Improvement of Flexible Testifying System of Civil Procedure Witnesses under the Background of Deep Integration of Internet Technology

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Abstract. It has become a trend to use information technology to realize witness covert testimony and remote testimony in civil litigation, which is efficient, convenient and obvious. But at the same time, due to the imperfection of relevant systems, the actual application of covert testimony and remote testimony is not standardized, and there are many problems in judicial practice. This paper analyzes the existing problems of flexible testimony and puts forward some ideas to improve the system of flexible testimony.

Introduction

The witness has the irreplaceable function in the lawsuit, our civil lawsuit law prescribes the witness testimony as one of the seven evidences, and prescribes the witness to testify in court as a legal obligation, the intention of the legislator is obvious. However, faced with the chronic problem of low witness appearance rate in civil proceedings in our country, we can do more than sigh and must seek solutions. We should make full use of electronic information technology and Internet technology to establish a diversified way of witness testifying, which is supplemented by the principle of testifying in court and flexible testifying, increase the proportion of testifying witnesses, and strengthen the awareness of testifying witnesses, so as to gradually overcome the problem of low witness testifying rate.

Standardize Remote Testimony

Define the Application Scope of Remote Testimony

As mentioned above, with the permission of the people's court, a witness may submit written testimony or audio-visual materials or give testimony through two-way audio-visual transmission technology. Based on this, combined with the needs of judicial practice, the scope of application of remote testimony can be stipulated as "the witness cannot appear in court with real difficulties" in article 70 of the civil procedure law. For example: unable to appear in court due to infirm health or mobility; The special post is really impossible to leave; If the journey is particularly long, the transportation is inconvenient and it is difficult to appear in court; Unable to appear in court due to natural disasters or other force majeure; Other special circumstances in which he is unable to appear in court.

Specify the Initiation Procedures for Remote Testimony

Upon application, the party applying for the witness to appear in court or the witness himself shall voluntarily apply to the court for remote testimony when the witness has the aforementioned circumstances.

To start the remote to testify, according to the power for the court to collect the testimony of witnesses, meet the difficulties when the witness to appear in court, the court may adopt the mode of remote to testify, according to the power to inform the witness remotely, and to witness the local grass-roots court for judicial assistance, provided by the witness home court manpower and material resources, technology and equipment support.
Improve the Supporting Measures for Remote Testimony

Establish a Professional Remote Testimony Platform to Maintain Judicial Authority. Private network dedicated, establish a special court to testify the remote network, avoid malicious hackers attack, courts at various levels and in accordance with the unified standards to establish specialized remote testify platform, at the same time, improve the digital recording technology, developing software to testify professional remote video transmission, ensure that the witness testifies the remote video or audio two-way real-time lossless transmission, to resolve the existing in the judicial practice of the witness use commercial social software (such as WeChat, QQ, etc.) the technology risk and the judicial ceremony a sense of loss, to ensure that the witness testimony in litigation have the effect of prove the case facts, At the same time, it can also meet the needs of judges, parties and agents AD litem for the inquiry and cross-examination of witnesses, so as to maintain judicial authority and enable the principle of direct speech to be implemented in this flexible way.

Train Specialized Remote Testimony Technicians. Remote to testify to the judiciary staff put forward higher technical requirements, the traditional legal science specialized students in the knowledge reserve is often inadequate, therefore, in the future, the court should be more special admission both law and computer information professional academic background of specialized personnel, or a court officials of existing specialized training business and information technology, master remote testified using professional software and network, to ensure that play a role in the litigation and trial practice, effective arrangements and assist the witness remote, and processed in a timely manner and assist in remote to testify in the process of network failures or other problems, the software and hardware technology Ensure safe and unimpeded transmission of trial data and avoid malicious attacks.

Assign Special Personnel to Supervise and Testify Remotely. In the process of remote testifying, the real identification of witnesses is a big problem, if it is only a remote view of the id card, often easy to create an opportunity for the rogue, more cannot guarantee the authenticity of the testimony.

Moreover, the testimony of witnesses is easily affected by subjective and objective factors and may be inaccurate. Therefore, in judicial practice, witnesses cannot observe the trial process in advance. Therefore, how to effectively supervise and ensure the witnesses not to be interfered by the outside world and not to observe the trial when testifying remotely? Based on the complexity of witnesses’ testimony and the need to supervise the environment of witnesses' testimony, it is necessary to avoid the witnesses from intervening in the case in advance, ensure the smooth proceeding of the lawsuit, and guarantee the evidence ability of remote witnesses' testimony. Its main responsibilities are:

(i) Identification and verification of the identity of witnesses. In the preparation stage of remote testimony, the supervisor of testimony shall check the id card of the witness and other identification materials, and make a clear check with one card and one face (id card, notice of the witness, accurate identification of the witness's face), and send it to the court remotely for the second inspection and keep files.

(ii) The supervisor of testimony shall master the trial process in real time. In the stage of court investigation, video is open to witnesses with the permission of the presiding judge, and witnesses shall give testimony remotely.

(iii) The signing of the trial materials before and after the testimony of the witnesses can be completed under the supervision of the supervisors, who will then electronically transmit the trial court and deliver the paper materials to the presiding judge of the case.

Facilitate Remote Testimony of Witnesses. If a witness is unable to come to the court due to force majeure or other objective reasons, special technical personnel of the court shall, before the trial, install a remote testifying terminal to the work unit or residence of the witness, and provide corresponding technical and legal guidance to facilitate the remote testifying of the witness. At the same time, if a witness testifies remotely, the court of the place where the witness is located can also provide technical support. Special testifying offices and testifying rooms can be set up in each
grass-roots court to ensure the consistency of the remote testifying environment with the trial, reduce the adverse influence of the outside, and facilitate the timely and effective participation of witnesses in the proceedings. To ensure the necessary material conditions for remote testimony. At the same time, we can also visit the witness's home to provide services.

In addition, according to the provisions of the civil procedure law, courts at various levels and can carry out judicial assistance between the future should be to pass legislation to assist witnesses also defined as the way to the court for judicial assistance between, refinement to assist remote to testify and the specific content of the program, the court of the place where clear witness the duties of the case shall be under the jurisdiction of the court to provide judicial assistance, and systematic and normalized.

**Establish a Covert Way of Testifying**

**Necessity of Covert Testimony**

In the judicial practice of civil procedure, it is an indisputable fact that the proportion of witnesses testifying in court is low, which is extremely unfavorable to judge. In particular, if the witness who knows the important facts of the case does not appear in court, the facts of the case may not be ascertained and the parties' legal appeals cannot be supported. Therefore, it is necessary to learn from the system of concealed testimony in the criminal procedure law, to supplement the way of flexible testimony in civil proceedings, and to better solve the problem of witnesses unwilling to appear in court and unable to appear in court due to the aforementioned reasons.

Hidden testify because is to point to in order to avoid the witness to appear in court to testify leaked identity, retaliation from the parties or an outsider, make the witness himself or his relatives suffer bodily injury or property damage, the court when the trial take witness appearance, change the cover of the witness's voice or hidden environment to let the witness in court attached testified through electronic means such as two-way video transmission. Such measures are helpful for witnesses to remove their concerns and give testimony with confidence, thus increasing the rate of witnesses appearing in court and helping the court better ascertain the facts of the case. According to the provisions of article 70 of the law of civil litigation and article 56 of the rules of evidence, if a witness is unable to appear in court and is permitted by the people's court, the witness may submit written testimony or audio-visual materials or give testimony through two-way audio-visual transmission technology. This regulation can be regarded as the legal basis for the practice of covert testimony in civil proceedings. However, the current legislation lacks specific operating rules and unified standards in the scope of application of covert testimony, procedure operation and other aspects. As a result, in judicial practice, various courts have different attitudes and practices towards covert testimony, and even cannot carry out covert testimony due to lack of software and hardware, etc. This system does not play its due role, but affects judicial credibility, and also causes problems for parties and witnesses.

**Clarify the Application of Concealed Testimony in Civil Proceedings**

As mentioned above, according to the provisions of article 56 of the civil litigation evidence, the witness is unable to leave due to his infirm age, limited mobility or special position; If the journey is extremely long, the transportation is inconvenient and it is difficult to appear in court, or if the witness is unable to appear in court due to force majeure such as natural disasters, he or she may give evidence under cover or submit written testimony. With the permission of the people's court, the witness may submit written testimony or audio-visual materials or give testimony through two-way audio-visual transmission technology. However, the judicial interpretation of the article "other special circumstances that cannot be brought to court" is not clear. The author thinks that this flexible clause can be used as the basis for concealing testimony, and the application scope of concealing testimony can be clarified by referring to the relevant provisions of the criminal procedure law. Article 64 of the criminal procedure law stipulates:... If a witness, expert witness or a victim faces danger to the personal safety of himself or his near relatives as a result of giving
testimony in a lawsuit, the people's court, the people's procuratorate or the public security organ shall take one or more of the following protective measures: (2) take measures not to expose his appearance or real voice to testify in court... cars only. Due to the complexity of civil proceedings and the concerns of witnesses in court, the spirit and essence of article 64 of the criminal procedure law can be fully implemented in civil proceedings and applied flexibly.

The case is complicated, the nature of the case is special, and the amount of the object of the case is large;

The number of parties involved is large and the adverse emotions are heavy, which may cause nuisance behavior;

When a witness in civil proceedings thinks that the personal or property safety of himself or his close relatives may be endangered because of his testimony, he may apply to the court to choose to give testimony under cover.

Courts at all levels and of all kinds shall improve the hardware and software facilities for concealed testimony, so as to protect the legitimate rights and interests of witnesses and avoid worries at home.

**Standardize the Initiation Procedure of Concealed Testimony in Civil Proceedings**

Covert Testimony can be Initiated in Two Ways

**Start Upon Application.** First of all, the parties concerned should be able to apply to the court for witnesses to give evidence secretly. Because the witness is the person who knows the facts of the case, the witness testifies truthfully in court, safeguarding the legitimate rights and interests of the parties. Therefore, out of respect for the right of disposal of the party concerned, the party providing the witness should be allowed to decide whether to apply to the court for the witness to testify secretly. Secondly, witnesses themselves can also apply for covert testimony. Witnesses should know best whether they can testify in court. Therefore, it is in line with practical needs to allow witnesses to apply for covert testimony. Of course, in order to avoid witnesses not appearing in court without justified reasons, the court should strictly examine the witnesses who apply for covert testimony.

**Start According to Authority.** If the court considers that a witness needs to give evidence in secret, it may, according to its power, notify the witness to give evidence in secret. Moreover, if a witness's covert testimony is caused by a different place, the court shall also inform the grass-roots court in the place where the witness is located to assist in covert testimony. Moreover, according to the requirements of the principle of convenience of litigation and convenience of testimony, the court assisting covert testimony should be the basic court where the witness is located. In addition, the court can start covert testimony according to its authority. For the testimony of witnesses collected by the court itself, when the witness comes to court and meets the above-mentioned conditions, the court can also take the method of covert testimony according to its authority, notify the witness to testify in secrecy, and make preparations for human, material and technical equipment.

**Improve Supporting Measures for Covert Testimony**

Secret testimony rooms may be set up in courts at all levels. Located next to the civil division of the court, as an ancillary building facility. A special window separates the courtroom from the hidden testimony room. Through this special window, the witness can clearly see the whole picture of the court. At the same time, the hidden testimony room can also play the video screen of the court scene in real time, so that the witness can know the scene when giving testimony. But in court, witnesses can't be seen except by trial judges through video. At the same time, a special channel for witnesses to give evidence in secret shall be set up. Before witnesses give evidence, they shall enter the secret room to effectively guarantee their safety, relieve their worries and increase the proportion of witnesses to give evidence. Of course, the witness cannot enter the secret testimony room in advance, so as not to be affected by psychological hints, affecting the authenticity of their testimony.
Conclusion
In the relationship between testifying in court and flexible testifying, we should take testifying in court as the basic way and flexible testifying as the supplementary way. In the judicial practice of civil litigation in China, the use of Internet technology and trial practice deep integration, the use of electronic technology for witnesses to provide remote testimony platform and covert testimony location, improve the efficiency of litigation, reduce the cost of litigation, convenient for witnesses to participate in the trial process, has become one of the new trial mode reform focus.

References

