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CIVIL FORFEITURE TRAINING GUIDE

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TRAINING MANUAL

CIVIL FORFEITURE OF PRIVATE PROPERTY UNDER THE PENNSYLVANIA CONTROLLED SUBSTANCES FORFEITURES ACT

December 2017 Edition



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PREFACE

This Civil Forfeiture Manual was originally created to train and assist volunteer attorneys in Pennsylvania who agreed to represent property owners whose homes, cars, or cash were seized by the local police and/or for which the District Attorney's office had filed a petition seeking to forfeit the seized property to the government.

The Manual is divided into six sections and includes an appendix with the governing statute and sample forms. Section I describes the historical roots of civil forfeiture. Section II describes the modern application of forfeiture in Pennsylvania. Today, civil forfeiture most often occurs in relation to arrests and criminal charges for alleged drug offenses.

Sections III and IV discuss the two most common types of matters that occur when the police seize property for drug-related offenses. Section III outlines what to do when police seize cash, cars, or other personal property and retain possession of the property. In these cases, the property owner is still the legal owner of the seized property and needs to file a court motion to obtain the return of the seized property. In Pennsylvania, this is called a "Rule 588 Motion for Return of Property" as the practice is governed by Rule 588 of the Pennsylvania Rules of Criminal Procedure. In Philadelphia, there is a special form, and Local Rule 588 describes this practice in more detail. Section III provides guidance for property owners seeking to obtain the return of property seized by the police.

The second type of matter is described in Section IV and involves the filing by the district attorney's office or state attorney's general office of a petition for civil forfeiture against a property. This action is brought in the name of the Commonwealth against the property and seeks to permanently eliminate the property owner's rights to the seized property. These cases can involve homes, cars, cash, or other personal property. In these cases, the property owner must file a legal response to the petition to contest the forfeiture of property to the government. If the property owner does nothing, the government will prevail by default. Section IV describes some of the many defenses available to property owners.

It is important to note that the district attorney's office does not always file a civil forfeiture petition for all seized property. Sometimes, the police seize property and the property just remains with the police without any attempt

by the government to permanently take ownership of the property. A property owner should protect his or her rights by filing a Rule 588 Motion for Return of Property whether or not a civil forfeiture petition is filed by the district attorney's office. However, if a civil forfeiture action is ultimately filed against the property, it is likely that the forfeiture matter will be joined procedurally with a pending Rule 588 Motion. Also, remember that property may be seized and a civil forfeiture petition filed against property without any criminal charges ever being filed against the property owner, and therefore a property owner must take steps to protect his or her property if it is seized by the police. This is why it is very important to obtain the assistance of a lawyer, if at all possible.

Section V, VI, and VII provide additional guidance on how to review docket entries in civil forfeiture cases, defend against civil forfeiture petitions, and obtain appellate review of an unfavorable forfeiture order.

Civil forfeiture proceedings are complex matters that can prove to be very challenging for property owners who are not represented by a lawyer. Property owners who can afford to hire an attorney should do so, and low-income individuals who cannot afford a lawyer should try to obtain free legal assistance from an established organization or volunteer lawyer. If a property owner is unable to obtain a lawyer, he or she should still appear at every court listing and attempt to represent his or her interests as best as possible. These actions follow a fairly predictable path and frequently can be resolved by negotiation between the district attorney and the property owner. However, whenever possible, counsel should be consulted to ensure that full protection of rights, and this manual is intended as a training manual for attorneys lacking experience in this subject area. The Appendix to the Manual includes governing statutes and rules and regulations as well as standard pleadings to assist attorneys in handling such matters.

IMPORTANT NOTICE: *This manual is for training and informational purposes only; it is not intended to convey legal advice in connection with any actual case or legal matter. It is strongly recommended that an individual whose property is the subject of a police seizure or a civil forfeiture proceeding consult an attorney promptly for legal advice and assistance.*

I. Introduction to Civil Forfeiture of Private Property

A. Historical Roots.

Forfeiture law in the United States has roots in English law, which at the time of our nation's founding authorized three kinds of forfeiture: (1) *Deodand*, whereby property that caused the accidental death of an English subject was forfeited to the Crown; (2) *Forfeiture of Estate*, whereby a person convicted of a felony or treason thus forfeited all of his property to the Crown; and (3) *Statutory Forfeiture*, whereby property used in violation of customs and revenue laws was forfeited to the Crown. See, e.g., *Austin v. United States*, 509 U.S. 602, 611-12 (1993).

Only statutory forfeiture took hold in the United States. *Id.* at 613. The federal Constitution generally proscribes forfeiture of estate resulting from a conviction for treason, U.S. Const. art. III, § 2; and federal statutory law prohibits it outright. See, e.g., *Calero-Toledo v. Pearson Yacht Leasing Co.*, 416 U.S. 663, 683 (1974). And insofar as statutory forfeiture took hold in the United States, it did not see widespread use—at least not initially. During the first two centuries of the nation's existence, statutory forfeiture was used principally in admiralty and customs cases—as a tool to combat piracy and smuggling. See, e.g., Donald J. Boudreaux & A.C. Pritchard, *Civil Forfeiture and the War on Drugs: Lessons from Economics and History*, 33 SAN DIEGO L. REV. 79, 96-99 (1996). It was not until the nation's "War on Drugs" in the 1970's and 1980's that the use of statutory forfeiture became widespread.

B. Criminal Forfeiture.

There are two types of forfeiture: Criminal Forfeiture and Civil Forfeiture. Criminal forfeiture involves an action brought by prosecutors against a person who is criminally responsible for an underlying crime to which property is related. The action is *in personam*, brought directly against the responsible individual. If the person is found guilty of an underlying crime for which forfeiture is authorized, property related to the crime may be the subject of forfeiture. If the person is found not guilty of the underlying offense, the property cannot be subject to criminal forfeiture. For that reason, the guilt or innocence of the person must first be determined before the forfeiture determination may go forward. A prosecutor seeking criminal forfeiture of property will include a forfeiture count in the

criminal indictment, describing the relationship of the offense to the property. Since criminal forfeiture is part of the criminal prosecution against the accused, any claim of ownership to the property by innocent third parties must await the completion of the criminal prosecution.

C. Civil Forfeiture.

Civil forfeiture is an action *in rem*, brought against the offending property and not against any individuals. Accordingly, the guilt or innocence of the property owner is not determinative, and property owners need not be convicted of, or even charged with, any criminal wrongdoing for civil forfeiture to go forward. This is a hard concept for property owners to understand. Civil forfeiture is based on the legal fiction that property—homes, vessels, cars, and even cash—can be guilty of wrongdoing and thereby subject to forfeiture to the government. While there are many federal civil forfeiture statutes governing a range of subject areas (e.g., cigarettes, gamecocks, etc.), civil asset forfeiture became a major weapon in the war on drugs with the passage of the federal Comprehensive Drug Abuse Prevention and Control Act of 1970. 21 U.S.C. §§ 801-904, 951-957.

Note that a property can be seized by the police and not returned to its owner even without a civil forfeiture petition being filed. In such cases, the property owner must seek the return of the property by filing a motion, as discussed in Section III of this Manual.

D. Federal Civil Asset Forfeiture.

The federal Comprehensive Drug Abuse Prevention and Control Act provides for the forfeiture of controlled substances and conveyances used to transport controlled substances, moneys and negotiable instruments, and real property used to facilitate violations. Civil asset forfeitures increased enormously when Congress revised the federal drug forfeiture program to create this powerful tool in the war on drugs. The purpose behind federal drug-related civil forfeiture statutes is to take away the cars, boats, airplanes, homes, and cash of drug traffickers, while at the same time increasing the resources of the seizing agency. Once seized and forfeited, property may be destroyed, retained for official use by the seizing agency, or sold, with proceeds from the sale going to law enforcement authorities. On the federal level, this means that forfeiture proceeds go to the Department of Justice's Asset Forfeiture Fund or the Department of Transportation's Asset Forfeiture Fund, rather than to the U.S.

Treasury. These programs net huge surpluses each year, and now bring in close to five billion dollars annually.

E. State Forfeiture Laws.

Many states have adopted their own civil forfeiture laws modeled on the Uniform Controlled Substances Act, which is based upon the federal act. In 1988, Pennsylvania enacted the Controlled Substances Forfeiture Act [the "Forfeiture Act"], 42 Pa. C.S. §§ 6801-6802, providing for the forfeiture of property to the Commonwealth for violations of the Pennsylvania Controlled Substance, Drug, Device and Cosmetic Act. 35 P.S. §§ 780-101 to 780-144. Effective July 1, 2017, the Pennsylvania legislature repealed this statute and replaced it with a revised statute found at 42 Pa. C.S. § 5802, et. seq. The Forfeiture Act permits the forfeiture of property, including real property, vehicles, and cash, and authorizes district attorneys and the state attorney general to utilize forfeited property or derived proceeds for law enforcement purposes. Forfeitures are not favored in the law, and therefore the Forfeiture Act must be strictly construed. *Commonwealth v. One 1993 Pontiac Trans AM*, 809 A.2d 444 (Pa. Cmwlth. 2002).

F. No Right to Counsel in Pennsylvania Civil Forfeiture Proceedings.

Under current law, there is no right to counsel in civil forfeiture cases in Pennsylvania. Pennsylvania's statutory law does not provide for a right to counsel in civil forfeiture cases. And the Pennsylvania Supreme Court has held that there is no constitutional right to counsel in civil forfeiture cases. *Commonwealth v. \$9,847.00 U.S. Currency*, 704 A.2d 612, 613 (Pa. 1997) (holding that the federal Constitution does not require the provision of court-appointed counsel to indigent claimants in civil forfeiture proceedings). The rationale for the Pennsylvania Supreme Court's holding in *\$9,847.00 U.S. Currency* was that "civil forfeiture does not implicate a person's liberty interest and only implicates a person's property interest." *Id.* at 613. Notwithstanding these decisions, there is growing momentum for recognition of a right to counsel, especially with regard to the civil forfeiture of family homes, in order to satisfy minimal due process requirements. The Pennsylvania Supreme Court's opinion in *Commonwealth v. 1997 Chevrolet*, -- A.3d --, 2017 WL 2291733 (3d Cir. May 25, 2017), places greater emphasis on the need to protect family homes in civil forfeiture proceedings, and at

the same time there are legislative initiatives aimed at providing a right to counsel when primary residences are at stake. See Pennsylvania HB 1155, Session 2017-18.

G. Limited Statutory Right to Counsel in Federal Civil Forfeiture Proceedings.

It is important to note, however, that while there is no right to counsel in civil forfeiture cases brought under Pennsylvania's Forfeiture Act, there is a statutory right to counsel under limited circumstances in federal civil forfeiture proceedings. In federal amendments adopted by Congress in 2000, known as the Civil Asset Forfeiture Reform Act of 2000 (CAFRA), Congress provided for the appointment of counsel for indigent property owners in federal proceedings where the primary residence of the indigent property owner is subject to civil forfeiture. 18 U.S.C. § 983.

II. The Pennsylvania Controlled Substances Forfeiture Act

A. Enactment

In 1988 Pennsylvania enacted civil legislation authorizing the forfeiture of real and personal property for controlled substance violations of Pennsylvania's Controlled Substance, Drug, Device and Cosmetic Act ["Drug Act"]. This legislation is known as the Controlled Substances Forfeiture Act ["Forfeiture Act"]. 42 Pa. C.S. §§ 6801-6802. Effective July 1, 2017, the Pennsylvania legislature repealed this statute and replaced it with a revised statute found at 42 Pa. C.S. § 5802, et. seq.¹ Subject to forfeiture under the Forfeiture Act are such items as drugs, drug paraphernalia, drug manufacturing materials, conveyances (aircraft, vessels, cars) used to transport controlled substances, money or negotiable instruments used or obtained in exchange for controlled substances, and firearms used to facilitate controlled substance violations. In addition, real property (including structures and improvements) and any interest in real property may be subject to forfeiture under the Forfeiture Act.

B. Forfeiture of Private Property Under the Forfeiture Act: An Overview

1. Property Subject to Forfeiture: Section 5802.

The Forfeiture Act provides that the following "shall be subject to

¹ Most of the case law referenced in this manual interprets the prior statute. It remains to be seen how changes in the new statute will be interpreted by the courts.

forfeiture to the Commonwealth” and that “no property right shall exist” therein:

- a. “Real property used or intended to be used to facilitate any violation of the [Drug Act], other than a violation of section 13(a)(16) or (31) of the [Drug Act], including structures or other improvements thereon, and including any right, title, and interest in the whole or any lot or tract of land and any appurtenances or improvements, which is used or intended to be used, in any manner or part, to commit, or to facilitate, the commission of, a violation of [the Drug Act], and things growing on, affixed to and found in the land.” § 5802(6)(i)(C).
- b. “Money, negotiable instruments, securities or other things of value furnished or intended to be furnished by any person in exchange for a controlled substance in violation of [the Drug Act], and all proceeds traceable to such an exchange.” § 5802(6)(i)(A).
- c. “Money, negotiable instruments, securities or other things of value used or intended to be used to facilitate any violation of [the Drug Act].” § 5802(6)(i)(B).
- d. “[D]rug paraphernalia, controlled substances or other drugs which have been manufactured, distributed, dispensed or acquired in violation of [the Drug Act].” § 5802(1).
- e. With certain limited exceptions (detailed below), “[a]ll conveyances, including aircraft, vehicles or vessels, which are used or are intended for use to transport, or in any manner to facilitate the transportation, sale, receipt, possession or concealment of” any of the following:
 - (i) “[D]rug paraphernalia, controlled substances or other drugs which have been manufactured, distributed, dispensed or acquired in violation of [the Drug Act].” § 5802(1).
 - (ii) “[R]aw materials, products and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing or exporting any controlled substance or other drug in violation of [the Drug Act].” § 5802(2), (4).
- f. “Any firearms . . . which are used or intended for use to facilitate a violation of [the Drug Act].” § 5802(7).

2. **Meaning of the Term “Facilitate” in the Forfeiture Act**

The term “facilitate” as used in the Forfeiture Act means any use or intended use of property which makes trafficking in contraband less difficult and laborious. *Commonwealth v. Funds in Merrill Lynch Account Owned by Peart*, 777 A.2d 519 (Pa. Cmwlth. Ct. 2001). *See also Commonwealth v. One 1979 Lincoln Four Door Sedan*, 496 A.2d 397 (Pa. Super. Ct. 1985) (noting that a district court within the Third Circuit has defined “facilitation” by asking whether there was a reasonable ground for belief that the use of the property, an automobile, made the sale less difficult and allowed it to remain more or less free from obstruction or hindrance); *United States v. One 1981 Datsun 280ZX*, 563 F.Supp. 470, 473 (E.D. Pa. 1983).

3. **Conveyances NOT Subject to Forfeiture Under the Forfeiture Act for Violation of Section 13(a)(31) and 13(a)(16) of Pennsylvania’s Controlled Substance, Device, Drug and Cosmetic Act [the “Drug Act”].**

The Forfeiture Act does not apply to certain small amounts of marijuana where no sales occur. The statute expressly provides that “no conveyance shall be forfeited under [42 Pa. C.S. § 5802] for violation of section 13(a)(31) of [the Drug Act].” 42 Pa. C.S. § 5802(4)(ii). Section 13(a)(31) of the Drug Act makes unlawful the following:

- (i) possession of a small amount of marihuana only for personal use;
- (ii) the possession of a small amount of marihuana with the intent to distribute it but not to sell it; [and]
- (iii) the distribution of a small amount of marihuana but not for sale.”

35 P.S. § 780-113(a)(31).

For purposes of Section 13(a)(31) of the Drug Act a “small amount” of marihuana means (I) thirty grams of marihuana or less; *or* (II) eight grams of hashish or less. *Id.*

The Forfeiture Act also expressly prohibits the forfeiture of real property for violations of Section 13(a)(16) of the Drug Act. 42 Pa. C.S. § 5802(6)(i)(C). This section prohibits “knowingly or

intentionally possessing a controlled or counterfeit substance by a person not registered...or a practitioner not registered or licensed by the appropriate State board, unless the substance was obtained directly from, or pursuant to, a valid prescription order or order of a practitioner, or except as otherwise authorized" by the law. 35 Pa. Stat. Ann. § 780-113(a)(16) (West).

C. "Common Law Forfeiture" in Pennsylvania

"Common law forfeiture" is the forfeiture of private property to the government in the absence of a statute that specifically authorizes such forfeiture. At times, prosecutors have brought forfeiture actions in the absence of any statutory authorization. This has led to debate over whether such forfeiture actions—known as common law forfeiture actions—exist in Pennsylvania. In *Commonwealth v. Irland*, the Commonwealth Court addressed this question. 153 A.3d 469, 471 (Pa. Commw. Ct. Jan 13, 2017). There, the Commonwealth Court held as follows:

- "[C]ommon law forfeiture *does not* exist in Pennsylvania[.]" *Id.* at 486 (emphasis added).
- "[A]bsent a statute that specifically authorizes the forfeiture of property, the Commonwealth and the courts have no authority to seek and order forfeiture of [property]." *Id.* at 471.

The Pennsylvania Supreme Court has not reviewed this decision.

III. Seizure of Property; Motions for Return of Seized Property

A. Seizure of Money and Personal Property: Section 5803(b)

The Forfeiture Act provides the following with respect to the seizure of money and personal property:

Property subject to forfeiture may be seized by a law enforcement authority if any of the following apply:

- (1) the seizure is incident to an arrest or a search under a search warrant or inspection under an administrative inspection warrant and there is reason to believe the property is subject to forfeiture;
- (2) the property subject to seizure has been the subject of a prior judgment in favor of the Commonwealth in a criminal injunction or forfeiture proceeding under [the Forfeiture Act];

(3) there is probable cause to believe that the property is dangerous to health and safety and exigencies are likely to result in the destruction or removal of the property or in the property otherwise being made unavailable for the forfeitures;

(4) there is probable cause to believe that the property has been used or is intended to be used in violation of [the Drug Act], or another offense for which forfeiture is expressly authorized as a sanction;

(5) there is a warrant issued by a court . . . with appropriate jurisdiction; or

(6) there is probable cause to believe that the property is subject to forfeiture and exigencies are likely to result in the destruction or removal of the property.

§ 5803(b).

B. Seizure of Real Property: Section 5803(b.1)

The Forfeiture Act provides the following with respect to real property:

“[R]eal property subject to forfeiture shall not be seized before the entry of an order of forfeiture and the owners or occupants of the real property shall not be evicted from or otherwise deprived of the use and enjoyment of real property that is the subject of a pending forfeiture action.” § 5803(b.1) (emphasis added).

However, real property may be seized before the entry of a forfeiture order if the district attorney or the Attorney General notifies the court that it intends to seize the property before a trial, and the court does one of two things: (A) authorizes the seizure after giving the property owner notice and a hearing in which he has “a meaningful opportunity to be heard,” or (B) makes an *ex parte* determination that the property may be seized without prior notice and an opportunity for the property owner to be heard because “there is probable cause to believe that a nexus exists between the property and the criminal activity” and that “exigent circumstances” exist 42 Pa. C.S. § 5803(b.1)(2). If the court authorizes a seizure of real property without first entering an order of forfeiture, then the property owner is entitled to a “prompt postseizure hearing” at which he or she will

have “an opportunity to contest the Commonwealth’s continuing custody of the property.” 42 Pa. C.S. § 5803(b.1)(4).

C. **Ex Parte Seizure of Private Property**

Under prior practice, courts have found that *ex parte* seizure of **personal** property subject to civil forfeiture may—but does not necessarily—violate due process of law. See *Calero-Toledo v. Pearson Yacht Leasing Co.*, 416 U.S. 663, 677 (1974). The government may seize *personal* property subject to civil forfeiture without providing prior notice or a hearing to the property owner, *provided* that there is probable cause to believe that the personal property at issue is subject to civil forfeiture under applicable law. See *United States v. James Daniel Good Real Property*, 510 U.S. 43, 49 (1993); *cf. One 1958 Plymouth Sedan v. Pennsylvania*, 380 U.S. 693, 699 (1965).

However, there are strict constitutional (due process) limitations on the *ex parte* seizure of **real** property. *Good Real Property*, 510 U.S. at 61-62. “Unless exigent circumstances are present, [constitutional due process] requires the [g]overnment to afford notice and a meaningful opportunity to be heard before seizing real property subject to civil forfeiture.” *Id.* at 62. And “[t]o establish exigent circumstances, the [g]overnment must show that less restrictive measures—i.e., a *lis pendens*, restraining order, or bond—would not suffice to protect the [g]overnment’s interests in preventing the sale, destruction, or continued unlawful use of the real property.” *Id.* Section 5803(b.1) described above also reflects this due process limitation on law enforcement’s ability to seize real property. § 5803(b.1)(1)-(2).

Note: The *Souovelis* Litigation in the District Court for the Eastern District of Pennsylvania

In Philadelphia County, the District Attorney’s practice of seizing homes without a prior hearing was challenged on due process grounds in a federal class action. The action was filed in the U.S. District Court for the Eastern District of Pennsylvania and docketed as *Souovelis v. City of Philadelphia*, No. 14-4687 (E.D. Pa. docketed August 11, 2014).

On November 4, 2015, the District Court approved a partial settlement agreement submitted by the *Souovelis* parties

(the “*Sourovelis* Settlement”). The key terms of the *Sourovelis* Settlement are as follows:

1. The “City of Philadelphia, [the] Mayor, . . . [the] Police Commissioner, . . . the Philadelphia District Attorney's Office[,] and [the] District Attorney [collectively, “the City”] cannot seek an ex parte ‘seize and seal’ order against real property under the [Forfeiture Act], except when all of the following circumstances are met:
 - i. “prior approval of the application from a person specifically designated . . . by the Philadelphia District Attorney's Office before it is submitted to the Court of Common Pleas of Philadelphia County;
 - ii. “specific, particularized, and credible facts demonstrating that exigent circumstances exist under *United States v. James Daniel Good Real Property*, 510 U.S. 43 (1993);² and
 - iii. “specific, particularized, and credible facts demonstrating that less restrictive measures are insufficient to protect the Commonwealth's interests in preventing the sale, destruction, or continued unlawful use of the real property and that providing notice would jeopardize this interest.”

- 2 The *Sourovelis* Settlement defines “exigent circumstances” as follows: “Exigent circumstances include, but are not limited to, persistent illegal activity occurring at the property, after, on multiple occasions, (1) arrests have been made or search warrants have been executed, and (2) contraband has been discovered at the property during those arrests or executions of search warrants.” (*continued* . . .) *Sourovelis v. City of Philadelphia*, 2015 WL 12806512, at *3 (E.D. Pa. Nov. 4, 2015). The *Sourovelis* Settlement also sets forth two qualifications regarding the scope of this definition: (1) “[T]he mere fact that law enforcement observed controlled substances present at a property, that law enforcement observed controlled substances being sold or distributed at a property, that a property was purchased with criminal proceeds, or that a property is considered deteriorated does not constitute exigent circumstances.” (2) “[C]onclusory allegations are insufficient to establish exigent circumstances and merely attaching a copy of any police report concerning the alleged criminal activity that serves as the predicate for civil forfeiture is insufficient to establish exigent circumstances.” *Id.* Moreover, Section 5803 of the Forfeiture Act explains that “exigent circumstances” are only present where “less restrictive measures, such as a lis pendens, temporary restraining order or security bond, would not suffice” to prevent “the sale, destruction or continued unlawful use of the real property.” 42 Pa. C.S. § 5803(b.1)(3).

Sourovellis v. City of Philadelphia, 2015 WL 12806512, at *3 (E.D. Pa. Nov. 4, 2015).

2. The City may enter into “unsealing agreements” and “settlement agreements” with homeowners;³ *provided* that an unsealing agreement or settlement agreement MAY NOT contain any of the following conditions:
 - i. “a prospective waiver of statutory or constitutional defenses or claims in any future [forfeiture] proceedings, including any condition providing for ‘automatic forfeiture’”;
 - ii. a restriction on “access to the property by any relative, defined to include up to fifth-degree relatives”;
 - iii. a restriction on “access to the property by any non-relative, unless the non-relative has been convicted of distributing illegal controlled substances”;
 - iv. a grant of power to the Commonwealth “to review, approve, or reject prospective lessees, tenants, buyers, residents, or transferees of the property.”

Sourovellis, 2015 WL 12806512, at *3.

D. Return of Seized Property; In General

It is common for law enforcement authorities to seize property alleged to be connected to a crime, especially cars and cash, and to refuse to return them to the property owner even in the absence of the filing of a civil forfeiture petition. This places a burden upon the property owner to take necessary and timely steps to seek the return of their property. Pennsylvania law provides no statutory authority for the automatic return of seized property back to the owner. *E.g.*, *Commonwealth v. Allen*, 107 A.3d 709, 718 (Pa. 2014) (“[I]t is apparent that there is no authority to support automatic return [of seized property].”) As a result, it appears that the police may seize cars or cash, for example, and retain them in their possession without filing a civil forfeiture petition or returning them to the rightful owner. If the prosecutor does not voluntarily return seized property, the owner must file a timely motion in court to obtain return of seized property. *E.g.*,

- 3 In an “unsealing agreement,” the City agrees that a homeowner whose home has been seized and sealed under the CSFA may re-enter his or her home after the “seize and seal” order has been lifted. In a “settlement agreement,” the City agrees to withdraw a previously filed forfeiture petition.

Allen, at 716-18. To do so, the owner must follow the procedure for filing a motion for return of property set forth in Section 5806 of the Forfeiture Act. See 42 Pa. C.S. § 5806. Otherwise, the seized property may remain in the government's custody and the owner may lose his or her right to obtain its return. *E.g.*, *Allen*, at 716-18.

Notably, however, the Forfeiture Act provides a post-acquittal presumption. In cases where an owner is acquitted of all related crimes which authorize forfeiture, a rebuttable presumption is created that the property was lawfully used or possessed by the claimant. In these cases, the owner of the property is entitled to a hearing under § 5806 (described below). It should be noted that "acquittal" does not include plea agreements, acceptance of ARD, or any other form of preliminary disposition. 42 Pa. C.S. § 5805(m).

1. Forfeiture Act: Motion for Return of Property under § 5806.

Effective July 1, 2017, the Pennsylvania legislature added provisions to the Forfeiture Act addressing the procedure for obtaining the return of seized property. 42 Pa. C.S. § 5806. To obtain the return of seized property, an individual who believes that he or she is entitled to lawful possession of the property may file a motion in the court of common pleas in the judicial district where the property is located, and serve a copy of that motion on the Commonwealth. 42 Pa. C.S. § 5806(a)(1)-(2).

2. Contents of Motion.

A motion for the return of seized property should contain the basic information related to a seizure of property. It should describe "the nature and extent of the movant's right, title or interest in the property," as well as the "time and circumstance of the movant's acquisition of the right, title or interest in the property." It should also include any additional facts supporting the movant's claim, including: (i) a description of the property seized; (ii) a statement of the time and place where the property was seized, if known; (iii) the owner, if known; and (iv) the person in possession, if known. 42 Pa. C.S. § 5806(b)(2).

In addition to providing the basic information related to the property and seizure (listed above), the movant must also identify the relief sought, which may include: (i) return of the property; (ii) reimbursement for the movant's legal interest in the property;

(iii) severance of the movant's property from the forfeited property; and (iv) any relief the court deems appropriate and just. 42 Pa. C.S. § 5806(b)(3).

E. Criminal Rule 588: Motion for Return of Property

1. In General.

To obtain the return of seized property, an individual who believes that he or she is entitled to lawful possession of the property must timely file a *Rule 588 Motion for Return of Property* in the court of common pleas for the judicial district in which the property was seized. PA. R. CRIM. P. 588(A); see *Allen*, 107 A.3d at 716-18. A Rule 588 motion refers to Rule 588 of the Pennsylvania Rules of Criminal Procedure, which provides the method for requesting a court to return seized property. A Rule 588 motion is the proper method to obtain the return of seized property *regardless of whether the Commonwealth files criminal charges or files a forfeiture petition against the seized property*. E.g., *Commonwealth v. Johnson*, 931 A.2d 781, 783 (Pa. Commw. Ct. 2007) (“[M]otions to secure the return of property seized by police are initiated pursuant to Pa. R. Crim. P. 588.”).

2. Contents of Motion.

A Rule 588 motion for return of property should contain the basic information relating to the seizure of property. It should include the name and address of the movant, the date of the seizure, the place of the seizure, a description of the property seized, the movant's relationship to the seized property, the property receipt number provided by the police (and a copy of the property receipt, if available), whether criminal charges were filed, the reason for requesting the return of the property, and the exact sum or property sought to be returned. The motion must be signed by the movant and the statements in the motion verified to be true and correct subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities. In light of this unsworn verification, the motion does not need to be notarized.

A Rule 588 motion may be joined with a motion to suppress evidence under Rule 581 of the Pennsylvania Rules of Criminal Procedure, but note that they are separate motions and should not be confused.

If a Rule 588 motion is granted by the court, the property will be returned unless the court should determine that the property is contraband (in other words, the property is by its nature illegal, such as illicit drugs). In such a case, the court may order the property to be forfeited.

3. Time Requirements for Filing Rule 588 Motion.

There are important time requirements that apply to Rule 588 motions. The Pennsylvania Supreme Court has ruled that a person accused of a crime must file a motion for return of property during the pendency of his criminal proceedings or within 30 days following the disposition of the criminal charges; otherwise, the right to request the return of property from the court will be waived. See *Allen*, 107 A.3d at 717. "It is the search and seizure of the property . . . [not the criminal trial] . . . that triggers the ability to seek return of the seized property." *Id.* The Pennsylvania Supreme Court *has not* ruled on the time requirements for filing a Rule 588 motion when it is a third-party claim for the return of seized property. In *Allen*, the Court expressly limited its holding to the facts of the case before it; namely, when a party to the underlying criminal proceeding seeks the return of seized property in connection to that criminal proceeding. *Id.* at 717 n.10. Therefore, it remains unclear whether there is any time requirement for the filing of a Rule 588 motion by a property owner whose property is seized by the police and is never accused of a crime. Nonetheless, it is advisable to file a Rule 588 motion as quickly as possible following the seizure of property by the police.

4. Sample Rule 588 Motion: Philadelphia County.

a. In General: Rule 588 Motions in Philadelphia County.

On August 11, 2016, Philadelphia County adopted a new local Rule 588 of the Philadelphia Rules of Criminal Procedure to supplement Pennsylvania Rule 588 of the Pennsylvania Rules of Criminal Procedure. See Administrative Order No. 02 of 2016 issued by Judge Jacqueline F. Allen, Administrative Judge, Trial Division of the Court of Common Pleas, Philadelphia County, *available at* <http://www.courts.phila.gov/pdf/regs/2016/cp-aj-ad-02-2016.pdf>, and included in the Appendix to this Manual.

Under this local rule, the aggrieved person does not have to wait for criminal charges to be filed, and the relief sought may be the temporary return of the property (pending the disposition of the criminal case) or the permanent return of the property. Even if criminal charges are not filed, a motion under Rule 588 should be filed to obtain a return of seized property. Under current law, there is no right to have an attorney appointed at public expense in connection with a motion for return of property. A low-income person may represent him or herself, seek free legal assistance from a nonprofit organization, or hire an attorney.

In Philadelphia, if criminal charges have been filed against the owner of the property or person in possession of the property, the motion will be assigned the CPCMS number assigned to the criminal case. If no criminal charges have been brought, the motion will be assigned a Miscellaneous Docket number.

Under Administrative Order No. 02 of 2016, Philadelphia County has adopted a standard form for filing a Motion for Return of Property, which is available online at : <https://www.courts.phila.gov/pdf/forms/criminal/Motion-for-Return-of-Property-Packet.pdf> and is attached to the manual in the Appendix. In addition to the previously described identifying information related to the seizure, the form asks whether the movant requests a prompt hearing to obtain the return of seized property, or whether the movant is filing the motion to preserve the right to request the return of the seized property at a later date. The latter option may be appropriate where there are pending criminal charges and the movant wants to preserve the timeliness of the motion but does not want to jeopardize his or her rights relating to the defense of those criminal charges.

b. Procedure for Filing a Rule 588 Motion in Philadelphia County.

- i. The standard form cited above requires you to provide identifying information about yourself, describe the property seized, and provide a specific reason for requesting the return of the property. You will be required to sign the motion and verify the truthfulness of the statements under penalty of perjury (statements are subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities). When completed, the Rule 588 Motion for

Return of Property should be filed at the Office of Judicial Records via the Motion Counter on the second floor of the Criminal Justice Center. When facing the cut-outs on the Second Floor, it is the cut-out on your left. There is a filing fee of \$12.50 (as of May 2017). Note that the filing office may require you to file a separate Rule 588 motion for each property receipt you have. You may be able to file the motion IFP (*in forma pauperis*) and ask the court to waive the filing fee, but that may delay the actual filing and so be careful to observe any time requirements for filing.

- ii. You should attach a copy of the Police Property Receipt to the Rule 588 Motion. If you do not have a copy of the Property Receipt but know the Police Property Receipt Number, you should be certain to put that number in the Motion.
- iii. Under Rule 588, you are required to serve a copy of the filed Motion on the Commonwealth through the District Attorney's Office, and an affidavit of service should be attached to the filing. However, the District Attorney's Office has agreed to accept service of the Motion directly from the Office of Judicial Records, and therefore you should just bring an additional copy of the Motion with you at the time of filing so that the Office of Judicial Records can accept the copy and serve the District Attorney's office for you. [If the property has been seized by state police authorities, rather than by the Philadelphia Police, the Commonwealth should be served through the Pennsylvania Attorney General's office. The Pennsylvania Attorney General's office has also agreed to accept service directly from the Office of Judicial Records and therefore an additional copy should be brought to the Office of Judicial Records at the time of filing].
- iv. You may also file a motion to suppress evidence under Criminal Rule 581 along with your Motion for Return of Property, if appropriate.
- v. When the court schedules a hearing date, you must attend and be prepared to prove to the court that you are entitled to the return of your property (either temporarily or permanently). Failure to appear may result in your Motion

being dismissed or denied.

- vi. In Philadelphia, the case will usually be listed at 8:00 a.m. at the Criminal Justice Center. At 8:30 a.m. a trial commissioner will take the bench, deliver an explanatory statement, and then engage in a call of the list. There is no judge at the outset while the trial commissioner manages the court list. The presiding judge will usually take the bench later after the call of the list is completed and will hear any motions or other matters requiring court orders or rulings.

A property owner of real property arriving at the courtroom should check in with the clerk of the court. When the assistant district attorney assigned to that case arrives, he or she will generally discuss the status of the case with the property owner or his or her counsel if the owner is represented.

- vii. The presiding judge assigned to the motion may require that an Answer be filed to the motion. In Philadelphia County, an answer is typically not required. This allows the assistant district attorney to propound interrogatories to the claimant at their first appearance, often promising that the property may be recoverable that same day if the interrogatories are completed on the spot. Counsel should weigh whether time permits a complete and appropriate response to the interrogatories, including appropriate objections, on the spot in court that day. For guidance on responding to interrogatories, see Section VI(B)(3).
- viii. Following completion of interrogatories, there will usually be an opportunity to negotiate with the assistant district attorney for the return of property prior to the presiding judge actually hearing the motion. Upon settlement, a simple order is presented to the presiding judge to approve the unopposed grant of the motion for return of property.
- ix. If the Motion is granted by the Court, you should arrange with the Forfeiture Unit of the District Attorney's office for the return of your property. (Note that with your order granting return of your property you may still be required to make multiple stops at City Hall and/or Police Headquarters in order to actually obtain your property).

- The forfeiture unit of the Philadelphia DA's office (Public Nuisance Task Force Unit) is located at Three South Penn Square, Corner of Juniper and South Penn Square, Philadelphia, PA 19107-3499, (215) 686-8000.
- If the property was seized by state police authorities, you should arrange for the return of your property by contacting the Office of the Pennsylvania Attorney General, Asset Forfeiture and Money Laundering Section, 7801 Essington Avenue, Philadelphia, PA 19153, at (215) 937-1346.

5. **Sample Rule 588 Motion: Outside of Philadelphia County.**

The Lehigh County Law Library has prepared a sample, one-page form for the Return of Tangible Evidence or Property. The sample form is provided in the appendix for convenience only; it is not intended to be legal advice and *should not* be treated as such. The form can be downloaded at the following web address: www.lccpa.org/pathfinder/ReturnTangibleEvidencePropertyPathfinder.pdf.

6. **Important Practice Tips.**

There are important issues to consider when seeking the return of property that is seized by the police. Two such issues are as follows:

- i. Statements made in a Rule 588 Motion are under oath and may be used against the person filing the motion. Therefore, a person whose property is seized may want to consult an attorney before filing a motion for return of property, especially if criminal charges have been filed, or are likely to be filed, against the person filing the motion for return of property.
- ii. If a car (or other property requiring third-party storage) is seized, the prosecutor may attempt to charge the owner storage fees for each day that the car or other property remains in third-party storage. In Philadelphia, it has been the practice of the District Attorney's office to stop assessing storage fees upon the filing of a Rule 588 motion. Therefore, the Philadelphia DA has required that a car owner pay storage fees from the date of the seizure of a car until the date that a Rule 588 motion is filed with the court. Once the motion is filed, the DA stops assessing storage fees against the owner. Since daily storage fees can be

substantial, there is a direct financial benefit in filing a Rule 588 motion as quickly as possible after a vehicle seizure occurs. Of course, whether a movant is required to pay any storage fees at all is a matter for negotiation with the prosecutor and ultimately, if no agreement is reached, an issue to be decided by the court.

7. **Burden of Proof at a Return of Property Hearing**

A party seeking return of seized property has the burden to prove by a preponderance of the evidence that he or she is entitled to lawful possession of the property at issue. *Commonwealth v. Wolfgang*, 97 A.3d 1274, 1279 (Pa. Commw. Ct. 2014); *Commonwealth v. Morelli*, 55 A.3d 177, 180 (Pa. Commw Ct. 2012). The movant bears the initial burden of coming forth with evidence of lawful entitlement to possession of the property. *In re Firearms, Eleven*, 922 A.2d 906, 912 (Pa. Super. Ct. 2007). A motion for return of property should be granted where the movant has presented the common pleas court with credible evidence of ownership of or entitlement to the property that is the subject of the motion. *Commonwealth v. Janda*, 14 A.3d 147, 167 (Pa. Super. Ct. 2011).

Once the moving party meets the initial burden of establishing entitlement to lawful possession of the property, the Commonwealth must prove by a preponderance of evidence that that property is contraband *per se* or derivative contraband. *Commonwealth v. Crespo*, 884 A.2d 960 (Pa. Commw. Ct. 2005).

- Contraband *per se* is property the mere possession of which is unlawful, such as heroin or other illegal drugs. *Commonwealth v. One 2001 Toyota Camry*, 894 A.2d 207, 210 (Pa. Commw. Ct. 2006) *overruled on other grounds by Commonwealth v. Irland*, 153 A.3d 469 (Pa. Commw. Ct. 2017). An unregistered handgun is not contraband *per se*. See, e.g., *City of Cleveland v. Fulton*, 898 N.E.2d 983, 988-89 (Ohio Ct. App. 2008).
- Derivative contraband is property that is innocent by itself but which is used in perpetration of an unlawful act, such as a car that is used to transport illegal goods. See *Wolfgang*, 97 A.3d at 1279. Firearms used in the perpetration of an unlawful act constitute derivative contraband. *In re Firearms, Eleven*, 922 A.2d 906, 911 (Pa. Super. Ct. 2007).

When there are disputed issues of fact, the common pleas court

must hold an evidentiary hearing. *Commonwealth v. Howard*, 931 A.2d 129 (Pa. Commw. Ct. 2007). See also *Commonwealth v. \$4,522.00 U.S. Currency*, 2015 WL 5436833, at *2 (Pa. Commw. Ct. Apr. 14, 2015) (unreported panel decision).^[**]

Review of a trial court's decision on a petition for return of property is limited to examining whether the findings of fact were supported by competent evidence and whether the trial court abused its discretion or committed legal error. *Commonwealth v. Johnson*, 931 A.2d 781, 783 n. 2 (Pa. Commw. Ct. 2007).

IV. Commencement of a Civil Forfeiture Action

A. How a Civil Forfeiture Action is Commenced; Nature of Action

1. A Civil Forfeiture Action is Commenced by the Government's Filing of a Forfeiture Petition.

Following the government's seizure of property under the Forfeiture Act, the government may—but is not required to—commence a civil forfeiture action by filing a forfeiture petition against the seized property in the court of common pleas for the jurisdiction in which the property is seized or located. 42 Pa. C.S. § 5805(a); see, e.g., *Commonwealth v. Smith*, 757 A.2d 354, 358 (Pa. 2000) (“[B]oth the [Forfeiture Act] and case law make clear that it is improper to award forfeiture unless a request for such forfeiture has been ‘duly made’.” (citing 42 Pa. C.S. § 6802(a) (replaced by 42 Pa. C.S. § 5805(a) on July 1, 2017))).

The government's seizure of property *does not* automatically initiate a civil forfeiture action against that property. See, e.g., *Commonwealth v. Pomerantz*, 573 A.2d 1149, 1150-52 (Pa. Super. Ct. 1989). Similarly, a court's denial of a Rule 588 motion for return of seized property *does not* automatically initiate a civil forfeiture action against the seized property. See *id.*

2. A Civil Forfeiture Action is a Civil, *In Rem* Proceeding

The Forfeiture Act provides that “proceedings for the forfeiture or condemnation of property, the sale of which is provided for in [the Forfeiture Act], shall be in rem, in which the Commonwealth shall be the plaintiff and the property the defendant.” 42 Pa. C.S. § 5805(a). See also *Commonwealth v. Black 2009 Ford Mustang*, 125 A.3d 493, 498 (Pa. Commw. Ct. 2015) (“[A] [forfeiture] proceeding under the [Forfeiture Act] is a civil, *in rem*

proceeding.”). [In Philadelphia County practice, a local court administrative order refers to the government as the “petitioner”, the property as the “respondent”, and the person asserting a claim in defense of his or her legal interest in the property as the “claimant”. See Philadelphia Court Administrative Order 02 of 2016 in the Appendix.

B. Time for Commencement of a Civil Forfeiture Action

Pennsylvania statutory law provides a two-year statute of limitation period for the commencement of “[a]n action upon a statute for a civil penalty or forfeiture”. 42 Pa. C.S. § 5524(5); see *Allen*, 107 A.3d at 715. If the government files a forfeiture petition more than two years after the seizure of property, the petition is subject to dismissal upon assertion of a statute of limitation defense. See, e.g., *Allen*, 107 A.3d at 715.

C. In addition, where property subject to civil forfeiture under the Forfeiture Act is seized without process, the government must commence civil forfeiture proceedings against that property “as soon as feasible.” 42 Pa. C.S. § 5803(c).⁴ Time to Respond to a Forfeiture Petition: Filing an Answer or Motion to Stay

A property owner must respond to the forfeiture petition by filing an answer within 30 days of service of the forfeiture petition. § 5805(a)(2)(i). Alternatively, if a claimant has been criminally charged in a case associated with the forfeiture matter, that claimant may instead file a motion to stay the civil forfeiture proceedings prior to filing an answer to the forfeiture petition. § 5805(a)(2)(ii)(A) (“If the motion is properly filed, it shall be granted.”) The claimant then has 30 days from the date the stay is lifted to file an answer. § 5805(a)(2)(ii)(B).

4 Under prior practice, the government was required to commence civil forfeiture proceedings against seized property “forthwith.” § 6801(c) (repealed on July 1, 2017). In this context, “forthwith” meant “within a reasonable period of time” and without prejudicial delay to the property owner. *Smith*, 757 A.2d at 358. Under this provision, it could be argued that a forfeiture petition that was filed after delay and with prejudice to the property owner was subject to dismissal even if it was filed within the two-year limitations period.

D. Contents of Forfeiture Petition

The Forfeiture Act provides that a forfeiture petition must be “verified by oath or affirmation of an officer,” 42 Pa. C.S. § 5805(a), and must contain the following information:

- (1) A description of the property actually seized or constructively seized, including, but is not limited to, if known, the address of any real property, the exact dollar amount of any United States currency, or the approximate value of any negotiable instrument or security and the make, model, year and license plate number of any vehicle;
- (2) A statement of the time and place where seized;
- (3) The owner, if known;
- (4) The person or persons in possession at the time of seizure, if known;
- (5) An allegation that the property is subject to forfeiture [under the Forfeiture Act] and an averment of material facts supporting the forfeiture action;
- (6) A prayer for an order of forfeiture that the property be adjudged forfeited to the Commonwealth unless cause be shown to the contrary.

§ 5805(a)(1).

In Philadelphia County, a civil forfeiture proceeding begins with the filing of a forfeiture petition with the Office of Judicial Records, Criminal Section. The petition should be electronically filed as provided in Philadelphia Criminal Rule 576, however the Office of Judicial Records will accept a paper filing at the Motion Counter located on the second floor of the Criminal Justice Center. When facing the cut-outs on the Second Floor, it is the cut-out on your left. See Philadelphia (First Judicial District) General Court Regulation No. 02 of 2016, available online at <https://www.courts.phila.gov/pdf/regs/2016/GCR-02-2016.pdf> and included in this Manual in the Appendix.

Philadelphia General Court Regulation No. 02 of 2016 specifically requires that the Petition contain the following:

- (a) A description of the property seized or subject to forfeiture.
- (b) A statement of the time and place where seized, as applicable.
- (c) The owner, if known.
- (d) The person or persons in possession, if known.
- (e) The related Offense Tracking Number (OTN), CPCMS criminal case number, and the criminal complaint, if applicable.
- (f) The Property Receipt which describes the property seized.
- (g) The Philadelphia Tracking Number (PID) of the claimant, if issued.
- (h) The Philadelphia Police Department District Control number (DC#) associated with the seizure of the subject property, if one exists.
- (i) An allegation that the property is subject to forfeiture pursuant to section [5802] (relating to controlled substances forfeiture) . . . and an averment of material facts upon which the forfeiture action is based.
- (j) A prayer for an order of forfeiture that the property be adjudged forfeited to the Commonwealth and sold according to law, unless cause be shown to the contrary.
- (k) A verification pursuant to Pa.R.C.P. No. 1024 signed by the attorney for the Commonwealth.

E. Service of Process in Civil Forfeiture Proceedings

1. Service of Process; In General

Where the government files a civil forfeiture petition, it must serve a copy of the forfeiture petition "personally or by certified mail" on the owner, if known, and on each person in possession at the time of seizure. 42 Pa. C.S. § 5805(b). This copy of the forfeiture

petition must be “signed by the Attorney General, deputy attorney general, district attorney, deputy district attorney or assistant district attorney” and contain “accurate contact information for the signatory.” *Id.* Further, the copy must include the following notice:

To the claimant of within described property: You are required to file an answer to this petition, setting forth your title in, and right to possession of, said property within 30 days from the service hereof, and you are also notified that, if you fail to file the answer, a decree of forfeiture and condemnation will be entered against said property.

Id.

The Commonwealth Court has held that this notice must include the “notice of right to be represented by counsel provision found in [PA. R. Civ. P. 1018.1(b)]” *Commonwealth v. 2338 N. Beechwood St.*, 134 A.3d 507, 517 (Pa. Commw. Ct. 2016).

The Forfeiture Act also provides for substitute notice (by publication) in the event “the owner of the [seized] property is unknown, there was no person in possession of the property when seized or if the owner or each person in possession at the time of the seizure cannot be personally served or located within the jurisdiction of the court” 42 Pa. C.S. § 5805(c). Notice of the petition must be in the form of an advertisement in at least one newspaper of general circulation published in the county where the property was seized. *Id.*

Importantly, Section 5805(d.1) of the Forfeiture Act also requires that the Commonwealth file “proof of notice” with the court. The Commonwealth must file proof of notice regardless of how service occurs. The court may not grant a forfeiture petition unless there is proof that the notice requirements under the Forfeiture Act have been met. 42 Pa. C.S. § 5805(d.1). Under prior practice, proof of notice was not required.

Finally, 42 Pa. C.S. § 5805(e) provides for waiver of notice (and default judgment) in certain circumstances: “The notice provisions of [§ 5805] shall be automatically waived if the owner [of the seized property], without good cause, fails to appear in court in response to a subpoena and a bench warrant is issued on the underlying criminal charges [if any]. If good cause has not

been demonstrated, the Commonwealth may move for default judgment." § 5805(e).

2. Service of Process; Procedural Requirements Specific to Philadelphia County

Philadelphia (First Judicial District) General Court Regulation No. 02 of 2016 provides that a forfeiture petition shall be served on the owner of the property or upon the person(s) in possession of the property at the time of seizure. Service shall be by personal service or by certified mail.

General Court Regulation No. 02 of 2016 provides that if the owner or person in possession at the time of seizure cannot be personally served or located within the jurisdiction of the court, as determined in [42 Pa.C.S. § 5805(d)], notice shall be by publication through an advertisement in only one newspaper of general circulation published in the county where the property was seized, once a week for two successive weeks. No other advertisement is required accordingly to the Philadelphia Court Regulation, notwithstanding any other law to the contrary. This notice shall contain a statement of the seizure of the property, a description of the property, the date and place of the seizure, and shall direct any claimants to file a claim on a date not less than 30 days from the date of the first publication. If no claim is filed within 30 days of the last publication, the Court Regulation provides that "the property shall summarily forfeit to the Commonwealth." See Court Regulation, paragraph 6, in the Appendix.

The Court Regulation also requires that "immediately upon service," the Petitioner shall file an affidavit of service with the Office of Judicial Records, Criminal Section, and certificates of mailing or publication notices be attached, as applicable.

3. Time for Service of Process

The Commonwealth Court has held that service requirements under PA. R. Civ. P. 401 (governing service of original process and reinstatement of civil actions) apply to forfeiture actions brought under the Forfeiture Act. *Commonwealth v. Neighbor's First Fed. Credit Union Check in Amount of \$76,389.27*, 134 A.3d 149, 157 (Pa. Commw. Ct. 2016). Essentially, the *Check in Amount of \$76,389.27* case holds the following:

- i. When the Commonwealth files a forfeiture petition under the Forfeiture Act, the Commonwealth must serve original process on the appropriate person(s) (per 42 Pa. C.S. § 5805(b)) within 30 days after filing the petition. *Check in Amount of \$76,389.27*, 134 A.3d at 157 (citing PA. R. Civ. P. 401(a)).
- ii. "In the event that [original] process is not served within 30 days, 'the prothonotary upon praecipe and upon presentation of the original process, shall continue its validity by . . . reinstating the [forfeiture petition].'" *Check in Amount of \$76,389.27*, 134 A.3d at 157 (quoting PA. R. Civ. P. 401(b)(1)). Therefore, if the government fails to serve the forfeiture petition within 30 days after filing, and subsequently serves the forfeiture petition without first reinstating the petition, the action is subject to dismissal upon motion of the property owner.

F. Immediate Return of Seized Property.

In the new forfeiture statute (effective July, 1 2017) a claimant to property subject to forfeiture may seek immediate release of seized property if the following conditions are met:

- i. the claimant has a possessory interest in the property;
- ii. the claimant has sufficient ties to the community to provide assurance that the property will be available at the time of the trial;
- iii. the continued possession by the Commonwealth pending the final disposition of forfeiture proceedings will cause substantial hardship to the claimant, such as preventing the functioning of a legitimate business, preventing the claimant from working or leaving the claimant homeless; [and]
- iv. the claimant's likely hardship from the continued possession by the Commonwealth of the seized property outweighs the risk that the property will be destroyed, damaged, lost, concealed or transferred if the property is returned to the claimant during the pendency of the forfeiture proceeding.

42 Pa. C.S. § 5805(f)(1). The procedure for seeking immediate release of seized property is detailed at §§ 5805(f)(2)-(7).

However, a claimant may not seek immediate release of seized property if the property falls into any of these four categories: (i)

contraband; (ii) evidence, including proceeds from a violation of law; (iii) particularly suited for use in illegal activities; or (iv) likely to be used to commit additional criminal acts if returned to the claimant. § 5805(f)(6).⁵

V. Obtaining Docket Entries of Civil Forfeiture Cases

- In the past, locating docket entries of civil forfeiture cases filed in Philadelphia County has not been easy. Historically, a civil forfeiture case was commenced in the Trial Division's civil filing office (currently renamed Office of Judicial Records), where it was assigned a traditional Common Pleas civil docket number, such as "March Term, 2014, No. 3056". After this docket was created, the civil forfeiture case was transferred to the Criminal Section where it was assigned a Miscellaneous Docket Number. Essentially, each civil forfeiture case had two docket entry addresses: (i) the original filing of the civil forfeiture petition with a C.P. court term and docket number, and (ii) most subsequent court dates and proceedings docketed under the Criminal Section's miscellaneous docket number. If a jury trial was demanded, the case was transferred back to the Civil Section where a case management order would issue under the C.P. court term and docket number. In short, to see all proceedings related to a civil forfeiture case, it was necessary to check all entries under both the C.P. court term and docket number and the Criminal Section's miscellaneous docket number. Civil forfeiture petitions are *in rem* proceedings brought against the property, and therefore their captions are untraditional (Commonwealth v. \$34,015 U.S. Currency; or Commonwealth v. 1993 Toyota Corolla, for example), and thus they can be difficult to search and locate electronically when name searching.

5 Under prior practice, upon application of the Commonwealth, a court could enter a restraining order or injunction, require a bond, or take other action to preserve the property. Such judicial action extended for not more than 90 days unless extended for good cause shown. Also under prior practice, a temporary restraining order could be entered without notice or opportunity for hearing if there was probable cause to believe that the property was subject to forfeiture and notice will jeopardize the availability of the property for forfeiture. At such a hearing, when held, a court was permitted to receive hearsay evidence. These provisions appeared in the prior statute, but do not appear in the new statute (effective July 1, 2017).

- However, advances in electronic filing are beginning to change this and, hopefully, will make it easier to locate the dockets of civil forfeiture cases. This remains a work in progress as paper filings are still accepted as of the writing of this description and it is prudent to check all possible entries in both the Civil and Criminal Sections to get a complete picture of the history of a civil forfeiture case.
- Additionally, traditional C.P. dockets that appear with a term, year, and docket number (for example, March Term, 2014, No. 3056) are translated into 9 digit numbers for electronic filing and accessing. The 9 digit number consists of the first two numbers for the year, the next two numbers for the month, and the final numbers for the chronological docket number within the monthly term. So, March Term, 2014, No. 3056 is translated into the following 9 digit number: 140303056. May Term, 2016, No. 45 is translated into the following 9 digit number: 160500045.
- Beginning in 2016, civil forfeiture petitions are intended to be managed through the statewide Court of Common Pleas Case Management System (CPCMS). Docket entries should now look as follows: CP – 51- MD - _ _ _ _ _ - _ _ _ _ . CP stands for Court of Common Pleas, 51 represents the numerical code for Philadelphia County (each county has its own code number – for example, Bucks County is 09), MD stands for Miscellaneous Docket, the docket number is listed as the next few numbers, and the final four numbers represent the year the petition was filed.
- In addition to this official docket number for the case, the caption of a civil forfeiture petition may also list several other important numbers that may be very helpful in locating related proceedings: OTN# (Offense Tracking Number), DC# (District Control Number), and PR# (Property Receipt Number of Property Seized).
- To access dockets of civil forfeiture proceedings as well as criminal proceedings, visit the on-line Unified Judicial System of Pennsylvania Web Portal by doing the following:
 - ▶ First, enter the following address in the address bar of your web browser: <http://ujportal.pacourts.us/DocketSheets/CP.aspx>
 - This will bring you to a webpage maintained by the Pennsylvania Unified Judicial System where you can search docket sheets of the Courts of Common Pleas of Pennsylvania (the “Docket Search Page”). Scroll down and you will see the boxes to select a Common Pleas or Municipal Court docket

search.

- ▶ Second, at the Docket Search Page, select the type of docket search you want to conduct and then input the specific information requested by the webpage. By default, the docket number search comes up and if you know the docket number you can place it in the box right below, following the required format which is illustrated there. If, however, you do not know the docket number, you may press the down arrow next to the words “Docket Number” in the Search Type box and bring up several other choices, such as Name search or Offense Tracking Number search.
- ▶ Third, after placing the required search type and required information into the boxes, you should pull up the information you are searching for. If information is located, it will come up as a line item with such things as Docket #, Short Caption, Filing Date, County, Party, Case Status, OTN, etc. Select the correct one and click on the graphic at the left of the line. That will bring up two choices: Docket Sheet and Court Summary. You should view both and may want to print them out in hard copy for future reference.

VI. Defending Private Property Against A Civil Forfeiture Petition

- **Initial Review of Petition:** At the outset, it is important to carefully review the forfeiture petition and all allegations of service of process to determine if the forfeiture petition was properly served and, if so, whether the Commonwealth has met the pleading requirements of the Forfeiture Act and has alleged the necessary elements required to state a prima facie case for civil forfeiture under Pennsylvania civil forfeiture law. If the forfeiture petition fails to state sufficient facts that enable the property owner to respond to the government’s request for forfeiture, or if it fails to state a cause of action upon which relief may be granted, the petition may be subject to dismissal upon the filing of a preliminary objection under the Pennsylvania Rules of Civil Procedure.
- **Pretrial Conference (Philadelphia-specific):** In Philadelphia County, the Office of Judicial Records is required to schedule a Pretrial Conference within 30 days from the date the Petition is served on the owner or person in possession at the time of seizure of the property. A sample notice scheduling the Pretrial Conference is attached in the Appendix. [See Attachment B of Court Regulation]. This is a new requirement, but may or may not be followed at the current time. The Pretrial Conference is intended to address a range

of issues that include discussion of service of process, the filing of an Answer, representation by counsel, a jury demand, any actual or potential agreements, disputed factual issues, discovery, a stay of forfeiture pending outcome of criminal charges, scheduling of a hearing on the merits, and any other issues. See Notice of Pretrial Conference for a statement of the issues that will be addressed. Please note that this is the practice used in Philadelphia County. The practice may differ in other Pennsylvania counties.

- **Application of the Pennsylvania Rules of Civil Procedure:** The Pennsylvania Rules of Civil Procedure [the “Rules”] apply in civil forfeiture proceedings to the extent that the Rules do not conflict with the Forfeiture Act. *Commonwealth v. 605 University Drive*, 104 A.3d 411, 427-28 (Pa. 2014).

A. **Step One: Initial Pleading Requirements**

1. **Preliminary Objections**

While a claimant will most often file an answer to a civil forfeiture petition, a claimant should also consider whether preliminary objections are proper and should be filed under the Pennsylvania and Philadelphia Rules of Civil Procedure, or otherwise preliminary objections may be waived. Compare the pleading (and service) requirements set forth in Section IV above (including any applicable cross-reference(s)) with the allegations of the forfeiture petition to determine whether it is in the property owner’s interest to file preliminary objections to the petition. For example, you might ask:

- (1) Was the owner of the seized property properly served with the forfeiture petition?
- (2) Is there a sufficient statement of material facts as to the basis for why the property is subject to forfeiture?
- (3) Has the government stated a cause of action upon which relief may be granted under Pennsylvania law?

2. **Filing a Motion to Stay**

Prior to filing an answer to a forfeiture petition, a claimant may file a motion to stay the forfeiture proceedings if the claimant has been criminally charged in a case associated with the forfeiture matter. After the stay is lifted, the claimant will have 30 days to

file an answer in the forfeiture proceedings. 42 Pa. C.S. § 5805(a)(2)(ii). This provision is consistent with the Forfeiture Act's new procedure following acquittal, which provides that a rebuttable presumption that the property was lawfully used or possessed by the claimant applies if that claimant has been acquitted of all crimes authorizing the forfeiture. See 42 Pa. C.S. § 5805(m). Both provisions appear in the new Forfeiture Act (effective July 1, 2017).

3. Immediate Release of Property

A claimant to property subject to forfeiture is permitted to seek the immediate release of seized property if four conditions are met: **(i)** the claimant has a possessory interest in the property; **(ii)** the claimant has sufficient ties to the community to provide assurance that the property will be available at the time of the trial; **(iii)** the continued possession by the Commonwealth pending the final disposition of forfeiture proceedings will cause substantial hardship to the claimant, such as preventing the functioning of a legitimate business, preventing the claimant from working or leaving the claimant homeless; [and] **(iv)** the claimant's likely hardship from the continued possession by the Commonwealth of the seized property outweighs the risk that the property will be destroyed, damaged, lost, concealed or transferred if the property is returned to the claimant during the pendency of the forfeiture proceeding. 42 Pa. C.S. § 5805(f)(1).

However, a claimant may not seek immediate release of seized property if the property falls into any of these four categories: (i) contraband; (ii) evidence, including proceeds from a violation of law; (iii) particularly suited for use in illegal activities; or (iv) likely to be used to commit additional criminal acts if returned to the claimant. 42 Pa. C.S. § 5805(f)(6).

The procedure for seeking immediate release of property is detailed at 42 Pa. C.S. §§ 5805(f)(2)-(7).

4. Content of Answer and New Matter

If no preliminary objections lie, a claimant should file an Answer and New Matter, responding to the allegations of the civil forfeiture petition and asserting all affirmative defenses that are

appropriate to the case. As discussed in more detail in this manual, a claimant should carefully consider all possible general defenses as well as all affirmative defenses. Note, however, that it is advisable for a claimant to obtain relevant police documents, such as the police arrest report, before drafting responsive pleadings. These should be provided upon request by the assistant district attorney assigned to the case.

In an answer, a claimant should deny, where appropriate, any connection of the property to the alleged crime and assert that there is a lack of nexus between the property and the alleged criminal activity when the facts so dictate.

In *New Matter*, the claimant may raise any or all of the following affirmative defenses, among others:

- The government's forfeiture petition was not filed within the statutory two-year time limit for filing civil forfeiture actions, 42 Pa. C.S. § 5524(5) and thus is barred by the statute of limitations, or if filed within two years was not filed "as soon as feasible" as required by § 5803(c) of the Forfeiture Act and as a result the claimant was prejudiced;
- The claimant is an "innocent owner" of the property in that the claimant did not know or did not consent to the illegal activity on his or her property. Note that this is an "or" standard, not an "and" standard. Therefore, a claimant can show either that she did not know or did not consent (or both) to prevail. The statutory innocent owner defense is provided in the Forfeiture Act at 42 Pa. C.S. § 5805(j)(4).
- A forfeiture of the property would constitute an excessive fine in violation of the U.S. and Pennsylvania Constitutions. A constitutional "excessive fines" defense is provided under the Eighth Amendment of the U.S. Constitution and Article I, Section 13 of the Pennsylvania Constitution. A statutory "excessive fines" defense is also provided in the Forfeiture Act at 42 Pa. C.S. § 5805(k) (permitting defense where the court finds that the forfeiture is "grossly disproportional to the offense"). For an extended discussion of the "excessive fines" standard see *Commonwealth v. 1997 Chevrolet*, No. 68A-B-2016, (Pa. May 25, 2017), which is discussed in detail below in section VI.F(2) (Innocent Owner Defense).

A claimant may also consider whether to raise other constitutional defenses that go to how evidence was obtained by the police, or whether the forfeiture process itself violates due process guarantees. See, e.g., *Leonard v. Texas*, 137 S. Ct. 847, 848-50 (2017) (statement of Thomas, J. respecting denial of certiorari).

5. **Filing of Answer and New Matter**

You should prepare your response (usually Answer and New Matter) and, when ready, file it in Room 206 of the Criminal Justice Center (also known as the Motion Counter on the second floor) and serve it on the assistant district attorney.

- Note that the Motion Counter where you can file pleadings is accessible on the Second Floor of the Criminal Justice Center. When facing the cut-outs on the Second Floor, it is the cut-out on your left. The clerk will usually ask for an additional copy with which to provide a copy to the District Attorney's office. Note that electronic filing is new at the time of this edition of the Manual and for the time being the clerk's office should accept both electronic and hard copy filings.

The answer should include a verification, certificate of service, and a notice to plead (if affirmative defenses are raised). Or, you may bring the answer and related documents with you to the next court listing and file it on that day and hand a copy to the district attorney in the courtroom. There is no court cost for filing an answer to a forfeiture petition. Have the clerk of court time-stamp your file copy if you do not file electronically in case there is ever a question as to the filing.

In preparing an answer, consider raising all affirmative statutory defenses (innocent owner defense) and constitutional defenses (excessive fines and due process under state and federal constitutions) via New Matter, in addition to general denials. Again, the state and local Rules of Civil Procedure apply, except to the extent that they conflict with the Forfeiture Act. 605 *University Drive*, 104 A.3d at 427-28.

6. **Jury Demand; Perfecting Jury Demand**

A claimant has a right to a trial by jury in a civil forfeiture action. *Commonwealth v. \$1400 in U.S. Currency*, 667 A.2d 452 (Pa. Commw. Ct. 1995). See also Pa. Const. art. I, § 6;

Commonwealth v. \$3961.00 Cash, 1 A.3d 999 (Pa. Commw. Ct. 2010). A jury demand may be made by placing an endorsement on the Answer or other pleading or by a separate writing substantially in the form attached to General Court Regulation No. 02 of 2016 as attachment C and reprinted in the Appendix.

It is important to remember that a jury demand may not be unilaterally withdrawn once filed, and the right to have a jury trial will be waived if a demand for a jury is not timely asserted. Under Pa.R.C.P. 1007.1(a), a party must file a jury demand and serve a copy on the adverse party no later than 20 days after the last permissible pleading. If a claimant files an Answer and New Matter raising affirmative defenses, a claimant should have 20 days after the Commonwealth files a Reply to New Matter in which to demand a jury trial. However, if a claimant knows that he or she wants a jury, it may be advisable to place the jury demand right on the Answer so that there is no question of unintentional waiver.

If your client decides that a jury demand is desired, you not only need to file the demand as described above, but also you must perfect it as detailed by the requirements of Administrative Docket 07 of 2001 issued by the Court of Common Pleas, entitled "In Re: Jury Trial Demands in Drug Forfeiture Cases," a copy of which is included in this manual. Perfecting a jury demand will require that you submit a proposed order, jury demand, and praecipe to proceed in forma pauperis (if appropriate) to the judge presiding in Courtroom 504. You should arrange a time with the assistant district attorney to present this to the forfeiture judge. Once the order is signed, the case will be transferred to the Civil Division. The jury demand must then be perfected in the Civil Division in accordance with Administrative Docket 07 of 2001 (31 Pa.B. 3733). Note that there is a question as to whether this procedure has now been affected by Court General Regulation 02 of 2016. Further guidance from the Court may be needed.

If a jury demand is perfected, the case will be forwarded from the Criminal Motions Unit in the Criminal Justice Center to the Complex Litigation Center and managed as a standard civil case. Instead of being heard and decided by a judge sitting in the Criminal Justice Center, the case will be assigned to a supervising judge of the Complex Litigation Center and issued a case

management order that will set deadlines for discovery, expert reports, pre-trial conference, dispositive motions, etc., and which will place the case in a jury pool.

B. Step Two: Informal Investigation and Formal Discovery

1. Police Reports

It is important that a claimant commence informal discovery as soon as possible. This should begin with obtaining all relevant police arrest reports connected to the incidents in question. Generally, the district attorney will not attach the police report to the forfeiture petition, but will provide it to the claimant upon request. You should request it as well as any other documents filed by the district attorney in connection with the incident in question. You should also review the property receipt for the seizure of the property, if any, which your client should have in his or her possession. Note that, under the new Forfeiture Act, police officers are required to provide a property receipt to the person in possession of the property at the time of seizure that “provide[s] notice of the right...to seek the return of seized property.” 42 Pa. C.S. § 5803(e) (effective July 1, 2017). Of course, also search court docket entries and any other public court records.

2. *Brady* Rule Does Not Apply in Civil Forfeiture Proceedings

In *Brady v. Maryland*, 373 U.S. 83 (1963), the Supreme Court established that prosecutors are required to disclose to defense counsel certain evidence favorable to a criminal defendant. Specifically, the *Brady* Court held that “the suppression by the prosecution of evidence favorable to an accused upon request violated due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.” *Id.* at 87.

While the “*Brady* rule” has become a presumptive standard in modern criminal proceedings, it is important to note that it does not apply in civil forfeiture proceedings. As established in *Commonwealth v. 542 Ontario Street*, 989 A.2d 411 (Pa. Commw. Ct. 2010), and other cases, there is a clear distinction between criminal proceedings and civil forfeiture proceedings. In *Commonwealth v. \$25,483.00 U.S. Currency*, No. 1643 C.D. 2010 (Pa. Commw. Ct. June 1, 2011),^[**] the Court held that the *Brady*

rule does not apply in civil forfeiture proceedings. *Id.*, slip op. at 8.

3. Interrogatories

- Interrogatories Propounded to Property Owner: After an answer to a forfeiture petition has been filed (or a Rule 588 motion for return of property is filed), the government will usually propound interrogatories to the property owner to determine additional information, under oath, regarding the owner's claim of ownership; knowledge of activities at issue in the case; list of residents (if real estate); and generally more background information depending on the nature of the property. Often, the assigned assistant district attorney will hand a set of interrogatories to you in court. These can be quite voluminous, sometimes running more than 60 questions in total. Review these interrogatories carefully to determine if information is requested that is irrelevant, privileged, or otherwise objectionable. Assert appropriate objections to protect the rights of your client and to limit the scope of the proceedings. In the past, interrogatories have tended to be overly broad and often request information that goes beyond discovery requirements. If so, and depending on the outlook of the case, you should consider whether it may be in your client's interest to both object to the discovery and still provide some information in response, without waiving any rights, if it will help the assistant district attorney come to an informed, favorable understanding of your client's case.
- Time for Response to Interrogatories: While the rules of civil procedure require a response within thirty (30) days, the usual practice in Philadelphia County that is followed by the district attorney's office is to give you until the next court listing (usually more than thirty days) in which to provide responses under oath. You should discuss that with the assistant district attorney on the case. Interrogatories and responses are not filed with the court. While awaiting responses to interrogatories, the court marks any court listings as "status of interrogatories."
- Propounding Discovery to the District Attorney's Office: You should also consider whether to propound discovery to the district attorney's office on behalf of the property owner. This

is a civil proceeding and the full range of civil discovery tools should be available to the property owner, including interrogatories, request for production of documents, depositions, and requests for admissions. There may be strategic reasons why you may want to hold off on extensive discovery until you know the district attorney's position in the case and whether an amicable agreement is possible.

- Investigation by Assistant District Attorney: After the assistant district attorney receives sworn responses to the interrogatories, the assistant district attorney will usually conduct an investigation and make a decision whether additional interrogatories are needed or whether there is now sufficient information upon which to decide whether to attempt settlement of the case or proceed to trial. The assistant district attorney will inform you of their position and, obviously, this is an area for significant advocacy by counsel for the property owner.

4. Depositions

The police report should provide a good list of individuals you may want to depose. In addition, you should ask the district attorney in interrogatories for the names and contact information of all witnesses intended to be called at trial, as well as any statements taken by the district attorney. All of these will add to your list of potential deponents. One difficult issue relates to confidential informants who may be referenced in police reports. If you need to depose such a person, you will probably need to obtain a court order to try to learn the identity of a confidential informant. As a general matter, you will need to present compelling reasons as the court will normally want to protect the safety of such individuals and will deny such requests absent extraordinary reasons. See *Commonwealth v. Heater*, 899 A.2d 1126 (Pa. Super. Ct. 2006) discussing the test(s) that PA courts use to determine whether the identity of a confidential informant should be revealed. *Id.* at 1130.

5. Requests for Admission(s)

A request for admissions is often a powerful weapon in defending against civil forfeiture petitions. Obtaining admissions that are conclusive and cannot be attacked at time of trial is extraordinarily helpful, especially for motion practice or at trial to show a lack of

nexus or certain predicate facts to an innocent owner defense. They should always be considered when defending against a civil forfeiture action.

C. Step Three: Motion Practice

1. Exclusionary Rule

- The exclusionary rule applies to drug-related forfeitures. The evidentiary standard on a suppression motion is a preponderance of the evidence. If an affidavit lacks an evidentiary basis for concluding that evidence of a crime would be found at the property, the search warrant may be found to lack probable cause and any evidence obtained based upon the search warrant may be excluded through a pre-trial motion. *See, e.g., Commonwealth v. Funds in Merrill Lynch Account Owned by Peart*, 777 A.2d 519 (Pa. Commw. Ct. 2001).
- However, if a defendant enters a guilty plea in the criminal proceeding, he or she automatically waives the right to raise an exclusionary rule claim for illegal search and seizure in the civil forfeiture proceeding. *Commonwealth v. \$8,337.00 U.S. Currency*, No. 1859 C.D. 2011 (Pa. Commw. Ct. 2012)^[**] at 7.

2. Summary Judgment

A civil forfeiture action brought under the Forfeiture Act may be disposed of by summary judgment. *See, e.g., 605 University Drive*, 104 A.3d at 429. Summary judgment or partial summary judgment is appropriate where there are no genuine issues of material fact in dispute regarding a particular claim or defense and a party is entitled to judgment on that claim or defense as a matter of law. For example, if allegations of drug offenses bear no substantial connection to the real property (e.g., the offenses did not occur at the premises, they were alleged to have been committed by persons not connected to the house, etc.), a summary judgment motion may be appropriate to dispose of a civil forfeiture petition brought against the home on the basis that even if the alleged facts are true they do not establish the requisite nexus required by the Forfeiture Act. Similarly, innocent owner and excessive fines defenses may, at times, be capable of resolution on summary judgment if the key facts are not in dispute.

D. Step Four: Settlement Discussions

1. Settlement Agreements: Terms and Conditions of Settlement Agreement

If the district attorney's office expresses interest in pursuing an amicable settlement, the assistant district attorney will prepare a proposed settlement agreement and order for review by counsel for the property owner. While proposed terms may vary from case to case, remember that all proposed agreements are subject to negotiation and counsel for the property owner should carefully counsel his or her client as to the meaning and consequences of all settlement terms. Consider carefully the objectives that are most important to your client. In the past, proposed settlement agreements drafted by the District Attorney's office have been known to contain some or all of the following proposed terms:

- A history of the case and the fact of ownership by the property owner;
- A provision that the owner understands that he or she has a right to a trial and is waiving that right by agreeing to a settlement of the case;
- An assertion that the property owner does not contest that if the case had gone to trial the Commonwealth would have proven violations of the Drug Act;
- A provision reserving the right of the Commonwealth to file a petition requesting forfeiture if there is future illegal drug activity or if the property is not transferred or leased in accordance with the provisions of the agreement;
- Where real estate is involved, an agreement that the property owner will not rent, lease, loan, sell, deed, bequeath, gift, or otherwise transfer the property to certain named individuals who were responsible for the forfeiture action in the first place;^[†]
- An agreement that the property owner will not lease, sell, or transfer the property to third parties without review by the Commonwealth, so that the Commonwealth may conduct a criminal history record check and reject the transferee if so warranted;^[†]
- A provision that the property owner will take all reasonable

steps to screen prospective lessees, tenants, or transferees, checking credit history and reference checks, as well as taking additional and reasonable measures to prevent future illegal drug activity from occurring at the property; [†]

- A provision waiving certain defenses (laches, res judicata, and possibly even the innocent owner defense) in the event that there are future controlled substance violations at the property and a new civil forfeiture petition is brought or the previous civil forfeiture action is reinstated.[†]

[†]: Note, however, that in Philadelphia County, a settlement agreement MAY NOT contain *any* the following provisions:

- i. “a prospective waiver of statutory or constitutional defenses or claims in any future [forfeiture] proceedings, including any condition providing for ‘automatic forfeiture’”;
- ii. a restriction on “access to the property by any relative, defined to include up to fifth-degree relatives”;
- iii. a restriction on “access to the property by any non-relative, unless the non-relative has been convicted of distributing illegal controlled substances”;
- iv. a grant of power to the Commonwealth “to review, approve, or reject prospective lessees, tenants, buyers, residents, or transferees of the property”;
- v. a requirement that the property owner “screen or disclose personal information . . . about prospective lessees, tenants, buyers, residents, or transferees of the property.”

Sourovellis, 2015 WL 12806512, at *3.

In Philadelphia County, all such provisions in any settlement agreement are void and unenforceable. *Id.* Additionally, the Philadelphia District Attorney’s Office in drafting the terms of a settlement agreement involving real estate or vehicles must use, as a template, the forms attached to this Manual in the Appendix.

2. **Settlement Agreements: Negotiation; Approval by the Court**

Counsel for the property owner should review a proposed settlement agreement carefully with the property owner and should undertake active negotiation to achieve a fair and

reasonable settlement agreement that does not subject the property owner to unnecessary risks or unreasonable burdens, and to assure that the agreement meets the long and short term goals of the property owner. Obviously, settlement decisions will depend greatly on the objectives of the parties and the relative strengths and weaknesses of the case. If the terms are acceptable and approved by the court, the Commonwealth generally agrees to withdraw its petition and the court may maintain continuing jurisdiction over compliance.

If the property involved real estate and was sealed by the district attorney's office, the agreement may also contain a provision requiring reimbursement of sealing costs by certified check or money order, made payable to the "District Attorney's Forfeiture Fund." In the past, reimbursement costs for sealing have generally been \$40 for each window sealed and \$60 for each door sealed. Again, this is an area of negotiation between the parties.

- **Note:** In Philadelphia County, the Philadelphia District Attorney's Office has entered into a settlement agreement (in connection with the *Sourovellis* litigation) that significantly limits the ability of Philadelphia County prosecutors to seek an *ex parte* "seize and seal" order against real estate under the Forfeiture Act. Those limitations are discussed above in section III.C.

If a settlement is reached, an agreement will be signed by the parties and counsel and the matter will be presented for court approval in the Criminal Justice Center. While practice is evolving and procedure may depend upon the practices of the presiding judge, in the past the Court has approved signed settlement agreements without requiring the property owner to be present. In these cases, the assistant district attorney obtains the signed court order approving the settlement and returns a copy to counsel for the property owner. Counsel should send a copy of the final order to the property owner and provide instructions for obtaining return of the property and for observing any continuing obligations agreed upon by the parties.

E. Step Five: Commonwealth's Burden of Proof at Forfeiture

Hearing

In a civil forfeiture proceeding, the Commonwealth bears the initial burden of proving that the property at issue is subject to forfeiture under the Forfeiture Act. To meet this burden, the Commonwealth must establish—by a *preponderance of the evidence*—that a “substantial nexus” exists between the property at issue and a violation of the Drug Act. *E.g.*, *Commonwealth v. Freeman*, 142 A.3d 156, 160 (Pa. Commw. Ct. 2016). However, the Forfeiture Act now imposes a *clear and convincing* evidentiary standard to some elements of proof placed upon the government. This higher burden of proof relates to the “innocent owner” affirmative defense, which is discussed in greater detail below. See 42 Pa. C.S. § 5805(j)(3)-(4). Note that, under prior law, the government was required only to meet its evidentiary burden by a *preponderance of the evidence*.

1. Proof of “Substantial Nexus”: Relevant Factors

In a civil forfeiture proceeding, two factors bear significantly on the issue of “substantial nexus”:

(1) the nature of the property that is the subject of the proceeding; *e.g.*, 42 Pa. C.S. § 5802; and

(2) the circumstances under which the subject property was seized. *E.g.*, *id.* § 5802(6); *Commonwealth v. McJett*, 811 A.2d 104, 110 (Pa. Commw. Ct. 2002) (Circumstantial evidence can be used to establish substantial nexus.).

a. Forfeiture of Contraband Per Se.

The Forfeiture Act provides for forfeiture of contraband *per se*. 42 Pa. C.S. § 5802(1). Contraband *per se* is any item that is itself illegal (*e.g.*, drug paraphernalia). *Commonwealth v. \$26,556.00 Seized From Polidoro*, 672 A.2d 389, 392 (Pa. Commw. Ct. 1996) (so defining contraband *per se*); *Commonwealth v. \$603.45 Cash (Severns & Russell)*, 144 A.3d 278, 287 (Pa. Commw. Ct. 2016) (“Drug paraphernalia is forfeitable contraband *per se*.”).

Because contraband *per se* is *per se* illegal, it follows that there is a “substantial nexus” between contraband *per se* and a criminal offense. See, *e.g.*, *Severns & Russell*, 144 A.3d at 287. “However, the Commonwealth has the burden of proving that an item of [property] meets the legal definition of [contraband *per se*].” *Id.*

b. Forfeiture of “Derivative” Contraband.

The Forfeiture Act also provides for the forfeiture of so-called “derivative” contraband. *E.g.*, *26,556.00 Seized From Polidoro*, 672 A.2d at 392 & n.6. Derivative contraband is property that is—

- derived from the commission of a violation of the Drug Act (“proceeds”), 42 Pa. C.S. § 5802(6)(i)(A), **or**
- used or intended to be used to facilitate the commission of a violation of the Drug Act (an “instrumentality”). *Id.* § 5802(6)(i)(B)-(C). *See, e.g.*, *26,556.00 Seized From Polidoro*, 672 A.2d at 392 n.6.

As a general matter, the Commonwealth has the burden of proving that an item of property is subject to forfeiture as “proceeds” or as an “instrumentality”. *E.g.*, *26,556.00 Seized From Polidoro*, 672 A.2d at 392. However, the Forfeiture Act provides that certain property seized under certain circumstances “shall be rebuttably presumed” to constitute either forfeitable “proceeds” or a forfeitable “instrumentality”, as the case may be. 42 Pa. C.S. §§ 5802(6)(ii), 5802(7). Essentially, this means the following:

- With respect to cash, the Forfeiture Act provides that cash “found in close proximity to controlled substances possessed in violation of [the Drug Act] shall be rebuttably presumed to be proceeds derived from the selling of a controlled substance in violation of [the Drug Act].” § 5802(6)(ii).
 - ▶ The Pennsylvania Supreme Court has determined that cash found within *actual arm’s length* of an illegally possessed controlled substance is in sufficiently “close proximity” thereto to trigger this rebuttable presumption. *Commonwealth v. \$6,425.00 Seized From Esquilin*, 880 A.2d 523, 532 (Pa. 2005).
 - ▶ Moreover, according to the Commonwealth Court, if the government establishes that certain cash was found in “close proximity” to an illegally possessed controlled substance, the government thereby satisfies its initial burden of proof (to establish forfeitability). *Commonwealth v. \$34,440 U.S. Currency*, 138 A.3d 102, 111 (Pa. Commw. Ct. 2016). In such event, “the

[government] need not present any more evidence to establish forfeitability; rather, “the burden [then] shifts to [the claimant] to demonstrate that he was the owner of the cash, that he lawfully acquired the cash, and “[t]hat it was not unlawfully used or possessed by him.” *Id.*

- With respect to firearms, the Forfeiture Act provides that “[f]irearms as are found in close proximity to illegally possessed controlled substances shall be rebuttably presumed to be used or intended for use to facilitate a violation of [the Drug Act].” 42 Pa. C.S. § 5802(7). By logical inference, *Esquilin’s* “arm’s length rule” likely applies in this context, as well (although no Pennsylvania cases have so held).

2. Proof of “Substantial Nexus” Does Not Require the Owner of the Seized Property to be Convicted of or Charged with the Underlying Crime

The government may prove a “substantial nexus” between property and a violation of the Drug Act without ever convicting the owner of that property of violating the Drug Act. *See, e.g., Esquilin*, 880 A.2d at 529. Indeed, the government may prove “substantial nexus” without ever *charging* the property owner with *any* criminal offense. *Id.* (“[F]or property to be deemed forfeitable, neither a criminal prosecution nor a conviction is required.”).

3. “Substantial Nexus” describes the quality and quantity of evidence needed to prove that property has “facilitated” a violation of the Drug Act: there must be a “significant causal relationship” between the property and the drug activity.

The Commonwealth Court recently clarified its interpretation of the statutory requirement that seized property be used to “facilitate” the underlying crime. *See* 42 Pa. C.S. § 5802(6)(i)(C) (“Real property used or intended to be used to facilitate any violation of the [Drug Act]” is subject to forfeiture). In *Commonwealth v. Teeter*, the court specifically addressed the application of this requirement to real property. No. 59 C.D. 2016, 2017 WL 4945275 (Pa. Commw. Oct. 31, 2017) (note that this

opinion has not been released for publication in the permanent law reports and remains subject to revision or withdrawal).⁶

The court held that the term “facilitate” means that the Commonwealth must show that the house to be forfeited is “the instrumentality of the offense.” *Id.* at *5. To do so, the government must show that a “significant relationship” exists between the property and the criminal conduct that “taints” the property and renders it “guilty.” *Id.* at *6. Specifically, the home must be used as a “base of operations” for an illegal drug enterprise. *See id.* (acknowledging that it takes “significant evidence” to show that a home used as a “base of operations” for an illegal drug enterprise meets the definition of “facilitate.”). Importantly, forfeiture of real property on the ground that it has “facilitated” a violation of the Drug Act “requires more than an incidental relationship” to the drug activity. *Id.* at *8. There must be a “significant *causal* relationship so that the forfeiture will prevent a repeat of the drug offense.” *Id.* (emphasis added).

F. Step Six: Property Owner’s Burden of Proof at Forfeiture Hearing

If the Commonwealth is able to meet its initial burden of proof, the burden then shifts to the property owner to disprove—by a preponderance of the evidence—the Commonwealth’s case or establish affirmative statutory or constitutional defenses preserved by the pleadings. *McJett*, 811 A.2d at 110.

1. Disproving the Commonwealth’s Case

This can be done by cross-examining the Commonwealth’s witnesses effectively and demonstrating the absence of the

⁶ In this case, the police department arranged for a confidential informant to meet the defendant at his home to purchase drugs in violation of the Drug Act. The officers then attempted to rely on the fact that this controlled buy occurred at the defendant’s home as evidence that the home was used to “facilitate” illegal drug trafficking and thus subject to forfeiture under the Forfeiture Act. On appeal, the court rejected this evidence as insufficient to establish that the home was used to “facilitate” an illegal drug enterprise because the officers chose the location of their sting operation. *Id.* The court concluded that, “where the Commonwealth has initiated the illegal drug transaction, it cannot be automatically inferred that the house chosen for the transaction has facilitated the offense, as opposed to facilitating the sting operation.” *Id.* (“The question that should have been answered in this forfeiture proceeding is whether [defendant’s] house would have been the subject of a forfeiture had the police directed that the controlled buy take place elsewhere.”).

required elements needed to prove nexus, and then moving for a directed verdict at the conclusion of the Commonwealth's case. If such a motion is denied, you can present documentary and testimonial evidence in your case that will effectively dispute the facts surrounding nexus and convince a court that the Commonwealth has failed to prove nexus by a preponderance of the evidence when all evidence is considered. You may also want to argue that a preponderance of the evidence standard is too low for the government under the due process clause (assuming that you preserved that issue in the pleadings). Of course, you should not put all your eggs in the nexus basket; you should be prepared to present evidence on all of your affirmative defenses at trial.

2. **Statutory "Innocent Owner" Defense**

The Forfeiture Act provides a statutory "innocent owner" defense to forfeiture. 42 Pa. C.S. § 5805(j)(4). The "innocent owner" defense is an *affirmative* defense, meaning that the property owner (the "claimant") bears the burden of proving each element of the defense. The claimant must show by *preponderance of the evidence* that he or she is the owner of the property or has some other documented interest in the property, and that his interest was lawfully acquired. The burden then shifts back to the Commonwealth to establish by *clear and convincing evidence* that the property was unlawfully used or possessed. If the claimant alleges that he or she lacked knowledge or consent regarding such unlawful activity, the burden is on the Commonwealth to establish by *clear and convincing evidence* that the property was unlawfully used and, if used by a person other than the property owner, to prove by *clear and convincing evidence* that the unlawful use was with the claimant's knowledge and consent. 4a Pa. C.S. § 5805(j).

In addition, for a claimant to raise an innocent owner defense, the claimant must have timely asserted that defense in the pleadings. Normally, an innocent owner defense should be asserted in the claimant's "Answer and New Matter". The failure to properly plead an affirmative defense will ordinarily result in the waiver of that defense and its exclusion from the case.

a. **Elements of Innocent Owner Defense; In General**

To establish an innocent owner defense under the Forfeiture Act, the claimant must show—

- (1) that the claimant is the owner of the property;
- (2) that the claimant lawfully acquired the property; *and*
- (3) that the claimant did not unlawfully use or possess the property. In the event the property was unlawfully used or possessed by someone other than the claimant, then the claimant must show that he did not know of or consent to that such use or possession.

42 Pa. C.S. § 5805(j).

b. Elements of Innocent Owner Defense: Status as “Owner” of Property

- Generally, an “owner” for purposes of the Forfeiture Act is defined as an individual who has “a possessory interest in the property with attendant characteristics of dominion and control.” *Commonwealth v. One 1988 Suzuki Samurai*, 589 A.2d 770, 773 (Pa. Commw. Ct. 1991).
- It has further been established that “[H]olding title to an automobile does not, in and of itself, prove actual legal ownership for purposes of the Forfeiture Act.” *Strand v. Chester Police Department*, 687 A.2d 872, 876 (Pa. Commw. Ct. 1997). The court reads “dominion and control” as paramount to proof of title, even when the title owner is in possession of the vehicle at the time of the initial search. *Commonwealth v. 1996 Chevrolet Truck*, No. 977 C.D. 2008 (Pa. Commw. Ct. 2009). If the Commonwealth can show another actor to have superior dominion and control over the property, the title owner is barred from raising an innocent owner defense; they are not recognized as the owner for purposes of the forfeiture proceeding. *Id.*

c. Elements of Innocent Owner Defense: Lack of Knowledge or Lack of Consent is the Standard; Proving “Lack of Consent”

- A claimant may prevail on an innocent owner defense if the claimant can prove *either* a lack of knowledge **or** a lack of consent as to another person’s unlawful use or possession of the claimant’s property. 42 Pa. C.S. § 5805(j)(4); *Commonwealth v. 502-504 Gordon St.*, 607 A.2d 839, 845 (Pa. Commw. Ct. 1992). The claimant need not prove *both*

lack of knowledge *and* lack of consent. *Id.* at 845-46.

- Thus, even with knowledge, a claimant may prevail on an innocent owner defense if the claimant can prove that he or she did not consent to the unlawful use (or possession) of his/her property. *Commonwealth v. \$2,523.48 U.S. Currency*, 649 A.2d 658 (Pa. 1994).
- Under prior practice, to prove lack of consent or knowledge, a claimant was required to show that their lack of consent or knowledge was reasonable under the circumstances. See 42 Pa. C.S. § 6802(j)(3) (repealed and replaced on July 1, 2017). However, the new Forfeiture Act omits the reasonableness standard from its text. It remains to be seen whether courts interpret it to still be required under the 2017 statute. 42 Pa. C.S. § 5805(j)(4) (effective on July 1, 2017).
 - ▶ Previously, in such a case, to prove lack of consent, the claimant must prove “that he or she did all that could reasonably be expected to prevent the illegal use of [his/her] property once he or she bec[ame] aware of that use.” 502-504 *Gordon St.*, at 845. However, “property owners are not required to take heroic, vigilante or police measures to rid their property of drug activity.” *Id.* Rather, a “property owner’s actions, or lack of action, to discourage illegal drug activity on his [or her] property [need only] be . . . reasonable under the circumstances.” *\$2,523.48 U.S. Currency*, 649 A.2d at 660. And “what is reasonable for one property owner may not be reasonable for another.” *Id.* at 662. For instance, “[i]t is not necessarily ‘reasonable’ to expect a parent to evict a child, even an adult child, from the family house in order to prove her lack of consent to that child’s [unlawful] conduct.” *Commonwealth v. 1997 Chevrolet*, 106 A.3d 836, 869–70 (Pa. Commw. Ct. 2014), *aff’d*, No. 68A-B-2016 (Pa. May 25, 2017).
 - ▶ However, if a claimant knew of illegal drug activity on his or her property, but did *nothing* to discourage that activity, the claimant will not be able to establish an innocent owner defense. *E.g.*, *Commonwealth v. 648 West Mayfield Street*, 819 A.2d 1226, 1230 (Pa. Commw.

Ct. 2003). *Some* minimum effort by the property owner (*i.e.*, the claimant) is required—for example, calling the police, or having the offenders removed from the property, or sending a certified letter to the offenders demanding that they leave the property. *Id.* The required effort will be determined on a case-by-case basis. *See, e.g., 2,523.48 U.S. Currency*, 649 A.2d at 662. What is clear, however, is that an owner may not “turn[] a blind eye to illegal activity” and then claim to be an innocent owner. *648 West Mayfield Street*, 819 A.2d at 1229.

- Finally, if a claimant raises an innocent owner defense and adduces evidence of lack of knowledge *or* lack of consent, the trial court “must consider all of the circumstances before rejecting an innocent owner defense.” *1997 Chevrolet*, No. 68A-B-2016, slip op. at 72. Specifically, “the trial court must faithfully identify the circumstances that make it reasonable to infer that the property owner had *actual* knowledge of the illegal use of the property or consented to the underlying criminal activity.” *Id.* (emphasis added).

3. Constitutional “Excessive Fines” Defense

Both the federal Constitution and the Pennsylvania Constitution prohibit the government from imposing excessive fines. U.S. Const. amend. VIII; Pa. Const. art. 1, § 13. . Civil forfeiture is subject to the Excessive Fines Clause of the Eighth Amendment to the federal Constitution. *Austin v. United States*, 509 U.S. 602, 622 (1993). And civil forfeiture under Pennsylvania’s Forfeiture Act is also subject to the “excessive fines” provision of Article I, Section 13 of the Pennsylvania Constitution. *Commonwealth v. 5444 Spruce St.*, 832 A.2d 396, 399 (Pa. 2003). Accordingly, in a civil forfeiture action brought under the Forfeiture Act, the claimant may raise a constitutional “excessive fines” defense based on the federal Constitution or the Pennsylvania Constitution (or both).

A constitutional “excessive fines” defense to civil forfeiture is an *affirmative* defense, meaning that the claimant bears the burden of establishing the necessary elements of the defense. In addition, for a claimant to raise an “excessive fines” defense, the claimant must have timely asserted that defense in the pleadings. Normally, an “excessive fines” defense should be asserted in the claimant’s “Answer and New Matter”. The failure to properly plead

an affirmative defense will ordinarily result in the waiver of that defense and its exclusion from the case. Under Pennsylvania's Forfeiture Act, a claimant may, prior to entry of a forfeiture order, petition the court to determine whether the forfeiture is constitutionally excessive. 42 Pa. C.S. § 5805(k)(1). If the court finds that the forfeiture is "grossly disproportional to the offense," the forfeiture will either be "reduce[d]" or "eliminate[d]." 42 Pa. C.S. § 5805(k)(2). (Under the new statute, a claimant may be able to request a ruling on constitutional excessiveness at any time prior to the court's entry of a forfeiture order, even if not previously raised in the pleadings.).

a. **Federal Constitutional Law**

The Limitations of the Eighth Amendment's Excessive Fines Clause Apply to Civil Forfeiture.

In the landmark case of *Austin v. United States*, 509 U.S. 602 (1993), the U.S. Supreme Court held that civil forfeiture is subject to the limitations of the Eighth Amendment's Excessive Fines Clause. The *Austin* Court reasoned that civil forfeiture has a distinctly *punitive* aspect to it; through the mechanism of civil forfeiture, the government extracts payment from a person (in money or other property) so as to punish him or her. *Austin*, 509 U.S. at 618-22. In the Court's judgment, civil forfeiture could *not* be regarded as *purely* remedial. *Id.* at 618-22. Therefore, the Court concluded that civil forfeiture is subject to the limitations of the Eighth Amendment's Excessive Fines Clause. *Id.* at 622.

The Standard for Determining Whether a Punitive Forfeiture is (Un)constitutionally Excessive: "Gross Disproportionality"

In *United States v. Bajakajian*, 524 U.S. 321 (1998), the Supreme Court addressed how courts are to determine whether a punitive forfeiture is "excessive"—and thus, unconstitutional. There, the Court held that a punitive forfeiture is excessive if the amount of the forfeiture is "grossly disproportional" to the gravity of the offense giving rise to the forfeiture (the "predicate offense"). *Bajakajian*, 524 U.S. at 334. The *Bajakajian* Court's "gross disproportionality" standard takes into account several factors: (1) the penalty that was *actually* imposed on the offender—who may be

someone other than the property owner—as compared to the maximum penalty that may be imposed for the predicate offense; (2) whether the predicate offense was an isolated incident or part of a pattern of unlawful activity; and (3) the harm resulting from the predicate offense. *Id.* at 338-39.

Here, it is important to note that *Bajakajian* was a criminal forfeiture case, *not* a civil forfeiture case. *Id.* at 333. That being so, it remains unclear what exactly is the proper legal standard to determine whether a civil forfeiture is “excessive” (and thus, unconstitutional).

b. **Pennsylvania Constitutional Law; Interpretation(s) of the Eighth Amendment by Pennsylvania State Courts**

The Supreme Court of Pennsylvania has determined that civil forfeiture under the Forfeiture Act is subject to the “excessive fines” provision of the Pennsylvania Constitution. *E.g.*, *Commonwealth v. 5444 Spruce St.*, 832 A.2d 396, 399 (Pa. 2003). “The ‘excessive fines’ provision of . . . the Pennsylvania Constitution is governed by the federal treatment of the Eighth Amendment.” *Id.* at 399.

Determining Whether a Civil *In Rem* Forfeiture is (Un)constitutionally Excessive: A Two-Step Test

In *Commonwealth v. 1997 Chevrolet*, the Pennsylvania Supreme Court addressed how Pennsylvania courts are to determine whether an *in rem* civil forfeiture violates the Excessive Fines Clause of the Eighth Amendment. No. 68A-B-2016, slip op. at 60-62 (Pa. May 25, 2017). There, the Court held that any such determination must be made in accordance with the following two-step test:

- First, “the [presiding] court must . . . assess whether the property sought to be forfeited is an instrumentality of the underlying offense.” *Id.* at 60.
 - ▶ Here, “[i]f the property is not found to be an instrumentality of the criminal conduct, the inquiry is dispositive and ends, and the forfeiture is unconstitutional.” *Id.*
- Second, if the property *is* found to be an instrumentality, the court must then determine “whether the value of the

property sought to be forfeited is grossly disproportional to the gravity of the underlying offense." *Id.* This prong of the test is consistent with Pennsylvania's Forfeiture Act. 42 Pa. C.S. § 5805(k)(2).

- ▶ Here, if a gross disproportionality exists, the forfeiture is unconstitutional. *Id.*

Step One: The "Instrumentality" Assessment

For a person's property to be an "instrumentality" of a particular offense, "the property itself is required to be 'significantly utilized in the commission' of the offense." *Id.* at 49 (quoting *Commonwealth v. Wingait Farms*, 690 A.2d 222, 227 (Pa. 1997)). In determining whether "significant utilization" exists, relevant considerations include the following:

- "whether the property was uniquely important to the success of the illegal activity;"
- "whether the use of the property was deliberate and planned or was merely incidental and fortuitous to the illegal enterprise;"
- "whether the illegal use of the property was an isolated event or repeated;"
- "whether the purpose of acquiring, maintaining or using the property was to carry out the offense;"
- "whether the illegal use of the property was extensive spatially and/or temporally;" and
- "whether the property is divisible with respect to the subject of forfeiture, allowing forfeiture of only that discrete property which has a significant relationship to the underlying offense."

1997 Chevrolet, No. 68A-B-2016, slip op. at 60-61.

With respect to the "divisibility" (or not) of the property sought to be forfeited, "[w]here a significant relationship to an offense is established with regard to only a portion of [that] property [that] is 'practicably divisible' from the rest, only the offending portion of the property may be forfeited." *Id.* at 50 (quoting *Commonwealth v. 5043 Anderson Rd.*, 728 A.2d 907, 909 (Pa.

1999)). Only if the property is *not* divisible may the *entire* property be forfeited. See *1997 Chevrolet*, No. 68A-B-2016, slip op. at 50.

Step Two: The “Gross Disproportionality” Assessment

Here, the essential inquiry is “whether the value of the property sought to be forfeited is grossly disproportional to the gravity of the underlying offense.” *Id.* at 60. This is consistent with Pennsylvania’s Forfeiture Act. 42 Pa. C.S. § 5805(k)(2). In determining the value of the property, then, relevant considerations include the following:

- “the fair market value of the property;”
- “the subjective value of the property taking into account whether the property is a family residence or if the property is essential to the owner’s livelihood;”
- “the harm forfeiture would bring to the owner or innocent third parties;” and
- “whether the forfeiture would deprive the property owner of his or her livelihood.”

Id. at 61.

A court *may not* rule on an excessive fines challenge without first receiving evidence of the value of the property at issue. *5444 Spruce Street*, 832 A.2d at 403.

In determining the gravity of the underlying offense, factors to be considered include the following:

- “the nature of the underlying offense;”
- “the relation of the violation of the offense to any other illegal activity and whether the offender fit into the class of persons for whom the offense was designed”;
- “the maximum authorized penalty as compared to the actual penalty imposed upon the criminal offender;”
- “the regularity of the criminal conduct — whether the illegal acts were isolated or frequent, constituting a pattern of misbehavior;”
- “the actual harm resulting from the crime charged, beyond

a generalized harm to society;" and

- "the culpability of the property owner."

1997 Chevrolet, No. 68A-B-2016, slip op. at 61.

In assessing the property owner's relative culpability (or not), appropriate considerations include "whether the owner was negligent or reckless in allowing the illegal use of the property, and whether the owner was directly involved in the illegal activity and to what extent." *Id.* at 59. Moreover, "[w]here the perpetrator of the [underlying] offense is not the property owner, the property owner's culpability must be evaluated by [the owner's] own knowledge and actions, not the knowledge and actions of the wrongdoer." *1997 Chevrolet*, 106 A.3d. at 862. In such a case, "[t]here must be some evidence that the [property] owner participated in the offense to a degree sufficient to justify the amount of the Commonwealth's proposed forfeiture." *Id.*

1997 Chevrolet

The *1997 Chevrolet* Court's holding(s) with respect to the Eighth Amendment's Excessive Fines Clause extend with equal force to the "excessive fines" provision of the Pennsylvania Constitution. *See, e.g., 5444 Spruce St.*, 832 A.2d at 399.

Determining Whether a Criminal *In Personam* Forfeiture is (Un)constitutionally Excessive: The Standard is "Gross Disproportionality" (per *Bajakajian*)

To determine whether a criminal *in personam* forfeiture violates the "excessive fines" provision of the Pennsylvania Constitution, the applicable standard is the "gross disproportionality" standard set forth in *Bajakajian*. *5444 Spruce Street*, 832 A.2d at 402-03. Here, too, a court *may not* rule on an excessive fines challenge without first receiving evidence of the value of the property at issue. *Id.* at 403.

4. Other Defenses to Forfeiture

a. Double Jeopardy Defense Not Available

The constitutional protection against double jeopardy does not extend to civil forfeiture proceedings. While the constitutional protection against double jeopardy from multiple punishments

prohibits government from punishing twice or attempting a second time to punish criminally for the same offense, civil *in rem* forfeitures are not “punishment” for double jeopardy purposes. *United States v. Ursery*, 518 U.S. 267 (1996); *Commonwealth v. Wingait Farms*, 690 A.2d 222 (Pa. 1997).

b. Due Process Defenses

An advocate should carefully consider whether to raise and preserve due process objections to the overall civil forfeiture regimen. Civil forfeiture statutes permit the government to forfeit private property without requiring that the government establish its claim by the higher level of proof often required in civil proceedings and certainly in criminal proceedings. Since forfeitures are highly penal actions, many have questioned whether the constitution requires the government to establish its claim beyond a reasonable doubt or, alternatively, by clear and convincing evidence, rather than merely by a preponderance of evidence.

These concerns were recently noted in a Statement of Justice Thomas respecting the denial of certiorari in the case of *Leonard v. Texas*, 137 S. Ct. 847, 848-50 (2017). There, Justice Thomas wrote that “forfeiture has in recent decades become widespread and highly profitable. This system—where police can seize property with limited judicial oversight and retain it for their own use—has led to egregious and well-chronicled abuses.” *Id.* at 848. “These forfeiture operations frequently target the poor and other groups least able to defend their interests in forfeiture proceedings.” *Id.* Ultimately, Justice Thomas suggests that in such a highly penal prosecution, “the penalty should not be inflicted, unless the infractions of the law shall be established beyond reasonable doubt.”

Bennis v. Michigan, 516 U.S. 442 (1996)

In *Bennis*, the U.S. Supreme Court addressed whether Amendment XIV’s Due Process Clause prohibits the forfeiture of private property to the government where the property owner is *actually* innocent of the offense giving rise to the forfeiture. 516 U.S. at 446. The *Bennis* Court held that the Due Process Clause *does not* prohibit such forfeiture. *Id.* at 443,

446.

Tina Bennis owned an automobile jointly with her husband, John Bennis. Without Tina's knowledge and certainly without her consent, John used their car to engage the services of a prostitute. The police observed John *in flagrante delicto* and arrested him. Thereafter, John was convicted of gross indecency, and the Bennis car was seized and forfeited as a public nuisance under Michigan law.

Because the Michigan statute did not provide for an innocent owner defense, Tina argued that the forfeiture of the Bennis car, at least to the extent of her interest, violated her right to due process of law. On appeal from the grant of a forfeiture order, the *Bennis* Court upheld the forfeiture and ruled that that the Due Process Clause did not prevent a forfeiture of Tina's legal interest in her car despite her innocence. *Id.* at 443, 446. The Court found it to be significant that the Michigan statute authorized the initial seizure of the Bennis car and that state courts retained remedial discretion in deciding whether to grant a forfeiture. *Id.* at 453.

G. Special Considerations Relating to Real Estate Forfeitures

Real estate forfeitures may involve additional pleadings and considerations for a homeowner when defending against forfeiture.

1. Petition for Forfeiture Pursuant to the Forfeiture Act

- i. The petition will be captioned in the name of the Commonwealth of Pennsylvania and brought against the property itself, since this is an in-rem proceeding. The defendant is usually captioned similar to "the real property and improvements known as 1234 Market Street, Philadelphia, PA 19107".

- ii. Under prior practice, the petition was to be filed in City Hall and given a typical court term and docket number for civil filings. The petition was also to be filed in Room 206 of the Criminal Justice Center (Motion Counter) where it was assigned will be given an M.R. or M.D. number. This procedure was modified in 2016 pursuant to Philadelphia General Court Regulation 02 of 2016 as described earlier in this manual.

iii. The petition will allege the identity of the owner, usually based upon what is listed in the Philadelphia Real Estate Directory. This may or may not be accurate.

iv. The petition will outline basic information regarding the alleged illegal sale of controlled substances, often involving the presence of undercover officers (U/C) and/or confidential informants (C/I). The petition will generally allege any arrests occurring at the property, although civil forfeiture may be commenced without any arrests or criminal charges being brought. The petition will generally describe any search and seizure warrants that were issued and executed, as well as all drugs, drug-related items, currency, proof of ownership or identity, etc., found and seized at the property. Finally, the petition will request that the property be forfeited and transferred to the custody of the Philadelphia District Attorney's office.

- Note that, at times, the District Attorney's office has simply attached the police arrest report to the petition and incorporated its contents as the material allegations of fact. This arguably does not comport with pleading requirements and is subject to a preliminary objection.

v. The petition will be signed by the assistant district attorney assigned to the case as well as the chief of the district attorney's public nuisance task force. The petition will usually be verified (affirmation) by the district attorney on the case.

2. **Related Preliminary Filings.** In addition to the forfeiture petition, the district attorney's office may also file the following preliminary pleadings and documents when the property involves real estate:

(1) A Lis Pendens;

(2) A Rule to Show Cause why a restraining order against the property should not issue and an application to seize and seal the property should not be granted;

(3) A Signed *Ex Parte* Court Order, granting a temporary restraining order against the property prohibiting any interest in the property from being sold, assigned, optioned, given, bequeathed or transferred in any manner;

(4) The Commonwealth's Petition for a Temporary Restraining Order, seeking to prohibit the sale, encumbrance, or transfer of any interest in the property; and Petition to Seize and Seal the property.

If the property involves real estate, the Court may grant the Commonwealth's preliminary petitions on an *ex parte* basis for a limited time period and set down these requests promptly for a court listing. Generally, at the next court listing, or soon thereafter, any orders entered *ex parte* that restrain the sale or disposition of the property, that enter a *lis pendens*, and/or that seize (and potentially seal) the property are entered for the duration of the case pending the outcome of the forfeiture petition or a specific preliminary request by the property owner. Note that *ex parte* seizures of real estate likely violate due process requirements absent exigent circumstances. This is consistent with the Forfeiture Act's treatment of real property seizures (42 Pa. C.S. § 5803(b.1)), and described in more detail earlier in the manual.

3. Service of Process.

The verification (affirmation) concerning service of process which is attached to the forfeiture petition sometimes states that "a copy of this petition will be sent by personal service and certified mail postage paid to [owner of property, as listed in Real Estate Directory]." This arguably does not comport with requirements as it suggests future action, rather than documenting past action to serve process. Also, under prior practices, the district attorney's office has not usually filed of record a proof of service, and the court has not, *sua sponte*, required the filing of proof of service. This practice appears to violate pleading requirements and raises questions of personal jurisdiction over the property owner. At times, the district attorney assigned to the case may make an oral representation to the court at a later listing that service has occurred and the court has sometimes accepted such representations without requiring more. This practice should be objected to if it still occurs. Under new requirements detailed in Court General Regulation 02 of 2016 and provided for under the Forfeiture Act (42 Pa. C.S. § 5805(d.1)), the district attorney is required to file a proof of notice in every case, and personal jurisdiction is not established without it.

If service cannot be accomplished, or if ownership is unclear, the district attorney's office will normally advertise the action once for

two successive weeks (generally in the Philadelphia Daily News), but then not automatically file a formal proof of advertisement with the Court. Once again, this raises substantial jurisdictional questions. See *Commonwealth v. One 1991 Cadillac Seville*, 853 A.2d 1093 (Pa. Cmwlth. 2004), for a discussion of service of process by certified mail. This procedure is also now governed by Court General Regulation 02 of 2016, and provided for under the Forfeiture Act (42 Pa. C.S. § 5805(d.1)), and the District Attorney's office is required to file proof of publication in every case.

4. Status of Answer and Status of Counsel

Under the Forfeiture Act, the claimant (owner or person with a legal interest in the seized real property) has thirty (30) days after service of process in which to file an answer to the forfeiture petition and the notice served with the petition will note that deadline. In practice, the claimant usually has much more time. Note that Philadelphia practices are now outlined in General Court Regulation 02 of 2016.

After service of the forfeiture petition and the entry of any preliminary orders, the case will usually be listed at 8:00 a.m. in the Criminal Justice Center. This listing is not a hearing, but rather a status listing. At 8:30 a.m. a trial commissioner will take the bench, deliver an explanatory statement, and then engage in a call of the list. There is no judge at the outset while the trial commissioner manages the court list. The presiding judge will usually take the bench later after the call of the list is completed and will hear any motions or other matters requiring court rulings. The courtroom is also used for other criminal motions and expungements at the same time.

A property owner of real property arriving at the courtroom should check in with the clerk of the court and identify the address of the real property. When the assistant district attorney assigned to that case arrives, he or she will generally discuss the status of the case with the property owner or his or her counsel if the owner is represented. If the owner states that she would like to get a lawyer or that she would like to defend the action, the case will usually get a new listing date from the trial commissioner, usually at least thirty or sixty days later. The property owner will be informed orally in the courtroom by the trial commissioner of the next court date, and the owner may be given a sheet with the next

date listed. Generally, there will be no additional notice of the next court listing provided to the property owner. The trial commissioner will mark on the transcript of the case the new date and usually a listing of "status of answer" or "status of counsel."

At the next court listing, the assistant district attorney will inquire of the owner the status of his or her efforts to obtain counsel or file an answer, and generally will obtain another listing date, some thirty days or more later, if the owner needs more time. It is critical that a property owner show up for all court dates; otherwise there is a risk that a default judgment may be entered forfeiting the property. If, for some reason, a property owner cannot attend a scheduled court listing, he or she should notify the district attorney listed on the forfeiture petition in advance of the court date so that a new date can be obtained.

It is usually during this time period that property owners seek legal assistance. Property owners who seek legal help from Community Legal Services or Philadelphia Legal Assistance may be referred to the Philadelphia Volunteers for the Indigent Program (VIP). VIP will attempt to obtain volunteer counsel from the private bar or from a law school clinical program. With the assistance of counsel, the following steps should be considered:

- a. Docket Entries. Always obtain the docket entries of the case from the Court of Common Pleas and all filed documents. website. Note, however, that the official docket entries will not contain all subsequent proceedings that have occurred in the Criminal Justice Center.
- b. Criminal Division File. If you are unable to access the docket entries of the case through the court's website, you may get a complete history of all court listings and actions taken by going to Room 206 of the Criminal Justice Center (Criminal Motions Counter) and request to see the court file and obtain their assistance to learn the history of the case. Depending on the age of the case, there may be a hand-written status sheet in the file that will briefly list all court listings (usually in the trial commissioner's handwriting) as well as the status of the case, including copies of any pleadings filed in the case. More recent cases should have a computerized listing of all case dates and actions taken.

- c. Sealing of Real Property. When a forfeiture petition involves real estate, it is important to ascertain from your client whether the property has been sealed (and the owner has already been removed from the property) or whether the owner is still in possession of the property. Obviously, this is a critical fact that will shape your immediate strategy and the speed by which you will need to act. If the property is sealed, you may want to file a motion for unsealing (see discussion below).
- d. Contact the Assistant District Attorney. Call the assistant district attorney who filed the forfeiture petition to advise the ADA that you will be representing the property owner and that you intend to file a response. Under normal circumstances, you will have until the next court status listing to do so, although additional time is normally granted upon request. Always check to make sure that a default judgment has not been entered and that you have adequate time to investigate and file a response, by agreement if necessary, so that a default judgment is not entered or will be entered before you can file a response.

5. **Special Issues.**

Sometimes, there are special issues that also must be addressed. For example,

- Status of Estate. If there is a question as to legal title to the property, or if your client has an interest in the property but is not the record owner, or if the owner is deceased and the estate of the deceased has not been probated, special attention will need to be taken with regard to ownership. The district attorney's office may take the position that you do not have standing to contest the forfeiture until the estate of the deceased has been raised. In this event, the district attorney and the court will normally give you ample time to take appropriate steps in the Orphan's Division of the Court of Common Pleas to obtain legal authority to appear on behalf of the seized real property. If this applies to your case, you may want to consult with the Volunteers for the Indigent Program (VIP) regarding problems of tangled title as there are technical and financial resources that may be available to help you if your client is indigent and you are unfamiliar or unable to resolve a

title problem on your own. Note also that if your client has a legal interest in the property, including possession of the property, that may be adequate to confer standing to defend against the forfeiture. It may not be enough, however, to assert an innocent owner defense and therefore it is advisable to remedy tangled title or other ownership issues.

- Unsealing Hearings. If the property involves real estate, the due process clause and Pennsylvania's Forfeiture Act require that a home not be seized and sealed without a prior court hearing and opportunity to be heard, absent exigent circumstances. If the owner is out of the property and the house has been sealed, you will need to determine with your client whether to file an unsealing motion and seek an "unsealing hearing" to try to get the owner back into possession of the property pending the outcome of the case. Since civil forfeiture cases can take a long time to conclude, you should strongly consider filing such a motion with the Court and seeking interim relief for your client. Pennsylvania's Forfeiture Act specifies procedures for the interim release of seized property for hardship reasons. 42 Pa. C.S. § 5805(f). Of course, you should also discuss with the assistant district attorney the prospect of unsealing the property by agreement of the parties once you are knowledgeable about the facts of the case. Usually, the entry of restraining orders and a *lis pendens* should be sufficient to protect the government's interest without need for sealing of the property.
- Status of Interest. If there is a question involving the legal interest of a property claimant, such as where the record owner has died intestate and legal ownership is part of a tangled title problem that needs to be resolved, the forfeiture case will be relisted for a future date under the designation "Status of Interest." While awaiting that listing, the property claimant may need to raise an estate or take other appropriate action to obtain legal title to the property. The Volunteers for the Indigent Program (VIP) has a very helpful manual available on its website on how to quiet title or take other action needed to resolve such questions.

H. Additional Considerations for the Forfeiture Hearing

1. If the case does not settle, and a jury demand has not been filed

and perfected, the matter will be tried before a judge at the Criminal Justice Center. (Note that according to a 2012 Commonwealth Court opinion, the government may not obtain a forfeiture of property by summary judgment, but rather must proceed to and prevail at trial. See *Commonwealth v. All That Certain Lot or Parcel of Land Located at 605 University Drive, State College*, 61 A.3d 1048 (Pa. Cmwlth. 2012) (plurality opinion)). (This may be altered by subsequent court decisions holding that the Pennsylvania Rules of Civil Procedure apply to civil forfeiture actions unless they conflict with requirements in the Forfeiture Act).

2. Appropriate advanced notice should be given by the parties to the presiding judge at the Criminal Justice Center to ensure that adequate time is allotted on the court's calendar for a hearing. It is strongly recommended that counsel request a pre-trial conference with the presiding judge to discuss any pre-trial issues that may require a judicial ruling. If a jury trial was previously demanded and perfected, the case should have been transferred to the Civil Division and it will be tried there in accordance with the case management order entered in the case in the Trial Division.
3. Forfeiture hearings are generally scheduled for a date certain. At the time of the hearing, the Philadelphia Court of Common Pleas is required to determine if the claimant received notice of the right to legal representation and the right to a jury trial (in substantial compliance with the Notice to Defend attached to General Court Regulation No. 02 of 2016 in the Appendix.
4. The Court is also required to determine whether a jury trial, if requested, was or is waived by any party.
5. If a claimant is not represented by counsel despite receiving notice of the right to have a lawyer, the Court must inform the claimant of his or her right to call witnesses and offer documentary evidence in support of the claim.
 - If the owner or person in possession of property subject to forfeiture is a minor, the Court should determine to what extent a parent or natural guardian may need to represent the minor's interests consistent with Pa. R.C.P. No. 2026 *et seq.*
6. If, at a forfeiture hearing, the Commonwealth sustains its burden

of establishing a nexus between the property and the criminal activity, the burden shifts to the property owner to disprove the Commonwealth's case and/or establish a statutory or constitutional defense. *Commonwealth v. McJett*, 811 A.2d 104 (2002), appeal denied 829 A.2d 1158. See also *Commonwealth v. \$6,425.00 Seized from Esquilin*, 880 A.2d 523 (Pa. 2005) (discussing the shifting of burdens in a currency forfeiture case).

- Forfeitures are not favored in the law, and therefore the Forfeiture Act must be strictly construed. *Commonwealth v. One (1) 1993 Pontiac Trans AM*, 809 A.2d 444 (Pa. Cmwlth.2002). See also *Esquilin*, Id.

7. Forfeiture proceedings, while quasi-criminal in nature, are civil in form; the standard of proof is by a "preponderance of the evidence." *Commonwealth v. \$16,208.38 U.S. Currency Seized from Holt*, 635 A.2d 233 (Pa. Cmwlth. 1993), appeal denied 647 A.2d 509 (Pa. 1994). Note, however, that if a property owner has asserted an Excessive Fine constitutional challenge, the government's burden on that claim arguably rises to "clear and convincing evidence" to show that the criminal conduct in question is not a one-time occurrence. *Commonwealth v. 2136 Clearview Avenue*, 841 A.2d 629, 632 (Pa. Cmwlth. 2004). Notably, however, these cases interpret the prior statute (repealed and replaced by §§ 5802-5808 (effective July 1, 2017)). The new statute changes the burdens affecting the "innocent owner" defense, at a minimum. It remains to be seen how courts will interpret the burdens affecting the "excessive fines" defense under this statute. See prior discussion in Section VI.E.
8. If the property owner answers the forfeiture petition but fails to appear at trial, the Commonwealth may still be required to meet its burden by presenting evidence of a nexus between the unlawful activity and the property subject to forfeiture. Arguably, a court should not automatically grant forfeiture of the property if the property owner fails to appear at trial. *Commonwealth v. 1992 Chevrolet*, 844 A.2d 583 (Pa. Cmwlth. 2004). See also *Commonwealth v. 605 University Drive*, 61 A.3d 1048 (Pa. Cmwlth. 2012) (plurality) (holding summary judgment is not available to the Commonwealth and a hearing must be held in order to forfeit real property). (Note however that there is a question as to the current status of these holdings since it is now clear that the Pennsylvania Rules of Civil Procedure do apply to

civil forfeiture proceedings, absent a conflict with the requirements of the Forfeiture Act).

9. The Fifth Amendment's privilege against self-incrimination may be invoked in a civil proceeding, including a civil forfeiture case, but a fact-finder may draw an adverse inference when the privilege is invoked in a civil case. See *Commonwealth v. \$23,320 U.S. Currency*, 733 A.2d 693 (Pa. Cmwlth. 1999). (Of course, this differs sharply from a criminal case in which an adverse inference may not be taken from the fact that a witness has invoked the privilege against self-incrimination.) In addition, immunity may be given by the prosecutor in a civil forfeiture proceeding for statements that a witness may make at the forfeiture hearing relating to his or her involvement with drugs. *Commonwealth v. One 1984 Chrysler Fifth Ave. Sedan*, 638 A.2d 370, 372 n.7 (Pa. Cmwlth. 1994) (citing 42 Pa.C.S. § 594(d)).

VII. Appeal of Forfeiture Order

- Following the entry of a judgment for forfeiture of property, there is no requirement for the filing of a post-trial motion. See Administrative Order 02 of 2016 in Appendix. An aggrieved party may file an appeal directly to the Commonwealth Court. Over the years there has been some confusion as to whether an appeal in a civil forfeiture matter should be filed in the Superior Court or the Commonwealth Court. Since these cases look like criminal cases, some lawyers have filed appeals to the Superior Court. However, since these are civil proceedings involving the Commonwealth as a party, jurisdiction more properly lies in the Commonwealth Court. The law seems to be much clearer on that now, although you will continue to see some civil forfeiture cases filed in the Superior Court. Usually, however, the Superior Court will transfer civil forfeiture appeals to the Commonwealth Court for disposition.

* * *

Note that unreported panel decisions of the Commonwealth Court issued after January 15, 2008 may be cited for their persuasive value, but not as binding precedent. See Commonwealth Court's Internal Operating

Procedures (IOP), Section 414. Always check to see whether cited cases in this Manual are unreported panel decisions.

IMPORTANT NOTICE: *This manual is for training and informational purposes only; it is not intended to convey legal advice in connection with any actual case or legal matter. It is strongly recommended that an individual whose property is the subject of a police seizure or a civil forfeiture proceeding consult an attorney promptly for legal advice and assistance.*

Special Notes of Appreciation. *This training manual was originally prepared by Louis S. Rulli, Practice Professor of Law, University of Pennsylvania Law School, for a Philadelphia Volunteers for the Indigent Program (VIP) training program on civil forfeiture for pro bono lawyers held on May 25, 2004. The manual was subsequently updated by Professor Rulli with the able assistance of Penn law students Matthew Funk in 2008 and Benjamin Frommer in 2012. Special appreciation is extended to Dan Urevick-Ackelsberg, Esq., for his comprehensive review in 2012 and to Tom Wheeler for his updating and formatting of the manual in 2013. The manual was substantially expanded, reorganized, and updated in May 2017 with the incredibly able assistance of Zachary Manning (Penn Law Class of 2017), for which we are especially grateful. Finally, a special note of thanks goes, as always, to the Civil Practice Clinic's Susanna Greenberg, Esq., for her many helpful suggestions and valuable input.*

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APPENDIX

CHAPTER 58
FORFEITURE OF ASSETS

Sec.

- § 5801. Scope of chapter.
- § 5802. Controlled substances forfeiture.
- § 5803. Asset forfeiture.
- § 5804. (Reserved).
- § 5805. Forfeiture procedure.
- § 5806. Motion for return of property.
- § 5806.1. (Reserved).
- § 5806.2. (Reserved).
- § 5807. Restrictions on use.
- § 5807.1. Prohibition on adoptive seizures.
- § 5807.2. Federal reporting requirements.
- § 5808. Exceptions.

Enactment. Chapter 58 was added June 29, 2017, P.L.247, No.13, effective July 1, 2017.

§ 5801. Scope of chapter.

This chapter relates to asset forfeiture.

§ 5802. Controlled substances forfeiture.

The following shall be subject to forfeiture to the Commonwealth and no property right shall exist in them:

(1) All drug paraphernalia, controlled substances or other drugs which have been manufactured, distributed, dispensed or acquired in violation of the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act.

(2) All raw materials, products and equipment of any kind which are used or intended for use in manufacturing, compounding, processing, delivering, importing or exporting any controlled substance or other drug in violation of The Controlled Substance, Drug, Device and Cosmetic Act.

(3) All property which is used or intended for use as a container for property described in paragraph (1) or (2).

(4) All conveyances, including aircraft, vehicles or vessels, which are used or are intended for use to transport, or in any manner to facilitate the transportation, sale, receipt, possession or concealment of property described in paragraph (1) or (2), except that:

(i) no bona fide security interest retained or acquired under 13 Pa.C.S. (relating to commercial code) by any merchant dealing in new or used aircraft, vehicles or vessels, or retained or acquired by any licensed or regulated finance company, bank or lending institution, or by any other business regularly engaged in the financing or lending on the security of such aircraft, vehicles or vessels, shall be subject to forfeiture or impairment; and

(ii) no conveyance shall be forfeited under this chapter for a violation of section 13(a)(31) of The Controlled Substance, Drug, Device and Cosmetic Act.

(5) All books, records and research, including formulas, microfilm, tapes and data, which are used or intended for use

in violation of The Controlled Substance, Drug, Device and Cosmetic Act.

(6) (i) All of the following:

(A) Money, negotiable instruments, securities or other things of value furnished or intended to be furnished by any person in exchange for a controlled substance in violation of The Controlled Substance, Drug, Device and Cosmetic Act, and all proceeds traceable to such an exchange.

(B) Money, negotiable instruments, securities or other things of value used or intended to be used to facilitate any violation of The Controlled Substance, Drug, Device and Cosmetic Act.

(C) Real property used or intended to be used to facilitate any violation of The Controlled Substance, Drug, Device and Cosmetic Act other than a violation of section 13(a)(16) or (31) of The Controlled Substance, Drug, Device and Cosmetic Act, including structures or other improvements thereon, and including any right, title and interest in the whole or any lot or tract of land and any appurtenances or improvements, which is used or intended to be used in any manner or part to commit or to facilitate the commission of a violation of The Controlled Substance, Drug, Device and Cosmetic Act, and things growing on, affixed to and found in the land.

(ii) The money and negotiable instruments found in close proximity to controlled substances possessed in violation of The Controlled Substance, Drug, Device and Cosmetic Act shall be rebuttably presumed to be proceeds derived from the selling of a controlled substance in violation of The Controlled Substance, Drug, Device and Cosmetic Act.

(iii) No valid lien or encumbrance on real property shall be subject to forfeiture or impairment under this paragraph. A lien which is fraudulent or intended to avoid forfeiture under this chapter shall be invalid.

(7) Any firearms, including, but not limited to, rifles, shotguns, pistols, revolvers, machine guns, zip guns or any type of prohibited offensive weapon, as that term is defined in 18 Pa.C.S. § 6105 (relating to persons not to possess, use, manufacture, control, sell or transfer firearms), which are used or intended for use to facilitate a violation of The Controlled Substance, Drug, Device and Cosmetic Act. Firearms as are found in close proximity to illegally possessed controlled substances shall be rebuttably presumed to be used or intended for use to facilitate a violation of The Controlled Substance, Drug, Device and Cosmetic Act. All weapons forfeited under this chapter shall be immediately destroyed by the receiving law enforcement agency.

Cross References. Section 5802 is referred to in section 5803 of this title.

§ 5803. Asset forfeiture.

(a) Applicability.--Notwithstanding any law to the contrary, this section shall apply to forfeitures conducted under the following:

- (1) 4 Pa.C.S. § 1518 (relating to prohibited acts; penalties).
- (2) 18 Pa.C.S. § 910 (relating to manufacture, distribution, use or possession of devices for theft of telecommunications services).
- (3) 18 Pa.C.S. § 2717 (relating to terrorism).
- (4) 18 Pa.C.S. § 3141 (relating to general rule).
- (5) 18 Pa.C.S. § 4116 (relating to copying; recording devices).
- (6) 18 Pa.C.S. § 4119 (relating to trademark counterfeiting).
- (7) 18 Pa.C.S. § 5513 (relating to gambling devices, gambling, etc.).
- (8) 18 Pa.C.S. § 5707 (relating to seizure and forfeiture of electronic, mechanical or other devices).
- (9) 18 Pa.C.S. § 6501 (relating to scattering rubbish).
- (10) 18 Pa.C.S. § 7707 (relating to loss of property rights to Commonwealth).
- (11) 30 Pa.C.S. § 927 (relating to forfeiture of fish and devices).
- (12) Section 5802 (relating to controlled substances forfeiture).
- (13) 75 Pa.C.S. § 4909 (relating to transporting foodstuffs in vehicles used to transport waste).
- (14) 75 Pa.C.S. § 9405 (relating to forfeitures; process and procedures).

(b) Process and seizure of money and personal property.--

Property subject to forfeiture may be seized by a law enforcement authority if any of the following apply:

- (1) The seizure is incident to an arrest or a search under a search warrant or inspection under an administrative inspection warrant and there is reason to believe the property is subject to forfeiture.
- (2) The property subject to seizure has been the subject of a prior judgment in favor of the Commonwealth in a criminal injunction or forfeiture proceeding under this chapter.
- (3) There is probable cause to believe that the property is dangerous to health and safety and exigencies are likely to result in the destruction or removal of the property or in the property otherwise being made unavailable for forfeiture.
- (4) There is probable cause to believe that the property has been used or is intended to be used in violation of the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act, or another offense for which forfeiture is expressly authorized as a sanction.
- (5) There is a warrant issued by a court of common pleas with appropriate jurisdiction.
- (6) There is probable cause to believe that the property is subject to forfeiture and exigencies are likely to result in the destruction or removal of the property.

(b.1) Process and seizure of real property.--Real property subject to forfeiture under this chapter may be seized by the law enforcement authority upon process issued by a court of common pleas having jurisdiction over the property. Except as provided under this section, real property subject to forfeiture shall not be seized before the entry of an order of forfeiture and the owners or occupants of the real property shall not be evicted from or otherwise deprived of the use and enjoyment of real property

that is the subject of a pending forfeiture action. The following shall apply:

(1) The filing of a *lis pendens* or the issuance of a temporary restraining order shall not constitute a seizure under this subsection.

(2) Real property may be seized prior to the entry of an order of forfeiture if:

(i) the district attorney or the Attorney General notifies the court that it intends to seize the property before a trial; and

(ii) the court:

(A) after causing notice to be served on the property owner and posted on the property and conducting a hearing in which the property owner has a meaningful opportunity to be heard, authorizes such seizure; or

(B) makes an *ex parte* determination that there is probable cause to believe that a nexus exists between the property and the criminal activity for which forfeiture is authorized and that exigent circumstances are presented that permit the district attorney or the Attorney General to seize the property without prior notice and an opportunity for the property owner to be heard.

(3) For purposes of paragraph (2) (ii) (B), exigent circumstances are presented where the district attorney or the Attorney General demonstrates that less restrictive measures, such as a *lis pendens*, temporary restraining order or security bond, would not suffice to protect the Commonwealth's interest in preventing the sale, destruction or continued unlawful use of the real property.

(4) If the court authorizes a seizure of real property under paragraph (2) (ii) (B), it shall conduct a prompt postseizure hearing at which the claimant shall have an opportunity to contest the Commonwealth's continuing custody of the property.

(c) Issuance of process.--If seizure without process occurs under subsection (b) or (b.1), proceedings for the issuance of process shall be instituted as soon as feasible.

(d) Custody of property.--Property taken or detained under this section shall not be subject to replevin and is deemed to be in the custody of the law enforcement authority subject only to the orders and decrees of the court of common pleas having jurisdiction over the forfeiture proceedings of the district attorney or the Attorney General. When property is seized under this chapter, the law enforcement authority shall place the property in a secure area or facility and either:

(1) remove the property to a secure area or facility designated by the law enforcement authority; or

(2) require that the district attorney or Attorney General take custody of the property and remove the property to an appropriate location for disposition in accordance with law.

(e) Receipt.--When property is seized, the law enforcement authority shall provide a receipt to the person in possession of the property or, in the absence of a person, leave a receipt in the place where the property was found, if reasonably possible. The receipt shall provide notice of the right of interest holders to seek the return of the seized property under this chapter. This

section shall not apply if law enforcement is otherwise required to provide a receipt for the property.

(f) Use of property held in custody.--When property is forfeited under this chapter, the property shall be transferred to the custody of the district attorney, if the law enforcement authority seizing the property has local or county jurisdiction, or the Attorney General, if the law enforcement authority seizing the property has Statewide jurisdiction. The district attorney or the Attorney General, where appropriate, may:

(1) retain the property for official use; or

(2) sell any forfeited property which is not required to be destroyed by law and which is not harmful to the public, except that the proceeds from the sale shall be used to pay all proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising and court costs. The balance of the proceeds shall be used and distributed in accordance with this chapter.

(f.1) Prohibited sales.--Sale of forfeited property to an employee of the district attorney or Attorney General, an individual related to an employee by blood or marriage or an employee of another law enforcement authority is prohibited.

(g) Use of cash or proceeds of property.--Cash or proceeds of property, subject to forfeiture under section 5802 and transferred to the custody of the district attorney under subsection (f) shall be placed in the operating fund of the county in which the district attorney is elected. The appropriate county authority shall immediately release from the operating fund, without restriction, a like amount for the use of the district attorney for the enforcement of or prevention of a violation of the provisions of The Controlled Substance, Drug, Device and Cosmetic Act. The funds shall be maintained in an account or accounts separate from other revenues of the office. The entity having budgetary control shall not anticipate future forfeitures or proceeds from future forfeitures in adoption and approval of the budget for the district attorney.

(h) Distribution of property among law enforcement authorities.--If both State and municipal law enforcement authorities were substantially involved in effecting the seizure, the court having jurisdiction over the forfeiture proceedings shall equitably distribute the property between the district attorney and the Attorney General.

(i) Authorization to utilize property.--Cash or proceeds of property subject to forfeiture under section 5802 and transferred to the custody of the district attorney or Attorney General under subsection (f) shall be utilized by the district attorney or Attorney General for the enforcement of or prevention of a violation of the provisions of The Controlled Substance, Drug, Device and Cosmetic Act. In appropriate cases, the district attorney and the Attorney General may designate proceeds from the forfeited property to be utilized by community-based drug and crime-fighting programs and for relocation and protection of witnesses in criminal cases. Real property may be transferred to a nonprofit organization to alleviate blight resulting from violations of The Controlled Substance, Drug, Device and Cosmetic Act.

(j) Annual audit of forfeited property.--Every county in this Commonwealth shall provide, through the controller, board of auditors or other appropriate auditor and the district attorney, an annual audit of all forfeited property and proceeds obtained

under this chapter. The audit shall not be made public but shall be submitted to the Office of Attorney General. By September 30 of each year, the county shall report all forfeited property and proceeds obtained under this chapter and the disposition of the property during the preceding year to the Attorney General. The Attorney General and each district attorney shall maintain and create appropriate records to account for the property forfeited in a fiscal year and the use made of the property forfeited. Each audit shall include:

- (1) Date property was seized.
- (2) The type of property seized.
- (3) Where property was seized.
- (4) The approximate value.
- (5) The alleged criminal behavior with which the property is associated.
- (6) The disposition or use of property forfeited.
- (7) Whether the forfeiture was related to a criminal case and the outcome of the criminal case.
- (8) Date of forfeiture decision.

(k) Annual report and confidential information.--The Attorney General shall annually submit a report to the Appropriations Committee and Judiciary Committee of the Senate and to the Appropriations Committee and Judiciary Committee of the House of Representatives specifying the forfeited property or proceeds of the forfeited property obtained under this chapter during the fiscal year beginning July 1, and the following shall apply:

- (1) The report shall include all information required under subsection (j) subject to the limitations provided under paragraph (2).
- (2) The Attorney General shall adopt procedures and guidelines, which shall be public, governing the release of information by the Attorney General or the district attorney to protect the confidentiality of forfeited property or proceeds used in ongoing law enforcement activities.

(k.1) Reporting.--By November 30 of each year, the Office of Attorney General shall notify the Appropriations Committee and Judiciary Committee of the Senate and the Appropriations Committee and Judiciary Committee of the House of Representatives of any county which has not submitted an audit and complied with the requirements in subsection (j).

(l) Proceeds and appropriations.--The proceeds or future proceeds from forfeited property under this chapter shall be in addition to any appropriation made to the Office of Attorney General. The Attorney General shall maintain proceeds from property forfeited to the Office of Attorney General in an account or accounts separate from any other account maintained by the Office of Attorney General.

Special Provisions in Appendix. See section 12 of Act 13 of 2017 in the appendix to this title for special provisions relating to forfeitures.

Cross References. Section 5803 is referred to in section 5807.2 of this title; section 1518 of Title 4 (Amusements); section 910, 2717, 3141, 4116, 4119, 5513, 5707, 6501, 7707 of Title 18 (Crimes and Offenses); section 927 of Title 30 (Fish); sections 4909, 9405 of Title 75 (Vehicles).

§ 5804. (Reserved).

§ 5805. Forfeiture procedure.

(a) General procedure.--The proceedings for the forfeiture or condemnation of property, the sale of which is provided for in this chapter, shall be in rem, in which the Commonwealth shall be the plaintiff and the property the defendant. A forfeiture petition signed by the Attorney General, deputy attorney general, district attorney or assistant district attorney shall be filed in the court of common pleas of the judicial district where the property is seized or located, verified by oath or affirmation of an officer. If criminal charges have been filed and a prosecution is pending, the petition shall be filed in the same judicial district as the criminal charges in all instances except those involving real property. Each petition relating to real property shall be filed in the jurisdiction where the real property is located.

(1) Each forfeiture petition shall contain the following:

(i) A description of the property actually seized or constructively seized, including, but not limited to, if known, the address of any real property, the exact dollar amount of any United States currency, or the approximate value of any negotiable instrument or security and the make, model, year and license plate number of any vehicle.

(ii) A statement of the time and place where seized.

(iii) The owner, if known.

(iv) The person or persons in possession at the time of seizure, if known.

(v) An allegation that the property is subject to forfeiture and an averment of material facts supporting the forfeiture action.

(vi) A prayer for an order of forfeiture that the property be adjudged forfeited to the Commonwealth unless cause is shown to the contrary.

(2) The following shall apply:

(i) A claimant shall file an answer setting forth a right of possession of the property within 30 days of service of the forfeiture petition. The answer shall be in writing and filed to the docket number in the court of common pleas and shall be signed by the claimant or the claimant's attorney.

(ii) The following shall apply:

(A) Prior to filing an answer to a forfeiture petition, a claimant may file a motion to stay the forfeiture proceedings if the claimant has been criminally charged in a case associated with the forfeiture matter. If the motion is properly filed, it shall be granted.

(B) The claimant shall have 30 days from the date the stay is lifted to file an answer in accordance with this paragraph.

(3) After the answer is filed, the parties shall be permitted to conduct discovery.

(b) Notice to property owners.--

(1) A copy of the forfeiture petition required under subsection (a) shall be served personally or by certified mail on the owner, if known, and on each person in possession at the time of the seizure, if known. The copy shall have endorsed a notice, as follows:

To the claimant of within described property:

You are required to file an answer to this petition, setting forth your title in, and right to possession of,

said property within 30 days from the service hereof, and you are also notified that, if you fail to file the answer, a decree of forfeiture and condemnation will be entered against the property.

(2) The notice under paragraph (1) must be signed by the Attorney General, deputy attorney general, district attorney, deputy district attorney or assistant district attorney and contain accurate contact information for the signatory.

(c) Substitute notice.--

(1) If the owner of the property is unknown, there was no person in possession of the property when seized or the owner or each person in possession at the time of the seizure cannot be personally served or located within the jurisdiction of the court, notice of the petition shall be given by the Commonwealth through an advertisement in at least one newspaper of general circulation published in the county where the property has been seized, once a week for two successive weeks.

(2) Notwithstanding any other law, no other advertisement shall be necessary.

(3) The notice shall contain a statement of the seizure of the property with a description of the property and the place and date of seizure and shall direct any claimants to the property to file a claim on or before a date given in the notice, which shall not be less than 30 days from the date of the first publication.

(4) If no claims are filed within 30 days of publication, the Commonwealth may move for default judgment.

(d) Property owners not in jurisdiction.--For purposes of this section, the owner or other person cannot be found in the jurisdiction of the court if:

(1) a copy of the petition is mailed to the last known address by certified mail and is returned without delivery;

(2) personal service is attempted once, but cannot be made at the last known address; and

(3) a copy of the petition is left at the last known address unless the address does not exist.

(d.1) Proof of notice.--The Commonwealth shall file proof of notice with the court. Forfeiture shall not be ordered if the court finds that proof does not exist that the notice requirements contained under subsections (b), (c) and (d), if applicable, have been met.

(e) Notice automatically waived.--The notice provisions of this section shall be automatically waived if the owner, without good cause, fails to appear in court in response to a subpoena and a bench warrant is issued on the underlying criminal charges. If good cause has not been demonstrated, the Commonwealth may move for default judgment.

(f) Release of seized property pending conclusion of proceedings.--

(1) A claimant to property subject to forfeiture is permitted to seek the immediate release of seized property if:

(i) the claimant has a possessory interest in the property;

(ii) the claimant has sufficient ties to the community to provide assurance that the property will be available at the time of the trial;

(iii) the continued possession by the Commonwealth pending the final disposition of forfeiture proceedings will cause substantial hardship to the claimant, such as

preventing the functioning of a legitimate business,
preventing the claimant from working or leaving the
claimant homeless;

(iv) the claimant's likely hardship from the continued
possession by the Commonwealth of the seized property
outweighs the risk that the property will be destroyed,
damaged, lost, concealed or transferred if the property is
returned to the claimant during the pendency of the
forfeiture proceeding; and

(v) none of the conditions under paragraph (6) apply.

(2) The following shall apply:

(i) The claimant under paragraph (1) may file a motion
in the court of common pleas in which the forfeiture
petition has been filed or, if no forfeiture petition has
been filed, in the court of common pleas in the
jurisdiction in which the property was seized. The motion
shall be served upon the district attorney or Attorney
General who has jurisdiction over the case.

(ii) The motion described in this subsection shall set
forth the basis on which the requirements of paragraph (1)
have been met.

(3) If the Commonwealth establishes that the claimant's
motion is meritless, the court shall deny the motion. In
response to a motion under this subsection, the Commonwealth
may, in appropriate cases, submit evidence ex parte in order to
avoid disclosing any matter that may adversely affect an
ongoing criminal investigation or pending criminal trial.

(4) The following shall apply:

(i) The court shall order that the property be
returned to the claimant pending completion of the
forfeiture proceeding if:

(A) a motion is filed under paragraph (2); and

(B) following a hearing, the claimant has
demonstrated that the requirements of paragraph (1)
have been met.

(ii) If the motion addresses currency, monetary
instruments or electronic funds, the claimant must
establish by a preponderance of the evidence a documented
and noncriminal source of the currency, monetary instrument
or electronic fund. The requirement under this subparagraph
shall be in addition to the requirements under subparagraph
(i).

(5) If the court grants a motion under paragraph (4):

(i) the court may enter any order necessary to ensure
that the value of the property is maintained while the
forfeiture action is pending, including:

(A) permitting the inspection, photographing and
the taking of inventory of the property;

(B) fixing a bond; and

(C) requiring the claimant to obtain or maintain
insurance on the subject property;

(ii) the Commonwealth may place a lien against the
property or file a lis pendens to ensure that the property
is not transferred to another person; and

(iii) if the property in question is currency,
monetary instruments or electronic funds, the court shall
fix a bond as provided under paragraph (5.1).

(5.1) For the purposes of paragraph (5)(iii), the
following shall apply to the fixing of a bond sufficient to

secure the value of the currency, monetary instruments or electronic funds:

(i) If the value of the currency, monetary instruments or electronic funds is less than \$2,000, the court may order the fixing of a bond.

(ii) If the value of the currency, monetary instruments or electronic funds is at least \$2,000, but less than \$5,000, the court may order the fixing of a bond. If the court finds that the claimant has not demonstrated his or her ability to ensure the availability of the currency at the time of the forfeiture trial, the court shall order the fixing of a bond.

(iii) If the value of the currency, monetary instruments or electronic funds is \$5,000 or more, the court shall order the fixing of a bond.

(6) This subsection shall not apply if the seized property:

(i) is contraband;

(ii) is evidence which shall include, but not be limited to, proceeds from a violation of law;

(iii) by reason of design or other characteristic, is particularly suited for use in illegal activities; or

(iv) is likely to be used to commit additional criminal acts if returned to the claimant.

(7) A party to a proceeding under this subsection shall not be estopped from raising in any other proceeding any claim or issue presented to or decided by the court under this subsection.

(g) (Reserved).

(h) (Reserved).

(i) Trial time.--On the filing of an answer setting forth a right of possession, the case shall be deemed at issue and a time shall be fixed for the trial. A judicial district shall not require the parties to proceed through local rules of arbitration.

(j) Burden of proof.--

(1) The burden shall be on the Commonwealth to establish in the forfeiture petition that the property is subject to forfeiture.

(2) If the Commonwealth satisfies the burden under paragraph (1), the burden shall be on the claimant to show by a preponderance of the evidence that:

(i) the claimant is the owner of the property or the holder of a chattel mortgage or contract of conditional sale on the property or holds some other documented interest in the property; and

(ii) the claimant lawfully acquired the property.

(3) If the claimant satisfies the burden under paragraph (2), the burden shall be on the Commonwealth to establish by clear and convincing evidence that the property in question was unlawfully used, possessed or otherwise subject to the forfeiture.

(4) If the Commonwealth satisfies the burden under paragraph (3) and the claimant alleges that he did not have knowledge of the unlawful activity or consent to the unlawful activity, the burden shall be on the Commonwealth to establish by clear and convincing evidence:

(i) that the property was unlawfully used or possessed by the claimant; or

(ii) if it appears that the property was unlawfully used or possessed by a person other than the claimant, that the person unlawfully used or possessed the property with the claimant's knowledge and consent.

(k) Proportionality.--

(1) If the court determines that the forfeiture petition shall be granted, the claimant, prior to entry of an order of forfeiture, may petition the court to determine whether the forfeiture is constitutionally excessive.

(2) If the court finds that the forfeiture is grossly disproportional to the offense, the court shall reduce or eliminate the forfeiture as necessary to avoid a constitutional violation.

(l) Disclaimed property.--A defendant in a criminal case who disclaims ownership of property during the criminal case may not claim ownership during a subsequent forfeiture proceeding.

(m) Procedure following acquittal.--The following shall apply:

(1) If the owner of the property is acquitted of all crimes which authorize forfeiture, there shall be a rebuttable presumption that the property was lawfully used or possessed by the claimant.

(2) If the owner of the property is acquitted of all crimes which authorize forfeiture, the owner shall be entitled to a hearing under section 5806 (relating to motion for return of property).

(3) If the forfeiture petition relating to the property at issue has already been litigated, this section shall not apply.

(4) As used in this subsection, the term "acquittal" shall not include plea agreements, acceptance of Accelerated Rehabilitative Disposition or any other form of preliminary disposition.

Special Provisions in Appendix. See section 12 of Act 13 of 2017 in the appendix to this title for special provisions relating to forfeitures.

Cross References. Section 5805 is referred to in section 1518 of Title 4 (Amusements); section 910, 2717, 3141, 4116, 4119, 5513, 5707, 6501, 7707 of Title 18 (Crimes and Offenses); section 927 of Title 30 (Fish); sections 4909, 9405 of Title 75 (Vehicles).

§ 5806. Motion for return of property.

(a) Motion.--The following shall apply:

(1) A person aggrieved by a search and seizure may move for the return of the property seized by filing a motion in the court of common pleas in the judicial district where the property is located.

(2) The filer under paragraph (1) must serve the Commonwealth.

(3) Upon proof of service, the court shall schedule a prompt hearing on the motion and shall notify the Commonwealth. A hearing on the motion shall, to the extent practicable and consistent with the interests of justice, be held within 30 days of the filing of the motion.

(4) The assigned judge may require the filing of an answer.

(5) If a forfeiture petition was filed by the Commonwealth before the filing of a motion for return of property, the

motion shall be assigned to the same judge for disposition, as practicable.

(b) Contents of motion.--A motion under this section shall:

- (1) Be signed by the petitioner under penalty of perjury.
- (2) Describe the nature and extent of the petitioner's right, title or interest in the property, the time and circumstances of the petitioner's acquisition of the right, title or interest in the property and any additional facts supporting the petitioner's claim. The information shall include:
 - (i) A description of the property seized.
 - (ii) A statement of the time and place where seized, if known.
 - (iii) The owner, if known.
 - (iv) The person in possession, if known.
- (3) Identify the relief sought, which may include:
 - (i) Return of the petitioner's property.
 - (ii) Reimbursement for the petitioner's legal interest in the property.
 - (iii) Severance of the petitioner's property from the forfeited property.
 - (iv) Any relief the court deems appropriate and just.

Special Provisions in Appendix. See section 12 of Act 13 of 2017 in the appendix to this title for special provisions relating to forfeitures.

Cross References. Section 5806 is referred to in section 5805 of this title; section 1518 of Title 4 (Amusements); section 910, 2717, 3141, 4116, 4119, 5513, 5707, 6501, 7707 of Title 18 (Crimes and Offenses); section 927 of Title 30 (Fish); sections 4909, 9405 of Title 75 (Vehicles).

§ 5806.1. (Reserved).

§ 5806.2. (Reserved).

§ 5807. Restrictions on use.

Property, money or other things of value received by a State law enforcement authority under any of the following laws may not be used for contributions to political campaigns, expenses related to judicial trainings or the purchase of alcoholic beverages:

- (1) A Federal law which authorizes the sharing or transfer of all or a portion of forfeited property or the proceeds of the sale of forfeited property to a State law enforcement authority.
- (2) A State law which authorizes forfeiture.

Special Provisions in Appendix. See section 12 of Act 13 of 2017 in the appendix to this title for special provisions relating to forfeitures.

Cross References. Section 5807 is referred to in section 1518 of Title 4 (Amusements); section 910, 2717, 3141, 4116, 4119, 5513, 5707, 6501, 7707 of Title 18 (Crimes and Offenses); section 927 of Title 30 (Fish); sections 4909, 9405 of Title 75 (Vehicles).

§ 5807.1. Prohibition on adoptive seizures.

State law enforcement authorities shall not refer seized property to a Federal agency seeking the adoption by the Federal agency of the seized property. Nothing under this chapter shall prohibit the Federal Government or any of its agencies from

seeking Federal forfeiture of the same property under any Federal forfeiture law.

Special Provisions in Appendix. See section 12 of Act 13 of 2017 in the appendix to this title for special provisions relating to forfeitures.

Cross References. Section 5807.1 is referred to in section 1518 of Title 4 (Amusements); section 910, 2717, 3141, 4116, 4119, 5513, 5707, 6501, 7707 of Title 18 (Crimes and Offenses); section 927 of Title 30 (Fish); sections 4909, 9405 of Title 75 (Vehicles).

§ 5807.2. Federal reporting requirements.

The audit required under section 5803(j) (relating to asset forfeiture) shall include a copy of each equitable sharing agreement and certification form filed with the United States Department of Justice within the last 12 months.

§ 5808. Exceptions.

(a) Contraband.--Nothing in this chapter shall be construed to apply to the forfeiture of the following:

- (1) Items bearing a counterfeit mark under 18 Pa.C.S. § 4119 (relating to trademark counterfeiting).
- (2) Liquor, alcohol or malt or brewed beverages illegally manufactured or possessed under section 601 of the act of April 12, 1951 (P.L.90, No.21), known as the Liquor Code.
- (3) Unlawfully stamped cigarettes under section 307 of the act of December 30, 2003 (P.L.441, No.64), known as the Tobacco Product Manufacturer Directory Act.
- (4) Unstamped cigarettes under section 1285 of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971.

(b) Abandoned and unclaimed property.--This chapter shall not apply to abandoned or unclaimed property under Article XIII.1 of the act of April 9, 1929 (P.L.343, No.176), known as The Fiscal Code.

Special Provisions in Appendix. See section 12 of Act 13 of 2017 in the appendix to this title for special provisions relating to forfeitures.

Cross References. Section 5808 is referred to in section 1518 of Title 4 (Amusements); section 910, 2717, 3141, 4116, 4119, 5513, 5707, 6501, 7707 of Title 18 (Crimes and Offenses); section 927 of Title 30 (Fish); sections 4909, 9405 of Title 75 (Vehicles).

Appendix – Pennsylvania Controlled Substances Forfeiture Act (repealed and replaced on July 1, 2017)

CHAPTER 68

FORFEITURES

Section

6801. Controlled substances forfeiture.

6802. Procedure with respect to seized property subject to liens and rights of lienholders.

§ 6801. Controlled substances forfeiture.

(a) Forfeitures generally.--The following shall be subject to forfeiture to the Commonwealth and no property right shall exist in them:

(1) All drug paraphernalia, controlled substances or other drugs which have been manufactured, distributed, dispensed or acquired in violation of the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act.

(2) All raw materials, products and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing or exporting any controlled substance or other drug in violation of The Controlled Substance, Drug, Device and Cosmetic Act.

(3) All property which is used, or intended for use, as a container for property described in paragraph (1) or (2).

(4) All conveyances, including aircraft, vehicles or vessels, which are used or are intended for use to transport, or in any manner to facilitate the transportation, sale, receipt, possession or concealment of, property described in paragraph (1) or (2), except that:

(i) no conveyance used by any person as a common carrier in the transaction of business as a common carrier shall be forfeited under the provisions of this section unless it shall appear that the owner or other person in charge of such conveyance was a consenting party or privy to a violation of The Controlled Substance, Drug, Device and Cosmetic Act;

(ii) no conveyance shall be forfeited under the provisions of this section by reason of any act or omission established by the owner thereof to have been committed or omitted without his knowledge or consent, which absence of knowledge or consent must be reasonable under the circumstances presented;

(iii) no bona fide security interest retained or acquired under 13 Pa.C.S. (relating to commercial code) by any merchant dealing in new or used aircraft, vehicles or vessels, or retained or acquired by any licensed or regulated finance company, bank or lending institution, or by any other business regularly engaged in the financing of, or lending on the security of, such aircraft, vehicles or vessels, shall be subject to forfeiture or impairment; and

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(iv) no conveyance shall be forfeited under this section for violation of section 13(a)(31) of The Controlled Substance, Drug, Device and Cosmetic Act.

(5) All books, records and research, including formulas, microfilm, tapes and data, which are used or intended for use in violation of The Controlled Substance, Drug, Device and Cosmetic Act.

(6) (i) All of the following:

(A) Money, negotiable instruments, securities or other things of value furnished or intended to be furnished by any person in exchange for a controlled substance in violation of The Controlled Substance, Drug, Device and Cosmetic Act, and all proceeds traceable to such an exchange.

(B) Money, negotiable instruments, securities or other things of value used or intended to be used to facilitate any violation of The Controlled Substance, Drug, Device and Cosmetic Act.

(C) Real property used or intended to be used to facilitate any violation of The Controlled Substance, Drug, Device and Cosmetic Act, including structures or other improvements thereon, and including any right, title and interest in the whole or any lot or tract of land and any appurtenances or improvements, which is used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, a violation of The Controlled Substance, Drug, Device and Cosmetic Act, and things growing on, affixed to and found in the land.

(ii) No property shall be forfeited under this paragraph, to the extent of the interest of an owner, by reason of any act or omission established by the owner to have been committed or omitted without the knowledge or consent of that owner. Such money and negotiable instruments found in close proximity to controlled substances possessed in violation of The Controlled Substance, Drug, Device and Cosmetic Act shall be rebuttably presumed to be proceeds derived from the selling of a controlled substance in violation of The Controlled Substance, Drug, Device and Cosmetic Act.

(iii) No valid lien or encumbrance on real property shall be subject to forfeiture or impairment under this paragraph. A lien which is fraudulent or intended to avoid forfeiture under this section shall be invalid.

(7) Any firearms, including, but not limited to, rifles, shotguns, pistols, revolvers, machine guns, zip guns or any type of prohibited offensive weapon, as that term is defined in 18 Pa.C.S. (relating to crimes and offenses), which are used or intended for use to facilitate a violation of The Controlled Substance, Drug, Device and Cosmetic Act. Such operable firearms as are found in close proximity to illegally possessed controlled substances shall be rebuttably presumed to be used or intended for use to facilitate a violation of The Controlled Substance, Drug, Device and Cosmetic Act. All weapons forfeited under this section shall be immediately destroyed by the receiving law enforcement agency.

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(b) Process and seizure.--Property subject to forfeiture under this chapter may be seized by the law enforcement authority upon process issued by any court of common pleas having jurisdiction over the property. Seizure without process may be made if:

- (1) the seizure is incident to an arrest or a search under a search warrant or inspection under an administrative inspection warrant;
- (2) the property subject to seizure has been the subject of a prior judgment in favor of the Commonwealth in a criminal injunction or forfeiture proceeding under this chapter;
- (3) there is probable cause to believe that the property is dangerous to health or safety; or
- (4) there is probable cause to believe that the property has been used or is intended to be used in violation of The Controlled Substance, Drug, Device and Cosmetic Act.

(c) Seizure without process.--In the event seizure without process occurs, as provided herein, proceedings for the issuance thereof shall be instituted forthwith.

(d) Custody of property.--Property taken or detained under this section shall not be subject to replevin, but is deemed to be in the custody of the law enforcement authority subject only to the orders and decrees of the court of common pleas having jurisdiction over the forfeiture proceedings and of the district attorney or the Attorney General. When property is seized under this chapter, the law enforcement authority shall place the property under seal and either:

- (1) remove the property to a place designated by it; or
- (2) require that the district attorney or Attorney General take custody of the property and remove it to an appropriate location for disposition in accordance with law.

(e) Use of property held in custody.--Whenever property is forfeited under this chapter, the property shall be transferred to the custody of the district attorney, if the law enforcement authority seizing the property has local or county jurisdiction, or the Attorney General, if the law enforcement authority seizing the property has Statewide jurisdiction. The district attorney or the Attorney General, where appropriate, may:

- (1) Retain the property for official use.
- (2) Sell any forfeited property which is not required to be destroyed by law and which is not harmful to the public, but the proceeds from any such sale shall be used to pay all proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising and court costs. The balance of the proceeds shall be dealt with in accordance with subsections (f) and (g).

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(f) Use of cash or proceeds of property.--Cash or proceeds of forfeited property transferred to the custody of the district attorney pursuant to subsection (e) shall be placed in the operating fund of the county in which the district attorney is elected. The appropriate county authority shall immediately release from the operating fund, without restriction, a like amount for the use of the district attorney enforcing the provisions of The Controlled Substance, Drug, Device and Cosmetic Act. The entity having budgetary control shall not anticipate future forfeitures or proceeds therefrom in adoption and approval of the budget for the district attorney.

(g) Distribution of property among law enforcement authorities.--If both municipal and State law enforcement authorities were substantially involved in effecting the seizure, the court having jurisdiction over the forfeiture proceedings shall equitably distribute the property between the district attorney and the Attorney General.

(h) Authorization to utilize property.--The district attorney and the Attorney General shall utilize forfeited property or proceeds thereof for the purpose of enforcing the provisions of The Controlled Substance, Drug, Device and Cosmetic Act. In appropriate cases, the district attorney and the Attorney General may designate proceeds from forfeited property to be utilized by community-based drug and crime-fighting programs and for relocation and protection of witnesses in criminal cases.

(i) Annual audit of forfeited property.--It shall be the responsibility of every county in this Commonwealth to provide, through the controller, board of auditors or other appropriate auditor and the district attorney, an annual audit of all forfeited property and proceeds obtained under this section. The audit shall not be made public but shall be submitted to the Office of Attorney General. The county shall report all forfeited property and proceeds obtained under this section and the disposition thereof to the Attorney General by September 30 of each year.

(j) Annual report; confidential information regarding property.--The Attorney General shall annually submit a report, to the Appropriations and Judiciary Committees of the Senate and to the Appropriations and Judiciary Committees of the House of Representatives, specifying the forfeited property or proceeds thereof obtained under this section. The report shall give an accounting of all proceeds derived from the sale of forfeited property and the use made of unsold forfeited property. The Attorney General shall adopt procedures and guidelines governing the release of information by the district attorney to protect the confidentiality of forfeited property or proceeds used in ongoing drug enforcement activities.

(k) Proceeds and appropriations.--The proceeds or future proceeds from forfeited property under this chapter shall be in addition to any appropriation made to the Office of Attorney General.

(Dec. 27, 1994, P.L.1337, No.154, eff. 60 days; July 7, 2006, P.L.342, No.71, eff. 60 days)

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§ 6801.1. Terrorism forfeiture.

(a) **Forfeitures generally.**--The following shall be subject to forfeitures to the Commonwealth, and no property right shall exist in them:

(1) All assets, foreign or domestic:

(i) Of an individual, entity or organization engaged in planning or perpetrating an act in this Commonwealth which violates 18 Pa.C.S. § 2717 (relating to terrorism) and all assets, foreign or domestic, affording a person a source of influence over such an entity or organization.

(ii) Acquired or maintained by a person with the intent and for the purpose of supporting, planning, conducting or concealing an act in this Commonwealth which violates 18 Pa.C.S. § 2717.

(iii) Derived from, involved in or used or intended to be used to commit an act in this Commonwealth which violates 18 Pa.C.S. § 2717.

(2) All assets within this Commonwealth:

(i) Of an individual, entity or organization engaged in planning or perpetrating an act which violates 18 Pa.C.S. § 2717.

(ii) Acquired or maintained with the intent and for the purpose of supporting, planning, conducting or concealing an act which violates 18 Pa.C.S. § 2717.

(iii) Derived from, involved in or used or intended to be used to commit an act which violates 18 Pa.C.S. § 2717.

(b) **Process and seizures.**--Property subject to forfeiture under this section may be seized by the law enforcement authority upon process issued by a court of common pleas having jurisdiction over the property. Seizure without process may be made if any of the following apply:

(1) The seizure is incident to an arrest, a search under a search warrant or an inspection under an administrative inspection warrant.

(2) The property subject to seizure has been the subject of a prior judgment in favor of the Commonwealth in a criminal injunction or forfeiture proceeding under this chapter.

(3) There is probable cause to believe that the property is dangerous to health or safety.

(4) There is probable cause to believe that the property has been or is intended to be used in the commission of an act which violates 18 Pa.C.S. § 2717.

(c) **Seizure without process.**--In the event seizure is made without process, proceedings for the issuance of process shall be instituted forthwith.

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(d) Custody of property.--Property taken or detained under this section shall not be subject to replevin but is deemed to be in the custody of the law enforcement authority, subject only to the orders and decrees of the court of common pleas having jurisdiction over the forfeiture proceedings and of the district attorney or the Attorney General. When property is seized under this section, the law enforcement authority shall place the property under seal and either:

- (1) remove the property to a place determined by the law enforcement authority; or
- (2) request that the district attorney or Attorney General take custody of the property and remove it to an appropriate location for disposition in accordance with law.

(e) Use of property held in custody.--Whenever property is forfeited under this section, it shall be transferred to the custody of the district attorney if the law enforcement authority seizing the property has local or county jurisdiction or of the Attorney General if the law enforcement authority seizing the property has Statewide jurisdiction. The district attorney or the Attorney General, where appropriate, may:

- (1) Retain the property for official use.
- (2) Sell any forfeited property which is not required to be destroyed by law and which is not harmful to the public, the proceeds from any such sale to be used to pay all proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising and court costs. The balance of the proceeds shall be dealt with under subsections (f) and (g).

(f) Use of cash or proceeds of property.--Cash or proceeds of forfeited property transferred to the custody of the district attorney under subsection (e) shall be placed in the operating fund of the county in which the district attorney is elected. The appropriate county authority shall immediately release from the operating fund, without restriction, a like amount for the use of the district attorney in enforcing the criminal laws of the Commonwealth of Pennsylvania. The entity having budgetary control shall not anticipate future forfeitures or proceeds therefrom in adoption and approval of the budget for the district attorney.

(g) Distribution of property among law enforcement authorities.--If both municipal and State law enforcement authorities were substantially involved in effecting the seizure, the court having jurisdiction over the forfeiture proceedings shall equitably distribute the property between the district attorney and the Attorney General.

(h) Authorization to utilize property.--The district attorney and the Attorney General shall utilize forfeited property or proceeds thereof for the purpose of enforcing the provisions of 18 Pa.C.S. § 2717, section 6802 (relating to procedure with respect to seized property subject to liens and rights

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of lienholders) and this section. In appropriate cases, the district attorney and the Attorney General may designate proceeds from forfeited property to be utilized for antiterrorism public safety programs and for relocation and protection of witnesses in criminal cases.

(i) Annual audit of forfeited property.--It shall be the responsibility of every county in this Commonwealth to provide, through the controller, board of auditors or other appropriate auditor and the district attorney, an annual audit of all forfeited property and proceeds obtained under this section. The audit shall not be made public but shall be submitted to the Office of Attorney General. The county shall report all forfeited property and proceeds obtained under this section and the disposition thereof to the Attorney General by September 30 of each year.

(j) Annual report; confidential information regarding property.--The Attorney General shall annually submit a report to the Appropriations Committee and Judiciary Committee of the Senate and the Appropriations Committee and Judiciary Committee of the House of Representatives specifying the forfeited property or proceeds thereof obtained under this section. The report shall give an accounting of all proceeds derived from the sale of forfeited property and the use made of unsold forfeited property. The Attorney General shall adopt procedures and guidelines governing the release of information by the district attorney to protect the confidentiality of forfeited property or proceeds used in ongoing antiterrorist activities.

(k) Proceeds and appropriations.--The proceeds or future proceeds from property forfeited under this section shall be in addition to any appropriation made to the Office of Attorney General.

(July 7, 2006, P.L.342, No.71, eff. 60 days)

Appendix – Pennsylvania Controlled Substances Forfeiture Act (repealed and replaced on July 1, 2017)

§ 6802. Procedure with respect to seized property subject to liens and rights of lienholders.

(a) **General procedure.**--The proceedings for the forfeiture or condemnation of property, the sale of which is provided for in this chapter, shall be in rem, in which the Commonwealth shall be the plaintiff and the property the defendant. A petition shall be filed in the court of common pleas of the judicial district where the property is located, verified by oath or affirmation of an officer or citizen, containing the following:

- (1) A description of the property seized.
- (2) A statement of the time and place where seized.
- (3) The owner, if known.
- (4) The person or persons in possession, if known.
- (5) An allegation that the property is subject to forfeiture pursuant to section 6801(a) (relating to controlled substances forfeiture) or 6801.1(a) (relating to terrorism forfeiture) and an averment of material facts upon which the forfeiture action is based.
- (6) A prayer for an order of forfeiture that the property be adjudged forfeited to the Commonwealth and condemned and be ordered sold according to law, unless cause be shown to the contrary.

(b) **Notice to property owners.**--A copy of the petition required under subsection (a) shall be served personally or by certified mail on the owner or upon the person or persons in possession at the time of the seizure. The copy shall have endorsed a notice, as follows:

To the Claimant of within Described Property:

You are required to file an answer to this petition, setting forth your title in, and right to possession of, said property within 30 days from the service hereof, and you are also notified that, if you fail to file said answer, a decree of forfeiture and condemnation will be entered against said property.

The notice shall be signed by the Attorney General, Deputy Attorney General, district attorney, deputy district attorney or assistant district attorney.

(c) **Substitute notice.**--If the owner of the property is unknown or there was no person in possession of the property when seized or if the owner or such person or persons in possession at the time of the seizure cannot be personally served or located within the jurisdiction of the court, notice of the petition shall be given by the Commonwealth through an advertisement in only one newspaper of general circulation published in the county where the property shall have been seized, once a week for two successive weeks. No other advertisement of any sort shall be necessary, any other law to the contrary notwithstanding. The notice shall contain a statement of the seizure of the property with a description of the property and the place and date of seizure

Appendix – Pennsylvania Controlled Substances Forfeiture Act (repealed and replaced on July 1, 2017)

and shall direct any claimants to the property to file a claim on or before a date given in the notice, which date shall not be less than 30 days from the date of the first publication. If no claims are filed within 30 days of publication, the property shall summarily forfeit to the Commonwealth.

(d) Property owners not in jurisdiction.--For purposes of this section, the owner or other such person cannot be found in the jurisdiction of the court if:

- (1) a copy of the petition is mailed to the last known address by certified mail and is returned without delivery;
- (2) personal service is attempted once, but cannot be made at the last known address; and
- (3) a copy of the petition is left at the last known address.

(e) Notice automatically waived.--The notice provisions of this section are automatically waived when the owner, without good cause, fails to appear in court in response to a subpoena on the underlying criminal charges. Forty-five days after such a failure to appear, if good cause has not been demonstrated, the property shall summarily forfeit to the Commonwealth.

(f) Preservation of the property subject for forfeiture.--Upon application of the Commonwealth, the court may enter a restraining order or injunction, require the execution of a satisfactory performance bond or take any other action to preserve the availability of property described in section 6801(a) or 6801.1(a) for forfeiture under this section either:

- (1) upon the filing of an information or an indictment charging an offense in this Commonwealth for which criminal forfeiture may be ordered under this chapter and alleging that the property with respect to which the order is sought would be subject to forfeiture; or
- (2) prior to the filing of such an indictment or information, if, after notice to persons appearing to have an interest in the property and an opportunity for a hearing, the court determines that:
 - (i) there is a substantial probability that the Commonwealth will prevail on the issue of forfeiture and that failure to enter the order will result in the property being destroyed, removed from the jurisdiction of the court or otherwise made unavailable for forfeiture; and
 - (ii) the need to preserve the availability of the property through the entry of the requested order outweighs the hardship on any party against whom the order is to be entered.

However, an order entered pursuant to this paragraph shall be effective for not more than 90 days unless extended by the court for good cause shown or unless an indictment or information described in paragraph (1) has been filed.

(g) Temporary restraining order.--A temporary restraining order under subsection (f) may be entered upon application of the Commonwealth without notice or opportunity for a hearing when an information or indictment has not

Appendix – Pennsylvania Controlled Substances Forfeiture Act (repealed and replaced on July 1, 2017)

yet been filed with respect to the property, if the Commonwealth demonstrates that there is probable cause to believe that the property with respect to which the order is sought would be subject to forfeiture under this chapter and that provision of notice will jeopardize the availability of the property for forfeiture. Such a temporary order shall expire not more than ten days after the date on which it is entered, unless extended for good cause shown or unless the party against whom it is entered consents to an extension for a longer period. A hearing requested concerning an order entered under this subsection shall be held at the earliest possible time and prior to the expiration of the temporary order.

(h) Hearing regarding property; rules of evidence.--The court may receive and consider, at a hearing held pursuant to subsection (f) or (g), evidence and information that would be inadmissible under the rules of evidence.

(i) Hearing time set.--Upon the filing of a claim for the property setting forth a right of possession, the case shall be deemed at issue and a time shall be fixed for the hearing.

(j) Owner's burden of proof.--At the time of the hearing, if the Commonwealth produces evidence that the property in question was unlawfully used, possessed or otherwise subject to forfeiture under section 6801(a) or 6801.1(a), the burden shall be upon the claimant to show:

- (1) That the claimant is the owner of the property or the holder of a chattel mortgage or contract of conditional sale thereon.
- (2) That the claimant lawfully acquired the property.
- (3) That it was not unlawfully used or possessed by him. In the event that it shall appear that the property was unlawfully used or possessed by a person other than the claimant, then the claimant shall show that the unlawful use or possession was without his knowledge or consent. Such absence of knowledge or consent must be reasonable under the circumstances presented.

(k) Court-ordered release of property.--If a person claiming the ownership of or right of possession to or claiming to be the holder of a chattel mortgage or contract of conditional sale upon the property, the disposition of which is provided for in this section, prior to the sale presents a petition to the court alleging over the property lawful ownership, right of possession, a lien or reservation of title and if, upon public hearing, due notice of which having been given to the Attorney General or the district attorney, the claimant shall prove by competent evidence to the satisfaction of the court that the property was lawfully acquired, possessed and used by him or, it appearing that the property was unlawfully used by a person other than the claimant, that the unlawful use was without the claimant's knowledge or consent, then the court may order the property returned or delivered to the claimant. Such absence of knowledge or consent must be reasonable under the circumstances presented.

Appendix – Pennsylvania Controlled Substances Forfeiture Act (repealed and replaced on July 1, 2017)

Otherwise, it shall be retained for official use or sold in accordance with section 6801(e) or 6801.1(f).

(July 7, 2006, P.L.342, No.71, eff. 60 days)

Appendix – Commonwealth’s Petition for Forfeiture

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
TRIAL DIVISION - CRIMINAL SECTION

COMMONWEALTH OF PENNSYLVANIA : COURT OF COMMON PLEAS
: TRIAL DIVISION
v. :
: MR#
THE REAL PROPERTY AND :
IMPROVEMENTS KNOWN AS : AUGUST TERM, 20█
█ ST. :
PHILADELPHIA, PA : NO.

**APPLICATION TO SEIZE AND SEAL
PREMISES PURSUANT TO 42 PA C.S. § § 6801, 6802**

TO THE HONORABLE JUDGE OF THIS COURT:

█, District Attorney of Philadelphia County, by her Chief of the Public Nuisance Task Force, █, and Assistant District Attorney, █, respectfully represent:

1. The Commonwealth is moving for forfeiture of the above-captioned real property pursuant to 42 Pa.C.S. §§ 6801, 6802 because it was used and/or continues to be used (or intended to be used) to commit, or facilitate the commission of, violations of the Controlled Substance, Drug Device and Cosmetic Act, 35 Pa.C.S. § § 780-121 et seq.
2. The Commonwealth is authorized to seize and seal property subject to forfeiture pursuant to both 42 Pa.C.S. § 6801(b)-(d) and 42 Pa.C.S. § 6802(f)(g).
3. Between July █, 20█ and July █, 20█, police officers conducted a narcotics investigation of the property located at █ ST., Philadelphia, PA.
4. On July █, 20█, police officers used a confidential informant (CI) to purchase illegal narcotics from █, who is an occupant of █ ST., Philadelphia, PA.

Appendix – Commonwealth’s Petition for Forfeiture

5. On July █, 20█, police officers used a confidential informant (C/I) to purchase illegal narcotics from █, who is an occupant of █ ST., Philadelphia, PA.

6. On July █, 20█, police officers used a confidential informant (C/I) to purchase illegal narcotics from █, who is an occupant of █ ST., Philadelphia, PA.

7. Later that same day, police officers executed a search warrant at █ ST. Inside that location, police officers confiscated marijuana, 3 loaded handguns, pre-recorded buy money, money, proof of residence, and narcotics paraphernalia (i.e. scales, plastic packets, etc.).

8. The Commonwealth asks this Court for permission to seize and seal the above-captioned property, thereby protecting the health and safety of the community by immediately preventing further narcotics activity from occurring within. To avoid a prolonged confrontation, to preserve the availability of the property for forfeiture, and to minimize the risk of injury to all parties, the Commonwealth asks that this order be entered without a notice and a hearing.

WHEREFORE, the Commonwealth respectfully requests that this Court enter the attached sealing order.

Respectfully submitted,

█
District Attorney

By:

█
Assistant District Attorney

Appendix – Commonwealth’s Petition for Forfeiture

██████████, Chief, Public Nuisance Task Force
██████████ Assistant District Attorney
Attorney IDs: ██████████
Philadelphia District Attorney's Office
Three South Penn Square
Philadelphia, PA 19127

COMMONWEALTH OF PENNSYLVANIA : COURT OF COMMON PLEAS
: TRIAL DIVISION
v. :
: MR#
THE REAL PROPERTY AND :
IMPROVEMENTS KNOWN AS : AUGUST TERM, 20██
██████████ ST. :
PHILADELPHIA, PA : NO.

INDEX UNDER: ██████████ AND ██████████
██████████ ST.
PHILADELPHIA, PA

TO THE PROTHONOTARY:

PURSUANT TO THE ATTACHED COURT ORDER, INDEX THIS PROPERTY, ██████████
██████████, PHILADELPHIA, AS A LIS PENDENS. I DO HEREBY CERTIFY THAT THIS
ACTION INVOLVES TITLE TO REAL ESTATE.

By: _____
Assistant District Attorney

Appendix – Commonwealth’s Petition for Forfeiture

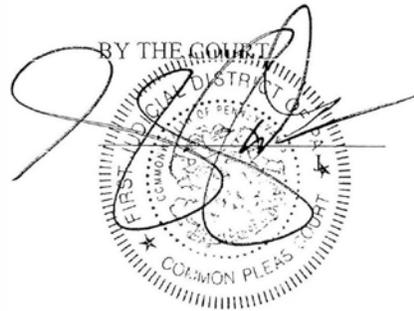
IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
TRIAL DIVISION - CRIMINAL SECTION

COMMONWEALTH OF PENNSYLVANIA	:	COURT OF COMMON PLEAS
	:	TRIAL DIVISION
v.	:	
	:	MR#
THE REAL PROPERTY AND	:	
IMPROVEMENTS KNOWN AS	:	AUGUST TERM, 20
ST.	:	
PHILADELPHIA, PA	:	NO.

ORDER

AND NOW, this 22ND DAY OF AUGUST,, 20, pursuant to 42 Pa.C.S. § 6802(f) (g), the Commonwealth is hereby authorized to enter and seize the premises at ST., Philadelphia, Pennsylvania. Once seized by the Commonwealth, these premises shall be sealed by whatever means necessary to prevent entry to these premises by unauthorized persons. These premises shall be posted with signs warning that no authorized entry is permitted without express written permission of the District Attorney and this Court.

BY THE COURT



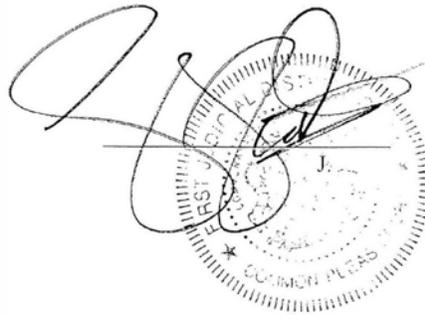
Appendix – Commonwealth’s Petition for Forfeiture

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
TRIAL DIVISION - CRIMINAL SECTION

COMMONWEALTH OF PENNSYLVANIA	:	COURT OF COMMON PLEAS
	:	TRIAL DIVISION
v.	:	
	:	MR#
THE REAL PROPERTY AND	:	
IMPROVEMENTS KNOWN AS	:	AUGUST TERM, 20
ST.	:	
PHILADELPHIA, PA	:	NO.

NOTICE OF HEARING

AND NOW, this 22ND day of AUGUST, 20, on application of the Commonwealth, a hearing on the entry of a restraining order and the petition for forfeiture against the above-captioned property is hereby set for the 5TH day of SEPTEMBER, 20 at 9:00 a.m., in Courtroom 478 of City Hall, Broad and Market Streets, Philadelphia, Pennsylvania.

A handwritten signature in black ink is written over a circular embossed seal. The seal contains the text "COURT OF COMMON PLEAS" and "PHILADELPHIA COUNTY" around the perimeter, with a star in the center. The signature is a cursive, stylized name.

Appendix – Commonwealth’s Petition for Forfeiture

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
TRIAL DIVISION - CRIMINAL SECTION

COMMONWEALTH OF PENNSYLVANIA : COURT OF COMMON PLEAS
: TRIAL DIVISION
v. :
: MR#
THE REAL PROPERTY AND :
IMPROVEMENTS KNOWN AS : AUGUST TERM, 20█
█ ST. :
PHILADELPHIA, PA : NO.

PETITION FOR FORFEITURE PURSUANT TO 42 Pa.C.S. § 6801 ET SEQ.

TO THE HONORABLE JUDGE OF THE SAID COURT:

█, District Attorney of Philadelphia County by her Chief of the Public Nuisance Task Force, █, and Assistant District Attorney, █, respectfully represent:

1. The Commonwealth is moving for forfeiture of the real property and improvements known as █ ST.
2. The Philadelphia Real Estate Directory lists █ AND █ as the owner(s) of the real property at █ ST., Philadelphia, PA. The property was last transferred over 30 years ago. The property was assessed for \$5,152.00 in 20█.
3. Between July █, 20█ and July █, 20█, police officers conducted a narcotics investigation of the property located at █ ST., Philadelphia, PA.
4. On July █ 20█ police officers used a confidential informant (C/I) to purchase illegal narcotics from █, who is an occupant of █ ST., Philadelphia, PA.
5. On July █, 20█, police officers used a confidential informant (C/I) to purchase illegal narcotics from █, who is an occupant of █ ST., Philadelphia, PA.

Appendix – Commonwealth’s Petition for Forfeiture

6. On July [REDACTED], 20 [REDACTED], police officers used a confidential informant (CI) to purchase illegal narcotics from [REDACTED], who is an occupant of [REDACTED] ST., Philadelphia, PA.

7. Later that same day, police officers executed a search warrant at [REDACTED] ST. Inside that location, police officers confiscated marijuana, 3 loaded handguns, pre-recorded buy money, money, proof of residence, and narcotics paraphernalia (i.e. scales, plastic packets, etc.).

8. The real property at [REDACTED] ST., Philadelphia, PA is subject to forfeiture pursuant to 42 Pa.C.S. § 6801(a)(6)(i)(C) because it was used and/or continues to be used (or intended to be used) to commit, or to facilitate the commission of, violations of the Controlled Substance, Drug, Device and Cosmetic Act, 35 Pa.C.S. § §780-121 et seq.

WHEREFORE, the Commonwealth respectfully requests that the above-captioned property be forfeited and transferred to the custody of the Philadelphia District Attorney’s Office pursuant to 42 Pa. C.S. § § 6801, 6802.

Respectfully submitted,

[REDACTED]
District Attorney

By:

[REDACTED]
Assistant District Attorney

Appendix – Commonwealth’s Petition for Forfeiture

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
TRIAL DIVISION - CRIMINAL SECTION

COMMONWEALTH OF PENNSYLVANIA	:	COURT OF COMMON PLEAS
	:	TRIAL DIVISION
v.	:	
	:	MR#
THE REAL PROPERTY AND	:	
IMPROVEMENTS KNOWN AS	:	AUGUST TERM, 20
ST.	:	
PHILADELPHIA, PA	:	NO.

ORDER

AND NOW, this day of , 2012, it is hereby **ORDERED** and **DECREED** that the above-captioned property, subject of the Commonwealth’s petition for forfeiture pursuant to 42 Pa.C.S. § 6801 et seq., is **FORFEITED** and ownership is transferred to the Philadelphia District Attorney’s Office for enforcement of the Drug Act. Please index this matter under **AND**

BY THE COURT:

J.

Appendix – Commonwealth’s Petition for Forfeiture

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
TRIAL DIVISION - CRIMINAL SECTION

COMMONWEALTH OF PENNSYLVANIA	:	COURT OF COMMON PLEAS
	:	TRIAL DIVISION
v.	:	
	:	MR#
THE REAL PROPERTY AND	:	
IMPROVEMENTS KNOWN AS	:	AUGUST TERM, 20
ST.	:	
PHILADELPHIA, PA	:	NO.

**COMMONWEALTH'S PETITION FOR A TEMPORARY
RESTRAINING ORDER PURSUANT TO 42 Pa.C.S. § 6802(g)**

TO THE HONORABLE JUDGE OF SAID COURT:

[REDACTED], District Attorney of Philadelphia County, by her Chief of the Public Nuisance Task Force, [REDACTED] and Assistant District Attorney, [REDACTED], respectfully represent:

1. The above-captioned property is presently the subject of a Commonwealth forfeiture petition pursuant to 42 Pa.C.S. § 6801 *et seq.*, Controlled Substances Forfeiture Act. The petition alleges that this property is subject to forfeiture because of its involvement in violations of the Controlled Substances Act, 35 P.S. § 789-121 *et seq.* By order of Court, the petition and all accompanying documents have been sealed for ten days following the filing of the petition.

2. Sale, encumbrance, or transfer of any interest in this property shall make it unavailable for forfeiture.

Appendix – Commonwealth’s Petition for Forfeiture

3. The Commonwealth requests this restraining order because:
- (a) there is a substantial possibility that the Commonwealth will prevail on the issue of forfeiture sought pursuant to 42 Pa.C.S. § 6801 et seq.;
 - (b) failure to restrain this property could result in its liquidation and the transfer of its proceeds and, therefore, make it unavailable for forfeiture;
 - (c) the need to bar the sale, encumbrance, or transfer of any interest in this property outweighs any hardship to the title holder.

WHEREFORE, the Commonwealth respectfully requests that this Court enter an order restraining the sale, encumbrance, assignment, gift or any other transfer of this property.

Respectfully submitted,

District Attorney

By:

Assistant District Attorney

Appendix – Commonwealth’s Petition for Forfeiture

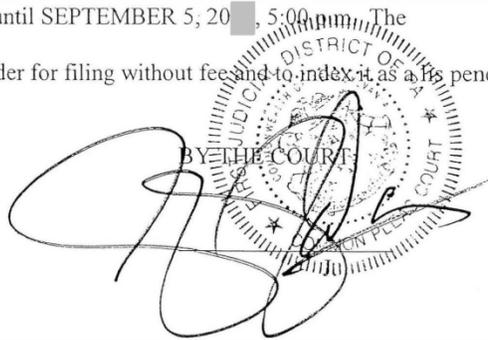
IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
TRIAL DIVISION - CRIMINAL SECTION

COMMONWEALTH OF PENNSYLVANIA : COURT OF COMMON PLEAS
: TRIAL DIVISION
v. :
: MR#
THE REAL PROPERTY AND :
IMPROVEMENTS KNOWN AS : AUGUST TERM, 20
ST. :
PHILADELPHIA, PA : NO.

ORDER

AND NOW, this 22ND day of AUGUST 20, on application of the Commonwealth, a temporary restraining order, authorized by 42 Pa.C.S. § 6802(f) and (g), is hereby entered against the above property. No interest in this property (including but not limited to ownership, tenancy, easement, and purchase or rental option) shall be sold, assigned, optioned, given, bequeathed or transferred in any manner.

This order shall remain in effect until SEPTEMBER 5, 20, 5:00 pm. The Prothonotary is directed to accept this order for filing without fee and to index it as a *pendens*.

BY THE COURT


Appendix – Commonwealth’s Petition for Forfeiture

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
TRIAL DIVISION - CRIMINAL SECTION

COMMONWEALTH OF PENNSYLVANIA	:	COURT OF COMMON PLEAS
	:	TRIAL DIVISION
v.	:	
	:	MR#
THE REAL PROPERTY AND	:	
IMPROVEMENTS KNOWN AS	:	AUGUST TERM, 20
ST.	:	
PHILADELPHIA, PA	:	NO.

NOTICE

TO THE CLAIMANT OF THE WITHIN DESCRIBED PROPERTY:

You are required to file an answer to this petition, setting forth your title in, and right to possession of, said property within thirty (30) days from the service hereof, and you are also notified that, if you fail to file an answer, a decree of forfeiture and condemnation will be entered against the property.

Assistant District Attorney
Narcotics Division
Philadelphia, PA 19127

Appendix – Commonwealth’s Petition for Forfeiture

AFFIRMATION

Chief, [REDACTED] and/or Assistant District Attorney [REDACTED], hereby affirm that the facts set forth in the foregoing petition are true and correct to the best of his/her knowledge, information and belief. A copy of this petition will be sent by personal service and certified mail postage paid to:

[REDACTED] AND [REDACTED]
[REDACTED] ST.
PHILADELPHIA, PA

The undersigned understands that the facts herein are verified subject to penalties for unsworn falsification to authorities under § 4904 of the Crimes Code (18 Pa.C.S. § 4904).

Assistant District Attorney

DATED: _____

Appendix – Respondent’s Answer and New Matter to Forfeiture Petition

Please note that this Answer and New Matter was prepared prior to the Supreme Court's decision in Young. Please see pages 53-56 of this Manual for additional allegations relevant to the Excessive Fines defense.

RECEIVED

By: [redacted] and [redacted]
Certified Legal Interns, and
[redacted] Esq.
Attorney I.D. No. [redacted]
[redacted]
[redacted]
Philadelphia, PA 19104
Tel: [redacted]

NOTICE TO PLEAD

To: Petitioner Commonwealth of Pennsylvania
CRIMINAL RECORDS
CRIMINAL MOTION COURT

You are hereby notified to file a written response to the enclosed New Matter in Response to Petition for Forfeiture Pursuant to 42 Pa.C.S. § 6801 et seq. within twenty (20) days from service hereof or a judgment may be entered against you.

[redacted]
Certified Legal Interns
Counsel for Respondents, [redacted]
and [redacted]

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA
CRIMINAL TRIAL DIVISION**

COMMONWEALTH OF PENNSYLVANIA :
v. : COURT OF COMMON PLEAS
THE REAL PROPERTY AND : TRIAL DIVISION
IMPROVEMENTS KNOWN AS :
[redacted] ST. : MR # CP-[redacted]
PHILADELPHIA, PA : SEPTEMBER TERM 20[redacted]
: NO: [redacted]

**ANSWER AND NEW MATTER IN RESPONSE TO PETITION FOR FORFEITURE
PURSUANT TO 42 Pa.C.S. § 6801 ET SEQ.**

TO THE HONORABLE JUDGE OF THE SAID COURT:

Respondents [redacted] and [redacted] legal owners of the above-captioned real property, by their counsel, [redacted] and [redacted] Certified Legal Interns, and [redacted] Esquire, hereby respond to the Commonwealth’s Petition for Forfeiture Pursuant to 42 Pa.C.S. § 6801 et seq. (“Petition for Forfeiture”) as follows:

Appendix – Respondent’s Answer and New Matter to Forfeiture Petition

1. Admitted. It is admitted that the Commonwealth has filed a petition seeking forfeiture of the real property and improvements known as [REDACTED] St.

2. Admitted and denied. After reasonable investigation, [REDACTED] and [REDACTED] are without knowledge or information sufficient to form a belief as to how [REDACTED] St. is listed in the Philadelphia Real Estate Directory. However, [REDACTED] and [REDACTED] admit that they are the legal owners of the property at [REDACTED] St. [REDACTED] and [REDACTED] have owned the real property located at [REDACTED] St. since approximately 19[REDACTED]. [REDACTED] and [REDACTED] admit that to the best of their information and knowledge the Office of Property Assessment assessed the property for taxation purposes at \$5,152.00 in 20[REDACTED]. Upon information and belief, [REDACTED] and [REDACTED] assert that the fair market value of [REDACTED] St. is much higher than the assessed value for taxation purposes. As of November [REDACTED], 20[REDACTED], the fair market value of the property was listed on “Zillow” (Zillow.com) as \$43,102.00.

3. Denied. After a reasonable investigation, [REDACTED] and [REDACTED] are without knowledge or information sufficient to form a belief as to the truth of the averment contained in Paragraph 3 of the Commonwealth’s Petition for Forfeiture. Therefore, [REDACTED] and [REDACTED] deny this averment and demand proof of this allegation at trial.

4. Admitted and denied. The individual from whom it is alleged that illegal narcotics were purchased on July [REDACTED], 20[REDACTED] is [REDACTED] (for the purposes of this Answer and New Matter, hereinafter “[REDACTED] Jr.”), the adult son of [REDACTED] and [REDACTED]. It is admitted that on or about July [REDACTED], 20[REDACTED] [REDACTED] Jr. was an occupant of [REDACTED] St. It is denied that a confidential informant purchased illegal narcotics from [REDACTED] the co-owner of [REDACTED] St. After a reasonable investigation, [REDACTED] and [REDACTED] are without knowledge or information sufficient to form a belief as to the truth of whether police

Appendix – Respondent’s Answer and New Matter to Forfeiture Petition

officers used a confidential informant to purchase illegal narcotics from [REDACTED] Jr. on July [REDACTED] 20[REDACTED]. Therefore, [REDACTED] and [REDACTED] deny this averment and demand proof of this allegation at trial.

5. Admitted and denied. The individual from whom it is alleged that illegal narcotics were purchased on July [REDACTED] 20[REDACTED] is [REDACTED] Jr., the adult son of [REDACTED] and [REDACTED]. It is admitted that on or about July [REDACTED] 20[REDACTED] [REDACTED] Jr. was an occupant of [REDACTED] St. It is denied that a confidential informant purchased illegal narcotics from [REDACTED] [REDACTED] the co-owner of [REDACTED] St. After a reasonable investigation, [REDACTED] and [REDACTED] are without knowledge or information sufficient to form a belief as to the truth of whether police officers used a confidential informant to purchase illegal narcotics from [REDACTED] [REDACTED] Jr. on July [REDACTED] 20[REDACTED]. Therefore, [REDACTED] and [REDACTED] deny this averment and demand proof of this allegation at trial.

6. Admitted and denied. The individual from whom it is alleged that illegal narcotics were purchased on July [REDACTED] 20[REDACTED] is [REDACTED] Jr., the adult son of [REDACTED] and [REDACTED]. It is admitted that on or about July [REDACTED] 20[REDACTED] [REDACTED] Jr. was an occupant of [REDACTED] St. It is denied that a confidential informant purchased illegal narcotics from [REDACTED] [REDACTED] the co-owner of [REDACTED] St. After a reasonable investigation, [REDACTED] and [REDACTED] are without knowledge or information sufficient to form a belief as to the truth of whether police officers used a confidential informant to purchase illegal narcotics from [REDACTED] [REDACTED] Jr. on July [REDACTED] 20[REDACTED]. Therefore, [REDACTED] and [REDACTED] deny this averment and demand proof of this allegation at trial.

7. Admitted and denied. The allegation that police officers executed a search warrant at [REDACTED] St. on July [REDACTED] 20[REDACTED] is a legal conclusion to which no response is

Appendix – Respondent’s Answer and New Matter to Forfeiture Petition

necessary; it is admitted that a document entitled “Search Warrant and Affidavit” was given to [REDACTED] on that date. It is admitted that police officers confiscated three handguns from inside [REDACTED] St. After a reasonable investigation, [REDACTED] and [REDACTED] are without knowledge or information sufficient to form a belief as to the truth of the averment that the handguns were loaded and that police officers confiscated marijuana, pre-recorded buy money, money, proof of residence, and narcotics paraphernalia (i.e. scales, plastic packets, etc.) inside [REDACTED] St. Therefore, [REDACTED] and [REDACTED] deny this averment and demand proof of these allegations at trial.

8. Denied. The allegation that [REDACTED] St. is subject to forfeiture pursuant to 42 Pa.C.S. § 6801(a)(6)(i)(C) is a legal conclusion to which no response is necessary. Notwithstanding that, [REDACTED] and [REDACTED] specifically deny that the property at [REDACTED] St. was used and/or continues to be used (or intended to be used) to commit, or to facilitate the commission of, violations of the Controlled Substance, Drug, Device and Cosmetic Act, 35 Pa.C.S. §§ 780-121 et seq., that would subject it to forfeiture under the Controlled Substances Forfeiture Act, 42 Pa.C.S. § 6801. [REDACTED] and [REDACTED] demand proof of these allegations at trial. Moreover, if any alleged unlawful activity was committed by [REDACTED] Jr. in July 20[REDACTED], [REDACTED] and [REDACTED] assert that no nexus exists between the alleged unlawful activity and the property at [REDACTED] St.

NEW MATTER

By way of further defense, Respondents [REDACTED] and [REDACTED] allege as follows:

Appendix – Respondent’s Answer and New Matter to Forfeiture Petition

INNOCENT OWNER DEFENSE

9. [REDACTED] and [REDACTED] incorporate their responses to Paragraphs 1-8 above, as if more fully set forth herein.

10. [REDACTED] and [REDACTED] are the legal owners of [REDACTED] St, Philadelphia, PA 19139.

11. [REDACTED] and [REDACTED] have owned the real property located at [REDACTED] St. since approximately 19[REDACTED].

12. [REDACTED] is [REDACTED] years old and [REDACTED] is [REDACTED] years old.

13. [REDACTED] retired from her work as a patient care assistant at [REDACTED] Hospital in 20[REDACTED].

14. [REDACTED] retired from his work as a custodian for [REDACTED] School District in 20[REDACTED].

15. For the past three years, [REDACTED] has suffered from pancreatic cancer. During this time, he has been in and out of hospital care and has battled for his life. When he is at his home at [REDACTED] St., he often rests in his bedroom with the door closed.

16. [REDACTED] Jr. is 3[REDACTED] years old and is the son of [REDACTED] and [REDACTED]

17. [REDACTED] Jr. resided at [REDACTED] St. in July 20[REDACTED]. His bedroom was located in the front of [REDACTED] and [REDACTED] home at [REDACTED] St. on the second floor.

18. [REDACTED] and [REDACTED] share a bedroom at the back of their home on the second floor at [REDACTED] St.

19. Prior to July [REDACTED], 20[REDACTED], [REDACTED] and [REDACTED] had no knowledge of any alleged drug-related activity at [REDACTED] St.

Appendix – Respondent’s Answer and New Matter to Forfeiture Petition

20. At the time that police entered [REDACTED] St. on July [REDACTED], 20 [REDACTED], [REDACTED] was at the grocery store with her granddaughter.

21. At the time that police entered [REDACTED] St. on July [REDACTED], [REDACTED], [REDACTED] was sleeping in his room recovering from surgery and a recent hospital visit.

22. [REDACTED] and [REDACTED] never explicitly or implicitly, either orally or by their actions, consented to anyone engaging in any illegal activity, including the sale, use or possession of illegal drugs, in their house or on their property.

23. [REDACTED] and [REDACTED] were not arrested or charged with any criminal offense in connection with the events alleged by the Commonwealth in its Petition for Forfeiture.

24. [REDACTED] has never been convicted of an illegal narcotics offense.

25. [REDACTED] has never been convicted of an illegal narcotics offense.

26. [REDACTED] and [REDACTED] deny that the premises at [REDACTED] St. were used or intended to be used to facilitate any violation of the Controlled Substance, Drug, Device and Cosmetic Act that would be subject it to forfeiture under the Controlled Substances Forfeiture Act. To the extent, if any, that this court should find that the above-captioned premises was used to facilitate a violation of the Controlled Substance, Drug, Device and Cosmetic Act that would subject it to forfeiture under Controlled Substances Forfeiture Act, [REDACTED] and [REDACTED] assert that said use of their home was without their knowledge or consent within the meaning of the Controlled Substances Forfeiture Act.

27. As owners of the premises, [REDACTED] and [REDACTED] are entitled to avail themselves of the statutory innocent owner defense provided by law in the Controlled Substances Forfeiture Act, thereby defeating any claim that the above-captioned premises should be forfeited.

Appendix – Respondent’s Answer and New Matter to Forfeiture Petition

CONSTITUTIONAL DEFENSES

28. [REDACTED] and [REDACTED] incorporate the responses contained in Paragraphs 1-27 above, as if more fully set forth herein.

29. [REDACTED] and [REDACTED] have owned the real property located at [REDACTED] St. since approximately 19[REDACTED].

30. Upon information and belief, [REDACTED] and [REDACTED] assert that the fair market value of [REDACTED] St. is at least \$43,102.00.

31. The Commonwealth’s Petition for Forfeiture seeks forfeiture based upon: the alleged purchase of illegal narcotics from [REDACTED] Jr., the adult son of [REDACTED] and [REDACTED] and the alleged seizure of an unspecified amount of marijuana and other stated items from the premises, of which [REDACTED] and [REDACTED] had no knowledge and for which they never gave consent. Forfeiture of the aforesaid property is grossly disproportionate to the allegations, even if proven, as set forth in the Commonwealth’s Petition.

32. There is no requisite nexus between the allegedly unlawful activity and [REDACTED] St.

33. The Eighth Amendment of the United States Constitution provides that “[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”

34. Article 1, Section 13 of the Pennsylvania Constitution provides that “[e]xcessive bail shall not be required, nor excessive fines imposed nor cruel punishments inflicted.”

35. The forfeiture of [REDACTED] St. under the facts of this case would constitute an excessive fine in violation of the Eighth Amendment of the United States Constitution and Article 1, Section 13 of the Pennsylvania Constitution.

Appendix – Respondent’s Answer and New Matter to Forfeiture Petition

WHEREFORE, Respondents [REDACTED] and [REDACTED] as legal owners of the above-captioned property, respectfully request that the Commonwealth’s Petition for Forfeiture be dismissed with prejudice, that any restraining order and lis pendens imposed against the premises be vacated, and that judgment be entered in favor of Respondents and against the Commonwealth of Pennsylvania.

Respectfully submitted,

[REDACTED]
Certified Legal Intern

[REDACTED]
Certified Legal Intern

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
Philadelphia, PA 19104
PA ID No. [REDACTED]
Counsel for Respondents [REDACTED]
and [REDACTED]

DATE: 11/11/11

Appendix – Respondent’s Answer and New Matter to Forfeiture Petition

VERIFICATION

I, [REDACTED] as a legal owner of [REDACTED] St., hereby verify that the statements made in this Answer and New Matter in Response to Petition for Forfeiture Pursuant to 42 Pa.C.S. § 6801 et seq. are true and correct to the best of my knowledge, information and belief. I understand that false statements made herein are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

[REDACTED]

DATE: // [REDACTED]

Appendix – Respondent’s Answer and New Matter to Forfeiture Petition

By: [redacted] and [redacted]
Certified Legal Interns, and
[redacted] Esq.
Attorney I.D. No. [redacted]
[redacted]
[redacted]
[redacted]
Philadelphia, PA 19104
Tel: [redacted]

Counsel for Respondents

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA
CRIMINAL TRIAL DIVISION**

COMMONWEALTH OF PENNSYLVANIA :
v. : COURT OF COMMON PLEAS
THE REAL PROPERTY AND : TRIAL DIVISION
IMPROVEMENTS KNOWN AS :
[redacted] ST. : MR # CP-[redacted]
PHILADELPHIA, PA : SEPTEMBER TERM, 20[redacted]
: NO: [redacted]
:

CERTIFICATE OF SERVICE

I, [redacted], Certified Legal Intern, counsel for [redacted] and [redacted] hereby certify that I have served a copy of the foregoing Answer and New Matter in Response to Petition for Forfeiture Pursuant to 42 Pa.C.S. § 6801 *et seq.* by hand delivery, in Courtroom 478, to Assistant District Attorney [redacted], counsel for the Commonwealth on the date below.

[redacted]
[redacted]
Certified Legal Intern
Counsel for Respondents [redacted]
and [redacted]

DATE: 11/ [redacted]

Appendix – Respondent’s First Set of Interrogatories for the Commonwealth

By: [REDACTED]
Certified Law Student for [REDACTED], Esq.
Attorneys for Respondent
Identification No. [REDACTED]
[REDACTED]
Philadelphia, PA 19104
[REDACTED]

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
TRIAL DIVISION – CRIMINAL SECTION

COMMONWEALTH OF PENNSYLVANIA : COURT OF COMMON PLEAS
: TRIAL DIVISION
v. : [REDACTED] TERM, [REDACTED]
: THE REAL PROPERTY AND
IMPROVEMENTS KNOWN AS :
[REDACTED] STREET :
PHILADELPHIA, PA : NO: [REDACTED]

**RESPONDENT’S FIRST SET OF INTERROGATORIES ADDRESSED TO
PETITIONER COMMONWEALTH OF PENNSYLVANIA**

Respondent [REDACTED] by her undersigned counsel, hereby serves on Petitioner, Commonwealth of Pennsylvania, the following Interrogatories, to be answered pursuant to the Pennsylvania Rules of Civil Procedure within thirty (30) days from the date of service hereof.

These interrogatories are continuing. Should Petitioner at any time subsequent to the service or filing of answers to these interrogatories become aware of information that renders those answers incomplete, inaccurate, or misleading in any respect, supplemental answers are promptly required.

Appendix – Respondent’s First Set of Interrogatories for the Commonwealth

DEFINITIONS

1. “Petitioner,” “you,” and/or “your” shall mean the Commonwealth of Pennsylvania, including without limitation any subdivision, subsidiary, division, officers, representatives, agents, employees, and/or other representatives acting or purporting to act on your behalf.
2. “Respondent” shall mean [REDACTED] legal owner of [REDACTED] Street, Philadelphia, PA.
3. “Petition” shall mean the Commonwealth’s Petition For Forfeiture Pursuant to 42 Pa.C.S. § 6801 Et Seq., filed with the Court of Common Pleas of Philadelphia County and verified by [REDACTED], Assistant District Attorney, on September [REDACTED] 20[REDACTED].
4. “Application” shall mean the Commonwealth’s Application To Seize And Seal Premises Pursuant To 42 Pa.C.S. § 6801(d), filed with the Court of Common Pleas of Philadelphia County and signed by [REDACTED], Esquire, Chief, Public Nuisance Task Force and [REDACTED], Assistant District Attorney, on September [REDACTED] 20[REDACTED].
5. “Communications” shall mean any transmission of thoughts, opinions, or information by speech, writing, signs, or recordings thereof.
6. “State” or “set forth” shall mean to set forth fully and unambiguously every fact relevant to the answer called for by the interrogatory.
7. “Identify” in relation to an individual person means to state his or her:
 - a. full name;
 - b. job title or position, if any;
 - c. present or last known home and business address; and
 - d. telephone number.
8. “Identify” when used in reference to a document means to state its date, its author, the type of document (e.g., letter, memorandum, telegram, chart, photograph, sound reproduction,

Appendix – Respondent’s First Set of Interrogatories for the Commonwealth

etc.), or if the above information is not available, some other means of identifying it, its present location, and the name of any present custodian.

9. “Identify” when used with reference to a communication means to describe the type of communication (e.g., conversation, and each person to whom each communication was made), state the date of such communication, state the place where such communication was made, if by telephone, identify the persons participating in the telephone call, the person making the call, and state the places where the persons participating in the call was located and describe in detail the subject matter and substance of each communication.

10. “Individual(s)” shall include natural persons, partnerships, associations, corporations, businesses, and legal and artificial entities.

11. “Document(s)” shall mean the original and copies, regardless of origin or location, or any writing or records of any type or description, including, but not limited to the original and copy of any letter, memorandum, telegram, report, record, interoffice, intra-office, inter-company or intra-company communication, inter-governmental or intra-governmental communication, handwritten or other note, tape recording, telephone call, photograph, videotape, computer file, computer printout, or any other written, recorded, transcribed, filed, or graphic material whether produced or reproduced to which you have or have had access. When one or more documents is requested or referred to, the request or reference shall include, but is not limited to, the original and each and every copy and draft thereof having writing, notations, corrections, or markings unique to such copy or draft.

12. “Date” means the exact day, month, and year if ascertainable, or if not, the best approximation thereof or best approximation in relation to other events. If in answering any interrogatory an approximate date is given, indicate that fact and indicate the basis for arriving at the approximation.

Appendix – Respondent’s First Set of Interrogatories for the Commonwealth

13. “Describe” or “Description”:

- a. When used in reference to any act, transaction, event, practice, or occurrence, means provide the following information:
 - i. Its general nature;
 - ii. The time and place thereof;
 - iii. The identity of each person involved therewith or with any knowledge thereof;
 - iv. The identity of each document that refers thereto or is connected therewith.
- b. When used in reference to a thing not listed in subparagraph (a) means to set forth fully and clearly its nature, its distinguishing characteristics, its actual and intended function and use, and each and every other relevant underlying fact, including, where relevant, particulars of time, manner, and place.

14. “Witness” means any person who had, has, or purports to have any personal knowledge of the events or allegations referred to herein.

Appendix – Respondent’s First Set of Interrogatories for the Commonwealth

INSTRUCTIONS

In responding to this discovery request, the following instructions shall apply:

1. Precede each answer with the Interrogatory number to which it is addressed. For each document produced, pursuant to Pennsylvania Rules of Civil Procedure, in response to an Interrogatory, indicate on the document, or in some other reasonable manner, the number of the Interrogatory to which it responds.

2. In answering each Interrogatory, the Petitioner is requested to furnish all information, including hearsay, in possession of the Petitioner and all other persons acting on behalf of the Petitioner, and not merely such information known of the personal knowledge of the person or entity answering these requests.

3. If the answering party does not know the answer to an Interrogatory, identify the person or persons who you would expect to know the answer to such question.

4. If any Interrogatory is not answered, in whole or in part, because of a claim of privilege, then:

- a. Identify each such Interrogatory, or part thereof;
- b. State the privilege asserted relating to it; and
- c. State the facts allegedly giving rise to the claim of privilege.

5. If any Interrogatory is objected to, in whole or in part, based on a claim that the Interrogatory, or part, is overly broad, unduly burdensome to respond to, covers too great a scope (e.g., as to time, persons or events covered, etc.) to be relevant, or for a similar reason, state the scope of the Interrogatory, or part, that you do not contend is overly broad, etc., respond fully and completely to all portions that you do not contend are subject to your objection, and explain the basis for your objection to the balance.

Appendix – Respondent’s First Set of Interrogatories for the Commonwealth

6. If any of the information provided in response to an Interrogatory, or part thereof, is not within the personal knowledge of the person certifying the answers to these Interrogatories, so indicate in each instance where such information is included, and identify each person and/or document from whom/which such information was obtained.

7. Unless otherwise noted in the specific request, each request shall cover the period from January 2 until the date of your responses hereto.

INTERROGATORY # 1

1. State the full name, address, job title, and representative capacity of the person or persons answering these interrogatories on behalf of Petitioner, as well as each person contributing any information in response to these interrogatories.

INTERROGATORY # 2

2. Set forth the investigation that was conducted in preparing the answers to these interrogatories, including but not limited to:

- a. The identity of all individuals who were consulted in obtaining these answers;
- b. The identification of all documents and communications that were reviewed in preparing these answers.

INTERROGATORY # 3

3. Please identify all facts, including the date(s) (or approximate date(s)) and length of time, upon which you rely to support the allegation in Paragraph 3 of the Petition that “[t]he real property at [REDACTED] STREET, Philadelphia, PA has been and/or continues to be used in violation of the Controlled Substance, Drug, Device and Cosmetic Act.”

INTERROGATORY # 4

4. Please identify the name, address, and telephone number of every person who is the source of information for the allegation in Paragraph 3 of the Petition that “[t]he real property at

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██████████ STREET, Philadelphia, PA has been and/or continues to be used in violation of the Controlled Substance, Drug, Device and Cosmetic Act.” For each such person identified, state the basis of their knowledge, the time period involved, and a brief summary of what they reported.

INTERROGATORY # 5

5. Please state the date that you first learned that “[t]he real property at ██████████ STREET, Philadelphia, PA has been and/or continues to be used in violation of the Controlled Substance, Drug, Device and Cosmetic Act.”

INTERROGATORY # 6

6. Please state what, if any, actions you took at the time you first acquired knowledge that “[t]he real property at ██████████ STREET, Philadelphia, PA has been and/or continues to be used in violation of the Controlled Substance, Drug, Device and Cosmetic Act.” In answering this interrogatory, please describe all actions taken against Respondents and the alleged individuals whom you believe participated in the activity “in violation of the Controlled Substance, Drug, Device and Cosmetic Act.” If you did not take any action at the time you acquired knowledge, please state why no action was taken at that time.

INTERROGATORY # 7

7. In Paragraph 4 of the Petition, you allege that “[t]here have been arrests at this property for the violation of the Controlled Substance Act of 1972.” Please identify all such arrests, including, but not limited to, the following:

- a. The name(s) of the person(s) arrested;
- b. The date of such arrest(s);
- c. The exact location of such arrest(s);
- d. A brief summary of the facts underlying such arrest(s);

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- e. A brief summary of the manner in which the arrest(s) was executed; and
- f. Whether criminal charges were initiated against the person(s) arrested, and, if so, the nature of those charges and the current status of those charges.

In answering this interrogatory, please identify any documents or records that were reviewed or relied upon in preparing this answer.

INTERROGATORY # 8

8. Please state whether a search warrant(s) and/or arrest warrant(s) were obtained for the “arrests” alleged in Paragraph 4 of the Petition. If any such warrant(s) was obtained, please state the date it was obtained, and the factual basis for obtained such warrant(s).

INTERROGATORY # 9

9. Please state the full name, address, badge number and telephone number for the undercover police officer referred to in Paragraph 5 of the Petition.

INTERROGATORY # 10

10. In Paragraph 5 of the Petition, you allege that “[a]fter a brief conversation, black male # 1 handed black male # 2 an unknown amount USC in exchange for an unknown amount of small items he retrieved from his waist area.” Please state whether the “unknown amount of small items” was ever identified.

INTERROGATORY # 11

11. In Paragraph 5 of the Petition, you allege that “[a]t approximately 5:55 p.m., the U/C observed a black male wearing a red and black shirt and white shorts approach a black male wearing a white tee-shirt, black baseball cap and black pants who was standing in front of [REDACTED] STREET.” Please state exactly where the aforementioned black male was standing in relation to the premises at [REDACTED] Street (i.e., sidewalk, porch, street, etc.).

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In answering this interrogatory, please identify any documents or records that were reviewed or relied upon in preparing this answer.

INTERROGATORY # 12

12. Please state what the “unknown amount of small items he retrieved from his waistband area” referred to in Paragraph 6 of the Petition were later identified as. If no identification was made, please state the reasons why no identification was made.

INTERROGATORY # 13

13. Please state whether the “1 clear glass vial with a gray top containing an off white chunky substance alleged crack cocaine” referred to in Paragraph 6 of the Petition was subsequently tested or examined for any reason, including, but not limited to, identification of the contents of the vial and fingerprint analysis. If so, please state who performed the test or examination (including name, address, and telephone number), where the test or examination was conducted, when the test or examination was conducted, the results of such test or examination, and in whose possession the results of such test or examination are kept. In answering this interrogatory, please identify all documents or records that were reviewed or relied upon in preparing this answer.

INTERROGATORY # 14

14. Please state whether “black male #1” and “black male # 2,” as referred to in Paragraph 5 of the Petition, were ever identified. If so, please provide the name, address, and telephone number for these individuals and also state whether these individuals were charged or arrested in conjunction with any crimes or offenses relating to the events forming the basis for the Petition. If these individuals were charged or arrested, please state the disposition of those cases.

Appendix – Respondent’s First Set of Interrogatories for the Commonwealth

INTERROGATORY # 15

15. Please state whether the “unknown black female,” as referred to in Paragraph 6 of the Petition, was ever identified. If so, please provide the name, address, and telephone number for this individuals and also state whether this individuals was charged or arrested in conjunction with any crimes or offenses relating to the events forming the basis for the Petition. If this individual was charged or arrested, please state the disposition of that case.

INTERROGATORY # 16

16. Please state whether any of the following individuals were arrested or charged in conjunction with the events forming the basis for the Petition: [REDACTED] and [REDACTED]. If so, please state the disposition of that individual’s case.

INTERROGATORY # 17

17. Please state whether any statements were taken from the following individuals: [REDACTED] and [REDACTED]. If so, please provide a summary of the individual’s statement and identify whom the statement was given to.

INTERROGATORY # 18

18. In Paragraph 8 of the Petition, you allege that “a black female later identified as [REDACTED] approached a black male later identified as [REDACTED] who was standing in front of [REDACTED] STREET.” Please state exactly where the “black male later identified as [REDACTED]” was standing in relation to the premises at [REDACTED] Street (i.e., sidewalk, porch, street, etc.). In answering this interrogatory, please identify any documents or records that were reviewed or relied upon in preparing this answer.

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INTERROGATORY # 19

19. Please state whether the “3 clear glass jars with a gray top each containing an off white chunky substance alleged crack cocaine” referred to in Paragraph 8 of the Petition were subsequently tested or examined for any reason, including, but not limited to, identification of the contents of the vial and fingerprint analysis. If so, please state who performed the test or examination (including name, address, and telephone number), where the test or examination was conducted, when the test or examination was conducted, the results of such test or examination, and in whose possession the results of such test or examination are kept. In answering this interrogatory, please identify all documents or records that were reviewed or relied upon in preparing this answer.

INTERROGATORY # 20

20. In Paragraph 9 of the Petition, you allege that “a white male late identified as [REDACTED] approached [REDACTED] who was in front of [REDACTED] STREET.” Please state exactly where the [REDACTED] was standing in relation to the premises at [REDACTED] Street (i.e., sidewalk, porch, street, etc.). In answering this interrogatory, please identify any documents or records that were reviewed or relied upon in preparing this answer.

INTERROGATORY # 21

21. Please state whether the “1 clear glass vial with a gray top containing an off white chunky substance alleged crack cocaine” referred to in Paragraph 9 of the Petition was subsequently tested or examined for any reason, including, but not limited to, identification of the contents of the vial and fingerprint analysis. If so, please state who performed the test or examination (including name, address, and telephone number), where the test or examination was conducted, when the test or examination was conducted, the results of such test or examination, and in whose possession the results of such test or examination are kept. In

Appendix – Respondent’s First Set of Interrogatories for the Commonwealth

answering this interrogatory, please identify all documents or records that were reviewed or relied upon in preparing this answer.

INTERROGATORY # 22

22. Please identify who “directed [the police] to go to the porch area of [REDACTED] STREET,” as alleged in Paragraph 10 of the Petition.

INTERROGATORY # 23

23. Please state whether the “several black males” referred to in Paragraph 10 of the Petition were ever identified. If so, please state the name, address, and telephone number of such individual and also whether any statement was taken from such individual. If a statement was taken, please provide a summary of that statement.

INTERROGATORY # 24

24. Please state whether the “several black males” referred to in Paragraph 10 of the Petition were ever charged or arrested with any crime or offense in conjunction with the events that form the basis for the Petition. If so, please state the disposition of that individual’s case.

INTERROGATORY # 25

25. Please state whether any individuals were inside [REDACTED] Street on August [REDACTED], 20[REDACTED] when “police entered the residence in hot pursuit,” as alleged in Paragraph 10 of the Petition. If so, please state the name, address, and telephone number of such individual(s). If a name is not known, please state a physical description of such individual(s).

INTERROGATORY # 26

26. If any individual(s) was inside [REDACTED] Street on August [REDACTED], 20[REDACTED] when “police entered the residence in hot pursuit,” please state who observed the individual(s) and exactly where the individual(s) was seen inside [REDACTED] Street.

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INTERROGATORY # 27

27. If any individual(s) was inside [REDACTED] Street on August [REDACTED], 20[REDACTED] when the “police entered the residence in hot pursuit,” please state what police action, if any, the police took against such individual(s), including, but not limited to, whether such individual(s) was arrested, handcuffed, or read his or her Miranda rights.

INTERROGATORY # 28

28. If any individual(s) was inside [REDACTED] Street on August [REDACTED], 2[REDACTED] when “police entered the residence in hot pursuit,” please state what, if anything, the police stated to such individual(s), and what, if anything, the individual(s) stated to the police. In answering this interrogatory, please state the name, address, and telephone number of the individual(s) or the police officer to which the answer refers.

INTERROGATORY # 29

29. Please identify from Paragraph 10 of the Petition the “one black male [who] was observed running onto the second floor of the house.”

INTERROGATORY # 30

30. In Paragraph 10 of the Petition you allege that the “black male [who] was observed running onto the second floor of the house . . . was stopped and later cleared by investigation.” Please identify the nature of this investigation, what the individual was being investigated for, and why he was “later cleared.” In answering this interrogatory, please identify any documents that exist regarding the investigation that was conducted.

INTERROGATORY # 31

31. In Paragraph 10 of the Petition, you allege that “in the second floor front bedroom, police observed in plain view 1 Nike shoebox containing 21 small clear glass jars each containing a green & weed substance alleged marijuana and loose marijuana scattered threw [sic]

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the shoebox.” Please state the exact location in which this Nike shoebox was observed, and by whom it was observed. In answering this interrogatory, please identify any documents or records that were reviewed or relied upon in preparing this answer.

INTERROGATORY # 32

32. Please state the name of any individual(s) who was present in the front second floor bedroom when “police observed in plain view 1 Nike shoebox containing 21 small clear glass jars each containing a green & weed substance alleged marijuana and loose marijuana scattered threw [sic] the shoebox.” If a name is not known, please state a physical description of such individual(s).

INTERROGATORY # 33

33. Please state whether the “21 small clear glass jars each containing a green & weed substance alleged marijuana” referred to in Paragraph 10 of the Petition were subsequently tested or examined for any reason, including, but not limited to, identification of the contents of the vial and fingerprint analysis. If so, please state who performed the test or examination (including name, address, and telephone number), where the test or examination was conducted, when the test or examination was conducted, the results of such test or examination, and in whose possession the results of such test or examination are kept. In answering this interrogatory, please identify all documents or records that were reviewed or relied upon in preparing this answer.

INTERROGATORY # 34

34. In Paragraph 10 of the Petition, you allege that police observed “loose marijuana scattered threw [sic] the shoebox.” Please state whether the “loose marijuana” was tested or examined for identification purposes. If so, please state who performed the test or examination (including name, address, and telephone number), where the test or examination was conducted,

Appendix – Respondent’s First Set of Interrogatories for the Commonwealth

when the test or examination was conducted, the results of such test or examination, and in whose possession the results of such test or examination are kept. In answering this interrogatory, please identify all documents or records that were reviewed or relied upon in preparing this answer.

INTERROGATORY # 35

35. In Paragraph 11 of the Petition, you allege that “confiscated from the second floor bedroom was 1 black plastic bag containing 100’s of new and unused packaging and 1 white sock which contained 43 clear glass jars with a gray top each containing an off white chunky substance alleged crack cocaine.” Please state the exact location in which the “1 black plastic bag” and the “1 white sock” were confiscated, by whom they were confiscated, and who currently has possession of them. In answering this interrogatory, please identify any documents or records that were reviewed or relied upon in preparing this answer.

INTERROGATORY # 36

36. Please identify what the “new and unused packaging” in Paragraph 11 of the Petition refers to.

INTERROGATORY # 37

37. Please state whether the “1 black plastic bag” and/or the “100’s of new and unused packaging” referred to in Paragraph 11 of the Petition were subsequently tested or examined for fingerprint analysis. If so, please state who performed the test or examination (including name, address, and telephone number), where the test or examination was conducted, when the test or examination was conducted, the results of such test or examination, and in whose possession the results of such test or examination are kept. In answering this interrogatory, please identify all documents or records that were reviewed or relied upon in preparing this answer.

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INTERROGATORY # 38

38. Please state whether the “43 clear glass jars with a gray top each containing an off white chunky substance alleged crack cocaine” referred to in Paragraph 11 of the Petition were subsequently tested or examined for any reason, including, but not limited to, identification of the contents of the jars and fingerprint analysis. If so, please state who performed the test or examination (including name, address, and telephone number), where the test or examination was conducted, when the test or examination was conducted, the results of such test or examination, and in whose possession the results of such test or examination are kept. In answering this interrogatory, please identify all documents or records that were reviewed or relied upon in preparing this answer.

INTERROGATORY # 39

39. In Paragraph 11 of the Petition, you allege that “[p]olice also observed a gray colored locked safe inside a closet on the second floor front bedroom.” Please state the exact location inside the closet in the second floor front bedroom in which the “gray colored locked safe” was observed, and by whom it was observed. In answering this interrogatory, please identify any documents or records that were reviewed or relied upon in preparing this answer.

INTERROGATORY # 40

40. Please state the approximate size and shape of the “gray colored locked safe” referred to in Paragraph 11 of the Petition. In answering this interrogatory, please identify any documents or records that were reviewed or relied upon in preparing this answer.

INTERROGATORY # 41

41. Please identify the source of the information contained in Paragraphs 5-11 of the Petition relating to the alleged times that the events forming the basis for the Petition took place.

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INTERROGATORY # 42

42. Please state what time “search and seizure warrant # [REDACTED] was executed on [REDACTED] STREET on Wednesday, August [REDACTED] 20 [REDACTED], and also by whom it was executed.

INTERROGATORY # 43

43. Please state whether “search and seizure warrant # [REDACTED] was ever displayed to any individual at [REDACTED] Street on August [REDACTED] 20 [REDACTED]. If so, please state the name, address, and telephone number of such individual(s). If a name is not known, please state a physical description of such individual(s).

INTERROGATORY # 44

44. Please state whether any individuals were inside [REDACTED] Street on August [REDACTED] 20 [REDACTED] when the police “executed search and seizure warrant # [REDACTED]. If so, please state the name, address, and telephone number of such individual(s). If a name is not known, please state a physical description of such individual(s).

INTERROGATORY # 45

45. If any individual(s) was inside [REDACTED] Street on August [REDACTED] 20 [REDACTED] when the police “executed search and seizure warrant # [REDACTED] please state who observed the individual(s) and exactly where the individual(s) was seen inside [REDACTED] Street.

INTERROGATORY # 46

46. If any individual(s) was inside [REDACTED] Street on August [REDACTED] 20 [REDACTED] when the police “executed search and seizure warrant # [REDACTED] please state what police action, if any, the police took against such individual(s), including, but not limited to, whether such individual(s) was arrested, handcuffed, or read his or her Miranda rights.

Appendix – Respondent’s First Set of Interrogatories for the Commonwealth

INTERROGATORY # 47

47. If any individual(s) was inside [REDACTED] Street on August [REDACTED] 20[REDACTED] when the police “executed search and seizure warrant # [REDACTED] please state what, if anything, the police stated to such individual(s), and what, if anything, the individual(s) stated to the police. In answering this interrogatory, please state the name, address, and telephone number of the individual(s) or the police officer to which the answer refers.

INTERROGATORY # 48

48. In Paragraph 12 of the Petition, you allege that “police executed search and seizure warrant # [REDACTED] on [REDACTED] STREET and recovered the following: from the first floor dining area: 1 water revenue bill in the name of [REDACTED] with the address of [REDACTED] Street.” Please state the exact location inside the first floor dining area that the “water revenue bill” was recovered, by whom it was recovered, and who currently has possession of it. In answering this interrogatory, please identify any documents or records that were reviewed or relied upon in preparing this answer.

INTERROGATORY # 49

49. In Paragraph 12 of the Petition, you allege that “police executed search and seizure warrant # [REDACTED] on [REDACTED] STREET and recovered the following: from the first floor dining area: . . . 1 clear glass jar containing a green & weed substance alleged marijuana.” Please state the exact location inside the first floor dining area that the “1 clear glass jar containing a green & weed substance alleged marijuana” was recovered, by whom it was recovered, and who currently has possession of it. In answering this interrogatory, please identify any documents or records that were reviewed or relied upon in preparing this answer.

INTERROGATORY # 50

Appendix – Respondent’s First Set of Interrogatories for the Commonwealth

50. Please state whether the “1 clear glass jar containing a green & weed substance alleged marijuana” referred to in Paragraph 12 of the Petition was subsequently tested or examined for any reason, including, but not limited to, identification of the contents of the jar and fingerprint analysis. If so, please state who performed the test or examination (including name, address, and telephone number), where the test or examination was conducted, when the test or examination was conducted, the results of such test or examination, and in whose possession the results of such test or examination are kept. In answering this interrogatory, please identify all documents or records that were reviewed or relied upon in preparing this answer.

INTERROGATORY # 51

51. In Paragraph 12 of the Petition, you allege that “police executed search and seizure warrant # [REDACTED] on [REDACTED] STREET and recovered the following . . . from the second floor front bedroom inside a locked safe: 1 brown McDonald’s bag containing 23 clear glass jars each containing a green & weed substance alleged marijuana.” Please state the exact location inside the first floor dining area that the “23 clear glass jars each containing a green & weed substance alleged marijuana” were recovered, by whom they were recovered, and who currently has possession of them. In answering this interrogatory, please identify any documents or records that were reviewed or relied upon in preparing this answer.

INTERROGATORY # 52

52. Please state whether the “23 clear glass jars each containing a green & weed substance alleged marijuana” referred to in Paragraph 12 of the Petition were subsequently tested or examined for any reason, including, but not limited to, identification of the contents of the jars and fingerprint analysis. If so, please state who performed the test or examination (including name, address, and telephone number), where the test or examination was conducted, when the

Appendix – Respondent’s First Set of Interrogatories for the Commonwealth

test or examination was conducted, the results of such test or examination, and in whose possession the results of such test or examination are kept. In answering this interrogatory, please identify all documents or records that were reviewed or relied upon in preparing this answer.

INTERROGATORY # 53

53. In Paragraph 12 of the Petition, you allege that “police executed search and seizure warrant # [REDACTED] on [REDACTED] STREET and recovered the following . . . from the second floor front bedroom inside a locked safe: . . . \$289 USC.” Please state the exact location inside the first floor dining area that the “\$289 USC” was recovered, by whom it was recovered, and who currently has possession of it. In answering this interrogatory, please identify any documents or records that were reviewed or relied upon in preparing this answer.

INTERROGATORY # 54

54. Please state whether the “\$289 USC” referred to in Paragraph 12 of the Petition was subsequently tested or examined for fingerprint analysis. If so, please state who performed the test or examination (including name, address, and telephone number), where the test or examination was conducted, when the test or examination was conducted, the results of such test or examination, and in whose possession the results of such test or examination are kept. In answering this interrogatory, please identify all documents or records that were reviewed or relied upon in preparing this answer.

INTERROGATORY # 55

55. Please state whether the “23 clear glass jars each containing a green & weed substance alleged marijuana” and “\$289 USC” referred to in Paragraph 12 of the Petition were the entire contents of the “locked safe.” If not, please identify the entire contents of the “locked safe.”

Appendix – Respondent’s First Set of Interrogatories for the Commonwealth

INTERROGATORY # 56

56. Please state whether anyone ascertained the owner of the “locked safe” referred to in Paragraph 12 of the Petition. If so, please provide the name, address and telephone number of the owner as well as the name, address and telephone number of the individual who ascertained that such individual was the owner of the “locked safe.”

INTERROGATORY # 57

57. Please state whether any statements were taken from any individual regarding the “gray colored locked safe” referred to in Paragraph 11 of the Petition or the “locked safe” referred to in Paragraph 12 of the Petition. If so, please identify both the individual(s) whose statement was taken and the individual who took such statement.

INTERROGATORY # 58

58. Please identify the procedure used by the police for “recover[ing]” or “confiscat[ing]” the items referred to in Paragraphs 10-12 of the Petition. In addition, please provide the tracking, receipt and/or identification numbers used by the police for the items that were “recovered” or “confiscated.”

INTERROGATORY # 59

59. If not already provided in response to the preceding interrogatories, please identify all facts, including the date(s) (or approximate date(s)) and length of time, upon which you rely to support the allegation in Paragraph 13 of the Petition that “the above captioned property was possessed or used (or intended to be used) or is a proceed of an exchange conducted, in violation of the Pennsylvania Controlled Substance, Drug, Device and Cosmetic Act, 35 P.S. § 780-101 et seq., and is subject to forfeiture under the Controlled Substances Forfeitures Act, 42 Pa.C.S. § 6801 et seq.” In answering this interrogatory, please identify any documents or records that were reviewed or relied upon in preparing this answer.

Appendix – Respondent’s First Set of Interrogatories for the Commonwealth

INTERROGATORY # 60

60. Please identify the name, address, and telephone number of every person who is the source of information for the allegation in Paragraph 13 of the Petition that “the above captioned property was possessed or used (or intended to be used) or is a proceed of an exchange conducted, in violation of the Pennsylvania Controlled Substance, Drug, Device and Cosmetic Act, 35 P.S. § 780-101 et seq., and is subject to forfeiture under the Controlled Substances Forfeitures Act, 42 Pa.C.S. § 6801 et seq.” For each such person identified, state the basis of their knowledge, the time period involved, and a brief summary of what they reported.

INTERROGATORY # 61

61. If not already provided in response to the preceding interrogatories, please identify all facts, including the date(s) (or approximate date(s)) and length of time, upon which you rely to support this allegation in Paragraph 2 of the Application that [REDACTED] the owner of the captioned property, has permitted the premises to be used for the storage and distribution of illegal narcotics in violation of the Controlled Substances Act, 35 Pa.C.S. § 780-101 et seq.” In answering this interrogatory, please identify any documents or records that were reviewed or relied upon in preparing this answer.

INTERROGATORY # 62

62. Please identify the name, address, and telephone number of every person who is the source of information for the allegation in Paragraph 2 of the Application that [REDACTED] the owner of the captioned property, has permitted the premises to be used for the storage and distribution of illegal narcotics in violation of the Controlled Substances Act, 35 Pa.C.S. § 780-101 et seq.” For each such person identified, state the basis of their knowledge, the time period involved, and a brief summary of what they reported.

Appendix – Respondent’s First Set of Interrogatories for the Commonwealth

INTERROGATORY # 63

63. If not already provided in response to the preceding interrogatories, please identify all facts, including the date(s) (or approximate date(s)) and length of time, upon which you rely to support the allegation in Paragraph 2 of the Application that “[REDACTED] . . . has used the premises for the storage and distribution of illegal narcotics in violation of the [Controlled Substances Act, 35 Pa.C.S. § 780-101 et seq.].” In answering this interrogatory, please identify any documents or records that were reviewed or relied upon in preparing this answer.

INTERROGATORY # 64

64. Please identify the name, address, and telephone number of every person who is the source of information for the allegation in Paragraph 2 of the Application that “[REDACTED] . . . has used the premises for the storage and distribution of illegal narcotics in violation of the [Controlled Substances Act, 35 Pa.C.S. § 780-101 et seq.].” For each such person identified, state the basis of their knowledge, the time period involved, and a brief summary of what they reported.

INTERROGATORY # 65

65. Do you possess, or are you aware of, any photographs, motion pictures, or video recordings of any of the incidents referred to in the Petition or Application? If yes, please identify:

- a. The date(s) when they were made and what they are;
- b. The name and address of the person making them;
- c. A brief description of what each represents or portrays; and
- d. The name, address, and telephone number of the person in whose possession they currently are.

Appendix – Respondent’s First Set of Interrogatories for the Commonwealth

INTERROGATORY # 66

66. To the extent not already identified in response to previous interrogatories, please state your knowledge of any alleged illegal activity that occurred at, or by residents or visitors of, [REDACTED] Street, including the dates you acquired knowledge of the incident(s). In answering this interrogatory, please identify the individuals involved in the alleged illegal activities.

INTERROGATORY # 67

67. Please state what, if any, actions you took at the time you acquired knowledge of any alleged illegal activities that occurred at or by residents or visitors of [REDACTED] Street. In answering this interrogatory, please describe actions taken against Respondents and/or any individuals who participated in the alleged illegal activities. If you did not take any action at the time you acquired knowledge, please state why no action was taken at that time.

INTERROGATORY # 68

68. Have you obtained from any person any statement (as defined by the Pennsylvania Rules of Civil Procedure) concerning this action or its subject matter? If yes, please identify:

- a. Each such person, their name, address, and telephone number;
- b. When, where, by whom, and to whom each statement was made, and whether it was reduced to writing or otherwise recorded; and
- c. Any person, including their title, who has custody of any such statements that were reduced to writing or otherwise recorded.

INTERROGATORY # 69

69. Have you given any statement (as defined by the Pennsylvania Rules of Civil Procedure) concerning this action or its subject matter to any person? If yes, please identify:

- a. Each such person, their name, address, and telephone number;

Appendix – Respondent’s First Set of Interrogatories for the Commonwealth

- b. When, where, by whom, and to whom each statement was made, and whether it was reduced to writing or otherwise recorded; and
- c. Any person, including their title, who has custody of any such statements that were reduced to writing or otherwise recorded.

INTERROGATORY # 70

70. Please identify the name, address, job title, and telephone number of each and every person you anticipate calling, or intend to call, as a witness in the trial of this matter, and provide a brief statement as to what each person is expected to testify to at the trial. If you intend to call any witnesses as expert witnesses, indicate that fact and include for all such experts their qualifications and state the substance of the facts and opinions to which the expert will testify.

INTERROGATORY # 71

71. Please identify all Documents by name and date that you anticipate introducing, or intend to introduce, at the trial of this matter, and provide a brief statement as to what the document will be introduced to show.

Respectfully submitted,

Certified Law Student for _____, Esq.

_____, Esq.

Counsel for Respondent

Philadelphia, PA 19104

Date: March , 20

Appendix – Respondent’s Answers and Objections to Commonwealth’s Interrogatories

[REDACTED]
BY: [REDACTED]
Attorney I.D. No. [REDACTED]
[REDACTED]
Philadelphia, Pennsylvania 19104
[REDACTED]

Counsel for Respondent, [REDACTED]

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA
CRIMINAL TRIAL DIVISION

COMMONWEALTH OF PENNSYLVANIA	:	PHILADELPHIA COUNTY
	:	COURT OF COMMON PLEAS
v.	:	TRIAL DIVISION
	:	
THE REAL PROPERTY AND	:	MR # CP- [REDACTED]
IMPROVEMENTS KNOWN AS	:	
[REDACTED]	:	DECEMBER TERM, 201 [REDACTED]
PHILADELPHIA, PA	:	
	:	NO. [REDACTED]
	:	

RESPONDENT [REDACTED] ANSWERS AND OBJECTIONS TO THE
COMMONWEALTH OF PENNSYLVANIA’S INTERROGATORIES

Respondent [REDACTED] (“Respondent” or [REDACTED]), by his undersigned counsel, hereby serves on Petitioner, the Commonwealth of Pennsylvania (the “Commonwealth”), the following answers and objections to the Commonwealth’s Interrogatories addressed to Respondent [REDACTED]

INTERROGATORY NO. 1: What is your full name and date of birth?

ANSWER TO NO. 1: Respondent’s full name is [REDACTED] [REDACTED] was born on [REDACTED]

INTERROGATORY NO. 2: What is your social security number?

OBJECTION AND ANSWER TO NO. 2: Respondent objects to this interrogatory on the basis that it is not relevant to the subject matter of this litigation and is not reasonably

Appendix – Respondent’s Answers and Objections to Commonwealth’s Interrogatories

calculated to lead to the discovery of admissible evidence. Subject to, and without waiving the foregoing objection, Respondent states that his social security number is [REDACTED]

INTERROGATORY NO. 3: Have you ever used any other name(s)? If yes, what are the other names?

OBJECTION AND ANSWER TO NO. 3: Respondent objects to this interrogatory on the basis that it is overly broad, not properly limited in time and scope, not reasonably calculated to lead to the discovery of admissible evidence, and not relevant to the subject matter of this litigation. Subject to, and without waiving the foregoing objections, Respondent answers that he has never formally used any other name, although others have sometimes referred to him by nicknames such as [REDACTED]

INTERROGATORY NO. 4: Have you ever been arrested?

OBJECTION AND ANSWER TO NO. 4: Respondent objects to this interrogatory on the basis that it is overly broad, not properly limited in time and scope, not reasonably calculated to lead to the discovery of admissible evidence, and not relevant to the subject matter of this litigation. Furthermore, the information sought in Interrogatory No. 4 is available to the Commonwealth through public records. Subject to, and without waiving the foregoing objections, Respondent answers that he has been arrested.

INTERROGATORY NO. 5: If the answer to Question 4 above was “yes”, please list the date of each arrest, where the arrest occurred, what you were charged with and the disposition of each case.

OBJECTION AND ANSWER TO NO. 5: Respondent objects to this interrogatory on the basis that it is overly broad, not properly limited in time and scope, not reasonably calculated to lead to the discovery of admissible evidence, and not relevant to the subject matter of this

Appendix – Respondent’s Answers and Objections to Commonwealth’s Interrogatories

litigation. Furthermore, the information sought in Interrogatory No. 5 is available to the Commonwealth through public records. Subject to, and without waiving the foregoing objections, Respondent will answer this interrogatory for the period of ten years prior to the current date. Respondent acknowledges that he was arrested on [REDACTED] while at his family home located at [REDACTED] (the “Property” or [REDACTED]). As a result of that arrest, Respondent was charged with “Manufacture, Delivery, or Possession With Intent to Manufacture or Deliver”, to which he pled guilty and for which he was sentenced to immediate parole with telephone reporting. In connection with the [REDACTED] also was charged with “Conspiracy”, “Int Poss Contr Subst By Per Not Reg”, “Poss Of Marijuana”, and “Use/Poss Of Drug Paraph”, all of which were nolle prossed.

INTERROGATORY NO. 6: Where were you when your property was seized?

OBJECTION AND ANSWER TO NO. 6: Respondent objects to this interrogatory on the basis that it is overly broad, not properly limited in time and scope, not reasonably calculated to lead to the discovery of admissible evidence, and not relevant to the subject matter of this litigation. Subject to, and without waiving the foregoing objections, Respondent answers this question by assuming that “property” refers to his home at [REDACTED]. Respondent states that he was in the living room of his family home located at [REDACTED] at the time he was arrested on [REDACTED] and his property was seized.

INTERROGATORY NO. 7: Where were you living when your property was seized?

ANSWER TO NO. 7: Respondent assumes that “property” refers to his home at [REDACTED]. Respondent was residing at his family home located at [REDACTED].

INTERROGATORY NO. 8: How long were you living there?

Appendix – Respondent’s Answers and Objections to Commonwealth’s Interrogatories

ANSWER TO NO. 8: Respondent states that he has resided and continues to reside at his family home located at [REDACTED] since purchasing the Property with [REDACTED]

INTERROGATORY NO. 9: With whom did you live?

OBJECTION AND ANSWER TO NO. 9: Respondent objects to this interrogatory on the basis that it is vague and ambiguous, as the question fails to specify a time period for the answer it seeks. Further, the interrogatory is overly broad, not properly limited in time and scope, not reasonably calculated to lead to the discovery of admissible evidence, and not relevant to the subject matter of this litigation. Subject to, and without waiving the foregoing objections, Respondent states that, when Respondent was arrested on [REDACTED] the following individuals resided with [REDACTED]: (i) Mrs. [REDACTED] Respondent’s wife; (ii) [REDACTED], (iii) [REDACTED] [REDACTED] (iv) [REDACTED] and (v) [REDACTED] the son of [REDACTED] and grandson of [REDACTED] [REDACTED] no longer resides at [REDACTED]

INTERROGATORY NO. 10: Did you own the place where you lived or did you rent?

ANSWER TO NO. 10: Respondent states that he owns [REDACTED] jointly with his wife, Mrs. [REDACTED]

INTERROGATORY NO. 11: How much were your monthly house payments or rent?

OBJECTION AND ANSWER TO NO. 11: Respondent objects to this interrogatory on the basis that it is overly broad, not properly limited in time and scope, not reasonably calculated to lead to the discovery of admissible evidence, and not relevant to the subject matter of this

Appendix – Respondent’s Answers and Objections to Commonwealth’s Interrogatories

litigation. Subject to, and without waiving the foregoing objections, Respondent states that the monthly mortgage payment on [REDACTED] is currently \$ [REDACTED]

INTERROGATORY NO. 12: Were you employed at the time your property was seized?

OBJECTION AND ANSWER TO NO. 12: Respondent objects to this interrogatory on the basis that it is overly broad, not properly limited in time and scope, not reasonably calculated to lead to the discovery of admissible evidence, and not relevant to the subject matter of this litigation. Subject to, and without waiving the foregoing objection, Respondent states that he was not employed at the time of his arrest on [REDACTED]

INTERROGATORY NO. 13: Who was your employer? (Please include company name, name and phone number of immediate supervisor and address of employer)

ANSWER TO NO. 13: N/A

INTERROGATORY NO. 14: How long did you work there?

ANSWER TO NO. 14: N/A

INTERROGATORY NO. 15: What were your wages? \$ ____ per _____. (Please provide copies of you last 2 paystubs)

ANSWER TO NO. 15: N/A

INTERROGATORY NO. 16: If you were unemployed, how did you support yourself?

OBJECTION AND ANSWER TO NO. 16: Respondent objects to this interrogatory on the basis that it is overly broad, not properly limited in time and scope, not reasonably calculated to lead to the discovery of admissible evidence, and not relevant to the subject matter of this litigation. Subject to, and without waiving the foregoing objections, Respondent states that he is unable to work due to physical ailments, including degenerative joint disease, heart disease, arthritis, and hypertension, and is dependent on the support of his wife, who is employed by [REDACTED]

Appendix – Respondent’s Answers and Objections to Commonwealth’s Interrogatories

████████████████████. Respondent has a pending claim for Social Security Disability benefits.

INTERROGATORY NO. 17: Did you receive any government aid such as social security, welfare, food stamps or a pension? If yes, list those you received and corresponding monthly amounts. Include copies of any supporting documentation.

OBJECTION AND ANSWER TO NO. 17: Respondent objects to this interrogatory on the basis that it is vague and ambiguous, as the question fails to specify a time period for the answer it seeks. Respondent also objects to this interrogatory on the basis that it is overly broad, not properly limited in time and scope, not reasonably calculated to lead to the discovery of admissible evidence, and not relevant to the subject matter of this litigation. Subject to, and without waiving the foregoing objections, Respondent states that, at the time of his arrest, he did not receive any government aid.

INTERROGATORY NO. 18: Identify all sources of income and/or gifts for the year during which the property was seized, including, but not limited to any one-time or extraordinary income payments, taxable or non-taxable, from whatever source derived, including, but not limited to “under the table” income not reported for tax purposes, gambling winnings, and payments received as a result of a lawsuit. Include any and all documents evidencing such income or gifts.

OBJECTION AND ANSWER TO NO. 18: Respondent objects to this interrogatory on the basis that it is overly broad, not properly limited in time and scope, not reasonably calculated to lead to the discovery of admissible evidence, and not relevant to the subject matter of this litigation. In addition, Respondent objects to this interrogatory to the extent that it seeks

Appendix – Respondent’s Answers and Objections to Commonwealth’s Interrogatories

information protected by the Fifth Amendment to the United States Constitution and Article I, Section 9 of the Pennsylvania Constitution.

INTERROGATORY NO. 19: What were your living expenses at the time your property was seized from you? (e.g., food, rent, mortgage, dependents, transportation) Please provide an itemized list.

OBJECTION AND ANSWER TO NO. 19: Respondent objects to this interrogatory on the basis that it is overly broad, not properly limited in time and scope, not reasonably calculated to lead to the discovery of admissible evidence, and not relevant to the subject matter of this litigation. Subject to, and without waiving the foregoing objections, Respondent states, to the best of his recollection, that his estimated expenses for [REDACTED] were as follows: \$ [REDACTED] for the mortgage on his family home; \$ [REDACTED] for food for his family; \$ [REDACTED] for personal public transportation expenses; \$ [REDACTED] for electricity; \$ [REDACTED] for natural gas; \$ [REDACTED] for water; \$ [REDACTED] for his personal life insurance; \$ [REDACTED] for pet expenses; and \$ [REDACTED] for personal and family miscellaneous expenses.

INTERROGATORY NO. 20: Are you married, single, divorced or widowed?

ANSWER TO NO. 20: Respondent states he is married to [REDACTED], who also resides at [REDACTED].

INTERROGATORY NO. 21: Do you have any children? If yes, what are their names and ages, and do they live with you?

OBJECTION AND ANSWER TO NO. 21: Respondent objects to this interrogatory on the basis that it is not reasonably calculated to lead to the discovery of admissible evidence, and not relevant to the subject matter of this litigation. Subject to, and without waiving the foregoing objections, Respondent states that he has four children. His oldest son, [REDACTED]

Appendix – Respondent’s Answers and Objections to Commonwealth’s Interrogatories

is [REDACTED] years old and does not currently reside with Mr. [REDACTED]. Mr. [REDACTED] second oldest son, [REDACTED], is [REDACTED] years old and does not currently reside at [REDACTED]. However, [REDACTED] did reside at [REDACTED] at the time of Respondent’s arrest. Mr. [REDACTED] daughter, [REDACTED], is [REDACTED] years old and currently resides at [REDACTED]. Mr. [REDACTED] youngest son, [REDACTED] is [REDACTED] years old and currently resides at [REDACTED].

INTERROGATORY NO. 22: Do you financially support anyone beside yourself? If so, please list the person, their relation to you (such as mother, sister or children), and the dollar amount of support you provide each month.

OBJECTION AND ANSWER TO NO. 22: Respondent objects to this interrogatory on the basis that it is overly broad, not properly limited in time and scope, not reasonably calculated to lead to the discovery of admissible evidence, and not relevant to the subject matter of this litigation. Subject to, and without waiving the foregoing objections, Respondent states that he and his wife provide limited financial assistance to their children and grandson with money derived from his wife’s income.

INTERROGATORY NO. 23: What is your version of the events surrounding the seizure of your property?

ANSWER TO NO. 23: Respondent was arrested for participating in three exchanges involving small quantities of narcotics during [REDACTED] all of which occurred away from the premises of [REDACTED]. The value of the narcotics involved in the three transactions totaled \$[REDACTED]. Respondent’s home was searched on [REDACTED] and various items were seized from his home and person in addition to the seizure of his home which is the subject of this proceeding. Respondent pled guilty on [REDACTED] to the charge of

Appendix – Respondent’s Answers and Objections to Commonwealth’s Interrogatories

“Manufacture, Delivery, or Possession With Intent to Manufacture or Deliver”, and Respondent was subsequently sentenced to immediate parole with telephone reporting.

INTERROGATORY NO. 24: What was the disposition of the underlying criminal case, if any, that gave rise to the seizure of your property?

ANSWER TO NO. 24: Respondent pled guilty to “Manufacture, Delivery, or Possession With Intent to Manufacture or Deliver” and the remaining charges were nolle prossed.

INTERROGATORY NO. 25: How did you acquire the property that was seized?

OBJECTION AND ANSWER TO NO. 25: Respondent objects to this interrogatory on the basis that it is vague and ambiguous, overly broad, and not properly limited in time and scope. Subject to and without waiving the foregoing objection, Respondent answers assuming that the question refers to the real property that was seized. Respondent and [REDACTED] jointly purchased their family home located at [REDACTED] Avenue for \$ [REDACTED] on [REDACTED]

INTERROGATORY NO. 26: What were you intending to do with the property that was seized?

ANSWER TO NO. 26: Respondent states that the Property was and is the family home of Mr. [REDACTED] and members of his family.

INTERROGATORY NO. 27: Please identify any person who may have a claim to the property that was seized. Provide their complete name and a current address and phone number.

ANSWER TO NO. 27: Respondent states that he and his wife both have a legal claim of ownership to the property that was seized. A deed dated [REDACTED] conferred ownership of [REDACTED], who still reside at [REDACTED]. A true and correct copy of that deed is attached hereto and marked as Exhibit 1.

Appendix – Respondent’s Answers and Objections to Commonwealth’s Interrogatories

Additionally, Mrs. [REDACTED] has a claim to cash that was seized by police as that money belonged to her exclusively and was intended for the purpose of [REDACTED]

INTERROGATORY NO. 28: Can anyone else provide documentation or information that can support your claim to the property that was seized? Please list the name, address, phone number and date of birth for each person.

ANSWER TO NO. 28: Respondent incorporates by reference his answer to Interrogatory No. 27 as if fully set forth herein in response to Interrogatory No. 28, including the deed to the property, attached as Exhibit 1. Additionally, Mrs. [REDACTED] can provide further support regarding the claims to the property described in response to Interrogatory No. 27.

Respectfully submitted,

[REDACTED]
[REDACTED]

By: [REDACTED]
Attorney I.D. [REDACTED]

[REDACTED]
[REDACTED]
Philadelphia, Pennsylvania 19104

Counsel for Respondent, [REDACTED]

DATE: [REDACTED]

Appendix – Respondent’s Request for Production of Documents

PENN LEGAL ASSISTANCE OFFICE
By: [REDACTED]
Certified Law Student for [REDACTED], Esq.
Attorneys for Respondent
Identification No. [REDACTED]
[REDACTED]
Philadelphia, PA 19104
[REDACTED]

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
TRIAL DIVISION – CRIMINAL SECTION

COMMONWEALTH OF PENNSYLVANIA : COURT OF COMMON PLEAS
: TRIAL DIVISION
v. : [REDACTED] TERM, [REDACTED]
THE REAL PROPERTY AND :
IMPROVEMENTS KNOWN AS :
[REDACTED] STREET :
PHILADELPHIA, PA : NO: [REDACTED]

**RESPONDENT’S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS
ADDRESSED TO PETITIONER COMMONWEALTH OF PENNSYLVANIA**

Pursuant to Rule 4009, et seq. of the Pennsylvania Rules of Civil Procedure, you are hereby requested to produce for inspection and copying the documents designated below at the offices of Respondent’s counsel, [REDACTED], Philadelphia, PA 19104, within thirty (30) days from the date of service hereof.

This request for discovery is continuing. Should Petitioner at any time subsequent to the service or filing of answers to this request for discovery become aware of information or

Appendix – Respondent’s Request for Production of Documents

documents that renders those answers incomplete, inaccurate, or misleading in any respect, supplemental answers are promptly required.

DEFINITIONS

1. “Petitioner,” “you,” and/or “your” shall mean the Commonwealth of Pennsylvania, including without limitation any subdivision, subsidiary, division, officers, representatives, agents, employees, and/or other representatives acting or purporting to act on your behalf.

2. “Respondent” shall mean [REDACTED] legal owner of [REDACTED] Street, Philadelphia, PA.

3. “Petition” shall mean the Commonwealth’s Petition For Forfeiture Pursuant to 42 Pa.C.S. § 6801 Et Seq., filed with the Court of Common Pleas of Philadelphia County and verified by [REDACTED], Assistant District Attorney, on September [REDACTED] 20[REDACTED].

4. “Application” shall mean the Commonwealth’s Application To Seize And Seal Premises Pursuant To 42 Pa.C.S. § 6801(d), filed with the Court of Common Pleas of Philadelphia County and signed by [REDACTED], Esquire, Chief, Public Nuisance Task Force and [REDACTED], Assistant District Attorney, on September [REDACTED] 20[REDACTED].

5. “Communications” shall mean any transmission of thoughts, opinions, or information by speech, writing, signs, or recordings thereof.

6. “Document(s)” is used in its customary broad sense and includes, but is not limited to, the following items (whether produced by any mechanical or manual process and whether an original, master, or copy): police records; office records; property receipts; records; reports; notes; summaries; conversations or statements; tapes of radio communications;

Appendix – Respondent’s Request for Production of Documents

memoranda (including inter-office and intra-office memoranda); correspondence; summaries, notes, and records of meetings, conferences, telephone conversations, and personal interviews; forecasts; appraisals; surveys; estimates; agreements; diaries; calendars; Day Timers; communications (including inter-office and intra-office communications); letters; cablegrams; radiograms; telegrams; telexes; faxes; e-mail; books; ledgers; invoices; contracts; notices; drafts of documents; comments or notes appearing on any documents; business records; maps; drawings; blueprints; charts; plans; specifications; schedules; computer files; computer printouts; computer tapes; computer disks; microfilm; microfiches; photographs; slides; negatives; motion pictures; video recordings; audio recordings (including transcriptions); data compilations from which information can be obtained in, or translated into, a reasonably usable form; and any other information containing paper, writing, or physical thing in your actual or constructive possession, custody, or control. When one or more documents is requested or referred to, the request or reference shall include, but is not limited to, the original and each and every copy and draft thereof having writing, notations, corrections, or markings unique to such copy or draft.

7. “Relating to, referring to, or concerning” (or any other of its forms) means relating to, reflecting, constituting, representing, supporting, contradicting, referring to, relevant to, containing information about, stating, describing, analyzing, noting, embodying, containing, mentioning, studying, recording, discussing, or evaluating (whether in opposition to or in support of Petitioner’s claims and positions in this action).

8. “Individual(s)” shall include natural persons, partnerships, associations, corporations, businesses, and legal and artificial entities.

9. “Witness” means any person who had, has, or purports to have any personal knowledge of the events or allegations referred to herein.

Appendix – Respondent’s Request for Production of Documents

INSTRUCTIONS

In responding to this discovery request, the following instructions shall apply:

1. Precede each answer with the request number to which it is addressed. For each document produced in response to a discovery request, indicate on the document, or in some other reasonable manner, the number of the request to which it responds.
2. In answering this discovery request, the Petitioner is requested to furnish all information, including hearsay, in possession of the Petitioner’s attorneys, agents, investigators, employees, independent contractors, and all other persons acting on behalf of Petitioner, and not merely such information known of the personal knowledge of the person or entity answering these requests.
3. When one or more documents is requested or referred to, the request or reference shall include, but is not limited to, the original and each and every copy and draft thereof having writings, notations, corrections, or markings unique to such copy or draft.
4. If the answering party does not know the answer to a discovery request, identify the person or persons who you would expect to know the answer to such request.
5. If there are any documents, the production, identification, or description of which is requested by this discovery request and which are not produced, identified, or described by Petitioner’s answer in full because of a claim of privilege, then:
 - a. Identify each such document by date, author, current custodian, and summary of its subject matter;
 - b. State the privilege asserted relating to it; and
 - c. State the facts allegedly giving rise to the claim of privilege.

Appendix – Respondent’s Request for Production of Documents

6. If anything is deleted from a document produced in response to the discovery request, then state:

- a. The reason for the deletion;
- b. Subject matter of the deletion; and
- c. If the deletion is based on a claim of privilege, the privilege being asserted and the facts allegedly giving rise to the claim of privilege.

7. If any request is objected to, in whole or in part, based on a claim that the request is overly broad, unduly burdensome to respond to, covers too great a scope (e.g., as to time, persons, or events covered, etc.) to be relevant, or for a similar reason, state the scope of the request that you are not asserting would be overly broad, etc., respond fully and completely to the portion that you are not asserting would be subject to your objection, and explain the basis for your objection to the balance.

8. If Petitioner is unable to produce any documents asked for in this discovery request because they are not within Petitioner’s possession, custody, or control, or for any other reason, for each such document state the information believed by Petitioner to be contained therein, and the name, address, occupation, affiliation, and title of any and all persons who have possession, custody, or control of each such document.

9. If any of the information included in the answers to this discovery request is not within the personal knowledge of the person certifying the answers to this discovery request, so indicate in each instance where such information is included, and identify each person and/or document from whom/which such information was obtained.

10. If Petitioner does not send documents or a set of documents due to an exceptionally large quantity thereof, please advise Respondents’ counsel of the dates and times

Appendix – Respondent’s Request for Production of Documents

when Respondents’ counsel may visit Petitioner’s office to inspect, review, and designate needed documents for photocopying.

11. Unless otherwise noted in the specific request, each request shall cover the period from January █, 20█ until the date of your responses hereto.

REQUESTS FOR PRODUCTION OF DOCUMENTS

Petitioner is requested to produce the following:

DOCUMENT REQUEST # 1

1. All documents relating to, referring to, or concerning the allegation in Paragraph 13 of the Petition that █ Street, Philadelphia, PA “was possessed or used (or intended to be used) or is a proceed of an exchange conducted, in violation of the Pennsylvania Controlled Substance, Drug, Device and Cosmetic Act, 35 P.S. § 780-101 et seq., and is subject to forfeiture under the Controlled Substances Forfeitures Act, 42 Pa.C.S. § 6801 et seq.”

DOCUMENT REQUEST # 2

2. All documents relating to, referring to, or concerning the allegation in Paragraph 2 of the Application that █ the owner of █ Street, Philadelphia, PA , has permitted the premises to be used for the storage and distribution of illegal narcotics in violation of the Controlled Substances Act, 35 Pa.C.S. § 780-101 et seq.”

DOCUMENT REQUEST # 3

3. All documents relating to, referring to, or concerning the allegation in Paragraph 2 of the Application that █ . . . has used the premises for the storage and distribution of illegal narcotics in violation of the [Controlled Substances Act, 35 Pa.C.S. § 780-101 et seq.].”

Appendix – Respondent’s Request for Production of Documents

DOCUMENT REQUEST # 4

4. All documents supporting the allegation in Paragraph 4 of the Petition and Paragraph 4 of the Application that “[t]here have been arrests at [REDACTED] Street, Philadelphia, PA] for the violation of the Controlled Substance Act of 1972.”

DOCUMENT REQUEST # 5

5. All documents relating to, referring to, or concerning the physical layout of [REDACTED] Street, Philadelphia, PA including, but not limited to, blueprints and/or other drawings, indicating the boundaries of the property of [REDACTED] Street, Philadelphia, PA, including, but not limited to, sidewalks, curbs, and walkways, if applicable.

DOCUMENT REQUEST # 6

6. All documents relating to, referring to, or concerning the ownership of [REDACTED] Street, Philadelphia, PA including, but not limited to, the deed for [REDACTED] Street, Philadelphia, PA.

DOCUMENT REQUEST # 7

7. All documents relating to, referring to, or concerning Petitioner’s official and unofficial decision-making process in deciding whether to bring a Petition for Forfeiture Pursuant to 42 Pa.C.S. § 6801 et seq.

DOCUMENT REQUEST # 8

8. If not already produced in response to a previous request for documents, all documents used by, or introduced by, Petitioner at legal proceedings, hearings, actions, or proceedings, prior to the commencement of the above captioned action, relating to, referring to, or concerning Respondent, [REDACTED] Street, Philadelphia, PA, or the subject matter and events comprising the basis for the Petition and/or the Application in the above captioned matter.

Appendix – Respondent’s Request for Production of Documents

DOCUMENT REQUEST # 9

9. If not already produced in response to a previous request for documents, all documents relating to, referring to, or concerning any investigations, surveillances, observations, inspections, raids, entries, or any other police or law enforcement actions taken regarding [REDACTED] Street, Philadelphia, PA by the Philadelphia Police, or any other law enforcement agency or authority, including, but not limited to, complaints, reports, and internal memoranda, for the following time periods:

- a. Prior to August [REDACTED] 20 [REDACTED];
- b. On August [REDACTED], 20 [REDACTED];
- c. On August [REDACTED] 20 [REDACTED];
- d. Subsequent to August [REDACTED], 20 [REDACTED]

DOCUMENT REQUEST # 10

10. If not already produced in response to a previous request for documents, all documents Petitioner possesses, possessed, or has knowledge of relating to, referring to, or concerning communications, regardless of which party initiated the communication, between Petitioner and:

- a. Respondent [REDACTED]
- b. Philadelphia Police, or any other law enforcement agency or authority, relating to, referring to, or concerning [REDACTED] Street Street, Philadelphia, PA or Respondent; and
- c. Any other person(s), relating to, referring to, or concerning [REDACTED] Street, Philadelphia, PA or Respondent.

Appendix – Respondent’s Request for Production of Documents

DOCUMENT REQUEST # 11

11. If not already produced in response to a previous request for documents, all witness statements, and any notes or internal memoranda relating to, referring to, or concerning such witness statements, relating to, referring to, or concerning the subject matter and events comprising the basis for the Petition and/or the Application in the above captioned matter.

DOCUMENT REQUEST # 12

12. If not already produced in response to a previous request for documents, all written statements rendered by persons contacted, interviewed, or who have knowledge of relevant facts, and any notes or internal memoranda relating to, referring to, or concerning such written statements, relating to, referring to, or concerning the subject matter and events comprising the basis for the Petition and/or the Application in the above captioned matter.

DOCUMENT REQUEST # 13

13. If not already produced in response to a previous request for documents, all search warrants and/or arrest warrants, if any, relating to, referring to, or concerning the subject matter and events comprising the basis for the Petition and/or the Application in the above captioned matter.

DOCUMENT REQUEST # 14

14. If not already produced in response to a previous request for documents, all statements made to, or by, any informant(s), if any, relating to, referring to, or concerning the subject matter and events comprising the basis for the Petition and/or the Application in the above captioned matter.

Appendix – Respondent’s Request for Production of Documents

DOCUMENT REQUEST # 15

15. If not already produced in response to a previous request for documents, all documents relating to, referring to, or concerning drug identification tests and their results that relate to, refer to, or concern the subject matter and events comprising the basis for the Petition and/or the Application in the above captioned matter.

DOCUMENT REQUEST # 16

16. If not already produced in response to a previous request for documents, all documents Petitioner anticipates introducing, or intends to introduce, at trial.

DOCUMENT REQUEST # 17

17. If not already produced in response to a previous request for documents, all documents Petitioner possesses, possessed, or has knowledge of, relating to, referring to, or concerning:

- a. [REDACTED] Street, Philadelphia, PA;
- b. Residents of [REDACTED] Street, Philadelphia, PA, including, but not limited to:
 - i. Respondent;
 - ii. Family members of Respondent; and
 - iii. Visitors or social guests of Respondent at [REDACTED] Street, Philadelphia, PA.

DOCUMENT REQUEST # 18

18. If not already produced in response to a previous request for documents, all documents relating to, referring to, or concerning any claims or defenses asserted in the above captioned matter.

Appendix – Respondent’s Request for Production of Documents

DOCUMENT REQUEST # 19

19. If not already produced in response to a previous request for documents, all documents identified by Petitioner in its answers to Respondent’s First Set of Interrogatories Addressed to Petitioner Commonwealth of Pennsylvania.

Respectfully submitted,

Certified Law Student for _____, Esq.

_____, Esq.

Philadelphia, PA 19104

Date: March █, 20 █

Appendix – Consent Motion for Discontinuance

Doc Id: [REDACTED] DM
02/24/2016 02:28 PM Page 1 of 4

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
TRIAL DIVISION - CRIMINAL SECTION

COMMONWEALTH OF PENNSYLVANIA	:	COURT OF COMMON PLEAS
	:	TRIAL DIVISION
v.	:	
	:	CP-51 [REDACTED]
THE REAL PROPERTY AND IMPROVEMENTS KNOWN AS [REDACTED]	:	DECEMBER TERM, [REDACTED]
PHILADELPHIA, PA 19143	:	NO [REDACTED]

CONSENT MOTION FOR DISCONTINUANCE

AND NOW, this 11th day of February, 2016, the COMMONWEALTH OF PENNSYLVANIA, through the Philadelphia District Attorney's Office ("Commonwealth"), and [REDACTED] "Respondent(s)" respectfully submit this consent motion for discontinuance, pursuant to Rule 229 of the Pennsylvania Rules of Civil Procedure. As support, the parties state as follows:

1. On [REDACTED] officers of the Philadelphia Police Department executed a search warrant at [REDACTED], Philadelphia, PA ("the Property"), during which [REDACTED] were arrested and cocaine, marijuana, money, and narcotics paraphernalia were seized.

2. On [REDACTED] the Commonwealth commenced this action by filing a civil forfeiture petition against the Property, alleging that the Property was subject to forfeiture pursuant to the Controlled Substances Forfeiture Act, 42 Pa. Cons. Stat. §§ 6801 *et seq.*

3. On [REDACTED] the Commonwealth filed the petition for forfeiture, a motion for a temporary restraining order, and a motion for seizing and sealing.



Page 1 of 4

This Document Recorded Doc Id: [REDACTED] Doc Code: DM
02/24/2016 02:28 PM Receipt #: [REDACTED]
Rec Fee: \$ [REDACTED]

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Appendix – Consent Motion for Discontinuance

4. On January 6, 2014, this Court granted the Commonwealth's motion for a temporary restraining order for the pendency of the litigation.

5. On [REDACTED], the detectives from the Philadelphia District Attorney's Office served the ex-parte seize and seal order at [REDACTED] and the Commonwealth served the record title holder of the Property and any occupants with a copy of the forfeiture petition, the motion for temporary restraining order, and the motion for seize and seal of the property.

6. The Commonwealth subsequently filed the temporary restraining order among the land records associated with the Property, which currently operates as a *lis pendens* ("*lis pendens*").

7. On January 6, 2014, the court signed a temporary restraining order for the pendency of the litigation. On March 12, 2014, the court signed an unsealing order for the property.

8. The Respondents, [REDACTED], have made a *prima facie* showing of their legal claim to the Property, and indicated that they will take reasonable measures to ensure that no activity that would constitute a violation of the Controlled Substance, Drug, Device and Cosmetic Act, 35 Pa. Co. Stat. §§ 780-101 to -144 will occur at the Property subsequent to the execution of this agreement.

9. In light of the foregoing, the Commonwealth consents to withdrawal of the civil forfeiture petition against the Property, to vacatur of all underlying orders, and to removal of the *lis pendens*.



Appendix – Consent Motion for Discontinuance

WHEREFORE, the Commonwealth, upon consent of the parties, requests that this matter be discontinued and that temporary restraining order and unsealing order previously issued in this matter be vacated and the *lis pendens* removed.

[Redacted Signature]
Respondent

[Redacted Signature], D.A.
by:
[Redacted Signature]
[Redacted Signature]
Chief, Public Nuisance Task Force

[Redacted Signature]
Respondent

[Redacted Signature]
Certified Legal Intern Respondent [Redacted]

[Redacted Signature]
Certified Legal Intern for Respondent [Redacted]

[Redacted Signature]
[Redacted] Esq., Esquire
Attorney for Respondent [Redacted]

[Redacted Signature]
Assistant District Attorney
Public Nuisance Task Force

[Redacted Signature]
[Redacted] Esq.
Attorney for Respondent [Redacted]

APPROVED AND SO ORDERED:
BY THE COURT:
[Redacted Signature]
J.



Appendix – Motion for Return of Property

FIRST JUDICIAL DISTRICT OF PENNSYLVANIA COURT OF COMMON PLEAS – TRIAL DIVISION

MOTION FOR RETURN OF PROPERTY-POST DEPRIVATION HEARING

The owner of property seized by law enforcement officers may file a *Motion for Return of Property* regardless of whether criminal charges were filed against the owner or person in possession of the property when the property was seized. See PA. Rule of Crim. Procedure 588 and Phila. Crim. Rule 588 for additional information. In the event the Owner/Petitioner believes he/she is entitled to have the property returned promptly, before disposition of any pending criminal and/or forfeiture action(s), the Owner/Petitioner may request a prompt hearing as part of the *Motion*.

If you believe you are entitled to lawful possession and the return of the seized property to you:

1. Complete and sign the *Motion for Return of Property*, make one copy, attach a copy of the Police Property Receipt, and file with the Office of Judicial Records, Justice Juanita Kidd Stout Center for Criminal Justice, 1301 Filbert Street, Motions Counter (Second Floor), Philadelphia, PA 19107. You must pay the filing fee of \$12.50.
2. Please select only **one** of the Hearing Request options. Unless you indicate that you are filing the *Motion* merely to preserve your right to request the return of the seized property, the Office of Judicial Records will schedule a hearing as promptly as possible after you file the *Motion* and will notify you of the hearing date.
3. The District Attorney's Office and the Pennsylvania Attorney General's Office, as applicable, have agreed to accept service of the *Motion* from the *Office of Judicial Records*.
4. On the hearing date, you **must** appear and be ready to prove to the assigned judge that you are entitled to return of your property, either on a temporary basis or permanently. If you fail to appear on the hearing date, your *Motion* will be dismissed or denied.
5. You will be given a copy of the order issued by the judge, either granting or denying your *Motion*.
6. If your *Motion* is granted, and the Philadelphia Police Department has been ordered to return your property, you must contact the District Attorney's Office, Forfeiture Unit, Three South Penn Square, Philadelphia, PA 19107 to make arrangements for the return of your property.
7. If your *Motion* is granted, and the Pennsylvania State Police or by the Office of the Attorney General have been ordered to return your property, you must contact the Pennsylvania Attorney General, Asset Forfeiture and Money Laundering Section, 7801 Essington Avenue, Philadelphia, PA 19153 (Phone: 215-937-1346) to make arrangements for the return of your property.

PLEASE NOTE

**An attorney will not be appointed for you in connection with your
Motion for Return of Property.**

**You may represent yourself or you may hire an attorney to assist and represent you.
If you fail to provide all required information or fail to appear for the scheduled
hearing, your *Motion for Return of Property* will be denied or dismissed.**

Appendix – Motion for Return of Property

Pa.R.Crim.P. Rule 588. Motion for Return of Property

(A) A person aggrieved by a search and seizure, whether or not executed pursuant to a warrant, may move for the return of the property on the ground that he or she is entitled to lawful possession thereof. Such motion shall be filed in the court of common pleas for the judicial district in which the property was seized.

(B) The judge hearing such motion shall receive evidence on any issue of fact necessary to the decision thereon. If the motion is granted, the property shall be restored unless the court determines that such property is contraband, in which case the court may order the property to be forfeited.

(C) A motion to suppress evidence under Rule 581 may be joined with a motion under this rule.

Comment: A motion for the return of property should not be confused with a motion for the suppression of evidence, governed by Rule 581. However, if the time and effect of a motion brought under the instant rule would be, in the view of the judge hearing the motion, substantially the same as a motion for suppression of evidence, the judge may dispose of the motion in accordance with Rule 581.

Philadelphia Criminal Rule 588. Motion for Return of Property. Post Deprivation Hearing.

(A) Any person aggrieved by a search and seizure may move for the return of the property seized by filing a motion with the Trial Division, Criminal regardless of whether criminal charges have been filed against the owner of the property or the person in possession of the property. The relief requested may be interim (i.e. return of the property pending disposition of the criminal case or the forfeiture petition), or permanent in nature.

(B) In the event criminal charges have been filed against the owner of the property or the person in possession of the property, the motion shall be filed utilizing the CPCMS number assigned to the underlying case. If criminal charges have not been filed against the owner or person in possession of the property, a Miscellaneous Docket number shall be assigned through CPCMS.

(C) The filer shall serve the Commonwealth through the District Attorney's Office, and shall file an Affidavit of Service.

(D) Upon receipt of the Affidavit of Service, the Office of Judicial Records shall schedule a prompt hearing on the motion and shall notify the Commonwealth and the filer.

(E) The assigned judge may require the filing of an Answer.

(F) In the event a forfeiture petition was filed by the Commonwealth before the filing of a motion for the return of property, the motion(s) shall be assigned to the same judge for disposition, as practicable.

Note: Issued on August 11, 2016 as Administrative Order No. 02 of 2016 by Trial Division Administrative Judge Jacqueline F. Allen. Published in *The Pennsylvania Bulletin* August 27, 2016, effective September 26, 2016.

Appendix – Motion for Return of Property

FIRST JUDICIAL DISTRICT OF PENNSYLVANIA

Motion for Return of Property

See Pa.R.Crim.P. 588 and Phila. Crim. Rule 588

For Official Use Only - Bar Code

<p><i>Motion Must Be Filed with the</i> Office of Judicial Records, Criminal Justice Juanita Kidd Stout Center for Criminal Justice 1301 Filbert Street, Motions Counter (Second Floor) Philadelphia, PA 19107</p>		<p>FOR OFFICIAL USE ONLY- CAPTION (PROPERTY DESCRIPTION) In Re: _____ CPCMS No. <u> -51- </u> - - - - -</p>	
NAME OF PETITIONER (<i>Person filing this Motion</i>)		PP NO.	
PETITIONER'S CURRENT ADDRESS		TELEPHONE NO.	
MOTION FOR RETURN OF PROPERTY-REQUEST FOR POST-DEPRIVATION HEARING			
1) I, the above named Petitioner, request this Honorable Court to return the property described and identified below, and represent that I am entitled to lawful possession of the property and further aver as follows:			
2) NAME AND ADDRESS OF PERSON IN POSSESSION OF THE PROPERTY WHEN SEIZED:			
POLICE PROPERTY RECEIPT NUMBER	DATE PROPERTY SEIZED	LOCATION OF PROPERTY WHEN SEIZED	
NAME OF LAW ENFORCEMENT OFFICER WHO SEIZED PROPERTY, IF KNOWN		BADGE NUMBER, IF KNOWN	
DESCRIPTION OF PROPERTY			
ADDRESS OF PROPERTY, IF PROPERTY SEIZED IS REAL ESTATE		VIN NUMBER, IF PROPERTY SEIZED IS A MOTOR VEHICLE	
ARE THERE ANY PENDING MATTERS RELATED TO THE SUBJECT PROPERTY (SUCH AS FORFEITURE)?			
LIST ANY RELATED CRIMINAL CASE(S)			
3) I am requesting return of the above property for the following reasons (<i>be as specific as possible</i>):			
<i>You may attach additional pages or documentation</i>			
HEARING REQUEST – Choose One			
<input type="checkbox"/> I am filing this Motion to preserve my right to request the return of the seized property. I do not want a hearing on this Motion to scheduled at this time. I or my attorney will inform the Office of Judicial Records when to schedule a hearing on this Motion.			
<input type="checkbox"/> I request a prompt hearing because I cannot wait for the end of any pending criminal and/or forfeiture case(s) to have the property returned, and ask that the Court order the return of the seized property to me at this time for the following reasons (<i>be as specific as possible</i>):			
<i>You may attach additional pages or documentation</i>			
VERIFICATION			
I, being duly sworn according to law, depose and say that I am the Petitioner in this action and that the facts and statements I have provide in this <i>Motion for Return of Property</i> are true and correct to the best of my knowledge, information and belief.			
I verify that the statements made are true and correct. I understand that any false statements I have made in this <i>Motion</i> are subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.			
_____ <i>Date</i>		_____ <i>Signature of Petitioner</i>	

Appendix – Administrative Docket – Jury Trial Demands in Forfeiture Cases

PHILADELPHIA COUNTY

Jury Trial Demands in Drug Forfeiture Cases; Administrative Doc. 07 of 2001

[31 Pa.B. 3733]

And Now, this 25th day of June, 2001, it is hereby *Ordered* and *Decreed* that effective immediately jury trial demands in drug forfeiture cases will be handled by the Civil Trial Division in accordance with previous practices except as otherwise set forth in this Order.

Upon receiving a demand for a jury trial, the sitting judge in the Criminal Division shall enter an Order transferring the case from the Criminal Division to the Civil Division of the Trial Division. (The sitting judge in the Criminal Division shall give the moving party a copy of the "Notice to Litigants" appended as Attachment "A".) Leonard Armstrong of the Criminal Motions Unit will send a memorandum to the Supervising Judge of the Civil Division (Judge Sheppard) advising of the jury trial demand.

The moving party shall obtain a certified copy of the pertinent transfer Order and file it with the First Filing Unit of the Prothonotary's office, at which time the jury demand fee shall be paid. The First Filing Unit shall assign a court term and number to the case and place the case in a "waiting to list status conference." For docketing purposes, the court type shall be "DF"--Drug Forfeiture.

The First Filing Unit of the Prothonotary shall E-mail a notice that the jury trial has been perfected to Leonard Armstrong of the Criminal Motions Unit and provide the Civil Division court term and number. Upon receipt of this notice, the Criminal Motions Unit will forward copies of the Forfeiture Petition (and any response) and the Order of Transfer to the Prothonotary's Second Filing Unit.

Notwithstanding the jury demand, the case shall remain within the jurisdiction of the judge of the Criminal Division until such time as notice is received from the Prothonotary that the demand has been perfected. At the time that the jury demand is made, the sitting judge in the Criminal Division shall list the matter for a status hearing in thirty (30) days. At that status hearing, the moving party shall present proof of the jury trial perfection in the Civil Division. If the moving party fails to perfect the jury trial within thirty (30) days, the sitting judge in the Criminal Division will enter an Order holding that the moving party has waived the right to a jury trial and schedule a hearing on the Forfeiture Petition before a judge sitting without a jury.

In the Civil Division, the case shall be assigned to the Supervising Judge of the Complex Litigation Center and shall be placed on a case management track that provides for a trial in the eighth month after filing. A Case Management Order will be issued and the case shall proceed to trial under the Pennsylvania Rules of Civil Procedure.

By the Court

Appendix – Administrative Docket – Jury Trial Demands in Forfeiture Cases

JOHN W. HERRON,
Administrative Judge
Trial Division

This Administrative Docket is promulgated in accordance with the April 11, 1986 Order of the Supreme Court of Pennsylvania, Eastern District, No. 55, Judicial Administration, Docket No. 1, Phila. Civ. *51 and Pa. R.C.P. 239, and shall become effective immediately. As required by Pa. R.C.P. 239, the original Administrative Docket shall be filed with the Prothonotary in a docket maintained for Administrative Dockets issued by the Administrative Judge of the Trial Division and copies shall be submitted to the Administrative Office of Pennsylvania Courts, the Legislative Reference Bureau and the Civil Procedural Rules Committee. Copies of the Administrative Docket shall also be submitted to American Lawyer Media, *The Legal Intelligencer*, Jenkins Memorial Law Library and the Law Library for the First Judicial District. The Administrative Docket is also available on the Court's website at <http://courts.phila.gov>.

Notice to Litigants

Drug Forfeiture Jury Trials

The moving party is directed to do the following to perfect the request for a jury trial in drug forfeiture matters:

1. Counsel must obtain a certified copy of the Order of the sitting Criminal Division judge transferring the case to the Civil Division for trial.
2. Counsel must present the certified copy of the Order to the Office of the Prothonotary, First Filing Unit, Room 280, City Hall.
3. Counsel must be prepared to pay the jury demand fee of \$180.00.
4. The case will be given a Civil Division court term and number and will be placed in "waiting to list status conference." Counsel will receive notice of a status conference which will be scheduled approximately one month after the month of transfer. That conference will take place at the Complex Litigation Center, 12th Floor, Wanamaker Building.
5. Failure to perfect the jury trial request in the Civil Division within thirty (30) days will result in the entry of an Order holding that the moving party has waived the right to a jury trial and a hearing on the Forfeiture Petition will be scheduled before a judge sitting without a jury. At the hearing when the jury trial demand is made, the sitting Criminal Division judge shall list the case for a thirty (30) day status hearing, at which time the moving party shall present proof of the jury trial perfection in the Civil Division.

[Pa.B. Doc. No. 01-1268. Filed for public inspection July 13, 2001, 9:00 a.m.]

Appendix – Respondent’s Demand for a Jury Trial

By: [Redacted], Esquire
Identification No. [Redacted]
[Redacted]
Philadelphia, PA 19104
[Redacted]

Attorney For Respondents

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
TRIAL DIVISION – CRIMINAL SECTION

COMMONWEALTH OF PENNSYLVANIA : COURT OF COMMON PLEAS
: TRIAL DIVISION
: v. : MR # CP [Redacted]
: : NOVEMBER TERM 20[Redacted]
: THE REAL PROPERTY AND :
IMPROVEMENTS KNOWN AS : NO: [Redacted]
[Redacted] STREET :
PHILADELPHIA, PA 19143 :

DEMAND FOR JURY TRIAL

Respondents, [Redacted], [Redacted], and [Redacted], by and through their undersigned counsel, hereby demand a trial by jury in the above-captioned matter.

Respectfully submitted.

[Redacted], Esquire
Counsel for [Redacted]
[Redacted]
[Redacted]
Philadelphia, PA 19104
[Redacted]
[Redacted]
Legal Interns

Date: 1/ [Redacted]

Appendix – Respondent’s Demand for a Jury Trial

██████████ OFFICE
By: ██████████ Esquire
Identification No. ██████████
██████████
██████████
Philadelphia, PA 19104
██████████

Attorney For Respondents

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
TRIAL DIVISION – CRIMINAL SECTION

COMMONWEALTH OF PENNSYLVANIA : COURT OF COMMON PLEAS
: TRIAL DIVISION
:
v. : MR # CP ██████████
:
: NOVEMBER TERM 20██
:
THE REAL PROPERTY AND :
IMPROVEMENTS KNOWN AS : NO: ██████████
██████████ STREET :
PHILADELPHIA, PA 19143 :

PRAECIPE TO PROCEED IN FORMA PAUPERIS

To the Prothonotary:

Kindly allow Respondents ██████████, ██████████, and ██████████, to proceed in forma pauperis.

I, ██████████, Esq., counsel for the parties proceeding in forma pauperis, certify that I believe the party is unable to pay the costs and that I am providing free legal service to the party.

Respectfully submitted,

██████████, Esquire
Counsel for Respondents
██████████
██████████
██████████
Philadelphia, PA 19104

██████████
Legal Interns

Date: January █, 20██
██████████

Appendix – Respondent’s Demand for a Jury Trial

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
TRIAL DIVISION – CRIMINAL SECTION

COMMONWEALTH OF PENNSYLVANIA	:	COURT OF COMMON PLEAS
	:	TRIAL DIVISION
	:	
v.	:	MR # CP [REDACTED]
	:	
	:	NOVEMBER TERM 20 [REDACTED]
	:	
THE REAL PROPERTY AND	:	
IMPROVEMENTS KNOWN AS	:	NO: [REDACTED]
[REDACTED] STREET	:	
PHILADELPHIA, PA 19143	:	

ORDER

AND NOW, this [REDACTED] day of January, 20 [REDACTED], upon Respondents', [REDACTED]
[REDACTED], [REDACTED], and [REDACTED], Motion to Demand a Jury Trial in the above-
captioned civil forfeiture action, **IT IS HEREBY ORDERED AND DECREED** that the above-
captioned case is transferred to the Civil Division for a trial by jury.

J.

Appendix – Case Management Orders

DRUG FORFEITURE

DESCRIPTION: These cases are commenced pursuant to the procedure attached hereto.

MANAGEMENT: A Status/Trial Scheduling Conference is conducted approximately 30 days from commencement at which time a trial assignment to a designated Trial Pool Month and a Settlement Conference are scheduled.

Appendix – Case Management Orders



IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

*Drug Forfeiture / Return of Property Program
Case Management Order*

Pursuant to Administrative Order No. 7, 2001, a jury demand having been filed in the above drug forfeiture case and a Status Hearing been scheduled, the following Case Management Order is entered:

1. *Discovery Deadline:* All discovery shall be completed *no later than* _____.
2. *Expert Deadline:* *Plaintiff's expert report* (if applicable), including any supplemental report, is to be served on opposing counsel and/or opposing party *on or before* _____ Defendant's expert report is to be served on opposing counsel and/or opposing party *on or before* _____.
3. *Dispositive Motions:* All dispositive motions must be filed *no later than* _____.
4. *Motions in Limine:* All Motions in Limine must be filed *no later than* _____. All responses must be filed *no later than* _____.
5. *Extensions:* Requests to extend any case management deadline *must be submitted by filing a Motion for Extraordinary Relief* and filed prior to the expiration of the deadline in question.
6. *Continuances:* All requests for continuances must be submitted in writing, with a copy to opposing party, and directed to the Honorable Allan L. Tereshko, Supervising Judge, attention: Mary McGovern, via facsimile (215-563-1623) or U.S. mail (12th Floor, Complex Litigation Center, Wanamaker Building, 100 Penn Square East, Philadelphia, PA 19107). *However, said request may be made only under exigent circumstances.*
7. *Jury Charge:* An agreed upon Jury Charge and an agreed upon Jury Verdict Sheet must be presented to the trial judge at the time of jury selection.

By The Court:

Supervising Judge

Appendix – Case Management Orders



IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

COMMONWEALTH OF PA

VS

REAL PROPERTY AND IMPROVEMEN

Term 20

No.

**Drug Forfeiture / Return of Property Program
Case Management Order**

Pursuant to Administrative Docket 07 of 2001, a jury demand having been filed in the above drug forfeiture case and a Status Hearing been scheduled, the following Case Management Order is entered:

1. **Discovery Deadline:** All discovery shall be completed *no later than* 2/4/.
2. **Expert Deadline:** Plaintiff's expert report (if applicable), including any supplemental report, is to be served on opposing counsel and/or opposing party *on or before* 2/4/. Defendant's expert report is to be served on opposing counsel and/or opposing party *on or before* 3/4/.
3. **Dispositive Motions:** All dispositive motions must be filed *no later than* 3/4/.
4. **Motions in Limine:** All Motions in Limine must be filed *no later than* 3/18/. All responses must be filed *no later than* 3/25/.
5. **Extensions:** Requests to extend any case management deadline *must be submitted by filing a Motion for Extraordinary Relief* and filed prior to the expiration of the deadline in question.
6. **Continuances:** All requests for continuance must be submitted in writing, with a copy to the opposing party, and directed to the Honorable [redacted], Coordinating Judge, via facsimile ([redacted]) or U.S. Mail (622, City Hall, Philadelphia PA 19107). *However, said request may be made only under exigent circumstances.*
7. **Jury Charge:** an agreed upon Jury Charge and an agreed upon Jury Verdict Sheet must be presented to the trial judge at the time of jury selection.

BY THE COURT:

[redacted]
Coordinating Judge