

**FILED**

DISTRICT COURT OF GUAM

NOV = 2 2012

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**JEANNE G. QUINATA**  
CLERK OF COURT

GENERAL ORDER

No. 12-0008

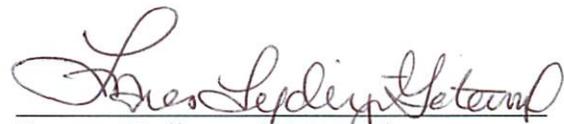
In Re:

Adoption of Updated Local Rules

Of Admiralty Practice

Pursuant 28 U.S.C. § 2071, The District Court of Guam hereby adopts the attached updated Local Rules of Admiralty Practice, effective November 5, 2012.

SO ORDERED this 2<sup>nd</sup> day of November, 2012.



Frances Tydingco-Gatewood  
Chief District Judge

# DISTRICT COURT OF GUAM

## ADMIRALTY LOCAL RULES

### ADLR A. AUTHORITY AND SCOPE.

(1) **Authority.** The Admiralty Local Rules (“ADLR”) of the District Court of Guam are promulgated as authorized by and subject to the limitations of Federal Rule of Civil Procedure 83.

(2) **Scope.** The ADLR apply only to civil actions that are governed by Rule A of the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions (“the Supplemental Rules”). The General Rules and Local Rules are applicable in these cases, but to the extent that another local rule is inconsistent with the applicable ADLR, the ADLR shall govern.

(3) **Citation.** The ADLR shall be cited as ADLR and the capital letter and numbers in parentheses that appear in each section (e.g., ADLR A(1)). The capital letter is intended to associate the ADLR with the Supplemental Rule that bears the same capital letter.

(4) **Definitions.** As used in the ADLR, the term “the Rules” means the Federal Rules of Civil Procedure; the word “Rule” followed by a numeral, e.g., Rule 12, means a Federal Rule of Civil Procedure; the term “Supplemental Rule” followed by a capital letter, e.g., Supplemental Rule C, means a Supplemental Rule for Admiralty or Maritime Claims and Asset Forfeiture Actions; the word “Court” means the District Court of Guam; the term “judicial officer” means a United States District Judge, District Court of Guam Judge, a United States Magistrate Judge or a Designated Judge exercising jurisdiction; the word “Clerk” means the Clerk of the District Court of Guam and includes deputy clerks of court; the word “state” includes the territory of Guam; the word “Marshal” means the United States Marshal and includes deputy marshals; the word “keeper” means any person or entity appointed by the Marshal to take physical custody of and maintain the vessel or other property under arrest or attachment; and the term “substitute custodian” means the individual who or entity that, upon motion and order of the Court, assumes the duties of the Marshal or keeper with respect to the vessel or other property that is arrested or attached.

### ADLR B. MARITIME ATTACHMENT AND GARNISHMENT.

When the plaintiff invokes a state procedure in order to attach or garnish as permitted by the Rules or the Supplemental Rules, the process of attachment or garnish as permitted by the Rules or the Supplemental Rules, the process of attachment or garnishment shall identify the state law upon which the attachment or garnishment is based.

## ADLR C. ACTIONS *IN REM*; SPECIAL PROVISIONS.

(1) **Intangible Property.** The summons issued pursuant to Supplemental Rule C(3)(c) shall direct the person having control of intangible property to show cause no later than fourteen (14) days after service why the intangible property should not be delivered to the Court to abide the judgment. A judicial officer for good cause shown may lengthen or shorten the time. Service of the summons has the effect of an arrest of the intangible property and brings it within the control of the Court.

Service of the summons to show cause requires a garnishee wishing to retain possession of the property to establish grounds for doing so and to specify the measures taken to segregate and safeguard the intangible property arrested. The person who is served with the summons may deliver or pay over to the Marshal the intangible property proceeded against to the extent sufficient to satisfy the plaintiff's claim. If such delivery or payment is made, the person served is excused from the duty to show cause. A person who asserts a right of possession or ownership may show cause as provided in Supplemental Rule C(6)(a) why the property should not be delivered to the Court.

(2) **Publication of Notice of Action and Arrest.** The notice required by Supplemental Rule C(4) shall be published once in a newspaper named in the General Rules, and the plaintiff's attorney shall file with the Clerk a copy of the notice as it was published. The notice shall contain:

(a) The court, title, and number of the action;

(b) The date of the arrest;

(c) The identity of the property arrested;

(d) The name, address, and telephone number of the attorney for the plaintiff;

(e) A statement that any person who asserts a right of possession or any ownership interest in the property pursuant to Supplemental Rule C(6) must file a verified statement of right or interest within fourteen (14) days after the execution of process or within the period specified by court order;

(f) A statement that any person required to file a verified statement of right or interest must also file and serve an answer to the complaint within twenty-one (21) days after filing the statement of interest or right, and that otherwise, default may be entered and condemnation ordered;

(g) A statement that applications for intervention under Rule 24 by persons claiming maritime liens or other interests shall be filed within the time fixed by the

Court; and

(h) The name, address, and telephone number of the Marshal, keeper, or substitute custodian.

**(3) Default in Actions in Rem.**

(a) Notice Required. A party seeking a default judgment in an action *in rem* must demonstrate to the Court's satisfaction that notice of the action and arrest of the property has been given:

(i) by publication as required in ADLR C(2),

(ii) by service upon the Marshal, keeper, substitute custodian, master, or other person having custody of the property, and

(iii) by mailing notice to every other person who has not appeared in the action and is known to have an interest in the property.

**(b) Persons with Recorded Interests**

(i) If the defendant property is a vessel documented under the laws of the United States, plaintiff must attempt to notify all persons named in the United States Coast Guard certificate of ownership.

(ii) If the defendant property is a vessel numbered as provided in the Federal Boat Safety Act (46 U.S.C. §§ 4301–4311), the plaintiff must attempt to notify the persons named in the records of the issuing authority.

(iii) If the defendant property is of such character that there exists a governmental registry of property interests and/or security interests, the plaintiff must attempt to notify all persons named in the records of each such registry.

**(4) Entry of Default and Default Judgment.** After the time for filing an answer has expired, the plaintiff may apply for entry of default under Rule 55(a). Default will be entered upon showing that:

- (a) Notice has been given as required by ADLR C(3)(a);
- (b) Notice has been attempted as required by ADLR C(3)(b), where appropriate;
- (c) The time to answer by claimants of ownership to or possession of the property has expired; and
- (d) No answer has been filed or no one has appeared to defend on behalf of the property.

The plaintiff may move for judgment under Rule 55(b) at any time after default has been entered.

#### ADLR D. POSSESSORY, PETITORY AND PARTITION ACTIONS.

In a possessory action under Supplemental Rule D, a judicial officer may order that the statement of right or interest and answer be filed on a date earlier than twenty-one (21) days after arrest. The order may also set a date for an expedited hearing of the action.

#### ADLR E. ACTIONS *IN REM* AND *QUASI IN REM*; GENERAL PROVISIONS.

(1) **Itemized Demand for Judgment.** The demand for judgment in every complaint filed under Supplemental Rules B or C shall allege the dollar amount of the debt or damages for which the action was commenced. The demand for judgment shall also allege the nature of other items of damage. The amount of the special bond posted under Supplemental Rule E(5)(a) may be based upon these allegations.

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

(3) **Verification of Pleadings.** A complaint in Supplemental Rules B, C, and D actions shall be verified upon oath or solemn affirmation, or in the form provided by 28 U.S.C. § 1746, by a party or by an authorized officer of a corporate party. If no party or authorized corporate officer is present within the district, verification of a complaint may be made by an agent, attorney in fact, or attorney of record, who shall state the sources of the knowledge, information and belief contained in the complaint; declare that the document verified is true to the best of that knowledge, information, and belief; state why verification is not made by the party or an

authorized 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 commission or as otherwise ordered.

(4) **Review by Judicial Officer.** Unless otherwise required by the judicial officer, the review of complaints and papers called for by Supplemental Rules B(1) and C(3) does not require the affiant party or attorney to be present. The applicant for review shall include a form of order to the Clerk which, upon signature by the judicial officer, will direct the arrest, attachment or garnishment sought by the applicant. In exigent circumstances, the certification of the plaintiff or his attorney under Supplemental Rules B and C shall consist of an affidavit or a declaration pursuant to 28 U.S.C. § 1746 describing in detail the facts that establish the exigent circumstances.

(5) **Return of Service.** The party who requests a warrant of arrest or process of attachment or garnishment shall provide instructions to the Marshal. A person specially appointed by the Court under Supplemental Rule B or C, who has served process of maritime attachment and garnishment or a warrant of arrest that seized property, shall promptly file a verified return showing the name of the individual on whom the process or warrant was served, the identity of the person or entity on whom service was made, the documents served, the manner in which service was completed (e.g., personal delivery), and the address, date and time of service.

(6) **Property in Possession of United States Officer.** When the property to be attached or arrested is in the custody of an employee or officer of the United States, the Marshal will deliver a copy of the complaint and warrant of arrest or summons and process of attachment or garnishment to that officer or employee if present, and otherwise to the custodian of the property. The Marshal will instruct the officer or employee or custodian to retain custody of the property until ordered to do otherwise by a judicial officer.

(7) **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). The party so ordered shall post the security within seven (7) 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.

**(8) Adversary Hearing.** The adversary hearing following arrest or attachment or garnishment that is called for in Supplemental Rule E(4)(f) shall be promptly conducted by a judicial officer if such hearing is requested. The person(s) requesting the hearing shall notify all persons known to have an interest in the property of the time and place of the hearing.

**(9) Appraisal.** Upon motion, a judicial officer will issue an order for appraisal of property so that security may be given or altered. If the parties do not agree in writing upon an appraiser, a judicial officer will appoint the appraiser. The appraiser shall be sworn to the faithful and impartial discharge of the appraiser's duties before any federal or state officer authorized by law to administer oaths. The appraiser shall give one (1) business day's notice of the time and place for the appraisal to counsel of record. The appraiser shall promptly file the appraisal with the Clerk and serve it upon counsel of record. The appraiser's fee shall be paid by the moving party, but it is a taxable cost of the action.

**(10) Security Deposit for Seizure of Vessels.** The first party who seeks arrest or attachment of a vessel or property aboard a vessel shall deposit Five Thousand Dollars (\$5,000) with the Marshal to cover the expenses of the Marshal, including, but not limited to, dockage, keepers, 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, at the Marshal's request, to cover estimated expenses. A party who fails to advance such additional sums may not participate further in the proceedings except by order of the Court. The Marshal may, upon notice to all parties, petition the Court for an order to release the vessel if additional sums are not advanced within seven (7) days after the request.

**(11) Intervenors' Claims.**

**(a) Presentation of Claim.** When a vessel or other property has been arrested, attached, or garnished, and is in the hands of the Marshal or substitute custodian, anyone having a claim against the vessel or property is required to present the claim by filing an intervening complaint and obtain a warrant of arrest, and not by filing an original complaint, unless otherwise ordered by a judicial officer. No formal motion is required. The intervening party shall serve a copy of the intervening complaint and warrant of arrest upon all parties to the action and shall forthwith deliver a conformed copy of the complaint and warrant of arrest to the Marshal, who shall deliver the copies to the vessel or custodian of the property. Intervenors shall thereafter be subject to the rights and obligations of parties, and the vessel or property shall stand arrested, attached, or garnished by the intervenor. An intervenor shall not be required to advance a security deposit to the Marshal for seizure of a vessel as required by ADLR (E)(10).

**(b) Sharing Marshal's Fees and Expenses.** An intervenor shall 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. If a 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.

**(12) 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. Notice of the application to appoint a substitute custodian must be given to all parties and the Marshal. The application must show the name of the proposed substitute custodian, the location of the vessel during the period of custody, and the proposed insurance coverage.

**(b) Insurance.** The Marshal may procure insurance to protect the Marshal, keepers, and substitute custodians from liabilities assumed in arresting and holding the vessel, cargo, and/or other property; in performing protective services; and in maintaining the Court's custody. The party who applies for arrest or attachment shall reimburse the Marshal for premiums paid for the insurance and shall be an added insured on the policy. The party who applies for removal of the vessel, cargo, or other property to another location, for designation of a substitute custodian, or for other relief that will require an additional premium, shall reimburse the Marshal therefor. The premiums charged for the liability insurance are taxable as administrative costs while the vessel, cargo, or other property is in custody of the Court.

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

**(i)** Following arrest or attachment of a vessel, cargo handling shall be permitted to commence or continue unless otherwise ordered by the Court. No repairs to or movement of the vessel shall take place without order of the Court. The applicant for such an order shall give notice to the Marshal and to all parties of record.

**(ii)** If an applicant shows adequate insurance to indemnify the Marshal for liability, the Court may order the Marshal to permit cargo handling,

repairs, or movement of the vessel, cargo, or other property. The costs and expenses of such activities shall be borne as ordered by the Court. Any party of record may move for an order to dispense with keepers or to remove or place the vessel, cargo, or other property at a specified facility, to designate a substitute custodian, or for similar relief. Notice of the motion shall be given to the Marshal, keeper or substitute custodian, and to all parties of record. The judicial officer will require that adequate insurance on the property 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 has furnished supplies or services to a vessel, cargo, or other property in custody of the Court, who has not been paid, and who claims the right to payment as an expense of administration, shall submit an invoice to the Clerk in the form of a verified claim at any time before the vessel, cargo, or other property is released or sold. The supplier must serve copies of the claim on the Marshal, substitute custodian if one has been appointed, and all parties of record. The Court may consider the claims individually or schedule a single hearing for all claims.

**(13) Sale of Property.**

**(a)** Notice of sale of arrested or attached property shall be published in one or more newspapers to be specified in the order for sale. Unless otherwise ordered by a judicial officer upon good cause shown, or unless otherwise provided by law, such notice shall be published for at least seven (7) consecutive days before the date of sale.

**(b)** Payment of Bid. These provisions apply unless otherwise ordered in the order of sale:

**(i)** The person whose bid is accepted shall immediately pay the Marshal the full purchase price if the bid is One Thousand Dollars (\$1,000) or less.

**(ii)** If the bid exceeds One Thousand Dollars (\$1,000), the bidder shall immediately pay the Marshal a deposit of at least One Thousand Dollars (\$1,000) or Ten Percent (10%) of the bid, whichever is greater, and shall pay the balance within seven (7) days.

**(iii)** If an objection to the sale is filed within the period in ADLR E(13)(f), the bidder is excused from paying the balance of the purchase price until

seven (7) days after the sale is confirmed.

**(iv)** Payment shall be made in cash, by certified check, or by cashier's check.

**(c)** Late Payment. If the successful bidder does not pay the balance of the purchase price within the time allowed, the bidder shall pay the Marshal the cost of keeping the property from the due date until the balance is paid, and the Marshal may refuse to release the property until this charge is paid.

**(d)** Default. If the successful bidder does not pay the balance of the purchase price within the time allowed, the bidder shall be in default, and the judicial officer may accept the second highest bid or may arrange a new sale. The defaulting bidder's deposit shall be forfeited and applied to any additional costs incurred by the Marshal because of the default, and the balance shall be retained in the registry of the Court awaiting its order.

**(e)** Report of Sale by Marshal. At the conclusion of the sale, the Marshal shall forthwith file a written report with the Court setting forth the notice given; the fact of the sale; the date of the sale; the names, addresses, and bid amounts of the bidders; the price obtained; and any other pertinent information.

**(f)** Time and Procedure for Objection to Sale. An interested person may object to the sale by filing a written objection with the Clerk within seven (7) days after the sale, serving the objection on all parties of record, the successful bidder, and the Marshal, and depositing a sum with the Marshal that is sufficient to pay the expense of keeping the property for at least seven (7) calendar days. Payment to the Marshal shall be in cash, certified check, or cashier's check. The Court shall hold a hearing on the confirmation of the sale.

**(g)** Confirmation of Sale. If no objection to the sale has been filed, the sale shall be confirmed by order of the Court no sooner than seven (7) days after the sale and no later than fourteen (14) days after the sale. The Marshal shall transfer title to the purchaser upon the order of the Court.

**(h)** Disposition of Deposits

**(i)** If the objection is sustained, sums deposited by the successful bidder will be returned to the bidder forthwith. The sum deposited by the objector

will be applied to pay the fees and expenses incurred by the Marshal in keeping the property until it is resold, and any balance remaining shall be returned to the objector. The objector will be reimbursed for the expense of keeping the property from the proceeds of a subsequent sale.

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

**(14) Presentation of Matters.** If the judicial officer to whom a case has been assigned is not readily available, any matter under the ADLR may be presented to any other judicial officer in the district without reassigning the case.

#### ADLR F.      LIMITATION OF LIABILITY

**(1) Security for Costs.** The amount of security for costs under Supplemental Rule F(1) shall be One Thousand Dollars (\$1,000) and security for costs may be combined with security for value and interest unless otherwise ordered.

**(2) Forms of Acceptable Payment.**

(a) cash - must be in U.S. Currency;

(b) check and cashier's check - must be drawn on a federally-insured U.S. financial institution, payable in U.S. Currency. Checks and cashier's checks drawn on other financial institutions will not be permitted without prior Court approval. Security provided by check and cashier's check will not be recognized until funds have "cleared" and have been credited to the Court's registry. Any fees or costs incurred by the Court registry in connection with acceptance of the check or cashier's check must be paid by the payer/depositor;

(c) money order - must be issued by the United States Postal Service, or by a federally-insured U.S. financial institution, payable in U.S. Currency;

(d) court-approved surety bond; or

(e) court-approved letter of undertaking issued by a Protection and Indemnity (P&I) Club.

(3) **Order of Proof at Trial.** In an action where vessel interests seek to limit their liability, the damage claimants shall offer their proof first, whether the right to limit arises as a claim or as a defense.

(4) **Notice to Claimants.** Publication of notices shall be once a week for four consecutive weeks in a newspaper of general circulation in the district where the property is seized or located. Newspaper of general circulation shall mean the Guam Pacific Daily News or the Guam Marianas Variety.