

**THE ELEVENTH JUDICIAL CIRCUIT
MIAMI-DADE COUNTY, FLORIDA**

**CASE NO. 16-1
(Court Administration)**

**ADMINISTRATIVE ORDER
NO. 16-09**

**IN RE: UNIFORM PROCEDURES FOR
FORFEITURES PURSUANT TO THE
FLORIDA CONTRABAND FORFEITURE
ACT**

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

WHEREAS, recent statutory changes passed by the Florida Legislature to the Florida Contraband Forfeiture Act necessitate the implementation of these procedures in a uniform manner within the Eleventh Judicial Circuit;

NOW, THEREFORE, in order to provide for the uniform disposition of forfeiture proceedings and ensure consistency amongst all seizing agencies within the Eleventh Judicial Circuit, and pursuant to the authority vested in me as Chief Judge of the Eleventh Judicial Circuit of Florida under Rule 2.215 of the Rules of Judicial Administration, it is hereby **ORDERED**:

1. In accordance with section 932.704(2), Florida Statutes, of the Florida Contraband Forfeiture Act, all civil forfeiture cases shall be heard by a circuit court judge of the civil division. Such cases shall be assigned to any circuit court civil section judge in the same manner that other civil cases are assigned.
2. Pursuant to section 932.703, Florida Statutes, civil court involvement is required after seizure but prior to the filing of a complaint. Specifically, section 932.703(2)(a) requires the seizing agency (Seizing Agency) to apply to the circuit court, within ten (10) business days after the date of seizure, for an order determining whether probable cause exists for the seizure of the property. Furthermore, pursuant to the time frames set forth in section 932.703(3)(a), Florida Statutes, which provides the right to an adversarial preliminary hearing, such a hearing may be required prior to the filing of a complaint. Therefore, to ensure that an adequate record of these initial documents is maintained and that a civil case number is available for these filings, the following procedures apply:

I. Application for an Ex-Parte Order Determining Probable Cause for Seizure

- a. Effective July 1, 2016, in order to comply with section 932.703(2)(a), Florida Statutes, the Seizing Agency shall, within ten (10) business days after the date of a seizure, submit an Application for an Ex-Parte Order Determining Probable Cause for Seizure (Application), with an accompanying sworn affidavit (Affidavit).
- b. Such Application and Affidavit shall be submitted via the Florida Courts e-Filing Portal, and once the e-Filing Portal provides the Seizing Agency with a case number, the Seizing Agency shall promptly send a copy of the Application and Affidavit via e-Courtesy to the assigned judge in compliance with the procedures for emergency matters listed on the assigned judge's webpage.
- c. The Application for an Ex-Parte Order Determining Probable Cause for Seizure shall be in substantially the same format as *Attachment A* to this order. The Application shall include a proposed Order Finding Probable Cause for Seizure, substantially the same as *Attachment B* to this order, as well as a proposed Order Denying Probable Cause for Seizure, substantially the same as *Attachment C* to this order.

II. Notice of Seizure and Right to an Adversarial Preliminary Hearing

- a. Section 932.703(3)(a), Florida Statutes, includes the right to an adversarial preliminary hearing. Pursuant to this statute, the Seizing Agency must provide specific notice of this right. All law enforcement agencies that will be proceeding against contraband in the Eleventh Judicial Circuit shall use the Notice of Seizure customarily utilized by the seizing agency or a Notice of Seizure in substantially the same format as *Attachment D* to this order.
- b. The Seizing Agency shall complete a Notice of Seizure 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. (Such person(s) to be referred to hereinafter as Claimant.)
- c. When any Claimant receiving the notice requests an adversarial preliminary 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 the Claimant's request for an adversarial hearing via the e-Filing portal, and shall send copies of both to the assigned judge via e-Courtesy in compliance with the procedures for emergency matters listed on the assigned judge's webpage.

III. Notice of Resolution

For tracking and administrative purposes, it is necessary for the court to be made aware of the resolution of any seizure proceedings that occur prior to the filing of a complaint. Accordingly, if the Seizing Agency and the Claimant who may have an interest in the seized property reach an agreement concerning the

seizure, or otherwise resolve the seizure proceedings, prior to the filing of the complaint, the Seizing Agency shall file a Notice of Resolution (including therein the Order of Dismissal) in substantially the same format as *Attachment E* to this order. The notice shall be filed via the e-Filing Portal and sent to the assigned judge via e-Courtesy to the proposed order library of the judge's e-Courtesy page.

IV. Complaint for Forfeiture

- a. In the event the Seizing Agency and the Claimant are unable to reach an agreement concerning the seizure or otherwise resolve the seizure proceedings, the Seizing Agency shall file a complaint for forfeiture (Complaint) within forty-five (45) days after the seizure, which time period may be extended to sixty (60) days for good cause.
- b. The Complaint must be filed under the previously assigned case number (as set forth in paragraph I. Application for an Ex-parte Order Determining Probable Cause for Seizure) and must, in addition to stating that which is required by sections 932.703(3)(a) and (b), Florida Statutes, as appropriate, describe the property; state the county, place, and date of seizure, and state the name of the law enforcement agency holding the seized property.
- c. Additionally, copies of the Order Finding Probable Cause for Seizure and the Affidavit must be provided as attachments to the Complaint.
- d. Upon filing the Complaint with attachments and payment of the appropriate filing fee and posting a bond pursuant to section 932.704(4), Florida Statutes, to the Clerk of the Court, the civil forfeiture action will commence.
- e. Pursuant to Section 932.704(5)(c), 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 twenty (20) days after the receipt of the Complaint.

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

DONE AND ORDERED in Chambers at Miami-Dade County, Florida, this 29th day of June, 2016.

**BERTILA SOTO, CHIEF JUDGE
ELEVENTH JUDICIAL CIRCUIT OF FLORIDA**

ATTACHMENT A

**THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY,
FLORIDA**

CASE NO. _____

CIVIL DIVISION

IN RE: FORFEITURE OF:

(Description of Property)

**APPLICATION FOR AN EX-PARTE ORDER DETERMINING PROBABLE
CAUSE FOR SEIZURE**

COMES NOW, the Applicant, ____(insert agency)____, by and through undersigned counsel, pursuant to section 932.703(2), Florida Statutes, files this Application For An Ex-parte Order Determining Probable Cause For Seizure (Application), and says:

1. On ____(date)____, ____(insert agency)____, seized for forfeiture ____(describe property)____ (Property) as more fully set forth in the attached sworn affidavit (Affidavit). This Application is being presented within ten (10) business days of seizing that Property.

2. The requirements specified in section 932.703(1)(a), 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 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 agrees to be a confidential informant as defined in section 914.28, Florida Statutes; or

_____The property is a monetary instrument.

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

WHEREFORE, Applicant 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 have been submitted this ____ day of _____, 20__.

Signature of Attorney

ATTACHMENT B

**THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY,
FLORIDA**

CASE NO. _____

CIVIL DIVISION

IN RE: FORFEITURE OF:

(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 within ten (10) business days of seizure of the above-described property by ____ (*Seizing Agency*)____, and the Court having reviewed the sworn affidavit, **FINDS:**

1. The Agency applied for the probable cause determination within ten (10) business days after 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 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 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 agrees to be a confidential informant as defined in section 914.28, Florida Statutes; or

_____ 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 in 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 Miami-Dade County, Florida, this _____ day of _____, 20____.

CIRCUIT COURT JUDGE

copies to:
Attorney for Seizing Agency
Claimant

ATTACHMENT C

THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY,
FLORIDA

CASE NO. _____

CIVIL DIVISION

IN RE: FORFEITURE OF:

(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 the Application For An Ex-parte Order Determining Probable Cause For Seizure by _____ (Seizing Agency)_____, and the Court having reviewed the sworn Affidavit, **FINDS:**

_____The Agency did not apply for the probable cause determination within ten (10) business days after the date of the seizure.

AND/OR

_____The requirements specified in section 932.703(1)(a), 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.

THEREFORE, it is **ORDERED** that any forfeiture hold, lien, lis pendens, or other civil encumbrance shall be released in conformity with the statute within five (5) days.

DONE and ORDERED in Chambers, in Miami-Dade County, Florida, this _____ day of _____, 20____.

CIRCUIT COURT JUDGE

copies to:
Attorney for Seizing Agency
Claimant

ATTACHMENT D

NOTICE OF SEIZURE

REPORT NO.: _____

DATE: _____

TO: _____ (Claimant's Name) _____

ADDRESS: _____

CASE NO.: _____

(To be filled in by Clerk of the Court)

RE: (Description of Seized Property) _____

This is to advise you that on ____ (Date) ____, ____ (Seizing Agency) ____ seized the above-referenced property for a violation of the Florida Contraband Forfeiture Act, sections 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 by certified mail, return receipt requested, to ____ (Name of 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

(Seizing agency)

(Address)

(Person ID/Fla. Bar Number)

(Telephone Number)

(E-mail Address)

I HEREBY CERTIFY that I have:

_____ received the foregoing Notice apprising me of my right to post-seizure adversarial hearing.

Claimant

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact the Eleventh Judicial Circuit Court's ADA Coordinator, Lawson E. Thomas Courthouse Center, 175 NW 1st Ave., Suite 2702, Miami, FL 33128, Telephone (305) 349-7175; TDD (305) 349-7174, Fax (305) 349-7355 at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711.

ATTACHMENT E

**THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY,
FLORIDA**

CASE NO. _____

CIVIL DIVISION

IN RE: FORFEITURE OF:

(Description of Property)

NOTICE OF RESOLUTION
(Re: Proceedings Prior to Filing Forfeiture Complaint)

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

1. The seizure proceedings 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 necessary.

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 the filing of a complaint for forfeiture, are hereby dismissed..

DONE AND ORDERED in Chambers at Miami-Dade County, Florida, this _____ day of _____ 20__.

Circuit Court Judge

Cc: Claimant