

The Synergistic Development of People's Mediation and Commercial Mediation in China

Xiaoxiao Li

Law School, Beijing Normal University, Beijing, China
Email: na.jiang@bnu.edu.cn

How to cite this paper: Li, X. X. (2023). The Synergistic Development of People's Mediation and Commercial Mediation in China. *Chinese Studies*, 12, 48-58.
<https://doi.org/10.4236/chnstd.2023.121005>

Received: November 2, 2022

Accepted: February 6, 2023

Published: February 9, 2023

Copyright © 2023 by author(s) and Scientific Research Publishing Inc.
This work is licensed under the Creative Commons Attribution International License (CC BY 4.0).
<http://creativecommons.org/licenses/by/4.0/>



Open Access

Abstract

It is a general trend for the synergistic development of people's mediation and commercial mediation in China. Given the current operations of people's mediation and commercial mediation in China, and in conjunction with the overseas experience of alternative dispute resolution, this paper proposes to consolidate the advantages of people's mediation, cultivate and promote commercial mediation organizations and commercial mediators, facilitate more professional, high-end and international commercial mediation, and cultivate high-level and professional international commercial mediators. Moreover, it is proposed that joint efforts should be made to promote the synergistic development of people's mediation and commercial mediation and clarify the regulation of false mediation as the path of synergistic development of people's mediation and commercial mediation in China.

Keywords

People's Mediation, Commercial Mediation, Alternative Dispute Resolution Mechanism

1. Introduction

Mediation is regarded as traditional "oriental experience" (Wu, 2010). People's mediation is an activity that the committees for people's mediation urges the person concerned to voluntarily reach a mediation agreement based on equal consultation through persuasion and other methods to solve civil disputes. Commercial mediation refers to an activity that equal subjects have a dispute on a commercial transaction and submit to the committee for commercial mediation to solve the disputes. The main differences between people's mediation and commercial mediation are the scope of the case and the mediator. On one hand, the scope of the case of people's mediation is the committee for people's

meditation, which is a mass organization established by law to mediate civil disputes; while the mediator of commercial meditation is a social commercial mediation organization. After years of development in China, people's mediation and commercial mediation have formed the mediation model with Chinese characteristics, which is especially represented by the mediation model and experience of Zhejiang, Beijing and Shanghai. They will be introduced below.

1.1. Zhejiang Experience—From “Fengqiao Experience” to Online Alternative Dispute Resolution

The “Fengqiao Experience” originated in Fengqiao Township, Zhuji, Zhejiang Province, and has spread to the entire country. The Fengqiao Experience has been sustained and developed in Zhejiang Province. Since 2013, the people's mediation organizations in Zhejiang Province have received more than 3.6 million cases of various conflicts and disputes, with a mediation success rate of 98.33%. There are 31,417 people's mediation committees at county, township and village levels, and 1175 industrial and professional people's mediation organizations covering 15 sectors in Zhejiang Province. More than 620,000 cases of conflicts and disputes have been resolved through the linkage mechanism of people's mediation, administrative mediation and judicial mediation (*Zhejiang Province's innovations in developing people's mediation in the new era*, 2019). In addition to such a linkage mechanism, Zhejiang Province has developed new forms of mediation in recent years, such as Internet Plus internal organization mediation and online mediation.

The Fengqiao Experience of people's mediation was originally an innovation of the people of Zhuji in the working methods or approaches of people's mediation based on the characteristics of local conflicts and disputes, and the requirements of social governance and solutions for different times. While innovations are made in the methods and mechanisms of people's mediation, the mode and form of people's mediation in Zhuji and the mediator team has also been transformed from traditional to modern. In addition to innovative models and broadened forms, in order to enable the people's mediators to be more authoritative, specialized and professional, the Zhuji Municipal People's Government has established a model combining full-time, part-time and volunteer mediators in addition to strengthening the regular training of people's mediators. Moreover, experts in medicine and law, as well as distinguished and prominent personages, are actively involved in the work of people's mediation as part-time people's mediators. In order to adapt to the development of the Internet economy in the information age, the Supreme People's Court has introduced online dispute resolution (ODR) to respond to the new challenges of alternative dispute resolution mechanisms in the information age. Local grassroots courts are also actively experimenting with this new approach. In the birthplace of the Fengqiao Experience, the Zhuji Municipal People's Court has integrated the existing mediation resources, and incorporated the Fengqiao Experience into it based on the construction of information technology facilities. Based on this, it has gradually es-

tablished a supporting mechanism of the online alternative dispute resolution platform which integrates online mediation, online case filing, online judicial confirmation, online supervisory procedures, and electronic service.

1.2. Beijing Experience—Lawyer Engagement in Alternative Mediation

One of the main features of Beijing's pilot project on the implementation of lawyer mediation is that it is fully integrated into Beijing's alternative dispute resolution system, so that lawyers can play a practical role in dispute mediation. Beijing has incorporated lawyer mediation into its alternative dispute resolution system. Moreover, it is gradually building up the work pattern led by Beijing Municipal Bureau of Justice and Beijing High People's Court, with Beijing Association for Alternative Dispute Resolution (BJADR) as the platform and involving many law firms, where lawyer mediation, people's mediation, professional mediation, and industrial mediation work in a mutually reinforcing manner. Specifically, first, the "1 + N" working model of lawyer mediation is constructed. Based on the neutral nature of mediation work, BJADR acts as the one hub, and BJADR, the Beijing High People's Court and the Beijing Municipal Bureau of Justice jointly certify N law firms and lawyers to become the group and individual members of BJADR. Moreover, they guide the parties and their representatives to choose the lawyers in BJADR's professional mediation platform for mediation services. At present, 60 law firms in Beijing have established mediation centers and are incorporated into BJADR's mediation organization platform, with 677 certified attorney-mediators. Second, standardized procedures of lawyer mediation are established. The preliminary notification procedure is implemented, and the Notice of Legal Service of Lawyer is made a mandatory procedure. Before the lawyer accepts the entrustment, the lawyer informs the parties of the risk of litigation, and the parties may prioritize the mediation and dispute settlement by lawyers. Lawyers issue the Notice of Lawyer Mediation to the parties who accept the lawyer mediation, and clearly notify the parties of the mediation system and related matters. Third, it expands the breadth and depth of lawyers' engagement in mediation work. In Beijing, on the basis of the full coverage of people's mediation in the case filing tribunals of the grassroots courts in 2016, a large number of veteran lawyers and trainee lawyers were engaged in courts and carried out pre-litigation mediation with people's mediators. At the same time, excellent lawyers were guided to join the industrial and professional people's mediation organizations.

1.3. Shanghai Experience—Cultivation and Development of Commercial Mediation

In recent years, with the rising status of Shanghai as an international trade center, commercial mediation in Shanghai has also experienced rapid development. A group of independent third-party dispute resolution organizations, which are neither attached to any government agency nor affiliated with any one entity,

have been established. On January 8, 2011, Shanghai Commercial Mediation Center (“SCMC”) was formally established with the approval of Shanghai Municipal Commission of Commerce and Shanghai Social Organization Administration. It has become the first independent agency specializing in commercial mediation in China, marking the full-scale development of commercial mediation in Shanghai into a professional track. The commercial mediation agencies in Shanghai, represented by SCMC, have been able to take root and grow in Shanghai, and exhibit mediation models with distinctive Shanghai characteristics.

First of all, the commercial mediation agencies in Shanghai adhere to a neutral institutional positioning, and most of them are private non-enterprise units established by social organizations. As a neutral third-party institution, it is neither attached to any government agency nor affiliated to any unit, and is an independent market entity. Second, Shanghai’s commercial mediation agencies adhere to the path of specialization and professionalism. Most commercial mediation agencies specialize in commercial fields such as trade, investment, finance, securities, insurance, intellectual property, technology transfer, real estate, engineering contracting, and transportation, and adhere to the path of professionalism and specialization. Most of the mediators of commercial mediation agencies are experienced experts, academics, lawyers, and retired judges. Among them, some are professors, experts and scholars with special government allowance from the State Council, lawyers and leading members of international ADR agencies. Such a professional team has gained credibility and reputation for the commercial mediation agency. Third, commercial mediation agencies insist on market-oriented operation. Commercial mediation agencies in Shanghai, represented by SCMC, are independent third-party agencies, and most of them operate through market-oriented mechanisms. Finally, commercial mediation agencies have been stepping up cooperation with international mediation agencies. In recent years, commercial mediation agencies in Shanghai have also established partnerships with mediation agencies in the US, EU, UK, Singapore and Hong Kong, China. In addition, SCMC has established a close strategic partnership with Judicial Arbitration and Mediation Services, Inc. (JAMS), the world’s largest ADR organization, and become its seventh international member. In addition, the Shanghai-Hong Kong Commercial Mediation Forum has been held for four consecutive years. In view of this, commercial mediation agencies in Shanghai have been increasing their international presence.

2. Overseas Experience of Alternative Dispute Resolution

China has the longest tradition of mediation, and mediation, as a traditional Eastern experience, has extremely distinctive Chinese characteristics. Therefore, it has been argued that “mediation is probably the only feature of the Chinese legal system that has been most extensively studied in the West” (Guo, 2001). Nevertheless, it does not mean that the research on mediation can overlook the

concept and system of the comparative law. On the contrary, the new developments of the mediation systems in foreign countries and regions should also attract China's attention and concern, especially in the case of commercial mediation.

2.1. Mediation System in the United States

The development of the mediation system in the United States is based on the ADR ("Alternative Dispute Resolution") Movement in the United States, which has emerged comprehensively and rapidly, and is flourishing. Mediation is an integral component of the ADR mechanism, and mediation organizations have become increasingly sophisticated in the United States in recent years, with the emergence of various specialized mediation organizations. Moreover, mediation is beginning to evolve into a professional discipline, providing instruction to practitioners. In addition, mediation has gradually become an independent profession in the United States, with independent professional norms and standards, and private and commercial mediation companies have sprung up, and their business scope has gradually expanded from the whole United States to the world (Liao & Zhang, 2013). Among them, one of the important features of the development of the US mediation system is the market-oriented and commercialized mode of operation of mediation. In the United States, there are specialized mediation agencies, such as community mediation departments supervised by the government, as well as commercial and private mediation companies, making mediation an independent profession that can be practiced for a lifetime. Mediation is now an independent profession. With the support of the government and the bar association, a large number of professional mediation organizations have been established to provide mediation services depending on the type and nature of disputes, such as agricultural dispute mediation organizations, community dispute mediation organizations and family dispute mediation organizations. It should be noted that the US has also developed commercial mediation institutions that are in line with the market economy, such as the well-known Judicial Arbitration and Mediation Service (JAMS). JAMS is the world's largest private organization for the resolution of civil and commercial disputes other than litigation, and its services cover almost all forms of dispute resolution outside litigation. JAMS handles an average of 11,000 cases per year, with a turnover of tens of millions of dollars (Wang & Lai, 2016). In the United States, in addition to the court-oriented mediation model, the attorney-led mediation model in the United States is also well developed, thus forming a diversified and comprehensive mediation model. The US mediation system can be classified into civil mediation and court mediation according to the different mechanisms of mediation operation. Civil mediation specifically comprises community mediation, business mediation, solution-oriented professional mediation, and mediation by mediation organizations that are funded by companies, associations, and professional organizations.

2.2. The Mediation System in the UK

During the civil justice reform in the 1990s with the theme of “Access to Justice,” ADR became highly advocated and promoted as one of the main solutions to alleviate the pressure of litigation and resolve the problems faced by the judicial system. The alternative dispute resolution mechanisms such as mediation have been developed in the UK because the judicial reform in the UK has proposed the objectives of reducing the costs and expenses of dispute resolution, establishing a case management mechanism and resolving disputes quickly before trial. Influenced by this, the mediation and reconciliation system has been well used and developed in the resolution of family disputes and consumer disputes, and later began to shift from the resolution of general civil cases to that of commercial cases. In recent years, both court-affiliated mediation and court-encouraged mediation have been growing.

ADR is becoming increasingly popular in the UK in the dispute resolution process, and is being used efficiently in a variety of disputes, from neighborhood disputes to international commercial disputes. At a minimum, ADR is being used as an intermediate step before access to justice. As the reform progresses, more and more parties are willing to apply the mediation procedure. In the UK, the mediation process is particularly effective in four areas: commercial disputes, family disputes, community disputes, and environmental disputes. According to statistics, there are currently approximately 10,000 cases per year in the civil and commercial mediation market in England and Wales, with the value of the subject matters of the mediation cases amounting to £10.5 billion. Since 1990, civil and commercial mediation in England and Wales has grown rapidly, with the total value of the subject matters involved in mediation cases reaching £85 billion and the dispute resolution costs saved through the mediation process amounting to £22.6 billion. As the advantages of mediation become more apparent, it attracts considerable resources and capital, but the mediation market is still dominated by a handful of dispute resolution powers. According to the findings of the Civil Mediation Council, more than 86% of cases are handled by the top 7 mediation agencies or mediation organizations in the UK (Jiang, 2017).

2.3. Mediation System in Japan

Since the 1970s, Japan has been attempting to reform the traditional mediation system while paying more attention to the coordinated development of the alternative dispute resolution mechanism. At present, the main form of judicial ADR in Japan is mediation, and civil mediation in Japan is well developed and operable, and the mediation system has been incorporated into the judicial system in an organized and systematic way.

Looking at the Japanese mediation system, we can find that the prominent features are the separation of mediation and trial, judge-led process and active participation of lawyers. These characteristics are closely related to the establishment of the Mediation Committee in Japan. In order to separate mediation

from trial, mediators are strictly distinguished from the judges of the case in the Japanese civil mediation system. In Japan, special mediation committees are established in the Summary Court and Family Court, which are responsible for the mediation of civil disputes and are not governed by the Summary Court, and exercise their functions and powers independently according to the law. In this regard, Article 6 of the Civil Conciliation Act of Japan stipulates that “the Mediation Committee shall consist of two or more members, the Chief Mediator and members.” Article 7 of the Civil Conciliation Act stipulates that “the Chief Mediator shall be appointed by the District Court from among the judges. The mediation members for each case shall be appointed by the court as the civil mediation members of the mediation committee.” A civil mediation member is not a judge, but a part-time court staff member (a national civil servant who holds a special position) or a lawyer or other professional in a court as provided for by national law. In addition to lawyers, people with legal qualifications, expert mediation members and general mediation members in Japan can serve as civil mediation members. In addition, Article 8 of the Civil Conciliation Act stipulates the specific responsibilities of the mediation members: “The civil mediation members, in addition to participating as mediation members, shall be ordered by the court to give opinions based on their expertise and experience in other mediation cases and to hear the interested parties entrusted with the resolution of the dispute. In addition, they shall perform other matters necessary for the mediation of cases as prescribed by the Supreme Court. The civil mediation members shall act as informal civil servants, and the matters related to their appointment and removal shall be regulated by the Supreme Court.” Thus, in addition to the chief mediation member, other mediation members are equivalent to consulting experts in civil cases, and they also express their expert opinions on highly specialized cases for the reference of litigation judges in the trial of these cases.

3. Recommendations on the Path to Synergistic Development of People’s Mediation and Commercial Mediation

Concerning its development status, the coordinated development of people’s mediation and commercial mediation in China can be improved in combination with the extraterritorial experience of multiple dispute resolution via the following paths.

3.1. Stabilizing the Strengths of People’s Mediation, Cultivating and Promoting Commercial Mediation Organizations and Commercial Mediators

The current mediation mechanism in China does not specifically provide for professional commercial mediators. For this reason, it is necessary to establish a corresponding mechanism for training and regulating commercial mediators in accordance with the existing rules and requirements for mediators in people’s

mediation, judicial mediation, and professional mediation in the industry, as well as the characteristics of international conventions.

In terms of mediation process management institutions, China adopts a model of quasi-judicial administration, while commercial mediation, because of its natural independence and marketability, prefers a market-based model. Currently, some of the most influential commercial mediation centers in China, which have been operating in a market-oriented manner, are International Commercial Mediation Center for the Belt & Road (BNRMC), CCPIT/CCOIC Mediation Center, and Shanghai Commercial Mediation Center (SCMC). Compared with the huge commercial mediation market, further institutional guidance, encouragement and support are still needed to establish more market-oriented and highly specialized commercial mediation institutions.

3.2. Facilitating More Specialized, High-End and International Commercial Mediation

Lawyers' professionalism and authority are the main characteristics that distinguish commercial mediation from other forms of mediation out court, which is also the core reason for lawyer mediation. This characteristic of lawyer mediation determines that the cases it accepts are often disputes that may be resolved by mediation, but cannot be resolved by people's mediation. Such disputes are always complex commercial disputes, such as complex contract disputes, intellectual property disputes, corporate disputes, securities disputes, financial disputes, and foreign-related commercial disputes. Moreover, these commercial cases usually involve large amounts of subject matter. By focusing the scope of cases on commercial mediation, lawyer mediation, which is charged on the basis of the amount of the subject, can guarantee the cost of its own operation and motivate the attorney-mediators. Moreover, it can ensure the balance of costs and benefits for the parties in such disputes to choose lawyer mediation. For cases with disputes over marriage, neighborhood, family, alimony, maintenance, and inheritance, they seldom involve complex legal relationships, with small amounts in dispute. These cases are undoubtedly more appropriate to be mediated by people's mediation and other non-professional mediation methods. As attorney-mediators are all practicing lawyers with rich practical experience and profound legal expertise, their professionalism determines that the main content of the scope of lawyer mediation cases should be distinguished from other forms of mediation out court such as people's mediation. Lawyer mediation should focus on the mediation of modern commercial disputes, so the appointment and training of attorney-mediators and other supporting facilities of lawyer mediation should be developed around the characteristics of modern commercial disputes. In addition, due to the voluntary nature of mediation, there is no reason to refuse the application of legal mediation in cases where the parties to the dispute are unanimously willing to choose legal mediation in ordinary civil disputes.

3.3. Cultivating High-Level and Professional International Commercial Mediators

Mediators' competence and quality not only affect the success rate of commercial mediation, but also directly relate to the social credibility of the commercial mediation system, which is evident in the development of the German mediation system (Zhang & Liu, 2012). The qualification requirements for commercial mediators in China can be reasonably regulated by the number of years of experience of mediators, the assessment of their business ability and any disciplinary penalties they have received. In addition, since commercial mediation is a highly practical business activity, it should be clarified that candidates who are qualified as mediators should receive training on the business competence of mediation and become mediators only after they pass the assessment. In this regard, practices in the comparative law can provide a mature empirical model for China. Special training institutions need to be set up in conjunction with the establishment of a commercial mediation system in China. Candidates can only be fully qualified for commercial mediators if they are trained and qualified, so as to establish a perfect entry system for commercial mediators. At the same time, the education management of commercial mediators should be strengthened, and a system of certification, classified management, graded training and rating should be implemented. Moreover, the code of conduct and professional ethics of commercial mediators should be formulated, and a database of professional commercial mediators should be established to continuously improve the quality and social image of commercial mediators. It is necessary to improve the assessment, reward and punishment system of commercial mediators, increase the commendation and reward for excellent mediators, adjust commercial mediators who are inappropriate to engage in mediation work in time, enhance the sense of social responsibility and honor of commercial mediators, and provide human resource guarantee for effective resolution of various disputes (Zhang & Liu, 2012).

3.4. Joint Efforts to Facilitate the Synergistic Development of People's Mediation and Commercial Mediation

The mediation mechanism linking multiple parties should be improved to effectively resolve social conflicts and disputes. Social contradictions and disputes can be effectively resolved only through the collaboration and joint efforts of many departments. Courts at all levels should intensify contact with people's mediation organizations, industry associations, administrative departments and other grassroots organizations with mediation functions, and actively build a macro-mediation working mechanism, thus striving to resolve conflicts and disputes at the village or home before litigation. Moreover, they should actively work with the justice bureau, and traffic control departments to jointly set up traffic accident mediation centers, timely resolving disputes in traffic matters. A circuit court for labor disputes should be set up to trace the root of the dispute to

its origin and seamlessly integrate judicial mediation and administrative mediation. Pre-litigation mediation should be carried out in civil disputes and minor criminal cases, to enhance the effectiveness of mediation, and prevent and resolve conflicts and disputes in the bud. At the same time, the judicial mediation and litigation should be closely linked, to truly close the case when the dispute is settled and the parties are reconciled. Meanwhile, the source of litigation should be controlled to ease the pressure of handling cases.

The collaboration mechanism should be strengthened in many aspects such as resource sharing, service of legal documents, investigation and evidence collection, and case execution. Also, we should build a judicial linkage and collaboration mechanism to establish a holistic concept and overall consciousness in order to complement each other's resources and achieve win-win cooperation. At the same time, the judicial collaboration mechanism should be fully strengthened in order to develop innovative means of comprehensive social governance, form a synergy of protection, effectively improve the effectiveness of judicial services, and achieve social equality and justice.

3.5. Regulation of False Mediation

The greatest hidden danger in the mediation system can be considered as false mediation. There are two major reasons for false meditation. Firstly, mediators force the dispute subjects to agree on meditation for the mediation settlement rate. Secondly, disputes subjects make a malicious collusion to reach the objective of damaging others' legal rights through a false meditation. The regulation of false commercial mediation can be performed through the signing of voluntary mediation agreements and the recording of mediation process.

On the one hand, the parties' voluntariness is the "lifeline" of mediation operation, and the automatic initiation of mediation procedure guarantees the voluntariness of mediation from the source. Therefore, the regulation of false mediation first needs to make sure that the parties choose mediation based on their true voluntariness from the source. In this regard, we can learn from Singapore's institutional model. When the mediation process starts, the parties can sign a written agreement on the mediation. The agreement indicates that the parties voluntarily choose commercial mediators for mediation, and undertake to fulfill the agreement after reaching an agreement on mediation. On the other hand, as far as the recording of mediation is concerned, the system requires that the entire process of commercial mediation be recorded. It should specify why the parties to the dispute choose commercial mediation, when they choose commercial mediation, how to determine commercial mediators, what statements are made by the parties to the dispute in the specific process of mediation, what evidence is presented, how to reach an agreement on a specific issue, how the mediation plan is formed, how the parties to the dispute treat the mediation plan, and how they finally accept the mediation plan. The general principle is to record the whole process of mediation in detail, especially the undisputed facts

and reasons of the parties to the dispute. Moreover, upon the conclusion of the mediation, the parties to the dispute shall sign and confirm the record after reading it and considering it to be correct for filing.

4. Conclusion

Combined with the development situation of people's meditation and commercial meditation and the running experience in foreign countries, there is still a long way for the coordination development of people's meditation and commercial in China to reform. There is the integration of the strength of people's meditation into commercial meditation to set up modern and professional commercial mediation organizations so as to urge commercial meditation to develop to be professional, high-end and internationalized one to cultivate all kinds of professional meditators and integrate the resources from all aspects in the society; consequently, the commercial meditation could truly make an efficient cooperation between the people's meditation and the commercial meditation to achieve the reasonable regulation of false meditation in the future. We hope the paper could attract much more attention from the academic circle and the circle of judicial practice on meditation to jointly promote and push the people's meditation and commercial meditation have a perfect development in China.

Conflicts of Interest

The author declares no conflicts of interest regarding the publication of this paper.

Funding

This dissertation is supported by "The Fundamental Research Funds for the Central Universities".

References

- Guo, D. Q. (2001). *Dispute Resolution in China* (Trans. by Q. Wang). Qiang Shigong. *Mediation, Legality and Modernity: Mediation in China* (p. 375), China Legal Publishing House.
- Jiang, L. P. (2017). Mediation Mechanisms and Experience of the Centre for Effective Dispute Resolution. *People's Court Newspaper*.
- Liao, Y. A., & Zhang, Y. (2013). Insights and Lessons from the U.S. Mediation System. *Journal of Huaihua University*, 12, 54-58.
- Wang, X. Z., & Lai, X. S. (2016). Observations of the U.S. Civil Mediation System—Report on the Study Tour of the Ministry of Justice Delegation to the U.S. Civil Mediation Training Mission. *People's Mediation*, 2, 44-47.
- Wu, Z. M. (2010). *Great Mediation: The Oriental Experience in Dealing with Social Conflicts* (p. 78). China Legal Publishing House.
- Zhang, M. Q., & Liu, M. F. (2012). The Development and Inspiration of the German Civil Mediation System. *Justice of China*, 5, 72-75.
- Zhejiang Province's Innovations in Developing People's Mediation in the New Era (2019, August 24). *Zhejiang Daily*.
http://www.gov.cn/xinwen/2019-08/24/content_5424063.htm