

# *Exploration on the Causes and Cracking Paths of Civil False Litigation*

**Xiaowen Miao**

*Dalian Ocean University, Dalian, Liaoning, 116023, China*

**Keywords:** Civil false litigation; Cause analysis; Cracking Path

**Abstract:** With the development of China's economy and society, civil false litigation cases have shown a high incidence trend, which seriously disrupts the judicial order in our country, wastes judicial resources, and damages judicial authority. Although China has introduced a series of measures in the field of regulating false litigation, further improvement is still needed. Starting from judicial practice, this article summarizes the frequent cases of civil false litigation, analyzes the causes of civil false litigation cases, and explores the cracking paths of civil false litigation, attempting to provide a sound idea for regulating civil false litigation.

## **1. The Concept of Civil False Litigation**

After the revision of the Civil Procedure Law, there is still controversy in the theoretical community regarding the definition of false litigation. Currently, there are two types of false litigation: broad false litigation and narrow false litigation. In a broad sense, the viewpoint holds that false litigation not only includes malicious collusion between both parties to file a false lawsuit, but also includes one party filing a lawsuit through tampering or falsifying evidence. And this viewpoint has also been affirmed by the "Interpretation on Several Issues Concerning the Application of Criminal False Litigation Crimes" by the two high authorities. Narrowly speaking, the viewpoint holds that false litigation only includes malicious collusion between both parties, and does not include litigation initiated by one party through tampering or forging evidence without the knowledge of the other party. However, civil litigation initiated by one party through tampering or forging evidence is litigation fraud, and the litigation still has adversarial nature and does not harm the authority of the judiciary. Therefore, this behavior can be classified as obstructing litigation and imposing sanctions.

With the development of judicial practice, false litigation has become increasingly common. In order to better clarify the concept of civil false litigation and effectively regulate it, defining false litigation as malicious collusion between both parties is more in line with the description of false litigation in China's specific environment<sup>[1]</sup>. However, for one party to tamper with the act of forging evidence to initiate a civil lawsuit shall be punished for the act of forging evidence that hinders the compulsory measures of civil litigation in the Civil Procedure Law. Based on the above analysis, civil false litigation refers to the malicious collusion and fabrication of facts by both parties with civil rights capabilities, using legal litigation procedures to evade laws and regulations to seek illegal benefits, undermine social integrity, disrupt judicial order, violate judicial fairness,

and damage judicial authority and credibility.

## **2. The Characteristics and Multiple Fields of False Civil Litigation**

### **2.1 The Characteristics of Civil False Litigation**

#### **2.1.1 Close relationship between the parties involved**

With the increasing number of civil false litigation cases, we have found that the parties involved often have close relationships, mostly close relatives such as spouses, children, and parents. This is because in civil false litigation, malicious collusion between both parties is required, which requires tacit cooperation between both parties. Only reliable and reliable relationships can create a favorable environment for false litigation.

#### **2.1.2 Weak adversarial nature of litigation**

Due to malicious collusion between both parties, fabricating false legal relationships and facts to seek illegal benefits and infringe on the interests of others, in order to accelerate the trial process and obtain effective judgments from the court more quickly, one party passively defends and generally voluntarily acknowledges some case facts. Both parties have little dispute over the case facts and only show some formal confrontation. The cooperation between the two parties is tacit and makes the evidence and cross-examination mere formality.

#### **2.1.3 Most cases are settled through mediation**

Due to the relatively fast settling time and limited process of mediation, in order to accelerate the trial process and achieve the premeditated purpose more quickly, most of the parties involved in false litigation actively request mediation. In recent years, China's litigation has tended to adopt a party oriented litigation model, emphasizing the dominant position of the parties and weakening the dominant power of judges. Therefore, judges generally only review the legality of mediation agreements. There will be no substantive review of the case itself, which provides an opportunity for civil false litigation.

#### **2.1.4 Short case processing cycle**

Due to the desire of both parties to close the case as soon as possible to achieve the purpose of implementing false litigation, during the litigation process, both parties generally do not raise objections to the facts of the case, that is, there are basically no conflicting situations between the two parties. Moreover, due to one party's self-admission of false facts, the amount of evidence and cross-examination required by both parties during the trial process is reduced, which greatly reduces the handling time and accelerates the litigation process, in order to achieve the parties' goals more quickly.

## **2.2 Multiple fields**

### **2.2.1 Private lending**

Private lending is a high incidence area of civil false litigation. In such cases, both parties fabricate debt facts and transfer one party's property to the other party to avoid debt. Moreover, due to the limited evidence, the parties are prone to falsifying evidence such as IOUs, making false litigation relatively simple and difficult to identify. Therefore, private lending dispute cases are the "disaster zone" of false litigation.

### 2.2.2 Divorce dispute

Divorce disputes in civil false litigation mainly include malicious collusion between one spouse and a third party or creditor during or after the divorce litigation, increasing or reducing the couple's common property through fictitious debts, in order to occupy more property interests and harm the legitimate interests of the other spouse. Alternatively, in order to achieve the corresponding purpose, both spouses privately agree to terminate the marriage relationship through litigation, and then remarry after achieving a certain purpose, which is commonly known as "fake divorce".

### 2.2.3 Corporate debt disputes

In this case, the main form of civil false litigation is the fabrication of debt and debt relationships between the relevant parties of the enterprise and their counterparts, fabricating false facts, and damaging the legitimate rights and interests of the enterprise's creditors or others. For example, in a bankruptcy case of a company, the person in charge of the company maliciously colludes with the company's management personnel to file a civil false lawsuit by fabricating the salary of the management personnel, allowing the management personnel to pay the salary in priority in the company's property based on the priority right to compensation, thereby damaging the legitimate rights and interests of other creditors of the company.

### 2.2.4 Labor dispute disputes

Since 2016, the increase in the number of cases involving labor disputes in litigation and arbitration proceedings has also led to a surge in such false litigation cases. The high incidence of such cases mainly includes disputes over confirming labor relations, disputes over pursuing labor remuneration, industrial and commercial insurance disputes, medical insurance disputes, and disputes over confirming employee bankruptcy claims.

## 3. Analysis of the Causes of False Civil Litigation

### 3.1 Lack of social integrity

Lu Xun once said, "Honesty is the foundation of human nature." Honesty is also an excellent traditional virtue of the Chinese nation. Social integrity is an important guarantee for maintaining social stability and fairness and justice. China's civil law stipulates honesty as the basic principle, and the Civil Code Article 7 stipulates that civil subjects engaged in civil activities shall follow the principle of good faith, uphold honesty, and abide by promises. The principle of good faith, as the most important fundamental principle of civil law, is known as the "imperial clause" of civil law. From this, it can be seen that integrity is a criterion that civil subjects should follow when engaging in civil activities and judicial organs when conducting civil and judicial activities. However, with the development of economy and society, in the process of socialist modernization in China, we have experienced the transformation of economic structure<sup>[2]</sup>. Traditional ideas have been constantly impacted by foreign ideas and cultures. Money worship, hedonism, extreme individualism, utilitarianism and other ideas have emerged. Spiritual civilization construction has encountered unprecedented challenges. With the continuous expansion of people's pursuit of profit, the problem of lack of integrity has spread to various fields of politics, culture, and even society. In the field of litigation, a large number of false litigation behaviors have emerged, manifested in the parties, driven by material interests, disregarding integrity, forging evidence, fabricating legal facts or relationships, and using legal procedures to seek illegitimate benefits. The continuous increase in civil false litigation cases is also a reflection of the lack of social integrity in the field of judicial practice.

### 3.2 The current litigation model brings defects

The litigation mode is mainly divided into party doctrine represented by the Anglo American legal system and authoritarianism represented by the continental legal system. Since the late 1990s, the party oriented litigation model has been identified as the transformation goal of China's civil litigation model as a dispute resolution mechanism that has been proven by countries around the world to meet the requirements of the commodity economy society. The principle of parties is that in the litigation process, the parties are in the dominant position, and the judge is in the middle of the judgment. In this litigation mode, the judge is in a passive and passive position, only passively listening to the arguments of both parties, and rarely conducting investigations and evidence collection on relevant facts outside of their authority. Although fully respecting the central position of the parties and ensuring the exercise of their litigation rights, it has also led to the abuse of litigation rights by the parties, such as abuse of litigation rights, evidence raids, defense raids, and abuse of jurisdiction objection rights<sup>[3]</sup>. It is precisely because of the imbalance between judicial initiative and passivity in party oriented litigation that parties to false litigation use the principle of passive review by judges to maliciously collude, tamper with or fabricate evidence, fabricate case facts, and file lawsuits to seek improper benefits. This model objectively provides convenient conditions for the spread of false litigation.

### 3.3 The mediation system has certain limitations

Article 96 of China's Civil Procedure Law stipulates the mediation system for people's courts to hear civil cases. The mediation system follows the principles of voluntariness, legality, and the principle of identifying facts and distinguishing right from wrong. Under the supervision of a judge, both parties resolve disputes through equal consultation, and can obtain a mediation agreement with the same effectiveness as the judgment, which has a mandatory enforcement effect.

However, with the increasing use of mediation systems in judicial practice to resolve disputes, the widespread application of mediation systems has also exposed the loopholes that exist in the mediation system. The reason why most parties choose to settle their cases through mediation is partly because in mediation, both parties reach a consensus for the final result, which is not adversarial enough to easily reveal their true purpose of engaging in false litigation. On the other hand, the effectiveness of the mediation agreement is the same as that of the judgment agreement. On this premise, compared to litigation, mediation is faster and can achieve illegal purposes faster. The mediation system requires full respect for the autonomy of the parties involved, and the court has always adhered to the trial principle of combining mediation and judgment, and prioritizing mediation. Once both parties request mediation, the court is also willing to quickly close the case in the most convenient way. As long as the mediation agreement is not obvious and seriously violates the interests of the country, society, and collective, the court generally does not take the initiative to review, which results in a lack of substantive review of the facts of the case by judges<sup>[4]</sup>. Some scholars believe that the idea of focusing mainly on finding out the facts will curb the mediation function, leading to the widespread practice of respecting the agreement of the parties in handling cases, eliminating the need for finding out the facts. The mediation system is a double-edged sword. Although it fully respects the authenticity of the parties' declaration of will, it ignores the authenticity of the case itself. The inherent defects of mediation have contributed to the breeding of false civil litigation.

### 3.4 Insufficient victim relief system

In China's current legal system, the relief for victims of civil false litigation is not yet perfect, which is one of the reasons for the proliferation of civil false litigation. The third party revocation lawsuit stipulated in Article 56 (3) of the Civil Procedure Law is an important relief system for third

parties to protect their own rights and interests. As an important system design to curb false litigation, it plays an indispensable role. However, due to its shortcomings in the system, the demands of some outsiders affected by false litigation cases cannot be supported by the court in judicial practice.

Firstly, the scope of the qualification of the subject of the third-party revocation lawsuit is too narrow. The Civil Procedure Law of our country stipulates that the subject of a third-party revocation lawsuit is a third party with independent claim rights and a third party without independent claim rights. At the same time, it further explains that the third party without independent claim rights is "the result of the case processing has a legal interest with him". For a third party without independent claim rights, how to define the statement that "the result of the case has a legal interest with him"? It is necessary to consider whether the third party has a legal relationship with the case, or only whether the result of the case has caused damage to the legitimate rights and interests of the third party. The third paragraph of Article 59 of the Civil Procedure Law limits the scope of the subject matter, which to some extent can control excessive litigation. However, it also makes it impossible for many non-parties whose rights and interests have been damaged to file a third-party revocation lawsuit due to the limitation of the subject matter in the system. They can only file a separate lawsuit, which not only puts the system on hold, but also increases judicial workload and wastes judicial resources. Secondly, the acceptance threshold for third-party revocation lawsuits is relatively high. According to the interpretation of the Civil Procedure Law, the filing of a third-party revocation lawsuit requires proof of all or part of the error in the original effective judgment. However, false litigation itself has the characteristics of high concealment and being difficult to detect, and even when the court retrieves evidence ex officio, it is difficult to identify it. Moreover, it requires a third party who may passively know even if their rights are damaged to fully prove the erroneous part.

## **4. The Cracking Path of Civil False Litigation**

### **4.1 Strengthen the construction of social integrity system**

The high incidence of civil false litigation cases is to some extent influenced by the rapid development of China's economy, which has led to people overly pursuing economic benefits and neglecting social integrity. Therefore, in order to effectively solve the problem of civil false litigation, it is necessary to strengthen the construction of the social integrity system, cover all aspects of social life, and create an honest trading environment to ensure the stable operation of social order.

Firstly, we need to accelerate the improvement of the personal credit reporting system, comprehensively strengthen the cooperation of credit reporting departments, consolidate information from departments such as banks, industry and commerce, real estate, and the judicial system, and establish a multi-level information disclosure system. Include all personal credit information such as income and expenditure, economic transactions, lending relationships, administrative penalties, etc. in the personal credit reporting system and conduct credit evaluations. Secondly, it is necessary to improve the system of punishing dishonesty, such as establishing a list of dishonest individuals in false lawsuits, punishing those who file false lawsuits, blacklisting them, and limiting their economic transactions. The list is also published in newspapers, online media, and other media to alert and deter dishonest individuals, in order to prevent the occurrence of false lawsuits. In addition, in the process of building a social integrity system, the government should also play a leading role, actively formulate laws and regulations related to improving social credit, encourage the public to promote the excellent quality of honesty and trustworthiness in society, and create a social atmosphere of integrity.



## 4.2 Building a pre-trial prevention mechanism

Filing a case is the first step in initiating litigation proceedings and plays a crucial role in identifying and preventing false civil litigation. However, due to the implementation of the registration system in our country, the court only conducts formal examination of the prosecution requirements without substantive examination when accepting cases, which makes it difficult for the filing procedure to play its role in preventing false litigation. Therefore, it is necessary to conduct a dual review of the facts, conditions, evidence, and other aspects of the prosecution, strengthen the screening of false lawsuits during the filing stage, establish a pre-trial prevention mechanism, and try to nip false lawsuits in the bud as much as possible<sup>[5]</sup>.

The construction of a pre-trial prevention system specifically includes: firstly, establishing a team of judges dedicated to identifying false litigation, selecting skilled and experienced judges from those who frequently handle false litigation cases to cooperate with the staff of the filing court, and screening the accepted cases before the trial to reduce the waste of judicial resources. Secondly, the court places false litigation warning signs on the filing window and requires the applicant to sign the "False Litigation Risk Commitment Letter", informing the applicant in advance that they will bear the corresponding legal consequences if they initiate false litigation or other actions, in order to deter those who want to initiate false litigation and reduce the occurrence of civil false litigation. Thirdly, for cases involving simple or almost uncontroversial facts and in a high incidence of false litigation, the judge team should carefully verify the authenticity of the case facts, litigation requests, and evidence in the complaint, and investigate the identity information of the parties involved, whether there is an intimate relationship between the two, etc. Once false litigation behavior is discovered, it should be contained during the filing stage, fully utilizing the important role of the pre-trial prevention system, and effectively avoiding the waste of judicial resources.

## 4.3 Improve the mediation system

Due to the requirement of the mediation system to fully respect the autonomy of the parties, the court lacks examination of the facts and evidence of the case. And the mediation documents produced during the mediation process have mandatory enforcement power, leading to the mediation system becoming an important means for false litigation actors to commit illegal acts. Therefore, it is necessary to improve the civil mediation system, identify and crack down on false litigation cases in mediation activities, in order to regulate the occurrence of civil false litigation.

In mediation activities, increase the scrutiny of cases in areas where false litigation is common. For example, in cases such as private lending, divorce disputes, and corporate debt disputes, emphasis should be placed on reviewing situations where evidence cannot form a complete chain, and both parties strive for mediation. Judges should conduct a comprehensive review of the legal facts and evidence in the above-mentioned cases in accordance with the law, with particular emphasis on verifying the authenticity of the facts admitted by the parties. In addition, it is necessary to review the content of the mediation agreement formulated to determine whether it is reasonable and legitimate. For settlement agreements reached voluntarily by the parties, it is necessary to carefully examine whether it will harm the legitimate rights and interests of others as well as the national and social public interests. In addition, the mediation process and mediation documents should be appropriately disclosed. In cases where national interests, trade secrets, or personal privacy are not involved, the mediation process can be appropriately made public and actively supervised by all parties. As a type of judicial document, the mediation agreement has the same legal effect as the judgment agreement. It can be made public on the corresponding website in accordance with the judgment agreement, which is conducive to promoting judicial openness, enhancing transparency and credibility of judicial activities, and enabling stakeholders outside the case to understand the situation of the case as soon as possible, and to promptly remedy the legitimate rights and interests infringed upon.

#### 4.4 Improve the lawsuit of third-party revocation

The initiation of third-party revocation actions has many restrictive conditions, making it difficult for third-party revocation actions to play an effective role in regulating false litigation. In this regard, the third-party revocation lawsuit can be improved from the following two aspects. Firstly, appropriately expand the scope of the plaintiff's subject matter. In current judicial practice, there are many non-parties whose rights are damaged who do not meet the subject conditions for prosecution, making it impossible for them to file a third-party revocation lawsuit. In order to more effectively regulate civil false litigation, the standards for determining whether the plaintiff has the subject qualification to file a third-party revocation lawsuit should not be too strict, otherwise it will not be easy to protect the legitimate rights and interests of outsiders. Secondly, simplify the acceptance conditions for third-party revocation lawsuits and lower the standard of proof. If an outsider files a lawsuit for revocation by a third party, they need to provide evidence to prove that there are errors in the judgment, ruling, or mediation agreement. However, in civil false litigation cases, due to the intentional concealment of the perpetrator, a third party outside the case was unable to participate in the litigation<sup>[6]</sup>. Moreover, the evidence in false litigation cases is mostly false evidence prepared by the perpetrator intentionally, making it difficult for outsiders to gain a deeper understanding of the specific situation of the case, resulting in significant difficulties in providing evidence. Therefore, the standard of proof provided by the parties should be appropriately reduced. As long as the evidence provided by a third party can prove that they have an interest in the outcome of the case, a third-party revocation lawsuit can be initiated. At the same time, in order to avoid the occurrence of excessive litigation, a specialized review procedure with a pre-emptive nature can be established for the revocation of a lawsuit by a third party.

#### 5. Conclusion

By analyzing the concept of false litigation, the concept of civil false litigation is clearly defined, and the typical characteristics of civil false litigation are summarized. In response to the situation in judicial practice of civil false litigation, four common cases of false litigation were summarized. Secondly, combined with judicial practice, the causes of civil false litigation were analyzed. Finally, propose solutions to the problem of civil false litigation. To solve the problem of civil false litigation, it is necessary to improve the shortcomings of the existing system and strengthen the punishment of illegal acts in civil false litigation; At the same time, we also need to attach importance to social moral education and strengthen the construction of a social integrity system.

#### References

- [1] Su Zhiqiang. *Compulsory Agency of Civil Litigation Lawyers: A Revision Mechanism of the Litigation Model of the Party Doctrine* [J]. *Politics and Law*, 2019 (12): 14-24
- [2] Sun Qichen. "Research on False Civil Litigation and Its Governance", published in "Economics and Law", 2017, Issue 33, p. 81.
- [3] Zheng Dan. *Research on the Current Situation and Solution Path of Civil False Litigation* [C]//Chongqing Dingyun Cultural Communication Co., Ltd. *Proceedings of the 2022 Social Development Theory Seminar* (2). 2022:77-79
- [4] Lou Hetao. *Research on Civil False Litigation* [C]//The Law and Policy Research Office of the Supreme People's Procuratorate, Tongfang Zhiwang (Beijing) Technology Co., Ltd. *Selected Works from the 4th National Prosecutors' Reading and Soliciting Activities*. 2023:483-492
- [5] Zhang Yafang, Li Bihui. *Exploring the Path of Prosecutorial Supervision over the Typology of Civil False Litigation* [C]//Shanghai Law Society Volume 18, 2022, *Shanghai Law Research Collection - Collected Works of the Litigation Law Research Association of Shanghai Law Society*. 2023:136-142
- [6] Liu Xiaoyan, Tan Xin. *On the Systematic Regulation of Civil False Litigation* [J]. *Inner Mongolia Social Sciences*, 2022,43 (05): 77-85