

IN THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR THE STATE OF FLORIDA

IN RE: PRACTICE AND PROCEDURE )  
UNDER THE FLORIDA )  
CONTRABAND FORFEITURE )  
ACT )

ADMINISTRATIVE ORDER  
NO: 3.3

This order shall govern practice and procedure within the Twentieth Judicial Circuit in all cases involving the seizure of property pursuant to the Florida Contraband Forfeiture Act, Sections 932.701.-704 of the Florida Statutes (1989)(the Act).

The purpose of this order is to effectuate the intent of the Legislature consistent with the opinion of the Supreme Court in Department of Law Enforcement v. Real Property, 16 F.L.W. S497 (Fla. Aug. 15, 1991). To the extent that this order is in any way inconsistent with that opinion, the opinion shall control and shall be binding upon all parties to forfeiture proceedings.

REAL PROPERTY SEIZURES

In any action for the forfeiture of real property, the state must provide notice and schedule an adversarial hearing for interested parties prior to any initial restraint other than lis pendens.

The action shall be commenced by the state's filing of a petition for rule to show cause in the circuit court where the property is located or where the crime is alleged to have taken place. The state shall simultaneously record a notice of its petition with the appropriate property records clerk of court, which will serve as a lis pendens.

The state must then immediately schedule an adversarial preliminary hearing with the appropriate circuit judge as contemplated by Administrative Order 2.11 (formerly Administrative Order 3.3). This hearing shall take place within ten (10) days of the filing of the petition unless an extension of time is granted by the court upon joint application of the parties.

The purpose of this adversarial preliminary hearing is to determine if probable cause exists to maintain the forfeiture action and to resolve all questions pertaining to the temporary restraints on the property pending final disposition. Notice of the petition and the adversarial preliminary hearing must be served on all interested parties.

If probable cause is found to exist at the hearing, the court may, at its discretion, enter such orders as are necessary to protect the respective interests of the parties.

#### PERSONAL PROPERTY SEIZURES

In all actions involving the seizure of personal property, the seizure may occur prior to notice or hearing, provided that notice and the opportunity for an adversarial preliminary hearing is made available as soon as possible after seizure.

In those situations where the state has not yet taken possession of the personal property, the state may seek an ex parte preliminary hearing. At that hearing, the court shall authorize seizure of the personal property if it finds probable cause to maintain the forfeiture action.

In those situations where a law enforcement agency has already lawfully taken possession of personal property, as for example, incident to arrest or other lawful police action, an ex parte seizure has effectively been made for the purpose of initiating a forfeiture action.

After the ex parte seizure of personal property, the state must immediately notify all interested parties that they have the right to request a post-seizure adversarial preliminary hearing.

If requested, the preliminary hearing shall be held before the appropriate circuit judge as contemplated by Administrative Order 2.11 within ten (10) days of the request, unless an extension of time is granted by the court upon joint application of the parties.

The purpose of this adversarial preliminary hearing is to make a de novo determination as to whether probable cause exists to maintain the forfeiture action; and to determine whether continued seizure is the least restrictive means warranted by the circumstances to protect against disposal of the property pending final disposition.

#### NOTICE

In all forfeiture cases, notice shall be served on all persons whom the law enforcement agency knows, or with reasonable investigation should know, have a legal interest in the subject property. Notice shall advise those persons that a forfeiture action is pending against the property or properties which are specifically identified therein.

In real property forfeiture actions, notice must advise interested parties of the time and place of the adversarial preliminary hearing.

In personal property forfeiture actions notice must advise interested parties that they have a right to an adversarial preliminary hearing upon request.

If the state establishes probable cause, the court shall order the property restrained throughout the pendency of the forfeiture action by the least restrictive means necessary under the circumstances.

Under no circumstances may the state continue its restraint on the property pending final disposition unless notice and an opportunity to be heard are provided to all potential claimants.

#### LITIGATION OF FORFEITURE ACTIONS

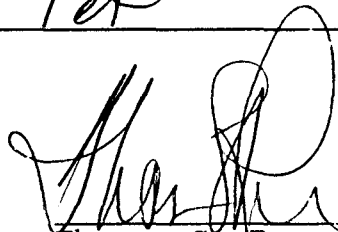
All forfeiture actions shall commence by the filing of a petition for issuance of a rule to show cause in the circuit court where the property was restrained or where the alleged offense occurred. The petition shall be assigned as contemplated by Administrative Order 2.11. The petition shall be verified and supported by affidavit.

If the court determines that the petition is facially sufficient to state a cause of action for forfeiture, the court shall sign and issue the rule. A copy of the petition and rule shall be served on all persons who the agency knows, or with reasonable investigation should know, have a legal interest in the property. The rule to show cause shall also require that responsive pleadings and affirmative defenses be filed within

twenty (20) days of service of the rule to show cause. The contents of the required notice shall be as set forth previously in this order. The required notices shall be prepared by the state and provided by the state to all interested persons as set forth previously.

The Florida Rules of Civil Procedure shall otherwise control service of process, discovery, and other measures appropriate for the administration of forfeiture proceedings. The burden of proof at trial shall be as set forth in Department of Law Enforcement v. Real Property, supra.

DONE AND ORDERED in Chambers in Fort Myers, Lee County, Florida, this 5<sup>th</sup> day of Feb, 1992.

  
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Thomas S. Reese  
Chief Circuit Judge

History. - New.

STATE OF FLORIDA, COUNTY OF LEE

FILED FOR RECORD

This 6<sup>th</sup> Day of FEB 1992 Record in MINUTE  
Book 36 Page 2 and Record Verified.  
CHARLIE GREEN By: B Sands  
Clerk Circuit Court Deputy Clerk

I CERTIFY THIS DOCUMENT TO BE A TRUE AND CORRECT COPY OF THE ORIGINAL ON FILE IN MY OFFICE. CHARLIE GREEN, CLERK CIRCUIT COURT LEE COUNTY, FLORIDA.

DATED:

BY:

B Sands  
Deputy Clerk