

The plight and outlet of judicial technical assistant personnel in the Chinese judge post system reform

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ABSTRACT In the process of post system reform by Chinese people's court, technical staff of the court is regarded as the judicial auxiliary personnel, whose judicial duty is connected with the previous reforms of judicial technology in our country. The current situation is, although in some cases, the judge will consult the technical personnel on the court, usually the technical staff of the court system is usually taken as auxiliary personnel, and their professionalism and particularity has not been taken seriously and treated differently. In this process of the post system reform, if the court system of introducing extraterritorial judicial investigation officer is adopted, combined with the experience in China's current practice in intellectual property cases, it will help technical personnel of the court to gain new position and promotion path, so as to make them play more efficient and important roles in the trial work.

KEY WORDS technical assistant personnel, judge post system; judicial technology, technical investigation officer, forensic science

With the continuous reform of the judicial system in China, the specific measures and schemes of the judges' post system have been introduced continuously, and the classification and management of the personnel of the court system have been gradually detailed. The current post system reform situation and existing pre-pilot experience need comprehensive investigation of court staff, and fully mobilization of all personnel, especially the judicial working enthusiasm of the judicial support staff, if it is ignored and hasty handled, it is likely to leave scars on reform. At present, in our country at all levels of the court system, there are a number of special staff, and they have professional knowledge, and can provide technical advice for the trial, but in the current round of reform, they are covered by the surging wave of general reform. Their speciality and particularity are hardly mentioned in the reform of the special division in Posts. There are differences in function and orientation between these people and the general judicial support staff, and we can call them judicial technical support staff.

1. JUDICIAL TECHNICAL ASSISTANT INSTITUTIONS AND PERSONNEL

1.1 China's judicial technical assistant institutions

In 2006 the Chinese Supreme People's Court China required higher people's court, intermediate people's court and local court to set up independent judicial technical assistance agencies to provide scientific and technical support for the court trial and execution work. This is an important judicial reform measure made by the Supreme Court striving for the reform and perfection of judicial appraisal management system, adjustment and strengthening of the judicial technology to assist the work of the people's court, and guaranteeing and assuring the trial work and the implementation smoothly. The judicial assistant department of the court system established clear responsibilities [1]: (1) to provide technical advice and technical audit services for trial work of the court and the lower people's court; (2) to be responsible for the common handling of entrusting identification, assessment, auditing, auction work, strict implementation of entrusting work procedures and regulations; (3) to responsible for the execution of technical supervision, guidance and confirmation of the death; (4) to be responsible for judicial technology counseling research and technical training; (5) to be responsible for the supervision and guidance of the lower people's Court on judicial technical assistance; (6) to determine the administrator or its member of a bankruptcy case. Seen from the original purpose of setting the legal provisions and judicial

institutions, technical assistance work is performed for the extension of the trial, and execution of service, and the high quality judicial and technical personnel should assist the judge to differentiate the true from the false, and contribute to the formation of the facts of the case and the judge's free evaluation.

1.2 Judicial practice of judicial technical personnel and court technical investigation officers in China

In 2014, China's technical investigation officer system was established at the level of judicial interpretation, which was mainly used in court cases of intellectual property cases. "Technical investigation" is not only used in intellectual property cases, but objectively, in other cases, such as relatively more common damages, construction projects and technical contract disputes, there is a need for more. The original judicial technical team of more than 30 years of technical background dedicated to solving scientific problems, and their court work experience of forensic science accumulated valuable wealth, which is precious resource for the national court to carry out technology investigation officer system in all kinds of trials. Compared to the general cases involving identification, the current system of technical investigation officers in our country is related to the trial of intellectual property rights cases, and our country's technical investigation officers belong to judicial assistance personnel. Based on this kind of litigation status, on the one hand, the technical investigation officer is judge technical assistant for technical types of intellectual property cases, responsible for providing technical advice, for the judge to verify the facts and for the technology review comments and other necessary technical assistance. At this time, through the assistant's interpretation, the judge can understand the technical terms; on the other hand, the technical investigation officer belongs to the judicial support staff, although they can participate in the conversation, the trial, review and litigation activities, for the judgment of cases, they have no right to vote, so it is significantly different from judges and people's assessors who enjoy the right of jurisdiction. In addition, the technical investigation officer is also different from the identification expert, the expert assistant or the related judge. His duty is to represent impartial and independent manner of identifying the relevant technical facts of the case in the open court. The personnel inside the intellectual property court are divided into judges, judicial assistants and judicial administrative personnel. The technical investigation officer belongs to the judicial auxiliary personnel and belongs to different categories with the judges^[2].

1.3 The formation of China's judicial and technical assistance personnel in the reform of the post system.

With the reform of the management system of judicial expertise, the original judicial technical personnel are diverted, and technical

duties have also undergone considerable adjustment, their professional and technical inspection and identification being transited to providing technical advisory services for special inspection relating to issues of the case, which dwarfs the professional qualification and results to forming two core tasks, technical personals and judiciary supporting personals. The technical office and technical staff of the people's courts are also divided, and the issue of whether to retain judicial technicians in the technical room has been discussed. In addition, in some jurisdictions and institutions, technology will put entrust department under the supervision of the filing court, or under the internal trial management office, which also reflects that this staff is judicial support staff. In this round of post system reform, the court's technical commissioning and inspection departments are generally included in the trial auxiliary departments, and the personnel division belongs to the trial auxiliary personnel formation, and there is no allocation of the number of post judges.

1.4 The establishment of judicial and technical personnel abroad

The law systems in US and UK have both operational auxiliary personnel and administrative assistant personnel, the former like judge assistant, hospital legal assistant and so on. The United States with common law does not set special system for the technical problems in the adjudication of intellectual property, but adopts the expert witness and the general technical consultant in the civil litigation system in the trial, and appointed expert witness or technical consultant are strictly restricted in the United States court. In the case that needs strong professional techniques, judges generally depends on the technical judges, the expert, the expert assistant, technical experts, the expert jury judges, technical adviser, and technical investigation officer who can help complete its investigation of identification of the technical facts. In the United States, each jurisdiction district has different requirements for the qualifications, skills and activities of investigators. The coroner is the officer of the constitutional agency, 82% of whom are elected and 18% are commissioned.^[3]

To the technical difficulties that can not be solved, Japan introduced a special committee system. In 2003, Japan amended the civil procedure law, and the special committee system officially entered the three fields of medical treatment, construction and intellectual property rights. Special members do not need giving opinions on the final technical disputes of conclusion on the case, but explaining the latest development in related fields from the objective and fair stance, and pointing out the suspicious parts in each parties' statement and reason, making the problems and doubts clarified.

2. THE STATUS QUO AND DIFFICULTIES OF CHINA'S JUDICIAL AND TECHNICAL ASSISTANCE PERSONNEL

2.1 Changes in judicial and technical personnel in contemporary China

The reform of management system of judicial expertise has been started. The original state of court technical department being “both player and referee of identification system” has been broken, and a large number of technical personnel are facing court occupation career crossroads, contributing to the formation of a variety of personnel triage situation. Some of the technical staff in the court transferred to trial positions through the judicial examination, some still stay in the filing court, judicial identification department, litigation security center and other departments, engaged in the identification of the admissibility of the case, and commission the inspection work. The typical example of the technical staff leaving the court is the Technology Department of the Beijing Municipal Higher People's court, which transferred the whole staff to the China University of Political Science and Law Evidence Research Institute, where they can continue judicial expertise career of trial service in research and technical evidence. There is also a part of personnel such as forensic, clerical and technical personnel from the court leave or retire, who continue to engage in technical work in private appraisal institutions.

In practice, in cases involving professional problems, professional judges often consult professional technical personnel of their court or other court, whereas these are generally not recorded as the verdict in this case, and it also reveals that the professional technical personnel in the court actually bear the assistive technology trial work, and it is unknown to the public. The author participated in many meetings and investigations, and the placement and diversion of the technical staff rarely aroused discussion. In the exchanges with the court and inspection department staff, the author found that the positioning of this kind of personnel after many reforms still can not get rid of their own “technicians”, and some technicians do not like to be called “the judge”, while others are more willing to call it a “forensic person” or “an Engineer”. It can be attributed to the deep influence of the court system for specialty and occupation, and the court “appraiser” is not willing to be regarded as ordinary judicial support staff, and also not willing to ignore the influence of professional technical experts on the problem of litigation.

What should be done is to solve thought positioning problem after the work function changes of the judicial technology support staff, to clarify judicial technology auxiliary work responsibilities, to mobilize the enthusiasm, to re-establish the work enthusiasm, while the introduction of various rules and regulations

improvement of the judicial technical assistance work should be conducted, a long-term mechanism to work should be established, the judicial technical assistance work center should be set up. After the court personnel function adjustment, great changes have taken place in the court of justice of technical characteristics, functions to expand the scope of the need to identify the species in the myriads of changes of technology, and technical requirements of auxiliary staff knowledge level are more profound, but the existing technical staff is still confined to the original, the material evidence, and forensic knowledge. At the same time, a large part of the personnel without technical background are transferred to the technical team, due to the lack of the corresponding updating knowledge, education and training, the overall technical level and ability are lowered greatly.

2.2 Positioning of judicial technical assistant personnel

The role of the technical assistant is actually the technical assistant of the judge. In the current judicial reform and the distribution of posts in our country, the technical investigation officer system should be introduced conditionally. The judges and assistant judges of the people's courts are judges of the sequence of judges. The executive, the Secretary, the judicial police and the judicial expert are judicial assistants. According to the above measures, the judicial technical assistance personnel bear the trial responsibility similar to that of the judges. Therefore, the court should set up judicial technical assistance personnel to become technical judges, which is fundamentally different from the other economic and civil liabilities undertaken by other identification institutions and personnel. Although the technical investigation officers are not judges, but unlike experts, witnesses, appraisers and technical advisory experts, they are still members of the judicial organs. In the judge's consent, the technical investigation officer may ask the parties, witnesses and so on, and directly interact with the participants in the proceedings. Technical investigation officers can participate in many proceedings, such as pretrial meetings, investigation, evidence collection, preservation, trial and evaluation. In addition to the above rights, they have the obligation to avoid or identify in the referee's documents. From this perspective, our country adopts the technical investigation officer to help solve technical problems that encounter in the trial of judge interpretation of the practice, which is different from that of the United States. The work of judicial technical personnel is an important guarantee for judicial and judicial procedures, and should have its independent professional status and professional value.

For the original court forensic and technical personnel, they should adapt to the reform of the trial court and the judicial expertise management work, and place their right position, then, they can see the judicial technical staff” functions more clearly, so

as to correct the service attitude for the trial and execution. The introduction of a technical officer is a useful option in resolving the problems between judges and expert judges. The technical officer can play as a bridge between judges and expert judges, making smoother communication between the two parties. If the technical investigation officer perform certain functions in the identification before and after trial, it not only can help the parties to simplify the focus of controversy, but also help to judge a thorough understanding of the relationship between the identification results and the facts to be proved and improve the identification practice that has long been criticized for the identification of human harm, promote them to perform their duties conscientiously towards the direction of fine detailed identification. Routine management, deployment and assessment of the technical investigation officer should be conducted. The technical investigation officer's daily work is mainly divided into two parts: one is service technical problems in the trial court room, such as the consultation and advice; the other is to participate in the litigation activities in specific cases, to assist the judge to verify the case involved in technology.

3. THE PLANNING AND OUTLET OF JUDICIAL TECHNICAL ASSISTANT PERSONNEL

3.1 The reform direction of judicial technical assistance personnel

With the reform of the registration system, the number of lawsuits has increased considerably, and the number of judges has not increased correspondingly, so the court has been required to improve the efficiency of the trial and reduce the cost of litigation. In the post reform of technical assistant personnel, the principle of efficiency should also be followed. we should also follow the modern enterprise system of "flat" trend, and the principle of Occam's razor in technical support personnel setting, namely if not necessary, its number should not be increased. What should be done is to solve the problem of positioning technology support personnel in the existing arrangements as far as possible. According to the unified plan of the Central Committee, the judicial officials, judicial assistants and judicial administrative personnel accounted for 39%, 46% and 15% of the total number of the central political and legal organizations respectively. Occupation demands of technical support personnel include occupation honor, procedural safeguards, scientific expression and work facilities and other aspects. From the transformation of post system reform of the elite judges, legal occupation specialization not only reflects the legal knowledge and judgment skills, but also lies in improving the specialized ability in litigation to solve the problem. Therefore, relevant occupation demands by technical assistant personnel

should be satisfied, in order to attract professionals to enrich the technical support staff team, achieving the aim of attracting the talents by the cause.

Some experts believe that for the judicial support staff, the more, the better, which is a misunderstanding, because they believe that when judicial assistants, the judge assistant and the various assistant clerks increase, then the handling efficiency will naturally be improved, and judge pressure will be reduced. Japan and South Korea, although early established expert investigators system, but its use is limited to intellectual property rights and other special cases, and the number of experts set up in the court system is only twenty, for they does not require large-scale settings and increasing the court such staff, and also does not need setting up a category and proportion alone.

3.2 The positioning and reconstruction of judicial technical assistant personnel

The core value of judicial technical assistance personnel lies in their services for the trial by means of specialized technology, and its meaning can be interpreted from two levels: first of all, in the strict sense, judicial technical assistant personnel are not judicial personnel, and do not have judicial functions, nor can they use technological superiority to influence judicial trials. Secondly, judicial technicians provide technical support and guarantee for trial work, which is a remedy for the professional defects of judicial judges and the promotion of effective judgments. It is questionable whether it can interpret their professional connotation only with the concept of a "helper". From the perspective of their service to enthusiasm and a sense of belonging of technical staff, titles such as "judicial officer", "technical judges" and "expert investigators" can be applied, which will form a certain impact on the personnel positioning and trial service effect.

Some scholars conducted a preliminary classification of the specialized technical personnel in the court system: the first class is judicial technical personnel who at the same time have the qualification of professional and technical knowledge; the second one is judicial personnel who have a technical background but not the qualification of judges; the third one is judicial technical personnel without background of professional skills, but they have long been engaged in legal and judicial technical work. Considering the above three categories of personnel in the sequence management, first class personnel can be included into law officials in the amount of judicial system reform, referring to the "judges", included in the judge sequence; the second kind of personnel with professional and technical knowledge, according to the "technical investigation officer", can be included in the professional class of civil servants; the third one can be included in the series of assistant judge sequence.

3.3 Professional planning of judicial technical assistant personnel

The technical investigation officer belongs to the judicial auxiliary personnel, and the technical investigation officer shall be managed by the professional and technical civil servants. However, due to some reasons, the state has not yet promulgated special management regulations for professional and technical civil servants. From the situation of the court, many senior technical staff also has the judicial qualification of the trial judge, who has certain judicial experience and technical background at the same time, even with senior technical titles, and is the rare of talent the people's Court. If they are employed in the post system, with the advantage of richly experience involving specialized technical problems of trial, the judge can refer to techniques such as Germany and the United States system, the technology construction of the judge system with Chinese characteristics is possible. We should take full advantage of judges' profession of technology to solve the special problems of cases, such as medical disputes, personal injury, construction projects, technology contract and intellectual property rights and other related technical content and evidence or highly specialized cases. The technical officer with profession can be incorporated into the collegial panel in the trial, which will realize the maximized sharing of resources. At the same time, judicial and technical personnel who have obtained judicial qualifications can be promoted to the judges through this assessment.

3.4 The professional guarantee of judicial technical assistant personnel

Positioning of auxiliary technology personnel in the overall framework of the reform of the court posts should be reasonable, but the occupation guarantee system of judicial technical support staff should be set up according to their characteristics of judicial work. The core of this professional guarantee system is to guarantee and safeguard the professional honor of the technical personnel of the court system, and the key is to promote the technical assistance staff's professional work and the compensation treatment. On the one hand, professional titles can be differentiated. Some of them participate in technical services trials, some are technical support investigation staff, and some just take part in

simple transactional support staff. Through establishing recognition policy of their professional titles, it will open a technical promotion path for them, which will effectively protect this kind of professional expertise. On the other hand, in the process of promoting the unified judicial support staff salary, appropriate tilt can be made to the professional and technical personnel through the salary system of classification reform. The mechanism of recruiting technical personnel from the judicial professional college teachers, doctors, judicial expertise of the team can be exercised, guaranteeing a "less is more" court system with personnel of required specialized knowledge, which is also an extension of effective conduct to China's current judicial reform in details.

4. CONCLUSION

In this process of post system reform by Chinese people's court, there are different problems and difficulties. As present auxiliary technical personnel, their role and influence in the court trial should not be underestimated. Their judicial duty is connected with the previous reforms of judicial technology in our country. In this process of the post system reform, if the court system of introducing extraterritorial judicial investigation officer is adopted, combined with the experience in China's current practice in intellectual property cases, it will help technical personnel of the court to gain new position and promotion path, so as to make them play more efficient and important roles in the trial work.

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