

SUPPLEMENTAL ADMIRALTY RULES

LAR 100

TITLE AND SCOPE OF THESE RULES

These rules are entitled Supplemental Admiralty Rules and may be cited as “Local Admiralty Rules.” They apply to admiralty and maritime proceedings defined in Supplemental Rule A of the Federal Rules of Civil Procedure. The General Rules and Civil Rules apply to all civil cases, including admiralty and maritime proceedings, but if in any instance one of those rules is inconsistent with an Admiralty Rule, the Admiralty Rule shall control.

LAR 101

OFFICERS OF THE COURT

As used in these local admiralty rules, “judicial officer” means a United States District Judge or a United States Magistrate Judge; “Clerk” or “clerk of court” means the clerk of the district court and includes deputy clerks of court; and “Marshal” means the United States Marshal and includes deputy marshals.

LAR 102 THROUGH 104

RESERVED

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VERIFICATION OF PLEADINGS AND CLAIMS TO PROPERTY

Pleadings and claims to property shall be verified upon oath or solemn affirmation, or in the form provided by 28 U.S.C. § 1746 by the parties, or one of them, and, if a corporate party, by an officer, or by the attorney for said party. If no party or authorized corporate officer is present within the district, verification of a pleading or claim may be made by an agent, attorney in fact, or attorney of record, who shall state the sources of the knowledge, information and belief contained in the pleading or claim and declare that the document verified is true to the best of that knowledge, information and belief; state why verification is not made by the party or an authorized corporate officer, and state that the affiant is authorized so to verify. If the personal oath or the solemn affirmation of a party be demanded, the court may on good cause require the same and stay the proceedings a reasonable time for the securing thereof.

LAR 106 THROUGH 109

RESERVED

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PROCESS GENERALLY

(a) Instructions to Issue

A party who files a pleading and requires process to be issued by the clerk concerning execution shall state that party's instructions to the marshal on appropriate forms available from the marshal's office.

(b) Process Held in Abeyance

If a party files a pleading seeking relief in rem or quasi in rem, which would require the clerk to issue process, and the party does not wish the process to be issued at that time, the party shall request, in writing, that issuance of process be held in abeyance. In any case where issuance of process is held in abeyance pursuant to the written request of a party, a subsequent written request shall be filed before the clerk shall issue process. In any case where issuance of process is held in abeyance pursuant to the written request of a party, the one hundred twenty-day period of Fed.R.Civ.P. 4(m) will not begin to run until the process is issued by the clerk.

(c) Intangible Property

(1) Issuance and Effect of Summons. The summons issued pursuant to Supplemental Rule C(3) shall direct the person having control of the funds or other intangible property to show cause, no later than fourteen days after service, why the funds or other property should not be delivered to the court to abide the judgment. The court for good cause shown by plaintiff may shorten the time to a period of less than fourteen days. Service of the summons has the effect of an arrest of the property and brings it within the control of the court.

(2) Payment to Marshal. The person who is served may deliver or pay over to the marshal the property or funds proceeded against or a part thereof sufficient to satisfy plaintiff's claim. If such payment is made, the person served is excused from any duty to show cause.

(3) Manner of Showing Good Cause. The claimant of the property may show cause why the property should not be delivered to the court by serving and filing a claim as provided in Supplemental Rule C(6), within the time allowed to show cause, and serving and filing an answer to the complaint within twenty days thereafter.

(4) Effect of Failure to Show Cause. If a claim is not filed within the time stated in the summons, or an answer is not filed within the time allowed under this rule, the person who was served shall deliver or pay over to the marshal the property or funds proceeded against or a part thereof sufficient to satisfy plaintiff's claim.

(d) Marshal's Return

The person executing process shall file proof of service with the clerk, and the marshal shall mail a copy of the return to the attorney at whose request the execution was effected.

(e) Seizure of Property Already in Custody of an Officer of the United States

Where property in the custody of an officer or employee of the United States is to be arrested or attached, the marshal shall deliver a copy of the complaint and warrant for arrest or summons and process of attachment to such officer or employee or, if the officer or employee is not found within the district, then to the custodian of the property within the district. The marshal shall notify such officer, employee or custodian not to relinquish such property from custody until ordered to do so by the court.

LAR 111 THROUGH 114

RESERVED

LAR 115

PROCESS FOR ATTACHMENT AND GARNISHMENT

(a) Verification of Complaint

The affidavit verifying a complaint which includes a prayer for process under Supplemental Rule B, if made by a person who does not have personal knowledge of the facts alleged as grounds for plaintiff's claim, shall state the circumstances making it necessary for that person to make the verification and shall also state the sources of that person's information.

(b) Affidavit Showing Defendant's Absence

The affidavit required by Supplemental Rule B, accompanying the complaint, shall state with particularity the efforts made to locate the defendant in the district.

(c) Order Authorizing the Clerk to Issue Process

Before the clerk will issue a summons and process of attachment and garnishment under Supplemental Rule B, the complaint and accompanying affidavit must be reviewed by a judicial officer. If the judicial officer finds that probable cause has been shown, he or she will sign an order authorizing the clerk to issue process. Alias process may thereafter be issued by the clerk upon application without further order. If the plaintiff or his attorney certifies that exigent circumstances make review by a judicial officer impracticable, and state with particularity the nature of such exigent circumstances, the clerk shall issue a summons and process of attachment and garnishment.

(d) Hearing

Whenever property is attached, any person claiming an interest in the property shall be entitled to a hearing before a judicial officer on not less than five days' written notice to plaintiff. The person claiming the interest shall be entitled to an order vacating the attachment forthwith and granting other appropriate relief unless plaintiff shows cause at the hearing why such an order should not be granted.

LAR 116

WARRANTS FOR ARREST IN ACTION IN REM

(a) Order Authorizing Clerk to Issue Warrant for Arrest

Except in cases of actions by the United States for forfeitures for Federal statutory violations, before the clerk will issue a Warrant for Arrest under Supplemental Rule C, the verified complaint must be reviewed by a judicial officer. If a judicial officer finds that the conditions for an action in rem appear to exist, the judicial officer will sign an order so stating and authorizing the clerk to issue a warrant for arrest of a vessel or other property. Hereafter in these rules, the term "property" shall mean a vessel or other property. Supplemental process may thereafter be issued by the clerk upon application without further order of a judicial officer. If the plaintiff or his attorney certifies that exigent circumstances make review by a judicial officer impracticable, the clerk shall issue a warrant for arrest and the plaintiff shall have the burden at a post-arrest hearing under Rule E(4)(f) to show that exigent circumstances existed.

(b) Hearing

Whenever any property is arrested, any person claiming an interest in the property shall be entitled to a hearing before a judicial officer on not less than five days' written notice to the plaintiff. The person claiming an interest shall be entitled to an order vacating the arrest forthwith and granting other appropriate relief unless plaintiff shows at the hearing why such an order should not be granted.

LAR 117 THROUGH 119

RESERVED

LAR 120

SECURITY FOR COSTS AND MARSHAL'S FEES

(a) Costs Generally

In an action governed by Supplemental Rule E, a party may serve upon an adverse party and file a demand for security for costs. Unless otherwise ordered by the court, the amount thereof shall be five hundred dollars. The party notified shall post security within seven days after service. A party who fails to post security when demanded may not participate further in the proceedings, except for the purpose of seeking relief from this rule.

(b) Costs in Action for Limitation of Liability

The amount of the security for costs required by Supplemental Rule F(1) is five hundred dollars. Unless otherwise ordered by the court, the security for costs may be combined with the security for value and interest.

(c) Marshal's Fees

(1) Deposit Required Before Seizure. A party who seeks arrest or attachment of property in an action governed by Supplemental Rule E shall deposit a sum with the marshal sufficient to cover the marshal's estimated fees and expenses of seizing and keeping the property for at least fourteen days. The marshal is not required to execute process until the deposit is made.

(2) Additional Deposit Required After Seizure. A party who has caused the marshal to arrest or attach property shall advance additional sums from time to time as requested, to cover the marshal's estimated fees and expenses until the property is released or disposed of as provided in Supplemental Rule E. Any party who fails to make an advance when demanded may not participate further in the proceedings, except for the purpose of seeking relief from this rule.

(d) Judicial Relief

A party may apply to the court for an order increasing the amount of security for costs. The marshal shall notify the court if a party fails to advance sums as requested, after property has been seized, and may apply to the court for directions if a question arises concerning the obligation of a party to advance moneys required under this rule. A party may also apply to the court for an order relieving that party from the requirement to: (1) give security for costs; or (2) make a deposit before seizure; or (3) make an additional deposit. An application to the court for relief under this rule shall be made by motion with notice to the marshal and other parties who have appeared. The motion may be heard summarily.

LAR 121 THROUGH 124

RESERVED

LAR 125

PUBLICATION OF NOTICE OF ACTION AND ARREST

The notice required by Supplemental Rule C(4) shall be published once, in accordance with Rule 150. The notice shall contain the following:

- (a) Title and number of the action;
- (b) Date of the arrest;
- (c) Identity of the property arrested;
- (d) Name and address of the attorney for plaintiff;
- (e) A statement that claims of persons entitled to possession pursuant to Supplemental Rule C(6) must be filed with the clerk within fourteen days after the date of publication; and
- (f) A statement that answers to the complaint must be served within twenty-one days after the filing of claims, and that in lieu thereof default may be noted and condemnation ordered.

LAR 126 THROUGH 129

RESERVED

LAR 130

JUDGMENT IN ACTION IN REM

(a) Notice Required

A party seeking a judgment, default or otherwise, in an action in rem must show to the satisfaction of the court that due notice of the action and arrest of the property has been given:

- (1) By publication, as required in Rule 125;
- (2) By service on the master or other person having custody of the property, if any such person can be found;
- (3) By delivery, to every other person who has not appeared in the action and is known to have an interest in the property.

The party seeking a judgment may be excused for failing to give notice to such "other person" upon a showing to the satisfaction of the court that diligent effort was made to give the notice, without success.

(b) Persons with Recorded Interests

(1) If the defendant property is a vessel documented under the laws of the United States, plaintiff must obtain a current certificate of ownership from the Coast Guard and give notice to the persons named therein who appear to have an interest.

(2) If the defendant property is a vessel numbered as provided in the Federal Boat Safety Act, plaintiff must obtain information from the issuing authority and give notice to the persons named in the records of such authority who appear to have an interest.

(c) Manner of Giving Notice

A required notice, other than by publication or other manner of service required by Local Admiralty Rule 130(a)(2), of the action and arrest of the property shall be given by delivering a copy of the complaint and warrant of arrest. The delivery may be made by personal service or by certified mail with return receipt requested to the last known address of the person to whom notice must be given.

(d) Motion for Default Judgment

Upon a showing that no one has appeared to claim the property and give security and that due notice of the action and arrest of property has been given, plaintiff may move for judgment at any time after the time for answer has expired. If no one has appeared, plaintiff may have an ex parte hearing and judgment without notice. If any person has appeared and does not join in the motion for judgment, such person shall be given seven days' notice of the motion.

LAR 131

CLAIMS AND INTERVENTION

(a) Claims and Intervention After Arrest, Attachment or Garnishment

When property has been arrested, attached, or garnished, and is in the custody of the marshal or custodian substituted therefore, unless otherwise ordered by a judicial officer, anyone having a claim against the property may present the claim only by filing a claim to the property pursuant to Supplemental Rule B or C as appropriate and by filing a complaint in intervention pursuant to Fed.R.Civ.P. 24. Such a claim shall not be presented by filing an original complaint.

(b) Claims and Intervention Before Judgment In Rem

Before any judgment in rem is entered pursuant to Local Admiralty Rule 130, the claimant/intervenor may move for intervention. The claimant/intervenor shall serve copies of the motion, the proposed order permitting intervention and of the complaint in intervention on every other party that has appeared in the action. Any such party may object to the intervention by serving and filing a motion to vacate within fourteen days after receipt of the motion and the complaint in intervention.

(c) Claim and Intervention After Judgment In Rem

After judgment in rem has been entered, motions for intervention shall not be presented ex parte.

(d) Rights of Claimant/Intervenor

Upon entry of an order permitting intervention, whether before or after a judgment in rem, the clerk shall forthwith deliver uncertified copies of the order and of the complaint in intervention to the marshal who shall deliver the copies to the custodian of the property. The claimant/intervenor will thereafter be subject to the rights and obligations of parties and the property shall stand arrested, attached or garnished by the claimant/intervenor. A claimant/intervenor shall not be required to advance an initial deposit to the marshal for seizure of the property, but may be required to post a deposit by subsequent order of the court. Upon motion by any party, a judicial officer may order that security deposits or deposits for marshal's fees and expenses of custody be paid or shared by any party who has arrested, attached or garnished property, including parties claiming and intervening as provided herein, such payment or sharing to be in amounts or proportions as determined by the judicial officer.

LAR 132 THROUGH 134

RESERVED

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CUSTODY OF PROPERTY

(a) Safe Keeping of Property When Seized

When a property is seized the marshal shall take custody and arrange for adequate and safe moorage and necessary security for the safekeeping of the property, which may include in the marshal's discretion the assignment of keepers to the property, or the appointment of a shipyard, terminal, yacht club, marina, or similar facility as custodian of the property for the marshal.

(b) Appointment of Substitute Custodian

When property has been or will be taken into custody by the marshal, any party then appearing may also move for an order appointing a substitute custodian for the property. Such a motion shall be accompanied by the Affidavit of Proposed Substitute Custodian and a proposed Order Appointing Substitute Custodian. Notice of the motion shall be given to the marshal and to counsel for all parties who have appeared. The court may also appoint a substitute custodian on its own motion.

The affidavit of the proposed substitute custodian shall state with particularity: (1) that said custodian has knowledge of and experience with care of property of the type to be arrested or under arrest, has adequate facilities for safekeeping of the property or that such facilities have been arranged, can safely move the property to those facilities, if necessary, and can safely keep the property; (2) the custodian's fees and expenses per day for safekeeping, which shall include moorage or shall state any separate arrangements made for moorage; (3) that the proposed custodian has knowledge of the requirements of this rule; (4) that the proposed substitute custodian is not interested in the outcome of the action in which the property is or will be under arrest; and (5) that the proposed substitute custodian accepts appointment as substitute custodian and possession of the property and will safely keep the property for the duration of his appointment as substitute custodian.

The proposed Order Appointing Substitute Custodian shall include the following recitals:

- (1) The property has been or will be arrested by the marshal;
- (2) The present location of the property or the location where it will be when arrested, and the location for its safekeeping while in the custody of the proposed custodian;
- (3) The fees and expenses to be charged by the custodian and for moorage will be less than the cost of leaving the property in the custody of the marshal;
- (4) The proposed custodian has no interest in the outcome of the action in which the property is or will be under arrest;
- (5) The property will not be moved and no person except the appointed substitute custodian will be allowed to enter on the property except as necessary to transfer the property to the facilities of the substitute custodian for safekeeping and except as necessary to adequately safekeep and protect the property, except as may be expressly ordered by the court;
- (6) The moving party has obtained the insurance coverage required by these rules;
- (7) The moving party agrees to release the United States and the marshal from any and all liability and responsibility arising out of the care and custody of the property, from the time the marshal transfers possession of the property to the substitute custodian until the property is released or sold, and agrees to hold harmless and indemnify the United States and the marshal from any and all claims whatsoever arising out of the substitute custodian's possession and safekeeping;
- (8) The proposed substitute custodian accepts appointment as substitute custodian and possession of the property and will safely keep the property for the duration of the appointment as substitute custodian.

The proposed order must be approved in writing by the marshal prior to presentation to a judicial officer.

The court will determine whether the proposed substitute custodian is capable of and will safely keep the property. The order entered by the court after hearing the motion may fix fees and expenses and the terms of

the custodianship in accordance with the recitals as made above, and may provide for other necessary arrangements. Any subsequent increase in the costs of the custodianship, movement of the property, or other changes in arrangements will be allowed only upon further order of the court.

It shall be the responsibility of the moving party to arrange compensation for the substitute custody, safekeeping, shifting, movement, or other expenses incident to the custody of the property during the period of substitute custody. Any such charges, fees, or expenses incurred as a result of the order may be allowed as administrative expenses upon motion after the release or judicial sale of the property.

(c) Insurance

The marshal may order insurance to protect the marshal, his deputies, keepers, and substitute custodians from liabilities assumed in arresting and holding the property, and in performing whatever services may be undertaken to protect the property, and to maintain the court's custody with respect to such property. The party who applies for arrest or attachment of the property shall reimburse the marshal for premiums paid for the insurance and shall be an added insured on the policy. The party who applies for removal of the 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 premiums charged for the liability insurance are taxable as administrative costs while the property is in custody of the court. A party moving for the appointment of a substitute custodian shall obtain insurance to protect the court-appointed substitute custodian from liability assumed in receiving an arrested property for custodianship and in performing whatever services are undertaken to safekeep and protect the property while in the custody of the substitute custodian. The premiums charged for this insurance shall be paid directly by the moving party, who may move the court, after the release or judicial sale of the property to have the cost of the insurance deemed an administrative expense of keeping the property.

(d) Cargo Handling, Repairs, and Movement of the Vessel

Following arrest or attachment of a vessel, no cargo handling, repairs, or movement may be made without an order of court. The applicant for such an order shall give notice to the marshal and to all parties of record. Upon proof of adequate insurance coverage of the applicant to indemnify the marshal for his liability, the court may direct the marshal to permit cargo handling, repairs, movement of the vessel, or other operations. Before or after the marshal has taken custody of a property, cargo or other property, any party of record may move for an order to remove or place the property, cargo, or other property at a specified facility, to designate a substitute custodian, or for similar relief. Notice of the motion shall be given to the marshal and to all parties of record. The court will require that adequate insurance on the property will be maintained by the successor to the marshal, before issuing the order to change arrangements.

(e) Motions for Changes in Arrangements

When property has been or will be taken into custody by the marshal, any party then appearing may move the court to dispense with keepers, or to remove to or place the property at a specified shipyard, terminal, yacht club, marina or similar facility, or similar relief. Notice of the motion shall be given to the marshal and to counsel for all parties which have appeared. The court will determine whether such a facility can and will safely keep the property. The order entered by the court after hearing the motion may fix reasonable towage, storage, moorage and any other authorized fee or charge incurred by or through the marshal in arranging for keepers, or for shifting or movement of the property. The order may also provide for the deposit in advance with the marshal by the party seeking such order of funds enabling payment of any such charges when and as incurred.

(f) Claim by Supplier for Payment of Charges

A person who has furnished services or supplies to property in custody, and has not been paid, and claims the right to payment as an expense of administration, should submit an invoice to the marshal without delay. The marshal may decline to pay an invoice unless it is ordered paid by the court. The supplier has a right to submit the invoice to the court for approval, in the form of a verified claim, at any time before the property is released or the res is distributed. The supplier must serve copies of the claim on the marshal and the counsel for all parties who have appeared in the action. The court may decline to consider the claim until a hearing is conducted to decide other claims against the property.

LAR 136 THROUGH 139

RESERVED

LAR 140

**APPRAISAL AND RELEASE OF PROPERTY
BEFORE SALE**

(a) Appraisal

An order for appraisal of property so that security can be given will be entered by the clerk at the request of any interested party. If the parties do not agree in writing upon an appraiser, the court 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 give three days' notice of the time and place of making the appraisal to the counsel who have appeared in the action. The appraiser shall file the appraisal with the clerk as soon as it is made.

(b) Proof That Fees Have Been Paid

Before any property is released by the marshal the party seeking dismissal of the action or release of the property before sale shall obtain an endorsement by the marshal on the document being presented to the clerk or the court showing that all expenses and fees due the marshal have been paid or provided for.

LAR 141 THROUGH 144

RESERVED

LAR 145

SALE OF PROPERTY

(a) Notice

Unless otherwise ordered as provided by law, notice of sale of property in an action in rem shall be published daily, in accordance with Rule 150, for a period of eight days prior to the day of sale.

(b) Payment of Bid

The person whose bid is accepted shall immediately pay the marshal the full purchase price, if the bid is no more than five hundred dollars, or a deposit of at least five hundred dollars, or ten percent of the bid, whichever sum is greater, if the bid exceeds five hundred dollars. The bidder shall pay the balance of the purchase price within three days thereafter, excluding Saturdays, Sundays, and holidays. If an objection to the sale is filed within that time, the bidder is excused from paying the balance of the purchase price until the sale is confirmed, and for a period of three days thereafter. Payments to the marshal shall be made in cash, or by certified check or cashier's check. The court may specify different terms in any order of sale.

(c) Penalty for Failing to Pay Balance of Bid

(1) Late Payment. A successful bidder who fails to pay the balance of the bid within the time allowed under these rules, or a different time specified in an order by the court, shall also pay the marshal the cost of keeping the property, from the date payment of the balance was due to the date the bidder takes delivery of the property. The marshal may refuse to release the property until this additional charge is paid.

(2) Default. A person who fails to pay the balance of a bid within the time allowed is deemed to be in default, and the court may at any time thereafter order a sale to the second highest bidder, or order a new sale, as seems appropriate. Any sum deposited by the bidder in default shall be forfeited and applied to pay any additional costs incurred by the marshal by reason of the forfeiture and default, including costs incident to a resale. The balance of the deposit, if any, shall be retained in the registry subject to further order of the court.

(d) Accounting by Marshal

At the conclusion of the sale the marshal shall forthwith file a written report to the court of the fact of sale, the date thereof, the price obtained, and the name and address of the buyer.

(e) Confirmation

(1) Without Order of Court. A sale shall stand confirmed as of course, without any affirmative action by the court, unless: (A) a written objection is filed within the time allowed under these rules; or (B) the successful bidder is in default for failing to pay the balance due the marshal.

(2) On Motion. If an objection has been filed, or if the successful bidder is in default, the marshal, the objector, the successful bidder, or a party may move the court for relief. The motion will be heard summarily. The person seeking a hearing shall apply to the court for an order fixing the date of the hearing and directing the manner of giving notice, and shall give written notice of the motion to the marshal and all persons who have an interest. The court may confirm the sale, order a new sale, or grant such other relief as justice requires.

(f) Objection to Sale

(1) Manner and Time for Objecting. A person may object to the sale by filing a written objection with the clerk and depositing a sum with the marshal which will pay the expense of keeping the property for at least fourteen days. Payment to the marshal shall be made in cash, or by certified check or cashier's check. The objector must give written notice of the objection to the successful bidder and the parties to the action. The written objection must be endorsed by the marshal with an acknowledgment of the receipt of the deposit prior to filing. The objection must be filed within three days after the sale, excluding Saturdays, Sundays, and holidays.

(2) Disposition of Deposits.

(A) If the objection is sustained, sums deposited by the successful bidder will be returned to the bidder forthwith. The sum deposited by the objector will be applied to pay the fees and expenses incurred by the marshal in keeping the property until it is resold, and any balance remaining will be returned to the objector without delay. The objector will be reimbursed for the expense of keeping the property from the proceeds of a subsequent sale.

(B) If the objection is overruled, the sum deposited by the objector will be applied to pay the expense of keeping the property from the day the objection was filed until the day sale is confirmed, and any balance remaining will be returned to the objector forthwith.

(g) Title to Property Sold

Failure of a party to give required notice of the action and arrest of the property or required notice of the sale, may afford grounds for objecting to the sale, but does not affect the title of the purchaser of the property.

LAR 146 THROUGH 149

RESERVED

LAR 150

PUBLICATION OF NOTICES

Every notice required to be published in a newspaper, by any statute of the United States or any rule applying to admiralty and maritime proceedings, including these rules, shall be published in the Seattle Daily Journal of Commerce unless the court directs otherwise.

LAR 151 THROUGH 154

RESERVED

LAR 155

RATE OF PREJUDGMENT INTEREST ALLOWED

The award shall specify the date(s) from which and the rate(s) at which any prejudgment interest shall run. Unless the court directs otherwise, an award of prejudgment interest shall be computed at the same rate authorized in 28 U.S.C. § 1961, providing for interest on judgments.