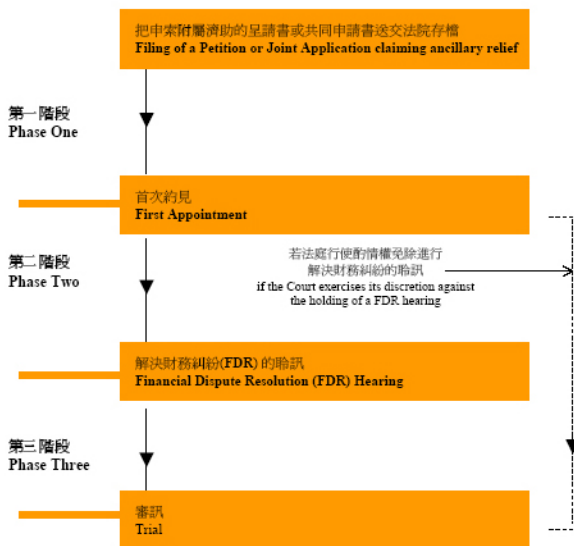


改革後的程序大致上可分為三個階段，每個階段均以法庭聆訊為作結。

The reformed procedures are broadly divided into three phases, with each phase concluding with a 'milestone' court hearing.



引言

現行的婚姻訴訟附屬濟助¹程序於1972年制訂。這些程序一直以來都被批評為容許訴訟人有太多的回旋空間，讓他們把附屬濟助的法律程序，轉化為宣洩怨懟的戰場。這樣，不但延長了離婚所帶來的精神折磨，而且雙方亦往往因訟費負擔而耗盡家庭資產。

近年來，已有多個實施普通法的司法管轄區對其附屬濟助法律程序引入了不少改革。終審法院首席法官於1999年11月，委任一個工作小組研究本港附屬濟助程序的改革，希望盡量減低訴訟者之間的對抗，鼓勵以商議和解為目標，使糾紛得以更快捷更廉宜的途徑解決。

該工作小組建議了一套改革程序，並建議推行一個為期兩年的試驗計劃，以測試改革程序的成效。

終審法院首席法官已接納工作小組的建議，並於2003年9月4日訂立了《2003年婚姻訴訟（修訂）規則》，讓試驗計劃得以有效進行。該規則將於2003年12月29日生效。終審法院首席法官亦已發出實務指示，以規管試驗計劃相關的法律程序。

受影響人士

試驗計劃適用於所有涉及申索附屬濟助的案件，但那些只涉及申請象徵式贍養費（如每年1元）的案件則不列入試驗計劃範圍內。

¹ 「附屬濟助」一詞在香港法例第179章《婚姻訴訟規則》規則2的定義是 —

- | | |
|--------------------|---------------|
| (a) 廢止產權處置令， | (g) 財產轉讓令， |
| (b) 整筆付款令， | (h) 更改授產安排令，或 |
| (c) 在訟案待決期間提供贍養費令， | (i) 更改令。 |
| (d) 定期付款令， | |
| (e) 有保證定期付款令， | |
| (f) 授產安排令， | |

當解決附屬濟助的糾紛與解決管養權的糾紛不可分割時，有關的管養權糾紛亦被納入試驗計劃範圍內。

所有載於2003年12月29日或以後入稟法院的呈請書或共同申請書內的附屬濟助申索，均在試驗計劃範圍內。載於2003年12月29日以前入稟法院的呈請書或共同申請書內的附屬濟助申索，除非雙方同意參加試驗計劃，而法庭亦作出相應的命令，否則該等申索將不在試驗計劃範圍內。若該等申索在上述情況下被納入試驗計劃範圍內，視乎已展開訴訟的進展程度，雙方可能需要向法庭尋求指示如何繼續訴訟。

雙方不論是否曾參與家事調解服務，均會被納入此項試驗計劃範圍內。

試驗計劃的目的

- 找出雙方的主要爭議點，並鼓勵雙方就有關爭議點達成和解。
- 減少不必要的訟費和延誤，以及減輕雙方所受的情緒困擾。
- 確保雙方於法律程序進行的每一個階段，知道所累積的訟費金額，及訴訟若繼續進行，雙方可能要承擔的進一步訟費金額。
- 遏止過份和不必要的經濟資料披露，尤其是過量的文件透露（和影印），好讓雙方和法庭能在花費較少訟費的情況下集中處理重要事項。

試驗計劃的主要特點

- 以一份要求詳細披露經濟狀況資料的標準化表格（「經濟狀況陳述書」）代替經濟能力誓章。雙方不論貧富均須把一份經濟狀況陳述書送交法院存檔。

- 強制雙方出席首次約見及解決財務糾紛的聆訊。
- 首次約見的聆訊日期一經定出，便為訴訟訂立了時間表。除非法庭許可，該時間表不得更改。
- 首次約見將由負責管理有關案件的法官主持。在首次約見時，雙方必須清楚界定糾紛的爭議點，並由法官就各方面發出指示，以確保案件能在合化算和最少延誤的情況下解決。
- 當所有必需文件送交法院存檔後，解決財務糾紛的聆訊將在首次約見時所定下的日期進行。聆訊由負責管理有關案件的法官主持。解決財務糾紛聆訊的目的是為了探討達成和解的可行方法。聆訊時，雙方須把之前作出的所有和解建議，以及任何新的建議提出討論，讓雙方尋求可達致和解的共通之處；而法官會視乎情況嘗試協助雙方達成和解。
- 若雙方在解決財務糾紛的聆訊中不能達成和解，法官便會定出日期，由另一位法官進行審訊。
- 規定雙方或其法律代表於每次聆訊時呈交一份最近的訟費陳述書，藉此確保雙方和法庭在每一重要階段，都知悉最新的訟費，以及這些訟費對家庭資產的影響。
- 附屬濟助法律程序往往與管養權事宜息息相關。首次約見時，法官可酌情以最佳方法處理並行的管養權法律程序，例如指示有關管養權的爭議須於另一聆訊中先行解決，然後視乎結果才進行附屬濟助聆訊。

改革後的附屬濟助程序

大體來說，改革後的附屬濟助程序分為三個階段，每一階段均以法庭聆訊作結。雖然法庭容許雙方有自由處理各聆訊之間的事宜，但若沒有令人信服的理由和法庭的許可，這些聆訊日期不得改動。一個明確的時間表令訴訟進行有序，同時亦可改善現時附屬濟助法律程序往往被無了期拖延下去的情況。

第一階段

這階段在訴訟人向法院送交載有附屬濟助的申索（象徵式贍養費除外）的呈請書、共同申請書或答辯書存檔時開始，在首次約見聆訊時結束。

- 首次約見通常定於10至14個星期後進行。在某些情況下，例如訴訟人預料在送達文件給對方的過程中會出現困難，登記處便可能把首次約見日期定於上述時限的稍後部份。
- 在首次約見前最少28天，雙方須同時互相交換各自的經濟狀況陳述書。凡未能在到期當天把經濟狀況陳述書送交法庭存檔者，可被罰支付訟費。若只有一方能把經濟狀況陳述書送交法院存檔並與對方交換的話，該方（「甲方」）可選擇把陳述書放進密封的信封內交存法院，以免欠缺行動的一方在送交其陳述書存檔並與甲方交換前，先行閱讀甲方的陳述書內容。
- 雙方均須於交換經濟狀況陳述書後，並在首次約見聆訊前最少14天，把下列文件送交法院存檔：
 - 扼要說明雙方爭議點的陳述書一份；
 - 簡潔說明爭議事件的事序表一份；
 - 首次約見通知書的送達確認書一份；及

- 問題表或詳盡資料要求書一份（如有需要），就爭議點陳述書內容向對方要求提供的進一步資料及/或文件。
- 除非事前獲得法院許可，否則雙方必須出席首次約見。
- 雙方均須提供一份列明直至聆訊當天為止該方所承擔的訟費的陳述書。
- 若首次約見時，法庭行使酌情權免除進行解決財務糾紛的聆訊，則第二階段變成第三階段，案件隨即進行審訊。

第二階段

進行首次約見後，這階段隨即開始，並以解決財務糾紛的聆訊結束。

- 法官在解決財務糾紛的聆訊中將考慮雙方所有和解提議的往來通訊文件。申請人須把此等文件列於一個附表之內，並連同一份最新的爭議點陳述書，於解決財務糾紛的聆訊前最少 7 天送交法院存檔。
- 除非事前獲得法院許可，否則雙方必須出席解決財務糾紛的聆訊。
- 解決財務糾紛的聆訊中討論過的所有事項對雙方的權利並不構成任何損害。同樣，若雙方在解決財務糾紛的聆訊後繼續商討，商討內容也不會對雙方的權利構成任何損害。
- 在解決財務糾紛的聆訊中，主理法官基本上是一位「協助人」，協助雙方嘗試和解。
- 雙方均須提供一份列明直至聆訊當天為止該方所承擔的訟費的陳述書。

- 解決財務糾紛的聆訊可不時押後，以便雙方各自檢討情況。
- 若雙方未能在解決財務糾紛的聆訊中達成和解，該法官除給予雙方進一步的訴訟指示外，將不再參與雙方其後的法律程序，而法庭會編定日期，安排由另一位法官進行審訊。

第三階段

若解決財務糾紛的聆訊結束時雙方仍未能達致全面和解，這階段便開始進行，並以審訊作結。

- 申請人須於審訊前最少21天將一份供對方考慮的建議書送交法庭存檔並送達予對方，答辯人則須在收到申請人建議書當天起計7天內把他/她本人的建議書送交法院存檔。
- 審訊開始時，訴訟雙方都必須向法庭呈交一份最終的訟費陳述書，列出直至審訊結束時該方的估計訟費。
- 審訊是以一般方式進行，曾主理解決財務糾紛聆訊的法官不會是同案的主審法官。由於雙方的爭議點已於首次約見時界定，且訴狀文件也被限制在實際需要的範圍內，聆訊時間可望縮短。

如何取得改革後的附屬濟助程序的進一步資料？

你可向家事法庭登記處索取進一步資料和尋求協助。

地址/查詢

地址：香港港灣道12號灣仔政府大樓閣樓二

電話號碼：2840 1218

傳真號碼：2523 9170

辦公時間：

星期一至星期五 上午九時至下午一時

下午二時至五時

星期六 上午九時至中午十二時

(星期日及公眾假日休息)

司法機構
二零零三年十二月
(第一版)

Introduction

The existing ancillary relief¹ procedures in matrimonial proceedings have been in place since 1972. They have, however, been criticized for giving too much leeway to litigants to transform ancillary relief proceedings into a battlefield for the exhaustion of their marital antagonisms. This prolongs the emotional trauma of divorce and often results in the dissipation of family assets.

In recent years, a number of common law jurisdictions have introduced changes to their ancillary relief proceedings. In November 1999, the Chief Justice appointed a Working Group to consider the reform of our ancillary relief procedures with a view to making them quicker, cheaper, less adversarial and more conducive to a culture of settlement.

The Working Group has recommended a set of reformed procedures and a two-year pilot scheme to test their effectiveness.

The Chief Justice has accepted the Working Group's recommendation. On 4 September 2003, the Chief Justice made the Matrimonial Causes (Amendment) Rules 2003 for the effective implementation of the pilot scheme. The Rules will commence operation on 29 December 2003. The Chief Justice has also issued a practice direction to regulate proceedings under the pilot scheme.

¹ The term 'ancillary relief' is defined in rule 2 of the Matrimonial Causes Rules, Chapter 179 and means-

- | | |
|--|---|
| (a) an avoidance of disposition order, | (h) a variation of settlement order, or |
| (b) a lump sum order, | (i) a variation order. |
| (c) an order for maintenance pending suit, | |
| (d) a periodical payments order, | |
| (e) a secured periodical payments order, | |
| (f) a settlement of property order, | |
| (g) a transfer of property order, | |

Who will be affected?

The pilot scheme applies to all cases involving claims for ancillary relief, except for those in which nominal maintenance only (i.e. \$1 per annum) is claimed.

When the resolution of a custody dispute is integral to the resolution of an ancillary relief dispute, that custody dispute will also fall under the pilot scheme.

All claims for ancillary relief contained in petitions or joint applications which are filed on or after 29 December 2003 are subject to the pilot scheme. Claims contained in petitions or joint applications filed prior to 29 December 2003 will not be subject to the pilot scheme unless the parties agree and the court so orders. If so, and depending on the stage of that prior litigation, it may be necessary to seek directions from the court.

All parties will be subject to this pilot scheme whether or not they have attempted family mediation.

What are the aims of the pilot scheme?

- To identify the issues which are important to the parties and to encourage them to reach settlement on those issues.
- To reduce unnecessary costs, delay and personal distress for the parties.
- To ensure that the parties are made aware at every stage of the proceedings of the costs incurred to date and, where appropriate, the costs that may be incurred if the matter is to proceed.

- To curb exhaustive and unnecessary disclosure of financial information, especially copious discovery (and copying) of documents so that the parties and the court can, at a reduced cost, focus on the matters of material relevance.

What are the main features of the pilot scheme?

- Substitution of affidavits of means with a detailed disclosure of financial information in a standardized form (the ‘Financial Statement’). All parties must file a Financial Statement notwithstanding the level of their affluence.
- Mandatory attendance of the parties at the First Appointment and the Financial Dispute Resolution (FDR) hearings.
- Once a date for the hearing of the First Appointment is given, a timetable is thereby created. Such timetable cannot be altered without the leave of the court.
- The First Appointment will be presided over by the judge who will ‘manage’ the case. The issues must be defined and a broad range of directions will be given at the First Appointment to ensure that the matter proceeds to resolution economically and with a minimum of delay.
- The FDR hearing will take place after the filing of all necessary documents on a date fixed at the First Appointment. This hearing is presided over by the judge who has been given management of the case. The purpose of the FDR hearing is to explore possible grounds for settlement. All settlement proposals that the parties have made to each other, together with any fresh proposals, will be tabled at the hearing to enable the parties to seek common ground for settlement.

The judge, where appropriate, will attempt to facilitate settlement.

- If a settlement is not obtained at the FDR hearing, the matter will be set down for trial before another judge.
- A requirement for the parties or their legal representatives to submit at each hearing a statement of costs incurred by them to date. The purpose of this is to ensure that both the parties and the court are, at each milestone event, kept aware of the costs incurred to date and thereby their impact on the family assets.
- Matters of custody are often integral to ancillary relief proceedings. At the First Appointment, the judge will have discretion to seek a way to best manage the collateral custody proceedings, perhaps by directing that custody issues be resolved first in a separate hearing, and the ancillary relief hearings will be consequent upon that resolution.

What are the reformed ancillary relief procedures?

Broadly speaking, the reformed ancillary relief procedures are divided into *three* phases, each phase concluding with a ‘milestone’ court hearing. While the parties are allowed flexibility between these ‘milestone’ hearings, the hearings themselves cannot be moved except on compelling grounds and with the consent of the court. A clear timetable provides certainty and meets the criticism that ancillary relief proceedings all too often are allowed to drag on indefinitely.

Phase One

This phase commences with the filing of a petition, joint application or defence in which a claim for ancillary relief, other than only nominal

maintenance, is contained and concludes with the holding of the First Appointment.

- The date of the First Appointment will in the ordinary course of events be some 10 to 14 weeks ahead. A later date within such time frame may be given, if, for example, difficulties are anticipated in serving process on the other party.
- At least 28 days before the First Appointment, the parties must simultaneously exchange their respective Financial Statements. A failure to file the Statement on due date may be penalized in costs. Where one party only is in the position to file and exchange the Financial Statement, that party shall be at liberty to file the Statement in a sealed envelope so that it cannot be read by the defaulting party until that party has filed his/her Statement and is in the position to exchange his/her Statement.
- After the exchange of the Financial Statement, and at least 14 days before the hearing of the First Appointment, the parties are required to file the following documents:
 - a concise statement of the issues between the parties;
 - a brief chronology relevant to the matters in issue;
 - a confirmation of service of notice of the First Appointment;
and
 - if necessary, a questionnaire or request for particulars which, by reference to the statement of issues, sets out further information and/or documents requested from the other party.

- The parties must attend the First Appointment unless prior leave is obtained from the court.
- The parties are obliged to provide a statement of their costs incurred to date.
- If the court at the First Appointment exercises its discretion against the holding of a FDR hearing, then Phase Two effectively becomes Phase Three leading directly to trial.

Phase Two

This phase proceeds from the First Appointment and concludes with the FDR hearing.

- All correspondence between the parties aimed at settlement will be considered at the FDR hearing. A schedule setting out such correspondence, together with an updated statement of issues is to be filed by the applicant at least 7 days before the FDR hearing.
- The parties must attend the FDR hearing unless prior leave is obtained from the court.
- All matters canvassed at the FDR hearing are without prejudice. Similarly, if the parties pursue their negotiations after the FDR hearing, those negotiations will be without prejudice.
- At the FDR hearing, the judge sits essentially in the role of a ‘facilitator’, assisting the parties to try to reach a settlement.
- The parties are obliged to provide a statement of their costs incurred to date.

- The FDR hearing may be adjourned from time to time to enable the parties to consider their positions.
- If no settlement is reached at the FDR hearing, the judge will take no further part in the proceedings between the parties other than to give any further necessary directions, and the court will then fix a date for trial before another judge.

Phase Three

This phase proceeds from the conclusion of the FDR hearing, if that has not been fully successful, and concludes with the trial.

- At least 21 days before the trial, the applicant must file and serve an open proposal and the respondent must, within 7 days of receipt of that open proposal, file his or her open proposal.
- At the commencement of the trial, each party must submit a final statement of their costs, such costs being estimated to the end of the trial.
- The trial will proceed in the usual manner before a judge other than the one who presided at the FDR hearing. As the issues will have been defined at the First Appointment and pleadings kept within realistic limits, hearings are expected to be shorter.

How can I obtain further information on the reformed ancillary relief procedures?

You may approach the Family Court Registry for further information and assistance.

Address/Enquiries

Address : M2 Floor, Wanchai Law Courts, Wanchai Tower
12 Harbour Road, Hong Kong

Telephone No. : 2840 1218

Fax No. : 2523 9170

Business Hours

Monday to Friday 9:00 a.m. to 1:00 p.m.
2:00 p.m. to 5:00 p.m.

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(Closed on Sundays and Public Holidays)

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