

## APPENDIX A

### 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, 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” means the clerk of the district court and includes deputy clerks of court; 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 (a)(5) Bonds. When a bond is posted under the Local Admiralty Rules for any reason, it should be electronically filed in the case by the posting party. The paper original of the bond shall be retained by the posting party unless otherwise directed by the court.

#### **Local Admiralty Rule (b). Maritime Attachment and Garnishment.**

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.

**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)(c) shall direct the person having control of intangible property to show cause no later than seven 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 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. 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 fourteen days after publication;
- (F) A statement that an answer to the complaint must be filed and served within twenty-one days after filing the statement of ownership interest in the property or right of possession, 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 thirty days after publication; 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 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 Rule D, a judicial officer may order that the statement of interest and answer be filed on a date earlier than twenty-one 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 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 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 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 Rules B(1) and C(3) does not require the affiant 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 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) 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 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 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 Rule E(2)(b). Unless otherwise ordered, the amount of security shall be \$500. The party so ordered shall post the security within seven 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 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 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 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 security deposit for seizure of a vessel or property aboard a vessel is \$5,000 if there is a substitute custodian, and \$10,000 if the vessel or property is to remain in the custody of the Marshal. The Marshal is not required to execute process until the deposit is made. The party shall advance additional sums from time to time at the Marshal's request to cover estimated expenses. 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 days after the initial request.

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. Intervenor 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), but will receive the funds back, less the intervenor's share of the Marshal's fees and expenses as stated in LAR (e)(11)(B).

- (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 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. 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 custody, and the proposed insurance coverage.
- (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. 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) (i) Cargo Handling, Repairs, and Movement of the Vessel. Following arrest or attachment of a vessel, cargo handling will cease unless an order of the court is received by the Marshal. 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.
- (ii) Insurance. 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 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 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:

- (i) The person whose bid is accepted shall immediately pay the Marshal the full purchase price if the bid is \$1000 or less.
  - (ii) 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 days.
  - (iii) If an objection to the sale is filed within the period in LAR (e)(13)(H)(ii), the bidder is excused from paying the balance of the purchase price until three days after the sale is confirmed.
  - (iv) Payment shall be made by certified check or by cashier's check.
- (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 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 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 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 days. Payment to the Marshal shall be by certified check or cashier's check. The court shall hold a hearing on the confirmation of the sale.
- (G) Confirmation of Sale. If no objection to the sale has been filed, the sale shall be confirmed by order of the court no sooner than three days nor later than five days from the court's receipt of the Marshal's written report. The Marshal shall transfer title to the purchaser upon the order of the court.

(H) Disposition of Deposits.

- (i) 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.
- (ii) 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.

LAR (e)(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.

**Local Admiralty Rule (f) Limitation of Liability.**

LAR (f)(1) Security for Costs. The amount of security for costs under Rule F(1) shall be \$1,000, and 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 vessel interests seek to limit their liability, the damage claimants shall offer their proof first, whether the right to limit arises as a claim or as a defense.

**Local Admiralty Rule (g) Special Rules.**

LAR (g)(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)(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.