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## **LAR (a) Authority and Scope**

**LAR (a)(1) Authority.** The local admiralty rules of the United States District Court for the District of Alaska are promulgated by a majority of the judges as authorized by and subject to the limitations of Federal Rule of Civil Procedure 83 (Civil Rule or Rules).

**LAR (a)(2) Title and Scope of Rules for Admiralty and Maritime Claims.** These rules apply to claims governed by the Supplemental Rules for Certain Admiralty and Maritime Claims of the Civil Rules, which are referred to herein as Supplemental Rules A through F. They may be cited as "Local Admiralty Rules" or "LAR." The Civil Rules and the Local Rules of the United States District Court for the District of Alaska apply to all civil cases, including admiralty and maritime proceedings, but if in any instance one (1) of those rules is inconsistent with a Local Admiralty Rule, the Local Admiralty Rule shall control.

**LAR (a)(3) Definitions.** As used in the Local Admiralty Rules, "judicial officer" means a United States District Judge or a United States Magistrate Judge; "Clerk of Court" means the Clerk of the District Court and includes deputy clerks of court; and "Marshal" means United States Marshal and includes deputy marshals. The term "keeper" means the individual or entity designated by the Marshal to maintain a vessel while under arrest. The term "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.

## **LAR (b) Maritime Attachment and Garnishment**

**LAR (b)(1) Affidavit Showing Defendant's Absence.** The affidavit required by Supplemental Rule B, accompanying the complaint, shall state with particularity the efforts made to locate the defendant in the District.

**LAR (b)(2) Order Authorizing Clerk to Issue Process.** Unless exigent circumstances as referenced in Supplemental Admiralty Rule B exist, before the clerk will issue a summons and process of attachment and garnishment under Supplemental Rule B, the complaint and accompanying affidavit must be reviewed by a judicial officer. If the judicial officer finds that probable cause for attachment or garnishment has been shown, the judicial officer will sign an order authorizing the clerk to issue process. Supplemental process may thereafter be issued by the clerk upon application without further order of the court for a period of thirty (30) days.

## **LAR (c) Actions in Rem: Special Provisions**

**LAR (c)(1) Funds or Intangible Property.** The summons issued pursuant to Supplemental Rule C(3) shall direct the person having control of funds or intangible property to show cause no later than ten (10) days after service why the funds or intangible property should not be delivered to the Court to abide the judgment. A judicial officer for good cause shown may lengthen or shorten the time. Service of the summons has the effect of an arrest of the funds or intangible property and brings it within the control of the Court. The person who is served may deliver or pay over to the Marshal the funds or intangible property proceeded against to the extent sufficient to satisfy the plaintiff's claim. If such delivery or payment is made, the person served is excused from the duty to show cause. The claimant of the property may show cause as provided in Supplemental Rule C(6) why the property should not be delivered to the Court.

**LAR (c)(2) Publication of Notice of Action and Arrest.** The notice required by Supplemental Rule C(4) shall be published once in a paper of general circulation in the District<sup>1</sup> and once in a paper of local circulation in the area where the property was arrested, if any. Plaintiff's attorney shall file a copy of the notice as it was published with the clerk. The notice shall contain

- (A) The Court, title, and number of the action;
- (B) The date of the arrest;
- (C) The identity of the property arrested;
- (D) The nature of the action and the amount demanded;
- (E) The name, address, and telephone number of the attorney for the plaintiff;
- (F) A statement that the claim of a person who is entitled to possession or who claims an interest pursuant to Supplemental Rule C(6) must be filed with the clerk and served on the attorney for the plaintiff within ten (10) days after the date of publication, or within such additional time as may be allowed by the Court;
- (G) A statement that an answer to the complaint must be filed and served within thirty (30) days after publication, and that otherwise, default may be entered and condemnation ordered; and
- (H) A statement that applications for intervention under Civil Rule 24 by persons claiming maritime liens or other interests shall be filed within the time fixed by the Court.

**LAR (c)(3) Notice Required for Default and Default Judgment in Action in Rem.**

- (A) **Notice Required.** A party seeking a default judgment in an action *in rem* must satisfy the judicial officer that due notice of the action and arrest of the property has been given
- (1) By publication as required in LAR (c)(2);
  - (2) By service under Civil Rule 5(b) upon the master or other person having custody of the property;
  - (3) By service under Civil Rule 5(b) upon every other

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<sup>1</sup> At the time the Local Admiralty Rules were revised, there was at least one paper of general circulation in the District of Alaska, the *Anchorage Daily News*.

party who has appeared in the action; and

(4) By service under Civil Rule 5(b) to every person who has not appeared in the action and is known to have an interest in the property.

The party seeking a default judgment may be excused, however, for failing to serve notice to such "other person" upon a showing to the satisfaction of the judicial officer that diligent effort was made to give the notice, without success. Failure to give notice as provided by this rule shall be grounds for setting aside the default under applicable rules, but shall not effect property sold under a judgment.

(B) Persons With Recorded Interests.

(1) If the defendant property is a vessel documented under the laws of the United States, plaintiff must attempt to notify all persons identified in the United States Coast Guard Office of Vessel Documentation as having an interest in defendant vessel.

(2) If the defendant property is a vessel numbered as provided in 46 U.S.C. Chapter 123 (Numbering Undocumented Vessels), plaintiff must attempt to notify the persons named in the records of the issuing authority.

**LAR (c)(4) Entry of Default and Default Judgment in Actions in Rem.**

(A) After the time for filing an answer has expired, the plaintiff may move for entry of default under Civil Rule 55(a). Default will be entered upon a showing that

(1) Notice has been given as required by LAR(c)(3)(A);

(2) Notice has been attempted as required by LAR(c)(3)(B), where appropriate;

(3) The time for answer has expired; and

(4) No one has appeared to claim the property.

(B) The plaintiff may move for default judgment under Civil Rule 55(b) at any time after default has been entered. If any person has appeared and does not join in the motion for default judgment, such person shall be given five (5) days notice of the motion by the moving party.

**LAR (d) Possessory, Petitory and Partition Actions**

**LAR (d) Return Date.** In a possessory action under Supplemental Rule D, a judicial officer may order that the claim and answer be filed on a date other than twenty (20) days after arrest. The order may also set a date for expedited hearing of the action.

**LAR (e) Actions *in Rem* and Quasi *in Rem*:  
General Provisions**

**LAR (e)(1) Itemized Demand for Judgment.** The demand for judgment in every complaint filed under Supplemental Rule B or C, other than complaints for personal injury, wrongful death or government forfeiture actions, shall allege the dollar amount of the debt or damages for which the action was commenced. The demand for judgment shall also allege the nature of other items of damage. The amount of the special bond posted under Supplemental Rule E(5)(a) may be based upon these allegations.

**Commentary:** Requiring that the amount of the debt or damages be alleged assists in the early arrangement of a bond or other security. Complaints for personal injury and wrongful death are excepted because such claims commonly cannot be readily quantified at the inception of suit. Government forfeiture actions are excluded from this rule per Supplemental Rule E(5)(a). Plaintiffs should communicate early with the Marshal's office to apprise the Marshal of the intended action and to obtain copies of written information the Marshal may distribute about the arrest procedure. Guidance may also be found in the MANUAL FOR UNITED STATES MARSHALS, 1987 A.M.C. 1041-1061.

**LAR (e)(2) Salvage Action Complaints.** In an action for salvage reward, the complaint shall allege the dollar value of the vessel, cargo, freight, and other property salvaged, and the dollar amount of the reward claimed.

**LAR (e)(3) Verification of Pleadings.** Every complaint in Supplemental Rule B, C, and D actions shall be verified upon oath or solemn affirmation, or in a form provided by 28 U.S.C. Section 1746, by a party or by an authorized officer of a corporate party. If no party or authorized corporate officer is present within the District, verification of a complaint may be made by an agent, attorney-in-fact, or attorney of record, who shall state the sources of the knowledge, information and belief contained in the complaint and declare that the document verified is true to the best of affiant's knowledge, information and belief, state why verification is not made by the party or an authorized corporate officer and state that the affiant is authorized so to verify. A verification not made by a party or authorized corporate officer will be deemed to have been made by the party as if verified personally. If the verification was not made by a party or authorized corporate officer, any interested party may move, with or without requesting a stay, for the personal oath of a party or an authorized corporate officer, which shall be procured by a commission or as otherwise ordered.

**LAR (e)(4) Review by Judicial Officer.** Unless otherwise required by the judicial officer, or Federal Rules, the review of complaints and papers called for by Supplemental Rules B(1) and C(3) does not require that the affiant party or attorney be present. The applicant for review shall include a form of order to the clerk which, upon signature by the judicial officer, will direct the arrest, attachment or garnishment sought by the applicant. In exigent circumstances, the certification of the plaintiff or his attorney under Supplemental Rules B and C shall

consist of an affidavit detailing the exigent circumstances.

**Commentary:** To the extent reasonably possible, the affidavit detailing exigent circumstances should include whether the owners or operators are subject to in personam jurisdiction, whether demand or notice has been given, the vessel's registration and home port, plaintiff's inability to determine the identity of the owners or operators, the type of property, and the likelihood the property will remain in, or will return to, the jurisdiction. Supplemental Rule (C)(3) provides that the Clerk may issue a warrant under certain circumstances.

**LAR (e)(5) Process Held in Abeyance.** If a party files a pleading seeking relief *in rem* or *quasi in rem* which would require the clerk to issue process, and the party does not wish the process to be issued at that time, the party may move for an order providing that the warrant may issue, but requiring the clerk to hold the issuance of process in abeyance for good cause shown per Civil Rule 4(m). If the issuance of process is held in abeyance pursuant to Court order, the party seeking issuance of process must file a subsequent written request before the clerk shall issue process. In any case where issuance of process is held in abeyance, the one hundred twenty (120) day period of Civil Rule 4(m) will not begin to run until the process is actually issued by the clerk.

**LAR (e)(6) Instructions to Marshal.** The party who requests a warrant of arrest or process of attachment or garnishment shall provide instructions to the Marshal.

**LAR (e)(7) Property in Possession of United States Officer.** When the property to be attached or arrested is in the custody of an employee or officer of the United States, the Marshal will deliver a copy of the complaint and warrant of arrest or summons and process of attachment or garnishment to that officer or employee if present within the District, and otherwise to the custodian of the property. The warrant, summons and process of attachment or garnishment may be delivered by facsimile, providing the Marshal confirms service by a telephone call. The Marshal will instruct the officer or employee or custodian to retain custody of the property until ordered to do otherwise by a judicial officer.

**LAR (e)(8) Security for Costs.** In an action under the Supplemental Rules, a party may move upon notice to all parties for an order to compel an adverse party to post security for costs with the clerk pursuant to Supplemental Rule E(2)(b). Unless otherwise ordered, the amount of security shall be five hundred dollars (\$500.00). The party so ordered shall post the security within five (5) days after the order is entered. A party who fails to post security when due may not participate further in the proceedings, except by order of the Court. A party may move for an order increasing the amount of security for costs.

**LAR (e)(9) Adversary Hearing.** The adversary hearing following arrest, attachment or garnishment that is referenced in Supplemental Rule E(4)(f) shall be conducted by a judicial officer within three (3) court days, unless otherwise ordered by the Court. The person(s) requesting the hearing shall notify all other persons known to have an interest in the property of the time and place of the hearing.

**LAR (e)(10) Appraisal.** An order for appraisal of property so



that security may be given or altered will be entered by the clerk at the request of an interested party. If the parties do not agree in writing upon an appraiser, a judicial officer will appoint an appraiser. The appraiser shall be sworn to the faithful and impartial discharge of the appraiser's duties before any federal or state officer authorized by law to administer oaths. The appraiser shall give at least one day's notice of the time and place of making the appraisal to all counsel of record. The appraiser shall promptly file the appraisal with the clerk and serve it upon counsel of record. The appraiser's fee normally will be paid by the moving party, but it is a taxable cost of the action.

**LAR (e)(11) Security Deposit for Seizure of Vessels.** The first party who seeks arrest or attachment of a vessel or property aboard a vessel shall deposit with the Marshal the sum required by the Marshal to cover the Marshal's reasonable expenses, including, but not limited to, dockage, keepers, substitute custodians, maintenance, and insurance. The Marshal is not required to execute process until the deposit is made. The party shall advance additional sums from time to time as requested to cover the Marshal's estimated expenses until the property is released or disposed of as provided in Supplemental Rule E. Any party who fails to 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. 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.

**LAR (e)(12) Intervenor's Claims.** When a vessel or other property has been arrested, attached or garnished, and is in the hands of the Marshal or custodian substituted therefor, anyone pursuing a claim against the vessel or property is required to present the claim in accord with Civil Rule 24, unless otherwise ordered by a judicial officer. Upon entry of an order granting the motion to intervene, the intervening party shall forthwith provide a conformed copy of the complaint in intervention to their process server, who shall serve the copy on the owner of the vessel or custodian of the property in conformance with Civil Rule 4. The intervenor shall thereafter be subject to the rights and obligations of the parties, and the vessel or property shall stand arrested, attached, or garnished by the intervenor. An intervenor shall not be required to advance a security deposit to the Marshal for seizure of a vessel as required by LAR (e)(11).

**LAR (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 shall arrange for adequate safekeeping, which may include the placing of keepers on or near the vessel. A substitute custodian in place of the Marshal may be appointed by order of the Court. A motion seeking appointment of substitute custodian must show the name of the proposed substitute custodian, the duties to be performed by the proposed substitute custodian, the fee to be charged by the proposed substitute custodian, the location of the vessel during the period of custody, that adequate insurance coverage has been obtained and 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.

(B) **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. The party who applies for arrest or attachment of the vessel, cargo or other property shall reimburse the Marshal for premiums paid for the insurance. The party who applies for removal of the vessel, cargo or other property to another location, for designation of a substitute custodian, or for other relief that will require an additional premium, shall reimburse the Marshal therefor. The premiums charged for the liability insurance are taxable as administrative costs while the vessel, cargo or other property is in the custody of the Court. A party moving for the appointment of a substitute custodian shall 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. The premiums charged for this insurance shall be paid directly by the moving party, who may move, after the release or judicial sale of the property to have the cost of the insurance deemed an administrative expense of keeping the property.

(C) **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. The applicant for such an order shall give notice to the Marshal and to all parties of record. Upon proof of adequate insurance coverage of the applicant to indemnify the Marshal or substitute custodian for potential liability arising out of cargo handling, repairs or movement of the vessel, the Court may direct the Marshal or substitute custodian to permit cargo handling, repairs, movement of the vessel or other operations. Before or after the Marshal has taken custody of a vessel, cargo or other property, any party of record may move for an order to dispense with keepers or to move or place the vessel, cargo, or other property at a specified facility, to designate a substitute custodian or for similar relief. Notice of the motion shall be given to the Marshal or substitute custodian and to all parties of record. The judicial officer will require that adequate insurance on the property will be maintained by the successor to the Marshal before issuing the order to change arrangements.

(D) **Claims by Suppliers for Payment of Charges.** A person who furnishes supplies or services to a vessel, cargo or other property in custody of the Court who has not been paid and claims the right to payment as an expense of administration shall file with the Court a verified claim at any time before the vessel, cargo or other property is released or sold. The supplier must serve copies of the claim on the Marshal, substitute custodian if one has been appointed and all parties of record. The Court may consider the claims individually or may schedule a hearing for all claims.

(E) **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 and provide a substitute custodian and to move to place the property at a specified shipyard, terminal, yacht club, marina, or similar facility or for similar relief. Notice of the motion shall be given by the moving party to the Marshal or the keeper and to counsel for all parties that have appeared. The Court will determine whether such a facility can and will safely keep the property. The order entered by the Court after hearing the motion may 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. The order may also provide for the deposit in advance with the Marshal by the party seeking an order of funds enabling payment of any such charges when and as incurred.

**LAR (e)(14) Sale of Property.**

(A) **Order of Sale.** Except as required by Supplemental Rule E(9)(a), an order for the sale of a vessel or other property shall state the specific date, time and location for the sale. The party seeking the order of sale shall coordinate the sale date, time and location with the Marshal's Office. Offset bids shall only be allowed 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* shall be published at least four (4) times prior to the day of the sale. This notice shall be published so the last required notice is published no less than five (5) calendar days prior to the day of the sale.<sup>2</sup> The notice shall state whether written bids will be accepted.

(C) **Written Bids.** The Marshal is authorized to accept written sealed bids. The bids must be received at the Marshal's office in Anchorage by 4:00 p.m. the business day preceding the sale. 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)(D).

(D) **Payment of Bid.** These provisions apply unless otherwise provided in the Order of Sale. The person whose bid is accepted shall immediately pay the Marshal the full purchase price if the bid is one thousand dollars (\$1,000.00) or less. If the bid exceeds one thousand dollars (\$1,000.00), the bidder shall, 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 shall pay the balance within seven (7) calendar days after the day on which the bid was accepted. 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) court days after the sale is confirmed. Payment shall be made in cash, by certified check or by cashier's check. The judicial officer may specify different terms in any order of sale.

(E) **Late Payment.** A successful bidder who does not pay the

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<sup>2</sup> See Footnote 1.

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

(F) **Default.** If the successful bidder does not pay the balance of the purchase price within the time allowed under LAR (e)(13)(D), any interested party may move on expedited consideration to hold the bidder in default. 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 judicial officer shall order. The defaulting bidder's deposit shall be applied to any additional cost incurred by the Marshal because of the default. Any balance shall be retained in the registry of the Court awaiting Court order for disposition.

(G) **Report of Sale by Marshal.** At the conclusion of the sale, the Marshal shall forthwith file a written report with the clerk of the fact of sale, the date, the price obtained, the name and address of the successful bidder and any other pertinent information, and upon confirmation of sale, pay over all monies received with a bill of the Marshal's charges. When directed by the judicial officer, the clerk shall tax the charges and pay them to the Marshal out of such monies.

(H) **Time and Procedure for Objection to Sale.** An interested person may object to the sale by filing a written objection with the clerk within seven (7) calendar days (inclusive of weekends and holidays) following the sale, serving the objection on all parties of record and the successful bidder and the Marshal, and depositing a sum with the Marshal that is sufficient to pay the expense of keeping the property for at least fourteen (14) days. Payment to the Marshal shall be in cash, certified check or cashier's check. Time for objection to sale shall not be extended.

(I) **Upset Bids.** No judicial sale made pursuant to court order may be confirmed if, before or at the time set for confirmation, a bid is presented which is ten percent (10%) or more in excess of the highest bid received at the sale ("Upset Bid"). If an Upset Bid is received, a new sale will be held by the Court at the time of hearing of the motion or petition for confirmation. 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. This rule does not prevent the Court from refusing to confirm and holding a new sale if a higher bid is presented which 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 shall lodge a proposed order with the clerk confirming the sale within seven (7) calendar days (inclusive of weekends and holidays) after the date of sale. The clerk shall immediately present the proposed Order to the judicial officer for signature. The judicial officer shall sign the order within ten (10) days, but no sooner than seven (7) calendar days after the sale, unless an objection to the sale has been filed or the purchaser has failed to pay the balance due the Marshal or an upset bid has been filed. If an objection is filed, the judicial officer shall hold a hearing on

the confirmation of the sale. The Marshal shall issue a bill of sale to the purchaser upon the receipt of a confirmation order from the judicial officer.

**Commentary:** Civil Rule 6 does not apply to add more than seven (7) days to this time period, but see LAR(g)(2).

(K) **Disposition of Deposits.**

(1) **Objection Sustained.** If an objection to sale is sustained, sums deposited by the successful bidder will be returned to the bidder forthwith. The sum deposited by the objector will be applied to the fees and expenses incurred by the Marshal in keeping the property until it is resold, and any balance remaining shall be returned to the objector. The objector will be reimbursed for the 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 shall be applied to pay the expense of keeping the property from the day the objection was filed until the day the sale is confirmed, and any remaining balance will be returned to the objector forthwith.

(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.

**LAR (f) Limitation of Liability**

**LAR (f)(1) Security for Costs.** The amount of security for costs under Supplemental Rule F(1) shall be one thousand dollars (\$1,000.00), and it may be combined with the security for value and interest, unless otherwise ordered.

## LAR (g) Special Rules

**LAR (g)(1) Newspapers for Publishing Notices.** Every notice required to be published under the Local Admiralty Rules or any rules or statutes applying to admiralty and maritime proceedings shall be published in a paper of general circulation in the district.<sup>3</sup>

**LAR (g)(2) Computation of Time.** If a time period provided for in these rules falls on a day that the Court is closed, the time period shall run to the next day the Court is open for business.

**LAR (g)(3) Use of State Procedures.** When the plaintiff invokes a state procedure in order to attach or garnish under Federal Rule 64(e), the process of attachment or garnishment shall so state.

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<sup>3</sup> See Footnote 1.

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