

U.S. DISTRICT COURT
N.D. OF N.Y.
March 7, 2017
LAWRENCE K. BAERMAN, CLERK

**UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF NEW YORK**

GENERAL ORDER #15



**UNIFORM PROCEDURE FOR CIVIL AND CRIMINAL FORFEITURE
CASES IN THE NORTHERN DISTRICT OF NEW YORK**

Table of Contents

	<u>Page</u>
I. CIVIL IN REM FORFEITURE PROCEDURE	1
A. Pre-Complaint Restraining (Protective) Order Pursuant to 18 U.S.C. § 983 – Personal Property.....	1
B. Initiating a Civil Forfeiture Action.....	1
C. Default Procedure.....	2
D. Contested Civil Forfeitures.....	3
E. Pre-Complaint Restraining (Protective) Order for Real Property.....	4
F. Civil Forfeiture Complaint for Real Property.....	5
II. DISPOSITIVE STIPULATIONS AND ORDERS FOR SETTLEMENT	6
A. Settlement Agreements.....	6
III. CIVIL SEIZURE WARRANTS	6
A. Civil Seizure Warrants.....	7
IV. CRIMINAL FORFEITURE PROCEDURE	7
A. Notice of Appearance Required.....	7
B. Criminal (Protective) Restraining Orders Pursuant to 21 U.S.C. § 853(e).....	7
C. Criminal Seizure Warrants Pursuant to 21 U.S.C. § 853(f).....	7
D. Jury Determination of Forfeiture.....	7
E. Preliminary Order of Forfeiture – Fed. R. Crim. P. 32.2(b).....	8
F. Ancillary Motions – Fed. R. Crim. P. 32.2(b)(3).....	8
G. Ancillary Proceedings – Fed. R. Crim. P. 32.2(c).....	8

H. Final Orders of Forfeiture - Fed. R. Crim. P. 32.2(b)(4) and (c)(2).....	9
I. Substitute Assets – 21 U.S.C. § 853(p) and Fed. R. Crim. P. 32.2(e).....	9
J. Restitution – 21 U.S.C. § 853(i).....	10

UNIFORM PROCEDURE FOR CIVIL AND CRIMINAL FORFEITURE CASES IN THE NORTHERN DISTRICT OF NEW YORK

I. CIVIL *IN REM* FORFEITURE PROCEDURE

A. Pre-Complaint Restraining (Protective) Order Pursuant to 18 U.S.C. § 983 – Personal 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.
2. The United States Attorney's Office will provide the Court Clerk's Office with the documents to be filed.

B. Initiating a Civil Forfeiture Action

1. The United States Attorney's Office will file its complaint for civil forfeiture in a shell case (00-at-99999) via the Case Management/Electronic Case Filing system ("CM/ECF"). The United States Attorney's Office will submit the following documents with its civil forfeiture complaint paperwork: (a) a civil cover sheet; (b) Verified Complaint for Forfeiture with Notice to Potential Claimant attached; (c) a Warrant for Arrest of Articles *in Rem*; and on occasion, (d) a post-complaint restraining order.
2. 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.
3. The Clerk's Office shall file, date stamp and electronically certify, as requested, the documents filed, returning same to the United States Attorney's Office via e-mail. The United States Attorney's Office will make arrangements for the United States Marshal to serve potential claimants.
4. The United States Marshals Service will manually submit the executed Warrant for Arrest of Articles *in Rem* and the process receipts to the Clerk of the Court for scanning and electronic filing. For non-Department of Justice cases, the United States Attorney's Office will collect and file the executed process receipts electronically on ECF.

C. Default Procedure

1. If no claims to the defendant property have been received by the later of the claim filing deadlines set forth under Supplemental Rule G(5)(a)(ii)(A)(35 days after direct notice is sent) and Supplemental Rule G(5)(a)(ii)(B)(60 days after the first date of publication on the internet), and no one has contacted the Court or the United States Attorney's Office seeking to file an untimely claim, the United States Attorney's Office shall initiate default proceedings by requesting the entry of a default by the Clerk of the Court pursuant to Fed. R. Civ. P. 55(a).
2. The United States Attorney's Office will file an affidavit accompanying the request for entry of a default by the Clerk of the Court showing that:
 - a. upon information and belief, no person or entity thought to have an interest in the defendant property is an infant, incompetent, or presently engaged in military service;
 - b. neither a verified claim nor an answer have been filed in the action, and the time for any and all potential claimants to file a verified claim and answer in the action has expired; and
 - c. the complaint was properly served, including verification of:
 - i. the date the civil forfeiture complaint was filed;
 - ii. the date the defendant property was arrested;
 - iii. the names of known potential claimants, and the date(s) of service;
 - iv. date(s) the process receipts were filed on the docket; and
 - v. the date publication began.
3. Upon the issuance of the Clerk's Entry of Default, the United States Attorney's Office shall move the Court for a default judgment pursuant to Fed. R. Civ. P. 55(b)(ii). The United States Attorney's Office shall file a motion for the entry of a default judgment with a Clerk's Entry of Default in accordance with Fed. R. Civ. P. 55(a), and a proposed order. The United States Attorney's Office shall also include in its application an affidavit from an Assistant United States Attorney attesting that:
 - a. upon information and belief, no person or entity thought to have an interest

in the defendant property is an infant, incompetent, or presently engaged in military service;

- b. neither a verified claim nor an answer have been filed in the action, and the time for any and all potential claimants to file a verified claim and answer in the action has expired; and
- c. the complaint was properly served, including verification of:
 - i. the date the civil forfeiture complaint was filed;
 - ii. the date the defendant property was arrested;
 - iii. the names of known potential claimants, and the date(s) of service;
 - iv. date(s) the process receipts were filed on the docket; and
 - v. the date publication began.
4. The Motion for Entry of a Default Judgment shall be filed on the docket as a Notice of Motion, accompanied by an Affidavit with the Clerk's Entry of Default attached, along with a proposed order . Thereafter, the Court will issue a Text Notice setting a response date.
5. The United States Attorney's Office will promptly send known potential claimants the Motion for Entry of a Default Judgment, the Text Notice issued by the Court, and a Certificate of Service, which shall be sent by certified mail, return receipt requested, or by Federal Express.
6. Where no response is received, the Court will issue the proposed order requesting entry of a default judgment, and the Clerk of the Court will issue a Default Judgment of Forfeiture.
7. 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 additional time for filing prior to the entry of a default judgment, then the Court may grant an enlargement of time within which the claimant may file a verified claim and answer.

D. Contested Civil Forfeitures

1. When an individual files a claim of ownership to the defendant property, and the claim satisfies the statutory requirements for filing a claim set forth under Supplemental Rule G(5)(a), the United States Attorney's Office will advise the Court by status report that it will accept the claim as an appearance.

2. Once the deadlines set forth under Supplemental Rule G(5)(a)(ii)(A) and Supplemental Rule G(5)(a)(ii)(B) have expired, and no additional claim(s) have been received, the United States Attorney's office will file a letter requesting that the Court issue an order barring all further claims. At that time the United States Attorney's Office shall also electronically file the notarized Affidavit of Non-Military, Non-Infancy and Non-Incompetency as to all known potential claimants, including those who did not file a claim.
3. Within thirty (30) days after the filing of the Order barring all further claims, the United States of America shall contact opposing counsel 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.
4. Pursuant to General Order #25, Forfeiture/Penalty cases are exempt from the requirement of filing a Civil Case Management Plan.
5. The United States Attorney's Office will prepare a Stipulation pursuant to Fed. R. Civ. P. Rule 16(b) and federal form AO 85, *Notice, Consent, and Reference of a Civil Action to a Magistrate Judge*, and will present these forms to opposing counsel or the *pro se* claimant for review and signature.
6. Once the Stipulation is signed by all parties and/or attorneys for parties to the action, the United States Attorney's Office will 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.
7. 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 United States Attorney's Office will electronically file form AO 85, executed by all parties, on the docket.

E. Pre-Complaint Restraining (Protective) Order for Real Property

1. The United States may seek a pre-complaint restraining or protective order for real property 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.

2. The United States Attorney's Office will electronically file to a shell case (00-at-99999) via CM/ECF.

F. Civil Forfeiture Complaint for Real Property

1. The United States Attorney's Office will file its complaint for civil forfeiture in a shell case (00-at-99999) via CM/ECF. The United States Attorney's Office will submit the following documents with its civil forfeiture complaint paperwork: (i) a civil cover sheet; (ii) the Verified Complaint for Forfeiture with a Notice to Potential Claimant attached; (iii) Summons for each potential claimant; (iv) a Notice of *Lis Pendens*; (v) a Writ of Entry; and, on occasion, (vi) a post-complaint restraining (protective) order.
2. 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.
3. The Clerk's Office shall file, date stamp and electronically certify, as requested, the documents filed, returning same to the United States Attorney's Office via e-mail. The United States Attorney's Office will make arrangements for the United States Marshal to serve potential claimants.
4. 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 for 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 may request issuance of a Warrant for Arrest *in Rem* pursuant to the provisions of 18 U.S.C. § 985(d)(1).
5. The United States Attorney's Office will prepare a process receipt directing the United States Marshals Service (or the appropriate Department of Treasury agency or the Department of Homeland Security) to effect the posting of the Notice of Complaint for Forfeiture of Real Property and Summons upon the defendant real property. The executed "post and walk" process receipt will be remitted to the Office of the Clerk of the Court by the United States Marshals Service to be filed electronically via CM/ECF. In a non-Department of Justice Case, the United States Attorney's Office will file the executed process receipt electronically via CM/ECF.
6. Where no claims have been filed to the defendant real property, the United States Attorney's Office will initiate default proceedings as set forth in Section I(C) above.
7. When an individual files a claim of ownership to the defendant property, and the

claim satisfies the statutory requirements for filing a claim set forth under Supplemental Rule G(5)(a), the United States Attorney's Office will advise the Court by status report that it will accept the claim as an appearance and the United States Attorney's Office will follow the procedures for a contested civil forfeiture.

8. 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 additional time for filing prior to the entry of a default judgment, then the Court may grant an enlargement of time within which the claimant may file a verified claim and answer.

II. DISPOSITIVE STIPULATIONS AND ORDERS FOR SETTLEMENT

A. Settlement Agreements

1. Where a Stipulated Settlement Agreement is signed by all parties and/or attorneys for parties to a civil forfeiture action, the United States Attorney's Office will file the signed Stipulated Settlement Agreement, a proposed Order, and a proposed Judgment of Civil Forfeiture electronically for the Court's review and signature.
2. After the issuance of the proposed Order, the Clerk shall issue a Judgment of Civil Forfeiture.
3. In actions where there is substitute *res* forfeited in place of directly forfeitable 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.

III. CIVIL SEIZURE WARRANTS

A. Civil Seizure Warrants

1. Seizure Warrants are authorized pursuant to 21 U.S.C. § 881(b), 18 U.S.C. § 981(b)(2), and other applicable statutes. When federal law enforcement agencies have probable cause to believe that an item is subject to forfeiture, 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.
2. 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.
3. 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.

IV. CRIMINAL FORFEITURE PROCEDURE

A. Notice of Appearance Required

The United States 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.

B. Criminal (Protective) Restraining Orders Pursuant to 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.

C. Criminal Seizure Warrants Pursuant to 21 U.S.C. § 853(f)

1. The United States Attorney's Office may request a criminal seizure warrant authorizing the seizure of property subject to forfeiture, pursuant to 21 U.S.C. § 853(f). The United States Attorney's Office and the signing agent will arrange a time to appear before the presiding United States Magistrate Judge. The United States Attorney's Office will provide the Magistrate with a copy of the supporting affidavit in advance of that appearance.
2. The United States Attorney's Office will receive a certified copy of the seizure warrant from the Court for service and will retain the original warrant pending its execution. The original seizure warrant and return will be manually filed with the Court by the United States Attorney's Office, and the seizure warrant, application, affidavit and return will be electronically filed by the Court only after the seizure warrant has been executed.

D. Jury Determination of Forfeiture

1. When the indictment or information provides for forfeiture of specific property and the case is tried before a jury, the defendant or the government may request that the jury be retained, pursuant to Fed. R. Crim. P. 32.2(b)(5), to determine whether the government has established the requisite nexus between the property and the criminal offense on which the defendant has been convicted.
2. The request for a jury determination of the forfeiture of specific property shall be made before the trial begins, so the court and the parties can plan and the jury can be informed of what to expect in terms of their service. Before the jury begins

deliberating, the court will confirm whether either party requests that the jury be retained to determine the forfeitability of specific property if it returns a guilty verdict. The failure of a party to affirmatively assert, before deliberations begin, that that it requests the jury be so retained will be deemed a waiver.

E. Preliminary Order of Forfeiture – Fed. R. Crim. P. 32.2(b)

1. When a defendant pleads guilty or a special verdict is rendered by the trial jury, the United States Attorney's Office shall prepare and file a Preliminary Order of Forfeiture, pursuant to the provisions of Federal Rules of Criminal Procedure 32.2. The United States Attorney will ask the assigned Judge to hold in abeyance his or her signing of the Preliminary Order of Forfeiture for a period of ten (10) days from the date the United States Attorney's Office files the proposed Order to allow adequate time for defendant's counsel (or the *pro se* defendant) to submit any objections as to the form and content of the proposed Order.
2. 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 may within 30 days of the final publication notice or receipt of actual notice by mail, whichever is earlier, petition the court for a hearing in accordance with the provisions of 21 U.S.C. § 853(n).
3. If no third party files an ancillary claim within the prescribed period of time, the United States Attorney's Office, after sentencing, will electronically file a letter in CM/ECF advising that (i) no ancillary claims have been filed, (ii) the Preliminary Order of Forfeiture will become final as to the defendant and (ii) no separate Final Order of Forfeiture will be prepared.
4. When specific property of a defendant is unavailable for forfeiture, the United States may seek a personal money judgment against a defendant in 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.

F. 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 on CM/ECF.

G. Ancillary Proceedings – 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.

H. Final Orders of Forfeiture - Fed. R. Crim. P. 32.2(b)(4) and (c)(2)

1. Pursuant to Fed. R. Crim. P. 32.2(b)(4), where no ancillary claim has been filed to property set forth for criminal forfeiture, the Preliminary Order of Forfeiture will automatically become final at the time of sentencing. At that time, the United States Attorney's Office will electronically file its letter advising the Court that no ancillary claims were filed and the Preliminary Order shall become the Final Order of Forfeiture.
2. Pursuant to Fed. R. Crim. P. 32.2(c)(2), once all of ancillary claims filed in the matter have been resolved, the United States Attorney's Office will submit to the United States District Judge assigned to the case a 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 the Department of Homeland Security), requesting that the terms of the Court's Order be implemented.

I. Substitute Assets – 21 U.S.C. § 853(p) and Fed. R. Crim. P. 32.2(e)

1. Where a defendant's known and recoverable property subject to forfeiture at the time of conviction is insufficient to satisfy the Court's Order of Forfeiture entered against the defendant, the United States may apply to the assigned District Judge, pursuant to Fed. R. Crim. P. 32.2(e) 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.
2. In such cases, the Court may order the forfeiture of those substitute assets by including the substitute assets in the preliminary order of forfeiture or by amending the final order of forfeiture at any time to include the substitute property pursuant to Fed. R. Crim. P. 32.2(e). Where the Final Order of Forfeiture has been filed, the United States Attorney's Office will present to the United States District Judge assigned to the case a letter and affidavit (prepared by a federal law enforcement special agent) seeking an amendment of the Final Order of Forfeiture to include the

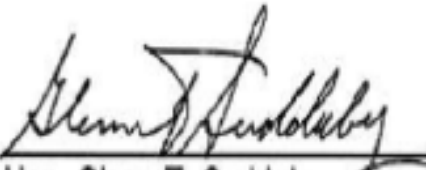
substitute assets. If that application is granted, the United States Attorney's Office will follow the same procedures set forth above pertaining to Preliminary Orders of Forfeiture and Final Orders of Forfeiture.

J. Restitution – 21 U.S.C. § 853(i)

1. 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).
2. 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/Department of Homeland Security to:
 - a. liquidate any vehicles or real property; and
 - b. satisfy, by payment from the net proceeds of the sale, any outstanding mortgages, liens and judgments; and
 - c. remit a check made payable to the Clerk of the Court for any remaining forfeited funds after satisfaction of any outstanding mortgages, liens, and judgments. 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 United States 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 the United States may present a Final Judgment of Restitution in Lieu of Forfeiture. In such cases, the United States will use the same procedures as outlined in paragraph 2 above.

IT IS SO ORDERED:

Dated this 7th day of March, 2017


Hon. Glenn T. Suddaby
Chief U.S. District Judge