

CHAPTER III - ADMIRALTY RULES

A.1. Scope.

The local admiralty rules apply only to civil actions that are governed by Fed. R. Civ. P., Supp. R. A (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.

A.2. Officers of Court.

As used in the local admiralty rules, "judicial officer" means a district judge or a magistrate judge; "clerk" means the Clerk of the District Court and includes deputy clerks; and "marshal" means United States Marshal and includes deputy marshals.

B.1. Affidavit that Defendant Is Not Found Within the District.

The affidavit required by Fed. R. Civ. P., Supp. R. B(1) to accompany the complaint shall list the efforts made by and on behalf of plaintiff to find and serve the defendant within the district.

C.1. Undertaking in Lieu of Arrest.

If, before or after commencement of suit, plaintiff accepts any written undertaking to respond on behalf of the vessel or other property sued in return for his foregoing the arrest or stipulating to the release of such vessel or other property, the undertaking shall become a defendant in place of the vessel or other property sued and be deemed referred to under the name of the vessel or other property in any pleading, order or judgment in the action referred to in the undertaking. The preceding shall apply to any such undertaking, subject to its own terms and whether or not it complies with local rules and has been approved by a district judge or clerk.

C.2. Intangible Property.

The summons issued pursuant to Fed. R. Civ. P., Supp. R. C(3) shall direct the person having control of intangible property to show cause no later than ten (10) 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 summons has the

effect of an arrest of the intangible property and brings it within the control of the court. The person who is served may deliver or pay over to the marshal 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. Claimants of the property may show cause as provided in Fed. R. Civ. P., Supp. R. C(6) why the property should not be delivered to or retained by the court.

C.3. Notice of Action and Arrest.

(a) Publication. The notice required by Fed. R. Civ. P., Supp. R. C(4) shall be published once in a newspaper to be specified by the United States District Court for the District of Hawaii, and plaintiff's attorney shall file a copy of the notice as it was published with the clerk. The notice shall contain:

1. The court, title, and number of the action;
2. The date of arrest;
3. The identity of the property arrested;
4. The name, address, and telephone number of the attorney for plaintiff;
5. A statement that the claim of a person who is entitled to possession or who claims an interest pursuant to Fed. R. Civ. P., Supp. R. C(6) must be filed with the clerk and served on the attorney for plaintiff (i) for proceedings governed by Admiralty Rule C(6)(b), within ten (10) days after publication, and (ii) for proceedings not governed by Admiralty Rule C(6)(b), within thirty (30) days after publication, unless a different time is set forth in Admiralty Rule C(6), in which event that different period controls;
6. A statement that an answer to the complaint must be filed and served within twenty (20) days after publication, and that otherwise, default may be entered and condemnation ordered;
7. A statement that applications for intervention under Fed. R. Civ. P. 24, by persons claiming maritime liens or other interests, shall be filed within the time fixed by the court; and
8. The name, address, and telephone number of the marshal.

(b) **Filing of Proof of Publication.** Plaintiff shall cause to be filed with the clerk no later than thirty (30) days after the date of publication sworn proof of publication by or on behalf of the publisher of the newspaper in which notice was published, together with a copy of the publication or reproduction thereof.

C.4. Default in Action In Rem.

(a) **Notice Required.** A party seeking a default judgment in an action *in rem* must show that due notice of the action and arrest of the property has been given in accordance with Fed. R. Civ. P., Supp. R. C(4).

(b) **Persons with Recorded Interests.** (1) If the defendant property is a vessel documented under the laws of the United States, the plaintiff must attempt to notify all persons named in the United States Coast Guard certificate of ownership. (2) If the defendant property is of such character that there exists a governmental registry of recorded property interests or security interests in the property, the plaintiff must attempt to notify all persons named in the records of each such registry.

C.5. Entry of Default and Default Judgment.

After the time for filing an answer has expired, the plaintiff may apply for entry of default under Fed. R. Civ. P. 55(a). Default will be entered upon showing that:

(a) notice has been given as required by LRC.4(a), and

(b) notice has been attempted as required by LRC.4(b), where appropriate, and

(c) the time for answer has expired, and

(d) no one has appeared to claim the property. Judgment may be entered, under Fed. R. Civ. P. 55(b), at any time after default has been entered.

D.1. Return Date.

In an action under Fed. R. Civ. P., Supp. R. D, a judicial officer may order that the claim and answer be filed on a date earlier than twenty (20) days after arrest. The order may also set a date for expedited hearing of the action.

E.1. Itemized Demand for Judgment.

The demand for judgment in every complaint filed under Fed. R. Civ. P., Supp. R. B or C, except a demand for salvage award, shall allege the dollar amount of the debt of 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 Fed. R. Civ. P., Supp. R. E(5) (a) may be based upon these allegations.

E.2. Verification of Pleadings.

Every complaint in Fed. R. Civ. P., Supp. R. 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 in accordance with Hawaii law. 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 corporate officer, any interested party may move, with or without requesting a stay, for the personal oath of a party or an authorized corporate officer, which shall be procured by commission or as otherwise ordered.

E.3. Review by Judicial Officer.

(a) Authorization to Issue Process. Except in actions by the United States for forfeitures, before the clerk will issue a summons and process of arrest, attachment, or garnishment to any party, including intervenors, under Fed. R. Civ. P., Supp. R. B and C, the pleadings, the affidavit required by LRB.1, and accompanying supporting papers must be reviewed by a judicial officer. If the judicial officer finds the conditions set forth in Rules B or C appear to exist, as appropriate, the judicial officer shall authorize the clerk to issue process. Supplemental process or alias process may thereafter be issued by the clerk upon application without further order of the court.

(b) Exigent Circumstances. If the plaintiff or his attorney certifies by affidavit submitted to the clerk that exigent circumstances make review impracticable, the clerk shall issue a summons and warrant of arrest or process of attachment and garnishment. In actions by the United States for forfeitures for federal statutory violations, the clerk, upon filing of the complaint, shall forthwith issue a summons and warrant for the arrest of the vessel or other property without requiring a certification of exigent circumstances.

(c) **Personal Appearance.** Unless otherwise required by the judicial officer, the review by the judicial officer will not require the presence of the applicant or its attorney but shall be based upon the pleadings and other papers submitted on behalf of that party.

(d) **Order.** Upon approving the application of arrest, attachment, or garnishment, the judicial officer will issue an order to the clerk authorizing the clerk to issue an order for arrest, attachment, or garnishment. The form of the order of arrest, attachment, or garnishment shall be submitted with the other documents for review.

(e) **Request for Review.** Except in the case of exigent circumstances, application for review shall be made by filing a Notice of Request for Review in Accordance with Supplemental Rule B or C with the clerk and stating therein the process sought and any time requirements within which the request must be reviewed. The clerk shall contact the judicial officer to whom the matter is assigned to arrange for the necessary review. It will be the duty of the applicant to ensure that the application has been reviewed and, upon approval, presented to the clerk for issuance of the appropriate order.

E.4. Process Held in Abeyance.

If a party does not wish the process to be issued at the time of filing the action, the party shall request issuance of process be held in abeyance. It will not be the responsibility of the clerk or marshal to ensure that process is issued at a later date.

E.5. Service by Marshal Required.

Only a marshal shall arrest or attach a vessel, cargo, or other tangible property.

E.6. Instructions to the Marshal.

The party who requests a warrant of arrest or process of attachment or garnishment shall provide instructions to the marshal.

E.7. 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 to the property until ordered to do otherwise by a judicial officer.

E.8. 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 Fed. R. Civ. P., Supp. R. E(2)(b). Unless otherwise ordered, the amount of security shall be \$500.00. The party so ordered shall post the security with the clerk at the time the process is presented to the clerk for filing. 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.

E.9. Adversary Hearing.

The adversary hearing following arrest or attachment or garnishment that is called for in Fed. R. Civ. P., Supp. R. E(4)(f) shall be conducted upon three (3) days' written notice to plaintiff, unless otherwise ordered. This rule shall have no application to suits for seamen's wages when process is issued upon a certification of sufficient cause filed pursuant to 46 U.S.C. §§ 603 and 604 or to action by the United States for forfeitures.

E.10. 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 will be paid by the moving party, unless otherwise ordered or agreed that it is a taxable cost of the action.

E.11. Security Deposit for Arrest or Attachment of Vessels.

The first party who seeks arrest or attachment of a vessel or property aboard a vessel shall deposit with the marshal the sum estimated by the marshal to be sufficient to cover the expenses of the marshal including, but not limited to, dockage, keepers, maintenance, and insurance for at least ten (10) days. 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 Fed. R. Civ. P., Supp. R. E.

E.12. 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 the claim by filing an intervening complaint, and not by filing an original complaint, unless otherwise ordered by a judicial officer. The clerk shall forthwith deliver a conformed copy of the complaint in intervention and the intervenor's warrant of arrest or process of attachment or garnishment to the marshal, who shall deliver the same 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.

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

E.13. Custody of Property.

(a) Safekeeping of Property. When a vessel, cargo, or other property is brought into 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.

(b) Insurance. The marshal may procure insurance to protect the marshal, the 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 to maintain the court's custody. 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 are taxable as administrative costs while the vessel, cargo, or other property is in custody of the court.

(c) Vessel Operations. Following arrest or attachment of a vessel, no cargo handling, repairs, or movement may be made without an order of court. The applicant for such an order shall give notice to the marshal and to all parties of record. Upon proof of adequate insurance coverage of the applicant to indemnify the marshal for liability, the court may direct the marshal to permit cargo handling, repairs, movement of the vessel, or other operations. 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 shall require that adequate insurance 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 file an invoice with 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.

E.14. Sale of Property.

(a) Notice. Notice of sale of arrested or attached property shall be published in one or more newspapers to be specified in the order for sale. Unless otherwise ordered by a district judge upon a showing of urgency or impracticality or unless otherwise

provided by law, such notice shall be published for at least six (6) days before the date of sale.

(b) Payment of Bid. Unless otherwise provided in the order, in all public auction sales by the marshal under orders of sale in admiralty and maritime claims, the marshal shall require of the last and highest bidder at the sale a minimum deposit in cash, certified check, or cashier's check, of the full purchase price if it does not exceed \$500.00, and otherwise \$500.00 or 10 percent of the bid, whichever is greater. The balance, if any, of the purchase price shall be paid in cash, certified check, or cashier's check within three (3) days after confirmation of the sale or within three (3) days of the dismissal of any opposition which may have been filed, exclusive of Saturdays, Sundays, and legal holidays. Notwithstanding the above, a plaintiff or intervening plaintiff foreclosing a properly recorded and endorsed preferred mortgage on, or other valid security interest in, the vessel may bid, without payment of cash, certified check or cashier's check, up to the total amount of the secured indebtedness as established by affidavit filed and served by that party on all other parties no later than ten (10) days prior to the date of sale.

(c) Confirmation of Sale. A sale shall be confirmed by order of the court within five (5) court days but no sooner than three (3) court days after the sale unless an objection to the sale has been filed, in which case the court shall hold a hearing on the confirmation of the sale. The marshal shall transfer title to the purchaser upon the order of the court.

(d) Penalty for Late Payment of Balance. A successful bidder who fails to pay the balance of the bid within the time allowed under these rules, or a different time specified by the court, shall also pay the marshal the costs of keeping the property from the date payment of the balance was due to the date the bidder pays the balance and takes delivery of the property. Unless otherwise ordered by the court, the marshal shall refuse to release the property until this additional charge is paid.

(e) Penalty for Default in Payment of Balance. A successful bidder who fails to pay the balance of the bid within the time allowed is in default, and the court may at any time thereafter order a sale to the second highest bidder or order a new sale as appropriate. Any sum deposited by the bidder in default shall be applied to pay any additional costs incurred by the marshal by reason of the default, including costs incident to resale. The balance of the deposit, if any, shall be retained in the registry subject to further order of the court, and the court shall be

given written notice of its existence whenever the registry deposits are reviewed.

(f) Opposition to Sale. A party filing an opposition to the sale, whether seeking the reception of a higher bid or a new public sale by the marshal, shall give prompt notice to all other parties and to the purchaser. Such party shall also, prior to filing an opposition, secure the marshal's endorsement upon it acknowledging deposit with the marshal of the necessary expense of keeping the property for at least five (5) days. Pending the court's determination of the opposition, such party shall also advance any further expense at such time and in such amounts as the marshal shall request, or as the court orders upon application of the marshal or the opposing party. Such expense may later be subject to taxation as costs. In the event of failure to make such advance, the opposition shall fail without necessity for affirmative action thereon by the court. If the opposition fails, the expense of keeping the property during its pendency shall be borne by the party filing the opposition.

(g) Disposition of Deposits.

1. **Objection Sustained.** If an objection is sustained, sums deposited by the successful bidder shall 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.

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.

(h) Title to Property. Failure of a party to give the required notice of the action and arrest of the vessel, cargo, or other property, or required notice of the sale, may afford ground for objecting to the sale but does not affect the title of a bona fide purchaser of the property without notice of the failure.