

# KANSAS LEGISLATIVE RESEARCH DEPARTMENT

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April 3, 2018

**To:** Representative John Alcalá  
**From:** Dylan Dear, Managing Fiscal Analyst  
**Re:** Barbara Reese—Claim—Statute of Limitations

*Disclaimer: Due to the lack of specific information on the forfeiture discussed below, the following analysis is limited in its capacity to evaluate this specific case.*

Barbara Reese filed a claim in September 2015 against the Kansas Highway Patrol (KHP) due to seizure of cash in the amount of \$17,660 (amount in dispute) from a traffic stop in August of 1995. Shortly after the stop, the KHP turned the funds over to the Drug Enforcement Agency (DEA) to initiate a seizure. Neither KLRD staff nor the KHP have been able to locate a record of that seizure, which KHP indicates was in the amount of \$14,936. In January 1996, a Wyandotte County judge ordered KHP to return \$15,660 to Ms. Reese. A subsequent letter and order dated November 1998 from the same judge states the money was in the possession of the federal government so any recourse should be against the federal government *via* the DEA and not the State of Kansas.

Representative Alcalá inquired as to what recourse Ms. Reese may have against the federal government given the amount of time that has elapsed since the original seizure. Under current law (18 U.S.C.A. § 983), an individual who is subject to a civil forfeiture may make a motion to set aside a civil forfeiture within five years of the publication of final notice of the seizure. However, this provision was established in January 2000 within the Civil Asset Forfeiture Reform Act of 2000 (CAFRA).

The House Report No. 106-192 from the federal Committee on Judiciary in 1999 says the following.

Currently, a property owner has 20 days (from the date of the first publication of the notice of seizure) to file a claim with the seizing agency challenging the government's administrative forfeiture of property.<sup>75</sup> To challenge a judicial forfeiture, the property owner has an exceedingly short 10 days (after process has been executed).<sup>76</sup>

Even assuming that notice is published the next day after process is executed, the reader of the notice will have a mere nine days to file a

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<sup>75</sup> 19 U.S.C. S 1608.

<sup>76</sup> Fed. R. Civ. P. C(6)(Supplemental Rules for Certain Admiralty and Maritime Claims)(This is the date when a U.S. court takes possession of the property through "arrest" by a federal marshal. It is not the date when it is initially seized by a law enforcement officer).

timely claim. Most local rules require that notice be published for three successive weeks, on the assumption that interested parties will not necessarily see the first published notice. But by the time the second notice is published, more than ten days will have elapsed from the date process is executed. Thus anyone who misses the first published notice will be unable to comply with the exceedingly short time limitation for filing a claim. . . .<sup>77</sup>

Even though these time limits sometimes are ignored in the interests of justice, failure to file a timely claim often results in judgment in favor of the government.<sup>78</sup>

As the seizure occurred in August 1995, the seizure would have been governed by the law prior to the CAFRA with the limited time for appeal.

If Ms. Reese never responded to the federal forfeiture in any way, then she may have been subject to an entry of default under Rule 55 of the Federal Rules of Civil Procedure (Fed. R. Civ. P. ). Under Rule 55 (c), a court may set aside a default judgment for a showing of "good cause." The decision to set aside a judgment on these grounds is discretionary; however, the Court considers several factors, including: (1) whether the default was the result of culpable conduct on the part of the defendant; (2) whether the defendant has a meritorious defense; and (3) whether setting aside the default will result in prejudice to the plaintiff.

There may be other options to set aside the judgment in the event that Ms. Reese did not respond in any way to the federal forfeiture claim, such as demonstrating a default in process. Regardless, the longer the amount of time that has elapsed since the entry of judgment, the higher the bar a respondent must overcome to set aside a judgment.

If Ms. Reese responded to the federal forfeiture action, then she would likely fall under Rule 60. Under Rule 60, a respondent may seek relief from a judgment under a variety of basis including mistake, new evidence, fraud, the judgment is void, the judgment has been satisfied, and any other reason that justifies relief. However, under Rule 60 (c) a motion for such relief must be made within a "reasonable time." A reasonable time is usually within one year and always within one year for mistake, new evidence, or allegations of fraud.

Under these circumstances, Ms. Reese could have great difficulty recovering assets held by the federal government by setting aside any judgment.

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<sup>77</sup> David Smith, *Prosecution and Defense of Forfeiture Cases*, S 9.03[1], at 9-45 (1998).

<sup>78</sup> See, e.g., *United States v. Beechcraft Queen Airplane*, 789 F.2d 627, 630 (8th Cir. 1986).