

# Rules of the District Court (Amendment) Rules 2008

## The Rules of the District Court (Cap. 336H)

### Order 44 – PROCEEDINGS UNDER JUDGMENTS AND ORDERS

#### Remarks

#### 1. Application to orders (O. 44, r. 1)

In this Order references to a judgment include references to an order.

#### 2. Service of notice of judgment on person not a party (O. 44, r. 2)

(1) Where in an action for –

- (a) the administration of the estate of a deceased person; or
- (b) the execution of a trust; or
- (c) the sale of any property,

the Court gives a judgment or makes a direction which affects persons not parties to the action, the Court may when giving the judgment or at any stage of the proceedings under the judgment direct notice of the judgment to be served on any such person and any person so served shall, subject to paragraph (4), be bound by the judgment as if he had originally been a party to the action.

(2) If it appears that it is not practicable to serve notice of a judgment on a person directed to be served the Court may dispense with service and may also order that such person be bound by the judgment.

(2A) Order 6, rule 7(3) and (5) shall apply in relation to a notice of judgment under this rule as if the notice were a writ and the person by whom the notice is issued were the plaintiff.

(3) Every notice of a judgment for service under this rule must be indorsed with a memorandum in Form No. 52 in Appendix A and accompanied by a form of acknowledgment of service in Form No. 15 in Appendix A with such modifications as may be appropriate and the copy of the notice to be served shall be a sealed copy.

(4) A person served with notice of a judgment may, within one month after service of the notice on him, and after acknowledging service, apply to the Court to discharge, vary or add to the judgment.

(5) A person served with notice of a judgment may, after acknowledging service of the notice, attend the proceedings under the judgment.

(6) Order 12, rules 1, 3 and 4, shall apply in relation to the acknowledgment of service of a notice of judgment as if the judgment were a writ, and the person by whom the notice is served were the plaintiff and the person on whom it is served a defendant.

**3. Directions by the Court (O. 44, r. 3)**

(1) Where a judgment given in a cause or matter contains directions which make it necessary to proceed in chambers under the judgment the Court may, when giving the judgment or at any time during proceedings under the judgment, give further directions for the conduct of those proceedings, including, in particular, directions with respect to –

- (a) the manner in which any account or inquiry is to be prosecuted;
  - (b) the evidence to be adduced in support thereof;
  - (c) the preparation and service on the parties to be bound thereby of the draft of any deed or other instrument which is directed by the judgment to be settled by the Court and the service of any objections to the draft;
  - (d) without prejudice to Order 15, rule 17, the parties required to attend all or any part of the proceedings;
  - (e) the representation by the same solicitors of parties who constitute a class and by different solicitors of parties who ought to be separately represented; and
  - (f) the time within which each proceeding is to be taken,
- and may fix a day or days for the further attendance of the parties.

(2) The Court may revoke or vary any directions given under the rule.

**4. Application of rules 5 to 8 (O. 44, r. 4)**

Rules 5 to 8 apply –

- (a) where in proceedings for the administration under the direction of the Court of the estate of a deceased person the judgment directs any account of debts or other liabilities of the deceased's estate to be taken or any inquiry for next of kin or other unascertained claimants to be made; and
  - (b) where in proceedings for the execution under the direction of the Court of a trust the judgment directs any such inquiry to be made,
- and those rules shall, with the necessary modifications, apply where in any other proceedings the judgment directs any account of debts or other liabilities to be taken or any inquiry to be made.

**5. Advertisements for creditors and other claimants (O. 44, r. 5)**

The Court may, when giving a judgment or at any stage of proceedings under a judgment, give directions for the issue of advertisements for creditors or other claimants and may fix the time within which creditors and claimants may respond.

**6. Examination of claims (O. 44, r. 6)**

- (1) Where an account of debts or other liabilities of the estate of a deceased person has been directed, such party as the Court may direct must –
  - (a) examine the claims of persons claiming to be creditors of the estate;
  - (b) determine, so far as he is able, to which of such claims the estate is liable; and
  - (c) at least 7 clear days before the time appointed for adjudicating on claims, make an affidavit stating his findings and his reasons for them and listing all the other debts of the deceased which are or may still be due.
- (2) Where an inquiry for next of kin or other unascertained claimants has been directed, such party as the Court may direct must –
  - (a) examine the claims;
  - (b) determine, so far as he is able, which of them are valid; and
  - (c) at least 7 clear days before the time appointed for adjudicating on claims, make an affidavit stating his findings and his reasons for them.
- (3) If the personal representative or trustee concerned are not the parties directed by the Court to examine claims, they must join with the party directed to examine them in making the affidavit required by this rule.

**7. Adjudication on claims (O. 44, r. 7)**

For the purpose of adjudicating on claims the Court may –

- (a) direct any claim to be investigated in such manner as it thinks fit;
- (b) require any claimant to attend and prove his claim or to furnish further particulars or evidence of it; or
- (c) allow any claim after or without proof thereof.

**8. Notice of adjudication (O. 44, r. 8)**

The Court shall give directions that there be served on every creditor whose claim or any part thereof has been allowed or disallowed, and who did not attend when the claim was disposed of, a notice informing him of that fact.

**9. Interest on debts (O. 44, r. 9)**

(1) Where an account of the debts of a deceased person is directed by any judgment, then, unless the deceased's estate is insolvent or the Court otherwise orders, interest shall be allowed –

- (a) on any such debt as carries interest, at the rate it carries; and
- (b) on any other debt, from the date of the judgment at the rate payable on judgment debts at that date.

(2) A creditor who has established his debt in proceedings under the judgment and whose debt does not carry interest shall be entitled to interest on his debt in accordance with paragraph (1)(b) out of any assets which may remain after satisfying the costs of the cause or matter, the debts which have been established and the interest on such of those debts as by law carry interest.

(3) For the purposes of this rule “debt” (債項) includes funeral, testamentary or administration expenses and, in relation to expenses incurred after the judgment, for the reference in paragraph (1)(b) to the date of the judgment there shall be substituted a reference to the date when the expenses became payable.

**10. Interest on legacies (O. 44, r. 10)**

Where an account of legacies is directed by any judgment, then, subject to any directions contained in the will or codicil in question and to any order made by the Court, interest shall be allowed on each legacy at the rate of 8 per cent per annum beginning at the expiration of one year after the testator's death.

**11. Master's Order (O. 44, r. 11)**

(1) Subject to Order 37, rule 2, the result of proceedings before a master under a judgment shall be stated in the form of an order.

(2) Subject to any direction of the master under paragraph (3) or otherwise an order under this rule shall have effect as a final order disposing of the cause or matter in which it is made.

(3) An order under this rule shall contain such directions as the master thinks fit as to the further consideration, either in court or in chambers, of the cause or matter in which it is made.

(4) Every order made under this rule shall have immediate binding effect on

the parties to the cause or matter in which it is made and copies of the order shall be served on such of the parties as the master may direct.

**12. Appeal against order of master (O. 44, r. 12)**

(1) Subject to paragraph (2), Order 58, rule 1 shall apply to an order under ~~this rule~~ **rule 11** as it applies to any judgment, order or decision of the master: **save that the hearing shall be in open court unless the Court directs otherwise.**

Rule 181  
Alignment with RHC

**(1A) The following provisions have effect in the application of Order 58, rule 1 to an order made under rule 11 –**

- (a) the notice referred to in Order 58, rule 1(2) shall state the grounds of the appeal;**
- (b) no fresh evidence (other than evidence as to matters which occurred after the date of the master's order) shall be admitted except on special grounds;**
- (c) the judge hearing the appeal has the same power to draw inferences of fact as has the Court of Appeal under Order 59, rule 10(3) of the Rules of the High Court (Cap. 4 sub. leg. A).**

(2) If the order is to be acted on by the Judiciary Accountant or is an order passing a receiver's account, notice of appeal must be issued not later than 2 clear days after the making of the order and, where the order is to be acted on by the Judiciary Accountant, a duplicate of it must be served on the Judiciary Accountant as soon as practicable after it is made.