

立法會
Legislative Council

LC Paper No. LS64/13-14

**Paper for the House Committee Meeting
on 20 June 2014**

**Further Report by Legal Service Division on
District Court Equal Opportunities (Amendment) Rules 2014 (L.N. 86)
Gazetted on 6 June 2014**

Members may recall that L.N. 86 is made by the District Court Rules Committee under sections 73B to 73E of the District Court Ordinance (Cap. 336) to amend the District Court Equal Opportunities Rules (Cap. 336G) to simplify the procedure for the District Court (the Court) to deal with equal opportunities (EO) claims made under the Sex Discrimination Ordinance (Cap. 480), the Disability Discrimination Ordinance (Cap. 487), the Family Status Discrimination Ordinance (Cap. 527) or the Race Discrimination Ordinance (Cap. 602) (each "a relevant Ordinance").

2. In our Report (LC Paper No. LS60/13-14) to the House Committee meeting of 13 June 2014, it was reported that we were seeking clarifications on certain technical and drafting issues from the Judiciary Administration (JA). The salient issues and JA's replies are summarized below.

Application of the Rules of the District Court (Cap. 336H)

3. Under the new rule 4(3) of Cap. 336G, the Court may direct that any provision of Cap. 336H applies to and in relation to an EO proceeding under a relevant Ordinance as if the new Part 2 of Cap. 336G had not been enacted, but the circumstances in which the Court may do so are not specified in Cap. 336G. According to JA, the Court will consider invoking the new rule 4(3) on a case-by-case basis, for example, to direct formal pleadings (instead of the simplified claim and response forms) to be filed in cases where the allegations or incidents involved are relatively well-defined and the parties are represented.

The Court's power to award costs

4. Under sections 73B(3), 73C(3), 73D(3) and 73E(3) of Cap. 336, each party to an EO action under a relevant Ordinance shall bear its own costs unless the Court otherwise orders on the grounds that the proceedings were brought maliciously or frivolously, or there are special circumstances which warrant an award of costs. While the Court's power to order costs under the

new rule 15(3) of Cap. 336G¹ is expressed to be subject to the above provisions of Cap. 336, the new rules 9(3), 11(3) and 13(1)(a)², which also empower the Court to award costs, are not so expressed. JA has confirmed that all provisions in Cap. 336G, including rules 9(3), 11(3) and 13(1)(a), must be construed subject to sections 73B to 73E of Cap. 336 under which Cap. 336G is made. The express reference to sections 73B to 73E in the new rule 15(3) is for the purpose of avoidance of doubt in the context of awarding costs against the party who discontinues or withdraws a claim without leave.

Default of response

5. It is noted that while the new rule 10(1) requires a respondent who wishes to oppose a claim to file with the Court the notice of response in Form 3 *and* to serve on the claimant a copy of that notice, under the new rule 13, the Court may only make an order in default if the respondent fails to *file* a notice in Form 3. JA has confirmed that a respondent who has filed (but failed to serve) a notice in Form 3 is not intended to be subject to an order under the new rule 13, but that the Court will be able to deal with any dispute relating to service of the notice in Form 3, including any application for costs by the claimant.

Service of process

6. Under the new rule 16, a party must provide his "address for service" in the first document that he files with the Court. JA has confirmed that before the respondent files a notice in Form 3 and provides his address, the address provided by the claimant in the notice in Form 1 will be taken as the respondent's "address for service" for the purpose of serving a copy of that notice and the notice in Form 2 on the respondent under the new rule 8.

7. The new rule 19 provides for the time at which service by ordinary post is taken to have been effected, but contains no provisions to determine the time at which a document is deemed to have been served by registered post. JA advises that the new Practice Direction for EO claims will provide that upon being notified that service of Form 2 on the respondent by the Court has been unsuccessful (e.g. where the documents sent by registered post are returned by the post office marked "undelivered"), the claimant shall as soon as reasonably practicable apply for an order for substituted service under the new rule 20. According to JA, stakeholders³ have been consulted on the new Practice

¹ Rule 15 deals with the discontinuance or withdrawal of a claim by the claimant without leave.

² Rules 9 and 11 deal with requests for further particulars, while rule 13 deals with the claimant's application for an order against the respondent in default of response.

³ The Hong Kong Bar Association, the Law Society of Hong Kong, the Equal Opportunities Commission, the Hong Kong Law Costs Draftsmen Association, the Department of Justice and the Legal Aid Department.

Direction which is being finalized, and is expected to take effect at the same time as L.N. 86 on 1 November 2014.

Notice of Response in Form 3

8. Paragraphs 1 and 3 of Form 3 require the respondent to "set out in full" the grounds of opposition while the new rule 10(2) merely requires the notice in Form 3 to include "a concise statement" of the extent and grounds of the respondent's opposition. JA has explained that the above references in Form 3 and the new rule 10(2) are different descriptions to refer to the same obligation, i.e. the respondent must state with sufficient particulars his grounds of opposition in the response, although the statement as a whole should be concise.

Other forms

9. It is noted that the new Appendix to Cap. 336G contains no standard forms for interlocutory applications under Cap. 336G. JA has confirmed that parties to EO proceedings may continue to use the usual form of summons under Order 32 of Cap. 336H⁴ to apply for an order to join an interested party under the new rule 12, or for default judgment under the new rule 13, of Cap. 336G.

Concluding Observations

10. Subject to Members' views on the issues set out above, we have no further comments relating to the legal or drafting aspects of L.N. 86.

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16 June 2014

LS/S/25/13-14

⁴ Order 32 deals with interlocutory applications and other proceedings in chambers.