

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

IN RE:
AMENDMENTS TO THE LOCAL RULES -
NOTICE OF PROPOSED AMENDMENTS,
OF OPPORTUNITY FOR PUBLIC COMMENTS,
AND OF HEARING TO RECEIVE COMMENTS

Administrative Order 2010-146
FILED by WJZ D.C.
DEC - 7 2010
/ STEVEN M. LARIMORE
CLERK U. S. DIST. CT.
S. D. of FLA. - MIAMI

The Court's Ad Hoc Committee on Rules and Procedures has recommended that this Court amend the Local Rules, the Rules Governing Attorney Discipline, and the Admiralty Rules. In accordance with Fed. R. Civ. P. 83(a)(1) and Fed. R. Crim. P. 57(a)(1), it is hereby

ORDERED that the Clerk of the Court is directed, for the next 30 days: (a) to publish this Order (without the attachments) three times per week in the Daily Business Review (in the editions published in Miami-Dade, Broward, and Palm Beach Counties, Florida); and (b) to offer every person who files any papers in any action in this Court, and to give to anyone who so desires, a copy of this Order with the attached proposed rule amendments.

IT IS FURTHER ORDERED that the Court will conduct an *en banc* public hearing on the proposed rule amendments on the 20th day of January, 2011, at two o'clock p.m. at the Wilkie D. Ferguson, Jr. United States Courthouse, 400 North Miami Avenue, Miami, Florida, in Courtroom 13-3. Those who desire to appear and offer oral comments on the proposed rule amendments at this hearing shall file written notice to that effect with the Clerk of the Court no later than five days prior to the hearing. Those who desire to offer only written comments on the proposed rule amendments must file their written comments with the Clerk of the Court no later than ten days prior to the hearing.

DONE AND ORDERED in Chambers at Miami, Florida this 6th day of December, 2010.



FEDERICO A. MORENO
CHIEF UNITED STATES DISTRICT JUDGE

Copies to:

Honorable Joel F. Dubina, Chief Judge, United States Court of Appeals for the Eleventh Circuit
All Southern District Judges and Magistrate Judges
James P. Gerstenlauer, Circuit Executive, Eleventh Circuit
Thomas Meeks, Chair, Ad Hoc Committee on Rules and Procedures
Kevin Jacobs, Vice Chair, Ad Hoc Committee on Rules and Procedures
All members of the Ad Hoc Committee on Rules and Procedures
Library
Daily Business Review

Rule 5.1 Filing and Copies

(a) Form of Conventionally Filed Documents. All civil and criminal pleadings, motions, and other papers exempted from the requirement that they be filed via CM/ECF and instead tendered for conventional (non-CM/ECF) filing shall:

(1) Be bound only by easily-removable paper or spring-type binder clips, and not stapled or mechanically bound or fastened in any way. Voluminous pleadings, motions, or documents may be bound with a rubber band. Attachments may not be tabbed; reference characters should be printed or typed on a blank sheet of paper separating each attached document.

(2) When filing a civil complaint for which issuance of initial process is requested, one (1) copy of the complaint must be submitted for each summons.

(3) Be on standard size 8-1/2" × 11" white, opaque paper.

(4) Be plainly typed or written on one (1) side with 1" margins on top, bottom, and each side. All typewritten documents, except for quoted material of fifty words or more and footnotes, both of which may be single-spaced, shall have not less than one and one-half (1 1/2) spaces between lines. Fonts for typewritten documents, including footnotes and quotations, must be no smaller than twelve (12) point. All typewritten documents must be paginated properly and consecutively at the bottom center of each page. Only one (1) side of the paper may be used.

(5) Include a caption with:

(A) The name of the Court centered across the page;

(B) The docket number, category (civil or criminal), and the last names of the assigned District Judge and Magistrate Judge, centered across the page;

(C) The style of the action, which fills no more than the left side of the page, leaving sufficient space on the right side for the Clerk of the Court to affix a filing stamp; and

(D) The title of the document, including the name and designation of the party (as plaintiff or defendant or the like) on whose behalf the document is submitted, centered across the page.

Exception:

The requirements of (a)(3)-(a)(5) do not apply to: (i) exhibits submitted for filing; (ii) papers filed in removed actions prior to removal from the state courts; and (iii) forms

provided by the Court.

(6) Include (A) a signature block with the name, street address, telephone number, facsimile telephone number, e-mail address, and Florida Bar identification number of all counsel for the party and (B) a certificate of service that contains~~which refers to an attached Service List containing~~ the name, street address, telephone number, facsimile telephone number, and e-mail address of all counsel for all parties, including the attorney filing the pleading, motion, or other paper. *See* Form following this Local Rule.

(7) Not be transmitted to the Clerk of the Court or any Judge by facsimile telecopier.

(8) Be submitted with sufficient copies to be filed and docketed in each matter if styled in consolidated cases.

(b) Form of CM/ECF Filed Documents. Except those documents exempted under Section 5 of the CM/ECF Administrative Procedures, all documents required to be served ~~upon a party after the complaint~~ shall be filed in compliance with the CM/ECF Administrative Procedures; however, pro se parties are exempted from this requirement pursuant to Section 2C of the CM/ECF Administrative Procedures. The requirements of paragraphs (a)(2)-(a)(5) above shall apply to documents filed via CM/ECF. *See* Section 3A of the CM/ECF Administrative Procedures.

(c) Restriction on Courtesy Copies. Counsel shall not deliver extra courtesy copies to a Judge's Chambers except when requested by a Judge's office.

(d) Notices of Filing; Form and Content. The title of a notice of filing shall include (1) the name and designation of the party (as plaintiff or defendant or the like) on whose behalf the filing is submitted, and (2) a description of the document being filed. A notice of filing shall identify by title the pleading, motion or other paper to which the document filed pertains and the purpose of the filing, such as in support of or in opposition to a pending motion or the like.

Effective Dec. 1, 1994; amended effective April 15, 1996; April 15, 1998; April 15, 1999; April 15, 2000; April 15, 2001; paragraph E added effective April 15, 2003; April 15, 2007; April 15, 2009; April 15, 2011.

Authority

(1993) Former Local Rule 7; Model Rule 5.1; Administrative Order 90-64 (A.6, B).

Comments

(1993) Telecopies not permitted to be filed. Adds reference to number of copies required for issuance of summonses, per Clerk's Office. Adds restriction on courtesy copies.

(1994) The addition of counsel's facsimile telephone number in A.6 is consistent with the

Local Rule amendment to permit counsel to serve each other via facsimile transmission. The other changes are grammatical or designed to make the Local Rule gender neutral.

(1996) In recognition of the logistical problems posed by the requirement that papers must be filed with the Clerk of the Court where the assigned Judge is chambered, the Local Rule is amended to make clear that filing within three business days after service is reasonable under Federal Rule of Civil Procedure 5(d). The pre-1993 version of Local Rule 7.B. required filing of papers either before service or within five days thereafter.

(1999) Subsection A has been rewritten to conform to current practice and the format of most word processors. The Clerk's Office prefers the new format because it reserves ample space for the filing stamp. Former subsections A.2, A.3 and A.4 are rewritten and renumbered, effecting changes in clarity, not substance. An updated sample form is appended to the Local Rule, replacing the old form. Despite a stylistic change, subsection C continues to refer to both District Judges and Magistrate Judges.

(2000) Amendments to subpart 5(a) dispenses with the need for reference to the Division of the Court to avoid confusion resulting from the requirement to file papers, in accordance with Local Rule 5.1.B, in the Division where the assigned Judge is chambered, which is different from the Division in which the case is venued. A corresponding change is made to the sample form following the Local Rule.

(2001) The amendments to Subsection A are intended to facilitate the process of document imaging by reducing the time spent on disassembling documents in preparation for scanning and decreasing the frequency of equipment failure caused by undetected fastening material.

(2003) The addition of Local Rule 5.1.D is intended to assist the Court in understanding the purpose for which materials are filed.

(2007) Amended to conform to CM/ECF Administrative Procedures by making distinction between form required for papers filed conventionally and those filed electronically (paragraphs A & B), eliminating the reference to three-judge court filings (paragraph C), and renumbering the paragraphs accordingly (D becomes C; E becomes D).

(2009) Amended to eliminate the requirement to file multiple copies of initial process, which CM/ECF renders unnecessary, and to supply additional formatting requirements for pleadings, motions, and other papers filed with the Court.

(2010) Amended to conform tabulation to the style used in the federal rules of procedure.

(2011) Amended to conform to Section 8 of the CM/ECF Administrative Procedures requiring electronic filing of original complaints and to eliminate suggested requirement that the Service List be on a separate page.

SAMPLE FORM FOLLOWING RULE 5.1

(Two hole punched at top of page)
(1" from top of page, and centered,
begin title of Court)

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. ____ -Civ or Cr-(USDJ's last name/USMJ's last name)

A.B.,

Plaintiff

~~{Leave space for
Clerk of the Court's filing stamp}~~

vs.

C.D.,

Defendant.

_____ /

TITLE OF DOCUMENT

Dated: Month, day, year

Respectfully submitted,

Attorney Name (Bar Number)

Attorney E-mail Address

Firm Name

Street Address

City, State, Zip Code

Telephone: (xxx)xxx-xxxx

Facsimile: (xxx)xxx-xxxx

Attorneys for Plaintiff/Defendant [Party

Name(s)]

Certificate of Service

I hereby certify that a true and correct copy of the foregoing was served by
[specify method of service] on [date] on all counsel or parties of record on the ~~attached~~
Service List below.

Attorney Name

SERVICE LIST

~~Case No. _____ Civ or Cr (USDJ's last name/USMJ's last name)~~

Attorney Name	Attorney Name
Attorney E-mail Address	Attorney E-mail Address
Firm Name	Firm Name
Street Address	Street Address
City, State, Zip Code	City, State, Zip Code
Telephone: (xxx)xxx-xxxx	Telephone: (xxx)xxx-xxxx
Facsimile: (xxx)xxx-xxxx	Facsimile: (xxx)xxx-xxxx
Attorneys for Plaintiff/Defendant [Party's Name(s)]	Attorneys for Plaintiff/Defendant [Party's Name(s)]

Effective Dec. 1, 1994; amended effective April 15, 1999; April 15, 2000; April 15, 2006; April 15, 2007; April 15, 2009; April 15, 2011.

Rule 5.2 Proof of Service and Service by Publication

(a) Certification of Service. Each pleading or paper required by Federal Rule of Civil Procedure 5 to be served on the other parties shall include a certificate of service that complies with Form B to the CM/ECF Administrative Procedures and, if service includes a method other than CM/ECF, that states the persons or firms served, their relationship to the action or proceeding, the date, method and address of service. Signature by the party or its attorney on the original constitutes a representation that service has been made.

~~**(b) Initial Process.** Initial process shall be issued by the Clerk's Office upon submission of an original and three (3) copies.~~ **Multiple Copies Unnecessary.** Any document permitted to be filed via CM/ECF, including the corporate disclosure statement required by Federal Rule of Civil Procedure 7.1, shall be deemed to have been delivered in multiple if multiple copies are required to be filed.

(c) Publication. Publication required by law or rule of court shall be made in a newspaper of general circulation. *The Daily Business Review* and such other newspapers as the Court from time to time may indicate are designated as official newspapers for the publication of notices pertaining to proceedings in this Court; provided, however, that publication shall not be restricted to the aforesaid periodicals unless an order for publication specifically so provides.

~~**(d) Service of Pleadings and Papers Subsequent to Original Complaint.** See Local Rule 7.1(a)(3)(A) and Administrative Order 2001-72 In Re: Repeal of Local Rule 5.2.D and the CM/ECF Administrative Procedures.~~

Effective Dec. 1, 1994. Amended effective December 1, 2001; April 15, 2007; April 15, 2011.

Authority

(1993) Former Local Rule 7; Model Rule 5.2 (does not require certificate of service); Clerk of the Court's administrative rule on issuance of initial process.

(1994) D. Rule 1.07(c), Local Rules, Middle District of Florida.

~~(2007) Amended to conform to CM/ECF Administrative Procedures and the form of certificate of service attached to those Procedures.~~

~~(2010) Amended to conform tabulation to the style used in the federal rules of procedure.~~

Comments

(2007) Amended to conform to CM/ECF Administrative Procedures and the form of certificate of service attached to those Procedures.

(2010) Amended to conform tabulation to the style used in the federal rules of procedure.

(2011) Amended to conform to Section 8 of the CM/ECF Administrative Procedures requiring electronic filing of original complaints.

RULE 7.1 MOTIONS, GENERAL

(a) Filing.

(1) Every motion when filed shall ~~incorporate include or be accompanied by~~ a memorandum of law citing supporting authorities, except that the following motions need not ~~incorporate be accompanied by~~ a memorandum:

- (A) petition for writ of habeas corpus ad testificandum or ad prosequendum;
- (B) motion for out-of-state process;
- (C) motion for order of publication for process;
- (D) application for default;
- (E) motion for judgment upon default;
- (F) motion to withdraw or substitute counsel;
- (G) motion for continuance, provided the good cause supporting it is set forth in the motion and affidavit required by Local Rule 7.6;
- (H) motion for confirmation of sale;
- (I) motion to withdraw or substitute exhibits;
- (J) motion for extensions of time providing the good cause supporting it is set forth in the motion;
- (K) motion for refund of bond, provided the good cause supporting it is set forth in the motion; and
- (L) application for leave to proceed in forma pauperis.

(2) Those motions listed in (a)(1) above shall be accompanied by a proposed order.

(3) *Pre-filing Conferences Required of Counsel.* Prior to filing any motion in a civil case, except a motion for injunctive relief, for judgment on the pleadings, for summary judgment, to dismiss or to permit maintenance of a class action, to dismiss for failure to state a claim upon which relief can be granted, or to involuntarily dismiss an action, counsel for the movant shall confer (orally or in writing), or make reasonable effort to confer (orally or in writing), with all parties or non-parties who may be affected by the relief sought in the motion in a good faith effort to resolve by agreement the issues to be raised in the motion. Counsel

conferring with movant's counsel shall cooperate and act in good faith in attempting to resolve the dispute. At the end of the motion, and above the signature block, counsel for the moving party shall certify either: (A) that counsel for the movant has conferred with all parties or non-parties who may be affected by the relief sought in the motion in a good faith effort to resolve the issues raised in the motion and has been unable to do so; or (B) that counsel for the movant has made reasonable efforts to confer with all parties or non-parties who may be affected by the relief sought in the motion, which efforts shall be identified with specificity in the statement, but has been unable to do so. If certain of the issues have been resolved by agreement, the certification shall specify the issues so resolved and the issues remaining unresolved. Failure to comply with the requirements of this Local Rule may be cause for the Court to grant or deny the motion and impose on counsel an appropriate sanction, which may include an order to pay the amount of the reasonable expenses incurred because of the violation, including a reasonable attorney's fee. See sample forms following this Local Rule.

(c) Memorandum of Law. ~~Except with respect to a response or reply to a motion for summary judgment, the time of which is governed by Federal Rule of Civil Procedure 56 unless otherwise ordered, e~~Each party opposing a motion shall serve an opposing memorandum of law no later than fourteen (14) days after service of the motion. Failure to do so may be deemed sufficient cause for granting the motion by default. The movant may, within seven (7) days after service of an opposing memorandum of law, serve a reply memorandum in support of the motion, which reply memorandum shall be strictly limited to rebuttal of matters raised in the memorandum in opposition without reargument of matters covered in the movant's initial memorandum of law. No further or additional memoranda of law shall be filed without prior leave of Court.

(1) *Time.* Time shall be computed under this Local Rule as follows:

(A) If the motion or memorandum was served by mail or filed via CM/ECF, count fourteen (14) days (seven (7) days for a reply) beginning the day after the motion, response, or memorandum was certified as having been mailed or filed via CM/ECF. If the last day falls on a Saturday, Sunday, or legal holiday, the period continues to run until the next business day. Beginning on the next calendar day, including Saturday, Sunday, or a legal holiday, count three (3) days. The third day is the due date for the opposing memorandum or reply. If the third day falls on a Saturday, Sunday, or legal holiday, the due date is the next business day.

(B) If, in addition to being filed via CM/ECF, the motion or memorandum was served by hand delivery, count fourteen (14) days (seven (7) days for a reply) beginning the day after the motion, response, or memorandum

was hand-delivered. The fourteenth or seventh day is the due date for the opposing memorandum or reply, respectively. If the due date falls on a Saturday, Sunday, or legal holiday, the due date is the next business day.

(2) *Length.* Absent prior permission of the Court, neither a motion and its incorporated memorandum of law nor the opposing memorandum of law shall exceed twenty (20) pages; a reply memorandum shall not exceed ten (10) pages-in length. Title pages preceding the first page of text-in-a-memorandum, signature pages, certificates of good faith conferences, and certificates of service shall not be counted as pages for purposes of this rule. The practice of filing multiple motions for partial summary judgment shall be prohibited, absent prior permission of the Court.

(3) *Supporting and Opposing Materials.* To the extent a party wants the Court to consider affidavits, declarations, or other materials in support of or in opposition to the motion, then:

(A) the movant must serve with the motion all such materials; and (B) the opposing party must serve with the opposing memorandum all such materials in opposition to the motion. The movant may serve a reply memorandum with affidavits, declarations, or other materials provided that all such materials are strictly limited to rebuttal of matters raised in the opposing memorandum.

Effective Dec. 1, 1994; amended effective April 15, 1996; April 15, 1997; April 15, 2000; April 1, 2004; April 15, 2005; April 15, 2006; April 15, 2007; April 15, 2009; April 15, 2010; April 15, 2011.

Comments

(2010) Amended to conform tabulation to the style used in the federal rules of procedure and change the calculation of time periods to correspond to the amendments to the various federal rules.

(2011) Amended to make clear that the motion and memorandum must be part of the same document and to apply the Rule to summary judgment motions.

SAMPLE FORM FOLLOWING RULE 7.1

CERTIFICATE OF GOOD FAITH CONFERENCE; CONFERRED BUT UNABLE TO RESOLVE ISSUES PRESENTED IN THE MOTION

RULE 7.3 ATTORNEYS FEES AND COSTS

(a) Motions for Attorneys Fees and/or Non-Taxable Expenses and Costs. This rule provides a mechanism to assist parties in resolving attorneys fee and costs disputes by agreement. A motion for an award of attorneys fees and/or non-taxable expenses and costs arising from the entry of a final judgment or order shall ~~(1)~~ not be filed until a good faith effort to resolve the motion, as described in paragraph (b) below, has been completed; The motion shall:

(12) be filed within sixty (60) days of the entry of the final judgment or order giving rise to the claim, regardless of the prospect or pendency of supplemental review or appellate proceedings;

(23) identify the judgment or other order which gives rise to the motion, as well as the statute, rule, or other grounds entitling the moving party to the award;

(34) state the amount sought;

(45) disclose the terms of any applicable fee agreement;

(56) provide:

(A) the identity, experience, and qualifications for each timekeeper for whom fees are sought;

(B) the number of hours reasonably expended by each such timekeeper;

(C) a description of the tasks done during those hours; and

(D) the hourly rate(s) claimed for each timekeeper;

(67) describe and document with invoices all incurred and claimed fees and ~~nontaxable expenses~~ not taxable under 28 U.S.C. § 1920;

(78) be verified; and

(89) certify that a good faith effort to resolve issues by agreement occurred pursuant to Local Rule 7.3(b), describing what was and was not resolved by agreement and addressing separately the issues of entitlement to fees and amount.

Within fourteen (14) days after filing and service of the motion, the respondent shall describe with reasonable particularity each time entry or nontaxable expense to which it objects, both as to issues of entitlement and as to amount, and shall provide supporting legal authority. If a party objects to an hourly rate, its counsel must submit an affidavit giving its firm's hourly rates for the matter and include any contingency, partial contingency, or other arrangements that could change the effective hourly rate. Pursuant

to Federal Rule of Civil Procedure 54(d)(2)(C), either party may move the Court to determine entitlement prior to submission on the issue of amount. This Local Rule's requirements of disclosure are not intended to require the disclosure of privileged, immune, or protected material.

A party shall seek costs that are taxable under 28 U.S.C. § 1920 by filing a bill of costs and supporting memorandum in accordance with paragraph 7.3(c) below. The costs and expenses sought in a motion under this paragraph shall not include any cost sought in a bill of costs.

(b) Good Faith Effort to Resolve Issues by Agreement. A draft motion compliant with Local Rule 7.3(a)(1)-(8) must be served but not filed within thirty (30) days after entry of the final judgment or order. Within twenty-one (21) days of service of the draft motion, the parties shall confer and attempt in good faith to agree on entitlement to and the amount of fees and ~~nontaxable~~ expenses not taxable under 28 U.S.C. § 1920. The respondent shall describe in writing and with reasonable particularity each time entry or nontaxable expense to which it objects, both as to issues of entitlement and as to amount, and shall provide supporting legal authority.

~~C.*(c)~~ **Bill of Costs.** A bill of costs pursuant to 28 U.S.C. § 1920 should be filed and served within thirty (30) days of entry of final judgment or other appealable order that gives rise to a right to tax costs under the circumstances listed in 28 U.S.C. § 1920. Prior to filing the bill of costs, the moving party shall confer with affected parties under the procedure outlined in S.D. Fla. L.R. 7.1(a)(3) in a good faith effort to resolve the items of costs being sought.

An application for bill of costs must be submitted on form (or in form substantially similar to) AO 133 of the Administrative Office of the United States Courts and shall be limited to the costs permitted by 28 U.S.C. § 1920. Expenses and costs that the party believes are recoverable although not identified in § 1920 shall be moved for as provided in paragraph 7.3(a) above. The bill of costs ~~should~~shall attach copies of any documentation showing the amount of costs— and shall be supported by a memorandum not exceeding ten (10) pages. The prospects or pendency of supplemental review or appellate proceedings shall not toll or otherwise extend the time for filing a bill of costs with the Court.

Effective Dec. 1, 1994. Amended effective April 15, 1999; April 15, 2001; April 15, 2005; April 15, 2006; April 15, 2007; April 15, 2010; April 15, 2011.

Comments

(2011) Amended to make clear the difference between a bill of costs under 28 U.S.C. § 1920 and a motion to tax other costs, to clarify the duty to confer in good faith before submitting a bill of costs and to require a bill of costs to be supported by a memorandum of law.

Rule 7.5 Motions for Summary Judgment

(a) Motions for Summary Judgment. Motions for summary judgment shall be accompanied by a memorandum of law, necessary affidavits, and a concise statement of the material facts as to which the movant contends there exists no genuine issue to be tried.

(b) Opposition Papers. The papers opposing a motion for summary judgment shall include a memorandum of law, necessary affidavits, and a single concise statement of the material facts as to which it is contended that there exists a genuine issue to be tried.

(c) Statement of Material Facts. The statement of material facts submitted either in support of or in opposition to a motion for summary judgment shall:

- (1) Not exceed ten (10) pages in length;
- (2) Be supported by specific references to pleadings, depositions, answers to interrogatories, admissions, and affidavits on file with the Court; and
- (3) Consist of separately numbered paragraphs.

Statements of material facts submitted in opposition to a motion for summary judgment shall correspond with the order and with the paragraph numbering scheme used by the movant, but need not repeat the text of the movant's paragraphs. Additional facts which the party opposing summary judgment contends are material shall be numbered and placed at the end of the opposing party's statement of material facts; the movant shall use that numbering scheme if those additional facts are addressed in the reply.

(d) Effect of Failure to Controvert Statement of Undisputed Facts. All material facts set forth in the movant's statement filed and supported as required by Local Rule 7.5(c) will be deemed admitted unless controverted by the opposing party's statement, provided that the Court finds that the movant's statement is supported by evidence in the record.

~~**(e) Briefing Schedule.** Unless otherwise specifically ordered by the Court, the briefing schedule in Federal Rule of Civil Procedure 56 shall apply.~~

Effective Dec. 1, 1994; amended effective April 15, 1999; April 15, 2002; April 15, 2005; April 15, 2007; April 15, 2008; April 15, 2011.

Authority

(1993) Former Local Rule 10J.

Comments

(1993) Deletes specific briefing schedule and reference to submitting envelopes. These are covered by the general motion Local Rule.

(1999) Adds a page limit for the statement of material facts and makes clear that only one such statement shall be submitted with a motion for summary judgment.

(2002) This Local Rule is amended to require specific references to materials on file with the Court to support or controvert the movant's statement of undisputed facts. The "on file with the Court" language will require litigants to file any materials on which they intend to rely or to which they refer. This is in accord with the practice contemplated by Federal Rule of Civil Procedure 5(d)(1), as amended effective December 1, 2000. The Advisory Committee Notes to the December 2000 amendments make clear that, with regard to voluminous materials, only those parts actually used need to be filed, with any other party free to file other pertinent portions of the materials that are so used. See Fed.R.Evid. 106; cf. Fed.R.Civ.P. 32(a)(4). Therefore, only the portions of deposition transcripts actually "used" need be filed.

(2005) Local Rule 7.5.D is amended to clarify that the Court will not grant summary judgment unless supported by a review of evidence in the record. *See United States v. One Piece of Real Prop. Located at 5800 S.W. 74th Ave., Miami, Fla.*, 363 F.3d 1099, 1103 n.6 (11th Cir. 2004).

(2008) Local Rule 7.5.C is amended to ensure that statements of material facts filed by movants and opponents shall correspond with each other in numerical order so as to make review of summary judgment motions less burdensome to the Court.

(2010) Amended to conform tabulation to the style used in the federal rules of procedure.

(2011) Amended to eliminate reference to Fed. R. Civ. P. 56 briefing schedule, which has been eliminated. The briefing time periods set forth in Local Rule 7.1 now apply.

RULE 11.1 ATTORNEYS

(a) Roll of Attorneys. The Bar of this Court shall consist of those persons heretofore admitted and those who may hereafter be admitted in accordance with the Special Rules Governing the Admission and Practice of Attorneys in this District.

(b) Contempt of Court. Any person who before his or her admission to the Bar of this Court or during his or her disbarment or suspension exercises in this District in any action or proceeding pending in this Court any of the privileges of a member of the Bar, or who pretends to be entitled to do so, may be found guilty of contempt of Court.

(c) Professional Conduct. The standards of professional conduct of members of the Bar of this Court shall include the current Rules Regulating The Florida Bar. For a violation of any of these canons in connection with any matter pending before this Court, an attorney may be subjected to appropriate disciplinary action.

(d) Appearance by Attorney.

(1) The filing of any pleading shall, unless otherwise specified, constitute an appearance by the person who signs such pleading.

(2) An attorney representing a witness in any civil action or criminal proceeding, including a grand jury proceeding, or representing a defendant in a grand jury proceeding, shall file a notice of appearance, with consent of the client endorsed thereon, with the Clerk of the Court on a form to be prescribed and furnished by the Court, except that the notice need not be filed when such appearance has previously been evidenced by the filing of pleadings in the action or proceeding. The notice shall be filed by the attorney promptly upon undertaking the representation and prior to the attorney's appearance on behalf of the attorney's client at any hearing or grand jury session. When the appearance is in connection with a grand jury session, the notice of appearance shall be filed with the Clerk of the Court in such manner as to maintain the secrecy requirements of grand jury proceedings.

(3) No attorney shall withdraw the attorney's appearance in any action or proceeding except by leave of Court after notice served on the attorney's client and opposing counsel. A motion to withdraw shall include a current mailing address for the attorney's client or the client's counsel.

(4) Whenever a party has appeared by attorney, the party cannot thereafter appear or act on the party's own behalf in the action or proceeding, or take any step therein, unless an order of substitution shall first have been made by the Court, after notice to the attorney of such party, and to the opposite party; provided, that the Court may in its discretion hear a party in open court, notwithstanding the fact that the party has appeared or is represented by an attorney.

(5) When an attorney dies, or is removed or suspended, or ceases to act as such, a party to an action or proceeding for whom the attorney was acting as counsel must, before any further proceedings are had in the action on the party's behalf, appoint another attorney or appear in person, unless such party is already represented by another attorney.

(6) No agreement between parties or their attorneys, the existence of which is not conceded, in relation to the proceedings or evidence in an action, will be considered by the Court unless the same is made before the Court and noted in the record or is reduced to writing and subscribed by the party or attorney against whom it is asserted.

(7) Only one (1) attorney on each side shall examine or cross-examine a witness, and not more than two (2) attorneys on each side shall argue the merits of the action or proceeding unless the Court shall otherwise permit.

(e) Relations With Jury. All attempts to curry favor with juries by fawning flattery, or pretend solicitude for their personal comfort are unprofessional. Suggestions of counsel, looking to the comfort or convenience of jurors, and propositions to dispense with argument, should be made to the Court out of the jury's hearing. Before, during, and after the trial, a lawyer should avoid conversing or otherwise communicating with a juror on any subject, whether pertaining to the case or not. Provided, however, after the jury has been discharged, upon application in writing and for good cause shown, the Court may allow counsel to interview jurors to determine whether their verdict is subject to legal challenge. In this event, the Court shall enter an order limiting the time, place, and circumstances under which the interviews shall be conducted. The scope of the interviews should be restricted and caution should be used to avoid embarrassment to any juror and to avoid influencing the juror's action in any subsequent jury services.

(f) Relation to Other Rules. This Local Rule governing attorneys is supplemented by the Special Rules Governing the Admission and Practice of Attorneys and the Rules Governing Attorney Discipline of this District.

(g) Responsibility to Maintain Current Contact Information. Each member of the Bar of the Southern District, any attorney appearing *pro hac vice*, and any party appearing *pro se* shall maintain current contact information with the Clerk of Court. Each attorney shall update contact information including e-mail address within seven (7) days of a change. Counsel appearing *pro hac vice* and a party appearing *pro se* shall conventionally file a Notice of Current Address with updated contact information within seven (7) days of a change. The failure to comply shall not constitute grounds for relief from deadlines imposed by Rule or by the Court. All Court Orders and Notices will be deemed to be appropriately served if directed either electronically or by conventional mail consistent with information on file with the Clerk of Court.

Effective Dec. 1, 1994. Amended effective April 15, 2002; April 15, 2007; April 15, 2010; April 15, 2011.

Authority

(1993) Former Local Rule 16. Renumbered per Model Rules.

Comments

(1994) Changed to make the Local Rule gender neutral.

(2002) Local Rule 11.1.D.7. deleted, as the issue addressed by this Local Rule deals with an ethical rule, *see* Rule 4-3.7 of the Rules of Professional Conduct of the Rules Regulating the Florida Bar, subject to exceptions and distinctions not encompassed by the Local Rule.

(2010) Amended to conform tabulation to the style used in the federal rules of procedure.

(2011) Amended to conform and ensure attorney compliance with AO 2005-38 and CM/ECF Procedural Updates.

Rule 12.2 CASE STATEMENT FOR THE FAIR LABOR STANDARDS ACT (“FLSA”)

Except as otherwise ordered by a Judge of this Court in a particular case, in all civil actions where a pleading contains a cause of action pursuant to the Fair Labor Standards Act of 1938, 29 U.S.C. §§ 201 - 219 (“FLSA”), the party filing the FLSA claim shall, within fourteen (14) days of the filing (including filing upon removal or transfer), file an FLSA Case Statement.

(a) Each plaintiff shall file the FLSA Case Statement setting forth: (1) the nature of the claim (e.g., off the clock work, misclassification, miscalculation, minimum wage, other); (2) the amount of alleged unpaid wages; (3) the calculation of such wages; and (4) the nature of the wages (e.g., overtime or regular pay). Plaintiff shall also serve the Case Statement and copies of all documents then in plaintiff’s possession, custody, or control supporting plaintiff’s claim (e.g., time slips, pay stubs, etc.) on defendant within seven (7) days of when defendant first appears in the case or at the time of filing of plaintiff’s Case Statement if defendant has already appeared.

(b) Each defendant shall file a response to plaintiff’s Case Statement, responding to each of the items in paragraphs (a)(1), (2), (3), and (4) above, and also serve plaintiff with copies of all documents then in defendant’s possession, custody, or control that supports defendant’s defenses within fourteen (14) days of service of plaintiff’s Case Statement.

Effective April 15, 2011.

Comment

(2011) Created to provide uniform requirement to provide a Case Statement in any FLSA case.

Rule 16.1 Pretrial Procedure in Civil Actions

(a) Differentiated Case Management in Civil Actions.

(1) *Definition.* “Differentiated Case Management” is a system for managing cases based on the complexity of each case and the requirement for judicial involvement. Civil cases having similar characteristics are identified, grouped and assigned to designated tracks. Each track employs a case management plan tailored to the general requirements of similarly situated cases.

(2) *Case Management Tracks.* There shall be three (3) case management tracks, as follows:

(A) Expedited—a relatively non-complex case requiring only one (1) to three (3) days of trial may be assigned to an expedited track in which discovery shall be completed within the period of ninety (90) to 179 days from the date of the Scheduling Order.

(B) Standard Track—a case requiring three (3) to ten (10) days of trial may be assigned to a standard track in which discovery shall be completed within 180 to 269 days from the date of the Scheduling Order.

(C) Complex Track—an unusually complex case requiring over ten (10) days of trial may be assigned to the complex track in which discovery shall be completed within 270 to 365 days from the date of the Scheduling Order.

(3) *Evaluation and Assignment of Cases.* The following factors shall be considered in evaluating and assigning cases to a particular track: the complexity of the case, number of parties, number of expert witnesses, volume of evidence, problems locating or preserving evidence, time estimated by the parties for discovery and time reasonably required for trial, among other factors. The majority of civil cases will be assigned to a standard track.

(4) The parties shall recommend to the Court in their proposed Scheduling Order filed pursuant to Local Rule 16.1(b), to which particular track the case should be assigned.

(b) Scheduling Conference and Order.

(1) *Party Conference.* Except in categories of proceedings exempted from initial disclosures under Federal Rule of Civil Procedure 26(a)(1)(~~E~~B), or when otherwise ordered, counsel for the parties (or the party, if proceeding pro se), as soon as practicable and in any event at least twenty-one (21) days before a scheduling conference is held or a scheduling order is due under Federal Rule of Civil Procedure 16(b), *must* meet in person, by telephone, or by other comparable means, for the purposes prescribed by Federal Rule of Civil Procedure 26(f).

(2) *Conference Report.* The attorneys of record and all unrepresented parties that have appeared in the case are jointly responsible for submitting to the Court, within fourteen (14) days of the conference, a written report outlining the discovery plan and discussing:

- (A) the likelihood of settlement;
- (B) the likelihood of appearance in the action of additional parties;
- (C) proposed limits on the time:
 - (i) to join other parties and to amend the pleadings;
 - (ii) to file and hear motions; and
 - (iii) to complete discovery.
- (D) proposals for the formulation and simplification of issues, including the elimination of frivolous claims or defenses, and the number and timing of motions for summary judgment or partial summary judgment;
- (E) the necessity or desirability of amendments to the pleadings;
- (F) the possibility of obtaining admissions of fact and of documents, electronically stored information or things which will avoid unnecessary proof, stipulations regarding authenticity of documents, electronically stored information or things, and the need for advance rulings from the Court on admissibility of evidence;
- (G) suggestions for the avoidance of unnecessary proof and of cumulative evidence;
- (H) suggestions on the advisability of referring matters to a Magistrate Judge or master;
- (I) a preliminary estimate of the time required for trial;
- (J) requested date or dates for conferences before trial, a final pretrial conference, and trial; and
- (K) any other information that might be helpful to the Court in setting the case for status or pretrial conference.

(3) *Joint Proposed Scheduling Order.* The Report shall be accompanied by a Joint Proposed Scheduling Order which shall contain the following information:

- (A) Assignment of the case to a particular track pursuant to Local Rule 16.1(a) above;
- (B) The detailed discovery schedule agreed to by the parties including provisions for disclosure or discovery of electronically stored information;
- (C) Any agreements the parties reach for asserting claims of privilege or protection of trial preparation material after production;
- (D) A limitation of the time to join additional parties and to amend the pleadings;
- (E) A space for insertion of a date certain for filing all pretrial motions;
- (F) A space for insertion of a date certain for resolution of all pretrial motions by the Court;
- (G) Any proposed use of the Manual on Complex Litigation and any other need for rule variations, such as on deposition length or number of depositions;
- (H) A space for insertion of a date certain for the date of pretrial conference (if one is to be held); and
- (I) A space for insertion of the date certain for trial.

In all civil cases (except those expressly exempted below) the Court shall enter a Scheduling Order as soon as practicable but in any event within ninety (90) days after the appearance of a defendant and within 120 days after the complaint has been served on a defendant. It is within the discretion of each Judge to decide whether to hold a scheduling conference with the parties prior to entering the Scheduling Order.

(4) *Notice of Requirement.* Counsel for plaintiff, or plaintiff if proceeding pro se, shall be responsible for giving notice of the requirements of this subsection to each defendant or counsel for each defendant as soon as possible after such defendant's first appearance.

(5) *Exempt Actions.* The categories of proceedings exempted from initial disclosures under Federal Rule of Civil Procedure 26(a)(1)(~~EB~~) are exempt from the requirements of this subsection. The Court shall have the discretion to enter a Scheduling Order or hold a Scheduling Conference in any case even if such case is within an exempt category.

(6) *Compliance With Pretrial Orders.* Regardless of whether the action is exempt

pursuant to Federal Rule of Civil Procedure 26(a)(1)(~~EB~~), the parties are required to comply with any pretrial orders by the Court and the requirements of this Local Rule including, but not limited to, orders setting pretrial conferences and establishing deadlines by which the parties' counsel must meet, prepare and submit pretrial stipulations, complete discovery, exchange reports of expert witnesses, and submit memoranda of law and proposed jury instructions.

(c) Pretrial Conference Mandatory. A pretrial conference pursuant to Federal Rule of Civil Procedure 16(a), shall be held in every civil action unless the Court specifically orders otherwise. Each party shall be represented at the pretrial conference and at meetings held pursuant to paragraph (d) hereof by the attorney who will conduct the trial, except for good cause shown a party may be represented by another attorney who has complete information about the action and is authorized to bind the party.

(d) Pretrial Disclosures and Meeting of Counsel. Unless otherwise directed by the Court, at least thirty (30) days before trial each party must provide to the other party and promptly file with the Court the information prescribed by Federal Rule of Civil Procedure 26(a)(3). No later than fourteen (14) days prior to the date of the pretrial conference, or if no pretrial conference is held, fourteen (14) days prior to the call of the calendar, counsel shall meet at a mutually convenient time and place and:

- (1) Discuss settlement.
- (2) Prepare a pretrial stipulation in accordance with paragraph (e) of this Local Rule.
- (3) Simplify the issues and stipulate to as many facts and issues as possible.
- (4) Examine all trial exhibits, except that impeachment exhibits need not be revealed.
- (5) Exchange any additional information as may expedite the trial.

(e) Pretrial Stipulation Must Be Filed. It shall be the duty of counsel to see that the pretrial stipulation is drawn, executed by counsel for all parties, and filed with the Court no later than seven (7) days prior to the pretrial conference, or if no pretrial conference is held, seven (7) days prior to the call of the calendar. The pretrial stipulation shall contain the following statements in separate numbered paragraphs as indicated:

- (1) A short concise statement of the case by each party in the action.
- (2) The basis of federal jurisdiction.
- (3) The pleadings raising the issues.
- (4) A list of all undisposed of motions or other matters requiring action by the

Court.

(5) A concise statement of uncontested facts which will require no proof at trial, with reservations, if any.

(6) A statement in reasonable detail of issues of fact which remain to be litigated at trial. By way of example, reasonable details of issues of fact would include: (A) As to negligence or contributory negligence, the specific acts or omissions relied upon; (B) As to damages, the precise nature and extent of damages claimed; (C) As to unseaworthiness or unsafe condition of a vessel or its equipment, the material facts and circumstances relied upon; (D) As to breach of contract, the specific acts or omissions relied upon.

(7) A concise statement of issues of law on which there is agreement.

(8) A concise statement of issues of law which remain for determination by the Court.

(9) Each party's numbered list of trial exhibits, other than impeachment exhibits, with objections, if any, to each exhibit, including the basis of all objections to each document, electronically stored information and thing. The list of exhibits shall be on separate schedules attached to the stipulation, should identify those which the party expects to offer and those which the party may offer if the need arises, and should identify concisely the basis for objection. In noting the basis for objections, the following codes should be used:

A—Authenticity

I—Contains inadmissible matter (mentions insurance, prior conviction, etc.)

R—Relevancy

H—Hearsay

UP—Unduly prejudicial-probative value outweighed by undue prejudice

P—Privileged

Counsel may agree on any other abbreviations for objections, and shall identify such codes in the exhibit listing them.

(10) Each party's numbered list of trial witnesses, with their addresses, separately identifying those whom the party expects to present and those whom the party may call if the need arises. Witnesses whose testimony is expected to be presented by means of a deposition shall be so designated. Impeachment witnesses need not be listed. Expert witnesses shall be so designated.

(11) Estimated trial time.

(12) Where attorney's fees may be awarded to the prevailing party, an estimate of each party as to the maximum amount properly allowable.

(f) Unilateral Filing of Pretrial Stipulation Where Counsel Do Not Agree. If for any reason the pretrial stipulation is not executed by all counsel, each counsel shall file and serve separate proposed pretrial stipulations not later than seven (7) days prior to the pretrial conference, or if no pretrial conference is held, seven (7) days prior to the call of the calendar, with a statement of reasons no agreement was reached thereon.

(g) Record of Pretrial Conference Is Part of Trial Record. Upon the conclusion of the final pretrial conference, the Court will enter further orders as may be appropriate. Thereafter the pretrial stipulation as so modified will control the course of the trial, and may be thereafter amended by the Court only to prevent manifest injustice. The record made upon the pretrial conference shall be deemed a part of the trial record; provided, however, any statement made concerning possible compromise settlement of any claim shall not be a part of the trial record, unless consented to by all parties appearing.

(h) Discovery Proceedings. All discovery proceedings must be completed no later than fourteen (14) days prior to the date of the pretrial conference, or if no pretrial conference is held, fourteen (14) days prior to the call of the calendar, unless further time is allowed by order of the Court for good cause shown.

(i) Newly Discovered Evidence or Witnesses. If new evidence or witnesses are discovered after the pretrial conference, the party desiring their use shall immediately furnish complete details thereof and the reason for late discovery to the Court and to opposing counsel. Use may be allowed by the Court in furtherance of the ends of justice.

(j) Memoranda of Law. Counsel shall serve and file memoranda treating any unusual questions of law, including motions in limine, no later than seven (7) days prior to the pretrial conference, or if no pretrial conference is held, seven (7) days prior to the call of the calendar.

(k) Exchange Expert Witness Summaries/Reports. Where expert opinion evidence is to be offered at trial, summaries of the expert's anticipated testimony or written expert reports (including lists of the expert's qualifications to be offered at trial, publications and writings, style of case and name of court and Judge in cases in which the expert has previously testified and the subject of that expert testimony, the substance of the facts and all opinions to which the expert is expected to testify, and a summary of the grounds for each opinion) shall be exchanged by the parties no later than ninety (90) days prior to the pretrial conference, or if no pretrial conference is held, ninety (90) days prior to the call of the calendar; provided, however, that if the expert opinion evidence is intended solely to contradict or rebut evidence on the same subject matter identified by another party's expert, then the expert summary or report for such evidence shall be served no later than thirty (30)

days after the expert summary or report is served by the other party.

(l) Proposed Jury Instructions or Proposed Findings of Facts and Conclusions of Law.

At the close of the evidence or at an earlier reasonable time that the Court directs, counsel may submit proposed jury instructions or, where appropriate, proposed findings of fact and conclusions of law to the Court, with copies to all other counsel. At the close of the evidence, a party may file additional instructions covering matters occurring at the trial that could not reasonably be anticipated; and with the Court's permission, file untimely requests for instructions on any issue.

(m) Penalty for Failure to Comply. Failure to comply with the requirements of this Local Rule will subject the party or counsel to appropriate penalties, including but not limited to dismissal of the cause, or the striking of defenses and entry of judgment.

Effective Dec. 1, 1994; amended effective April 15, 1996; April 15, 1997; April 15, 1998; April 15, 2001; April 15, 2004; April 15, 2007; April 15, 2011.

Authority

(1993) Former Local Rule 17. Changes have been made in recognition of the fact that the call of the calendar is a benchmark for deadlines if no pretrial conference is held; the need for more specificity in expert resumes; and some modifications were needed to pretrial stipulation rule. All counsel now share responsibility to prepare a pretrial stipulation. Codes are provided for the customary objections to exhibits.

Comments

(1993) Sections A and B.7 added in accordance with recommendation of the Civil Justice Advisory Group.

(1994)[K.] This Local Rule is based in part on the disclosure requirements of Federal Rule of Civil Procedure 26(a)(2), as amended effective December 1, 1993, and in part on superseded Federal Rule of Civil Procedure 26(b)(4) concerning expert interrogatories.

(1996)[B.1.] In order to avoid uncertainty as to which documents, electronically stored information or things were produced at a scheduling conference, this Local Rule is amended to require that a party producing documents, electronically stored information or things at the conference either uniquely stamp the materials produced or provide a particularized list of what is being produced.

(1996)[K.] The change is intended to make the timing of disclosing expert witness information consistent with that prescribed by Federal Rule of Civil Procedure 26(a)(2)(c), to delete the language referring to an expert "resume" as being superfluous, and to make clear the expert witness information to be disclosed may be either a summary prepared by counsel or a report prepared by the expert (both of which are required to provide the information specified).

(1997)[B.] Letters rogatory and registrations of foreign judgment made exempt from scheduling requirements as unnecessary.

(1998) Local Rule 16.1.B.6 is modified to make clear that, at the time of the scheduling conference, counsel should discuss whether there is a need to modify any standard procedure, not just whether the Manual for Complex Litigation should be used. Local Rule 16.1.B.7(f) is modified to make clear that the Joint Proposed Scheduling Order should contain any joint or unilateral requests to exceed deposition limitations in length and number, as well as any other proposed variations from these Local Rules or the Federal Rules of Civil Procedure that are not specifically addressed in other paragraphs of this Local Rule.

(2001) Local Rules 16.1.B, D and E amended to conform with the December 2000 amendments to Federal Rule of Civil Procedure 26.

(2004) Local Rule 16.1.B.2 is amended, in conjunction with the amendment of the last sentence in Local Rule 7.1.C.2, to emphasize the need to discuss at the scheduling conference of parties and/or counsel the number and timing of motions for summary judgment or partial summary judgment, and have the Scheduling Order address these issues. Local Rule 16.1.L is amended to conform to the December 2003 amendment to Federal Rule of Civil Procedure 51.

(2010) Amended to conform tabulation to the style used in the federal rules of procedure and change the calculation of time periods to correspond to the amendments to the various federal rules.

(2011) Amended to correct a mis-citation to Federal Rule of Procedure 26.

Rule 26.1 Discovery and Discovery Material (Civil)

(a) Initial Disclosures. Except in categories of proceedings specified in Federal Rule of Civil Procedure 26(a)(1)(E), or to the extent otherwise stipulated or directed by order, a party must comply with the disclosure obligations imposed under Federal Rule of Civil Procedure 26(a)(1), in the form prescribed by Federal Rule of Civil Procedure 26(a)(4).

(g) Interrogatories and Production Requests.

(1) The presumptive limitation on the number of interrogatories (twenty-five (25) questions including all discrete subparts) which may be served without leave of Court or written stipulation, as prescribed by Federal Rule of Civil Procedure 33(a), shall apply to actions in this Court. Interrogatories propounded in the form set forth in Appendix B to these Local Rules shall be deemed to comply with the numerical limitations of Federal Rule of Civil Procedure 33(a).

(2) Each interrogatory objection and/or response must immediately follow the quoted interrogatory, and No part of an interrogatory shall be left unanswered merely because an objection is interposed to another part of the interrogatory.

(3) (A) Where an objection is made to any interrogatory or subpart thereof or to any production request under Federal Rule of Civil Procedure 34, the objection shall state with specificity all grounds. Any ground not stated in an objection within the time provided by the Federal Rules of Civil Procedure, or any extensions thereof, shall be waived.

(B) Where a claim of privilege is asserted in objecting to any interrogatory or production demand, or sub-part thereof, and an answer is not provided on the basis of such assertion:

(i) The attorney asserting the privilege shall in the objection to the interrogatory or document demand, or subpart thereof, identify the nature of the privilege (including work product) which is being claimed and if the privilege is being asserted in connection with a claim or defense governed by state law, indicate the state's privilege rule being invoked; and

(ii) The following information shall be provided in the objection, unless divulgence of such information would cause disclosure of the allegedly privileged information:

(a) For documents or electronically stored information, to the extent the information is readily obtainable from the witness being deposed or otherwise: (1) the type of document (e.g., letter or memorandum) and, if electronically stored information, the software application

used to create it (e.g., MS Word, MS Excel Spreadsheet); (2) general subject matter of the document or electronically stored information; (3) the date of the document or electronically stored information; and (4) such other information as is sufficient to identify the document or electronically stored information for a subpoena duces tecum, including, where appropriate, the author, addressee, and any other recipient of the document or electronically stored information, and, where not apparent, the relationship of the author, addressee, and any other recipient to each other;

(b) For oral communications: (1) the name of the person making the communication and the names of persons present while the communication was made and, where not apparent, the relationship of the persons present to the person making the communication; (2) the date and the place of communication; and (3) the general subject matter of the communication.

(C) This rule requires preparation of a privilege log with respect to all documents, electronically stored information, things and oral communications withheld on the basis of a claim of privilege or work product protection except the following: written and oral communications between a party and its counsel after commencement of the action and work product material created after commencement of the action.

(D) If information (written documents, electronically stored information or otherwise) is produced in discovery that is subject to a claim of privilege or of protection as trial-preparation material, the party making the claim may notify any party that received the information of the claim, and the basis for it, and seek to retrieve the information and protect it from disclosure using the procedures set forth in Federal Rule of Civil Procedure 26(b)(5).

(4) Whenever a party answers any interrogatory by reference to records from which the answer may be derived or ascertained, as permitted in Federal Rule of Civil Procedure 33(d):

(A) The specification of business records and materials to be produced shall be in sufficient detail to permit the interrogating party to locate and identify the records and to ascertain the answer as readily as could the party from whom discovery is sought.

(B) The producing party shall make available any electronically stored information or summaries thereof that it either has or can adduce by a relatively simple procedure, unless these materials are privileged or otherwise immune from discovery.

(C) The producing party shall provide any relevant compilations, abstracts or

summaries in its custody or readily obtainable by it, unless these materials are privileged or otherwise immune from discovery.

(D) The business records and materials shall be made available for inspection and copying within fourteen (14) days after service of the answers to interrogatories or at a date agreed upon by the parties.

(5) A party need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the party from whom discovery is sought must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the Court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Federal Rule of Civil Procedure 26(b)(2)(C). The Court may specify conditions for the discovery. Absent exceptional circumstances, the Court may not impose sanctions under these Local Rules on a party for failing to provide electronically stored information lost as a result of the routine, good-faith operation of an electronic information system.

Effective Dec. 1, 1994; amended effective April 15, 1996; April 15, 1998; April 15, 2001; paragraph G.3 amended effective April 15, 2003; April 15, 2004; April 15, 2005; April 15, 2007; April 15, 2009; April 15, 2010; April 15, 2011.

Comments

(2011) Amended to require that interrogatory responses be immediately preceded by the interrogatory to which the response is directed.

Rule 88.2 Petitions for Writs of Habeas Corpus Pursuant to 28 U.S.C. § 2241 and 28 U.S.C. § 2254, Motions Pursuant to 28 U.S.C. § 2255 and Civil Rights Complaints Pursuant to Title 42 U.S.C. § 1983 and *Bivens*.

(a) The following petitions, motions, and complaints must substantially follow the forms, if any, prescribed by the Court and obtained from the Clerk of the Court upon request:

- (1) Petitions for writ of habeas corpus pursuant to 28 U.S.C. § 2241 (common law habeas corpus),
- (2) Petitions for writ of habeas corpus pursuant to 28 U.S.C. § 2254 (state prisoner attacking conviction),
- (3) Motions to Vacate pursuant to 28 U.S.C. § 2255 (federal prisoner attacking conviction),
- (4) Civil rights complaints pursuant to 42 U.S.C. § 1983 (Constitutional deprivation under color of state law),
- (5) Civil rights complaints pursuant to *Bivens v. Six Unknown Federal Narcotics Agents*, 403 U.S. 388 (1971) (Constitutional deprivation under color of federal law).

~~Each must be For (a)(1)-(3) above, an original and one (1) copy of the petition or motion, signed under penalty of perjury by petitioner/movant or by a person authorized to sign it for petitioner/movant and, together with filing fee, if any, shall be filed in the Clerk's Office. For (a)(4)-(5) above, an original and one (1) copy of a civil rights complaint, plus one (1) copy for each defendant, signed under penalty of perjury by plaintiff or by a person authorized to sign it for plaintiff, together with the filing fee, if any, shall be filed in the Clerk's Office.~~

(b) When a petition, motion to vacate, or complaint is submitted in forma pauperis, the petitioner/movant/plaintiff shall submit the form "Application to Proceed Without Prepayment of Fees and Affidavit," which may be obtained from the Clerk of the Court, or an affidavit which substantially follows the form, and shall, under oath, set forth information which establishes that he or she is unable to pay the fees and costs of the proceedings referenced above.

Effective Dec. 1, 1994. Amended effective April 15, 2007; April 15, 2011.

Authority

(1993) Former Local Rule 18.

Comments

(1994) Revised to add *Bivens* actions, delete implication that federal prisoners can attack

prison conditions in a petition pursuant to Title 28, United States Code, Section 2241, and requiring verification of certain petitions.

(2010) Amended to conform tabulation to the style used in the federal rules of procedure.

(2011) Amended to conform to Section 8 of the CM/ECF Administrative Procedures requiring electronic filing of original complaints.

Rule 88.7 Retained Criminal Defense Attorneys

Retained criminal defense attorneys are expected to make financial arrangements satisfactory to themselves and sufficient to provide for representation of each defendant until the conclusion of the defendant's case at the trial level. Failure of a defendant to pay sums owed for attorney's fees, or failure of counsel to collect a sum sufficient to compensate him for all the services usually required of defense counsel, will not constitute good cause for withdrawal after arraignment. Every defendant, of course, has a right to appeal from any conviction.

All notices of permanent appearance in the District Court, and motions for substitution of counsel, shall state whether the appearance of counsel is for trial only or for trial and appeal.

~~At arraignment, the Magistrate Judge will inquire of each defendant and counsel whether counsel has been retained for trial only or for trial and appeal. Where counsel indicates that he or she has been retained only for trial, the defendant will be notified that it is the defendant's responsibility to arrange for counsel for any necessary appeals.~~

In cases where the defendant moves the Court to proceed in forma pauperis on appeal, or for appointment of Criminal Justice Act appellate counsel, the Court will consider, in passing upon such applications, factors such as (a) the defendant's qualified Sixth Amendment right to counsel of choice, recognizing the distinction between choosing a trial lawyer and choosing an appellate lawyer; (b) the contract between the defendant and trial counsel; (c) the defendant's present financial condition and ability to have retained only trial counsel; (d) retained counsel's appellate experience; (e) the financial burden that prosecuting the appeal would impose upon trial counsel, in view of the fee received and the professional services rendered; and (f) all other relevant factors, including any constitutional guarantees of the defendant.

In assessing whether the legal fees previously paid to defense counsel should reasonably encompass appellate representation, the Court is to apply the provisions of Rule 4-1.5 of the Rules Regulating The Florida Bar. The Court is to consider the following factors as guides in determining the reasonableness of the fee: (a) the time and labor required, the novelty, complexity, and difficulty of the questions involved, and the skill requisite to perform the legal service proffered; (b) the likelihood that the acceptance of the particular employment precluded other employment by the lawyer; (c) the fee, or rate of fee, customarily charged in the locality for legal services of a comparable or similar nature; (d) the significance of, or amount involved in, the subject matter of the representation, the responsibility involved in the representation, and the results obtained; (e) the time limitations imposed by the client or by the circumstances and, as between attorney and client, any additional or special time demands or requests of the attorney by the client; (f) the nature and length of the professional relationship of the client; and (g) the experience, reputation, diligence and ability of the lawyer or lawyers performing the service and the skill, expertise or efficiency of efforts reflected in the actual providing of such services.

In determining a reasonable fee, the time devoted to the representation and the customary rate of fee are not the sole or controlling factors; nor should the determination be governed by fees or rates of fee provided under the Criminal Justice Act. All factors set out in this Local Rule and in the Rules Regulating The Florida Bar should be considered, and may be applied, in justification of a fee higher or lower than that which would result from application of only the time and rate factors.

All proceedings undertaken, and determinations made, pursuant to this Local Rule, shall be in camera, ex-parte and under seal. All such proceedings and determinations shall be strictly confidential, and not subject to disclosure by subpoena or otherwise.

Effective Dec. 1, 1994. Amended effective April 15, 2007; April 15, 2011.

Authority

(1993) This rule is new in its entirety. Added at the request of the Eleventh Circuit.

~~(2010) Amended to conform tabulation to the style used in the federal rules of procedure.~~

Comments

(2010) Amended to conform tabulation to the style used in the federal rules of procedure.

(2011) Amended to eliminate requirement that the Magistrate Judge is to inquire at arraignment whether defense counsel has been retained through appeal and notify the defendant if this is not so.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO:

UNITED STATES OF AMERICA

v.

NOTICE OF PERMANENT APPEARANCE

(Name of counsel) _____ files this appearance as counsel for the above-
named defendant. Counsel agrees to represent the defendant for:

_____ TRIAL AND ALL PROCEEDINGS IN THE DISTRICT COURT

or

_____ TRIAL, ALL PROCEEDINGS IN THE DISTRICT COURT, AND ON APPEAL

Counsel acknowledges responsibility to advise the defendant of the right to appeal, and to file a
timely notice of appeal if requested to do so by the defendant.

Counsel hereby states that this appearance is in conformity with the requirements of Local
General Rule 11.1 and the Special Rules Governing the Admission and Practice of Attorneys.

FEE DISPUTES BETWEEN COUNSEL AND CLIENT SHALL NOT BE A BASIS FOR
WITHDRAWAL FROM THIS REPRESENTATION.

DATE: _____

Attorney: _____

Florida Bar Number: _____

Address: _____

City/State/Zip Code: _____

Email: _____

Telephone: _____

I hereby acknowledge that I have read this form and consent to the representation of the above
counsel as noted above.

Defendant

Effective April 15, 2011

ADMIRALTY AND MARITIME RULES

RULE 1-A. GENERAL PROVISIONS

(1a) Scope of the Local Admiralty and Maritime Rules. The Local Admiralty and Maritime Rules apply to the procedures in admiralty and maritime claims within the meaning of Federal Rule of Civil Procedure 9(h), which in turn are governed by the Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure.

(2b) Citation Format.

(a1) *The Supplemental Rules* for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure shall be cited as "Supplemental Rule (___)".

(b2) The Local Admiralty and Maritime Rules shall be cited as "Local Admiralty Rule(____)".

(3e) Application of Local Admiralty and Maritime Rules. The Local Admiralty Rules shall apply to all actions governed by Local Admiralty Rule A(1)(a), and to the extent possible should be construed to be consistent with the other Local Rules of this Court. To the extent that a Local Admiralty Rule conflicts with another Local Rule of this Court, the Local Admiralty Rule shall control.

(4d) Designation of "In Admiralty" Proceedings. Every complaint filed as a Federal Rules of Civil Procedure 9(h) action shall boldly set forth the words "IN ADMIRALTY" following the designation of the Court. This requirement is in addition to any statements which may be contained in the body of the complaint.

(5e) Verification of Pleadings, Claims and Answers to Interrogatories. Every complaint and claim filed pursuant to Supplemental Rules B, C and/or D shall be verified on oath or solemn affirmation by a party, or an officer of a corporate party.

If a party or corporate officer is not within the District, verification of a complaint, claim and/or answers to interrogatories may be made by an agent, an attorney-in-fact, or the attorney of record. Such person shall state briefly the source of his or her knowledge, or information and belief, and shall declare that the document affirmed is true to the best of his or her knowledge, and/or information and belief. Additionally, such person shall state that he or she is authorized to make this representation on behalf of the party or corporate officer, and shall indicate why verification is not made by a party or a corporate officer. Such verification will be deemed to have been made by the party to whom the document might apply as if verified personally.

Any interested party may move the Court, with or without a request for stay, for the personal oath or affirmation of a party or all parties, or that of a corporate officer. If required by the Court, such verification may be obtained by commission, or as otherwise provided by Court order.

~~(6f)~~ Issuance of Process. Except as limited by the provisions of Supplemental Rule B(1) and Local Admiralty Rule ~~B(3)2(e)~~ or Supplemental Rule C(3) and Local Admiralty Rule C(2) 3(b); or in suits prosecuted in forma pauperis and sought to be filed without prepayment of fees or costs, or without security; all process shall be issued by the Court without further notice of Court.

~~(7g)~~ Publication of Notices. Unless otherwise required by the Court, or applicable Local Admiralty or Supplemental Rule, whenever a notice is required to be published by any statute of the United States, or by any Supplemental Rule or Local Admiralty Rule, such notice shall be published at least once, without further order of Court, in an approved newspaper in the county or counties where the vessel or property was located at the time of arrest, attachment, or seizure, and if different, in the county within the Southern District of Florida where the lawsuit is pending.

For purposes of this subsection, an approved newspaper shall be a newspaper of general circulation, designated from time to time by the Court. A listing of these approved newspapers will be made available in the Clerk's Office during normal business hours.

~~(8h)~~ Form and Return of Process in *In Personam* Actions. Unless otherwise ordered by the Court, Federal Rule of Civil Procedure 9(h) process shall be by civil summons, and shall be returnable twenty-one (21) days after service of process; except that process issued in accordance with Supplemental Rule B shall conform to the requirements of that rule.

~~(9i)~~ Judicial Officer Defined. As used in these Local Admiralty Rules, the term "judicial officer" or "Court" shall mean either a United States District Judge or a United States Magistrate Judge.

~~(10j)~~ Appendix of Forms. The forms presented in the Appendix provide an illustration of the format and content of papers filed in admiralty and maritime actions within the Southern District of Florida. While the forms are sufficient, they are neither mandatory nor exhaustive.

Effective Dec. 1, 1994. Amended effective April 15, 2007; April 15, 2010; April 15, 2011.

Advisory Notes

(1994) These Local Admiralty Rules were amended in 1994 to make them gender neutral.

(1993) (a) General Comments. These Local Admiralty Rules were prepared and submitted to the Court through the Rules Committee of the Southern District of Florida, at the request of a Subcommittee of the Admiralty Law Committee of The Florida Bar.

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

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

Reference to the former Local Admiralty Rules refers to the former Local Rules of the Southern District of Florida.

(b) Comments on Specific Sections. These Local Admiralty Rules are substantially similar to the Local Rules for the Middle District and therefore provide for consistency and uniformity in admiralty and maritime claims in the state.

A(1) and A(3) continue in substance former Local Admiralty Rule 1(a).

A(4) continues the "IN ADMIRALTY" designation requirements of former Local Admiralty Rule G(a). Under the revised rule, the "IN ADMIRALTY" designation is required to be posted to all complaints even if the complaint is filed as a Federal Rule of Civil Procedure 9(h) action and jurisdiction would exist on another basis, e.g., federal question or diversity jurisdiction.

A(5) continues the requirements of former Local Admiralty Rule 8.

A(6) continues the requirements of former Local Admiralty Rule 2(a).

A(7) enlarges upon former Local Admiralty Rule 3(a) which addressed notice by publication only in cases filed pursuant to Supplemental Rule C(4). The revised rule extends the publication provisions to all Federal Rule of Civil Procedure 9(h) actions for which notice by publication is required.

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

A(8) continues the requirements of former Local Admiralty Rule 2(c).

A(9) adopts the definition of "Court" provided in the Advisory Notes to the August 1, 1985, amendments to the Supplemental Rules.

As defined in these Local Admiralty Rules, the terms "Court" or "judicial officer" shall extend to United States Magistrates Judges assigned to the Southern District of Florida. The committee notes that the delegation of the duties contemplated by this definition are consistent with the jurisdictional grant to the United States Magistrate Judges as set forth in Title 28, United States Code, Section 636(a).

Where the terms "Court" and "judicial officer" are not used, these Local Admiralty Rules contemplate that without further order of Court, the responsibility of taking the specific action shall be vested with a District Judge.

A(10) provides for an Appendix of Forms to the Local Admiralty Rules. The former Local Admiralty Rules incorporated the text of some forms within the specific Local Admiralty Rules and included some forms in an Appendix. The Appendix of Forms provides an alternate method of presenting the format and content of necessary admiralty forms.

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

(1998) These Local Admiralty Rules are amended in 1998 to correct scrivener's errors and to require the custodian or substitute custodian to comply with orders of the Captain of the Port, United States Coast Guard. (2010) Amended to conform tabulation to the style used in the Federal Rules of Civil Procedure.

RULE 2 B. ATTACHMENT AND GARNISHMENT: SPECIAL PROVISIONS

(a~~1~~) Definition of "Not Found Within the District." In an action in personam filed pursuant to Supplemental Rule B, a defendant shall be considered "not found within the District" if the defendant cannot be served within the Southern District of Florida with the summons and complaint as provided by Federal Rule of Civil Procedure 4(d)(1), (2), (3), or (6).

(b~~2~~) Verification of Complaint Required. In addition to the specific requirements of Local Admiralty Rule ~~4(e)~~A(5), whenever verification is made by the plaintiff's attorney or agent, and that person does not have personal knowledge, or knowledge acquired in the ordinary course of business of the facts alleged in the complaint, the attorney or agent shall also state the circumstances which make it necessary for that person to make the verification, and shall indicate the source of the attorney's or agent's information.

(e~~3~~) Pre-seizure Requirements. In accordance with Supplemental Rule B(1), the process of attachment and garnishment shall issue only after one of the following conditions has been met:

(~~1~~a) Judicial Review Prior to Issuance. Except as provided in Local Admiralty Rule ~~2(e)(2)~~ B(3)(b), a judicial officer shall first review the verified complaint, and any other relevant case papers, prior to the Clerk of the Court issuing the requested process of attachment and garnishment. No notice of this pre-arrest judicial review is required to be given to any person or prospective party.

If the Court finds that probable cause exists to issue the process of attachment and garnishment, plaintiff shall prepare an order for the Court's signature directing the Clerk of the Court to issue

the process. This order shall substantially conform in format and content to the form identified as SDF 1 in the Appendix of these Local Admiralty Rules.

Upon receipt of the signed order, the Clerk of the Court shall file the order and, in accordance with Local Admiralty Rule ~~B(3)(c)~~~~2(e)(3)~~, issue the summons and process of attachment and garnishment. Thereafter the Clerk of the Court may issue supplemental process without further order of Court.

~~(2b)~~ Certification of Exigent Circumstances. If the plaintiff files a written certification that exigent circumstances make review by the Court impracticable, the Clerk of the Court shall, in accordance with Local Admiralty Rule ~~2(e)(3)~~~~B(3)(c)~~, issue a summons and the process of attachment and garnishment.

Thereafter at any post-attachment proceedings under Supplemental Rule E(4)(f) and Local Admiralty Rule ~~2(e)~~~~B(5)~~, plaintiff shall have the burden of showing that probable cause existed for the issuance of process, and that exigent circumstances existed which precluded judicial review in accordance with Local Admiralty Rule ~~2(e)(1)~~~~B(3)(a)~~.

~~(3c)~~ Preparation and Issuance of the Process of Attachment and Garnishment. Plaintiff shall prepare the summons and the process of attachment and garnishment, and deliver the documents to the Clerk of the Court for filing and issuance.

The process of attachment and garnishment shall substantially conform in format and content to the form identified as SDF 2 in the Appendix to these Local Admiralty Rules, and shall in all cases give adequate notice of the postseizure provisions of Local Admiralty Rule ~~2(e)~~~~B(5)~~.

~~(4d)~~ Marshal's Return of Service. The Marshal shall file a return of service indicating the date and manner in which service was perfected and, if service was perfected upon a garnishee, the Marshal shall indicate in the return the name, address, and telephone number of the garnishee.

~~(d4)~~ Notification of Seizure to Defendant. In an in personam action under Supplemental Rule B, it is expected that plaintiff and/or garnishee will initially attempt to perfect service of the notice in accordance with Supplemental Rule B(2)(a) or (b).

However, when service of the notice cannot be perfected in accordance with Supplemental Rule B(2)(a) or (b), plaintiff and/or garnishee should then attempt to perfect service in accordance with Supplemental Rule B(2)(c). In this regard, service of process shall be sufficiently served by leaving a copy of the process of attachment and garnishment with the defendant or garnishee at his or her usual place of business.

~~(e5)~~ Post-attachment Review Proceedings.

~~(1a)~~ Filing a Required Answer. In accordance with Supplemental Rule E(4)(f), any person who claims an interest in property seized pursuant to Supplemental Rule B must file an answer and

claim against the property. The answer and claim shall describe the nature of the claimant's interest in the property, and shall articulate reasons why the seizure should be vacated. The claimant shall serve a copy of the answer and claim upon plaintiff's counsel, the Marshal, and any other party to the litigation. The claimant shall also file a Certificate of Service indicating the date and manner in which service was perfected.

(2b) Hearing on the Answer and Claim. The claimant may be heard before a judicial officer not less than seven (7) days after the answer and claim has been filed and service has been perfected upon the plaintiff.

If the Court orders that the seizure be vacated, the judicial officer shall also award attorney's fees, costs and other expenses incurred by any party as a result of the seizure.

If the seizure was predicated upon a showing of "exigent circumstances" under Local Admiralty Rule ~~2(e)(2)~~B(3)(b), and the Court finds that such exigent circumstances did not exist, the judicial officer shall award attorney's fees, costs, and other expenses incurred by any party as a result of the seizure.

(f6) Procedural Requirement for the Entry of Default. In accordance with Federal Rule of Civil Procedure 55, a party seeking the entry of default in a Supplemental Rule B action shall file a motion and supporting legal memorandum and shall offer other proof sufficient to demonstrate that due notice of the action and seizure have been given in accordance with Local Admiralty Rule ~~2(d)~~B(4).

Upon review of the motion, memorandum, and other proof, the Clerk of the Court shall, where appropriate, enter default in accordance with Federal Rule of Civil Procedure 55(a). Thereafter, the Clerk of the Court shall serve notice of the entry of default upon all parties represented in the action.

(g7) Procedural Requirements for the Entry of Default Judgment. Not later than thirty (30) days following notice of the entry of default, the party seeking the entry of default judgment shall file a motion and supporting legal memorandum, along with other appropriate exhibits to the motion sufficient to support the entry of default judgment. The moving party shall serve these papers upon every other party to the action and file a Certificate of Service indicating the date and manner in which service was perfected.

A party opposing the entry of default judgment shall have seven (7) days from the receipt of the motion to file written opposition with the Court. Thereafter, unless otherwise ordered by the Court, the motion for the entry of default judgment will be heard without oral argument.

If the Court grants the motion and enters the default judgment, such judgment shall establish a right on the part of the party or parties in which favor it is entered. The judgment shall be considered prior to any claims of the owner of the defendant property against which it is entered,

and to the remnants and surpluses thereof; providing, however, that such a judgment shall not establish any entitlement to the defendant property having priority over non-possessory lien claimants. Obtaining a judgment by default shall not preclude the party in whose favor it is entered from contending and proving that all, or any portion, of the claim or claims encompassed within the judgment are prior to any such non-possessory lien claims.

Effective Dec. 1, 1994. Amended effective April 15, 1998; April 15, 2000; April 15, 2007; April 15, 2010; April 15, 2011.

Advisory Notes

(1993) (a) General Comments. Local Admiralty Rule B is intended to enhance and codify the local procedural requirements uniquely applicable to actions of maritime attachment and garnishment under Supplemental Rule B. Other local procedural requirements involving actions in rem and quasi in rem proceedings can be found in Local Admiralty Rule E.

When read in conjunction with Supplemental Rule B and E, Local Admiralty Rules B and ~~5~~* E are intended to provide a uniform and comprehensive method for constitutionally implementing the long-standing and peculiar maritime rights of attachment and garnishment. The Committee believes that Local Admiralty Rules B and E correct the deficiencies perceived by some courts to exist in the implementation of this unique maritime provision. Schiffahrtsgesellschaft Leonhardt & Co. v. A. Bottacchi S.A. de Navegacion, 552 F.Supp. 771 (S.D.Ga.1982); Cooper Shipping Company v. Century 21, 1983 A.M.C. 244 (M.D.Fla.1982); Crysen Shipping Co. v. Bona Shipping Co., Ltd., 553 F.Supp.139 (N.D.Fla.1982); and Grand Bahama Petroleum Co. v. Canadian Transportation Agencies, Ltd., 450 F.Supp.447 (W.D.Wa.1978), discussing Supplemental Rule (B) proceedings in light of Fuentes v. Shevin, 407 U.S. 67, [92 S.Ct. 1983, 32 L.Ed.2d 556] (1972) and Sniadach v. Family Finance Corp., 395 U.S. 337, [89 S.Ct. 1820, 23 L.Ed.2d 349] (1969).

Although the Committee is aware of the Eleventh Circuit's decision in Schiffahrtsgesellschaft Leonhardt & Co. v. A. Bottacchi S.A. de Navegacion, 732 F.2d 1543 (1984), the Committee believes that from both a commercial and legal viewpoint, the better practice is to incorporate the pre-seizure scrutiny and post-attachment review provisions provided by this Local Admiralty Rule.

These provisions protect the rights of any person claiming an interest in the seized property by permitting such persons to file a claim against the property, and thereafter permitting a judicial determination of the propriety of the seizure.

(b) Comments on Specific Sections. Local Admiralty Rule B(1) codifies the governing law of this Circuit as set forth in LaBanca v. Ostermunchner, 664 F.2d 65 (5th Cir., Unit B, 1981).

Local Admiralty Rule B(2) codifies the verification requirements of Supplemental Rule B(1) and former Local Admiralty Rule 5S.

B(3) incorporates the "pre-seizure" and "exigent circumstances" provisions of the August 1, 1985, revision to Local Supplemental Rule B(1). In the routine case, the rule contemplates that issuance of the process of attachment and garnishment be preconditioned upon the exercise of judicial review. This ensures that plaintiff can make an appropriate maritime claim, and present proof that the defendant cannot be found within the District. The rule also contemplates that upon a finding of probable cause, a simple order directing the Clerk of the Court to issue the process shall be entered by the Court.

This rule also incorporates the "exigent circumstances" provision of Supplemental Rule B(1). Read in conjunction with Local Admiralty Rule B(5)(b), this rule requires that the plaintiff carry the burden of proof at any post-attachment proceedings to establish not only the prima facie conditions of a maritime attachment and garnishment action under Supplemental Rule B, but also that "exigent circumstances" precluded judicial review under Local Admiralty Rule B(3)(a). The Committee believes that this additional requirement will place upon plaintiff's counsel a burden of extra caution before invoking the "exigent circumstance" provision of the rule.

Local Admiralty Rule B(5) establishes the post-attachment review provisions potentially applicable to maritime attachment and garnishment proceedings. These proceedings may be invoked by any person claiming an interest in the seized property.

(2000) Local Admiralty Rule B(7) is amended to give the party seeking entry of a default judgment up to thirty days, rather than five days, to file a motion and supporting legal memorandum.

(2010) Amended to conform tabulation to the style used in the Federal Rules of Civil Procedure.

RULE 3C. ACTION IN REM

(1a) Verification Requirements. Every complaint and claim filed in an in rem proceeding pursuant to Supplemental Rule C shall be verified in accordance with Local Admiralty Rules ~~1(e)A(5)~~ and ~~2(b)B(2)~~.

(2b) Pre-seizure Requirements. In accordance with Supplemental Rule C(3), the process of arrest in rem shall issue only after one of the following conditions has been met:

(1a) Judicial Review Prior to Issuance. Except as provided in Local Admiralty Rule C(2)(b), a judicial officer shall first review the verified complaint, and any other relevant case papers, prior to the Clerk of the Court issuing the warrant of arrest and/or summons in rem. No notice of this pre-seizure judicial review is required to be given to any person or prospective party.

If the Court finds that probable cause exists for an action in rem, plaintiff shall prepare an order for the Court's signature directing the Clerk of the Court to issue a warrant of arrest and/or summons. This order shall substantially conform in format and content to the form identified as SDF 2 in the Appendix to these Local Admiralty Rules.

Upon receipt of the signed order, the Clerk of the Court shall file the order and, in accordance with Local Admiralty Rule C(2)(c), issue the warrant of arrest and/or summons.

Thereafter the Clerk of the Court may issue supplemental process without further order of the Court.

~~(2)(b)~~ Certification of Exigent Circumstances. If the plaintiff files a written certification that exigent circumstances make review by the Court impracticable, the Clerk of the Court shall, in accordance with Local Admiralty Rule ~~2(e)(2)~~B(3)(b), issue a warrant of arrest and/or summons.

Thereafter at any post-arrest proceedings under Supplemental Rule E(4)(f) and Local Admiralty Rule ~~3(g)~~C(7), plaintiff shall have the burden of showing that probable cause existed for the issuance of process, and that exigent circumstances existed which precluded judicial review in accordance with Local Admiralty Rule ~~3(b)(1)~~C(2)(a).

~~(3)(c)~~ Preparation and Issuance of the Warrant of Arrest and/or Summons. Plaintiff shall prepare the warrant of arrest and/or summons, and deliver them to the Clerk of the Court for filing and issuance.

The warrant of arrest shall substantially conform in format and content to the form identified as SDF 4 in the Appendix to these Local Admiralty Rules, and shall in all cases give adequate notice of the post-arrest provisions of Local Admiralty Rule ~~3(g)~~C(7).

~~(e)3~~ Special Requirements for Actions Involving Freight, Proceeds and/or Intangible Property.

~~(1a)~~ Instructions to Be Contained in the Summons. Unless otherwise ordered by the Court, the summons shall order the person having control of the freight, proceeds and/or intangible property to either:

~~(A)~~ File a claim within fourteen (14) days, beginning on the next calendar day, including Saturday, Sunday, or a legal holiday, count fourteen days after service of the summons in accordance with Local Admiralty Rule ~~D(6)(a)4(f)(1)~~D(6)(a)4(f)(1); or

~~(B)~~ Deliver or pay over to the Marshal, the freight, proceeds, and/or intangible property, or a part thereof, sufficient to satisfy plaintiff's claim.

The summons shall also inform the person having control of the freight, proceeds, and/or intangible property that service of the summons has the effect of arresting the property, thereby

preventing the release, disposal or other distribution of the property without prior order of the Court.

(2b) Requirements for Claims to Prevent the Delivery of Property to the Marshal. Any claim filed in accordance with Supplemental Rule E(4) and Local Admiralty Rule ~~3(e)(1)~~C(5)(a) shall describe the nature of claimant's interest in the property, and shall articulate reasons why the seizure should be vacated.

The claim shall be served upon the plaintiff, the Marshal, and all other parties to the litigation. Additionally, the claimant shall file a Certificate of Service indicating the date and manner in which service was perfected.

(3c) Delivery or Payment of the Freight, Proceeds, and/or Intangible Property to the United States Marshal. Unless a claim is filed in accordance with Supplemental Rule E(4)(f), and Local Admiralty Rule ~~3(f)(1)~~C(6)(a), any person served with a summons issued pursuant to Local Admiralty Rule ~~3(b)(1)~~C(2)(a) or ~~(b)(2)~~C(2)(b) or ~~(2)(b)~~, shall within fourteen (14) days, beginning on the next calendar day, including Saturday, Sunday, or a legal holiday, after execution of service, deliver or pay over to the Marshal all, or part of, the freight, proceeds, and/or intangible property sufficient to satisfy plaintiff's claim.

Unless otherwise ordered by the Court, the person tendering control of the freight, proceeds, and/or intangible property shall be excused from any further duty with respect to the property in question.

(d 4) Publishing Notice of the Arrest as Required by Supplemental Rule C(4).

(1a) Time for Publication. If the property is not released within fourteen (14) days after the execution of process, the notice required by Supplemental Rule C(4) shall be published by the plaintiff in accordance with Local Admiralty Rule ~~4(g)~~A(7). Such notice shall be published within twenty-one (21) days after execution of process. The notice shall substantially conform to the form identified as SDF 7 in the Appendix to these Local Admiralty Rules.

(2b) Proof of Publication. Plaintiff shall file with the Clerk of the Court proof of publication not later than fourteen (14) days following the last day of publication. It shall be sufficient proof for the plaintiff to file the sworn statement by, or on behalf of, the publisher or editor, indicating the dates of publication, along with a copy or reproduction of the actual publication.

(e5) Undertaking in Lieu of Arrest. If, before or after the commencement of an action, a party accepts any written undertaking to respond on behalf of the vessel and/or other property in return for foregoing the arrest, the undertaking shall only respond to orders or judgments in favor of the party accepting the undertaking, and any parties expressly named therein, to the extent of the benefit thereby conferred.

(~~f~~6) Time for Filing Claim or Answer. Unless otherwise ordered by the Court, any claimant of property subject to an action in rem shall:

(~~1~~a) File the claim within fourteen (14) days, beginning on the next calendar day, including Saturday, Sunday, or a legal holiday, after process has been executed; and

(~~2~~b) Serve an answer within twenty-one (21) days after the filing of the claim.

(~~g~~7) Post-arrest Proceedings. Coincident with the filing of a claim pursuant to Supplemental Rule E(4)(f), and Local Admiralty Rule ~~3(f)(1)~~C(6)(a), the claimant may also file a motion and proposed order directing plaintiff to show cause why the arrest should not be vacated. If the Court grants the order, the Court shall set a date and time for a show cause hearing. Thereafter, if the Court orders the arrest to be vacated, the Court shall award attorney's fees, costs, and other expenses incurred by any party as a result of the arrest.

Additionally, if the seizure was predicated upon a showing of "exigent circumstances" under Local Admiralty Rule ~~3(f)(2)~~C(6)(b), and the Court finds that such exigent circumstances did not exist, the Court shall award attorneys' fees, costs and other expenses incurred by any party as a result of the seizure.

(~~h~~8) Procedural Requirements Prior to the Entry of Default. In accordance with Federal Rule of Civil Procedure 55, a party seeking the entry of default judgment in rem shall first file a motion and supporting legal memorandum.

The party seeking the entry of default shall also file such other proof sufficient to demonstrate that due notice of the action and arrest has been given by:

(~~1~~a) Service upon the master or other person having custody of the property; and

(~~2~~b) Delivery, or by certified mail, return receipt requested (or international effective equivalent), to every other person, including any known owner, who has not appeared or intervened in the action, and who is known to have, or claims to have, a possessory interest in the property.

The party seeking entry of default judgment under Local Admiralty Rule C(8) may be excused for failing to give notice to such "other person" upon a satisfactory showing that diligent effort was made to give notice without success; and

(~~3~~c) Publication as required by Supplemental Rule C(4) and Local Admiralty Rule ~~3(d)~~C(4).

Upon review of the motion, memorandum, and other proof, the Clerk of the Court may, where appropriate, enter default in accordance with Federal Rule of Civil Procedure 55. Thereafter, the Clerk of the Court shall serve notice of the entry of default upon all parties represented in the action.

(19) Procedural Requirements for the Entry of Default Judgment. Not later than thirty (30) days following notice of the entry of default, the moving party shall file a motion, and supporting legal documents, for the entry of default judgment pursuant to Federal Rule of Civil Procedure 55(b). The moving party may also file as exhibits for the motion such other documentation as may be required to support the entry of default judgment. Thereafter the Court will consider the motion as indicated below:

(1a) When No Person Has Filed a Claim or Answer. Unless otherwise ordered by the Court, the motion for default judgment will be considered by the Court without oral argument.

(2b) When Any Person Has Filed an Appearance, But Does Not Join in the Motion for Entry of Default Judgment. If any person has filed an appearance in accordance with Local Admiralty Rule ~~3(f)C(6)~~, but does not join in the motion for entry of default judgment, the party seeking the entry of default judgment shall serve notice of the motion upon the party not joining in the motion, and thereafter the opposing party shall have seven (7) days from receipt of the notice to file written opposition with the Court.

If the Court grants the motion and enters the default judgment, such judgment shall establish a right on the part of the party or parties in whose favor it is entered. The judgment shall be considered prior to any claims of the owner of the defendant property against which it is entered, and to the remnants and surpluses thereof; providing, however, that such a judgment shall not establish any entitlement to the defendant property having priority over non-possessory lien claimants. Obtaining a judgment by default shall not preclude the party in whose favor it is entered from contending and proving that all, or any portion, of the claim or claims encompassed within the judgment are prior to any such non-possessory lien claims.

Effective Dec. 1, 1994. Amended effective April 15, 1998; April 15, 2000; April 15, 2001; April 15, 2007; April 15, 2010; April 15, 2011.

Advisory Notes

(1993) C(2). Well-reasoned authority has upheld Supplemental Rule C, specifically holding that a pre-seizure judicial hearing is not required where a vessel, freight, or intangible property is proceeded against to enforce a maritime lien. *Amstar Corporation v. SS Alexandros T*, 664 F.2d 904 (4th Cir.1981); *Merchants Nat'l Bank v. Dredge Gen. G.L. Gillespie*, 663 F.2d 1338 (5th Cir., Unit A, 1981); *Schiffahrtsgesellschaft Leonhardt & Co. v. A. Bottacchi S.A. de Navegacion*, 732 F.2d 1543 (11th Cir. 1984).

The desirability of providing by local admiralty rule an available avenue for reasonably prompt and effective post-arrest judicial relief is indicated. See, *Merchants Nat'l Bank v. Dredge Gen. G.L. Gillespie*, *supra*, at 1334, 1350. This provision is incorporated in Local Admiralty Rule C(7).

This procedure made available through this rule has proven effective. *Maryland Ship Building & Dry-Dock Co. v. Pacific Ruler Corp.*, 201 F.Supp. 858 (S.D.N.Y. 1962). In fact, the procedure established by this local rule goes beyond that encountered in *Merchants Nat'l Bank v. DredgeGen. G.L. Gillespie, supra*, or *Maryland Ship Building & Dry-Dock Co. v. Pacific Ruler Corp., supra*.

Under this rule, the claimant or intervenor may petition the Court to order the plaintiff to establish probable cause for the arrest of the property. Therefore at an early stage of the litigation, plaintiff can be required to establish a prima facie case that he is asserting a claim which is entitled to the dignity and status of a maritime lien against the arrested property. This rule contemplates the entry of an order with conclusory findings following the post-arrest proceedings. More detailed findings may be requested by any party.

The rule is not intended to provide a method for contesting the amount of security to be posted for the release of the vessel. Once a prima facie case for the maritime lien has been established, or the question of lien status remains uncontested, the matter of security is left to the provisions of Local Admiralty Rule E.

C(3). Supplemental Rule C(3) also addresses the less commonly encountered action in rem to enforce a maritime lien against freights, proceeds or other intangible property. The revision to this rule designates the United States Marshal to take custody of all tangible and intangible properties arrested in accordance with this rule, and to bring these properties under the control of the Court. This is the practice in many other districts, and when implemented will provide the greatest uniformity in the treatment of tangible and intangible property.

C(4). The substance of former Local Admiralty Rule 3(c) is continued.

C(5). Although this section is new to the local rules, it reflects the current local practice with respect to undertakings and stipulations in lieu of arrest. Such undertakings and stipulations have been held effective to permit a Court to exercise its in rem admiralty jurisdiction so long as either at the time the undertaking or stipulation is given, or at any subsequent time prior to the filing of the action, the vessel or other property is, or will be, present within the District.

C(6). The substance of former Local Admiralty Rule 2(b) is continued.

C(7). See the comments for Local Admiralty Rule C(2).

C(8) and (9). These sections are designed to mesh Supplemental Rule C with Federal Rules of Civil Procedure 55. For purpose of default and default judgments, the rule recognizes two distinct groups of in rem claimants.

The first category of claimants include those who by ownership or otherwise, would, but for the arrest of the property, be entitled to its possession. Pursuant to Supplemental Rule C(6), these claimants must file a claim setting forth their interest in the property, demand their right to

receive possession, and to appear and defend the action. In the case of such claimants, the operation of standard default procedures foreclose their rights to contest positions of the party in whose favor the default is rendered, and the entry of default judgment is both fair and appropriate.

The second category of claimants embodies a potentially numerous and varying class of claimants. The claims of these other claimants do not give rise to a right of possession of the vessel from the marshal or other appropriate custodian, but rather invoke the power of the Court in admiralty to foreclose against the property by the ultimate rendering of a judgment in rem against property entitlements. Such judgments would be predicated upon non-possessory liens.

The time in which the second category of claimants may intervene is governed by the provisions of Local Admiralty Rule E. Such lien claimants are not obligated, and indeed are probably not entitled to file a claim of possession to the vessel, or to answer and defend in the name of the vessel. As to them, in accordance with Federal Rule of Civil Procedure 8, the essential averments of all the complaints are taken as automatically denied.

No default judgments entered pursuant to this rule will operate to adjudicate priorities among competing non-possessory lien claimants.

In attempting to reconcile the traditional notions of default and default judgments with the concept of in rem proceedings, the final language has been formulated to maintain the efficacy of the default procedure without resulting in premature adjudication effecting priorities and distributions. The default procedure establishes in favor of the holder of such a default judgment, a lien position against the proceeds of the property, resulting from any sale or disposition, or, if currency is involved, the ultimate adjudication, inferior to all other competing priorities, except the otherwise escheating right of the property owner to the remnants and surpluses after all full-claims satisfactions. At the same time, the right of a person obtaining a default judgment to contend and compete with other claimants for priority distribution remains unaffected.

(2000) Local Admiralty Rule C(9) is amended to give the party seeking entry of a default judgment up to thirty days, rather than five days, to file a motion and supporting legal memorandum.

(2001) Corrections to rule number references.

(2010) Amended to conform tabulation to the style used in the Federal Rules of Civil Procedure.

RULE 4D. POSSESSORY, PETITORY AND PARTITION ACTIONS

(a¹) Establishing Dates for the Return of Process. In possessory actions filed pursuant to Supplemental Rule D, the Court may order that process be returnable at a time shorter than that prescribed by Federal Rule of Civil Procedure 12(a).

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

Effective Dec. 1, 1994. Amended effective April 15, 2007; April 15, 2010; April 15, 2011.

Advisory Notes

(1993) This rule continues in substance the provisions of former Local Admiralty Rule 15.

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

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

RULE 5E. ACTIONS IN REM AND QUASI IN REM: GENERAL PROVISIONS

(a~~1~~) Statement of Itemized Damages and Expenses Required. Every complaint in a Supplemental Rule B and C action shall state the amount of the debt, damages, or salvage for which the action is brought. In addition, the statement shall also specify the amount of any unliquidated claims, including attorneys' fees.

(b~~2~~) Requirements and Procedures for Effecting Intervention. Whenever a vessel or other property is arrested or attached in accordance with any Supplemental Rule, and the vessel or property is in the custody of the United States Marshal, or duly authorized substitute custodian, any other person having a claim against the vessel or property shall be required to present their claim as indicated below:

(~~1~~a) Intervention of Right When No Sale of the Vessel or Property Is Pending. Except as limited by Local Admiralty Rule 5(~~b~~)(~~2~~)E(2)(b), any person having a claim against a vessel or property previously arrested or attached by the Marshal may, as a matter of right, file an intervening complaint at any time before an order is entered by the Court scheduling the vessel or property for sale.

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

Upon receipt of the intervening complaint and supplemental process, the Clerk of the Court shall conform a copy of the intervening complaint and shall issue the supplemental process.

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

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

(2b) Permissive Intervention When the Vessel or Property Has Been Scheduled for Sale by the Court. Except as indicated below, and subject to any other rule or order of this Court, no person shall have an automatic right to intervene in an action where the Court has ordered the sale of the vessel or property, and the date of the sale is set within twenty-one (21) days from the date the party moves for permission to intervene in accordance with this subsection. In such cases, the person seeking permission to intervene must:

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

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

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

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

(E) File a certificate of service indicating the date and manner of service.

Thereafter, the Court may permit intervention under such conditions and terms as are equitable to the interests of all parties; and if intervention is permitted, shall also direct the Clerk of the Court to issue the supplemental process.

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

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

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

(e3) Special Requirements for Salvage Actions. In cases of salvage, the complaint shall also state to the extent known, the value of the hull, cargo, freight, and other property salvaged, the amount claimed, the names of the principal salvors, and that the suit is instituted in their behalf and in behalf of all other persons associated with them.

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

(e4) Form of Stipulation or Bonds. Except in cases instituted by the United States through information, or complaint of information upon seizures for any breach of the revenues, navigation, or other laws of the United States, stipulations or bonds in admiralty and maritime actions need not be under seal and may be executed by the agent or attorney of the stipulator or obligor.

(e5) Deposit of Marshal's Fees and Expenses Required Prior to Effecting Arrest, Attachment and/or Garnishment.

(4a) Deposit Required Before Seizure. Any party seeking the arrest or attachment of property in accordance with Supplemental Rule E shall deposit a sum with the Marshal sufficient to cover the Marshal's estimated fees and expenses of arresting and keeping the property for at least fourteen (14) days. The Marshal is not required to execute process until the deposit is made.

(2b) Proration of Marshal's Fees and Expenses Upon Intervention. When one or more parties intervene pursuant to Local Admiralty Rule ~~5(b)(1) or (2)~~ E(2)(a) or (b), the burden of advancing sums to the Marshal sufficient to cover the Marshal's fees and expenses shall be allocated equitably between the original plaintiff, and the intervening party or parties as indicated below:

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

(B_{ii}) Allocation of Costs and Expenses in the Event That Counsel Cannot Stipulate. The Court expects that counsel will resolve the allocation of costs and expenses in accordance with the preceding paragraph. In the event that such an arrangement cannot be made, the parties shall

share in the fees and expenses of the Marshal in proportion to their claims as stated in the original and intervening complaints.

In order to determine the proportionate shares of each party, counsel for the last intervening plaintiff shall determine the total amounts claimed by each party. The individual claims shall be determined from the original and amended complaint, and all other intervening complaints subsequently accepted and processed by the Marshal in accordance with Local Admiralty Rule ~~5(b)(1) or (2)~~E(2)(a) or (b).

Thereafter, counsel for the last intervening plaintiff shall deliver to the Marshal a list which summarizes each party's claim, and the proportion which each party's claim bears to the aggregate claims asserted in the litigation, determined to the nearest one-tenth of one percentage point.

Upon receipt of this listing, the Marshal shall determine the total expenses incurred to date and shall estimate the expenses to be incurred during the next fourteen (14) days. For the purpose of making this calculation, the total fees and expenses shall be calculated from the date when continuous and uninterrupted arrest or attachment of the property began, and not prorated from the date a particular party's intervening complaint was filed.

The Marshal shall then apply the percentages determined in the listing, and shall compute the amount of the intervening party's initial deposit requirements. The Marshal shall also utilize this listing to compute any additional deposit requirements which may be necessary pursuant to Local Admiralty Rule ~~5(e)(3)~~E(5)(c).

The Marshal need not re-arrest or re-attach the vessel and/or property until the deposit is received from the intervening plaintiff.

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

(4d) Judicial Relief From Deposit Requirements. Any party aggrieved by the deposit requirements of Local Admiralty Rule ~~5(e)(2)~~E(5)(b) may apply to the Court for relief. Such application shall be predicated upon a showing that owing to the relative priorities of the claims asserted against the vessel or other property, the deposit requirements operate to impose a burden disproportionate to the aggrieved party's recovery potential.

The judicial officer may adjust the deposit requirements, but in no event shall the proportion required of an aggrieved party be reduced to a percentage less than that imposed upon the claimant whose claim is the smallest among that of claims which the aggrieved party stipulates

as having priority over its claim; or, in the absence of such stipulation, the greatest percentage imposed upon any claimant participating in the deposit requirements.

(~~5e~~) Consequence of Failing to Comply With Additional Deposit Requirements. Any party who fails to make the additional deposit as requested by the Marshal may not participate further in the proceeding, except for the purpose of seeking relief from this rule.

Additionally, the Marshal shall notify the Court in writing whenever any party fails to make additional deposits as required by Local Admiralty Rule ~~E(5)(c)-5(e)(3)~~.

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

(~~f6~~) Property in Possession of a United States Officer. Whenever the property to be arrested or attached is in custody of a United States officer, the Marshal shall serve the appropriate process upon the officer or employee; or, if the officer or employee is not found within the District, then to the custodian of the property within the District.

The Marshal shall direct the officer, employee or custodian not to relinquish custody of the property until ordered to do so by the Court.

(~~g7~~) Process Held in Abeyance.

(~~4a~~) When Permitted. In accordance with Supplemental Rule E(3)(b), a plaintiff may ask the Clerk of the Court not to issue process, but rather to hold the process in abeyance. The Clerk of the Court shall docket this request, and thereafter shall not be responsible for ensuring that process is issued at a later date.

(~~2b~~) When Intervention Is Subsequently Required. It is the intention of these rules that a vessel or other property should be arrested or attached pursuant to process issued and effected in only one civil action. Therefore, if while process is held in abeyance on one action, the vessel or property is arrested or attached in another action, it shall be the responsibility of the plaintiff who originally requested process be held in abeyance in the first action to voluntarily dismiss without prejudice the first action, insofar as that action seeks to proceed against the property arrested or attached in the second action, and promptly intervene in the second action pursuant to Local Admiralty Rule ~~5(b)(1) or (2)~~E(2)(a) or (b).

In order to prevent undue hardship or manifest injustice, motions to consolidate in rem actions against the same vessel or property will be granted only in exceptional circumstances.

(~~h8~~) Release of Property in Accordance With Supplemental Rule E(5).

(~~4a~~) Release by Consent or Stipulation. Subject to the limitations imposed by Supplemental Rule E(5)(c), the Marshal may release any vessel, cargo or property in the Marshal's possession to the

party on whose behalf the property is detained. However, as a precondition to release, the Marshal shall require a stipulation, bond, or other security, expressly authorizing the release. The authorizing instrument shall be signed by the party, or the party's attorney, on whose behalf the property is detained.

The stipulation, bond, or other security shall be posted in an amount equal to, or greater than, the amount required for the following types of action:

(~~A~~i) Actions Entirely for a Sum Certain. The amount alleged to be due in the complaint, with interest at six percent per annum from the date claimed to be due to a date twenty-four months after the date the claim was filed, or by filing an approved stipulation, or bond for the amount alleged plus interest as computed in this subsection.

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

(~~B~~ii) Actions Other Than Possessory, Petitory or Partition. Unless otherwise ordered by the Court, the amount of the appraised or agreed value of the property seized, with interest. If an appraised value cannot be agreed upon by the parties, the Court shall order an appraisal in accordance with Local Admiralty Rule ~~6(e)~~E(3).

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

The person consenting or stipulating to the release shall also file a claim in accordance with Local Admiralty Rule ~~5(b)(1) or (2)~~E(2)(a) or (b).

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

(~~2~~b) Release Pursuant to Court Order. In accordance with Supplemental Rule E(5)(c), a party may petition to release the vessel pursuant to Court order. A party making such application shall file a Request for Release which shall substantially conform in format and content to the form identified as SDF 8 in the Appendix to these Local Admiralty Rules. Additionally, the party shall prepare, and offer for filing, a proposed order directing the release. This order shall substantially conform in format and content to the form identified as SDF 9 in the Appendix to these Local Admiralty Rules.

However, as a precondition to the release, the Marshal shall require a stipulation, bond, or other security, as specified in Local Admiralty Rule ~~5(h)(1)(A), (B) or (C)~~E(8)(a)(i), (ii) or (iii), as appropriate.

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

(4d) Release Subsequent to the Posting of a General Bond.

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

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

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

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

(f~~9~~) Application to Modify Security for Value and Interest. At any time, any party having an interest in the subject matter of the action may move the Court, on due notice and for cause, for greater, better or lesser security, and any such order may be enforced by attachment or as otherwise provided by law.

(j~~10~~) Custody and Safekeeping.

(4~~a~~) Initial Responsibility. The Marshal shall initially take custody of any vessel, cargo and/or other property arrested, or attached in accordance with these rules. Thereafter, and until such time as substitute custodians may be authorized in accordance with Local Admiralty Rule 5(j)(3) E(10)(c), the Marshal shall be responsible for providing adequate and necessary security for the safekeeping of the vessel or property.

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

(2~~b~~) Limitations on the Handling, Repairing and Subsequent Movement of Vessels or Property. Subsequent to the arrest or attachment of a vessel or property, and except as provided in Local

Admiralty Rule ~~5(j)(1)~~E(10)(a), no person may handle cargo, conduct repairs, or move a vessel without prior order of Court. Notwithstanding the foregoing, the custodian or substitute custodian is obligated to comply with any orders issued by the Captain of the Port, United States Coast Guard, including an order to move the vessel; and to comply with any applicable federal, state, or local laws or regulations pertaining to vessel and port safety. Any movement of a vessel pursuant to such requirements must not remove the vessel from the District and shall be reported to the Court within twenty-four hours of the vessel's movement.

~~(3c)~~ (A) Procedures for Changing Custody Arrangements. Any party may petition the Court to dispense with keepers, remove or place the vessel, cargo and/or other property at a specified facility, designate a substitute custodian for the vessel or cargo, or for other similar relief. The motion shall substantially conform in format and content to the form identified as SDF 5 in the Appendix of these Local Admiralty Rules.

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

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

The consent and indemnification agreement shall expressly release the Marshal from any and all liability and responsibility for the care and custody of the property while in the hands of the substitute custodian; and shall expressly hold the Marshal harmless from any and all claims whatsoever arising from the substitute custodianship. The agreement shall substantially conform in format and content to the form identified as SDF 6 in the Appendix to these Local Admiralty Rules.

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

~~(4d)~~ (4d) Insurance Requirements.

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

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

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

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

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

~~(K11)~~ (K11) Preservation, Humanitarian and Repatriation Expenses.

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

Any order issued pursuant to this subsection shall require the person furnishing the services or supplies to file a weekly invoice. This invoice shall be set forth in the format prescribed in Local Admiralty Rule ~~5(k)(5)~~E(11)(e).

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

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

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

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

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

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

(5e) Claim by a Supplier for Payment of Charges. Any person who claims payment for furnishing services or supplies in compliance with Local Admiralty Rule E(11), shall submit an invoice to the Marshal's Office for review and approval.

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

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

(12) Property in Incidental Custody and Otherwise Not Subject to the Arrest or Attachment.

(1a) Authority to Preserve Cargo in Incidental Custody. The Marshal, or an authorized substitute custodian, shall be responsible for securing, maintaining and preserving all property incidentally taken into custody as a result of the arrest or attachment of a vessel or property. Incidental property may include, but shall not be limited to, laden cargo not itself the subject of the arrest or attachment.

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

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

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

When separation of the property is ordered to protect the incidentally seized property from undue deterioration; provide for safer storage; meet an emergency; reduce the expenses of custody; or

to facilitate a sale of the vessel or other property pursuant to Local Admiralty Rule ~~5(p)~~E(16); the costs of such separation shall be treated as an expense of preservation and taxed as a cost of custody.

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

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

~~(m13)~~ Dismissal.

~~(1a)~~ By Consent. No action may be dismissed pursuant to Federal Rule of Civil Procedure 41(a) unless all costs and expenses of the Court and its officials have first been paid.

Additionally, if there is more than one plaintiff or intervening plaintiff, no dismissal may be taken by a plaintiff unless that party's proportionate share of costs and expenses has been paid in accordance with Local Admiralty Rule ~~5(f)~~E(6).

~~(2b)~~ Involuntary Dismissal. If the Court enters a dismissal pursuant to Federal Rule of Civil Procedure 41(b), the Court shall also designate the costs and expenses to be paid by the party or parties so dismissed.

~~(n14)~~ Judgments.

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

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

~~(o15)~~ Stay of Final Order.

~~(1a)~~ Automatic Stay for Fourteen Days. In accordance with Federal Rule of Civil Procedure 62(a), no execution shall issue upon a judgment, nor shall seized property be released pursuant to a judgment or dismissal, until fourteen (14) days after the entry of the judgment or order of dismissal.

~~(2b)~~ Stays Beyond the Fourteen Day Period. If within the fourteen (14) day period established by Federal Rule of Civil Procedure 62(a), a party files any of the motions contemplated in Federal Rule of Civil Procedure 62(b), or a notice of appeal, then unless otherwise ordered by the Court,

a further stay shall exist for a period not to exceed thirty (30) days from the entry of the judgment or order. The purpose of this additional stay is to permit the Court to consider an application for the establishment of a supersedeas bond and to order the date upon which the bond shall be filed with the Court.

(p16) Notice of Sale.

(1a) Publication of Notice. In an action in rem or quasi in rem, and except in suits on behalf of the United States of America where other notice is prescribed by statute, the Marshal shall publish notice in any of the newspapers approved pursuant to Local Admiralty Rule ~~4(g)~~A(7).

(2b) Duration of Publication. Unless otherwise ordered by the Court, applicable Supplemental Rule, or Local Admiralty Rule, publication of the notice of sale shall be made at least twice; the first publication shall be at least ~~one calendar week~~ fourteen (14) days prior to the date of the sale, and the second at least seven ~~calendar~~ (7) days prior to the date of the sale.

(a17) Sale of a Vessel or Property.

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

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

(B) If the Bid Is More Than \$500.00. The bidder shall immediately deposit with the Marshal \$500.00, or ten percent of the bid, whichever sum is greater. Thereafter the bidder shall pay the remaining purchase price within seven (7) days. If an objection to the sale is filed within the time permitted by Local Admiralty Rule ~~5(a)(7)~~E(17)(g), the successful bidder is excused from paying the remaining purchase price until seven (7) days after the Court confirms the sale.

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

(3c) Custodial Costs Pending Payment. When a successful bidder fails to pay the balance of the bid within the time allowed by Local Admiralty Rule ~~5(a)(1)(B)~~E(17)(a)(ii), or within the time permitted by order of the Court, the Marshal shall charge the successful bidder for the cost of keeping the property from the date payment of the balance was due, to the date the bidder takes delivery of the property.

The Marshal may refuse to release the property until these additional charges have been paid.

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

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

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

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

In order to confirm the sale, plaintiff's counsel shall file a "Request for Confirmation of Sale" on the day following the last day for filing an objection. The "Request for Confirmation of Sale" shall substantially conform in format and content to the form identified as SDF 10 in the Appendix to these Local Admiralty Rules. Plaintiff's counsel shall also prepare and offer for filing a "Confirmation of the Sale." The "Confirmation of Sale" shall substantially conform in format and content to the form identified as SDF 11 in the Appendix to these Local Admiralty Rules. Thereafter the Clerk of the Court shall file and docket the confirmation and shall promptly transmit a certified copy of the "Confirmation of Sale" to the Marshal's Office.

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

(7g) Objections to Confirmation.

(A*i*) Time for Filing Objections. Unless otherwise permitted by the Court, an objection must be filed within seven (7) days following the sale. The party or person filing an objection shall serve a copy of the objection upon the Marshal and all other parties to the action, and shall also file a Certificate of Service indicating the date and manner of service. Opposition to the objection must be filed within seven (7) days after receipt of the objection of the sale.

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

(B*ii*) Deposit of Preservation or Maintenance Costs. In addition to filing written objections, any person objecting to the sale shall also deposit with the Marshal the cost of keeping the property for at least fourteen (14) days. Proof of the deposit with the Marshal's Office shall be delivered to the Clerk of the Court's Office by the moving party. The Court will not consider the objection without proof of this deposit.

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

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

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

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

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

Effective Dec. 1, 1994. Amended effective April 15, 1998; April 15, 2007; April 15, 2010; April 15, 2011.

Advisory Notes

(1993) Local Admiralty Rule E(1). This section continues the provisions of former Local Rule 7(c).

Local Admiralty Rule E(2). This section is new. The rules do not require an intervening plaintiff to undertake the formal steps required to issue the original process of arrest or attachment pursuant to Local Admiralty Rule B(3) or C(2); rather the Committee believes that intervening parties need only apply for supplemental process, which in accordance with the August 1, 1985, amendments to Supplemental Rule B and C, may be issued by the Clerk of the Court without further order of the Court. The Committee recommends the re-arrest or re-attachment provisions of this rule in order to accommodate the administrative and records keeping requirements of the Marshal's Office.

The revision also reflects the elimination of the initial security deposit formerly required by Local Admiralty Rule 5(e). The Marshal shall, however, assess custodial costs against the intervening plaintiff in accordance with Local Admiralty Rule E(5)(b).

Local Admiralty Rule E(3). This section continues the provisions of former Local Rule 7(e).

Local Admiralty Rule E(4). This section continues the provisions of former Local Rule 6.

Local Admiralty Rule E(5). The Marshal, as an officer of the Court whose fiscal affairs are regulated by statute and order, is precluded by law from expending funds of the United States to maintain custody of vessels or other property pursuant to claims being asserted by the several states, any foreign sovereigns, or any private parties. This prohibition extends to incurring obligations which, if not satisfied, otherwise might be asserted as a claim against the United States. Consequently, before undertaking to arrest or attach property, the Marshal must receive funds in advance of incurring such obligations sufficient to satisfy them.

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

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

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

Local Admiralty Rule E(6). Section (6) is new. It reflects the approach embodied in the local rules of those districts which have addressed the question of properties subject to arrest but already in the possession of an officer of the United States.

Local Admiralty Rule E(7). The provisions of Section (7) are new. Paragraph (a), following rules promulgated in other districts, states what is understood by the Advisory Committee to have been the practice in this District. Paragraph (b) is designed to mesh the concept of process held in abeyance with the requirements of Local Admiralty Rule E(2) regarding intervening claims, and is designed to foreclose the possibility of a vessel or other property being arrested or attached in the District as a result of more than one civil action. Since under Local Rule 5(b), the automatic, permissive intervention is not triggered until the vessel or other property has been arrested, attached or seized, a suit in rem in which process is held in abeyance will not form the basis for such an intervention. On the other hand, once the property is arrested, attached or seized, the issuance of process in the earlier suit would be destructive of the "only one civil action" concept, and, consequently paragraph (b) requires a party whose process was held in abeyance to refile as an intervenor pursuant to Local Admiralty Rule E(2), making provision for the proper disposition of the earlier action.

Local Admiralty Rule E(8). Section (8) continues the provisions of former Local Rule 11.

Local Admiralty Rule E(9). Section (9) is new. The provisions of Section (j) are expressly authorized by Supplemental Rule E(6) and offer some potential relief from the automatic operations and other provisions of Supplemental Rule E regarding security for value and interest.

The decision in *Industria Nacional del Papel, C.A. M/V Albert F.*, 730 F.2d 622 (11th Cir. 1984), indicates that such an application must be made prior to the entry of judgment.

Local Admiralty Rule E(10). Section (10) is new. It is designed to reflect the actual practice in the District, and follows the rules promulgated in several other districts. In formulating this Local Admiralty Rule, the Committee studied Section 6.3 of the "Marshal's Manual," the internal operating guide for the United States Marshal's Service. Section 10(b) was amended in 1998 to permit substitute custodians to move arrested vessels, pursuant to an order of the United States Coast Guard Captain of the Port ("COTP"), without first obtaining permission from the Court. The change was prompted by instances where substitute custodians declined to obey a COTP order to move an arrested vessel, citing Local Admiralty Rule E(10)(b) and its requirement that Court permission be first obtained. Any movement of a vessel pursuant to a COTP order must not take the vessel out of the District. A corresponding change was made in Form 5, paragraph (5).

Local Admiralty Rule E(11). Section (11) is new. It addresses areas which in recent litigation in the District have called excessively for interim judicial administration. While the subject matter is covered in the rules promulgated in other districts, Section (11) differs from the approach of other districts in providing for a more positive control of expenses being incurred in connection with vessels or other property in the custody of the Court, and is designed to avoid accumulated costs being advanced for the first time well after having been incurred.

Local Admiralty Rule E(12). Section (12) is new. It addresses a situation which has arisen in the District in the past and which can be foreseen as possibly arising in the future. While the subject is not addressed in other local rules studied by any oft-cited leading cases, it was the opinion of the Advisory Committee that the area should be addressed by Local Admiralty Rule and that the provisions of Section (12) are both consistent with the general maritime laws of the United States and designed to permit efficient administration without the necessity for undue judicial intervention. As with the claims of intervenors and the allocation of deposits against custodial costs, the provisions of Section (12), in keeping with the design of these Local Admiralty Rules, are intended to be essentially self-executing, with the emphasis on the ministerial role of Court officers and services.

Local Admiralty Rule E(13). Section (13) continues the provisions of former Local Rule 17(a). It follows Federal Rule of Civil Procedure 41, and addresses the necessarily greater concern for costs and expenses inherent in the in rem admiralty procedure.

Local Admiralty Rule E(14). Section (14) continues the provisions of former Local Rule 13.

Local Admiralty Rule E(15). Section (15) incorporates the provisions of former Local Rule 14.

Local Admiralty Rule E(16) and (17). The provisions of former Local Rule 4 have been expanded to provide a standardized procedure governing sales of property, which procedure the Court, at its option, may utilize, in whole or in part, thus shortening and simplifying orders related to sales and accompanying procedures.

Local Admiralty Rule E(18). Consistent with the provision of Local Admiralty Rule E(2), this section gives express notice of the distinct positions of claims pre-sale and post-sale.

(2010) Local Admiralty Rule E(16)(b). The dates of publication were changed to conform with the 2009 changes to the deadline calculations of the Federal Rules.

RULE 6F. ACTIONS TO LIMIT LIABILITY

(1) Monition, Injunction and Publication of the Notice. Upon the plaintiff's filing of an Ad Interim Stipulation of Value or otherwise posting a deposit or transfer in compliance with Supplemental Rules F(1) and F(2), the court shall immediately issue a Monition and Injunction pursuant to Supplemental Rule F(3). The Monition and Injunction shall: enjoin the further prosecution of any action or proceeding against the plaintiff or the plaintiff's property with respect to any claim subject to limitation in the action; order that all persons asserting claims with respect to which the complaint seeks limitation, to file their respective claims pursuant to Supplemental Rule F(4); order that public notice be effectuated by the plaintiff pursuant to Supplemental Rule F(4); and approve the Ad Interim Stipulation of Value or other form of deposit, transfer or security if it meets the requirements of Supplemental Rules F(1) and F(2). Upon the issuance of the Monition and Injunction by the Court, the plaintiff shall effect publication of the notice in accordance with the provisions set forth in Supplemental Rule F(4)

and Local Admiralty Rule A(7). This Local Rule does not affect a claimant's right to assert the insufficiency of the fund or security under Supplemental Rule F(7).

~~(a) Publication of the Notice. Immediately upon the commencement of an action to limit the liability pursuant to Supplemental Rule F, plaintiff shall, without further order of Court, effect publication of the notice in accordance with the provisions set forth in Supplemental Rule F and Local Admiralty Rule 1(g).~~

(2) Proof of Publication. Plaintiff shall file proof of publication of the notice to claimants with the court within seven (7) days after the date fixed by the Court pursuant to Supplemental Rule F(4). It shall be sufficient proof for plaintiff to file the sworn statement or a declaration pursuant to 28 U.S.C. § 1746 by, or on behalf of, the publisher or editor, indicating the dates of publication, along with a copy or reproduction of the actual publication.

~~(b) Proof of Publication. Plaintiff shall file proof of publication not later than the return date. It shall be sufficient proof for plaintiff to file the sworn statement by, or on behalf of, the publisher or editor, indicating the dates of publication, along with a copy or reproduction of the actual publication.~~

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

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

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

At such time that the parties agree to the quantum of the plaintiff's Ad Interim Stipulation of Value, deposit or security, or alternatively, the Court finds that the plaintiff's Ad Interim Stipulation of Value is insufficient or excessive, the Court shall order that a deposit or security be effectuated for the amount agreed by the parties or the amount found by the Court to be sufficient, after the date for objections to the appraisal under Local Rule F(4) has passed and the Court has ruled on the objections. The Joint Stipulation of the Parties as to the Value of the Vessel shall substantially conform to the form identified as SDF 18 in the Appendix of these Local Admiralty Rules.

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

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

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

~~(e4) Objections to the Appraisal. Any party may move to set aside the appraisal within fourteen (14) days following the filing of the appraisal with the Clerk of the Court.~~

~~(e5) Fees of the Appraiser. The Court shall establish the fee to be paid the appraiser. Unless otherwise ordered by the Court, the fee shall be taxed against the party seeking relief under Supplemental Rule F(7).~~

(6) Order of Proof at Trial. In an action where plaintiff seeks to limit liability, the claimants shall offer their proof at trial first, whether the right to limit arises as a claim or as a defense.

Effective Dec. 1, 1994. Amended effective April 15, 2007; April 15, 2010; April 15, 2011.

Advisory Notes

(1993) Local Admiralty Rule F(1). This section incorporates the publication provisions of Local Admiralty Rule A(7), and applies them to limitation of liability actions. The rule provides for the publication of the notice required by Supplemental Rule F(4) without further order of the Court.

The Advisory Committee believes that this self-executing aspect of the rule will save judicial time and at the same time will not impair the rights of any party or claimant.

Local Admiralty Rule F(2). The Advisory Committee determined that filing proof of publication with the Clerk of the Court was essential in order to establish an adequate record of the publication.

Local Admiralty Rule F(3). This section continues in substance the provisions of former Local Admiralty Rule 10.

(2010) Local Admiralty Rule F(1). The Advisory Committee determined that the publication of the notice without court order did not meet the self-executing aspect of the rule as contemplated in 1993.

Amended to conform tabulation to the style used in the Federal Rules of Civil Procedure.

Local Admiralty Rule F(2). The Advisory Committee believes that the previous language “not later than the return date” was vague. The language was changed to remove any confusion on the definition of “return date” and the time by which the plaintiff is required to file the proof of

publication. The addition of the language “or a declaration pursuant to 28 U.S.C. § 1746” was added to deal with any exigent circumstances.

Local Admiralty Rule F(3). The Advisory Committee determined that while the previous Local Rule references a claimant’s demand for an increase, it fails to consider instances where the claimants accept the plaintiff’s Ad Interim Stipulation of Value, obviating the need to post further security.

Local Admiralty Rule F(6). The Maritime Law Association of the United States (“MLA”) has approved Model Local Admiralty Rules dated May 2, 2008. The Advisory Committee has adopted MLA Model Local Admiralty Rule F(2) because the Committee believes that although petitioners in limitation of liability proceedings are the plaintiffs, in practice they are defending claims of claimants and therefore the claimants should offer proof at trial first.

APPENDIX OF FORMS
ADMIRALTY AND MARITIME RULES
FORM 1. ORDER DIRECTING THE ISSUANCE OF THE PROCESS OF ATTACHMENT
AND GARNISHMENT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. ____ -Civ or Cr-(USDJ's last name/USMJ's last name)

"IN ADMIRALTY"

Plaintiff,

v.

Defendant.

Pursuant to Supplemental Rule B(1) and Local Admiralty Rule ~~3(e)(1)~~B(3)(a), the Clerk of the Court is directed to issue the summons and process of attachment and garnishment in the above-styled action.

DONE AND ORDERED at _____, Florida, this _____ day of _____, _____.

United States District Judge

Effective Dec. 1, 1994. Amended effective April 15, 2001; April 15, 2007; April 15, 2010; April 15, 2011.

FORM 2. PROCESS OF ATTACHMENT AND GARNISHMENT

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF FLORIDA

Case No. ____-Civ or Cr-(USDJ's last name/USMJ's last name)

"IN ADMIRALTY"

Plaintiff,

v.

Defendant.

PROCESS OF ATTACHMENT AND GARNISHMENT

The complaint in the above-styled case was filed in the ____ Division of this Court on _____, _____.

In accordance with Supplemental Rule B of Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure and Local Admiralty Rule 2B you are directed to attach and garnish the property indicated below:

DESCRIPTION

(Describe the property to be attached and garnished in sufficient detail, including location of the property, to permit the United States Marshal to effect the seizure.)

You shall also give notice of the attachment and garnishment to every person required by appropriate Supplemental Rule, Local Admiralty Rule, and the practices of your office.

DATED at _____, Florida, this _____ day of _____, _____.

CLERK

By: _____

Deputy Clerk

Attorney Name (Bar Number)

Attorney E-mail Address

Firm Name

Street Address

City, State, Zip Code

Telephone: (xxx)xxx-xxxx

Facsimile: (xxx)xxx-xxxx

Attorneys for Plaintiff [Party Name(s)]

SPECIAL NOTICE

Any person claiming an interest in property seized pursuant to this process of attachment and garnishment must file a claim in accordance with the post-seizure review provisions of Local Admiralty Rule ~~2(e)~~B(5).

Effective Dec. 1, 1994. Amended effective April 15, 2001; April 15, 2007; April 15, 2010; April 15, 2011.

FORM 3. ORDER DIRECTING THE ISSUANCE OF THE WARRANT OF ARREST

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. ____-Civ or Cr--(USDJ's last name/USMJ's last name)

"IN ADMIRALTY"

Plaintiff,

v.

Defendant.

ORDER DIRECTING THE ISSUANCE OF THE WARRANT OF ARREST
AND/OR SUMMONS

Pursuant to Supplemental Rule C(1) and Local Admiralty Rule ~~3(b)(1)~~C(2)(a), the Clerk of the Court is directed to issue a warrant of arrest and/or summons in the above-styled action.

DONE AND ORDERED at _____, Florida, this ____ day of _____,

_____.

United States District Judge

Effective Dec. 1, 1994. Amended effective April 15, 2001; April 15, 2007; April 15, 2010; April 15, 2011.

FORM 4. WARRANT FOR ARREST IN REM

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. ____-Civ or Cr-(USDJ's last name/USMJ's last name)

"IN ADMIRALTY"

Plaintiff,

v.

Defendant.

WARRANT FOR ARREST IN REM

TO THE UNITED STATES MARSHAL FOR THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

The complaint in the above-styled in rem proceeding was filed in the ____ Division of this Court
on _____, _____.

In accordance with Supplemental Rule C for Certain Admiralty and Maritime Claims of the
Federal Rules of Civil Procedure and Local Admiralty Rule 3C, you are directed to arrest the
Defendant vessel, her boats, tackle, apparel and furniture, engines and appurtenances, and to
detain the same in your custody pending further order of the Court.

You shall also give notice of the arrest to all persons required by appropriate Supplemental Rule,
Local Admiralty Rule, and the practices of your office.

ORDERED at _____, Florida, this _____ day of _____, _____.

CLERK

By: _____

Deputy Clerk

Attorney Name (Bar Number)

Attorney E-mail Address

Firm Name

Street Address

City, State, Zip Code

Telephone: (xxx)xxx-xxxx

Facsimile: (xxx)xxx-xxxx

Attorneys for Plaintiff [Party Name(s)]

cc: Counsel of Record

SPECIAL NOTICE

In accordance with Local Admiralty Rule ~~3(f)~~C(6), any person claiming an interest in the vessel and/or property shall be required to file a claim within fourteen (14) days after process has been executed, and shall also be required to file an answer within twenty-one (21) days after the filing of this claim.

Any persons claiming an interest in the vessel and/or property may also pursue the post-arrest remedies set forth in Local Admiralty Rule ~~3(f)~~C(7).

Effective Dec. 1, 1994. Amended effective April 15, 2001; April 15, 2007; April 15, 2010; April 15, 2011.

FORM 5. MOTION FOR APPOINTMENT OF SUBSTITUTE CUSTODIAN

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF FLORIDA

Case No. ____-Civ or Cr-(USDJ's last name/USMJ's last name)

"IN ADMIRALTY"

Plaintiff,

v.

Defendant.

MOTION FOR APPOINTMENT OF SUBSTITUTE CUSTODIAN

Pursuant to Local Admiralty Rule ~~5(j)(3)~~E(10)(c), Plaintiff _____, by and through the undersigned attorney, represents the following:

(1) On _____, _____, Plaintiff initiated the above-styled action against the vessel _____, her boats, tackle, apparel, furniture and furnishings, equipment, engines and appurtenances.

(2) On _____, _____, the Clerk of the Court issued a Warrant of Arrest against the vessel _____, directing the United States Marshal to take custody of the vessel, and to retain custody of the vessel pending further order of this Court.

(3)(a) Subsequent to the issuance of the Warrant of Arrest, the Marshal will take steps to immediately seize the vessel. Thereafter, continual custody by the Marshal will require the services of at least one custodian at a cost of at least \$ ____ per day. (This paragraph would be applicable only when the motion for appointment is filed concurrent with the complaint and application for the warrant of arrest.)

-or-

(3)(b) Pursuant to the previously issued Warrant of Arrest, the Marshal has already arrested the vessel. Continued custody by the Marshal requires the services of _____ custodians at a cost of at least \$ ____ per day. (This paragraph would be applicable in all cases where the Marshal has previously arrested the vessel.)

(4) The vessel is currently berthed at _____, and subject to the approval of the Court, the substitute custodian is prepared to provide security, wharfage, and routine services for the safekeeping of the vessel at a cost substantially less than that presently required by the Marshal. The substitute custodian has also agreed to continue to provide these services pending further order of this Court.

(5) The substitute custodian has adequate facilities for the care, maintenance and security of the vessel. In discharging its obligation to care for, maintain and secure the vessel, the substitute custodian shall comply with all orders of the Captain of the Port, United States Coast Guard, including but not limited to, an order to move the vessel; and any applicable federal, state, and local laws, regulations and requirements pertaining to vessel and port safety. The substitute custodian shall advise the Court, the parties to the action, and the United States Marshal, of any movement of the vessel pursuant to an order of the Captain of the Port, United States Coast Guard within twenty-four hours of such vessel movement.

(6) Concurrent with the Court's approval of the Motion for Appointment of the Substitute Custodian, Plaintiff and the substitute custodian will file a Consent and Indemnification Agreement in accordance with Local Admiralty Rule ~~5(j)(3)(B)~~E(10)(C)(ii).

THEREFORE, in accordance with the representations set forth in this instrument, and subject to the filing of the indemnification agreement noted in paragraph (6) above, Plaintiff requests this Court to enter an order appointing _____ as the Substitute Custodian for the vessel _____.

DATED at _____, Florida, this ____ day of _____, ____.

SIGNATURE OF COUNSEL OF RECORD

Attorney Name (Bar Number)

Attorney E-mail Address

Firm Name

Street Address

City, State, Zip Code

Telephone: (xxx)xxx-xxxx

Facsimile: (xxx)xxx-xxxx

Attorneys for Plaintiff [Party Name(s)]

cc: Counsel of Record

Substitute Custodian

SPECIAL NOTE

Plaintiff's attorney shall also prepare for the Court's signature and subsequent filing, a proposed order for the Appointment of Substitute Custodian.

Effective Dec. 1, 1994. Amended effective April 15, 1998; April 15, 2001; April 15, 2007; April 15, 2010; April 15, 2011.

FORM 6. CONSENT AND INDEMNIFICATION AGREEMENT FOR THE
APPOINTMENT OF A SUBSTITUTE CUSTODIAN

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. ____-Civ or Cr-(USDJ's last name/USMJ's last name)

"IN ADMIRALTY"

Plaintiff,

v.

Defendant.

CONSENT AND INDEMNIFICATION AGREEMENT FOR THE APPOINTMENT
OF A SUBSTITUTE CUSTODIAN

Plaintiff _____, (by the undersigned attorney) and _____,
the proposed Substitute Custodian, hereby expressly release the United States Marshal for this
District, and the United States Marshal's Service, from any and all liability and responsibility for
the care and custody of _____ (describe the property) while in the hands of
_____ (substitute custodian).

Plaintiff and _____ (substitute custodian) also expressly agree to hold the
United States Marshal for this District, and the United States Marshal's Service, harmless from
any and all claims whatsoever arising during the period of the substitute custodianship.

As counsel of record in this action, the undersigned attorney represents that he has been
expressly authorized by the Plaintiff to sign this Consent and Indemnification Agreement for,
and on behalf of the Plaintiff.

SIGNED this ____ day of _____, _____, at _____, Florida.

PLAINTIFF'S ATTORNEY

Attorney Name (Bar Number)

SUBSTITUTE CUSTODIAN

Typed Name

Attorney E-mail Address

Fla. Bar ID No.

Firm Name

(if admitted in Fla.)

Street Address

Firm or Business Name

City, State, Zip Code

Mailing Address

Telephone: (xxx)xxx-xxxx

City, State, Zip Code

Facsimile: (xxx)xxx-xxxx

Telephone Number

Attorneys for Plaintiff

[Party Name(s)] Facsimile Number

E-Mail Address

cc: Counsel of Record

Effective Dec. 1, 1994. Amended effective April 15, 2001; April 15, 2007; April 15, 2010; April 15, 2011.

FORM 7. NOTICE OF ACTION IN REM AND ARREST OF VESSEL

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF FLORIDA

Case No. ____-Civ or Cr-(USDJ's last name/USMJ's last name)

"IN ADMIRALTY"

Plaintiff,

v.

Defendant.

NOTICE OF ACTION IN REM AND ARREST OF VESSEL

In accordance with Supplemental Rule C(4) for Certain Admiralty and Maritime Action of the Federal Rules of Civil Procedure, and Local Admiralty Rule ~~3(d)~~C(4), notice is hereby given of the arrest of _____, in accordance with a Warrant of Arrest issued on _____.

Pursuant to Supplemental Rule C(6), and Local Admiralty Rule ~~3(f)~~C(6), any person having a claim against the vessel and/or property shall file a claim with the Court not later than fourteen (14) days after process has been effected, and shall file an answer within twenty-one (21) days from the date of filing their claim.

DATED at _____, Florida, this _____ day of _____, _____.

SIGNED NAME OF PLAINTIFF'S ATTORNEY

Attorney Name (Bar Number)

Attorney E-mail Address

Firm Name

Street Address

City, State, Zip Code

Telephone: (xxx)xxx-xxxx

Facsimile: (xxx)xxx-xxxx

Attorneys for Plaintiff [Party Name(s)]

cc: Counsel of Record

Effective Dec. 1, 1994. Amended effective April 15, 2001; April 15, 2007; April 15, 2010; April 15, 2011.

FORM 8. MOTION FOR RELEASE OF A VESSEL OR PROPERTY IN ACCORDANCE
WITH SUPPLEMENTAL RULE E(5)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. ____-Civ or Cr--(USDJ's last name/USMJ's last name)

"IN ADMIRALTY"

Plaintiff,

v.

Defendant.

MOTION FOR RELEASE OF A VESSEL OR PROPERTY IN ACCORDANCE
WITH SUPPLEMENTAL RULE E(5)

In accordance with Supplemental Rule E(5) and Local Admiralty Rule ~~5(h)(2)~~E(8)(b), plaintiff, on whose behalf property has been seized, requests the Court to enter an Order directing the United States Marshal for the Southern District of Florida to release the property. This request is made for the following reasons:

(Describe the reasons in sufficient detail to permit the Court to enter an appropriate order.)

DATED at _____, Florida, this ___ day of _____, _____.

SIGNED NAME OF PLAINTIFF'S ATTORNEY

Attorney Name (Bar Number)

Attorney E-mail Address

Firm Name

Street Address

City, State, Zip Code

Telephone: (xxx)xxx-xxxx

Facsimile: (xxx)xxx-xxxx

Attorneys for Plaintiff [Party Name(s)]

cc: Counsel of Record

Effective Dec. 1, 1994. Amended effective April 15, 2001; April 15, 2007; April 15, 2010; April 15, 2011.

FORM 9. ORDER DIRECTING THE RELEASE OF A VESSEL OR PROPERTY IN
ACCORDANCE WITH SUPPLEMENTAL RULE E(5)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. ____-Civ or CR-(USDJ's last name/USMJ's last name)

"IN ADMIRALTY"

Plaintiff,

v.

Defendant.

ORDER DIRECTING THE RELEASE OF A VESSEL OR PROPERTY IN
ACCORDANCE WITH SUPPLEMENTAL RULE (E)(5)

In accordance with Supplemental Rule (E)(5) and Local Admiralty Rule ~~5(h)(1)~~E(8)(a), and pursuant to the Request for Release filed on _____, _____, the United States Marshal is directed to release the vessel and/or property currently being held in his custody in the above-styled action.

ORDERED at _____, Florida, this ____ day of _____, _____.

U.S. District Judge

cc: Counsel of Record

Effective Dec. 1, 1994. Amended effective April 15, 2001; April 15, 2010; April 15, 2011.

FORM 10. REQUEST FOR CONFIRMATION OF SALE

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF FLORIDA

Case No. ____-Civ or Cr-(USDJ's last name/USMJ's last name)

"IN ADMIRALTY"

Plaintiff,

v.

Defendant.

REQUEST FOR CONFIRMATION OF SALE

Plaintiff, by and through its undersigned attorney certifies the following:

(1) Date of Sale: In accordance with the Court's previous Order of Sale, plaintiff represents that the sale of _____ (describe the property) was conducted by the United States Marshal on

_____, _____.

(2) Last Day for Filing Objections: Pursuant to Local Admiralty Rule ~~5(a)(7)(A)~~E(17)(g)(i), the last day for filing objections to the sale was _____, _____.

(3) Survey of Court Records: Plaintiff has surveyed the docket and records of this case, and has confirmed that as of _____, _____, there were no objections to the sale on file with the Clerk of the Court.

THEREFORE, in light of the facts presented above, plaintiff requests the Clerk of the Court to enter a Confirmation of Sale and to transmit the confirmation to the Marshal for processing.

DATED at _____, Florida, this _____ day of _____, _____.

SIGNED NAME OF PLAINTIFF'S ATTORNEY

Attorney Name (Bar Number)

Attorney E-mail Address

Firm Name

Street Address

City, State, Zip Code

Telephone: (xxx)xxx-xxxx

Facsimile: (xxx)xxx-xxxx

Attorneys for Plaintiff [Party Name(s)]

cc: Counsel of Record

Effective Dec. 1, 1994. Amended effective April 15, 2001; April 15, 2007; April 15, 2010; April 15, 2011.

FORM 11. CONFIRMATION OF SALE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. ____-Civ or Cr-(USDJ's last name/USMJ's last name)

"IN ADMIRALTY"

Plaintiff,

v.

Defendant.

CONFIRMATION OF SALE

The records in this action indicate that no objection has been filed to the sale of property conducted by the United States Marshal on _____, _____.

THEREFORE, in accordance with Local Admiralty Rule ~~5(e)(6)~~ E(17)(f), the sale shall stand confirmed as of _____, _____.

DONE at _____, Florida, this _____ day of _____, _____.

CLERK

By: _____

Deputy Clerk

cc: United States Marshal

Counsel of Record

Effective Dec. 1, 1994. Amended effective April 15, 2001; April 15, 2007; April 15, 2010; April 15, 2011.

FORM 12. SUMMONS AND PROCESS OF MARITIME
ATTACHMENT AND GARNISHMENT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. ____-Civ or Cr-(USDJ's last name/USMJ's last name)

Plaintiff,

v.

Defendant.

SUMMONS AND PROCESS OF MARITIME ATTACHMENT AND GARNISHMENT

THE PRESIDENT OF THE UNITED STATES OF AMERICA

TO: THE UNITED STATES MARSHAL FOR THE SOUTHERN DISTRICT OF FLORIDA.

GREETING:

WHEREAS, on the ____ day of _____, _____, _____ filed a complaint against _____ for reasons in said complaint mentioned for the sum of _____ and praying for process of marine attachment and garnishment against the said defendant and _____,

WHEREAS, this process is issued pursuant to such prayer and requires that a garnishee shall serve his answer within twenty-one (21) days after service of process upon him and requires that a defendant shall serve his answer within thirty (30) days after process has been executed, whether by attachment of property or service on the garnishee,

NOW, THEREFORE, you are hereby commanded that if the said defendant cannot be found within the District you attach goods, chattels, credits and effects located and to be found at _____ and described as follows: _____, or in the hands of _____, the garnishee, up to the amount sued for, to-wit: _____ and how you shall have executed this process, make known to this Court with your certificate of execution thereof written.

WITNESS THE HONORABLE

Judge of said Court at _____, Florida,

in said District, this _____ day of _____, _____.

_____, CLERK

BY: _____

Deputy Clerk

NOTE: This process is issued pursuant to Rule B(1) of the Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure.

Effective Dec. 1, 1994. Amended effective April 15, 2001; April 15, 2007; April 15, 2010.

FORM 13. MARITIME SUMMONS TO SHOW CAUSE
RESPECTING INTANGIBLE PROPERTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. ____-Civ or Cr-(USDJ's last name/USMJ's last name)

Plaintiff,

v.

Defendant.

MARITIME SUMMONS TO SHOW CAUSE RESPECTING INTANGIBLE PROPERTY TO ALL PERSONS having control of the freight of the vessel _____ or control of the proceeds of the sale of said vessel or control of the proceeds of the sale of any property appurtenant thereto or control of any other intangible property appurtenant thereto. You are hereby summoned to interpose in writing a claim, by attorney or in proper person, at the Clerk of the Court's Office in said District within fourteen (14) days after the service, and therewith or thereafter within twenty-one (21) days following such claim or thirty (30) days after the service, whichever is less, a responsive pleading to the complaint herewith served upon you and to show cause why said property under your control should not be paid into Court to abide the judgment; and you are required so also to serve copy thereof upon _____, plaintiff's attorney(s) whose address is _____; or if you do not claim said property then to so serve and show cause why said property under your control should not be paid into Court to abide the judgment.

The service of this summons upon you brings said property within the control of the Court.

Service of this summons is ineffective unless made in time to give notice of the required appearance or such shorter period as the Court may fix by making and signing the form of order provided below:

WITNESS THE HONORABLE

Judge of said Court at _____, Florida,

in said District, this _____ day of _____, _____.

_____, CLERK

BY: _____

Deputy Clerk

Date:

Good cause for shortening the periods required by the foregoing summons having been shown by affidavit of _____, verified the _____ day of _____, _____, the period of notice of the appearance in all respects required by the foregoing summons is hereby fixed as ___ days.

Dated at _____, Florida, the _____ day of _____, _____.

UNITED STATES DISTRICT JUDGE

NOTE: This summons is issued pursuant to Rule C(3) of the Supplemental Rules for Certain Admiralty Maritime Claims of the Federal Rules of Civil Procedure.

Effective Dec. 1, 1994. Amended effective April 15, 2001; April 15, 2007; April 15, 2010.

FORM 14. AFFIDAVIT—FOREIGN ATTACHMENT

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF FLORIDA

Case No. ____-Civ or Cr-(USDJ's last name/USMJ's last name)

Plaintiff,

v.

Defendant.

AFFIDAVIT

(Foreign Attachment)

This affidavit is executed by the undersigned in order to secure the issuance and execution of a Writ of Foreign Attachment in the above-styled in personam cause in admiralty. As attorney for the above-styled plaintiff, the undersigned does hereby certify to the Court, the Clerk of the Court and the United States Marshal that the undersigned has made a diligent search and inquiry to ascertain the name and address of a person or party upon whom can be served process in personam which will bind the above-styled defendant.

That based upon such diligent search and inquiry the undersigned has been unable to ascertain the name and address of any person or party within the District upon whom service of process would bind said defendant.

The Clerk of the Court is hereby requested to issue a Writ of Foreign Attachment and deliver the same to the United States Marshal.

The United States Marshal is hereby directed to promptly serve said Writ of Foreign Attachment upon _____ (name of vessel) which vessel is presently located at _____.

Attorney Name (Bar Number)

Attorney E-mail Address

Firm Name

Street Address

City, State, Zip Code

Telephone: (xxx)xxx-xxxx

Facsimile: (xxx)xxx-xxxx

Attorneys for Plaintiff [Party Name(s)]

Sworn and subscribed to this ___ day of _____, _____.

Clerk, U.S. District Court

Southern District of Florida

By: _____

Deputy Clerk

Effective Dec. 1, 1994. Amended effective April 15, 2001; April 15, 2007; April 15, 2010.

deposit said bond into the Court within fifteen (15) days after the demand thereof by any Claimant.

Further, Petitioner will pay and/or deposit a surety bond in the Court's registry, within fifteen (15) days after the entry of an Order confirming the report of a commissioner to be appointed to appraise the amount of value of the Petitioner's interest in the Vessel, the amount or value of such interest is thus ascertained and ordering the posting of said bond, if demanded by any Claimant, or alternatively will file in this proceeding a Joint Stipulation for Value in the usual form, and that after giving of the Joint Stipulation for Value in the usual form, this Ad Interim Stipulation shall stand as security for all claims in the said limitation of liability proceeding *in lieu* of said bond, until such time as any Claimant demands the posting of a bond or the Court so orders.

THUS DONE AND EXECUTED this _____ day of [month], [year].

Respectfully submitted,

Attorney-in-fact

[Owner]

Owner of [vessel]

Effective April 15, 2011

FORM 16. ORDER APPROVING AD INTERIM STIPULATION OF VALUE, DIRECTING
ISSUANCE OF MONITION AND INJUNCTION

UNITED STATES COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA

IN ADMIRALTY

IN THE MATTER OF:

Petitioner. _____ /

ORDER APPROVING AD INTERIM STIPULATION OF VALUE, DIRECTING ISSUANCE
OF MONITION AND INJUNCTION

A Complaint having been filed herein on the _____ day of [month], [year], by [Petitioner],
as Owner of the [vessel] (the "Vessel"), for exoneration from and/or limitation of liability as
provided for in the Act of Congress embodied in 46 U.S.C. §§ 30501 *et seq.* and pursuant to Rule F
of the Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil
Procedure, together with the statutes supplemental thereto and amendatory thereof, and also
contesting its liability independently of the limitation of liability claims under said Acts, Treaty or

Code for any loss, damages, deaths, personal injuries, damage or destruction of property or other occurrences arising from the incident which occurred on or about [date of incident], on the navigable waterways of [county] as further described in the Petition for Limitation, and said Complaint also stating the alleged facts and circumstances on which such exoneration from or limitation of liability is claimed;

And Petitioner having deposited with the Court as security for the benefit of Claims, an Ad Interim Stipulation of Value not less than or equal to the amount or value of its interest in the Vessel, as required by the rules of this Court and by the law;

IT IS ORDERED AND ADJUDGED that the Ad Interim Stipulation for the value of Petitioner's interest in the Vessel, for no more than the amount of [amount], including costs of court and interest at the rate of six percent (6%) per annum from date hereof, and filed herein by Petitioner, be accepted as Ad Interim Stipulation for the purpose of this action and that it be approved as to form and quantum.

IT IS FURTHER ORDERED AND ADJUDGED that Petitioner and any Claimant who may properly become a party hereto may contest the amount of value of Petitioner's interest in the Vessel as fixed in said Ad Interim Stipulation, subject to such increases or decreases in the amount of such Stipulation, together with adequate security, as the Court may from time to time order according to the rules and practices of this Court may adjudge.

IT IS FURTHER ORDERED AND ADJUDGED that if the amount of the Ad Interim Stipulation is not contested by any Claimant herein, said Stipulation shall stand as a Stipulation for Value and an appraisal by a Commissioner will not be required.

NOW, THEREFORE, it is ordered that a Monition issue out of and under the seal of this Court against all persons or corporations claiming damage for any and all loss, destruction, damage, injuries, and/or death allegedly as a result of the occurrences and happenings recited in the Complaint, to file their respective claims with the Clerk of this Court and to serve on or mail to the attorneys for Petitioner copies thereof on or before [date], and that all persons or corporations so presenting claims and desiring to contest the allegations of the Complaint shall file an answer to the Complaint in this Court and shall serve on or mail to the attorneys for the Petitioner copies thereof, or be defaulted.

IT IS FURTHER ORDERED that a public notice of said Monition be given by publication as required by Rule F of the Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure and the Local Rules of the United States District Court for the Southern District of Florida, once each week for four successive weeks in the "Daily Business Review - [county] Edition" prior to the date fixed for the filing of claims in accordance with Supplemental Rule F and that not later than the date of the second weekly publication, a copy of said notice to be mailed by Petitioner to every person or corporation known by the Petitioner to have a claim against Petitioner arising out of the accident set forth in the Complaint.

IT IS FURTHER ORDERED that the commencement or further prosecution of any action, suit or proceeding in any court whatsoever, and the institution and prosecution of any suits, actions or legal proceedings, of any nature or description whatsoever, in any court whatsoever, except in these proceedings, in respect to any claim arising out of, or connected with the casualty set forth in

the Complaint herein, be and the same are hereby STAYED AND RESTRAINED until the final determination of this proceeding.

IT IS FINALLY ORDERED that the service of this Order as a restraining order in this District may be made in the usual manner as any other district of the United States by delivery by the Marshal of the United States for such District of a certified copy of this Order on the person or persons to be restrained or to their respective attorneys, or alternatively, by mailing a conformed copy of it to the person or persons to be restrained or to their respective attorney.

DONE AND ORDERED in Chambers at _____, Florida this _____ day of [month], [year].

UNITED STATES DISTRICT JUDGE

Effective April 15, 2011

FORM 17. AFFIDAVIT OF VALUE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

IN ADMIRALTY

IN THE MATTER OF:

_____ /
Petitioner.

AFFIDAVIT OF VALUE
STATE OF FLORIDA

COUNTY OF _____

Before me, the undersigned authority, a notary public, personally came and appeared [name of expert] who, being duly sworn, did depose and state as follows:

1. I am [name of expert], and I am over eighteen (18) years of age.
2. I am a marine surveyor employed with [name of employer] located in [name of county] County, Florida.
3. I have been actively working as a marine surveyor in [name of county] County for more than [number of years] years and in such capacity I am familiar with and have determined the value of vessels such as the [name of vessel].
4. I examined the [name of vessel] on [date], immediately after the alleged accident as stated in the Complaint. I have reviewed certain documentation information concerning the vessel and determined that the fair market value of the vessel on [date of inspection], immediately after the accident was no more than [value].

[name of expert]

STATE OF FLORIDA

COUNTY OF _____

BEFORE ME, the undersigned authority, personally appeared
who () is personally known to me, or () who produced a copy of
_____ as proof of identification.

SWORN TO AND SUBSCRIBED before me this _____ day of
_____, 20_____.

Notary
Public – State of Florida

My Commission Expires:

Effective April 15, 2011

3. Pursuant to the provisions of Rule F of the Supplemental Rules for Certain Admiralty and Maritime Claims, Petitioner filed an Ad Interim Stipulation for Value setting forth the value of the Vessel following the incident which forms the subject matter of this litigation, and at the conclusion of the voyage during which said incident occurred, as being [dollar amount].

4. Having duly considered the provisions of the Ad Interim Stipulation for Value and the documentation filed in support thereof, the parties jointly stipulate and agree that the value or the Vessel at the conclusion of the voyage of [date] occurred did not exceed the sum of [dollar amount] and, was, in fact, [amount] U.S. dollars.

5. It is further stipulated and agreed by the parties, by and through their undersigned counsel, that the entry by the parties to this Joint Stipulation is without prejudice to, and with full reservation of, all rights, claims, and defenses of the parties including, without limit, any and all defenses of Petitioner and Claimants.

6. Inasmuch as there have been no other claims filed in this Court pursuant to the Monition and Injunction entered by the Court and that there are no other creditors, claimants or alleged lienors whether in contract or in tort who have filed claims against the Petitioner, it is stipulated and agreed by the parties, by and through their undersigned counsel, that no other claims have been timely filed in this proceeding and that all other non-filing claimants should be defaulted by the Court.

WHEREFORE, the parties, [owner], as owner of the [vessel], by and through h[is][er] undersigned counsel, [Claimants], by and through their undersigned counsel, stipulate and agree to the facts set forth herein and to the matters jointly set forth herein as well as the entry by the Court of appropriate Orders as stipulated thereto by the parties.

Respectfully submitted,

Claimant's Attorney

Petitioner's Attorney

Effective April 15, 2011

RULE 6. DISBARMENT DISCIPLINE ON CONSENT OR RESIGNATION IN OTHER COURTS

(a) Any attorney admitted to practice before this Court shall, upon being suspended or disbarred on consent or resigning from any other bar while an investigation into allegations of misconduct is pending, promptly inform the Clerk of the Court of such suspension or disbarment on consent or resignation.

(b) An attorney admitted to practice before this Court who shall be suspended or disbarred on consent or resign from the bar of any other court of the United States or the District of Columbia, or from the bar of any state, territory, commonwealth, or possession of the United States while an investigation into allegations of misconduct is pending shall, upon the filing with this Court of a certified copy of the judgment or order accepting such suspension or disbarment on consent or resignation, cease to be permitted to practice before this Court and be stricken from the roll of attorneys admitted to practice before this Court.

Effective Dec. 1, 1994. Amended effective April 15, 2007; April 15, 2010; April 15, 2011.

Comment

(2010) Amended to conform tabulation to the style used in the federal rules of procedure.

(2011) Amended to apply to suspensions as well as disbarments or resignations.

RULE 7. ~~DISBARMENT~~ DISCIPLINE ON CONSENT WHILE UNDER DISCIPLINARY INVESTIGATION OR PROSECUTION

(a) Any attorney admitted to practice before this Court who is the subject of an investigation into, or a pending proceeding involving, allegations of misconduct may consent to suspension or disbarment, but only by delivering to this Court an affidavit stating that the attorney desires to consent to suspension or disbarment and that:

(1) the attorney's consent is freely and voluntarily rendered; the attorney is not being subjected to coercion or duress; the attorney is fully aware of the implications of so consenting;

(2) the attorney is aware that there is a presently pending investigation or proceeding involving allegations that there exist grounds for the attorney's discipline the nature of which the attorney shall specifically set forth;

(3) the attorney acknowledges that the material facts so alleged are true; and

(4) the attorney so consents because the attorney knows that if charges were predicated upon the matters under investigation, or if the proceeding were prosecuted, the attorney could not successfully defend himself.

(b) Upon receipt of the required affidavit, this Court shall enter an order suspending or disbaring the attorney.

(c) The order suspending or disbaring the attorney on consent shall be a matter of public record. However, the affidavit required pursuant to the provisions of this Rule shall not be publicly disclosed or made available for use in any other proceeding except upon order of this Court.

Effective Dec. 1, 1994. Amended effective April 15, 2007; April 15, 2010; April 15, 2011.

Comment

(2010) Amended to conform tabulation to the style used in the federal rules of procedure.

(2011) Amended to apply to suspensions as well as disbarments or resignations.

RULE 12. SERVICE OF PAPER AND OTHER NOTICES

Service of an order to show cause instituting a formal disciplinary proceeding shall be made by personal service or by registered or certified mail addressed to the affected attorney at the address shown on the roll of attorneys admitted to practice before this Court or by email upon consent of the affected attorney to waive formal service. Service of any other papers or notices required by these Rules subsequent to the original order to show cause shall be deemed to have been made if such paper or notice is addressed,mailed to the attorney at the address shown on the roll of attorneys admitted to practice before the Court; or to counsel or the respondent's attorney at the address indicated in the most recent pleading or document filed by them in the course of any proceeding, or any other method permitted by Federal Rule of Civil Procedure 5(b).

Effective Dec. 1, 1994. Amended effective April 15, 2007; April 15, 2010; April 15, 2011.

Comment

(2011) Amended to provide for service by email or other methods upon consent.

CASE MANAGEMENT ELECTRONIC CASE FILING
CM/ECF ADMINISTRATIVE PROCEDURES

Purpose of Addition: Require the disclosure of proposed documents to opposing counsel that are being sent to the Court for consideration.

Section 3 – USER INFORMATION AND RESPONSIBILITIES

3I. Filings That Require Special Attention

(6) Proposed Documents

In addition to being filed in accordance with these procedures, proposed findings of fact and conclusions of law, jury instructions, and proposed orders, **unless otherwise directed by a Judge**, shall be filed initially as an attachment to a motion, notice, or other filing; however, the **final version** of the proposed document must be e-mailed to the appropriate Judge at the e-mail address listed below. All counsel must be copied on the e-mail to the Judge. The final document, if approved by the Court, will be filed with the Clerk of Court.

Users will submit the final version of the proposed document by e-mail in WordPerfect or Word format. The **e-mail subject line** and the **name of the attachment** should include the case number, followed by a short description of the attachment (e.g., 05-cv-20534 Order). The following e-mail addresses are to be used **only** to submit documents as described above unless otherwise specifically permitted by the Judge.