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Pattern Exploration and Construction Process of the System of Judicial Authentication Aid in China

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Abstract Judicial authentication assistance is mainly to maintain the legitimate rights and interests of the vulnerable groups by helping them to solve the problems when they cannot afford the appraisal charge to enter the proceedings or when they have difficulties in proofing in the lawsuit. The system of judicial authentication aid can effectively protect the judicial authentication equality of the eligible recipients in the judicial process and can secure judicial justice and the implementation of social equity and justice. We have not formulated the national unified judicial authentication legal aid measures in our country at present, but many provinces, cities and counties have developed provisions to specify judicial authentication assistance norms. However, the makers of the local specifications are various and the contents are different, the patterns of judicial authentication aid are not clear, and the programs of judicial authentication aid are still worth trying and exploring. This paper will make an analysis of the two aspects: the choice of a pattern and the construction of a program.

Keywords: Forensic science, Judicial authentication, Legal aid, Pattern, Program.

1 The present situation of judicial authentication aid in China

The system of judicial authentication is an important part of the lawsuit system and the system of judicial authentication aid is also an important part of legal aid system. Legal aid system, also called legal aid, is a kind of judicial relief system generally used many countries in the world. Specifically speaking, it is a legal security system provided

by the country in each link and each level of the implementation of the legal system to the disadvantageous of a society who cannot typically use legal relief means to maintain their basic social rights because of economic hardship and other factors through breaking charge. As a state act to implement social justice and judicial justice and to maintain basic rights of the citizens, it plays a very important role in the legal system of a country. Judicial authentication assistance system, also called

judicial authentication aid system, its meaning is that to secure the practical implementation of all rights given by law to the citizens in real life in the process of litigation activities, the country provides measures to avoid, reduce charge for the parties concerned who need judicial authentication proof to protect us from illegal infringement but cannot afford the appraisal charge to secure their legitimate rights and interests and also to maintain judicial justice. China enacted "The Legal

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Aid Ordinance" in 2003, which didn't make it clear that judicial authentication aid is included in it. At present, the legal aid obligations are mainly undertaken by the legal aid centers at all levels. The participants mainly includes lawyers, notaries and grass-roots legal services staff. They provide legal services that can break the corresponding law service fee for the parties concerned who have economic difficulties and cannot afford legal service fees or those who are involved in special cases by using their own legal professional knowledge. In our country, there are not clear requirements that the judicial authentication institutions and the judicial appraisers should bear the corresponding legal aid obligations.

In January 1997, the department of justice legal aid center was set up. Then, China's legal aid foundation approved by the state council was set up. On July 16, 2003, the state council published "Legal Aid Ordinance", which was to be implemented from September 1, 2003. "Legal Aid Ordinance" makes a comprehensive and specific provisions for the basic problems such as the nature, task, organization, scope, program, implementation and the legal responsibility of the legal aid in our country. Its implementation marked that the legal aid work in our country entered a new stage of legalization and standardization and it provided the necessary security of laws and regulations for the further promotion and specifications of the legal aid work. It played an important role in ensuring the citizens who had economic difficulties to obtain the necessary legal services and in promoting social fairness and justice

and the construction of a harmonious socialist society. On February 21, 2012, the justice department ministerial meetings reviewed "Procedures for the Legal Aid Cases Handled by Rules", which was to implemented from July 1, 2012. the department of justice put forward that efforts should be taken to deal with over millions of legal aid cases throughout the year.

We have not formulated the national unified judicial authentication legal aid measures in our country at present. So far, judicial authentication aid hasn't hit as a headline and it took time and efforts to find in "The Central Subsidies to Local Legal Aid Case Special Fund Management Interim Measures" and files such as the judicial appraisal aid rules of some provinces, cities and counties. Since July 21, 2006, when the Justice Department of Sichuan Province published the more systematic "Interim Measures for Judicial Authentication Assistance in Sichuan Province", many provinces, cities and counties have formulated provisions to standardize judicial identification aid. Most of the provisions are from the local judicial administrative department, a few from the courts and the commodity price departments. Among those provisions, some systematically and clearly indicate the problems referring to the purpose of the judicial authentication relief, the scope and conditions of judicial authentication aid object, operating procedures, the rights and responsibilities of the authentication institutions and the appraisers that undertake the obligation to help. However, some of the local provisions are difficult and others are simple.

Besides, some of the problems are not paid full attention to.

Take Jiangsu Province for example, Nanjing City Judicial Bureau issued "Opinions about Judicial Authentication Assistance Work" which indicated that judicial authentication aid is included in legal aid since June 2007. Nanjing Province has determined the scope of judicial authentication assistance, which is the forensic clinical identification, forensic pathology identification, forensic psychiatric assessment, forensic toxicology evaluation, paternity test, documents identified, trace identification etc. of the recipients of legal aid cases approved by the legal aid centers of the two levels of the municipals, districts (counties). In the aid process, the legal aid center uniformly accept and approve them first and then the management office of the judicial authentication assigned relevant judicial authentication institutions to take turns to deal with the judicial appraisal aid issues. In March 2012, the Kunshan City Court and Kunshan City Price Bureau assembled "The Measures for the Implementation of the Judicial Identification of Legal Aid" on the basis of coordination and communication of many sides. It provided free price verification aid for the parties concerned who cannot afford the appraisal charge because of economic difficulties. The "Measures for the Implementation" had a total of seven items. From the aspects such as the connotation of the judicial identification of legal aid, the applicable objects, the examination and approval procedures, matters that should be avoided, it indicated specific operation scheme of judicial

identification of legal aid, severed the responsibilities that shall be investigated for. In 2012, the judicial identification of legal aid was adopted in the project plans promoting the innovation in social management of the provincial courts by Jiangsu provincial high court.

2 Pattern exploration of the system of judicial authentication aid

The pattern selection of the system of judicial authentication legal aid is crucial, which determines whether the system can be established and carried out smoothly in the judicial practice in our country. The patterns of legal aid can be roughly divided into two kinds: society-dominant pattern and state-welfare pattern.

2.1 Society-dominant pattern

Society-dominant pattern of legal aid can be seen in Anglo-American law system most of the time. In this mode, social groups, the lawyer organizations, law offices and the lawyers themselves are dominant in legal aid. They are responsible for the specific implementation of legal aid. The country plays a secondary or supporting role in the whole mechanism. It only guides and specifies social organizations and personal legal aid in such two aspects as Policy guidance and legislation. Case guidance is not included.

2.2 State-welfare pattern

The representative countries of state-welfare pattern are Canada and Australia and some European countries. The country has the responsibility to ensure every citizen to resort to the law and to seek the

judicial relief and to get the fair trial rights. The country should provide necessary legal assistance for the citizens who are in poor economic conditions or adverse situations. Legal aid is mainly state or government behaviors and it gradually begins to develop towards social direction. State-welfare pattern of legal aid makes the country dominant in legal aid system, in which legal aid matters are to be dealt with by specialized agencies set up by the country. The participants of the main body of society-dominant pattern are only in a subordinate position.

We lack developed social assistance organizations in our country at present, therefore it is not suitable for society-dominant pattern to set up the system of judicial authentication legal aid. The characteristics of state-welfare pattern are their universality and sociability. It enables most of the people to enjoy legal aid services but its disadvantage is obvious, which is that the state financial burden is heavy. Therefore, the author thinks that We should explore a legal aid pattern that conforms to our national conditions. Such kind of pattern should give priority to state-welfare pattern and take society-dominant pattern as a supplement.

3 Construction process of the system of judicial authentication aid

3.1 The object of judicial authentication aid

Judicial authentication aid ensures the right of vulnerable groups to appeal, so the qualifications of the object of judicial authentication aid must be limited. What kind

of group should be given aid to is the primary issue of the system of judicial authentication aid. What is "vulnerable groups"? Vulnerable groups, a new term of political economy, refers to those people who obtain social wealth less and more difficult in the social production and living and therefore are in poorer condition because of their relatively weak strength and power of the group. Vulnerable groups are defined according to the social status, living conditions, physical characteristics and physical state of the people. It in name is a virtual community. It is generally referred to as the people who have difficulties in living, or people whose abilities are not enough, or people who are marginalized and scattered around the society.

3.2 The process of the system of judicial authentication aid

3.2.1 Application for judicial authentication aid

The parties concerned who are eligible for judicial authentication aid apply to the judicial administrative department that has jurisdiction. It should be a written application and the the application form should be filled out. At the same time, the following materials should be submitted: 1) ID card, residential certificate or temporary residence permit of the applicant. 2) Documents of the applicant's economic condition issued by the street agency, the township people's government and the civil affairs department at or above the county level that are in the place of the applicant's residency or habitual residence. 3) The case materials related to appraisal.

When the applicant has no capacity for civil conduct or limited

capacity for civil conduct, his or her guardian or legal representative can apply instead. At the same time, the proof of identity and the agency agreement of the guardian or legal representative should be submitted either.

3.2.2 Review of judicial authentication aid

The judicial administrative department should review the application submitted by the applicant. Ways of the review include examination as to substance and a written review. In order to save the judicial resources and improve the efficiency of lawsuit, the written review is mainly used. Make sure that the economic condition of the applicant cannot afford the appraisal charge. The applications submitted by the eligible applicants are determined to accepted and dealt with. The applicants should be informed of the right to the administrative reconsideration at the same time.

3.2.3 Implementation of judicial authentication aid

If the judicial administrative department determined to offer aid, the court and Judicial authentication institutions where the applicant and case exist. If the case is directly entrusted by the recipients, the recipients and the authentication institution will sign a judicial authentication assistance agreement. If the case is entrusted by the court, the recipients, the court and the authentication institution will sign a judicial authentication assistance agreement, which indicates the rights and obligations of the three sides and the specific items of the assistance. After the assistance agreement is signed, the recipients' appraisal

charge can be delayed. After the case is over, the appraisal charge is paid by the losing party. If the losing party is the recipient, the appraisal charge can be reduced or freed according to specific situation. If both parties bear responsibilities, the appraisal charge is shared by both. If the recipient still have difficulties, the appraisal charge can be reduced or freed.

3.3 Security of judicial authentication aid

3.3.1 The government grant

The source of the funds of judicial authentication aid is mainly the government grant at present. The government should include the special funds of judicial authentication aid in the annual government budget. The judicial administrative departments at all levels should control the spending.

3.3.2 The fund of judicial authentication aid

At present, the grant of Chinese government given to legal aid is far from sufficient to meet the demand of the assistance in the judicial practice. Besides waiting for the rise of the government grant year after year, other sustainable Sources of aid should be developed.

The country should mobilize all social resources, raise funds variously, establish judicial authentication aid funds. The funds should be operated by special funds operating companies to ensure the benign development of the fund. The country should take effective measures to supervise the operating of the foundation.

3.3.3 Implementation of tax preferential policies

In the aspect of security of the system of judicial identification aid, it is necessary to take tax preferential treatment measures. The social

judicial authentication institutions of our country are self-sustaining on the fiscal. Accepting the entrust of aid identification is bound to increase the financial burden, so we can provide paid services or income for the society to support the daily operations. We can implement preferential measures such as the appropriate tax breaks to the authentication institutions that accept the entrust of the aid identification.

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