

UNITED STATES DISTRICT COURT  
DISTRICT OF ALASKA

# LOCAL ADMIRALTY RULES

[EFFECTIVE *OCTOBER 1, 2002*]

WITH AMENDMENTS THROUGH *DECEMBER 1, 2009*

[**TO GO TO DESIRED RULE, CLICK ON RULE NUMBER IN TABLE OF CONTENTS**]

## SUMMARY OF DECEMBER 1, 2009, AMENDMENTS

### TIME

The amendment to Fed. R. Civ. P. Rule 6(a) eliminated the exclusion of intervening weekends and holidays for short time periods. In general, for times of less than 30 days, the national rules adopted a protocol measuring times in increments of 7 days (7, 14, 21, or 28). For most rules: 5 days becomes 7; 10 and 15 days become 14; 20 days becomes 21; and 25 days becomes 28. The local rules adopted the same protocol.

Local Admiralty Rules affected: (c)-1, (c)-2, (c)-3, (c)-4, (d)-1, (e)-8, (e)-9, and (e)-14.

### DEVIATIONS

Rule (c)-3 “Notice Required for Default and Default Judgment in Action in Rem” – Time in subsection (b) for serving notice changed from 3 to 7 days.

Rule (e)-9 “Adversary Hearing” – Time for holding a hearing in subsection (a) changed from 3 court days to 7 days.

Rule (e)-11 “Security Deposit for Seizure of Vessels” – Time in ¶ (b)(2) for advancing additional funds unchanged from 2 business days.

Rule (e)-14 “Sale of Property” – Deleted the word calendar in (b)(1), (b)(2), (d)(2)[B](ii), (h), (j), and (j)(2); and the word “business” between “next” and “day” in (c)(1).

Time in (d)(2)[B](ii) for payment of the balance of the purchase price in the event an objection is filed is changed from 7 court days to 7 calendar days making the time for competing payment the same irrespective of whether an objection is filed.

#### OTHER (NON-TIME) AMENDMENTS

Rule (e)-12 “Intervenor’s Claims” – Adaptation of Model Local Admiralty Rule E(11) promulgated by the Maritime Law Association of the United States (2008). As amended, subsection (a) dispenses with the current necessity for filing a motion to intervene under Fed. R. Civ. P. 24. A claimant may now file a complaint in intervention without first obtaining leave of court. The amendment also adds the provisions of ¶¶ (c)(2) and (c)(3) regarding the obligations of the intervenor for costs and expenses incurred and the obligation of a claimant who dismisses a claim against the vessel suggested by the Maritime Law Association.

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## **Rule (a)-1 Title and Scope of Rules for Admiralty and Maritime Claims**

### **(a) Applicability.**

(1) These rules apply to claims governed by the Supplemental Rules for Certain Admiralty and Maritime Claims of the Civil Rules, referred to herein as "Supplemental Rules."

(2) These rules supplement the Supplemental Rules and applicable Federal Rules of Civil Procedure.

(3) In the event of a conflict between these rules and the Supplemental Rules or the applicable Federal Rules of Civil Procedure, the Supplemental Rules or Federal Rules of Civil Procedure govern.

(c) **Citation.** These rules may be cited as "Local Admiralty Rules" or "D.Ak. LAR \_\_\_\_."

(c) **Other Rules Applicable.** Except to the extent otherwise provided in or inconsistent with these rules, the District of Alaska Local Rules apply to all admiralty actions brought in this court.

### Related Provisions:

46A U.S.C. § 740                      Extension of admiralty and maritime jurisdiction; libel in rem or in personam; exclusive remedy; waiting period

## **Rule (a)-2 Definitions**

As used in these rules —

(1) "Clerk of Court" means the Clerk of the District Court and includes deputy clerks of court;

(2) "court" and "judicial officer" mean a United States District Judge or a United States Magistrate Judge;

(3) "keeper" means the individual or entity designated by the Marshal to maintain a vessel while under arrest;

(4) "Marshal" means United States Marshal and includes deputy marshals; and

(5) "substitute custodian" means the individual or entity who, upon motion and court order, assumes the duty from the keeper or Marshal to maintain a vessel while under arrest.

### Related Provisions:

46 U.S.C. § 30101                      Definitions

46 U.S.C. § 31301                      Definitions

## **Rule (b)-1 Affidavit Showing Defendant's Absence**

The affidavit accompanying the complaint required by Supplemental Rule B must state with particularity the efforts made to locate the defendant in the District.

### Related Provisions:

Supplemental Rule B                      In Personam Actions; Attachment and Garnishment

## **Rule (b)-2 Use of State Procedures**

When the plaintiff invokes a state procedure to attach or garnish under Rule 64(e), Federal Rules of Civil Procedure, the process of attachment or garnishment must so state.

### Related Provisions:

Supplemental Rule B                      In Personam Actions: Attachment and Garnishment

Fed. R. Civ. P. 64                      Seizure of Person or Property

Alaska Civ. R. 64                      Seizure of Person or Property

## **Rule (c)-1 Funds or Intangible Property**

### **(a) Contents of Summons.**

(1) A summons issued for the arrest, attachment, garnishment or seizure of funds or intangible property under Supplemental Rule C(3) must direct the person having control of the funds or intangible property to comply with the provisions of subsection (b) not later than fourteen (14) days after service.

(2) A judicial officer for good cause shown may lengthen or shorten the time for a response by the person served.

**(b) Response.** The person who is served must either:

(1) deliver or pay over to the Marshal the funds or intangible property proceeded against to the extent sufficient to satisfy the plaintiff's claim; or

(2) show cause as provided in Supplemental Rule C(3)(c) why the property should not be delivered to the court.

#### Related Provisions:

Supplemental Rule B In Personam Actions; Attachment and Garnishment

Supplemental Rule C In Rem Actions: Special Provisions

## **Rule (c)-2 Publication of Notice of Action and Arrest**

**(a) Publication.** The notice required by Supplemental Rule C(4) is to be published once in a paper of general circulation in the District and once in a paper of local circulation in the area where the property was arrested, if any.

**(b) Contents.** The notice must, to the extent applicable, contain:

(1) Court, title, and number of the action;

(2) date of the arrest;

(3) identity of the property arrested;

(4) nature of the action and the amount demanded;

(5) name, address, telephone number, and e-mail address of the attorney for the plaintiff;

(6) a statement that the claim of a person who is entitled to possession or who claims an interest under Supplemental Rule C(6) must be filed with the Clerk of the Court and served on the attorney for the plaintiff—

[A] in the case of an *in rem* forfeiture for violation of a federal law, within twenty-one (21) days after the date of publication, or

[B] in any other case, within fourteen (14) days after the date of publication, or within such additional time as may be allowed by the court;

(7) a statement that an answer to the complaint must be filed and served within twenty-one (21) days after publication, or such other time as the court may order, otherwise, default may be entered and condemnation ordered; and

(8) a statement that applications for intervention under Rule 24, Federal Rules of Civil Procedure, by persons claiming maritime liens or other interests must be filed within the time fixed by the court.

**(c) Filing with Court.** A copy of the notice published must be filed with the court.

#### Related Provisions:

46 U.S.C. § 31325 Preferred mortgage liens and enforcement

46 U.S.C. § 31342 Establishing maritime liens

Supplemental Rule C In Rem Actions: Special Provisions

**Rule (c)-3 Notice Required for Default and Default Judgment in Action in Rem**

A party seeking a default judgment in an action in rem must show that due notice of the action and arrest of the property has been given under this rule.

(a) **Publication.** Notice has been made by publication under D.Ak. LAR (c)-2.

(b) **Service of Notice.** Not less than seven (7) days notice by service under Rule 5(b), Federal Rules of Civil Procedure upon:

- (1) the master or other person having custody of the property;
- (2) every other party who has appeared in the action;
- (3) every person who has not appeared in the action and is known to have an interest in the property, including—

[A] if the defendant property is a vessel documented under the laws of the United States, all persons identified in the United States Coast Guard Office of Vessel Documentation as having an interest in defendant vessel, or

[B] if the defendant property is a vessel numbered as provided in 46 U.S.C. Chapter 123 (Numbering Undocumented Vessels), to the persons named in the records of the issuing authority.

(4) Service is presumed to be effective under paragraph (b)(3) if sent or delivered to the address shown on the official records of the United States Coast Guard or issuing authority.

(c) **Service Excused.** Service upon persons described in paragraph (b)(3) may be excused upon a showing that diligent effort was made to give the notice, without success.

(d) **Effect of Failure to Give Notice.** Failure to give notice as provided by this rule constitutes grounds for setting aside the default under applicable rules, but does not affect property sold under a judgment.

Related Provisions:

46 U.S.C. § 12101 <i>et seq</i>	[Documentation of Vessels]
46 U.S.C. § 12301 <i>et seq</i>	[Numbering Undocumented Vessels]
46 U.S.C. § 31321	Filing, recording, and discharge
46 U.S.C. § 31322	Preferred mortgages
46 U.S.C. § 31325	Preferred mortgage liens and enforcement
46 U.S.C. § 31342	Establishing maritime liens
46 U.S.C. § 31343	Recording and discharging liens on preferred mortgage vessels
Fed. R. Civ. P. 5	Service and Filing of Pleadings and Other Papers
Fed. R. Civ. P. 55	Default
D.Ak. LAR (c)-2	Publication of Notice of Action and Arrest
D.Ak. LAR (c)-4	Entry of Default and Default Judgment in Actions in Rem
D.Ak. LR 5.1	Filing and Proof of Service When Service is Required by Rule 5, Federal Rules of Civil Procedure
D.Ak. LR 10.1	Form of Pleadings and Other Papers

**Rule (c)-4 Entry of Default and Default Judgment in Actions in Rem**

(a) **Entry of Default.**

(1) After the time for filing an answer has expired, the plaintiff may move for entry of default under Rule 55(a), Federal Rules of Civil Procedure.

(2) Default will not be entered unless it is shown that:

[A] notice as required by D.Ak LAR (c)-3 has been given or excused;

[B] the time for answer has expired; and

[C] the person against whom default is to be entered has not served and filed an answer or other responsive pleading.

**(b) Entry of Default Judgment.**

(1) The plaintiff may move for default judgment under Rule 55(b), Federal Rules of Civil Procedure, at any time after default has been entered.

(2) Any person who has appeared and does not join in the motion for default judgment must be given seven (7) days notice of the motion.

Related Provisions:

Fed. R. Civ. P. 5	Serving and Filing Pleadings and Other Papers
Fed. R. Civ. P. 55	Default
D.Ak. LAR (c)-3	Notice Required for Default and Default Judgment in Action in Rem
D.Ak. LR 5.1	Filing and Proof of Service When Service is Required by Rule 5, Federal Rules of Civil Procedure
D.Ak. LR 10.1	Form of Pleadings and Other Papers

**Rule (d)-1 Return Date**

In a possessory action under Supplemental Rule D, the court may order that:

(1) the claim and answer be filed within a time longer or shorter than twenty-one (21) days after arrest; or

(2) the matter be set for expedited hearing.

Related Provisions:

Supplemental Rule D	Possessory, Petitory, and Partition Actions
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**Rule (e)-1 Itemized Demand for Judgment**

(a) **Demand in Complaint.** The demand for judgment in every complaint filed under Supplemental Rule B or C, other than complaints for personal injury, wrongful death or government forfeiture actions, must allege:

(1) the dollar amount of the debt or damages for which the action was commenced; and

(2) the nature of other relief requested.

(b) **Effect on Bond.** The amount of the special bond posted under Supplemental Rule E(5)(a) may be based upon the amount of damages alleged.

Related Provisions :

Supplemental Rule B	In Personam Actions: Attachment and Garnishment
Supplemental Rule C	In Rem Actions: Special Provisions
Supplemental Rule E	Actions in Rem and Quasi in Rem: General Provisions

**Rule (e)-2 Salvage Action Complaints**

In an action for salvage reward, the complaint must allege:

(1) the dollar value of the—

[A] vessel,

[B] cargo,

[C] freight, and

[D] other property salvaged; and

(2) amount of the reward claimed.

Related Provisions:

46A U.S.C. § 730	Time limit for salvage suits
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**Rule (e)-3 Verification of Pleadings**

(a) **Verification by Party.** Every complaint, response, or other document required to be verified under the Supplemental Rules must be verified upon oath or solemn affirmation, or in a form provided by 28 U.S.C. § 1746, by the party, general partner of a partnership, manager of a limited liability company, or by an authorized officer of a corporate party.

**(b) Verification by Agent.**

(1) If no party, general partner, manager of a limited liability company, or authorized corporate officer is present within the District, verification may be made by an agent, attorney-in-fact, or attorney of record, who must:

[A] state the source of the knowledge, information and belief contained in the document;

[B] declare that the document verified is true to the best of affiant's knowledge, information and belief;

[C] state why verification is not made by the party, general partner, manager of a limited liability company, or authorized corporate officer; and

[D] state that the affiant is authorized to so verify.

(2) A verification not made by a party, general partner, manager of a limited liability company, or authorized corporate officer will be presumed to have been made by the party as if verified personally.

(3) If the verification was not made by a party, general partner, manager of a limited liability company, or authorized corporate officer, any interested party may move, with or without requesting a stay, for the personal oath of a party, general partner, manager of a limited liability company, or an authorized corporate officer, which must be procured by a commission or as otherwise ordered.

Related Provisions:

28 U.S.C. § 1746	Unsworn declaration under penalty of perjury
Supplemental Rule B	In Personam Actions: Attachment and Garnishment
Supplemental Rule C	In Rem Actions: Special Provisions

**Rule (e)-4 Review by Judicial Officer.**

(a) **No Presence Required.** Unless otherwise required by the judicial officer or rule, the review of complaints and papers required by Supplemental Rules B(1) and C(3) does not require that the affiant party or attorney be present.

(b) **Form of Order.** The applicant for review must provide a form of order to the Clerk of the Court that, upon signature by the judicial officer, will direct the arrest, attachment or garnishment sought.

(c) **Affidavit of Exigent Circumstances.** In exigent circumstances, the certification of the plaintiff or his attorney under Supplemental Rules B and C may consist of an affidavit detailing the exigent circumstances.

Related Provisions:

Supplemental Rule B	In Personam Actions: Attachment and Garnishment
Supplemental Rule C	In Rem Actions: Special Provisions

**Rule (e)-5 Process Held in Abeyance**

(a) **At Request of Party.** A party requesting that issuance of process be held in abeyance under Supplemental Rule E(3)(c) must do so by motion, which motion must set forth with particularity the basis for the motion.



(b) **By Court Order.** If issuance of process is held in abeyance under a court order, the party seeking issuance of process must file a subsequent written request before the Clerk of the Court will issue process.

(c) **Tolling of Service Time.** Unless otherwise ordered by the court, in any case in which issuance of process is held in abeyance, the 120-day period of Rule 4(m), Federal Rules of Civil Procedure, will not begin to run until the process is actually issued by the Clerk of the Court.

Related Provisions:

Supplemental Rule E	Actions in Rem and Quasi in Rem: General Provisions
Fed. R. Civ. P. 4	Summons
D.Ak. LR 7.1	Motion Practice
D.Ak. LR 10.1	Form of Pleadings and Other Papers

**Rule (e)-6 Instructions to Marshal**

The party requesting a warrant of arrest or process of attachment or garnishment must provide written instructions to the Marshal.

**Rule (e)-7 Property in Possession of United States Officer**

(a) **To Whom Delivered.** When the property to be attached or arrested is in the custody of an employee or officer of the United States, the Marshal will deliver a copy of the complaint and warrant of arrest or summons and process of attachment or garnishment to that officer or employee if present within the District, and otherwise to the custodian of the property.

(b) **Method of Delivery.** The warrant, summons and process of attachment or garnishment may be delivered by facsimile, provided the Marshal confirms service by a telephone call.

(c) **Retention of Custody.** Unless otherwise ordered by the court, the Marshal will instruct the officer or employee or custodian to retain custody of the property pending further order of the court.

**Rule (e)-8 Security for Costs**

(a) **Order upon Motion.** Upon motion of a party and notice to all parties, in an action under the Supplemental Rules, the court may order an adverse party to post security for costs with the Clerk of the Court under Supplemental Rule E(2)(b).

(1) Unless otherwise ordered by the court, the amount of security will be five hundred dollars (\$500.00).

(2) Upon motion of a party, for good cause shown, the court may increase the amount of security for costs.

(b) **Posting of Security and Effect of Non-Compliance.**

(1) Unless otherwise ordered by the court, the party ordered to post security must do so within seven (7) days after the order is entered.

(2) Unless otherwise ordered by the court, a party that fails to post security when due may not participate further in the proceedings.

Related Provisions:

Supplemental Rule E	Actions in Rem and Quasi in Rem: General Provisions
Fed. R. Civ. P. 5	Service and Filing of Pleadings and Other Papers
D.Ak. LR 5.1	Filing and Proof of Service When Service is Required by Rule 5, Federal Rules of Civil Procedure
D.Ak. LR 7.1	Motion Practice
D.AK. LR 10.1	Form of Pleadings and Other Papers

### **Rule (e)-9 Adversary Hearing**

(a) **Scheduling.** Unless otherwise ordered by the court, the adversary hearing following arrest, attachment or garnishment under Supplemental Rule E(4)(f) will be conducted by a judicial officer within seven (7) days.

(b) **Notice.** The person(s) requesting the hearing must notify all other persons known to have an interest in the property of the time and place of the hearing.

#### Related Provisions:

Supplemental Rule E      Actions in Rem and Quasi in Rem: Special Provisions

### **Rule (e)-10 Appraisal**

#### (a) **Entry of Order.**

(1) An order for appraisal of property so that security may be given or modified will be entered by the Clerk of the Court at the request of an interested party.

(2) If the parties do not agree in writing upon an appraiser, the court will appoint an appraiser.

(b) **Procedure of Appraisal.** The appraiser will be sworn to the faithful and impartial discharge of the appraiser's duties before any federal or state officer authorized by law to administer oaths and must:

(1) give at least one (1) day notice of the time and place of making the appraisal to all counsel of record; and

(2) promptly file the appraisal with the Clerk of the Court and serve it upon counsel of record.

(c) **Cost of Appraisal.** The appraiser's fee normally will be paid by the moving party, but is a taxable cost of the action.

#### Related Provisions:

Supplemental Rule E      Actions in Rem and Quasi in Rem: Special Provisions

### **Rule (e)-11 Security Deposit for Seizure of Vessels**

(a) **Initial Deposit.** The first party that seeks arrest or attachment of a vessel or property aboard a vessel must deposit with the Marshal the sum required by the Marshal to cover the Marshal's reasonable expenses, including, but not limited to, dockage, keepers, substitute custodians, maintenance, and insurance.

(1) The Marshal is not required to execute process until the deposit is made.

(2) The party must advance additional sums from time to time as requested to cover the Marshal's estimated expenses until the property is released or disposed of as provided in Supplemental Rule E.

#### (b) **Effect of Failure to Make Deposit.**

(1) Any party who fails to make a reasonable advance when demanded by the Marshal may not participate further in the proceedings, except for the purpose of seeking relief from this rule.

(2) The Marshal may petition the Court for permission to release the vessel if additional sums are not advanced within two (2) business days of the Marshal's request.

#### Related Provisions:

28 U.S.C. § 1921      United States marshal's fees

Supplemental Rule E      Actions in Rem and Quasi in Rem: General Provisions

### **Rule (e)-12 Intervenor's Claims**

(a) **Presentation of Claim.** Unless otherwise ordered by the court, anyone pursuing a claim against the vessel or property that has been arrested, attached or garnished, and is in the hands

of the Marshal or a person substituted for the Marshal, is required to file an intervening complaint and obtain a warrant of arrest, rather than file an original complaint. No formal motion is required.

**(b) Service.**

(1) The intervening party must:

[A] serve a copy of the intervening complaint and warrant of arrest upon all parties to the action under the otherwise applicable Rules of Civil Procedure; and

[B] forthwith deliver a conformed copy of the complaint and warrant of arrest to the Marshal.

(2) The U.S. marshal must deliver the copies to the vessel or custodian of the property.

(3) The intervenor will thereafter be subject to the rights and obligations of the parties, and the vessel or property stands arrested, attached, or garnished by the intervenor.

**(c) Marshal's Fees and Expenses.**

(1) Unless otherwise ordered by the court, an intervenor will not be required to advance a security deposit to the Marshal under D.Ak. LAR (e)-11.

(2) An intervenor will owe a debt to any party that has previously advanced funds to cover the expenses of the Marshal, enforceable on motion, consisting of the intervenor's share of the Marshal's fees and expenses in the proportion that the intervenor's claim bears to the sum of all the claims.

(3) If a party plaintiff permits the vacation of an arrest, attachment, or garnishment, the remaining plaintiffs will share the responsibility to the Marshal for fees and expenses in proportion to the remaining claims and for the duration of the Marshal's custody because of each claim.

Related Provisions:

Supplemental Rule E      Actions in Rem and Quasi in Rem: General Provisions

Fed. R. Civ. P. 4      Summons

D.Ak. LAR (e)-11      Security Deposit for Seizure of Vessels

D.Ak. LR 10.1      Form of Pleadings and Other Papers

**Rule (e)-13 Custody of Property**

(a) **Safekeeping of Property.** When a vessel or other property is brought into the Marshal's custody by arrest or attachment, the Marshal will arrange for adequate safekeeping, which may include the placing of keepers on or near the vessel.

**(b) Substitute Custodian.**

(1) Upon motion and notice to all parties in interest, the court may appoint a substitute custodian in place of the Marshal.

(2) A motion seeking appointment of substitute custodian must show:

[A] name of the proposed substitute custodian;

[B] duties to be performed by the proposed substitute custodian;

[C] fee to be charged by the proposed substitute custodian;

[D] location of the vessel during the period of custody;

[E] that adequate insurance coverage has been obtained; and

[F] that an agreement has been executed by the moving party and the proposed substitute custodian to hold the Marshal harmless and indemnify the Marshal from liability arising during the period of custody.

(c) **Insurance.** The Marshal may purchase insurance to protect the Marshal and the Marshal's deputies, keepers and custodians from liabilities assumed in arresting and holding the vessel, cargo or other property, and in performing whatever services may be undertaken to protect the vessel, cargo or other property, and to maintain the court's custody.

(1) The party who applies for arrest or attachment of the vessel, cargo or other property must reimburse the Marshal for premiums paid for the insurance.

(2) The party who applies for removal of the vessel, cargo or other property to another location, for designation of a substitute custodian, or for other relief that will require an additional premium, must reimburse the Marshal for the premiums paid.

(3) A party moving for the appointment of a substitute custodian must:

[A] obtain insurance to protect the court-appointed custodian from liability assumed in receiving an arrested property for custodianship and in performing whatever services are undertaken to keep the property safe while in the custody of the substitute custodian; and

[B] pay the premiums charged for this insurance.

(4) The premiums charged for liability insurance, including premiums paid by a party under paragraph (3)[B], are taxable as administrative costs while the vessel, cargo or other property is in the custody of the court.

**(d) Cargo Handling, Repairs and Movement of the Vessel.** Following arrest or attachment of a vessel, no cargo handling, repairs or movement of the vessel may be made without an order of the court.

(1) The applicant for an order requesting authorization to handle cargo, make repairs or move the vessel, must:

[A] give notice to the Marshal and to all parties of record; and

[B] provide proof of adequate insurance coverage to indemnify the Marshal or substitute custodian for potential liability arising out of cargo handling, repairs or movement of the vessel.

(2) Before or after the Marshal has taken custody of a vessel, cargo or other property, any party of record may move for an order to dispense with keepers, to move or place the vessel, cargo, or other property at a specified facility, to designate a substitute custodian, or for similar relief, which motion must:

[A] be noticed to the Marshal or substitute custodian and to all parties of record; and

[B] provide proof that adequate insurance on the property will be maintained by the successor to the Marshal.

**(e) Claims by Suppliers for Payment of Charges.**

(1) A person who furnishes supplies or services to a vessel, cargo or other property in custody of the court who has not been paid and claims the right to payment as an expense of administration may file with the court a verified claim at any time before the vessel, cargo or other property is released or sold.

(2) The supplier must serve copies of the claim on the Marshal, substitute custodian, if one has been appointed, and all parties of record.

(3) The court may consider the claims individually or may schedule a hearing for all claims.

**(f) Motion for Changes in Arrangement.** When property has been or will be taken into custody by the Marshal, any party then appearing may move to dispense with keepers, provide a substitute custodian, move or place the property at a specified shipyard, terminal, yacht club, marina, or similar facility, or for similar relief.

(1) Notice of the motion must be given to:

[A] the Marshal or the keeper; and

[B] all parties that have appeared in the action.

(2) The court will determine whether a designated facility can and will safely keep the property.

(3) The order entered by the Court after hearing the motion may:

[A] fix reasonable towage, storage, moorage and any other authorized fee or charge incurred by or through the Marshal or substitute custodian in arranging for keepers or for shifting or movement of the property; and

[B] provide for the deposit in advance with the Marshal by the party seeking an order of funds enabling payment of the charges when and as incurred.

Related Provisions:

28 U.S.C. § 1921	United States marshal's fees
Supplemental Rule E	Actions in Rem and Quasi in Rem: General Provisions
Fed. R. Civ. P. 5	Service and Filing of Pleadings and Other Papers
D.Ak. LR 5.1	Filing and Proof of Service When Service is Required by Rule 5, Federal Rules of Civil Procedure
D.Ak. LR 7.1	Motion Practice
D.AK. LR 10.1	Form of Pleadings and Other Papers

**Rule (e)-14 Sale of Property**

**(a) Order of Sale.**

(1) Except as required by Supplemental Rule E(9)(a), an order for the sale of a vessel or other property must state the:

- [A] date;
- [B] time; and
- [C] location for the sale.

(2) The party seeking the order of sale must coordinate the sale date, time and location with the Marshal's Office.

(3) Offset bids will be allowed only if provided for in the Order of Sale.

**(b) Notice.** Unless otherwise ordered upon good cause shown or as provided by law, notice of sale of property in an action *in rem* must:

- (1) be published at least four (4) times prior to the day of the sale so the last required notice is published no less than five (5) days prior to the day of the sale; and
- (2) state whether written bids will be accepted.

**(c) Written Bids.** The Marshal is authorized to accept written sealed bids.

(1) Bids must be received at the Marshal's office in Anchorage by 4:00 p.m. local time the day preceding the sale.

(2) Unless the bid is an offset bid, each written bid must be accompanied by a certified or cashier's check for the amount indicated in LAR(e)-13(e).

**(d) Payment of Bid.** Except to the extent otherwise provided in the Order of Sale, the provisions of this subsection apply to all sales of property governed by the Supplemental Rules.

(1) Payment must be made in cash, by certified check or by cashier's check.

(2) The person whose bid is accepted:

[A] if the bid is one thousand dollars (\$1,000.00) or less, must immediately pay the full purchase price; or

[B] if the bid exceeds one thousand dollars (\$1,000.00), the bidder must—

(i) within a reasonable time set by the Marshal, pay a deposit of at least one thousand dollars (\$1,000.00) or ten percent (10%) of the bid, whichever is greater, and

(ii) pay the balance within seven (7) days after the day on which the bid was accepted, provided that if an objection to the sale is filed within that seven-day period, the bidder is excused from paying the balance of the purchase price until seven (7) days after the sale is confirmed.

**(e) Late Payment.**

(1) A successful bidder who does not pay the balance of the purchase price within the time allowed under these rules is responsible for paying the Marshal the cost of keeping the property

from the due date until the balance is paid or until the property is released upon confirmation of sale.

(2) The Marshal may refuse to release the property until the cost of keeping the property is paid.

**(f) Default.**

(1) If the successful bidder does not pay the balance of the purchase price within the time allowed under D.AK. LAR (e)-13(d), any interested party may move on expedited consideration to hold the bidder in default.

(2) Upon default, the judicial officer may accept the second highest bid at the option of the second highest bidder or arrange a new sale on such terms as the court may order.

(3) The defaulting bidder's deposit will be:

[A] applied to any additional cost incurred by the Marshal because of the default; and

[B] any balance retained in the registry of the court pending further order of the court.

**(g) Report of Sale by Marshal.**

(1) At the conclusion of the sale, the Marshal must immediately:

[A] file a written report with the Clerk of the Court of the fact of sale, setting forth—

(i) date of the sale,

(ii) price obtained,

(iii) name and address of the successful bidder, and

(iv) any other pertinent information; and

[B] upon confirmation of sale, pay over all monies received together with a bill of the Marshal's charges.

(2) When directed by the court, the Clerk of the Court will tax the charges and pay them to the Marshal out of the sales proceeds.

**(h) Time and Procedure for Objection to Sale.** An interested person may object to the sale by filing a written objection with the Clerk of the Court within seven (7) days following the sale.

(1) The objection must be served on:

[A] all parties of record;

[B] the successful bidder; and

[C] the Marshal.

(2) The objection must be accompanied by proof that the objecting party has deposited with the Marshall, by cash, certified check or cashier's check, a sum sufficient to pay the expenses of keeping the property for not less than fourteen (14) days.

(3) Time for objection to sale may not be extended.

**(i) Upset Bids.** No judicial sale under court order may be confirmed if, before or at the time set for confirmation, a bid is presented that is ten percent (10%), or more, in excess of the highest bid received at the sale ("upset bid").

(1) If an upset bid is received:

[A] a new sale will be held by the Court at the time of hearing on the motion or petition for confirmation; and

[B] only the upset bidder(s) and the party who made the highest bid at the original sale will be allowed to bid at the new sale.

(2) This rule does not prevent the Court from refusing to confirm and holding a new sale if a higher bid is presented that does not exceed ten percent (10%) of the highest bid at the original sale.

**(j) Confirmation of Sale.** The party seeking the sale of a vessel must lodge a proposed order with the Clerk of the Court confirming the sale within seven (7) days after the date of sale.

(1) The Clerk of the Court will immediately present the proposed Order to the judicial officer for signature.

(2) The judicial officer will sign the order within fourteen (14) days, but no sooner than seven (7) days after the sale, unless:

[A] an objection to the sale has been filed;

[B] the purchaser has failed to pay the balance due the Marshal; or

[C] an upset bid has been filed.

(3) If an objection is filed, a hearing on the confirmation of the sale will be held.

(4) Upon receipt of a confirmation order, the Marshal will issue a bill of sale to the purchaser.

**(k) Disposition of Deposits.**

(1) *Objection Sustained.* If an objection is sustained:

[A] sums deposited by the successful bidder will be immediately returned to the bidder; and

[B] the sum deposited by the objector will be:

(i) applied to the fees and expenses incurred by the Marshal in keeping the property until it is resold, and

(ii) any balance remaining returned to the objector.

[C] The objector will be reimbursed for the custodial expenses of keeping the property from the proceeds of a subsequent sale.

(2) *Objection Overruled.* If the objection is overruled, the sum deposited by the objector will be applied:

[A] to pay the expense of keeping the property from the day the objection was filed until the day the sale is confirmed; and

[B] any remaining balance immediately returned to the objector .

(l) **Title to Property.** Failure of a party to give the required notice of the action and arrest of the vessel, cargo or other property, or required notice of the sale, may afford grounds for objecting to the sale; but once sale is confirmed does not affect the title of the purchaser of the property.

Related Provisions:

46 U.S.C. § 31326 Court sales to enforce preferred mortgage liens and maritime liens and priority of claims

46 U.S.C. § 31329 Court sales of documented vessels

**Rule (f)-1 Security for Costs**

Unless otherwise ordered by the court, the amount of security for costs under Supplemental Rule F(1) will be one thousand dollars (\$1,000.00), which may be combined with the security for value and interest.

Related Provisions:

46A U.S.C. § 185 Petition for limitation of liability; deposit of value of interest in court; transfer of interest to trustee

Supplemental Rule F Limitation of Liability