

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF NEW YORK

GENERAL ORDER 15

ELECTRONIC FILING OF DOCUMENTS CIVIL AND CRIMINAL FORFEITURE ACTIONS

I CIVIL IN REM FORFEITURE PROCEDURE

A. 18 U.S.C. § 983 -- PERSONAL PROPERTY Pre-Complaint Restraining (Protective) Order

1(a) The United States may seek a pre-complaint restraining or protective order pursuant to 18 U.S.C. § 983(j). The United States Attorney's Office will contact the Clerk's Office for the United States District Court and advise that it intends to file a pre-complaint restraining order. The Clerk will assign a Civil Action Number to the case and assign the matter to a United States District Judge and United States Magistrate Judge.

The United States Attorney's Office will provide to the Court Clerk's Office a disk or CD¹ containing the documents to be filed.

Civil Forfeiture - - Complaint

2(a) The United States Attorney's Office will contact the Clerk's Office for the United States District Court and advise that it intends to file a civil forfeiture action on the same day.

2(b) The Clerk of the Court will assign a Civil Action Number to the case and assign the matter to a United States District Judge and a United States Magistrate Judge. The identity of the assigned judges will then promptly be conveyed to the United States Attorney's Office.

¹ This disk or CD will be returned by the District Court Clerk's Office to the representative of the U.S. Attorney's Office who filed the documents.

2(c) The United States will select a date for the case to appear before the U.S. District Judge assigned to the case. The return date noted on the Warrant of Arrest of Articles in Rem and the Notice of Complaint for Forfeiture will be a regular motion date for the United States District Judge to whom the case has been assigned, and shall be at least 70 days from the time the Warrant is issued, to allow time for the United States Marshals Service to arrange for publication, service of process and arrest of the property. Before scheduling this date, however, the United States Attorney's Office will call the assigned Judge's Deputy Court Clerk to confirm that the proposed return date remains a scheduled motion day for the assigned Judge.

3(a) The United States Attorney's Office will then submit its civil forfeiture complaint paperwork, consisting of (i) civil cover sheet; (ii) Notice of Complaint for Forfeiture², (iii) Verified Complaint for Forfeiture, attaching Plaintiff's First Set of Interrogatories pursuant to Rule C(6) of the Supplemental Rules of Admiralty and Maritime Claims; and Warrant for Arrest of Articles in Rem³, and on occasion, (iv) a post-complaint restraining order. Both the Notice of Complaint for Forfeiture and Warrant for Arrest of Articles in Rem will set forth the date on which the case will be returnable before the assigned Judge. This initial paperwork may be filed with the Clerk's Office for the Northern District of New York in Utica, Syracuse, Binghamton, Albany, or any other location for the United States District Court for the Northern District of New York.

3(b) The Clerk's Office shall file, date stamp and certify, as requested, the originals and copies of papers filed. The Clerk's Office shall retain copies stamped "Received" of the original Warrant for Arrest of Articles In Rem, Notice of Complaint for Forfeiture and Summons, and the originals of all other complaint paperwork filed. The original Warrant for Arrest of Articles In Rem and Notice of Complaint for Forfeiture and Summons, together with copies of all remaining papers shall be returned to a designated representative in the United States Attorney's Office in Albany, New York, Syracuse, New York, or any other United States Attorney's Office so designated. This designated individual shall forward the original Warrant for Arrest of Articles In Rem, original Notice of Complaint for Forfeiture and Summons and copies of all of the other complaint paperwork to the United States Marshals Service (or the appropriate Department of Treasury agency or Immigration and Customs Enforcement agency) to accomplish service of process, arrest of the property and publication of the notice pursuant to Supplemental Rule G and www.forfeiture.gov.

3(c) On the return date, the Clerk of the Court shall call the case when the civil motion calendar is called. The Clerk shall inquire as to whether there is any "appearance" on behalf of the "defendant" property (asset) sought to be forfeited. A civil in rem forfeiture case, when scheduled for a "return on a warrant of arrest in rem," shall not under any circumstance be removed from the calendar and shall always be called at calendar call on the date published on www.forfeiture.gov and announced to the public in that manner. If a Judge decides to cancel a motion day, to take cases on the calendar on submission, or is otherwise unavailable for the assigned motion day, and a civil forfeiture action(s) appear(s) on said calendar, a Court Clerk shall call the civil forfeiture case(s) and note appearances or non-appearances of any potential claimants in the forfeiture actions(s).

² CAFRA has replaced the Summons in a Civil Forfeiture Action and the Notice of Forfeiture Action and Seizure with a form entitled "Notice of Complaint for Forfeiture and Summons.

³ CAFRA has replaced the Warrant of Arrest in Rem with Warrant for Arrest of Articles in Rem.

The U.S. Attorney's Office will provide to the Court Clerk's Office a disk or CD containing the documents to be filed. Once the functions set forth in 3(b) have been accomplished, the U.S. Marshal Service will continue to manually submit these original documents to the Court for scanning and electronic filing. Moreover, for Internal Revenue Service (IRS) and Immigration and Customs Enforcement (ICE) cases, the U.S. Attorney's Office will collect these return receipts and deliver them to the Court for scanning and electronic filing.

4. If no person enters an appearance on behalf of the "defendant" property (asset) at the time the calendar is called on the return of the warrant of arrest in rem, then the United States Attorney's Office will move the Court for a Judgment of Forfeiture on the basis that the forfeiture is uncontested. Prior to the return date, the United States Attorney's Office shall present the proposed documents set forth below to the Judge's law clerk.

a. copies of the USM-285 Process Receipts and Returns (the originals of which should be filed with the Court by the United States Marshals Service) showing personal service; if personal service cannot reasonably be performed, service by certified mail, return receipt requested;

b. a copy of an affidavit/declaration of publication (the original of which should be filed with the Court by the United States Marshals Service);

c. an affidavit of non-military service, non-infancy and non-incompetency, which states that upon information and belief, the known potential claimant(s) are not in the military service, and are not infants or incompetents;

d. a proposed Order Directing Entry of an Uncontested Judgment of Forfeiture, directing the Clerk to enter a Judgment in a Civil Case pursuant to Rule 58 of the Federal Rules of Civil Procedure; and

e. a proposed Form of Judgment will be provided to the Court after the terms of the Order Directing Entry of an Uncontested Judgment of Forfeiture have been met.

(i) The original Affidavit of Non-Military Service, Non-Infancy and Non-Incompetency shall be electronically filed with the Court and a courtesy copy provided to the Judge; (There will be no requirement for a notary signature on the Affidavit -- however, the U.S. Attorney's Office will maintain a signed, notarized Affidavit in its file)

(ii) the U.S. Attorney's Office shall inquire of the District Court Clerk's Office whether the Judge assigned to the case wishes to sign a hard copy of the Order Directing Entry of an Uncontested Judgment of Forfeiture, or wishes to utilize an electronic signature. Depending upon the answer to this inquiry, the U.S. Attorney's Office may either electronically file the Order Directing Entry of an Uncontested Judgment of Forfeiture and provide a courtesy copy to the Judge OR provide a hard copy of the Order to the Judge together with a disk or CD containing the documents to be filed.

(iii) After the terms of the Order Directing Entry of an Uncontested Judgment of Forfeiture have been satisfied, the U.S. Attorney's Office shall submit to the Court a hard copy of a letter (stating that the terms of the Order have been satisfied) and enclose a proposed Judgment to be signed by a Deputy Clerk of the Court.

5. If no verified claim or answer has been filed, but the potential claimant (or counsel for the potential claimant) has contacted the Court or the United States Attorney's Office seeking some type of adjournment or postponement, then the Court may grant an enlargement of time within which the claimant or the attorney who requested a postponement may file a verified claim and answer, but the case still will be called at the originally noticed motion date to determine whether any other person has appeared to assert a claim, and any such appearance

or non-appearance will be noted in the record.

6. If an individual files a claim of ownership to the property (asset) sought to be forfeited, and such claim satisfies all of the statutory requirements for a valid claim, the Government will so advise the Court that it will accept the claim as an appearance and request that the Court issue an Order barring all further claims. This Order will either be presented to the Judge at the time of the court appearance or sent to the Judge after the Court appearance.

The U.S. Attorney's Office shall inquire of the District Court Clerk's Office whether the Judge assigned to the case wishes to sign a hard copy of the Order Barring All Further Claims, or wishes to utilize an electronic signature. Depending upon the answer to this inquiry, the U.S. Attorney's Office may either electronically file the Order Barring All Further Claims OR provide a hard copy of the Order to the Judge together with a disk or CD containing the document to be filed.

6(a). If there is a potential claimant named in the complaint who has not filed a formal claim and answer by the time of the Court appearance and who has not notified the Government or Court of his, her or its interest in the property, then, at the return date, when the Government requests that all further claims be barred, the Government shall provide the Court with an affidavit pertaining to any individual who was named in the complaint, but never interposed a verbal or written claim to the property, stating that on information and belief the known potential claimant is not in the military service, is not an infant or incompetent person, and direct the Court to the U.S. Marshal Forms USM-285, contained in the Court's file, showing publication of notice of the forfeiture and/or proof of service of process on the individual.

The U.S. Attorney's Office shall electronically file the Affidavit of Non-Military, Non-Infancy and Non-Incompetency. (There will be no requirement for a notary signature on the electronically filed Affidavit -- however, the U.S. Attorney's Office will maintain a signed, notarized Affidavit in its file)

6(b). Within sixty (60) days after the filing of the Order barring all further claims, the United States of America shall contact opposing counsel and/or the pro se claimant to set out and agree upon a schedule of expiration dates dealing with joinder of parties, amendment of pleadings, discovery, filing of motions and a proposed trial date, and memorialize this agreement in a stipulation form which shall be signed by the parties and so ordered by the United States Magistrate Judge assigned to the case. In the event the parties cannot come to an agreement with regard to a schedule, the United States Attorney's Office will contact the deputy clerk to the assigned Magistrate Judge and request a discovery conference.

(i) the U.S. Attorney's Office will prepare a Stipulation pursuant to F.R.Civ.P. Rule 16(b) and a Form entitled Notice, Consent and Order of Reference --Exercise of Jurisdiction by a United States Magistrate Judge. (Pursuant to General Order #25, Forfeiture/Penalty cases are exempt from the requirement of filing a Civil Case Management Plan)

(ii) Once the Stipulation is signed by all parties and/or attorneys for parties to the action, the U.S. Attorney's Office will inquire of the District Court Clerk's Office whether the Magistrate Judge assigned to the case wishes to sign a hard copy of the Rule 16(b)Stipulation, or wishes to utilize an electronic signature. Depending upon the answer to this inquiry, the U.S. Attorney's Office may either electronically file the Rule 16(b) Stipulation and maintain a fully executed original of the Stipulation in its file and attest to the signatures contained thereon OR provide a hard copy of the Stipulation and Order to the Magistrate Judge together with

a disk or CD containing the document to be filed.

(iii) Should the parties and/or attorneys for the parties to the action consent to have all further proceedings conducted by a United States Magistrate Judge, the U.S. Attorney's Office will inquire of the District Court Clerk's Office whether the District Judge assigned to the case wishes to sign a hard copy of the Notice, Consent and Order of Reference --Exercise of Jurisdiction by a United States Magistrate Judge, or wishes to utilize an electronic signature. Depending upon the answer to this inquiry, the U.S. Attorney's Office may either electronically file the Notice, Consent and Order of Reference -- Exercise of Jurisdiction by a United States Magistrate Judge and maintain a fully executed original of the Consent in its file and attest to the signatures contained thereon OR provide a hard copy of the Notice, Consent and Order of Reference to the District Judge together with a disk or CD containing a copy of the document to be filed.

**B. 18 U.S.C. § 985 -- REAL PROPERTY
Pre-Complaint Restraining (Protective) Order - Real Property**

1. The United States may seek a pre-complaint restraining or protective order pursuant to 18 U.S.C. § 983(j). The United States Attorney's Office will contact the Clerk's Office for the United States District Court and advise that it intends to file a pre-complaint restraining order. The Clerk will assign a Civil Action Number to the case and assign the matter to a United States District Judge and United States Magistrate Judge.

The United States Attorney's Office will provide to the Court Clerk's Office a disk or CD containing the documents to be filed.

Civil Forfeiture - - Complaint

2(a) The United States Attorney's Office will contact the Clerk's Office for the United States District Court and advise that it intends to file a civil forfeiture action on the same day.

2(b). The Clerk of the Court will assign a Civil Action Number to the case and assign the matter to a United States District Judge and a United States Magistrate Judge. The identity of the assigned judges will then promptly be conveyed to the United States Attorney's Office.

2(c) The United States will select a date for the case to appear before the U.S. District Judge assigned to the case. The return date noted on the Notice of Complaint for Forfeiture and Summons will be a regular motion date for the United States District Judge to whom the case has been assigned, and shall be at least 70 days from the time the Notice is issued, to allow time to arrange for publication, service of process and posting of the property. Before scheduling this date, however, the United States Attorney's Office will call the assigned Judge's Deputy Court Clerk to confirm that the proposed return date remains a scheduled motion day for the assigned Judge.

3(a) The United States Attorney's Office will then submit its civil forfeiture complaint paperwork, consisting of a (i) Civil Cover Sheet, (ii) Notice of Complaint for Forfeiture and Summons with return date, (iii) Verified Complaint for Forfeiture, attaching Plaintiff's First Set of Interrogatories pursuant to Rule C(6) of the Supplemental Rules of Admiralty and Maritime Claims, (iv) Notice of Lis Pendens, (v) Writ of Entry (the Writ will secure the property as it will not be seized

(arrested))⁴ and, on occasion, (vi) a post-complaint restraining (protective) order. The initial paperwork will be filed with the Clerk's Office for the Northern District of New York in Syracuse, Binghamton, Albany, or any other location for the United States District Court for the Northern District of New York.

3(b) The Clerk's Office shall file, date stamp and certify, as requested, the originals and copies of papers filed. The Clerk's Office shall retain a copy marked "Received" of the Notice of Complaint for Forfeiture and Summons, and the originals of all other complaint paperwork filed. The original Notice of Complaint for Forfeiture and Summons, together with copies of all remaining papers shall be returned to a designated representative in the United States Attorney's Office in Albany, New York, Syracuse, New York, or any other United States Attorney's Office so designated. This designated individual shall forward the original Notice of Complaint for Forfeiture and Summons and copies of all of the other complaint paperwork to the United States Marshals Service (or the appropriate Department of Treasury agency or Immigration and Customs Enforcement agency) to accomplish service of process, posting of the property and publication of the notice pursuant to Supplemental Rule G and www.forfeiture.gov.

3(c) Since seizure (arrest) of the real property will generally not occur during the pendency of the civil forfeiture action, there will be no need for the issuance of a warrant of arrest in rem. However, upon a showing of exigent circumstances by the Government that less restrictive measures such as the filing of a lis pendens or a restraining (protective) order would not suffice to protect the Government's interest in the property, the Government will, request issuance of a warrant of arrest in rem pursuant to the provisions of 18 U.S.C. § 985(d)(1).

3(d) On the return date, the Clerk of the Court shall call the case when the civil motion calendar is called. The Clerk shall inquire as to whether there is any "appearance" on behalf of the "defendant" real property sought to be forfeited. A civil in rem forfeiture case, when scheduled for a "return on the Notice of Complaint and Summons" shall not under any circumstance be removed from the calendar and shall always be called at calendar call on the date published on www.forfeiture.gov and announced to the public in that manner. If a Judge decides to cancel a motion day, to take cases on the calendar on submission, or is otherwise unavailable for the assigned motion day, and a civil forfeiture action(s) appear(s) on said calendar, a Court Clerk shall call the civil forfeiture case(s) and note appearances or non-appearances of any potential claimants in the forfeiture actions(s).

The U.S. Attorney's Office will provide to the Court Clerk's Office a disk or CD containing the documents to be filed. Once the functions set forth in 3(b) have been accomplished, the U.S. Marshal Service will continue to manually submit these original documents to the Court for scanning and electronic filing. Moreover, for Internal Revenue Service (IRS) and Immigration and Customs Enforcement (ICE) cases, the U.S. Attorney's Office will collect these return receipts and deliver them to the Court for scanning and electronic filing.

4. If no person enters an appearance on behalf of the "defendant" real property at the time the calendar is called on the return of the Notice of Complaint and Summons, then the United States Attorney's Office will move the Court for a Judgment of Forfeiture on the basis that the forfeiture is uncontested. Prior to the return date, the United States Attorney's Office shall present the proposed documents set forth below to the Judge's law clerk.

⁴ U.S. Attorney's Office will file Writ of Entry with Civil Complaint paperwork. U.S. Attorney's Office will ask Deputy Clerk to contact Courtroom Deputy for Judge assigned to case to arrange for signing of Writ by Judge. Courtroom Deputy for Judge assigned to case will then contact U.S. Attorney's Office when Writ of Entry is signed.

a. copies of the USM-285 Process Receipts and Returns (the originals of which should be filed with the Court by the United States Marshals Service) showing personal service of known potential claimants; if personal service cannot reasonably be performed, service by certified mail, return receipt requested;

b. a copy of an affidavit/declaration of publication (the original of which should be filed with the Court by the United States Marshals Service)

c. an affidavit of non-military service, non-infancy and non-incompetency, which states that, upon information and belief, the known potential claimant(s) are not in the military service, and are not infants or incompetents;

d. a proposed Order Directing Entry of an Uncontested Judgment of Forfeiture, directing the Clerk to enter a Judgment of Forfeiture pursuant to Rule 58 of the Federal Rules of Civil Procedure; and

e. a proposed Form of Judgment will be provided to the Court after the terms of the Order Directing Entry of an Uncontested Judgment of Forfeiture have been met.

(i) the original Affidavit of Non-Military Service, Non-Infancy and Non-Incompetency shall be electronically filed with the Court and a courtesy copy provided to the Judge; (There will be no requirement for a notary signature on the Affidavit -- however, the U.S. Attorney's Office will maintain a signed, notarized Affidavit in their file)

(ii) the U.S. Attorney's Office shall inquire of the District Court Clerk's Office whether the Judge assigned to the case wishes to sign a hard copy of the Order Directing Entry of an Uncontested Judgment of Forfeiture, or wishes to utilize an electronic signature. Depending upon the answer to this inquiry, the U.S. Attorney's Office may either electronically file the Order Directing Entry of an Uncontested Judgment of Forfeiture and provide a courtesy copy to the Judge OR provide a hard copy of the Order to the Judge together with a disk or CD containing the document to be filed.

(iii) After the terms of the Order Directing Entry of an Uncontested Judgment of Forfeiture have been satisfied, the U.S. Attorney's Office shall submit to the Court a hard copy of a letter (stating that the terms of the Order have been satisfied) and enclose a proposed Judgment to be signed by a Deputy Clerk of the Court.

5. If no verified claim or answer has been filed, but the potential claimant (or counsel for the potential claimant) has contacted the Court or the United States Attorney's Office seeking some type of adjournment or postponement, then the Court may grant an enlargement of time within which the claimant or the attorney who requested a postponement may file a verified claim and answer, but the case still will be called at the originally noticed motion date to determine whether any other person has appeared to assert a claim, and any such appearance or non-appearance will be noted in the record.

6. If an individual files a claim of ownership to the real property sought to be forfeited, and such a claim satisfies all statutory requirements for a valid claim, the Government will so advise the Court that it will accept the claim as an appearance and request that the Court issue an Order barring all further claims. This Order will either be presented to the Judge at the time of the court appearance or sent to the Judge after the Court appearance.

The U.S. Attorney's Office shall inquire of the District Court Clerk's Office whether the Judge assigned to the case wishes to sign a hard copy of the Order Barring All Further Claims, or wishes to utilize an electronic signature. Depending upon the answer to this inquiry, the U.S. Attorney's Office may either electronically file the Order Barring All Further Claims OR provide a hard copy of the Order to the Judge together with a disk or CD containing the

document to be filed.

7. If there is a potential claimant named in the complaint who has not filed a formal claim and answer by the time of the Court appearance and who has not notified the Government or Court of his, her or its interest in the property, then, at the return date, when the Government requests that all further claims be barred, the Government shall provide the Court with an affidavit pertaining to any individual who was named in the complaint, but never interposed a verbal or written claim to the property, stating that on information and belief the known potential claimant is not in the military service, is not an infant or incompetent person, and direct the Court to the U.S. Marshal Forms USM-285, contained in the Court's file, showing publication of notice of the forfeiture and/or proof of service of process on the individual.

The U.S. Attorney's Office shall electronically file the Affidavit of Non-Military, Non-Infancy and Non-Incompetency. (There will be no requirement for a notary signature on the electronically filed Affidavit -- however, the U.S. Attorney's Office will maintain a signed, notarized Affidavit in their file)

8. Within sixty (60) days after the filing of the Order barring all further claims, the United States of America shall contact opposing counsel and/or the pro se claimant to set out and agree upon a schedule of expiration dates dealing with joinder of parties, amendment of pleadings, discovery, filing of motions and a proposed trial date, and memorialize this agreement in a stipulation form which shall be signed by the parties and so ordered by the United States Magistrate Judge assigned to the case. In the event the parties cannot come to an agreement with regard to a schedule, the United States Attorney's Office will contact the deputy clerk to the assigned Magistrate Judge and request a discovery conference.

(i) the U.S. Attorney's Office shall prepare a Stipulation pursuant to F.R.Civ.P. Rule 16(b)⁵ and a Form entitled Notice, Consent and Order of Reference --Exercise of Jurisdiction by a United States Magistrate Judge.

(ii) Once the Stipulation is signed by all parties and/or attorneys for parties to the action, the U.S. Attorney's Office will inquire of the District Court Clerk's Office whether the Magistrate Judge assigned to the case wishes to sign a hard copy of the Stipulation, or wishes to utilize an electronic signature. Depending upon the answer to this inquiry, the U.S. Attorney's Office may either electronically file the Stipulation and maintain a fully executed original of the Stipulation in its file and attest to the signatures contained thereon OR provide a hard copy of the Stipulation to the Magistrate Judge together with a disk or CD containing a copy of the document to be filed.

(iii) Should the parties and/or attorneys for the parties to the action consent to have all further proceedings conducted by a United States Magistrate Judge, the U.S. Attorney's Office will inquire of the District Court Clerk's Office whether the District Judge assigned to the case wishes to sign a hard copy of the Notice, Consent and Order of Reference --Exercise of Jurisdiction by a United States Magistrate Judge, or wishes to utilize an electronic signature. Depending upon the answer to this inquiry, the U.S. Attorney's Office may either electronically file the Notice, Consent and Order of Reference -- Exercise of Jurisdiction by a United States Magistrate Judge and maintain a fully executed original of the Consent in its file and attest to the signatures contained thereon OR provide a hard copy of the Order to the District Judge together with a disk or CD containing a copy of the document to be filed.

⁵ Pursuant to General Order #25, Forfeiture/Penalty cases are exempt from the requirement to file a Civil Case Management Plan.

II DISPOSITIVE STIPULATIONS AND ORDERS FOR SETTLEMENT AND ORDERS DIRECTING ENTRY OF AN UNCONTESTED JUDGMENT OF FORFEITURE.

A. Settlement Agreements

Substituted Res - United States funds remitted by a claimant that are to be forfeited to the United States in place of specific real or personal property subject to forfeiture, such as real estate or a vehicle.

After a Stipulation and Order for Settlement has been signed by the parties and "So Ordered" by the Judge assigned to the case, and as directed by the Stipulation, after the terms of the Stipulation have been satisfied, the Clerk shall issue a Judgment in a Civil Case. The U.S. Attorney's Office will submit a proposed form of Judgment to the Court. In actions where there is a substitute res forfeited in place of real or personal property, the Judgment shall direct that the substituted res be forfeited to the United States of America for disposition in accordance with law.

Once the Settlement Stipulation is signed by all parties and/or attorneys for parties to the action, the U.S. Attorney's Office will inquire of the District Court Clerk's Office whether the Judge assigned to the case wishes to sign a hard copy of the Settlement Stipulation, or wishes to utilize an electronic signature. Depending upon the answer to this inquiry, the U.S. Attorney's Office may either electronically file the Settlement Stipulation and maintain a fully executed original of the Settlement Stipulation in its file and attest to the signatures contained thereon OR provide a hard copy of the Settlement Stipulation to the Judge together with a disk or CD containing the document to be filed.

B. Order Directing Entry of an Uncontested Judgment of Forfeiture

After the Order Directing Entry of an Uncontested Judgment of Forfeiture has been signed by the Judge assigned to the case and as directed in the Order, after the terms of the Order have been satisfied, the Clerk shall issue a Judgment in a Civil Case directing forfeiture of the property to the United States of America for disposition in accordance with law. The United States Attorney's Office will submit a proposed form of judgment.

The U.S. Attorney's Office will provide a hard copy of a letter and the proposed Judgment to the assigned Judge's Courtroom Deputy Clerk.

C. Dissemination of Copies of Dispositive Pleadings

The United States Attorney's Office requires, for dissemination, six date-stamped certified copies of any dispositive pleading. The United States Attorney's Office shall provide the original dispositive pleading to the assigned Judge. The Deputy Clerk of the assigned Judge shall provide the United States with six (6) date-stamped, certified copies of the pleading.

III CIVIL IN REM SEIZURE WARRANTS

Seizure Warrants are authorized pursuant to Title 21, United States Code, Section 881(b)(4), Title 18, United States Code, Section 981(b)(2), and other applicable statutes. When federal law enforcement agencies have probable cause to believe that an item is subject to forfeiture, then they may contact the United States Attorney's Office for assistance in seeking a seizure warrant. A seizure warrant is entirely different from the Warrant of Arrest In Rem that is used in civil in rem forfeiture cases. A seizure warrant merely results in the securing of the asset by federal law enforcement, pending the institution and/or conclusion of a forfeiture proceeding.

As a general rule, an application for a Seizure Warrant is not presented to a United States District Judge, unless a United States Magistrate Judge is unavailable.

The procedure for the Clerk's Office in processing Seizure Warrants shall be identical to the process employed for processing search warrants pursuant to Rule 41 of the Federal Rules of Criminal Procedure.

(i) the United States Attorney's Office will provide to the Court Clerk's Office a disk or CD containing the documents to be filed. (If the documents are sealed, no disk or CD will be required to be furnished to the Clerk's Office until the documents are unsealed); and

(ii) instead of filing a seizure warrant pursuant to 18 U.S.C. § 983(a)(3)(B)(ii)(I) to preserve the Government's right to maintain custody of the property pursuant to the criminal forfeiture statutes, the United States will present a hard copy of an Application and Order Regarding Criminal Forfeiture of Property In Government Custody pursuant to 18 U.S.C. § 983(a)(3)(B)(ii)(II) to the Judge assigned to the case together with a disk or CD containing the documents to be filed.

IV CRIMINAL FORFEITURE PROCEDURE

The U.S. Attorney's Office will file a notice of appearance on each criminal case containing a forfeiture allegation in the Indictment/Information. This Notice of Appearance will contain language stating that the forfeiture attorney is appearing as co-counsel concerning the criminal forfeiture aspects of the case.

A. CRIMINAL (PROTECTIVE) RESTRAINING ORDERS

21 U.S.C. § 853(e)

Prior or subsequent to the filing of a criminal indictment/information, the United States may apply for the issuance of a protective order/restraining order/temporary restraining order pursuant to the provisions of 21 U.S.C. § 853(e), to preserve the availability of the property subject to forfeiture.

(i) the United States Attorney's Office will provide to the Court Clerk's Office a disk or CD containing the documents to be filed.

B. CRIMINAL SEIZURE WARRANTS

21 U.S.C. § 853(f)

The Government may request a criminal seizure warrant authorizing the seizure of property subject to forfeiture, pursuant to 21 U.S.C. § 853(f).

(i) the seizure warrant application and affidavit will manually be filed with the Court by the U.S. Attorney's Office (manual filing will ensure that the seizure warrant will not become public before it is executed); (ii) the U.S. Attorney's Office will be provided with a certified copy of the seizure warrant by the Court for service and will retain the original seizure warrant pending its execution; (iii) the original seizure warrant and return will be manually filed with the Court by the U.S. Attorney's Office and (iv) the seizure warrant, application, affidavit and return will be electronically filed by the Court only after the seizure warrant has been executed.

C. PRELIMINARY ORDER OF FORFEITURE Fed.R.Crim.P. 32.2(b)

When a defendant pleads guilty or a special verdict is rendered by the trial jury, the United States Attorney's Office shall prepare a Preliminary Order of Forfeiture, pursuant to the provisions of Federal Rules of Criminal Procedure 32.2, and submit such Order to the U.S. District Judge assigned to the case. At the same time, a copy of the Preliminary Order of Forfeiture will be sent to defendant's counsel (or *pro se* defendant) for submission of any objections, if any, as to form and/or content of the order. The United States Attorney will ask the assigned Judge to hold in abeyance his signing of the Preliminary Order of Forfeiture for a period of ten (10) days from the date the U.S. Attorney's Office mails the proposed Order to defendant's counsel, to allow defendant's counsel adequate time to raise objections, if any, as to the form and content of the proposed Order. A copy of the proposed Preliminary Order of Forfeiture also will be provided to the United States Probation Department by the United States Attorney's Office.

Once the United States Attorney's Office receives the signed Preliminary Order of Forfeiture from the assigned Judge, it will publish notice of its intent to dispose of the property(ies) pursuant to Supplemental Rule G and www.forfeiture.gov and provide written notice to any person known to have an interest in the property(ies). Any person, other than defendant, asserting a legal interest in the property shall within 30 days of the final publication notice or receipt of actual notice by mail, file a petition in accordance with the provisions of 21 U.S.C. § 853(n). The statute calls for a hearing to be held on the ancillary claim, however, based on the common practice in this District, no hearing will be held unless requested by a petitioner or the United States after serious, good cause efforts have been made to resolve the claim without the intervention of the Court.

If no third party files an ancillary claim within the prescribed period of time, the United States Attorney's Office, at sentencing, will provide a letter to the Court advising that (i) no ancillary claims have been filed, (ii) the Preliminary Order of Forfeiture will become final as to the defendant and (iii) no separate Final Order of Forfeiture will be prepared.

When specific property of a defendant is unavailable for forfeiture, the Government may seek a personal money judgment against a defendant at an amount to be determined by the Court. In such instances, the United States Attorney's Office will prepare a Preliminary Order of Forfeiture as described above, however, nothing further will be done until such time as property is found to satisfy this money judgment.

The United States Attorney's Office will provide to the Court Clerk's Office a disk or CD containing the documents to be filed.

D. ANCILLARY MOTIONS
Fed.R.Crim. P. 32.2(b)(3)

The United States may file discovery motions as provided in Rule 32.2(b)(3) to identify, locate or dispose of property or may commence a proceeding that complies with any statutes governing third party rights.

The United States will electronically file said motions.

E. ANCILLARY PETITIONS
Fed.R.Crim.P. 32.2(c)

Procedures governing ancillary forfeiture proceedings in criminal actions are set forth in Fed. R.Crim. P. 32.2(c). The United States or an ancillary petitioner may seek permission of the Court to conduct discovery in accordance with the Federal Rules of Civil Procedure, which request shall be granted if the Court first determines that discovery is necessary or desirable to resolve factual issues. When discovery ends, a party may move for summary judgment under Fed.R.Civ.P. 56.

**F. FINAL ORDERS OF FORFEITURE
(NO ANCILLARY CLAIMS FILED OR
ANCILLARY CLAIMS RESOLVED)**
Fed.R.Crim.P. 32.2(c)

Once all of ancillary claims filed in the matter have been resolved (or in the instance where there are no ancillary claims filed), the United States Attorney will submit to the U.S. District Judge assigned to the case the Final Order of Forfeiture containing terms resolving ancillary claim issues. After receiving the signed Final Order of Forfeiture, the United States Attorney's Office will submit this signed Order to the United States Marshal Service (or the appropriate Department of Treasury agency or Immigration and Customs Enforcement agency), requesting that the terms of the Court's Order be implemented.

(i) Final Order of Forfeiture -Resolution of Ancillary Claim(s):

The U.S. Attorney's Office shall inquire of the District Court Clerk's Office whether the Judge assigned to the case wishes to sign a hard copy of the Final Order of Forfeiture, or wishes to utilize an electronic signature. Depending upon the answer to this inquiry, the U.S. Attorney's Office may either electronically file the Final Order of Forfeiture OR provide a hard copy of the Order to the Judge together with a disk or CD containing the document to be filed.

(ii) Preliminary Order will become the Final Order of Forfeiture
No Ancillary Claims Filed (Rule 32.2(c)(2))

The U.S. Attorney's Office will electronically file its letter advising the Court that there were no ancillary claims filed and the Preliminary Order shall become the Final Order of Forfeiture,

G. SUBSTITUTE ASSETS

21 U.S.C. § 853(p) & F.R. Crim.P. 32.2(e)

There may be cases where a defendant's known and recoverable property subject to forfeiture at the time of conviction is insufficient to satisfy the Forfeiture Order of a Court in this District. In such cases, and where additional property of the defendant not otherwise subject to forfeiture can be located, the United States may apply to the assigned District Judge, pursuant to Fed.R. Crim.P. 32.2 and 21 U.S.C. § 853, for an order authorizing the seizure and forfeiture of such substitute assets up to but not exceeding the remaining unsatisfied amount of the Court's Order of Forfeiture. In such cases, the United States Attorney's Office, upon notice to the defendant, will present to the United States District Judge assigned to the case a letter and Affidavit (prepared by federal law enforcement special agent) seeking an amendment of the Preliminary Order/Final Order of Forfeiture to include substitute assets. If that application is granted, the Government will follow the same procedures set forth in Sections IV(C)(D)&(E) above.

The United States Attorney's Office will provide to the Court Clerk's Office a disk or CD containing the documents to be filed.

H. RESTITUTION

21 U.S.C. § 853(i)

With respect to property ordered forfeited, 21 U.S.C. § 853(i) provides, in part, a mechanism to restore forfeited property to victims of crimes or to take any other action to protect the rights of innocent persons (victims).

1. In a case where restitution is ordered and the Government has obtained any necessary approvals from the Department of Justice, the Government may present a Final Order of Forfeiture Directing Restoration of Forfeited Property to Victims to the Judge assigned to the criminal case. The Final Order of Forfeiture shall direct the United States Marshal Service/Department of Treasury agency/Immigration and Customs Enforcement agency to:

- (i) liquidate any vehicles or real property,
- (ii) satisfy, by payment from the net proceeds of the sale, any outstanding mortgages, liens and judgments and
- (iii) remit a check made payable to the Clerk of the Court for any remaining forfeited funds after "(ii)" above has been accomplished. Said check shall contain on its face the following information:
 - (i) the court criminal case number and
 - (ii) the name of the defendant to whom the restitution shall be applied.

The check shall then be deposited into a general restitution account held by the U.S. District Court Clerk's Office for the Northern District of New York and be applied toward the assigned District Judge's restitution order for that specific defendant,

OR ALTERNATIVELY

2. The Government may present a Final Judgment of Restitution in Lieu of Forfeiture. In such cases, the United States will use same procedures as set forth in paragraph '1' above.

The United States Attorney's Office will provide to the Court Clerk's Office a disk or CD containing the documents to be filed.

IT IS SO ORDERED:

A handwritten signature in black ink, appearing to read "Norman A. Mordue". The signature is written in a cursive style with a horizontal line underneath the name.

Norman A. Mordue
Chief United States District Court Judge

At Syracuse, New York this 22nd day of September, 2009