

Applicable to all admiralty actions (as defined in Rule A) filed on or after March 1, 1995 and, as far as is practicable, to all such actions currently pending. Promulgated by the Palau Supreme Court February 16, 1995.

RULES FOR CERTAIN ADMIRALTY AND MARITIME CLAIMS

RULE A. SCOPE OF RULES.

These rules govern procedure in admiralty and maritime claims with respect to the following remedies:

- (1) Maritime attachment and garnishment;
- (2) Actions in rem; and
- (3) Possessory, petitory, and partition actions.

These rules also govern procedure in statutory condemnation proceedings analogous to maritime actions in rem. Except as otherwise provided, references actions in rem include analogous statutory condemnation proceedings.

The ROP Rules of Civil Procedure also apply except to the extent they are inconsistent with these rules, in which case these rules shall govern.

RULE B. IN PERSONAM ACTIONS; ATTACHMENT AND GARNISHMENT.

(1) When Available; Complaint; Affidavit, Judicial Authorization, and Process. With respect to any in personam admiralty or maritime claim, if the defendant cannot be served with a summons and complaint as provided in ROP Civ. Pro. Rule 4(d), a verified complaint may contain a prayer for process to attach the defendant's goods and chattels, or to garnish credits and effects in the hands of garnishees to be named in the process to the amount sued for. Such a complaint shall be accompanied by an affidavit signed by the plaintiff or the plaintiff's attorney stating that, to the affiant's knowledge, or to the best of his or her information and belief, the defendant cannot be served with a summons and complaint as provided in ROP Civ. Pro. Rule 4(d). The affidavit shall list the efforts made by and on behalf of the plaintiff to find and serve the defendant within Palau. The verified complaint and affidavit shall be reviewed by the court and, if the conditions set forth in this rule appear to exist, an order so stating and authorizing process of attachment and/or garnishment shall issue. Supplemental process enforcing the court's order may be issued by the Clerk of Courts upon application without further order of the court.

- (2) Answer.

(a) By garnishee. The garnishee shall serve an answer, together with answers to any interrogatories served with the complaint, within 20 days after service of process upon him or her. Interrogatories to the garnishee may be served with the complaint without leave of court. If the garnishee refuses or neglects to answer on oath as to the debts, credits, or effects of the defendant in his or her hands, or any interrogatories concerning such debts, credits, and effects that may be propounded by the plaintiff, the

court may award compulsory process against the garnishee. If the garnishee admits any debts, credits, or effects, they shall be held in his or her hands or paid into the registry of the court, and shall be held in either case subject to the further order of the court.

(b) By defendant. The defendant shall serve an answer within 30 days after process has been executed, whether by attachment of property or service on the garnishee.

(3) Default judgment. No judgment by default shall be entered in an in personam admiralty or maritime action except upon proof, which may be by affidavit, (a) that the plaintiff or the garnishee has given notice of the action to the defendant by mailing a copy of the complaint, summons, and process of attachment or garnishment, using any form of mail requiring a return receipt, or (b) that the complaint, summons, and process of attachment or garnishment have been served on the defendant in a manner authorized by ROP Civ. Pro. 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.

RULE C. ACTIONS IN REM: SPECIAL PROVISIONS.

(1) When Available. An action in rem may be brought to enforce any maritime lien or whenever a statute provides for a maritime action in rem or an analogous proceeding. A party who may proceed in rem may also, or in the alternative, proceed in personam against any person who may be liable.

(2) Complaint. In actions in rem the complaint shall be verified on oath. It shall describe with reasonable particularity the property that is the subject of the action and state that it is within Palau or will be during the pendency of the action. In actions for the enforcement of forfeitures for violation of any statute, the complaint shall state the place of seizure and whether it was on land or on navigable waters, and shall contain such allegations as may be required by the statute pursuant to which the action is brought.

(3) Judicial authorization and process. The verified complaint and any supporting papers shall be reviewed by the court upon the filing of a Notice of Request for Review. The Notice shall state the process sought and any time requirements within which the request must be reviewed. Unless otherwise required by the court, the review by the court will not require the presence of the applicant or its attorney but shall be based upon the pleadings and other papers submitted on behalf of that party. If the conditions for an action in rem appear to exist, the court may issue an order authorizing a warrant for the arrest of the vessel or other property that is the subject of the action. If the property that is the subject of the action consists in whole or in part of the proceeds of property sold, or other intangible property, the Clerk of Courts shall issue a summons directing any person having control of the funds to show cause within 10 days why they should not be paid into court to abide the judgment. The court may for good cause shown lengthen or shorten the time. Service of the summons has the effect of an arrest of the funds and brings them within the control of the court. The person who is served may deliver or pay over to the court the funds proceeded against to the extent sufficient to satisfy the plaintiff's claim. If such delivery or payment is made, the person served is excused from the duty to show cause. Claimants of the property may show cause as provided in Rule C(6) why the property should not be delivered to or retained by the court. Supplemental process enforcing any court order issued pursuant to this rule may be issued by the Clerk of Courts upon application without further order of the court.

(4) Notice. No notice other than the execution of the process is required when the property that is the subject of the action has been released in accordance with Rule E (5). If the property is not released within 10 days after execution of process, the plaintiff shall promptly cause public notice of the action and arrest to be given in a local newspaper of general circulation, the Pacific Daily News, and in such other publications as the court may order. The notice shall contain:

- (1) The court, title, and number of the action;
- (2) The date of the arrest;
- (3) The identity of the property arrested;
- (4) The name, address, telephone number and fax number of the attorney for plaintiff;
- (5) A statement that the claim of a person who is entitled to possession or who claims an interest pursuant to Rule C(6) must be filed with the Clerk of Courts and served on the attorney for plaintiff within 20 days after publication;
- (6) A statement that an answer to the complaint must be filed and served within 20 days after publication, and that otherwise, default may be entered and condemnation ordered;
- (7) A statement that applications for intervention under ROP Civ. Pro. Rule 24 by persons claiming maritime liens or other interests shall be filed within the time fixed by the court; and
- (8) The name, address, and telephone number of the Clerk of Courts.

Plaintiff shall file with the Clerk of Courts no later than 30 days after the date of publication a copy of the publication or a reproduction of it.

(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, 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 court to abide the judgment and, after hearing, the court may enter such judgment as law and justice may require.

(6) Claim and answer; interrogatories. Any claimant of the property that is the subject of an action in rem shall file a claim and an answer to the complaint within 20 days after process has been executed or notice published, or within such additional time as may be allowed by the court. The claim shall be verified on oath and shall state the interest in the property by virtue of which the claimant demands its restitution and the right to defend the action. If the claim is made on behalf of the person entitled to possession by an agent, bailee, or attorney, it shall state that he is duly authorized to make the claim. At the time of answering the claimant shall also serve answers to any interrogatories served with the complaint.

(7) Default in action in rem. At any time after the time for filing an answer has expired, the plaintiff may apply for entry of default judgment pursuant to ROP Civ. Pro. Rule 55. A party seeking a default judgment in an action in rem must show that due notice of the action and arrest of the property has been given (a) by publication as described in Rule C(4), (b) by service upon the person having custody of the property, and (c) by service under ROP R. Civ. Pro. Rule 5 (b) upon every other person who has not appeared in the action and is known to have an interest in the property. Failure to give notice shall be grounds for setting aside the default but shall not affect title to property sold pursuant to order of sale or judgment.

RULE D. POSSESSORY, PETITORY, AND PARTITION ACTIONS.

In all actions for possession, partition, and to try title to a vessel, in all actions for 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 C(4) to the adverse party or parties. The court may order that the claim and answer be filed on a date earlier than 20 days after arrest. The order may also set a date for expedited hearing of the action.

RULE E. ACTIONS IN REM AND QUASI IN REM: GENERAL PROVISIONS.

(1) Applicability. Except as otherwise provided, this rule applies to actions in personam with process of maritime attachment and garnishment, actions in rem, and petitory, possessory, and partition actions, supplementing Rules B, C, and D.

(2) Complaint: security.

(a) Complaint. In actions to which this rule applies the complaint shall state the circumstances from which the claim arises with such particularity that the defendant or claimant will be able, without moving for a more definite statement, to commence an investigation of the facts and to frame a responsive pleading. The demand for judgment in every complaint filed under Rule B or C (except a demand for a salvage award) shall allege the dollar amount of the debt or damages for which the action was commenced. The demand for judgment shall also allege the nature of other items of damage. The amount of the special bond posted under Rule E(5)(a) may be based upon these allegations. Every complaint in Rule B, C, and D actions shall be verified upon oath by a party or by an authorized officer of a corporate party. If no party or authorized corporate officer is present in Palau, verification of a complaint may be made by an agent, attorney in fact, or attorney of record, who shall state the sources of the knowledge, information and belief contained in the complaint; declare that the document verified is true to the best of that knowledge, information, and belief; state why verification is not made by the party or an authorized corporate officer; and state that the affiant is authorized so to verify. A verification not made by a party or authorized corporate officer will be deemed to have been made by the party as if verified personally. If the verification was not made by a party or authorized corporate officer, any interested party may move, with or without requesting a stay, for the personal oath of a party or an authorized corporate officer, which shall be procured by commission or as otherwise ordered.

(b) Security for costs. Subject to the provisions of ROP Civ. Pro. Rule 54(d) and of relevant statutes, the court may, on the filing of the complaint or on the appearance of any defendant, claimant, or any other party, or at any later time, require the plaintiff, defendant, claimant, or other party to give security, in such sum as the court shall direct, to pay all costs and expenses that may be awarded against him. The party so ordered shall post the security within five days after the order is entered, or such other time as the court may order. A party may move for an order increasing the amount of security for costs.

(3) Execution of process.

(a) In general. Upon issuance and delivery of the process, or, in the case of summons with process of attachment and garnishment, when the defendant cannot be served with the summons and complaint as provided in ROP Civ. Pro. 4(d), the Bureau of Public Safety shall forthwith execute the process in accordance with this subdivision, making prompt return.

(b) Tangible property. If tangible property is to be attached or arrested, the Bureau of Public Safety shall take it into its possession for safe custody. If the character or situation of the property is such that the taking of actual possession is impracticable, the Bureau of Public Safety shall execute the process by affixing a copy thereof to the property in a conspicuous place and by leaving a copy of the complaint and process with the person having possession or the person's agent. In furtherance of its custody of any vessel the Bureau of Public Safety is authorized to make a written request to the collector of customs not to grant clearance to such vessel until notified by the Bureau of Public Safety or by the Clerk of Courts that the vessel has been released in accordance with these rules.

(c) Intangible property. If intangible property is to be attached or arrested the Bureau of Public Safety shall execute the process by leaving with the garnishee or other obligor a copy of the complaint and process requiring him to answer as provided in Rules B(2) (a) and C(6) ; or it may accept for payment into the registry of the court the amount owed to the extent of the amount claimed by the plaintiff with interest and costs, in which event the garnishee or other obligor shall not be required to answer.

(4) Custody of Property.

(a) Safekeeping of property. When a vessel, cargo or other property is brought into the Bureau of Public Safety's custody by arrest or attachment, the Bureau shall arrange for adequate safekeeping, which may include placing keepers on or near the vessel.

(b) Insurance. The Bureau of Public Safety may procure insurance to protect itself from liabilities assumed in arresting and holding the vessel, cargo, or other property, and in performing services to protect the vessel, cargo, or other property, and to maintain the court's custody. A party who applies for any relief that will require an additional premium shall reimburse the Bureau of Public Safety. The premiums charged for liability insurance are taxable as administrative costs while the vessel, cargo, or other property is in the custody of the court.

(c) Vessel operation. Following arrest or attachment of a vessel, no cargo handling, repairs, or movement may be made without an order of the court. The applicant for such an order shall give notice to the Bureau of Public Safety and to all parties of record. Upon proof of adequate insurance coverage to indemnify the Bureau of Public Safety for the applicant's liability, the court may direct the Bureau to permit cargo handling, repairs, movement of the vessel, or other operations.

(d) Claims by suppliers for payment of charges. A person who furnishes supplies or services to a vessel, cargo, or other property in custody of the court who has not been paid and who 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 Bureau of Public Safety and all parties of record. The court may consider the claims individually or schedule a single hearing for all claims.

(e) Directions with respect to property in custody. The Bureau of Public Safety may at any time apply to the court for directions with respect to property that has been attached or arrested, and shall give notice of such application to any or all of the parties as the court may direct.

(f) Procedure for release from arrest or attachment. Whenever property is arrested or attached, any person claiming an interest in it shall be entitled to a prompt hearing at which the plaintiff shall be required to show why the arrest or attachment should not be vacated or other relief granted consistent with these rules.

(5) Release of property.

(a) Special bond. Whenever process of attachment and garnishment or process in rem is issued the execution of such process shall be stayed, or the property released, on the giving of security. If the parties are unable to stipulate to the amount and nature of the security, the court shall fix the principal sum of the bond at an amount sufficient to cover the plaintiff's claim fairly stated with accrued interest and costs; but the principal sum shall in no event exceed (i) twice the amount of the plaintiff's claim or (ii) the value of the property on due appraisal, whichever is smaller. An order for appraisal of property so that security may be given or altered shall be entered 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 be faithful and impartial discharge of his or her duties. The appraiser shall promptly file the appraisal with the Clerk of Courts and serve it upon counsel of record. The appraiser's fee, which is a taxable cost of the action, shall be paid by the moving party, unless otherwise ordered or agreed.

(b) General bond. The owner of any vessel may file a general bond or stipulation, with sufficient surety, to be approved by the court, to answer the judgment of the court in all or any actions that may be brought thereafter in which the vessel is attached or arrested. Thereupon the execution of all such process against such vessel shall be stayed so long as the amount secured by such bond or stipulation is at least double the aggregate amount claimed by plaintiffs in all actions begun and pending in which such vessel has been attached or arrested. Judgments and remedies may be had on such bond or stipulation as if a special bond or stipulation had been filed in each of such actions. The

court may make necessary orders to carry this rule into effect, particularly as to the giving of proper notice of any action against or attachment of a vessel for which a general bond has been filed. If a special bond or stipulation is given in a particular case, the liability on the general bond or stipulation shall cease as to that case.

(c) Reducing or increasing security. Whenever security is taken the court may, on motion and hearing, for good cause shown, increase or reduce the amount of security given.

(d) Security for counterclaim. Whenever a counterclaim is arises out of the same transaction or occurrence as the original action, and the defendant or claimant in the original action has given security to respond in damages, any plaintiff for whose benefit such security has been given shall give security in the usual amount and form to respond in damages to the claims set for in such counterclaim, unless the court, for cause shown, directs otherwise. Proceedings on the original claim shall be stayed until such security is given, unless the court otherwise directs.

(e) Release by order of the court. No property in the custody of the Bureau of Public Safety or other officer of the court shall be released without an order of the court.

(6) Disposition of property; sales.

(a) Actions for forfeitures. In any action in rem to enforce a forfeiture for violation of a statute the property shall be disposed of as provided by statute.

(b) Interlocutory sales. If property that has been attached is perishable or liable to injury by being detained in custody pending the action, or if the expense of keeping the property is excessive or disproportionate, or if there is unreasonable delay in securing the release of property, the court, on application of any party or of the Bureau of Public Safety, may order the property or any portion thereof to be sold; and the proceeds, or so much thereof as shall be adequate to satisfy any judgment, may be ordered brought into court pending final judgment; or the court may, on motion of the defendant or claimant, order delivery of the property to him, upon the giving of security in accordance with these rules.

(c) Sales; proceeds.

(i) Sales; notice. All sales of property shall be made by the Bureau of Public Safety, or other proper officer assigned by the court. Notice of the sale of arrested or attached property shall be published in a local newspaper of general circulation, the Pacific Daily News, and in such other publications as the court may order. Unless otherwise ordered by the court upon a showing of urgency or impracticality notice shall be published for at least six consecutive days before the date of sale.

(ii) Payment of bid. Unless otherwise provided in the order, in all public auction sales by the Bureau of Public Safety under orders of sale in admiralty and maritime claims, the Bureau of Public Safety shall require of the last and highest bidder at the sale a minimum deposit in cash, certified check or cashier's check, of

the full purchase price if it does not exceed \$500, and otherwise \$500 or ten percent of the bid, whichever is greater. The balance, if any, of the purchase price shall be paid in cash, certified check or cashier's check before confirmation of the sale or within three days of the dismissal of any opposition which may have been filed, exclusive of Saturdays, Sundays, and legal holidays. Notwithstanding the above, a plaintiff or intervenor foreclosing a properly recorded and endorsed preferred mortgage, or other valid security interest in the vessel, may bid, without payment of cash, certified check or cashier's check, up to the total amount of the secured indebtedness as established by affidavit filed and served by that party on all other parties no later than ten days prior to the date of sale.

(iii) Report and confirmation. At the conclusion of the sale, the Bureau of Public Safety shall forthwith file a written report to the court of the fact of the sale, the price obtained and the name and address of the buyer. If within three days, exclusive of Saturdays, Sundays, and legal holidays, no written objection is filed, the sale shall stand confirmed as of course, without the necessity of any affirmative action by the court; except that no sale shall stand confirmed until the buyer has complied fully with the purchase terms. If no opposition to the sale is filed, the expenses of keeping the property pending confirmation of the sale shall be charged against the party bearing expenses before the sale (subject to taxation as costs), except that if confirmation is delayed by the purchaser's failure to pay any balance due on the price, the cost of keeping the property after the three day period shall be borne by the purchaser.

(iv) Penalty for late payment of balance. A successful bidder who fails to pay the balance of the bid within the time allowed under these rules or a different time specified by the court shall also pay the Bureau of Public Safety the costs of keeping the property from the date payment of the balance was due to the date the bidder pays the balance and takes delivery of the property. Unless otherwise ordered by the court, the Bureau of Public Safety shall refuse to release the property until the additional charge is paid.

(v) Penalty for default in payment of balance. A successful bidder who fails to pay the balance of the bid within the time allowed is in default and the court may order a sale to the second highest bidder or order a new sale as appropriate. Any sum deposited by the bidder in default shall be applied to pay any additional costs incurred by the Bureau of Public Safety by reason of the default, including costs incident to resale. The balance of the deposit, if any, shall be retained in the registry subject to further order of the court.

(vi) Objection to sale. A party filing an objection to the sale shall give prompt notice to all other parties and to the purchaser. Such party shall also, prior to filing an objection, deposit with the Bureau of Public Safety sufficient funds to cover the necessary expense of keeping the property for at least five days. Pending the court's determination of the objection, such party shall also advance any further expense at such time and in such amounts as the Bureau of Public Safety shall request, or as the court orders upon application of the Bureau of Public Safety or the opposing party. Such expense may later be subject to taxation as costs. In the event of failure to make such advance, the objection shall

fail without the necessity for affirmative action thereon by the court. If the objection fails, the expense of keeping the property during its pendency shall be borne by the party filing the objection.

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

(7) Restricted appearance. An appearance to defend against an admiralty and maritime claim with respect to which there has issued process in rem, or process of attachment and garnishment, may be expressly restricted to the defense of such claim and thus not constitute an appearance for the purposes of any other claim with respect to which process is not available or has not been served.

(8) Deputization of private parties. The court may, upon application of any party or *sua sponte*, deputize an individual or organization other than the Bureau of Public Safety to execute process, to maintain custody of the arrested property, or to dispose of the property through sale or by any other means authorized. The person so deputized shall have all the rights and responsibilities afforded the Bureau of Public Safety in these rules.