

民事法律资讯

家事审判白皮书专题

2020年4月号 总第14期

深圳律师协会民事法律专业委员会 编



目 录

第一部分：北京市第一中级人民法院家事审判治理白皮书	3
第二部分：深圳法院家事审判改革白皮书	4

第一部分：北京市第一中级人民法院家事审判治理白皮书

战“疫”能动司法 聚焦权利保障

家事审判治理白皮书

北京市第一中级人民法院

二〇二〇年四月

目 录

线上全方位全流程	“云模式”开启全新审判方式	1
从传统向现代演进	“云探望”助力破解探望困境	5
充分保护个人隐私	“证明书”有效延伸审判职能	8
附件 1: 离婚证明书 (模板)	11
夫妻共债共意共享	“指引书”切实强化权益保障	12
附件 2: 涉夫妻共同债务的维权指引	17
附件 3: 家事审判治理典型案例	21
附件 4: 家事审判治理所涉法律、规范、意见	56

在国家发展、强大的过程中，“大国”与“小家”始终是一路同行，风雨同舟，休戚与共。新型冠状病毒肺炎疫情作为突发公共卫生事件给司法带来了新形势、新挑战，家事案件的公正审理与妥善解决关系到“小家”的稳定，更关系到“大国”的和谐。北京一中院在疫情特殊时期积极应对，主动谋划，提出新做法，新对策，并在家事审判治理工作方面建立新机制、取得新进展，为有效防治疫情、强化权益保障、彰显司法温度、切实回应人民群众对公平正义的新期待保驾护航。

线上全方位全流程 “云模式” 开启全新审判方式

今年以来，北京一中院积极应对“新冠”疫情，全面开启“云立案、云审判、云调解、云质证、云查询、云保全”的全方位“云模式”，实现线上诉讼活动立体化、规范化、制度化、便捷化、常态化、人性化，多措并举确保立案畅通、审判高效、调解线上、证据可视、查询便捷、保全省力。其中，一季度审结各类家事案件122件，依托线上诉讼平台网络庭审64次，网络调解撤诉结案43件，在疫情特殊时期更加注重强化当事人权益保障，传递司法温度，彰显人文关怀。

一、推广网上立案系统，畅通在线立案

一中院公众号第一时间推送《远程诉讼服务指南》，对远程立案线上操作进行全程手把手式教学，引导当事人通过北京法院审判信息网、“北京移动微法院”小程序等线上平台开展网上立案。

我院还自主研发并投入应用跨域双向立案系统，实现京津冀三地中院双向同步跨域立案。在我院近期审理的一起继承纠纷上诉案中，一方当事人因身处天津，疫情期间无法来京办理立案缴费手续，通过引导让当事人到所在地法院顺利完成“云立案”，方便快捷的同时，也有效避免了疫情防控时期异地当事人的跨域流动。

二、开通线上庭审系统，远程审结案件

第一时间上线互联网庭审系统，依托互联网法庭，当事

人足不出户即可参加庭审活动，实时查看庭审笔录，完成在线签名，全程视频留痕，充分保障当事人诉讼权利。

家事案件审理中，常涉及一方当事人因年老、患病或在京外、境外等，直接参加庭审活动存在一定障碍，同时又没有委托诉讼代理人。结合疫情形势和当事人实际，家事法官大力开展“云审判”，在收到案件后第一时间向当事人电子送达《在线庭审申请和操作指南》，引导当事人参加网络庭审，便捷当事人参与诉讼。我院还在辖区6个监狱建设远程法庭，实现远程提讯、庭审。在近期审理的一起特殊离婚案件中，稳妥安排在监狱服刑的一方当事人顺利参加网上庭审，线上与另一方当事人和孩子可视化交流，最终促成案件温情化解，高效审结。

三、依托在线调解系统，利于矛盾化解

最大限度发挥疫情防控特殊时期调解的独特优势，打通线上纠纷多元化解渠道，通过在线调解系统、北京法院分调裁一体化平台等，实现调解申请、上传材料、视频调解、达成协议、司法确认全流程一站式服务。

家事案件不同于一般民事纠纷，其矛盾与争点主要发生在家庭成员内部之间。当事人在法庭上对抗辩论，难免情绪激动，极易引发争执，不利于调解工作展开。“云调解”能够让当事人足不出户，在云端解决纷争，有效缓和双方当事人的对立情绪，必要时当事人还可以邀请家中的长辈或亲属一同参与线上调解过程，突破了到庭参加诉讼旁听人员的限制，

为促成调解起到了积极的辅助作用。“云调解”模式将法官主持、家人参与、积极互动的法理情融入到线上，使矛盾纠纷化解在线下，对引导当事人理性诉讼、妥处纠纷、和谐司法具有促进作用。

四、运用线上证据系统，云端交换传送

我院结合最高人民法院《关于新冠肺炎疫情防控期间加强和规范在线诉讼工作的通知》、北京高院《北京法院关于新型冠状病毒感染肺炎疫情防控期间网上庭审的流程规范》，有针对性地引导当事人在云端进行证据传送，确保举证质证程序合法，按期完成。

家事案件当事人提交新证据材料的比例较高，二审收案后，第一时间通知当事人准备证据材料，证据电子化后上传发送至庭审系统，解决了因互相邮寄证据耗时较长的弊端。书面质证意见形成后也一并上传发送至庭审系统，便于对方当事人查看。这种新的证据交换方式，便捷当事人完成证据交换，保障当事人留有充足时间质证，大大提高了审判全流程质效。

五、利用网上阅卷系统，查询诉讼档案

创新“互联网+司法便民”服务模式，利用移动端微信平台打造诉讼档案调阅“020”服务系统，打破诉讼档案调阅空间、时间限制，为当事人、诉讼代理人、执业律师提供实时诉讼档案调阅服务。

在家事案件法律事实的认定中，当事人在庭审过程中对

事实的陈述与自认往往较其他民事案件更为突出。疫情期间，大部分家事案件当事人及委托诉讼代理人均利用微信平台诉讼档案服务系统，顺利完成案件的调阅与查询，为下一步案件审理打好基础。

六、应用网上保全系统，省时省力办理

疫情防控期间，为有效减少当事人诉累，避免申请保全的当事人多地奔波，减少感染风险，我院实行保全线上申请、线上担保、线上审核、线上反馈、线上跟踪全程线上保全办理。

在近期审理的一起离婚纠纷中，女方发现诉讼期间男方在房屋中介公司挂出了涉案房屋的售卖信息，为了防止该房屋在诉讼期间被私自变卖处置，影响其权利的最终实现，女方申请对涉案房屋进行保全。我院及时引导当事人在线上提交保全申请、提供线上担保，在线上审核通过后及时对财产进行保全，保全作出后及时线上反馈、线上跟踪，实现财产保全全程线上办理，避免一方在诉讼期间恶意转移财产，充分保护了当事人权益。

从传统向现代演进 “云探望” 助力破解探望困境

一、疫情时期“探望难”

近年来涉及探望权的纠纷在家事案件中占比较高，并且受本次疫情影响较大，我们发现疫情持续期间，离婚纠纷中不直接抚养子女的父母一方探望权的行使存在以下两方面困境。

一是实现形式较为单一。《婚姻法》第三十八条规定离婚后，不直接抚养子女的父或母，有探望子女的权利，另一方有协助的义务。行使探望权利的方式、时间由当事人协议，协议不成时，由人民法院判决。法律规定的探望权行使方式相对模糊宽泛，并没有作具体规定，但实践中多以直接见面接触作为探望权实现的唯一方式，尤其是在疫情防控期间，极易产生新问题、引发新纠纷。

二是执行效果难以保障。《婚姻法》第四十八条规定“对拒不执行有关探望子女等判决或裁定的，由人民法院依法强制执行。有关个人和单位应负协助执行的责任。”虽然法律对探望权的执行作出了规定，但是父母对子女的探望因涉及人身权利，与血脉亲情相连，亦与个人意愿相关，有的当事人分居两地，甚至移居国外，此类案件的执行不同于财产的查封扣押和老赖的失信惩罚，难以对双方当事人就判决内容强制执行。特别是在疫情期间，此类涉及身份权利的执行效果更难以保障。

二、破解困境“云探望”

因疫情持续，上述“不执行”或“难执行”的现实困境更为突出。为此，我院积极探索解决路径，创新“云探望”模式，助力破解探望困境。

一是依托线上审判，实现远程探望。疫情期间，我院有效利用网络庭审系统对离婚案件进行线上审判、线上调解。对于涉及探望权纠纷案件中长期未见到子女的当事人，家事法官提前与双方当事人电话沟通，倾听双方诉辩意见，多次与抚养子女一方协商，借助可视化庭审系统，在法官主持下满足实现未直接抚养子女一方父母与子女云端见面交流，促进亲情释放、情感沟通。

二是利于疫情防治，便于纠纷化解。依据婚姻法相关规定，父或母探望子女，不利于子女身心健康的，由人民法院依法中止探望的权利；中止的事由消失后，应当恢复探望的权利。结合当前疫情传播的途径和范围，以见面接触的方式行使探望权极有可能增加交叉感染病毒的风险，既不利于子女的健康成长，更不利于国家的疫情防控。目前，我院已成功促成多起离婚案件实现“云探望”，缓解双方当事人的紧张对抗，真正从有利于子女身心健康的角度温情审判、化解纠纷。

三、形成长效“入文书”

“云探望”作为疫情特殊时期的一次创新尝试，给家事审判提供了新方法，新思路，可以从尝试推广为长效，建立

长效机制，推广平时执行。

一是多种情境适用，满足不同需求。具体而言，“云探望”不仅在特殊时期适用，在特定情境下亦可适用。空间上，离婚案件中夫妻双方分居两地，或者移居国外时可以选择；配合子女异地求学或寄宿学习时可以选择；实践中，不直接抚养子女的父母一方身患疾病不便直接接触探望时亦可以选择。诸如此类特定情境下，“云探望”作为一种方便可行的探望权实现方式，有必要在涉探望纠纷的离婚案件中形成长效机制。

二是法官及时释明，尝试文书引入。一般而言，探望权的行使可分为逗留式探望与看望式探望，但在司法实践和实际生活中又缺乏方式补充。从探望权法律规范的多重目的出发，依靠现代网络技术突破地理空间，实现探望权行使方式的创新，既是法律与科技的互动，也是司法由传统向现代的演进。特别是在司法实践中有效把握婚姻法确定探望权“协议+判决，协议优先”的立法原则时，这种技术创新就更具规范基础。实践中，由法官及时释明“云探望”作为探望权行使的方式之一，在调解和判决的基础上综合“云探望”以及其他探望权行使方法，如果离婚案件双方当事人就此达成一致意见，可以在裁判文书中予以确认，从而实现对离婚父母以及未成年子女的全方位保护。

充分保护个人隐私 “证明书”有效延伸审判职能

法院生效裁判具有强制性和稳定性，不能随意改变或撤销。以离婚生效裁判为例，法院的离婚判决书或调解书即为男女双方解除婚姻关系的凭证，无需其他文件的补充或强化，民政部门一般不再为离婚双方另行发放《离婚证》。

一、诉讼终结可能产生现实困境

我院调查发现，一中院辖区内的海淀、石景山、昌平、门头沟、延庆五区民政局对诉讼离婚均不予另外发放《离婚证》。现实背景下，离婚案件当事人收到法院生效法律文书后，多向法院反映其在办理银行贷款、户口迁移、出国签证、子女留学等手续时，相关部门均要求提供离婚证明文件用以证明离婚事实。但由于离婚判决书中涉及多项个人隐私、财产分割等具体内容而存在诸多不便，特别是法院认定有过错方的当事人在向案外人提供离婚判决书时更存在一定困难。以我院梳理的家事审判治理典型案例第3组案件为例，判决书中详细记载了一方当事人与第三人的暧昧信息内容、婚内出轨他人的具体经过等，当事人在诉讼终结后办理个人事项时为证明婚姻状态出具此份判决书的同时，个人隐私、财产信息等也一并被案外人知晓。并且，法院对于判决书的发放只限于案件当事人及委托诉讼代理人，裁判文书原件发放数量的限制，难以满足当事人工作生活变化调整需要。基于上述原因，离婚诉讼主体进而向法院提出申请，要求法院出具《离婚证明书》。我院2015年至2019年审理的离婚

案件中，有意愿希望法院出具《离婚证明书》的当事人占比超过20%。

二、延伸审判职能实现司法便民

为有效保护离婚案件当事人的隐私权，真正实现司法为民、司法便民，化解诉讼离婚的现实矛盾，依离婚案件当事人申请出具《离婚证明书》必要且可行。

第一，《离婚证明书》是延伸审判职能的应有之义。《离婚证明书》是由人民法院为离婚案件当事人出具的，用以证明双方当事人已解除婚姻关系的书面证明。最高人民法院发布《关于进一步深化家事审判方式和工作机制改革的意见（试行）》，审理规程中规定“人民法院判决或者调解离婚的案件，根据当事人的申请，人民法院可以为当事人出具离婚证明书。”《离婚证明书》的出具，能够进一步贯彻落实以人民为中心的思想，延伸审判职能，深化司法为民。**第二，《离婚证明书》是践行司法便民的可行之举。**《离婚证明书》与法院离婚生效法律文书具有同等证明效力，而且可以依实际需要多数量发放，相较于离婚判决书而言，《离婚证明书》篇幅短小，便于离婚案件当事人携带和使用。**第三，《离婚证明书》是强化权益保障的有力一环。**《离婚证明书》是从保护离婚案件当事人隐私、便利离婚案件当事人的角度出发，作为法院出具的用以证明当事人婚姻关系解除的一种文书形式，而非是对既有生效判决效力的重新确认或者强化，《离婚证明书》中仅记载当事人信息及证明离婚等必要事

项，不涉及具体案件事实，充分保护离婚案件当事人隐私和个人相关信息，强化权益保障“多一公里”。

三、规范推广离婚证明文书发放

第一，《离婚证明书》的适用范围，是通过法院判决或者调解解除婚姻关系的离婚纠纷案件；第二，《离婚证明书》的提出主体，应为离婚纠纷案件的男女双方当事人；第三，《离婚证明书》的提出时间，在法院作出离婚生效裁判文书后，当事人可以申请提出；第四，《离婚证明书》的作出主体，应由作出离婚生效裁判的人民法院出具；第五，《离婚证明书》的证明范围，仅能证明离婚纠纷案件中男女双方离婚的事实；第六，《离婚证明书》的发放规范，当事人应书面申请并写明正当合理的申请事由及需求数量，由法院审核后发放。

为离婚案件当事人出具离婚证明书是我院完善审判治理，强化司法为民的重要举措，将在我院及辖区法院推广实行，我院制定的《离婚证明书》模板作为白皮书附件附后。

附件 1：离婚证明书（模板）

北京市第一中级人民法院
离婚证明书（建议稿）

上诉人（原审被告）：XX，男，年月日出生，汉族，职业，住……。身份证号码……。

被上诉人（原审原告）：XX，女，年月日出生，汉族，职业，住……。身份证号码……。

本院已就 XX 与 XX 离婚纠纷一案作出（XXXX）京 01 民终 XXXX 号民事判决书（调解书/裁定书），准许 XX 与 XX 离婚。该民事判决书（调解书/裁定书）已于 XXXX 年 XX 月 XX 日发生法律效力。

兹证明 XX 与 XX 已离婚。

年 月 日

（院印）

夫妻共债共意共享 “指引书” 切实强化权益保障

近年来随着经济发展，夫妻之间的人身关系和财产关系更为独立，债权债务关系逐渐增多，涉夫妻共债的案件数量呈上升趋势。我院家事审判 2018 年至 2019 年审理涉及夫妻共同债务问题的案件共计 123 件，占比超过 20%。夫妻共同债务的处理是离婚案件审理中财产分割的关键。

在离婚纠纷或离婚后财产纠纷中，夫妻一方提出巨额债务，要求配偶承担，另一方面面临“被负债”的情形。这种现象，已经成为新的“家事欺凌”手段，严重损害了未举债配偶一方的合法权益。但应当指出的是，当前也不乏有部分离婚案件当事人借离婚之名，行逃债之实。“被负债”与“真逃债”的审查判断是当前审判实践的难点。

一、严审债务真实性

实践中，夫妻和其他家庭成员之间往往存在一些财产变动。财产变动的原因可能是基于借款，亦有可能是赠与或其他原因。离婚时，夫妻一方往往会以借款为由，要求对方承担部分债务。当然，也存在夫妻一方与第三人恶意串通、虚构债务的情形。由于借款关系仅涉及借贷双方，其他人很难查知，因此，对债务真实性的审查就成为涉夫妻共债案件审理的难点。对此，我院在审理中一是**准确分配举证责任**。在仅有举债方与未举债方参与的诉讼中，将证明债务真实性及用途的责任分配给举债配偶一方。二是**强化对借款真实意思**

的审查。当事人欲证明借贷关系的成立，必须提供借据、欠条、短信、微信记录等足以证明双方之间形成真实借款关系的证据材料，仅有款项流动，不足以证明借贷法律关系的成立。即便当事人提供了欠条，也存在离婚时为了争夺财产而虚构债务的可能。法院会根据双方当时的感情因素，钱款用途等综合判断。比如我院梳理的家事治理典型案例中的第7个案例，亲属之间借款未提交充分证据证明债务的真实性，经审查后未认定为夫妻共同债务。

二、审慎认定夫妻共债

准确把握夫妻共债的认定标准，统一裁判思路是审判实践中的另一难点。比如，2018年最高人民法院关于夫妻债务审理的司法解释第三条规定“夫妻一方在婚姻关系存续期间以个人名义超出家庭日常生活需要所负的债务，债权人以属于夫妻共同债务为由主张权利的，人民法院不予支持，但债权人能够证明该债务用于夫妻共同生活、共同生产经营或者基于夫妻双方共同意思表示的除外”，其中“共同生产经营”认定标准应该如何把握，实践中的认识并不统一。以我院审理的一起担保之债为例，丈夫对公司经营产生的债务承担保证责任，经查，该公司中丈夫占60%的股份，妻子占40%的股份，实际上是家庭为共同经营开设的公司。那么作为公司股东的妻子是否应当共同承担保证责任呢？一审法院认为不属于夫妻共同债务，我院经审理认为，对于这种夫妻一方对外担保之债是否应认定为夫妻共同债务的问题，不同情形

不同对待。实践中应立足个案，严格遵循司法解释精神认定。本案因保证行为所带来的利益均用于了夫妻共同生产经营，应是作为股东的夫妻双方共同追求的结果，符合司法解释中一方债务用于共同生产经营的要件，应当属于夫妻共同债务。

三、切实维护合法权益

《中华人民共和国民法典》草案虽几经修改，但对于夫妻债务问题的认定基本延用了2018年夫妻债务解释的精神。我院结合现行立法及《民法典》草案的有关规定，瞄准夫妻共债审查难、认定难的困境，认真总结，深入研究，综合审查债务数额、家庭收入、借款真实性、钱款流向以及夫妻双方意思表示、是否用于家庭生活或生产经营等因素，通过对当事人言辞的判断、常理的分析 and 民事案件高度可能性的证明标准等综合运用，形成《涉夫妻共同债务的维权指引》，合理保护当事人的合法权益。

一是确立认定夫妻共债的基本理念。夫妻共同债务问题既涉及到夫妻一方的合法权益保护，也涉及到债权人的合法利益保护，既涉及到家庭关系也涉及到交易关系。考虑内外部不同关系当事人举证的难易程度，法官应当充分运用日常生活经验判断以及高度可能性的证明标准，既要避免夫妻双方恶意逃债，同时也要避免夫妻一方离婚时被高额负债。

二是遵循认定夫妻共债的基本原则。认定夫妻共同债务应坚持两个原则，一是夫妻之间形成“共意”，2018年夫妻

债务解释第一条规定“夫妻双方共同签字或者夫妻一方事后追认等共同意思表示所负的债务，应当认定为夫妻共同债务”，共意既包括债务形成时的共同意思表示，也包括夫妻一方的事后追认，不仅包括书面形式，还包括实际履行行为；**二是夫妻之间实际“共享”**，2018年夫妻债务解释第二条规定“夫妻一方在婚姻关系存续期间以个人名义为家庭日常生活需要所负的债务，债权人以属于夫妻共同债务为由主张权利的，人民法院应予支持”，共享包括基于日常家事代理形成的“共享”以及超出日常家事代理范围但该债务涉及的财产利益用于夫妻共同生活、共同生产经营等形成的“共享”。

三是具化认定夫妻共债的基本标准。在确立基本理念，遵循基本原则的基础上，《涉夫妻共同债务维权指引》就何种情况下构成夫妻共同债务、何种情形下产生的债务属于个人债务、分居或诉讼期间产生的债务是否属于夫妻共同债务等问题一一进行解答。其中，对司法解释规定的“家庭日常生活需要”的判别，一般包括日常生活消费、日常精神消费、日常投资性消费以及为赡养老人、教育抚育子女的合理花费等，应该结合夫妻的家庭生活水准、借贷的目的等因素综合衡量。如果一方擅自对外高额借款，借款后自己挥霍浪费，严重侵害另一方的财产权益，该借款就不属于夫妻共同债务。需要说明的是，法院在认定家庭日常生活需要范围时，不宜一刀切地以债务“数额”为标准，应综合家庭生活水平、借贷目的等因素，妥善平衡夫妻双方以及债权人的合法权

益。

对于构成“共同生产经营”的认定，虽然强调“共同性”，但“共同性”并非是指夫妻双方实际共同处理经营事务，而是指夫妻双方把经营活动纳入共同意志范围，同时经营收益也作为家庭收入来源。若夫妻一方隐瞒对方从事经营事务，并且所得盈利也没有作为家庭收入来源的，就不宜认定为共同生产经营。

关于涉夫妻共同债务案件更为详尽的维权指引以及家事审判治理典型案例的内容，作为白皮书附件附后。

司法为民、公正司法，人民法院使命光荣，责任重大。北京一中院希望与社会各界进一步沟通合作，有效推进家事审判治理制度化、规范化、人性化，为法院能动司法注入新理念，取得新突破，为促进家庭社会和谐稳定提供更加坚实的司法保障。

附件 2：涉夫妻共同债务的维权指引

涉夫妻共同债务的维权指引

根据《中华人民共和国婚姻法》、《中华人民共和国民事诉讼法》及《最高人民法院关于审理涉及夫妻债务纠纷案件适用法律有关问题的解释》、《最高人民法院关于适用〈中华人民共和国民事诉讼法〉的解释》等相关司法解释规定，我们对涉夫妻共同债务的维权作以下指引。

一、什么情况下构成夫妻共同债务？

第一、具备共债的共同意思。如夫妻共同签字，或一方签字后另一方事后追认。

第二、具备“日常性”与“合理性”的为家庭日常生活需要所负担的债务。

第三、超出家庭日常生活需要但债务用于夫妻共同生活、共同生产经营。

二、什么情况下产生的债务一般属于个人债务？

第一、夫妻一方与债权人明确约定为个人债务的。

第二、夫妻对婚姻关系存续期间所得的财产约定归各自所有的，夫或妻一方对外所负的债务，第三人知道该约定的。

第三、夫妻一方与第三人串通，虚构的债务。

第四、夫妻一方在从事赌博、吸毒等违法犯罪活动中所负的债务。

第五、超出家庭日常生活需要，并未用于夫妻共同生活、共同生产经营所负担债务。

第六、其他不符合夫妻共同债务条件的个人债务。

三、夫妻离婚时，女方是否可以主张少分担夫妻债务？

离婚时对子女、女方和无过错方权益的保护是一项重要的法律原则，在平等分配的基础上适当考量女方利益及婚姻过错情况，对女方予以照顾符合目前司法实践的具体做法。

四、如果夫妻双方已经分居或提起离婚诉讼后，夫妻一方新形成的债务是否属于夫妻共同债务？

如果能够证明该债务基于双方共同意思产生或者用于家庭共同生活或共同生产经营的，才属于夫妻共同债务。

五、司法解释规定的“家庭日常生活需要”具体包括哪些类型，应该如何判别？

一般包括日常生活消费、日常精神消费、日常投资性消费以及为赡养老人、教育抚育子女的合理花费等，应该结合夫妻的家庭生活水准、借贷的目的等因素综合衡量。如果一方擅自对外高额借款，借款后自己挥霍浪费，严重侵害另一方的财产权益，该借款就不属于夫妻共同债务。

六、如果夫或妻一方不认可对方的借款等债务用于夫妻共同生活，离婚时应该由谁提供证据？

根据“谁主张、谁举证”的证据规则，主张债务用于夫妻共同生活或共同生产经营的，应该由主张共债的夫妻一方承担举证责任，而且主张共债的夫妻一方属借款方，对钱款

的支配及去向更容易说明。

七、夫妻一方在外经营，另一方并不参与经营活动，是否属于“共同生产经营”？

共同生产经营虽强调“共同性”，但“共同性”并非指夫妻双方实际共同处理经营事务，而是指夫妻双方将经营活动纳入其家庭意志范围，经营收益也作为其家庭收入的来源，满足此种条件也属于共同生产经营。

八、夫妻一方隐瞒另一方对外经营，且经营所获得利益未用于夫妻家庭生活的，离婚时，因经营所负担的债务是否属于共同债务？

如果夫妻一方隐瞒另一方对外经营，经营所获得利益未用于夫妻家庭生活，原则上不属于夫妻双方“共同生产经营”，所产生的债务一般由举债方自己承担。

九、夫妻以自己设立的公司名义借款，借款后将所借款项用于家庭的，是否应该由夫妻共同偿还？

参照《最高人民法院关于审理民间借贷案件适用法律若干问题的规定》第二十三条第一款之规定，夫妻一方或双方以自己设立的公司名义与出借人签订民间借贷合同，债权人如果能够证明所借款项用于夫妻家庭生活的，该债务应由公司以及夫妻财产共同偿还。

十、如果夫妻婚姻关系存续期间一方伪造共同债务，侵害另一方合法权益的，如何救济？

如果夫妻一方与第三人之间恶意串通，企图通过诉讼、调解等方式侵害他人合法权益的，根据情节轻重可予以罚款、拘留；构成犯罪的，依法追究刑事责任。同时，根据婚姻法及司法解释的规定，一方有伪造夫妻共同债务等严重损害夫妻共同财产利益行为的，另一方可以要求分割共同财产。

附件 3：家事审判治理典型案例

北京市第一中级人民法院 家事审判治理典型案例

根据《中华人民共和国婚姻法》、《最高人民法院关于适用《中华人民共和国婚姻法》若干问题的解释》（一）（二）（三）、《最高人民法院关于审理涉及夫妻债务纠纷案件适用法律有关问题的解释》等相关规定，下面发布北京市第一中级人民法院家事审判治理典型案例。

◆案例一 特殊家事案件通过网审实现多重效果

【案号】

(2020)京01民终1610号

【案情】

石某与刘某于2015年9月登记结婚后育有一子石某某。石某主张刘某多次对其进行不法侵害，造成其人身与精神的双重伤害，认为刘某违法、犯罪的行为严重伤害了夫妻感情，坚决要求与刘某解除婚姻关系，婚生子石某某由刘某抚养，石某每月支付抚养费5000元（至石某某年满18周岁止）。2019年9月1日刘某因涉嫌犯罪被北京市公安局海淀分局刑事拘留，后经北京市海淀区人民检察院批准，北京市公安局海淀分局于2019年9月30日对刘某执行逮捕，现羁押于海

淀区看守所。

一审法院认为，根据《关于人民法院审理离婚案件如何认定夫妻感情确已破裂的若干具体意见》第 11 条的规定，一方被依法判处有期徒刑，或其违法、犯罪行为严重伤害夫妻感情的，视为夫妻感情确已破裂，一方坚决要求离婚，经调解无效，可依法判决准予离婚。本案中，可以认定双方夫妻感情已经破裂，勉强维持婚姻，对双方均无益处，故石某要求离婚的诉讼请求，应予支持。就婚生子抚养权一节，因刘某涉嫌犯罪被羁押，婚生子年幼，从保护未成年子女权益及身心健康角度出发，对石某主张抚养权的诉讼请求予以支持。刘某应按月支付石某抚养费。关于抚养费数额，结合石某某生活所需及双方经济能力等酌定每月抚养费 5000 元。关于探视权，离婚后，不直接抚养子女的父或母，有探望子女的权利，另一方有协助的义务，具体方式，依据实际情况予以确定。一审法院判决：石某与刘某离婚；婚生子石某某由石某抚养，刘某自 2019 年 12 月起每月支付石某某抚养费 5000 元直至石某某年满十八周岁止；刘某自判决生效后每周可探视石某某一次，石某有配合探视之义务。

刘某不服一审判决提起上诉。

【裁判结果】

二审法院准许刘某撤回上诉。

【案件评析】

本案为一起特殊的二审离婚纠纷。特殊之处在于案件当

事人石某与刘某分别在相应民事案件与刑事案件中具有多重身份，刘某既是二审民事案件的上诉人、一审民事案件的被告，也是一起刑事案件的被告人；而石某既是该起二审民事案件的被上诉人、一审民事案件的原告，也是该起刑事案件的被害人以及被告人家属。考虑到该案当事人身份的特殊性，疫情特殊时期，二审法院积极借助刑事司法审理工作，将刑事判决生效后尚羁押在看守所的刘某提押至视频提讯室参加民事案件网上庭审，实现了多重效果。

一、实现对子女云端探望

疫情期间，利用网上庭审系统开展线上审判、线上调解，对离婚纠纷案件中长期未见到子女的当事人，借助可视化庭审系统，实现父母与子女云端见面交流。二审法官在庭审完毕后适当安排上诉人刘某通过“云法庭”与孩子见面，尽可能留足时间促进亲情联络，修复家庭关系。

二、利于双方矛盾化解

本案双方当事人又系刑事案件中的被告人与被害人，原本矛盾尖锐，对立情绪严重。但通过在“云法庭”面对面沟通，有效消除了双方的对立情绪，化解了双方矛盾，在一定程度上弥合了对被害人的伤害。庭审中，刘某多次表示悔罪，石某表示谅解，在法官积极促进下，最终上诉人刘某主动撤回上诉，服从一审判决。

三、促使被告人积极改造

被告人尚被羁押在看守所，家属一般不安排会见，待转

到监狱服刑后才能依程序申请，通常等待时间较长，且一般不予安排未成年人会见。二审法官庭前说服石某参加网上庭审，借助网上庭审安排探望环节，特别协调看守所警察避开镜头，妥善处理背景细节，注重未成年人心理健康。刘某某当即感谢法院，表示认罪悔罪，积极改造，尽早回归家庭。

四、有效节约司法资源

一般民事案件当事人被羁押在看守所或监狱，法官只能到羁押场所以单方谈话方式进行审判，遇有出现新证据等问题则可能需要法官多次往返，占用大量司法资源。本案利用“云法庭”网络系统，实现了诉讼双方当事人同时在线，对可能出现的新证据、新意见等问题及时解决，有效节约了司法资源。

◆案例二 云探望让父子终相聚 云调解促双方解心结

【案号】

(2020)京01民终1014号

【案情】

女方王某与男方徐某相识结婚，婚后育有一子徐小某。后双方因感情不合，女方王某起诉男方徐某离婚，并要求孩子归其抚养，男方每月支付孩子抚养费1万元。男方徐某同意离婚，并自称其月收入为4万元。一审法院综合考虑徐某的个人陈述及孩子的实际需求等情况，判决双方离婚，孩子归女方王某抚养，男方徐某每月支付孩子抚养费8000元至

孩子年满 18 周岁止。

一审判决后，男方徐某不服提出上诉，请求酌减抚养费的金额，并对探望权依法予以判决。二审期间，徐某称其是为了争取孩子的抚养权才在一审庭审夸大陈述自己的经济状况和月收入情况。自己曾是一家网络公司的工程师，但是由于公司裁员，他被迫换了一家公司，准备春节过后正式入职。但由于疫情持续，徐某无法复工，薪金也大幅减少，月收入为 2 万元。对于孩子探望问题，徐某称其在一审期间因缺乏法律常识，并未对探望权提出诉讼请求，由于其已许久未见孩子，现又遇疫情阻拦，思子之情更是心切，希望二审法院能够设法促成父子相见。

【裁判结果】

本案审理过程中，经法院主持调解，双方当事人自愿达成如下调解协议：一、王某与徐某离婚；二、婚生子徐小某由王某抚养，徐某自二〇一九年九月起每月支付徐小某抚养费 6500 元，至徐小某年满十八周岁时止；徐某每月可探望徐小某四次，具体探视时间为：每周六早九点至晚十九点，王某予以协助。

考虑到疫情特殊时期，法官提示双方当事人可采取网络化、信息化手段行使探望权。

【案件评析】

一、创新云探望，父子终相聚

《中华人民共和国婚姻法》第三十八条规定：离婚后，

不直接抚养子女的父或母，有探望子女的权利，另一方有协助的义务。探望权是离婚一方当事人的法定权利。本案中，徐某向法官表示其因与女方王某感情不和分居以来，已许久未见过孩子。春节期间女方把孩子带回老家过年，又遇疫情，无法如期回京，徐某对孩子十分想念，希望法院能够设法促成其与孩子相见。为圆徐某父子相聚的心愿，法官决定在疫情期间为他们安排一次特殊的“探望”。为此，法官先与女方王某进行了电话沟通，向王某转述了徐某思念孩子的心情与想见孩子的愿望，并从有利于孩子健康成长的角度，耐心展开调解工作，规劝双方放下隔阂，修复感情，维系亲情。通过法官一次次地释法明理，女方王某最终同意了法官在网络庭审结束后徐某对孩子进行云探望的建议。

2020年2月11日上午10点半，北京一中院家事审判庭就徐某与王某离婚纠纷一案进行了网络庭审。依托线上庭审平台，在法官的主持与安排下，徐某通过网络庭审系统在云端见到了日日思念的儿子。屏幕那端传来孩子稚嫩的声音，那一声声“爸爸”，让徐某禁不住泪湿了眼眶。

二、开展云调解，千里解心结

这一场特殊时期的“云探望”，不仅维系了父子之间的天伦之情，也保障了父子之间的亲情传递与情感交流，同时大大化解了徐某与王某之间的隔阂与矛盾，修复了双方的情感，缓和了双方的对抗情绪，为案件顺利调解成功打下了基础。

本案的争议焦点是孩子的抚养费金额。徐某表示其现在因为工作变动和疫情影响，收入有所减少，在现阶段自己经济能力承受范围内尽可能多的承担孩子的各项日常开支和生活花费，尽其所能给孩子提供良好的物质条件。在对孩子进行“云探望”之后，女方王某对徐某目前的经济状况表示理解，主动提出将抚养费的金额由原先的每月 8000 元降至每月 6500 元。徐某承诺待其后续经济收入上涨，会自愿增加抚养费金额并积极履行抚养义务。考虑到徐某未在一审期间提出探视权的诉讼请求，为了避免增加当事人诉累，法官引导双方就探视的频次及时间进行了协商，并最终达成一致意见。

隔空探望，阻隔住疫情却阻隔不住亲情；云端调解，超越距离促成案件圆满解决。“云探望”从有利于子女身心健康为出发点，在保障一方当事人合法行使探望权的同时，充分延伸司法职能，彰显家事审判独有的司法温度和司法为民的人文关怀。

◆案例三 判决内容涉隐私 离婚证明维权益

【案号】

(2019)京01民终4719号

(2019)京01民终6003号

(2020)京01民终2388号

(2018)京01民终7133号

【案情】

一、卢某（女）与李某（男）于 2012 年登记结婚，婚后未生育子女。2016 年 2 月，李某向卢某出具承诺书，主要内容为：我承诺不再发生背叛伤害卢某的事，包括文字性、精神及身体出轨等一切损害其感情的事，如果发生，家庭全部财产归对方。后李某起诉离婚。卢某辩称同意离婚，称在李某出具上述承诺书后又出现出轨情况，并提供在李某 iPad 中保存的李某与她人的聊天记录截屏，京东、淘宝的购物记录，携程网的订票、订房记录等，证实李某存在对婚姻不忠实行为。

法院经审理后认为，李某与异性的交往不当，应为导致夫妻感情破裂的主要原因，卢某与李某间已失去夫妻间的基本信任，双方均同意离婚，故认定夫妻感情确已破裂。李某在夫妻关系存续期间存在过错，故在分割共同财产时应对卢某予以多分。判决：准予李某与卢某离婚，以照顾女方权益、照顾无过错方原则，对夫妻共同财产进行了分割。

二、朱某（男）与钟某（女）于 2005 年登记结婚，双方均为初婚；于 2006 年 8 月生育一子，现随钟某居住生活。庭审中，双方均认可自 2014 年分居至今。婚姻存续期间，朱某与案外第三人张某于 2014 年育有一女。钟某要求分得全部夫妻共同财产，并主张朱某对其进行精神损害赔偿。

法院经审理后认为，朱某在婚姻关系存续期间存有过错，钟某要求精神损害赔偿，理由正当，法院依据朱某的过

错程度依法裁判精神损害抚慰金的数额。对夫妻共同财产依法分割。判决：准予双方离婚；婚生子由钟某直接抚养；朱某赔偿钟某精神损害抚慰金 10 万元；依据照顾女方权益和照顾无过错方原则对双方共同财产进行了分割。

三、张某（女）与李某（男）1988 年结婚，双方均系初婚，婚后未生育子女。在共同生活中，双方因家庭琐事产生争执，一定程度上影响了夫妻关系。2019 年 7 月左右，李某身体出现多种症状，后被诊断患有艾滋病。李某称自己患病系因张某存在婚外情，导致自己自暴自弃，因而发生同性恋，并感染艾滋病。

法院经审理后认为，李某因出轨感染艾滋病毒，严重影响了夫妻关系，李某虽提出张某亦存在出轨行为，且导致其自暴自弃，但并未提交充分证据予以证明，对其所述不予采纳。在分割双方共同财产时，根据查明事实及财产的具体情况，依据照顾无过错方的原则，对张某予以适当倾斜。关于房屋的居住使用问题，现张某拒绝与李某共同使用房屋，且李某的病情具有一定的传染性，双方共同居住使用房屋存在潜在的危险性，故根据房屋来源、使用现状、双方的居住需求等现实状况，判定诉争房屋由张某居住使用，由张某给付李某相应居住使用费。具体数额，根据当地房屋租赁市场现状，并结合张某的给付能力予以确定。李某所患疾病给张某造成较大的心理压力，精神状态及日常生活已经受到影响。张某要求李某给付精神损害赔偿，理由充分，结合本案情况

及双方经济状况，判定精神损害赔偿款数额。判决：李某与张某离婚；李某给付张某精神损害赔偿金1万元；房屋由李某与张某按份共有，张某占有70%份额；双方的存款等亦按照上述比例进行分割。张某提起上诉，双方在二审期间达成协议，房屋归张某所有。

四、陈某（女）与孟某（男）于2003年登记结婚，2008年8月生育一子。对于婚姻期间的主要矛盾，陈某表示：主要因孟某存在家庭暴力，之前向法院申请过人身保护令，此外是孟某存在出轨行为，从2009年开始，也因此打骂陈某和孩子。孟某对陈某所述不予认可，表示双方之间的主要矛盾系陈某长期冷暴力。现双方均同意离婚。

依据陈某申请，法院依法调取了孟某与案外人闫某的同房间开房记录，自2014年至2017年总计25条，部分开房记录开房时间长达四天。对于开房原因，孟某解释为系会议需要，但未就此提交任何证据予以证明。

法院经审理后认为，陈某与孟某均同意离婚，法院准许。从安全保护令裁定的内容可以看出，孟某在婚后共同生活中未能理性克制自身行为，多次动手导致陈某受伤。此外，根据依法调取的开房记录显示，从2014年至2017年期间，孟某多次与婚外第三者在外开房，孟某的行为违反了夫妻间的忠实义务，严重伤害了夫妻感情，是导致双方婚姻关系走向破裂的主要原因。陈某基于孟某的上述过错行为请求损害赔偿，有事实和法律依据，应予以支持。孟某作为婚姻的过错

方，其行为不仅导致了夫妻感情的恶化，也势必会给其余家庭成员，尤其是孩子的心理健康带来不利影响，孩子由陈某抚养更为适宜。根据当事人的过错程度、孩子抚养权情况以及最大限度发挥财产效用等因素考虑，判决：准许陈某与孟某离婚；婚生子由陈某直接抚养；孟某给付陈某精神损害抚慰金 15 万元；双方的财产依法分割。

【案件评析】

一、因过错导致离婚后的现实困境

上述四个离婚纠纷生效判决书中，既有认定一方当事人存在诸如有配偶者与他人同居、实施家庭暴力等婚姻法规定的法定过错情形，也有记载诸如一方当事人与案外人之间存在暧昧聊天记录、开房记录以及一方当事人系同性恋并患艾滋病等情形。法院生效判决书中记载上述事实，是法院依法查明案件，准确适用法律，作出判决结果的事实基础与裁判依据。但是上述事实被记载在判决书中，对当事人来说却因涉及诸多个人隐私，其一般不愿意将自己的离婚判决书出示给案外人查看。可是在日常生活中，如办理银行贷款、户口迁移、出国签证、子女留学等手续时，相关部门一般会要求当事人提供离婚证明文件，此时当事人只能提供离婚判决书用以证明离婚事实。在我院近 4 年审结的离婚案件中，约有超过 20% 的案件当事人向法院提出申请，希望法院能为其出具离婚证明书。

二、离婚证明书制度的必要性

（一）过错事实涉及隐私不宜让案外人知晓

很多离婚过错事实的认定，都涉及当事人个人隐私，比如，裁判文书记载了过错方与案外第三人之间的暧昧信息，有些还涉及了案外第三人的姓名、住址等私人信息。部分案件事实则是记载了当事人所患生理或精神类疾病以及性取向等相关个人隐私事项。虽然过错方在法律上承担了相应的责任，但过错方保护自己的隐私不被泄露也有正当的法律依据。因此，从维护当事人隐私权出发，此类离婚判决书不宜让案外人知晓，经当事人申请，必要时法院可为其出具离婚证明书。

（二）财产分割信息详尽不便让案外人知晓

在离婚纠纷中，事实查明往往涉及了男女双方的婚内财产和个人财产情况。离婚判决书中记载的财产，内容种类详尽，且相关具体信息翔实。诸如不动产权属证书、银行账户、股权证及车辆等信息均在判决书中有详细记载。如果上述财产信息过多的公示给不特定的案外人，势必会造成个人财产信息隐私的泄露，也不利于财产信息安全的保护。因此，为了维护个人财产安全，此类离婚判决书同样不便让案外人知晓，经当事人申请，必要时法院可为其出具离婚证明书。

（三）感情破裂离婚事由不适让未成年人知晓

离婚纠纷中法院会审查双方当事人起诉离婚的事由以及感情破裂的具体原因。除了因一方当事人存在过错提出离婚外，还存在因家庭矛盾导致男女双方之间，或与岳父母、

公婆之间产生争吵、辱骂甚至殴打等极端暴力行为，无法维系婚姻。此外，在极个别案件中，还会出现因孩子患有某种特殊疾病，使得双方产生婚姻无望的情况。婚姻的维系与解体均系男女双方的合意与选择，对于未成年子女来说，不适合让其过多的介入并知晓父母双方离婚的具体事由与感情破裂的主要原因。离婚判决书中关于上述事实的记载，如果被孩子看到，也不利于孩子童年的心理健康成长。因此，从保护未成年人利益出发，经当事人申请，必要时法院可为其出具离婚证明书。

◆案例四 婚姻关系存续期间夫妻一方以个人名义所负债务 未用于共同生活不属于夫妻共同债务

【案号】

(2018)京01民终9610号

【案情】

男方赵某与女方乔某系自由恋爱，双方于2008年5月6日登记结婚。2014年5月，双方因产生矛盾诉至法院，男方赵某要求与乔某离婚，并要求乔某承担婚内夫妻共同债务2258万元。

赵某主张该共同债务包括向案外人林某借款2108万元，以及向案外人张某借款150万元。关于向林某借款2108万元，赵某提交了3份《借款合同》及对应的银行对账单为证。第1

份《借款合同》显示为林某与赵某于2010年10月7日签订，由赵某向林某借款1000万元，利息为月2%，还款日期为2015年10月9日，逾期未还约定有违约金，借款用途为投资。对应的银行对账单显示赵某的银行账户于2010年10月8日收到汇款1000万元。第2份《借款合同》显示为林某与赵某于2012年4月17日签订，由赵某向林某借款1000万元，利息为月2%，还款日期为2015年4月18日，逾期未还约定有违约金，借款用途为投资。对应的银行对账单显示林某的银行账户于2012年4月18日转出1000万元。第3份《借款合同》显示为林某与赵某于2014年1月29日签订，由赵某向林某借款108万元，利息为月2%，还款日期为2015年1月29日，逾期未还约定有违约金，借款用途为投资。对应的银行对账单显示赵某的银行账户于2014年1月29日收到款项108万元。赵某称2010年10月7日的借款用于买房和买奥迪车、皮卡车及家庭支出和装修；2012年4月17日的借款用于注册公司；2014年1月29日的借款用途记不清了。乔某对上述借款均不认可。

赵某主张曾向张某借款150万元用于支付房屋购房款，并提交银行对账单、刷卡凭条为证。银行对账单显示赵某的银行账户于2012年12月25日POS机刷卡支出150万元。刷卡凭条显示张某于2012年12月25日向北京某公司刷卡支付150万元。乔某称自己对《借款合同》毫不知情，上述巨额债务也均未用于夫妻日常生活，乔某也未在上述《借款合

同》上签字。

一审法院审理后对赵某主张2258万元债务系夫妻共同债务的请求不予支持，赵某不服提起上诉。

【裁判结果】

法院生效判决认为：本案中，赵某向案外人借款所签订的三份《借款合同》上，均未有乔某的签字，乔某对上述债务的真实性亦不予认可。二审期间，赵某主张其借款系用于购买两套房屋和相应的两个车位，以及上述两套房屋的家电装修费用、两辆汽车，其余款项均用于家庭生活开支，但未能提交相应证据对此予以佐证。此外，赵某在一审期间称其向案外人借款150万元用于购买房屋。同时其称于2014年之后支取的大额款项部分用于生活开支、买房装修、买车等。对此法院认为，赵某主张的借款，从金额上明显超出家庭日常生活需要，且赵某在庭审中对该笔借款的陈述存在矛盾之处，其亦未能提交充分有效的证据证明该笔债务系为满足家庭共同生活需要所负债务，故综合上述因素，该笔债务不属于夫妻共同债务，赵某上诉主张分割债务，不符合相关法律规定，法院对此不予支持，判决：驳回上诉，维持原判。

【案件评析】

《最高人民法院关于审理涉及夫妻债务纠纷案件适用法律有关问题的解释》中规定，夫妻双方共同签字或者夫妻一方事后追认等共同意思表示所负的债务，应当认定为夫妻共同债务。夫妻一方在婚姻关系存续期间以个人名义为家庭日常

生活需要所负的债务，债权人以属于夫妻共同债务为由主张权利的，人民法院应予支持。夫妻一方在婚姻关系存续期间以个人名义超出家庭日常生活需要所负的债务，债权人以属于夫妻共同债务为由主张权利的，人民法院不予支持，但债权人能够证明该债务用于夫妻共同生活、共同生产经营或者基于夫妻双方共同意思表示的除外。由此可见，认定夫妻共同债务一是要审查是否有共同举债的合意；二是债务是否属于家庭日常生活所需或超出家庭日常生活所需但用于夫妻共同生活或共同生产经营。本案即是对认定夫妻共债的标准和判断规则的典型应用。

一、夫妻共同债务要有共同举债的合意

《最高人民法院关于审理涉及夫妻债务纠纷案件适用法律有关问题的解释》第一条规定：“夫妻双方共同签字或者夫妻一方事后追认等共同意思表示所负的债务，应当认定为夫妻共同债务”。共同意思表示，要求在形成夫妻共同债务时，夫妻双方共同签字或者夫妻一方事后追认等。该意思表示的作出需要当事人具有民事行为能力，意思表示真实，且合意内容不得违反法律法规的强制性规定。

二、未有合意的债务，夫妻实际“共享”是关键

根据《最高人民法院关于审理涉及夫妻债务纠纷案件适用法律有关问题的解释》第二条规定，夫妻之间因家庭日常生活需要所负债务属于夫妻共同债务，原因在于该类债务往往具有日常性和合理性，是为了满足家庭基本生活所需。超

出合理性和日常性的大额举债，一般不认为是夫妻共同债务，但如果夫妻双方实际享有该债务利益，即司法解释所规定的该债务用于了夫妻共同生活、共同生产经营，那么该债务因夫妻实际“共享”，就应认定为夫妻共同债务。

具体到本案，赵某向案外人借款所签订的三份《借款合同》上，均未有女方的签字。男方未能提交充分有效证据证明借款用于日常家庭生活或共同生产经营，该债务不符合《最高人民法院关于审理涉及夫妻债务纠纷案件适用法律有关问题的解释》的相关规定，故综合上述因素，法院认定该笔债务不属于夫妻共同债务，对男方赵某的诉讼请求不予支持。

◆案例五 夫妻一方对外担保之债与夫妻共同生活或共同生产经营密切相关宜认定为夫妻共同债务

【案号】

(2018)京01民终8017号

【案情】

杨某与张某于1996年登记结婚，二人系海南某公司的股东，分别持有60%和40%的股份。

2006年，北京某物业公司与海南某公司达成《合作开发房产合同》，约定北京某物业公司投入建房资金1500万元。2013年、2015年，北京某物业公司与海南某公司又签订借款协议两份。其中2015年2月2日《借款合同》约定：一、

借款用途：在海南三亚投资开发房地产项目。二、借款金额：4127.5 万元。三、借款期限：自 2015 年 3 月 31 日起至 2016 年 3 月 30 日止。四、借款利率：借款利息率为借款本金的 10%，按年付息。具体时间 2016 年 3 月 30 日前连本带息一次性付清全额。五、海南某公司借款需由其大股东杨某以个人名义担保此借款行为并承担相应的借款还款义务……同日，杨某出具个人担保书，自愿对上述款项承担连带保证责任。此后海南某公司仅偿还了 250 万元，北京某物业公司将海南某公司、杨某诉至法院。双方达成一致意见，法院于 2016 年出具民事调解书，确认海南某公司给付北京某物业公司借款本金及利息共计 4290.25 万元；杨某对上述债务承担连带保证责任。到期后，海南某公司、杨某亦未按时还款。

北京某物业公司主张上述债务发生在张某与杨某二人婚姻关系存续期间，且张某没有固定的职业和收入，日常生活开销都是依靠杨某从海南某公司盈利获得，2008 年二人还购买了价值不菲的房屋和机动车，现张某、杨某系海南某公司股东，故张某应对债务承担连带责任。张某辩称，对外担保之债不属于夫妻共同债务，且不是杨某以个人名义为家庭生活需要所负的债务，故不同意北京某物业公司诉讼请求。杨某作为第三人诉称，北京某物业公司所称债务与婚姻家庭生活无关。

一审法院审理驳回北京某物业公司全部诉讼请求。北京某物业公司不服提出上诉。

【裁判结果】

法院生效判决认为：本案中，经法院民事调解书确认海南某公司给付北京某物业公司借款本金及利息共计 4290.25 万元，杨某对上述债务承担连带保证责任，上述债务真实有效，应予确认。连带责任保证的债务人在主合同规定的债务履行期届满没有履行债务的，债权人可以要求债务人履行债务，也可以要求保证人在其保证范围内承担保证责任。杨某对上述债务自愿承担连带保证责任，故北京某物业公司可以要求杨某就上述债务承担还款责任。

关于诉争债务，上述借款发生于杨某与张某婚姻关系存续期间，且上述款项用于海南某公司的经营活动，杨某与张某均属海南某公司的股东，故应认定为用于夫妻共同生产经营，故北京某物业公司主张张某承担连带清偿责任的上诉请求，法院依法予以支持。最终判决：一、撤销北京市海淀区人民法院（2018）京 0108 民初 5237 号民事判决；二、张某对杨某在北京市丰台区人民法院（2016）京 0106 民初 8823 号民事调解书第一项、第二项所确认的债务承担连带清偿责任。

【案件评析】

是否构成夫妻共同债务，其核心要件即债务发生时间以及借款去向用途。一般而言，如果债务发生于夫妻关系存续期间且该借款用于夫妻共同生活或者夫妻共同生产经营活动，应当认定为夫妻共同债务。对于夫妻一方对外担保之债

的定性，亦应当依据上述标准进行审查，担保之债认定为夫妻共同债务，需要满足下列条件：

一、夫妻一方对外担保之债应与夫妻共同生活或共同生产经营密切相关

担保之债作为债务的一种，同样应当适用婚姻法关于夫妻共同债务的审查认定标准。同时，夫妻一方对外担保之债也要考虑担保的性质和法律意义。担保是指为保证特定的债权人实现债权，以第三人或债务人的特定财产或信用来督促债务人履行债务的制度，而配偶一方在法律上具有独立人格，夫或妻的信用并不存在必然连带关系。因此对于夫妻一方对外担保之债的定性不能一概而论，需要根据个案案情进行分析。当夫妻一方对外担保之债与夫妻共同生活或共同生产经营密切相关时，该担保之债宜认定为夫妻共同债务。具体而言，结合个案中债务金额大小、借款名义、资金流向、家庭情况、夫妻经营状况等因素，若夫妻一方对外担保产生的利益用于家庭生活或夫妻共同生产经营，则该担保之债属于夫妻共同债务的范畴。

具体到本案，诉争债务用于海南某公司的经营活动，杨某与张某为海南某公司全部股东，杨某对诉争债务自愿承担连带保证责任，结合诉争债务的金额大小、借款用途、资金流向等因素来看，该债务与夫妻共同生产经营密切相关，故本案中担保之债宜作为夫妻共同债务进行考量。

二、认定共同生产经营需具备“共同性”

因夫妻双方在家生活和生活经营中可能存在分工不同的事实，因此，这里的“共同性”并不要求双方实际共同经营，而是指生活经营活动属于夫妻共同的意志范围。本案属于典型的双方共同参与情形，实践中表现为共同决策、共同投资、分工合作、共同经营管理等。张某于2010年成为海南某公司的股东，2016年最终确认债务数额及还款方式时，公司登记在册的股东仅为张某及杨某两人，债权人依据公司登记情况有理由相信海南某公司的决策系由杨某与张某夫妻双方共同决定和执行，故应当认定双方共同参与。综合本案担保之债的款项具体应用宜认定为属于夫妻共同债务。

◆案例六 夫妻一方经营借款与夫妻财产混同，大额负债情况下仍进行高额消费不宜认定为个人债务

【案号】

(2019)京01民终857号

【案情】

计某与二案外人共同出资，委托甲公司购买乙公司的土地。其中计某拟出资3000万元，持有该项目30%的股权。2008年4月18日，撤某与计某签署股权转让协议，约定撤某通过计某在该项目中投资入股，间接持有该项目的股权，撤某以1500万元受让计某所占前述项目公司15%的股权，与计某共同分享利润，分担亏损。同日，撤某向计某支付投资款1500

万元，计某出具《收条》。

2010年2月4日，计某向撒某支付500万元。2013年8月28日，撒某与计某签订《还款协议》，载明计某欠撒某1500万元，截止至当日尚欠730万元。同日，计某向撒某出具《欠条》，载明计某欠撒某730万元。之后计某陆续向撒某偿还了230万元。

2016年，撒某作为申请人申请北京仲裁委员会对其与计某之间的前述纠纷进行仲裁。当年8月2日，北京仲裁委员会基于前述事实，作出（2016）京仲裁字第1026号裁决书，裁决：（一）确认撒某与计某签订的《股权转让协议书》于2013年8月28日解除；（二）计某向撒某返还投资款500万元；（三）计某向撒某支付已偿还款项230万元的利息损失71798.56元，以及未偿还款项500万元的利息损失（以500万元为基数，按照中国人民银行同期贷款利率，自2013年9月13日起计算至实际清偿之日止，暂计至2016年8月2日为818784.72元）；（四）计某向撒某赔偿律师费损失6万元；（五）本案仲裁费为132822.25元（已由撒某全额预交），由计某承担，计某应直接向撒某支付其垫付的仲裁费132822.25元。同年11月29日，法院受理撒某基于前述仲裁裁决书的执行申请。

另查明，2012年，计某作为申请人申请北京仲裁委员会对其与甲公司之间的《合作开发房地产合同》进行裁决。当年3月15日，计某与甲公司达成和解协议，即甲公司于2012

年6月30日前向计某支付土地款1000万元。北京仲裁委员会依此作出(2012)京仲调字第0055号调解书予以确认。之后,甲公司未能依约给付全部款项,计某向当地法院申请了执行。据此,法院曾要求山东省淄博市中级人民法院协助冻结计某在该院申请执行甲公司的案款,限额600万元。

再查明,计某与陈某于2001年5月21日登记结婚,于2002年2月18日生育一子,取名计小某。二人于2013年7月2日购置位于北京市昌平区某路某房屋,并分别于2008年6月18日购置北京现代牌小汽车一辆、2013年4月23日购置华晨宝马牌小汽车一辆、2015年7月24日购置凯迪拉克小汽车一辆,上述房屋与小汽车均登记于陈某名下。计某与陈某后于2016年7月7日协议离婚。双方在《离婚协议书》中载明:计小某由女方抚养,男方每月给付抚养费2万元;双方名下无银行存款;女方名下坐落于北京市昌平区某院某号房屋归女方个人所有;女方名下宝马525、凯迪拉克SUV、现代SUV汽车三辆归女方所有;婚前双方各自财产归各自所有,男女双方各自的私人生活用品及首饰归各自所有;双方确认在婚姻关系存续期间没有发生任何共同债务,任何一方对外负有债务的,由负债方自行承担。

撤某诉称,确认计某对撤某所负债务6083406元及迟延履行仲裁裁决的债务利息系计某与陈某的夫妻共同债务,由计某与陈某对上述债务承担连带责任。

一审法院经审理后驳回撤某的诉讼请求。撤某不服一审

判决提起上诉。

【裁判结论】

法院生效判决认为：本案双方争议焦点为陈某是否应对北京仲裁委员会出具的（2016）京仲裁字第 1026 号裁决书中确定的计某对撒某所负债务承担连带偿还责任。夫妻一方在婚姻关系存续期间以个人名义超出家庭日常生活需要所负的债务，债权人以属于夫妻共同债务为由主张权利的，人民法院不予支持，但债权人能够证明该债务用于夫妻共同生活、共同生产经营或者基于夫妻双方共同意思表示的除外。

本案中，计某委托甲公司进行项目开发时拟出资 3000 万元以持有该项目 30%的股权，后撒某与计某签署股权转让协议约定撒某出资 1500 万元受让计某所占该项目公司 15%的股权，同日撒某向计某支付投资款 1500 万元，计某出具《收条》。因计某本应向甲公司支付投资款 3000 万元，即其本人的 1500 万元与撒某的 1500 万元，但其实际仅支付 1500 万元，故无法确认该 1500 万元投资款的来源系计某或撒某。

法院认为，计某在收到撒某 1500 万元投资款后，与自己财产发生混同，计某在诉讼中并不能指明已经投入的 1500 万元是自己的钱款还是撒某的钱款。相反，计某在收到撒某 1500 万元后购置了房屋、车辆，用于家庭共同生活。且在 2013 年又与撒某签订还款协议书和欠条，确认其对撒某负有债务，北京仲裁委员会出具（2016）京仲裁字第 1026 号裁决书亦确认撒某与计某签订的《股权转让协议书》于 2013

年8月28日解除。因此，考虑在撤某对计某的投资款转为计某债务后，计某在无力偿还债务的情况下仍与陈某购置车辆用于共同生活，且离婚时将房产、车辆均分配给陈某的情节，法院有理由认为计某将资金用于夫妻共同生活，故该债务应属于计某与陈某的夫妻共同债务，陈某应对该债务承担连带责任。最终判决：一、撤销北京市昌平区人民法院（2018）京0114民初7188号民事判决；二、陈某对北京仲裁委员会出具的（2016）京仲裁字第1026号裁决书中确定的计某对撤某所负债务承担连带偿还责任。

【案件评析】

债权人的债权和夫妻一方的财产所有权，均属于法律保护的范畴。2018年最高人民法院出台《关于审理涉及夫妻债务纠纷案件适用法律有关问题的解释》进一步增强了对未具名举债夫妻一方权益的保护，加大了债权人的举证责任，有效防范了夫妻一方与债权人串通损害夫妻另一方利益的风险。但实践中，仍有夫妻借离婚之名，行逃债之实，串通损害债权人利益，从而达到“假离婚，真逃债”的目的。本案系夫妻一方个人经营借款最终被认定为夫妻共同债务的典型案件，认定的理由如下：

一、夫妻一方投资经营借款与夫妻共同财产发生混同

本案中，计某收到撤某的1500万元虽为投资款，但与其最终个人出资的1500万元数额相等，且未有证据显示该1500万元系其个人出资与撤某的投资款无关，其在诉讼中并

不能指明已经投入的 1500 万元是自己的钱款还是撒某的钱款，故法院有理由认为该款项与其个人财产或夫妻共同财产发生混同。根据《最高人民法院关于审理涉及夫妻债务纠纷案件适用法律有关问题的解释》第三条之规定精神，对夫妻一方因投资经营发生的超出家庭日常生活需要所负债务，如果有证据证明最终未显示流向了该用途领域，而是与个人财产或夫妻共同财产发生了混同，则该债务可能就用于了夫妻家庭生活，应谨慎对待。

二、大额负债情况下仍然进行家庭高额消费

本案中北京仲裁委员会出具（2016）京仲裁字第 1026 号裁决书确认撒某与计某签订的《股权转让协议书》已于 2013 年解除，计某对撒某负有 500 余万元高额债务，但在此种情况下，计某与配偶陈某仍于 2013 年 7 月 2 日购置房屋，并相继购置北京现代牌小汽车一辆、华晨宝马牌小汽车一辆，且上述房屋与小汽车均登记于未具名举债的陈某名下。计某所负投资经营借款非但未流入经营，反而用于家庭购房、购车等高额消费。通常来讲，在大额负债情况下除去必须的衣食住行，理应首先考虑偿还借款，而非进行与自身经济能力不符的高额消费。在上述夫妻一方因投资经营所借款项与个人财产或夫妻共同财产发生混同后，继而进行与当前负债情况不符的家庭高额消费，该债务属于直接用于了家庭和生活，故不应认定为计某的个人债务。

三、离婚协议中财产分配明显失衡

离婚时对于夫妻共同财产的分割，一般应当均等，通常情况下可适当照顾女方权益。本案中，2016年撒某与计某之间的债务纠纷进行仲裁后不久，计某与陈某即协议离婚，并在《离婚协议书》中约定将双方共同所有的房屋、车辆全部归未具名举债的陈某所有，且尤其强调了双方确认在婚姻关系存续期间没有发生任何共同债务，任何一方对外负有债务的，由负债方自行承担。计某在债台高筑且未有婚姻过错的情形下，仍同意将近乎所有财产分给其配偶，综合上述财产混同、高额消费等情形，可以说明双方对离婚财产的分配具有逃避债务的重大嫌疑。综上因素，更应认定为夫妻共同债务。

法院审理涉及夫妻债务纠纷案件，既要依法保护夫妻特别是未具名举债一方的合法权益，不能让夫妻一方承担不应承担的债务，也不能让本该承担债务的夫妻一方逃避责任，损害债权人的合法权益。在案件审理中，应当努力防范夫妻双方串通损害债权人利益和夫妻一方与债权人串通损害夫妻另一方利益两大风险朝极端化发展。

◆案例七 主张亲属借款尤其应证明债务真实性及用途

【案号】

(2019)京01民终8137号

【案情】

男方李某与女方蔡某于2006年登记结婚，2019年蔡某

诉至法院要求离婚，庭审中，綦某、李某均同意离婚。关于债务，綦某主张其自2015年5月至2019年4月信用卡消费2万余元及取暖费、物业费1万余元尚未偿还，此笔费用为夫妻共同债务。李某称为其父亲看病向妹妹李小某借款10万元，并提交其妹妹李小某的借款证明，证明为了给父亲看病，其向李小某借款，此为夫妻共同债务，双方应共同负担债务10万元。

一审法院经审理后判决：一、准予綦某与李某离婚；二、双方共同债务36735.11元由綦某负责偿还，李某于判决生效后七日内给付綦某18367.56元；三、驳回綦某其他诉讼请求。李某不服一审判决提起上诉。

【裁判结论】

法院生效判决认为：李某在一审主张向其妹妹李小某借款10万元用于给父亲看病，二审中李某主张向其妹妹李小某借款8万元用于给父亲看病，借款1万元用于家庭日常生活，主张数额前后不一，陈述也相互矛盾，且李某与李小某系亲属关系，李小某未到庭佐证，李某亦未提交充分证据证明债务的真实性，故对李某上诉主张向其妹妹借款应属夫妻共同债务法院不予支持。结合綦某提交信用卡账单明细显示多为小额支出，且消费地点多为超市、药店、便利店等，一审法院认定綦某信用卡支出2万余元为家庭日常生活开支，从而认定为夫妻共同债务并无不当。综上，驳回上诉，维持原判。

【案件评析】

离婚纠纷中常涉及夫妻债务的认定问题，因离婚纠纷主要为解决夫妻双方的身份关系及财产关系，通常不会列入第三人，因此离婚纠纷中的夫妻债务认定一般仅涉及夫妻双方，而鲜少涉及债权人一方。此类纠纷中举债的夫妻一方多主张为家庭生活向亲属借款，基于举债人与债权人的特殊身份关系，法院对债务的认定更注重审查债务的真实性及实际用途。

一、诉争债务须合法且真实发生

夫妻债务是指夫妻双方因婚姻共同生活及在婚姻关系存续期间履行法定扶养义务所负的债务。认定夫妻债务的首要前提是债务须合法且真实发生。离婚纠纷中举债的夫妻一方常主张为家庭购房、购车、子女抚养等借父母或其他亲属钱款，根据我国《最高人民法院关于适用〈中华人民共和国民事诉讼法〉的解释》第九十条规定，当事人对自己提出的诉讼请求所依据的事实或者反驳对方诉讼请求所依据的事实，应当提供证据加以证明，但法律另有规定的除外。在作出判决前，当事人未能提供证据或者证据不足以证明其事实主张的，由负有举证证明责任的当事人承担不利的后果。此时主张举债的夫妻一方应承担证明债务真实发生责任，包括证明双方确有借款行为、举债一方与债权人有借贷的意思表示、债务系因合法用途发生等，同时可以向法院提交举债一方与债权人之间的转账凭证、借款或收款凭证等予以佐

证。

实践中，法院审查债务真实性重点把握两方面，一是债权人与债务人之间存在资金往来、借条等佐证债务真实性的证据，要求出借人向人民法院起诉时，应当提供借据、收据、欠条等债权凭证以及其他能够证明借贷法律关系存在的证据；二是债权人与债务人之间具有借贷意思表示，双方之间资金往来并非为其他用途。

二、诉争债务系用于家庭日常生活需要

根据《中华人民共和国婚姻法》第四十一条及《最高人民法院关于审理涉及夫妻债务纠纷案件适用法律有关问题的解释》第二条之规定，实践中对家庭日常生活需要范围的衡量侧重于夫妻家庭生活需求“日常性”与“合理性”的审查。对“日常性”行为的解释一般应结合普通人的观念加以衡量，包括日常生活消费、日常精神消费、日常投资性消费以及为赡养老人、教育抚育子女的合理花费等。对“合理性”的衡量亦应根据“日常性”判断并结合夫妻共同财产收入、当地消费水平等情况予以认定。

◆案例八 法院执行债务人名下房产，配偶提出的案外人异议之诉不予支持

【案号】

(2019)京01民终1339号

【案情】

男方王某与女方马某于1995年5月29日登记结婚，二人婚后取得涉案房屋一处，并登记在马某名下。（2015）石民（商）初字第2333号民事调解书确定马某于2015年10月13日前给付赵某借款120万元。调解书生效后，马某未按调解书履行。2015年10月14日，赵某向一审法院申请执行。执行过程中，一审法院于2015年11月4日查封了马某名下涉案房屋一套。后配偶王某提出执行异议认为强制执行侵害了其合法权益，请求法院裁定中止执行涉案房屋。一审法院于2018年10月12日作出（2018）京0107执异109号执行裁定书，裁定驳回了配偶王某的异议请求。王某向一审法院提出案外人异议之诉，请求：1、撤销执行裁定书，终止对登记在马某名下的涉案房屋的拍卖执行程序；2、确认涉案房屋系王某与马某的共同财产，各占50%份额。

一审法院认为：案外人提起执行异议之诉的，案外人应当就其对执行标的享有足以排除强制执行的民事权益承担举证证明责任。具体至本案，本案双方主要争议焦点有二，一是配偶王某对涉案房屋是否享有权利；二是配偶王某对涉案房屋享有的权利是否足以排除强制执行。对于配偶王某就涉案房屋是否享有权利一节。根据已查明的事实，涉案房屋系配偶王某与马某于二人婚姻关系存续期间取得，依法应属于夫妻共同财产，配偶王某与马某对此形成共同共有关系。对于配偶王某主张确认其按份共有份额一节，《最高人民法

院关于适用《中华人民共和国婚姻法》若干问题的解释(三)》第四条规定,婚姻关系存续期间,夫妻一方请求分割共同财产的,人民法院不予支持,但有下列重大理由且不损害债权人利益的除外:(一)一方有隐藏、转移、变卖、毁损、挥霍夫妻共同财产或者伪造夫妻共同债务等严重损害夫妻共同财产利益行为的;(二)一方负有法定扶养义务的人患重大疾病需要医治,另一方不同意支付相关医疗费用的。本案中,配偶王某与马某二人夫妻关系存续,而涉案房屋被列为被执行人的责任财产并非因马某侵害配偶财产利益所致,且配偶王某关于确权的相关主张牵涉执行申请人利益,不符合前述司法解释中“婚内分割夫妻共同财产,人民法院不予支持”的例外条件,故对于配偶王某要求确认其对涉诉房屋按份共有的主张不予支持。

对于本案配偶王某对涉案房屋享有的共有权是否足以排除强制执行一节。《中华人民共和国民事诉讼法》第二百四十四条规定:被执行人未按执行通知履行法律文书确定的义务,人民法院有权查封、扣押、冻结、拍卖、变卖被执行人应当履行义务部分的财产。《最高人民法院关于人民法院民事执行中查封、扣押、冻结财产的规定》第十四条第一款规定:对被执行人与其他人共有的财产,人民法院可以查封、扣押、冻结,并及时通知共有人。故马某作为生效裁判文书的被执行人,人民法院对其与配偶王某的夫妻共同财产采取强制执行措施并无不当。一审法院判决:驳回配偶王某的全

部诉讼请求。王某不服提起上诉。

【裁判结论】

法院生效判决认为：一审法院认为涉案房屋系配偶王某与马某于二人婚姻关系存续期间取得，属于夫妻共同财产，具有事实和法律依据，法院予以确认。马某系生效裁判文书所确定的债务人和被执行人，而且涉案房屋登记在马某名下，根据《最高人民法院关于人民法院民事执行中查封、扣押、冻结财产的规定》第十四条规定，人民法院对马某与配偶王某的夫妻共同财产即涉案房屋采取强制执行措施并无不当。配偶王某对涉案房屋享有的共有权不足以排除人民法院对涉案房屋采取的强制执行。另外，配偶王某要求确认其对涉案房屋占 50%份额，根据《最高人民法院关于适用〈中华人民共和国婚姻法〉若干问题的解释（三）》第四条的规定，除非具有该条所规定的例外情形，婚姻关系存续期间，夫妻一方请求分割共同财产的，人民法院不予支持。本案并不具备该条所规定的例外情形。综上，驳回上诉，维持原判。

【案件评析】

人民法院查封、扣押、冻结被执行人实际占有或登记在其名下的财产，被执行人的配偶以该财产系夫妻共同财产为由提出异议的，按照民事诉讼法二百二十七条规定即案外人异议程序处理，不服处理结果的，可以提出案外人异议之诉。

这类案件中，配偶以涉案房产属夫妻共同财产为由提出异议，按照案外人异议进行审查。因案外人异议系程序审查，

按照权利外观来判断,法院按照房产登记情况查封处置涉案房产,配偶以其对房产享有权利为由不能排除执行。配偶不服上述处理结果,可以提出案外人异议之诉,在这个程序中,法院审查重点一是配偶对涉案房屋是否享有权利,二是配偶对涉案房屋享有的权利是否足以排除执行。

首先,经过实质审查,房产确系夫妻婚姻关系存续期间取得,依法应属于夫妻共同财产,法院确认其配偶对房屋的共同共有关系。但依据《最高人民法院关于适用〈中华人民共和国婚姻法〉若干问题的解释(三)》第四条规定,婚姻关系存续期间,夫妻一方请求分割共同财产的,人民法院不予支持,但有下列重大理由且不损害债权人利益的除外:(一)一方有隐藏、转移、变卖、毁损、挥霍夫妻共同财产或者伪造夫妻共同债务等严重损害夫妻共同财产利益行为的;(二)一方负有法定扶养义务的人患重大疾病需要医治,另一方不同意支付相关医疗费用的。因此,除非有上述除外情形,否则法院不支持婚内分割财产。

其次,依据《最高人民法院关于人民法院民事执行中查封、扣押、冻结财产的规定》第十四条规定:“对被执行人与其他人共有的财产,人民法院可以查封、扣押、冻结,并及时通知共有人。共有人协议分割共有财产,并经债权人认可的,人民法院可以认定有效。共有人提起析产诉讼或者申请执行人代位提起析产诉讼的,人民法院应当准许。诉讼期间中止对该财产的执行。故,法院对夫妻共同房产采取强制

执行措施并无不当，配偶对涉案房屋享有的共有权不足以排除人民法院对涉案房屋采取的强制执行。

所以，配偶主张房产系共有财产的理由不能阻止法院对房产的执行。

综上所述，当夫妻双方仅有一方为被执行人时，法院在通知共有人后，可以对夫妻双方的共有财产采取执行措施，无论配偶提出的案外人异议以及案外人异议之诉，法院均不予支持。但在案外人异议之诉中，法院会进行实体权利的审查，查明是否系夫妻共同财产，配偶对涉案房屋的共有权利，法院在执行中应在符合法律法规规定的前提下予以适当保护。因此，作为被执行人的配偶，如何维护自身合法权益呢？可以采取以下三个步骤：首先应督促、协助另一半及时履行生效判决书确定的义务；其次，积极与债权人协商通过以其他财产，或分期履行等方式履行债务；最后，前两种方式无果的情况下，在案外人异议之诉确认为夫妻共同财产后，向法院执行实施机构申请，在房产被处置变价后，保留其在夫妻共同财产中一半的份额。

附件 4：家事审判治理所涉法律、规范、意见

家事审判治理所涉法律、规范、意见

一、云模式

1. 最高人民法院《关于新冠肺炎疫情防控期间加强和规范在线诉讼工作的通知》

2. 北京市高级人民法院《北京法院关于新型冠状病毒感染肺炎疫情防控期间网上庭审的流程规范》

3. 北京市第一中级人民法院《在线庭审申请和操作指南》

4. 北京市第一中级人民法院《远程诉讼服务指南》

5. 北京市第一中级人民法院《“三提早、三及时”网络庭审工作方法》

6. 北京市第一中级人民法院《关于依托信息化智能集控系统平台全面实行网上办案、网上诉服、网上办公的实施意见》

7. 北京市第一中级人民法院《加强疫情防控特殊时期审判执行等各项管理工作的实施意见》

二、云探望

1. 【离婚后的子女探望】

《中华人民共和国婚姻法》第三十八条：离婚后，不直接抚养子女的父或母，有探望子女的权利，另一方有协助的

义务。行使探望权利的方式、时间由当事人协议；协议不成时，由人民法院判决。父或母探望子女，不利于子女身心健康的，由人民法院依法中止探望的权利；中止的事由消失后，应当恢复探望的权利。

2. 【探望权的执行】

《中华人民共和国婚姻法》第四十八条：对拒不执行有关扶养费、抚养费、赡养费、财产分割、遗产继承、探望子女等判决或裁定的，由人民法院依法强制执行。有关个人和单位应负协助执行的责任。

三、离婚证明书

《最高院发布关于进一步深化家事审判方式和工作机制改革的意见(试行)》第四十一条：人民法院判决或者调解离婚的案件，根据当事人的申请，人民法院可以为当事人出具离婚证明书。

四、夫妻共同债的认定标准与审查

【共同债务与个人债务的区分标准】

1. 《婚姻法司法解释（二）》第二十三条：债权人就一方婚前所负个人债务向债务人的配偶主张权利的，人民法院不予支持。但债权人能够证明所负债务用于婚后家庭共同生活的除外。

2. 《婚姻法司法解释（二）》第二十四条：债权人就婚姻关系存续期间夫妻一方以个人名义所负债务主张权利的，

应当按夫妻共同债务处理。但夫妻一方能够证明债权人与债务人明确约定为个人债务，或者能够证明属于婚姻法第十九条第三款规定情形的除外。

夫妻一方与第三人串通，虚构债务，第三人主张权利的，人民法院不予支持。

夫妻一方在从事赌博、吸毒等违法犯罪活动中所负债务，第三人主张权利的，人民法院不予支持。

3. 《最高人民法院关于审理涉及夫妻债务纠纷案件适用法律有关问题的解释》第一条：夫妻双方共同签字或者夫妻一方事后追认等共同意思表示所负的债务，应当认定为夫妻共同债务。

4. 《最高人民法院关于审理涉及夫妻债务纠纷案件适用法律有关问题的解释》第二条：夫妻一方在婚姻关系存续期间以个人名义为家庭日常生活需要所负的债务，债权人以属于夫妻共同债务为由主张权利的，人民法院应予支持。

5. 《最高人民法院关于审理涉及夫妻债务纠纷案件适用法律有关问题的解释》第三条：夫妻一方在婚姻关系存续期间以个人名义超出家庭日常生活需要所负的债务，债权人以属于夫妻共同债务为由主张权利的，人民法院不予支持，但债权人能够证明该债务用于夫妻共同生活、共同生产经营或者基于夫妻双方共同意思表示的除外。

【夫妻共债的审查】

1. 《北京高院婚姻案件参考意见》第三十八条：符合《婚

姻法司法解释二》第二十四条规定情形的，应推定为按夫妻共同债务处理。但同时存在以下情形的，可根据具体案情认定构成个人债务。

(1) 夫妻双方主观上不具有举债的合意且客观上不分享该债务所带来的利益；

(2) 债务形成时，债权人无理由相信该债务是债务人夫妻共同意思表示或为债务人的家庭共同利益而成立。

2. 《北京高院婚姻案件参考意见》第三十九条：夫妻一方因侵权行为致人损害产生的债务，一般认定为一方个人债务。但该侵权行为系因家庭劳动、经营等家事活动产生或其收益归家庭使用的，应认定为夫妻共同债务。

3. 《北京高院婚姻案件参考意见》第四十条：离婚诉讼中对于夫妻一方出具证据表明另一方事先知晓的大额债务凭据，并据以要求认定夫妻共同债务的，人民法院应根据案情结合债权人债务人双方关系、转款记录、借款时家庭财务情况等对债务真实性及性质进行判断。

4. 《北京高院婚姻案件参考意见》第四十一条：离婚诉讼中，夫妻一方出具的确定婚姻关系存续期间一方所欠债务的生效法律文书，并据以主张该债务为夫妻共同债务的。如法律文书主文中对债务属于夫妻共同债务还是个人债务性质有明确认定，依该认定确定；如法律文书主文未对债务性质进行认定，则可根据本文件第三十八条对债务性质进行认定。

第二部分：深圳法院家事审判改革白皮书



深圳市中级人民法院
SHENZHEN INTERMEDIATE PEOPLE'S COURT

深圳法院家事审判改革 白皮书

**White Paper on Family Trial Reform in
Shenzhen Courts**

二〇二〇年四月

努力让人民群众在每一个
司法案件中感受到公平正义。

——习近平

序言

《大学》有云，“欲治其国者，先齐其家”，家庭的重要性古今中外同。习近平总书记说，“家是最小国，国是千万家”，对家庭的深情，对祖国的热爱，是我们追梦圆梦的力量源泉。深圳法院家事审判工作贴近百姓日常生活，为家庭美满、社会和谐保驾护航，致力于百姓在新时代有更多的获得感。深圳法院从2012年开始家事审判改革，到2018年五年家事审判改革推进，锐意创新、先行先试，总结了一套行之有效的工作机制，推行家事纠纷专业化、人性化、协作化审判，统一裁判标准、疏导消极情绪、妥善化解家事矛盾、保护未成年人权益，实现家事审判的法理情融合。近三年来（2017年—2019年），深圳法院家事审判改革进一步向纵深迈进，全面布局，加强协作，完善审判硬件设施、优化审判软件配套、总结审判实务经验，取得了一定成效。白皮书将深圳法院家事审判改革的思考和实践凝练总结，以期呈现我们在纷繁芜杂的事实之上，在千丝万缕的情感之中，准确适用法律，平衡各方利益，维护个体尊严，弘扬核心价值的努力和探索。我们希望社会各界广泛理解、支持和参与到家事审判改革这一系统性的社会工程中来，将改革推向一个更新的高度。

二〇二〇年四月

目录

序言

第一章 三年回顾 /05

第二章 案件审理 /10

一、深圳两级法院 2017 年至 2019 年受理审结的各类家事案件总体情况 /11

二、家事案件的特点及成因 /16

三、家事案件审理情况 /24

第三章 改革前行 /28

一、家事审判改革的总体情况 /29

二、家事审判改革的主要措施 /29

（一）进一步统一思想认识，树立家事审判新理念 /29

（二）进一步转变工作方式，实现家事审判新作为 /30

（三）进一步创新改革机制，开创家事审判新局面 /31

三、家事审判改革的主要成效 /33

四、深化家事审判改革的展望 /36

结语 /37

家事审判改革时间轴 /38

家事审判改革大事记 /41

Table of Content

Preface	/43
Chapter I Three-Year Review	/ 44
Chapter II Trials	/ 49
I. General Situation of All Types of Cases over Family Issues Registered and Concluded by the Two-Level Courts in Shenzhen from 2017 to 2019	/50
II. Characteristics and Causes of Family Cases	/56
III. A Summary of the Trials of Family Cases	/65
Chapter III Reform Ahead	/70
I. General Situation of the Family Trial Reform	/71
II. Major Reform of Family Trial	/72
(I) further unify the ideological understanding and establish a new concept of family trial	/72
(II) further change the way of work and achieve new development in family trial	/73
(III) further innovate the reform mechanism and create a new situation of family trial	/74
III. Main Achievements of Family Trial Reform	/77
IV. Prospect of Deepening the Family Trial Reform	/81
Conclusion	/82
Family Trial Reform Timeline	/83
Family Trial Reform Milestones	/84

壹

三年回顾



2018年4月1日

深圳法院全面推行家事审判方式和工作机制改革推进
工作会召开



2018年4月1日

深圳中院召开颁布《全面推行家事审判方式和工作机
制改革的实施意见》新闻发布会



2017年3月7日

罗湖法院与深圳市遗嘱库签署合作备忘录



2017年4月18日

最高人民法院和全国妇联考察宝安法院家事审判工作



2018年9月27日

福田法院与深圳市千鸟关爱单亲家庭协会签署合作备忘录



2018年11月25日

龙华法院家事诉讼中心启用



2018年12月28日

南山法院家事诉讼服务中心揭牌



2019年10月28日

龙岗法院婚姻家庭纠纷调解工作室挂牌

贰

案件审理

2017年至2019年三年来，深圳两级法院充分发挥家事审判职能，依法审结20020宗家事案件，妥善化解家事纠纷，为建设法治深圳幸福深圳提供强有力的司法保障和服务。

一、深圳两级法院2017年至2019年受理审结的各类家事案件总体情况

全市法院2017年、2018年、2019年共受理家事案件20379宗，审结20020宗，结案数逐年小幅增长，每年增长比率为1.21%、7.64%，呈稳中有升的持续增长趋势。

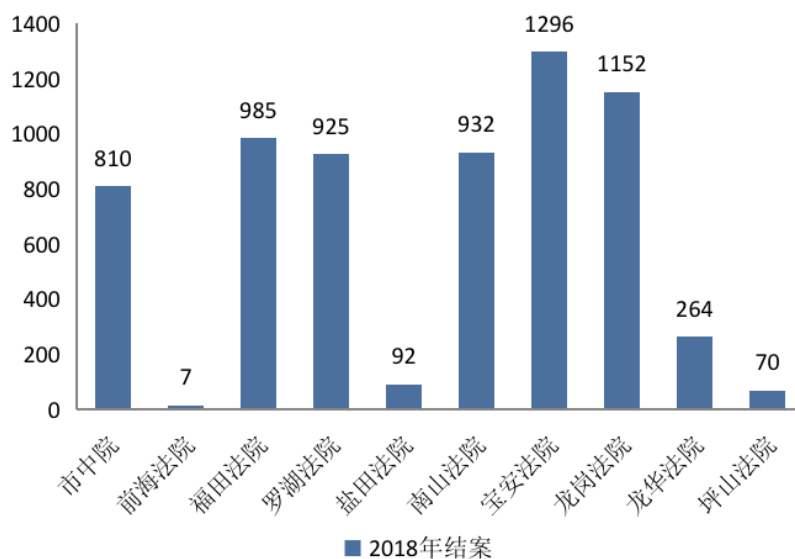
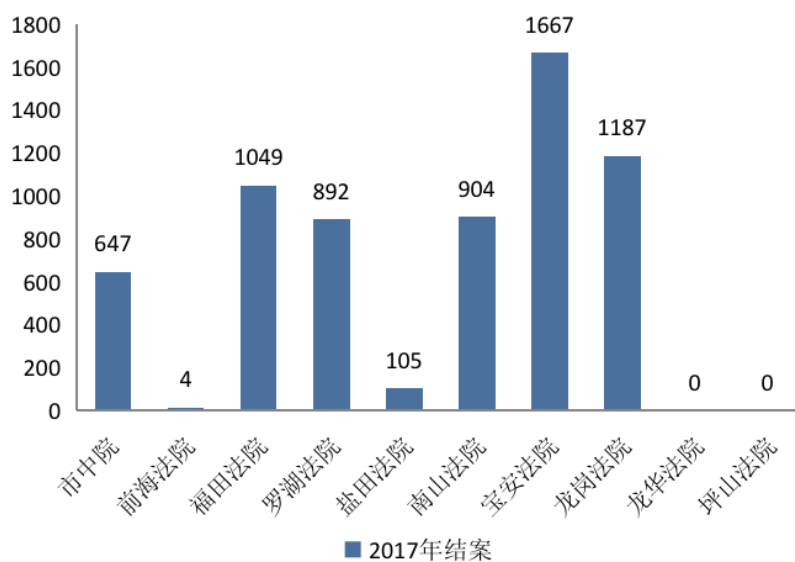
审结案件中：离婚纠纷案件13324宗、离婚后财产纠纷案件2032宗，抚养费纠纷案件979宗，变更抚养关系纠纷案件950宗，抚养纠纷案件798宗，继承纠纷案件727宗，法定继承纠纷案件613宗，赡养费纠纷案件64宗，探望权纠纷案件130宗，同居关系析产纠纷案件123宗，遗嘱继承纠纷案件200宗。婚约财产纠纷案件56宗，被继承人债务清偿纠纷案件49宗，监护人责任纠纷案件5宗，各基层法院共发出人身保护令171宗。各区院收结案情况如图：

附表：家事案件收结案情况

年份	2017			2018			2019		
	收结案情况			收结案情况			收结案情况		
法院	收案数	结案数	结案率	收案数	结案数	结案率	收案数	结案数	结案率
市中院	687	647	94.18%	894	810	90.60%	953	813	85.31%
前海法院	4	4	100.00%	7	7	100.00%	5	5	100.00%
福田法院	1134	1049	92.50%	940	985	104.79%	1046	982	93.88%
罗湖法院	874	892	102.06%	890	925	103.93%	916	983	107.31%
盐田法院	87	105	120.69%	97	92	94.85%	119	113	94.96%
南山法院	925	904	97.73%	899	932	103.67%	1032	964	93.41%
宝安法院	1461	1667	114.10%	1309	1296	99.01%	1212	1161	95.79%
龙岗法院	1268	1187	93.61%	1068	1152	107.87%	1165	1198	102.83%
龙华法院	0	0	0	428	264	61.68%	753	701	93.09%
坪山法院	0	0	0	82	70	85.37%	124	112	90.32%
全市法院合计	6440	6455	100.23%	6614	6533	98.78%	7325	7032	96.00%

（注：收案数不包括旧存，龙华法院自2018年4月收案）

全市法院 2017 年、2018 年、2019 年结案情况如图：

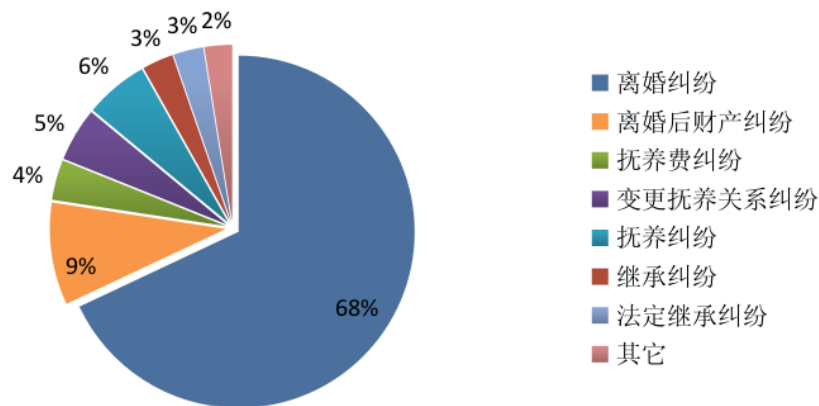




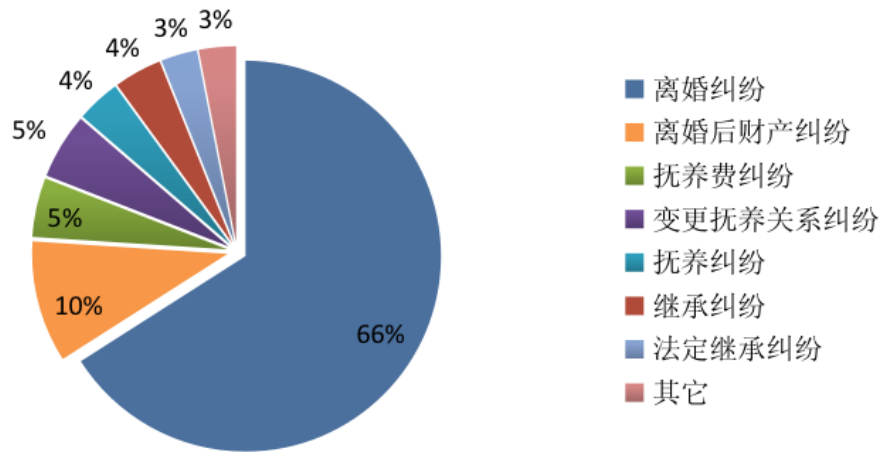
从基层法院家事案件的分布分析，宝安、龙岗、福田法院的案件数量每年稳居全市法院前列，其中宝安法院 2018 年收案数下降的原因是 2018 年 4 月龙华法院开始收案，分流了部分原宝安法院管辖的案件。案件数量与辖区地域、人口成正比，亦与流动人口的数量呈一定程度的相关性，一部分案件当事人均没有深圳户籍，没有稳定的居所，其中以宝安与龙岗为突出。

全市法院 2017 年、2018 年、2019 年家事案件分案由结案情况如图：

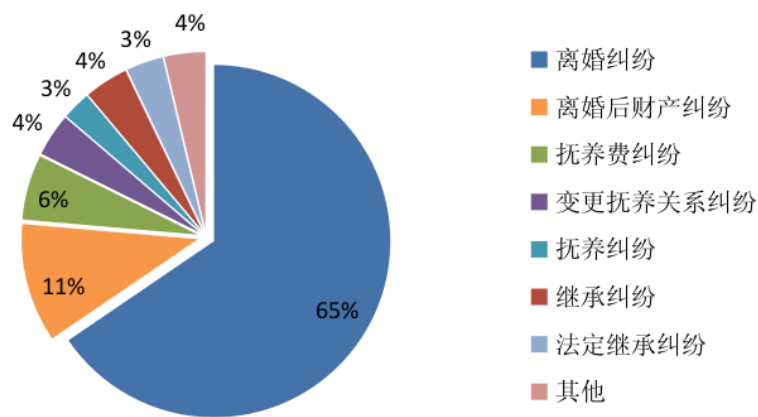
2017 年全市法院家事案件各案由结案



2018 年全市法院家事案件各案由结案



2019 年全市法院家事案件各案由结案

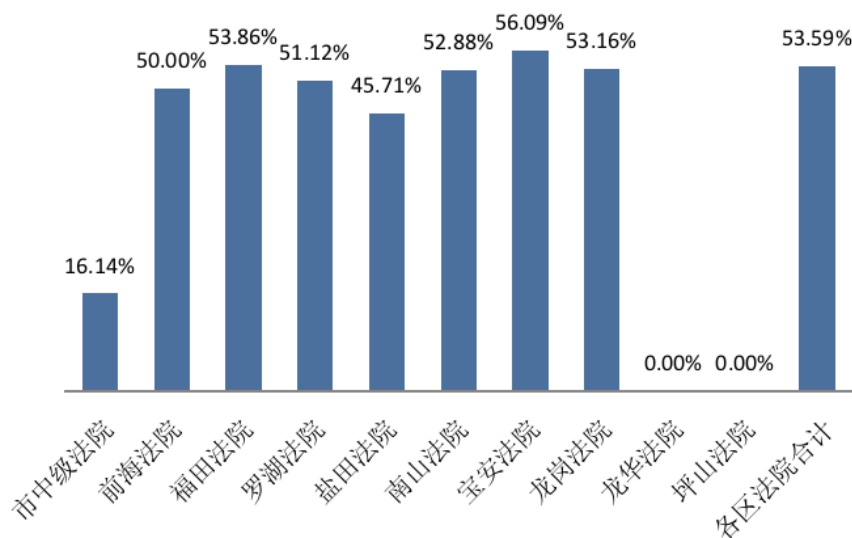


从案件类型上分析，呈现以下特点：离婚与离婚后财产纠纷为案件主要类型，每年均占各类家事案件总和的 75% 以上，且离婚后财产纠纷上涨趋势明显，抚养类纠纷占各类案件总和的 15% 左右，人身保护令案件呈现上升趋势，三年发出的人身保护令分别为 48 份、46 份、77 份。

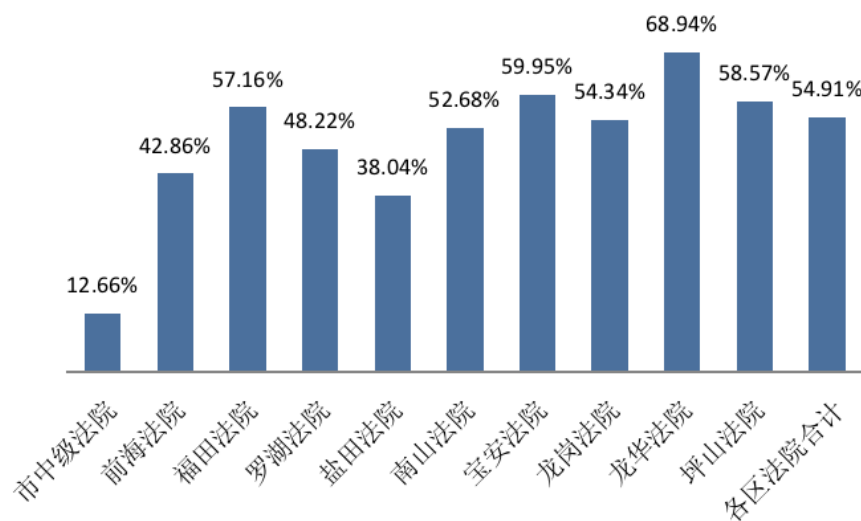
调解方面，各基层法院均对家事案件在登记立案前进行诉前调解，家事案件诉前调

撤比例（家事诉前调解撤诉数 / 家事案件总收案数 + 家事诉前调解撤诉数）为 14.58%，诉中专职及兼职家事调解员调撤比例（家事诉中调解撤诉结案数 / 家事案件结案数）为 40.68%。两级法院调撤比例分别为市中院 13.8%、罗湖法院 47.4%、福田法院 55%、南山法院 55.4%、宝安法院 55.8%、龙岗法院 51.8%、龙华法院 62.3%、盐田法院 45.2%、坪山法院 60.4%、前海法院 43.8%。调解已经成为家事案件的重要审结方式。

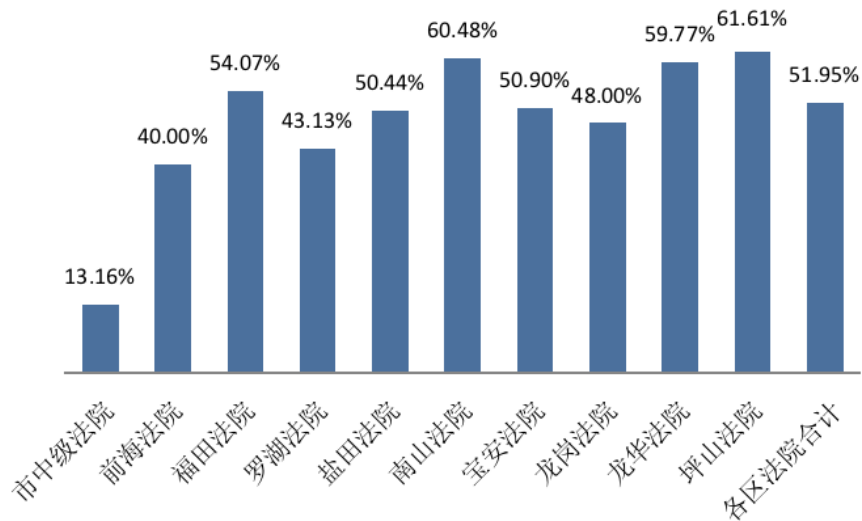
2017 年家事案件调撤率



2018 年家事案件调撤率



2019 年家事案件调撤率



二、家事案件的特点及成因

(一) 离婚案件

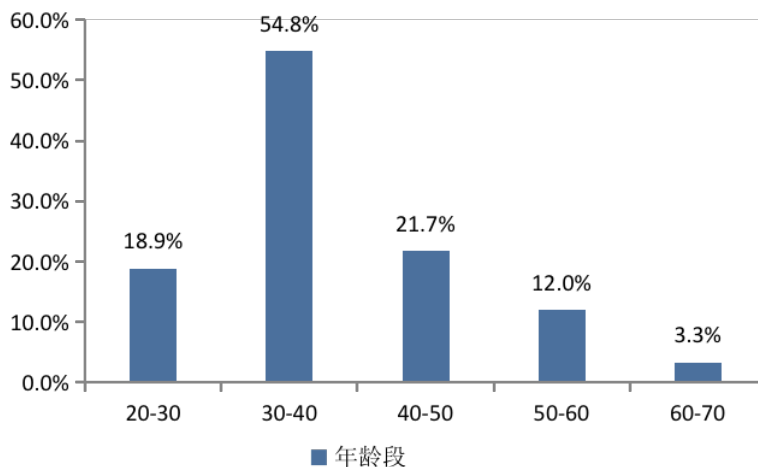
1. 女方提起离婚诉讼的比例较高

三年来，女方提出离婚诉讼的案件占有所有离婚案件比例为 76.8%。社会生产力发展水平与生产方式是影响婚姻的重要因素。因此，离婚纠纷中女方提出离婚诉讼的比例较高反映了深圳经济社会发展程度较高，越来越多女性寻求独立，也一定程度上反映了现代社会保障体系日渐成熟以及婚姻法律制度对妇女权益的保护。

2. 30-40 岁年龄段、婚姻存续时间 7-15 年的夫妻提出离婚的比例较高

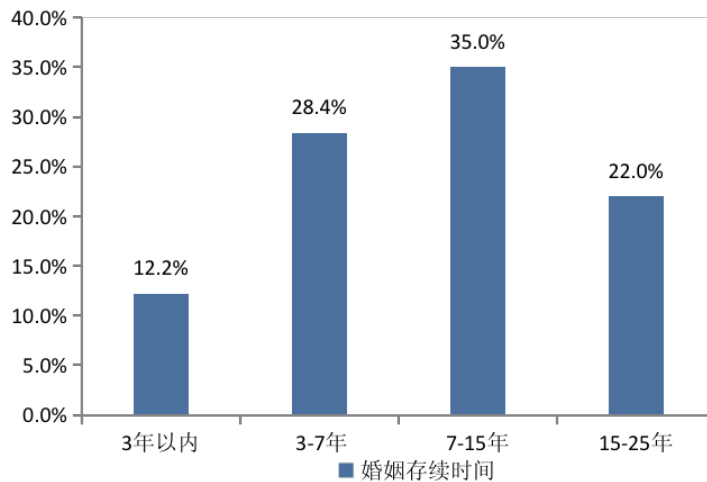
不同年龄段的夫妻均存在离婚纠纷，但是比例有所不同。30-40 岁年龄段的夫妻诉请离婚的比例最高，为 54.8%；其次为 40-50 岁年龄段比例较高，为 21.7%；20-30 岁年龄段为 18.9%；50-60 岁年龄段比例为 12%；60-70 岁年龄段比例最小为 3.3%。

提出离婚的夫妻年龄段



离婚纠纷婚姻存续时间 3 年以内的比例为 12.2%，3-7 年的比例为 28.4%，7-15 年的比例为 35%，15-25 年的比例为 22%，25 年以上的比例为 2.2%。可见，婚后 7-15 年的比例最高。30-40 岁年龄段的为 80 后，初婚家庭婚姻存续 7-15 年左右，引起离婚的因素主要有三个方面：一是当事人自我意识强，不愿意为了婚姻的稳定与维持而妥协；二是当事人大多为独生子女，与父母同住家庭生活受干预，或者与父母因生活习惯、教育理念等产生矛盾；三是当事人购房生子后，生活压力大，上有老下有小，事业在爬坡阶段，情绪难以调整，不能有效沟通，矛盾容易积压、激化。

离婚纠纷中夫妻婚姻存续时间



3、90后“啃老”的比例高

婚后两年“蜜月期”即提起离婚的夫妻亦不在少数，这反映出越来越多的年轻人结婚较为感性，离婚又缺乏理性，导致婚姻采取“快餐消费”的模式。该年龄段的离婚双方创造财富能力有限却有超前的消费观念，追求有房、有车、高档名牌消费的生活，往往依靠“啃老”或消费贷，因此离婚时往往主张夫妻共同债务，主要系向父母、其他亲朋的借款，或向银行、小额贷款公司的借款。

4. 离婚后财产纠纷增多

离婚后财产纠纷的数量逐年上升，主要集中在房产、银行账户资产、股票、股权等财产权益，包括双方对离婚协议的履行存在争议、双方对离婚协议财产分配内容存在争议、一方主张对方存在隐瞒、转移财产的情形等。

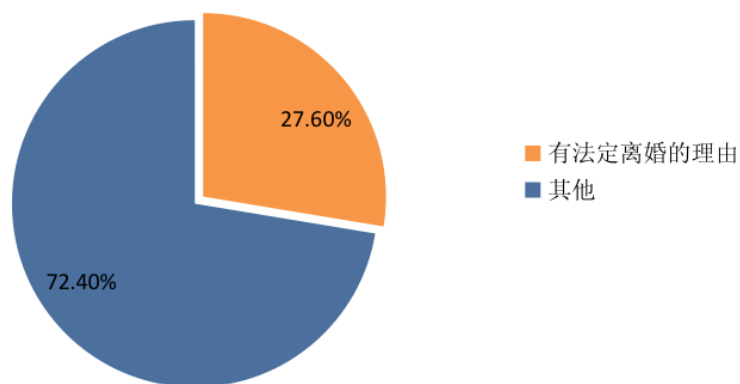
形成纠纷的主要原因为：一是对财产分割未考虑成熟，急于签订离婚协议；二是不具备相关法律知识，离婚时未咨询专业人士导致对协议的反悔；三是财产形态多元化，一方隐瞒财产或者转移财产，对小产权房、理财产品不申报，另一方不容易发现等（明确主张因对方转移财产应当少分或者不分的案件占离婚后财产纠纷的比例为 21%）；四是部分

财产未书面约定分割，双方默认或者口头约定，情势发生变化后一方反悔；五是“假离婚”，该种情况发生原因是房产价格上涨快，投资房产有利可图却被限购限贷政策限制，用假离婚来争取购房指标以及较低的首付款，假离婚案件当事人的诉求一般为请求法院重新分割离婚协议中已经处理的房产以及离婚后同居期间购买的房产。“假离婚”这一现象高发于前几年，导致近几年该类案件增多。

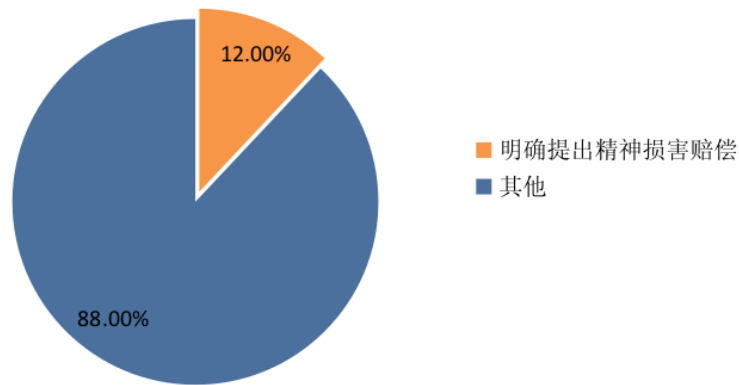
5. 主张离婚原因符合法定准许离婚情形并请求精神损害赔偿的增多

在通常诉称的性格不合、感情基础差、家庭琐事矛盾之外，一般诉称有法定离婚的理由，即分居满两年、一方存在家庭暴力、一方有婚外同居情形、赌博等过错的案件占全部离婚案件比例为 27.6%；明确提出精神损害赔偿的比例为 12%。在明确提出因对方过错少分财产的案件中，上述过错情形分别占比为：家庭暴力占比 47%、婚外同居占比 25%、婚外情出轨占比 24%、吸毒赌博占比 4%，占比最高系家庭暴力。

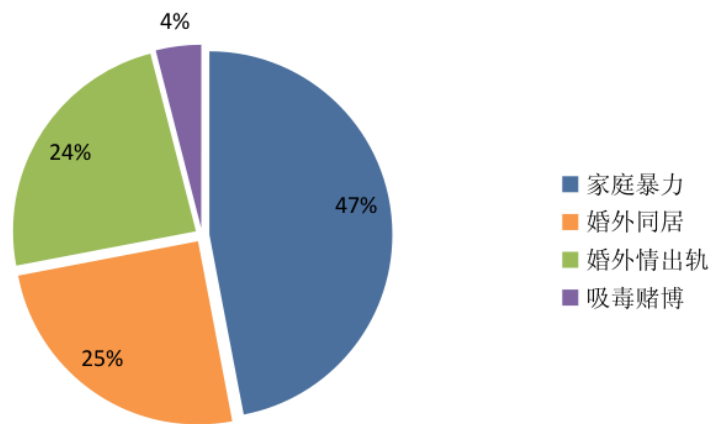
主张离婚原因符合法定准许离婚情形



明确提出精神损害赔偿的情形



明确提出因对方过错少分财产案件中的过错情形



家庭暴力成为导致夫妻感情破裂的重要原因之一，其中，女方主张对方存在家庭暴力的比例远高于男方主张，这一现象反映了部分女性因身体素质、经济程度等原因仍处于较为弱势的地位，但另一方面也反映了家丑不可外扬的观念逐渐在改变，女性敢于拿起法律武器维护自身权益。以目前情况来看，对于家庭暴力的防范以及对家庭暴力行为的惩治力度还需要引起重视。

另外，离婚案件中主张婚外情、婚外同居情形增多，因此要求离婚的比例较高。婚外情的发生涉及社会、伦理、法律、经济、文化、心理等诸方面因素，道德观的变迁、社会评价、法律后果的预期是比较突出的因素。

6. 离婚纠纷双方均要求房产所有权，关于房产性质的争议以及夫妻共同债务的争议成为审理重点

深圳的房价一直处于高位，同时满足居住与投资功能，部分工薪阶层主要依靠借款买房，离婚时往往是“离不起婚”，在有些案件中房产既是引发矛盾导致离婚的原因又是诉求的焦点，对房产的性质的分歧、为买房所负夫妻共同债务以及房产的分配方式的诉求复杂化，成为审理重点。

在该类型案件的审理过程中，经常出现以下两类问题：第一，房产出资的来源涉及面广，有时是两方家庭的财产都有涉及（形式包括父母出资、亲戚借款等），该情形导致银行转账往来复杂，在审理过程中难以认定财产出资来源。第二，因为签订买房合同、交首付、房屋登记时间等发生在登记结婚前，诉求房产全部为个人财产，或以个人婚前财产出资、父母部分出资为由主张购房首付款或者部分房产为个人财产的，该类案件不在少数。

（二）抚养案件

1. 双方均要求抚养权，应引起重视

双方均要求婚生子女抚养权，双方条件无论相当或者存在差距，共同的特点是非常希望直接抚养，还有一些案件出现四位老人一起出庭争夺小孩抚养权的情形。随着二胎政策的放开，离婚诉讼中存在二孩的家庭数量亦逐年增多，争取两个孩子的抚养权成为越来越多离婚当事人争议的焦点。

2. 有协议约定而请求增加抚养费以及不主动履行协议导致另一方诉至法院的案件增多

在全部抚养案件中，无协议约定主张抚养费的案件占 22%，有协议约定主张履行协议的案件占 70%，有协议约定但遗漏抚养费而提起诉讼的案件占 8%，可见，有协议约定抚养费而无正当理由请求增加以及不主动履行抚养费协议导致另一方诉至法院的案件

占大多数，本质上都是不履行协议。要求增加抚养费案件常见理由为物价逐年上涨导致的生活成本逐年升高，以及孩子年龄增长导致的生活、学习所需费用尤其是各种补习班费用增多。

请求变更抚养权的案件在所有抚养案件中占比为 10%。一般而言，夫妻双方通过协议离婚或诉讼离婚确定了抚养权归属后，抚养权本应不存在争议，但变更抚养权纠纷数量不小，部分原因为不直接抚养一方的探视权不能实现，比较突出的是因孩子在对方老家生活而长期见不到孩子，这反映了深圳作为一线移民城市很多外地来深工作的人群经济、住房条件并不稳定，不具备让孩子在深圳生活与接受教育的条件，便把孩子送回老家，引发对方起诉变更抚养权；第二个原因是诉称对方不适宜抚养孩子，包含一部分签署离婚协议时为了尽快离婚，办完离婚手续后反悔想要回孩子的直接抚养权；第三个原因是孩子的意愿发生变化。

（三）继承案件

1. 继承人身份涉外情形较多

继承案件中继承人涉及港澳台及其他境外身份的占比为 38%，其中尤以涉港身份居多，这一现象一方面归结于早年深圳特定历史背景下引发部分人员前往香港的情况，另一方面亦是因深圳房产价值涨幅大、拆迁带来的收益巨大等因素引发早年出境出国人员回深要求继承财产的人数增多。

2. 部分案件难以查明所有继承人、难以送达

除了上述其他继承人身居境外久无联系，无法查明身份，难以送达之外，还有以下几个因素导致继承案件中难以查明所有继承人：一是原告与被继承人其他任配偶的子女并无联系；二是原告系非婚生子女；三是部分案件中由于被继承人去世多年无法提供与被继承人关系的证明。上述情形中有的婚生子女刻意不提供身份信息与送达地址，即使能够查明全部继承人也难以送达，该类情形占比为 42%。上述现象的产生有其历史原因，也决定了处理该类案件的程序事宜需花费更多时间和精力。

3. 遗嘱继承案件数量逐年增多，且代书遗嘱形式瑕疵问题突出

继承案件中主张法定继承的占比为 41%，主张遗嘱继承占比为 47%，遗嘱继承案件中原告主张被继承人留有遗嘱的数量呈上涨趋势，比例较高，说明开放思想、摒弃旧观念的人数逐年增多，人们逐渐能够接受生前立下遗嘱的观念，处理好后事避免后人为财产引起纷争。较为常见的遗嘱形式有自书遗嘱、代书遗嘱和公证遗嘱，占比分别为 22%、28%、39%，自书遗嘱与代书遗嘱中以打印遗嘱居多，占比 55%。打印遗嘱比例较高的原因之一为深圳的本地老人不会写字占比大，一般请人为其打印居多，还有一个原因为被继承人病危而无法书写。代书遗嘱出现的问题多为代书人与见证人未严格按照法定形式在遗嘱主文落款处签名。

4. 无产权房产的继承矛盾突出

对于没有取得产权的农村自建房的继承、分家析产案件，有的依据此前对历史遗留违法建筑清查登记主张权利，但登记本身并非确权行为，权属存在异议。有的“外嫁女”对其父母遗留的房屋请求继承，但是房屋登记在其他继承人名下，且大部分并非完整产权的登记，而所在股份公司出于“村规民俗”通常对法院的调查工作不配合，数量虽然不多，但处理难度大，法院难以查清具体的案件事实。

（四）人身保护令案件

1. 案件数量逐年上升

2017 年至 2019 年受理的人身保护令案件呈逐年上升趋势。申请人数的上升，说明人身保护令在实践中产生一定成效，越来越多的受害人运用法律武器保护自己，亦反映了家庭暴力行为或者类似的行为大量存在，因此运用该制度保护受害人的适用空间还是较大。

2. 女性申请人占多数，申请理由中殴打行为占比高

人身安全保护令案件中，93.2% 的申请人是女性，女性往往是被家暴者，是社会的弱势群体。申请保护令的理由中主张存在殴打行为的居多，但也存在经常性谩骂、恐吓等

方式，多数申请人提供的证据为报警回执、照片、医院诊断，但大多数申请人未能提交报警笔录、鉴定报告。

3. 与离婚纠纷案件的关联度高

人身安全保护令案件均以“民保令”字为案号，该类案件与法院受理的离婚纠纷案件关联度高达89%。人身安全保护令的发出是基于当事人遭受家庭暴力或者面临家庭暴力的现实危险，人身安全保护令的发出具有即时性，审查要求不能太高，否则会降低人身安全保护令的效力。因此，并非所有在“民保令”案件中得到保护的当事人都能在离婚案件中在关于家庭暴力的主张上得到支持。

三、家事案件审理情况

（一）家事案件多元化纠纷解决的成效凸显

家事案件调解结案在所有审结案件中占比较高。全市法院家事案件调解结案比例为49.09%，其中离婚案件调解率为52.42%，抚养案件调解率为60.72%，继承案件调解率为24.16%。由此可见，在深圳法院建立诉前联调机制后，除继承案件调解难度较大之外，离婚案件及抚养案件中一半以上的案件均能通过调解达到双方满意的结果。

（二）身份关系处理与精神利益、子女利益保护并重

关于身份关系的解除，秉持维护婚姻家庭和谐稳定以及依法处理的原则，无法定准许离婚情形时一般第一次判决不准离婚。在所有准许离婚的案件中，第一次起诉与第二次起诉、第三次起诉分别占比为14%、85%、1%。在法定准许离婚情形外，判决是否准予离婚，主要考虑以下情形：双方感情基础；是否存在一方有重大疾病需要照顾；是否存在一方有过错而另一方愿意挽救家庭的情形等等。

关于子女抚养，针对主张亲子鉴定的诉求从严把握。对一方提出亲子鉴定请求的，严格依照法律规定要求提交否认亲子关系的初步证明，谨慎进入亲子鉴定程序。尤其部分当事人为逃避抚养费承担义务，在没有任何事实依据的情况下，提出子女非自己亲生的亲子

鉴定要求，有悖诚信，缺乏责任感的，不予支持。

在解决抚养权问题的同时针对未主张探望权的当事人，法院予以释明，一并解决探望权。如对探望权的行使做出概括性的规定不能切实解决问题的，法院酌情确定具体行使的时间与方式，比如节假日、寒暑假以及接送小孩的方式等。另外，探望权不能协商解决的主要原因是部分当事人未能从婚姻创伤中走出来，将矛盾转移，导致对方探望权的行使受阻，法院对该类案件当事人加强情绪疏导。

更加重视主张精神损害赔偿的诉求处理。在离婚时，一方当事人常常以对方存在婚外情或家庭暴力为由主张精神损害赔偿，其中以重婚或婚外同居为由请求精神损害赔偿被支持的比例为 42.8%，以家庭暴力请求精神损害赔偿被支持的比例为 73.3%，未被支持的原因包括婚外同居、家庭暴力行为均具有隐蔽性，当事人较难证明；一方对对方偶尔的出轨行为主张为同居；一方对因双方争执情形下均有动手行为导致的伤害亦主张为家庭暴力；双方均存在过错。

（三）变更抚养权、抚养费纠纷以尊重协议时当事人意愿以及生效判决为基础

请求变更抚养权的案件在全部抚养类案件中占比为 10%，获得支持的比例为 30%，支持的理由中孩子自愿随其生活这一因素占比较高，其次的理由为实际的状态与判决或者双方约定不一致，不享有抚养权的一方实际亲自抚养孩子。另外，小孩生活环境主要指长期稳定生活状态，而非因离婚矛盾激化而导致的临时状态，防止当事人通过“抢孩子”的手段实现抚养权归属，故在分居与诉讼期间随谁生活这一因素之外，还综合其他因素决定抚养权归属。

请求变更抚养费的案件在全部抚养类案件中占比为 34%，获得支持的比例为 38%，抚养费的确定以尊重当事人的合意为首要原则，着重审查增加抚养费的理由是否符合法律规定，是否有离婚后需要增加或者降低抚养费的客观事实。双方协议或者经过法院生效裁判文书确定抚养费经过时间不长，未提交证据证实其目前的生活、学习开支需求以及收入水平较之前发生显著改变，即又诉请变更抚养费的，一般不予支持。部分当事人在自身有

一定学历背景和工作经历的情况下开具失业证明，称其经济困难，从而要求降低抚养费，该失业证明虽可证明该期间该当事人的客观失业状态，但不是其降低或丧失劳动能力的直接证明，一般不予支持。

有部分变更抚养权或者抚养费的案件，缘于当事人达成离婚协议后办理了离婚登记却拒不履行离婚协议，达到离婚目的后，即对协商好的协议反悔，提起诉讼，与诚实信用原则相违背，对其诉求不予支持。

（四）离婚纠纷依法处理财产，贯彻照顾子女与女方权益原则，兼顾利益平衡

离婚纠纷夫妻财产分割调解不成时依据财产具体情况依法分割。对夫妻双方订立的有关违约金、赔偿金、放弃财产等协议，审查是否属于法律调整范畴以及是否属于法律规定的夫妻财产约定，分别情况处理。对财产的性质认定依照法律规定与实际情况妥善处理，对有证据证明双方合意购买、共同出资的财产认定为夫妻共同财产，防止利益失衡。对父母出资或者部分出资购买的财产，严格依照最高人民法院相关司法解释处理，兼顾利益平衡原则。对主张“假离婚”的离婚后财产纠纷，综合考量当事人婚姻存续期间积累的财产与离婚后同居生活期间共同所得财产，遵循利益平衡原则，依法分割。分割财产时依照照顾妇女与子女权益原则，酌情照顾女方。

对农村自建房、村里统建楼、单位集资房等各类尚未取得所有权或者完全所有权的房屋根据实际情况判决由当事人使用。

对请求分割夫妻共同财产时一并处理夫妻共同债务，主张为父母、亲戚的借款或者银行、小额贷款公司贷款，在转账明细完备、双方对款项支付无异议，仅对款项性质为借款或者赠与存在争议，或者对是否用于夫妻共同生活存在争议的情形，一并作出处理，以减少诉累，妥善全面解决纠纷。

（五）运用依职权调查以及律师调查令方式查明身份信息，严格依照法律规定审查遗嘱形式要件，妥善处理继承纠纷案件

继承纠纷案件当事人对其本人与被继承人的身份关系、以及遗产范围未能提交相关证

据，如有初步证据表明可能存在其他未参加诉讼的继承人的，两级法院依职权进行调查核实，前往被继承人生前所在单位、居住地派出所、居委会、婚姻登记机关等调取户籍资料或其他档案资料的情形比较常见。对于各方当事人均认可存在其他继承人，但未能提交该继承人的身份信息导致法院无法送达或者送达周期长的案件较多。仍然有部分继承案件因遗产范围不能确定被驳回起诉。

遗嘱继承案件中有 82% 的代书遗嘱被认定为有效，订立代书遗嘱时由两位不具有利害关系的见证人在场见证、其中一人代书是确保遗嘱效力的有效方式，法院严格依照代书遗嘱的法定形式审查，如见证人与代书人均应在遗嘱主文落款处签字、注明年月日等，以确保遗嘱系被继承人处分其个人财产的真实意思表示。

叁

改革前行

三年来，深圳市两级法院按照最高法院与省法院要求，落实《最高人民法院关于进一步深化家事审判方式和工作机制改革的意见（试行）》以及《省法院审理离婚案件程序指引》，积极稳妥推进家事审判改革，转变家事审判理念和工作方式、创新工作机制、积极推进队伍专业化建设，取得了一定成效。

一、家事审判改革的总体情况

市中院总结近年来试点法院家事审判改革的经验，从2017年开始全面部署全市法院的家事审判改革，采取召开全面推行改革工作的推进会、对贯彻落实情况取得的进展与存在的不足进行通报、结合家事案件审理情况通过发改分析对家事审判改革情况进行总结与反馈等方式稳步推进，开创了良好的局面。两级法院共计完成平均每年6673宗家事案件的审理，法官每年人均结案185宗，当事人服判息诉，审判质效得到进一步提升。其中，3163宗家事案件经诉前调解结案，占案件总数的14.58%；8144宗案件经诉中调解结案，调解结案率为40.68%；对5046宗离婚案件实行财产申报；243宗离婚案件设置了冷静期；对546宗案件做了亲子关系评估；发放离婚证明书共计2798宗；对1675宗家事案件实施心理疏导，对3174宗家事案件实施案后回访制度，分别为案件总数的21.85%和39.83%。

工作中涌现了一批先进经验以及先进集体与个人，2017年2月，宝安法院在最高法院召开的部分法院家事审判方式和工作机制改革试点工作推进会上作经验介绍。2018年7月，宝安法院家事审判庭荣获“全国家事审判工作先进集体”荣誉称号，2019年6月，罗湖法院婚姻家事审判团队负责人卢颖红获得“全国维护妇女儿童权益先进个人”荣誉称号。

二、家事审判改革的主要措施

（一）进一步统一思想认识，树立家事审判新理念

家庭的和谐稳定是国家发展、社会进步、民族繁荣的重要基石，家事案件的审理不仅

关乎个人及家庭的幸福，同时也影响着社会与国家的和谐稳定。深化家事审判机制改革，就是要使家事案件的审理更加符合家事案件浓厚的伦理道德色彩和特殊的司法审判规律，通过细致入微的软硬件设置，最大限度地平复婚姻家庭纠纷各方因为感情危机形成的心理创伤，体现特区司法的人文关怀，提高家事纠纷案件裁判的社会认可度。市中院在家事审判改革工作中，深刻领会了最高法院家事审判改革的精神内涵，率先转变家事审判理念。

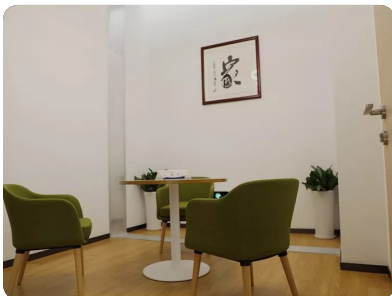
一是将家事案件与一般民事案件区别开来，准确把握家事审判身份性、伦理性、修复性等不同于普通民商事审判的特点，坚持人性化审判，创新家事审判理念，发挥家事审判化解矛盾、保障权益、修复情感、弘扬美德、维护稳定的作用。

二是将贯彻处分原则、辩论原则与强化法官依职权探知、自由裁量、对当事人处分权的适当干预相结合，在注重财产类案件审判的同时，更加重视身份利益和人格利益，妥善处理离婚双方的权益，依法保障妇女、老人的合法权益，实现未成年人利益最大化。

（二）进一步转变工作方式，实现家事审判新作为

一是调解前置与调解优先。离婚案件在登记立案前或者案件审理中未经调解的，不得径行裁判，只有当事人坚持不愿调解或者一方下落不明的除外。各区法院将全部离婚案件在立案前进行调解，进入诉讼程序后设置了专门的家事调解环节，在专职家事调解员的配

家事案件调解进行中



备和家事纠纷的多元化解上倾注了较多精力，争取做到把大量矛盾化解在立案阶段和诉中调解阶段，化解在基层。

二是离婚案件本人到庭。全市法院在符合民事诉讼法规定的前提下，贯彻落实离婚案件当事人本人到庭的基本要求，既有力保障了当事人的诉讼权利，也大大提高了送达的质量和效率，降低了离婚案件因违反法定送达程序被二审法院发回重审或改判的百分比。同时，实践中出现部分不愿意离婚的当事人采取不签收法律文书等方式消极应诉，拖延诉讼，法院耗费司法资源穷尽送达方式。只要案件经过法定送达程序，当事人消极应诉的行为不影响法院对案件的正常审判。

三是依职权探知。家事案件当事人利益对立，各种因素造成一方难以提交另一方当事人的身份信息、财产信息等，在处理有关事项尤其是追加当事人以及审查财产范围时，全市两级法院严格遵循民事诉讼法以及司法解释，按照《广东法院审理离婚案件程序指引》列举的事项，加大了依职权主动调查的力度。对于继承人身份的确定、被告是否适格、管辖的确定以及夫妻共同财产的查明等问题，当事人因为客观原因不能收集相关证据的，法院依职权探知，查明上述事实，解决了案件审理的实际需要。

四是全面解决纠纷。全市法院在审理离婚案件时坚持全面审理原则，原告起诉时仅请求判决离婚的，可以视为一并概括请求处理未成年子女抚养、探望和财产等事项，当事人未提出的，应当要求其明确未成年子女抚养、探望方案。原告起诉时未提出分割共同财产请求，没有合理理由的，应当要求其对此予以明确，并询问无过错方是否请求离婚损害赔偿。全面解决纠纷原则的贯彻落实，减轻了当事人的诉累，有利于纠纷的一次性化解，也提高了家事案件判决的法律效果和社会效果。

（三）进一步创新改革机制，开创家事审判新局面

一是巩固家事审判纠纷化解功能，加快改革速度。为不断提升司法服务保障家事纠纷解决的能力和水平，两级法院均建立起集家事案件专业化审判、家事纠纷综合协调解决、当事人专业心理疏导等于一体的多功能、集成式家事诉讼中心平台，根据当事人需求与案

件特点及时进入处理程序，高效解决纠纷。龙华法院创建家事纠纷“1633”柔性审判新模式，走出了“案结、事了、人和”的家事审判新路子，家事审判工作成效显著。从龙华法院成立开始立案的2018年4月2日至2019年12月30日，共受理家事案件1242件，结案965件。其中调撤结案601件，调撤率达62.3%。家事纠纷“1633”柔性审判新模式获评“筑安龙华十大平安建设事件”。

二是强化家事审判权益保障功能，增强改革厚度。在人身权益上，深圳法院在人身安全保护裁定制度上落实与各联动部门的协调配合，与公安、妇联、团委、司法、民政等部门会签《关于执行人身安全保护裁定的办法》，完善了人身安全保护综合联动机制，加大送达与执行的力度，切实保障家庭暴力受害人权益的维护。在财产权益上，2019年3月14日市中院审判委员会讨论通过离婚案件财产申报制度，要求双方当事人在举证期限届满前主动申报夫妻共同财产、共同债务，对财产申报制度的适用范围、财产申报表的送达时间、填报截止时间、应申报的财产范围、财产申报的具体程序、未如实申报财产的法律后果等进行了详细规定，该制度为认定隐藏、转移夫妻共同财产行为提供了客观标准，其全面推行有效解决了离婚案件中的财产查明难题。

三是拓展家事审判情感治愈功能，彰显改革温度。全市法院注重婚姻关系修复与创伤平复，将司法关怀渗透离婚案件。将心理评估疏导纳入全过程。各区法院均以向社会购买服务的方式，引入专业心理咨询机构辅助家事案件审理，与市心理咨询师协会、罗湖区心灵心理研究所等机构签署合作备忘录。2017年10月，罗湖法院在省内率先推出婚姻关系修复建议书制度，针对仍有可能修复关系的离婚当事人，指出婚姻出现问题的症结，提出婚姻修复指导计划。在当事人填写由专业心理咨询师编制的《婚姻关系评估卷》基础上，心理咨询师旁听庭审并且在庭审结束后对当事人进行疏导，疏导的次数和时间由心理咨询师根据当事人的婚姻状况确定。心理咨询师根据疏导的情况，结合双方填写的《婚姻关系评估卷》情况，拟定修复建议书供法官参考。法院送达不准予离婚判决书的同时向当事人送达婚姻关系修复建议书。福田法院与深圳市慈卫公益事业发展中心、深圳市千鸟关爱

单亲家庭协会建立了合作关系，专职、兼职社工对离婚双方、离异家庭未成年子女、未成年被告人和受害未成年人开展情绪疏导、心理干预、行为矫正、跟踪回访、诉后帮扶等工作，以司法关怀护航离婚当事人以及未成年子女成长。

四是延伸家事审判社会辐射功能，扩展改革广度。全市法院以多元化纠纷解决机制为抓手，建立从诉前联调、诉中调解到诉后回访、帮扶的全流程家事纠纷调解机制。结合家事纠纷、涉未成年人权益保护等案件的发展形势，构建“家事调解员+家事调查员+家事观察员+专业社工”四位一体的新型多元化家事纠纷解决机制，面向社会邀请、选任家事调查员、调解员、观察员，委托其针对特定事项，通过走访当事人邻居、亲属、社区、工作单位等方式调查了解当事人的家庭生活和情感状况，并向法院提交调查报告、陈述调查意见，帮助查明家事案件事实，为裁判提供扎实依据。宝安区法院与区妇联、民政局、司法局、公安局、区信息管理中心、网格办等部门协同制定了家庭暴力预防救助相关工作标准及规范，基于区网格化工程，对家事情感纠纷案件实现闭环处置模式，实现防止情感纠纷转化为家庭暴力，控制民事案件转化为刑事案件的“两防控”目标。该体系充分整合基层力量，发挥基层优势，调动社会综合治理的末梢，对家庭纠纷早发现、早介入、早预防、早化解，将预防、化解工作充分前移，使前端调和、分流、监管工作有序、有效开展。

三、家事审判改革的主要成效

一是基本完成队伍专业化建设。市中院组建了专门的家事案件合议庭，区法院共组建三个专门家事审判庭、五个家事案件审判团队，配备32名专业法官、46名法官助理负责家事案件；两级法院共计配备常驻法院的专职调解员、国家二级或者一级心理咨询师10名，兼职家事调查员或者家事调解员百余名。

二是调解率持续稳定在较高水平。两级法院对家事案件加大了调解力度，市中院对于改革初期有部分基层法院未落实调解前置程序、未做到调解优先等问题予以高度重视，通过案件质量分析、召开工作会议、下发情况通报等方式促进调解工作。目前，各区法院均

对家事案件实施了调解前置程序。南山法院通过社会购买方式建立了由两名专职调解员加上一名专职心理咨询师以及一名区婚调委派驻的家事调解员组成的调解队伍，调解队伍稳定，力量到位，经验扎实，2019年调解率达到60%以上。

三是家事特别程序的探索应用提上了日程。改造案件流程，建立全流程调解机制。把工作流程由“诉讼立案——审判”改造为“先行调解——诉讼立案——审判”，所有家事纠纷案件先行由调解员进行调解；调解不成的，再进入立案程序。在诉讼过程中，将需要调解的案件交给社工或人民陪审员进行调解，并进行心理疏导、家庭治疗方面的工作；结案后再由社工、人民陪审员作进一步地跟踪、回访、帮扶。实行家事观察员听证制度，公开招募有婚姻经历、养育未成年子女经验的人员成为家事观察员，在涉未成年子女抚养权的家事案件中，作为第三方参与听证程序，就未成年子女抚养权归属等问题独立发表意见。对离婚案件设置了冷静期，为冲突矛盾减压降火，力争挽救尚未彻底破裂的感情与存在和好可能的婚姻。全面实行亲子关系评估，由第三方机构客观评估抚养权归属。

四是完善了家事案件多元化化解机制。市中院制定《家事案件审规程（试行）》《家事案件调解员工作规程（试行）》《家事案件调查员工作规程（试行）》等。各区法院完善多元化化解机制，引入家事调解员、调查员、心理咨询师等开展家事诉前调解、调查、心理辅导，解决“家务事”难以调查清楚的难题，对有心理障碍的当事人开展心理疏导，平复情绪修复感情。福田法院专设的婚姻家庭纠纷调解室，被列为全市首批婚调室示范点。福田区妇联派出2名专业家事调解员驻点开展诉前调解；家事审判团队配备了2名专职人民陪审员，从福田区政法委、民政局争取了3名社工参加家事案件调解。福田法院20名家事观察员和40名家事调查员已全部到位。

五是硬件设施建设迈上了一个新台阶。各区院围绕家事审判特点和需求，加大经费保障力度，加强硬件设施建设。龙华法院、南山法院新建了家事诉讼服务中心，福田法院的规划预算已经通过，近期将开始施工建设。龙华法院、南山法院设立妇联婚调室、心理咨询调解室、心理评估室、单面镜观察室、亲子陪护室、母婴室等六个功能室，完善了符合



圆桌审判庭



沙盘观察室



亲子陪护室



母婴室

家事审判特点的必要配套设施。其他法院也在原有基础上改造了圆桌审判法庭，缓解了当事人在庭审中的对抗情绪，同时拓展了家事诉讼与调解的场地，使当事人在诉讼中体会到特区司法的人文关怀。

四、深化家事审判改革的展望

深圳法院将总结经验、砥砺前行，进一步完善家事审判方式和工作机制改革各项措施，打造符合家事审判规律的实体和程序规则，妥善处理婚姻家庭纠纷，为建设粤港澳大湾区和社会主义先行示范区创造和谐稳定的社会环境。

一是完善与提升队伍建设专业化。各区法院已基本配备专门的家事审判人员，但对辅助人员的配备仍有完善空间，按照最高法院与省法院明确家事合议庭应当至少有一名女性法官或者女性人民陪审员以及将调解员、调查员、心理学专业人员列入司法辅助人员的要求，进一步明确辅助人员配合审理家事案件的职能，提升与完善家事法官的专业素质，开展对家事审判团队进行审判业务、调解技能、心理学等专业培训。

二是全面落实调解工作前置与优先原则。全面落实省法院在程序指引中关于离婚纠纷在登记立案前或者案件审理中未经调解不得径行裁判、优先使用调解方式解决纠纷的规定，着力营造减少对抗、修复感情的氛围，进一步提高调解率。

三是在审判程序上加大探索力度。将主动依职权探知、采取多种调查方式收集证据、坚持全面解决纠纷、合理设置冷静期等上级法院的明确要求落实到位。同时，呼应不断推进的家事审判改革要求，组织精干力量进行调研，探索建立适应粤港澳大湾区家事审判实践的未成年人保护规则，形成以诉讼活动为中心、涵盖诉讼前端和诉讼后续的全方位的未成人家事审判保障机制。

结 语

岁月不居，时节如流，转眼二十一世纪又进入一个新的十年。回首深圳法院家事改革历程，在裁判中思考，在摸索中创新，“图难于其易，为大于其细”，迄今为止已在一定程度上把握住了家事案件审判的特点和规律，取得了一定成绩。此白皮书是在总结成绩的基础上，拓宽家事审判的视野，用更坚定的理想和信念，为家事审判改革吹响新征程的号角。“行之力则知愈进，知之深则行愈达”，白皮书是深圳法院家事审判知行合一的体现，是深圳法院家事审判理念和宏愿的彰显。深圳法院家事审判改革工作将不断散发出勃勃生机，让百姓不仅感受到法律的公正严明，更感受到法律的柔性温暖。

○ 家事审判改革时间轴

- 2012年8月
深圳中院颁布《深圳法院创新家事案件审理方式改革工作方案》
- 2012年9月
宝安法院成为深圳市法院家事审判改革试点单位
- 2013年5月
罗湖法院发出第一份人身安全保护令
- 2013年9月
宝安法院成立深圳市首家家事审判庭，并同时设立家事调解员、家事调查员制度
- 2013年11月
深圳中院审判委员会通过《深圳法院家事案件审理规程（试行）》《深圳法院家事案件人身安全保护裁定适用指引（试行）》《深圳法院家事案件调解员工作规程（试行）》《深圳法院家事案件调查员工作规程（试行）》
- 2014年3月
罗湖法院将家事审判庭作为内设机构

- 2014年7月
罗湖法院设立家事调查员制度
- 2014年10月
福田法院与深圳市慈卫公益事业发展中心签订备忘录共同构建多元化家事纠纷解决机制
- 2016年4月
宝安法院被确定为“全国家事改革试点法院”
- 2017年3月
罗湖法院设立家事调解员制度
- 2017年4月
宝安法院启用家事诉讼中心
- 2017年5月
罗湖法院启用家事诉讼服务中心
- 2018年4月
深圳中院召开全市法院全面推行家事审判方式和工作机制改革工作推进会

● 2018年4月

深圳中院与市妇联会签《关于建立家事纠纷协调解决机制的若干意见》

● 2018年4月

深圳中院颁布《关于全面推行家事审判方式和工作机制改革的实施意见》

● 2018年11月

龙华法院启用家事诉讼中心

● 2018年12月

南山法院启用家事诉讼服务中心

● 2019年4月

深圳中院发布《关于实行离婚案件财产申报制度的工作指引》

○ 家事审判改革大事记

- 2015年4月
最高人民法院审判委员会委员杜万华到宝安法院指导工作
- 2017年3月
宝安法院洪胜元同志获得“2016年度全国妇联先进个人”荣誉称号
- 2017年5月
全国妇联、最高人民法院领导到宝安法院调研家事审判改革工作
- 2018年7月
宝安法院家事审判庭获得“全国家事审判工作先进集体”荣誉称号
- 2018年7月
宝安法院家事庭张力英获得“全国家事审判工作先进个人”荣誉称号
- 2019年11月
罗湖法院卢颖红获得“全国维护妇女儿童权益先进个人”荣誉称号

Strive to make people feel fair and just in every judicial case.

—Xi Jinping

Preface

The Great Learning reads, "To rule his state well, he had to first educate his family". The importance of the family is the same at all times and all over the world. President Xi Jinping said that "a family is a smallest country; a country is made up of thousands of families". The deep affection for the family and the love for the motherland supply a source of strength to our pursuing and fulfilling of dreams. Shenzhen courts' family trial relates to people's daily lives, ensures family happiness and social harmony, and endeavors to provide people more perception of achievement in the new era. From 2012, the beginning of the family trial reform, to 2018, after five years promotion, Shenzhen courts have dedicated to innovation, encouraged experiments, summed up a set of effective working mechanism, promoted specialization, humanization and cooperation in trial, unified adjudication standard, eased negative emotion, resolved family conflicts properly, protected minors' right and interest, and integrated law, reason and sensibility into family trial. In the past three years (2017-2019), the family trial reform has further advanced in depth. Shenzhen courts have made a comprehensive layout, strengthened cooperation, improved and optimized trial hardware and software, summed up practical trial experience, and achieved remarkable results. The White Paper succinctly summarizes the thoughts and practices of the family trial reform in Shenzhen courts, with a view to showing our efforts to accurately apply the law, balance the interests of all parties, safeguard individual dignity, and carry forward core values on the basis of numerous facts and complicated emotions. We hope that all levels and sectors of society will broadly understand, support, and participate in the systematic social project of family trial reform to take the reform to a new height.

April 2020

I Three-Year Review



April 1, 2018

The Meeting of Shenzhen Courts on Comprehensively Implementing the Reform of Mode and Working Mechanism of Family Trial



April 1, 2018

Shenzhen Intermediate People's Court held a press conference to promulgate the Implementation Opinions on Comprehensively Implementing the Reform of Mode and Working Mechanism of Family Trial



March 7, 2017

Luohu District People's Court Signed a Memorandum of Cooperation with Shenzhen Wills Service Center



April 18, 2017

The Supreme People's Court of the People's Republic of China and the All-China Women's Federation inspected the family trial work of Bao'an District People's Court



September 27, 2018

Futian District People's Court signed a Memorandum of Cooperation with Shenzhen Qianniao Association for Single Parent Family Care



November 25, 2018

Family Law Trial Center of Longhua District People's Court started operation



December 28, 2018

Family Trial Service Center of Nanshan District People's Court was inaugurated



October 28, 2019

Marriage and Family Dispute Mediation Studio of Longgang District People's Court was inaugurated

II Trials

In the three years from 2017 to 2019, the two-level courts in Shenzhen gave full play to their family trial functions, concluded 20,020 family cases according to law, properly resolved disputes over family issues, and provided strong judicial protection and services for the construction of a happy Shenzhen under the rule of law.

I. General Situation of All Types of Family Cases Registered and Concluded by the Two-Level Courts in Shenzhen from 2017 to 2019

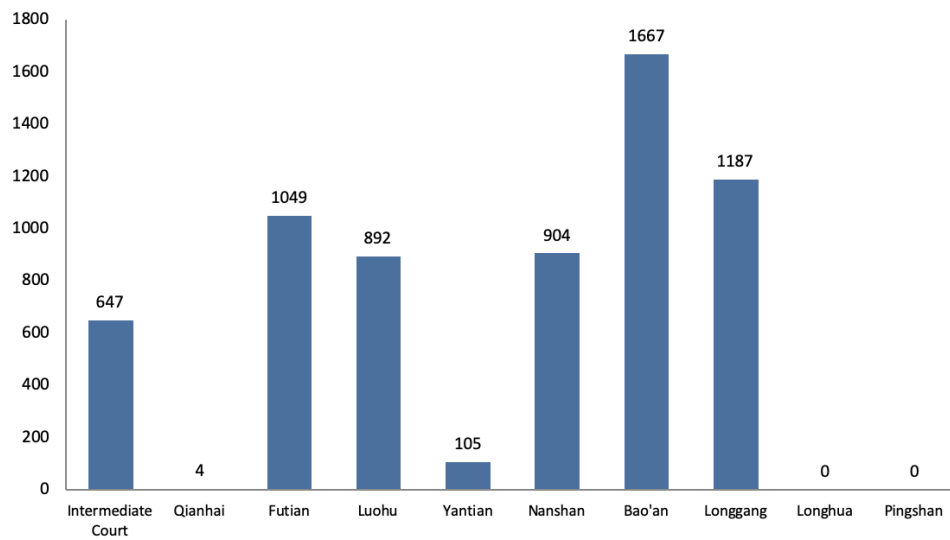
In 2017, 2018 and 2019, 20,379 cases over family issues were filed in Shenzhen courts, and 20,020 were concluded. The number of cases concluded increased slightly year by year, with respective annual growth rates of 1.21% and 7.64%, showing a steady and rising trend.

Among the cases concluded, 13,324 involved disputes of divorce, 2,032 post-divorce property, 979 child support, 798 child custody, 950 changing child custody, 727 succession dispute, 613 intestate succession, 64 elderly parent support, 130 visitation right, 123 partition of property under cohabitation, and 200 testate succession. There were also 56 cases involved dispute over betrothal gifts, 49 liquidation of debts of the deceased, 5 guardian responsibility. Beside those, 171 injunctions to restrain torts were issued by district courts. The cases filed in and concluded by each district court are as follows:

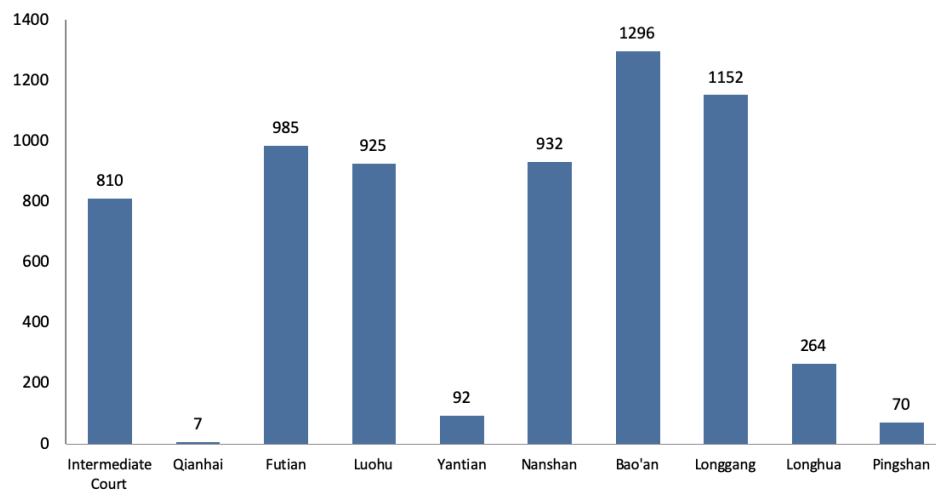
Year	2017			2018			2019		
	Cases Filed and Concluded			Cases Filed and Concluded			Cases Filed and		
Court	Number of Cases Filed	Number of Cases Concluded	Conclusion Rate	Number of Cases Filed	Number of Cases Concluded	Conclusion Rate	Number of Cases Filed	Number of Cases Concluded	Conclusion Rate
Intermediate Court	687	647	94.18%	894	810	90.60%	953	813	85.31%
Qianhai	4	4	100.00%	7	7	100.00%	5	5	100.00%
Futian	1134	1049	92.50%	940	985	104.79%	1046	982	93.88%
Luohu	874	892	102.06%	890	925	103.93%	916	983	107.31%
Yantian	87	105	120.69%	97	92	94.85%	119	113	94.96%
Nanshan	925	904	97.73%	899	932	103.67%	1032	964	93.41%
Bao'an	1461	1667	114.10%	1309	1296	99.01%	1212	1161	95.79%
Longgang	1268	1187	93.61%	1068	1152	107.87%	1165	1198	102.83%
Longhua	0	0	0	428	264	61.68%	753	701	93.09%
Pingshan	0	0	0	82	70	85.37%	124	112	90.32%
Total	6440	6455	100.23%	6614	6533	98.78%	7325	7032	96.00%

(Note: The number of cases filed each year does not include previous years' cases of yet to be concluded; Longhua District People's Court has started accepting the filing of such cases since April 2018)

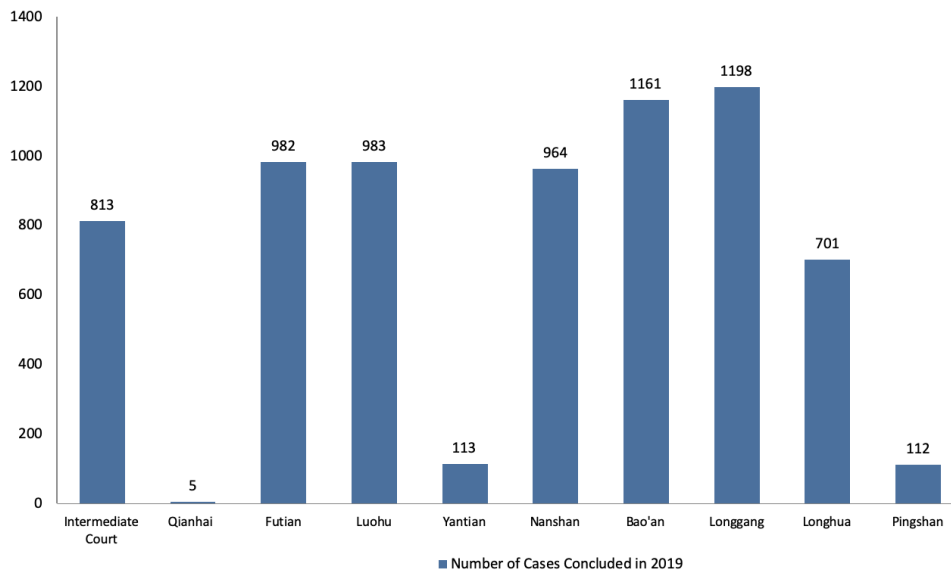
The numbers of cases concluded by Shenzhen courts in 2017, 2018 and 2019 are as follow:



■ Number of Cases Concluded in 2017



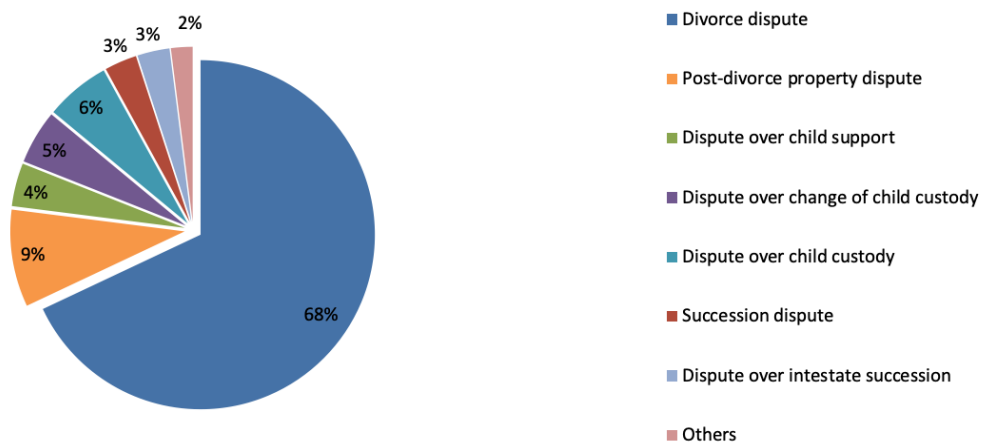
■ Number of Cases Concluded in 2018



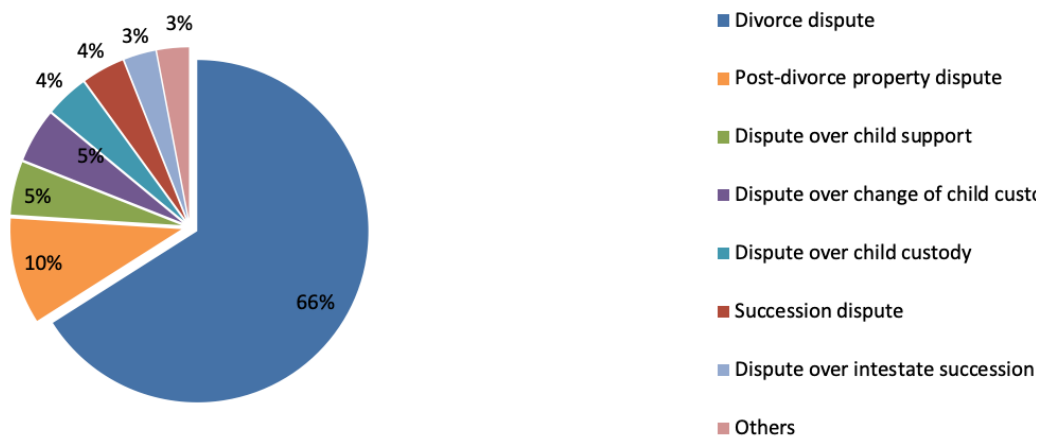
The distribution of cases over family issues in the basic courts shows that the numbers of cases in Bao'an, Longgang and Futian District People's Courts steadily rank top among Shenzhen courts every year. The decline in the number of cases filed in Bao'an District People's Court in 2018 was due to the fact that Longhua District People's Court, in April 2018, began to accept family cases which were originally under the jurisdiction of Bao'an District People's Court. The number of cases is directly proportional to the geographical size and population of the jurisdiction, and also related to the number of flowing population to a certain extent. The parties to the cases in some areas do not have Shenzhen household registration and do not have a stable residence, especially in Bao'an and Longgang District.

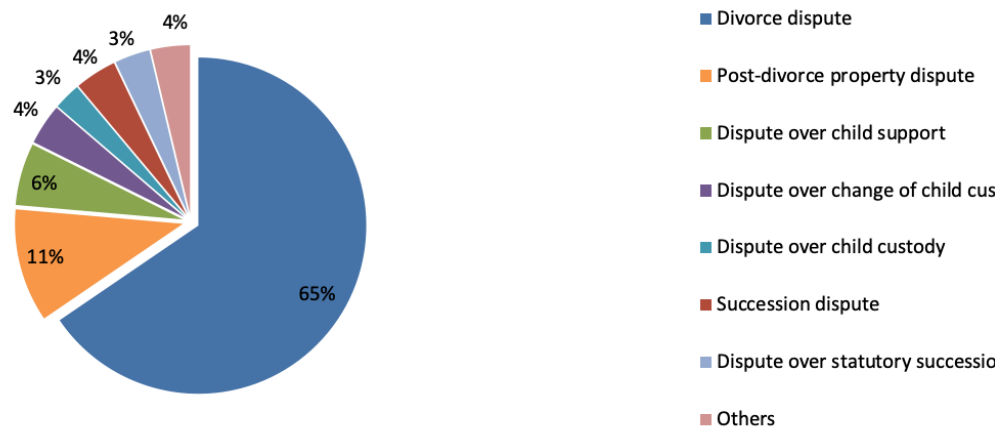
The distribution of cases over family issues concluded by Shenzhen courts by causes of action in 2017, 2018 and 2019 was as follow:

The distribution of family cases concluded by Shenzhen courts by causes of action in 2017



The distribution of family cases concluded by Shenzhen courts by causes of action in 2018



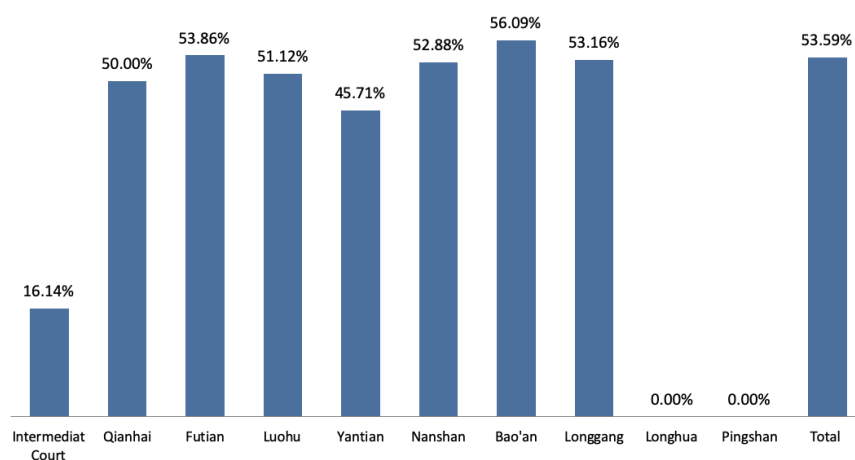
The distribution of family cases concluded by Shenzhen courts by causes of action in 2019

The types of cases show that, divorce dispute and post-divorce property dispute were the main types of cases, accounting for more than 75% of the total of all types of cases over family issues every year, and the rising trend of post-divorce property dispute was obvious, with child support-related disputes accounting for about 15%. The number of injunction to restrain a tort cases was on the rise, with 48, 46, and 77 injunctions to restrain torts issued in the past three years respectively.

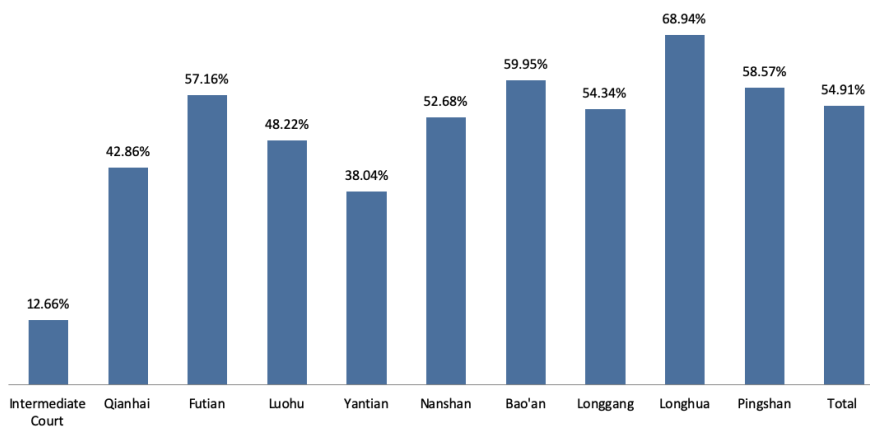
In terms of mediation, all basic courts conducted pre-litigation mediation before registration of cases over family issues, and the proportion of cases over family issues withdrawn by pre-mediation (equal to the number of cases over family issues withdrawn by pre-mediation / the total number of cases over family issues accepted + the number of cases over family issues withdrawn by pre-mediation) was 14.58%. The proportion of cases over family issues withdrawn by mediation during litigation by full-time and part-time family dispute mediators (equal to cases withdrawn and concluded by mediation during litigation / the number of concluded cases over family issues) was 40.68%. The proportion of cases withdrawn by mediation of the two-level courts was 13.8% of the Shenzhen Intermediate People's Court, 47.4% of the Luohu District Court, 55% of the Futian District People's Court, 55.4% of the Nanshan District People's Court, 55.8% of the Bao'an District People's Court, 51.8% of the Longgang District People's Court, 62.3% of the Longhua District

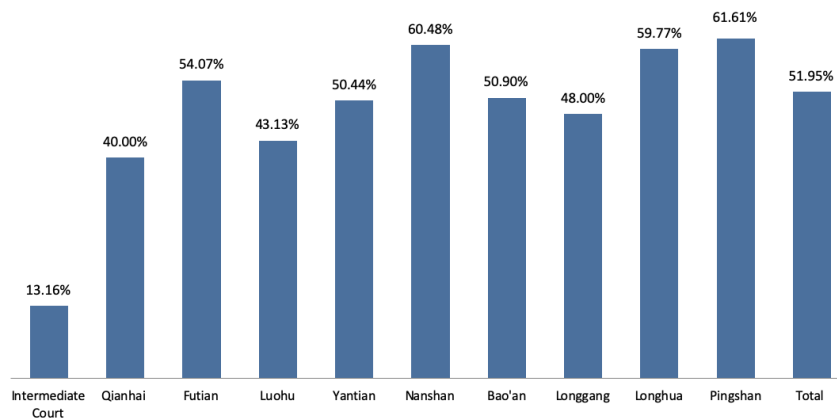
People’s Court, 45.2% of the Yantian District People’s Court, 60.4% of the Pinshan District People’s Court and 43.8% of the Qianhai Court. Mediation has become an important method to conclude the cases over family issues.

The proportion of family cases withdrawn by pre-trial mediation in 2017



The proportion of family cases withdrawn by pre-trial mediation in 2018



The proportion of family cases over withdrawn by pre-trial mediation in 2019

II. Characteristics and Causes of Family Cases

(I) divorce cases

1. more divorce cases were filed by wives than by husbands

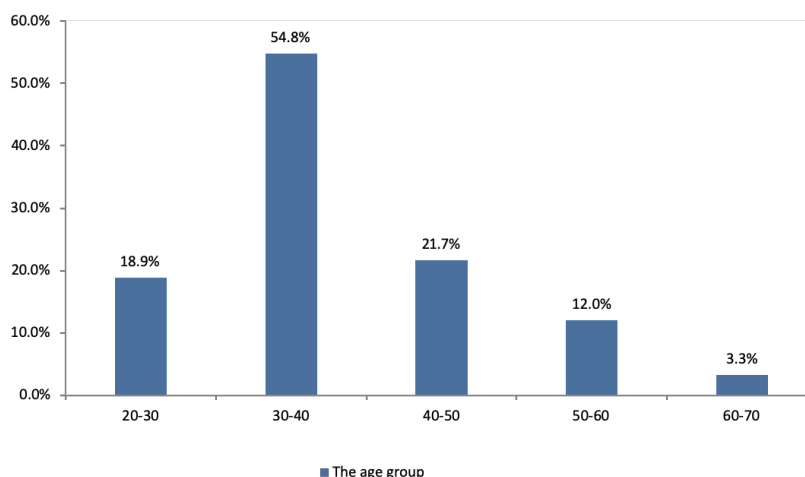
In the last three years, the divorce cases that were initiated by the wives accounted for 76.8% of all divorce cases. The development level of social productive forces and the mode of production were important factors affecting the marriage. Therefore, the high proportion of divorce proceedings filed by women in divorce disputes reflected the high degree of economic and social development in Shenzhen, and more and more women became independent. It also reflected, to a certain extent, the increasing maturity of the modern social security system and the protection of women's rights and interests by the legal system of marriage.

2. couples whose ages were between 30 and 40 and whose marriage lengths were between 7-15 years were more likely to file for divorce

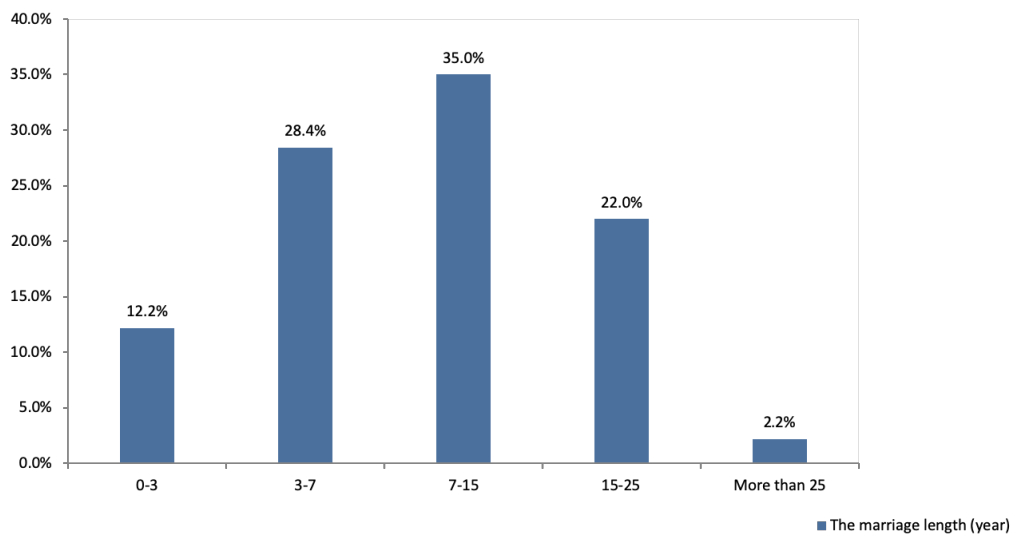
There were divorce disputes among couples of different ages, but the proportions of those were different. The divorce cases filed by couples between 30 and 40 years old account for 54.8% of the total divorce cases and were of the highest percentage; the second-highest

age group was that between 40 and 50 years old, accounting for 21.7% of the total divorce cases; for the age between 20 and 30, the number went to 18.9%; for the age between 50 and 60, the number went to 12%; and the minimum percentage was that between 60 and 70 years old, accounting for 3.3% of the total divorce cases.

The age group of couples who file for divorce



Among divorce cases, those of which the marriage length was less than three-year accounted for 12.2%; the length between 3 and 7 years accounted for 28.4%; the length between 7 and 15 years accounted for 35%; the length between 15 and 25 years accounted for 22%; and the length more than 25 years accounted for 2.2%. As we can see, the proportion of marriage whose lengths were between 7 and 15 years is the highest. The people in the age group 30-40 are post-80s, the length of whose first marriage was about 7 to 15 years. There were three main factors that led to divorce. First, the increasing self-awareness of parties made them unwilling to compromise for the maintenance of marriage. Second, most of them were the only child in the family, They lived with their parents. As a consequence, their lives were interfered by the parents, or they had contradictions with their parents with regard to living habits and educational philosophy, Third, after they bought a house and gave birth to children, they needed to take care of their parents and children and needed to pursue their careers, thus causing high pressure, insufficient communication and bad emotion. The contradictions concerned were easy to be accumulated and erupted.

The proportion of different marriage length among divorce cases

3. High percentage of boomerang children in post-90s

A lot of couples filed divorce cases within a two-year honeymoon period after marriage. It shows that more and more young people were getting married emotionally and getting divorced irrationally, rendering the marriage as "fast food". For the parties in this age group, they were unable to create wealth whereas were inclined to consume in advance. They pursued a life with houses, cars and high-end goods by resorting to their parents or consumer loans. Therefore, when getting divorced, they often claimed that such money was borrowed from parents, other relatives and friends, banks or micro-credit companies, and claimed such debts are the couple's joint debts.

4. property disputes after divorce increased

The property disputes after divorce increased year by year. The main concerns of such disputes were property rights and interests such as real estate, bank accounts, stocks, equity and so on, involving the disputes over the performance of the divorce agreement, the disputes over the property distribution under the divorce agreement, the concealment and transfer of property by one party and so on.

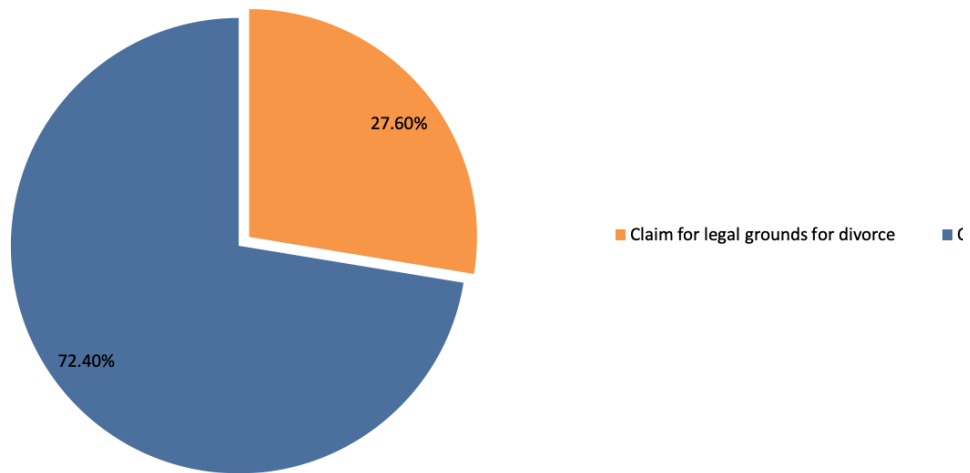
As to the main reasons for the disputes, first, the property distribution was not subjected to thorough consideration when the parties entered into a divorce agreement. Second, the

lack of relevant legal knowledge, and the failure to consult professionals during divorce led to the breach of the divorce agreement, Third, the diversification of property forms led to the concealment and transfer of property by one party. The failure of one party in declaring house with limited property rights and financial products could not be easily detected by another party (the cases in which a party expressly claims that another party should get less or even zero in property distribution due to the transfer of property accounted for 21% of all divorce cases). Fourth, part of the property had been divided by mutual acquiescence or an oral agreement rather than a written agreement, whereas one party breached his promise when the situation changes. Fifth, "fake divorce", which occurred because the price of real estate rose rapidly whereas parties were restricted from getting loans or from buying houses. Fake divorce was for getting quota and preferable down payments. The parties in fake divorce cases always claimed for the redistribution of real estate that had been dealt with in the divorce agreement as well as the property purchased during the period of cohabitation after divorce. The "fake divorce" mostly happened in previous years, leading to the increase of related cases in recent years.

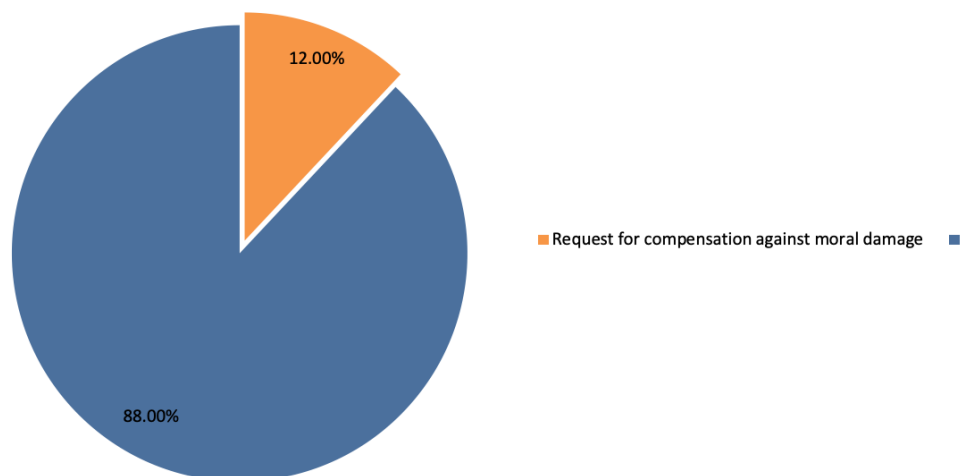
5. there were more and more people claimed that the reasons for divorce were in line with laws and request for compensation for moral damage

In addition to the usual reasons such as personality differences, poor emotional foundation, and family conflicts, the cases in which one party claimed for legal grounds for divorce such as separation for two years, domestic violence by one side, extramarital cohabitation of one side, gambling and other faults account for 27.6% of all divorce cases, and there were 12% cases in which compensation for moral damage were sought. Among cases in which one party claimed for less distribution of the other party due to the fault of the other party, the percentage of above-mentioned faults were: domestic violence for 47%, extramarital cohabitation for 25%, extramarital affairs for 24%, drug abuse for 4%. The highest proportion is domestic violence.

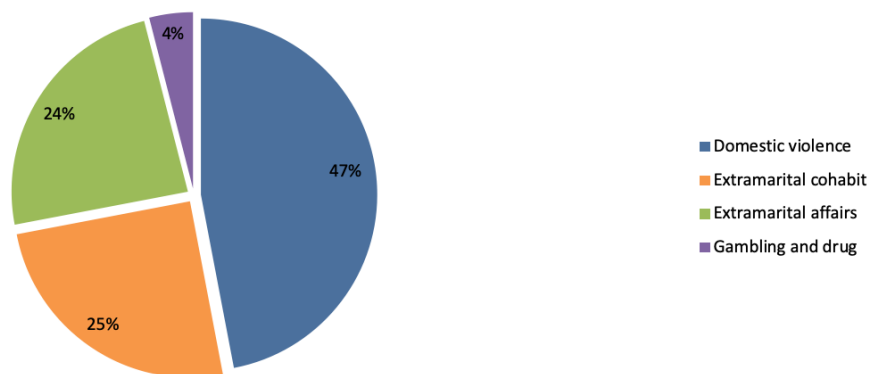
The proportion of one party claims that the reasons for divorce are in line with laws



The proportion of one party request for compensation against moral damage



The proportion of one party claims for less distribution of another party due to the fault of the another party



Domestic violence has become one of the important reasons for the breakdown of relationship. Among them, the proportion of claims by women was much higher than that of men. This phenomenon reflected that some women were still in a relatively weak position because of their physical quality, economic independence and other reasons. However, on the other hand, it also reflected that the concept that family ugliness could not be made public was gradually changed, and women dared to take up legal weapons to protect their own rights and interests. In view of the current situation, attention should be paid to the prevention and the punishment of domestic violence.

In addition, there were more and more cases in which one party claims for extramarital affairs or extramarital cohabitation. The percentage of divorce claimed thus gets higher. The occurrence of extramarital affairs involved social, ethical, legal, economic, cultural, psychological and other factors, among which the changes of moral values, social evaluation and the expectation of legal consequences were prominent factors.

6. both parties to the divorce cases claimed the ownership of the real estate, and the disputes over the nature of the real estate and the couple's joint debts became the key issues of the case

Housing prices in Shenzhen have always been high. Some salarieds mainly relied on loans to buy houses, and when they wanted to divorce, they often "could not afford to

divorce". In some cases, real estate was not only the cause of contradiction but also the focus of the claims. The differences on the nature of the real estate, the couple's joint debt for buying a house and the division of real estate have become the key issues of these cases.

In the trial of this type of cases, the following two kinds of problems often occurred, First, the funds for buying real estate came from various channels, and sometimes the property of both families were involved (in the form of parents' contributions, relatives' loans, etc.). The complexity of bank transfer led to the difficulties in identifying the sources of fund contribution in the trial. Second, because the signing of a house purchase contract, the payment of the down payment, and the registration of house took place before the marriage registration, one party might claim that such real estate was solely his/her personal property, or claimed that the down payment or part of real estate was solely his/her personal property on the ground that the funds were contributed by himself or partly by his/her parents.

(II) custody-related cases

1. both sides claimed for child custody, which should be paid attention.

Both sides claimed for the custody of children born in wedlock, regardless that the conditions of the two sides were similar or there was difference. The common characteristic was that they extremely wanted to raise the children directly. In some cases, four grandparents appeared in court together to compete for the custody of children. With the implementation of the Second Child policy, the number of families with two children in divorce proceedings has also increased year by year. Fighting for the custody of two children has more and more become the focus of disputes in divorce cases.

2. requests for increasing child support according to the agreement and failure to perform the agreement led to an increase in the number of cases brought by the other party to the court

Of all custody-related cases, 22% claimed for child support without an agreement, 70% for the performance of an existing agreement, and 8% was under the situation that an agreement existed but without any article about child support. It showed that the cases were in majority in which one party sued to the court because of the other party requesting an increase of child support without justifiable cause when there was an agreement on child support or the other party did not actively perform the agreement on child support, which was essentially non-performance of the agreement. The common reasons for requesting an

increase in child support were the rising cost of living caused by rising prices year by year, and the increase in the cost of living and study caused by the age of children, especially the cost of various tutoring classes.

Requests for change of child custody account for 10% of all custody-related cases. Generally speaking, after the spouse determines the child custody through divorce by agreement or litigation, there should be no dispute over it, but the number of disputes over changing the child custody was still big. In part because the visitation rights of the party who were not directly raising could not be exerted. What was prominent was that the child could not be visited for a long time because the child lived in the other party's hometown. It reflects that Shenzhen, as a first-tier immigrant city, many immigrant people who came to work have unstable economic and housing conditions, and did not have the conditions for their children to live and be educated in Shenzhen, so they sent children back to their hometown, causing the other party to sue for change of child custody. The second reason was that the claimant was not suitable to raise the child, including the fact that in order to divorce as soon as possible when signing the divorce agreement, after going through the divorce procedure, some of them wanted to get back the direct custody of the child; the third reason was the change in the will of the child.

(III) inheritance cases

1. there were many foreign-related issues in the identity of heirs

In inheritance cases, 38% of the heirs involved Hong Kong, Macao, Taiwan and other overseas identities, among which the Hong Kong identities accounted for the most. On one hand, this phenomenon was attributed to the fact that some people in Shenzhen went to Hong Kong under the specific historical background in the early years. On the other hand, due to the large increase of the value of the real estate in Shenzhen, the huge benefits brought by demolition and other factors, more and more people who went abroad in the early years go back to Shenzhen to request inheritance of property.

2. in some cases, it was difficult to identify all the heirs and to serve documents.

In addition to the fact that the other heirs have been living abroad for a long time, unable to be identified and difficult to be served, several factors that made it difficult to identify all the heirs in succession cases were as follows. First, there was no contact between the plaintiff and the children of other spouses of the decedent. Second, the plaintiff was born out of wedlock. Third, in some cases, proof of the relationship with the decedent could not

be provided due to the death of the decedent for many years. Some of the above cases occurred due to the children born in the wedlock deliberately did not provide identity information and service address. Therefore, even if all the heirs could be identified, it was difficult to serve. This type of situation accounted for 42%. The above phenomenon had its historical reasons, and it also determined that it took more time and energy to deal with the procedural matters of such cases.

3. the number of testate succession cases was increasing year by year, and the defects in the form of allograph testaments were prominent

Of inheritance cases, 41% claimed for intestate succession and 47% claimed for testate succession. In testate succession cases, the number of plaintiffs claiming that the decedent had a will was on the rise, and the proportion was relatively high. It showed that the number of people who were open-minded and abandoned old ideas was increasing year by year, and people gradually accepted the idea of making a will before death for the dealing with everything after death to avoid disputes over property between heirs. The common forms of testaments were self-written testaments, allograph testaments and notarized testaments, accounting for 22%, 28% and 39%, respectively. The majority of self-written testaments and allograph testaments were printed testaments, accounting for 55%. One of the reasons for the high proportion of printed testaments was that a large part of local elderly people in Shenzhen could not write, and they mainly asked people to print testaments for them. Another reason is that the decedent was critically ill and unable to write. Most of the problems in the allograph testaments were that the graffers and witnesses fail to sign in strict accordance with the legal form at the place where the main text of the testament was registered.

4. the contradiction of inheritance regarding unowned property was prominent.

For the cases of inheritance and separation of self-built houses in rural areas without property rights, some claimed rights on the basis of the inventory and registration of illegal buildings left over by history, but the registration itself was not an act of ownership affirmation. There were objections to the ownership. Some "married women" asked for the inheritance of the houses left by their parents, but the houses were registered in the names of other heirs, and most of them did not have complete registration of the property rights. The joint-stock companies usually did not cooperate with the court's investigation because of the "village rules and customs". Although the number was small, it was difficult for the courts to

find out the specific facts of the case.

(IV) cases of injunctions to restrain a tort

1. the number of such cases has increased year by year

The number of injunctions to restrain a tort cases accepted from 2017 to 2019 had increased year by year. The increase in the number of applicants showed that injunctions to restrain a tort had been effective in practice, and more and more victims used the legal weapon to protect themselves, which also reflected the massive existence of domestic violence or similar behavior. Therefore, there was more space for applying this system to protect victims.

2. female applicants were the majority, and beating accounted for a high proportion of the reasons for application

In injunctions to restrain a tort cases, 93.2% of the applicants were women. Women were often victims of domestic violence and were vulnerable groups in society. The majority reason for applying for injunctions to restrain a tort was beating and apart from which, frequent abuse and intimidation were also common. The evidences provided by most applicants were the receipt from the police, photos and medical diagnosis issued by hospitals. But most of the applicants failed to submit the record of calling the police and the judicial identification report.

3. high correlation with divorce cases

Injunctions to restrain a tort cases all took the word "Civil Protection Order" in their case numbers, and the correlation between such cases and divorce cases accepted by the court was as high as 89%. The issuance of the injunctions to restrain a tort was based on the fact that the parties were subject to domestic violence or facing the real risk of domestic violence. The issuance of the injunctions to restrain a tort was of immediacy, and the requirement of examination should not be too high, otherwise it would reduce the effectiveness of the injunctions to restrain a tort. Therefore, not all parties protected in the "Civil Protection Order" cases could be supported on the claim of domestic violence in divorce cases.

III. A Summary of the Trials of Family cases

(I) prominent effectiveness of diversified dispute resolution in family cases

The family cases that were closed by mediation accounted for a relatively high

proportion in all closed cases. In Shenzhen courts, the family cases that were closed by mediation accounted for 49.09% in all such cases, of which the mediation rate of divorce cases was 52.42%, that of support-related cases were 60.72% and that of inheritance cases were 24.16%. As we can see, after the joint mediation mechanism before litigation was established in Shenzhen courts, more than half of the divorce cases and support-related cases, except inheritance cases in which many difficulties existed, could satisfy parties concerned through mediation.

(II) equal emphasis on the disposal of identity relationship and the protection of spiritual interests and children's interests

With regard to the termination of identity relationship, according to the principles of maintaining the harmony and stability of marriage and family and dealing with cases in accordance with the law, the courts usually rejected parties' first claim for divorce unless otherwise legal requirements were met. In all cases in which divorce was granted, the proportion of the first claim, the second claim and the third claim were 14%, 85% and 1% respectively. In addition to the case where the reason of divorce was expressly specified by law, when deciding whether a divorce should be granted, the following factors were mainly considered: the emotional basis of both parties; whether one party was subject to serious illness thus needed to be taken care of; whether one party was at fault whereas another party was still willing to keep the family, and so on.

With regard to the support of children, the claim for paternity test should be treated cautiously and strictly. If one party made a request for a paternity test, the preliminary evidence denying paternity should be submitted in strict accordance with the law, and the paternity test should be preceded cautiously. In particular, some of the parties, in the absence of any factual basis, requested for the paternity test to deny the natural child, with a view to evading the obligation of child-raising. Such actions contradicted with integrity and lacked a sense of responsibility, and thus would not be supported.

When solving issues of custody, the court would make an interpretation to the parties who did not claim for the visitation rights, and would deal with visitation rights at the same time. In case the general provisions on the exercise of visitation rights could not effectively solve the problem, the court would specify the time and mode of visitation rights, such as holidays, winter and summer holidays and the way to pick up children. In addition, the main reason why the visitation right could not be resolved through negotiation was that some

parties failed to recover from the marital trauma, which hindered the visitation rights of the other party. The court would promote the emotional guidance to such parties.

The courts paid more attention to the claims for moral damages. When getting divorced, one party often claimed for moral damages on the grounds that the other party had extramarital affairs or domestic violence, the percentage of supported claims for moral damages based on bigamy or extramarital cohabitation was 42.8%, and that of domestic violence was 73.3%. Some claims were denied because extramarital cohabitation and domestic violence were concealed, and it was difficult for the parties to prove; one party deemed the occasional infidelity of the other party as cohabitation; one party deemed the injury caused by the physical conflict as domestic violence; both parties were at fault.

(III) disputes over the change of custody and child support were dealt with based on the respect for the wishes of the parties to the agreement and the effective Judgment.

The cases requesting charge of custody accounted for 10% in all custody-related cases, and 30% of such claims got support. Among the reasons for support, the children's willingness to live together was the most frequent one. The second reason was that the actual state was inconsistent with the judgment or the agreement between two parties, and the party who did not enjoy custody rights actually raised the child. In addition, the living environment of children mainly was referred to the long-term and stable living state, rather than the temporary state caused by the intensification of contradictions in the divorce process. In order to prevent the parties from getting custody by means of "robbing the child", in addition to the factor that children lived with such party during the period of separation and litigation, other factors would also be considered to determine the custody.

The cases requesting change of child support accounted for 10% in all custody-related cases, and 30% of such claims got support. The determination of child support was mainly based on the consent of parties, and the courts mainly examined whether the reasons for increasing child support were in line with the law, and whether there was a fact that led to the increase or reduce of child support after divorce. If the child support had just been determined by mutual agreement or the effective judgment of the court for a short time, and there was no evidence proving that their current living and study expenses and income level had changed significantly, their claim for alteration would be generally denied. In case some parties with certain education and work experience obtained unemployment certificates and thus claimed for the reduction of child support due to their economic difficulties, although

such unemployment certificate could prove the unemployment state of that party during that period, but it was not a direct proof of its reduction or loss of working ability, and would be generally denied.

Some cases of change of custody or child support were due to the reasons that the parties concerned refused to perform the divorce agreement after the divorce registration. They breached the divorce agreement and initiated a lawsuit when their goal of divorce had achieved. It was a breach of the principle of good faith, and would be generally denied.

(IV) dealt with property in divorce cases according to laws, implemented the principle of favoring the rights and interests of children and women, and gave consideration to the balance of interests

If the mediation regarding property division failed in the divorce cases, such property should be divided in accordance with the law based on the specific circumstances of the property. The agreements on liquidated damages, damages and renunciation of property concluded between husbands and wives should be examined as to whether such issues should be regulated by law and whether they were lawful agreements stipulated by law, and such agreements should be dealt with separately. The nature of the property should be determined in accordance with the law and the actual circumstances. The property that both parties agreed to purchase and jointly paid for should be recognized as the couple's joint property, so as to prevent the imbalance of interests. The property paid for or partially paid for by the couple's parents should be dealt with in strict accordance with the relevant judicial interpretations of the Supreme People's Court and the principle of balance of interests should be taken into account. For the property disputes after divorce in "fake divorce" cases, the courts should comprehensively consider the property accumulated during the marriage and the property jointly obtained during the period of cohabitation after divorce, and should divide it in accordance with the law and the principle of balance of interests. When the property is divided, the wives should enjoy preferential conditions in accordance with the principle of favoring the rights and interests of women and children.

For houses that had not yet obtained ownership or full ownership, such as self-built houses in rural areas, collective buildings in the village and houses built on the funds collected by organizations, they should be, in accordance with the actual situation, used by the parties concerned in the judgment.

In case one party claiming for the division of couple's joint property also claimed for

the division of joint debts, the debts claimed to be the loans for the couple's parents or relatives or loans from banks or micro-credit companies should be dealt with at the same time provided that the details of the transfer were complete and both parties had no objection to the payment of the money, and that the only dispute rested on the nature of the money (loan or gift), or whether it was used for couple's joint life.

(V) ascertained identity information by means of self-investigation and search warrant of lawyers, examined the formalities of wills in strict accordance with the law, and properly handle succession cases

In case parties to succession cases failed to submit relevant evidence regarding the identity relationship between them and the decedent as well as the scope of the estate, if there was preliminary evidence showing that there might be other heirs who did not participate in the proceedings, the two-level courts might investigate and verify in accordance with their functions and powers. And it was common to go to the organization where the decedent previously worked at, local police office, neighborhood committee, marriage registration authority, etc. to obtain household registration materials or other archives. There were many cases in which the parties agreed that there were other heirs whereas the courts could not serve or take a long time to serve due to the failure to submit the identity information of such heirs. Some succession cases were dismissed because the scope of the estate could not be determined.

Among testate succession cases, 82% of the allograph testaments were determined to be valid. To ensure the validity of allograph testaments, they should be witnessed by two witnesses who did not enjoy any related interest and be written by one of the witnesses. The court examined the wills strictly in accordance with the legal form of the will, for example, the witness and the graffer should sign at the main text of the will and indicated the year, month, day, etc., with a view to ensuring that the allograph testament was an expression of the decedent's true intention to dispose of his or her personal property.

III Reform Ahead

In the past three years, the two-level courts in Shenzhen, in accordance with the requirements of the Supreme People's Court and the Guangdong Provincial Higher People's Court, implemented the Opinions of the Supreme People's Court on Further Deepening the Reform of Modes and Working Mechanisms of Family Trials (for Trial Implementation) and the Guidelines on the procedure of divorce cases in Guangdong Court, actively and steadily promoted the family trial reform, changed the concept and working methods of family trial, innovated the working mechanism, promoted the team specialization, and achieved remarkable results.

I. General Situation of the Family Trial Reform

Summing up the experience of the family trial reform of the pilot courts in recent years, Shenzhen Intermediate People's Court comprehensively deployed the family trial reform of Shenzhen courts since 2017, steadily promoted the reform by convening the promotion meeting to comprehensively carry out the reform work, notifying the progress and shortcomings made in the implementation of the reform, and summarizing and giving feedback by analyzing the overall situation of returning for retrial and changing the original sentence of the family cases, and achieved a good result. The two-level courts have completed an average of 6,673 family cases per year, and the judges have closed an average of 185 cases a year. The parties are satisfied with the judgment, and the trial quality has been further improved. Among them, 3,163 family cases were settled through pre-trial mediation, accounting for 14.58% of the total. 8,144 cases were settled through mediation during litigation, with a mediation settlement rate of 40.68%. Property declaration was carried out in 5,046 divorce cases. A cooling-off period was set in 243 divorce cases. Parent-child relationship assessments were conducted in 546 cases. A total of 2,798 divorce certificates were issued. Psychological counseling was carried out in 1,675 family cases, and the system of return visits was implemented in 3,174 family cases, respectively accounting for 21.85% and 39.83% of the total number of family cases.

A number of advanced experience and advanced collectives and individuals have emerged. In February 2017, Bao'an District People's Court introduced the experience at the Pilot Work Conference on the Reform of Mode and Working Mechanism of Family Trial in Part of Courts convened by the Supreme People's Court. In July 2018, the Family Trial Division of Bao'an District People's Court was awarded the honorary title of "National

Advanced Collective of Family trial". In June 2019, Lu Yinghong, in charge of the marriage and family trial team of Luohu District People's Court, was awarded the honorary title of "National Advanced Individual in Protecting the Rights and Interests of Women and Children".

II. Major Reform of Family Trial

(I) further unify the ideological understanding and establish a new concept of family trial

The harmony and stability of the family is the cornerstone of national development, social progress and national prosperity. The trial of family cases is not only related to the happiness of individuals and families, but also affects the harmony and stability of society and the country. To deepen the family trial mechanism reform is to make the trial of family cases more in line with the strong ethical traits and special judicial rules, to effectively heal the trauma caused by the emotional crisis of all parties in dispute over family issue through meticulous software and hardware settings, so as to reflect the humanistic care of Shenzhen Judiciary and improve the social recognition of the adjudication of family cases. In the work of family trial reform, Shenzhen Intermediate People's Court deeply understood the spiritual connotation of the family trial reform of the Supreme People's Court and took the lead in changing the concept of family law trial.

First, we distinguish family cases from general civil cases, accurately understand the characteristics of family trial, such as identity, ethics and restoration, which are different from general civil and commercial trial, adhere to humanized trial, innovate the concept of family trial, give full play to the role of family trial in resolving contradictions, protecting rights and interests, repair bruised feelings, carrying forward virtues and maintaining stability.

Second, we combine the implementation of the principle that a party is entitled to disposal of its rights and principle of debate with strengthening judges' ex officio investigation, discretion, and appropriate intervention to parties' right of disposition. While paying attention to the trial of property cases, we are more focused on the interests of identity and personality, properly handle the rights and interests of divorce parties, protect the legitimate rights and interests of women and the elderly in accordance with law, and maximize the interests of minors.

(II) further change the way of work and achieve new development in family trials

First, pre-trial mediation and mediation first should be guaranteed and. A divorce case shall not be judged without mediation before registration or during the trial of the case, unless the parties insist that they are unwilling to mediate or one party's whereabouts are unknown. The district people's courts mediated all divorce cases before registration, set up special family mediation links after entering the litigation procedure, and devoted more energy to the allocation of full-time family mediators and the diversified settlement of dispute over family issues, and strive to resolve a large number of contradictions during registration of cases and the mediation during litigation, and at the basic level.

Mediation of cases over family issues



Second, the parties to the divorce case should appear in court. Under the premise of complying with the provisions of the Civil Procedure Law, the courts in Shenzhen have implemented the basic requirements for the parties to appear in court in divorce cases, which has not only effectively protected the procedural rights of the parties, but also greatly improved the quality and efficiency of service, reduced the situation that divorce cases are remanded for retrial or the judgment are overruled by the court of second instance for violating the legal service procedure. At the same time, in practice, some parties who are unwilling to divorce respond to proceeding negatively by not signing legal documents, delaying the lawsuit, and the court uses up judicial resources to serve. As long as the case goes through the service procedure, the negative response of the parties will not affect the trial.

Third, ex officio investigation. The interests of the parties in family cases are opposed to each other, and various factors make it difficult for one party to submit the identity and property information of the other party. When dealing with relevant matters, especially the joinder of additional parties and the examination of the scope of property, the two-level courts strictly follow the Civil Procedure Law and judicial interpretations, and conduct more active investigation in accordance with the matters listed in the Guidelines for Courts on Divorce Case Proceeding in Guangdong Province. With regard to the determination of the identity of the heir, the qualification of the defendant, the determination of jurisdiction and the identification of the community property, if the parties are unable to collect relevant evidence due to objective reasons, the courts will ascertain the above-mentioned facts by ex officio investigation, to meet the actual needs of the trial.

Fourth, comprehensive dispute resolution. Shenzhen courts adhere to the principle of comprehensive dispute resolution in the trial of divorce cases. If the plaintiff only requests to adjudicate divorce when suing, it may be regarded as a general request to deal with such matters as child support, visitation rights and property issue. If the party fails to do so, the court shall require him to specify the plan for child support and visitation. If the plaintiff does not make a request for the division of joint property when filing without reasonable reason, the court shall require the plaintiff to clarify and ask whether the unerring party requests for divorce damages. The implementation of the principle of comprehensive dispute resolution reduces the litigation burden of the parties, and is conducive to the one-time resolution of disputes, improving the legal and social effects of family cases.

(III) further innovate the reform mechanism and create a new situation of family trial

First, consolidate the dispute resolution function of family trial and speed up the reform. In order to continuously improve the ability and level of judicial services to ensure dispute resolution over family issues, the two-level courts have established a multi-functional and integrated family litigation center platform that integrates various functions, such as the professional trial of family cases, the comprehensive coordination of dispute over family issues, and the professional psychological counseling of the parties. According to the needs of the parties and the characteristics of the case, the courts enter the processing procedure in time and resolve disputes efficiently. Longhua District People's Court established "1633" New Flexible Trial Mode for Disputes over Family Issues, and

walked out of a new way of family trial of "case conclusion, dispute resolution, human harmony", and achieved remarkable results. From April 2, 2018 when it initiated its service for registration of cases to December 30, 2019, Longhua District People's Court accepted a total of 1,242 family cases and closed 965 of them. Among them, 601 cases were withdrawn by mediation and the withdrawal after mediation rate reached 62.3%. "1633" New Flexible Trial Mode for Disputes over Family Issues was awarded "Top Ten Safe Construction Events in Longhua District".

Second, strengthen the function of protection of rights of family trial and deepen the reform. In terms of personal rights and interests, Shenzhen courts implemented coordination and cooperation with the interaction departments on the personal safety protection ruling system, and countersigned the Measures for Enforcement of the Ruling of Personal Safety Protection with Public Security, Women's Federation, Youth League Committee, Justice, Civil Affairs and other departments, improving the comprehensive interaction mechanism for personal safety protection, increasing the intensity of service and enforcement, and effectively safeguarding the rights and interests of victims of domestic violence. In terms of property rights and interests, on March 14, 2019, the Adjudication Committee of Shenzhen Intermediate People's Court discussed and approved the property declaration system in divorce cases, requiring both parties to take the initiative to declare the joint property and joint debts before expiration of the time limit for adducing evidence, specifically regulating the scope of application of the property declaration system, the service time of the property declaration form, the deadline for filling in the property declaration, the scope of the property to be declared, the specific procedures for the property declaration, and the legal consequences of failing to declare the property truthfully. The system provides an objective standard for the identification of concealment and transfer of the joint property, and its comprehensive implementation effectively solves the problem of property identification in divorce cases.

Third, expand the emotional healing function of family trial embodying the warmth of reform. Shenzhen courts pay attention to the repair of marital relationship and wound healing, and permeate judicial care into divorce cases. Psychological evaluation and counseling were included in the whole process. In the way of purchasing services from the society, the district courts introduced specialized psychological counseling institutions to assist in the handling of family cases and signed memorandums of cooperation with

Shenzhen Psychological Consultant Association and Luohu District Institute of Psychology. In October 2017, Luohu District People's Court took the lead in launching the marriage repair proposal system in the Guangdong province, pointing out the crux of marriage problems and proposing a marriage repair guidance plan for divorced parties who are still likely to repair their relationship. On the basis of the parties filling in the Marriage Relationship Assessment Paper compiled by the psychological counselors, the psychological counselors attended the trial and counseled the parties after the trial, and the number and time of counseling were determined by the psychological counselors according to the marital status of the parties. According to the counseling situation, combined with the Marriage Relationship Assessment Paper filled in by both parties, the psychological counselor drew up a repair proposal for the judge's reference. When the court serves the disapproval of divorce judgment, it serves the marriage repair proposal at the same time. Futian District People's Court has established a cooperative relationship with Shenzhen Ciwei Philanthropy Institute and Shenzhen Qianniao Association for Single Parent Family Care. Full-time and part-time social workers carry out emotional counseling, psychological intervention, behavior correction, follow-up return visits, and post-litigation assistance to divorced parties, children of divorced families, minor defendants and victimized minors, and provide judicial care to escort the divorce parties and the growth of minor children.

Fourth, extend the social radiation function of family trial and expand the breadth of reform. Shenzhen courts take the diversified dispute settlement mechanism as the starting point to establish a full-process mediation mechanism for dispute over family issues from pre-trial joint mediation and the mediation during litigation to return visit and assistance after trial. In the light of the development situation of dispute over family issues and cases involving the protection of the rights and interests of minors, Shenzhen courts construct a new and diversified family dispute resolution mechanism of "family mediator + family investigator + family observer + professional social worker", openly invite and select family investigators, mediators and observers, entrust them to focus on specific issues, investigate and understand the family life and emotional status of the parties by visiting their neighbors, relatives, communities and work units, and submit the investigation report to the court and state the investigation opinions to help find out the facts of the cases over family issues and provide a solid basis for the judgment. Bao'an District People's Court, in cooperation with the District Women's Federation, Civil Affairs Bureau, Justice Bureau, Public Security

Bureau, District Information Management Center, Grid Patrol Office and other departments, has formulated relevant work standards and norms for the prevention and assistance of domestic violence, based on the district gridding project, to achieve the closed-loop disposal mode of family emotional disputes, to achieve the goal of preventing emotional disputes from turning into domestic violence and controlling the transformation of civil cases into criminal cases. The system fully integrates grassroots forces, gives full play to grassroots advantages, mobilizes the ends of comprehensive social governance, realizes early detection, early intervention, early prevention and early resolution of dispute over family issues, fully moves forward the prevention and resolution work, and makes the front-end mediation and diversion supervision work carry out orderly and effectively.

III. Main Achievements of Family Trial Reform

First, the team specialization construction has been basically completed. Shenzhen Intermediate People's Court has set up a special collegial panel of family cases, and the district courts have set up three special family trial division and five family trial teams, with 32 professional judges and 46 judge assistants in charge of family cases. The two-level courts are equipped with a total of 10 full-time mediators, national second-level or first-level psychological counselors stationed in the court, and more than a hundred family investigators or family mediators.

Second, the mediation rate has remained stable at a relatively high level. The two-level courts have stepped up mediation for family cases, and Shenzhen Intermediate People's Court attached great importance to the failure of some basic courts to implement the pre-trial mediation procedures and mediation first, promoted the mediation work by means of case quality analysis, work meetings, information circulars, and so on. At present, all of the district courts have implemented pre-trial mediation procedure for family cases. Through social purchase, Nanshan District People's Court has established a mediation team composed of two full-time mediators, a full-time psychological counselor and a family mediator stationed by the People's Mediation Committee on Marriage and Family Disputes. The mediation team is stable, strong and experienced, and the mediation rate reached more than 60% in 2019.

Third, the exploration and application of special procedures for family cases has been put on the agenda. The case process should be transformed and a full-process mediation

mechanism should be established. The work flow should be transformed from "registration of cases-trial" to "mediation-registration of cases-trial". All family cases are first mediated by mediators and if mediation fails, they will enter the registration procedure. In the process of litigation, the cases that need mediation shall be handed over to social workers or people's assessors for mediation, and psychological counseling and family treatment will be carried out. After the case is concluded, social workers and people's assessors will make further follow-up, return visits and assistance. The family observer hearing system should be implemented, and persons with marital experience and experience in raising minor children will be openly recruited to become family observers and participate in the hearing procedure as a third party in family cases involving the custody of minor children, independently express opinions on issues such as the custody of minor children. A cooling-off period for divorce cases, should be set to reduce the pressure for conflicts, and to strive to save relationships that have not yet been completely broken and marriages that can be reconciled. The parent-child relationship assessment shall be fully implemented, and the custody shall be objectively assessed by third-party institutions.

Fourth, the diversified dispute resolution mechanism of family cases has been improved. Shenzhen Intermediate People's Court formulated the Trial Rules for Family Cases (For Trial Implementation), the Working Rules for Mediator in Family Cases (For Trial Implementation) and the Working Rules of Investigators in Family Cases (For Trial Implementation). The district courts have improved the diversified resolution mechanism, introducing family mediators, investigators, and psychological counselors to carry out mediation, investigation, and psychological counseling before trial, so as to solve the difficult problems that "family affairs" are difficult to investigate clearly, and carry out psychological counseling to the parties with psychological obstacles to calm their emotions and recover their feelings. The Marriage and Family Dispute Mediation Room specially set up by the Futian District People's Court is listed as the first demonstration site of the marriage dispute mediation room in the city. The Futian District Women's Federation sent two professional family mediators to carry out pre-trial mediation. The family trial team was equipped with two full-time people's assessors and acquired three social workers from the Futian District Politics and Law Committee and the Civil Affairs Bureau to participate in the mediation of family cases. Futian District Court has 20 family observers and 40 family investigators in place.

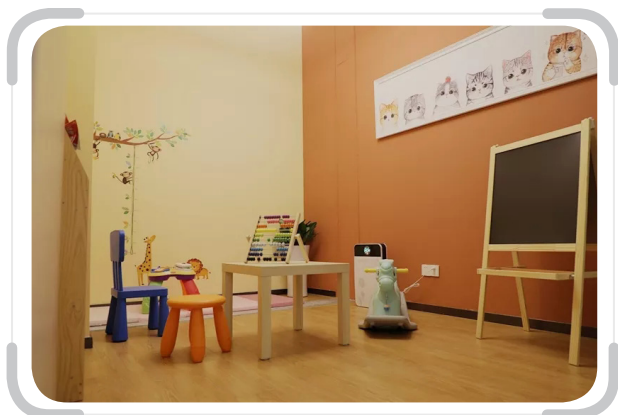
Fifth, the construction of hardware facilities has stepped onto a new level. The district courts, centering on the characteristics and needs of the family trial, increase the guarantee of funds and strengthen the construction of hardware facilities. Longhua District People's Court and Nanshan District People's Court have built a new family trial service center. The planning budget of Futian District People's Court has been approved and the construction will begin soon. Longhua District People's Court and Nanshan District People's Court have set up six functional rooms, including the Women's Federation Marriage Mediation Room, the Psychological Counseling and Mediation Room, the Psychological Evaluation Room, the One-Way Mirror Observation Room, the Parent-Child Accompany Room, and the Mother-Baby Room, which have improved the necessary supporting facilities in line with the characteristics of the family trial. Other courts have also transformed the round-table courtroom on the original basis, alleviating the antagonistic mood of the parties in the court hearings, and expanding the venue of family trial and mediation, so that the parties can experience the humanistic care of justice in Shenzhen.



Round-Table Courtroom



Sand Table Observation Room



Parent-Child Accompany Room



Mother-Baby Room

IV. The Prospect of Deepening the Family Trial Reform

Shenzhen courts will sum up experience, forge ahead, further improve measures for the reform of modes and working mechanisms of family trials, create entity and procedural rules in line with the rules of family trials, properly handle dispute over marriage and family issues, and create a harmonious and stable social environment for the construction of the Guangdong-Hong Kong-Macao Greater Bay Area and the demonstration pilot zone for socialism with Chinese characteristics.

First, improve and enhance the construction of team specialization. The district courts have basically been equipped with specialized judicial personnel for family cases, but there is still room for improvement in the allocation of ancillary personnel. In accordance with the requirements of the Supreme People's Court and Guangdong Provincial Higher People's Court that there should be at least one female judge or female people's assessor in the family collegial panel, and to include mediators, investigators, and psychological professionals as ancillary judicial personnel. The district courts should further clarify the role of ancillary personnel to assist in the trial of family cases, improve the professional quality of family judges, carry out professional training for family trial teams, such as trial business, mediation skills and psychology.

Second, fully implement the principle of pre-mediation and mediation first. Fully implement the provisions in the procedural guidelines of Guangdong Provincial Higher People's Court that divorce disputes shall not be adjudicated without mediation before registration or during the trial of the case, and the use of mediation to resolve disputes shall be given priority to, in order to create an atmosphere of reducing confrontation and recovering feelings, and further improving the mediation rate.

Third, strengthen the exploration in the trial procedure. Shenzhen courts will put the clear requirements of the higher courts in place, such as taking the initiative to conduct ex officio investigation, collecting evidence by various means of, insisting on comprehensive disputes resolution, and setting a reasonable cooling-off period. At the same time, Shenzhen courts will respond to the requirements of the continuous family trial reform, organize capable forces to conduct research, explore the establishment of rules for the protection of minors adapted to the Guangdong-Hong Kong-Macao Greater Bay Area's family trial practice, and form a comprehensive protection mechanism for family trials related to minors centered on litigation proceedings, covering the front-end and follow-up of litigation.

Conclusion

Time flies, and the 21st century is about to enter a new decade again. Looking back on the course of family trial reform in Shenzhen courts, we think in adjudication and innovate in groping. As the saying goes that, "start from the easy place to deal with difficult problems, and start from the subtle place to achieve great things". We have grasped the characteristics and rules of the trial of family cases to a certain extent and made certain achievements. On the basis of summarizing the achievements, this White Paper broadens the vision of family trial and blows the horn of a new journey for the reform of the family trial with stronger ideals and beliefs. "The deeper the practice, the better the understanding; the deeper the understanding, the more directional the practice". The White Paper herein is the embodiment of the unity of knowledge and practice in the family trial of Shenzhen courts, and the manifestation of the concept and grand wish of the family trial of Shenzhen courts. The family trial reform in Shenzhen courts will continue to exude vitality, so that people will not only feel the justice and strictness of the law, but also feel the flexibility and warmth of the law.

○ Family Trial Reform Timeline

● **August 2012**

Shenzhen Intermediate People's Court promulgated the Work Plan for Reform of the Shenzhen Court's Innovative Methods for Family Case Trial

● **September 2012**

Bao'an District People's Court became the pilot unit of Shenzhen court's family trial reform

● **May 2013**

Luohu District People's Court issued the first injunction to restrain a tort

● **September 2013**

Bao'an District People's Court established Shenzhen's first family law trial division, and also established the family mediator and family investigator system

● **November 2013**

The Adjudicatory Committee of Shenzhen Intermediate People's Court passed the Trial Rules for Family Cases in Shenzhen Court (For Trial Implementation), Guidelines for the Application of Personal Safety Protection in Family Matters in Shenzhen Court (For Trial Implementation), and Working Rules for Mediator in Family Cases in Shenzhen Court (For Trial Implementation), Working Rules of Investigators in Family Cases in Shenzhen Court (For Trial Implementation)

● **March 2014**

Luohu District People's Court had the Family Trial Division as its internal institution

July 2014

Luohu District People's Court established the family investigator system

October 2014

Futian District People's Court and Shenzhen Ciwei Philanthropy Institute signed a memorandum to jointly build a diversified family dispute settlement mechanism

April 2016

Bao'an District People's Court was identified as the "Pilot Court for National Family Trial Reform"

March 2017

Luohu District People's Court established the family investigator system

April 2017

Bao'an District People's Court inaugurated the Family Trial Center

May 2017

Luohu District People's Court inaugurated the Family Trial Service Center

April 2018

Shenzhen Intermediate People's Court held the Work Promotion Conference for Shenzhen Courts to Comprehensively Promote the Reform of Modes and Working Mechanisms of Family Trials

● **April 2018**

Shenzhen Intermediate People's Court and Shenzhen Women's Federation signed Several Opinions on Establishing the Coordinated Settlement Mechanism for Dispute over Family Issues

● **April 2018**

Shenzhen Intermediate People's Court issued Implementation Opinions on Comprehensively Promoting the Reform of Modes and Working Mechanisms of Family Trials

November 2018: Longhua District People's Court inaugurated the Family Trial Center

● **December 2018**

Nanshan District People's Court inaugurated the Family Trial Service Center

● **April 2019**

Shenzhen Intermediate People's Court issued the Guidelines on Implementing the Property Declaration System in Divorce Cases.

○ Family Law Trial Reform Milestones

● April 2015

Du Wanhua, member of the Judicial Committee of the Supreme People's Court, paid a visit to Bao'an District People's Court for work guidance

● March 2017

Hong Shengyuan of Bao'an District People's Court won the honorary title of "2016 National Women's Federation Advanced Individual"

● April 2017

Leaders of the All-China Women's Federation and the Supreme People's Court went to Bao'an District People's Court to investigate the family trial reform implementation

● July 2018

The Family Trial Division of Bao'an District People's Court won the honorary title of "National Advanced Collective of Family Trial"

● July 2018

Zhang Liying of the Family Trial Division of Bao'an District People's Court won the honorary title of "National Advanced Individual of Family Trial"

● November 2019

Lu Yinghong of Luohu District People's Court won the honorary title of "National Advanced Individual in Protecting the Rights and Interests of Women and Children"