

In some cases the plaintiff may prefer to give notice by serving process in the usual way instead of simply by mail. (Rule 4(d).) In particular, if the defendant is in a foreign country the plaintiff may wish to utilize the modes of notice recently provided to facilitate compliance with foreign laws and procedures (Rule 4(i)). The rule provides for these alternatives.

The rule does not provide for notice by publication because there is no problem concerning unknown claimants, and publication has little utility in proportion to its expense where the identity of the defendant is known.

#### Subdivision (3)

Subdivision (a) incorporates the substance of Admiralty Rule 36.

The Admiralty Rules were silent as to when the garnishee and the defendant were to answer. See also 2 Benedict ch. XXIV.

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. When allowance is made for the time required for notice to reach the defendant this gives the defendant in attachment and garnishment approximately the same time that defendants have to answer when personally served.

#### NOTES OF ADVISORY COMMITTEE ON RULES—1985 AMENDMENT

Rule B(1) has been amended to provide for judicial scrutiny before the issuance of any attachment or garnishment process. Its purpose is to eliminate doubts as to whether the Rule is consistent with the principles of procedural due process enunciated by the Supreme Court in *Sniadach v. Family Finance Corp.*, 395 U.S. 337 (1969); and later developed in *Fuentes v. Shevin*, 407 U.S. 67 (1972); *Mitchell v. W. T. Grant Co.*, 416 U.S. 600 (1974); and *North Georgia Finishing, Inc. v. Di-Chem, Inc.*, 419 U.S. 601 (1975). Such doubts were raised in *Grand Bahama Petroleum Co. v. Canadian Transportation Agencies, Ltd.*, 450 F. Supp. 447 (W.D. Wash. 1978); and *Schiffahrtsgesellschaft Leonhardt & Co. v. A. Bottacchi S.A. de Navegacion*, 552 F. Supp. 771 (S.D. Ga. 1982), which was reversed, 732 F.2d 1543 (11th Cir. 1984). But compare *Polar Shipping Ltd. v. Oriental Shipping Corp.*, 680 F.2d 627 (9th Cir. 1982), in which a majority of the panel upheld the constitutionality of Rule B because of the unique commercial context in which it is invoked. The practice described in Rule B(1) has been adopted in some districts by local rule. E.g., N.D. Calif. Local Rule 603.3; W.D. Wash. Local Admiralty Rule 15(d).

The rule envisions that the order will issue when the plaintiff makes a prima facie showing that he has a maritime claim against the defendant in the amount sued for and the defendant is not present in the district. A simple order with conclusory findings is contemplated. The reference to review by the "court" is broad enough to embrace review by a magistrate as well as by a district judge.

The new provision recognizes that in some situations, such as when the judge is unavailable and the ship is about to depart from the jurisdiction, it will be impracticable, if not impossible, to secure the judicial review contemplated by Rule B(1). When "exigent circumstances" exist, the rule enables the plaintiff to secure the issuance of the summons and process of attachment and garnishment, subject to a later showing that the necessary circumstances actually existed. This provision is intended to provide a safety valve without undermining the requirement of preattachment scrutiny. Thus, every effort to secure judicial review, including conducting a hearing by telephone, should be pursued before resorting to the exigent-circumstances procedure.

Rule B(1) also has been amended so that the garnishee shall be named in the "process" rather than in

the "complaint." This should solve the problem presented in *Filia Compania Naviera, S.A. v. Petroskip, S.A.*, 1983 A.M.C. 1 (S.D.N.Y. 1982), and eliminate any need for an additional judicial review of the complaint and affidavit when a garnishee is added.

#### NOTES OF ADVISORY COMMITTEE ON RULES—1987 AMENDMENT

The amendments are technical. No substantive change is intended.

#### COMMITTEE NOTES ON RULES—2000 AMENDMENT

Rule B(1) is amended in two ways, and style changes have been made.

The service provisions of Rule C(3) are adopted in paragraph (d), providing alternatives to service by a marshal if the property to be seized is not a vessel or tangible property on board a vessel.

The provision that allows the plaintiff to invoke state attachment and garnishment remedies is amended to reflect the 1993 amendments of Civil Rule 4. Former Civil Rule 4(e), incorporated in Rule B(1), allowed general use of state quasi-in-rem jurisdiction if the defendant was not an inhabitant of, or found within, the state. Rule 4(e) was replaced in 1993 by Rule 4(n)(2), which permits use of state law to seize a defendant's assets only if personal jurisdiction over the defendant cannot be obtained in the district where the action is brought. Little purpose would be served by incorporating Rule 4(n)(2) in Rule B, since maritime attachment and garnishment are available whenever the defendant is not found within the district, a concept that allows attachment or garnishment even in some circumstances in which personal jurisdiction also can be asserted. In order to protect against any possibility that elimination of the reference to state quasi-in-rem jurisdiction remedies might seem to defeat continued use of state security devices, paragraph (e) expressly incorporates Civil Rule 64. Because Rule 64 looks only to security, not jurisdiction, the former reference to Rule E(8) is deleted as no longer relevant.

Rule B(2)(a) is amended to reflect the 1993 redistribution of the service provisions once found in Civil Rule 4(d) and (i). These provisions are now found in many different subdivisions of Rule 4. The new reference simply incorporates Rule 4, without designating the new subdivisions, because the function of Rule B(2) is simply to describe the methods of notice that suffice to support a default judgment. Style changes also have been made.

#### COMMITTEE NOTES ON RULES—2005 AMENDMENT

Rule B(1) is amended to incorporate the decisions in *Heidmar, Inc. v. Anomina Ravennate Di Armamento Sp.A. of Ravenna*, 132 F.3d 264, 267-268 (5th Cir. 1998), and *Navieros InterAmericanos, S.A. v. M/V Vasilias Express*, 120 F.3d 304, 314-315 (1st Cir. 1997). The time for determining whether a defendant is "found" in the district is set at the time of filing the verified complaint that prays for attachment and the affidavit required by Rule B(1)(b). As provided by Rule B(1)(b), the affidavit must be filed with the complaint. A defendant cannot defeat the security purpose of attachment by appointing an agent for service of process after the complaint and affidavit are filed. The complaint praying for attachment need not be the initial complaint. So long as the defendant is not found in the district, the prayer for attachment may be made in an amended complaint; the affidavit that the defendant cannot be found must be filed with the amended complaint.

*Changes Made After Publication and Comment.* No changes have been made since publication.

#### COMMITTEE NOTES ON RULES—2009 AMENDMENT

The time set in the former rule at 20 days has been revised to 21 days. See the Note to Rule 6.

### Rule C. In Rem Actions: Special Provisions

(1) WHEN AVAILABLE. An action in rem may be brought:

- (a) To enforce any maritime lien;
- (b) Whenever a statute of the United States provides for a maritime action in rem or a proceeding analogous thereto.

Except as otherwise provided by law a party who may proceed in rem may also, or in the alternative, proceed in personam against any person who may be liable.

Statutory provisions exempting vessels or other property owned or possessed by or operated by or for the United States from arrest or seizure are not affected by this rule. When a statute so provides, an action against the United States or an instrumentality thereof may proceed on in rem principles.

(2) COMPLAINT. In an action in rem the complaint must:

- (a) be verified;
- (b) describe with reasonable particularity the property that is the subject of the action; and
- (c) state that the property is within the district or will be within the district while the action is pending.

(3) JUDICIAL AUTHORIZATION AND PROCESS.

(a) *Arrest Warrant.*

(i) The court must review the complaint and any supporting papers. If the conditions for an in rem action appear to exist, the court must issue an order directing the clerk to issue a warrant for the arrest of the vessel or other property that is the subject of the action.

(ii) If the plaintiff or the plaintiff's attorney certifies that exigent circumstances make court review impracticable, the clerk must promptly issue a summons and a warrant for the arrest of the vessel or other property that is the subject of the action. The plaintiff has the burden in any post-arrest hearing under Rule E(4)(f) to show that exigent circumstances existed.

(b) *Service.*

(i) If the property that is the subject of the action is a vessel or tangible property on board a vessel, the warrant and any supplemental process must be delivered to the marshal for service.

(ii) If the property that is the subject of the action is other property, tangible or intangible, the warrant and any supplemental process must be delivered to a person or organization authorized to enforce it, who may be: (A) a marshal; (B) someone under contract with the United States; (C) someone specially appointed by the court for that purpose; or, (D) in an action brought by the United States, any officer or employee of the United States.

(c) *Deposit in Court.* If the property that is the subject of the action consists in whole or in part of freight, the proceeds of property sold, or other intangible property, the clerk must issue—in addition to the warrant—a summons directing any person controlling the property to show cause why it should not be deposited in court to abide the judgment.

(d) *Supplemental Process.* The clerk may upon application issue supplemental process to en-

force the court's order without further court order.

(4) NOTICE. No notice other than execution of process is required when the property that is the subject of the action has been released under Rule E(5). If the property is not released within 14 days after execution, the plaintiff must promptly—or within the time that the court allows—give public notice of the action and arrest in a newspaper designated by court order and having general circulation in the district, but publication may be terminated if the property is released before publication is completed. The notice must specify the time under Rule C(6) to file a statement of interest in or right against the seized property and to answer. This rule does not affect the notice requirements in an action to foreclose a preferred ship mortgage under 46 U.S.C. §§31301 et seq., as amended.

(5) ANCILLARY PROCESS. In any action in rem in which process has been served as provided by this rule, if any part of the property that is the subject of the action has not been brought within the control of the court because it has been removed or sold, or because it is intangible property in the hands of a person who has not been served with process, the court may, on motion, order any person having possession or control of such property or its proceeds to show cause why it should not be delivered into the custody of the marshal or other person or organization having a warrant for the arrest of the property, or paid into court to abide the judgment; and, after hearing, the court may enter such judgment as law and justice may require.

(6) RESPONSIVE PLEADING; INTERROGATORIES.

(a) *Statement of Interest; Answer.* In an action in rem:

(i) a person who asserts a right of possession or any ownership interest in the property that is the subject of the action must file a verified statement of right or interest:

- (A) within 14 days after the execution of process, or
- (B) within the time that the court allows;

(ii) the statement of right or interest must describe the interest in the property that supports the person's demand for its restitution or right to defend the action;

(iii) an agent, bailee, or attorney must state the authority to file a statement of right or interest on behalf of another; and

(iv) a person who asserts a right of possession or any ownership interest must serve an answer within 21 days after filing the statement of interest or right.

(b) *Interrogatories.* Interrogatories may be served with the complaint in an in rem action without leave of court. Answers to the interrogatories must be served with the answer to the complaint.

(As added Feb. 28, 1966, eff. July 1, 1966; amended Apr. 29, 1985, eff. Aug. 1, 1985; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Dec. 1, 1991; Apr. 17, 2000, eff. Dec. 1, 2000; Apr. 29, 2002, eff. Dec. 1, 2002; Apr. 25, 2005, eff. Dec. 1, 2005; Apr. 12, 2006, eff. Dec. 1, 2006; Apr. 23, 2008, eff. Dec. 1, 2008; Mar. 26, 2009, eff. Dec. 1, 2009.)

## NOTES OF ADVISORY COMMITTEE ON RULES

## Subdivision (1).

This rule is designed not only to preserve the proceeding in rem as it now exists in admiralty cases, but to preserve the substance of Admiralty Rules 13-18. The general reference to enforcement of any maritime lien is believed to state the existing law, and is an improvement over the enumeration in the former Admiralty Rules, which is repetitious and incomplete (e.g., there was no reference to general average). The reference to any maritime lien is intended to include liens created by state law which are enforceable in admiralty.

The main concern of Admiralty Rules 13-18 was with the question whether certain actions might be brought in rem or also, or in the alternative, in personam. Essentially, therefore, these rules deal with questions of substantive law, for in general an action in rem may be brought to enforce any maritime lien, and no action in personam may be brought when the substantive law imposes no personal liability.

These rules may be summarized as follows:

1. Cases in which the plaintiff may proceed in rem and/or in personam:
  - a. Suits for seamen's wages;
  - b. Suits by materialmen for supplies, repairs, etc.;
  - c. Suits for pilotage;
  - d. Suits for collision damages;
  - e. Suits founded on mere maritime hypothecation;
  - f. Suits for salvage.
2. Cases in which the plaintiff may proceed only in personam:
  - a. Suits for assault and beating.
3. Cases in which the plaintiff may proceed only in rem:
  - a. Suits on bottomry bonds.

The coverage is complete, since the rules omit mention of many cases in which the plaintiff may proceed in rem or in personam. This revision proceeds on the principle that it is preferable to make a general statement as to the availability of the remedies, leaving out conclusions on matters of substantive law. Clearly it is not necessary to enumerate the cases listed under Item 1, above, nor to try to complete the list.

The rule eliminates the provision of Admiralty Rule 15 that actions for assault and beating may be brought only in personam. A preliminary study fails to disclose any reason for the rule. It is subject to so many exceptions that it is calculated to receive rather than to inform. A seaman may sue in rem when he has been beaten by a fellow member of the crew so vicious as to render the vessel unseaworthy. *The Rolph*, 293 Fed. 269, aff'd 299 Fed. 52 (9th Cir. 1923), or where the theory of the action is that a beating by the master is a breach of the obligation under the shipping articles to treat the seaman with proper kindness. *The David Evans*, 187 Fed. 775 (D. Hawaii 1911); and a passenger may sue in rem on the theory that the assault is a breach of the contract of passage, *The Western States*, 159 Fed. 354 (2d Cir. 1908). To say that an action for money damages may be brought only in personam seems equivalent to saying that a maritime lien shall not exist; and that, in turn, seems equivalent to announcing a rule of substantive law rather than a rule of procedure. Dropping the rule will leave it to the courts to determine whether a lien exists as a matter of substantive law.

The specific reference to bottomry bonds is omitted because, as a matter of hornbook substantive law, there is no personal liability on such bonds.

## Subdivision (2).

This incorporates the substance of Admiralty Rules 21 and 22.

## Subdivision (3).

Derived from Admiralty Rules 10 and 37. The provision that the warrant is to be issued by the clerk is new, but is assumed to state existing law.

There is remarkably little authority bearing on Rule 37, although the subject would seem to be an important one. The rule appears on its face to have provided for

a sort of ancillary process, and this may well be the case when tangible property, such as a vessel, is arrested, and intangible property such as freight is incidentally involved. It can easily happen, however, that the only property against which the action may be brought is intangible, as where the owner of a vessel under charter has a lien on subfreights. See 2 Benedict §299 and cases cited. In such cases it would seem that the order to the person holding the fund is equivalent to original process, taking the place of the warrant for arrest. That being so, it would also seem that (1) there should be some provision for notice, comparable to that given when tangible property is arrested, and (2) it should not be necessary, as Rule 37 provided, to petition the court for issuance of the process, but that it should issue as of course. Accordingly the substance of Rule 37 is included in the rule covering ordinary process, and notice will be required by Rule C(4). Presumably the rules omit any requirement of notice in these cases because the holder of the funds (e.g., the cargo owner) would be required on general principles (cf. *Harris v. Balk*, 198 U.S. 215 (1905) to notify his obligee (e.g., the charterer); but in actions in rem such notice seems plainly inadequate because there may be adverse claims to the fund (e.g., there may be liens against the subfreights for seamen's wages, etc.). Compare Admiralty Rule 9.

## Subdivision (4).

This carries forward the notice provision of Admiralty Rule 10, with one modification. Notice by publication is too expensive and ineffective a formality to be routinely required. When, as usually happens, the vessel or other property is released on bond or otherwise there is no point in publishing notice; the vessel is freed from the claim of the plaintiff and no other interest in the vessel can be affected by the proceedings. If however, the vessel is not released, general notice is required in order that all persons, including unknown claimants, may appear and be heard, and in order that the judgment in rem shall be binding on all the world.

## Subdivision (5).

This incorporates the substance of Admiralty Rule 9. There are remarkably few cases dealing directly with the rule. In *The George Prescott*, 10 Fed. Cas. 222 (No. 5,339) (E.D.N.Y. 1865), the master and crew of a vessel libeled her for wages, and other lienors also filed libels. One of the lienors suggested to the court that prior to the arrest of the vessel the master had removed the sails, and asked that he be ordered to produce them. He admitted removing the sails and selling them, justifying on the ground that he held a mortgage on the vessel. He was ordered to pay the proceeds into court. Cf. *United States v. The Zarko*, 187 F.Supp. 371 (S.D.Cal. 1960), where an armature belonging to a vessel subject to a preferred ship mortgages was in possession of a repairman claiming a lien.

It is evident that, though the rule has had a limited career in the reported cases, it is a potentially important one. It is also evident that the rule is framed in terms narrower than the principle that supports it. There is no apparent reason for limiting it to ships and their appurtenances (2 Benedict §299). Also, the reference to "third parties" in the existing rule seems unfortunate. In *The George Prescott*, the person who removed and sold the sails was a plaintiff in the action, and relief against him was just as necessary as if he had been a stranger.

Another situation in which process of this kind would seem to be useful is that in which the principal property that is the subject of the action is a vessel, but her pending freight is incidentally involved. The warrant of arrest, and notice of its service, should be all that is required by way of original process and notice; ancillary process without notice should suffice as to the incidental intangibles.

The distinction between Admiralty Rules 9 and 37 is not at once apparent, but seems to be this: Where the action was against property that could not be seized by

the marshal because it is intangible, the original process was required to be similar to that issued against a garnishee, and general notice was required (though not provided for by the present rule; cf. Advisory Committee's Note to Rule C(3)). Under Admiralty Rule 9 property had been arrested and general notice had been given, but some of the property had been removed or for some other reason could not be arrested. Here no further notice was necessary.

The rule also makes provision for this kind of situation: The proceeding is against a vessel's pending freight only; summons has been served on the person supposedly holding the funds, and general notice has been given; it develops that another person holds all or part of the funds. Ancillary process should be available here without further notice.

Subdivision (6).

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 stage of the proceedings—before they could fairly be required to answer. The draft is designed to preserve this feature of the present practice by requiring early filing of the claim. The time schedule contemplated in the draft is closely comparable to the present practice in the Southern District of New York, where the claimant has a minimum of 8 days to claim and three weeks thereafter to answer.

This rule also incorporates the substance of Admiralty Rule 25. The present rule's emphasis on "the true and bona fide owner" is omitted, since anyone having the right to possession can claim (2 Benedict §324).

NOTES OF ADVISORY COMMITTEE ON RULES—1985  
AMENDMENT

Rule C(3) has been amended to provide for judicial scrutiny before the issuance of any warrant of arrest. Its purpose is to eliminate any doubt as to the rule's constitutionality under the *Sniadach* line of cases. *Sniadach v. Family Finance Corp.*, 395 U.S. 337 (1969); *Fuentes v. Shevin*, 407 U.S. 67 (1972); *Mitchell v. W. T. Grant Co.*, 416 U.S. 600 (1974); and *North Georgia Finishing, Inc. v. Di-Chem, Inc.*, 419 U.S. 601 (1975). This was thought desirable even though both the Fourth and the Fifth Circuits have upheld the existing rule. *Amstar Corp. v. S/S Alexandros T.*, 664 F.2d 904 (4th Cir. 1981); *Merchants National Bank of Mobile v. The Dredge General G. L. Gillespie*, 663 F.2d 1338 (5th Cir. 1981), cert. dismissed, 456 U.S. 966 (1982). A contrary view was taken by Judge Tate in the *Merchants National Bank* case and by the district court in *Alyeska Pipeline Service Co. v. The Vessel Bay Ridge*, 509 F. Supp. 1115 (D. Alaska 1981), appeal dismissed, 703 F.2d 381 (9th Cir. 1983).

The rule envisions that the order will issue upon a prima facie showing that the plaintiff has an action in rem against the defendant in the amount sued for and that the property is within the district. A simple order with conclusory findings is contemplated. The reference to review by the "court" is broad enough to embrace a magistrate as well as a district judge.

The new provision recognizes that in some situations, such as when a judge is unavailable and the vessel is about to depart from the jurisdiction, it will be impracticable, if not impossible, to secure the judicial review contemplated by Rule C(3). When "exigent circumstances" exist, the rule enables the plaintiff to secure the issuance of the summons and warrant of arrest, subject to a later showing that the necessary circumstances actually existed. This provision is intended to provide a safety valve without undermining the requirement of pre-arrest scrutiny. Thus, every effort to secure judicial review, including conducting a hearing by telephone, should be pursued before invoking the exigent-circumstances procedure.

The foregoing requirements for prior court review or proof of exigent circumstances do not apply to actions

by the United States for forfeitures for federal statutory violations. In such actions a prompt hearing is not constitutionally required, *United States v. Eight Thousand Eight Hundred and Fifty Dollars*, 103 S.Ct. 2005 (1983); *Calero-Toledo v. Pearson Yacht Leasing Co.*, 416 U.S. 663 (1974), and could prejudice the government in its prosecution of the claimants as defendants in parallel criminal proceedings since the forfeiture hearing could be misused by the defendants to obtain by way of civil discovery information to which they would not otherwise be entitled and subject the government and the courts to the unnecessary burden and expense of two hearings rather than one.

NOTES OF ADVISORY COMMITTEE ON RULES—1987  
AMENDMENT

The amendments are technical. No substantive change is intended.

NOTES OF ADVISORY COMMITTEE ON RULES—1991  
AMENDMENT

These amendments are designed to conform the rule to Fed.R.Civ.P. 4, as amended. As with recent amendments to Rule 4, it is intended to relieve the Marshals Service of the burden of using its limited personnel and facilities for execution of process in routine circumstances. Doing so may involve a contractual arrangement with a person or organization retained by the government to perform these services, or the use of other government officers and employees, or the special appointment by the court of persons available to perform suitably.

The seizure of a vessel, with or without cargo, remains a task assigned to the Marshal. Successful arrest of a vessel frequently requires the enforcement presence of an armed government official and the cooperation of the United States Coast Guard and other governmental authorities. If the marshal is called upon to seize the vessel, it is expected that the same officer will also be responsible for the seizure of any property on board the vessel at the time of seizure that is to be the object of arrest or attachment.

COMMITTEE NOTES ON RULES—2000 AMENDMENT

Style changes have been made throughout the revised portions of Rule C. Several changes of meaning have been made as well.

*Subdivision 2.* In rem jurisdiction originally extended only to property within the judicial district. Since 1986, Congress has enacted a number of jurisdictional and venue statutes for forfeiture and criminal matters that in some circumstances permit a court to exercise authority over property outside the district. 28 U.S.C. §1355(b)(1) allows a forfeiture action in the district where an act or omission giving rise to forfeiture occurred, or in any other district where venue is established by §1395 or by any other statute. Section 1355(b)(2) allows an action to be brought as provided in (b)(1) or in the United States District Court for the District of Columbia when the forfeiture property is located in a foreign country or has been seized by authority of a foreign government. Section 1355(d) allows a court with jurisdiction under §1355(b) to cause service in any other district of process required to bring the forfeiture property before the court. Section 1395 establishes venue of a civil proceeding for forfeiture in the district where the forfeiture accrues or the defendant is found; in any district where the property is found; in any district into which the property is brought, if the property initially is outside any judicial district; or in any district where the vessel is arrested if the proceeding is an admiralty proceeding to forfeit a vessel. Section 1395(e) deals with a vessel or cargo entering a port of entry closed by the President, and transportation to or from a state or section declared to be in insurrection. 18 U.S.C. §981(h) creates expanded jurisdiction and venue over property located elsewhere that is related to a criminal prosecution pending in the district. These amendments, and related amendments of Rule E(3),

bring these Rules into step with the new statutes. No change is made as to admiralty and maritime proceedings that do not involve a forfeiture governed by one of the new statutes.

Subdivision (2) has been separated into lettered paragraphs to facilitate understanding.

*Subdivision (3).* Subdivision (3) has been rearranged and divided into lettered paragraphs to facilitate understanding.

Paragraph (b)(i) is amended to make it clear that any supplemental process addressed to a vessel or tangible property on board a vessel, as well as the original warrant, is to be served by the marshal.

*Subdivision (4).* Subdivision (4) has required that public notice state the time for filing an answer, but has not required that the notice set out the earlier time for filing a statement of interest or claim. The amendment requires that both times be stated.

A new provision is added, allowing termination of publication if the property is released more than 10 days after execution but before publication is completed. Termination will save money, and also will reduce the risk of confusion as to the status of the property.

*Subdivision (6).* Subdivision (6) has applied a single set of undifferentiated provisions to civil forfeiture proceedings and to in rem admiralty proceedings. Because some differences in procedure are desirable, these proceedings are separated by adopting a new paragraph (a) for civil forfeiture proceedings and recasting the present rule as paragraph (b) for in rem admiralty proceedings. The provision for interrogatories and answers is carried forward as paragraph (c). Although this established procedure for serving interrogatories with the complaint departs from the general provisions of Civil Rule 26(d), the special needs of expedition that often arise in admiralty justify continuing the practice.

Both paragraphs (a) and (b) require a statement of interest or right rather than the “claim” formerly required. The new wording permits parallel drafting, and facilitates cross-references in other rules. The substantive nature of the statement remains the same as the former claim. The requirements of (a) and (b) are, however, different in some respects.

In a forfeiture proceeding governed by paragraph (a), a statement must be filed by a person who asserts an interest in or a right against the property involved. This category includes every right against the property, such as a lien, whether or not it establishes ownership or a right to possession. In determining who has an interest in or a right against property, courts may continue to rely on precedents that have developed the meaning of “claims” or “claimants” for the purpose of civil forfeiture proceedings.

In an admiralty and maritime proceeding governed by paragraph (b), a statement is filed only by a person claiming a right of possession or ownership. Other claims against the property are advanced by intervention under Civil Rule 24, as it may be supplemented by local admiralty rules. The reference to ownership includes every interest that qualifies as ownership under domestic or foreign law. If an ownership interest is asserted, it makes no difference whether its character is legal, equitable, or something else.

Paragraph (a) provides more time than paragraph (b) for filing a statement. Admiralty and maritime in rem proceedings often present special needs for prompt action that do not commonly arise in forfeiture proceedings.

Paragraphs (a) and (b) do not limit the right to make a restricted appearance under Rule E(8).

#### COMMITTEE NOTES ON RULES—2002 AMENDMENT

Rule C(3) is amended to reflect the provisions of 18 U.S.C. §985, enacted by the Civil Asset Forfeiture Reform Act of 2000, 114 Stat. 202, 214–215. Section 985 provides, subject to enumerated exceptions, that real property that is the subject of a civil forfeiture action is not to be seized until an order of forfeiture is entered. A civil forfeiture action is initiated by filing a com-

plaint, posting notice, and serving notice on the property owner. The summons and arrest procedure is no longer appropriate.

Rule C(6)(a)(i)(A) is amended to adopt the provision enacted by 18 U.S.C. §983(a)(4)(A), shortly before Rule C(6)(a)(i)(A) took effect, that sets the time for filing a verified statement as 30 days rather than 20 days, and that sets the first alternative event for measuring the 30 days as the date of service of the Government’s complaint.

Rule C(6)(a)(iii) is amended to give notice of the provision enacted by 18 U.S.C. §983(a)(4)(B) that requires that the answer in a forfeiture proceeding be filed within 20 days. Without this notice, unwary litigants might rely on the provision of Rule 5(d) that allows a reasonable time for filing after service.

Rule C(6)(b)(iv) is amended to change the requirement that an answer be filed within 20 days. Service is the ordinary requirement, as in Rule 12(a). Rule 5(d) requires filing within a reasonable time after service.

*Changes Made After Publication and Comments.* No changes have been made since publication.

#### COMMITTEE NOTES ON RULES—2005 AMENDMENT

Rule C(6)(b)(i)(A) is amended to delete the reference to a time 10 days after completed publication under Rule C(4). This change corrects an oversight in the amendments made in 2000. Rule C(4) requires publication of notice only if the property that is the subject of the action is not released within 10 days after execution of process. Execution of process will always be earlier than publication.

*Changes Made After Publication and Comment.* No changes have been made since publication.

#### COMMITTEE NOTES ON RULES—2006 AMENDMENT

Rule C is amended to reflect the adoption of Rule G to govern procedure in civil forfeiture actions.

#### COMMITTEE NOTES ON RULES—2008 AMENDMENT

Supplemental Rule C(6)(a)(i) is amended to correct an inadvertent omission in the 2006 amendment to Rule C. The amendment is technical and stylistic in nature. No substantive change is intended.

#### COMMITTEE NOTES ON RULES—2009 AMENDMENT

The times set in the former rule at 10 or 20 days have been revised to 14 or 21 days. See the Note to Rule 6.

### Rule D. Possessory, Petitory, and Partition Actions

In all actions for possession, partition, and to try title maintainable according to the course of the admiralty practice with respect to a vessel, in all actions so maintainable with respect to the possession of cargo or other maritime property, and in all actions by one or more part owners against the others to obtain security for the return of the vessel from any voyage undertaken without their consent, or by one or more part owners against the others to obtain possession of the vessel for any voyage on giving security for its safe return, the process shall be by a warrant of arrest of the vessel, cargo, or other property, and by notice in the manner provided by Rule B(2) to the adverse party or parties.

(As added Feb. 28, 1966, eff. July 1, 1966.)

#### NOTES OF ADVISORY COMMITTEE ON RULES

This carries forward the substance of Admiralty Rule 19.

Rule 19 provided the remedy of arrest in controversies involving title and possession in general. See *The Tilton*, 23 Fed. Cas. 1277 (No. 14, 054) (C.C.D. Mass. 1830).