

GENERAL ORDER 10-1

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS**

**GENERAL ORDER AMENDING LOCAL RULES**

It is hereby ORDERED that the following amendments to the Local Rules, having been approved by the judges of this court, are adopted for implementation subject to a reasonable period for public notice and comment to be determined by the clerk.<sup>1</sup> *See* 28 U.S.C. § 2071(b).

**1. LOCAL RULE CV-4 Complaint, Summons, and Return**

- (a) At the commencement of the action, counsel shall prepare and file the civil cover sheet, Form JS 44, along with the complaint. When filing a patent, trademark, or copyright case, counsel is also responsible for electronically filing an AO Form 120 or 121 and submitting a copy of the applicable form to the United States Patent Office or United States Copyright Office.

If service of summons is not waived, an original and two copies of the summons in a civil action must be prepared by the attorney for the plaintiff and submitted for each defendant to be served with a copy of the complaint. The clerk is required to collect the filing fee authorized by federal statute before accepting a complaint for filing.

- (b) **Electronic Filing of Complaints.** Attorneys must electronically file a civil complaint within 24 hours of opening the civil case in CM/ECF.

*Comment:* New Section (b) is designed to ensure that the complaint gets filed proximate to the opening of the civil case in CM/ECF, which is currently programmed to give the filing attorney the option not to file the complaint when he or she opens the case.

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<sup>1</sup>New language appears in redlined text; deleted language appears in ~~strikeout~~ text.

Consequently, there have been several instances where a plaintiff's attorney opened a civil case but never filed the complaint. The new rule would avoid or minimize this type of result.

## 2. LOCAL RULE CV-5 Service and Filing of Pleadings and Other Papers

(a) **Electronic Filing Required.** Except as expressly provided or in exceptional circumstances preventing a Filing User from filing electronically, all documents filed with the court shall be electronically filed in compliance with the following procedures.

(1) **Exemptions from Electronic Filing Requirement.** The following are exempted from the requirement of electronic filing:

- (A) In a criminal case, the charging documents, including the complaint, information, indictment, and any superseding indictment; petitions for revocation of probation or supervised release; affidavits in support of search and arrest warrants, pen registers, trap and trace requests, wiretaps, and other documentation related to these types of applications; and other matters filed *ex parte* in connection with ongoing criminal investigations;
- (B) filings from *pro se* litigants (prisoner and non-prisoner);
- (C) ~~consents to proceed before a magistrate judge;~~
- (~~D~~) proof of service of the initial papers in a civil case;
- (~~E~~ D) papers received from another court under Fed. R. Crim. P. 5(c), Fed. R. Crim. P. 20, and Fed. R. Crim. P. 40;
- (~~F~~ E) official administrative records or transcripts of prior court or administrative

proceedings from other courts or agencies that are required to be filed by law, rule, or local rule ~~(but see LOCAL R. CV-80(a));~~

(G) applications to appear *pro hac vice*; ~~and~~

(H) any document pertaining to presentence investigation reports in criminal cases; and

(I) sealed civil complaints (this document should be filed on a CD-ROM disk with the clerk along with a motion to seal the case). *See* LOCAL R. CV-5(a)(7)(A).

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- (e) **Service of Documents Filed by *Pro Se* Litigants.** A document filed by a *pro se* litigant shall be deemed “served” for purposes of calculating deadlines under the Local Rules or Federal Rules of Civil Procedure on the date it is electronically docketed in the court’s CM/ECF system.

*Comment:* The court intends to limit, to the degree possible, the number of documents that are exempt from Local R. CV-5(a)’s mandatory e-filing requirement. Accordingly, requests to proceed before a magistrate judge (*i.e.*, magistrate judge consent forms) will now routinely be e-filed. Under this new procedure, a signed consent form from a party represented by counsel will be e-filed by the attorney as a sealed document using a docketing “event code” provided by the clerk’s office. This procedure is in harmony with Fed. R. Civ. P. 73, as the judges assigned to the case will receive no notice of the filing of sealed consent forms until and unless all parties have consented.

New Section (a)(1)(H) was added to list of e-filing exceptions in light of the fact that

CM/ECF does not allow an attorney to e-file a sealed civil complaint. However, a sealed civil complaint filed by an attorney on a CD-ROM disk can be uploaded by clerk's office staff to CM/ECF.

New Section (e) identifies the service date for documents filed in paper form by *pro se* litigants. These documents are typically mailed to the court and opposing counsel.

### **3. LOCAL RULE CV-5.2 Privacy Protections for Filings Made with the Court**

- (a) **Electronic Filing of Transcripts by Court Reporters.** The following procedures apply to all court transcripts filed on or after May 19, 2008. The court reporter or transcriber shall electronically file all court transcripts,<sup>2</sup> including a completed version of the attached "Notice of Filing of Official Transcript." Upon request, the clerk shall make an electronic version of any transcript available for public inspection without charge at the clerk's office public terminal. *See* 28 U.S.C. § 753(b).
  
- (b) **Availability of Transcripts of Court Proceedings.** Electronically-filed transcripts of court proceedings are subject to the following rules:
  - (1) A transcript provided to a court by a court reporter or transcriber will be available at the clerk's office for inspection for a period of 90 days after it is electronically filed with the clerk. During the 90-day inspection period, access to the transcript in CM/ECF is limited to the following users: (a) court staff; (b) public terminal users; (c) attorneys of record or parties who have purchased the transcript from the court reporter or transcriber; and (d) other persons as directed by the court. Court staff may not copy or print transcripts for a requester during the 90-day inspection period,

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<sup>2</sup> Contract court reporters may either file court transcripts electronically in the CM/ECF database, or submit an electronic PDF version of the transcript to the clerk, who will thereupon file it.

nor can the transcript be printed from the public computer terminals located in the clerk's offices during that period.

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*Comment:* The new language reminds court users and court staff that transcripts cannot be printed from the public computer terminals during the 90-day inspection period without paying the court reporter. The clerk's office has moved the printers inside the clerk's office to prevent this from happening.

#### **4. LOCAL RULE CV-6 Computation of Time**

- (a) **General Rule.** When a party may or must act within a specified time after service, three days are added after the period would otherwise expire under Fed. R. Civ. P. 6(a), regardless of the method of service. This three-day extension applies only to responses due within a certain time after "service" of a preceding document.
- (b) **Deficient or Corrected Documents.** When a document is corrected or re-filed by an attorney following a deficiency notice from the clerk's office (*e.g.*, for a missing certificate of service or certificate of conference), the time for filing a response runs from the filing of the corrected or re-filed document, not the original document.

*Comment:* New Section (b) was added to clarify the time for filing a response when a document is corrected and re-filed by an attorney following the attorney's receipt of a deficiency notice from the clerk's office. In order to effectuate this, the filing attorney will be required to expeditiously file a curative document. The clerk's office then will put a deficiency notation on the original document and a reference to the curative document that was filed.

#### **5. LOCAL RULE CV-7 Motions Practice**

(a) **Generally.** All motions, unless made during a hearing or trial, shall be in writing, filed as a separate document, conform to the requirements of Local R. CV-5 and Local R. CV-10, and shall be accompanied by a proposed order in searchable and editable PDF format for the judge's signature. The proposed order shall be endorsed with the style and number of the cause and shall not include a date or signature block. Motions, responses, replies, and proposed orders, if filed electronically, shall be submitted in "searchable PDF" format. All other documents, including attachments and exhibits should be in "searchable PDF" form wherever possible.

(1) **Case Dispositive Motions.** Case dispositive motions shall not exceed thirty pages, excluding attachments, unless leave of court is first obtained. Likewise, a party opposing a case dispositive motion shall limit the response to the motion to thirty pages, excluding attachments, unless leave of court is first obtained. *See* Local R. CV-56 (regarding attachments to motions for summary judgment and responses thereto). Any reply or sur-reply to an opposed case dispositive motion filed pursuant to Section (f) of this rule shall not exceed ten pages, excluding attachments.

~~If a party files more than one summary judgment motion, the following additional limitations shall apply: (1) a party's summary judgment motions shall not exceed sixty pages collectively, excluding attachments; (2) a party's responses to summary judgment motions shall not exceed sixty pages collectively, excluding attachments; (3) a party's reply to summary judgment motions shall not exceed twenty pages collectively excluding attachments; and (4) a party's surreply briefing to summary judgment motions shall likewise not exceed twenty pages collectively, excluding attachments.~~

Case dispositive motions shall contain a statement of the issues to be decided by the court. Responses to case dispositive motions must include a response to the movant's statement of issues.

- (2) **Non-dispositive Motions.** Non-dispositive motions shall not exceed fifteen pages, excluding attachments, unless leave of court is first obtained. Likewise, a party opposing a non-dispositive motion shall limit the response to the motion to fifteen pages, excluding attachments, unless leave of court is first obtained. Any reply or sur-reply brief to an opposed non-dispositive motion filed pursuant to Section (f) of this rule shall not exceed five pages, excluding attachments. Non-dispositive motions include, among others, motions to transfer venue, motions for partial summary judgment, and motions for new trial pursuant to Fed. R. Civ. P. 59.
- (3) **Total Page Limits for Summary Judgment Motions.** If a party files more than one summary judgment motion, the following additional limitations shall apply:
- (A) a party's summary judgment motions shall not exceed sixty pages collectively, excluding attachments;
  - (B) a party's responses to summary judgment motions shall not exceed sixty pages collectively, excluding attachments;
  - (C) a party's reply briefing to summary judgment motions shall not exceed twenty pages collectively excluding attachments; and
  - (D) a party's sur-reply briefing to summary judgment motions shall likewise not exceed twenty pages collectively, excluding attachments.

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- (e) **Time to File Response.** A party opposing a motion has ~~12~~ 14 days from the date the motion was served in which to file a response and any supporting documents, after which the court will consider the submitted motion for decision. *See* LOCAL R. CV-6 (three days added to

the prescribed period). Any party may separately move for an order of this court lengthening or shortening the period within which a response may be filed.

- (f) **Reply Briefs.** Unless otherwise directed by the presiding judge, a party who has filed an opposed motion may serve and file a reply brief responding to issues raised in the response within 5 7 days from the date the response is served. *See* LOCAL R. CV-6 (three days added to the prescribed period). A sur-reply responding to issues raised in the reply may be served and filed within 5 7 days from the date the reply is served. *See* LOCAL R. CV-6 (three days added to the prescribed period). The court need not wait for the reply or sur-reply before ruling on the motion. Absent leave of court, no further submissions on the motion are allowed.

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- (i) **Certificates of Conference.** Except as specified below, all motions must be accompanied by a “certificate of conference” at the end of the motion following the certificate of service. The certificate must state: (1) that counsel has complied with the meet and confer requirement in Local R. CV-7(h); and (2) whether the motion is opposed or unopposed. Opposed motions shall include a statement in the Certificate of Conference, signed by the movant’s attorney, that the personal conference or conferences required by this rule have been conducted or were attempted, the date and manner of such conference(s) or attempts, the names of the participants in the conference(s), an explanation of why no agreement could be reached, and a statement that discussions have conclusively ended in an impasse, leaving an open issue for the court to resolve. In discovery-related motions, the Certificate of Conference shall be signed by the lead trial counsel and any local counsel. In situations involving an unreasonable failure to meet and confer, the movant shall set forth in the Certificate of Conference the facts believed to constitute bad faith.

Neither the “meet and confer” nor the Certificates of Conference requirements are applicable to *pro se* litigants (prisoner or non-prisoner), or to the following motions:

- (1) to dismiss;
- (2) for judgment on the pleadings;
- (3) for summary judgment;
- (4) *motions in limine*;
- ~~(5)~~ for judgment as a matter of law;
- (6 5) for judgment of acquittal in a criminal case;
- ~~(7 6)~~ to suppress in criminal cases;
- ~~(8 7)~~ for new trial; ~~and~~
- ~~(9 8)~~ any motion captioned as “joint,” “agreed,” or “unopposed;” and
- (9) issuance of letters rogatory.

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- (m) **Emergency Motions.** Counsel filing an emergency motion should ensure that: (1) the caption of the motion begins with the word “emergency;” (2) the motion is electronically filed using the CM/ECF event code drop down menu option entitled “emergency motion;” and (3) the chambers of the presiding judge is notified, either by telephone, e-mail, or fax, that an emergency motion has been filed.

*Comment:* New Section (a)(1) makes clear that for purposes of page limitations, dispositive motions are motions that dispose of an entire case, not just certain issues or claims. Toward this goal, the portion of Section (a)(1) regarding total summary judgment motion page limits was renumbered as new Section (a)(3) to clarify that the total limit applies to both case dispositive and partial summary judgment motions.

Section (a)(2) is amended to make clear that the non-dispositive motion page limits apply to motions to transfer venue, for partial summary judgment, and for new trial.

Through the amendments to Sections (e) and (f) and Local R. CR-47, the court has now adopted the “multiples of seven” time computation methodology recommended

by the Judicial Conference Committee on the Rules of Practice and Procedure. Most federal district courts are adopting this method in order to simplify time calculation and make it nationally uniform. That fact notwithstanding, practitioners should note that: (a) Fed. R. Civ. P. 6 has been amended to count intermediate weekends and holidays, regardless of the length of the overall time period at issue, and (b) Fed. R. Civ. P. 6(d) in combination with Local Rule CV-6(a) adds an additional three days to any prescribed period after service. Practitioners should also note that these time limits apply to all motion practice, including motions for summary judgment under Fed. R. Civ. P. 56. See Fed. R. Civ. P. 56(c)(1).

Regarding motions *in limine*, many of these motions can be resolved without court intervention if the parties attempt in good faith to reach an agreement between themselves. This, in turn, promotes a more efficient use of pretrial resources. Accordingly, motions *in limine* were removed from Local R. CV-7(i)'s list of exceptions to the "meet and confer" requirement.

In contrast to the above, the issuance of letters rogatory does not lend itself to the application of the "meet and confer" requirement. Consequently, that item has been added to the "meet and confer" exemption list.

The language change to Section (m) more accurately reflects existing practice.

## **6. LOCAL RULE CV-11 Signing of Pleadings, Motions, and Other Documents**

### **Lead Attorney**

- (a) **Designation.** On first appearance through counsel, each party shall designate a lead attorney on the pleadings or otherwise.
- (b) **Responsibility.** The lead attorney is responsible in that action for the party. That individual

- (b) **Responsibility.** The lead attorney is responsible in that action for the party. That individual attorney shall attend all court proceedings or send a fully informed attorney with authority to bind the client.
- (c) **Signing the Pleadings.** Every document filed must be signed by the lead attorney or by an attorney of record who has the permission of the lead attorney. Requests for postponement of the trial shall also be signed by the party making the request.

*Comment:* Sometimes an attorney who is not of record signs the pleadings. The new language is intended to avoid this result.

#### **7. LOCAL RULE CV-50 Judgment as a Matter of Law in a Jury Trial**

**Total Page Limits for Motions for Judgment as a Matter of Law.** The total page limits imposed by Local R. CV-7(a)(3) on motions for summary judgment shall also apply to motions for judgment as a matter of law pursuant to Fed. R. Civ. P. 50.

*Comment:* This rule, which adopts the page limit requirements of Local R. CV-7(a)(3), is designed to put reasonable limits on the length of motions for judgment as a matter of law.

#### **8. LOCAL RULE CV-83 Rules by District Courts; Judge's Directives**

- (a) **Docket Calls.** Traditional docket calls are abolished. Each judge shall endeavor to set early and firm trial dates which will eliminate the need for multiple-case docket calls.
- (b) **Transferred or Remanded Cases.** Absent an order of the court to the contrary, no sooner than the twentieth day following an order of the court transferring the case to another district court or remanding it to the appropriate state court, the clerk shall transmit the case file to

the directed court. Where a case has been remanded to state court, the clerk shall mail: (1) a certified copy of the court's order directing such action; and (2) the original of all pleadings and other documents on file in the case. Where a case has been transferred to another federal district court, the electronic case file shall be transferred to the directed court. If a timely motion for reconsideration of the order of transfer or remand has been filed, the clerk shall delay mailing or transferring the file until the court has ruled on the motion for reconsideration.

*Comment:* The new language allows flexibility in the application of this rule.

## 9. LOCAL RULE CR-47 Motions

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### (c) **Timing of a Motion.**

- (1) **Responses.** A party opposing a motion has ~~12~~ 14 calendar days from the date the motion was served in which to serve and file a response and any supporting documents, after which the court will consider the submitted motion for decision. Three days shall be added to the prescribed time period pursuant to Fed. R. Crim. P. 45(c). Any party may separately move for an order of the court lengthening or shortening the period within which a response may be filed.
- (2) **Reply Briefs and Sur-replies.** Unless otherwise directed by the presiding judge, a party who has filed an opposed motion may serve and file a reply brief responding to issues raised in the response within ~~five~~ 7 days from the date the response is served. A sur-reply responding to issues raised in the reply may be served and filed within ~~five~~ 7 days from the date the reply is served. The court need not wait for the reply or sur-reply before ruling on the motion. Absent leave of court, no further

submissions on the motion are allowed.

*Comment:* These “multiples-of-seven” time computation amendments mirror the ones made in Local R. CV-7(e) concerning civil motions.

## 10. APPENDIX J – LOCAL ADMIRALTY RULES

LAR A Authority and Scope.

LAR A(1) Authority. The Local Admiralty Rules of the United States District Court for the Eastern District of Texas are promulgated by a majority of the judges as authorized by and subject to the limitation of Federal Rule of Civil Procedure 83 (Federal Rule or Rules).

LAR A(2) Scope. The Local Admiralty Rules apply only to civil actions that are governed by Supplemental Rule A of the Supplemental Rules for Certain Admiralty and Maritime Claims (Supplemental Rule or Rules). All other local rules are applicable in these cases, but to the extent that another local rule is inconsistent with the applicable Local Admiralty Rules, the Local Admiralty Rules shall govern.

LAR A(3) Citation. The Local Admiralty Rules may be cited by the letters “LAR” and the lower case letters and numbers in parentheses that appear at the beginning of each section. The lower case letter is intended to associate the local admiralty rule with the Supplemental Rule that bears the same capital letter.

LAR A(4) Definitions. As used in the Local Admiralty Rules, the word “Rule” followed by a numeral (*e.g.*, Rule 12) means a Federal Rule of Civil Procedure; the word “Rule” followed by a capital letter (*e.g.*, Rule C) means a Supplemental Rule for Certain Admiralty and Maritime Claims; the word “court” means the district court issuing these LARs; the term “judicial officer” means the United States district judge or a

United States magistrate judge; the word “clerk of court” means the clerk of the district court and includes deputy clerks of court; and the word “Marshal” means the United States Marshal and includes deputy Marshals; the word “keeper” means any person or entity appointed by the Marshal to take physical custody of and maintain the vessel or other property under arrest or attachment; and the term “substitute custodian” means the individual or entity who, upon motion and order of the court, assumes the duties of the Marshal or keeper with respect to the vessel or other property arrested or attached.

LAR B Maritime Attachment and Garnishment.

~~LAR B(1) — “Found Within the District.” A defendant is not found within the district unless the defendant can be personally served therein by delivering process (i) in the case of an individual, to the individual personally, or by leaving a copy thereof at the individual’s dwelling house or usual place of abode with some person of suitable age and discretion; (ii) in the case of a corporation, trust or association, to an officer, trustee, managing or general agent thereof; (iii) in the case of a partnership, to a general partner thereof; (iv) in the case of a limited liability company, to a manager thereof.~~

~~LAR B(2) — Affidavit that Defendant Is Not Found Within the District. The affidavit required by Supplemental Rule B(1) to accompany the complaint shall specify with particularity the efforts made by and on behalf of plaintiff to find and serve the defendant within the district.~~

~~LAR B(3) — Notice to Defendant. In default applications, the affidavit or other proof required by Supplemental Rule B(2) from the plaintiff or the garnishee shall specify with particularity the efforts made to give notice of the action to the defendant.~~

~~LAR B(4) — Service by Marshal. If property to be attached is a vessel or tangible property aboard~~

~~a vessel, the process shall be delivered to the Marshal for service.~~

LAR B(1) Use of State Procedures. When the plaintiff invokes a state procedure in order to attach or garnish as permitted by the Rules or the Supplemental Rules, the process of attachment or garnishment shall identify the state law upon which the attachment or garnishment is based.

LAR C Actions in Rem: Special Provisions.

LAR C(1) Intangible Property. The summons to show cause why property should not be deposited in court issued pursuant to Supplemental Rule C(3)(c) shall direct the person having control of intangible property to show cause no later than 10 calendar days after service why the intangible property should not be delivered to the court to abide the judgment. A judicial officer for good cause shown may lengthen or shorten the time. Service of the warrant has the effect of arresting the intangible property and bringing it within the control of the court. Service of the summons to show cause requires a garnishee wishing to retain possession of the property to establish grounds for doing so, including specification of the measures taken to segregate and safeguard the intangible property arrested. The person who is served may, upon order of the court, deliver or pay over to the person on whose behalf the warrant was served or to the clerk of the court the intangible property proceeded against to the extent sufficient to satisfy the plaintiff's claim. If such delivery or payment is made, the person served is excused from the duty to show cause. The person asserting any ownership interest in the property or a right of possession may show cause as provided in Supplemental Rule C(6)(a) why the property should not be delivered to the court.

LAR C(2) Publication of Notice of Action and Arrest. The notice required by Supplemental Rule C(4) shall be published at least once in a newspaper named in LAR (g)(2), and plaintiff's attorney shall file with the clerk a copy of the notice as it was published

~~with the clerk.~~ The notice shall contain:

- (a) The court, title, and number of the action;
- (b) The date of the arrest;
- (c) The identity of the property arrested;
- (d) The name, address, and telephone number of the attorney for plaintiff;
- (e) A statement that a person asserting any ownership interest in the property or a right of possession pursuant to Supplemental Rule C(6) must file a statement of such interest with the clerk and serve it on the attorney for plaintiff within 10 calendar days after publication;
- (f) A statement that an answer to the complaint must be filed and served within 30 calendar days after publication and that otherwise default may be entered and condemnation ordered;
- (g) A statement that applications for intervention under ~~Federal~~ Rule 24 by persons asserting maritime liens or other interests shall be filed within the time fixed by the court; and
- (h) The name, address, and telephone number of the Marshal, keeper, or substitute custodian.

LAR C(3) Default In Action *In Rem*.

- (a) Notice Required. A party seeking a default judgment in an action *in rem* must satisfy the judge that due notice of the action and arrest of the property has been given:
  - (1) By publication as required in LAR (c)(2); and
  - (2) By service upon the Marshal and keeper, substitute custodian, master, or other person having custody of the property; and

(3) By mailing such notice to every other person who has not appeared in the action and is know to have an interest in the property.

(b) Persons with Recorded Interests.

(1) If the defendant property is a vessel documented under the laws of the United States, plaintiff must attempt to notify all persons named in the United States Coast Guard certificate of ownership.

(2) If the defendant property is a vessel numbered as provided in the Federal Boat Safety Act, plaintiff must attempt to notify the persons named in the records of the issuing authority.

(3) If the defendant property is of such character that there exists a governmental registry of recorded property interests and/or security interests in the property, the plaintiff must attempt to notify all persons named in the records of each such registry.

LAR C(4) Entry of Default and Default Judgment. After the time for filing an answer has expired, the plaintiff may move for entry of default under Federal Rule 55(a). Default will be entered upon showing that:

(a) Notice has been given as required by LAR C(3)(a); and

(b) Notice has been attempted as required by LAR C(3)(b), where appropriate; and

(c) The time to answer by claimants of ownership to or possession of the property has expired; and

- (d) No answer has been filed or no one has appeared to defend on behalf of the property.

The plaintiff may move for judgment under ~~Federal~~ Rule 55(b) at any time after default has been entered.

LAR D Possessory, Petitory, and Partition Actions.

- LAR D(1) Return Date. In a possessory action under ~~Supplemental~~ Rule D, a judicial officer may order that the statement of interest and answer be filed on a date earlier than 20 calendar days after arrest. The order may also set a date for expedited hearing of the action.

LAR E Actions *In Rem* and Quasi *In Rem*: General Provisions

- LAR E(1) Itemized Demand for Judgment. The demand for judgment in every complaint filed under ~~Supplemental~~ Rule B or C shall allege the dollar amount of the debt or damages for which the action was commenced. The demand for judgment shall also allege the nature of other items of damage. The amount of the special bond posted under ~~Supplemental~~ Rule E(5)(a) may be based upon these allegations.

- LAR E(2) Salvage Action Complaints. In an action for salvage award, the complaint shall allege the dollar value of the vessel, cargo freight, and other property salvaged or other basis for an award, and the dollar amount of the award sought.

- LAR E(3) Verification of Pleadings. Every complaint in ~~Supplemental~~ Rule B, C, and D actions shall be verified upon oath or solemn affirmation or in the form provided by 28 U.S.C. § 1746 by a party or by an authorized officer of a corporate party. If no party or authorized corporate officer is present within the district, verification of a complaint may be made by an agent, attorney in fact, or attorney of record, who shall

state the sources of the knowledge, information, and belief contained in the complaint; declare that the document verified is true to the best of that knowledge, information, and belief; state why verification is not made by the party or an authorized representative thereof; and state that the affiant or declarant is authorized so to verify. A verification not made by a party or authorized corporate officer will be deemed to have been made by the party as if verified personally. If the verification was not made by a party or authorized representative, any interested party may move, with or without requesting a stay, for the personal oath of a party or an authorized representative, which shall be procured by commission or as otherwise ordered.

LAR E(4) Review by Judicial Officer. Unless otherwise required by the judicial officer, the review of complaints and papers called for by ~~Supplemental~~ Rules B(1) and C(3) does not require the affiant ~~or declarant~~ party or attorney to be present. The applicant for review shall include a form of order to the clerk which, upon signature by the judicial officer, will direct the arrest, attachment, or garnishment sought by the applicant. In exigent circumstances, the certification of the plaintiff or his attorney under ~~Supplemental~~ Rules B and C shall consist of an affidavit or a declaration pursuant to 28 U.S.C. § 1746 describing in detail the facts establishing the exigent circumstances.

LAR E(5) ~~Instructions to the Marshal. The party who requests a warrant of arrest or process of attachment or garnishment shall provide instructions to the Marshal.~~ Return of Service. The party who requests a warrant of arrest or process of attachment or garnishment shall provide instructions to the Marshal. A person specially appointed by the court under Rules B or C who has served process of maritime attachment and garnishment or a warrant of arrest that seized property shall promptly file a verified return showing the name of the individual on whom the process or warrant was served, the identity of the person or entity on whom service was made, the documents served, the manner in which service was completed (e.g., personal

delivery), and the address, date, and time of service.

LAR E(6) Property in Possession of United States Officers. When the property to be attached or arrested is in the custody of an employee or officer of the United States, the Marshal will deliver a copy of the complaint and warrant of arrest or summons and process of attachment or garnishment to that officer or employee if present and otherwise to the custodian of the property. The Marshal will instruct the officer or employee or custodian to retain custody of the property until ordered to do otherwise by a judicial officer.

LAR E(7) 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 \$500. The party so ordered shall post the security within five days after the order is entered. A party who fails to post security when due may not participate further in the proceedings except by order of the court. A party may move for an order increasing the amount of security for costs.

LAR E(8) Adversary Hearing. The adversary hearing following arrest or attachment or garnishment provided for in ~~Supplemental~~ Rule E(4)(f) shall be conducted by a judicial officer within three court days unless otherwise ordered. The person(s) requesting the hearing shall notify all persons known to have an interest in the property of the time and place of the hearing.

LAR E(9) Appraisal. An order for appraisal of property so that security may be given or altered will be entered by the clerk at the request of any interested party upon motion. If the parties do not agree in writing upon an appraiser, a judicial officer will appoint the appraiser. The appraiser shall be sworn to the faithful and impartial discharge of the appraiser's duties before any federal or state officer authorized by law to administer oaths. The appraiser shall give one business day's notice of the time and place of

making the appraisal to counsel of record. The appraiser shall promptly file the appraisal with the clerk and serve it upon counsel of record. The appraiser's fee shall be paid in the first instance by the moving party, but it is taxable as an administrative cost of the action.

LAR E(10) Security Deposit for Seizure of Vessels. The first party who seeks arrest or attachment of a vessel or property aboard a vessel shall deposit a sum deemed sufficient by the Marshal to cover the expenses of the Marshal including, but not limited to, dockage, keepers, maintenance, and insurance. The Marshal is not required to execute process until the deposit is made. The party shall advance additional sums from time to time ~~as requested~~ at the Marshal's request to cover ~~the Marshal's estimated expenses until the property is released or disposed of as provided in Supplemental Rule E.~~ ~~Any~~ A party who fails to advance such additional costs as required by the Marshal may not participate further in the proceedings except by order of the court. The Marshal may, upon notice to all parties, petition the court for an order to be issued forthwith releasing the vessel if additional sums are not advanced within three business days ~~of~~ after the initial request for additional ~~sums.~~

LAR E(11) Intervenor's Claims.

- (a) Presentation of Claim. When a vessel or other property has been arrested, attached, or garnished and is in the hands of the Marshal or custodian substituted therefor, anyone having a claim against the vessel or property is required to present it by filing an intervening complaint and obtaining a warrant of arrest, and not by filing an original complaint unless otherwise ordered by a judicial officer. No formal motion is required. The intervening party shall serve a copy of the intervening complaint and warrant of arrest upon all parties to the action and shall forthwith deliver a conformed copy of the complaint and warrant of arrest to the Marshal, who shall deliver the copies to the vessel or custodian of the property. Intervenor's shall

thereafter be subject to the rights and obligations of parties, and the vessel or property shall stand arrested, attached, or garnished by the intervenor. An intervenor shall not be required to advance a security deposit to the Marshal for the intervenor's seizure of a vessel as required by LAR (E)(10).

- (b) Sharing Marshal's Fees and Expenses. An intervenor shall owe a debt to the preceding plaintiffs and intervenors, enforceable on motion, consisting of the intervenor's share of the Marshal's fees and expenses in the proportion that the intervenor's claim ~~against the property~~ bears to the sum of all the claims asserted against the property. If any party plaintiff permits vacation of an arrest, attachment, or garnishment, the remaining plaintiffs shall share the responsibility to the Marshal for fees and expenses in proportion to the remaining claims asserted against the property and for the duration of the Marshal's custody because of each such claim.

LAR E(12) Custody of Property.

- (a) Safekeeping of Property. When a vessel or other property is brought to the Marshal's custody by arrest or attachment, the Marshal shall arrange for adequate safekeeping, which may include the placing of keepers on or near the vessel. A substitute custodian in place of the Marshal may be appointed by order of the court. ~~An application seeking appointment of a substitute custodian shall be on notice to all parties and the Marshal, and~~ Notice of the application to appoint a substitute custodian must be given to all parties and the Marshal. The application must show the name of the proposed substitute custodian, the fee, if any, to be charged by the proposed substitute custodian, the location of the vessel during the period of ~~such~~ custody, and ~~that adequate~~ the proposed insurance coverage ~~is in place.~~
- (b) Insurance. The Marshal may order insurance to protect the Marshal, his deputies, keepers, and substitute custodians from liabilities assumed in arresting and holding the vessel, cargo, or other property and in performing whatever services may be

undertaken to protect the vessel, cargo, or other property, and in maintaining the court's custody. The arresting or attaching party shall reimburse the Marshal for premiums paid for the insurance and, where possible, shall be named as an additional insured on the policy. ~~A~~ The party who applies for removal of the vessel, cargo, or other property to another location for designation of a substitute custodian or for other relief that will require an additional premium shall reimburse the Marshal therefor. The premiums charged for the liability insurance shall be paid in the first instance by the initial party obtaining the arrest and holding of the property but are taxable as administrative costs of the action while the vessel, cargo, or other property is in custody of the court.

(c) Cargo Handling, Repairs, and Movement of the Vessel.

- (1) Following arrest or attachment of a vessel, cargo handling shall be permitted to commence or continue unless otherwise ordered by the court. No movement of or repairs to the vessel shall take place without order of the court. The applicant for an order ~~under this rule~~ shall give notice to the Marshal and to all parties of record.
- (2) Insurance. ~~Upon any application under (c)(1) above, the moving party shall obtain and provide proof of adequate insurance coverage of the moving party to indemnify the Marshal for any liability arising out of such activity, and any such activity shall be at the cost and expense of the moving party, and shall not be taxable as an administrative cost of the action, unless otherwise ordered by the Court. Before or after the Marshal has taken custody of a vessel, cargo or other property, any party of record may move for an order to dispense with keepers or to remove or place the vessel, cargo, or other property at a specified facility, to designate a substitute custodian, or for similar relief. If an applicant shows adequate insurance to indemnify the Marshal for liability, the court may order the Marshal to permit cargo~~

handling, repairs, or movement of the vessel, cargo, or other property. The costs and expenses of such activities shall be borne as ordered by the court. Any party of record may move for an order to dispense with keepers or to remove or place the vessel, cargo, or other property at a specified facility, to designate a substitute custodian, or for similar relief. Notice of the motion shall be given to the Marshal and to all parties of record. The judicial officer will require that adequate insurances on the property will be maintained by the successor to the Marshal before issuing the order to change arrangements.

- (d) Claims by Suppliers for Payment of Charges. A person who furnishes supplies or services to a vessel, cargo, or other property in custody of the court who has not been paid and claims the right to payment as an expense of administration shall submit an invoice to the clerk in the form of a verified claim at any time before the vessel, cargo, or other property is released or sold. The supplier must serve copies of the claim on the Marshal, substitute custodian if one has been appointed, and all parties of record. The court may consider the claims individually or schedule a single hearing for all claims.

LAR E(13) Sale of Property.

- (a) Notice. Unless otherwise ordered upon good cause shown or as provided by law, notice of sale of property in an action *in rem* shall be published ~~as provided in LAR (g)(2)~~ on at least four days between three and thirty-one days prior to the day of the sale.
- (b) Payment of Bid. These provisions apply unless otherwise ordered in the order of sale:
- (1) The person whose bid is accepted shall immediately pay the Marshal the full purchase price if the bid is \$1000 or less.

- (2) If the bid exceeds \$1,000, the bidder shall immediately pay a deposit of at least \$1,000 or 10% of the bid, whichever is greater, and shall pay the balance within three ~~court~~ days after the day on which the bid was accepted.
- (3) If an objection to the sale ~~or any upset bid permitted by the order of sale is filed within that period~~ is filed within the period in LAR E(13)(b)(2), the bidder is excused from paying the balance of the purchase price until three ~~court~~ days after the sale is ~~approved~~ confirmed.
- (4) Payment shall be made in cash, by certified check, or by cashier's check drawn on banks insured by the Federal Deposit Insurance Corporation or the ~~Federal Savings and Loan Insurance Corporation.~~
- (c) Late Payment. If the successful bidder does not pay the balance of the purchase price within the time allowed, the bidder shall pay the Marshal the cost of keeping the property from the due date until the balance is paid, and the Marshal may refuse to release the property until this charge is paid.
- (d) Default. If the successful bidder does not pay the balance of the purchase price within the time allowed, the bidder shall be in default, and ~~In such a case,~~ the judicial officer may accept the second highest bid or arrange a new sale. The defaulting bidder's deposit shall be forfeited and applied to any additional costs incurred by the Marshal because of the default, the balance being retained in the registry of the court awaiting ~~further order of the Court~~ its order.
- (e) Report of the Sale by Marshal. At the conclusion of the sale, the Marshal shall forthwith file a written report with the court setting forth the notice given of: the fact of sale; the date of the sale; the names, addresses, and bid amounts of the bidders; the

price obtained; and any other pertinent information.

- (f) Time and Procedure for Objection to Sale. An interested person may object to the sale by filing a written objection with the clerk within three court days following the sale, serving the objection on all parties of record, the successful bidder, and the Marshal, and depositing a sum with the Marshal that is sufficient to pay the expense of keeping the property for at least seven calendar days. ~~If additional custodial expenses are required, the objector must furnish same forthwith, failing which, the objection shall be immediately dismissed.~~ Payment to the Marshal shall be in cash, certified check, or cashier's check drawn on banks insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation. The court shall hold a hearing on the confirmation of the sale.
- (g) Confirmation of Sale. ~~Unless an~~ If no objection to the sale is has been filed, ~~or any~~ upset bid permitted by and conforming to the terms provided in the order of sale is filed, within three court days of the sale, the sale shall be deemed confirmed without further confirmed by order of the court no sooner than 3 days after the sale and no later than 5 days after the sale. The Marshal shall transfer title to the purchaser upon the order of the court. ~~the clerk shall prepare and deliver to the Marshal a certificate of confirmation, and the Marshal shall transfer title to the purchaser forthwith. If an objection or upset bid is filed, the Court shall hold a hearing on the confirmation of the sale, and the Marshal shall transfer title to the confirmed purchases only upon further order of the Court.~~
- (h) Disposition of Deposits.
- (1) Objection Sustained. ~~If an~~ If the objection is sustained, sums deposited by the successful bidder will be returned to the bidder forthwith. The sum deposited by the objector will be applied to pay the fees and expenses incurred by the Marshal in keeping the property until it is resold, and any balance remaining

shall be returned to the objector. The objector will be reimbursed for the expense of keeping the property from the proceeds of a subsequent sale for any expense of keeping the property.

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

LARE(14) Presentation of Matters. If the judge to whom a case has been assigned is not readily available, any matter under the Local Admiralty Rules may be presented to any other judge in the district without reassigning the case.

LAR F Limitation of Liability.

LAR F(1) Security for Costs. The amount of security for costs under ~~Supplemental Rule F(1)~~ shall be \$1,000, and its security for costs may be combined with the security for value and interest unless otherwise ordered.

LAR F(2) Order of Proof at Trial. In an action where ~~the vessel interests seeking statutory limitation of liability have raised the statutory defense by way of answer or complaint~~ seek to limit their liability, the plaintiff in the former or the party asserting a claim against the vessel or owner in the latter shall proceed with its proof first, as is normal at civil trials the damage claimants shall offer their proof first, whether the right to limit arises as a claim or as a defense.

LAR G Special Rules.

~~LAR G(1) Assignment of Actions. If the judge to whom a case has been assigned is not readily available, any matter under the Local Admiralty Rules may be presented to any other~~

~~judge in the district without reassigning the case.~~

LAR G(2 1) Newspapers for Publishing Notices. Unless otherwise ordered by the court, every notice required to be published under the Local Admiralty Rules or any rules or statutes applying to admiralty and maritime proceedings shall be published in the following newspaper[s] of general circulation in the district:

*Beaumont Enterprise*

LAR G(3 2) Use of State Procedures. When the plaintiff invokes a state procedure in order to attach or garnish as permitted by the Federal Rules of Civil Procedure or the Supplemental Rules for Certain Admiralty and Maritime Claims, the process of attachment or garnishment shall identify the state law upon which the attachment or garnishment is based.

*Comment:* The language adjustments above conform the existing Local Maritime Rules to the latest version of the Model Maritime Rules, promulgated in 2008. The court decided not to implement the Model Rule language in the first sentence of LAR E(10), as the existing rule language was deemed to be less ambiguous and more helpful than the recommended language.

## 11. APPENDIX M – PATENT RULES

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### 2. GENERAL PROVISIONS

#### 2-1. Governing Procedure.

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- (c) Electronic Filings. All patents attached as exhibits to any filing submitted electronically shall be in searchable PDF format. Any other documents attached as exhibits to any filing submitted electronically should be in searchable PDF format whenever possible.

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#### 4. CLAIM CONSTRUCTION PROCEEDINGS

\* \* \* \* \*

##### 4-5. Claim Construction Briefs.

- (a) Not later than 45 days after serving and filing the Joint Claim Construction and Pre-hearing Statement, the party claiming patent infringement shall serve and file an opening brief and any evidence supporting its claim construction. All asserted patents shall be attached as exhibits to the opening claim construction brief in searchable PDF form.

*Comment:* New Section (c) to PR 2-1 requires all patents to be in searchable PDF form, and recommends that all other exhibits be submitted in searchable PDF form whenever possible.

Filing potentially lengthy electronic documents in word searchable format is a great advantage to both the bench and the bar.

The amendment to PR 4-5(a) is aimed solely at claim construction, and requires any party asserting a claim of infringement to attach all patents to their opening claim construction brief in searchable PDF format.

Signed this 18th day of February, 2010.

FOR THE COURT:

A handwritten signature in cursive script, appearing to read "David Folsom", is written above a horizontal line.

DAVID FOLSOM  
Chief Judge