

# Research on Family Investigator System in Family Justice

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**Abstract.** Since the Supreme People's Court decided to reform the way and working process of family trial, many experimental courts have begun extensive practical research, among which the implementation of the family investigator system is a notable feature. In order to further improve the professional ability of family trial, this study aims to conduct in-depth exploration and research from the current state of the family investigator system and refer to the successful experience at home and abroad, and provide some suggestions for improving the family investigator system. First of all, we need to unify the selection system of family investigators; Next, we need to establish a family investigator investigation process; Again, it is necessary to clarify the validity of the findings in law; Finally, we should specify the remedies available to the parties. In order to achieve family harmony and social stability, the work of family trial needs to become more scientific and professional.

**Keywords:** family justice, family investigator system, family investigation report, family trial

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## 1. Introduction

In 2016, the Supreme Court decided to launch a pilot project for family trial reform in 118 courts across the country, and clearly pointed out that judicial services and corresponding protection standards for family trials should be introduced. After the completion of the pilot project, based on the previous experience, the Opinions on Further Deepening the Reform of the Family Trial Method and Working Mechanism (Trial) were published in 2018, in which articles 15-27 clearly defined the basic principles of the family investigation system. The implementation of the family investigator system represents an innovation to the traditional family litigation mode and brings positive effects to the judiciary and society. However, we must recognize that the family investigator system is still under exploration and faces many challenges and issues. In order to ensure the long-term, stable and efficient operation of the family trial system, it is necessary to improve the relevant problems to promote the successful implementation of the family trial reform.

## 2. Investigation and Enlightenment of the System of Foreign Family Investigators

### 2.1. Review of Relevant Systems Outside the Region

#### 2.1.1. Family Investigation Officer System in Japan

In Japan, there are specialized family courts, as well as family investigation officers, mediators and some auxiliary agencies for family cases Japanese family investigators must pass a unified examination held by the Supreme Court in order to be eligible for selection. [1] Japanese family investigator system plays a key role in finding out the case facts, resolving family disputes and improving the efficiency of family litigation. However, the family investigation officer still cannot violate the judge's order and must conduct an investigation according to the judge's order. [2] After the investigation of the facts of the case and other objective circumstances required for a family trial or mediation, the family investigator shall submit his investigation report to the court and the judge, and may appear in court to explain the case and express his opinion with the judge when necessary.

#### 2.1.2. Family Adviser System in Australia

Australia has an independent family court, with similar family investigators in both the Federal Circuit and the Family Court, known in Australia as family advisers. In Australia, the family adviser is appointed by the judge and its task is only to participate in

the resolution of issues involving the protection of the rights and interests of minor children, and to assist the judge and parents in the best interests of the minor. [3] In this way, the family counselor is able to assess the actual situation of the case in a more in-depth and comprehensive way and provide strong recommendations on how to maximize the interests of the child.

## 2.2. The Enlightenment of Foreign Family Investigation System to Our Country

Through the comprehensive analysis of the relevant foreign systems and experiences, we can sum up the commonness and characteristics of the family investigator system in China's family justice.[4] First, in the selection process, we should make full use of the power of social organizations and encourage the diverse participation of all sectors of society. Secondly, in terms of knowledge reserve, besides legal knowledge, family investigators should also pay attention to the accumulation of knowledge in psychology and education. Finally, we need to establish and continuously improve the monitoring mechanism for the work behavior of family investigators to avoid the abuse of rights.[5]

## 3. Current Judicial Practice of the Family Investigator System in China

### 3.1. Legislative Status of the Family Investigator System

Up to now, the family trial in our country has not been independent from the ordinary civil case trial. In the current legal system, the number of procedural laws involving family trial is relatively small, and the scope of provisions is also relatively narrow. [6] Due to the lack of due attention to family litigation in legislation, the construction of family trial system is not perfect. In the Civil Procedure Law, in addition to special procedures, there are only a dozen provisions on family cases, and these provisions are scattered in different chapters, and there is no special chapter to describe. Most of these provisions are provisions of principle and have not formed a complete system, which can not provide guidance and reference for the people's court to try family cases. [7] Although the Supreme People's Court has involved some family cases in its Opinions on Several Issues concerning the Application of the Civil Procedure Law of the People's Republic of China and Several Provisions on Evidence in Civil Proceedings, the incompleteness and unsystematic nature of these legal provisions may bring a lot of troubles to judicial practice and application.

### 3.2. Practice Status of China's Family Investigator System

China is currently going through a transition period, the public attitude towards the family has also changed, which brings great challenges to marriage and family relations. With the increasing number of family cases in the courts, marriage and family cases not only involve legal issues, but also often involve many aspects such as morality, ethics, women's rights, children's development and the rights of the elderly. For judges dealing with family matters, the uniqueness of the case sets a pretty high bar. [8] Not only do they need to have a deep knowledge of the law, but they also need to have a wealth of experience and be good at accurately grasping the truth from complex emotional relationships. At present, some experimental courts are using the resources of all parties in society to explore and reform their working methods, make full use of the cooperation of family disputes, and apply the written report after the completion of the investigation to the family trial procedure. In the process of certification, the report is considered as evidence, and the judge assesses its authenticity, legality and relevance and decides whether it is admissible.[9] From the current situation, the acceptance of investigation reports in cases involving family investigators is relatively high.

## 4. Problems Existing in China's Family Investigator System

### 4.1. The Selection Criteria for Family Investigators Are Not Uniform

In the judicial practice of family trial reform in China, there are differences in the selection criteria for investigators, which are mainly divided into two categories, one is selected by the auxiliary judicial personnel of the court, The court will appoint professionals in the community to take up this role and become family investigators after examination by the court; [10] This disagreement is bound to hinder their investigation. Too low a standard may threaten the authority of justice. High standards may lead to a shortage of investigators in economically disadvantaged areas, which is also detrimental to the smooth conduct of trials.

### 4.2. Lack of Uniform Regulations on Investigation Procedures

The main problems in the investigation process of investigators are as follows: First, local courts do not have a uniform understanding of the timing of intervention of family investigators, and some courts stipulate that family investigators need to intervene when some case facts are not easy to find out in court. And some courts require family investigators only when their involvement in a minor case is in doubt; Second, in terms of the investigation period, some courts have no requirements on the investigation period of investigators. However, too short time is difficult to find out the facts of the case, and too long time will increase the litigation burden of the parties;

#### 4.3. Lack of Corresponding Relief Procedures

The facts involved in family cases are complex and in some cases, the investigation report may not give a true picture of the actual circumstances of the case. This may lead to errors in the judgment process and damage the legal rights of the parties. However, the lack of effective remedies for erroneous investigation reports has led to an increase in the number of appeals, which violates the basic principles of family trials and the original purpose of the ombudsman.

### 5. Measures to Construct the Family Investigator System in Family Justice in China

#### 5.1. Unify the Selection Criteria for Family Investigators

During the pilot period of family trial reform, the selection standards of family investigators in different places are not consistent, and the judicial practice is heavily hindered. In the future legislative process, the selection criteria of family investigators should be clarified, and the nature and function of family investigators should be defined. [11] The selection criteria of family investigators in our country have certain randomness, which is not conducive to the specialization and efficiency of the family investigation team. Based on the pressure of court trial and the current situation of family trial pilot, the selection system and employment system of family investigators should be promoted at the same time. The court conducts civil service examinations and selects some officers to serve as family investigators. At the same time, some people can be appointed as family investigators outside the hospital. In terms of appointment criteria, they should have certain professional knowledge and social experience, etc. Specific appointments should be determined by the president of the hospital, the head of the personnel department of the hospital and the head of the family investigator department, and announced to the public for the record.

#### 5.2. Standardize the Investigation Procedures of Family Investigators

The family investigators should follow the corresponding procedures in the investigation process, and the subsequent relevant legislation should clarify the investigation procedures of the investigators. The main points are as follows: First, from the start of the investigation, investigators can be appointed when there are questions about the key points of the case or when the two sides have different views. [12] Second, in terms of the withdrawal procedure of investigators, we can refer to the provisions of China's Civil Procedure Law and the withdrawal procedure of trial personnel. On the issue of entrustment and assignment of investigation, the judge entrusts at least 2 family investigators at any time, and the number of entrustment can be appropriately increased depending on the complexity of the case. Fourth, in terms of the investigation period, it should be limited to 15 days, if the case is more complex, the investigator can apply to the judge for extension, up to 30 days.

#### 5.3. Establish the Remedies of the Parties

When conducting a family investigation, investigators may assess certain issues based on their own subjective judgment, and the complexity of family cases also means that conventional logical reasoning can yield errors. Although the cross-examination of the trial has been carried out, there is still a possibility of inconsistency with the facts of the case, and the remedy measures for the parties to their rights can be stipulated through legislation. First of all, in the course of the investigation, if the investigator adopts improper investigation methods, the parties or interested persons can appeal to the court. If the court finds that the facts are true after the investigation, it should immediately stop the investigation of the investigator and reassign the investigator. Secondly, if the parties find that the investigators have violated laws or regulations, they have the right to appeal to the court. If the complaint is substantiated, the investigator will need to be replaced immediately and, in serious cases, may be fired or dismissed. Third, if the parties refuse to recognize a certain fact in the process of cross-examination, but the court has confirmed, then the parties have the right to apply to the court for reconsideration, and the reconsideration decision will be made by the head of the investigation department.

### 6. Conclusions

On the whole, in our current legal system, the introduction of the family investigator system not only provides strong support for the reform of the family trial system, but also fully conforms to the core concept of "resolving disputes, strengthening family affection, and safeguarding the legal rights of vulnerable groups such as minors, women, and the elderly". At the same time, it also promotes the participation of the public in the judicial process and realizes the diversified settlement of disputes. It is expected that the above suggestions can provide support for the further improvement of the family investigator system and inject strong impetus into the reform of family trial.

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