

Local Rules Proposed Revision

SUMMARY OF RECOMMENDATION: The following minor change in the supplemental admiralty rule LAR 135 (noted in red below) will bring the local rule for vessel arrests into conformity with the practice of the U.S. Marshals office for the last year. The Marshals altered their policy because of liability concerns. The textual change below answers the concerns of their Office of General Counsel and does not require a major alteration in practice.

MARSHALS' ROLE IN VESSEL ARREST PROCEEDINGS

LAR 135 CUSTODY OF PROPERTY

(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 **reviewed** ~~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.