

THE EIGHTH JUDICIAL CIRCUIT OF FLORIDA
ADMINISTRATIVE ORDER NO. 3.05

**PRELIMINARY PROCEEDINGS UNDER
THE FLORIDA CONTRABAND FORFEITURE ACT**

WHEREAS, The Florida Contraband Forfeiture Act, §§ 932.701-932.7062, Florida Statutes, (the Act) permits the various law enforcement agencies within the Eighth Judicial Circuit to seize and seek forfeiture of personal and real property; and,

WHEREAS, the Act requires that the agency seek an initial determination that there was probable cause for the seizure, and,

WHEREAS, the Act provides certain due process rights for those who have a claim to or interest in the seized property, including the right to be notified of the seizure and of the forfeiture action, and the right to request an adversarial preliminary hearing on probable cause; and,

WHEREAS, there is a need to establish uniform procedures throughout the Eighth Judicial Circuit to supplement the provisions of the Act and applicable Rules of Court in order to ensure that civil proceedings are conducted in a 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. Personal Property Seizures – Notice of Seizure, Forfeiture, Proceedings, and Right to Adversarial Preliminary Hearings.

1. **Notice** - All law enforcement agencies conducting personal property seizures under the Florida Contraband Forfeiture Act shall, in accordance with the provisions of the Act, provide to those persons entitled to notice under the Act written notification of the seizure of property, of the agency's intent to seek forfeiture of such property, and of the person's right to an adversarial preliminary hearing.

2. **Initial Probable Cause Determination** – Within ten (10) business days after the seizure, the law enforcement agency shall apply for an order determining whether probable cause exists for the seizure of the property and that the seizure meets the requirements of section 932.703(1)(a), Florida Statutes. The application may be made via:

a) Application accompanied by a verified affidavit, and the correct filing fee required by the Clerk of Court; or

b) Ex parte motion filed with or after a Complaint, supported by a verified affidavit, and correct filing fee as required by the Clerk of Court.

The Clerk of Court shall accept an application for filing and assign a case number and circuit civil division in accordance with routine procedures otherwise in effect for circuit civil cases.

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.

3. **Bond** – The bond required by section 932.704(4), Florida Statutes, shall be deposited when a complaint is filed.

4. **Certificate of Compliance with Forfeiture Act** – Summons shall not be served on a complaint for civil forfeiture unless the seizing agency has: (1) obtained an initial determination of probable cause and, if applicable, a post-adversarial hearing Order Finding Probable Cause; (2) paid a filing fee of at least \$1,001; and, (3) deposited a bond of \$1,500 with the Clerk of Court. When no claimant makes a timely request for an adversarial hearing, the attorney for the seizing

agency shall file with the Clerk of Court a Certificate of Compliance with Forfeiture Act, executed by the seizing agency, which attests to the following:

a) 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; and

b) 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 the notice shall be filed with the certificate. If any such notice was sent by certified mail, the seizing agency shall also verify that notice was sent within five (5) working days of the seizure, and the return receipt pertaining to such notice shall be attached to the certificate (if available); and

c) The seizing agency did not receive a timely written request for adversarial preliminary hearing made within the fifteen (15) day time period prescribed by law.

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 five (5) days after the fifteen (15) days prescribed by section 932.703(3)(a), Florida Statutes, before attesting to the absence of a request for hearing.

The Certificate of Compliance shall be filed in the case file already opened, and shall be filed prior to serving the summons, complaint, and order determining probable cause on any claimant. The Certificate of Compliance with Forfeiture Act shall be in substantially the following form:

[See following page]

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

IN RE: FORFEITURE OF
(Describe personal property)

CASE NO.:
DIVISION:

CERTIFICATE OF COMPLIANCE
WITH FORFEITURE ACT

I hereby certify that the seizing agency has complied with the requirements of the Florida Contraband Forfeiture Act as follows:

1. 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; and
2. 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 Certificate of Compliance; and
3. A notice of seizure, forfeiture proceedings, and right to adversarial preliminary hearing was (check one):
 - (a) Hand delivered on the date of seizure; or
 - (b) 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 Certificate of Compliance; and
4. The seizing agency did not receive written request for adversarial preliminary hearing.

Attested to this _____ day of _____, 20__.

For Seizing Agency

Submitted this _____ day of _____, 20__.

Attorney For Seizing Agency

5. The Court may seal any portion of the application and the record of any proceeding under the Florida Contraband Forfeiture 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. The Court may also seal any such record or proceeding pursuant to Fla. R. Jud. Admin. 2.420.

6. 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, and (2) that probable cause exists for the seizure, the forfeiture may proceed as set forth in the Florida Contraband Forfeiture Act.

7. **Scheduling and Notice of Adversarial Preliminary Hearing** – Upon receipt of a timely written request for an adversarial preliminary hearing, the attorney for the seizing agency shall immediately contact the assigned judge’s office and schedule a date and time for the adversarial preliminary hearing. The hearing shall be scheduled so that it is held within ten (10) days after the request for hearing was received by the seizing agency, or as soon as practicable thereafter, as contemplated by section 932.703(3)(a), Florida Statutes.

The seizing agency shall serve, in the manner required by Rule of Civil Procedure 1.080, a copy of a notice of hearing on those persons entitled to notice of seizure, or their counsel in the forfeiture action, if any, and file the original notice with the Clerk in accordance with Rule 1.080(d). The hearing shall be scheduled and notice served in a manner calculated to give reasonable notice in advance of the hearing.

8. **Presentation of Evidence at Adversarial Preliminary 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.

9. **Entry of Order after Review of Application for Probable Cause Determination or Adversarial Hearing; Service of Process after Finding of Probable Cause** – Following review of the application for determination of probable cause or ex parte motion, and the adversarial

preliminary hearing, if one was requested, the Court shall enter an order determining whether probable cause does or does not exist for seizure under the Act as follows:

a) If the Court determines that no probable cause exists, it shall enter an order dismissing the forfeiture action for lack of probable cause, and shall order the seizing agency to return the seized property to the person entitled to possession of the property within thirty (30) days unless a timely appeal is taken. If an adversarial preliminary hearing was conducted, motions to award reasonable attorneys' fees and costs pursuant to the Act, Chapter 57, or other provisions of law must be made within the time permitted under Florida Rule of Civil Procedure 1.525.

b) If the Court determines that probable cause exists, it shall enter an order finding probable cause. The seizing agency shall thereupon arrange for service of the complaint for civil forfeiture and the applicable order finding probable cause, in the manner provided for original process, on all claimants as defined under the Act. As in other civil cases, a summons shall be issued and served requiring any claimant who desires to contest forfeiture to file with the Clerk and serve on the attorney for the seizing agency a written response to the complaint within twenty (20) days after service of process. In addition to service of original process on the claimant, if the claimant is represented by counsel who has already appeared in the forfeiture proceeding, a copy of the summons, complaint, and order finding probable cause shall be served on said counsel in the manner set forth in Rule 1.080. Nothing herein prevents voluntary acceptance of original process by authorized counsel.

10. Prior to the seizure of personal property pursuant to the Act, a seizing agency may apply to the Court for authorization to effect such seizure. If such application is made, the seizing agency must file a Motion for Civil Forfeiture Seizure Warrant with the Clerk, who will assign a case number and division to the matter. The Motion for Civil Forfeiture Seizure Warrant must be accompanied by a supporting affidavit and must be styled in the same manner as the anticipated civil forfeiture action. After filing, counsel for the seizing agency shall bring the motion, affidavit and proposed seizure warrant to the judge assigned to the case for an ex parte preliminary hearing, or for review without a hearing, to determine if probable cause exists for seizure of the property under the Act. If probable cause exists, the Court shall issue the seizure warrant in

duplicate, and the duplicate and original shall be delivered by the seizing agency to the sheriff's office or police agency commanded therein to execute same. The seizure warrant shall be executed and the return made thereon in the manner set forth in sections 933.08-12, Florida Statutes. Upon seizure of personal property pursuant to a seizure warrant, all applicable provisions of the Act and this administrative order pertaining to civil forfeiture proceedings shall be followed. If an adversarial preliminary hearing is requested, the Court shall make a determination de novo as to whether probable cause exists. If no adversarial preliminary hearing is requested, notwithstanding the Court's previous determination of probable cause to issue a seizure warrant, the seizing agency shall file an application for determination of probable cause as set forth in subsection (e), and the Court shall review the complaint and supporting affidavit before entering an order finding probable cause.

B. Real Property Seizures – Notice of Lis Pendens; Petition for Rule to Show Cause; Pre-seizure Adversarial Preliminary Hearing.

1. Notice of Lis Pendens for Civil Forfeiture - A law enforcement agency intending to effect the seizure or restraint of real property pursuant to the Act shall file with the Clerk of Court a Notice of Lis Pendens for Civil Forfeiture which complies with the requirements of section 48.23, Florida Statutes. The notice of lis pendens may be filed either with or without a contemporaneously filed complaint for civil forfeiture.

2. Petition for Rule to Show Cause - A notice of lis pendens for civil forfeiture must be accompanied by a Petition for Rule to Show Cause, in which the seizing agency requests issuance of a Rule to Show Cause directed to the agency and to all persons entitled to notice under the Act requiring them to show cause at a pre-seizure adversarial preliminary hearing why the Court should or should not enter an order finding probable cause and authorizing seizure or restraint of real property pending resolution of forfeiture proceedings. The petition shall contain the address and legal description of the property to be seized and a certificate verifying that the seizing agency has made a diligent search and inquiry to determine the names and addresses of all persons and entities having any ownership or other interest in the real property to be seized or restrained. The petition shall set forth the names and current addresses of all said owners and interested parties, and a description of the ownership or other interest held by each.

3. Scheduling Pre-seizure Adversarial Hearing; Issuance of Rule to Show Cause –

Upon the filing of the notice of lis pendens and petition for rule to show cause, the Clerk shall assign a case number and division, and the attorney for the seizing agency shall immediately schedule a date and time for a pre-seizure adversarial preliminary hearing with the assigned judge. The pre-seizure adversarial preliminary hearing shall be scheduled so that it is held within ten (10) days of filing the notice of lis pendens, or as soon as practicable thereafter, as contemplated by section 932.703(3)(b), Florida Statutes. The hearing shall be scheduled in a manner calculated to give reasonable notice to the claimant(s) in advance of the hearing. The seizing agency's request to schedule a pre-seizure adversarial preliminary hearing shall be accompanied by a review packet which contains a copy of the petition and notice of lis pendens, and an original and one copy of a proposed Rule to Show Cause. In lieu of a review packet, counsel for the seizing agency may arrange with the Clerk for delivery of the court file to the assigned judge with the petition. The Rule to Show Cause shall notify the claimants to whom it is directed of the date and time of the pre-seizure adversarial preliminary hearing; shall advise the claimants that the seizing agency intends to seize or restrain and seek forfeiture of the subject real property; shall contain the address and legal description of the subject property; shall advise the claimants that the Court will make a determination at the pre-seizure adversarial preliminary hearing, based upon affidavits and evidence presented, as to whether probable cause exists for seizure or restraint of the property and, if so, what manner of seizure or restraint will be authorized; and shall advise the claimants that they have the right to attend the pre-seizure adversarial preliminary hearing if they want to object to the seizure or restraint of the subject property but are not required to attend if they choose not to object. The Rule to Show Cause shall be in substantially the following form:

[See following page]

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

IN RE: FORFEITURE OF

CASE NO.:

(Address and legal description of real
property)

DIVISION:

RULE TO SHOW CAUSE AT PRE-SEIZURE HEARING

TO: (Claimants' names and addresses)

KEEP THIS PAPER. CONTACT YOUR ATTORNEY.

Whereas (name of seizing agency) has filed a notice of lis pendens and a petition for authorization to seize or restrain the real property described above, and is claiming that said property has been used in violation of law under the Florida Contraband Forfeiture Act, and is or will be proceeding in civil court to have this property forfeited so that all right, title and interest in the property will be granted to the seizing law enforcement agency,

NOW, THEREFORE, RULE TO SHOW CAUSE IS HEREBY ISSUED requiring a pre-seizure adversarial preliminary hearing to be held before the Honorable (judge's name), (hearing room or courtroom number or location), (name of courthouse), (courthouse address), on (date), at (time), at which time the Court will determine, based upon the affidavits and evidence presented, whether probable cause exists for the seizure or restraint of the subject property and, if so, what manner of seizure or restraint will be authorized. All persons claiming an interest in this property and objecting to the seizure or restraint thereof must attend this hearing to present evidence, examine witnesses, and state their positions regarding the proposed seizure or restraint of the property, but will be deemed to have waived their rights if they do not attend. You are not required to attend the hearing if you do not object to the seizure or restraint of the property.

IT IS FURTHER ORDERED that a copy of this rule to show cause shall be sent forthwith by the seizing agency to all claimants by certified mail, return receipt requested.

DONE AND ORDERED at (city), (county), Florida, this _____ day of _____, 20__.

(Judge's name), Circuit Judge

Copy picked up by/ sent to seizing agency:

Date:

JA:

ADA NOTICE

If you are a person with a disability that is covered under the Americans with Disability Act who needs an accommodation in order to participate in this proceeding, you are entitled to be provided with certain assistance at no cost to you. Please call (352) 337-6237, or if you are hearing-impaired or voice-impaired, call 1-800-955-8771, within seven working days after you receive this notice.

4. Notice of Pre-Seizure Adversarial Preliminary Hearing; Service of Rule to Show Cause and Petition - Immediately following issuance of a Rule to Show Cause the seizing agency shall send to the claimants, by certified mail, return receipt requested, a copy of the Rule to Show Cause. Counsel for the seizing agency shall file a certificate of service verifying that the Rule to Show Cause has been served as required and shall file all certified mail return receipts pertaining thereto.

5. Conduct of Pre-Seizure Adversarial Preliminary Hearing - The pre-seizure adversarial preliminary hearing shall be conducted in the same manner as a post-seizure adversarial preliminary hearing.

6. Entry of Order after Pre-Seizure Adversarial Preliminary Hearing - Following the pre-seizure adversarial preliminary hearing, the Court shall enter an order determining whether probable cause does or does not exist for seizure or restraint under the Act as follows:

a) If the Court determines that no probable cause exists, it shall enter an Order Dismissing Forfeiture Action for Lack of Probable Cause, and shall discharge the lis pendens effective thirty (30) days from the order unless a timely appeal is taken. The order shall be recorded. Motions to award reasonable attorneys' fees and costs pursuant to the Act, Chapter 57, or other provisions of law must be made within the time permitted under Rule of Civil Procedure 1.525.

b) If the Court determines that probable cause exists, it shall enter an Order Finding Probable Cause which authorizes seizure or restraint of real property and which shall also state whether any form of seizure or restraint other than lis pendens is appropriate. The complaint for civil forfeiture and a copy of the Order Finding Probable Cause shall thereupon be served in the manner provided for original process on all claimants as defined under the Act. As in other civil cases, a summons shall be issued and served requiring any claimant who desires to contest forfeiture to file with the Clerk and serve on the attorney for the seizing agency a written response to the complaint within twenty (20) days after service of process. In addition to service of original process on the claimant, if the claimant is represented by counsel in the forfeiture proceeding, a copy of the summons, complaint, and order finding probable cause shall be served

on said counsel in the manner set forth in Rule of Civil Procedure 1.080. Nothing herein prevents voluntary acceptance of process by authorized counsel.

C. 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.

This Administrative Order replaces and supersedes Administrative Order No. 3.05(v2) entitled "Preliminary Proceedings Under the Florida Contraband Forfeiture Act," dated June 28, 2016.

The effective date of this Order is July 1, 2016.

ORDERED ON this 6th day of July, 2016.



Robert E. Roundtree, Jr., Chief Judge