A Comparative Study on the Testifying Methods of Civil Procedure Witnesses

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Abstract. With the development of society, there are more and more witnesses using flexible testifying in civil litigation. This paper compares the advantages and disadvantages of traditional testifying methods and flexible testifying methods, and puts forward the view of constructing diversified testifying system.

Introduction

In civil action, the testimony of witnesses is very important.

First, for the parties concerned, witness testimony is an important way for the parties to prove their own views, fulfill the burden of proof, refute the other party's views, and exercise the right to cross-examine.

Second, for the court, witness testimony is an important basis for ascertaining the case, distinguishing right from wrong, correctly handling the case and making a fair judgment according to law. If the witness can honestly state from the grasp of the case to the court, could give the judge decided the case objectively and correctly judge the foundation, on the contrary, it is likely to affect the judge for the understanding of the case, in some cases even can't find out, visible and testimony of witnesses to restore the case facts, discover the truth, correct the referee is of great significance.

Third, with the deepening of the trial mode reform in China, to strengthen the leading role of the parties in the lawsuit, strengthening courtroom cross-examination, strengthening early has been on the agenda of the debate, and the witness can smoothly has be cross-examined about whether can smoothly, about court investigation and court debate whether can smoothly, is the enthusiasm and initiative can effectively play in litigation.

At present, there are two main ways for witnesses to testify in civil litigation: testifying in court and testifying in a flexible way. The former refers to the litigation behavior of the witness who comes to court to provide testimony according to the requirements of the court, state the situation of the case he knows, answer the inquiries of the parties and judges, and reveal the facts of the case. The latter refers to the written testimony or technical testimony provided by the witness under special circumstances (such as remote testimony and covert testimony). In accordance with the legislative spirit of the civil procedure law, the principle of witnesses testifying in court is supplemented by flexible means. In fact, the two ways of testifying have their own advantages and disadvantages, and one cannot completely replace the other.

Advantages and Disadvantages of the Way of Testifying in Court

Advantages of the Way of Testifying in Court

At present, in civil proceedings, witnesses' testimony is based on the principle of appearing in court, with the exception of flexible ways such as providing written testimony. Testifying in court is still the main way of testifying. This is not only conducive to the judge's direct access to evidence, to reflect the spirit of justice and openness, but also to avoid the disadvantages of written trial.
The need for the debate principle requires that the judge's judgment behavior is bound by the result of the parties' debate, and the result of the parties' cross-examination directly affects the judgment result.

**Deficiencies in the Way Witnesses Testify in Court**

- **Higher Litigation Costs.** It requires a certain amount of manpower, material resources, financial resources and time for witnesses to testify in court, especially if the witness is not in the jurisdiction of the court, there will be a high cost of transportation, accommodation, dining, etc., as well as a huge loss of missed work. Although the procedure law stipulates the principle of bearing expenses for witnesses to testify, it is indeed a loss that cannot be ignored for the overall wealth of the society. How to reduce the cost and realize litigation economy should be an important factor to explore the way of witness testifying.

- **The Witness has Security Concerns.** When witnesses testify in court, they often face security pressure. If the testimony goes against a party, the party or its interested parties may hold a grudge, retaliate, or even threaten the personal and property safety of the witness and his or her close relatives. Generally speaking, the witness protection measures stipulated by the law are of post-incident nature, lacking of prevention mechanism and continuity, and without clarifying the responsibility of the judicial organ in the protection of witnesses. Therefore, the traditional way of testifying in court cannot eliminate the concerns of witnesses about safety.

- **Low Litigation Efficiency.** In some cases, witnesses who have promised to testify are unable to appear in court on time due to age and physical condition, travel problems, occupational factors, etc. The delay, expense, and occupation of limited judicial resources result in the mere formality of witness testimony, Its function of verifying other evidence and ascertaining the facts of a case is also greatly weakened, leading to the decline of trial quality and efficiency.

**Advantages and Disadvantages of Flexible Ways of Testifying by Witnesses**

**Advantages of Flexible Testifying Mode of Witnesses**

- **Improve the Efficiency of Litigation, Reduce the Cost of Litigation, and Protect the Safety of Witnesses.** Flexible testifying can be regarded as a convenient measure for witnesses to testify, which can improve the efficiency of litigation, reduce the cost of litigation, and save the time, money, manpower and material input caused by guaranteeing witnesses to testify in court. In particular, it provides a solution to the difficulties caused by the long journey, special work, physical reasons or other objective reasons. In addition, flexible testimony can protect the safety of witnesses to a certain extent and avoid suffering from the harassment of the other party or the outsider.

- **Enhancing Judicial Transparency.** With a few rules of law not hearing a case, the whole trial process, including the witness hidden by digital video transmission system, with the help of a network of popularity and convenience, can make the public better supervision, increase the judicial transparency, guarantee the impartiality of the litigation process and the predictability of the result.

**Shortcomings of Flexible Testifying Methods of Witnesses**

- **It cannot Meet the Requirements of the Principle of Direct Speech.** In the case of covert testimony and remote testimony, the judge will lose the opportunity to directly question the witness, observe his or her own words, and distinguish the truth and false-ness of the testimony, which may also cause the lack of authority and weakened sense of ceremony in the trial. Therefore, how to arrange witnesses to give testimony in a flexible manner without undermining the seriousness of the court is worthy of serious consideration.

- **Lack of Specific Operation Specifications.** At present in the civil litigation law and judicial interpretation and no specific provisions on the flexibility to testify, only if the witness for health reasons or because of the long way, traffic inconvenience, etc. Unable to appear in court, or due to force majeure such as natural disasters and other justifiable reasons not to appear in court, with the
permission of the people's court, can through the written testimony, audio and video transmission technology or audio-visual material and other means to testify. The civil lawsuit law does not specify the applicable conditions and procedures of flexible testimony. In judicial practice, different courts have different attitudes and practices towards flexible testimony, and even cannot carry out covert testimony due to lack of software and hardware. The reason thus affects the judicial credibility, also causes the party and the witness's disturbance.

The Evidentiary Capacity and Evidentiary Power of Testimony are Uncertain. (i) The evidentiary capacity of testimony is uncertain. Due to the limitations of distance, technology and other factors, the court is often unable to verify the true identity of witnesses in a timely and accurate manner. The witness cannot sign all kinds of trial documents after the witness testifies in court, which leads to defects and even tampering of the trial materials. It is impossible to guarantee that the witness testimony is not affected by the outside world, which leads to the lack of objectivity of the testimony, and it is impossible to avoid the witness to attend the trial in advance, which becomes an important restriction factor to reduce the ability of remote testimony.

(ii) Judge whether the testimony of witnesses of the remote to testify and hidden testify recoverable, its technical requirements is very high, can testimony is believed to be based on professional operation personnel, facilities, and so on hardware and software aspects of the strict professional requirements, because our country economic development level vary from region to region, in professional equipment, technology, software, network and so on around the facility equipped with is very difficult to guarantee the court can achieve the same level of evidence. Therefore, it will affect the testimonial power of flexible testimony.

Correctly Handle the Relationship between Testifying in Court and Flexible Testifying

Taking Testifying in Court as the Basic Mode

In the present legislation, testifying in court is the basic position. To facilitate the judge to directly access to evidence, to reflect the spirit of justice, open, and uphold the principle of direct speech. If the witness testifies remotely or covertly, then the effect of accepting the questioning and answering from the judges, the parties and the agents AD litem is not as good as that of testifying in court.

The way of testifying in court should be the basic and preferred way for witnesses to testify. Except under circumstances of force majeure or other circumstances where flexible provision of testimony is permitted by law, the witness shall testify in court in order to appear in court. Otherwise, the witness shall be deemed to have obstructed the civil proceedings.

The Supplementary Form of Testimony Shall be Flexible

For simple cases where the legal relationship between the parties is relatively clear, the facts are relatively clear and the disputes are not big, or the witnesses are unable to appear in court in a different place during the trial, the flexible way of testifying shall be implemented and the proportion of its application shall be appropriately increased.

In the judicial practice of civil litigation in our country, the use of Internet technology and trial practice in-depth integration, the use of electronic technology for witnesses to provide remote testimony platform and covert testimony location, to break through the problem of witnesses to testify in court, has become a new subject of various levels of courts under the new situation of the new era. In recent years, courts all over the country have been keeping up with the trend of Internet technology and adopting various advanced hardware and software facilities to facilitate remote litigation. , witnesses can directly through the WeChat small program to testify remotely. Similarly, covert testimony is sought after for its safety.

Combining Testimony in Court with Flexible Testimony to Meet the Actual Needs of Different Cases

As mentioned above, both testifying in court and testifying in a flexible way have their own advantages and disadvantages, and one of them cannot completely replace the other. Therefore, it is
necessary to rationalize the allocation of witness testifying resources and establish diversified ways of witness testifying. In order to effectively implement this principle, in the pre-trial preparation stage, the presiding judge can determine the specific way for witnesses to testify in court according to the nature of the case, the degree of complexity, the amount of the object of the lawsuit and the specific conditions of the parties and witnesses.

Conclusion

With the rapid development of society and the quickening pace of social life, efficient and convenient protection of the legal rights and interests of litigants has become an important value goal that must be considered in judicial activities. Therefore, in order to give full play to the positive role of flexible testimony, it is necessary to standardize the flexible testimony through legislation and implement it in judicial practice. Judicial practice shows that the use of electronic technology to organize witnesses to testify in court is a development direction of the judicial practice of civil litigation in the future.

References


