

Rule 7.03 | ACTION IN REM

(a) **Verification Requirements:** Every complaint and claim filed in an *in rem* proceeding pursuant to Supplemental Rule (C) shall be verified in accordance with Local Admiralty Rules 7.01(e) and 7.02(b).

(b) **Pre-seizure Requirements:** In accordance with Supplemental Rule (C)(3), the process of arrest *in rem* 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 7.03(b)(2), a judicial officer shall first review the verified complaint, and any other relevant case papers, prior to the Clerk issuing the warrant of arrest and/or summons *in rem*. No notice of this pre-seizure judicial review is required to be given to any person or prospective party.

If the Court finds that probable cause exists for an action *in rem*, plaintiff shall prepare an order for the Court's signature directing the Clerk to issue a warrant of arrest and/or summons. This order shall substantially conform in format and content to the form identified as MDF 702 in the Appendix to these Local Admiralty Rules.

Upon receipt of the signed order, the Clerk shall file the order and, in accordance with Local Admiralty Rule 7.03(b)(3) issue the warrant of arrest and/or summons. Thereafter the Clerk may issue supplemental process without further order of the 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 7.03(b)(3), issue a warrant of arrest and/or summons.

Thereafter at any post-arrest proceedings under Supplemental Rule (E)(4)(f) and Local Admiralty Rule 7.03(g), 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 7.03(b)(1).

(3) **Preparation and Issuance of the Warrant of Arrest and/or Summons:** Plaintiff shall prepare the warrant of arrest and/or summons, and deliver them to the Clerk for filing and issuance.

The warrant of arrest shall substantially conform in format and content to the form identified as MDF 703 in the Appendix to these Local Admiralty Rules, and shall in all cases give adequate notice of the post-arrest provisions of Local Admiralty Rule 7.03(g).

(c) **Special Requirements for Actions Involving Freight, Proceeds and/or Intangible Property:**

(1) **Instructions to be Contained in the Summons:** Unless otherwise ordered by the Court, the summons shall order the person having control of the freight, proceeds and/or intangible property to either:

(A) File a claim within fourteen (14) days after service of the summons in accordance with Local Admiralty Rule 7.03(f)(1); or

(B) Deliver or pay over to the Marshal, the freight, proceeds, and/or intangible property, or a part thereof, sufficient to satisfy plaintiff's claim. The summons shall also inform the person having control of the freight, proceeds, and/or intangible property that service of the summons has the effect of arresting the property, thereby preventing the release, disposal or other distribution of the property without prior order of the Court.

(2) **Requirements for Claims to Prevent the Delivery of Property to the Marshal:** Any claim filed in accordance with Supplemental Rule (E)(4) and Local Admiralty Rule 7.03(f)(1) shall describe the nature of claimant's interest in the property, and shall articulate reasons why the seizure should be vacated.

The claim shall be served upon the plaintiff, Marshal, and all other parties to the litigation. Additionally, the claimant shall file a Certificate of Service indicating the date and manner in which service was perfected.

(3) Delivery or Payment of the Freight, Proceeds, and/or Intangible Property to the U. S. Marshal: Unless a claim is filed in accordance with Supplemental Rule (E) (4) (f), and Local Admiralty Rule 7.03(f) (1), any person served with a summons issued pursuant to Local Admiralty Rule 7.03(b) (1) or (2), shall within fourteen (14) days after execution of service, deliver or pay over to the Marshal all, or part of, the freight, proceeds, and/or intangible property sufficient to satisfy plaintiff's claim.

Unless otherwise ordered by the Court, the person tendering control of the freight, proceeds, and/or intangible property shall be excused from any further duty with respect to the property in question.

(d) Publishing Notice of the Arrest as Required by Supplemental Rule (C) (4):

(1) Time for Publication: If the property is not released within fourteen (14) days after the execution of process, the notice required by Supplemental Rule (C) (4) shall be published by the plaintiff in accordance with Local Admiralty Rule 7.01(g). Such notice shall be published within twenty-one (21) days after execution of process. The notice shall substantially conform to the form identified as MDF 706 in the Appendix to these Local Admiralty Rules.

(2) Proof of Publication: Plaintiff shall file with the Clerk, proof of publication not later than fourteen (14) days following the last day of publication. It shall be sufficient proof for the plaintiff to file the sworn statement by, or on behalf of, the publisher or editor, indicating the dates of publication, along with a copy or reproduction of the actual publication.

(e) Undertaking in Lieu of Arrest: If, before or after the commencement of an action, a party accepts any written undertaking to respond on behalf of the vessel and/or other property in return for foregoing the arrest, the undertaking shall be substituted for the vessel or other property sued *in rem*.

The undertaking shall be referred to under the name of the vessel or other property in any pleading, order, or judgment; providing, however, that the undertaking shall only respond to

orders or judgments in favor of the party accepting the undertaking, and any parties expressly named therein, to the extent of the benefit thereby conferred.

(f) **Time for Filing Claim or Answer:** Unless otherwise ordered by the court, any claimant of property subject to an action *in rem* shall:

(1) File his claim within fourteen (14) days after process has been executed; and

(2) Serve his answer within twenty-one (21) days after the filing of the claim.

(g) **Post-arrest Proceedings:** Coincident with the filing of a claim pursuant to Supplemental Rule (E) (4) (f), and Local Admiralty Rule 7.03(f) (1), the claimant may also file a motion and proposed order directing plaintiff to show cause why the arrest should not be vacated. If the court grants the order, the court shall set a date and time for a show cause hearing. Thereafter, if the court orders the arrest to be vacated, the court shall award attorney's fees, costs, and other expenses incurred by any party as a result of the arrest.

Additionally, if the seizure was predicated upon a showing of "exigent circumstances" under Local Admiralty Rule 7.03(b) (2), and the court finds that such exigent circumstances did not exist, the court shall award attorneys' fees, costs and other expenses incurred by any party as a result of the seizure.

(h) **Procedural Requirements Prior to 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 rem* shall first file a motion and supporting legal memorandum in accordance with Local Rule 3.01.

The party seeking the entry of default shall also file such other proof sufficient to demonstrate that due notice of the action and arrest have been given by:

(1) Service upon the master or other person having custody of the property; and

(2) Delivery, or by certified mail, return receipt requested (or international effective equivalent), to every other person, including any known owner, who has not appeared or intervened in the action, and who is known to have, or claims to have, a possessory interest in the property.

The party seeking entry of default judgment under Local Admiralty Rule 7.03(i) may be excused for failing to give notice to such "other person" upon a satisfactory showing that diligent effort was made to give notice without success; and

(3) Publication as required by Supplemental Rule (C)(4) and Local Admiralty Rule 7.03(d).

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

(i) **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 moving party shall file a motion, and supporting legal documents, for the entry of default judgment pursuant to Rule 55(b), Fed.R.Civ.P.. The moving party may also file as exhibits for the motion such other documentation as may be required to support the entry of default judgment. Thereafter the court will consider the motion as indicated below:

(1) **When No Person Has Filed a Claim or Answer:** Unless otherwise ordered by the court, the motion for default judgment will be considered by the court without oral argument.

(2) **When Any Person Has Filed An Appearance, But Does Not Join in the Motion for Entry of Default Judgment:** If any person has filed an appearance in accordance with Local Admiralty Rule 7.03(f), but does not join in the motion for entry of default judgment, the party seeking the entry of default judgment shall serve notice of the motion upon the party not joining in the motion, and thereafter the opposing party shall have seven (7) days from receipt of the notice to file written opposition with the court.

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 whose 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 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

7.03(b): The August 1 1985, revisions to Supplemental Rule (C)(3) provides for an arrest *in rem* either following a "pre-arrest" judicial review, or upon the showing of "exigent circumstances" by plaintiff's attorney. Well reasoned authority has upheld Supplemental Rule (C), specifically holding that a pre-seizure judicial hearing is not required where a vessel, freight, or intangible property is proceeded against to enforce a maritime lien. *Amstar Corporation v. S/S. Alexandros T*, 664 F.2d 904 (4th Cir. 1981); *Merchants Nat'l Bank v. Dredge Gen. G. L. Gillespie*, 663 F.2d 1338 (5th Cir., Unit A, 1981); *Schiffahrtsgesellschaft Leonhardt & Co. v. A. Bottacchi S.A. de Navegacion*, 732 F.2d 1543 (11th Cir. 1984).

The desirability of providing by local admiralty rule an available avenue for reasonably prompt and effect post-arrest judicial relief is indicated. See, *Merchants Nat'l Bank v. Dredge Gen. G.L. Gillespie*, *supra*, at 1344, 1350. This provision is incorporated in Local Admiralty Rule 7.03(g).

The procedure made available through this rule has proven effective. *Maryland Ship Building & Dry-Dock Co., v. Pacific Ruler Corp.*, 201 F. Supp. 858 (SDNY 1962). In fact, the procedure established by this local rule goes beyond that encountered in *Merchants Nat'l Bank v. Dredge Gen. G.L. Gillespie*, *supra*, or *Maryland Ship Building & Dry-Dock Co. v. Pacific Ruler Corp.*, *supra*.

Under this rule, the claimant or intervenor may petition the Court to order the plaintiff to establish probable cause for the arrest of the property. Therefore at an early stage of the litigation, plaintiff can be required to establish a prima facie case that he is asserting a claim which is entitled to the dignity and status of a maritime lien against the arrested property. This rule contemplates the entry of an order with conclusory findings following the post-arrest proceedings. More detailed findings may be requested by any party.

The rule is not intended to provide a method for contesting the amount of security to be posted for the release of the vessel. Once a prima facie case for the maritime lien has been established, or the question of lien status remains uncontested, the matter of security is left to the provisions of Local Admiralty Rule 7.05.

7.03(c): Supplemental Rule (C)(3) also addresses the less commonly encountered action *in rem* to enforce a maritime lien against freights, proceeds or other intangible property. The revision to this rule designates the U. S. Marshal to take custody of all tangible and intangible properties arrested in accordance with this rule, and to bring these properties under the control of the Court. This is the practice in many other districts, and when implemented will provide the greatest uniformity in the treatment of tangible and intangible property.

7.03(d): The substance of former Local Rule 7.03(c) is continued.

7.03(e): Although this section is new to the local rules, it reflects the current local practice with respect to undertakings and stipulations in lieu of arrest. Such undertakings and stipulations have been held effective to permit a Court to exercise its *in rem* admiralty jurisdiction so long as

either at the time the undertaking or stipulation is given, or at any subsequent time prior to the filing of the action, the vessel or other property is, or will be, present within the district.

7.03(f): The substance of former Local Rule 7.02(b) is continued.

7.03(g): See the comments for Local Admiralty Rule 7.03(b).

7.03(h) and (i): These sections are designed to mesh Supplemental Rule (C) with Fed.R.Civ.P. 55. For purpose of default and default judgments, the rule recognizes two distinct groups of *in rem* claimants.

The first category of claimants include those who by ownership or otherwise, would, but for the arrest of the property, be entitled to its possession. Pursuant to Supplemental Rule (C)(6), these claimants must file a claim setting forth their interest in the property, demand their right to receive possession, and to appear and defend the action. In the case of such claimants, the operation of standard default procedures foreclose their rights to contest positions of the party in whose favor the default is rendered, and the entry of default judgment is both fair and appropriate.

The second category of claimants embodies a potentially numerous and varying class of claimants. The claims of these other claimants do not give rise to a right of possession of the vessel from the marshal or other appropriate custodian, but rather invoke the power of the Court in admiralty to foreclose against the property by the ultimate rendering of a judgment *in rem* against property entitlements. Such judgments would be predicated upon non-possessory liens.

The time in which the second category of claimants may intervene is governed by the provisions of Local Admiralty Rule 7.05. Such lien claimants are not obligated, and indeed are probably not entitled to file a claim of possession to the vessel, or to answer and defend in the name of the vessel. As to them, in accordance with Fed.R.Civ.P. 8, the essential averments of all the complaints are taken as automatically denied.

No default judgment entered pursuant to this rule will operate to adjudicate priorities among competing non-possessory lien claimants.

In attempting to reconcile the traditional notions of default and default judgments with the concept of *in rem* proceedings, the final language has been formulated to maintain the efficacy of the default procedure without resulting in premature adjudication effecting priorities and distributions. The default procedure establishes in favor of the holder of such a default judgment, a lien position against the proceeds of the property, resulting from any sale or disposition, or, if currency is involved, the ultimate adjudication, inferior to all other competing priorities, except the otherwise escheating right of the property owner to the remnants and surpluses after all full-claims satisfactions. At the same time, the right of a person obtaining a default judgment to contend and compete with other claimants for priority distribution remains unaffected.