

2006 No. 352 (L. 1)

FAMILY PROCEEDINGS

SUPREME COURT OF ENGLAND AND WALES

COUNTY COURTS, ENGLAND AND WALES

The Family Proceedings (Amendment) Rules 2006

<i>Made</i> - - - -	<i>10th February 2006</i>
<i>Laid before Parliament</i>	<i>15th February 2006</i>
<i>Coming into force</i> - -	<i>3rd April 2006</i>

The persons appointed under section 40(1) of the Matrimonial and Family Proceedings Act 1984(a) make the following Rules in exercise of the powers conferred by that section:

Citation, commencement and interpretation

1.—(1) These Rules may be cited as the Family Proceedings (Amendment) Rules 2006 and shall come into force on 3rd April 2006.

(2) In these Rules a reference to a rule or Appendix by number alone is a reference to the rule or Appendix so numbered in the Family Proceedings Rules 1991(b) (“the 1991 Rules”) and a form referred to by letters means the form so designated in Appendix 1A to those Rules.

Amendments to the 1991 Rules

2. In the arrangement of rules—

(a) omit the entries relating to—

(i) rule 2.69;

(ii) rule 2.69B; and

(iii) rule 2.69D; and

(b) after the entry relating to rule 2.70 insert—

“2.71 Costs orders”.

3. In rule 2.45(5) and (5A) and rule 2.51B(1), for “2.70”, on each occasion it appears, substitute “2.71”.

(a) 1984 c.42; section 40 was amended by the Courts and Legal Services Act 1990 (c. 41), Schedule 18, paragraph 50 and will be repealed (on a date to be appointed) by the Courts Act 2003 (c. 39), Schedule 8, paragraph 278 and Schedule 10.
(b) S.I.1991/1247; relevant amending instruments are S.I. 1991/2113, 1992/456, 1992/2067, 1993/295, 1994/3155, 1996/816, 1997/1056, 1998/1901, 2000/2267, 2001/821, 2003/184, 2003/2839, 2004/3375, 2005/264, 2005/412, 2005/559, 2005/1976, and 2005/2922.

4. In rule 2.61D(2), for sub-paragraph (e) substitute—

“(e) in considering whether to make a costs order under rule 2.71(4), must have particular regard to the extent to which each party has complied with the requirement to send documents with Form E; and”.

5. For rule 2.61F substitute—

“(1) Subject to paragraph (2), at every hearing or appointment each party must produce to the court an estimate in Form H of the costs incurred by him up to the date of that hearing or appointment.

(2) Not less than 14 days before the date fixed for the final hearing of an application for ancillary relief, each party must (unless the court directs otherwise) file with the court and serve on each other party a statement in Form H1 giving full particulars of all costs in respect of the proceedings which he has incurred or expects to incur, to enable the court to take account of the parties’ liabilities for costs when deciding what order (if any) to make for ancillary relief.”.

6. Omit rules 2.69, 2.69B and 2.69D.

7. After rule 2.70, insert—

“Costs orders

2.71.—(1) CPR rule 44.3(1) to (5) shall not apply to ancillary relief proceedings.

(2) CPR rule 44.3(6) to (9) apply to an order made under this rule as they apply to an order made under CPR rule 44.3.

(3) In this rule “costs” has the same meaning as in CPR rule 43.2(1)(a) and includes the costs payable by a client to his solicitor.

(4) (a) The general rule in ancillary relief proceedings is that the court will not make an order requiring one party to pay the costs of another party; but

(b) the court may make such an order at any stage of the proceedings where it considers it appropriate to do so because of the conduct of a party in relation to the proceedings (whether before or during them).

(5) In deciding what order (if any) to make under paragraph (4)(b), the court must have regard to—

- (a) any failure by a party to comply with these Rules, any order of the court or any practice direction which the court considers relevant;
- (b) any open offer to settle made by a party;
- (c) whether it was reasonable for a party to raise, pursue or contest a particular allegation or issue;
- (d) the manner in which a party has pursued or responded to the application or a particular allegation or issue;
- (e) any other aspect of a party’s conduct in relation to the proceedings which the court considers relevant; and
- (f) the financial effect on the parties of any costs order.

(6) No offer to settle which is not an open offer to settle shall be admissible at any stage of the proceedings, except as provided by rule 2.61E.”.

8. In rule 10.27(1)—

(a) in sub-paragraph (b), for “.” substitute “; and”; and

(b) after sub-paragraph (b) insert—

“(c) CPR rule 44.3(1) and (3) to (5) shall not apply to an application to which rule 2.71 (ancillary relief: costs) applies.”.

9. In Appendix 1A—

- (a) for Form H substitute Form H (Estimate of Costs (Ancillary Relief)) as set out in the Schedule to these Rules; and
- (b) after Form H insert Form H1 (Statement of Costs (Ancillary Relief)) as set out in the Schedule to these Rules.

Transitional provision

10.—(1) The 1991 Rules shall apply to—

- (a) an application for ancillary relief made in a petition or answer before these Rules come into force;
- (b) an application for ancillary relief made in Form A before these Rules come into force (no such application having been made in the petition or answer); or
- (c) an application under section 10(2) of the Matrimonial Causes Act 1973^(a) or an application under section 48(2) of the Civil Partnership Act 2004^(b) made in Form B before these Rules come into force,

as if these Rules had not been made.

(2) The 1991 Rules shall also apply to an application of a kind mentioned in paragraph (1) which is made after these Rules come into force but is heard by the court at the same time as an application to which paragraph (1) applies, as if these Rules had not been made.

*Falconer of Thoroton, C
Mark Potter, P
Charles, J
Angela Finnerty,
Philip Waller,
Duncan Adam,
Bruce Edgington,
David Salter*

10th February 2006

(a) 1973 c.18.
(b) 2004 c.33.

SECTION A:

Costs incurred in the Ancillary Relief proceedings **prior** to issue of Form A

PART 1

	Prescribed rates for publicly funded services £	Indemnity Rate £
1. Ancillary Relief solicitors' costs (including VAT) incurred by any previous solicitors.		
2. Ancillary Relief solicitors' costs (including VAT) incurred by the current solicitors.		
3. Disbursements (including VAT, if appropriate) incurred by any previous solicitors.		
4. Disbursements (including VAT, if appropriate) incurred by current solicitors.		
5. All counsel's fees (including VAT).		
SUB-TOTAL		

PART 2

6. Add any private client costs previously incurred (in publicly funded cases only)		
7. TOTAL OF SECTION A		

SECTION B:

Costs incurred in the Ancillary Relief proceedings **after** issue of Form A

PART 3

	Prescribed rates for publicly funded services £	Indemnity Rate £
8. Ancillary Relief solicitors' costs (including VAT) incurred by any previous solicitors.		
9. Ancillary Relief solicitors' costs (including VAT and costs of the current hearing) incurred by the current solicitors.		
10. Disbursements (including VAT, if appropriate) incurred by any previous solicitors.		
11. Disbursements (including VAT, if appropriate) incurred by current solicitors.		
12. All counsel's fees (including VAT).		
SUB-TOTAL		

PART 4

13. Add any private client costs previously incurred (in publicly funded cases only).		
14. TOTAL OF SECTION B		

**Statement of Costs
(Ancillary Relief)
of**

(name of party)

the Applicant
Respondent

Between

and

Statement of costs relating to ancillary relief application for hearing on: []

Please Note: it is a requirement of the rules to provide full costs information to the court

(Do not include in this form costs incurred in respect of other aspects of the case, for example, the divorce or civil partnership proceedings, children matters, injunctions, etc.)

Description of fee earner:

(a) Name:	Status:	Hourly Rate Claimed: £
(b) Name:	Status:	Hourly Rate Claimed: £
(c) Name:	Status:	Hourly Rate Claimed: £
(d) Name:	Status:	Hourly Rate Claimed: £

SUMMARY OF COSTS STATEMENT

	Prescribed rates for publicly funded services £	Indemnity Rate £
TOTAL SECTION A (Box 7)		
TOTAL SECTION B (Box 14)		
TOTAL SECTION C (Box 21)		
TOTAL SECTION D (Box 25)		
TOTAL SECTION E (Box 26) (if completed)		
GRAND TOTAL (A + B + C + D + E)		

State what has been paid towards the grand total above.

Amount of any contributions paid by the funded client towards their publicly funded services.

Signature of solicitor:
(or party, if not represented)

Dated:

Name of firm of solicitors:

Ref:

The court office at

is open between 10 am and 4 pm (4.30pm at the Principal Registry of the Family Division) Monday to Friday. When corresponding with the court, please address forms or letters to the Court Manager and quote the case number. If you do not do so, your correspondence may be returned.

SECTION A:

Costs incurred in the Ancillary Relief proceedings **prior** to issue of Form A

PART 1

	Prescribed rates for publicly funded services £	Indemnity Rate £
1. Ancillary Relief solicitors' costs (including VAT) incurred by any previous solicitors.		
2. Ancillary Relief solicitors' costs (including VAT) incurred by the current solicitors.		
3. Disbursements (including VAT, if appropriate) incurred by any previous solicitors.		
4. Disbursements (including VAT, if appropriate) incurred by current solicitors.		
5. All counsel's fees (including VAT).		
SUB-TOTAL		

PART 2

6. Add any private client costs previously incurred (in publicly funded cases only)		
7. TOTAL OF SECTION A		

SECTION B:

Costs incurred in the Ancillary Relief proceedings **after** issue of Form A up to and including FDR appointment (or, if none, the date of the last Form H)

PART 3

	Prescribed rates for publicly funded services £	Indemnity Rate £
8. Ancillary Relief solicitors' costs (including VAT) incurred by any previous solicitors.		
9. Ancillary Relief solicitors' costs (including VAT) incurred by the current solicitors.		
10. Disbursements (including VAT, if appropriate) incurred by any previous solicitors.		
11. Disbursements (including VAT, if appropriate) incurred by current solicitors.		
12. All counsel's fees (including VAT).		
SUB-TOTAL		

PART 4

13. Add any private client costs previously incurred (in publicly funded cases only).		
14. TOTAL OF SECTION B		

SECTION C:

Costs incurred in the Ancillary Relief proceedings **after** FDR appointment (or, if none, the date of the last Form H) up to the date of this form.

PART 5

	Prescribed rates for publicly funded services £	Indemnity Rate £
15. Ancillary Relief solicitors' costs (including VAT) incurred by any previous solicitors.		
16. Ancillary Relief solicitors' costs (including VAT) incurred by the current solicitors.		
17. Disbursements (including VAT, if appropriate) incurred by any previous solicitors.		
18. Disbursements (including VAT, if appropriate) incurred by current solicitors.		
19. All counsel's fees (including VAT). (Counsel's fees for final hearing should not be included here, but given in Section D.)		
SUB-TOTAL		

PART 6

20. Add any private client costs previously incurred (in publicly funded cases only).		
21. TOTAL OF SECTION C		

SECTION D:

Estimate of costs expected and incurred in the Ancillary Relief proceedings **after** the date of this form up to the end of the final hearing.

PART 7

	Prescribed rates for publicly funded services £	Indemnity Rate £
22. Ancillary Relief solicitors' costs (including VAT)		
23. Disbursements (including VAT, if appropriate)		
24. Counsel's fees (including VAT). (All counsel's fees expected to be incurred for final hearing should be included here.)		
25. TOTAL OF SECTION D		

SECTION E:

Estimate of costs to be incurred in implementing proposed order for ancillary relief.

(Note: Include only those costs which it is known or anticipated will be incurred in giving effect to the order.

If the work to be carried out is only conveyancing, the prescribed rates for public funding services do not apply.)

PART 8

	Prescribed rates for publicly funded services £	Indemnity Rate £
26. TOTAL OF SECTION E (Total estimated costs of implementing proposed order)		

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules amend the Family Proceedings Rules 1991 (“the 1991 Rules”) to make provision about the costs of ancillary relief proceedings.

Rule 6 omits the existing rules about costs in such proceedings and rule 7 inserts a new rule 2.71 into the 1991 Rules which sets out a new general rule that the court will not make a costs order in ancillary relief proceedings unless it is appropriate to do so because of the conduct of one of the parties in relation to them. Paragraph (5) of the new rule 2.71 sets out the factors which the court must have regard to before making a costs order under the new rule.

Rule 5 substitutes a new rule 2.61F of the Family Proceedings Rules and requires the completion of a costs estimate at interim hearings (Form H) and the completion of a detailed statement of costs at any final ancillary relief hearing (Form H1).

Rules 2, 3, 4, 8 and 9 make changes consequential to the other changes made by these Rules. Rule 10 provides that the new rules about costs in ancillary relief proceedings only apply to proceedings commenced after these rules come into force.

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