

**International Association of Judges
Second Study Commission
Civil Law and Procedure
2015 Questionnaire
58th Annual Meeting of IAJ – Barcelona, Spain**

Replies of the Taiwan Delegation

1. Is training and accreditation of experts required in your jurisdiction?

Judges aren't particularly good at every professional field. In many cases, the parties may be involved in a complicated, technical or professional dispute; however, it is still hard for a judge to find out the fact by himself, especially in medical or construction cases; e.g.: was there any medical malpractice in that surgical operation; what situation caused water leaks on the roof; what kind of material can be used in that building, etc. To solve those issues, a training and accreditation of expert in the jurisdiction is required.

Under Taiwanese legal system, all experts should be appointed by court, no matter who subpoena experts to find the fact. The parties and lawyers can just request to subpoena experts, or express their opinion about the experts appointed by court. Furthermore, the parties and lawyers can also present profitable expert witness as a written form before trial, but it's still up to the judge to use it or not.

Before subpoenaing an expert at trial, it's necessary to make sure the expert does have special, professional and technical knowledge or experience needed for giving expert testimony.

2. What powers do you have as a judge to control the use of expert evidence?

In order to solve some professional and technical issues, the parties and lawyers may request to subpoena an expert at trial; however, if the judge finds the expert evidence is likely to be of limited value or inconclusive, the judge can refuse their request. Furthermore, even allowing their request to subpoena expert at trial, the judge can also reject to use the expert evidence. In other words,

if judge have already considered the full value of parties' claim and all the evidence, but finds the expert evidence is disproportionate to the sum that the party is likely to gain, he can refuse to use the expert evidence. Therefore, the use of expert evidence is always decided by the judge.

It's free for the parties and lawyers to present their own expert evidence as a written form, but it's up to the judge to decide what weight it is. Surely, the judge should give the reasons on decision.

3. How can the tendency towards relying on excessive numbers of experts be prevented or managed?

The use of expert evidence has increased in frequency as the issues in modern civil litigation have become more complex, so it's hard to prevent from using expert evidence. But there are still some ways to do :

One is that judges should study other professional field to avoid relying on excessive numbers of experts in civil cases. In Taiwan, Judges Academy, institution of Judicial Yuan, is enacted to foster judges in learning and map out multifaceted training programs including new laws, medical, construction, finance, economics, etc. Through overall studying, judges can determine the parties' complicated and professional disputes by themselves.

The other is that judicial specialization is also necessary in modern civil litigation. We should set up professional courts or judges to deal with some specific cases; e.g.: commercial, medical, construction, intellectual property cases. Under Taiwanese judicial system, Intellectual Property Court dealing I.P. cases was established on July 1, 2008. Commercial Court dealing with all the financial and commercial cases is the next step to be established. Besides, medical, construction or commercial cases must be assigned to specific judges who are good at those professional cases in every court of Taiwan. As above said, there are also some training programs provided for those specific judges, and they must take these programs every year.

As refer to avoid using excessive numbers of experts in a case, according to article 326 of the Taiwan Code of Civil Procedure, "an expert shall be appointed by the court in which the action is pending and the number of expert witnesses shall also be determined by the court." So there is no restriction on the number of

experts in a case; however, the judge normally doesn't allow the parties to subpoena more than one expert at trial. Of course, each party can submit expert evidence as a written form to the judge, but as already said, judge can disregard them.

4. Are there means of avoiding expert bias, and if so, how?

According to article 331 of the Taiwan Code of Civil Procedure, "a party may move for the rejection of an expert witness on the same grounds as for moving for the disqualification of a judge." Before appointing an expert witness, judge may usually accord the parties an opportunity to be heard. Therefore, the parties can express their opinion to the qualification of expert; then the judge will take it into consideration. If the judge finds that the expert has some kind of personal interest in that case, or close relationship to the parties, the judge will normally refuse the expert to testify.

For ensuring an expert testimony is impartial and truthful, an expert witness appointed by court shall sign a written oath indicating that he will give just and truthful expert testimony. Meanwhile, that means he is willing to be punished for perjury if he gives any false statement.

Such rules above said can be confirmed that the expert would give opinion to the court objectively. Accordingly, the expert appointed by court is not common to see expert bias. By contrast, when the parties submit their profitable expert witness as a written form, it's not hard to image that expert bias does exist. However, we don't have to worry about it, because judge can decide to use it or not.

5. How are experts to be prevented from usurping the role of the primary finder of fact in civil matters?

An expert witness can just provide technical and professional testimony to court; in addition, the expert can just help judge to find fact in that case, not to provide any legal opinion to court. The judge should examine all the evidence given by lawyers or parties to decide what weight the expert testimony is. When the expert testimony isn't based on factual foundation or disproportionate to the sum that the party is likely to gain, judge can refuse to take it; moreover, maybe another expert will be appointed by court.

Of course, we should admit that sometimes expert testimony is a key factor to help judge to make the final decision. For example, a person sue a doctor to claim compensation for medical negligence. To decide medical malpractice does exist or not, an expert generally is appointed by court. When the expert says there is malpractice in that medical case, it often means that the doctor is negligent, and should be responsible for that damage. However, it does matter that the judge should still examine all the evidence to see if the expert testimony is appropriate or not in that case. As a result, judge is still the role of the primary finder of fact.

Submitted by :

Judge Yen-Chih Chen
Taiwan Changhua District Court