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30 April 2008

Peter G. McCabe, Esq.
Secretary, Committee on Rules of Practice & Procedure
Administrative Office of the United States Courts
Thurgood Marshall Federal Judiciary Building
Washington, D.C. 20544

Re: MLA Proposal to Amend Supplemental Rule E

Dear Peter:

I enclose a letter from David J. Sharpe, project manager for the Maritime Law Association of the United States working group on the Model Local Admiralty Rules.

Professor Sharpe writes that two sentences in Supplemental Rule E(4)(f) have become obsolete and should be deleted.

This letter, although initially addressed to me as Reporter for the Civil Rules Advisory Committee, should be treated as a suggestion for the Civil Rules agenda.

Thank you for tending to this, and for helping to preserve it in a way that will protect against oversight better than my cluttered desk top has done.

Sincerely yours,


Edward H. Cooper

EHC/lm
c: Professor David J. Sharpe

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January 24, 2008

Prof. Edward H. Cooper
Reporter, Advisory Committee on the Federal Rules of Civil Procedure
University of Michigan Law School
625 South State St.
ANN ARBOR MI 48109-1215

Dear Prof. Cooper:

I am a member of The Maritime Law Association of the United States, a professor emeritus of law (The George Washington University), and the project manager for a working group of the MLAUS that is updating the Model Local Admiralty Rules.

In the course of the Model Local Admiralty Rules project, I explored two sentences in Supplemental Rule E(4)(f) that seem to be obsolete. The matter seems to me trivial and leisurely, and it has no direct relationship to the Model Local Admiralty Rules, but I like to keep the Supplemental Rules up to date

I enclose a short memorandum for you to explore and, if you think fit, to pass forward in the Judicial Conference hierarchy.

Very truly yours,

David J. Sharpe

Copies to.

Lizabeth L. Burrell, president, MLAUS
Andrew J. Goldstein, chair, MLAUS Committee on Practice and Procedure
Robert J. Zapf, ex-chair, MLAUS Committee on Practice and Procedure

PROPOSAL TO DELETE A SENTENCE OF SUPP. RULE E(4)(f)

The Supplemental Rule Text. Supplemental Rule E(4)(f) entered into force July 1, 1966, and it has not been amended. The sentence proposed to be deleted is underlined:

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

(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. This subdivision shall have no application to suits for seamen's wages when process is issued upon a certification of sufficient cause filed pursuant to Title 46, U.S.C. §§ 603 and 604 or to actions by the United States for forfeitures for violation of any statute of the United States.

The Text of the Seaman's Wage Statutes Referred to. In 1966, the reference to 46 U.S.C. §§ 603 and 604 was valid:

46 U.S.C. § 603. Summons for nonpayment

Whenever the wages of any seaman are not paid within ten days after the time when the same ought to be paid according to the provisions of Title 53 of the Revised Statutes, or any dispute arises between the master and seamen touching wages, the district judge for the judicial district where the vessel is, or in case his residence be more than three miles from the place, or he be absent from the place of his residence, then, any judge or justice of the peace, or any United States commissioner, may summon the master of such vessel to appear before him, to show cause why process should not issue against such vessel, her tackle, apparel, and furniture, according to the course of admiralty courts, to answer for the wages. R.S § 4546; May 28, 1896, c. 252, § 19, 29 Stat. 184; Mar. 2, 1901, c. 814, 31 Stat. 956.

46 U.S.C. § 604. Libel for wages

If the master against whom such summons is issued neglects to appear, or, appearing, does not show that the wages are paid or otherwise satisfied or forfeited, and if the matter in dispute is not forthwith settled, the judge or justice or United States commissioner shall certify to the clerk of the district court that there is sufficient cause of complaint whereon to found admiralty process; and thereupon the clerk of such court shall issue process against the vessel. In all cases where the matter in demand does not exceed \$100 the return day of the monition or citation shall be the first day of a stated or special session of court next succeeding the third day after the service of the monition or citation, and on the return of process in open court, duly served, either party may

proceed therein to proofs and hearing without other notice, and final judgment shall be given according to the usual course of admiralty courts in such cases. In such suits all the seamen having cause of complaint of the like kind against the same vessel may be joined as complainants, and it shall be incumbent on the master to produce the contract and log book, if required to ascertain any matter in dispute; otherwise the complainants shall be permitted to state the contents thereof, and the burden of proof of the contrary shall be on the master. But nothing therein contained shall prevent any seaman from maintaining any action at common law for the recovery of his wages, or having immediate process out of any court having admiralty jurisdiction wherever any vessel may be found, in case she shall have left the port of delivery where her voyage ended before payment of the wages, or in case she shall be about to proceed to sea before the end of the ten days next after the day when such wages are due, in accordance with section 596 of this title. This section shall not apply to fishing or whaling vessels or yachts. R.S. § 4547; May 28, 1896, c. 252, § 19, 29 Stat. 184; Dec. 21, 1898, c. 28, §§ 6, 26, 30 Stat. 756, 764; Mar. 2, 1901, c. 814, 31 Stat. 956.

Historical notes indicate that both sections originated in the Act of July 20, 1790, c. 29.

The Seaman's Wage Statutes Were Repealed in 1983. The first wave of recodifying Title 46—Shipping was enacted and became effective August 26, 1983. Pub.L. No. 98-89, 97 Stat. 500. It contained this repealing provision:

Sec. 4(b). The laws specified in the following schedule are repealed, except for rights and duties that matured, penalties that were incurred, and proceedings that were begun, before the date of enactment of this Act and except as provided by section 2 of this Act: . . .

The schedule, shown in 46 U.S.C.A. App. §§ 591 to 608, lists §§ 603-607 as repealed.

The Remaining Reference to Forfeitures. If the repeal of obsolete seamen's wage statutes undermines the first clause of Supp. R. E(4)(f), the entrance into force of Supp. R. G's lavish procedural provisions on December 1, 2006, make the second clause unnecessary:

This subdivision shall have no application . . . to actions by the United States for forfeitures for violation of any statute of the United States.

Thus the entire sentence may be repealed.

David J. Sharpe

January 24, 2008