

**United States District Court
Eastern District of North Carolina**



**Local Admiralty and Maritime Claims Rules
of
Practice and Procedure
December, 2016
(Redline)**

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Rule A(1) Title, Citation And Scope

These local admiralty rules apply to the admiralty and maritime proceedings as defined in [Supplemental Rule A of the Federal Rules of Civil Procedure](#) and shall be cited as "Local Admiralty Rule ____." The [Local Civil Rules](#) of the United States District Court for the Eastern District of North Carolina apply to all civil cases, including admiralty and maritime proceedings, but if a local rule is inconsistent with a local admiralty rule, the local admiralty rule shall control.

Rule A(2) Definitions

As used in these Admiralty Rules,

- (a) "court" means a United States District Judge or a United States Magistrate Judge;
- (b) "keeper" means any person or entity appointed by the **M**arshal to take physical custody of and maintain the vessel or other property under arrest or attachment;
- (c) "**M**arshal" means the United States Marshal and includes deputy marshals;
- (d) "substitute custodian" means the individual who or entity that, upon motion and order of the court, assumes the duties of the **M**arshal or keeper with respect to the vessel or other property that is arrested or attached;
- (e) "Supplemental Rule" followed by a capital letter, e.g., "Supplemental Rule C," refers to the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions.

Rule A(3) Alternative Dispute Resolution

Alternative dispute resolution in admiralty and maritime cases shall be governed by the provisions of [Local Civil Rules 101-101.3](#).

Rule B(1) Use Of State Procedures

When the plaintiff invokes a state procedure to attach or garnish property under [Fed. R. Civ. P. 4\(n\)](#), the process of attachment and garnishment shall ~~so state~~ **include a citation to the applicable state law.**

Rule C(1) Issuance of Process: Intangible Property

(a) Issuance and Effect of Summons.

The summons issued pursuant to [Supplemental Rule C\(3\)](#) shall direct the person having control of the funds or other intangible property to show cause no later than ~~fourteen~~ (14) days after service why the funds or other property should not be delivered to the court to abide the judgment. The court, for good cause shown, may shorten or lengthen the time. Service of the summons has the effect of an arrest of the property and brings it within the control of the court.

(b) Payment to Marshal.

The person who is served may deliver or pay over to the ~~M~~marshal the property or funds proceeded against, or a part thereof, sufficient to satisfy the claim. If such payment is made, the person served is excused from any duty to show cause.

(c) Manner of Showing Cause.

The claimant of the property may show cause why the property should not be delivered to the court by serving and filing a claim as provided in Supplemental Rule C(6) within the time allowed to show cause, and by serving and filing an answer to the complaint within ~~twenty one~~ (21) days thereafter.

(d) Effect of Failure to Show Cause.

If a claim is not filed within the time stated in the summons, or an answer is not filed within the time allowed under this Rule, the person who was served shall deliver or pay to the ~~M~~marshal the property or funds proceeded against, or a part thereof, sufficient to satisfy plaintiff's claim.

Rule C(2) Publication

(a) Publication required by [Supplemental Rule C\(4\)](#) shall be made once, without further court order, in any one of the following newspapers:

Northern Division: **The** Virginian-Pilot (Norfolk, Virginia); The News and Observer (Raleigh, North Carolina)

Southern Division: Star News (Wilmington, North Carolina); **The News and Observer (Raleigh, North Carolina)**

All Other Divisions: The News and Observer (Raleigh, North Carolina)

* * *

- (c) Such notice shall be substantially as follows, except and unless otherwise provided in actions for the enforcement of forfeitures for violation of any federal statute:

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA

Division

In Admiralty

No.

Caption of Case

NOTICE: The United States Marshal, Eastern District of North Carolina, has on (date) arrested the (Vessel and appurtenances) (Property) in the above causes, civil and maritime for (nature of claim, i.e. contract, salvage, damage, collision, foreclosure of preferred mortgage, etc.) amounting to (\$ (and nature of unliquidated items)). Any person who has not been previously served with process and who is entitled to possession or who claims an interest in the (Vessel or Property), must file a claim and serve an answer no later than (date ~~twenty one~~ (21) days after publication); otherwise, default may be entered and condemnation ordered.

DATED at (city of publication), (state), (month, day and year of publication).

(Name)

(Firm Name)

(Address)

(Telephone Number)

(Fax Number)

(N.C. Bar Number)

(Attorney(s)) for (Plaintiff)(Intervenor)

- (d) Whenever publication is required, the person or party causing the publication shall file with the clerk, no later than ~~thirty (30)~~ days after the date of publication, sworn proof of publication (1) by a person duly authorized by the newspaper to execute affidavits of legal notices, together with a copy of the publication, or (2) through an affidavit executed by the person, party, or attorney of record. The affidavit shall include as an exhibit a copy of the required publication ~~reproduction thereof~~.

Rule C(3) Default In Action In Rem

(a) Notice Required.

Except in actions by the United States for forfeitures, 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:

- (1) By publication, as required in **Local Admiralty Rule C(2)**;
- (2) By service on the master or other person having custody of the property;
- (3) By service on every other person who has not appeared in the action and is known to have an interest in the property; and
- (4) By service in accordance with the Foreign Sovereign Immunities Act, **28 U.S.C. §§ 1602 et seq.**, if the property is subject to that Act.

(b) Persons with Recorded Interests.

- (1) If the defendant property is a vessel documented under the laws of the United States, a party seeking default judgment must obtain a current certificate of ownership **or abstract of title** from the United States Coast Guard and attempt to serve persons named in the certificate **or abstract** who appear to have an interest in the property.
- (2) If the defendant property is a vessel numbered as provided in the Federal Boat Safety Act, **46 U.S.C. §§ 4301 et seq.**, a party seeking default judgment must ~~obtain information from the authority issuing the number and~~ attempt to serve persons named in the records of the issuing authority who appear to have an interest in the property.

- (3) If the defendant property is of such character that there exists a governmental registry of recorded property interests or security interests in the property, a party seeking default judgment must attempt to notify all persons named in the records of each such registry who appear to have an interest in the property.

(c) **Manner of Giving Notice.**

A required notice, other than by publication, of the action and arrest of the property shall be given by delivery under [Fed. R. Civ. P. 5\(b\)](#).

Rule C(4) Entry Of Default

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

- (a) Notice has been given as required in [Rule C\(3\)](#) or, in the case of forfeiture actions in rem arising from a federal statute, as required by [Supplemental Rule G\(4\)](#); and
- (b) No claim has been served or filed within the prescribed time or no answer has been served or filed within the prescribed time.

The plaintiff may move for judgment under [Fed. R. of Civ. P. 55\(b\)](#) at any time after default has been entered.

Rule D(1) Possessory Actions ~~Short Day Return~~ Return Date in Possessory, Petitory, and Partition Actions

~~In all possessory an actions upon special order of the court under Supplemental Rule D, the court may order that the claim and answer be filed on a date earlier than 21 days after the arrest, and may by order set a date for expedited hearing of the action, process may be made returnable upon a short day. The answer shall be filed within such time as may be specifically ordered by the court, and a day of hearing then fixed, unless otherwise ordered. The hearing of possessory suits shall be given preference.~~

Rule E(1) Process

(a) Order Authorizing the Clerk to Issue Process of Arrest, Attachment or Garnishment.

Except in actions by the United States for forfeitures **or where exigent circumstances make court review impracticable**, the pleadings, the affidavit required by Supplemental Rule B, and accompanying supporting papers must be reviewed by the court pursuant to Supplemental Rules B and C before the clerk will issue a summons and process of arrest, attachment or garnishment to any party, including intervenors. The clerk may refer a motion under this provision to any ~~magistrate judge or judge of the court who is reasonably available, regardless of the judge to whom the action is assigned~~ **district or magistrate judge**. The motion may be heard and the decision thereon communicated to the clerk by telephone **or other electronic communication**. If the court finds the conditions set forth in Supplemental Rules B or C appear to exist, as appropriate, the court shall authorize the clerk to issue process. Supplemental process ~~or alias process~~ may thereafter be issued by the clerk upon application without further order of the court.

(1) Order

Upon approving the application for arrest, attachment or garnishment, the court will issue an order to the clerk to issue such process. The proposed form of order authorizing the issuance of such process and the proposed process itself shall be submitted to the court or the clerk before the court's review.

~~(2) Exigent Circumstances~~

(b) Exigent circumstances

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

(b)(c) Return of Process -- Supplemental Rules C and D.

Unless otherwise ordered by the court, all process from this court within the scope of Supplemental Rules C and D shall be returnable by claim no later than ~~fourteen~~ (14) days after execution of the process and by answer within ~~twenty one~~ (21) days following filing of a claim or, in the event the property is not released within ~~fourteen~~ (14) days after execution of process, by filing a claim and serving an answer within ~~twenty one~~ (21) days of publication as required by Supplemental Rule C(4).

(e)(d) Return of Process -- Supplemental Rules B and F and other Rule 9(h) actions.

Unless otherwise ordered by the court, all process from this court within the contemplation of Supplemental Rules B and F shall be in conformity therewith. Unless otherwise ordered by the court, all process in Fed. R. Civ. P. 9(h) actions (other than process contemplated by Supplemental Rules B, C, D and F) shall be returnable no later than ~~twenty one~~ (21) days following service.

(d)(e) Registry of Vessel Information.

Whenever a vessel is to be served, the party seeking service ~~should~~ **shall** inform the ~~M~~marshal of the registry of the vessel to be served, **if known**. However, failure to so inform the ~~M~~marshal shall not be cause for the ~~M~~marshal to refuse to serve the ~~said~~ vessel or in any way invalidate service of process.

Rule E(2) Seizure Of Property Already In Custody Of An Officer Of The United States

In addition to the requirements of [Supplemental Rule C\(3\)](#), where property in the custody of an officer or employee of the United States is to be arrested or attached, the ~~M~~marshal shall deliver a copy of the complaint and warrant for arrest, or summons and process of attachment, to such 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 ~~M~~marshal shall notify such officer, employee or custodian not to relinquish such property from custody until ordered to do so by the court.

A defendant is considered to be "not found within the district" if, in an action in *personam*, service upon the defendant cannot be effected in person or upon an authorized officer or agent within the State of North Carolina or if the only effective service is through the Secretary of State, the North Carolina Long Arm Statute, or through any method of substituted service.

Rule E(3) Post Arrest Procedure

- (a) Whenever property is arrested, attached or garnished, any person claiming an interest in the property shall be entitled to a prompt hearing before the court on notice to the party bringing the arrest, attachment or garnishment and to all other parties who have appeared in the action. The hearing shall be noticed and scheduled as is a hearing on a request for temporary restraining order. At the hearing, the party that obtained the arrest, attachment or garnishment shall show cause why the arrest, attachment or garnishment order should not immediately be vacated or other appropriate relief granted.
- (b) If the arrest, attachment or garnishment was obtained under a certification of exigent circumstances, the party obtaining the arrest, attachment or garnishment shall have the burden to show that exigent circumstances existed.
- (c) This Rule shall have no application to suits for seamen's wages when process is issued upon a certification of sufficient cause filed pursuant to 46 U.S.C. §§ 603 and 604 or to actions by the United States for forfeitures.

Rule E(4) Prepared Statement Of Attachment And Garnishment Or Arrest

At the time process issues in Supplemental Rule B, C and D actions, plaintiff or intervenor will furnish to the Marshal, by email or hand delivery, a prepared statement of attachment and garnishment or arrest with blanks for completion of date thereof and for signature below the name and title of such Marshal, together with a valid email address or a self-addressed envelope to plaintiff or intervenor or its attorney with sufficient postage affixed. After execution of process, the Marshal will promptly cause that completed prepared statement to be emailed or mailed to such addressee.

Rule E(5) Stipulations And Undertakings

- (a) Except in cases instituted by the United States by information, or complaint of information upon seizures for any breach of the revenue, 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 on behalf of the stipulator or obligor by his/her/its agent or counsel. Stipulations for costs with corporate surety need not be signed or executed by the party, but may be signed on the party's behalf by the

party's agent or counsel, and shall be sufficient in any event if executed only by the surety approved by the court.

- (b) If, before or after commencement of suit, the arresting, attaching or garnishing party accepts any written undertaking to respond on behalf of the vessel or other property sued in return for foregoing its arrest or for stipulating to the release of such vessel or other property, the undertaking shall be filed, shall become the res in place of the vessel or other property sued and shall be deemed the subject referred to when any pleading, order or judgment in the action refers to the vessel or other property. The preceding shall apply to any such undertaking, subject to its own terms, whether or not it has been approved by a judge or the clerk.

Rule E(6) Pleadings And Parties

- (a) Every complaint filed as a [Fed. R. Civ. P. 9\(h\)](#) action shall set forth:
- (1) "In Admiralty" following the designation of the court, in addition to the statement, if any, contained in the body of the complaint pursuant to such rule; and
 - (2) The individual name, firm name, address, telephone number, fax number, **email address** and State Bar ~~identification~~ **number**, where applicable, of all attorneys who appear for the filing party, including an attorney making a special appearance pursuant to [Local Civil Rule 83.1\(e\)](#) or the telephone number and address of the plaintiff, if plaintiff appears pro se.
- (b) Every complaint in Supplemental Rule B and C actions shall state the amount of the debt, damages, or salvage for which the action is brought, and shall include in addition thereto the amounts of unliquidated claims, including a good faith estimate of attorney's fees to be supplemented seasonably. The defendant or claimant may post bond pursuant to [Supplemental Rule E\(5\)](#) based on such allegations. **When a bond is posted under the Local Admiralty Rules for any reason, notice of the posting with a copy of the bond attached shall be electronically filed in the case by the posting party. The paper original of the bond shall be retained by the posting party unless otherwise directed by the court.**
- (c) In cases of salvage, the complaint shall also state to the extent known or estimated 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 the behalf of all other persons interested or

associated with them. There shall also be attached to the complaint a list of all known salvors and all persons believed entitled to share in the salvage, and also any agreement of consortium available and known to exist among them or any of them, including a copy of any such agreement.

Rule E(7) Verification Of Pleadings And Answers To Interrogatories

Every complaint and claim in an action filed under the Supplemental Rules shall be verified on oath or solemn affirmation by a party, or an officer of a corporate party. If no party or corporate officer is within the district, verification of a complaint, claim or answers to interrogatories may be made by an agent, attorney-in-fact or attorney of record, who shall state briefly the sources of his or her knowledge, information and belief, declare that the document affirmed is true to the best of his or her knowledge, information and belief, state the reason why verification is not made by the party or a corporate officer, and that he or she is so authorized to act. Any such verification will be deemed to have been made by the party to whom a 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 of any party or of a corporate party's officer. If required by the court, such verification shall be procured by commission or as otherwise ordered.

Rule E(8) Intervention

(a) Presentation of Claim.

When a vessel or other property has been arrested, attached or garnished, and is in the hands ~~of the M~~ **custody** of the ~~M~~ **marshal** or ~~substitute~~ **custodian** ~~substituted therefor~~, anyone seeking to enforce a claim against the vessel or property shall ~~present the claim by filing an intervening complaint, and not by filing an original complaint~~ **file a complaint in intervention in the in rem action**, unless otherwise ordered by the court. The clerk shall promptly ~~deliver~~ **provide** a ~~conformed~~ copy of the complaint in intervention and the intervenor's warrant of arrest or process of attachment or garnishment **as filed** to the ~~M~~ **marshal**, who shall deliver the same to the vessel and custodian of the property. Intervenors shall thereafter be subject to the rights and obligations of a party originally arresting, attaching or garnishing the vessel or property unless otherwise provided herein, 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 ~~M~~ **marshal** **until ordered by the court**.

(b) Intervention When Sale Has Been Scheduled.

No party may intervene without first obtaining leave of court if intervention is sought less than ~~twenty-one~~ (21) days prior to the date for which a sale of the vessel or property has been set by the court.

(c) Compliance with Rules.

An intervenor must comply with the [Supplemental Rules for Certain Admiralty and or Maritime Claims and Asset Forfeiture Actions, the Federal Rules of Civil Procedure](#) and these [Local Civil Admiralty Rules](#) in accomplishing and perfecting the arrest, attachment or garnishment unless otherwise provided in this Rule E(8) or by order of the court.

(d) Sharing of Marshal's Fees and Expenses.

At any time after the filing of a complaint in intervention, any party to the action or the Mmarshal may move the court for an order directing that the intervenor pay a fair share, as determined by the court, of the Mmarshal's fees and expenses incurred and to be incurred for the arrest, attachment, garnishment, keeping, maintenance and security of the vessel or other property. A hearing on such motion may be held upon three (3) days' notice.

(e) Intervenors' Obligations upon Vacation of the Arrest, Attachment or Garnishment.

If an original arrest, attachment or garnishment is vacated, ~~an intervenor a party~~ who has ~~delivered conformed copies of his or her complaint in intervention~~ **filed a complaint in intervention in the in rem action which was presented in accordance with Local Admiralty Rule E(8)(a) to the Marshal** shall bear responsibility for the Mmarshal's fees and expenses and shall deposit the sum required by the Mmarshal for fees and expenses within ~~forty-eight~~ (48) hours after receiving written notice from the Mmarshal requiring such deposit. Such notice may be given as soon as the Mmarshal learns that the original arrest, attachment or garnishment is to be vacated. If more than one complaint in intervention has been delivered to the Mmarshal, the intervenors shall step into the position of the originally arresting, attaching or garnishing party as provided herein in order of the delivery of their complaints in intervention to the Mmarshal.

(f) Service and Responsive Pleadings.

~~Upon the filing of a complaint in intervention, the intervenor, in addition to any other service required by statute, the Federal Rules of Civil Procedure, these local rules or order of the court, shall serve a copy of (1) the complaint in intervention, (2) the order authorizing arrest, attachment or garnishment in intervention, and (3) the warrant, writ and/or summons in intervention on all parties who have appeared in the action pursuant to Fed. R. Civ. P. 5 and any order of the court. Within twenty-one (21) days of such service, each party to the action shall serve an answer, motion or other responsive pleading to the complaint in intervention consistent with Fed. R. Civ. P. 12 and.~~ ~~†The intervenor shall~~ **have 21 days from the filing of the complaint in intervention to file and** serve an answer, motion or other responsive pleading to the complaints and claims previously filed in the action.

Rule E(9) Custody Of Property

(a) Safekeeping of Property When Seized.

When a vessel, cargo or other property is seized, the ~~M~~marshal shall take custody and arrange for adequate and necessary security for its safekeeping which may include, in the ~~M~~marshal's discretion, the placing of keepers on or near the vessel, or the appointment of a facility or person as custodian of the property in lieu of the ~~M~~marshal. When a vessel with crew aboard is seized, the removal of such crew shall fall within the discretion of the ~~M~~marshal.

(b) Cargo Handling, Repairs and Movement of the Vessel.

Upon arrest or attachment of the vessel, no cargo handling, repairs or movement of the vessel may be made without a court order except in an emergency situation in the discretion of the ~~M~~marshal. Written notice shall be given to the ~~M~~marshal and to all parties who have appeared prior to the application for such order, and the certificate of service of such notice shall be filed with the clerk before application is made to the court. For good cause shown, the court may direct the ~~M~~marshal to allow the conduct of cargo handling, repairs, movement of the vessel or other operations on a vessel under arrest or attachment. Neither the United States nor the ~~M~~marshal shall be liable for the consequence of the undertaking or continuation of any such activities during the arrest or attachment.

(c) Motion for Change in Arrangements.

Prior to or after a vessel, cargo or property has been taken into custody by the Marshal, any party then appearing may move the court to dispense with keepers or to remove or place the vessel, cargo or other property at a specified facility, to designate a substitute custodian, or for similar relief. Notice of the motion shall be given to the Marshal and to all parties who have appeared.

(d) Insurance.

The Marshal may order insurance to protect the Marshal, his or her deputies, keepers and substitute custodians from liability assumed in arresting and holding the vessel, cargo or other property and performing whatever services are undertaken to protect the vessel, cargo or other property and maintain the court's custody. The party applying for arrest of the vessel, cargo or other property shall reimburse the Marshal for premiums paid for the insurance. The party applying 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 *custodia legis*.

(e) 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 a verified claim with the court at any time before the vessel, cargo, or other property is released or sold. The supplier must serve copies of the claim pursuant to [Fed. R. Civ. P. 5\(b\)](#), on the Marshal, substitute custodian (if one has been appointed), and all parties of record. The court may consider the claims individually or schedule a single hearing for all claims.

Rule E(10) Appraisal

(a) Order for Appraisal.

An order for appraisal of property so that security may be given or altered will be entered by the clerk at the written request of any interested party. If the parties do not agree in writing on the selection of the appraiser, the court will appoint the appraiser.

(b) Appraiser's Oath.

The appraiser shall be sworn to the faithful and impartial discharge of duties before any federal or state officer authorized by law to administer oaths, and a copy of the oath shall be filed with the clerk.

(c) Appraisal.

The appraiser shall give one day's notice of the time and place of making the appraisal to the parties who have appeared in the action. The appraiser shall file the appraisal in writing with the clerk as soon as it is completed and shall serve it on all parties.

(d) Cost of Appraisal.

Absent stipulation of the parties or order of the court to the contrary, the appraiser shall be paid by the party requesting the appraisal. Appraiser's fees shall thereafter be taxed as the court orders.

Rule E(11) Sale Of Property

(a) Publication of Notice of Sale.

Unless otherwise ordered upon a showing of urgency, impracticality or other good cause, or as provided by law, notice of the sale of property shall be published daily, at least twice, the first publication to be a least one calendar week prior to the date of sale and the second publication to be a least three calendar days prior to the date of sale, unless otherwise ordered by the court.

(b) Place of Sale.

The place of sale will occur at ~~the~~ ~~a~~ ~~F~~ederal ~~C~~courthouse in the division in which the property is located unless the court otherwise directs.

(c) Payment of Bid.

The person whose bid is accepted shall immediately pay the ~~M~~arshal either the full purchase price if the bid is no more than \$500 or a deposit of \$500 or ten percent of the bid, whichever is greater, if the bid exceeds \$500. The bidder shall pay the balance of the purchase price within three ~~(3) court~~ days following the sale. If an objection to the sale is filed within that time, the bidder is excused from paying the balance of the purchase

price until three ~~(3) court~~ days after the sale is confirmed. Payments to the **M**arshal shall be in cash, certified check or cashier's check. The court may specify different terms in any order of sale.

(d) Penalty for Late Payment of Balance.

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

(e) Penalty for Default in Payment of Balance.

A successful bidder who fails to pay the balance of the bid within the time allowed is in default and the court may at any time thereafter order a sale to the second highest bidder or order a new sale as appropriate. Any sum deposited by the bidder in default shall be forfeited and applied to pay any additional costs incurred by the **M**arshal by reason of the forfeiture and default, including costs incident to resale. The balance of the deposit, if any, shall be retained in the registry subject to further order of the court, ~~and the court shall be given written notice of its existence whenever the registry deposits are reviewed.~~

(f) Report of Sale by the Marshal.

At the conclusion of the sale, the **M**arshal shall immediately file a written report with the court of the fact of sale, the date thereof, the price obtained, the name and address of the successful bidder, and any other pertinent information.

(g) Time and Procedure for Objection to Sale.

An interested person may object to the sale by filing a written objection with the clerk within three ~~(3) court~~ days following the sale, serving the objection on all parties, the successful bidder and the **M**arshal, and depositing a sum with the **M**arshal that is sufficient to pay the expense of keeping the property for at least ~~seven (7)~~ days. Payment to the **M**arshal shall be in cash, certified check, or cashier's check. The written objection must be endorsed by the **M**arshal with an acknowledgment of receipt of the deposit prior to filing with the clerk.

(h) Confirmation of Sale Without Motion.

A sale shall stand confirmed as of course without any affirmative action by the court unless (1) written objection is filed with the court within the time allowed under these rules, or (2) the purchaser is in default for failure to pay the balance due to the Marshal. The purchaser in a sale so confirmed as of course shall present a ~~form of~~ proposed order reflecting the confirmation of the sale for entry by the clerk ~~on~~ no earlier than the fourth court day following the sale. The Marshal shall transfer title to the purchaser upon ~~presentation~~ issuance of such order by the clerk.

(i) Confirmation of the Sale on Motion.

If an objection has been filed or if the successful bidder is in default, the Marshal, the objector, the successful bidder, or a party may move the court for relief. ~~The motion will be heard summarily by the court. The~~ Any person seeking a hearing on such motion shall may apply to the court for an order fixing the date and time of the a hearing and directing the manner of giving notice and shall give written notice of the motion to the Marshal, all parties, the successful bidder and the objector. ~~The motion will be determined promptly by the court.~~ The court may confirm the sale, order a new sale, or grant such other relief as justice requires.

(j) Disposition of Deposits.

(1) Objection Sustained.

If an objection is sustained, sums deposited by the successful bidder will be returned to the bidder immediately. The sum deposited by the objector will be applied to pay the fees and expenses incurred by the Marshal in keeping the property until it is resold, and any balance remaining shall be returned to the objector. The objector will be reimbursed for the expense of keeping the property from the proceeds of a subsequent sale.

(2) Objection Overruled.

If the objection is overruled, the sum deposited by the objector will be applied to pay the expense of keeping the property from the day the objection was filed until the day the sale is confirmed, and any balance remaining will be returned to the objector immediately.

(k) 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 does not affect the title of a bona fide purchaser of the property without notice of the failure.

Rule E(12) Release Of Seizures; Custodial Costs; General Bonds

(a) Property seized by the Marshal may be released as follows:

- (1)** By the Marshal upon the receipt of security by the Marshal, accompanied by the endorsed express authorization for release signed by the party or counsel for the party as provided by Supplemental Rule E(5)(c) if all costs and charges of the court and its officers shall have first been paid. Monies received as part of any cash stipulation shall be delivered by the Marshal to the clerk for deposit in the registry of the court.
- (2)** In an action entirely for a sum certain, by paying into the court the amount alleged in the complaint to be due, plus interest at the rate of ~~ten percent (10%)~~ per annum from the date claimed to be due to a date ~~twenty four (24)~~ months after the date the claim was filed, or by filing an approved stipulation for such alleged amount and interest. In either event, claim of the property shall be filed.
- (3)** In actions other than possessory, petitory, and partition, by filing, in addition to a claim of the property, an approved stipulation for the amount of the appraised or agreed value of the property seized, with interest (unless otherwise ordered by the court), interlocutory or final, and to pay the amount awarded by the final decree rendered by this court or by any appellate court, with interest.
- (4)** In possessory, petitory, and partition actions, only upon the order of the court, and on such security and terms as ordered.
- (5)** Upon the dismissal or discontinuance of the action or upon the written consent of the attorney for the party on whose behalf the property is detained, if all costs and charges of the court and its officers shall have first been paid.

(b) The Marshal shall not deliver any property so released until costs and charges of the Marshal shall first have been paid.

- (c) In any general bond as provided for by Supplemental Rule E(5)(b) the vessel will be identified by name, nationality, dimension, official number or registration number, hailing port and port of documentation, to the extent applicable. The owner of such vessel shall also file complete designated United States address **and email address, if available**, for communications to the owner or designated agent, which shall be by mail **or email**. Execution of process against the vessel so stayed under [Supplemental Rule E\(5\)\(b\)](#) shall be endorsed to the **M**arshal as stayed pursuant to the rule. Such process shall be served by the **M**arshal together with a copy of the complaint on the master or other person in whose charge or custody the vessel is found and the **M**arshal shall make his or her return thereof. If no master or other person in charge of custody is found aboard the vessel, the **M**arshal shall so make his or her return accordingly, and the clerk shall advise by mail **or email** the owner or designated agent, at the address furnished pursuant to this rule, of the nature of the action, any amount claimed, the plaintiff, the name and address of plaintiff's attorney, the case number, and the return day ~~thirty~~ (30) days from the date of the **M**arshal's attempt. The clerk will maintain a current list of vessels subject to a general bond and file said bonds alphabetically by name of vessel and endorsed as provided by [Supplemental Rule E\(5\)\(b\)](#).

Rule E(13) Taxation Of Costs

All applications for costs shall be made in accordance with Local Civil Rule 54.1
If costs shall be awarded to ~~either or~~ any party, then the reasonable premium or expenses paid on all bonds or stipulations or other security by the party in whose favor such costs are allowed shall be taxed as a part of the costs of the case. In addition, if costs shall be awarded to ~~either or~~ any party, then the reasonable expenses paid by a party incidental to or arising out of the attachment or arrest of any property in the proceedings or while said property is in *custodia legis* shall be taxed as a part of the costs of the case.

Rule E(14) Stay Of Execution Or Of Release Of Property After Judgment Or Dismissal

No execution of judgment shall issue nor shall seized property be released pursuant to judgment or order of dismissal, until ~~fourteen (14)~~ days after its entry. Upon the filing of a motion for new trial or notice of appeal or motion to set aside default within said ~~fourteen (14)~~ day period, a further stay shall exist for a period not to exceed ~~thirty (30)~~ days from the entry of judgment or dismissal to permit

the entry of an order fixing the amount of a supersedeas bond and the filing of same.

Rule E(15) Claims After Sale How Limited

Claims upon the proceeds of sale of property under a final decree, except for seamen's wages, shall not be admitted in behalf of lienors who file their claims after the sale, to the prejudice of lienors who filed their claims before the sale, but shall be limited to remnants and surplus, unless for cause shown it shall be otherwise ordered.

Rule F(1) Stipulations For Costs And Security

(a) Seamen.

Seamen suing as provided in 28 U.S.C. § 1916 shall not be required to file a stipulation for costs in the first instance. The court may, however, order a stipulation to be given at any time. In all actions in rem brought by seamen in their own names and for their own benefit for wages, salvage, or the enforcement of laws for their health or safety without prepaying costs or fees or furnishing security therefor, pursuant to 28 U.S.C. § 1916, the Marshal may at any time after service of process, attachment, or seizure of a vessel, petition any judge or magistrate judge of this court to require the posting of security for any or all reasonable expenses which have been or may be incurred while the vessel is in the custody of the Marshal. Upon filing such petition for the posting of security, a hearing date shall promptly be set by the court and the Marshal clerk shall give notice of the time and place of such hearing by serving a copy of the notice of hearing together with a copy of the petition upon the marshal and counsel of record for the parties or upon the parties, and the marshal shall by posting a copy of the same on the vessel.

(b) Increase or Decrease in Security.

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 otherwise. The court may enter such order on its own motion, with or without notice.

(c) Deposit Required Before Seizure.

Any party, including any intervenor, who seeks arrest, attachment or garnishment of property in an action governed by [Supplemental Rule E](#) and [Fed. R. Civ. P. 4\(en\)](#) shall deposit with the Marshal the sum estimated by the Marshal to be sufficient to pay the fees and expenses of arresting, attaching, or garnishing and keeping the property for at least ~~fourteen~~ (14) days, or such lesser amount as the Marshal deems sufficient. The Marshal is not required to execute process of arrest, attachment or garnishment until such deposit is made.

(d) Additional Deposits Required After Seizure.

Any party who has caused the Marshal to arrest, attach or garnish property shall advance additional sums from time to time as required by the Marshal to pay the fees and expenses of the Marshal until the property is released or disposed of as provided in [Supplemental Rule E](#).

(e) Sanction for Failure to Make Deposit.

Any party who fails to make a deposit when required by the Marshal may be subject to sanctions including the release of the vessel.

(f) Security for Costs.

In complying with the provisions of [Supplemental Rule F\(1\)](#) concerning security for costs, if plaintiff elects to post cash, that sum shall be \$500.00; if the plaintiff elects to post a bond, the amount of the bond shall be \$500.00 plus interest at the rate of ~~six percent~~ (6%) per annum from the date of the security.

Rule F(2) Notice

Plaintiff shall effect publication required by [Supplemental Rule F\(4\)](#) without further court order, in any one of the following newspapers:

Northern Division: The Virginian-Pilot (Norfolk, Virginia); The News and Observer (Raleigh, North Carolina)

Southern Division: Star News (Wilmington, North Carolina)

All Other Divisions: The News and Observer (Raleigh, North Carolina)

Rule F(3) Order Of Proof At Trial

In an action where a party seeks to limit liability under Supplemental Rule F, whether the right to limit arises as a claim or defense, the damage claimants shall offer their proof first.