

# Federal *Forfeiture* Guide

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Vol. 19, No. 5  
May 2015

## District Court Highlights:

Eighth Circuit reverses district court forfeiture order because government presented no factual allegations connecting the subject properties to any offense for which the defendant was convicted.

Alabama district court denies claimant's Rule 41(g) petition because funds were seized pursuant to a civil forfeiture statute, but acknowledges that he could file an administrative claim at any time after the seizure, before the seizing agency sends a seizure notice.

Second Circuit holds that law firm did not have a superior interest to government in forfeitable property, however remanded for a hearing as to whether firm was a bona fide purchaser reasonably without cause to believe that the property was subject to forfeiture.

Ninth Circuit holds that since claimant had statutory standing to contest forfeiture, his failure to respond to the government's special interrogatories did not alone vitiate his ability to maintain his claim, and court would allow him additional time to respond.

Iowa district court denies motion for attorney fees because government dismissed forfeiture action without prejudice, but used its discretion to award costs since claimants were put to significant expense and inconvenience in fighting for the return of their seized funds before the government eventually elected to dismiss.

Kentucky district court denied petition by Kentucky Cabinet for Health & Family Services for value of advanced child support payments because defendant himself never held good title to the forfeited monies, since all interest in forfeited property vested in the United States upon commission of the crime.

## Evidence, Sufficiency

**Eighth Circuit reverses district court forfeiture order because government presented no factual allegations connecting the subject properties to any offense for which the defendant was convicted. (560)** The government alleged that Beltramea engaged in a multi-faceted criminal scheme, in which he solicited investments from

numerous individuals and represented that the money would be used to open a Subway restaurant franchise, when in fact he used the investment funds for his personal use and for a real estate development project. Beltramea pled guilty, and the district court entered a forfeiture order. On appeal, because Beltramea's trial counsel did not timely object to the forfeiture of the property, the court of appeals limited review to plain error. Beltramea argued the district court plainly erred by failing to establish the required nexus between each item of property in the forfeiture order and his criminal conduct, and that it improperly double and triple counted proceeds in the forfeiture. The court found that the government presented no factual allegations connecting the certain rental properties and undeveloped lots to any offense for which Beltramea was convicted, so the district court plainly erred. The forfeiture of Beltramea's property without a proper basis in law and fact thus violated his substantial rights, and affected the integrity of judicial proceedings, thus affording the court discretion to vacate and remand the forfeiture order. *United States v. Beltramea*, 2015 WL 2079765 (8th Cir. 2015)(May 6, 2015).

## Fed. R. Crim. P. 41(e) Motions, Jurisdiction of District Court

**Alabama district court denies claimant's Rule 41(g) petition because funds were seized pursuant to a civil forfeiture statute, but acknowledges that he could file an administrative claim at any time after the seizure, before the seizing agency sends a seizure notice. (615)** Defendant Ali was arrested on a criminal complaint, alleging that on four occasions in 2014 he distributed and dispensed a controlled substance. DEA agents raided Ali's business, Walker Rural Health Services, and seized several tens of thousands of dollars in cash, and then \$48,347.35, \$47,347.12, and \$75,510.55 from three bank accounts. Ali filed a petition for return of the

funds under Rule 41(g) of the Federal Rules of Criminal Procedure. Because Rule 41(g) relief is not available to challenge a civil forfeiture, the first question was whether the property was retained pursuant to the civil forfeiture statute. Ali contended it was not because he had not received notice and the government used language indicating it was still weighing whether to even give such notice. The court held that it was clear from the language of the applicable statutes (21 U.S.C. §881(a)(6) and (b), 18 U.S.C. §981, and 31 U.S.C. §5317) that the property was seized and was being retained pursuant to civil forfeiture. CAFRA, 18 U.S.C. §983(a)(1)(A)(I), states in part that “*in any nonjudicial civil forfeiture proceeding under a civil forfeiture statute, with respect to which the Government is required to send written notice to interested parties, such notice shall be sent in a manner to achieve proper notice as soon as practicable, and in no case more than 60 days after the date of the seizure.*” Based on this language, the civil forfeiture statute clearly intends that a nonjudicial civil forfeiture proceeding already exists at the time notice is given. Moreover, a claimant’s right to file a claim in a nonjudicial civil forfeiture proceeding arises “after the seizure,” according to §983(a)(2)(A). Thus, since a claimant’s rights and the government’s deadlines under the statute arise upon seizure, it was clear a “nonjudicial civil forfeiture proceeding” begins at the moment the property is seized. The court refused to invoke its equitable jurisdiction Ali acknowledged at the hearing that his business was still operating, and the government showed Ali still had additional accounts to which he had access. The government’s warrant applications for the three accounts and cash showed probable cause to seize them in the first place, and Ali had adequate remedies at law. Although he had not received notice of the seizing agencies’ intent to seek administrative forfeiture, he was entitled to file a claim any time after the seizure, which would set the legal machinery in motion. If the facts of this case required prevention of manifest injustice, then claimants would be entitled to extraordinary relief anytime the civil forfeiture statute was used to seize a substantial amount of funds, so the court found these circumstances did not merit the exercise of

this Court’s equitable jurisdiction, and the motion was denied. *United States v. Ali*, 2015 WL 2159335 (N.D. Ala. 2015)(May 5, 2015).

## **Standing of Claimant, Generally ; Discovery**

**Ninth Circuit holds that since claimant had statutory standing to contest forfeiture, his failure to respond to the government’s special interrogatories did not alone vitiate his ability to maintain his claim, and court would allow him additional time to respond. (320, 370)** Byron Pickle appealed the district court’s default judgment and final judgment of forfeiture of his real property after it granted the government’s motion to strike Pickle’s claim and answer based on Pickle’s failure to respond to the government’s special interrogatories. It was apparent from the district court’s order that it viewed Pickle’s failure to answer the Admiralty and Forfeiture Rule G(6) special interrogatories as a per se basis for striking his claim. Because that conclusion was incorrect as a matter of law, the court reversed and remanded. Pickle filed a verified claim in the in which he stated he was the “recorded owner” of the defendant property, and an answer in which he claimed “an innocent possessory and/or ownership interest” in the property. The parties stipulated to a six month stay of the action based on an ongoing criminal investigation. After its expiration, the government served special interrogatories, but Pickle did not timely respond, so the government moved to strike his claim and answer. In the meantime Pickle moved to suppress the marijuana evidence obtained from the search of his property, to dismiss the forfeiture proceedings, and for a stay of the proceedings on the ground that the discovery requests the government served sought information that implicated his Fifth Amendment protection against self-incrimination. The court concluded that the government’s motion to strike must be resolved before either of Pickle’s pending motions, and then granted the government’s motion to strike and denied the motion to stay. The appeals court held that Pickle’s failure to answer the G(6) interrogatories would not have warranted striking his claim as a discovery sanction without giving Pickle an opportunity to cure his lack of

response. Nor did Pickle's failure to comply with Rule G(6) vitiate his statutory standing. Although Rule G(8) authorizes the government to bring a motion to strike on these bases, the Advisory Committee Notes to Rule G(8) caution that the court should strike a claim or answer only if satisfied that an opportunity should not be afforded to cure the defects under Rule 15, and that not every failure to respond to subdivision (6) interrogatories warrants an order striking the claim. Accordingly, courts typically afford claimants one or even several opportunities to cure defective Rule G(6) responses, except where the circumstances indicate that it would be futile to do so or reflect persistent discovery abuses. Because it could not reasonably be disputed that Pickle's interest in the defendant property was sufficient to establish his *statutory* standing at the inception of the proceedings, since both parties alleged he was the "recorded owner" of the defendant property, and the government further alleged that Pickle and his son both resided on the property, Pickle's failure to respond to the government's special interrogatories did not alone vitiate his ability to maintain his claim. *United States v. Real Prop. Located at 17 Coon Creek Rd., Hawkins Bar California, Trinity Cnty.*, 2015 WL 2371466 (9th Cir. 2015)(May 19, 2015).

## **Attorneys' Fees, Reimbursement by Government**

**Iowa district court denies motion for attorney fees because government dismissed forfeiture action without prejudice, but used its discretion to award costs since claimants were put to significant expense and inconvenience in fighting for the return of their seized funds before the government eventually elected to dismiss. (870)**

The government filed a verified complaint for forfeiture in which it alleged that seized funds represented proceeds from structuring offenses committed by the claimants. After some discovery, the parties discussed the government's possible filing of a motion to dismiss with prejudice. Claimants requested that the motion contain no language stating that the parties would bear their own fees, which the government accepted. The government later advised the claimants that it would

be filing a motion to dismiss without prejudice, rather than with prejudice as previously discussed. The government nevertheless filed its motion to dismiss without prejudice, which the claimants opposed. After the court granted the motion and ordered the seized funds released, the claimants moved for attorney fees under CAFRA. The claimants alleged they substantially prevailed by successfully challenging the forfeiture because the seized funds were returned to them and the action was dismissed. They contended the dismissal was a material alteration of the legal relationship of the parties, even though it was a dismissal without prejudice. In the alternative, they argued the dismissal order should be reconsidered and modified to provide that the case was dismissed *with* prejudice, because the dismissal without prejudice extinguished their statutory right to recover fees. The Eighth Circuit Court of Appeals has held that the claimant in a forfeiture action is not a substantially prevailing party under CAFRA when the government voluntarily dismisses the action without prejudice. The claimants also cited no case awarding fees under CAFRA after a dismissal without prejudice. The court thus concluded that the claimants were not substantially-prevailing parties within the meaning of CAFRA, since they did not obtain an enforceable judgment on the merits or a consent decree. The dismissal without prejudice lacked the required judicial imprimatur to qualify as a material alteration of the parties' legal relationship. The claimants further argued that a denial of fees on grounds that the dismissal was without prejudice showed they suffered legal prejudice because of that dismissal, relying on a decision of the Ninth Circuit Court of Appeals reversing the district court's order granting the government's motion to dismiss a civil forfeiture action without prejudice. The court there held that without prevailing party status, the claimants were unable to bring their attorney's fees motion under CAFRA, and thus suffered plain legal prejudice. This argument, however, was not timely raised in the instant case in response to the government's motion to dismiss without prejudice, so the claimants waived this argument and reconsideration was inappropriate. Moreover, Ninth Circuit's holding was not controlling. Nevertheless, the court found that it would be appropriate to

exercise the court's inherent discretion to award costs to the claimants, since they were put to significant expense and inconvenience in fighting for the return of their seized funds before the government eventually elected to dismiss the forfeiture action without prejudice. *United States v. Thirty-Two Thousand Eight Hundred Twenty Dollars & Fifty Six Cents (\$32,820.56) in U.S. Currency*, 2015 WL 3385003 (N.D.Iowa 2015)(May 22, 2015).

### **Third-party Claims and Ancillary Proceedings, Generally ; Standing to Assert Third-Party Claims**

**Kentucky district court denied petition by Kentucky Cabinet for Health & Family Services for value of advanced child support payments because defendant himself never held good title to the forfeited monies, since all interest in forfeited property vested in the United States upon commission of the crime. (590, 595)** Defendant Bess pleaded guilty to multiple drug trafficking charges, conspiracy, and a firearms violation. As part of the plea, Bess agreed to forfeit certain property that had been seized, including certain cash proceeds. The Commonwealth of Kentucky filed a petition to amend the forfeiture order on the grounds that Bess owed a total of \$18,603.80 in overdue child support. The Commonwealth filed a notice of lien against the currency on behalf of its Cabinet for Health & Family Services that was recorded on June 24, 2013, and argued its interest in this amount of the forfeited cash was superior to that of the United States. The court held, however, that Bess himself never held good title to the forfeited monies, since all interest in forfeited property vested in the United States upon commission of the crime. The Commonwealth never acquired an interest in the cash, as proceeds of crime do not precede the crime. Although under Kentucky law child support payments become vested when due, rendering each installment of child support a lump sum judgment, state law doctrines do not defeat the unequivocal direction of the federal forfeiture statute, i.e., that proceeds of criminal activity are forfeited to the United States "irrespective of any provision of State law," pursuant to 21 U.S.C. §853(a). Accordingly,

the court denied the Commonwealth's claim. *United States v. Bess*, 2015 WL 2454272 (W.D. Ky. 2015)(May 22, 2015)

### **Second Circuit holds that law firm did not have a superior interest to government in forfeitable property, however remanded for a hearing as to whether firm was a bona fide purchaser reasonably without cause to believe that the property was subject to forfeiture. (590)**

Defendant Watts and his law firm appealed from a judgment granting the government's motion to dismiss their petition asserting an interest in property found subject to forfeiture under 18 U.S.C. §982(a)(2) following the conviction of Watts's co-defendant, Dupree. The firm claimed that, as the beneficiary of an assignment transferring a portion of the forfeited property in exchange for legal services, it possessed a superior interest in that portion of the property under 21 U.S.C. §853(n)(6)(A), and as a bona fide purchaser reasonably without cause to believe that the contested property was forfeitable §853(n)(6)(B). The court held that because the government's forfeiture claim qualified it as a creditor under New York law, the government had standing to challenge the assignment as a fraudulent conveyance. However, because the record failed to establish whether the transferor of the contested funds was insolvent at the time of the transfer so as to render the firm's assignment a fraudulent conveyance, it alleged a plausible interest in the property sufficient to create standing to seek an ancillary hearing. Since the contested funds were subject to forfeiture as "proceeds" of Dupree's criminal activity and therefore only came into existence following the commission of his criminal act, the firm could not claim it had a superior interest in those funds at the time of the offense. However, because the firm accepted the assignment of the contested funds shortly after a *Monsanto* hearing in which the district court determined that the government failed to establish probable cause to restrain the contested property, and because the firm's petition alleged no additional facts suggesting it had reason to know that the property was forfeitable as a matter of law, it plausibly alleged it was a bona fide purchaser reasonably without cause to believe that the property

was subject to forfeiture. Whether a defendant's property is "subject to forfeiture" under federal law is not solely a matter of the government's intentions regarding that property. It is a legal conclusion that must be proven, on the merits, to a court. The mere *assertion* by the government that it believes the property forfeitable, stripped of the reliability provided by the grand jury's probable cause determination by the court's contrary conclusion after both sides have been heard, cannot be conclusive of the attorney's reason to believe the property is forfeitable. Indeed, relying solely on the government's decision to seek forfeiture to conclude that a defendant's property is likely "subject to forfeiture" contradicts the very purpose of holding a pre-trial asset restraint hearing. The district court's order as to that issue vacated and remanded. *United States v. Watts*, 2015 WL 1963468 (2d Cir. 2015)(May 4, 2015).

## **This Issue**

320, 370, 560, 590, 595, 615, 870

## **Table of Cases**

*United States v. Beltramea*, 2015 WL 2079765 (8th Cir. 2015)(May 6, 2015).

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