The Study of the Witnesses to Appear in Court in Civil Litigation

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Abstract. In the judicial practice of civil litigation in our country, the witness to appear in court rate is low, hinder the our country civil lawsuit activity smoothly. To this end, we should perfect the relevant system. According to the current situation of the civil litigation the witnesses to appear in court to testify, analyze the causes, and puts forward the countermeasures of perfecting our country's civil lawsuit the witnesses to appear in court to testify system.

An Overview, the System of Civil Litigation the Witnesses to Appear in Court

The Meaning of the Witness to Testify

Witness to testify refers to outside parties know about a case shall be the court summons to appear in court on their perception of the case presentation. Than direct presentation of testimony of witnesses in court when the trial in court to submit the written testimony of witnesses is more able to persuade the public, and can make to participate in the trial related personnel to get more direct inner conviction.

The Characteristics of the Witness to Testify

First of all, the witness to appear in court to testify is to know the case of a third person, although the parties also understand the case, but because of the parties to the case has a direct interest relationship, so it cannot be as a witness; Secondly, to testify the witness is not in the form of written testimony, but to testify in court, in the form of oral presentations; Finally, provided the testimony of the witness to appear in court to testify if irreplaceability, because the witness to the related situation of the case was seen, to the smell, so it is important to the witness to testify in court.

The Role of the Witness to Testify

First of all, the witness to testify, the general will understand the time, place, cause, in the case of results, etc., make this clear to the court, this is beneficial to the judiciary comprehensive investigation, laid a solid foundation for the correct processing case; Secondly, the witnesses to provide testimony in court, also provides evidence of judicial authorities don't yet know what clues, which is beneficial to the judiciary further collect evidence; Finally, the witness to testify, the court can be combined with other to collect evidence, evidence to verify whether the phase, is advantageous to the civil lawsuit activity smoothly.

The Comparison of One, the Witness to Testify System

Through the comparative study of foreign related system of the witness to testify, witness testimony system has the following two law systems is advanced place worthy of our learning and reference: first, set up a special witness protection organs, the clear testimony of witnesses shall be protected by the law, and no one may question the witnesses to implement any form of retaliation. Otherwise, will be the necessary compulsory measures, such as imposing a fine or detention if the circumstances are serious, can pursue its revenge the witness crimes, the maximum punishment prescribed is the death penalty. Second, clear the object of witness protection, its scope should include witnesses and their near relatives, the scope of protection should include personal, property
and reputation, and for their protection should throughout the litigation process. Third, for the special witness, the witness protection authority. To take special way of protection, such as through the study of the audio or video of the witness to gather testimony of witnesses.

Our Country Civil Litigation Witnesses Testify in Present Situation and Cause Analysis

Legal System is Not Sound. The witness to testify system in our country some of the laws that are not specific enough, comprehensive, lead to the existence of many shortcomings. Such as the provisions of article 70 of the civil procedure law, its only for the witness to appear in court to testify system made the principle rules, resulting in the judicial practice in the process of the lack of maneuverability, most of the witness can easily escape testify obligations. Although our country the evidence rules, procedures and rules for the witness to appear in court way, testify in charge of payments made the provisions of the supplementary but from the whole, due to the safeguard measures for witness is not enough detailed, comprehensive, and there is a serious imbalance, the witness rights and obligations and legal regulations of forcing the witness to appear in court system comprehensive enough, cause the witness will not be able to actively to perform its obligations to testify.

Of the Judicial Organs Lack of Authority. In the modern country under the rule of law, the authority of the judicial authority is unquestioned. Unless there is a legally justifiable reason, the witness must testify obligations in accordance with the instruction of the court, the court summoned to appear in court against the witness is controversial. If the witness does not appear in court on time to provide testimony, the court is according to the specific situation to take the necessary to enforce or disciplinary measures. But in our country, because the authority of the judicial organ has not been fully established, so cause a lot of the witness is not seriously when the court summons, sometimes even refused to testify for weary psychology.

Legal Publicity and Education. Our country law while testifying is the witness of an obligation, but because of the state, society and so on about the legal obligations of propaganda, and the rural population occupies a large proportion in our country, and the cultural level is not high, the law of the people in the society also occupies certain proportion. A lot of people don't even know how to testify the legal obligation, so, when they have been told to testify, they don't realize that this is an oneself to fulfill obligations, so as to refuse to testify, or to appear in court to provide false evidence, so the effect of the system of witness to testify played is not ideal.

The Lack of the Witness Economic Compensation System. Although the supreme people's court about civil action evidence certain provisions stipulated in article 54: "the witness reasonable expense due to testify, by providing the witness a party first pay, shall be borne by the losing party party". However, if the losing party have no ability to pay, or when the witness the loss of property due to testify, the infringer's property is insufficient to compensate, who will pay the cost of compensation, the provisions of the laws it is not clear, lead to the witness due to fear of their own property losses cannot be compensated accordingly and refused to testify.

The Lack of Security System of the Witnesses and Their Families. Due to a lack of security system, the safety of witnesses and their families in the process of judicial practice, the personal safety of witnesses and its relatives not fully guaranteed by the parties or even black evil forces retaliate against situation happen from time to tome, witnesses worry more, and dare not testify.

The Influence of Interpersonal Relationship. Most people are still living in a society of acquaintances, almost every day to deal with the acquaintances around, lead to very complex relationships in the community, the witnesses tend to consider many factors when they decide whether to testify, for example, whether or not his testimony will cause resentment of relatives and friends, on the adverse impact on their future work and life, and so on. When the witness after serious thinking, and after balance, tend to be based on interests and choose not to testify.

Objectively Lead to Witness the Special Case of Unable to Appear in Court. In the process of civil litigation in our country, often can appear some lead to witness to appear in court to provide testimony of objective facts, for example, the evidence rules referred to in paragraph (1) of article 56 points out the actual situation of each witness and difficulties can't appear in court: "first, who is
elderly or disabled unable to appear in court; second, special post does not leave; third, journey special remote, inaccessible to appear in court; fourth, due to the reason of natural disasters and other force majeure unable to appear in court; fifth, other special cases of unable to appear in court."

But there were not enough provisions specific comprehensive and the lack of strict and standard not testify why censorship, makes some people can easily use the clause to avoid testify obligations.

The Influence of Traditional Culture in Our Country. First of all, our traditional Confucianism is always paying attention to people's ideological and moral education, deep impact on the social consciousness, reconciliation has always been our social widespread principles to choose the life. Second, in the society, some people's minds still exist since ancient times some weary, the fear of litigation. Finally, on the issue of testifying, as a result of the existence of "workman" in life, most people hold don't mind their own business attitude, choose to escape testify obligations.

Improve the System of Civil Litigation the Witnesses to Appear in Court

Establish the Witness System of Forced to Testify. Witness to testify is the witness of our country's law should fulfill a duty, but in the process of the practice of civil litigation in our country, most are not willing to take the initiative to testify, witness in court or providing false testimony, lead to the witnesses to appear in court rate and low, this kind of phenomenon seriously affected our country's civil lawsuit activity smoothly.

As mentioned earlier, many foreign countries not only witness compulsory obligation to testify, but also witness rules of unable to testify the corresponding sanctions, witness to testify in our country, at the same time, draw lessons from foreign advanced legislation and judicial experience, our country should make by amending the civil procedure law or an independent evidence law enforcement measures to clarify and refine the witness to appear in court.

When the witness refuses to testify the request of the parties or the parties due to the objective cause failing to notify the witness to testify, the parties may apply to the court for witnesses to provide testimony, summoned by the court of the witnesses to appear in court; The court can also according to the case of our needs, personally summoned the witnesses to appear in court. For without justified reasons after being twice legally summoned still cannot be a witness to appear in court, can interrogate taking corresponding measures, forcing its testify; To refuse to testify to the serious consequences to the lawsuit activity, by law or judicial interpretation expressly impose a fine on or detain; If the circumstances are particularly bad or consequence is extremely serious, can sin impose a penalty for obstruction of justice, to ensure that civil litigation activities smoothly.

To Strengthen the Construction of Judicial Personnel, Improve the Judiciary Authority.

Relevant judicial personnel to completely change the ideas of "ranking in the past, completely from" inquisitorial "litigation model, improve the understanding of witness to testify the necessity. Through the observation of the trial witnesses demeanor, participate in the trial of the judiciary can get their own inner convinced, so should pay much attention to the witness in court cross-examination. To recognize that the witness to appear in court to testify is in order to assist their investigation, the main body of the witness is not only a duty, and it is the main body of rights. Only in this way, the judiciary to value and respect the witness in the process of civil litigation, the protection of the rights of the witness. At the same time, if the witness cannot according to the court summoned to appear in court to testify, the court can take corresponding to enforce or to its disciplinary measures, in order to improve the authority of the judiciary.

Strengthen the Propaganda and Education of Legal System. Testified in order to make people understand, since as a legal obligation of the citizens, should be positive to perform, otherwise will be affected by the court corresponding force and punishment. So, the state, enterprises, schools and shall regularly carry out relevant propaganda and education of legal system, formed to assist in the assembly of the judiciary case, witness glorious, rejected the shameful atmosphere, increase
 society's understanding of witness to testify and support, make the witness to appear in court to testify the concept of thorough popular feeling.

Perfect the System of Economic Compensation. For the testimony of the witness due to appear in court to provide paid, or loss of property due to testify, should establish the system of economic compensation. Although the supreme people's court about civil action evidence certain provisions stipulated in article 54: "the witness reasonable expense due to testify, by providing the witness a party first pay, shall be borne by the losing party party". But if there is no ability to pay or losing party witness the loss of property due to testify, the infringement behavior person's property is insufficient to compensate for, then the witness of the compensation fees paid by who? Because the witness to appear in court to testify, the trial activities can go smoothly, and improve the efficiency of litigation, so should pay appropriate compensation by the state. Material compensation for witnesses, essentially also have played an important role to witness the spiritual encouragement, at the same time can encourage other citizens in certain cases to consciously fulfill their obligation to testify.

Improve the Guarantee System of the Safety of Witnesses and Their Families. First of all, the protection of witnesses should nip in the bud, strengthen protection, judicial organs, French authorities should clearly know the authority on witness protection duty, and take effective protective measures to avoid the witness after testifying suffered any retaliation. Second, build system of violations shall be investigated for, for the infringement behavior of witnesses and their near relatives, witnesses have the right to request relevant departments shall be investigated for the infringer corresponding legal responsibility. Finally, expand the scope of the protection of witnesses and their families. All in accordance with the law to fulfill its obligations of witnesses to testify and their close relatives should be protected by law.

Establish System Number. Although of give witness to resist the card power could reduce the testimony of witnesses, but compared the trust relationship between the case of real people have a greater value. Reference to the practice of the right number of the country, our country law shall be under the following circumstances: of witnesses have to resist the card power first, spouse and their close relatives of the parties shall enjoy the right of certain rejected certificate; Second, aware of business secrets, especially state secrets, shall be given, of relevant personnel corresponding to resist the card power in order to guarantee the security of state secrets, business secrets; Third, lawyers, doctors, etc as professional relationship and aware of the secret, such as personal privacy, shall enjoy the right of evidence-based.

Establish a Witness to Testify the Flexibility of System. Law witnesses to testify is mainly due to provide testimony in court, participate in the trial of personnel can through to identify the authenticity of testimony, sense motive actually witness mainly through language to describe his knowledge related to the case facts, so as long as the voice of the witness appear in court, his body is not not much obstacle to appear in court. The supreme people's court "about civil action evidence certain rules >," article 56 made clear rules for these workarounds, and put forward: "the license of the people's court, the witness may submit the written testimony or the audiovisual materials or testimony by two-way audio and video transmission means." With the constant progress of science and technology, now has entered the 3 g era, the videophone will become a trend, making this workaround way is more practical and shall stipulate the following situations in our country's legislation can adopt flexible measures: first, the witness is minors; Second, the witness is limited personal freedom; Third, the witnesses in the trial period with severe diseases; Fourth, the witness infirm, disability and disabled; Fifth, the witness due to force majeure such as natural disasters, accidents and unable to appear in court; Sixth, the witness's home or work place away from the venue, and the testimony of the cognizance of the case facts; it won't do to Seventh, unable to appear in court because of other special reasons.

Conclusion

Build system of the witness forced to testify, to strengthen the self-construction of the judicial personnel, improve the judicial authority, to strengthen publicity and education of legal system,
establishing and perfecting the system of economic compensation to improve the witness's security system and their families, and set up the flexibility of the system of witness to testify, believe that through the joint efforts, the witness will testify in a positive way.

References

