

The Current Situation of Court Testimony of Witnesses in Civil Online Litigation and the Improvement of its Paths

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ABSTRACT

With the development of online litigation, the appearance of witnesses in court as an important part of litigation is also facing a transformation towards the online way of testifying in court. The emergence of online court testimony has revolutionized the relevant meanings in traditional civil litigation and possesses the institutional advantages of economy and convenience that offline testimony does not have. However, problems such as the unclear mechanism for initiating the system, the difficulty in verifying the identity of witnesses, and the lack of guarantee for the principle that witnesses are not allowed to attend as observers have also restricted the application of the online testimony system. In the future, the procedural choice rights of witnesses should be clearly defined in the form of law, the review procedures for witness identities should be standardized, and a standardized testimony environment should be provided for witnesses to testify, so as to ensure the effective operation of the online witness testimony system.

KEYWORDS

Online Litigation; Witnesses in Court; Improvement of Paths.

1. INTRODUCTION

A witness refers to a person who knows the circumstances of a case and provides testimony to the court or the parties involved. Testimony refers to the statement or testimony made by a witness to the court regarding the facts of a case that he or she is aware of. [1] Witnesses appearing in court to give testimony is not only an important way to ascertain the facts of a case, but also an inevitable requirement for safeguarding the parties' right to cross-examine and achieving procedural justice. [2] Compared with the traditional offline testimony model, online testimony offers witnesses diverse ways to appear in court. The implementation of this system can break through the barriers of spatial distance, provide convenience for witnesses to appear in court, thereby enhancing their willingness to appear in court and further increasing the attendance rate of witnesses. To a certain extent, it can solve the problem of low attendance rate of witnesses in litigation activities. Meanwhile, the application of online testimony has, to a certain extent, brought about changes to traditional civil litigation. However, there are still problems such as unclear initiation mechanisms and difficulties in verifying witness identities when witnesses appear in court online. Based on the analysis of these problems, the improvement paths of the online court testimony system will be explored.

2. THE MAIN CHARACTERISTICS OF WITNESSES TESTIFYING IN COURT IN ONLINE LITIGATION

2.1. Convenience

There are certain differences in the value goal tendencies of different civil litigation subjects when they carry out online civil litigation behaviors. [3] Among them, low cost and convenience are the greatest value expectations of witnesses when they carry out civil litigation behaviors. The traditional civil litigation system requires witnesses to personally go to a specific physical space to give testimony, which is usually only tens or hundreds of square meters. In the procedural design of online litigation, testifying in court online is usually not restricted by physical geographical space. Whether witnesses give testimony online or in person, the physical Spaces they are in with the judges and the parties involved are relatively scattered. They may be thousands of miles apart in physical space, and there may be situations where they cross cities, provinces or even countries. In such circumstances, if a witness opts to testify in court online, they can use network devices to present their testimony in court. The witness's testimony has a physical space span.

In terms of the choice of testimony methods for witnesses in court, compared with traditional offline litigation activities, the imperialist color of the court in online litigation is greatly weakened, and the parties and witnesses have more autonomy. In traditional offline litigation activities, in principle, witnesses can only appear in court in person to give testimony. The exception is that if a witness is unable to appear in a physical court due to special circumstances, they can apply to give testimony in other forms such as written testimony. However, whether they can give testimony in a special form further depends on whether the people's court grants permission. It can be seen from this that in traditional offline litigation activities, courts play a dominant role in the choice of the way witnesses appear in court to give testimony. In online litigation, the parties and witnesses have a relatively high degree of autonomy in choosing the way witnesses appear in court to give testimony. The parties involved can choose the one that is more suitable for the witness to testify in court and more convenient among a variety of testimony methods. For judicial activities, this can also more efficiently complete the acquisition of witness statements.

2.2. Flexibility

In terms of the way witnesses testify in court, the way witnesses testify in online litigation is more flexible compared to that in traditional offline litigation. This flexibility is mainly reflected in the following situations. First, the way witnesses give testimony in online litigation can be switched between different methods to adapt to specific circumstances. The second is that when giving asynchronous testimony, the choice of witness time and the form of testimony are more flexible.

In traditional civil litigation, witnesses usually can only appear in court in person to give testimony. Only in special circumstances, with the consent of the court, can they present their statements in writing or via video. However, in online litigation, since witnesses have multiple ways to testify in court, they can switch between different ways of appearing in court when testifying. As Article 5 of the " Online Litigation Rules of the People's Court" stipulates, if a certain litigation stage is not suitable for online handling, the People's Courts shall switch the corresponding proceedings from online to offline. It can be seen that in the face of possible sudden or unexpected situations in online litigation, the way witnesses appear in court to give testimony can be flexibly changed to deal with new circumstances.

In addition, the time selection and testimony method of asynchronous testimony also reflect the flexibility of online testimony. When giving testimony asynchronously, the witness's testimony process is scattered throughout the trial procedure. The witness's court appearance time is relatively flexible, and they can choose a convenient time within the specified period to complete the trial

activities they are participating in. Such a procedural setting saves the cost of witnesses' testimony, facilitates their participation in litigation activities, and effectively enhances their enthusiasm for testifying.

2.3. Independence

The independence of witnesses in online litigation refers to the fact that many aspects of witnesses' testimony in court are less affected by other litigation links and the entire civil litigation activity, especially in terms of the choice of methods and physical space.

In terms of the choice of methods, in traditional offline litigation, the witness appearance in court to give testimony is greatly influenced by the overall civil litigation procedure. The order of appearance, the way of appearance, and the sequence of specific steps within this stage of the witness appearance in court to give testimony procedure throughout the litigation process are all fixed, and it is closely related to other litigation stages, with strong dependence. In online litigation, the people's court may determine the way a witness appears in court to give testimony based on the parties' expressions of intent. A witness may also refuse to appear in court online and instead choose to do so offline.

In physical space, in traditional offline litigation, the parties, litigation participants and judges are all concentrated in a fixed physical space, and their physical Spaces cannot be independent of each other. In online litigation, the physical distances among the parties, witnesses and judges are independent of each other. For instance, when a party opts for online litigation and a witness opts for offline testimony, the spatial distances between the parties and the judge, between the parties and the judge, and between the parties and the witness are all different. The spatial spans among the three parties do not interfere with each other and are physically independent.

3. THE TRANSFORMATION OF THE TRADITIONAL TESTIMONY SYSTEM BY WITNESSES TESTIFYING IN COURT ONLINE

3.1. Innovating the Meaning of the Court

There is still some controversy over whether the act of witnesses stating the facts of the case and being questioned by the judges and the parties involved through remote online means can be recognized as "testifying in court". In traditional litigation concepts, the courtroom is a place where the court conducts trials in accordance with the law. It is a venue and space for litigation activities, and its layout must strictly comply with legal requirements. For instance, national flags should be hung and gavels placed to highlight the solemnity and ritual of the trial activities. [4] Judges, parties and other participants in litigation, including witnesses, shall come to physical places with the above characteristics to carry out trial and litigation activities. Therefore, according to this traditional view, when witnesses state facts and are questioned remotely in cyberspace without coming to a physical court to testify, it can only be regarded as an alternative way for witnesses to appear in court, rather than an independent way of appearing in court. Article 76 of the Civil Procedure Law stipulates that "upon notice by a people's court, a witness shall testify in court. Under any of the following circumstances, a witness may testify by written testimony, audio-visual transmission technology, audio-visual recordings or any other means as permitted by a people's court". This also indicates the concept that testifying through audio-visual transmission technology is an alternative way to testify in court.

However, the alternative concept of witnesses testifying online is based on the premise that traditional civil litigation activities are usually conducted offline as the main way. Correspondingly, the current civil litigation system is also formulated with offline litigation as the regulated object. However, the application of intelligent technology in the field of civil litigation has had a significant impact on traditional civil litigation methods, as well as litigation concepts, litigation culture, and court culture.

As a result, it has also posed a challenge to the civil litigation system that takes traditional civil litigation as its regulated object. [5] In online litigation, judges, litigation participants and other subjects have transferred litigation activities from the physical space to the online space. It has become the norm for all litigation subjects to communicate and exchange litigation information through online means on the Internet. [6] In this situation, witnesses do not need to go to the offline substantive court alone to testify. They can fulfill their obligation to state the facts of the case and be questioned through the information network. Judges can directly listen to witnesses' statements through real-time video technology on the Internet, observe the witnesses' testimony environment and whether they were coerced, etc. Parties can also directly ask witnesses questions about the facts of the case. If the testimony of online witnesses is excluded as hearsay evidence in accordance with the traditional civil litigation system, it lacks legal basis. Therefore, the nature of the witness's testimony in such circumstances should not be regarded as hearsay evidence; it should be recognized as "testifying in court".

The change in the place where witnesses give testimony not only involves the alteration of its legal nature but also transforms the meaning of "court". The "Online Litigation Rules of the People's Courts" clearly stipulates the system of "witnesses testifying online". Article 26, Paragraph 1 of these rules officially uses the expression "online court appearance" and regulates the online court appearance of witnesses, requiring that in online litigation, the application requirement of "online court appearance as the principle and offline court appearance as the exception" should be followed. At this level, the meaning of the court has been innovated in the field transformation of the way of testifying. Essentially, the court is not a specific place in the physical space, but a judicial service provided by judges to try cases and resolve disputes when the parties and other participants in the litigation attend the trial. [7]

3.2. Changing the Principle of Direct Words

The principle of direct speech is a combined term for the principle of direct speech and the principle of speech. In modern civil litigation procedures, when hearing cases, it is often required that both the principle of direct speech and the principle of speech be followed. The main purpose of both principles is to discover the truth, improve efficiency and protect the rights and interests of the parties. The principle of directness mainly emphasizes the judge's personal experience, while the principle of speaking orally mainly emphasizes the oral nature of the statement. [8] In offline litigation conducted in physical courts, the appearance of witnesses to give testimony is one of the important measures to ensure the realization of the principle of direct oral trial, and it is also an important system to safeguard the parties' right to cross-examination and due process. On the one hand, when judges have direct face-to-face communication with witnesses, they can directly listen to the fluency of the witnesses' language during their testimony and observe their expressions and states. This information can serve as an important basis for judges to determine the authenticity of the witnesses' statements, which is conducive to making fair and impartial judgments. On the other hand, the obligation to testify in court requires witnesses to give oral testimony in court. If a witness fails to testify in court without a valid reason and only submits written testimony, and the opposing party does not recognize the testimony of the witness, the testimony of the witness shall be invalid. That is, in traditional offline litigation, the principle of direct oral hearing is better implemented by having witnesses appear in court to state the facts and be questioned.

In synchronous online litigation, the environmental factors in which witnesses testify have greatly changed the connotation of the traditional direct oral principle. In terms of form, when witnesses testify in front of judges in a synchronous online manner, the process changes from a "face-to-face" format to a "screen-to-screen" one. Although the judge still personally reviews the evidence and the evidence investigation and determination activities are not entrusted to others, compared with the offline testimony stage, the judge's investigation method has still changed. In essence, the change in the physical space where witnesses testify has broken the physical sense of experience. Although

judges can still participate in evidence investigation and listen to court debates, the physical space has cut off direct contact between judges and witnesses. The on-site environment where courts observe people's expressions and behaviors no longer exists. To a certain extent, the online testimony of witnesses has revolutionized the principle of direct oral trial.

4. THE CURRENT PRACTICAL SITUATION OF WITNESSES TESTIFYING IN COURT ONLINE

The normative basis for witnesses to appear in court in online litigation in our country is mainly reflected in the Civil Procedure Law, the Online Litigation Rules of the People's Courts and the Rules for the Online Operations of the People's Courts. Among them, the Civil Procedure Law mainly stipulates the traditional provisions for witnesses to appear in court, but some basic principles of evidence provisions are also applicable to witnesses to appear in court online.

With the gradual establishment and improvement of the online litigation system in our country, the "Online Litigation Rules of the People's Courts" have been promulgated, which more reflect the provisions on witnesses' appearance in court to give testimony in online litigation. Article 1 of the "Online Litigation Rules of the People's Courts" stipulates that "online litigation shall have the same legal effect as offline litigation", which affirms that the testimony of witnesses in online litigation has the same effect as that in the traditional mode.

The Online Litigation Rules of the People's Courts have some specific provisions on the appearance of witnesses to testify in online litigation. Firstly, regarding the issue of the choice of witness testimony methods, the rules stipulate that based on the parties' active choice or after the court consults the parties' opinions, the court may make corresponding handling according to the parties' expressions of intent. However, in the "Understanding and Application of the Online Litigation Rules of the People's Court" issued by the Supreme People's Court, it is also stipulated that the parties shall not improperly interfere with or influence the choice rights of other litigation subjects. This indirectly indicates that witnesses, as participants in litigation, can independently choose the way to testify in court during online litigation. Article 10 of the "Online Litigation Rules of the People's Court" stipulates that when for a case applicable to online litigation, the People's Courts shall notify the defendant, the appellee and other participants in the action and inquire on their willingness to apply online litigation. If the notified person does not expressly consent to the application of online litigation, and fails to register with and log into the litigation platform within the period stipulated by the People's Courts, the relevant parts of the litigation involving him/her shall be conducted offline. Article 26, Paragraph 1 of the Rules stipulates that if a witness appears in online court, the People's Courts shall ensure that other parts of the court trial is closed to the witness and the witness is not disturbed by others by designating a place for online court appearance or setting up an online witness courtroom. If a party objects to the online court appearance of the witness with reasonable grounds, or the People's Courts deem it necessary, the witness shall testify before the court offline.

Secondly, regarding the issue of witness identity verification in online litigation, the "Online Litigation Rules of the People's Court" only stipulates the identity verification methods for litigation subjects before participating in online litigation in Article 7. However, this regulation can also be applied to the identity verification of witnesses in online litigation. Witnesses should complete real-name authentication on the litigation platform before the start of litigation activities. After online comparison and verification by the court, they will obtain a dedicated account. When conducting litigation activities, the people's court shall verify the identity again. If necessary, it shall conduct offline verification.

To improve the online operation mechanism of the people's courts, the Supreme People's Court has passed the "Rules for the Online Operations of the People's Courts". Article 14 of the rules clearly stipulates the method of identity verification for witnesses to testify in online litigation, that is, in

online litigation, they should first register and complete identity verification to obtain a dedicated account for the smart service system. Article 25 of the Rules stipulates that witnesses may conduct court proceedings on the online litigation platform designated by the court.

5. THE DILEMMA OF WITNESSES TESTIFYING IN COURT ONLINE

5.1. The Mechanism for Initiating the System is Not Clear

There is a conflict in the current legal provisions regarding whether witnesses have the right to choose the procedure when applying online testimony. According to the provisions of the "Online Litigation Rules of the People's Court", witnesses have the procedural right to choose whether to apply online testimony. However, Article 16, Paragraph 1 of the Civil Procedure Law revised in 2023 still limits the subject of procedural selection for online litigation to "the parties". Therefore, there is still controversy over whether witnesses can be the procedural selection subjects for online testimony.

Article 68, Paragraph 2 of the Some Provisions of the Supreme People's Court on Evidence in Civil Procedures revised in 2019 allows the application to witnesses after the parties reach an agreement on the way witnesses testify. To a certain extent, this provision has expanded the scope of application for witnesses to testify in court online. However, in specific practice, the premise that the parties reach an agreement may actually limit the application of the system. The reason is that the testimony provided by witnesses is often favorable to one party but unfavorable to the other. The party that may be adversely affected by the testimony naturally hopes that the witness does not provide testimony in any way or that the testimony lacks evidential capacity. [9] Therefore, it is often difficult for the parties to reach an agreement on witnesses testifying in court online, and the application of this system is hard to be realized.

5.2. Difficulty in Verifying the Identity of Witnesses

In traditional litigation, the litigants usually participate in the lawsuit through "face-to-face" communication. The identities of witnesses are verified through "face-to-face" means, thereby ensuring the authenticity of the witnesses' identities and the safety of the litigation process. In online litigation, information exchange needs to be carried out through online media. The remote and non-experiential nature of this will increase the difficulty of verifying the authenticity of witnesses' identities. [10] The authenticity of a witness's identity is the primary issue that witnesses face when testifying in online litigation. It can be said that identity verification is the first line of defense in online litigation. If the identity of a witness is false in an online lawsuit, all subsequent actions of the witness shall be invalid, and it will also affect the legal effect of the procedures related to the witness's appearance in court to testify.

Article 7 of the "Online Litigation Rules of the People's Court" stipulates the rules for identity verification of litigation subjects participating in online litigation. It clarifies that the first identity verification shall be conducted on litigation subjects when they register their accounts on the online litigation platform with their real names before online litigation. It also emphasizes that after the litigation officially begins, attention should be paid to verifying the consistency between the verified person and the user of the online litigation platform account, except where there is evidence to prove it. Litigation actions carried out using an account should be regarded as the actions of the verified person.

According to the provisions of the "Online Litigation Rules of the People's Court", the verification of witness identities can be achieved to a certain extent, but there are still some imperfections. Firstly, there are various scenarios for witnesses to give online testimony. For instance, it can be classified into synchronous testimony and asynchronous testimony based on whether they are synchronous or not. In different scenarios, the objective conditions available for identity verification of witnesses

vary, as do the strictness of the verification and the duration of the verification. The current law does not formulate corresponding rules for different ways of testifying. Secondly, the rules merely stipulate the specific method for identity verification when obtaining an online mediation platform account, but do not specify the method for identity verification again after the formal trial begins, which may create opportunities for others to impersonate and participate in testimony. Furthermore, there are no provisions for the relief channels of witnesses who raise objections.

5.3. The Principle that Witnesses are Not Allowed to Attend as Observers Lacks Guarantee

Article 72 of the Some Provisions of the Supreme People's Court on Evidence in Civil Procedures stipulates that " Witnesses must not observe court proceedings before testifying, and must not present testimony by reading out written materials prepared in advance when testifying." The purpose of China's regulation of "witnesses testifying in isolation" is to prevent witnesses from having prior contact with court hearings and to avoid the impact of previous litigation activities on the authenticity of their testimony. Regarding this issue, Article 26, Paragraph 1 of the "Rules of Online Litigation of the People's Courts" stipulates the way for witnesses to testify in court online, emphasizing the isolation of witnesses from the space of their online testimony, thereby ensuring that they have not participated in the trial of the case before and after testifying, and that their testimony will not be disturbed by other parties. So as to ensure their independent testimony and the authenticity of the witness statements. Although measures such as setting up online testimony rooms and signal isolation effectively prevent witnesses from logging into the online litigation platform to observe the trial and thus being affected in their testimony, it is still difficult to fully ensure that online testimony is not affected by the trial situation or interfered with by the parties or other litigation participants. [11]

In online court hearings, in accordance with relevant legal norms, the place where witnesses testify can be directly designated by the court or chosen by the witnesses themselves and then reported to the court for approval. When witnesses choose their own testimony locations, courts have very little control over the testimony environment. A witness may participate in the entire online court hearing at the physical space venue where the party applying for his or her testimony is located. However, due to the "screen-to-screen" method of the online court hearing, the court cannot determine whether the witness is in the same physical space venue as one of the parties. Although the witness has completed the online court hearing in a formal sense, it cannot be guaranteed that he or she can achieve "isolated testimony". [12] Therefore, the testimony provided by the witness to the judge may have been made under the direction or coercion of others, or after forming a false memory after attending the trial as an observer. The authenticity of the witness's testimony lacks guarantee in online trials.

6. THE IMPROVEMENT OF PATHS FOR WITNESSES TO TESTIFY IN COURT ONLINE

6.1. Expand the Application of Online Testimony

Witnesses should be granted the right to choose the procedures for online testimony to leverage its advantages. In contrast to Article 128-1 of the German Civil Procedure Law, the court may, upon the application of the parties and witnesses, permit witnesses to carry out procedural acts at locations other than the courtroom. Compared with the provisions of the Civil Procedure Law of our country, the regulations in Germany have expanded the application space of online testimony. Allowing witnesses to apply for fulfilling their litigation obligations through online testimony on their own can enhance their enthusiasm for testifying, reduce their testifying costs, and safeguard their legitimate rights and interests. At the same time, after a witness submits an application, the court will ultimately

decide whether to apply online testimony, and can select the most beneficial way of testifying for the ascertaining of case facts and the realization of judicial justice.

Moreover, the procedural choice rights of witnesses should be clearly defined in legislation. Although the Rules of Online Litigation of the People's Courts granted other litigation participants, including witnesses, the option to choose the procedure, the Civil Procedure Law revised after its promulgation still failed to incorporate this provision. Whether in terms of hierarchical effect or temporal effect, the Civil Procedure Law has priority applicability, effectively excluding the right of witnesses to choose to give testimony online. The procedural choice rights of witnesses should be formally incorporated into legal provisions to provide them with more opportunities to enjoy the advantages of online testimony.

6.2. Improve the Witness Identity Verification Procedures

In traditional offline court testimony, due to the witness's respect for the judge and the courtroom environment, as well as the procedure of face-to-face identity verification in court, it is very difficult for someone to give testimony by impersonation. However, in online litigation, there is a deficiency in the regulation of witness testimony. The identity verification procedures for witnesses in online litigation should be improved from three aspects.

First of all, increase the penalties for presenting and cross-examining evidence by impersonating others in online litigation through legislation. At present, the " Rules of Online Litigation of the People's Courts" of our country do not stipulate what kind of penalties should be imposed on the above-mentioned behaviors. Therefore, in the subsequent legislation and judicial practice of online litigation in our country, the act of impersonating witnesses should be punished by referring to the act of disrupting the litigation order.

Secondly, the Supreme People's Court can issue judicial interpretations to provide detailed regulations on the specific operations of the witness identity verification procedures, offering clear operational guidelines for courts at all levels. Establish a standardized operation process for witness identity verification, covering all aspects from witness identity verification to online court testimony, to ensure the standardization and uniformity of the operation. To clarify the specific standards for verifying the identity of witnesses, technical means such as document verification, real-time video comparison, and biometric recognition can be adopted, as well as a combination of multiple methods and dynamic continuous authentication to verify the identity and ensure the authenticity of witnesses. [13]

Outside the court system, courts can achieve coordinated cooperation with departments such as public security, civil affairs, and household registration, and update the identity information of witnesses by sharing information. Within the court system, a database of witness identity information can be established to record the witness's court appearance records, credit and other situations for verification by different courts. However, in this stage, it is necessary to pay attention to protecting the security of the witness's identity information and prevent the leakage of the witness's information through strict privacy protection measures.

6.3. Standardize the Online Testimony Environment for Witnesses

Regulating the environment for witnesses to give online testimony is an important link to ensure the authenticity of witness statements and judicial fairness. The testimony environment for witnesses to appear in court online can be regulated from both online and offline perspectives.

At the level of the online testimony environment, courts should provide a unified and specific online litigation platform for litigation participants, including witnesses, and they cannot choose any instant messaging software to conduct litigation activities on their own. The online litigation platform software of the court should have basic functions such as identifying whether the user has switched

to the background, to prevent witnesses from attending the trial in advance. In terms of the courtroom scene, the court must restore as many basic elements that appear in the physical courtroom as possible in the video to ensure the seriousness of the trial scene. [14] During the testimony process, witnesses should be required to use at least two camera positions so that the judge can clearly see the full picture of the witness's testimony environment and ensure that the witness has not been instructed or coerced during the testimony process.

At the level of the offline testimony environment, courts have already made practical explorations to provide convenient physical testimony venues for witnesses. For instance, the Intermediate People's Court of Lishui, Zhejiang Province, has set up shared courts in county and township conflict mediation centers, towns and sub-districts, village committees, financial and postal outlets, etc. These courts provide relatively independent venues for witnesses to testify online. Moreover, there are relevant staff members on hand to serve and supervise, which is conducive to ensuring that witnesses do not attend case hearings before and after testifying. However, the court shall not force witnesses to testify at the places it has set up and shall respect the witnesses' right to choose to testify independently.

7. CONCLUSION

The online court appearance of witnesses is an inevitable product of the rapid development of information network technology and an important part of the implementation of online litigation. Therefore, it is an inevitable requirement to achieve litigation goals to identify the problems existing in the current online court appearance of witnesses and improve them through technology and norms in a targeted manner. Through continuous improvement, online court testimony by witnesses, due to its advantages such as convenience and flexibility, may become the preferred choice for litigation participants considering their litigation interests. The mutual connection and complementarity between online and offline testimony can also continuously promote the improvement of China's litigation system.

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