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Memorandum

TO: Committee on Rules of Practice and Procedure

FROM: Daniel R. Coquillette, Reporter, and
Mary P. Squiers, Director, Local Rules Project

RE: Report of the Local Rules Project:
Local Rules on Admiralty Practice

DATE: June 21, 1990

Attached for your review and comment at the meeting of the Committee on Rules of Practice and Procedure scheduled for July 12 and 13, 1990 is the Report of the Local Rules Project concerning the local rules on admiralty practice. The Report consists of three sections. The format of this material is quite similar to that of the Project Report on Local Civil Rules that was sent to the jurisdictions last year.

The first section contains a suggested uniform numbering system for the jurisdictions based on the Supplemental Rules for Certain Admiralty and Maritime Claims [hereinafter Supplemental Rules]. As you are aware, this Committee recommended that a uniform numbering system, based on the Federal Rules of Civil Procedure, be used by all jurisdictions when numbering their local rules on civil practice. The Judicial Conference, at its September, 1988 meeting, approved this recommendation and urged the districts to adopt such a uniform numbering system. See Report of the Judicial Conference (September, 1988) 103. Consistent with that proposal, the Local Rules Project now suggests that the numbering system for the admiralty rules correlate with the Supplemental Rules.

The second section consists of a discussion and analysis of the existing local rules on admiralty practice. The rules are discussed by topic. The topics covered in this material are arranged according to the Supplemental Rules. Within the discussion of each topic, the material is further arranged into one or more of the following five categories: 1. Rules that Should Remain Subject to Local Variation; 2. Rules that Should Become the Subject of a Model Local Rule; 3. Rules that Repeat; 4. Rules that Conflict; and, 5. Rules that Form a Topic for Advisory Committee Review. There are local rules which do not correspond to any existing provision of a Supplemental

Rule. If such rules were appropriately the subject of one particular Supplemental Rule, then the discussion was set forth under that Rule, as an additional subheading. If the rules did not relate to any Supplemental Rule, they were discussed under heading "G. Miscellaneous."

The third portion of the material are lists of the local admiralty rules of each individual jurisdiction. Each of these lists contains the local admiralty rules of a particular jurisdiction, using its original numbering system. Each rule is numbered and, then, identified as a repetitive local rule, an inconsistent local rule, a potential Model Local Rule, a rule that should remain subject to local variation, or a rule that should be incorporated into the Supplemental Rules. There is also a designation next to each of these local rules indicating where in the materials the discussion on the particular rule can be found.

This Report raises two issues which require Committee action:

1. The first concerns your approval of the Model Local Rules as set forth in the analysis section of the material. There are six Model Local Rules suggested by the Project.
2. The second concerns your approval of the Project's recommendation that each of the ninety-four jurisdictions be given this material. Although only thirty-seven jurisdictions have local admiralty directives, it may be helpful for all of the districts to receive copies of this material for several reasons. First, any district may want to adopt the Model Local Rules. Second, a district may be interested in adopting other admiralty local rules and this material may be of assistance. Lastly, providing this information to all of the jurisdictions may assist in the rulemaking process generally. Any of the jurisdictions may be interested in commenting on possible amendments to the Supplemental Rules suggested by the Advisory Committee on Civil Rules as a result of this Report.

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REPORT OF THE LOCAL RULES PROJECT:
LOCAL RULES ON ADMIRALTY PROCEDURE

As authorized by the United States Judicial Conference
on the recommendation of the
Committee on Rules of Practice and Procedure
Agenda 6-7
September 1984

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Uniform Numbering System for Local Admiralty Rules

Thirty-seven jurisdictions have local admiralty rules. Currently, there is no uniform numbering system for these directives. Some of the jurisdictions have admiralty rules which are simply numbered sequentially beginning at "1". *E.g.*, Southern District of Alabama; District of Alaska. Other jurisdictions have admiralty rules which are arranged by topic, designated with a "100," "200," or "300," followed by a hyphen and the rule number or letter. *E.g.*, District of Hawaii; Eastern District of California. Still other jurisdictions have admiralty rules which are found in the district's other local rules as one rule with numerous subparts. *E.g.*, Middle District of Louisiana; Western District of Louisiana; Northern District of Mississippi. Only several of the jurisdictions have admiralty rules which are numbered to correspond to the Supplemental Rules for Certain Admiralty and Maritime Claims [hereinafter Supplemental Rules]. *E.g.*, Central District of California; District of Maryland; Eastern District of Virginia.

The Judicial Conference has recommended that a uniform numbering system be adopted which would standardize the numbering of the local rules on civil practice. *See* Report of the Judicial Conference (September, 1988) 103. Such a uniform system has many advantages. It would be helpful to the bar in locating rules applicable to a particular subject. This is especially important for those attorneys with multi-district practices. It is also significant for any attorney needing to locate a particular rule or to learn whether a local rule on a specific topic exists in the first instance. In the past, it has been difficult to find any case law relating to a particular local rule, in part because there is no uniform numbering. The uniform system will also

ease the incorporation of local rules into the various indexing services such as West Publishing Company and the Lexis computer services.

The Report of the Local Rules Project examining the local rules on civil practice which was sent to the chief judges of the district courts in the spring of 1989 suggested a uniform numbering system based on the numbering system already used for the Federal Rules of Civil Procedure. This system is already familiar to the bar. Consistent with that proposal, the Local Rules Project now suggests that the numbering system for the admiralty rules correlate with the Supplemental Rules.

What follows, therefore, is a numbering system for admiralty local rules proposed by the Local Rules Project which tracks the Supplemental Rules. Each local rule corresponds to the letter of the related Supplemental Rule. For example, the designation "LRC(1).1" refers to the local rule entitled: "Undertaking in Lieu of Arrest." The designation "LR" indicates it is a local rule; the letter "C" indicates that the local rule is related to Supplemental Rule C; the number "(1)" after the letter "C" indicates that the rule specifically addresses the first part of Supplemental Rule C; and, the number "1" after the period indicates that it is the first local rule concerning Supplemental Rule C(1).

Uniform Numbering System

- A. Scope of Rules**
- LRA.1 Scope of the Rules.
- B. Attachment and Garnishment: Special Provisions**
- LRB(1).1 Contents of the Affidavit.
- LRB(1).2 Issuance of Process.
- LRB(2).1 Default Judgment.
- C. Actions in Rem: Special Provisions**
- LRC(1).1 Undertaking in Lieu of Arrest.
- LRC(3).1 Actions in Rem—Intangible Property.
- LRC(4).1 Notice.
- D. Possessory, Petitory, and Partition Actions.**
- E. Actions in Rem and Quasi in Rem: General Provisions.**
- LRE(2)(b).1 Security for Costs.
- LRE(3).1 Instructions to the Marshal.
- LRE(3).2 Process in *In Forma Pauperis* Actions.
- LRE(4)(b).1 Custody of Property.
- LRE(4)(e).1 Responsibilities of the Marshal.
- LRE(4)(f).1 The Post-Arrest or Post-Attachment Hearing.
- LRE(5)(a).1 Appraisal.
- LRE(5)(b).1 General Bond.
- LRE(5)(c).1 Release by Consent or Stipulation.
- LRE(9)(b).1 Interlocutory Sales.
- LRE(9)(c).1 Sales.
- F. Limitation of Liability.**
- LRF(1).1 Security for Costs.

- LRF(4).1 Notice to Claimants.
- LRF(7).1 Appraisal.
- LRF(10).1 Order of Proof at Trial.

G. Miscellaneous.

- LRG.1 Taxation of Costs.
- LRG.2 Assignment of Actions
- LRG.3 Stay of Execution.
- LRG.4 Dismissal.
- LRG.5 Jury Trial Election.
- LRG.6 Discovery.
- LRG.7 Summary Determination.
- LRG.8 Bifurcation.

Local Rules Addressing Admiralty Practice

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B. Attachment and Garnishment: Special Provisions (Page 9)

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 - b. The Affidavit (Page 12).
 - c. The Process (Page 14).
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11. Other Matters (Page 82).

Thirty-seven jurisdictions have local rules augmenting the Supplemental Rules for Certain Admiralty and Maritime Claims [hereinafter Supplemental Rules]. What follows is a discussion of those rules. The rules are discussed by topic. Within each topic, the rules are further arranged into one or more of the following five categories: 1. Rules that Should Remain Subject to Local Variation; 2. Rules that Should Become the Subject of a Model Local Rule; 3. Rules that Repeat; 4. Rules that Conflict; and, 5. Rules that Form a Topic for Advisory Committee Review.

Each of the topics is set forth under its corresponding Supplemental Rule. Accordingly, local rules concerning the procedure to obtain a default in an attachment proceeding, for example, would be discussed under subheading "(2) Notice to Defendant" of heading "B. Attachment and Garnishment: Special Provisions" since default in an attachment proceeding is found, generally, in Supplemental Rule B(2). Similarly, local rules relating to the need for any security for costs in an admiralty proceeding are discussed under subheading "(2)(b) Security for Costs" of heading "E. Actions in Rem and Quasi in Rem: General Provisions" since this issue is presented in Supplemental Rule E(2)(b). If there are no local rules under a particular subheading, the subheading is set forth, but without any text.

There are local rules which do not correspond to any existing provision of a Supplemental Rule. If such rules were appropriately the subject of one particular Supplemental Rule, then the discussion was set forth under that Rule, as an additional subheading. For example, the discussion of local rules addressing default in Supplemental Rule C actions was set forth as subheading "(7) Default" of heading "C. Actions in Rem: Special Provisions", since there was no existing subheading for such rules. If the rules did not relate to any Supplemental Rule, they were discussed under heading "G.

Miscellaneous". For example, rules on the rate of prejudgment interest are found under subheading "(1) Rate of Prejudgment Interest" of heading "G. Miscellaneous".

A. Scope of the Rules

Thirty-one jurisdictions have local admiralty rules relating to the scope of these local rules. Thirty of these jurisdictions have local rules which explain the applicability of such rules in their respective jurisdictions. The Local Rules Project recommends that the jurisdictions adopt one Model Local Rule that covers, generally, the issues addressed in these existing local rules. That Model Local Rule is set forth below. The other jurisdiction has a local rule that repeats existing law and should, therefore, be rescinded. In addition, six of the thirty jurisdictions have local rules that either repeat or conflict with existing law and should also be rescinded.

MODEL LOCAL RULE

The full text of the Model Local Rule recommended by the Local Rules Project is set forth below. A detailed discussion of each of the subsections follows.

Model Local Rule A.1

Scope of the Rules.

(a) **Title and Citation.** These Rules shall be known as the Local Admiralty Rules of the United States District Court for the _____ District of _____. They may be cited as " .D. . LR ."

(b) **Effective Date.** These Rules become effective on _____.

(c) **Scope of Rules.** These Rules apply to admiralty and maritime claims within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure and remedies within the meaning of Supplemental Rule A of the Supplemental Rules for Certain Admiralty and Maritime Claims [hereinafter Supplemental Rules]. Other local civil rules of this district are also applicable except to the extent they are inconsistent with the Supplemental Rules or with these local admiralty rules.

(d) **Relationship to Prior Rules; Actions Pending on Effective Date.** These local admiralty rules supersede all previous local admiralty rules. They shall govern all applicable proceedings brought after they take effect. They shall also apply to all proceedings pending at the time they take effect, except to the extent that, in the opinion of the court, the application thereof would not be feasible or would work injustice, in which event the former rules shall govern.

(e) **Definitions.** The following definitions shall apply:

1. _____
2. _____

DISCUSSION

Subsection (a) of this Model Local Rule includes the title and citation form for the local admiralty rules. Currently, there is no uniform citing system and title for local admiralty rules in the districts. In fact, only eight jurisdictions provide a title for the rules and eleven jurisdictions set forth a citation form. The Southern District of Alabama, for example, calls its rules "Admiralty Supplemental Rules" (S.D.Ala. ALR1), while the District of Alaska

names its rules: "Local Admiralty Rules" (D.Alaska LAR1). A local admiralty rule for the Middle District of Florida requires that a rule in that district be cited as "Supplemental Rule (___)." M.D.Fla. LR7.01(b). Other jurisdictions require that the rules be cited as "Local Admiralty Rules." E.D.Wash. LAR100; W.D.Wash. LAR100; N.D.Ohio LAR1.01 (rules are cited in the same manner "or abbreviated as 'L.Adm.R.'"). The rules for the District of New Jersey "may be cited by the letters 'LAR' and the lower case letters and numbers in parentheses" (D.N.J. LAR(b)(1)); "[t]he lower case letter is intended to associate the local admiralty rule with the Supplemental Rule that bears the same capital letter (D.N.J. LAR(a)(2)). The "Local Rules of Admiralty Practice for the United States District Court for the District of Oregon ... may be cited as 'L.R.____'." D.Or. LR1000-1. Other jurisdictions have no directives in the local rules concerning how the rules must be cited. *E.g.*, Western District of Pennsylvania; Eastern District of Wisconsin.

The Local Rules Project recommends a standard method of labeling and citing all local rules. This method is set forth in subsection (a) of the Model Local Rule, *infra*. The format used consists of the abbreviation of the district court, followed by the designation "LR" to denote a local rule, the letter of the related Supplemental Rule and then a number referring to the subsection of the related Supplemental Rule. Accordingly, a local rule concerning the provision of security in a limitation of liability proceeding in the Western District of Pennsylvania would be cited as: "W.D.Pa. LRF(1)."

A standard and uniform system of labeling and citing the local rules is, for several reasons, preferable to the variations which currently exist. First, uniformity among the jurisdictions will be helpful to those attorneys with multi-state practices. Second, uniformity will assist the companies that index legal materials. This is particularly significant for those companies that

have computer systems which rely on exact citation forms for retrieving information. For example, a user of a computer research system who attempts to find cases challenging a particular local supplemental rule, and who types a rule number which deviates only slightly from the form used by the jurisdiction may not find the information requested. Lastly, the citation form employs the district court abbreviations already in use when citing district court opinions so all attorneys can easily conform to the method.

Subsection (b) of the Model Local Rule sets forth the effective date of the local admiralty rules. This subsection simply provides a sentence indicating that the rules become effective on a particular date. The date is inserted by the individual jurisdiction in the blank space provided.

Subsection (c) of the Model Local Rule concerns the applicability and scope of the rules. Twenty-nine of the jurisdictions have similar provisions, listing what actions the local admiralty rules "apply to." *E.g.*, S.D.Ala. ALR1; C.D.Cal. LRA.1; E.D.Wis. LR22.01. The first sentence of the Model Local Rule is taken, almost verbatim, from the Local Rule of the Northern District of Florida. N.D.Fla. LAR1. It indicates that these local rules apply to admiralty and maritime claims as defined by Rule 9(h) of the Federal Rules of Civil Procedure and remedies as defined by Supplemental Rule A. The second sentence of this subsection is intended to assure that, although the district's other local rules on civil practice also apply to these proceedings, the local admiralty rules, along with the Supplemental Rules, take precedence over other such rules.

Subsection (d) of the Model Local Rule provides that the local admiralty rules supersede all previous admiralty rules promulgated by the court. Only one jurisdiction has a local rule that specifically discusses this issue:

Actions presently docketed as Admiralty actions will continue as docketed. Further proceedings in all Admiralty and Maritime actions to which these rules apply, however docketed, will be governed by these Rules.
S.D.Fla. LAR1(B).

Subsection (d) also includes a provision which allows the court to use the previous local admiralty rules, when necessary, in cases that are pending at the time the new local supplemental rules become effective. This sentence is more flexible than that in the local rule of the Southern District of Florida which does not allow the use of the new rules, after their promulgation, in pending actions.

Subsection (e) of the Model Local Rule includes any definitions a district court may find necessary to state. Nine jurisdictions have similar "definitions" section. *E.g.*, N.D.Cal. LR600-2; D.Haw. LR600-2; D.Md. LAR(a)(3).

Two local rules give the authority for the rules' existence. W.D.Pa. LAR(a)(1); E.D.Va. LAR(a)(1). While these provisions may be appropriate for inclusion in an order adopting the local rules, it appears unnecessary to include them in the rules themselves. Such a statement, therefore, has been omitted from the Model Local Rule.

A RULE THAT REPEATS

One jurisdiction has a rule that reiterates that the Supplemental Rules "govern all admiralty and maritime actions in this Court." E.D.Tex. LR16. The "Advisory Notes" for this rule indicate that it is "merely for the information of the Bar." E.D.Tex. LR16 Advisory Note. Such a rule is unnecessary since members of the Bar should know this fact based on their familiarity with the Supplemental Rules.

RULES THAT REPEAT OR CONFLICT

Seven jurisdictions have local rules requiring a designation in the complaint that the case is an admiralty case. N.D.Fla. LAR; M.D.Fla. LR7.01(d); S.D.Fla. LAR7(A); S.D.Ga. LAR7(A); E.D.Wis. LR22.02; E.D.Cal. LR510(a); E.D.N.C. LR87.00(a). These rules either conflict with or repeat existing law and should, therefore, be rescinded.

For example, the Northern District of Florida has a local rule that requires that any person intending to file a claim for relief within the admiralty jurisdiction of the court which is also within the jurisdiction of the federal court on other grounds insert the following "identifying statement in the first paragraph of the initial pleading":

'This is an admiralty or Maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure for the United States District Courts.'
N.D.Fla. LAR2(A).

This rule also requires that a seaman setting forth a claim for relief insert the following statement in the first paragraph of the initial pleading:

'This is a Seaman's Suit within the meaning of Title 28, United States Code, Section 1916.'
Id. at (B).

To the extent these provisions require the pleader to choose to have the claim heard pursuant to the court's admiralty jurisdiction, they repeat Rule 9(h) of the Federal Rules of Civil Procedure. Fed. R. Civ. P. 9(h). That Rule provides for the same election:

A pleading or count setting forth a claim for relief within the admiralty and maritime jurisdiction that is also within the jurisdiction of the district court on some other ground may contain a statement identifying the claim as an admiralty or maritime claim....
Fed. R. Civ. P. 9(h).

See also 28 U.S.C. §1331(1) ("The district courts shall have original jurisdiction...of [a]ny civil case of admiralty or maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled").

To the extent, however, that these directives preclude a party from maintaining an action pursuant to the court's admiralty jurisdiction if the person has not provided the precise required statement, they are inconsistent with several Federal Rules. Rule 9(h) recognizes that, in some instances, jurisdiction is only in admiralty, regardless of any statements made by a party:

If the claim is cognizable only in admiralty, it is an admiralty or maritime claim for those purposes whether so identified or not.

Fed. R. Civ. P. 9(h).

These directives also conflict with Federal Rules 8, concerning the content of an allegation of jurisdiction, and 10, concerning the form of allegations generally, by requiring specific language. Fed. R. Civ. P. 8, 10. Under Rule 8 "[n]o technical forms of pleadings or motions are required." Fed. R. Civ. P. 8(e)(1). With respect to specific allegations of jurisdiction, Rule 8(a) provides:

A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim, or third party claim, shall contain, (1) a short and plain statement of the grounds upon which the court's jurisdiction depends, unless the court already has jurisdiction and the claim needs no new grounds of jurisdiction to support it....

Fed. R. Civ. P. 8(a).

Rule 10 sets out the general form of pleadings and does not require any special language. Fed. R. Civ. P. 10.

The other six jurisdictions have local rules concerning the content of the caption of a complaint. For example, the local rule in the Middle District of Florida requires:

Every complaint filed as a Fed.R.Civ.P. 9(h) action shall boldly set forth the words 'IN ADMIRALTY' following the designation of the court. This requirement is in addition to any statements

which may be contained in the body of the complaint.
M.D.Fla. LR7.01(d).

To the extent this rule precludes the exercise of admiralty jurisdiction by the district court in the absence of the required designation, it is inconsistent with Rules 9(h), 8, and 10 of the Federal Rules of Civil Procedure. Fed. R. Civ. P. 9(h), 8, 10; *see* discussion of N.D.Fla. LAR2, *supra*.

B. Attachment and Garnishment: Special Provisions

1. When Available; Complaint, Affidavit, Judicial Authorization, and Process

Twenty-five jurisdictions have local rules concerning the procedure in attachment and garnishment actions found in subsection (1) of Supplemental Rule B. These rules address three topics: 1. The verification of the complaint; 2. The contents of the affidavit which must accompany the complaint; and, 3. The method for process to issue, generally. These topics will be discussed below.

a. The Complaint

Twenty-one jurisdictions have local rules concerning the need for verification of Supplemental Rule B complaints. Some of these rules should be rescinded because they repeat existing law. Others should be rescinded because they are inconsistent with existing law.

RULES THAT REPEAT

Eighteen of the twenty-one jurisdictions have local rules that repeat the requirement in Supplemental Rule B(1) that a complaint be verified. *E.g.*, E.D.Mo. LAR4; E.D.Wis. LR22.03; S.D.Fla. LAR8. These rules are simply unnecessary.

RULES THAT CONFLICT

Twenty of the twenty-one jurisdictions have local rules that define the form of the required verification and who can verify. *E.g.*, E.D.Wis. LR22.03; S.D.Ga. LAR8; D.Alaska LAR2. These rules, generally, provide that someone other than the party or an officer of a corporate party can verify. *E.g.*, M.D.Fla. LR7.01(e); E.D.N.C. LR88; E.D.Mo. LAR4. One of the jurisdictions states that a verification made by someone not a party "will be deemed to be that of the party, as if verified personally." S.D.Ala. ALR6. Several of the jurisdictions provide that an interested party may move for the personal oath of a party if another person, such as an agent or attorney of the party, makes the verification at the outset. *E.g.*, E.D.Cal. LR511; S.D. Ala. ALR6; E.D.Wis. LR22.03. At least two of the districts provide that the personal oath can be secured by an interested party "on good cause." *E.g.*, E.D.Wash. LAR105; W.D.Wash. LAR105. These local rules are inconsistent with existing law in several respects and should be rescinded.

First, they are inconsistent with Supplemental Rule B(1) which anticipates that the verification of a complaint be made by a party. Fed. R. Civ. P. Supp.R. B(1). That Supplemental Rule reads, in relevant part:

With respect to any admiralty or maritime claim in personam a verified complaint may contain a prayer for process
Such a complaint shall be accompanied by an affidavit signed by the plaintiff or the plaintiff's attorney....
Fed. R. Civ. P. Supp.R. B(1).

This subsection indicates that the affidavit, stating that the defendant cannot be found within the district, can be signed by someone other than the plaintiff. There is no similar provision with respect to the verification of the complaint. If the Advisory Committee on Civil Rules had intended that a non-party could verify the complaint, it could have easily provided for this in the Rule.

In addition, these local rules are inconsistent with the intent of Section 1746 of Title 28, which provides an alternative method for verification of documents. 28 U.S.C. §1746. Before this statute was enacted, a person, seeking to verify a document, had to sign the document before a personal legally authorized to administer oaths, such as a notary public. H.R. No. 1616, 94th Cong., 2d Sess. 1, *reprinted in* 1976 U.S. Code Cong. & Admin. News 5644. This was viewed as an inconvenient procedure because it generally required additional documents "to prove such things as the authority of the officer who administers the oath and the authenticity of his seal." *Id.* Section 1746 permits the signer to subscribe to a document "executed subject to the penalties of perjury." *Id.* at 2. Although Section 1746 was designed to make the verification process easier, it was not amended to permit someone else to verify a document even when such a substitution may be easier. If Congress had been willing to permit an alternate person to verify a document, Congress could have easily made this allowance in Section 1746.

Lastly, these local rules are inconsistent with existing case law which indicates that, when verification of a complaint is required, it must be made by the plaintiff. For example, in the context of a shareholder's derivative action, the Supreme Court has explained that Rule 23.1 of the Federal Rules of Civil Procedure, which states that "the complaint shall be verified" (Fed. R. Civ. P. 23.1), requires "that a shareholder's complaint ... be verified by the plaintiff." *Surowitz v. Hilton Hotels Corp.*, 383 U.S. 363, 365 (footnote omitted), *rehearing den'd* 384 U.S. 915 (1966). This was mandated although the plaintiff did not base the verification on her own knowledge or information but on the advice provided her by her son-in-law. *Id.* at 370-71; *cf. Surowitz, supra*, at 374, Harlan, J., concurring, stating that a reasonable interpretation of the Federal Rule is that a verification from an attorney is

sufficient. Accordingly, to determine the validity of the verification, the court must be assured

that some person, party, attorney, advisor, or otherwise has responsibly investigated the allegations at the behest of the named plaintiff, who then stands behind the merits of the complaint.

Rogosin v. Steadman, 65 F.R.D. 365, 367 (S.D.N.Y. 1974).

See also, *Surowitz, supra*; *Brown v. Hart, Schaffner & Marx*, 96 F.R.D. 64 (N.D.Ill. 1982). In the admiralty context, it has also been recognized that "it is not required that the verifying plaintiff have detailed personal knowledge." *United States v. Banco Cafetero International*, 608 F.Supp. 1394, 1400 (S.D.N.Y. 1985) (quoting *Rogosin, supra*, at 367). Rather, it is sufficient that the plaintiff is satisfied that the averments in the complaint are true, "based either upon his own knowledge or upon information and belief." *Id.* at 1400 (quoting 7A J. Moore & A. Palaez, *Moore's Federal Practice* ¶B.09 at B-402 (2d ed. 1983)).

b. The Affidavit

Seventeen jurisdictions have local rules concerning the need for an affidavit to establish that the defendant is not within the district. *E.g.*, W.D.Pa. LAR(b)(1); D.Alaska LAR5(A); E.D.Mich. LR34. Supplemental Rule B(1) requires the plaintiff to provide an affidavit:

Such a complaint shall be accompanied by an affidavit signed by the plaintiff or by the plaintiff's attorney that, to the affiant's knowledge, or to the best of the affiant's information and belief, the defendant cannot be found within the district. Fed. R. Civ. P. Supp.R. B(1).

RULES THAT REPEAT

Three jurisdictions have local rules that repeat, generally, the applicability of Supplemental Rule B(1). N.D.Fla. LAR13; S.D.Ga. LAR7(E); E.D.Mich. LR34. These rules are unnecessary.

RULES SUBJECT TO LOCAL VARIATION

Twelve of the seventeen jurisdictions have local rules that set forth, in minor detail, the required contents of the affidavit. *E.g.*, N.D.Cal. LR603; D.Md. LAR(b); D.Or. LR1015-2. These rules provide that the affidavit must state "with particularity the efforts made to locate the defendant in the district." W.D.Wash. LAR115(b); E.D.Wash. LAR115(b). Supplemental Rule B(1) places the burden on the plaintiff at the outset of establishing that the defendant cannot be found within the district and requires the court to make its determination as to whether the process of attachment and garnishment shall issue based on a review of this affidavit. The requirements in these local rules may be helpful to the court in making this determination.

RULES THAT CONFLICT

Six jurisdictions have local rules that conflict with Supplemental Rule B(1) and should, therefore, be rescinded. C.D.Cal LRB; N.D.Cal. LR603; E.D.Cal. LR510(d); M.D.Fla. LR7.02(a); E.D.N.C. LR82.00(c); E.D.Va. LAR(b)(1). These rules seek to define the phrase: "the defendant cannot be found within the district." *See* Fed. R. Civ. P. Supp.R. B(1); *e.g.*, C.D.Cal. LRB (means that "the defendant cannot be served with the summons and complaint as provided in FRCivP 4(d)"); E.D.Va. LAR(b)(1) (means that "the defendant cannot be served with the summons and complaint as provided in Federal Rule 4(d)"). The Notes from the Advisory Committee on Civil Rules concerning Supplemental Rule B(1) acknowledge that the prior Admiralty Rules did not define this clause and that this Supplemental Rule likewise made no attempt at a definition. Fed.R.Civ.P. Supp.R. B Advisory Committee Notes. Rather, the Advisory Committee recognized that "[t]he subject seems one best left for the time being

to development on a case-by-case basis." *Id.* Relying on a local rule on the subject is contrary to relying on case law development.

TOPICS FOR ADVISORY COMMITTEE REVIEW

The Advisory Committee on Civil Rules may want to consider amending Supplemental Rule B(1) to incorporate two topics addressed by local rules that concern the use of affidavits. *See* discussions of topics, *supra*. The Advisory Committee may want to consider amending Supplemental Rule B(1) to require that the affidavit state with particularity the efforts used to locate the defendant. Secondly, the Advisory Committee may want to consider defining the phrase: "the defendant cannot be found within the district," to reflect the current case law and practice in this area.

c. The Process

Twenty jurisdictions have local rules discussing, in some fashion, the procedure used to issue process of an attachment or garnishment. *E.g.*, D.Alaska LAR5(B); E.D.Pa. LAR4; E.D.Va. LAR(b)(4). Supplemental Rule B(1) provides that the complaint and affidavit shall be reviewed by the court to determine if process shall issue. Fed. R. Civ. P. Supp.R. B(1). If, however, the plaintiff or the plaintiff's attorney certifies "that exigent circumstances make review by the court impracticable," then the clerk may issue the process and the plaintiff, at a post-attachment hearing, must establish that exigent circumstances did, in fact, exist. *Id.*

RULES SUBJECT TO LOCAL VARIATION

Six jurisdictions have local rules that should remain subject to local variation because they are appropriate additions to Supplemental Rule B(1). Five of the jurisdictions have local rules explaining that, if the plaintiff is

invoking state procedures to attach or garnish, as allowed in Supplemental Rule B(1), the process must state that fact. D.Md. LAR(b); D.N.J. LAR(b)(2); E.D.Va. LAR(b)(4); E.D.N.C. LR82.00(c); W.D.Pa. LAR(g)(2). Five of the districts have local rules providing that the review of the complaint and affidavit "is conducted in the absence of the affiant party or attorney." E.D.Cal. LR512(c); *see also* W.D.Pa. LAR(e)(3); E.D.Va. LAR(e)(4); D.Md. LAR(e)(4); D.N.J. LAR(e)(4).

RULES THAT REPEAT

Five jurisdictions have local rules that repeat existing Federal Rules and should, therefore, be rescinded. Three of the jurisdictions have local rules that repeat many of the provisions of Supplemental Rule B(1). E.D.La. LR25.01; M.D.La. LR25.01; W.D.La. LR25.01. A local rule in the Eastern District of North Carolina repeats that Supplemental Rule B(1) is applicable. E.D.N.C. LR81.00(c). A local rule in the Eastern District of Pennsylvania repeats Rule 4(c) of the Federal Rules of Civil Procedure. E.D.Pa. LAR4(A).

RULES THAT REPEAT OR CONFLICT

Eleven jurisdictions have local rules that either repeat or conflict with existing law and should, therefore, be rescinded.

Ten of these jurisdictions have local rules that repeat, in large measure, the requirement of Supplemental Rule B(1) that the complaint and affidavit are reviewed by the court. *E.g.*, W.D.Wash. LAR115(c); E.D.N.C. LR81.00(a); N.D.Fla. LAR13. Yet, these rules alter the anticipated practice under Supplemental Rule B(1) because they do not repeat all of the Supplemental Rule and because they seem to change the standards set forth in that Rule. For example, the local rules in most of these jurisdictions state that "the complaint and accompanying affidavit must be reviewed by a judge." W.D.Wash. LAR115(c); E.D.Wash. LAR115(c); E.D.N.C. LR81.00(a). These local

rules omit any discussion of the provision in Supplemental Rule B(1) that, if exigent circumstances exist, no pre-attachment review is required. Fed. R. Civ. P. Supp.R. B(1). To the extent these local rules intend to require pre-attachment court review in all instances, they are inconsistent with Supplemental Rule B(1). In addition, several of these local rules state that the court will issue the process of attachment and garnishment only if "probable cause exists." M.D.Fla. LR7.02(c); *see also* D.Alaska LAR5(b); D.Or. LR1015-3. The standard provided in Supplemental Rule B(1) for issuing process is: "if the conditions set forth in this rule appear to exist." To the extent the standard in the local rules differs from that in the Supplemental Rule, these local rules are inconsistent with the Supplemental Rule.

A local rule in the Eastern District of California repeats that process will issue without pre-attachment review by the court if exigent circumstances exist and "no such process shall be issued until every effort to secure judicial review has been pursued, including conducting a hearing by telephone conference." E.D.Cal. LR512(d). To the extent this local rule seeks to add requirements to Supplemental Rule B(1) concerning when process will issue without court review, it is inconsistent with that Rule.

2. *Notice to Defendant*

Five jurisdictions have local rules specifically addressing subsection (2) of Supplemental Rule B concerning the need to provide adequate notice to the defendant before seeking a default judgment. M.D.Fla. LR7.02(d), 7.02(f), 7.02(g); E.D.N.C. LR91.00; S.D.N.Y. LAR10(b); E.D.N.Y. LAR10(b); N.D. Ohio LAR2.06. Portions of these rules are inconsistent with existing law and should be rescinded while other portions should remain subject to local variation.

RULES SUBJECT TO LOCAL VARIATION

Two local rules from the Middle District of Florida set out the procedural requirements for securing an entry of default and, then, a judgment of default. M.D.Fla. LR7.02(f), 7.02(g). These rules include provisions for submitting briefs, motions, and oppositions thereto; they also explain that the default judgment may be entered without oral argument. *Id.* These requirements are appropriate as local directives.

RULES THAT CONFLICT

A local rule in the Middle District of Florida provides that the notice requirement of Supplemental Rule B(2) be satisfied in a particular manner. M.D.Fla. LR7.02(d). Specifically, this rule states, in relevant part:

[I]t is expected that plaintiff and/or garnishee will initially attempt to perfect service in accordance with Supplemental Rule (B)(2)(a) or (b). However, when service of notice cannot be perfected in accordance with Supplemental Rule (B)(2)(a) or (b), plaintiff and/or garnishee should then attempt to perfect service in accordance with Supplemental Rule (B)(2)(c).
Id.

This rule conflicts with Supplemental Rule B(2) which sets out three methods of providing notice, without relying on a hierarchy. *See* Fed. R. Civ. P. Supp.R. B(2).

A local rule in the Northern District of Ohio is also inconsistent with Supplemental Rule B(2) by permitting or requiring notice by publication. N.D.Ohio LAR2.06. Although this rule is entitled: "Decree on Default, How Obtained in Rem," the text of the rule refers to in personam actions and, to the extent it refers to attachments, it should be rescinded.

A local rule in the Eastern District of North Carolina is entitled: "Entry of Default" and, to the extent it refers to attachments, it is also

inconsistent with Supplemental Rule B(2) in requiring notice by publication. E.D.N.C. LR91.00.

Local rules in the Southern and Eastern Districts of New York that require that the plaintiff give "prompt notice to the defendant of the attachment" by a writing which "may be given by telex, telegram, or cable," are also inconsistent with Supplemental Rule B(2) and other Federal Rules. E.D.N.Y. LAR10(b); S.D.N.Y. LAR10(b). Supplemental Rule B(2) provides a notice requirement which must be satisfied in order to secure a default judgment. Fed. R. Civ. P. Supp.R. B(2). That subsection requires that the plaintiff or garnishee give notice to the defendant in one of several enumerated ways or that the plaintiff or garnishee make an affidavit indicating an inability to give notice to the defendant. *Id.* In addition, Rule 5 of the Federal Rules of Civil Procedure requires that all parties be served with pleadings and other papers after the service of the complaint. Fed. R. Civ. P. 5. To the extent these local rules seek to impose an additional notice requirement on the plaintiff, even when such notice may be unnecessary if the garnishee has already provided it, they are inconsistent with Supplemental Rule B(2) both because they provide additional methods of notice and because they omit methods of notice set forth in that Supplemental Rule. Lastly, there seems to be no great purpose served by these rules. The defendant is protected from a default judgment by Supplemental Rule B(2). And, the defendant will receive notice of all other pleadings and papers pursuant to Rule 5. Accordingly, a defendant will not be ignored in the proceedings with the existing Federal Rules.

3. Answer

Eleven jurisdictions have local rules relating to Supplemental Rule B(3) which explains the time limits and other requirements that must be

followed by a garnishee and a defendant in answering a complaint. Fed. R. Civ. P. Supp.R. B(3). Four districts have local rules that repeat Supplemental Rule B. In addition, rules in the other seven districts either repeat or are inconsistent with existing law.

RULES THAT REPEAT

Four of the jurisdictions have local rules setting forth a return date for in personam actions. E.D.N.C. LR81.00(c); S.D.Ga. LAR(C); S.D.Fla. LAR2(C); M.D.Fla. LR7.01(h). These rules state that the return date shall be twenty days "except process within the contemplation of Supplemental Rule B, F.R.Civ.P. which shall be in conformity therewith." E.D.N.C. LR81.00(c). These rules repeat the applicability of Supplemental Rule B and, to that extent, are unnecessary.

A local rule in the Southern District of Florida is superfluous in requiring that an answer or motion in a Supplemental Rule B action be filed "in conformity therewith." S.D.Fla. LAR9(A). In addition, a local rule in the Middle District of Florida simply repeats that an answer must be filed and served pursuant to existing law. M.D.Fla. LR7.02(e)(1).

RULES THAT REPEAT OR CONFLICT

Seven jurisdictions have local rules with respect to service on garnishees that repeat and are inconsistent with existing law. *E.g.*, E.D.N.Y. LAR10(a); E.D.Va. LAR(b)(3); N.D.Ill. LAR10(a). The first sentence of these rules, explaining the process used where a garnishee is served, repeats Supplemental Rule B(1) and Rule 4 of the Federal Rules of Civil Procedure by requiring that the garnishee be served when named in the process. Fed. R. Civ. P. 4, Supp.R. B(1). It also conflicts with these Federal Rules in enumerating only two methods of adequate service. *Id.* The second sentence

simply repeats that the court has authority to make a final judgment in the case once it is established that the garnishee holds property that, in fact, belongs to the defendant.

C. Actions in Rem: Special Provisions

1. When Available

Nine jurisdictions have local rules authorizing a party to accept a written undertaking as a substitute for the arrest of the vessel or other property. *E.g.*, C.D.Cal. LRC(1); D.Haw. LR602-1. The Local Rules Project recommends that the jurisdictions intending to have such a directive, adopt the following Model Local Rule.

MODEL LOCAL RULE

Model Local Rule C(1).1

Undertaking in Lieu of Arrest.

If, before or after commencement of suit, a party accepts any written undertaking to respond on behalf of the vessel or other property sued in return for foregoing the arrest or stipulating to the release of such vessel or other property, the undertaking shall become a party in place of the vessel or other property sued and be deemed referred to under the name of the vessel or other property in any pleading, order, or judgment in the action referred to in the undertaking.

DISCUSSION

This Model Local Rule is taken, almost verbatim, from the local rule in the District of Oregon. D.Or. LR1024-1. The other existing rules on this

subject are basically identical. A Model Local Rule may be helpful for those jurisdictions interested in regulating this area.

2. *Complaint*

Twenty-three jurisdictions have local rules concerning the need for verification of Supplemental Rule C complaints. Some of these rules should be rescinded because they repeat existing law. Others should be rescinded because they are inconsistent with existing law.

RULES THAT REPEAT

Fifteen of the twenty-three districts have local rules that repeat the requirement in Supplemental Rule C that a complaint be verified. *E.g.*, S.D.Fla. LAR8; D.Md. LAR(e)(3); E.D.Va. LAR(e)(3). These rules are simply unnecessary.

A local rule in the District of Alaska is similarly unnecessary in requiring that a complaint in a Supplemental Rule C action "set forth with particularity sufficient facts...." since this provision repeats, in substance, the second sentence of Supplemental Rule C(2). D.Alaska LAR4(A).

RULES THAT CONFLICT

Twenty-one of the twenty-three jurisdictions have local rules that define the form of the required verification and who can verify. *E.g.*, E.D.Wis. LR22.03; S.D.Ga. LAR8; D.Alaska LAR2. These rules, generally, provide that someone other than the party or an officer of a corporate party can verify. *E.g.*, M.D.Fla. LR7.01(e); E.D.N.C. LR88.00; E.D.Mo. LAR4. One of the jurisdictions states that a verification made by someone not a party "will be deemed to be that of the party, as if verified personally." S.D.Ala. ALR6. Several of the jurisdictions provide that an interested party may move for the personal oath of a party if another person, such as an agent or attorney of the party, makes

the verification at the outset. *E.g.*, E.D.Cal. LR511; S.D.Ala. ALR6; E.D.Wis. LR22.03. At least two of the districts provide that the personal oath can be secured by an interested party "on good cause." *E.g.*, E.D.Wash. LAR105; W.D.Wash. LAR105. These local rules are inconsistent with existing law in several respects and should be rescinded.

First, they are inconsistent with Supplemental Rule C(2) which anticipates that the verification of a complaint be made by a party. Fed. R. Civ. P. Supp.R. C(2). That Supplemental Rule reads, in relevant part:

In actions in rem the complaint shall be verified on oath or solemn affirmation. It shall describe with reasonable particularity the property that is the subject of the action and state that it is within the district or will be during the pendency of the action.

Fed. R. Civ. P. Supp.R. C(2).

This subsection provides no alternative to verification. If the Advisory Committee on Civil Rules had intended that a non-party could verify the complaint, it could have easily provided for this in the Rule. Such an option is found in Supplemental Rule B(1) which states that the affidavit that accompanies a complaint for attachment may be "signed by the plaintiff or the plaintiff's attorney". Fed. R. Civ. P. Supp.R. B(1).

In addition, these local rules are inconsistent with the intent of Section 1746 of Title 28, which provides an alternative method for verification of documents. 28 U.S.C. §1746. Before this statute was enacted, a person, seeking to verify a document, had to sign the document before a person legally authorized to administer oaths, such as a notary public. H.R. No. 1616, 94th Cong., 2d Sess. 1, *reprinted in* 1976 U.S. Code Cong. & Admin. News 5644. This was viewed as an inconvenient procedure because it generally required additional documents "to prove such things as the authority of the officer who administers the oath and the authenticity of his seal." *Id.* Section 1746 permits

the signer to subscribe to a document "executed subject to the penalties of perjury." *Id.* at 2. Although Section 1746 was designed to make the verification process easier, it was not amended to permit someone else to verify a document even when such a substitution may be easier. If Congress had been willing to permit an alternate person to verify a document, Congress could have easily made this allowance in Section 1746.

Lastly, these local rules are inconsistent with existing case law which indicates that, when verification of a complaint is required, it must be made by the plaintiff. For example, in the context of a shareholder's derivative action, the Supreme Court has explained that Rule 23.1 of the Federal Rules of Civil Procedure, which states that "the complaint shall be verified" (Fed. R. Civ. P. 23.1), requires "that a shareholder's complaint ... be verified by the plaintiff." *Surowitz v. Hilton Hotels Corp.*, 383 U.S. 363, 365 (footnote omitted), *rehearing den'd* 384 U.S. 915 (1966). This was mandated although the plaintiff did not base the verification on her own knowledge or information but on the advice provided her by her son-in-law. *Id.* at 370-71; *cf. Surowitz, supra*, at 374, Harlan, J., concurring, stating that a reasonable interpretation of the Federal Rule is that a verification from an attorney is sufficient. Accordingly, to determine the validity of the verification, the court must be assured

that some person, party, attorney, advisor, or otherwise has responsibly investigated the allegations at the behest of the named plaintiff, who then stands behind the merits of the complaint.

Rogosin v. Steadman, 65 F.R.D. 365, 367 (S.D.N.Y. 1974).

See also, Surowitz, supra; Brown v. Hart, Schaffner & Marx, 96 F.R.D. 64 (N.D.Ill. 1982). In the admiralty context, it has also been recognized that "it is not required that the verifying plaintiff have detailed personal knowledge." *United States v. Banco Cafetero International*, 608 F.Supp. 1394, 1400 (S.D.N.Y.

1985) (quoting *Rogosin, supra*, at 367). Rather, it is sufficient that the plaintiff is satisfied that the averments in the complaint are true, "based either upon his own knowledge or upon information and belief." *Id.* at 1400 (quoting 7A J. Moore & A. Palaez, *Moore's Federal Practice* ¶B.09 at B-402 (2d ed. 1983)).

3. *Judicial Authorization and Process*

Twenty-six jurisdictions have local rules concerning subsection (3) of Supplemental Rule C. Twenty of the districts have directives concerning an arrest when freight or other intangible property is involved. The Local Rules Project has recommended a Model Local Rule for those jurisdictions intending to regulate in this area. In addition, six jurisdictions have local rules that repeat various portions of Supplemental Rule C(3). These rules should be rescinded.

MODEL LOCAL RULE

The full text of the Model Local Rule recommended by the Local Rules Project is set forth below. A brief discussion of each of the sentences follows.

Model Local Rule C(3).1

Actions in Rem—Intangible Property.

The summons issued pursuant to Supplemental Rule C(3) shall direct the person having control of intangible property to show cause no later than ten 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. The person who is

served may deliver or pay over to the marshal the intangible property proceeded against to the extent sufficient to satisfy the plaintiff's claim and, if such delivery is made, the person served is excused from the duty to show cause.

DISCUSSION

Twenty of the jurisdictions have local rules addressing the obligation of the holder of intangible property to deliver such property to the court pursuant to Supplemental Rule C(3). *E.g.*, E.D.N.C. LR82.00(a); D.N.J. LAR(c)(1); W.D.Wash. LAR110(c). These rules are, in substance, very similar. The operative portion of Supplemental Rule C(3) reads:

If the property that is the subject of the action consists in whole or in part of freight, or the proceeds of property sold, or other intangible property, the clerk shall issue a summons directing any person having control of the funds to show cause why they should not be paid into court to abide the judgment.

Fed. R. Civ. P. Supp.R. C(3).

The local rules relating to this provision set out the procedure used to seek delivery of the property into the court. The Model Local Rule set out above is taken from the rule of the Northern District of California. N.D.Cal. LR605-2. Other districts have almost identical provisions. *E.g.*, E.D.Va. LAR(c)(2); W.D.Pa. LAR(c)(1); S.D.Cal. LR305-3. Several other jurisdictions have directives with, generally, the same substance but written in a slightly different format. *E.g.*, D.Alaska LAR3(C); E.D.Wash. LAR110(c); W.D.Wash. LAR110(c).

The first sentence of this Model Local Rule requires that the person with control over the intangible property show cause within ten days after service why such property should not be delivered into the court. All twenty of the jurisdictions have a similar ten-day limit. *E.g.*, E.D.N.C. LR82.00(a); D.N.J.

LAR(c)(1); D.Or. LR1010-3. This sentence simply imposes a time limit on the general provision in Supplemental Rule C(3).

The second sentence of the Model Local Rule permits a judicial officer to lengthen or shorten this time limit "for good cause shown." This provision is set forth in nineteen of the districts. *E.g.*, E.D.Wash. LAR110(c); E.D.Mo. LAR2(C); E.D.N.Y. LAR2. This provision recognizes the court's flexibility to alter the time limit if the circumstances warrant such a change.

The third sentence simply states what is already implicit in the Supplemental Rule, that service of the summons has the effect of an arrest. Eleven of the jurisdictions use similar language. *E.g.*, D.Alaska LAR3(C); E.D.Va. LAR(c)(2); D.Md. LAR(c)(1).

The last sentence states that, if the person served turns the property over to the marshal, then that person is excused from showing cause. Twelve of the jurisdictions have an analogous provision. *E.g.*, E.D.Wash. LAR110(c)); E.D.N.C. LR82.00(a); D.Haw. LR602-2. This sentence gives clear direction to a holder of intangible property of the duties of that person.

RULES THAT REPEAT

Six jurisdictions have local rules that repeat, almost verbatim, many portions of Supplemental Rule C(3). *E.g.*, E.D.Mich. LR35; W.D.La. LR25.01(B); M.D.Fla. LR7.03(b). For example, four of these jurisdictions have directives that repeat that, with respect to intangible property, a summons will issue directing the holder of such property to turn it over to the court. E.D.La. LR25.03; M.D.La. LR25.03; W.D.La. LR25.03; E.D.Mich. LR35.

4. Notice

Thirty-three jurisdictions have local rules concerning subsection (4) of Supplemental Rule C. Generally, the directives in these jurisdictions

should remain subject to local variation. Local rules in eight of the districts, however, repeat Supplemental Rule C(4) and should, therefore, be rescinded.

RULES SUBJECT TO LOCAL VARIATION

Thirty-three jurisdictions have local rules that add to Supplemental Rule C(4) concerning the public notice which must be given in certain circumstances in actions in rem. *E.g.*, D.Alaska LAR7; S.D.Ga. LAR3; E.D.N.C. LR84.00. Supplemental Rule C reads, in relevant part:

If the property is not released within 10 days after execution of process, the plaintiff shall promptly or within such time as may be allowed by the court cause public notice of the action and arrest to be given in a newspaper of general circulation in the district, designated by order of the court. Such notice shall specify the time within which the answer is required to be filed as provided by subdivision (6) of this rule.
Fed. R. Civ. P. Supp.R. C(4).

The existing local rules add to these requirements. For example, thirty of the districts have local rules augmenting, in some manner, the general procedure required for giving notice, most frequently by naming the newspaper which must be used. *E.g.*, E.D.Wis. LR22.07 ("newspaper of largest general circulation within the district"); W.D.Pa. LAR(g)(3) (provides a choice among specifically named newspapers); D.Md. LAR(c)(2) ("in a newspaper of general circulation in the city or county where the property has been seized"). Some of these jurisdictions also regulate the number of times a notice must be published. *E.g.*, E.D.N.Y. LAR3 ("at least once"); E.D.Pa. LAR6 ("three times a week for two consecutive weeks"); D.Md. LAR(c)(2) ("once"). Twenty-five jurisdictions have local rules outlining the required content of the notices. *E.g.*, S.D.Ga. LAR3; E.D.Mo. LAR3; N.D.Ohio LAR2.05. Lastly, six jurisdictions require proof of publication. *E.g.*, N.D.Cal. LR605-3; S.D.Fla. LAR3. Regulation in these areas seems appropriately accomplished through individual district court rulemaking since the issues are local in nature.

RULES THAT REPEAT

Eight jurisdictions have local rules that repeat portions of Supplemental Rule C(4) and should, therefore, be rescinded. All of these districts have local rules providing simply that publication be made "in a newspaper of general circulation in the District." S.D.Ala. ALR5; *see also* D.P.R. LR603; E.D.Pa. LAR6. Two of the districts unnecessarily repeat that there is a notice requirement. S.D.Ala. ALR5; N.D.Fla. LAR16.

5. *Ancillary Process*

6. *Claim and Answer; Interrogatories*

Seven jurisdictions have local rules relating to subsection (6) of Supplemental Rule C. Four of these districts have directives that repeat portions of Supplemental Rule C(6). In addition, four districts have rules that conflict with this Federal Rule. There are also rules in three jurisdictions that should become the subject of review by the Advisory Committee on Civil Rules.

RULES THAT REPEAT

Four jurisdictions have rules that repeat existing law. Two of the districts have rules that repeat that any claim filed pursuant to Supplemental Rule C(6) be verified. S.D.Ala. ALR6; S.D.Fla. LAR8. Two other jurisdictions have rules that repeat the time limit set forth in Supplemental Rule C(6) within which a claim and answer must be filed. S.D.Ga. LAR2(B); M.D.Fla. LR7.03(f).

RULES THAT CONFLICT

Four local rules conflict with existing law and should be rescinded.

A local rule in the Southern District of Georgia conflicts with Supplemental Rule C(6) in two respects. S.D.Ga. LAR2(B). First, it provides a

claimant with a choice of time limits within which to file a claim and answer when only one time limit is set forth in the Federal Rule. *See* Fed. R. Civ. P. Supp.R. C(6). It permits the claimant to file the claim and answer within the time limits of Supplemental Rule C(6); it also permits the claimant to file "both claim and motion or answer within thirty days following execution of process." S.D.Ga. LAR2(B). Secondly, the provision refers to the use of "return days" in Supplemental Rule C actions. *Id.* This terminology and practice has been specifically rejected by the Advisory Committee on Civil Rules:

Adherence to the practice of return days seems unsatisfactory. The practice varies significantly from district to district. A uniform rule should be provided so that any claimant or defendant can readily determine when he is required to file or serve a claim or answer.

A virtue of the return-day practice is that it requires claimants to come forward and to answer. The draft is designed to preserve this feature of the present practice by requiring early filing of the claim....
Fed.R.Civ.P. Supp.R. C Advisory Committee Notes

Three other jurisdictions have local rules that conflict with Supplemental Rule C(6) by providing for an additional period of time to file a claim if there has been publication:

In all cases where publication is necessary under Admiralty Rule C(4), the time for filing a claim is hereby extended for a period of fifteen (15) days from the date of the publication.
E.D.La. LR25.05; M.D.La. LR25.05; W.D.La. LR25.05.

There is no such provision in the Supplemental Rules. In fact, the Supplemental Rules are very specific on the time within which a claimant must file a claim. *See* Fed. R. Civ. P. Supp.R. C(6). If the Advisory Committee had intended to provide a different time frame for those claimants notified by the public notice, it could easily have done so. The Local Rules Project has recommended that the Advisory Committee on Civil Rules consider amending

Supplemental Rule C(6) to address the issue raised by these local rules. *See, infra.*

A TOPIC FOR ADVISORY COMMITTEE REVIEW

The three rules from the districts in Louisiana provide additional time for a claimant to file a claim when notice is provided by publication. E.D.La. LR25.05; M.D.La. LR25.05; W.D.La. LR25.05. This directive seems intended to avoid a problem inherent in the Supplemental Rule as it currently reads. At present, a claim must be filed "within 10 days after process has been executed, or within such additional time as may be allowed by the court..." Fed. R. Civ. P. Supp.R. C(6). Yet, publication is not required until ten days after execution of process and only if the property has not been released. *See* Fed. R. Civ. P. Supp.R. C(4). It is quite probable that a potential claimant would not discover that the property had been arrested until there had been an advertisement, at which time the claimant is automatically too late to comply with the strict wording of the Rule and must, instead, appeal to the discretion of the court to allow a later filing of the claim. This may be too burdensome a process for a claimant intending to assert an interest in the arrested property when that claimant has not been at all delinquent in responding to the notice. In addition, the Rule, as it currently reads, gives discretion to the court to permit late filing where fairness may dictate there be no discretion to deny the claimant this right to file. The Advisory Committee may want to consider amending Supplemental Rule C(6) to accommodate the suggestion provided by the local rules in the three districts of Louisiana.

7. *Default*

Sixteen jurisdictions have local rules setting forth a procedure for securing an entry of default and a default judgment in Supplemental Rule C

actions. The Local Rules Project recommends that the Advisory Committee on Civil Rules consider whether such procedures should be incorporated into Supplemental Rule C to provide a uniform method for obtaining a default.

A TOPIC FOR ADVISORY COMMITTEE REVIEW

The sixteen districts have similar rules which address several areas. For example, fifteen of them have rules requiring that a particular form of notice be given before moving for an entry of default. *E.g.*, D.Or. LR1030; E.D.Wash. LAR130; D.Alaska LAR8. Generally, they require that three forms of notice be given: notice by publication pursuant to Supplemental Rule C(4); notice by service on the person in custody of the property; and, notice to other people who have not appeared in the action but who are known to have an interest in the property. *E.g.*, N.D.Fla. LAR14; E.D.Cal. LR540. The districts vary in their requirement of notice to other interested persons. Some of the jurisdictions mandate that the notice to the other person be by service on such person (*e.g.*, N.D.Cal. LR605-4; W.D.Pa. LAR(c)(3)), while others require only delivery of a notice to such person (*e.g.*, D.Alaska LAR8; M.D.Fla. LR7.03(h)). On occasion, a jurisdiction seems to use another method of notice (*e.g.*, D.Or. LR1030-1 ("By delivery or by certified mail, return receipt requested"); E.D.N.C. LR90.00 ("By delivery under Federal Rule 5(b)"). In addition, fourteen of the jurisdictions require that some type of notice be provided to anyone with a recorded interest in the property. *E.g.*, D.N.J. LAR(c)(3); E.D.Va. LAR(c)(4).

Eleven of the districts set forth almost identical requirements for obtaining an entry of default. *E.g.*, E.D.Va. LAR(c)(5) (default entered if required notice has been given, the time to answer has expired, and no one has appeared to claim the property); E.D.N.C. LR91.00 (default entered if required notice has been given, the time to answer has expired, no one has

appeared to claim the property, and the publication requirement has been fulfilled); D.Haw. LR602-5 (default entered if required notice has been given or attempted, the time to answer has expired, and no one has appeared to claim the property).

Fourteen of the districts explain how a plaintiff may move for a default judgment. Most of these rules say that the plaintiff may move for judgment under Rule 55(b) of the Federal Rules of Civil Procedure "at any time after default has been entered." E.D.Va. LAR(c)(5); *see also*, D.Haw. LR602-5; N.D.Cal. LR605-5; C.D.Cal. LRC(5).

The Advisory Committee on Civil Rules has shown an interest in regulating the procedures for obtaining a default judgment in other situations. For example, Rule 55 of the Federal Rules of Civil Procedure sets forth a rather detailed recitation of the circumstances under which a default judgment will be entered either by the clerk or by the court. *See* Fed. R. Civ. P. 55(b). In addition, Supplemental Rule B(2) explains the notice required to be provided to a defendant in a Supplemental Rule B action to secure a judgment by default. Fed. R. Civ. P. Supp.R. B(2). Yet, Supplemental Rule C is silent on this issue. The Advisory Committee may want to consider amending this Rule to discuss default. Such an addition may be appropriately placed in subsection (4), the notice provision.

D. Possessory, Petitory, and Partition Actions

Supplemental Rule D, relating to title and the right of possession, is silent with respect to most of the specifics of pleading and practice. *See* Fed. R. Civ. P. Supp.R. D. It does, however, require two procedures but only by reference to other Supplemental Rules. First, it provides that process be "by warrant or arrest of the vessel, cargo, or other property," referring to Rule C

actions. *Id.* Secondly, it states that notice be "in the manner provided by Rule B(2) to the adverse party or parties." *Id.* Where Supplemental Rule D is silent on other specifics of procedure, the remaining relevant Supplemental Rules are applicable. *See discussion at 7A Moore's Federal Practice ¶D.06 (1988); 12 C. Wright & A. Miller, Federal Practice and Procedure, §3231 (1973).* For example, Supplemental Rule E specifically applies to Supplemental Rule D actions "[e]xcept as otherwise provided." Fed. R. Civ. P. Supp.R. E(1). Supplemental Rule E(5)(d) excludes subsection (5), concerning the release of property, from operation in petitory, possessory, and partition actions. *Id.* at (5)(d). In addition, the provisions of Supplemental Rule C, concerning *in rem* actions, are also applicable. *See Fed. R. Civ. P. Supp.R. C.* What follows is a brief discussion of the few local rules that specifically concern Supplemental Rule D actions. Because most of the procedures required in a Supplemental Rule D action are those found in other Supplemental Rules, reference is made to the relevant discussions of other local rules in this document.

RULES THAT CONFLICT

Eleven jurisdictions have local rules that conflict with the Supplemental Rules and should be rescinded.

All of these jurisdictions have local rules setting forth a return date for the claim and answer to be filed. *E.g.*, C.D.Cal. LRD(1) (twenty days); D.Haw. LR603-1 (twenty days); D.N.J. LAR(d) (twenty days). These rules conflict with Supplemental Rule C which provides that the claim be filed "within 10 days after process has been executed..." and that the answer be served "within 20 days after the filing of the claim." Fed. R. Civ. P. Supp.R. C(6). In addition, the Supplemental Rules were purposefully written to exclude any reference to

"return days." The Advisory Committee Notes relating to Supplemental Rule C read, in relevant part:

Adherence to the practice of return days seems unsatisfactory. The practice varies significantly from district to district. A uniform rule should be provided so that any claimant or defendant can readily determine when he is required to file or serve a claim or answer.

A virtue of the return-day practice is that it requires claimants to come forward and identify themselves at an early state of the proceedings—before they could fairly be required to answer. The draft is designed to reserve this feature of the present practice by requiring early filing of the claim.
Fed. R. Civ. P. Supp.R. C(6) Advisory Committee Notes.

Return dates in Supplemental Rule B were also abolished by the Advisory Committee:

The rule proceeds on the assumption that uniform and definite periods of time for responsive pleadings should be substituted for return days (see the discussion under Rule C(6), below). Twenty days seems sufficient time for the garnishee to answer (cf. FRCP 12(a)), and an additional 10 days should suffice for the defendant.
Fed. R. Civ. P. Supp.R. B(3) Advisory Committee Notes.

A local rule in the Middle District of Florida conflicts with Supplemental Rule D by requiring a different method of notice than that required in this Supplemental Rule, namely, that notice be as provided in Rule B(2). M.D.Fla. LR7.04(b) *referring to* M.D.Fla. LR7.01(g). This local rule requires publication of notice in an "approved newspaper". M.D.Fla. LR7.01(g).

E. Actions in Rem and Quasi in Rem: General Provisions

1. Applicability

2. Complaint; Security

Twenty-seven jurisdictions have local rules concerning the form of the complaint and any security for costs which must be provided. The local

rules concerning the complaint should be rescinded because they are inconsistent with existing law. In addition, the Local Rules Project recommends that the Advisory Committee on Civil Rules consider amending Supplemental Rule E to address the issues raised by these local rules. The directives concerning the provision of security should remain subject to local variation. A brief discussion of these two topics follows.

(a) Complaint

RULES THAT CONFLICT

Fourteen jurisdictions have local rules requiring that specific allegations be made in admiralty complaints. *E.g.*, E.D.Cal. LR510(b); D.N.J. LAR(e)(2); E.D.Va. LAR(e)(1). For example, all of these jurisdictions have local rules requiring that there be an itemized demand for judgment in certain admiralty actions:

The demand for judgment in every complaint filed under Supplemental Rule 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 or other items of damage.
D.Md. LAR(e)(1).

See also, N.D.Fla. LAR3; N.D.Cal. LR610-1. Twelve of the jurisdictions have directives requiring that specific amounts be claimed in salvage actions:

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 was instituted in their behalf and in behalf of all other persons interested or associated with them.
E.D.N.C. LR87.00(d).

See also, E.D.Wis. LR22.02; S.D.Ga. LAR7(D).

These rules may be helpful in the later determination of the appropriate amount of any bond or stipulation provided in order to release the

property pursuant to Supplemental Rule E(5). Yet, by requiring specific allegations in admiralty complaints, these local rules are inconsistent with the Supplemental Rules and other Federal Rules which do not mandate specific pleading. For example, Supplemental Rule B only states that a complaint seeking an attachment or garnishment "may contain a prayer for process to attach the defendant's goods and chattels...." Fed. R. Civ. P. Supp.R. B(1).

Supplemental Rule C only requires that a complaint

describe with reasonable particularity the property that is the subject of the action and state that it is within the district or will be during the pendency of the action.
Fed. R. Civ. P. Supp.R. C(2).

Supplemental Rule E simply requires that a complaint "state the circumstances from which the claim arises with such particularity...." Fed. R. Civ. P. Supp.R. E(2).

In addition, these local rules are inconsistent with the general intent of the Federal Rules of Civil Procedure of providing simple and non-technical pleading requirements. Rule 8 of the Federal Rules of Civil Procedure states that pleadings should consist of "short and plain" statements of the grounds for relief and that "[n]o technical forms of pleadings or motions are required." Fed. R. Civ. P. 8(a), (c). In fact, only certain matters are required under the Federal Rules to be specially pleaded, such as fraud, mistake, any conditions precedent, and any items of special damage. Fed. R. Civ. P. 9. When there has been a need to mandate specific pleading of certain matters, the Federal Rules have included such requirements. For example, Rule 19 requires pleading the reasons for non-joinder of certain persons (Fed. R. Civ. P. 19(c)), and Rule 23.1 requires a specific allegation of the plaintiff's shareholder status in a shareholder derivative action (Fed. R. Civ. P. 23.1).

There is no such pleading requirement in the Supplemental Rules concerning the amount of the claim.

TOPICS FOR ADVISORY COMMITTEE REVIEW

As discussed above, local rules exist which require specific allegations in certain admiralty complaints. These rules, at present, are inconsistent with the existing Supplemental Rules and other Federal Rules. Because such allegations may be helpful in determining the amount of any bond or stipulation provided pursuant to Supplemental Rule E(5), the Advisory Committee may want to consider amending either Supplemental Rules B and C or Supplemental Rule E to include a similar requirement.

The Advisory Committee has rejected special pleading requirements for particular categories of cases in the past. In 1955, the Advisory Committee rejected an amendment to Rule 8(a)(2), despite suggestions that it be amended to require more specific pleading in complex cases such as antitrust litigation. Fed. R. Civ. P. 8 Advisory Committee Notes, Report of Proposed Amendments (1955). *See also Nagler v. Admiral Corporation*, 248 F.2d 319, 323 (2d Cir. 1957). The Advisory Committee has also rejected suggestions to create special pleading procedures for copyright and patent cases. Clark, *Special Pleading in the "Big Case,"* 21 F.R.D. 45 (1957). *See also* Fed. R. Civ. P. Forms 16, 17. In the admiralty context, however, the Advisory Committee has required specific requirements for many procedural issues. Therefore, it may be quite appropriate to make such an amendment to the Supplemental Rules.

(b) *Security for Costs*

RULES SUBJECT TO LOCAL VARIATION

Twenty-five jurisdictions have local rules concerning the provision of security in admiralty cases. *E.g.*, E.D.Mo. LAR5(A); W.D.Wash. LAR120(a); E.D.La. LR25.02. These directives should remain subject to local variation since they are appropriate additions to Supplemental Rule E(2)(b) on security for costs. Fed. R. Civ. P. Supp.R. E(2)(b). That Supplemental Rule provision states that,

[s]ubject to the provisions of Rule 54(d) and of relevant statutes, the court may ... require the ... party to give security, or additional security, in such sum as the court shall direct to pay all costs and expenses that shall be awarded against the party....
Id.

Ten of the jurisdictions have directives requiring that the plaintiffs provide security unless it is shown to be unnecessary. *E.g.*, S.D.Fla. LAR5(a); W.D.La. LR25.02; N.D.N.Y. LAR6. Twelve other jurisdictions state that a party can request that the opposing party or claimant provide security upon motion. *E.g.*, D.Or. LR1020-1; E.D.Va. LAR(e)(8); D.Haw. LR604-8. Twenty-three of the twenty-five jurisdictions provide a specific amount for the security. Twelve of the jurisdictions require \$500.00 security (*e.g.*, D.Alaska LAR6(A); N.D.Fla. LAR7), while the remaining eleven jurisdictions set the amount at \$250.00 (*e.g.*, E.D.La. LR25.02; W.D.Pa. LAR(e)(6)).

Other directives involve the general method for posting security. For example, twelve jurisdictions permit stipulations for security to be used. *E.g.*, S.D.Ga. LAR5(B); E.D.N.Y. LAR6; D.P.R. LR606.1. Ten of the districts explain that a party

who fails to post security when demanded may not participate further in the proceedings, except for the purpose of seeking

relief from this rule.
D. Alaska LAR6(A).

See also, D.Or. LR1020-1; E.D.Wash. LAR120(a). Several other districts require that a party, ordered to post security, do so within five days after the order is entered (*e.g.*, C.D.Cal. LRE(8); N.D.Cal. LR610-8), or within five days after service of a demand for security (*e.g.*, D.Alaska LAR6(a); S.D.Cal. LR310-1(a)).

3. Process.

Twenty-one districts have local rules concerning Supplemental Rule E(3), relating to process. Some of these rules repeat existing law and some conflict with existing law. Others should remain subject to local variation.

RULES THAT REPEAT

Ten jurisdictions have local rules permitting the plaintiff to request that the process be held in abeyance. *E.g.*, W.D.Wash. LAR110(b); D.Or. LR1010-2; D.Haw. LR604-4. These rules simply repeat Supplement Rule E(3)(b) and are, therefore, unnecessary. Fed. R. Civ. P. Supp. R. E(3)(b).

RULES THAT CONFLICT

Four jurisdictions have local rules that conflict with Rule 4(g) of the Federal Rules of Civil Procedure by providing that the marshal file proof of service with the court and also "mail a copy of the return to the attorney at whose request the execution was effected." W.D.Wash. LAR110(d); E.D.Wash. LAR110(d); *see also* D.Or. LR1010-4; D.Alaska LAR3(D).

RULES SUBJECT TO LOCAL VARIATION

Fifteen of the districts have local rules requiring that the party state, on a particular form, the "party's instructions to the Marshal specifying the process to be issued." W.D.Wash. LAR110(a); E.D.Wash. LAR110(a); *see also* C.D.Cal. LRE(6); N.D.Cal. LR610-6. These directives may be helpful to the

marshal in completing the service of process and should remain subject to individual district court variation.

Ten jurisdictions have local rules providing for a distinct procedure for issuing process in *in forma pauperis* actions. *E.g.*, N.D.Ill. LAR6; D.P.R. LR605; N.D.Fla. LAR11. Generally, these local rules require that:

No process in rem shall issue in forma pauperis suits except upon proof of twenty four hours' notice to the owner of the res or the owner's agent, of the filing of the complaint.
E.D.N.Y. LAR5.

Section 1915 of Title 28 provides that a court may authorize a person to commence a suit

without prepayment of fees and costs or security therefore by a person who makes affidavit that he is unable to pay such costs or give security therefor.
28 U.S.C. §1915(a).

In addition, the court may dismiss such a case "if satisfied that the action is frivolous or malicious." *Id.* at (d). The determination of whether a case can proceed *in forma pauperis* is subject to a case-by-case determination. *In Re Green*, 669 F.2d 779, 786, 215 U.S.App.D.C. 393 (1981). This ability to proceed is not unconditional:

A court may impose conditions upon a litigant—even onerous conditions—so long as they assist the court in making such determinations, and so long as they are, taken together, not so burdensome as to deny the litigant meaningful access to the courts.
Green, supra, at 786.

See also, Carter v. United States, 733 F.2d 735, 737 (10th Cir. 1984), *cert. denied* 469 U.S. 1161 (1985) ("Restrictive conditions, other than total preclusions, ... are available....")

These local rules do not totally preclude a plaintiff from bringing suit. Rather, they provide the owner or the owner's agent an opportunity to argue that the complaint is frivolous or malicious prior to engaging in the

timely and expensive activity of issuing the process and arresting the vessel. In addition, the vessel owner will not be compelled to procure a bond to secure the vessel's release if the complaint is found to be frivolous or malicious. These local rules, then, may provide an effective method for the court to determine whether a case should be dismissed pursuant to 28 U.S.C. §1915(d).

4. *Execution of Process; Marshal's Return...*

(a) *In General*

Twenty-two jurisdictions have local rules explaining how service of process is made in those instances where the property is already in the custody of the United States. The Local Rules Project recommends that the Advisory Committee on Civil Rules consider amending Supplemental Rule E(4)(a) to include the substance of these local rules.

A TOPIC FOR ADVISORY COMMITTEE REVIEW

The local rules in the twenty-two jurisdictions which address the manner of service when the property is in the possession of the United States, are almost identical. *E.g.*, D.Haw. LR604-7; E.D.Wash. LAR110(e); D.Or. LR1010-5. The jurisdictions have rules that require the marshal to serve the United States officer or employee with custody of the property and to notify that person not to relinquish the property. The local rule from the Middle District of Florida is illustrative:

Whenever the property to be arrested or attached is in the custody of a U.S. officer, the marshal shall serve the appropriate process upon the officer or employee; or, if the officer or employee is not found within the district, then to the custodian of the property within the district. The marshal shall direct the officer, employee or custodian not to relinquish custody of the property until ordered to do so by the court.

M.D.Fla. LR7.05(g).

These local rules concern service of process, an issue addressed in the Supplemental Rules as well as in the other Federal Rules. *See e.g.*, Fed. R. Civ. P. Supp.R. E(3), (4); C(3), (5); B(1), (2); Fed. R. Civ. P. 4. In fact, Rule 4 of the Federal Rules of Civil Procedure requires that a particular method of service be used depending upon who is being served such as an infant or incompetent person or a partnership or unincorporated association. *See* Fed. R. Civ. P. 4(d). These local rules also explain the method of service depending upon who is being served, specifically, when the person being served is a United States office or employee. Such a provision is more appropriately made a part of the Federal Rules since the Advisory Committee and Congress have already addresses this issue in other contexts.

In addition, Supplemental Rule E(4)(b) already permits the marshal to direct the collector of customs "not to grant clearance to such vessel until notified ... that the vessel has been released...." Fed. R. Civ. P. Supp.R. E(4)(b). This provision gives some direction to the marshal when property is in the custody of a customs official, thus indicating the Advisory Committee's interest in regulating, at least to some extent, what occurs when property is in the custody of the United States.

(b) Tangible Property

Twenty-four jurisdictions have local rules outlining what happens to property that is taken into custody by the marshal. The Local Rules Project recommends that the jurisdictions, interested in regulating in this area, adopt a Model Local Rule, the text of which is set forth below.

MODEL LOCAL RULE

Model Local Rule E(4)(b).1

Custody of Property.

(a) **Safekeeping of Property When Seized.** When a vessel or cargo is seized, the marshal shall take custody and arrange for adequate and safe moorage and necessary security for the safekeeping of the vessel, which may include, in the marshal's discretion, the placing of keepers on the vessel, or the appointment of a shipyard, terminal, yacht club, marina, harbor master or similar facility as custodian of the vessel for the marshal.

(b) **Substitute Custodian.** The marshal is authorized, without special order of court, to appoint the master of the vessel or another competent person as keeper or custodian of any vessel under seizure with their consent, provided that all parties to the action or their attorneys shall have expressly consented in writing to the appointment and shall have agreed in writing to hold the marshal and all of the marshal's deputies harmless from any and all liability as a result of the appointment.

(c) **Cargo Handling, Repairs, and Movement of the Vessel.** Following arrest or attachment of a vessel, no cargo handling, repairs, or movement may be made without an order of 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 for the marshal's liability, the court may direct the marshal to permit cargo, handling, repairs, movement of the vessel, or other operations.

(d) **Petition for Change in Arrangements.** After a vessel or cargo has been taken into custody by the marshal, any party then appearing may petition the court to dispense with keepers, or to remove to or place the vessel or cargo at a specified shipyard, terminal, yacht club, marina, or similar facility, to designate a substitute for the vessel or cargo, or for similar relief.

(e) **Insurance.** The marshal may order insurance to protect the marshal, the marshal's 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 and shall be an additional insured on the policy. 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 the custody of the court.

(f) **Claim by Suppliers for Payment of Charges.** A person who furnished 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 an invoice with 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.

DISCUSSION

This Model Local Rule is a composite of the existing local rules of the twenty-four jurisdictions. What follows is a brief discussion of each of the subsections.

The first portion of the Model Local Rule states that, pursuant to the marshal's responsibility to take possession of the property "for safe custody" (*see* Fed. R. Civ. P. Supp.R. E(4)(b)), the marshal has discretion to make certain arrangements with respect to the property. This provision is from the local rule in the District of Alaska. D.Alaska LAR9(A). Seventeen other jurisdictions have similar provisions. *E.g.*, E.d.Mo. LAR2(F); N.D.Ill. LAR12.

Subsection (b) permits a substitute custodian to be appointed by the marshal. This subsection is taken from the local rule in the Eastern District of Louisiana. E.D.La. LR25.08. Twenty other districts have analogous directives. *E.g.*, S.D.Cal. LR310-2; N.D.Ill. LAR12.

Subsection (c) concerns the operation of the vessel following an arrest or attachment. This provision is taken from the local rule in the Eastern District of Virginia. E.D.Va. LAR(e)(14)(b). Seventeen other jurisdictions have local rules on this topic. *E.g.*, W.D.Pa. LAR(e)(11); D.Or. LR1035-2.

Subsection (d) of the Model Local Rule permits a party to seek a change in the arrangements with respect to the marshal's activities. This provision is taken from the local rule in the Western District of Washington. W.D.Wash. LAR135(b). Only five other jurisdictions state that such a procedure is available to a party. *E.g.*, E.D.N.C. LR92.00(c); D.Or. LR1035-3.

Subsection (e) authorizes the marshal to order that adequate insurance be provided. It also explains that premiums paid on such liability insurance are taxable as costs. This provision is taken from the local rule in the Eastern District of California. E.D.Cal. LR550(d). Fifteen other districts have similar rules. *E.g.*, S.D.Miss. LR20(c); E.D.Wash. LAR135(c).

The last portion of the Model Local Rule sets forth the procedure for compensation of those persons who furnish supplies or services to property in the marshal's custody. This subsection is taken from the local rule in the District of Hawaii. D.Haw. LR604-13. Twelve other jurisdictions have similar provisions. *E.g.*, W.D.Pa. LAR(e)(100); M.D.Fla. 7.05(k).

(c) Intangible Property

(d) Directions with Respect to Property in Custody

(e) Expenses of Seizing and Keeping Property; Deposit

Seventeen jurisdictions have local rules concerning the collection of fees and costs of the marshal in admiralty cases. All of these local rules

either repeat or conflict with Section 1921 of Title 28 and should, therefore, be rescinded. *See* 28 U.S.C. §1921. In addition, one district has a local rule that should remain subject to local variation.

RULES THAT REPEAT

Sixteen jurisdictions have local rules requiring that a deposit for fees and costs incurred by the marshal be provided before the arrest or attachment. *E.g.*, E.D.Wash. LAR120(c); M.D.Fla. LR7.05(f); E.D.Pa. LAR2. These rules repeat Section 1921 of Title 28 concerning fees of the marshal. 28 U.S.C. §1921. This statute was amended in 1988 to specifically require prepayment of the fees and costs:

(a)(1) The United States marshals or deputy marshals shall routinely collect, and a court may tax as costs, fees for the following:....

(E) The keeping of attached property (including boats, vessels, or other property attached or libeled), actual expenses incurred, such as storage, moving, boat hire, or other special transportation, watchmen's or keepers' fees, insurance, and an hourly rate, including overtime, for each deputy marshal required for special services, such as guarding, inventorying, and moving....

(2) The marshals shall collect, in advance, a deposit to cover the initial expenses for special services required under paragraph (1)(E), and periodically thereafter such amounts as may be necessary to pay such expenses until the litigation is concluded. This paragraph applies to all private litigants, including seamen proceeding pursuant to section 1916 of this title

28 U.S.C. §1921(a) (as amended Nov. 18, 1988, Pub.L. 100-690, Title VII, §7608(c), 102 Stat. 4515 (1988)).

Also relevant to this discussion is Section 1916 of Title 28 referring to actions brought by seamen which provides that seamen "may institute and prosecute suits and appeals...without prepaying fees or costs or furnishing security therefor." 28 U.S.C. §1916.

Before its amendment in 1988, the language in Section 1921 did not as clearly mandate prepayment of such fees. Yet, it was even interpreted to include within its reach a claim for attachment by a seaman. *Puerto Rico Drydock and Marine Terminals, Inc. v. Motor Vessel Luisa del Caribe*, 746 F.2d 93 (1st Cir. 1984); *Araya v. McLelland*, 525 F.2d 1194 (5th Cir. 1976).

Generally, the local rules in the sixteen jurisdictions repeat several portions of the newly-amended Section 1921. They require that a deposit for the costs of keeping the property be provided before either an attachment or an arrest. *E.g.*, D.Alaska LAR6(C); E.D.Va. LAR(e)(10). They also require that the deposit be sufficient to cover the expenses of the marshal for a specific time period, typically ten days. *E.g.*, W.D.Wash. LAR120(c); D.Haw. LR604-11. They also provide that additional deposits, after seizure, may be required. *E.g.*, E.D.Cal. LR521; W.D.Pa. LAR(e)(9). Lastly, they frequently state that the marshal is not required to execute process in the absence of a deposit. *E.g.*, S.D.Cal. LR310-1; S.D.Ala. ALR2.

A RULE THAT CONFLICTS

The local rule in the Southern District of Florida conflicts with Section 1921 by only providing a mechanism for the marshal to require a deposit "at any time after service of process, attachment, or seizure of a vessel." S.D.Fla. LAR5(F). Section 1921 requires the marshal to collect the deposit in advance. 28 U.S.C. §1921(a)(2).

A RULES SUBJECT TO LOCAL VARIATION

A local rule in the Southern District of Florida, requiring that the marshal report the expenses of caring for attached property, is appropriately the subject of local district court variation. S.D.Fla. LAR12.

(f) Procedure for Release from Arrest or Attachment

Thirty jurisdictions have local rules augmenting, to some extent, Supplemental Rule E(4)(f). *E.g.*, M.D.La. LR25.01; S.D.Miss. LR20(d); N.D.Ohio LAR2.02. Most of the substance of these rules should remain subject to local variation. Also, portions of the local rules in fifteen of these districts repeat Supplemental Rule E(4)(f) and should, therefore, be rescinded.

RULES SUBJECT TO LOCAL VARIATION

Subsection (4)(f) of Supplemental Rule E indicates that a person with an interest in the arrested or attached property is entitled to a "prompt hearing" to determine whether the arrest or attachment should be vacated. Fed. R. Civ. P. Supp.R. E(4)(f). Twenty-four of the jurisdictions have local rules stating that parties claiming such an interest must move for a hearing. *E.g.*, W.D.La. LR25.01; E.D.Mich. LR36. Eleven of the districts have local rules explaining the hearing process in more detail. For example, the local rule in the Central District of California states that the hearing may be *ex parte*. C.D.Cal. LRE(g). The local rule in the Eastern District of California explains what the party must establish at the hearing. E.D.Cal. LR513. All of the districts also explain when the hearing will be held and how notice of the proposed hearing is provided to the parties. *E.g.*, D.N.J. LAR(e)(8); E.D.Pa. LAR5; D.Md. LAR(e)(7). These rules are all appropriate as local rules.

RULES THAT REPEAT

Fifteen of the jurisdictions have local rules that repeat some or all of the last sentence of Supplemental Rule E(4)(f) concerning what suits are not covered by this provision. *See* Fed. R. Civ. P. Supp.R. E(4)(f); *e.g.*, N.D.Cal. LR610-9; E.D.Mich. LR36. These rules are simply unnecessary.

5. *Release of Property.*

(a) *Special Bond.*

Twenty-two jurisdictions have local rules relating to subsection (5)(a) of Supplemental Rule E. All of these districts have local rules setting forth the procedure for obtaining an appraisal of the property which is subject to the arrest or attachment so that a special bond can be provided, releasing that property. The Local Rules Project recommends that a Model Local Rule be provided on this subject. In addition, nine of these jurisdictions have local rules that repeat a portion of Supplemental Rule E(5)(a) and should, therefore, be rescinded.

MODEL LOCAL RULE

The full text of the Model Local Rule recommended by the Local Rules Project is set forth below. A brief discussion of each of the sentences follows.

Model Local Rule E(5)(a).1

Appraisal.

An order for appraisal of property so that security can be given will be entered by the clerk at the request of any interested party. If the parties do not agree in writing upon an appraiser, the court 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 day's notice of the time and place of making the appraisal to the attorneys who have appeared in the action. The appraiser shall file the appraisal with the clerk as soon as

it is completed and shall serve it on all parties. 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.

DISCUSSION

The local rules in the twenty-two jurisdictions are quite similar. The Model Local Rule is taken, in large measure, from the local rules in the District of Alaska and the Eastern District of North Carolina. D.Alaska LAR10(A); E.D.N.C. LR93.00. Such a Model Local Rule is preferable to minor variations among the districts which may be confusing to practitioners. This directive is suggested as a Model Local Rule, rather than an amendment to the Supplemental Rules, because it outlines procedures commonly regulated by the individual courts.

The first sentence of the rule simply permits an appraisal at the request of an interested party. All of the twenty-two districts have such a provision. *E.g.*, S.D.N.Y. LAR11; E.D.Wash. LAR140(a).

The next sentence provides that the court will appoint an appraiser if the parties cannot agree on who it will be. Nineteen of the jurisdictions have similar rules. *E.g.*, E.D.Mo. LAR8; E.D.Cal. LR560.

The third sentence requires that the appraiser be sworn to the impartial charge of the appraiser's duties. Seventeen of the districts have this requirement. *E.g.*, W.D.Pa. LAR(e)(8); D.Haw. LR604-10.

The fourth sentence requires that the appraiser give one day's notice of the time and place of the appraisal. Eighteen of the districts have a similar notice provision. *E.g.*, N.D.Ill. LAR11; S.D.Cal. LR310-3. The rule in the

Northern District of Ohio varies from the other directives by requiring that three days notice be given. N.D. Ohio LAR2.04.

The next sentence requires that the appraiser file the appraisal with the clerk and serve it on all parties. All of the jurisdictions have rules requiring, at a minimum, that the appraiser file the appraisal (*e.g.*, D. Alaska LAR10(a); S.D. Cal. LR310-3), while some of these districts have directives requiring that the appraisal also be served on the parties (*e.g.*, E.D. N.C. LR93.00; C.D. Cal. LRE(10)). The Model Local Rule has included the service requirement in an effort to minimize the clerk's responsibility and cost in this matter.

The last two sentences of the Model Local Rule provide that the appraisal fees are paid by the party requesting the appraisal and taxable as costs. Only ten of the jurisdictions have such a provision. *E.g.*, S.D. Fla. LAR10; E.D. Va. LAR(e)(11).

RULES THAT REPEAT

Nine jurisdictions have local rules that repeat a portion of Supplemental Rule E(5)(a). For instance, four of these districts repeat that property may be released upon payment of the amount alleged with interest thereon at 6 per cent per annum. *E.g.*, E.D. N.C. LR95.00; D.P.R. LR612. The other five jurisdictions repeat, generally, that a stipulation may be provided when the amount of the plaintiff's claim is a sum certain. *E.g.*, N.D. Ill. LAR13; N.D. N.Y. LAR12. These rules are unnecessary.

(b) General Bond

Six jurisdictions have local rules discussing issues relating to the posting of a general bond pursuant to Supplemental Rule E(5)(b). Rules in

four of these jurisdictions should remain subject to local variation. The rules in the other two districts should be rescinded because they repeat existing law.

RULES SUBJECT TO LOCAL VARIATION

Four jurisdictions have directives requiring that certain identifying information be provided to the court when seeking a general bond. M.D.Fla. LR7.05(i); S.D.Fla. LAR11(C); S.D.Ga. LAR11(D); E.D.N.C. LR95.00. These rules may be helpful to individual districts and should remain subject to local court rulemaking.

RULES THAT REPEAT

Two of the districts have local rules that repeat, generally, that a stipulation may be used, in place of a general bond. *See* Fed. R. Civ. P. Supp.R. E(5)b); E.D.Mo. LAR9(A); D.P.R. LR612.

(c) Release by Consent or Stipulation;....

Twenty jurisdictions have local rules concerning Supplemental Rule E(5)(c). Fourteen of these districts have directives outlining the use of stipulations to release a vessel, cargo, or other property. These rules should remain subject to local variation. Nineteen of the twenty districts have rules that repeat various portions of subsection (5)(c). Lastly, five jurisdictions have rules that both repeat and conflict with existing law and should be rescinded.

RULES SUBJECT TO LOCAL VARIATION

Fourteen jurisdictions have local rules that set forth appropriate additions to Supplemental Rule E(5)(c). *E.g.*, M.D.La. LR25.04; E.D.Mo. LAR6; S.D.Ga. LAR6. For example, seven of the districts require the use of a specific procedure to approve a surety. *E.g.*, D.P.R. LR609; E.D.La. 25.04. Six of the

jurisdictions have local rules explaining the role of the stipulation or other undertaking in the action upon release of the vessel. *E.g.*, N.D.Ill. LAR8; E.D.N.C. LR86.00. Several jurisdictions have local rules stating that a stipulation need not be under seal. *E.g.*, S.D.Fla. LAR6; S.D.Ga. LAR6. There are also some that define the requirements of sureties. *E.g.*, E.D.N.C. LR85.00(a) (one surety sufficient if surety resides in district); E.D.Mo. LAR6 (one corporate surety or two individual sureties).

RULES THAT REPEAT

Nineteen of the districts have directives that repeat various portions of Supplemental Rule E(5)(c). For example, five districts state that property which is seized can be released in those circumstances set forth in subsection (5)(c). *E.g.*, S.D.Ala. ALR4; S.D.Fla. LAR11; E.D.Mo. LAR9. Five jurisdictions repeat that the marshal's fees and costs must be paid. *E.g.*, E.D.Wash. LAR140(b); E.D.N.C. LR95.00. Fourteen of the jurisdictions repeat, generally, the substance of subsection (5)(c). *E.g.*, E.D.La. LR25.06; N.D.N.Y. LAR12.

RULES THAT REPEAT AND CONFLICT

Five jurisdictions have local rules stating that a stipulation can be signed by a party or a party's agent or attorney. S.D.Fla. LAR6; N.D.Fla. LAR8; M.D.Fla. LR7.05(d); S.D.Ga. LAR6; E.D.N.C. LR86.00. The portion of these rules permitting a party's attorney to sign a stipulation repeats Supplemental Rule E(5)(c) and is, therefore, unnecessary. The portion of these rules permitting an agent to sign a stipulation is inconsistent with Supplemental Rule E(5)(c) which only allows signing of a stipulation "by the party ... or the party's attorney...." Fed. R. Civ. P. Supp.R. E(5)(c).

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

RULES THAT REPEAT

Five jurisdictions have local rules that simply repeat the provision of Supplemental Rule E(5)(d), stating that subsection (5) does not apply to petitory, possessory, and partition actions and that the court must order release of the property in those cases. *E.g.*, S.D.Ga. LAR11(A); E.D.Mo. LAR9(C). These rules are unnecessary.

6. *Reduction or Impairment of Security.*

Seven jurisdictions have local rules that should be rescinded because they either repeat or conflict with Supplemental Rule E(6).

RULES THAT REPEAT

Four jurisdictions have local rules that repeat, almost verbatim, that the court may increase or decrease the amount of security taken, upon motion and for good cause. M.D. Fla. LR7.05(e)(4), 7.05(j); S.D.Fla. LAR5(D); S.D.Ga. LAR5(C); E.D.Mo. LAR6(C). These rules are unnecessary.

RULES THAT EITHER REPEAT OR CONFLICT

Two jurisdictions have local rules that also repeat Supplemental Rule E(6) but with modifications. N.D.Fla. LAR15(B); N.D. Ohio LAR 2.03. The rule in the Northern District of Florida only refers to the court's ability to reduce the amount of security. N.D.Fla. LAR15(B)(2). It does not state that an interested party may seek an increase in the security. The local rule in the Northern District of Ohio, on the other hand, only permits an interested party to move for "greater or better security" and not for any reduction in the security. N.D. Ohio LAR 2.03. These local rules each repeat Supplemental Rule E(6) and, to this extent, are unnecessary.

These rules may also be inconsistent with Supplemental Rule E(6). The rule in the Northern District of Florida, which only states that a party may seek a reduction in security, may mean that no motion for an increase in security can be made. If so, such a rule conflicts with Supplemental Rule E(6). The local rule in the Northern District of Ohio provides that a motion to increase security will be granted "on special cause shown." N.D. Ohio LAR 2.03. To the extent this phrase is equivalent to the "good cause" requirement of Supplemental Rule E(6), the local rule repeats the Supplemental Rule. To the extent, however, that this local rule sets a different and seemingly higher standard for determining the outcome of a motion, it is inconsistent with Supplemental Rule E(6).

A RULE THAT CONFLICTS

The local rule in the eastern District of North Carolina provides that an order increasing or decreasing security may be entered by the court "on its own motion, with or without notice." E.D.N.C. LR85.00(c). Permitting an order to issue without notice conflicts with Supplemental Rule E(6) which states that there must be a motion and hearing. Fed. R. Civ. P. Supp. R. E(6).

7. *Security on Counterclaim*

8. *Restricted Appearance*

One jurisdiction has a local rule that repeats, almost verbatim, Supplemental Rule E(8) concerning a restricted appearance. N.D. Fla. LAR15(A). This rule is simply unnecessary.

9. *Disposition of Property; Sales*

Thirty-four jurisdictions have local rules augmenting Supplemental Rule E(9). The regulation of sales seems quite dependent on local custom, the

number of such sales, and, perhaps, physical size of the district. Accordingly, all of these rules should remain subject to local variation.

Subsection (9) has three broad requirements. The first portion of the rule states that forfeiture proceedings are not covered by this Rule. Fed. R. Civ. P. Supp.R. E(9)(a). There are no local rules addressing this topic. The second portion of the Rule permits an interlocutory sale when certain criteria are satisfied. *Id.* at (9)(b). There are only four jurisdictions with local rules specifically discussing such sales. The third portion of the rule briefly states who shall make a sale and where the proceeds are paid. *Id.* (9)(c). All of the jurisdictions have local rules covering this situation.

RULES SUBJECT TO LOCAL VARIATION

The local rules addressing sales, generally, discuss a variety of topics. Many of these districts, however, have rules that cover three subjects. Thirty-one of the jurisdictions have local rules requiring that notice by publication be provided prior to a judicial sale. *E.g.*, S.D.Ala. ALR9; S.D.Miss. LR20(j); E.D.Pa. LAR8. The form of such publication varies. *E.g.*, E.D.Wis. LR22.08 (at least once at least seven days before sale and another publication at least three days before sale); W.D.Wash. LAR145(a) (daily for six days before sale); S.D.Tex. LR18(A) (at least four times between three and thirty-one days before sale). Many of these rules have provisions allowing the court to make an order concerning publication different from that set forth in the local rules. *E.g.*, E.D.N.C. LR94.00(a) ("Unless otherwise ordered upon a showing of urgency"); E.D.Pa. LAR8 ("unless otherwise ordered by the Court").

Twenty-four of the jurisdictions have local rules that address the confirmation of the sale and the circumstances under which a person can object to the sale before confirmation. *E.g.*, E.D.La. LR25.10; E.D.Pa. LAR10;

N.D.Ill. LAR15. These rules provide a time limit within which an objection must be filed and, then, state that, in the absence of such an objection, confirmation will occur. The time limits vary, but they are generally short. The time limits for filing an objection range from "two court days following the sale" (E.D.Va. LAR(e)(15)) to "10 days after the sale, excluding Saturdays, Sundays, and Holidays" (D.Alaska LAR11(H)(1)), with the usual time set at three days, sometimes excluding Saturdays, Sundays, and holidays (e.g., C.D.Cal. LRE(14)(c); W.D.La. LR25.10; E.D.Mo. LAR10).

Eleven jurisdictions have local rules concerning claims made after the sale. E.g., N.D.Fla. LAR18; N.D.Ohio LAR4.02; N.D.N.Y. LAR15. These rules provide that claims after sale shall not be admitted "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." E.D.N.C. LR99.00; *see also*, N.D.Ill. LAR16; S.D.Ga. LAR15.

Four jurisdictions have local rules specifically referring to interlocutory sales. E.D.Mo. LAR3(F); E.D.N.Y. LAR3(d); S.D.N.Y. LAR3(d); N.D.N.Y. LAR3(d). These rules require that, before an interlocutory sale is ordered, "the sum chargeable thereon [shall be]... fixed by the court, except by consent of the parties or by order of the court." S.D.N.Y. LAR3(d); E.D.N.Y. LAR3(d).

10. *Intervention and Joinder*

Seventeen jurisdictions have local rules concerning the circumstances under which a person may intervene or join in an admiralty proceeding. Rules in sixteen of these jurisdictions either repeat or conflict with existing law. In addition, rules in two of the districts repeat several Federal Rules. These rules should be rescinded.

RULES THAT CONFLICT OR REPEAT

Fifteen of these districts require that intervention be used in certain circumstances:

Anyone asserting a maritime lien or writ of foreign attachment against the vessel or property may proceed only by intervention, unless otherwise ordered by the Court. S.D.Ala. ALR8(A).

See also E.D.Cal. LR522; E.D.Va. LAR(e)(13). The rule in the other district states that a person asserting a lien "may upon motion to the court, with notice to counsel of record, be permitted to intervene." E.D.Pa. LAR7(A). This rule may be interpreted to permit a person to elect to proceed by intervention or to institute an independent action; it may also be interpreted to require intervention, and simply repeat the court's authority to allow the intervention.

Some of the rules describe in detail other aspects of intervention. For example, sixteen of the districts have rules that require that an intervenor share costs with the other parties. *E.g.*, W.D.Pa. LAR(e)(10); D.N.J. LAR(e)(10); D.Md. LAR(e)(9). Seven of the rules state that there is no need to re-arrest or re-attach the vessel when intervening. *E.g.*, D.Haw. LR604-12; S.D.Ga. LAR9; S.D.Ala. ALR8. Five of the rules mandate that the intervenor "serve a copy of the complaint in intervention upon all counsel of record." S.D.Ala. ALR8(A); *see also* N.D.Miss. LR20(i). Lastly, five of the rules state that release of the seizure by the original party does not release the seizure as to remaining claims by intervenors. *E.g.*, E.D.Pa. LAR7; S.D.Miss. LR20(i); E.D.Cal. LR522.

The Supplemental Rules are silent with respect to the use of intervention. Other Federal Rules, however, discuss intervention. Rule 24 of the Federal Rules of Civil Procedure sets forth the procedure for a person to intervene, both when that person has a right to intervene (Fed. R. Civ. P.

24(a)), and when that person may be permitted to intervene (*Id.* at (b)). This Rule does not compel intervention. The other Federal Rules concerning joinder of claims, remedies, and parties also do not require the use of intervention. For example, Rule 18(a) gives authority to the party to decide what claims that party would like to join. Fed. R. Civ. P. 18(a). This Rule does not allow the court to compel joinder. *Id.* Rule 19(a) gives the court authority to order that a person be joined as a party but only if it will not defeat jurisdiction and only if

(1) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may (i) as a practical matter impair or impede the person's ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest. If the person has not been so joined, the court shall order that the person be made a party.... If the joined party objects to venue and joinder of that party would render the venue of the action improper, that party shall be dismissed from the action. Fed. R. Civ. P. 19(a).

This Rule allows for the possibility that joinder may not be feasible in all circumstances. *Id.* Rule 20(a) also permits, but does not require, joinder of parties in certain relevant circumstances:

All persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all these persons will arise in the action. All persons (and any vessel, cargo or other property subject to admiralty process in rem) may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all defendants will arise in the action. Fed. R. Civ. P. 20(a).

In addition, Rule 42(a) allows the court to consolidate actions when they involve "a common question of law or fact." Fed. R. Civ. P. 42(a).

To the extent the local rules in the sixteen districts simply permit the court to join claims or parties in the same action, they repeat existing Federal Rules and are unnecessary. To the extent, however, that these rules require the use of intervention when, in fact, the person has other options under existing law, they are inconsistent and should be rescinded.

RULES THAT REPEAT

Two jurisdictions have local rules concerning joinder that repeat the Federal Rules on joinder and should be rescinded. E.D.Mo. LAR7; E.D.Pa. LAR11,12.

F. Limitation of Liability

Thirty-two jurisdictions have local rules concerning the procedure used by a ship owner to limit liability, pursuant to Supplemental Rule F. Fed. R. Civ. P. Supp.R. F. Supplemental Rule F contains nine subsections. The local rules address five of these nine subjects and are numbered according to the applicable Supplemental Rule subsections. In addition, there are local rules relating to limitation of liability proceedings which do not fall within one of the stated subsections; these local rules are discussed in this material under topic "10". Each of these local rule topics will be addressed individually in the following discussion.

1. Time for Filing Complaint; Security

RULES SUBJECT TO LOCAL VARIATION

Twenty-three jurisdictions have local rules concerning security for costs. *E.g.*, E.D.Mo. LAR5(A); E.D.Wis. LR22.05; S.D.Cal. LR315. These rules should remain subject to local variation.

The amount required by the court to be deposited as security for costs varies among the jurisdictions. Eight jurisdictions have local rules requiring that \$500.00 be posted as security. D.Alaska LAR6(B); E.D.Cal. LR520(b); S.D.Cal. LR315; N.D.Fla. LAR7; S.D.Fla. LAR5(A); D.Or. LR1020-2; E.D.Wash. LAR120(b); W.D.Wash. LAR120(b). Four jurisdictions have local rules requiring that \$1,000.00 be posted as security. N.D.Cal. LR615-1; C.D.Cal. LRF.1; D.Md. LAR(f); E.D.Va. LAR(f)(1). Two jurisdictions require a \$250.00 security. D.N.J. LAR(f); N.D.Ill. LAR7. The other nine districts provide that a stipulation for costs may be filed instead of posting the security. They provide that a stipulation in the sum of \$250.00 be given, "conditioned that the principal shall pay all costs and expenses awarded against him...." S.D.Ga. LAR5(A); *see also* E.D.Mo. LAR5(A); E.D.N.Y. LAR6; S.D.N.Y. LAR6. Most of these jurisdictions permit the filing of security in the actual amount in lieu of posting a stipulation.

The prior Rules of Practice in Admiralty and Maritime Cases, which were rescinded, effective July 1, 1966, contained Rule 24 entitled "Stipulation for Costs" which essentially permitted the court to require a litigant to provide security. Admiralty Rules of 1920, Rule 24, rescinded by Order of February 28, 1966, Fed.R.Civ.P. Such a rule simply restates the district court's inherent power to require security for costs in a particular case. *Hawes v. Club Ecuestre El Comandante*, 535 F.2d 140, 143 (1st Cir. 1976), *citing McClure v. Borne Co.*, 292 F.2d 824, 835 (3rd Cir. 1961). It follows, then, that these local rules are within the district court rulemaking power.

Most of the jurisdictions, with local rules permitting the filing of stipulations, also have local rules setting out the form of such a stipulation. S.D.Ga. LAR6; E.D.N.Y. LAR7; S.D.N.Y. LAR7; W.D.Pa. LAR(f)(1). These rules should remain subject to local variation, consistent with the court's discretion generally with respect to security.

Three jurisdictions have local rules that specifically permit a party to ask the court to increase or decrease the amount of the security for costs. D.Alaska LAR6(D); E.D.Wash. LAR120(d); W.D.Wash. LAR120(d). Again, these local rules are an appropriate exercise of district court rulemaking.

2. *Complaint*

RULES THAT CONFLICT

Three jurisdictions have local rules discussing the verification of pleadings and claims which, to the extent they refer to Supplemental Rule F proceedings to limit liability, either conflict with or repeat existing law. S.D.Ala. ALR6; N.D.Miss. LR20(g); S.D.Miss. LR20(g). Accordingly, these rules should be rescinded.

These jurisdictions have local rules requiring that "[e]very complaint and claim under the Admiralty Supplemental Rules ... be verified on oath or affirmation by a party or an officer of a corporate party." S.D.Ala. ALR6; *see also* N.D.Miss. LR20(g); S.D.Miss. LR20(g). To the extent that these local rules refer to a verification requirement for complaints seeking to limit liability, they are inconsistent with existing law.

Verification is the signing of a complaint under the pains and penalties of perjury. *See* 28 U.S.C. §1746. Complaints typically do not need to be verified. *See* Fed.R.Civ.P. 11; *see also* Fed. R. Civ. P. Supp.R. A, making the Federal Rules of Civil Procedure applicable to admiralty and maritime claims to the extent they are not inconsistent with the Supplemental Rules. Rule 11 states that "[e]xcept when otherwise specifically provided by rule or statute," pleadings need not be verified or accompanied by affidavit. Fed.R.Civ.P. 11. The phrase "rule or statute" contained in Rule 11 refers to the Federal Rules of Civil Procedure and federal statutes since, when the Advisory Committee has

intended to refer to local district court rules, it has used the phrase, "district court rule" or "local rule." *E.g.*, Rule 16(b) ("Except in categories of actions exempted by district court rule as inappropriate..."); Rule 73(a) ("When specially designated to exercise such jurisdiction by local rule or order of the district court..."); Rule 74(d) ("For failure to comply with these rules or any local rule or order..."). Further, when the Advisory Committee has intended to refer to state law, it has defined the source of law so that it clearly refers to state law. *E.g.*, Rule 17(b) ("The capacity of an individual, other than one acting in a representative capacity, to sue or be sued shall be determined by the law of the individual's domicile."); Rule 4(e) ("Whenever a statute or rule of court of the state in which the district court is held...").

Rule 11 provides that, if a paper is signed in violation of Rule 11, the court may impose sanctions. Fed.R.Civ.P. 11. A verification requirement allows for more severe penalties; false verification may result in a punishment for a criminal misdemeanor. Therefore, a verification requirement can have a chilling effect on a litigant's inclination to bring suit.

Rule 11 recognizes that there are times when verification is appropriate and those situations are "specifically provided by rule or statute." Fed.R.Civ.P. 11. Several other Federal Rules require verification. *E.g.*, Fed.R.Civ.P. 23.1, 27(a)(1), 65(b). The habeas corpus provisions also require verification of petitions and motions. *See* 28 U.S.C. §§2254, 2255 and rules promulgated thereunder.

Supplemental Rule F(2) sets out the form of any complaint to limit liability. Fed. R. Civ. P. Supp.R. F(2). Yet, it does not require that such a complaint be verified. *Id.* This is in contrast to Supplemental Rules B and C concerning attachment and garnishment and actions in rem, respectively.

Fed. R. Civ. P. Supp.R. B(1), C(2). Both of these Rules require that the complaint be verified. *Id.*

In addition, there is no apparent need to require verification as there may be in a Supplemental Rule B or C proceeding. In either of these proceedings, the action is commenced and the res is attached or arrested without necessarily any notice by the plaintiff to the vessel owner. *See* Fed. R. Civ. P. Supp.R. B, C. The attachment or arrest can be undertaken unilaterally. Verification, then, may be an additional assurance by the arresting or attaching party that the procedure is warranted. In a limitation of liability proceeding, however, the parties already have notice: the vessel owner, seeking the limitation, has notice of the claim which has been provided by a complaint brought against the vessel owner or by a written claim. There seems little reason to require verification of the complaint in this situation.

3. *Claims Against Owner: Injunction*

4. *Notice to Claimants*

Thirteen jurisdictions have local rules relating to Supplemental Rule F(4). These local rules address essentially three subjects: (1) The newspaper used for publication of a notice to the claimants; (2) The need for publication; and, (3) The form for any proof of publication. A brief discussion of the local rules follows.

RULES SUBJECT TO LOCAL VARIATION

Supplemental Rule F(4) requires that notice to claimants be published in a "newspaper or newspapers as the court may direct once a week for four successive weeks prior to the date fixed for the filing of claims." Fed. R. Civ. P. Supp.R. F(4). All of the jurisdictions have local rules explaining what

newspaper can be used to satisfy this requirement. *E.g.*, M.D.Fla. LR7.01(g); S.D.Ga. LAR3(E); D.Or. LR1050-1. The definition of the appropriate newspaper varies. For example, some districts provide a general description. *E.g.*, S.D.Fla. LAR3(E) ("in any one newspaper of general circulation within the county in which the complaint is filed"); D.Or. LR1050-1 ("a newspaper of general circulation in this district unless a judge directs otherwise"). Other jurisdictions specifically define the newspaper that must be used. *E.g.*, E.D.N.C. LR84(e) (sets out different newspapers for use in particular divisions of the district); E.D.Wash. LAR150 (directs that notices be published in a specifically named periodical). These local rules are an appropriate exercise of district court rulemaking and should, therefore, remain subject to local variation.

A RULE THAT REPEATS

One jurisdiction has a local rule that reiterates that Supplemental Rule F(4) applies in limitation of liability proceedings. M.D.Fla. LR7.06(a) ("plaintiff shall, without further order of court, effect publication of the notice in accordance with the provisions set forth in Supplemental Rule (F)(4)..."). This rule is simple unnecessary.

RULES THAT CONFLICT

Four jurisdictions have local admiralty rules requiring that proof of publication of the notice be submitted to the court. M.D.Fla. LR7.06(b); S.D.Fla. LAR3(F); S.D.Ga. LAR3(F); E.D.N.C. LR84(f). These rules require that the plaintiff or intervenor file "sworn proof of publication by or on behalf of the publisher or the editor in charge of legal notices of the newspaper in which published, together with the copy of the proof of publication, or publication or reproduction thereof." S.D.Ga. LAR3(F). These local rules are inconsistent

with the procedures as they currently exist in the Supplemental Rules and other Federal Rules of Civil Procedure and should, therefore, be rescinded.

Supplemental Rule F(4) requires that notice to the claimants be published "in such newspaper or newspapers as the court may direct" and that the plaintiff mail "a copy of the notice to every person known to have made any claim." Fed. R. Civ. P. Supp.R. F(4). It is silent concerning proof of publication. *Id. See also* Admiralty Rules of 1920, Rule 51, which contains the same notice provision, almost verbatim, and, similarly, does not require any proof of notice.

In other instances in both the Federal Rules of Civil Procedure and two of its Supplemental Rules, the Advisory Committee on Civil Rules has required that a party perform a particular task and, in addition, prove that the task has been completed. For example, Supplemental Rule B states that a default judgment will not enter

except upon proof, which may be by affidavit, (a) that the plaintiff or the garnishee has given notice of the action to the defendant ... or (b) that the complaint ... [has] been served on the defendant in a manner authorized by Rule 4(d) or (i), or (c) that the plaintiff or the garnishee has made diligent efforts to give notice of the action to the defendant and has been unable to do so.

Fed. R. Civ. P. Supp.R. B(2).

See also Fed. R. Civ. P. Supp.R. D, concerning possessory, petitory, and partition actions, which requires "notice in the manner provided by Rule B(2)". Rule 4 of the Federal Rules of Civil Procedure requires proof of service.

Fed.R.Civ.P. 4(g). It does not, however, set out the form of such return. *Id.* In addition, it specifically states that a "[f]ailure to make proof of service does not affect the validity of service." *Id.* Lastly, Rule 30 of the Federal Rules of Civil Procedure concerning depositions states that "[t]he officer shall certify on the

deposition that the witness was duly sworn by the officer and that the deposition is a true record of the testimony given." Fed.R.Civ.P. 30(f).

If the Advisory Committee had intended to insert a provision requiring proof of publication into Supplemental Rule F(4), it could easily have done so. Yet, Supplemental Rule F(4) is silent on this subject. The Advisory Committee Notes on the issue of proof, in the context of Supplemental Rule B(2), are a persuasive indication that the Advisory Committee rejected any proof of publication procedure for Supplemental Rule F(4). While inserting the proof of notice provision in Supplemental Rule B(2), the Advisory Committee was aware of the potential burden on the plaintiff of such a proof requirement:

In attachment and garnishment proceedings the persons whose interests will be affected by the judgment are identified by the complaint. No substantial burden is imposed on the plaintiff by a simple requirement that he notify the defendant of the action by mail The rule therefore provides only that no default judgement shall be entered except upon proof of notice or of inability to give notice despite diligent efforts to do so. Thus the burden of giving notice is further minimized.

Fed. R. Civ. P. Supp.R. 2 Advisory Committee Notes.

Lastly, such a procedure is probably not necessary since, if the court discovers that there is a failure to give proper notice to the claimants, the court has the power to order that new or additional notice be given. *Petition of Canada S.S. Lines, Ltd.*, 93 F.Supp. 549, 553 (N.D.Ohio, 1950). Although such a method may, at first blush, encourage the use of a defective procedure when the petitioner wants delay, the assessment of additional costs or other sanction by the court has been recognized as sufficient to prevent such abuse. *Id.*, at 544. Since only four jurisdictions have such a directive, it is likely that the other districts are able to avoid problems with the existing sanctions.

5. Claims and Answer

Three jurisdictions have local rules that, to the extent they relate to Supplemental Rule F proceedings, should be rescinded. S.D.Fla. LAR9(A), 2(C); E.D.N.C. LR81.00(c); S.D.Ga. LAR2(C).

A RULE THAT REPEATS

One jurisdiction has a local rule that reiterates that answers and motions in Supplemental Rule F actions be filed in conformity therewith. S.D.Fla. LAR9(A). This rule is simply unnecessary.

RULES THAT CONFLICT

The three jurisdictions have local rules that, to the extent they apply to Supplemental Rule F, are inconsistent with it. S.D.Fla. LAR2(C); E.D.N.C. LR81.00(c); S.D.Ga. LAR2(C). These rules set forth a return date for in personam actions. It is unclear exactly the types of actions these local rules impact. They state that the return date shall be twenty days "except process within the contemplation of Supplemental Rule B, F.R.Civ.P. which shall be in conformity therewith." E.D.N.C. LR81.00(c). Therefore, these rules do not apply to Supplemental Rule B attachments and garnishments. These jurisdictions also have other local rules providing for a different return date for actions "within the scope of Supplemental Rules C and D." S.D.Fla. LAR2(B); S.D.Ga. LAR2(B); E.D.N.C. 81.00(b). Accordingly, the jurisdictions must intend that these local rules apply to limitation of liability actions pursuant to Supplemental Rule F.

These rules conflict with the intent of the Supplemental Rules that there be no return dates. For example, Supplemental Rule C provides that the claim be filed "within 10 days after process has been executed..." and that the answer be served "within 20 days after the filing of the claim." Fed. R. Civ. P.

Supp.R. C(6). In addition, the Supplemental Rules were purposefully written to exclude any reference to return days. The Advisory Committee Notes relating to Supplemental Rule C read, in relevant part:

Adherence to the practice of return days seems unsatisfactory. The practice varies significantly from district to district. A uniform rule should be provided so that any claimant or defendant can readily determine when he is required to file or serve a claim or answer.

A virtue of the return-day practice is that it requires claimants to come forward and identify themselves at an early state of the proceedings—before they could fairly be required to answer. The draft is designed to reserve this feature of the present practice by requiring early filing of the claim.
Fed. R. Civ. P. Supp.R. C(6) Advisory Committee Notes.

Return dates in Supplemental Rule B were also abolished by the Advisory Committee:

The rule proceeds on the assumption that uniform and definite periods of time for responsive pleadings should be substituted for return days (see the discussion under Rule C(6), below). Twenty days seems sufficient time for the garnishee to answer (cf. FRCP 12(a)), and an additional 10 days should suffice for the defendant.
Fed. R. Civ. P. Supp.R. B(3) Advisory Committee Notes.

In the absence of a controlling directive in the Supplemental Rules on the use of a return day in a limitation of liability action, the Federal Rules of Civil Procedure are applicable and they, also, make no reference to return days. *See generally*, Fed. R. Civ. P. Supp.R. A.

6. *Information to Be Given Claimants*

7. *Insufficiency of Fund or Security*

Twenty-three jurisdictions have local rules discussing the use of an appraiser to determine the value of funds or security deposited by the plaintiff in a limitation of liability action. *E.g.*, M.D.Fla. LR7.06; D.Or. LR1040-1; E.D.N.C. LR93. Supplemental Rule F(7), referring to the insufficiency of any funds or

security to satisfy a claimant, provides that an appraiser may be used to assess the value of the plaintiff's interest. Fed. R. Civ. P. Supp.R. F(7). In addition, an appraiser may be needed in similar circumstances arising under Supplemental Rules B, C, and D. *See e.g.*, Fed. R. Civ. P. Supp.R. E(5)(a). Accordingly, an analogous discussion of appraisers is set forth in "E(5)(a). Release of Property," *supra*. The Local Rules Project has suggested two Model Local Rules for the jurisdictions to consider adopting if they choose to have a directive on the subject of appraisers. The two rules are identical, but are found in two places in the local rules: one under Supplemental Rule E(5) and one under Supplemental Rule F(7).

MODEL LOCAL RULE

The local rules from these twenty-three jurisdictions apply to various proceedings brought under the Supplemental Rules. For example, two jurisdictions specifically state that their local rules are applicable only to appraisals pursuant to Supplemental Rule F(7). M.D.Fla. LR7.06(c); N.D. Ohio LAR5.02. Rules in at least two of the jurisdictions apply to an "[o]rder for appraisement of property under arrest or attachment, or of plaintiff's interest in the vessel and pending freight under Supplemental Rule F(7)." S.D.Fla. LAR10; *see also* S.D.Ga. LAR10(A). The remaining jurisdictions have local rules that appear to be applicable to limitation of liability actions, although they do not specifically mention Supplemental Rule F. *E.g.*, D.Or. LR1040-1 ("An order for appraisal of property so security can be given"); N.D.Fla. LAR12 ("An order for appraisement of property under arrest or attachment"); E.D.Mo. LAR8(B) ("Orders for the appraisement of property under arrest").

The Local Rules Project has suggested that those jurisdictions interested in regulating appraisers and appraisals in limitation of liability proceedings consider adopting the following Model Local Rule:

Model Local Rule F(7).1

Appraisal.

An order for appraisal of property so that security can be given will be entered by the clerk at the request of any interested party. If the parties do not agree in writing upon an appraiser, the court 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 day's notice of the time and place of making the appraisal to the attorneys who have appeared in the action. The appraiser shall file the appraisal with the clerk as soon as it is completed and shall serve it on all parties. 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.

DISCUSSION

The local rules in the twenty-two jurisdictions are quite similar. The Model Local Rule is taken, in large measure, from the local rules in the District of Alaska and the Eastern District of North Carolina. D.Alaska LAR10(A); E.D.N.C. LR93.00. Such a Model Local Rule is preferable to minor variations among the districts which may be confusing to practitioners. This directive is

suggested as a Model Local Rule, rather than an amendment to the Supplemental Rules, because it outlines procedures commonly regulated by the individual courts.

The first sentence of the rule simply permits an appraisal at the request of an interested party. All of the twenty-two districts have such a provision. *E.g.*, S.D.N.Y. LAR11; E.D.Wash. LAR140(a).

The next sentence provides that the court will appoint an appraiser if the parties cannot agree on who it will be. Nineteen of the jurisdictions have similar rules. *E.g.*, E.D.Mo. LAR8; E.D.Cal. LR560.

The third sentence requires that the appraiser be sworn to the impartial charge of the appraiser's duties. Seventeen of the districts have this requirement. *E.g.*, W.D.Pa. LAR(e)(8); D.Haw. LR604-10.

The fourth sentence requires that the appraiser give one day's notice of the time and place of the appraisal. Eighteen of the districts have a similar notice provision. *E.g.*, N.D.Ill. LAR11; S.D.Cal. LR310-3. The rule in the Northern District of Ohio varies from the other directives by requiring that three days notice be given. N.D.Ohio LAR2.04.

The next sentence requires that the appraiser file the appraisal with the clerk and serve it on all parties. All of the jurisdictions have rules requiring, at a minimum, that the appraiser file the appraisal (*e.g.*, D.Alaska LAR10(a); S.D.Cal. LR310-3), while some of these districts have directives requiring that the appraisal also be served on the parties (*e.g.*, E.D.N.C. LR93.00; C.D.Cal. LRE(10)). The Model Local Rule has included the service requirement in an effort to minimize the clerk's responsibility and cost in this matter.

The last two sentences of the Model Local Rule provide that the appraisal fees are paid by the party requesting the appraisal and taxable as

costs. Only ten of the jurisdictions have such a provision. *E.g.*, S.D.Fla. LAR10; E.D.Va. LAR(e)(11).

8. *Objections to Claims; Distribution of Fund*

9. *Venue; Transfer*

10. *Order of Proof at Trial*

RULES SUBJECT TO LOCAL VARIATION

Five jurisdictions have local rules providing for the order of proof at trial in limitation of liability actions. C.D.Cal. LRF(2); N.D.Cal. LR615-2; E.D.Pa. LAR13; W.D.Pa. LAR(f)(2); E.D.Va. LAR(F)(2). Each of these rules states that, when a limitation of liability issued is raised by "answer or complaint, the plaintiff in the former or the damage claimant in the latter shall proceed with its proof first, as is normal at civil trials." C.D.Cal. LRF(2). These rules should remain subject to local variation since they are an appropriate exercise of district court discretion and since they may alleviate confusion as to the order of trial in Supplemental Rule F proceedings. *See generally* Fed. R. Evid. 611.

G. *Miscellaneous*

1. *Rate of Prejudgment Interest*

RULES THAT REPEAT OR CONFLICT

Eight jurisdictions have local rules setting forth a rate of prejudgment interest. One of the districts has a rule providing for a 6 per cent rate of interest "unless otherwise provided by law or otherwise specified." E.D.Mo. LAR12(C). The other seven districts have directives requiring that interest be calculated according to 28 U.S.C. §1961, unless the court directs

otherwise (*e.g.*, E.D.Wash. LAR155), or unless the court or a statute directs otherwise (*e.g.*, N.D.Cal. LR620-2). Section 1961 of Title 28 provides a method for calculating interest "on any money judgment in a civil case recovered in a district court." 28 U.S.C. §1961(a). To the extent the local rules refer to the procedure in Section 1961 to calculate the interest, they repeat that Section. To the extent, however, that these rules allow a court to direct any amount of interest or method for calculating the interest, they are inconsistent with Section 1961.

2. *Deserting Seamen*

RULES THAT REPEAT AND CONFLICT

Three jurisdictions have local rules concerning the method of service and the time to plead in cases involving deserting seamen. N.D.Cal. LR620-1; S.D.Cal. LR320; C.D.Cal. LRG(1). These rules require service upon the United States Attorney, with a copy to the Attorney General of the United States, and a twenty-day time period within which the United States Attorney must file a responsive pleading. *Id.* The method of service outlined in these rules repeats Rule 4(d)(4) of the Federal Rules of Civil Procedure. Fed. R. Civ. P. 4(d)(4). To the extent these rules do not permit service upon "an assistant United States attorney or clerical employee designated by the United States attorney..." as permitted by Rule 4(d)(4), they are also inconsistent with that Federal Rule. Fed. R. Civ. P. 4(d)(4). The requirement of a twenty-day time period within which the United States must file its response is inconsistent with Rule 12(a) of the Federal Rules of Civil Procedure which allows the United States sixty days within which to answer. *See* Fed. R. Civ. P. 12(a).

The rule in the Southern District of California is inconsistent with existing law by referring to the relevant statute as "the provisions of 46 USC

Section 706." S.D.Cal. LR320. Section 706 was repealed August 26, 1983 (*see* Pub.L. 98-89, §4(b), 97 Stat. 600); the operative statute is now set forth at 46 U.S.C. §11505 (*see* Pub.L. 98-89, 97 Stat. 584 (August 26, 1983)).

3. *Taxation of Costs*

Nine jurisdictions have local rules setting forth examples of those items which may be taxed as costs upon completion of an admiralty proceeding. Rules in eight of these jurisdictions should remain subject to local variation. In addition, the Advisory Committee may want to consider incorporating the substance of some of these rules in Supplemental Rule E to promote uniformity among the jurisdictions. Lastly, one local rule repeats Rule 54(d) of the Federal Rules of Civil Procedure and should be rescinded.

RULES SUBJECT TO LOCAL VARIATION

Eight of the nine jurisdictions provide that taxable costs include any premiums paid on bonds and stipulations. *E.g.*, N.D.Fla. LAR19; E.D.N.C. LR96.00; S.D.Ga. LAR12. Six of the jurisdictions provide, also, that wharfage or other storages charges be taxed as costs. *E.g.*, N.D.Miss. LR20(m); S.D.Miss. LR20(m); M.D.Fla. LR7.05(o). Three of these jurisdictions allow the costs for the publication of any notices to be assessed, as well as other reasonable expenses. S.D.Ala. ALR12; N.D.Miss. LR20(m); S.D.Miss. LR20(m).

Section 1925 of Title 28, enacted in 1948, explains how costs have been taxed in an admiralty case:

Except as otherwise provided by Act of Congress, the allowance and taxation of costs in admiralty and maritime cases shall be prescribed by rules promulgated by the Supreme Court.
28 U.S.C. §1925.

Section 2073 of Title 28, also enacted in 1948 but repealed in 1966, empowered the Supreme Court to make rules governing admiralty cases. *See* Act of June

25, 1948, Ch. 646, §2073, 62 Stat. 961 *repealed by* Pub.L. 89-773, §2, 80 Stat. 1323 (Nov. 6, 1966). Section 1925 is still in existence. It was not amended in light of the unification of the admiralty and civil rules in 1966, the repeal of Section 2073 in 1966, or the 1988 amendments to the rulemaking process. *See generally*, Judicial Improvements and Access to Justice Act, Title IV, 102 Stat. 4649 (Nov. 18, 1988) (codified as amended at 28 U.S.C. §§2071-2077 (1988) (hereinafter Rules Enabling Act)).

Because of the unification of admiralty and civil rules and the repeal of Section 2073, both in 1966, and because of the recently enacted Rules Enabling Act, Section 1925 does not have much particular force. It merely permits the Supreme Court to propose rule changes in admiralty cases when Congress has not already acted. This permission, however, is already granted to the Court through the Rules Enabling Act which also provides that, "[e]xcept as otherwise provided by Act of Congress," the Supreme Court may make rules. *See* 28 U.S.C. §§2072-2074.

Both Section 1925 and the Rules Enabling Act preclude Supreme Court rulemaking if Congress has already acted. Congress has acted with respect to the Federal Rules of Civil Procedure. Rule 54(d) of the Federal Rules provides that, unless otherwise stated in a statute or other Federal Rule, "costs shall be allowed as of course to the prevailing party unless the court otherwise directs." Fed. R. Civ. P. 54(d). The local rules in the eight jurisdictions are appropriate supplements to this Federal Rule by explaining what costs are taxable in the admiralty context.

TOPICS FOR ADVISORY COMMITTEE REVIEW

The eight local rules discussed above, list some types of costs which may be taxable in admiralty cases. Because a statute specifically exists

concerning the allowance and taxation of costs in admiralty and maritime cases and because this statute has not been amended in spite of other recent amendments, some clarification of existing law may be helpful. The Advisory Committee, for example, may want to consider amending Supplemental Rule E to add a provision explaining the types of costs recoverable by a prevailing party. In the alternative, Congress may choose to amend Section 1925 of Title 28 by either deleting the provision or by amending it to refer to the existing rulemaking process.

A RULE THAT REPEATS

The local rule in the Eastern District of Pennsylvania provides that discovery costs may be taxed as provided by law. E.D.Pa. LAR14. This rule simply repeats the applicability of Rule 54(d) and is, therefore, unnecessary. *See* Fed. R. Civ. P. 54(d).

4. *Assignment of Actions*

RULES SUBJECT TO LOCAL VARIATION

Two jurisdictions have local rules that provide that, if the assigned judge is unavailable in certain emergency situations, another "judicial officer in the district" may hear the case without reassignment. N.D.Cal. LR620-3; *see also* C.D.Cal. LRG(3). Assignment of cases is a matter traditionally determined on a local basis.

5. *Stay of Execution*

Four jurisdictions have local rules addressing, in some manner, Rule 62 of the Federal Rules of Civil Procedure concerning stays of proceedings.

RULES THAT REPEAT

All of these districts have directives that repeat Rule 62(a) of the Federal Rules of Civil Procedure, that execution shall not issue upon a judgment "until the expiration of 10 days after its entry." Fed. R. Civ. P. 62(a); *see* S.D.Fla. LAR14; M.D.Fla. LR7.05(p); S.D.Ga. LAR13; E.D.N.C. LR93.00.

A RULE THAT CONFLICTS

The local rule in the Southern District of Florida repeats that execution will not issue until ten days after entry of judgment "or such time as is designated by Court order." S.D.Fla. LAR14. This provision conflicts with Rule 62(a), which requires that execution be delayed for ten days "[e]xcept as stated herein." *See* Fed. R. Civ. P. 62(a).

RULES SUBJECT TO LOCAL VARIATION

Three jurisdictions have local rules that supplement Rule 62(b) which provides that a stay may be extended in the court's discretion "and on such conditions for the security of the adverse party as are proper." Fed. R. Civ. P. 62(b); *see* M.D.Fla. LR7.05(p); S.D.Ga. LAR13; E.D.N.C. LR93.00. These local rules provide for an extension of a stay for thirty days

to permit the court to consider an application for the establishment of a supersedeas bond, and to order the date upon which the bond shall be filed with the court.
M.D.Fla. LR7.05(p).

Such a rule is an appropriate "condition" pursuant to Rule 62(b).

6. *Dismissal*

Five jurisdictions have local rules concerning the dismissal of admiralty actions, as already regulated, in part, by Rule 41 of the Federal Rules of Civil Procedure.

RULES SUBJECT TO LOCAL VARIATION

Two of the jurisdictions have local rules that supplement Rule 41(a) by indicating that, if there is a voluntary dismissal, the court and its officials must be paid first. S.D.Fla. LAR17; M.D.Fla. LR7.05(n). These provisions are appropriate additions to Rule 41(a) and to Supplemental Rule E(4) which, generally, requires that the marshal be paid the attachment and arrest costs. *See* Fed. R. Civ. P. 41(a); Supp.R. E(4).

Two other jurisdictions have rules indicating that a dismissal operates as a cancellation or release of all stipulations or other security. D.Md. LAR(e)(12); D.N.J. LAR(e)(13). This is also an appropriate supplement to Rule 41(a).

A RULE THAT REPEATS

The local rule in the Northern District of Florida simply repeats Rule 41(a), that the parties may consent to a dismissal. N.D.Fla. LAR20.

7. Jury Trial Election

RULES SUBJECT TO LOCAL VARIATION

Three jurisdictions have local rules providing that, if an admiralty claim is made along with a request for a jury trial at the time of filing the complaint, the plaintiff must elect whether the plaintiff intends to proceed with the use of the Supplemental Rules or with a jury trial. S.D.Ala. ALR7; S.D.Miss. LR20(h); N.D.Miss. LR20(h). These rules are an appropriate addition to Rules 9(h) and 38(e) of the Federal Rules of Civil Procedure. *See* Fed. R. Civ. P. 9(h), 38(e).

8. *Discovery*

There are two directives relating to discovery. D.S.Car. Order (12/11/67); E.D.Pa. LAR15.

AN ORDER SUBJECT TO LOCAL VARIATION

An order from the District of South Carolina imposes a time period within which discovery must be completed. D.S.Car. Order (12/11/67). This directive is an appropriate supplement to Rule 16 of the Federal Rules of Civil Procedure *See* Fed. R. Civ. P. 16.

A RULE THAT REPEATS

A local rule in the Eastern District of Pennsylvania repeats, generally, portions of Rules 29 and 30 of the Federal Rules of Civil Procedure. E.D.Pa. LAR15. It provides that the parties may agree that discovery take a specified form, thus repeating the parties' ability to agree to modify the discovery procedures pursuant to Rule 29. *See* Fed. R. Civ. P. 29. In addition, the rule repeats Rule 30(b)(4), that the court has the authority to order that a deposition be videotaped. *See* Fed. R. Civ. P. 30(b)(4).

9. *Rules for Summary Determination*

RULES SUBJECT TO LOCAL VARIATION

Two jurisdictions have local rules providing that, in certain enumerated instances and subject to consideration of the parties, claims not exceeding \$25,000 may be submitted for summary determination. E.D.N.Y. LAR16; S.D.N.Y. LAR16. These rules are appropriate local methods of determining cases quickly when all parties agree to such an expedited proceeding.

10. Bifurcation

A RULE SUBJECT TO LOCAL VARIATION

A local rule in the Northern District of Ohio states the "general practice" of the court to separate issues of liability and damage "in non-jury trials of maritime claims involving property damage only." N.D. Ohio LAR3.01. Such a statement is consistent with the Advisory Committee Notes to the 1966 amendment to Rule 42 of the Federal Rules of Civil Procedure:

In certain suits in admiralty separation for trial of the issues of liability and damages (or of the extent of liability other than damage, such as salvage and general average) has been conducive to expedition and economy, especially because of the statutory right to interlocutory appeal in admiralty cases (which is of course preserved by these Rules). While separation of issues for trial is not to be routinely ordered, it is important that it be encouraged where experience has demonstrated its worth. Cf. Weinstein, Routine Bifurcation of Negligence Trials, 14 Vand. L. Rev. 831 (1961).
Fed.R.Civ.P. 42 Advisory Committee Notes to 1966 Amendments

11. Other Matters

A RULE SUBJECT TO LOCAL VARIATION

A local rule in the Northern District of Florida lists the types of issues arising in admiralty actions which "are left to be handled by an originating motion under the provision of Rule 7(b) of the Federal Rules of Civil Procedure." N.D.Fla. LAR6. Regulation of the details of motion practice has traditionally fallen within local district court supervision.

Southern District of Alabama

<u>Local</u>	<u>Rule</u>	<u>Problem</u>	<u>Location</u>
ALR	1	Model Local Rule	A. Scope of the Rules
	2	Possible Repetition	E.4.e. Execution of Process....
	3	Local Variation	E.4.f. Execution of Process....
	4	Possible Repetition	E.5.c. Release of Property
	5	Local Variation	C.4. Notice
		Possible Repetition	C.4. Notice
	6	Possible Inconsistency	F.2. Complaint
		Possible Inconsistency	B.1. Complaint, Affidavit....
		Possible Repetition	C.6. Claim and Answer
		Possible Repetition	C.2. Complaint
		Possible Inconsistency	C.2. Complaint
	7	Local Variation	G.7. Jury Trial Election
	8	Possible Inconsistency	E.10. Intervention and Joinder
		Possible Repetition	E.10. Intervention and Joinder
	9	Local Variation	E.9. Disposition of Property
	10	Local Variation	E.9. Disposition of Property
	11	Local Variation	E.9. Disposition of Property
	12	Local Variation	G.3. Taxation of Costs
		To Advisory Committee	G.3. Taxation of Costs

District of Alaska

Local	Rule	Problem	Location
LAR	1	Model Local Rule	A. Scope of the Rules
	2	Possible Inconsistency	C.2. Complaint
		Possible Inconsistency	B.1. Complaint, Affidavit....
		Possible Repetition	B.1. Complaint, Affidavit....
3	(A)	Local Variation	E.3. Process
	(B)	Possible Repetition	E.3. Process
		Possible Repetition	E.3. Process
	(C)	Model Local Rule	C.3. Judicial Authorization
	(D)	Possible Inconsistency	B.1. Complaint, Affidavit....
		Possible Inconsistency	E.3. Process
	(E)	To Advisory Committee	E.4.a. Execution of Process....
4	(A)	Possible Repetition	C.2. Complaint
	(B)	Possible Repetition	C.3. Judicial Authorization
	(C)	Local Variation	E.2. Complaint; Security
	(E)	Local Variation	E.4.f. Execution of Process....
	(F)	Local Variation	E.4.f. Execution of Process....
5	(A)	Local Variation	B.1. Complaint, Affidavit....
	(B)	Possible Inconsistency	B.1. Complaint, Affidavit....
		Possible Repetition	B.1. Complaint, Affidavit....
	(C)	Local Variation	E.4.f. Execution of Process....
	(D)	Local Variation	E.2. Complaint; Security
	(E)	Local Variation	E.4.f. Execution of Process....
6	(A)	Local Variation	E.2. Complaint; Security
	(B)	Local Variation	F.1. Security
	(C)	Possible Repetition	E.4.e. Execution of Process....
	(D)	Local Variation	F.1. Security
	7	Local Variation	C.4. Notice
	8	To Advisory Committee	C.7. Default
	9	Model Local Rule	E.4.b. Execution of Process....
10	(A)	Model Local Rule	F.7. Insufficiency of Fund
		Model Local Rule	E.5.a. Release of Property
	(B)	Possible Repetition	E.5.c. Release of Property
11		Local Variation	E.9. Disposition of Property
12		Possible Repetition	G.1. Rate of Interest
		Possible Inconsistency	G.1. Rate of Interest

Central District of California

Local	Rule	Problem	Location
LR	A -1	Model Local Rule	A. Scope of the Rules
	-2	Model Local Rule	A. Scope of the Rules
	B	Local Variation	B.1. Complaint, Affidavit....
		Possible Inconsistency	B.1. Complaint, Affidavit....
	C -1	Model Local Rule	C.1. When Available
	-2	Model Local Rule	C.3. Judicial Authorization
	-3	Local Variation	C.4. Notice
	-4	To Advisory Committee	C.7. Default
	-5	To Advisory Committee	C.7. Default
	D -1	Possible Inconsistency	D. Possessory, Petitory...
	E -1	To Advisory Committee	E.2. Complaint; Security
		Possible Inconsistency	E.2. Complaint; Security
	-2	Possible Repetition	C.2. Complaint
		Possible Inconsistency	B.1. Complaint, Affidavit....
		Possible Inconsistency	C.2. Complaint
		Possible Repetition	B.1. Complaint, Affidavit....
	-3	Possible Inconsistency	B.1. Complaint, Affidavit....
		Possible Repetition	B.1. Complaint, Affidavit....
	-4	Possible Repetition	E.3. Process
	-6	Local Variation	E.3. Process
	-7	To Advisory Committee	E.4.a. Execution of Process....
	-8	Local Variation	E.2. Complaint; Security
	-9	Possible Repetition	E.4.f. Execution of Process....
		Local Variation	E.4.f. Execution of Process....
	-10	Model Local Rule	E.5.a. Release of Property
		Model Local Rule	F.7. Insufficiency of Fund
		Model Local Rule	F.7. Insufficiency of Fund
	-11	Possible Repetition	E.4.e. Execution of Process....
	-12	Possible Repetition	E.10. Intervention and Joinder
		Possible Inconsistency	E.10. Intervention and Joinder
	-13	Model Local Rule	E.4.b. Execution of Process....
	-14	Local Variation	E.9. Disposition of Property
	F -1	Local Variation	F.1. Security
	-2	Local Variation	F.10. Order of Proof at Trial
	G -1	Possible Repetition	G.2. Deserting Seamen
		Possible Inconsistency	G.2. Deserting Seamen
	-2	Possible Inconsistency	G.1. Rate of Interest
		Possible Repetition	G.1. Rate of Interest

Eastern District of California

Local	Rule	Problem	Location
LR	500	Model Local Rule	A. Scope of the Rules
	501	Model Local Rule	A. Scope of the Rules
	510 (a)	Possible Repetition	A. Scope of the Rules
		Possible Inconsistency	A. Scope of the Rules
	(b)	Possible Inconsistency To Advisory Committee	E.2. Complaint; Security E.2. Complaint; Security
	(c)	Possible Inconsistency To Advisory Committee	E.2. Complaint; Security E.2. Complaint; Security
	(d)	Local Variation	B.1. Complaint, Affidavit....
		Possible Inconsistency	B.1. Complaint, Affidavit....
	511	Possible Repetition	B.1. Complaint, Affidavit....
		Possible Inconsistency	C.2. Complaint
		Possible Inconsistency	B.1. Complaint, Affidavit....
	512 (c)	Local Variation	B.1. Complaint, Affidavit....
	(d)	Possible Inconsistency	B.1. Complaint, Affidavit....
		Possible Repetition	B.1. Complaint, Affidavit....
	(e)	Local Variation	B.1. Complaint, Affidavit....
	(f)	Possible Repetition	E.3. Process
	(g)	To Advisory Committee	E.4.a. Execution of Process....
	513	Possible Repetition	E.4.f. Execution of Process....
		Local Variation	E.4.f. Execution of Process....
	520 (a)	Local Variation	E.2. Complaint; Security
	(b)	Local Variation	F.1. Security for Costs
	(c)	Local Variation	E.2. Complaint; Security
	(e)	Local Variation	E.2. Complaint; Security
	521	Possible Repetition	E.4.e. Execution of Process....
	522	Possible Repetition	E.10. Intervention and Joinder
		Possible Inconsistency	E.10. Intervention and Joinder
	523	Model Local Rule	C.1. When Available
	530	Local Variation	C.4. Notice
	540	To Advisory Committee	C.7. Default
	550	Model Local Rule	E.4.b. Execution of Process....
	560	Model Local Rule	E.5.a. Release of Property
		Model Local Rule	F.7. Insufficiency of Fund
	570	Local Variation	E.9. Disposition of Property
	580	Local Variation	F.4. Notice to Claimants
	590	Possible Repetition	G.1. Rate of Interest
		Possible Inconsistency	G.1. Rate of Interest

Northern District of California

	Local	Rule	Problem	Location
LR	600	-1	Model Local Rule	A. Scope of the Rules
		-2	Model Local Rule	A. Scope of the Rules
	603		Possible Inconsistency	B.1. Complaint, Affidavit....
			Local Variation	B.1. Complaint, Affidavit....
	605	-1	Model Local Rule	C.1. When Available
		-2	Model Local Rule	C.3. Judicial Authorization
		-3	Local Variation	C.4. Notice
		-4	To Advisory Committee	C.7. Default
		-5	To Advisory Committee	C.7. Default
	606	-1	Possible Inconsistency	D. Possessory, Petitory...
	610	-1	To Advisory Committee	E.2. Complaint; Security
			Possible Inconsistency	E.2. Complaint; Security
		-2	Possible Inconsistency	C.2. Complaint
			Possible Repetition	C.2. Complaint
			Possible Repetition	B.1. Complaint, Affidavit....
			Possible Inconsistency	B.1. Complaint, Affidavit....
		-3	Possible Inconsistency	B.1. Complaint, Affidavit....
			Possible Repetition	B.1. Complaint, Affidavit....
		-4	Possible Repetition	E.3. Process
		-6	Local Variation	E.3. Process
		-7	To Advisory Committee	E.4.a. Execution of Process....
		-8	Local Variation	E.2. Complaint; Security
		-9	Local Variation	E.4.f. Execution of Process....
			Possible Repetition	E.4.f. Execution of Process....
		-10	Model Local Rule	E.5.a. Release of Property
			Model Local Rule	F.7. Insufficiency of Fund
		-11	Possible Repetition	E.4.e. Execution of Process....
		-12	Possible Repetition	E.10. Intervention and Joinder
			Possible Inconsistency	E.10. Intervention and Joinder
		-13	Model Local Rule	E.4.b. Execution of Process....
		-14	Local Variation	E.9. Disposition of Property
	615	-1	Local Variation	F.1. Security
		-2	Local Variation	F.10. Order of Proof at Trial
	620	-1	Possible Inconsistency	G.2. Deserting Seamen
			Possible Repetition	G.2. Deserting Seamen
		-2	Possible Repetition	G.1. Rate of Interest
			Possible Inconsistency	G.1. Rate of Interest
		-3	Local Variation	G.4. Assignment of Actions
		-4	Model Local Rule	A. Scope of the Rules

Southern District of California

	<u>Local Rule</u>	<u>Problem</u>	<u>Location</u>
LR	300	Model Local Rule	A. Scope of the Rules
	305 -1	Model Local Rule	C.1. When Available
	-1(a)	Local Variation	E.4.f. Execution of Process....
	-2	Local Variation	C.4. Notice
	-3	Model Local Rule	C.3. Judicial Authorization
	310 -1	Possible Repetition	E.4.e. Execution of Process....
	-1(a)	Local Variation	E.2. Complaint; Security
	-2	Model Local Rule	E.4.b. Execution of Process....
	-2(a)	To Advisory Committee	E.4.a. Execution of Process....
	-3	Model Local Rule	F.7. Insufficiency of Fund
		Model Local Rule	E.5.a. Release of Property
	-4	Local Variation	E.9. Disposition of Property
	315	Local Variation	F.1. Security
	320	Possible Inconsistency	G.2. Deserting Seamen
		Possible Repetition	G.2. Deserting Seamen

Middle District of Florida

Local	Rule	Problem	Location	
LR	7.01	(a)	Model Local Rule	A. Scope of the Rules
		(b)	Model Local Rule	A. Scope of the Rules
		(c)	Model Local Rule	A. Scope of the Rules
		(d)	Possible Repetition	A. Scope of the Rules
			Possible Inconsistency	A. Scope of the Rules
		(e)	Possible Inconsistency	B.1. Complaint, Affidavit....
			Possible Repetition	C.2. Complaint
			Possible Inconsistency	C.2. Complaint
			Possible Repetition	B.1. Complaint, Affidavit....
		(h)	Possible Inconsistency	D. Possessory, Petitory...
			Possible Repetition	B.3. Answer
(i)	Model Local Rule	A. Scope of the Rules		
7.02	(a)	Possible Inconsistency	B.1. Complaint, Affidavit....	
	(b)	Possible Inconsistency	B.1. Complaint, Affidavit....	
	(c)	Possible Inconsistency	B.1. Complaint, Affidavit....	
		Possible Repetition	B.1. Complaint, Affidavit....	
	(d)	Possible Inconsistency	B.2. Notice to the Defendant	
	(e)	Local Variation	E.4.f. Execution of Process....	
	(e)(1)	Possible Repetition	B.3. Answer	
	(f)	Local Variation	B.2. Notice to the Defendant	
(g)	Local Variation	B.2. Notice to the Defendant		
7.03	(b)	Possible Repetition	C.3. Judicial Authorization	
	(c)	Local Variation	E.3. Process	
	(d)	Local Variation	C.4. Notice	
	(e)	Model Local Rule	C.1. When Available	
	(f)	Possible Repetition	C.6. Claim and Answer	
	(g)	Local Variation	E.4.f. Execution of Process....	
	(h)	To Advisory Committee	C.7. Default	
	(i)	To Advisory Committee	C.7. Default	
	7.04	(a)	Possible Inconsistency	D. Possessory, Petitory...
(b)		Possible Inconsistency	D. Possessory, Petitory...	
7.05	(a)	To Advisory Committee	E.2. Complaint; Security	
		Possible Inconsistency	E.2. Complaint; Security	
	(b)	Possible Repetition	E.10. Intervention and Joinder	
		Possible Inconsistency	E.10. Intervention and Joinder	
	(c)	Possible Inconsistency	E.2. Complaint; Security	
		To Advisory Committee	E.2. Complaint; Security	
(d)	Local Variation	E.5.c. Release of Property		
	Possible Inconsistency	E.5.c. Release of Property		

Middle District of Florida

Local	Rule	Problem	Location
LR	7.05	(d) Possible Repetition	E.5.c. Release of Property
		(e) Local Variation	E.2. Complaint; Security
		(e)(4) Possible Repetition	E.6. Security
		(f) Possible Repetition	E.4.e. Execution of Process....
		(g) To Advisory Committee	E.4.a. Execution of Process....
		(h) Possible Repetition	E.3. Process
		(i) Local Variation	E.5.b. Release of Property
		Possible Repetition	E.5.d. Release of Property
		Possible Repetition	E.5.c. Release of Property
		(j) Possible Repetition	E.6. Security
		(k) Model Local Rule	E.4.b. Execution of Process....
		(m) Model Local Rule	E.4.b. Execution of Process....
		(n) Local Variation	G.6. Dismissal
		(o) To Advisory Committee	G.3. Taxation of Costs
		Local Variation	G.3. Taxation of Costs
		(p) Local Variation	G.5. Stay of Execution
		Possible Repetition	G.5. Stay of Execution
		(q) Local Variation	E.9. Disposition of Property
		(r) Local Variation	E.9. Disposition of Property
		(s) Local Variation	E.9. Disposition of Property
	7.06	(a) Possible Repetition	F.4. Notice to Claimants
		(b) Possible Inconsistency	F.4. Notice to Claimants
		(c) Model Local Rule	F.7. Insufficiency of Fund
		(d) Model Local Rule	F.7. Insufficiency of Fund
		(e) Model Local Rule	F.7. Insufficiency of Fund
		(g) Local Variation	F.4. Notice to Claimants

Northern District of Florida

	<u>Local</u>	<u>Rule</u>	<u>Problem</u>	<u>Location</u>
LAR	1		Model Local Rule	A. Scope of the Rules
	2		Possible Repetition	A. Scope of the Rules
			Possible Inconsistency	A. Scope of the Rules
	3		Possible Inconsistency To Advisory Committee	E.2. Complaint; Security E.2. Complaint; Security
	4		Possible Inconsistency Possible Inconsistency	B.1. Complaint, Affidavit.... C.2. Complaint
	5		Possible Inconsistency To Advisory Committee	E.2. Complaint; Security E.2. Complaint; Security
	6		Local Variation	G.11. Other Matters
	7		Local Variation Local Variation	E.2. Complaint; Security F.1. Security
	8		Possible Inconsistency Possible Repetition Local Variation	E.5.c. Release of Property E.5.c. Release of Property E.5.c. Release of Property
	11		Local Variation	E.3. Process
	12		Model Local Rule Model Local Rule	E.5.a. Release of Property F.7. Insufficiency of Fund
	13		Possible Repetition Possible Inconsistency	B.1. Complaint, Affidavit.... B.1. Complaint, Affidavit....
	14		To Advisory Committee	C.7. Default
	15 (A)		Possible Repetition	E.8. Restricted Appearance
	(B)		Possible Repetition Local Variation Possible Inconsistency	E.6. Security E.4.f. Execution of Process.... E.6. Security
	16		Local Variation Possible Repetition	C.4. Notice C.4. Notice
	17		Local Variation	E.9. Disposition of Property
	18		Local Variation	E.9. Disposition of Property
	19		Local Variation To Advisory Committee	G.3. Taxation of Costs G.3. Taxation of Costs
	20		Possible Repetition	G.6. Dismissal

Southern District of Florida

Local	Rule	Problem	Location
LAR	1	Model Local Rule	A. Scope of the Rules
	2 (B)	Possible Inconsistency	D. Possessory, Petitory...
	(C)	Possible Inconsistency	F.5. Claims and Answer
		Possible Repetition	B.3. Answer
	(D)	Local Variation	E.3. Process
	3	Local Variation	C.4. Notice
	(B)	Possible Inconsistency	D. Possessory, Petitory...
	(E)	Local Variation	F.4. Notice to Claimants
	(F)	Possible Inconsistency	F.4. Notice to Claimants
	4	Local Variation	E.9. Disposition of Property
	5 (A)	Local Variation	F.1. Security
		Local Variation	E.2. Complaint; Security
	(B)	Local Variation	E.2. Complaint; Security
	(C)	To Advisory Committee	E.2. Complaint; Security
		Possible Inconsistency	E.2. Complaint; Security
		Local Variation	E.2. Complaint; Security
	(D)	Possible Repetition	E.6. Security
	(E)	Local Variation	E.2. Complaint; Security
	(F)	Possible Inconsistency	E.4.e. Execution of Process....
	6	Local Variation	E.5.c. Release of Property
		Possible Repetition	E.5.c. Release of Property
		Possible Inconsistency	E.5.c. Release of Property
	7 (A)	Possible Inconsistency	A. Scope of the Rules
		Possible Repetition	A. Scope of the Rules
	(C)	To Advisory Committee	E.2. Complaint; Security
		Possible Inconsistency	E.2. Complaint; Security
	(E)	Possible Inconsistency	E.2. Complaint; Security
		To Advisory Committee	E.2. Complaint; Security
	8	Possible Inconsistency	C.2. Complaint
		Possible Inconsistency	B.1. Complaint, Affidavit....
		Possible Repetition	C.2. Complaint
		Possible Repetition	C.6. Claim and Answer
		Possible Repetition	B.1. Complaint, Affidavit....
	9 (A)	Possible Inconsistency	D. Possessory, Petitory...
		Possible Inconsistency	E.10. Intervention and Joinder
		Possible Repetition	E.10. Intervention and Joinder
		Possible Repetition	B.3. Answer
		Possible Repetition	F.5. Claims and Answer
	10	Model Local Rule	F.7. Insufficiency of Fund

Southern District of Florida

Local	Rule	Problem	Location
LAR	10	Model Local Rule	E.5.a. Release of Property
	11	Possible Repetition	E.5.c. Release of Property
		Possible Repetition	E.5.a. Release of Property
	(A)	Possible Repetition	E.5.d. Release of Property
	(C)	Local Variation	E.5.b. Release of Property
	12	Local Variation	E.4.e. Execution of Process....
	13	To Advisory Committee	G.3. Taxation of Costs
		Local Variation	G.3. Taxation of Costs
	14	Possible Repetition	G.5. Stay of Execution
		Possible Inconsistency	G.5. Stay of Execution
	15	Possible Inconsistency	D. Possessory, Petitory...
	16	Local Variation	E.3. Process
	17	Local Variation	G.6. Dismissal

Southern District of Georgia

Local	Rule	Problem	Location
LAR	1	Model Local Rule	A. Scope of the Rules
	2 (B)	Possible Inconsistency Possible Repetition	C.6. Claim and Answer C.6. Claim and Answer
	(C)	Possible Inconsistency Possible Repetition	D. Possessory, Petitory... F.5. Claims and Answer
	(D)	Local Variation	B.3. Answer E.3. Process
3		Local Variation	C.4. Notice
	(E)	Local Variation Local Variation	F.4. Notice to Claimants F.4. Notice to Claimants
	(F)	Possible Inconsistency Local Variation	F.4. Notice to Claimants F.4. Notice to Claimants
4		Local Variation	E.9. Disposition of Property
5 (A)		Local Variation Local Variation	F.1. Security E.2. Complaint; Security
	(B)	Local Variation	E.2. Complaint; Security
	(C)	Possible Repetition	E.6. Security
	(D)	Local Variation	E.2. Complaint; Security
6		Possible Inconsistency Possible Repetition Local Variation Local Variation	E.5.c. Release of Property E.5.c. Release of Property E.5.c. Release of Property F.1. Security
7 (A)		Possible Inconsistency Possible Repetition	A. Scope of the Rules A. Scope of the Rules
	(C)	Possible Inconsistency To Advisory Committee	E.2. Complaint; Security E.2. Complaint; Security
	(D)	Possible Inconsistency To Advisory Committee	E.2. Complaint; Security E.2. Complaint; Security
	(E)	Possible Repetition Possible Inconsistency	B.1. Complaint, Affidavit.... B.1. Complaint, Affidavit....
8		Possible Repetition Possible Inconsistency Possible Inconsistency	C.2. Complaint B.1. Complaint, Affidavit.... C.2. Complaint
		Possible Repetition	B.1. Complaint, Affidavit....
9		Possible Repetition Possible Inconsistency	E.10. Intervention and Joinder E.10. Intervention and Joinder
10		Model Local Rule Model Local Rule	E.5.a. Release of Property F.7. Insufficiency of Fund
11		Possible Repetition	E.5.a. Release of Property

Southern District of Georgia

Local	Rule	Problem	Location
LAR	11	Possible Repetition	E.5.c. Release of Property
	(A)	Possible Repetition	E.5.d. Release of Property
	(D)	Local Variation	E.5.b. Release of Property
	12	Local Variation	G.3. Taxation of Costs
		To Advisory Committee	G.3. Taxation of Costs
	13	Local Variation	G.5. Stay of Execution
		Possible Repetition	G.5. Stay of Execution
	14	Possible Inconsistency	D. Possessory, Petitory...
	15	Local Variation	E.9. Disposition of Property

District of Hawaii

	Local	Rule	Problem	Location
LR	600	-1	Model Local Rule	A. Scope of the Rules
		-2	Model Local Rule	A. Scope of the Rules
	601	-1	Local Variation	B.1. Complaint, Affidavit....
	602	-1	Model Local Rule	C.1. When Available
		-2	Model Local Rule	C.3. Judicial Authorization
		-3	Local Variation	C.4. Notice
		-4	To Advisory Committee	C.7. Default
		-5	To Advisory Committee	C.7. Default
	603	-1	Possible Inconsistency	D. Possessory, Petitory...
	604	-1	Possible Inconsistency	E.2. Complaint; Security
			To Advisory Committee	E.2. Complaint; Security
		-2	Possible Repetition	B.1. Complaint, Affidavit....
			Possible Inconsistency	C.2. Complaint
			Possible Repetition	C.2. Complaint
			Possible Inconsistency	B.1. Complaint, Affidavit....
		-3	Possible Inconsistency	B.1. Complaint, Affidavit....
			Possible Repetition	B.1. Complaint, Affidavit....
		-4	Possible Repetition	E.3. Process
		-6	Local Variation	E.3. Process
			Local Variation	E.3. Process
		-7	To Advisory Committee	E.4.a. Execution of Process....
		-8	Local Variation	E.2. Complaint; Security
		-9	Possible Repetition	E.4.f. Execution of Process....
			Local Variation	E.4.f. Execution of Process....
		-10	Model Local Rule	E.5.a. Release of Property
			Model Local Rule	F.7. Insufficiency of Fund
		-11	Possible Repetition	E.4.e. Execution of Process....
		-12	Possible Inconsistency	E.10. Intervention and Joinder
			Possible Repetition	E.10. Intervention and Joinder
		-13	Model Local Rule	E.4.b. Execution of Process....
		-14	Local Variation	E.9. Disposition of Property

Northern District of Illinois

Local	Rule	Problem	Location
LAR	1	Model Local Rule	A. Scope of the Rules
	2	Local Variation	C.4. Notice
	4	Model Local Rule	C.3. Judicial Authorization
	5	To Advisory Committee	E.4.a. Execution of Process....
	6	Local Variation	E.3. Process
	7	Local Variation	F.1. Security
	8	Local Variation	E.5.c. Release of Property
	9	Local Variation	E.5.c. Release of Property
	10 (a)	Possible Repetition	B.3. Answer
		Possible Inconsistency	B.3. Answer
	11	Model Local Rule	E.5.a. Release of Property
		Model Local Rule	F.7. Insufficiency of Fund
	12	Model Local Rule	E.4.b. Execution of Process....
	13	Possible Repetition	E.5.c. Release of Property
		Possible Repetition	E.5.a. Release of Property
	14	Local Variation	E.4.f. Execution of Process....
		Possible Repetition	E.4.f. Execution of Process....
	15	Local Variation	E.9. Disposition of Property
	16	Local Variation	E.9. Disposition of Property

Eastern District of Louisiana

Local	Rule	Problem	Location
LR	600	-1 Model Local Rule	A. Scope of the Rules
		-2 Model Local Rule	A. Scope of the Rules
	601	-1 Local Variation	B.1. Complaint, Affidavit....
	602	-1 Model Local Rule	C.1. When Available
		-2 Model Local Rule	C.3. Judicial Authorization
		-3 Local Variation	C.4. Notice
		-4 To Advisory Committee	C.7. Default
		-5 To Advisory Committee	C.7. Default
	603	-1 Possible Inconsistency	D. Possessory, Petitory...
	604	-1 Possible Inconsistency	E.2. Complaint; Security
		To Advisory Committee	E.2. Complaint; Security
		-10 Model Local Rule	F.7. Insufficiency of Fund
		Model Local Rule	E.5.a. Release of Property
		-11 Possible Repetition	E.4.e. Execution of Process....
		-12 Possible Repetition	E.10. Intervention and Joinder
		Possible Inconsistency	E.10. Intervention and Joinder
		-13 Model Local Rule	E.4.b. Execution of Process....
		-14 Local Variation	E.9. Disposition of Property
		-2 Possible Inconsistency	B.1. Complaint, Affidavit....
		Possible Repetition	C.2. Complaint
		Possible Inconsistency	C.2. Complaint
		Possible Repetition	B.1. Complaint, Affidavit....
		-3 Possible Repetition	B.1. Complaint, Affidavit....
		Possible Inconsistency	B.1. Complaint, Affidavit....
		-4 Possible Repetition	E.3. Process
		-6 Local Variation	E.3. Process
		Local Variation	E.3. Process
		-7 To Advisory Committee	E.4.a. Execution of Process....
		-8 Local Variation	E.2. Complaint; Security
		-9 Local Variation	E.4.f. Execution of Process....
		Possible Repetition	E.4.f. Execution of Process....

Middle District of Louisiana

<u>Local</u>	<u>Rule</u>	<u>Problem</u>	<u>Location</u>
LR	25.01	Local Variation	E.4.f. Execution of Process....
		Possible Repetition	E.4.f. Execution of Process....
	(A)	Possible Repetition	B.1. Complaint, Affidavit....
	(B)	Possible Repetition	C.3. Judicial Authorization
	25.02	Local Variation	E.2. Complaint; Security
	25.03	Possible Repetition	C.3. Judicial Authorization
	25.04	Local Variation	E.5.c. Release of Property
	25.05	Local Variation	C.4. Notice
		To Advisory Committee	C.6. Claim and Answer
		Possible Inconsistency	C.6. Claim and Answer
	25.06	Possible Repetition	E.5.c. Release of Property
	25.07	Model Local Rule	E.4.b. Execution of Process....
	25.08	Model Local Rule	E.4.b. Execution of Process....
	25.09	Local Variation	F.4. Notice to Claimants
	25.1	Local Variation	E.9. Disposition of Property

Western District of Louisiana

Local	Rule	Problem	Location
LR	25.01	Local Variation	E.4.f. Execution of Process....
		Possible Repetition	E.4.f. Execution of Process....
	(A)	Possible Repetition	B.1. Complaint, Affidavit....
	(B)	Possible Repetition	C.3. Judicial Authorization
	25.02	Local Variation	E.2. Complaint; Security
	25.03	Possible Repetition	C.3. Judicial Authorization
	25.04	Local Variation	E.5.c. Release of Property
	25.05	Local Variation	C.4. Notice
		To Advisory Committee	C.6. Claim and Answer
		Possible Inconsistency	C.6. Claim and Answer
	25.06	Possible Repetition	E.5.c. Release of Property
	25.07	Model Local Rule	E.4.b. Execution of Process....
	25.08	Model Local Rule	E.4.b. Execution of Process....
	25.09	Local Variation	F.4. Notice to Claimants
	25.1	Local Variation	E.9. Disposition of Property

District of Maryland

Local	Rule	Problem	Location
LAR	(a)	Model Local Rule	A. Scope of the Rules
	(b)	Local Variation	B.1. Complaint, Affidavit....
	(c) -1	Model Local Rule	C.3. Judicial Authorization
	-2	Local Variation	C.4. Notice
	-3	To Advisory Committee	C.7. Default
	-4	To Advisory Committee	C.7. Default
	(d)	Possible Inconsistency	D. Possessory, Petitory...
	(e) -1	To Advisory Committee	E.2. Complaint; Security
		Possible Inconsistency	E.2. Complaint; Security
	-2	To Advisory Committee	E.2. Complaint; Security
		Possible Inconsistency	E.2. Complaint; Security
	-3	Possible Repetition	C.2. Complaint
		Possible Repetition	B.1. Complaint, Affidavit....
		Possible Inconsistency	C.2. Complaint
		Possible Inconsistency	B.1. Complaint, Affidavit....
	-4	Local Variation	B.1. Complaint, Affidavit....
	-5	Local Variation	E.3. Process
	-6	To Advisory Committee	E.4.a. Execution of Process....
	-7	Local Variation	E.4.f. Execution of Process....
	-9	Possible Repetition	E.10. Intervention and Joinder
		Possible Inconsistency	E.10. Intervention and Joinder
	-10	Model Local Rule	E.4.b. Execution of Process....
	-11	Local Variation	E.9. Disposition of Property
	-12	Local Variation	G.6. Dismissal
	(f)	Local Variation	F.1. Security

Eastern District of Michigan

	<u>Local Rule</u>	<u>Problem</u>	<u>Location</u>
LR	34	Possible Repetition	B.1. Complaint, Affidavit....
	35	Possible Repetition	C.3. Judicial Authorization
	36	Local Variation	E.4.f. Execution of Process....
		Possible Repetition	E.4.f. Execution of Process....
	37	Model Local Rule	E.4.b. Execution of Process....

Northern District of Mississippi

Local	Rule	Problem	Location
LR	20	(a) Model Local Rule	A. Scope of the Rules
		(c) Model Local Rule	E.4.b. Execution of Process....
		(d) Local Variation	E.4.f. Execution of Process....
		(e) Possible Repetition	E.5.c. Release of Property
		(f) Possible Repetition	C.4. Notice
		Local Variation	C.4. Notice
		(g) Possible Repetition	C.2. Complaint
		Possible Inconsistency	F.2. Complaint
		(h) Local Variation	G.7. Jury Trial Election
		(i) Possible Inconsistency	E.10. Intervention and Joinder
		Possible Repetition	E.10. Intervention and Joinder
		(j) Local Variation	E.9. Disposition of Property
		(k) Local Variation	E.9. Disposition of Property
		(l) Local Variation	E.9. Disposition of Property
		(m) Local Variation	G.3. Taxation of Costs
		To Advisory Committee	G.3. Taxation of Costs

Southern District of Mississippi

Local	Rule	Problem	Location
LR	20	(a) Model Local Rule	A. Scope of the Rules
		(c) Model Local Rule	E.4.b. Execution of Process....
		(d) Local Variation	E.4.f. Execution of Process....
		(e) Possible Repetition	E.5.c. Release of Property
		(f) Possible Repetition	C.4. Notice
		Local Variation	C.4. Notice
		(g) Possible Repetition	C.2. Complaint
		Possible Inconsistency	F.2. Complaint
		(h) Local Variation	G.7. Jury Trial Election
		(i) Possible Inconsistency	E.10. Intervention and Joinder
		Possible Repetition	E.10. Intervention and Joinder
		(j) Local Variation	E.9. Disposition of Property
		(k) Local Variation	E.9. Disposition of Property
		(l) Local Variation	E.9. Disposition of Property
		(m) Local Variation	G.3. Taxation of Costs
		To Advisory Committee	G.3. Taxation of Costs

Eastern District of Missouri

Local	Rule	Problem	Location
LAR	1	Model Local Rule	A. Scope of the Rules
	2 (A)	Local Variation	E.2. Complaint; Security
	(C)	Model Local Rule	C.3. Judicial Authorization
	(D)	Possible Repetition	B.3. Answer
		Possible Inconsistency	B.3. Answer
	(E)	To Advisory Committee	E.4.a. Execution of Process....
	(F)	Model Local Rule	E.4.b. Execution of Process....
	(G)	Possible Repetition	E.3. Process
		Possible Repetition	E.3. Process
	3	Possible Repetition	C.4. Notice
		Local Variation	C.4. Notice
	(E)	Local Variation	E.9. Disposition of Property
	(F)	Local Variation	E.9. Disposition of Property
	4	Possible Inconsistency	C.2. Complaint
		Possible Inconsistency	B.1. Complaint, Affidavit....
		Possible Repetition	B.1. Complaint, Affidavit....
	5 (A)	Local Variation	F.1. Security
		Local Variation	E.2. Complaint; Security
	6	Local Variation	E.5.c. Release of Property
	(C)	Possible Repetition	E.6. Security
	7	Possible Repetition	E.10. Intervention and Joinder
	8	Model Local Rule	E.5.a. Release of Property
		Model Local Rule	F.7. Insufficiency of Fund
	9	Possible Repetition	E.5.c. Release of Property
		Possible Repetition	E.5.a. Release of Property
	(A)	Possible Repetition	E.5.b. Release of Property
	(C)	Possible Repetition	E.5.d. Release of Property
	(H)	Local Variation	E.4.f. Execution of Process....
	10	Local Variation	E.9. Disposition of Property
	11	Local Variation	E.9. Disposition of Property
	12 (C)	Possible Repetition	G.1. Rate of Interest
		Possible Inconsistency	G.1. Rate of Interest
	(D)	Local Variation	E.3. Process

District of New Jersey

LAR	Local Rule	Problem	Location
	(a)	Model Local Rule	A. Scope of the Rules
	(b) -1	Local Variation	B.1. Complaint, Affidavit....
	-2	Local Variation	B.1. Complaint, Affidavit....
	-4	Local Variation	B.1. Complaint, Affidavit....
	(c) -1	Model Local Rule	C.3. Judicial Authorization
	-2	Local Variation	C.4. Notice
	-3	To Advisory Committee	C.7. Default
	-4	To Advisory Committee	C.7. Default
	(d)	Possible Inconsistency	D. Possessory, Petitory...
	(e) -1	Possible Inconsistency	E.2. Complaint; Security
		To Advisory Committee	E.2. Complaint; Security
	-2	Possible Inconsistency	E.2. Complaint; Security
		To Advisory Committee	E.2. Complaint; Security
	-3	Possible Inconsistency	C.2. Complaint
		Possible Repetition	B.1. Complaint, Affidavit....
		Possible Inconsistency	B.1. Complaint, Affidavit....
		Possible Repetition	C.2. Complaint
	-4	Local Variation	B.1. Complaint, Affidavit....
	-5	Local Variation	E.3. Process
	-6	To Advisory Committee	E.4.a. Execution of Process....
	-8	Local Variation	E.4.f. Execution of Process....
	-9	Possible Repetition	E.4.e. Execution of Process....
	-10	Possible Repetition	E.10. Intervention and Joinder
		Possible Inconsistency	E.10. Intervention and Joinder
	-11	Model Local Rule	E.4.b. Execution of Process....
	-12	Local Variation	E.9. Disposition of Property
	-13	Local Variation	G.6. Dismissal
	(f)	Local Variation	F.1. Security

Eastern District of New York

Local	Rule	Problem	Location
LAR	1	Model Local Rule	A. Scope of the Rules
	2	Model Local Rule	C.3. Judicial Authorization
	3	Local Variation	C.4. Notice
	(c)	Local Variation	E.9. Disposition of Property
	(d)	Local Variation	E.9. Disposition of Property
	4	To Advisory Committee	E.4.a. Execution of Process....
	5	Local Variation	E.3. Process
	6	Local Variation	F.1. Security
		Local Variation	E.2. Complaint; Security
	7	Local Variation	E.5.c. Release of Property
		Local Variation	F.1. Security
	8	Local Variation	E.5.c. Release of Property
	9	Local Variation	E.5.c. Release of Property
10	(a)	Possible Repetition	B.3. Answer
		Possible Inconsistency	B.3. Answer
	(b)	Possible Inconsistency	B.2. Notice to the Defendant
11		Model Local Rule	E.5.a. Release of Property
		Model Local Rule	F.7. Insufficiency of Fund
12		Possible Repetition	E.4.f. Execution of Process....
		Local Variation	E.4.f. Execution of Process....
13		Possible Repetition	E.5.c. Release of Property
		Possible Repetition	E.5.a. Release of Property
14		Local Variation	E.9. Disposition of Property
15		Local Variation	E.9. Disposition of Property
16		Local Variation	G.9. Summary Determination

Northern District of New York

	Local	Rule	Problem	Location
LAR	1		Model Local Rule	A. Scope of the Rules
	2		Model Local Rule	C.3. Judicial Authorization
	3		Local Variation	C.4. Notice
	(c)		Local Variation	E.9. Disposition of Property
	(d)		Local Variation	E.9. Disposition of Property
	4		To Advisory Committee	E.4.a. Execution of Process....
	5		Local Variation	E.3. Process
	6		Local Variation	F.1. Security
			Local Variation	E.2. Complaint; Security
	7		Local Variation	E.5.c. Release of Property
			Local Variation	F.1. Security
	8		Local Variation	E.5.c. Release of Property
	9		Local Variation	E.5.c. Release of Property
	10 (a)		Possible Repetition	B.3. Answer
			Possible Inconsistency	B.3. Answer
	11		Model Local Rule	E.5.a. Release of Property
			Model Local Rule	F.7. Insufficiency of Fund
	12		Possible Repetition	E.5.a. Release of Property
			Possible Repetition	E.5.c. Release of Property
	13		Possible Repetition	E.4.f. Execution of Process....
			Local Variation	E.4.f. Execution of Process....
	14		Local Variation	E.9. Disposition of Property
	15		Local Variation	E.9. Disposition of Property

Southern District of New York

Local	Rule	Problem	Location
LAR	1	Model Local Rule	A. Scope of the Rules
	2	Model Local Rule	C.3. Judicial Authorization
	3	Local Variation	C.4. Notice
	(c)	Local Variation	E.9. Disposition of Property
	(d)	Local Variation	E.9. Disposition of Property
	4	To Advisory Committee	E.4.a. Execution of Process....
	5	Local Variation	E.3. Process
	6	Local Variation	F.1. Security
		Local Variation	E.2. Complaint; Security
	7	Local Variation	E.5.c. Release of Property
		Local Variation	F.1. Security
	8	Local Variation	E.5.c. Release of Property
	9	Local Variation	E.5.c. Release of Property
10	(a)	Possible Repetition	B.3. Answer
		Possible Inconsistency	B.3. Answer
	(b)	Possible Inconsistency	B.2. Notice to the Defendant
11		Model Local Rule	E.5.a. Release of Property
		Model Local Rule	F.7. Insufficiency of Fund
12		Possible Repetition	E.4.f. Execution of Process....
		Local Variation	E.4.f. Execution of Process....
13		Possible Repetition	E.5.c. Release of Property
		Possible Repetition	E.5.a. Release of Property
14		Local Variation	E.9. Disposition of Property
15		Local Variation	E.9. Disposition of Property
16		Local Variation	G.9. Summary Determination

Eastern District of North Carolina

	Local Rule	Problem	Location
LR	80	Model Local Rule	A. Scope of the Rules
	81 (a)	Possible Repetition	B.1. Complaint, Affidavit....
		Possible Inconsistency	B.1. Complaint, Affidavit....
	(b)	Possible Inconsistency	D. Possessory, Petitory...
	(c)	Possible Repetition	B.1. Complaint, Affidavit....
		Possible Repetition	B.3. Answer
		Possible Inconsistency	F.5. Claims and Answer
		Possible Inconsistency	B.1. Complaint, Affidavit....
	82 (a)	Model Local Rule	C.3. Judicial Authorization
	(b)	To Advisory Committee	E.4.a. Execution of Process....
	(c)	Local Variation	B.1. Complaint, Affidavit....
	(d)	Possible Inconsistency	B.1. Complaint, Affidavit....
	83	Local Variation	E.4.f. Execution of Process....
		Possible Repetition	E.4.f. Execution of Process....
	84	Local Variation	C.4. Notice
	(e)	Local Variation	F.4. Notice to Claimants
	(f)	Possible Inconsistency	F.4. Notice to Claimants
	85 (a)	Local Variation	E.5.c. Release of Property
		Local Variation	F.1. Security
		Local Variation	E.2. Complaint; Security
	(b)	Local Variation	E.2. Complaint; Security
	(c)	Possible Inconsistency	E.6. Security
	(d)	Possible Repetition	E.4.e. Execution of Process....
	(e)	Possible Repetition	E.4.e. Execution of Process....
	(f)	Possible Repetition	E.4.e. Execution of Process....
	86	Possible Repetition	E.5.c. Release of Property
		Local Variation	E.5.c. Release of Property
		Possible Inconsistency	E.5.c. Release of Property
	87 (a)	Possible Repetition	A. Scope of the Rules
		Possible Inconsistency	A. Scope of the Rules
	(c)	Possible Inconsistency	E.2. Complaint; Security
		To Advisory Committee	E.2. Complaint; Security
	(d)	Possible Inconsistency	E.2. Complaint; Security
		To Advisory Committee	E.2. Complaint; Security
	88	Possible Inconsistency	C.2. Complaint
		Possible Repetition	C.2. Complaint
		Possible Repetition	B.1. Complaint, Affidavit....
		Possible Inconsistency	B.1. Complaint, Affidavit....
	89	Possible Repetition	E.10. Intervention and Joinder

Eastern District of North Carolina

Local	Rule	Problem	Location
LR	89	Possible Inconsistency	E.10. Intervention and Joinder
	90	To Advisory Committee	C.7. Default
	91	Possible Inconsistency	B.2. Notice to the Defendant
		To Advisory Committee	C.7. Default
	92	Model Local Rule	E.4.b. Execution of Process....
	93	Model Local Rule	E.5.a. Release of Property
		Model Local Rule	F.7. Insufficiency of Fund
	94	Local Variation	E.9. Disposition of Property
	95	Possible Repetition	E.5.d. Release of Property
		Possible Repetition	E.5.a. Release of Property
		Possible Repetition	E.5.c. Release of Property
		Local Variation	E.5.b. Release of Property
	96	Local Variation	G.3. Taxation of Costs
		To Advisory Committee	G.3. Taxation of Costs
	97	Possible Repetition	G.5. Stay of Execution
		Local Variation	G.5. Stay of Execution
	98	Possible Inconsistency	D. Possessory, Petitory...
	99	Local Variation	E.9. Disposition of Property

Northern District of Ohio

Local	Rule	Problem	Location
LAR	1.01	Model Local Rule	A. Scope of the Rules
	2.01	To Advisory Committee	E.4.a. Execution of Process....
	2.02	Possible Repetition	E.4.f. Execution of Process....
		Local Variation	E.4.f. Execution of Process....
	2.03	Possible Repetition	E.6. Security
		Possible Inconsistency	E.6. Security
	2.04	Model Local Rule	E.5.a. Release of Property
		Model Local Rule	F.7. Insufficiency of Fund
	2.05	Local Variation	C.4. Notice
	(3)	Local Variation	E.9. Disposition of Property
	(4)	Local Variation	E.9. Disposition of Property
	2.06	Possible Inconsistency	B.2. Notice to the Defendant
		To Advisory Committee	C.7. Default
	2.07	Model Local Rule	E.4.b. Execution of Process....
	3.01	Local Variation	G.10. Bifurcation
	4.01	Local Variation	E.9. Disposition of Property
	4.02	Local Variation	E.9. Disposition of Property
	5.02	Model Local Rule	F.7. Insufficiency of Fund

District of Oregon

Local	Rule	Problem	Location
LR	1000	-1 Model Local Rule	A. Scope of the Rules
	1005	-1 Possible Inconsistency	C.2. Complaint
		Possible Inconsistency	B.1. Complaint, Affidavit....
	1010	-1 Local Variation	E.3. Process
		-2 Possible Repetition	E.3. Process
		-3 Model Local Rule	C.3. Judicial Authorization
		-4 Possible Inconsistency	B.1. Complaint, Affidavit....
		Possible Inconsistency	E.3. Process
		-5 To Advisory Committee	E.4.a. Execution of Process....
	1015	-1 Possible Inconsistency	B.1. Complaint, Affidavit....
		-2 Local Variation	B.1. Complaint, Affidavit....
		-3 Possible Repetition	B.1. Complaint, Affidavit....
		Possible Inconsistency	B.1. Complaint, Affidavit....
		-4 Local Variation	E.4.f. Execution of Process....
	1016	-1 Possible Inconsistency	C.2. Complaint
		-2 Local Variation	E.4.f. Execution of Process....
	1020	-1 Local Variation	E.2. Complaint; Security
		-2 Local Variation	F.1. Security
		-3 Possible Repetition	E.4.e. Execution of Process....
		-4 Possible Repetition	E.4.e. Execution of Process....
	1024	-1 Model Local Rule	C.1. When Available
	1025	-1 Local Variation	C.4. Notice
	1030	To Advisory Committee	C.7. Default
	1035	-1 Model Local Rule	E.4.b. Execution of Process....
		-2 Model Local Rule	E.4.b. Execution of Process....
		-3 Model Local Rule	E.4.b. Execution of Process....
		-4 Model Local Rule	E.4.b. Execution of Process....
	1040	-1 Model Local Rule	E.5.a. Release of Property
		Model Local Rule	F.7. Insufficiency of Fund
	1045	Local Variation	E.9. Disposition of Property
	1050	-1 Local Variation	C.4. Notice
		Possible Repetition	C.4. Notice
		Local Variation	F.4. Notice to Claimants
	1055	-1 Possible Repetition	G.1. Rate of Interest
		Possible Inconsistency	G.1. Rate of Interest

Eastern District of Pennsylvania

Local Rule	Problem	Location
LAR 1	Model Local Rule	A. Scope of the Rules
2	Possible Repetition	E.4.e. Execution of Process....
4	Possible Repetition	B.1. Complaint, Affidavit....
5	Possible Repetition	E.4.f. Execution of Process....
	Local Variation	E.4.f. Execution of Process....
6	Local Variation	C.4. Notice
	Possible Repetition	C.4. Notice
7	Possible Inconsistency	E.10. Intervention and Joinder
	Possible Repetition	E.10. Intervention and Joinder
8	Local Variation	E.9. Disposition of Property
9	Local Variation	E.9. Disposition of Property
10	Local Variation	E.9. Disposition of Property
11	Possible Repetition	E.10. Intervention and Joinder
	Possible Repetition	E.10. Intervention and Joinder
13	Local Variation	F.10. Order of Proof at Trial
14	Possible Repetition	G.3. Taxation of Costs
15	Possible Repetition	G.8. Discovery

Western District of Pennsylvania

Local	Rule	Problem	Location
LAR	(a)	Model Local Rule	A. Scope of the Rules
	(b) -1	Local Variation	B.1. Complaint, Affidavit....
	(c) -1	Model Local Rule	C.3. Judicial Authorization
	-2	Local Variation	C.4. Notice
	-3	To Advisory Committee	C.7. Default
	-4	To Advisory Committee	C.7. Default
	-5	Model Local Rule	C.1. When Available
	(d)	Possible Inconsistency	D. Possessory, Petitory...
	(e) -1	To Advisory Committee	E.2. Complaint; Security
		Possible Inconsistency	E.2. Complaint; Security
	-2	Possible Inconsistency	C.2. Complaint
		Possible Repetition	B.1. Complaint, Affidavit....
		Possible Inconsistency	B.1. Complaint, Affidavit....
		Possible Repetition	C.2. Complaint
	-4	Local Variation	E.3. Process
	-5	To Advisory Committee	E.4.a. Execution of Process....
	-6	Local Variation	E.2. Complaint; Security
	-7	Local Variation	E.4.f. Execution of Process....
	-8	Model Local Rule	E.5.a. Release of Property
		Model Local Rule	F.7. Insufficiency of Fund
	-9	Possible Repetition	E.4.e. Execution of Process....
	-10	Possible Repetition	E.10. Intervention and Joinder
		Possible Inconsistency	E.10. Intervention and Joinder
	-11	Model Local Rule	E.4.b. Execution of Process....
	-12	Local Variation	E.9. Disposition of Property
		Local Variation	B.1. Complaint, Affidavit....
	(f) -1	Local Variation	F.1. Security
	-2	Local Variation	F.10. Order of Proof at Trial
	(g) -1	Local Variation	E.3. Process
	-2	Local Variation	B.1. Complaint, Affidavit....
	-3	Local Variation	C.4. Notice
		Local Variation	F.4. Notice to Claimants

District of Puerto Rico

Local	Rule	Problem	Location
LR	601	Model Local Rule	A. Scope of the Rules
	602	Model Local Rule	C.3. Judicial Authorization
	603	Possible Repetition	C.4. Notice
		Local Variation	C.4. Notice
	604	To Advisory Committee	E.4.a. Execution of Process....
	605	Local Variation	E.3. Process
	606.1	Local Variation	E.2. Complaint; Security
		Local Variation	F.1. Security
	606.2	Local Variation	E.2. Complaint; Security
	607	Local Variation	F.1. Security
		Local Variation	E.5.c. Release of Property
	608	Local Variation	E.5.c. Release of Property
	609	Local Variation	E.5.c. Release of Property
	610.1	Possible Repetition	B.3. Answer
		Possible Inconsistency	B.3. Answer
	611	Model Local Rule	F.7. Insufficiency of Fund
		Model Local Rule	E.5.a. Release of Property
	612	Possible Repetition	E.5.c. Release of Property
		Possible Repetition	E.5.b. Release of Property
		Possible Repetition	E.5.a. Release of Property
	613	Local Variation	E.9. Disposition of Property
	614	Local Variation	E.9. Disposition of Property

District of South Carolina

	Order	Problem	Location
Order	(12/11/67)	Local Variation	G.8. Discovery

Eastern District of Texas

LR	Local Rule 16	Problem Possible Repetition	Location A. Scope of the Rules
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Southern District of Texas

<u>Local</u>	<u>Rule</u>	<u>Problem</u>	<u>Location</u>
LR	18	Local Variation	E.9. Disposition of Property

Eastern District of Virginia

Local	Rule	Problem	Location
LAR	(a)	Model Local Rule	A. Scope of the Rules
	(b) -1	Possible Inconsistency	B.1. Complaint, Affidavit....
	-2	Local Variation	B.1. Complaint, Affidavit....
	-3	Possible Inconsistency	B.3. Answer
		Possible Repetition	B.3. Answer
	-4	Local Variation	B.1. Complaint, Affidavit....
	(c) -1	Model Local Rule	C.1. When Available
	-2	Model Local Rule	C.3. Judicial Authorization
	-3	Local Variation	C.4. Notice
	-4	To Advisory Committee	C.7. Default
	-5	To Advisory Committee	C.7. Default
	(e) -1	To Advisory Committee	E.2. Complaint; Security
		Possible Inconsistency	E.2. Complaint; Security
	-2	To Advisory Committee	E.2. Complaint; Security
		Possible Inconsistency	E.2. Complaint; Security
	-3	Possible Repetition	B.1. Complaint, Affidavit....
		Possible Inconsistency	C.2. Complaint
		Possible Inconsistency	B.1. Complaint, Affidavit....
		Possible Repetition	C.2. Complaint
	-4	Local Variation	B.1. Complaint, Affidavit....
	-6	Local Variation	E.3. Process
	-7	To Advisory Committee	E.4.a. Execution of Process....
	-8	Local Variation	E.2. Complaint; Security
	-9	Local Variation	E.2. Complaint; Security
	-10	Possible Repetition	E.4.e. Execution of Process....
	-11	Model Local Rule	F.7. Insufficiency of Fund
		Model Local Rule	E.5.a. Release of Property
	-12	Local Variation	E.4.f. Execution of Process....
	-13	Possible Repetition	E.10. Intervention and Joinder
		Possible Inconsistency	E.10. Intervention and Joinder
	-14	Model Local Rule	E.4.b. Execution of Process....
	-15	Local Variation	E.9. Disposition of Property
	(f) -1	Local Variation	F.1. Security
	-2	Local Variation	F.10. Order of Proof at Trial

Eastern District of Washington

	<u>Local Rule</u>	<u>Problem</u>	<u>Location</u>
LAR	100	Model Local Rule	A. Scope of the Rules
	105	Possible Inconsistency	C.2. Complaint
		Possible Inconsistency	B.1. Complaint, Affidavit...
	110 (a)	Local Variation	E.3. Process
	(b)	Possible Repetition	E.3. Process
	(c)	Model Local Rule	C.3. Judicial Authorization
	(d)	Possible Inconsistency	B.1. Complaint, Affidavit...
		Possible Inconsistency	E.3. Process
	(e)	To Advisory Committee	E.4.a. Execution of Process....
	115 (a)	Possible Inconsistency	B.1. Complaint, Affidavit...
	(b)	Local Variation	B.1. Complaint, Affidavit...
	(c)	Possible Repetition	B.1. Complaint, Affidavit...
		Possible Inconsistency	B.1. Complaint, Affidavit...
	(d)	Local Variation	E.4.f. Execution of Process....
	120 (a)	Local Variation	E.2. Complaint; Security
	(b)	Local Variation	F.1. Security
	(c)	Possible Repetition	E.4.e. Execution of Process....
	(d)	Local Variation	F.1. Security
	125	Local Variation	C.4. Notice
	130	To Advisory Committee	C.7. Default
	135	Model Local Rule	E.4.b. Execution of Process....
	140 (a)	Model Local Rule	F.7. Insufficiency of Fund
		Model Local Rule	E.5.a. Release of Property
	(b)	Possible Repetition	E.5.c. Release of Property
	145	Local Variation	E.9. Disposition of Property
	150	Local Variation	C.4. Notice
		Local Variation	F.4. Notice to Claimants
	155	Possible Repetition	G.1. Rate of Interest
		Possible Inconsistency	G.1. Rate of Interest

Western District of Washington

Local	Rule	Problem	Location
LAR	100	Model Local Rule	A. Scope of the Rules
	105	Possible Inconsistency	C.2. Complaint
		Possible Inconsistency	B.1. Complaint, Affidavit....
	110 (a)	Local Variation	E.3. Process
	(b)	Possible Repetition	E.3. Process
	(c)	Model Local Rule	C.3. Judicial Authorization
	(d)	Possible Inconsistency	B.1. Complaint, Affidavit....
		Possible Inconsistency	E.3. Process
	(e)	To Advisory Committee	E.4.a. Execution of Process....
	115 (a)	Possible Inconsistency	B.1. Complaint, Affidavit....
	(b)	Local Variation	B.1. Complaint, Affidavit....
	(c)	Possible Repetition	B.1. Complaint, Affidavit....
		Possible Inconsistency	B.1. Complaint, Affidavit....
	(d)	Local Variation	E.4.f. Execution of Process....
	120 (a)	Local Variation	E.2. Complaint; Security
	(b)	Local Variation	F.1. Security
	(c)	Possible Repetition	E.4.e. Execution of Process....
	(d)	Local Variation	F.1. Security
	125	Local Variation	C.4. Notice
	130	To Advisory Committee	C.7. Default
	135	Model Local Rule	E.4.b. Execution of Process....
	140 (a)	Model Local Rule	F.7. Insufficiency of Fund
		Model Local Rule	E.5.a. Release of Property
	(b)	Possible Repetition	E.5.c. Release of Property
	145	Local Variation	E.9. Disposition of Property
	150	Local Variation	C.4. Notice
		Local Variation	F.4. Notice to Claimants
	155	Possible Repetition	G.1. Rate of Interest
		Possible Inconsistency	G.1. Rate of Interest

Eastern District of Wisconsin

Local	Rule	Problem	Location
LR	22.01	Model Local Rule	A. Scope of the Rules
	22.02	Possible Inconsistency	E.2. Complaint; Security
		Possible Inconsistency	A. Scope of the Rules
		To Advisory Committee	E.2. Complaint; Security
		Possible Repetition	A. Scope of the Rules
	22.03	Possible Repetition	B.1. Complaint, Affidavit....
		Possible Inconsistency	C.2. Complaint
		Possible Repetition	C.2. Complaint
		Possible Inconsistency	B.1. Complaint, Affidavit....
	22.04	Local Variation	E.3. Process
	22.05	Local Variation	F.1. Security
	22.06	Model Local Rule	C.3. Judicial Authorization
	22.07	Local Variation	C.4. Notice
	22.08	Local Variation	E.9. Disposition of Property