

7109 *Liberon*



The State of South Carolina  
**OFFICE OF THE ATTORNEY GENERAL**

CHARLIE CONDON  
ATTORNEY GENERAL

May 23, 2001

Mr. Louis M. Nelson, Sr.  
Chester County Sheriff's Office  
P.O. Box 727  
Chester, South Carolina 29706

**Re: Your Letter of February 12, 2001**  
**Drug Forfeiture - S.C. Code Ann. §44-53-520 & 530**

Dear Mr. Nelson:

In the above referenced letter, you request assistance from this Office concerning the procedure for securing the forfeiture of property/money pursuant to S.C. Code Ann. §44-53-520 when the defendant cannot be located. Specifically, you state:

In the Narcotics Division, a large percentage of the narcotics forfeitures that were initially seized, have not been signed over (Consent Order Forfeiture) by the defendant. Several attempts have been made to locate these defendants to no avail and these monies remain in a seized assets account.

At this point we are unsure how to proceed with the forfeiture of the remaining monies, since the defendants are not able to be located to sign the consent order.

You also enclosed copies of the form Consent Order Forfeiture and Initial Seizure report for our review.

As you know, Section 44-53-520 provides for the forfeiture of substances, materials, property, money, etc. which are related to the illegal sale or possession of controlled substances. Section 44-53-530 provides the procedure to accomplish such a forfeiture. While forfeiture can be accomplished by consent pursuant to §44-53-530(d), generally, forfeiture of property seized by a County Sheriff is "... accomplished by petition of the ... circuit solicitor or his designee to the court of common pleas for the jurisdiction where the items were seized." See §44-53-530(a). Subsection (a) also provides that "[n]otice of hearing ... must be directed to all persons with interests in the property listed in the petition, including law enforcement agencies which have notified the petitioner of their involvement in effecting the seizure ... [o]wners of record and lienholders of record may be served by certified mail, to the last known address as appears in the records of the governmental agency which records the title or lien."

*Request Letter*

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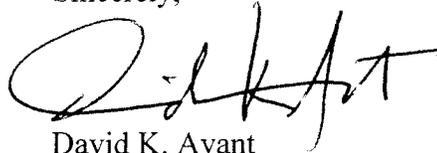
An action for forfeiture of property is a "civil action at law." City Of Sumter Police Department v. One (1) 1992 Blue Mazda Truck (VIN#JM2UF1132N0294812), 330 S.C. 371, 498 S.E.2d 894 (S.C. App. 1998). The South Carolina Rules of Civil Procedure "govern the procedure in all suits of a civil nature whether cognizable as cases at law or in equity..." Rule 1, SCRCP. Accordingly, service on the defendant can be accomplished by following the provisions for service of process set out in the Rules of Civil Procedure. When service of process cannot be accomplished by personal service as set out in Rule 4(d)(1) or certified mail as set out in Rule 4(d)(8)(and §44-53-530(a)), then the Rules provide that "service shall be made under the circumstances and in the manner prescribed by the statute, rule, or order." See Rule 4(e), SCRCP.

Service of process can be made by publication pursuant to S.C. Code Ann. §15-9-710 "[w]hen the person on whom the service of the summons is to be made cannot, after due diligence, be found within the State and (a) that fact appears by affidavit to the satisfaction of the court or judge thereof, the clerk of the court of common pleas, the master, or the probate judge of the county in which the cause is pending and (b) it in like manner appears that a cause of action exists against the defendant in respect to whom the service is to be made or that he is a proper party to an action relating to real property in this State, the court, judge, clerk, master, or judge of probate may grant an order that the service be made by the publication of the summons..." Therefore, if, as you describe, the defendants cannot be located, I believe that a petition pursuant to Section 44-53-530(a) could be filed and service could be accomplished by publication. Following such valid service, the case could proceed in the normal course of a civil matter if the defendant fails to answer or appear.

I would suggest that your Office confer with the Chester County Solicitor concerning this matter. The Solicitor's Office can evaluate the matter and file a petition in the circuit court if appropriate or designate some other attorney to do so.

This letter is an informal opinion only. It has been written by a designated Assistant Attorney General and represents the position of the undersigned attorney as to the specific question asked. It has not, however, been personally scrutinized by the Attorney General and not officially published in the manner of a formal opinion.

Sincerely,



David K. Avant  
Assistant Attorney General

DKA/an