
**LOCAL RULES OF COURT
FROM THE US DISTRICT COURT, FLORIDA, MIDDLE DISTRICT
[CHAPTER SEVEN]**

{AS OF: 12/1/2009}
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CHAPTER SEVEN | LOCAL RULES OF COURT | USFLMD

RULES: 7.01 through 7.06

TITLE: ADMIRALTY AND MARITIME RULES

Rule 7.01 | GENERAL PROVISIONS

(a) **Scope of the Local Admiralty and Maritime Rules:** The local admiralty and maritime rules apply to the procedures in admiralty and maritime claims within the meaning of Fed.R.Civ.P. 9(h), which in turn are governed by the Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure.

(b) **Citation Format:**

(1) The Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure shall be cited as "Supplemental Rule (____)".

(2) The Local Rules of the Middle District of Florida shall be cited as "Local Rule (____)".

(3) The Local Admiralty and Maritime Rules shall be cited as "Local Admiralty Rule (____)".

(c) **Application of Local Admiralty and Maritime Rules:** The Local Admiralty Rules shall apply to all actions governed by Local Admiralty Rule 7.01(a), and to the extent possible should be construed to be consistent with the other local rules of this Court. To the extent that a Local Admiralty Rule conflicts with another local rule of this Court, the Local Admiralty Rule shall control.

(d) **Designation of "In Admiralty" Proceedings:** Every complaint filed as a Fed.R.Civ.P. 9(h) action shall boldly set forth the words "IN ADMIRALTY" following the designation of the Court. This requirement is in addition to any statements which may be contained in the body of the complaint.

(e) **Verification of Pleadings, Claims and Answers to Interrogatories:** Every complaint and claim filed pursuant to Supplemental Rules (B), (C) and/or (D) shall be verified on oath or solemn affirmation by a party, or an officer of a corporate party.

If a party or corporate officer is not within the district, verification of a complaint, claim and/or answers to interrogatories may be made by an agent, an attorney-in-fact, or the attorney of record. Such person shall state briefly the source of his knowledge, or information and belief, and shall declare that the document affirmed is true to the best of his knowledge, and/or information and belief. Additionally, such person shall

state that he is authorized to make this representation on behalf of the party or corporate officer, and shall indicate why verification is not made by a party or a corporate officer. Such verification will be deemed to have been made by the party to whom the document might apply as if verified personally. Any interested party may move the Court, with or without a request for stay, for the personal oath or affirmation of a party or all parties, or that of a corporate officer. If required by the Court, such verification may be obtained by commission, or as otherwise provided by Court order.

(f) **Issuance of Process:** Except as limited by the provisions of Supplemental Rule (B)(1) and Local Admiralty Rule 7.02(c); or Supplemental Rule (C)(3) and Local Admiralty Rule 7.03(b); or in suits prosecuted in forma pauperis and sought to be filed without prepayment of fees or costs, or without security; all process shall be issued by the Court without further notice of Court.

(g) **Publication of Notices:** Unless otherwise required by the Court, or applicable Local Admiralty or Supplemental Rule, whenever a notice is required to be published by any statute of the United States, or by any Supplemental Rule or Local Admiralty Rule, such notice shall be published at least once, without further order of Court, in an approved newspaper in the county or counties where the vessel or property was located at the time of arrest, attachment, or seizure, and if different, in the county within the Middle District of Florida where the lawsuit is pending.

For the purposes of this subsection, an approved newspaper shall be a newspaper of general circulation. The newspaper of largest circulation in a county in the Middle District is rebuttably presumed to be a newspaper of general circulation in that same county. For cause shown by a party or on its own motion, the court may require publication in one or more additional publications if necessary to provide notice reasonably calculated to inform interested parties.

(h) **Form and Return of Process in In Personam Actions:** Unless otherwise ordered by the Court, Fed.R.Civ.P. 9(h) process shall be by civil summons, and shall be returnable twentyone (21) days after service of process; except that process issued in accordance with Supplemental Rule (B) shall conform to the requirements of that rule.

(i) **Judicial Officer Defined:** As used in these Local Admiralty Rules, the term "judicial officer" or "Court" shall mean either a United States district judge or a United States magistrate judge.

(j) **Appendix of Forms:** The forms presented in the Appendix provide an illustration of the format and content of papers filed in admiralty and maritime actions within the Middle District of Florida. While the forms are sufficient, they are neither mandatory nor exhaustive.

(k) **Advisory Committee Notes:** Chapter Seven of these Rules was prepared and submitted to the Court, at its request, by a Subcommittee of the Admiralty Law Committee of The Florida Bar. The work product of the Subcommittee, as transmitted to the Court, contained explanatory comments following each rule entitled "Notes of Advisory Committee on Local Rules". Such notes have not been adopted by the Court as a part of the Local Admiralty Rules, however, copies of the advisory notes are available in the Office of the Clerk.

Advisory Notes to Admiralty and Maritime Rules

(a) General Comments

The Local Admiralty and Maritime Rules are promulgated pursuant to this Court's rule making authority under Fed.R.Civ.P. 83, and have been drafted to complement the Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure.

The Committee has arranged these Local Admiralty Rules to correspond generally with the ordering of the Supplemental Rules, e.g., Local Admiralty Rule 7.01 corresponds generally with Supplemental Rule A, and each sequentially numbered Local Admiralty Rule addresses the subject matter of the corresponding next-in-order Supplemental Rule.

Reference to the former local admiralty rules refers to the former Chapter Seven of the Local Rules of the Middle District of Florida.

(b) Comments on Specific Sections:

7.01(a) continues in substance former Local Admiralty Rule 7.01(a).

7.01(d) continues the "IN ADMIRALTY" designation requirements of former Local Admiralty Rule 7.07(a). Under the revised rule, the "IN ADMIRALTY" designation is required to be posted to all complaints even if the complaint is filed as a Fed.R.Civ.P. 9(h) action and jurisdiction would exist on another basis, e.g., federal question or diversity jurisdiction.

7.01(e) continues the requirements of former Local Admiralty Rule 7.08(a).

7.01(f) continues the requirements of former Local Admiralty Rule 7.02(a).

7.01(g) enlarges upon former Local Admiralty Rule 7.03(a) which addressed notice by publication only in cases filed pursuant to Supplemental Rule (C)(4). The revised rule extends the publication provisions to all Fed.R.Civ.P. 9(h) actions for which notice by publication is required.

In addition, the exiting provisions have been altered to require that the publication shall be made both in the county where the vessel, or other property, was located at the time of arrest, attachment or seizure; and if different, in the county within the division of this Court in which the suit is pending.

7.01(h) continues the requirements of former Local Admiralty Rule 7.02(c).

7.01(i) adopts the definition of "Court" provided in the Advisory Notes to the August 1, 1985, amendments to the Supplemental Rules.

As defined in these Local Admiralty Rules, the term "Court" or "judicial officer" shall extend to United States Magistrate Judges assigned to the Middle District of Florida. The Committee notes that the delegation of the duties contemplated by this definition are consistent with the jurisdictional grant to United States magistrate judges as set forth in 28 USC § 636(a).

Where the terms "Court" and "judicial officer" are not used, these rules contemplate that without further order of Court as required by Local Rule 6.01(a), the responsibility of taking the specific action shall be vested with a district judge.

7.01(j) provides for an Appendix of Forms to the Local Admiralty Rules. The former rules attempted to incorporate the text of the form within the specific local rules. The Appendix of Forms provides an alternate method of presenting the format and content of necessary admiralty forms.

As noted in the revised rule, these forms are provided as examples, and are not intended to be mandatory. In addition to the specific forms referred to in the Local Admiralty Rules, the Appendix also includes other commonly used admiralty forms for the use and convenience of counsel.

(c) Other Considerations:

The Committee considered, but declined to recommend, a rule which would set the rate of pre-judgment interest allowed. The case construing pre-judgment interest appears to suggest that the issue is a substantive one in which the rate of pre-judgment interest is intended to compensate the prevailing party for the loss of use of funds during the pendency of the action. As such, the decision as to the rate of pre-judgment interest would appear to require evidentiary support. Therefore, the Committee decided not to incorporate such a rate in these rules. See, *Complaint of M/V Vulcan*, 553 F.2d 489 (5th Cir. 1977); *cert. denied, Sabine Towing & Transportation Co. v. Zapata Uglan Drilling, Inc.*, 434 U.S. 855 [98 S.Ct.175, 54 L.Ed.2d 127] (1977).

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. 1883, 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.

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.

Rule 7.04 | POSSESSORY, PETITORY AND PARTITION ACTIONS

(a) **Establishing Dates for the Return of Process:** In possessory actions filed pursuant to Supplemental Rule (D), the Court may order that process be returnable at a time shorter than that prescribed by Rule 12(a), Fed.R.Civ.P..

If the Court shortens the time, the Court shall specify the date upon which the answer must be filed, and may also set a hearing date to expedite the disposition of the possessory action. When possible, possessory actions shall be given preference on a judicial officer's calendar.

(b) **Service of Notice:** Notice of all possessory, petitory and/or partition actions pursuant to Supplemental Rule (D) shall be made in accordance with Local Admiralty Rule 7.01(g).

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This rule recognizes the equity in allowing for a prompt resolution in possessory actions. Since a possessory action is brought to reinstate an owner of a vessel alleging wrongful deprivation of property, rather than to allow original possession, the rule permits the Court to expedite these actions, thereby providing a quick remedy for one wrongfully deprived of his rightful property. *Silver v. Sloop Silver Cloud*, 259 F. Supp. 187 (SDNY 1966).

Since a petitory and possessory action can be joined to obtain original possession, *The Friendship*, Fed.Cas.No. 5,123 (CCD Maine, 1855), this rule contemplates that an expedited hearing will only occur in purely possessory actions.

Rule 7.05 | ACTIONS IN REM AND QUASI IN REM: GENERAL PROVISIONS

(a) **Statement of Itemized Damages and Expenses Required:** Every complaint in a Supplemental Rule (B) or (C) action shall state the amount of the debt, damages, or salvage for which the action is brought. In addition, the statement shall also specify the amount of any unliquidated claims, including attorneys' fees.

(b) **Requirements and Procedures for Effecting Intervention:** Whenever a vessel or other property is arrested or attached in accordance with any Supplemental Rule, and the vessel or property is in the custody of the U.S. Marshal, or duly authorized substitute custodian, any other person having a claim against the vessel or property shall be required to present their claim as indicated below:

(1) **Intervention of Right When No Sale of the Vessel or Property is Pending:** Except as limited by Local Admiralty Rule 7.05(b)(2), any person having a claim against a vessel or property previously arrested or attached by the Marshal may, as a matter of right, file an intervening complaint at any time before an order is entered by the Court scheduling the vessel or property for sale.

Coincident with the filing of an intervening complaint, the offering party shall prepare and file a supplemental warrant of arrest and/or a supplemental process of attachment and garnishment.

Upon receipt of the intervening complaint and supplemental process, the Clerk shall conform a copy of the intervening complaint and shall issue the supplemental process. Thereafter, the offering party shall deliver the conformed copy of the intervening complaint and supplemental process to the Marshal for execution. Upon receipt of the intervening complaint and supplemental process, the Marshal shall re-arrest or re-attach the vessel or property in the name of the intervening plaintiff.

Counsel for the intervening party shall serve a copy of the intervening complaint, and copies of all process and exhibits upon all other counsel of record, and shall thereafter file a certificate of service with the Clerk indicating the manner and date of service.

(2) **Permissive Intervention When the Vessel or Property Has Been Scheduled for Sale by the Court:** Except as indicated below, and subject to any other rule or order of this Court, no person shall have an automatic right to intervene in an action when the Court has ordered the sale of the vessel or property, and the date of the sale is set within fourteen (14) days from the date the party moves for permission to intervene in accordance with this subsection. In such cases, the person seeking permission to intervene must:

(A) File a motion to intervene and indicate in the caption of the motion a request for expedited hearing when appropriate.

(B) Include a copy of the anticipated intervening complaint as an exhibit to the motion to intervene.

(C) Prepare and offer for filing a supplemental warrant of arrest and/or a supplemental process of attachment and garnishment.

(D) Serve copies of the motion to intervene, with exhibits and proposed supplemental process upon every other party to the litigation.

(E) File a certificate of service indicating the date and manner of service. Thereafter, the Court may permit intervention under such conditions and terms as are equitable to the interests of all parties; and if intervention is permitted, shall also direct the Clerk to issue the supplemental process.

Upon receipt of the order permitting intervention, the Clerk shall file the originally signed intervening complaint, conform a copy of the intervening complaint and issue the supplemental process.

Thereafter, the offering party shall deliver the conformed copy of the intervening complaint and supplemental process to the Marshal for execution. Upon receipt of the intervening complaint and supplemental process, the Marshal shall re-arrest or re-attach the vessel or property in the name of the intervening plaintiff.

Counsel for the intervening party shall also serve a copy of the intervening complaint, exhibits, and supplemental process upon every other party of record, and shall thereafter file a Certificate of Service with the Clerk indicating the manner and date of service.

(c) **Special Requirements for Salvage Actions:** In cases of salvage, the complaint shall also state to the extent known, the value of the hull, cargo, freight, and other property salvaged, the amount claimed, the names of the principal salvors, and that the suit is instituted in their behalf and in behalf of all other persons associated with them.

In addition to these special pleading requirements, plaintiff shall attach as an exhibit to the complaint a list of all known salvors, and all persons believed entitled to share in the salvage. Plaintiff shall also attach a copy of any agreement of consortium available and known to exist among them collegially or individually.

(d) **Form of Stipulations or Bonds:** Except in cases instituted by the United States through information, or complaint of information upon seizures for any breach of the revenues, navigation, or other laws of the United States, stipulations or bonds in admiralty and maritime actions need not be under seal and may be executed by the agent or attorney of the stipulator or obligor.

Stipulations for costs with corporate surety need not be signed or executed by the party, but may be signed by the party's agent or attorney.

(e) **Stipulation for Costs:**

(1) **Seaman's Wage Claims:** Actions initiated by seamen pursuant to 28 U.S.C. Section 1916 may be filed without the posting of a stipulation for costs.

(2) **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 \$250. 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. A party may move for an order increasing the amount of security for costs.

(3) Security for Costs and Limitation of Liability Proceedings: The amount of security for costs under Supplemental Rule F(1) shall be \$250, and it may be combined with the security for value and interest, unless otherwise ordered.

(f) Deposit of Marshal's Fees and Expenses Required Prior to Effecting Arrest, Attachment and/or Garnishment:

(1) Deposit Required Before Seizure: Any party seeking the arrest or attachment of property in accordance with Supplemental Rule (E) shall deposit a sum with the Marshal sufficient to cover the Marshal's estimated fees and expenses of arresting and keeping the property for at least fourteen (14) days. The Marshal is not required to execute process until the deposit is made.

(2) Proration of Marshal's Fees and Expenses Upon Intervention: When one or more parties intervene pursuant to Local Admiralty Rule 7.05(b)(1) or (2), the burden of advancing sums to the Marshal sufficient to cover the Marshal's fees and expenses shall be allocated equitably between the original plaintiff, and the intervening party or parties as indicated below:

(A) Stipulation for the Allocation and Payment of the Marshal's Fees and Expenses: Immediately upon the filing of the intervening complaint, counsel for the intervening plaintiff shall arrange for a conference between all other parties to the action, at which time a good faith effort shall be made to allocate fees and expenses among the parties. Any resulting stipulation between the parties shall be codified and filed with the Court and a copy served upon the Marshal.

(B) Upon receipt of this listing, the Marshal shall determine the total expenses incurred to date, and shall estimate the expenses to be incurred during the next fourteen (14) days. For the purpose of making this calculation, the total fees and expenses shall be calculated from the date when

continuous and uninterrupted arrest or attachment of the property began, and not prorated from the date a particular party's intervening complaint was filed. In order to determine the proportionate shares of each party, counsel for the last intervening plaintiff shall determine the total amounts claimed by each party. The individual claims shall be determined from the original and amended complaint, and all other intervening complaints subsequently accepted and processed by the Marshal in accordance with Local Admiralty Rule 7.05(b)(1) or (2). Thereafter, counsel for the last intervening plaintiff shall deliver to the Marshal a list which summarizes each party's claim, and the proportion which each party's claim bears to the aggregate claims asserted in the litigation, determined to the nearest one-tenth of one percentage point. Upon receipt of this listing, the Marshal shall determine the total expenses incurred to date, and shall estimate the expenses to be incurred during the next ten (10) days. For the purpose of making this calculation, the total fees and expenses shall be calculated from the date when continuous and uninterrupted arrest or attachment of the property began, and not prorated from the date a particular party's intervening complaint was filed. The Marshal shall then apply the percentages determined in the listing, and shall compute the amount of the intervening party's initial deposit requirements. The Marshal shall also utilize this listing to compute any additional deposit requirements which may be necessary pursuant to Local Admiralty Rule 7.05(f)(3). The Marshal need not re-arrest or re-attach the vessel and/or property until the deposit is received from the intervening plaintiff.

(3) **Additional Deposit Requirements:** Until the property arrested or attached and garnished has been released or otherwise disposed of in accordance with Supplemental Rule (E), the Marshal may require from any original and intervening party who has caused the arrest or attachment and garnishment of a vessel or property, to post such additional deposits as the Marshal determines

necessary to cover any additional estimated fees or expenses.

(4) **Judicial Relief From Deposit Requirements:** Any party aggrieved by the deposit requirements of Local Admiralty Rule 7.05(f)(2) may apply to the Court for relief. Such an application shall be predicated upon a showing that owing to the relative priorities of the claims asserted against the vessel or other property, the deposit requirements operate to impose a burden disproportionate to the aggrieved party's recovery potential. The judicial officer may adjust the deposit requirements, but in no event shall the proportion required of an aggrieved party be reduced to a percentage less than that imposed upon the claimant whose claim is the smallest among that of claims which the aggrieved party stipulates as having priority over its claim; or, in the absence of such stipulation, the greatest percentage imposed upon any claimant participating in the deposit requirements.

(5) **Consequence of Failing to Comply with Additional Deposit Requirements:** Any party who fails to make the additional deposit as requested by the Marshal may not participate further in the proceeding, except for the purpose of seeking relief from this rule. Additionally, the Marshal shall notify the Court in writing whenever any party fails to make additional deposits as required by Local Admiralty Rule 7.05(f)(3).

In the event that a party questions its obligations to advance monies required by this rule, the Marshal may apply to the Court for instructions concerning that party's obligation under the rule.

(g) **Property in Possession of a United States Officer:** Whenever the property to be arrested or attached is in the custody of a U.S. officer, the Marshal shall serve the appropriate process upon the 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 direct the officer, employee or custodian not to relinquish custody of the property until ordered to do so by the Court.

(h) **Process Held in Abeyance:**

(1) **When Permitted:** In accordance with Supplemental Rule (E) (3) (b), a plaintiff may ask the Clerk not to issue process, but rather to hold the process in abeyance. The Clerk shall docket this request, and thereafter shall not be responsible for ensuring that process is issued at a later date.

(2) **When Intervention is Subsequently Required:** It is the intention of these rules that a vessel or other property should be arrested or attached pursuant to process issued and effected in only one civil action. Therefore, if while process is held in abeyance in one action, the vessel or property is arrested or attached in another action, it shall be the responsibility of the plaintiff who originally requested process be held in abeyance in the first action to voluntarily dismiss without prejudice the first action, insofar as that action seeks to proceed against the property arrested or attached in the second action, and promptly intervene in the second action pursuant to Local Admiralty Rule 7.05(b) (1) or (2). In order to prevent undue hardship or manifest injustice, motions to consolidate in rem actions against the same vessel or property will be granted only in exceptional circumstances.

(i) **Release of Property in Accordance with Supplemental Rule (E) (5) :**

(1) **Release by Consent or Stipulation:** Subject to the limitations imposed by Supplemental Rule (E) (5) (c), the Marshal may release any vessel, cargo or property in his possession to the party on whose behalf the property is detained. However, as a precondition to release, the Marshal shall require a stipulation, bond, or other security, expressly authorizing the release. The authorizing instrument shall be signed by the party, or his attorney, on whose behalf the property is detained. The stipulation, bond, or other security shall be posted in an amount equal to, or greater than, the amount required for the following types of action:

(A) **Actions Entirely for a Sum Certain:** The amount alleged to be due in the complaint, with interest at six percent (6%) per annum from the date claimed

to be due to a date forty-eight (48) months after the date the claim was filed, or by filing an approved stipulation, or bond for the amount alleged plus interest as computed in this subsection.

The stipulation or bond shall be conditioned to abide by all orders of the Court, and to pay the amount of any final judgment entered by this Court or any appellate Court, with interest.

(B) Actions Other Than Possessory, Petitory or Partition: Unless otherwise ordered by the Court, the amount of the appraised or agreed value of the property seized, with interest. If an appraised value cannot be agreed upon by the parties, the Court shall order an appraisal in accordance with Local Admiralty Rule 7.06(c).

The stipulation or bond shall be conditioned to abide by all orders of the Court, and to pay the amount of any final judgment entered by this Court or any appellate Court, with interest.

The person consenting or stipulating to the release shall also file a claim in accordance with Local Admiralty Rule 7.05(b)(1) or (2).

(C) Possessory, Petitory or Partition Actions: The Marshal may release property in these actions only upon order of Court, and upon the subsequent deposit of security and compliance with such terms and/or conditions as the Court deems appropriate.

(2) Release Pursuant to Court Order: In accordance with Supplemental Rule (E)(5)(c), a party may petition to release the vessel pursuant to Court order. A party making such application shall file a Request for Release which shall substantially conform in format and content to the form identified as MDF 707 in the Appendix to these Local Admiralty Rules. Additionally, the party shall prepare, and offer for filing, a proposed order directing the release. This order shall substantially conform in format and content to the form identified as MDF 708 in the Appendix to these Local Admiralty Rules.

However, as a precondition to the release, the Marshal shall require a stipulation, bond, or other security, as specified in Local Admiralty Rule 7.05(i)(1)(A), (B) or (C), as appropriate.

(3) **Upon the Dismissal or Discontinuance of an Action:** By coordinating with the Marshal to ensure that all costs and charges of the Court and its officers have first been paid.

(4) **Release Subsequent to the Posting of a General Bond:**

(A) **Requirements of a General Bond:** General bonds filed pursuant to Supplemental Rule (E)(5)(b) shall identify the vessel by name, nationality, dimensions, official number or registration number, hailing port and port of documentation.

(B) **Responsibility for Maintaining a Current Listing of General Bonds:** The Clerk shall maintain a current listing of all general bonds. This listing should be maintained in alphabetical order by name of the vessel. The listing will be available for inspection during normal business hours.

(C) **Execution of Process:** The arrest of a vessel covered by a general bond shall be stayed in accordance with Supplemental Rule (E)(5)(b), however, the Marshal shall serve a copy of the complaint upon the master or other person in whose charge or custody the vessel is found. If neither the master nor another person in charge of custody is found aboard the vessel, the Marshal shall make his return accordingly.

Thereafter, it shall be plaintiff's responsibility to advise the owner or designated agent, at the address furnished in the general bond, of (1) the case number; (2) nature of the action and the amount claimed; (3) the plaintiff and name and address of plaintiff's attorney; and (4) the return date for filing a claim.

(j) **Application to Modify Security for Value and Interest:** At any time, any party having an interest in the subject matter of the action may move the Court, on due notice and for cause, for

greater, better or lesser security, and any such order may be enforced by attachment or as otherwise provided by law.

(k) **Custody and Safekeeping:**

(1) **Initial Responsibility:** The Marshal shall initially take custody of any vessel, cargo and/or other property arrested, or attached in accordance with these rules. Thereafter, and until such time as substitute custodians may be authorized in accordance with Local Admiralty Rule 7.05(k)(3), the Marshal shall be responsible for providing adequate and necessary security for the safekeeping of the vessel or property.

In the discretion of the Marshal, adequate and necessary security may include the placing of keepers on or near the vessel and/or the appointment of a facility or person to serve as a custodian of the vessel or property.

(2) **Limitations on the Handling, Repairing and Subsequent Movement of Vessels or Property:** Subsequent to the arrest or attachment of a vessel or property, and except as provided in Local Admiralty Rule 7.05(k)(1), no person may handle cargo, conduct repairs, or move a vessel without prior order of Court.

(3) **Procedures for Changing Custody Arrangements:** Any party may petition the Court to dispense with keepers, remove or place the vessel, cargo and/or other property at a specified facility, designate a substitute custodian for the vessel or cargo, or for other similar relief. The motion shall substantially conform in format and content to the form identified as MDF 704 in the Appendix of these Local Admiralty Rules.

(A) **Notification of the Marshal Required:** When an application for change in custody arrangements is filed, either before or after the Marshal has taken custody of the vessel or property, the filing party shall serve notice of the application on the Marshal in sufficient time to permit the Marshal to review the indemnification and insurance arrangements of the filing party and substitute custodians. The application shall also be served upon all other parties to the litigation.

(B) **Indemnification Requirements:** Any motion for the appointment of a substitute custodian or facility shall include as an exhibit to the motion, a consent and indemnification agreement signed by both the filing party, or his attorney, and the proposed substitute custodian.

The consent and indemnification agreement shall expressly release the Marshal from any and all liability and responsibility for the care and custody of the property while in the hands of the substitute custodian; and shall expressly hold the Marshal harmless from any and all claims whatsoever arising from the substitute custodianship. The agreement shall substantially conform in format and content to the form identified as MDF 705 in the Appendix to these Local Admiralty Rules.

(C) **Court Approval Required:** The motion to change custody arrangements, and indemnification and consent agreement shall be referred to a judicial officer who shall determine whether the facility or substitute custodian is capable of safely keeping the vessel, cargo and/or property.

(4) **Insurance Requirements:**

(A) **Responsibility for Initially Obtaining Insurance:** Concurrent with the arrest or attachment of a vessel or property, the Marshal shall obtain insurance to protect the Marshal, his deputies, keepers, and custodians from liability arising from the arrest or attachment.

The insurance shall also protect the Marshal and his deputies or agents from any liability arising from performing services undertaken to protect the vessel, cargo and/or property while that property is in the custody of the Court.

(B) **Payment of Insurance Premiums:** It shall be the responsibility of the party applying for the arrest or attachment of a vessel, cargo and/or property to promptly reimburse the Marshal for premiums paid to effect the necessary insurance.

The party applying for change in custody arrangements shall be responsible for paying the Marshal for any additional premium associated with the change.

(C) **Taxation of Insurance Premiums:** The premiums charged for the liability insurance will be taxed as an expense of custody while the vessel, cargo and/or property is in custodia legis.

(5) **Contribution by Intervening Parties to Expenses of Substitute Custodian:** When a substitute custodian has been authorized under Local Admiralty Rule 7.05(k)(3), the Court in its discretion may require contribution by intervening parties (a) to all expenses of the substitute custodian and (b) to insurance premiums required under Local Admiralty Rule 7.05(k)(4) upon equitable terms. In addition to all relevant facts, the Court may consider the provisions of Local Admiralty Rule 7.05 (f)(2)(B).

(1) **Preservation, Humanitarian and Repatriation Expenses:**

(1) **Limitations on Reimbursement for Services and/or Supplies Provided to a Vessel or Property in Custody:** Except in cases of emergency or undue hardship, no person will be entitled to claim as an expense of administration the costs of services or supplies furnished to a vessel, cargo and/or property unless such services or supplies have been furnished to the Marshal upon his order, or pursuant to an order of this Court.

Any order issued pursuant to this subsection shall require the person furnishing the services or supplies to file a weekly invoice. This invoice shall be set forth in the format prescribed in Local Admiralty Rule 7.05(1)(5).

(2) **Preservation Expenses for the Vessel and Cargo:** The Marshal, or substitute custodian, is authorized to incur expenses reasonably deemed necessary in maintaining the vessel, cargo and/or property in custody for the purpose of preventing the vessel, cargo and/or property from suffering loss or undue deterioration.

(3) **Expenses for Care and Maintenance of a Crew:** Except in an emergency, or upon the authorization of a judicial officer, neither the Marshal nor substitute custodian shall incur expenses for feeding or otherwise maintaining the crew.

Applications for providing food, water and necessary medical services for the maintenance of the crew may be submitted, and decided ex parte by a judicial officer, providing such an application is made by some person other than the owner, manager or general agent of the vessel.

Such applications must be filed within thirty (30) days from the date of the vessel's initial seizure. Otherwise, except in the case of an emergency, such applications shall be filed and served upon all parties, who in turn shall have fourteen (14) days from receipt of the application to file a written response.

Expenses for feeding or otherwise maintaining the crew, when incurred in accordance with this subsection, shall be taxed as an expense of administration and not as an expense of custody.

(4) **Repatriation Expenses:** Absent an order of Court expressly ordering the repatriation of the crew and/or passengers, and directing that the expenses be taxed as a cost of administration, no person shall be entitled to claim these expenses as expenses of administration.

(5) **Claim by a Supplier for Payment of Charges:** Any person who claims payment for furnishing services or supplies in compliance with Local Admiralty Rule 7.05(1), shall submit an invoice to the Marshal's office for review and approval.

The claim shall be presented in the form of a verified claim, and shall be submitted within a reasonable time after furnishing the services or supplies, but in no event shall a claim be accepted after the vessel, or property has been released. The claimant shall file a copy of the verified claim with the Marshal, and also serve the substitute custodian and all other parties to the litigation.

The Marshal shall review the claim, make adjustments or recommendations to the claim as are appropriate, and shall thereafter forward the claim to the Court for approval. The Court may postpone the hearing on an individual claim until a hearing can be set to consolidate other claims against the property.

(m) Property in Incidental Custody and Otherwise Not Subject to the Arrest or Attachment:

(1) Authority to Preserve Cargo in Incidental Custody:

The Marshal, or an authorized substitute custodian, shall be responsible for securing, maintaining and preserving all property incidentally taken into custody as a result of the arrest or attachment of a vessel or property. Incidental property may include, but shall not be limited to, laden cargo not itself the subject of the arrest or attachment.

The Marshal or other custodian shall maintain a separate account of all costs and expenses associated with the care and maintenance of property incidentally taken into custody.

Any person claiming entitlement to possession of property incidentally taken into custody shall be required, as a precondition of receiving possession, to reimburse the Marshal for such separately accounted expenses. Monies received by the Marshal will be credited against both the expense of custody and administration.

(2) Separation, Storage and Preservation of Property in Incidental Custody: Any party, or the Marshal, may petition the Court to permit the separation and storage of property in incidental custody from the property actually arrested or attached.

When separation of the property is ordered to protect the incidentally seized property from undue deterioration; provide for safer storage; meet an emergency; reduce the expenses of custody; or to facilitate a sale of the vessel or other property pursuant to Local Admiralty Rule 7.05(q); the costs of such separation shall be treated as an expense of preservation and taxed as a cost of custody.

(3) **Disposal of Unclaimed Property:** Property incidentally in custody and not subsequently claimed by any person entitled to possession, shall be disposed of in accordance with the laws governing the disposition of property abandoned to the United States of America.

Except when prohibited by prevailing federal statute, the resulting net proceeds associated with the disposition of abandoned property shall be applied to offset the expense of administration, with the remainder escheating to the United States of America as provided by law.

(n) **Dismissal:**

(1) **By Consent:** No action may be dismissed pursuant to Fed.R.Civ.P. 41(a) unless all costs and expenses of the Court and its officials have first been paid.

Additionally, if there is more than one plaintiff or intervening plaintiff, no dismissal may be taken by a plaintiff unless that party's proportionate share of costs and expenses has been paid in accordance with Local Admiralty Rule 7.05(f).

(2) **Involuntary Dismissal:** If the Court enters a dismissal pursuant to Fed.R.Civ.P. 41(b), the Court shall also designate the costs and expenses to be paid by the party or parties so dismissed.

(o) **Judgments:**

(1) **Expenses of Sureties as Costs:** If costs are awarded to any party, then all reasonable premiums or expenses paid by the prevailing party on bonds, stipulations and/or other security shall be taxed as costs in the case.

(2) **Costs of Arrest or Attachment:** If costs are awarded to any party, then all reasonable expenses paid by the prevailing party incidental to, or arising from the arrest or attachment of any vessel, property and/or cargo shall be taxed as costs in the case.

(p) **Stay of Final Order:**

(1) **Automatic Stay for Fourteen (14) Days:** In accordance with Fed.R.Civ.P. 62(a), no execution shall issue upon a judgment, nor shall seized property be released pursuant to a judgment or dismissal, until fourteen (14) days after the entry of the judgment or order of dismissal.

(2) **Stays Beyond the Fourteen (14) Day Period:** If within the fourteen (14) day period established by Fed.R.Civ.P. 62(a), a party files any of the motions contemplated in Fed.R.Civ.P. 62(b), or a notice of appeal, then unless otherwise ordered by the Court, a further stay shall exist for a period not to exceed thirty (30) days from the entry of the judgment or order. The purpose of this additional stay is to permit the Court to consider an application for the establishment of a supersedeas bond, and to order the date upon which the bond shall be filed with the Court.

(q) **Notice of Sale:**

(1) **Publication of Notice:** In an action in rem or quasi in rem, and except in suits on behalf of the United States of America where other notice is prescribed by statute, the Marshal shall publish notice in any of the newspapers approved pursuant to Local Admiralty Rule 7.01(g).

(2) **Duration of Publication:** Unless otherwise ordered by the Court, applicable Supplemental Rule, or Local Admiralty Rule, publication of the notice of sale shall be made at least twice; the first publication shall be at least one (1) calendar week prior to the date of the sale, and the second at least three (3) calendar days prior to the date of the sale.

(r) **Sale of a Vessel or Property:**

(1) **Payment of the Purchase Price:** Unless otherwise provided in the order of sale, the person whose bid is accepted shall pay the Marshal the purchase price in the manner provided below:

(A) **If the Bid is Not More Than \$500.00:** The successful bidder shall immediately pay the full purchase price.

(B) **If the Bid is More Than \$500.00:** The bidder shall immediately deposit with the Marshal \$500.00, or 10% of the bid, whichever sum is greater. Thereafter the bidder shall pay the remaining purchase price within three (3) working days.

If an objection to the sale is filed within the time permitted by Local Admiralty Rule 7.05(r) (7), the successful bidder is excused from paying the remaining purchase price until three (3) working days after the Court confirms the sale.

(2) **Method of Payment:** Unless otherwise ordered by the Court, payments to the Marshal shall be made in cash, certified check or cashier's check.

(3) **Custodial Costs Pending Payment:** When a successful bidder fails to pay the balance of the bid within the time allowed by Local Admiralty Rule 7.05(r) (1) (B), or within the time permitted by order of the Court, the Marshal shall charge the successful bidder for 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 these additional charges have been paid.

(4) **Default for Failure to Pay the Balance:** The person who fails to pay the balance of the bid within the time allowed shall be deemed to be in default. Thereafter a judicial officer may order that the sale be awarded to the second highest bidder, or may order a new sale as appropriate.

Any sum deposited by the bidder in default shall be forfeited, and the amount shall be applied by the Marshal to any additional costs incurred because of the forfeiture and default, including costs incident to resale. The balance of the deposit, if any, shall be retained in the registry and subject to further order of the Court.

(5) **Marshal's Report of Sale:** At the conclusion of the sale, the Marshal shall file a written report of the sale to include the date of the sale, the price obtained, and the name and address of the buyer.

(6) **Confirmation of Sale:** Unless an objection is timely filed in accordance with this rule, or the purchaser is in default for failing to pay the balance of the purchase price, plaintiff shall proceed to have the sale confirmed on the day following the last day for filing objections.

In order to confirm the sale, plaintiff's counsel shall file a **"Request for Confirmation of Sale"** on the day following the last day for filing an objection. The **"Request for Confirmation of Sale"** shall substantially conform in format and content to the form identified as MDF 709 in the Appendix to these Local Admiralty Rules. Plaintiff's counsel shall also prepare and offer for filing a **"Confirmation of Sale"**. The **"Confirmation of Sale"** shall substantially conform in format and content to the form identified as MDF 710 in the Appendix to these Local Admiralty Rules. Thereafter the Clerk shall file and docket the confirmation and shall promptly transmit a certified copy of the **"Confirmation of Sale"** to the Marshal's office.

Unless otherwise ordered by the Court, if the plaintiff fails to timely file the **"Request for Confirmation of Sale"** and proposed **"Confirmation of Sale"**, the Marshal shall assess any continuing costs or expenses for custody of the vessel or property against the plaintiff.

(7) **Objections to Confirmation:**

(A) **Time for Filing Objections:** Unless otherwise permitted by the Court, an objection must be filed within three (3) working days following the sale. The party or person filing an objection shall serve a copy of the objection upon the Marshal and all other parties to the action, and shall also file a Certificate of Service indicating the date and manner of service. Opposition to the objection must be filed within five (5) days after receipt of the objection of the sale.

The Court shall consider the objection, and any opposition to the objection, and shall confirm the sale, order a new sale, or grant other relief as appropriate.

(B) Deposit of Preservation or Maintenance Costs:

In addition to filing written objections, any person objecting to the sale shall also deposit with the Marshal the cost of keeping the property for at least seven (7) days. Proof of the deposit with the Marshal's office shall be delivered to the Clerk's office by the moving party. The Court will not consider the objection without proof of this deposit.

If the objection is sustained, the objector will be reimbursed for the expense of keeping the property from the proceeds of any subsequent sale, and any remaining deposit will be returned to the objector upon Court order.

If the objection is denied, the sum deposited by the objector will be applied to pay the fees and expenses incurred by the Marshal in keeping the property from the date the objection was filed until the sale is confirmed. Any remaining deposit will be returned to the objector upon order of Court.

(8) Confirmation of Title: Failure of a party to give the required notice of an action and arrest of a vessel, property and/or cargo, or failure to give required notice of a sale, may afford grounds for objecting to the sale, but such failure does not affect the title of a good faith purchaser of the property.

(s) Post-sale Claim: Claims against the proceeds of a sale authorized by these rules, except for seamen's wages, will not be admitted on behalf of lienors who file their claims after the sale.

Unless otherwise ordered by the Court, any claims filed after the date of the sale shall be limited to the remnants and surplus arising from the sale.

Advisory Notes to Admiralty and Maritime Rules

7.05(a): This section continues the provisions of former Local Rule 7.07(c).

7.05(b): The rule continues, expands and clarifies the intervention provisions of former Local Rule 7.09.

The rule does not require an intervening plaintiff to undertake the formal steps required to issue the original process of arrest or attachment pursuant to Local Admiralty Rule 7.02(c) or 7.03(b); rather the Committee believes that intervening parties need only apply for supplemental process, which in accordance with the August 1, 1985, amendments to Supplemental Rule (B) and (C), may be issued by the clerk without further order of the Court. The Committee recommends the re-arrest or re-attachment provisions of this rule in order to accommodate the administrative and records keeping requirements of the marshal's office.

The revision also contemplates that the marshal will normally not require the initial security deposit otherwise required by Local Admiralty Rule 7.05(e). The marshal shall, however, access custodial costs against the intervening plaintiff in accordance with Local Admiralty Rule 7.05(f)(2).

7.05(c): This section continues the provision of former Local Rule 7.07(d).

7.05(d): This section continues the provisions of former Local Rule 7.06(a).

7.05(e): This section continues the provisions formerly found in Local Rules 7.05(a), (b), (c) and (d).

7.05(f): The marshal, as an officer of the Court whose fiscal affairs are regulated by statute and order, is precluded by law from expending funds of the United States to maintain custody of vessels or other property pursuant to claims being asserted by the several states, any foreign sovereigns, or any private parties. This prohibition extends to incurring obligations which, if not satisfied, otherwise might be asserted as a claim against the United States. Consequently, before undertaking to arrest or attach property, the marshal must receive funds in advance of incurring such obligations sufficient to satisfy them.

Past experience indicates that not infrequently vessels or other properties arrested for nonpayment of incurred obligations will be ultimately sold for satisfaction, to the extent possible, of pending claims. In such cases, substitute security is never given, and the property must be retained in custody for a sufficient period of time to permit the Court to determine the status of the situation and to order appropriate procedures. In such instances, custodial costs tend to be substantial and, by the very nature of the circumstances, the claimants and potential claimants can be both large in number and will vary markedly in the amounts of their respective individual claims. Apportioning the obligation to make advances against custodial costs over this range of claims and claimants has resulted in frequent calls for judicial intervention.

It was the Committee's view that a system initially self-executing and ministerial would minimize situations calling for judicial intervention while affording the marshal the protection of assured and certain procedures. At the same time, the Committee was strongly of the opinion that the rules should do substantial equity as between claims showing wide variation in amounts and potential priorities and, at the same time, should be so structured as to require all potential claimants to come forward and share in the cost of custody, discouraging the sometime practice of claimants' waiting to intervene until the last moment in order to allow other parties to bear the burdens of making such advances.

The Committee had for a model, a practice embodied in an order entered in a Jacksonville Division case providing essentially the features incorporated in this section.

A concern was expressed about the position of parties having large, but clearly inferior claims, who, in equity should not be required to share on a prorated value-of-the-claim-asserted basis with claimants who have obvious priority. A typical example of such a situation would involve a mortgagee of a foreign-flag vessel appearing as a claimant in an action along with lien claimants alleging to have supplied necessities to a vessel in ports of the United States, the mortgagee's position being subordinated by virtue of 46 USC § 951. After considering all possible alternatives, it was obvious that this limited range of situations could not be addressed through a mechanism for automatic administration and, consequently, the provision providing for judicial relief in the event of hardship or inequity was included.

7.05(g): Section (g) is new. It reflects the approach embodied in the local rules of those districts which have addressed the question of properties subject to arrest but already in the possession of an officer of the United States.

7.05(h): The provisions of section (h) are new. Paragraph (1), following rules promulgated in other districts, states what is understood by the advisory committee to have been the practice in this district. Paragraph (2) is designed to mesh the concept of process held in abeyance with the requirements of Local Rule 7.05(b) regarding intervening claims, and is designed to foreclose the possibility of a vessel or other property being arrested or attached in the district as a result of more than one civil action. Since under Local Rule 7.05(b), the automatic, permissive intervention is not triggered until the vessel or other property has been arrested, attached or seized, a suit in rem in which process is held in abeyance will not form the basis for such an intervention. On the other hand, once the property is arrested, attached or seized, the issuance of process in the earlier suit would be destructive of the "only one civil action" concept, and, consequently paragraph (2) requires a party whose process was held in abeyance to refile as an intervenor pursuant to 7.05(b), making provision for the proper disposition of the earlier action.

7.05(i): Section (i) continues, with editorial and stylistic changes, the provisions of Local Rule 7.11 (1984). In formulating the text of paragraph (1), due regard was given to, and concerning expressed about the Eleventh Circuit decision in *Industria Nacional del Papel, C.A. M/V. Albert F.*, 730 F.2d 622 (1984). Reasonable economic projections indicate that the 6% per annum will be insufficient to provide full security, and it was the view of the Advisory Committee that a higher figure, subject to adjustment by application to the Court or stipulation, should be specified.

However, in light of the express provision of Supplemental Rule (E)(5), the implementation by local rule of a figure higher than 6% per annum was precluded. Consequently, the period of time was increased to forty-eight (48) months, an effort on the Committee's part to at least mitigate the effects of the interaction of decisional law. The supplemental rule provision limiting such interest to 6% per annum needs to be addressed at the appropriate level.

7.05(j): Section (j) continues in effect the provisions of former Local Rule 7.05(c) (1984), relocated so as to make the relationship between Section (i) and Section (j) more readily apparent. The provisions of Section (j) are expressly authorized by Supplemental Rule (E)(6) and offer some potential for relief from the automatic operations and other provisions of Supplemental Rule (E) regarding security for value and interest. The decision in *Industria Nacional del Papel, C.A. M/V Albert F.*, 730 F.2d 622 (1984) indicates that such an application must be made prior to the entry of judgment.

7.05(k): Section (k) is new. It is designed to reflect the actual practice in the district, and follows the rules promulgated in several other districts. In formulating this rule, the Committee studied Section 6.3 of the "Marshal's Manual", the internal operating guide for the United States Marshal's Service.

7.05(l): Section (l) is new. It addresses areas which in recent litigation in the district have called excessively for interim judicial administration. While the subject matter is covered in the rules promulgated in other districts, section (l) differs from the approach of other districts in providing for a more positive control of expenses being incurred in connection with vessels or other property in the custody of the Court, and is designed to avoid accumulated costs being advanced for the first time well after having been incurred.

7.05(m): Section (m) is new. It addresses a situation which has arisen in the district in the past and which can be foreseen as possibly arising in the future. While the subject is not addressed in other local rules studied by the Committee, nor has it been the subject of any oft-cited leading cases, it was the opinion of the Committee that the area should be addressed by local rule and that the provisions of Section (m) are both consistent with the general maritime laws of the United States and designed to permit efficient administration without the necessity for undue judicial intervention. As with the claims of intervenors and the allocation of deposits against custodial costs, the provisions of Section (m), in keeping with the design of these local rules, are intended to be essentially self-executing, with the emphasis on the ministerial role of Court officers and services.

7.05(n): Section (n) is new. It follows Rule 41, Fed.R.Civ.P., and addresses the necessarily greater concern for costs and expenses inherent in the in rem admiralty procedure.

7.05(o): Section (o) continues the provisions of former Local Rule 7.12 (1984).

7.05(p): Section (p) incorporates the provisions of former Local Rule 7.13(a) (1984).

7.05 (q) and (r): The provisions of former Local Rule 7.04(a) (1984) have been expanded to provide a standardized procedure governing sales of property, which procedure the Court, at its option, may utilize, in whole or in part, thus shortening and simplifying orders related to sales and accompanying procedures.

7.05(s): Consistent with the provision of Local Rule 7.05(b), former Local Rule 7.15(a) (1984) has been clarified to give express notice of the distinct positions of claims pre-sale and post-sale.

Rule 7.06 | ACTIONS TO LIMIT LIABILITY

(a) **Publication of the Notice:** Immediately upon the commencement of an action to limit liability pursuant to Supplemental Rule (F), plaintiff shall, without further order of Court, effect publication of the notice in accordance with the provisions set forth in Supplemental Rule (F)(4) and Local Admiralty Rule 7.01(g).

(b) **Proof of Publication:** Plaintiff shall file proof of publication not later than the return date. It shall be sufficient proof for 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.

(c) **Appraisals Pursuant to Supplemental Rule (F)(7):** Upon the filing of a claimant's motion pursuant to Supplemental Rule (F)(7), demanding an increase in the funds deposited in Court or the security given by plaintiff, the Court shall order an appraisal of the value of the plaintiff's interest in the vessel and pending cargo.

Upon receipt of the order directing the appraisal, the parties shall have seven (7) days to file a written stipulation to an appraiser. In the event that the parties do not file a stipulation, the Court shall appoint the appraiser.

The appraiser shall promptly conduct an appraisal and thereafter file the appraisal with the Clerk and serve a copy of the appraisal upon the moving party and the plaintiff. The appraiser shall also file a Certificate of Service indicating the date and manner in which service was perfected.

(d) **Objections to the Appraisal:** Any party may move to set aside the appraisal within fourteen (14) days following the filing of the appraisal with the Clerk.

(e) **Fees of the Appraiser:** The Court shall establish the fee to be paid the appraiser. Unless otherwise ordered by the Court, the fee shall be taxed against the party seeking relief under Supplemental Rule (F)(7).

Advisory Notes to Admiralty and Maritime Rules

7.06(a): This section incorporates the publication provisions of Local Admiralty Rule 7.01(g), and applies them to limitation of liability actions. The rule provides for the publication of the notice required by Supplemental Rule (F)(4) without further order of the Court. The Committee believes that this self-executing aspect of the rule will save judicial time and at the time will not impair the rights of any party or claimant.

7.06(b): The Committee determined that filing proof of publication with the clerk was essential in order to establish an adequate record of the publication.

APPENDIX

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