

Rule 7.02 | ATTACHMENT AND GARNISHMENT: SPECIAL PROVISIONS

(a) **Definition of "Not Found Within the District":** In an action in personam filed pursuant to Supplemental Rule (B), a defendant shall be considered "not found within the district" if he cannot be served within the Middle District of Florida with the summons and complaint as provided by Fed.R.Civ.P. 4(e)(1) or (2), (g), (h)(1), or (j)(1) or (2).

(b) **Verification of Complaint Required:** In addition to the specific requirements of Local Admiralty Rule 7.01(e), whenever verification is made by the plaintiff's attorney or agent, and that person does not have personal knowledge, or knowledge acquired in the ordinary course of business of the facts alleged in the complaint, the attorney or agent shall also state the circumstances which make it necessary for that person to make the verification, and shall indicate the source of the attorney's or agent's information.

(c) **Pre-seizure Requirements:** In accordance with Supplemental Rule (B)(1), the process of attachment and garnishment shall issue only after one of the following conditions has been met:

(1) **Judicial Review Prior to Issuance:** Except as provided in Local Admiralty Rule 7.02(c)(2), a judicial officer shall first review the verified complaint, and any other relevant case papers, prior to the Clerk issuing the requested process of attachment and garnishment. No notice of this pre-arrest judicial review is required to be given to any person or prospective party.

If the Court finds that probable cause exists to issue the process of attachment and garnishment, plaintiff shall prepare an order for the Court's signature directing the Clerk to issue the process. This order shall substantially conform in format and content to the form identified as MDF 700 in the Appendix of these Local Admiralty Rules.

Upon receipt of the signed order, the Clerk shall file the order and, in accordance with Local Admiralty Rule 7.02(c)(3), issue the summons and process of attachment and garnishment. Thereafter the Clerk may issue supplemental process without further order of Court.

(2) **Certification of Exigent Circumstances:** If the plaintiff files a written certification that exigent circumstances make review by the Court impracticable, the Clerk shall, in accordance with Local Admiralty Rule 7.02(c)(3), issue a summons and the process of attachment and garnishment.

Thereafter at any post-attachment proceedings under Supplemental Rule (E)(4)(f) and Local Admiralty Rule 7.02(e), plaintiff shall have the burden of showing that probable cause existed for the issuance of process, and that exigent circumstances existed which precluded judicial review in accordance with Local Admiralty Rule 7.02(c)(1).

(3) **Preparation and Issuance of the Process of Attachment and Garnishment:** Plaintiff shall prepare the summons and the process of attachment and garnishment, and deliver the documents to the Clerk for filing and issuance.

The process of attachment and garnishment shall substantially conform in format and content to the form identified as MDF 701 in the Appendix to these Local Admiralty Rules, and shall in all cases give adequate notice of the post-seizure provisions of Local Admiralty Rule 7.02(e).

(4) **Marshal's Return of Service:** The Marshal shall file a return of service indicating the date and manner in which service was perfected and, if service was perfected upon a garnishee, the Marshal shall indicate in his return the name, address, and telephone number of the garnishee.

(d) **Notification of Seizure to Defendant:** In an in personam action under Supplemental Rule (B), it is expected that plaintiff and/or garnishee will initially attempt to perfect service of the notice in accordance with Supplemental Rule (B)(2)(a) or (b).

However, when service of the notice cannot be perfected in accordance with Supplemental Rule (B)(2)(a) or (b), plaintiff and/or garnishee should then attempt to perfect service in accordance with Supplemental Rule (B)(2)(c). In this regard, service of process shall be sufficiently served by leaving a copy

of the process of attachment and garnishment with the defendant or garnishee at his usual place of business.

(e) Post-attachment Review Proceedings:

(1) **Filing a Required Answer:** In accordance with Supplemental Rule (E)(4)(f), any person who claims an interest in property seized pursuant to Supplemental Rule (B) must file an answer and claim against the property. The answer and claim shall describe the nature of the claimant's interest in the property, and shall articulate reasons why the seizure should be vacated. The claimant shall serve a copy of the answer and claim upon plaintiff's counsel, the Marshal, and any other party to the litigation. The claimant shall also file a Certificate of Service indicating the date and manner in which service was perfected.

(2) **Hearing on the Answer and Claim:** The claimant may be heard before a judicial officer not less than three (3) days after the answer and claim has been filed and service has been perfected upon the plaintiff.

If the Court orders that the seizure be vacated, the judicial officer shall also award attorney's fees, costs and other expenses incurred by any party as a result of the seizure.

If the seizure was predicated upon a showing of "exigent circumstances" under Local Admiralty Rule 7.02(c)(2), and the Court finds that such exigent circumstances did not exist, the judicial officer shall award attorney's fees, costs, and other expenses incurred by any party as a result of the seizure.

(f) Procedural Requirements for the Entry of Default: In accordance with Rule 55, Fed.R.Civ.P. and Local Rule 1.07(b), a party seeking the entry of default in a Supplemental Rule (B) action shall file a motion and supporting legal memorandum in accordance with Local Rule 3.01, and shall offer other proof sufficient to demonstrate that due notice of the action and seizure have been given in accordance with Local Admiralty Rule 7.02(d).

Upon review of the motion, memorandum, and other proof, the Clerk shall, where appropriate, enter default in accordance with Rule 55(a), Fed.R.Civ.P.. Thereafter, the Clerk shall serve notice of the entry of default upon all parties represented in the action.

(g) **Procedural Requirements for the Entry of Default Judgment:** Not sooner than seven (7) nor later than thirty (30) days following notice of the entry of default, the party seeking the entry of default judgment shall file a motion and supporting legal memorandum in accordance with Local Rule 3.01, along with other appropriate exhibits to the motion sufficient to support the entry of default judgment. The moving party shall serve these papers upon every other party to the action and file a Certificate of Service indicating the date and manner in which service was perfected.

A party opposing the entry of default judgment shall have seven (7) days from the receipt of the motion to file written opposition with the Court. Thereafter, unless otherwise ordered by the Court, the motion for the entry of default judgment will be heard without oral argument.

If the Court grants the motion and enters the default judgment, such judgment shall establish a right on the part of the party or parties in which favor it is entered. The judgment shall be considered prior to any claims of the owner of the defendant property against which it is entered, and to the remnants and surpluses thereof; providing, however, that such a judgment shall not establish any entitlement to the defendant property having priority over non-possessory lien claimants. Obtaining a judgment by default shall not preclude the party in whose favor it is entered from contending and proving that all, or any portion, of the claim or claims encompassed within the judgment are prior to any such non-possessory lien claims.

Advisory notes to Admiralty and Maritime Rules

(a) General Comments:

Local Rule 7.02 is intended to enhance and codify the local procedural requirements uniquely applicable to actions of maritime attachment and garnishment under Supplemental Rule (B). Other local procedural requirements involving actions in rem and quasi in rem proceedings can be found in Local Admiralty Rule 7.05.

When read in conjunction with Supplemental Rule (B) and (E), Local Admiralty Rules 7.02 and 7.05 are intended to provide a uniform and comprehensive method for constitutionally implementing the long-standing and peculiar maritime rights of attachment and garnishment. The Committee believes that Local Admiralty Rules 7.02 and 7.05 correct the deficiencies perceived by some courts to exist in the implementation of this unique maritime provisions. *Schiffahrtsgesellschaft Leonhardt & Co. v. A. Bottacchi S.A. de Navegacion*, 552 F. Supp. 771 (S.D. Ga. 1982); *Cooper Shipping Company v. Century 21*, 1983 A.M.C. 244 (M.D. Fla. 1982); *Crysen Shipping Co. v. Bona Shipping Co., Ltd.*, 553 F. Supp. 139 (M.D. Fla. 1982); and *Grand Bahama Petroleum Co. v. Canadian Transportation Agencies, Ltd.*, 450 F. Supp. 447 (W. D. Wa. 1978), discussing Supplemental Rule (B) proceedings in light of *Fuentes v. Shevin*, 407 U.S. 67 [92 S.Ct. 1820, 32 L.Ed.2d 556] (1972) and *Sniadach v. Family Finance Corp.*, 395 U.S. 337 [89 S.Ct. 1820, 23 L.Ed.2d 349] (1969).

Although the Committee was aware of the Eleventh Circuit's decision in *Schiffahrtsgesellschaft Leonhardt & Co. v. A. Bottacchi S.A. de Navegacion*, 732 F.2d 1543 (11th Cir. 1984), the Committee believes that from both a commercial and legal viewpoint, the better practice is to incorporate the pre-seizure scrutiny and post-attachment review provisions provided by this rule. These provisions protect the rights of any person claiming an interest in the seized property by permitting such persons to file a claim against the property, and thereafter permitting a judicial determination of the propriety of the seizure.

(b) Comments on Specific Sections:

7.02(a) codifies the governing law of this circuit as set forth in *LaBanca v. Ostermunchner*, 664 F.2d 65 (5th Cir., Unit B, 1981).

7.02(b) codifies the verification requirements of Supplemental Rule (B)(1) and former Local Admiralty Rule 7.08.

7.02(c) incorporates the "pre-seizure" and "exigent circumstances" provisions of the August 1, 1985, revision to Supplemental Rule (B)(1). In the routine case, the rule contemplates that issuance of the process of attachment and garnishment be preconditioned upon the exercise of judicial review. This ensures that plaintiff can make an appropriate maritime claim, and present proof that the defendant cannot be found within the district. The rule also contemplates that upon a finding of probable cause, a simple order directing the Clerk to issue the process shall be entered by the Court.

This rule also incorporates the "exigent circumstances" provision of Supplemental Rule (B)(1). Read in conjunction with Local Admiralty Rule 7.02(e)(2), this rule requires that the plaintiff carry the burden of proof at any post-attachment proceedings to establish not only the prima facie conditions of a maritime attachment and garnishment action under Supplemental Rule (B), but also that "exigent circumstances" precluded judicial review under Local Admiralty Rule 7.02(c)(1). The Committee believes that this additional requirement will place upon plaintiff's counsel a burden of extra caution before invoking the "exigent circumstance" provision of the rule.

7.02(e) establishes the post-attachment review provisions potentially applicable to maritime attachment and garnishment proceedings. These proceedings may be invoked by any person claiming an interest in the seized property.