

XII. LOCAL RULES OF PROCEDURE FOR ADMIRALTY AND MARITIME CLAIMS

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SECTION XII.
LOCAL RULES OF PROCEDURE FOR
ADMIRALTY AND MARITIME CASES

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Rule A **Scope of the Rules**

(a)1. Authority

A majority of the judges have promulgated this Court's local admiralty rules as authorized by and subject to the limitations of the Fed. R. Civ. P. 83.

(a)2. Scope

The local admiralty rules apply only to civil actions that are governed by Supplemental Rule A of the Supplemental Rules for Certain Admiralty and Maritime Claims (“Supplemental Rule or Rules”). All other local rules are applicable in these cases, but to the extent that another local rule is inconsistent with the applicable local admiralty rules, the local admiralty rules shall govern.

(a)3. Citation

The local admiralty rules may be cited by the letter “LAR” and the lowercase letters and numbers in the parentheses that appear at the beginning of each section. The lower case letter is intended to associate the local admiralty rule with the Supplemental Rule that bears the same capital letter.

(a)4. Definitions

As used in the local admiralty rules, “court” refers to United States District Court for the Northern District of New York; “judge” refers to a United States District Judge or to a United States Magistrate Judge; “clerk” refers to the Clerk of the Court and includes deputy clerks of the Court; “marshal” refers to the United States Marshal of this district and includes deputy marshals; “keeper” refers to any person or entity that the Marshal appoints to take physical custody of and maintain the vessel or other property under arrest or attachment; and “substitute custodian” refers to the individual or entity who, upon motion and order of the Court, assumes the duties of the marshal or keeper with respect to the vessel or other property arrested or attached.

Rule B **Maritime Attachment and Garnishment**

(b)1. Found within the District

A defendant is not found within the District unless the defendant can be personally served therein by delivering process (i) in the case of an individual, to the individual personally, or by leaving a copy thereof at the individual's dwelling, house or usual place of abode with some person of suitable age and discretion; (ii) in the case of a corporation, trust or association, to an officer, trustee, managing or general agent thereof; (iii) in the case of a partnership, to a general partner thereof; and (iv) in the case of a limited liability company, to a manager thereof.

(b)2. Affidavit that defendant is not found within the District

The affidavit that Supplemental Rule B(1) requires to accompany the complaint shall specify with particularity the efforts made by and on behalf of the plaintiff to find and serve the defendant within the District.

(b)3. Notice to Defendant

In default applications, the affidavit or other proof that Supplemental Rule B(2) requires from the plaintiff or the garnishee shall specify with particularity the effort made to give notice of the action to the defendant.

(b)4. Service by Marshal

If property to be attached is a vessel or tangible property aboard a vessel, the process shall be delivered to the Marshal for service.

Rule C **Actions in Rem – Special Provisions**

(c)1. Intangible Property

The summons to show cause why property should not be deposited in the Court issued pursuant to Supplemental Rule C(3) shall direct the person having control of intangible property to show cause no later than fourteen (14) days after service why the intangible property should not be delivered to the Court to abide the judgment. The Court for good cause shown may lengthen or shorten the time. Service of the warrant has the effect of arresting the intangible property and bringing it within the Court's control. Service of the summons to show cause requires a garnishee wishing to retain possession of the property to establish grounds for doing so, including specification of the measures taken to segregate and safeguard the intangible property arrested. The person who is served may, upon order of the Court, deliver or pay over to the person on whose behalf the warrant was served or to the clerk the intangible property proceeded against to the extent sufficient to satisfy the plaintiff's claim. If such delivery or payment is made, the person served is excused from the duty to show cause. The person asserting any ownership interest in the property or a right of possession may show cause as provided in Supplemental Rule C(6) why the property should not be delivered to the Court.

(c)2. Publication of Notice of Action and Arrest

The notice that Supplemental Rule C(4) requires shall be published at least once in a newspaper named in [LAR \(g\)2](#), and the plaintiff's attorney shall file a copy of the notice as it was published with the Clerk. The notice shall contain:

- (a) The court, title, and number of the action;
- (b) The date of the arrest;
- (c) The identity of the property arrested;
- (d) The name, address, and telephone number of the attorney or the plaintiff;
- (e) A statement that a person asserting any ownership interest in the property or a right of possession pursuant to Supplemental Rule C(6) must file a statement of such interest with the Clerk and serve it on the plaintiff's attorney within fourteen (14) days after publication;
- (f) A statement that an answer to the complaint must be filed and served within thirty (30) calendar days after publication and that, otherwise, default may be entered and condemnation ordered;
- (g) A statement that applications for intervention under Fed. R. Civ. P. 24 by persons asserting maritime liens or other interests shall be filed within the time fixed by the Court; and
- (h) The name, address, and telephone number of the Marshal, keeper, or substitute custodian.

(c)3. Default In Action In Rem

(a) Notice Required. A party seeking a default judgment in an action *in rem* must satisfy the Court that due notice of the action and arrest of property has been given,

- (1) by publication as required in [LAR\(c\)\(2\)](#); and
 - (2) by service upon the Marshal and keeper, substitute custodian, master, or other person having custody of the property, and
 - (3) by mailing such notice to every other person who has not appeared in the action and is known to have an interest in the property.
- (b) Persons with Recorded Interests.**
- (1) If the defendant property is a vessel documented under the laws of the United

States, the plaintiff must attempt to notify all persons named in the United States Coast Guard Certificate of ownership.

(2) If the defendant property is a vessel numbered as provided in the Federal Boat Safety Act, the plaintiff must attempt to notify the persons named in the records of the issuing authority.

(3) If the defendant property is of such character that there exists a governmental registry of recorded property interests and/or security interests in the property, the plaintiff must attempt to notify all persons named in the records of each such registry.

(c)4. Entry of Default and Default Judgment

After the time for filing an answer has expired, the plaintiff may move for entry of default under Fed. R. Civ. P. 55(a). Default will be entered upon showing that:

- (a) Notice has been given as [LAR \(c\)\(3\)\(a\)](#) requires; and
- (b) Notice has been attempted as [LAR \(c\)\(3\)\(b\)](#) requires, where appropriate; and
- (c) The time for claimants of ownership to or possession of the property to answer has expired; and
- (d) No answer has been filed or no one has appeared to defend on behalf of the property. The plaintiff may move for judgment under Fed. R. Civ. P. Rule 55(b) at any time after default has been entered.

Rule D Possessory, Petitory, and Partition Actions

(d)1. Return Date.

In a possessory action under Supplemental Rule D, a judge may order that the statement of interest and answer be filed on a date earlier than twenty-one (21) days after arrest. The order may also set a date for expedited hearing of the action.

Rule E Actions In Rem and Quasi In Rem – General Provisions

(e)1. Itemized Demand for Judgment

The demand for judgment in every complaint filed under Supplemental Rule B or C shall allege the dollar amount of the debt or damages for which the action was commenced. The demand for judgment shall also allege the nature of other items of damage. The amount of the special bond posted under Supplemental Rule E(5)(a) may be based upon these allegations.

(e)2. Salvage Action Complaints

In an action for a salvage award, the complaint shall allege the dollar value of the vessel, cargo, freight, and other property salvaged or other basis for an award and the dollar amount of the award sought.

(e)3. Verification of Pleadings

A party or authorized officer of a corporate party shall verify every complaint in Supplemental Rule B, C, and D actions upon oath or solemn affirmation or in the form provided by 28 U.S.C. § 1746. If no party or authorized corporate officer is present within the District, an agent, attorney in fact, or attorney of record shall verify the complaint and shall state the sources of the knowledge, information and belief contained in the complaint; declare that the document verified is true to the best of that knowledge, information, and belief; state why the party or an authorized representative of the party is not making the verification; and state that the affiant or declarant is authorized so to verify. If a party or authorized representative of the party did not make the verification, any interested party may move, with or without requesting a stay, for the personal oath of a party or an authorized representative, which shall be procured by commission or as otherwise ordered.

(e)4. Review by Judicial Officer

Unless the Court requires otherwise, the review of complaints and papers that the Supplemental Rules B(1) and C(3) require does not require the affiant or declarant party or attorney to be present. The application for review shall include a form of order to the Clerk which, upon the assigned judge's signature, will direct the arrest, attachment or garnishment that the applicant seeks. In exigent circumstances, the certification of the plaintiff or his attorney under Supplemental Rules B and C shall consist of an affidavit or a declaration pursuant to 28 U.S.C. § 1746 describing in detail the facts establishing the exigent circumstances.

(e)5. Instructions to the Marshal

The party who requests a warrant of arrest or process of attachment or garnishment shall provide instructions to the Marshal.

(e)6. Property in Possession of United States Officer

When the property to be attached or arrested is in the custody of an employee or officer of the United States, the Marshal will deliver a copy of the complaint and warrant of arrest or summons and process of attachment or garnishment to that officer or employee, if present, and otherwise to the custodian of the property. The Marshal will instruct the officer or employee or custodian to retain custody of the property unless the Court orders otherwise.

(e)7. Security for Costs

In an action under the Supplemental Rules, a party may move upon notice to all parties for an order to compel an adverse party to post security for costs with the Clerk pursuant to Supplemental Rule E(2) (b). Unless otherwise ordered, the amount of security shall be \$500.00.

The party so ordered shall post the security within seven (7) days after the order is entered. A party who fails to post security when due may not participate further in the proceedings, except by order of the Court. A party may move for an order increasing the amount of security for costs.

(e)8. Adversary Hearing

The Court shall conduct the adversary hearing following arrest or attachment or garnishment provided for in Supplemental Rule E(4)(f) within seven (7) days, unless otherwise ordered. The person(s) requesting the hearing shall notify all persons known to have an interest in the property of the time and place of the hearing.

(e)9. Appraisal

The Clerk will enter an order for appraisal of property so that security may be given or altered at the request of any interested party. If the parties do not agree in writing upon an appraiser, a Judge will appoint the appraiser. The appraiser shall be sworn to the faithful and impartial discharge of the appraiser's duties before any federal or state officer authorized by law to administer oaths. The appraiser shall promptly file the appraisal with the Clerk and serve it upon counsel of record. The moving party shall pay the appraiser's fee in the first instance, but this fee is taxable as an administrative cost of the action.

(e)10. Security Deposit for Seizure of Vessels

The first party who seeks arrest or attachment of a vessel or property aboard a vessel shall make a minimum advance deposit with the United States Marshal's Service of \$5,000.00, or other such amount as determined appropriate by the United States Marshal. The deposit will be held by the Marshal to cover the Marshal's expenses, including, but not limited to, dockage keepers, maintenance and insurance. The Marshal is not required to execute process until the deposit is made. The Marshal may also require the party to arrange, in advance of the seizure, for a private security company to maintain security over the vessel or property after attachment. Parties requesting the attachment of a vessel or property are advised to contact the local Marshal's office for further information regarding this requirement. The party shall advance additional sums from time to time as requested to cover the Marshal's estimated expenses until the property is released or disposed of as provided in Supplemental Rule E. Any party who fails to advance such additional costs that the Marshal requires may not participate further in the proceedings except by order of the Court. The Marshal may, upon notice to all parties, petition the Court for an order to be issued forthwith releasing the vessel if additional sums are not advanced within seven (7) days of the initial request for additional sums.

(e)11. Intervenors' Claims

(a) Presentation of Claims. When a vessel or property has been arrested, attached, or garnished, and is in the hands of the Marshal or custodian substituted therefor, anyone having a claim against the vessel or property is required to present that claim by filing an intervening complaint and obtaining a warrant of arrest, and not by filing an original complaint, unless the Court orders otherwise. No formal motion is required. The intervening party shall serve a copy

of the intervening complaint and warrant of arrest upon all parties to the action and shall forthwith deliver a conformed copy of the complaint and warrant of arrest to the Marshal, who shall deliver the copies to the vessel or custodian of the property. Intervenor shall thereafter be subject to the rights and obligations of parties, and the vessel or property shall stand arrested, attached, or garnished by the intervenor. An intervenor shall not be required to advance a security deposit to the Marshal for the intervenor's seizure of a vessel as [LAR \(e\)\(10\)](#) requires.

(b) Sharing Marshal's Fees and Expenses. An intervenor shall owe a debt to the preceding plaintiffs and intervenors, enforceable on motion, consisting of the intervenor's share of the Marshal's fees and expenses in the proportion that the intervenor's claim against the property bears to the sum of all the claims asserted against the property. If any plaintiff permits vacation of an arrest, attachment, or garnishment, the remaining plaintiffs shall share the responsibility to the Marshal for fees and expenses in proportion to the remaining claims asserted against the property and for the duration of the Marshal's custody because of each such claim.

(e)12. Custody of Property

(a) Safekeeping of Property. When a vessel or other property is brought into the Marshal's custody by arrest or attachment, the Marshal shall arrange for the adequate safekeeping, which may include the placing of keepers on or near the vessel. A substitute custodian in place of the Marshal may be appointed by order of the Court. An application seeking appointment of a substitute custodian shall be on notice to all parties and the Marshal and must show the name of the proposed substitute custodian, the location of the vessel during the period of such custody, and that adequate insurance coverage is in place.

(b) Insurance. The Marshal may order insurance to protect the Marshal, his deputies, keepers, and substitute custodians from liabilities assumed in arresting and holding the vessel, cargo, or other property, and in performing whatever services may be undertaken to protect the vessel, cargo, or other property and in maintaining the Court's custody. The arresting or attaching party shall reimburse the Marshal for premiums paid for the insurance and, where possible, shall be named as an additional insured on the policy. A party who applies for removal of the vessel, cargo, or other property to another location, for designation of a substitute custodian, or for other relief that will require an additional premium, shall reimburse the Marshal therefor. The initial party obtaining the arrest and holding of the property shall pay the premiums charged for the liability insurance in the first instance, but these premiums are taxable as administrative costs of the action while the vessel, cargo, or other property is in the custody of the Court.

(c) (1) Cargo Handling, Repairs, and Movement of the Vessel. Following arrest or attachment of a vessel, cargo handling shall be permitted to commence or continue unless the Court orders otherwise. No movement of or repairs to the vessel shall take place without order of the Court. The applicant for an order under this Rule shall give notice to the Marshal and to all parties of record.

(2) Insurance. Upon any application under [\(c\)\(1\)](#) above, the moving party

shall obtain and provide proof of adequate insurance coverage of the moving party to indemnify the Marshal for any liability arising out of such activity, and any such activity shall be at the cost and expense of the moving party and shall not be taxable as an administrative cost of the action, unless the Court orders otherwise. Before or after the Marshal has taken custody of a vessel, cargo, or other property, any party of record may move for an order to dispense with keepers or to remove or place the vessel, cargo, or other property at a specified facility, to designate a substitute custodian, or for similar relief. The moving party shall give notice of the motion to the Marshal and all parties of record. The Court will require that the successor to the Marshal will maintain adequate insurances on the property before issuing the order to change arrangements.

(d) Claims by Suppliers for Payment of Charges. A person who furnishes supplies or services to a vessel, cargo, or other property in custody of the Court, who has not been paid and claims the right to payment as an expense of administration, shall submit an invoice to the Clerk in the form of a verified claim at any time before the vessel, cargo, or other property is released or sold. The supplier must serve copies of the claim on the Marshal, substitute custodian if one has been appointed, and all parties of record. The Court may consider the claims individually or schedule a single hearing for all claims.

(e)13. Sale of Property

(a) Notice. Unless otherwise ordered upon good cause shown or as provided by law, notice of sale of property in an action in rem shall be published as provided in [LAR \(g\)\(1\)](#) at least three (3) times during the period of time consisting of thirty (30) days prior to the day of the sale.

(b) Payment of Bid. These provisions apply unless otherwise ordered in the order of sale; the person whose bid is accepted shall immediately pay the Marshal the full purchase price if the bid is \$1,000 or less. If the bid exceeds \$1,000, the bidder shall immediately pay a deposit of at least \$1,000 or 10% of the bid, whichever is greater, and shall pay the balance within seven (7) days after the day on which the bid was accepted. If an objection to the sale or any upset bid permitted by the order of sale is filed within that period, the bidder is excused from paying the balance of the purchase price until seven (7) days after the sale is approved. Payment shall be made in cash, by certified check, or by cashier's check drawn on banks insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.

(c) Late Payment. If the successful bidder does not pay the balance of the purchase price within the time allowed, the bidder shall pay the Marshal the cost of keeping the property from the due date until the balance is paid, and the Marshal may refuse to release the property until this charge is paid.

(d) Default. If the successful bidder does not pay the balance of the purchase price within the time allowed, the bidder shall be in default. In such a case, the Court may accept the second highest bid or arrange a new sale. The defaulting bidder's deposit shall be forfeited and applied to any additional costs that the Marshal incurs because of the default, the balance being retained in the registry of the Court awaiting further order of the Court.

(e) **Report of sale by Marshal.** At the conclusion of the sale, the Marshal shall forthwith file a written report with the Court of the fact of sale, the date, the names and addresses, and bid amounts of the bidders, and any other pertinent information.

(f) **Time and Procedure for Objection to Sale.** An interested person may object to the sale by filing a written objection with the Clerk within seven (7) days following the sale, serving the objection on all parties of record, the successful bidder, and the Marshal, and depositing a sum with the Marshal that is sufficient to pay the expense of keeping the property for at least seven days. If additional custodial expenses are required, the objector must furnish same forthwith, failing which, the objection shall be immediately dismissed. Payment to the Marshal shall be in cash, certified check, or cashier's check drawn on banks insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.

(g) **Confirmation of Sale.** Unless an objection to the sale is filed, or any upset bid permitted by and conforming to the terms provided in the order of sale is filed, within seven (7) days of the sale, the sale shall be deemed confirmed without further order of the Court. The Clerk shall prepare and deliver to the Marshal a certificate of confirmation, and the Marshal shall transfer title to the confirmed purchaser only upon further order of the Court.

(h) **Disposition of Deposits.**

(1) **Objection Sustained.** If an objection is sustained, sums that the successful bidder deposited will be returned to the bidder forthwith. The sum that the objector deposited will be applied to pay the fees and expenses that the Marshal incurred in keeping the property until it is resold, and any balance remaining shall be returned to the objector. The objector will be reimbursed from the proceeds of a subsequent sale for any expense of keeping the property.

(2) **Objection Overruled.** If the objection is overruled, the sum that the objector deposited will be applied to pay the expenses of keeping the property from the day the objection was filed until the day the sale is confirmed. Any balance remaining will be returned to the objector forthwith.

Rule F Limitation of Liability

(f)1. Security for Costs

The amount of security for costs under Supplemental Rule F(1) shall be \$1,000, and it may be combined with the security for value and interest, unless otherwise ordered.

(f)2. Order of Proof at Trial

Where the vessel interests seeking statutory limitation of liability have raised the statutory defense by way of answer or complaint, the plaintiff in the former or the party asserting a claim against the vessel or owner in the latter shall proceed with its proof first, as is normal at civil trials.

Rule G **Special Rules**

(g)1. Newspapers for Publishing Notices

Unless the Court orders otherwise, every notice required to be published under the Local Admiralty Rules or any rules or statutes applying to admiralty and maritime proceedings shall be published in the following newspapers of general circulation in accordance with the [L.R. 77.5](#).

(g)2. Use of State Procedures

When the plaintiff invokes a state procedure in order to attach or garnish as the Federal Rules of Civil Procedure or the Supplemental Rules for Certain Admiralty and Maritime Claims permit, the process for attachment or garnishment shall identify the state law upon which the attachment or garnishment is based.