrest of the owner of the property was or was not made, an individual who does not own 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, and the owner of the property had actual knowledge of the criminal activity;
 - _____ Regardless of whether an arrest of the owner of the property was or was not made, the owner of the property agrees to be a confidential informant as defined in section 914.28, Florida Statutes; or
 - _____ Regardless of whether an arrest of the owner of the property was or was not made the property is a monetary instrument.
- 3. Probable cause exists to seize the above-described property under the Florida Contraband Forfeiture Act.

Therefore, the Court having found that the requirements of Florida Statute section 932.703(1)(a) were satisfied and that probable cause exists for the seizure, it is ORDERED and ADJUDGED as follows:

- 1. The Court authorizes continued seizure of the subject contraband property by the seizing law enforcement agency or an agency or agent on their behalf, pending a determination of title to the property upon the Filing of a Complaint for Forfeiture and pursuant to the procedures defined in the Florida Contraband Forfeiture Act.

2. Pursuant to section 943.704(5)(c), Florida Statutes, any claimant who desires to contest the forfeiture action upon the Filing of a Complaint for Forfeiture by or on behalf of the seizing agency shall file and serve upon the attorney representing the seizing agency any responsive pleadings and affirmative defenses. Therefore, upon the filing of a Civil Complaint for Forfeiture, the seizing Agency shall serve a Certified Copy of the Complaint along with a copy of this Order Finding Probable Cause upon all claimants.
3. Claimants are Notified upon service of this Order and a Complaint for Final Order of Forfeiture of the following: THAT AS A CLAIMANT OR POTENTIAL CLAIMANT WHO CLAIMS AN INTEREST IN THE SEIZED PROPERTY, YOU HAVE TWENTY (20) DAYS FROM SERVICE OF A COPY OF THE COMPLAINT FOR FORFEITURE AND A COPY OF THIS ORDER FINDING PROBABLE CAUSE, TO FILE IN THIS COURT, ANY RESPONSIVE PLEADING, ANSWER, AND/OR AFFIRMATIVE DEFENSES TO THE COMPLAINT FOR FORFEITURE. SAID PLEADINGS SHALL INCLUDE A SHORT AND PLAIN STATEMENT DEMONSTRATING A VALID PROPERTY INTEREST IN THAT WHICH IS CLAIMED, SUFFICIENT TO CONFER STANDING TO APPEAR IN THIS CAUSE.
4. 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.
5. The seizing Agency as described herein is ordered to restrain the seized property by the least restrictive means to protect against disposal, waste, or continued illegal use of such property, pending disposition of the property pursuant to the Florida Contraband Forfeiture Act.

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

CIRCUIT JUDGE

“ATTACHMENT C-2”

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

IN RE: FORFEITURE OF: _____ **AGENCY CASE NO.:** _____
(Description of Property): _____ **CIVIL FORFEITURE**

EX-PARTE ORDER DENYING PROBABLE CAUSE FOR SEIZURE

THIS MATTER having come before this Court pursuant to section 932.703(2), Florida Statutes, of the above-described property by the Application of the (Seizing Law Enforcement Agency) and the Court having reviewed the Application and the sworn supporting affidavit described therein, the COURT FINDS as indicated below:

- _____ The seizing agency did not apply for the probable cause determination within 10 business days of 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 upon the Court’s review of the supporting affidavit made part of the Application for the 10-day Probable Cause for Seizure Determination.

Therefore, the Court having found that the requirements of Florida Statute section 932.703(1) were not satisfied for the reasons indicated herein, it is HEREBY ORDERED:

Any forfeiture hold, lien, lis pendens, or other civil encumbrance shall be released in conformity with the Florida Contraband Forfeiture Act within 5 days of receipt of this Order. This Order is separate from any criminal evidentiary hold on said property.

DONE AND ORDERED in Chambers, in Sanford, Seminole County, Florida, this ___ day of _____, 20__.

CIRCUIT JUDGE

Copies to:
Attorney for Petitioner
Claimant