

## Rule 74. Civil Asset Forfeiture

(Applicable to all cases seeking asset forfeiture pursuant to G.L. c. 94C, § 47; G.L. c. 90, § 24W; G.L. c. 257, §§ 1-14; G.L. c. 265, § 56; or any other statute authorizing civil asset forfeiture)

- 1. Notice.** The Commonwealth shall file, simultaneously with every petition for forfeiture of any asset pursuant to G.L. c. 94C, § 47 or any other statute: (a) a motion for an order of notice, with a proposed order of notice; and (b) an affidavit indicating the basis on which the Commonwealth identified persons with an interest in the property and their addresses. The affidavit shall demonstrate that the Commonwealth diligently searched for persons with an interest in the property and for places where such persons will receive actual notice of the proceeding.

The proposed order shall provide for notice to each potential claimant, including: each person (a) from whose possession the asset was seized; (b) who holds registered or recorded title to the asset; or (c) who, according to information known or within the possession, custody or control of the Commonwealth, has or may claim an interest in the asset. If the person to be served is represented by counsel in the forfeiture proceeding or in a related criminal proceeding, the Commonwealth shall also serve notice on that person's counsel.

The proposed order shall provide for service of notice to each potential claimant within ten business days after issuance of the order. The Commonwealth shall serve notice on an incarcerated person in hand by a custodial officer at the place of incarceration or by certified or registered mail requiring a signed receipt, addressed to the potential claimant at the place of incarceration. The Commonwealth shall serve notice on a person who is not incarcerated either in hand or by certified or registered mail requiring a signed receipt, addressed to the potential claimant at a location where the potential claimant will receive actual notice. The court may order alternate or additional methods of service.

The requirements of this section, as to the contents of the order of notice and the manner of service, supplement any additional requirements of the statute governing the forfeiture proceeding.

- 2. Affidavit of Notice and Request for Hearing.** Within thirty days after giving notice to a potential claimant, the Commonwealth shall file an affidavit indicating the place and manner in which it gave notice. If the Commonwealth gave notice by certified or registered mail, it shall attach the signed return receipt to the affidavit of notice. The Commonwealth shall simultaneously file a request that the court hold a hearing on the petition to address the interest of the person so notified. The request shall include any information available to the Commonwealth indicating whether the potential claimant is incarcerated and whether such person requires the services of an interpreter.
- 3. Prompt Hearing.** The court shall hold a hearing as to the interest of each potential claimant promptly but not less than two weeks after the Commonwealth notified the potential claimant of the proceeding. Upon motion of any potential claimant, the court may continue the hearing pending the conclusion of any criminal proceeding related to the petition.

4. **Notice of Resolution of Criminal Case.** If the court continues the hearing on a petition pending the conclusion of a related criminal proceeding, the Commonwealth shall notify the court in writing within thirty days of the entry of judgment in, or other resolution of, the related criminal proceeding and shall request a prompt hearing on the petition. Failure to do so may result in the dismissal of the petition.
  
5. **Default.** If the Commonwealth seeks a default judgment, it shall do so pursuant to Mass. R. Civ. P. 55(b)(2). The Commonwealth shall make diligent efforts to ascertain whether, at the time of the motion hearing, the party against whom it seeks a default judgment is incarcerated and whether any address to which it mails notice of the motion hearing is a place where the potential claimant will receive actual notice. The Commonwealth shall file an affidavit with its motion for default judgment identifying the efforts it has made and the information it has obtained. Prior to ordering entry of default judgment against any potential claimant, the court shall determine that the documentation provided by the Commonwealth establishes diligent efforts to provide actual notice of the hearing to the defaulting potential claimant.