

Lawyer: new maritime rules may mean more work for bar

The U.S. District Court now has a set of local rules to address maritime issues that arise in Rhode Island ports and to fill in any gaps in the federal rules, all thanks to the efforts of a group that saw its hard work come to fruition last month.

Providence lawyer James T. Murphy says he had been contemplating a way to address the complexities of maritime law when he was approached last year by Samuel P. Blatchley, a Boston and Providence attorney who was interested in the matter as well. With the court's agreement, the two formed a panel with Michael J. Daly, Merlyn O'Keefe and Roger Williams School of Law Professor Jonathan Guttoff and got down to business.

The model rules issued by the Maritime Law Association, the national admiralty bar group, played a central role in the drafting of the local rules.

"We had all agreed that those model rules would serve as the foundation, and in large part they were adopted," says Murphy, who chaired the subcommittee. "We also knew that there were certain things that just never happened around here or could be better handled through other practice approaches."

The state is the second in the 1st Circuit to adopt such rules, which went into effect Jan. 15.

Murphy, a maritime lawyer who practices at Hanson Curran, recently spoke with Lawyers Weekly reporter Julie McMahon.

Q. *Why was there a need for this amended set of rules?*

A. One of the most significant and unusual aspects in the maritime law area is that a ship is treated as a person. Occasionally, a ship will pull into the port of Providence and there will be claims against it or maritime liens on it. Because ships come and go so quickly, maritime law allows for the arrest of a ship by the U.S. marshal. As you can imagine, the arrest of a ship that might be in port for only a day or two requires very quick action. Federal judges here and at other ports see these cases rarely, and often the judge is asking me what to do in court. It requires coordination between the lawyer, client, judge, marshal and clerk. There needs to be a common agreement on what's going to be done. The purpose of the local rules, too, was to fill in the gaps in the federal admiralty rules.

Q. *What are the key sections and provisions that practitioners should pay attention to?*

A. The key rule that we probably spent the most time on is Section C, ... that deals with the arrest of a vessel and the publication of a notice and arrest. Section E, particularly the part on salvage action complaints, is key, too. This comes up after a ship has been in a maritime peril, usually if it's in danger of sinking, and another ship rescues it. The salvor is entitled to an award. The rule gives guidance for calculating the vessel's value. This helps the parties and insurers know what we're doing.

Similarly, there are provisions concerning the marshal's fees, designed to assist the marshal with insurance and adequate safekeeping of seized ships. The rules also address what happens when a plaintiff wins, seizes the ship and goes to sell it. And section F fine-tunes rules for limitation of liability, giving practitioners more information on what they need to pursue a defense.

Q. *What's an example of a typical admiralty dispute?*

A. One matter that I handled in the 1st Circuit in 1987 was *Central Oil Co. v. M/V Lamma Forest*. The defendant, an old cargo ship, had gotten tens of thousands of gallons of fuel from the plaintiff, but didn't pay its bill. Central Oil learned that the ship was to come to Providence to load up scrap steel, and then it was going to Bangladesh to unload the scrap and be scrapped itself, never to sail again. The lien on it would disappear.

I represented the plaintiff, which asked me to have the ship arrested when it pulled into the port of Providence. The judge found in our favor. The defendant countersued, alleging we wrongfully arrested the ship, and appealed to the 1st Circuit. We prevailed on



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appeal. If we were not able to do what we did and the ship had set sail, my client never would have seen a dime. That's an example of how an arrest of a ship happens.

Q. *How often do disputes like that arise?*

A. I have arrested a number of ships, from a sailboat to a couple of big cargo ships. It happens less and less now. Clients say it's too risky and too expensive. Marina folks say that because it's such a cumbersome process and arcane law, they back off. When something becomes too difficult, they don't do it. The purpose of the court-house is to be open to the people and serve justice. When something is too cumbersome, justice won't get served.

Q. *What's the process for a local rule change?*

A. Local rules are up for change every year. The chief judge appoints a committee made up of criminal and civil litigators, prosecutors and public defenders, clerks and judges. Over the course of a year, the judges might experience a problem with a rule: maybe it's interpretational or a technological change is needed. These are discussed by a subcommittee, which drafts proposed changes, submits them to the committee, and then the judges decide what they want to change. The rules are put out for public comment, and the court approves them. It's a fairly complex but elegant way to go through it from a safeguard standpoint.



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Q. *What will these new maritime rules mean for practitioners?*

A. I'm hoping it will mean more work for us practitioners, because one of the benefits of this is that it won't just help the judges, clerks, marshals and lawyers; it should help the marine industry. We're a state with one of the largest car-shipping industries out there. Newport has shipyards, boatyards and marinas. There's a lot of traffic out of Providence and Quonset. Fishing is big. The state of Rhode Island is trying to develop industry that is conducive to its nature, historically and industrially. If you're a ship operator, you know that you have local admiralty rules, and you know your

lawyer knows about them, you're not going to be as reluctant to arrest a ship. Parties and clients will be able to make a wiser decision and seek counsel.

Q. *Are maritime lawyers typically boating enthusiasts?*

A. Virtually all of these men and women in the field have some kind of interest in ships and boats, whether they've sailed themselves, went to merchant marine academies, or were in the Navy. I just like boats. I was in the Navy, had a boat as a kid, and "Moby Dick" is my favorite book in the world. And boat cases are usually pretty interesting cases. **RILW**

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