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民事诉讼鉴定意见证据运用问题研究

Study on Evidence Application of Expert Opinion in Civil  
Litigation

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## 内容摘要

随着科学技术的进步及案件难度的提升，司法鉴定在民事诉讼中起着越来越重要的作用，其正确运用有助于查清案件事实，使法官正确适用法律，根据尽可能接近的损失作出公正合理的判决，从而定纷止争，回应人民群众对司法的新要求、新期待。在法律意识逐步提升的同时，鉴定结果的称谓也在不断地更新和完善。2012年民事诉讼法出台后，鉴定意见的说法被广泛运用。法律还以明文规定的形式确立了鉴定意见的证据属性，强调其作为一种证据必须经过法庭的质证、认证方可发挥其证据效用。此外，法律还规定了鉴定人出庭制度及专家辅助人制度。通过鉴定人或专家辅助人出庭作证，保障诉讼当事人平等的诉讼权利和地位，也为法官采信鉴定意见提供依据和参考。尽管我国民事诉讼法对鉴定的立法规定作了大幅度的修改，但相关的制度设计仍然不够完备，缺乏相应的可操作性。纵观我国审判实务，鉴定意见在民事诉讼运用中仍然存在着一些问题，影响了司法公正与效率。本文通过梳理鉴定意见在审判实践中各个环节出现的问题，分六个章节进行研究。从鉴定意见的基本概念入手，以审判实践中遇到的典型案例为出发点进而引出鉴定意见在司法实践运用中面临的尴尬及存在的问题。通过分析比较两大法系对鉴定的相关规定，对鉴定意见的启动，质证，认证等各个流程作细致规划和设想，同时对重新鉴定及鉴定费问题进行解析，以期提高鉴定意见在审判实践中的采纳率，使鉴定意见在中国特色的社会主义司法制度中发挥积极的作用。

**关键词：** 民事诉讼； 鉴定意见； 证据

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## Abstract

As science and technology advances and case difficulty augments, judicial identification plays an increasingly important role in civil litigation. Correct identification application help check the case facts, enable the Judge to utilize law properly so as to make a reasonable decision in line with losses, terminate conflicts and respond to the public's new requirements and expectations for judicature. Since Civil Procedure Law was released in 2012, the term of expert opinion has been widely used. The law defines the evidential characteristics of expert opinion in clear articles, emphasizing that it must be cross-examined before it enters into force as an evidence. Besides, the law states the appearing in court regulation and expert subsidiary person regulation. Identifier or expert subsidiary person' s witnessing in court guarantees litigants' equal litigation rights and status and provides evidence and reference for the judge to adopt expert opinion. Although Chinese Civil Procedure Law has greatly amended law-making stipulation, related system design is still not perfect and lacks of maneuverability. Viewed from our trial practice, there are still some problems of expert opinion application in civil litigation, which influences judicial justice and efficiency. This paper, which is divided into six chapters, reviews problems of expert opinion application occurred in each trial practice link. Starting from basic concepts and typical trial cases, it elaborates on dilemma and problems of expert opinion application in judicial practice. Analyzing and Comparing related regulations of two legal systems, and activation, cross-examination and identification of expert opinion, the paper explains detailed plans for each procedure and analyzes reidentification and identification cost issues to increase admissibility rate of expert opinion in actual trials and render expert opinion a much more positive role in judicial system with Chinese characteristics.

**Key Words:** Civil Litigation; Expert Opinion; Evidence.

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## 引言

随着我国民主法治建设的发展以及诉讼结构的调整和诉讼理念的转变，司法鉴定在人们诉讼活动中发挥着越来越重要的作用，成为诉讼中不可或缺的科技辅助手段。以笔者所在地法院审管办数据统计，2013年，云霄县人民法院受理司法鉴定案件59起，2014年达77起，今年1-9月份，该院已受理82起，呈现逐年上升的趋势。司法鉴定的发展也促进了其自身制度的逐步完善，鉴定意见的提出适应了时代的发展要求，反映了一定时代下人们对科学认识的能力和水平，这无疑是社会发展及人们意识提高的重要体现。但一项制度的提出需要有强有力的制度措施来保障，只有这样，该制度才能顺利实施，从而彰显其价值和作用。而我国目前鉴定意见立法的不完善严重制约了这一制度的发展，实践中存在着鉴定启动缺乏制约，鉴定材料的确认和移送不受重视；鉴定人管理有待提高；鉴定意见质证流于形式，鉴定人及专家辅助人出庭率不高；法官自由心证裁量权大、鉴定费用高等问题，影响了鉴定意见的有效运用，更影响了司法权威、效率与公正。如何解决这些问题，进而确保鉴定意见有效运用，切实推动民事鉴定制度的完善是本文欲解决的问题。



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