

Studies on Duty Solicitor System

Comparison Between China and Other Countries

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Abstract—Duty solicitor system is an important system to protect the litigant's litigation rights, which has been attached great importance to by many countries in the world. China is exploring the establishment of the duty solicitor system with Chinese characteristics to meet the requirement of full coverage of criminal defense. By comparing the duty solicitor system between China and other countries, this paper puts forward some suggestions that are up to the mustard of China's national conditions.

Keywords—*duty solicitor system; full coverage of criminal defense; difference; set up the institution*

I. INTRODUCTION

Many countries have established the duty solicitor system which plays a huge role in litigation. The duty solicitor system varies greatly from country to country and is determined by the different national conditions of each country. China is exploring the establishment of the duty solicitor system; so, it needs to take a research on the duty solicitor. Through the comparison of different countries on the duty solicitor system, China improves its system.

II. DUTY SOLICITOR SYSTEM IN EXTRATERRITORIAL COUNTRIES

Duty solicitor system was first established in England. With the establishment and perfection of the duty solicitor in England, Canada, Australia, New Zealand, Japan and other countries gradually establish relevant system the duty solicitor system in the legal aid system, which provides free consultation to the person who is in urgent need of the judicial assistance and regulates the investigation of judicial personnel.

A. The UK's Duty Solicitor System

There are two forms in the UK's Duty Solicitor System, including police station's duty solicitor and court's duty solicitor. The police station's duty solicitor refers to the system in which duty solicitor provides legal advice to suspects detained in police custody on the facts and circumstances of the crime they are suspected of, either in person or by phone (often both). The court's duty solicitor refers to the system whereby a defendant accused of a criminal offence in a magistrates' court does not have a solicitor, or simply because he has not yet had access to one,

to provide counsel or agency on the day of his first court appearance. It aims to provide necessary legal aid for the person who is prosecuted. After decades of operation, the UK's Duty Solicitor System has been relatively perfect, and an effective operation system has been established in terms of the construction of relevant systems, operation mechanism and the protection of rights and interests of duty solicitors.

B. Canada's Duty Solicitor System

Among many countries which have established the duty solicitor system, Canada's duty solicitor system has made rapid progress. Compared with the UK's duty solicitor program, which focuses on the criminal field, the Canadian duty solicitor system shows a trend of diversification, extending from a single criminal field to civil, family affairs, arbitration and other fields, and attaching importance to the protection of citizens' legal rights in various fields.

With the continuous expansion of the fields that duty solicitors need to deal with and the surge of social demand for duty solicitors, Canada has established the malleable duty solicitor system, but the relevant system operation guarantee system in Canada is still not perfect, Canada's duty solicitor's system is gradually developing on some fields, including how to establish hierarchy in the field of different litigation and many areas of the duty solicitor team, and how to establish the government purchase is given priority to, a variety of funding sources of the duty solicitor.

C. New Zealand's Duty Solicitor System

The duty solicitor system in New Zealand is greatly influenced by the UK. The duty solicitor system established in New Zealand is only included the court duty solicitor. After arriving at the court, the accused can get legal help from the duty solicitor. New Zealand's duty solicitors are excluded from the trial and could only provide legal advice and could not represent the accused.

New Zealand's government intends to broaden the scope of duty solicitor to provide legal aid and set up more station in order to solve the problem that the duty solicitor is only as a "witness". They try to broaden the duty solicitor litigation rights to protect the lawful rights of the accused person.

D. Japan's Duty Solicitor System

Compared with European and American countries, Asian countries established the duty solicitor system lately. In 1990, Japan established the duty solicitor system by referring to the relevant systems of the UK, and divided the duty solicitors into "standby system" and "register system", and established different legal aid systems according to the different characteristics of different regions. In major criminal cases, solicitors' associations will arrange solicitors on duty to contact the accused and provide legal services. Japanese government learns from the UK's experience, explores to build duty solicitor system more perfect. They use the solicitors association (JFBA) and the combination of solicitor association's subsidy and legal AIDS association's solicitation to provide the relevant fund guarantee for the duty solicitor. Japanese government tries to build up a duty solicitor aid system to cover the whole judicial organs to safeguard the lawful rights and interests of the accused person.

III. THE DIFFERENCES OF DUTY SOLICITOR SYSTEM BETWEEN CHINA AND OTHER COUNTRIES

A. The Differences of the Nature

"Duty solicitor system" in China includes legal aid institutions within the law, legal aid reception, migrant workers on duty on duty solicitor office, reporting on duty solicitor office. The legal aid institutions are subordinate to the judicial administrative organs and they have legal right institutions to provide a convenient measure. The legal aid institutions or all kinds of legal rights institution established for seeking legal help to people to provide legal consultation system of the daily work of reception.

Though, China's "criminal procedural law" the ninety-sixth, the supreme people's court, the supreme people's procuratorate, ministry of public security and the ministry of justice jointly formulated "about the regulation of criminal procedure legal aid work" in article 4 of the specified by the criminal investigation stage of criminal suspect has the right to get a solicitor to help or aid, but from the point of the judicial practice, in the investigation stage, because the solicitor met with criminal suspects program is not clear, arrange the reason such as the main body of the unknown, "the solicitor meeting of marking, and so on are very common and problems to be solved. Individual regions at the present stage in China, therefore, is to carry out the so-called "duty solicitor" system is not adapt to the current litigation system reform in China, solving the investigation phase "solicitors met with difficult, marking difficult" problems, so it is difficult to rise to help at all stages of the proceedings of criminal suspects to maintain their own rights, effectively promote the related judicial department to follow the law. Compared with foreign duty solicitor system as an important part of legal aid system, is to make up for a lack of legal aid system, ensure defendant balance, especially for the criminal suspect cannot obtain legal aid in investigation phase to provide free legal aid service, its effects at every stage of the proceedings.

B. The Differences of the Concept

The concept of legal aid duty solicitor system in foreign countries and China is different. At present, the concept of the Chinese duty solicitor system is still in the stage of introduction, system introduction and pilot study. Chinese legal aid institutions choose the duty solicitor to legal aid institutions office or legal aid work site to provide daily duty service, reception and answers the legal consultation.

For example, in the legal aid systems of the UK, Canada and other countries and regions, the duty solicitor has become a special concept with a specific meaning, and has established a sound operating mechanism. However, in China, the legal aid system has just been developed for more than a decade, and the duty solicitor system is still a relatively strange thing for legal aid professionals. Therefore, there is no and it is impossible to form a special concept, let alone the establishment and professional operation of the system.

C. The Differences of Responsibilities and Categories

Foreign duty solicitors have a clear classification according to their duties. The largest number of duty solicitors is in Canada, such as Ontario, duty solicitors include family and civil duty solicitors, criminal duty solicitors, mental health law duty solicitors, special duty solicitors, consulting solicitors and other on-duty solicitor programs. Different on-duty solicitors have different functions. However, in China, the so-called "duty solicitors" have no clear classification and function division, and the services they provide are mostly limited to simple non-litigation legal consultation, some legal knowledge and policy solution.

In addition, there are also great differences in personnel qualification requirements, office locations, relationships between relevant departments, service standardization, universality, stage and other aspects.

IV. SUGGESTIONS FOR PERFECTING THE DUTY SOLICITOR SYSTEM

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A. Setting up Strict Barriers to Entry the Duty Solicitor System

To clarify the qualification of duty solicitors is the top priority in the duty solicitor system. From the perspective of duty solicitors in England, Canada and other countries and regions, no matter from legal aid full-time solicitors or private practice solicitors, they have clear and strict requirements on the entry. The Canada's method can be adopted to set up strict barriers to entry the team of the duty solicitor. The applicants are required to sign a duty solicitor's

guarantee to participate in a three-month internship. Upon completion of the internship, the district director or the supervising duty solicitor will send a performance feedback form to the district director or the supervising duty solicitor to decide whether to approve the applicant to become the duty solicitor or require the applicant to accept another three-month internship. An applicant who is permitted to become a duty solicitor is also required to be brought to the courtroom by an experienced duty solicitor for attendance and skill training within the time limit specified by the district attorney or the duty solicitor with supervisory duties. All duty attorneys are required to sign warranties of compliance with legal aid laws and regulations, duty solicitor access and practice standards, and duty solicitor education.

B. Strengthening the Relationship Between Legal Aid Agencies, Courts, Public Security Organs and Other Relevant Departments

The activity of duty solicitors is a work that legal aid agencies, courts and public security organs take the initiative to participate in, but their responsibilities are different. For example, from the perspective of foreign practices, the office places of duty solicitors in police stations and duty solicitors in courts are mostly provided by police stations and courts for free, while the selection, assignment and remuneration of duty solicitors are generally managed by legal aid agencies. At present, the pilot projects are run by legal aid agencies for ease of administration. In the future, it is necessary to clarify the responsibilities and functions of legal aid institutions, courts and public security departments in the work of duty solicitors, establish a daily working connection mechanism, keep close relationship with each other, and jointly provide necessary services for duty solicitors.

C. Establishing Unified Telephone Consulting Service for Duty Solicitors

In the above-mentioned countries and regions, telephone counseling service is one of the important ways for duty solicitors to carry out their work, and the operation is very successful. In pilot areas, through integration of resources, it is necessary to try in public security, courts, prisons, and between legal aid agencies to establish a unified free solicitor on duty 24 hours telephone counseling services, improve the network of telephone counseling programs and systems, further extends the duty solicitor service tentacles, expand coverage for services, saving the cost of services, improve service efficiency.

V. CONCLUSION

Compared with other countries, the duty solicitor system started lately in China. The establishment and implementation of the duty solicitor system is a small step in the field of criminal legal aid, but in fact it is a big step in the context of "the state respects and guarantees human rights". In the future, China can learn from the mature experience of England and American countries on government purchase of services, and explore a new path to establish the government purchase of duty solicitor services in China. China will gradually improve the guarantee measures before, during and

after the event, ensure the quality of the services of duty solicitors, broaden other sources of funds for duty solicitors, and ensure the continuous operation of the system of duty solicitors. In a word, the development and improvement of the duty solicitor system still needs our constant exploration and experiment.

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