

GENERAL ORDER NO. 98-11

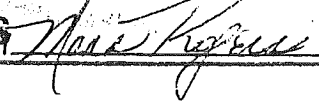
FILED  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF TEXAS

AUG 17 1998

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

DAVID J. MALAND, CLERK

BY  
DEPUTY



GENERAL ORDER ADOPTING LOCAL ADMIRALTY RULES

It is hereby ORDERED that new Local Rule CV-9 (attached), having been approved by the judges of the court, is hereby ADOPTED for immediate implementation. The new rule adopts Model Local Admiralty Rules recently approved by the Maritime Law Association of the United States as Appendix J to the local rules.

Signed this 12<sup>th</sup> day of August, 1998.

FOR THE COURT



RICHARD A. SCHELL  
Chief Judge

**Admiralty and Maritime Claims.** Admiralty and maritime claims in this court are governed by the Local Admiralty Rules, which appear as Appendix J to these rules.

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Appendix J

**UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS  
LOCAL ADMIRALTY RULES**

Local Admiralty Rule (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, "Court" means the

district court issuing these LARs; "judicial officer" means the United States district judge or a United States magistrate judge; "clerk of court" means the clerk of the court and includes deputy clerks of court; and "marshal" means the United States Marshal and includes deputy marshals; "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; "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.

Local Admiralty Rule (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.

Local Admiralty Rule (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) 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) 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 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 known 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.

Local Admiralty Rule (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.

Local Admiralty Rule (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 records, 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. 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.

LAR (e) (6) Property in Possession of United States Officer. 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. 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 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 \$[amount] with 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 to cover the marshal's estimated expenses until the property is released or disposed of as provided in Supplemental Rule E. Any 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 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 obtain 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. Interveners 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 plaintiff permits vacation of an arrest, attachment, or garnishment, the remaining plaintiffs shall share the responsibility to the marshal for fees and expense 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 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 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 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) (1) Cargo Handling, Repairs, and Movement of the Vessel. 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. 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 a 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) at least [number] times during the period of time consisting of [days] prior to the day of the sale.
- (b) Payment of Bid. These provisions apply unless otherwise ordered in the order of sale: The person whose bid is accepted shall immediately pay the marshal the full purchase price if the bid is \$1000 or less. If the bid exceeds \$1000, the bidder shall immediately pay a deposit of at least \$1000 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. If an objection to the sale or any upset bid permitted by the order of sale is filed within that period, the bidder is excused from paying the balance of the purchase price until three court days after the sale is approved. 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. 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.

- (e) Report of the Sale by Marshal. At the conclusion of the sale, the marshal shall forthwith file a written report with the Court of the fact of sale, the date, the names and addresses, and bid amounts of the bidders, 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.
- (g) Confirmation of Sale. Unless an objection to the sale is 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 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 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 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. Any balance remaining will be returned to the objector forthwith.

Local Admiralty Rule (f) Limitation of Liability.

LAR (f) (1) Security for Costs. The amount of security for costs under Supplemental Rule F(1) shall be \$1000, and it may be combined with the security for value and interest, unless otherwise ordered.

LAR (f) (2) Order of Proof at Trial. Where the vessel interests seeking statutory limitation of liability have raised the statutory defense by way of answer or complaint, 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.

Local Admiralty Rule (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) 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:

[name or names]

LAR (g) (3) 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.