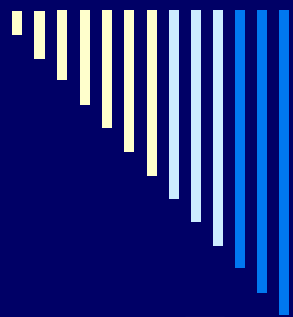


# The Application of Mediation in Chinese Civil and Commercial Judicial Procedure and its problems

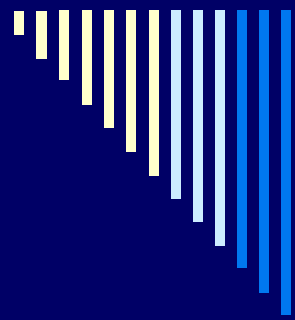
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06. 04. 2015

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# Contents

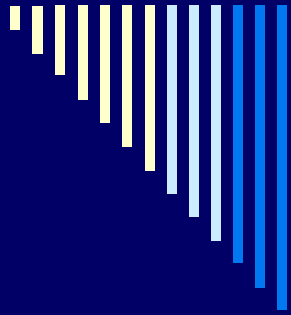
- I. Features of mediation in Chinese civil and judicial procedures.
  - II. The actual status of the application of mediation in Chinese civil and judicial procedures.
  - III. The encouraging measures adopted by Chinese courts
  - IV. Negative influence of the abovementioned measures on the quality of mediation
  - V. **Conclusion**
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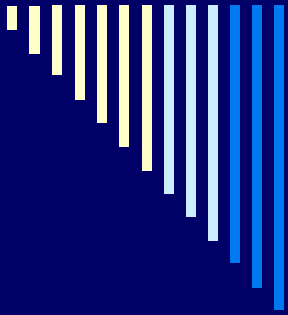
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# I. Features of mediation procedure

- 1. Wide scope of application

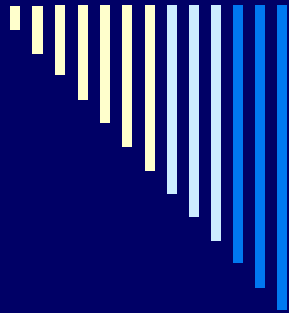


- 2. Combination litigation and mediation, with mediation as the preferred solution

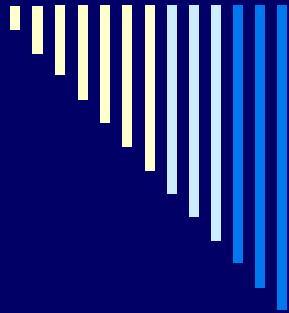


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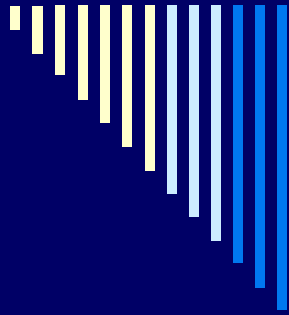
### □ 3. The key role of a judge during mediation,



## □ 4. The application of Summary Procedure

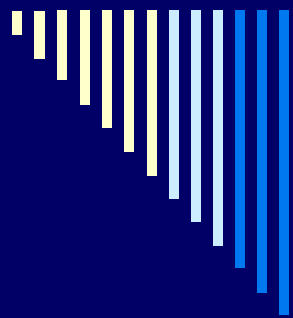


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- 5. Reach of Settlement Agreement on the basis of the facts.
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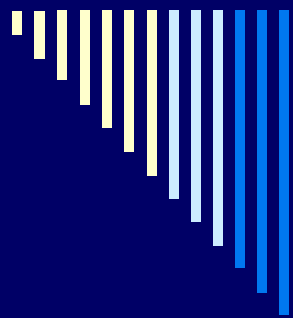
- 6. The convenience for the parties of a dispute.





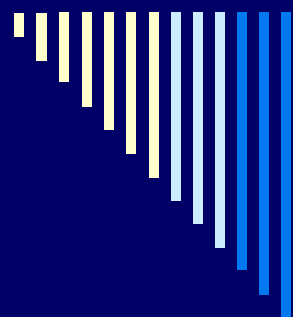
### III. The actual status of the application of mediation in Chinese civil and judicial procedures.

- from 1986 to 1996: According to a nation-wide investigation, **2/3 of the civil and commercial disputes** of first instance had been ended by means of mediation during the period

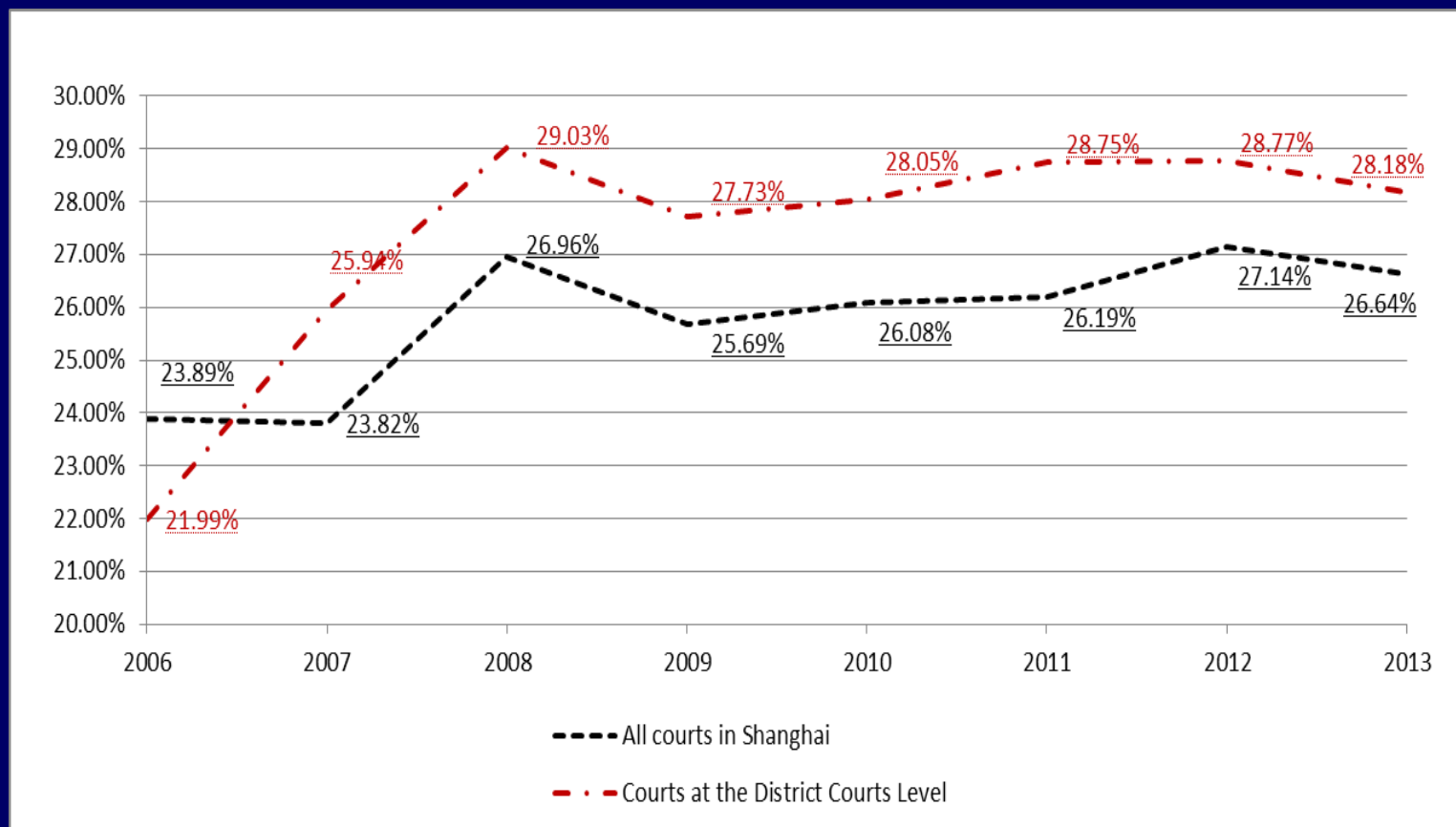


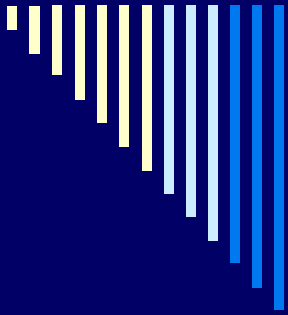
## the statistics from 2003 to 2011

- 2003 : the mediation rate reached the lowest at 29.94%,
- 2004: increased to 31%
- 2005: 32.1%
- 2006: 30.41% ;
- Since then, it increases every year, and rose up to 40.63% in 2011.

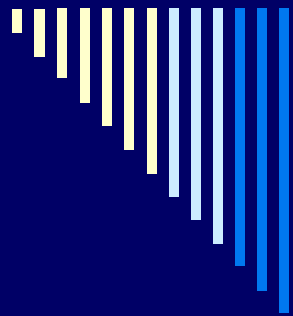


the percentage of mediation of civil judicial hearing of all courts Shanghai from 2006 – 2013.



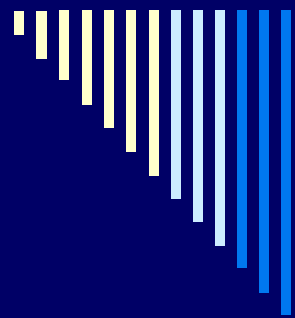


- In the courts in Manasi(瑪納斯), Xinjiang, the percentage of mediation has reached up to 61.9 per cent in 2006.
- In the same year, the percentage of mediation in Northern People's Court of Qingdao, Shandong was 60 per cent



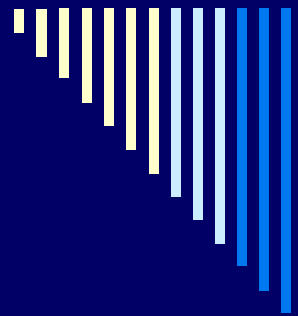
## IV. The encouraging measures adopted by Chinese courts

- 1. Measures taken by the middle and higher courts;
- 2. Measures taken by the primary courts:



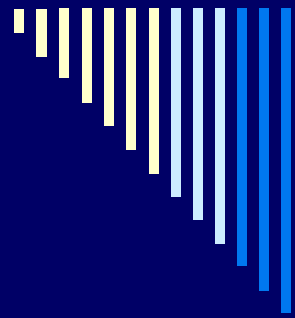
# 1. Measures taken by the middle and higher courts:

- to set the mediation rate as one evaluation index and make a ranking list accordingly.
- the higher the “mediation rate” of a court is, the better the ranking of the court and the higher the quality of trial will be. Conversely, the lower the rate is, the lower the ranking of the court and the quality of its trial will be.



## 2. Measures taken by the primary courts:

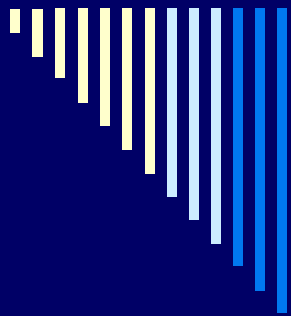
- ❑ allocation of the targets of mediation to each judge and combination with rewards and soft punishment.
- ❑ 1) to set its targets every month.
- ❑ 2) to make a ranking list every month for each tribunal within the court.
- ❑ 3) to allocate the monthly mediation target to every tribunal or each judge.
- ❑ 4) to link the completion of mediation targets to the rewards.



## V. Negative influence of the abovementioned measures on the quality of mediation

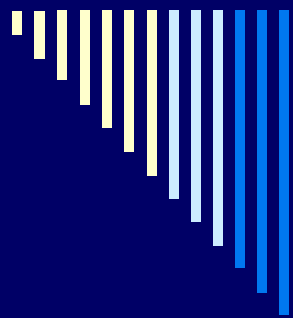
- 1. the quality of cases resolved by mediation has been decreased sharply.





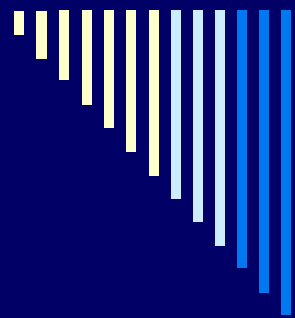
1.

- This sharp decrease is mainly marked by one fact: although the parties have entered into a mediation agreement with the assistance of the judge, **but on many cases the party bearing the executive obligation is not willing to implement the agreement actively and voluntarily.** It takes form as follows:



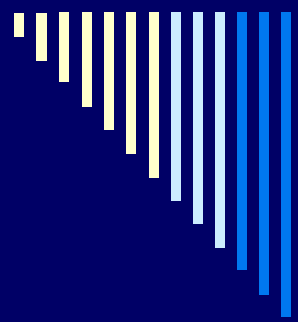
1) the rate of application for execution of the decision of mediation stays high.

- Taken Shanghai as an example, the average execution application rate of the primary courts in the whole city was 27.45% during the period from 2010 to 2013,
- In terms of the mediation rate in all courts in Shanghai, the corresponding rates were 27.10%, 32.14% and 23.76%.



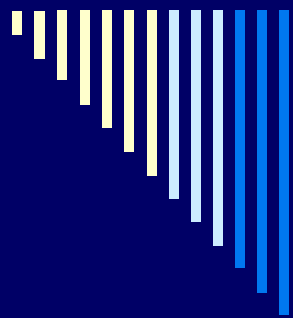
2) the rate of mediation cases having entered into compulsory execution procedures is rather high.

- the compulsory execution rates of the mediation cases in one primary court in south China
- 2007 68.76%,
- 2008 66.72%
- 2009 65.43%.



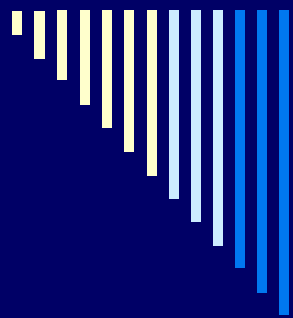
3) the rate of mediation cases entered into the retrial procedure is relatively high.

- in 2010, the First Middle People's Court of Shanghai decided that the retrial procedure should be started in 16 cases, among which 10 cases were settled with the means of mediation in the first instance. **They take up 63% of the total number.**
- **Compared to 2009, cases of the same kind have risen to 41% on a year-on-year basis.**



4). the rate of mediation cases resorting to petition is relatively high.

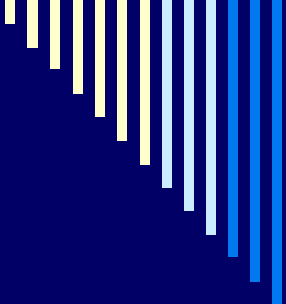
- One research group from a middle court in Central Plains of China investigated the 784 petition cases altogether. Approximately 279 petition cases among them were raised because of the mandatory mediation by the judges, which took up the proportion of 35.59%.



5). the phenomenon of the false mediation increases rapidly.

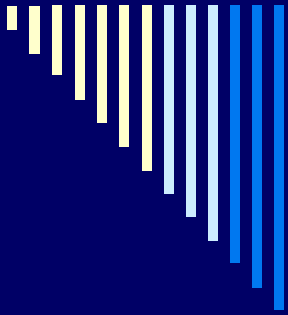
- Between 2006 and 2010, First Middle Court of Shanghai has found out 25 cases, which have been proven to be false.
- 18 of them were ended by means of mediation, which took up 72%.

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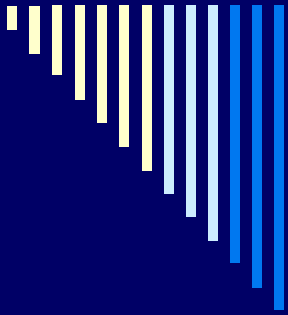
2. The causation between the incentive measures of the courts and the low quality of the mediation procedure.

- There may be multiple factors which lead to the sharp decrease of quality, but the most important factor should lie in various incentive measures taken by Chinese courts.

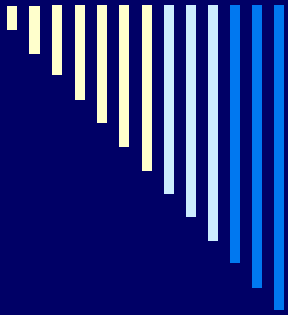


- 1), the only indicator to evaluate the quality of mediation cases is the “mediation rate”. This actually means that the trial of a case would be identified as high quality, if it is settled by the way of mediation.

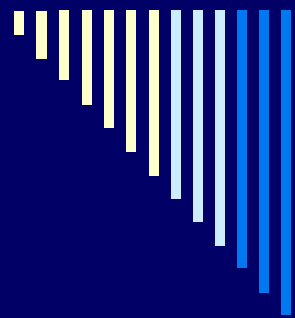




- 2) the accomplishment of mediation target is **linked to the social or economic interests of tribunals and judges**. Awards will be granted to tribunals or judges once the required mediation target is fulfilled or even over fulfilled. Otherwise, the tribunals and judges will face some adverse effects.

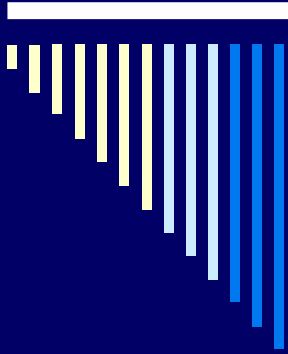


- In that case, the court and the judge will of course make every effort to “urge” the parties to accept the conciliating advice.
- But such mediation agreement does not arise completely from the true will of the parties. So it is also not strange that the number of cases ended through mediation rises by a large margin while the quality of mediation drops sharply.



## V. Conclusion

- mediation is one good way to settle disputes between different parties.
- The mediation evaluation indicators have a great effect on the mediation work of the courts and the quality of mediation.
- It can make mediation a way of resolving social disputes and keeping the stability of society. Meanwhile it can also make mediation a tool for the courts and judges further to pursue their own interests.



□ Thank a lot for your attention!