

Study On Pre-litigation Identification as an ADR Method

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Abstract China's current law allows the parties to take the pre-litigation identification as a kind of ADR mode to solve civil disputes. Pre-litigation identification is alternative, selective and accurate with the characteristics and mechanism of the ADR. In judicial practice, pre-litigation identification promotes reconciliation, people's mediation and pretrial mediation to realize the alternative dispute resolution, and contribute to the just settlement of the dispute, and to save litigation resources. In reality, pre-litigation identification also exist certain problems and defects, and need further regulation in order to achieve the purpose and the value of the ADR.

Keywords: Forensic science, Pre-litigation identification, ADR, Self identification, Pretrial mediation.

At present, the settlement of dispute involves more and more with the judicial identification activities. Scientific and authoritative method is one of the three core elements of social diverse dispute settlement mechanism. On the one hand, we should establish and perfect the diversified dispute settlement mechanism; on the other hand, we should learn to change the major political, economic and social problems into legal problems (and not the contrary). Especially, what we intend to do at last is that we would change the legal problems into technical problems. Depending on the objective judicial authentication, making use of scientific and technological means, it will be fair, objective and effective to mediate and resolve various disputes.

1 The concept and properties of pre-litigation identification activities

1.1 Related concepts of identification

Some administrations define the judicial authentication clearly as "judicial appraisal refers to that the expert uses science and technology or expertise knowledge to identify and judge specific problems involving the lawsuit case and provide expert opinions for the judging activities." If there is no legal definition, the concepts of identification activity are quite broad, which relates to whether the identification of activities before judicial proceedings are applicable to judicial regulations and have judicial effect. Some scholars believe that, judicial appraisal should be identified in the proceedings, and should also include the identification before proceedings. Identification by a party before proceedings should be entrusted if another party (including the identification in pre-litigation and litigation) has no objections, and can be adopted by the court.

Pre-litigation identification generally refers to situation that the public security and judicial organs have not yet placed the case on file, then the litigant of the case

entrusts appraisal institutions or the investigation organs to identify the special problems in the case; or the people's court has accepted the case, but by the law, the parties early has already entrust the institution for the special cases in the identification before the proceeding. The execution of the pre-litigation, commissioned external body, and pre-litigation identification results play different roles in the proceedings. Also the identification expenses are different. According to the role court plays before the lawsuit, some scholars divide the pretrial identification into three categories: court –dominant, court-leading, and court-promoting models, which center on the relationship between court and the identification activity.

From the client's perspective, pre-litigation identification is "self identification" commissioned by the clients themselves. The expert then makes use of the technology to the detect, judge, and evaluate the problems and disputes that arise in their daily life, providing the scientific

proof for the solvment.

1.2 Substituting property of pre-litigation

The pre-litigation identification has the various characteristics of the alternative dispute resolution (ADR) or the dispute mechanism. ADR refers to the dispute settlement method through the modest dialogue held by the intermediary who has no interests in either parties. First of all, identification before litigation is characterized with the property of substitute, which can substitute the trial of the court. Before the proceedings, if the dispute between the parties is solved before entering the next procedure, this is the substitution effect for court trial. Identification of activity in reality often can not directly settle disputes, in most cases, according to the expert opinion of reconciliation and mediation before litigation, both parties can come to compromise by themselves instead of by the trial.

Secondly, pre litigation identification has selectivity, the parties have the right to choose the way of dispute settlement. The parties involved in the identification have access to the selections: mainly including whether for identification, accreditation bodies to apply for, whether to apply for withdrawal and re identification problems. Objectively they also may have the choice of evidence materials they have occupied. It is common for the court to provide a list of authentication institution that may solve the problem by applying a special identification, and then it is one party that makes a choice of appraisal institution. If the other party does not agree, it can be determined by negotiation or options of drawing by lot. Appraisal law expert and scholars also confirmed this point, agreeing on selection right of the appraisal body prior to the judging. In selecting the authentication institutions and

identification of human and nature to solve the issue, the direct interest cut between the identification appraiser and identification results should be imposed, ensuring the objectivity. Law on the identification of the avoidance system has been implemented for some years, and regulations are also around the identification in abnormal contact with appraisal agencies and personnel and the specification. It is a problem particularly prominent in medical accident identification activities, or medical dispute. How to avoid the identification of favoritism in the identification activities must be considered, not only for the interests of the parties, but also for the objectivity of the identification activities.

Finally, as a quasi-judicial method, the pre-litigation identification means certain legal effect. It formed a kind of the alternative dispute resolution methods. If the pre-litigation identification is reviewed by the court, it will have the force of law. On the one hand, the judicial authentication activities should be a method of judicial or quasi judicial. As mentioned before, a pre-litigation identification activities is still a kind of the judicial authentication activities. Thus, it must be a kind of the quasi judicial methods. On the other hand, pre-litigation identification activities are carried out by both parties entrust or both sides commissioned. The expert opinion formed as a consultation between the two sides to approve or provide the pre-litigation mediation fact basis, so it has certain legal effect in both the formal and the substantive aspects.

In fact, the majority of the court of our consensus recognizes the identification conclusion as evidence in the lawsuit practice. The identification qualification and the testimony confirms the probative force. Also, identification

have the force of law without that circumstances.

2 ADR mode and the value of pretrial identification activities

2.1 Value of the identification activities

When the reform wave sweeps the old judicial expert system, the cause of our judicial expertise is led to a new era. The direction of the reform bring about the thinking of the value of judicial evidence, which is of great significance to the clear identification of the nature of justice and promotion of the improvement of judicial system and the proceedings, and to solution to the difficulties it faces. Judicial activities are an activity of litigation. Its scientific nature makes it different from the general litigation activity; therefore judicial expert evidence has dual attributes, which is scientific and legal.

Judicial fairness is of primary value in judicial expert activities, which aim to symbolize and pursue justice and fairness. Scientific attribute of the judicial decision of the judicial expert activities makes the value of justice connotation different from ordinary litigation activities, and it should also include scientific concept of justice. Scientific justice, procedural justice and entities justice are three levels of the value of judicial justice. They are mutually conflicted and balanced. Fairness in the judiciary means that the different entities who take part in judicial expert activities have equal right to choose in different levels. The judges, the parties and expert have certain mutual restraints on each other in terms of the rights of choice.

Judicial efficiency is the inevitable contents in the judicial value, which is to minimize the cost in time, economy and ethical activities is another pursuit of judicial expert service. Characteristics

and experience of two Schools of different national judicial system tell us that the fairness and efficiency of judicial expert activity are sometimes conflicting. How to ensure the fairness and efficiency of judiciary expert activity is the objective of judiciary activities. The most obvious problems are multi-headed and repeated expert evidence as well as extension of the time limit for lawsuits affecting the efficient identification of the outstanding problems. It should be solved through legislation to regulate the system.

At present, China is undergoing the judicial system reform. The drawbacks of judicial expert system are of the main reasons for the disorder. To solve the real problems fundamentally in the reform of the judicial expert system and management system, it is necessary to construct a new order system in purpose of fairness and efficiency, to protect the neutrality, independence, objectiveness, and science of judicial expert evidence. Scientific value is just the manifestation of reasonable allocation of resources and establishment of nonprofit are the requirement of efficiency of the judicial expert activity.

2.2 ADR model of identification of activities

The common feature of pretrial litigation, outer litigation and by- themselves identification is that the parties or their attorneys are commissioned side of the identification, and the purpose of identification is to specialize the judgment on a case or dispute, coming to an authorized result, which serves a party to claim their rights. When the party can claim his own substantive or procedural right without the action of proceedings, it would accord with ADR features. Usually there are three modes of pre-trial identification. There are several kinds of subjects in judicial expert activities. Fairness in

the judiciary means that the different entities who take part in judicial expert activities have equal right to choose in different levels. The judges, the parties and expert have certain mutual restraints on each other in terms of the rights of choice.

One is the service mode of reconciliation. In practice, there are oral or written agreement of both parties by the themselves, which takes the expert opinion as the basis of dispute settlement, and they carry related identification materials to appraisal institutions for identification jointly or under the witness of unilateral entrusted appraisal. Ultimately on basis of the authentication opinions the doubts are dispelled, the debtor pay off all the debt and they go no further into the judicial procedure. In the appraisal institution the author works, there are also practice cases of reconciliations according to the identification result by the two sides under the supervision of the law firms, the news media and the neighborhood offices and other institutions. This also belongs to the pre- litigation identification service ADR model, which can solve the settlement more quickly and save the labor power of the court.

The second one is mediation model outside the proceedings. Litigation mediation refers to the mediation activity hosted by people's mediation commission, under the supervise of the national laws and regulations, and social morality standard, to persuade and prompt them who have civil disputes for mediation, to forgive each other, aiming for the equal consultation, reaching an agreement voluntarily, eliminating disputes. "People's Mediation Law" of the people's Republic of China stipulates the twentieth " they can invite the personnel or staff with specialized knowledge, specific experience or relevant social organizations to participate in the

mediation", which standardizes and safeguards the approach of promoting people's mediation through the co-work of authentication institutions, the person with special knowledge, which also symbolizes the positive effects of the pre-trial litigation in the ADR model the identification. The exercise of the mediation outside the proceedings makes many ordinary civil disputes solved more quickly, without waiting for the proceedings. At the same time, it also puts new requirement for the related agencies, such as the method for the mediation, or whether it will make later disputes among them The third one is the pre-litigation mediation mode service. It refers to the lawsuit mediation before proceedings by the court judges or the jury or the mediator or them coordinately. Supreme People's Court promulgated the "several problems about civil mediation work of the people's Court of", of which the third term says People's court may invite the specialized knowledge to assist the mediation work. The court mediation should be followed in accordance with the facts, distinguishing right from wrong principle. The facts concluded by court in civil cases mediation may become the proof to the parties involved in the mediation and may go into the judicial authentication procedure, which constitutes the pretrial judicial mediation ADR mode service. Always, those facts are more convincing in the procedures.

2.3 Active ADR value

2.3.1 Conducive to the realization of justice in resolving the dispute

Justice connotation is different from ordinary litigation activities, instead it should include science and concept of justice. Scientific justice, procedural justice and entity justice are three levels of the value of justice, which have mutual relationship between the conflict and the balance. How to handle the three relations is conducive to the identification

of judicial reform objectives and direction.

Through the pre-litigation mediation or settlement of the cases, a compromise is achieved, saving the proceedings. It can better embody the justice of procedure and substance. Mediation is more in line with the "essence of justice", emphasizing active participation of the parties in the mediation, through voluntary negotiation of the parties rather than judge adjudicates according to law to settle the dispute. Litigation process is very clear, easy to understand and accept to the parties. the pre-trial expert opinions issued by institutions can also reduce lawsuit conflicts, because only the parties themselves are clearly aware of dispute truth, they can choose the most suitable measures to solve the disputes beneficiary to their own interests. Therefore, the processing results of their voluntary choice should be said to be not only in accordance with their best interests demand, but also the closest to the pursuit of substantive justice.

The priority of pre-litigation Identification is to the pursue the justice, which is the inherent requirement of judicial authentication activities, which not only reflects that the judicial identification activities in essence, is the pursuit of objective justice and procedure, also that it is the scientific requirements of the identification research. Identification of judicial activity is both scientific and legal action, whose concept also can be divided into the two levels: the science and the law. The identification justice pursue should include scientific justice, procedural justice and substantive justice. The core of procedure justice in judicial expertise is service judge, or justice to the judge, which is in fact the service on the substantive justice. In this goal under the guidance of the implementation, the specific legislation of system identification

should be made clear in direction, namely justice. Therefore, pretrial identification takes the objectivity and impartiality as the standard, helping solve legal dispute reasonably as the goal, pursuing substantive justice as the result. The premise of the pursuit for substantive justice is perfect procedural justice, according with the requirement of procedure justice. Identification shall be subject to the general principles and values of judicial authentication. As we know, the pursuit of justice includes three aspects: scientific, procedural and substantive justice, which correspond to the facts: the scientific facts, legal facts and the objective facts. There are conflicts in value among them, the solution of which is find a balance among the three, to maintain the scientific and procedural justice value, at the same time to seek truth and justice to resolve disputes, reduce and weaken the confrontation between the parties, to achieve reasonable and lawful reconciliation and mediation, conducive to social harmony and stability. In a word, the justice is always in the first place in the proceeding or before the proceedings.

2.3.2 Saving the lawsuit resources

Depending on the right of the disposition and the mediation, diversified dispute resolution pattern has more important significance, which is called the more radical new adversary system. the pre-litigation identification emphasizes the importance of friendly negotiation and compromise between the parties and promotes mutual understanding and friendly cooperation, although sometimes it is not easy.

The contradiction between limited resource and some countries and regions "litigation explosion" is one of the origins of ADR research. Reasonable distribution of litigation resources requires that the cases can be bypassed into the proceedings. The pre-trial identification can provide

the scientific proof for the settlement. When pretrial judicial authentication activities pursue judicial justice and efficiency, it obtains effective justice, which is the target of the activities, and also is the direction of the reform of the system.

For example, "the Huangjing death case" in 2003 was identified many times until 2006. The result and the process arouses a lot of doubts among the public, including whether there is a need to identify for many times, whether the identification result provided are convincing when there are other controversial issues.

3 Negative facets of the ADR model

The identification efficiency is helpful to realize the justice of identification. The value of efficiency is symbolized in that pretrial judicial expertise can resolve disputes not only for the identification of justice, but also save national judicial resources. Only in a certain period of time effective identification activities is finished, can rights and interests of the parties be safeguarded legitimately. If it lasts a long time, it will consume a lot of social resources. In order to make more scientific and effective identification, technological means are increasingly adopted in the judicial authentication. To pursue the efficiency and the justice are two essentiality of the identification activity. To establish a balance between the two in the system, on priority of the justice, there should be efficiency in identification activities. If the identification activity is exercised on the just and justice, it is also more in line with the principle of efficiency, which is the inevitable direction of scientific, rational development of identification activities. Identification and pre-litigation mediation before proceedings are more in line with the requirements of effective action,

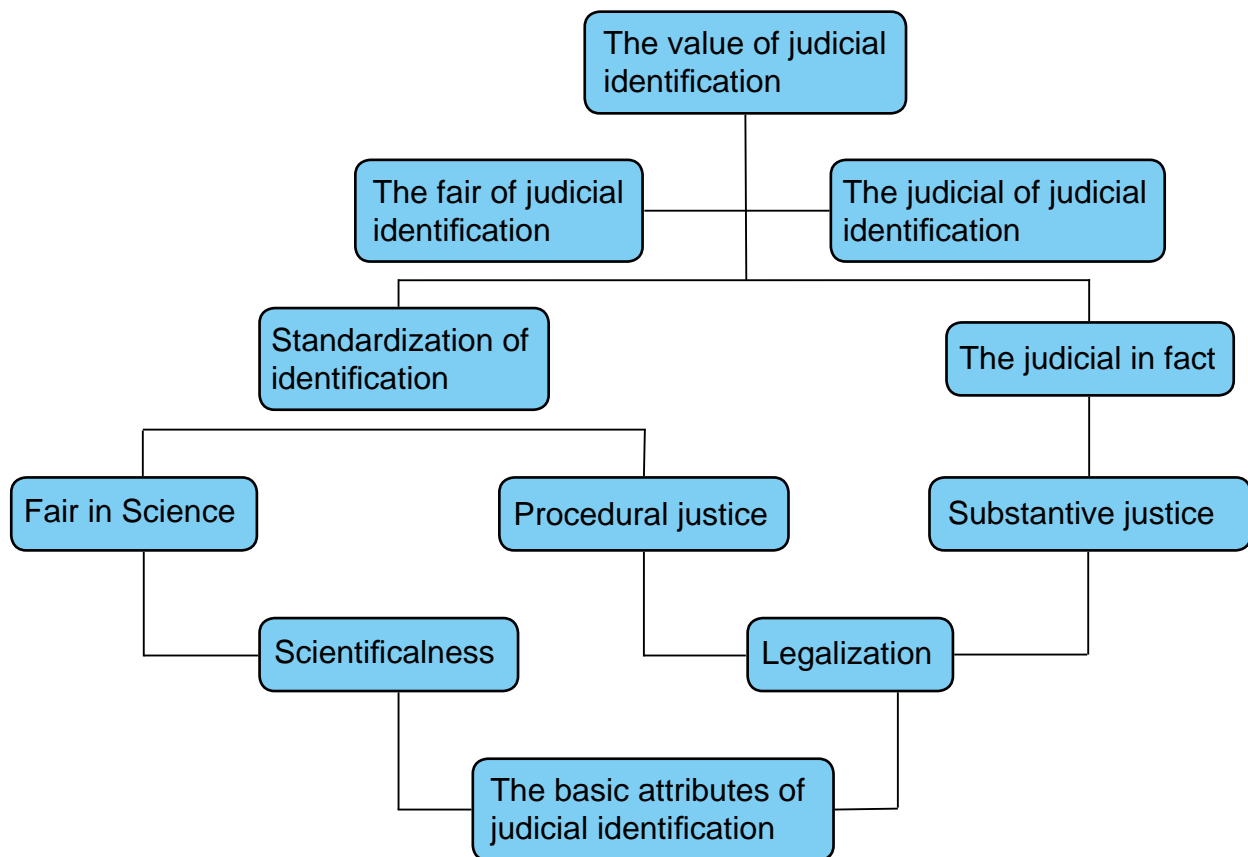


Fig.1. Value of identification relationship chart

and have the characteristics of being simple, efficient, economic, and can reduce the burdens of parties, but also can save the judicial resources.

3.1 Defects and disputes settlement mechanism of pretrial identification activities

The defects and problems of pre-litigation identification activities the reliability of expert opinion. Some scholars believe that in the pre-litigation identification and self identification activities, the experts of the identification sometimes make the partial appraisal conclusion. for economic benefits to the client's request. Although this view is not the statistical verification, but at least it is represented by some parties' concerns and doubts about the pre-trial expert opinion reliability. The reason usually includes two aspects: first, one party, for personal interests, intentionally provide incomplete

identification materials. On the other, the identification is practiced under the influence of the clients' requirement, giving a subjective result maybe. The parties in order to protect their own rights, put forward the requirements of identification, and its sidedness exists. Factors affecting the expert opinions exist in many aspects, including two aspects: the objectivity of the materials submitted and the relationship of the appraiser and the clients. When there are some relationships between them, it is normal and lawful for the appraiser to avoid the identification and also the detailed regulations should be made and clarified in this aspect so as to make sure every identification results are objective and effective. What is true in many countries is that it still lacks the supervision to this invisible process. Maybe sometimes, supervision of related agencies is

necessary in this process.

3.2 The existence of risk of duplicate identification

From the objective point of view, in the judicial practice, the parties often commission the authoritative agency for the pre-litigation identification as the proof for the personal interest. However, not all the identification results can be the evidence. In reality, it may not be accepted and recognized by both parties, even by some expert due to various reasons. Even sometimes, it may aggravate the dispute between parties. So not all the pre-litigation identification can go to the way of ADR. On the contrary, a part of the dispute into the procedure involves special problems caused repeated expertise identification, which is not only a waste of litigation and identification resources, but also makes the identification for two

times. It arouses us to think about about questions such as whether the duplicate identification should be avoided, or applicable supplementary identification or repetitive identification procedures should be made. When people talk about these problems, they would remind immediately that who can decide this process, that is whether to identify again or not. The regulation about this has still the space for discussion. In the future, the more precise and exact rules should be made towards this so that there will be little or no waste of the human power for the process and identification.

The multi-headed and the repeated Expert evidence result to lawsuit resources waste , affecting lawsuit efficiency. At the same time, it brings the waning of the authority of the expert evidence and the disorder of its operation. However, in certain case, repeated expert evidence also has its existence significance and value. The attitude we must take is to limit the operating conditions leading to repeated expert evidence. Based on the discussion of the advantages and disadvantages, this article proposes some operating conditions and the improving methods. With the increasing reform of Expert Evidence system in our country, this paper provides the practical and the theoretical support for this solution to this problem.

3.3 No binding of effect of the pre-litigation

Based on the identification before litigation, parties reach a verbal or written agreement. Some are achieved under the guidance and witness of the law firms, government agencies or relatives. To resolve disputes through settlement way based on expert opinion is one of values of the identification of ADR. But in such mediations, there are no constraints and no law to refer to. If the parties do not recognized the authentication

opinions, they still can turn to proceedings. At the same time, the special problems on the identification of the entrusted matters. It somehow complex in practice. Sometimes one of the parties has false confession, fluky psychology, and intentionally delays time for identification, so a part of such cases is doomed to be unable to solve the case successfully or quickly. In many areas, there are a lot of the cases waiting to be solved and judged for those reasons. It may make us consider how this can be resolved. It always depends on the voluntary cooperation of the parties. If there are some stipulations on this, it can be more effective. Of course people's awareness should be improved.

3.4 Touchstone of false evidence

Today, many have dropped the social good faith and false action is not to be ignored in the current civil procedure. False litigation can obtain illegal interests or the illegal purpose, which is one of the causes of false litigation and false evidence. On the pre-litigation identification, behavior can bring great benefits by forging false evidence with only a little cost, such as the economic contract, IOU(receipt for a loan), wills. and this kind of evidence may be identified as the genuine by the identification expert before litigation. Behavior entrust identification by pre-litigation identification way. If it is lucky enough for them to get the desired demand of expert opinion, they may enter the proceedings for malicious litigation. Even not through identification, such people usually will not be punished. Without relevant regulations, identification in a way could become a hotbed of false evidence touchstone and malicious litigation. Therefore, what should be done is worthy of out thinking. Perhaps, the public education of law and rules of the identification can make people know more about the roles of identification it should

play. The improvement of people's awareness of the law is constructive to the implementation of the identification in daily reconciliation work and in judging process. Moreover, when people always have the evil access to the process, the society will go in chaos. So more should be done in this aspect.

3.5 Causing problems of material damage in identification

When people know that the identification results can lead the lost of their interests. There is a risk that they may try to change or damage the identification materials. In pre-litigation identification process, the commissioners may utilize the technology to forge or destruct samples, so that the other party can not be identified in litigation. Because the identification before litigation, the principal knows the appraisal conclusion would be to their disadvantage. When entering the proceedings in the other proposed identification, there will be no identification of material or unable to be identified. The identification of material caused by technical reasons cannot make a two identification, which is widespread existence in forensic, trace evidence, document identification etc.. It is difficult for this to be solved because the proof should be provided by them, while without the genuine proof, the identification can not be carried out and with false proof, the result should not be adopted. It is a paradox. At present, what the institution tries to do is to distinguish the genuine ones and tries to distill as more evidence as possible.

4 The dispute settlement mechanism of identification before litigation

4.1. Pre-litigation identification startup conditions

The Supreme People's court

"several regulations about the civil action evidence" the twenty-eighth stipulation: "to the appraisal conclusion by one party entrusting the relevant departments to make, the other party has evidence to refute and apply for re-identification, the people's court shall permit." Our current law does not prohibit parties to hire appraisal main body, and only rules in what circumstances it shall appoint or employ identification subject, and stipulates that all the identification for proceeding services in the areas of litigation are judicial identification. So do not prohibit parties in the prosecution for pre-trial identification. But, that does not mean that the identification cannot set the start condition before litigation. From the procedure, the pretrial identification as the principal body shall review the qualification and ability of responsibility, from the substantive review perspective, pre-litigation identification should also set different scope and standards according to the identification requirements. For example, in order to prevent the client from the copy forgery, handwriting identification may request that the handed samples must be original ones. No matter which party initiated the appraisal process, whether it is the way of identification, and the appraisal conclusion is impartiality, objectivity and admissibility, it has no inevitable link among them. Therefore, we can see that the before the proceedings, not only the appraisal agencies, but also the law department, should set up the startup mechanism, ensuring the just and objective start of the proceeding process.

4.2 Improving the withdrawal system

The NPC Standing Committee "on judicial expertise management decision" provisions "stipules that appraiser should avoid in accordance with the legal provisions. If there are

following circumstances, they should choose to avoid. (1) authenticator is a party to the case, or a close relative of the party; (2) identification of the close relatives have an interest in the case; (3) the identification of people served as the case of the witnesses, the defender, agent. (4) the other may affect the accurate identification. The appraiser involved in pre-litigation identification into the proceedings may belong to the circumstance that "possibly influence the accurate identification of situations" and apply for the avoidance system. But at present, there is no exact regulation about the relationship between the appraiser and the clients. Of course, accordingly, there is no provision about the avoidance system. When to avoid and how to avoid are quite obscured. For example, there are cases that the appraiser, judge and the client are all relatives. It is easy for them to make a connection of the false judgment, for there are no exact rules and punishment for such behavior. It will be waiting for more sophisticated improvement.

4.3. The investigation system establishment of pretrial identification

Different from the legal liability of false evidence, it lacks supervision and accountability for those producing and providing false evidence before the lawsuit. On the other hand, the parties choose to destroy evidence when aware of the disadvantageous proof, which is a difficult situation to the identification before litigation. It is not illegal and incapable of being solved at present. If we do not regulate, pre-litigation identification will be a double-edged sword. On one hand, it contributes to the implementation of alternative dispute resolution, on the other hand it has become false litigation and twist. At present, it is not through the judicial authentication institutions to conjure up methods

to solve this problem, but through the system of report, demanding the foundation of identification mechanism in the pre-litigation by the government and law department. In Identification process, if the false evidence is found, identification evidence shall be submitted to the judicial administration organs for the record. When required by the judicial administrative organs to the court for the evidence preservation, responsibility of the parties should be called to account. What is present today is that many false and forged materials are discarded by the identification institutions, no further steps are taken because there are no rules for this behaviors and no department can exercise law tools to curb this phenomenon.

4.4 strengthening pre-litigation identification industry regulation

An important factor to improve the pretrial judicial identification dispute resolution ability is to improve the reliability and credibility of pre-litigation identification. To avoid the partial judgment against the science and facts due to the close relationship between identification institution or the appraiser and the clients for the personal interests. Judicial and administrative industry should adopt the means of self-government in combination. Trust management mechanism should be built up through self-regulation to establish the identification trust, which is to a certain extent constraint on the appraiser in "human favor" "material identification", such as Nanjing forensic association, making each appraiser a credit file, and hook with the identification qualification, urging people to rigorously obey appraisal credit style for the service in dispute resolution. When the mechanism is improved and strengthened, the more objective and effective results can be achieved.

4.5 Regulating rights to choose

of judicial identification subjects

There are many kinds of participants in the identification. The fairness of identification for different subjects involved in judicial authentication activities means equal rights to choose in different degrees, and the choosing rights of judges, the parties and the identifiers are restrained by each other. The choosing rights of these different subjects include: choose to apply for judicial authentication, select a judicial authentication institution, adopt the identification results or not, choose what scientific method, demand judicial authenticators to appear in court to be cross-examined and selection of part-time job, and so on. Various subjects involved in the identification work mainly include the party, the judicial authority, the identifier and the identification institution.

They respectively have different freedom choice in identification process, which can be reflected in the start-up phase of identification. Also there exist various choices in the process of scientific operation and process of conclusion formation in the identification, even in cross-examining, adopting, applying and excluding the identification results, there are still the free rights to choose. Another important embodiment of rights of litigant in the identification of activities is the free choice of identification institution, but the options in this area should be limited.

The rights of judicial personnel in the identification activities include the right for choosing institutions, and approve of the expert opinions or not. The judge is in fact the referee during the litigation and identification, so he has absolute rights and determining force in the selection and identification of opinions. The judicial identifiers have the rights to choose the methods for identification, because identifiers, as

technical experts, master specialized knowledge, and have their own experience and skills in the use of the technique to solve the identification problem. At the same time, for the similar authentication case commissioned, there may be several ways to test different possible results, which may require the choice, that is, in the inspection process, appraisal may be faced with a variety of ways and has to select one or several from to solve special problems. Some experts, due to various reasons, have part-time jobs in other institutions. There is already related part-time law that has given a clear definition. A judge may not work as the expert or engaged in the identification activities in two or more than two appraisal institutions at the same time. China's "general principles of judicial identification procedures" have clearly defined it clearly. This provision is conducive to standardizing the market order of identification, clarifying duties of the identification institutions and identification staff, and ensuring the vocational responsibilities of identification personnel.

5 Conclusion

Pre-litigation identification is alternative, selective and accurate with the characteristics and mechanism of the ADR. In judicial practice, pre-litigation identification promotes reconciliation, people's mediation and pretrial mediation to realize the alternative dispute resolution, and contribute to the just settlement of the dispute, and to save litigation resources. The construction of judicial identification law is an important goal of the construction of appraisal system, also is the important link of the course of law in our country. The judicial appraisal system in our country should be in our country the old judicial identification characteristics and cultural basis,

combined with the modern concept of the rule of law, taking the justice and efficiency value goal, establish a scientific and perfect the judicial identification system. China's legislation of judicial expertise should be combined with China's relevant legal system modification chance, in the gradual perfection of the existing law on the basis of building a unified, complete judicial identification of department law.

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