COMMENT

THE *LI'AN* ("DOCKETING") PROCESS: BARRIERS TO INITIATING LAWSUITS IN CHINA AND POSSIBLE REFORMS

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I. INTRODUCTION

Mr. and Mrs. Yi are seeking ¥1.2 million for the death of their six-month old son who died after ingesting milk tainted with melamine, a toxic chemical illegally added to disguise watered-down milk and artificially increase the protein count to pass safety tests.[1] The Ys bought milk from Sanlu, one of the largest milk manufactures in China, with the belief that they could trust the national brand's quality control.[2] They, along with countless other young families, were shocked to learn that tainted milk from one of China's most respectable companies severely endangered the health of their children (often infants) by causing kidney stones.

In established legal traditions, the manufacturer of the tainted product would likely face a products liability lawsuit. However, the Chinese judicial system does not afford the same open-access to courts – especially when it comes to filing lawsuits. The Chinese government has warned courts against accepting lawsuits from the tainted milk sandal.[3] Article 112 of the *Civil Procedure Laws* provides that after the court receives the party's complaint, it has seven days to decide whether to docket ("li'an")[4] the case or decline to *accept ("shouli")[5] the case. However, during a recent interview with the Shijiazhuang Xinhua Basic Court, a reporter learned that the Court's current *de facto* policy is to decline to accept tainted milk lawsuits – regardless of the seven day period.[6] The Basic Court confirmed

1. Edward Wong, *Courts Compound Pain of China's Tainted Milk*, N.Y. TIMES, Oct. 17, 2008, at A1.

2. *Id.*

3. Jerome Cohen argues that "to the extent that [the Chinese government] believe[s] this could ventilate well-grounded frustrations with the party, the government will not be too eager to allow access to the courts . . . The record so far suggests that the Chinese government may be cautious in limiting access to the courts . . . Cases in very controversial areas and cases likely to cause class action litigation have not been allowed to proceed." Peter Ford, *What China's Tainted Milk May Not Bring: Lawsuits*, CHRISTIAN SCIENCE MONITOR, Sept. 22, 2008, *available at* http://www.csmonitor.com/2008/0923/p01s01-woap.html.

4. "Li'an" roughly translates to docketing a case with the court. Upon bringing a complaint to the attention of the court, court officials/ personnel will docket or "li'an" the complaint and allow it to formally enter into the court's adjudication system.

5. "Shouli" describes when courts officially "accept" or "receive" the litigants complaint. An asterisk will be added to denote when "accept" is used to convey the Chinese phrase "shouli" due to subtle differences in the English definition of "accept."

6. Zhang Jing, *Fa yuan hui fui suo you sanlu nai fen suo pei bu li an cheng jie shang ji zhi shi* [*Court Refuse All Lawsuits Against Sanlu, Waiting for Further Instructions from Superiors*], SICHUAN RI BAO WANG [SICHAUN DAILY ONLINE], Oct. 31, 2008, http://www.scol.com.cn/focus/zgsz/20081031/20081031194908.htm (last visited Nov. 11, 2008).

that higher courts are instructing lower courts to follow official national policy; parties are to wait for the government's compensation scheme before looking to the legal system for reprieve.[7] Moreover, the Court is not providing litigants with official decision documents, thereby preventing litigants from appealing the Court's decision.[8]

What gives the Chinese courts the power to decline straight forward products liability cases? In the American tradition, parties with a legitimate legal claim which affords a legal remedy are given access to courts, provided that they meet procedural requirements. However, Chinese courts are given far greater discretion over accepting lawsuits, thereby creating a high threshold for litigants to overcome to enter the court system. The docketing process describes the mechanism by which Chinese courts decide whether or not to *accept and docket a lawsuit. This process involves more than following procedures and filing a complaint. The *Civil Procedure Laws* give courts the power to reject cases on both procedural and substantive grounds. Courts often have specialized "docketing chambers" that examine both the accuracy of technical filings and the merits of substantive issues in the complaint.

China's difficult docketing process reflects the disciplinary nature of its dispute resolution system, resulting in systemic problems that hinder court access. The disciplinary model emphasizes maintaining societal "harmony" through obedience to superiors and resolving disputes internally (as opposed to adversarial litigation).[9] On one hand, it achieves its goal of maintaining a façade of societal harmony by keeping disputes out of the formal adjudicatory mechanism. Yet, this model is pushed at the expense of creating a fair and transparent "lawsuit acceptance" system – often leaving litigants without a formal channel to stream disputes into the court system.

Part I provides an overview of the docketing process and highlights the institutions involved. Relevant portions of the *Civil Procedure Laws* are discussed and the role of specialized docketing chambers are described. Part II outlines the current problems with the docketing process. I find that the scope of courts is often ill-defined, and courts have too much discretion to investigate complaints, review evidence, and refuse to *accept cases. Given the difficult docketing process, Part III looks at al-

7. *Id.*

8. *Id. See infra* pp. 6-9, for further description of courts refusing to provide litigants with official court decision documents.

9. *See infra* pp. 31-33, for further discussion on the disciplinary model of dispute resolution.

ternative dispute mechanisms available (both formal and informal) to litigants and examines its effectiveness. Part IV compares and contrasts the German and Japanese filing process with China's docketing process. Part V explains the disciplinary model of dispute resolution and its ability to account for the difficulty to docket. Finally, I conclude by proposing methods to reform the docketing process – stressing the importance of increasing fair process and transparency. I also contend that Chinese courts are limiting its ability to play a larger role in shaping greater social policy by limiting court access.

II. INSTITUTIONS AND POLICIES

A. WHAT IS THE DOCKETING PROCESS?

The docketing process is China's gate-keeping mechanism designed to weed out unwanted cases from entering the court's adjudication system. Most adjudicatory systems have a process by which citizens can channel their disputes to the attention of the court.[10] Yet given the volume of lawsuits, courts also need a method to sort meritorious lawsuits from frivolous ones. Time and resources need to be appropriately allocated. I find that China's complex docketing process succeeds in keeping lawsuits at bay,[11] but perhaps the process has gone too far and raised the bar too high. To maintain a judicial system's integrity, weeding out suits can not be at the expense of procedural fairness and transparency. It should not be overly difficult to docket cases.

Articles 108 – 112 of the *Civil Procedure Laws* provide the requirements a plaintiff must meet for the court to *accept his case.[12] The plaintiff may bring his complaint either in print or orally (for litigants who are illiterate or have other impedi-

10. Official government rhetoric supports the idea that the government views the docketing process as the mechanism that protects citizens' right to bring disputes to court in a legal manner. *See* Ji Min, *Li an gong zuo de xing zhi, di wei, zuo yong ji li an ji gou she zhe, zhi ze fan wei* [*Docketing's Nature, Status, Composition, and Reach*], *in* FA YUAN LI AN GONG GUO JI GAI GE TAN SUO [EXPLORING THE COURT'S LI'AN PROCESS AND CHANGES] 75 (2000).

11. The idea that there is an "explosion" ("su song bao zha") of lawsuits in China is a misnomer. For civil lawsuits, cases have increased from 389,943 cases/ year in 1979 to 5,054,857 cases/year in 1999. However, since 1999, the number of lawsuits has steadily declined. By 2004, the court only heard 4,332,727 cases/ year. Perhaps, the statistics show that China's difficult docketing process has succeeded at keeping disputes out of adversarial adjudication. *Statistics from 1986-2004*, *in* ZHONG GUO FA LU FA ZHAN BAO GAO [REPORT ON CHINA LAW DEVELOPMENT: DATABASE AND INDICATORS] 6-7 (Zhu Jingwen ed., 2007).

12. *See* Appendix I for translated Articles 108-112 of the *Civil Procedure Laws*. ZHONG GUO REN MIN GONG HE GUO MIN SHI SU SONG FA (2007 XIU GAI) [CIVIL PROCEDURE LAWS (2007 REVISIONS) (P.R.C)] (2007) [hereinafter CIVIL PROCEDURE LAWS].

ments),[13] and must include his name, sex, age, ethnicity, occupation, work unit, and residential address.[14] He should also provide the names of other organizations or parties involved in the lawsuit (such as lawyers).[15] Like other civil law countries, China requires factual pleading. The plaintiff should include facts and reasons that give rise to his claim.[16] Finally, the plaintiff should also include relevant evidence, information on the evidence's origin, and the names and residential addresses of potential witnesses.[17]

The *Civil Procedure Laws* then shifts the onus onto the docketing chamber to conduct investigations into the adequacy of the plaintiff's complaint. The docketing chamber needs to ensure that the plaintiff bringing the complaint is in fact the party directly harmed.[18] There must also be an apparent defendant to the suit.[19] Next, the chamber determines that the plaintiff brought specific facts and reasoning for initiating the lawsuit.[20] Finally, the lawsuit must be within the scope and jurisdiction of the court.[21] The chamber must *accept the lawsuit if the requirements are met, subject to the prescriptions set forth in Article 111, which provides that: 1) administrative disputes should be governed by administrative laws and adjudicated by appropriate administrative courts; 2) parties who voluntarily enter into arbitration cannot re-litigate the same issues; 3) disputes that ought to be resolved by another department should be redirected to departmental dispute resolution bodies; 4) lawsuits brought in the wrong jurisdiction should be redirected to the correct jurisdiction; 5) appellate cases should be brought according to proper appellate procedures; 6) the court cannot *accept lawsuits not brought within the appropriate time limits; and 7) the court will not *accept divorce or custody appeals within six months from the date of the original suit.[22]

The court should docket the case within seven days after it receives the plaintiff's complaint, including completing necessary investigations, and determining that the complaint meets the docketing requirements.[23] If the complaint fails to meet docketing requirements, the court should also make this determination

13. *Id.* at Art. 109.
14. *Id.* at Art. 110.1.
15. *Id.*
16. *Id.* at Art. 110.2.
17. *Id.* at Art. 110.3.
18. CIVIL PROCEDURE LAWS, Art. 108.1.
19. *Id.* at Art. 108.2.
20. *Id.* at Art. 108.3.
21. *Id.* at Art. 108.4.
22. *Id.* at Art.111.
23. CIVIL PROCEDURE LAWS, Art. 112.

within seven days. If the plaintiff is unhappy with the results, he may appeal the decision.[24]

B. CREATION OF DOCKETING CHAMBERS

While the *Civil Procedure Laws* lay the general foundation, the Supreme People's Court ("SPC") found it necessary to provide further detailed instructions regarding the docketing process to ensure that courts uniformly docket cases. On May 29, 1997, the SPC issued the *Li'an ("Docketing") Work Regulations* to protect the litigant's right to bring lawsuits and ensure that courts properly docket cases in a timely fashion.[25] It further provided that higher courts are to regulate and supervise the docket work of lower courts.[26] Most importantly, the *Regulations* established the new policy of separating the docketing and adjudication processes ("li shen fen li").[27] It provided that courts need to have specialized units to conduct docketing work – separate from adjudication chambers ("shen pan ting").[28] Courts were encouraged to set-up independent docketing chambers ("li an ting") to handle docketing work.[29]

In China, one judge in one courtroom does not oversee the adjudication of a lawsuit from start to the final judgment. Rather, the "court" ("fa yuan") could be best described as an administrative agency that oversees a group of "chambers" ("fa ting") within the court. When a lawsuit is brought before the court, the court's personnel will disperse each case to the appropriate chamber, depending on the substantive issues in the case. Chambers are specialized to hear particular types of cases such as civil disputes, criminal cases, and intellectual property issues.[30] Docketing chambers only handle issues that arise from docketing, and if a case does in fact docket, the relevant adjudication

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24. *Id.*

25. *See* Appendix II for a translation of relevant portions of the LI'AN WORK REGULATIONS. ZHUI GAO REN MIN FA YUAN GUAN YU REN MIN FA YUAN LI AN GONG ZUO DE ZAN XING GUI DING [SUP. PEOPLE'S CT. TEMPORARY REGULATIONS ON THE COURT'S LI'AN WORK (P.R.C.)] (1997) [hereinafter LI'AN WORK REGULATIONS], Art. 1 & 3.

26. *Id.* at Art. 2.

27. *Id.* at Art. 5.

28. *See* Ji, *supra* note 10, at 88-9. The *1999 SPC Five Year Reform Program* ("Ren min fa yuan wu nian gai ge gang yao") relieved adjudication chambers from their docketing tasks so that the chambers could focus its energies into improving its adjudicative work for first and second trials.

29. *Id.*

30. *See* Cao Jianming, *Dang qian min shi shen pan gong zuo zhong de ruo gan wen ti* [*Current Problems with Civil Adjudication Work*], 251 FA LU SHI YONG [JOURNAL OF LAW APPLICATION] 2, 4 (2007), *available at* http://law1.cnki.net/kns50/clkd/clkt/Detail.aspx?DBName=CLKJ&FileName=FLSY200702003.

chamber (depending on the substantive issue) will handle the actual adjudication of substantive issues.[31]

Between 1996-1999, judges, court officials, and academics met at several round tables to discuss creating specialized docketing chambers to handle the docketing process.[32] Rather than having one chamber handle litigation from start to finish, courts are encouraged to have two chambers – one to handle docketing matters and another to handle the adjudication of substantive issues.[33] By June 2000, it was reported that 3,315 of the 3,424 Chinese courts (including 31 high courts, 381 intermediate courts, and 3,012 basic courts) established separate docketing chambers.[34] This reform was intended to professionalize and systemize the docketing process.[35]

Chambers that handle docketing work serve as the initial screen for litigants bringing lawsuits, and make the ultimate decision of whether or not to docket a case.[36] Chambers conduct investigations to determine if the lawsuit falls within the court's scope of adjudication.[37] Furthermore, the *Regulations* provide that chambers should conduct investigations to decide: 1) if the plaintiff has proper qualifications to bring the lawsuit; 2) if there is an apparent defendant; 3) if there is a specific claim and reasonable foundation to the claim; and 4) if the case is within the court's *acceptance scope and jurisdiction.[38] Large, important, or difficult docketing matters are given to the court president (or a panel of court officials) to decide.[39] Chambers may use evidence provided with the litigant's complaint to conduct its investigations. In the event that the evidence is not complete, chambers should notify parties to supplement the evidence.[40] If the chamber refuses to docket, evidence should be returned to the litigant.[41] Finally, chambers that refuse to *accept a case

31. *See* LI'AN WORK REGULATIONS, Art. 15.

32. *See* Ji, *supra* note 10, at 88-9. The idea of dividing *li'an* work with adjudicative work was raised at the 1996 Docketing Work Roundtable. By 1997, the SPC issued its LI'AN WORK REGULATIONS in attempts to systemize the process and prescribe specific docketing tasks for courts to handle. Soon afterwards, courts began exploring the idea of creating separate docketing chambers. By 1999, the SPC pushed the creation of separate docketing chambers to handle the influx of lawsuits that peaked that year.

33. *Id.* at 2.

34. *Id.*

35. *Id.* at 2-3.

36. LI'AN WORK REGULATIONS, Art. 7.1.

37. *Id.* at Art. 8.

38. *Id.*

39. *Id.*

40. *Id.* at Article 9.

41. *Id.*

should issue an official document stating the chamber's decision.[42] Litigants may use the document to appeal the decision.[43]

At first glance, docketing laws and regulations still leave many questions unanswered. While bright-line rules may not be appropriate, the docketing chambers' tasks and roles appear to be unclear. There is little guidance on how to interpret the *Civil Procedure Laws* or the *Li'an ("Docketing")Work Regulations.* How does a chamber know when Article 111 provisions apply? When are cases considered "large" or "difficult"? What about the policy of splitting the docketing process from substantive adjudication; will it actually professionalize or systemize the process? Or does it complicate the process? Will there be more procedural fairness and open transparency? It is apparent that the docketing process *does not* make filing lawsuits easier. It appears that there are serious systemic flaws in the process as a whole that reflect China's aversion to confrontational litigation. The lack of clarity shows that government policy does not encourage its citizens to use formal court proceedings to resolve disputes.

III. PROBLEMS AND DIFFICULTIES WITH THE DOCKETING PROCESS

With emphasis placed on avoiding litigation, China's docketing process has evolved into a muddled gate-keeping mechanism with unclear procedures and limited transparency. Docketing chambers are given too much power and discretion to reject complaints. "It's hard to docket" ("li an nan") is a common phrase that describes popular sentiment towards the docketing process.[44] Often litigants with legitimate legal claims are denied the opportunity to even file their lawsuit with the court. Procedures are unclear and transparency is lacking in the process. Lawsuits are rejected without providing any reasoning. Notably, four key systemic problems make it notoriously difficult to docket: 1) narrow and vague definition of the court's "scope", 2) lack of procedures guiding the docketing chambers' investigations, 3) lack of guidelines on the treatment of evidence, and 4) arbitrary refusal of cases and the inability to appeal docketing decisions.

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42. *Id.* at Article 12.

43. *Id.* at Article 11, 13.

44. Song Wangxing, *Lun min shi su song li an shen cha zhi du* [*Regarding Civil Litigation's Docketing Investigative Policy*], http://www.civillaw.com.cn/article/default.asp?id=39910 (last visited Nov. 11, 2008).

A. NARROW AND VAGUE DEFINITION OF THE COURT'S "SCOPE"

The government tightly controls the type of cases courts can hear by limiting the court's scope ("fan wei").[45] Chinese courts cannot freely *accept any type of dispute and adjudicate on it, but rather, docketing chambers must look carefully at the complaint and refuse to *accept the case if it raises issues outside its scope. Yet, the court's scope is ill-defined. There is no explicit definition, but it appears to change with the winds of government policies. While not definitive, I will highlight court trends to give a general sense of what constitutes "scope."

Across the spectrum, there are several characteristics that stand out amongst the types of cases that fail to docket. First, courts do not *accept disputes involving highly complex historical or political matters. For example, courts will not *accept land disputes that arise from the Collectivization Movement of the 1950s, or lawsuits over the "handing up" ("shang jiao") of gold, silver, and jewelry during the Cultural Revolution.[46] Second, courts rarely *accept civil disputes against the government or administrative agencies. For example, courts will not adjudicate disputes arising from the division of land by administrative agencies or disputes over the division of State-Owned Enterprise (SOEs) resources.[47] Third, courts do not intervene in disputes

45. It is important to recognize the status of Chinese courts. Courts are not the third branch of government, in the American sense. The government has the ability to set the court's scope because "[c]ourts are one of a number of state bureaucracies with the power to resolve disputes, and lack significant oversight powers over other state actors." Benjamin L. Liebman, *China's Courts: Restricted Reform*, 191 THE CHINA QUARTERLY 620, 621 (2007). Thus, courts are subjected to the winds of politics and current events. For example, the government only decided to forbid tainted-milk cases after the scandal was revealed by national and international media. *See also* Zhong Jinahua & Yu Guanghua, *Establishing the Truth on Facts: Has the Chinese Civil Process Achieved this Goal?*, 13 J. TRANSNAT'L L. & POL'Y 393 (2003) (describing the pyramid structure of the Chinese court system and providing a general overview of the Chinese judicial system).

46. Ceng Jin, *Tong wang he xie zhi lu de bi jing zhi men: Dui wo guo min shi su song shou li fan wei de fan si [Towards the Road of Harmony to Enter the Door: Thoughts on Our Country's Civil Litigation *Acceptance Area]*, 00 SI FA LUN PING [JUDICIAL REFORM REVIEW] 160-61 (2001), *available at* http://www.cnki.com.cn/Article/CJFDTotal-SFGG200700014.htm.

47. *Id.* Parties may bring administrative litigation to redress administrative wrongs. *See* ZHONG HUA REN MIN GONG HE GUO XING ZHENG ZU SONG FA [ADMINISTRATIVE LITIGATION LAW (P.R.C.)] [hereinafter ALL]. There are limits to bringing administrative suits, and only litigants with "legitimate rights and interests" have standing to bring suit. ALL, Art. 2. The government does not want interest groups or "private attorney generals" challenging the government. Randall Peerenboom, *China's Judicial and Administrative Law Reforms in Comparative Context: Rising Expectations, Diminishing Returns and the Need for Deep Reforms*, ASIAN DEVELOPMENT BANK 5 (2007). Administrative reconsideration is also available whereby problems are resolved through internal supervision within a bureaucratic hierarchy.

within work units or groups. For example, courts will not handle disputes arising within military units about retirement compensation or disputes within work units over the division of housing.[48] Fourth, courts do not oversee the adjudicative work of administrative agencies. For example, the Chinese Securities Regulatory Commission (CSRC) has the duty to punish officials guilty of insider trading – not courts.[49] Finally, courts rarely take cases where the law is not clear or when it involves highly technical questions. For example, courts will not *accept cases which involve assessing improper medical diagnosis.[50]

Most controversially, courts do not *accept disputes that heavily impact society. Cases arising from the recent tainted milk scandal and Sichuan earthquake fall within this category. In the past, the SPC required that courts refuse to *accept lawsuits stemming from the SARS epidemic.[51] Litigants were unable to file suit against medical agencies (such as doctors, hospitals, and clinics) because the SPC found that medical workers who sacrificed their lives on the frontlines should not be subjected to lawsuits.[52]

An analysis of these trends, suggests that courts play a narrow role in resolving disputes. Civil courts in China appear to be left with the task of resolving simple disputes between private parties. By severely limiting the "scope" of cases that courts may *accept, Chinese policy makers are systematically taking away opportunities for citizens to use formal adjudication to resolve disputes. While informal resolutions of disputes may calm surface tensions and preserve "harmony," it also leaves potential litigants with legitimate grievances feeling frustrated.

B. INVESTIGATIONS BY DOCKETING CHAMBERS

The docketing chamber's role in investigating the adequacy of a plaintiff's complaint is the subject of great criticism. Docketing chambers go beyond determining if the facts are properly pled in the complaint. Rather, docketing chambers often make substantive decisions based on the complaint's face (and what

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JIANFU CHEN, CHINESE LAW: CONTEXT AND TRANSFORMATION 236 (2008). Parties may apply for administrative reconsideration if their rights or interests are violated by a "concrete" administrative act. *Id.* at 240-41. *See also* ZHONG HUA REN MIN GONG HE GUO XING ZHENG FU YI FA [ADMINISTRATIVE RECONSIDERATION LAW (P.R.C.)]; Kevin J. O'Brien & Li Lianjiang, *Suing the Local State: Administrative Litigation in Rural China*, 51 CHINA JOURNAL 76 (2004).

48. *Id.*
49. *Id.*
50. *Id.*
51. Ceng, *supra* note 46, at 161.
52. *Id.*

was attached to it). Moreover, the *Civil Procedure Laws* fail to clearly state the breath and depth of the docketing chamber's investigations. As a result, chambers often conduct overly thorough investigations that look too closely into substantive matters without the full factual record at hand. There are few procedural guidelines, and the role of docketing chambers and regular adjudicative chambers are often muddled.

Docketing chambers are charged with investigating five key matters.[53] First, the chambers investigate the qualifications of the parties involved. Plaintiffs only have the standing to sue if they prove that they were directly harmed by actions of the defendant.[54] Similarly, docketing chambers look to see if the named defendant is the "apparent" defendant, meaning that the named defendant has a clear legal connection to the lawsuit.[55] Information regarding the defendant's name and residential address also needs to be readily available.[56] Second, the chamber investigates the factual pleadings of the plaintiff's complaint. The facts need to give rise to "concrete" issues and be narrow enough for the court to provide a legal remedy.[57] The court may use evidence provided by the plaintiff to examine if there is an adequate basis to docket. Third, docketing chambers may use evidence to investigate if the lawsuit is within the court's scope.[58] Fourth, docketing chambers will determine if the case falls within the court's jurisdiction.[59] Finally, docketing chambers look at the complaint and determine if all the papers and filings are properly presented.[60]

Difficulties arise when docketing chambers are tasked with determining if the correct parties are named to the lawsuit. Emphasis is placed on matching the correct plaintiff with each particular wrong. "Qualified" parties need to be bringing the action, yet, docketing chambers are given little guidance to determine who has proper "qualifications" to bring a lawsuit. Furthermore, more problems arise when docketing chambers are tasked to determine if *all* the "apparent" defendants are named to the lawsuit.[61] Litigants cannot name "Does" as defendants and later name them upon discovery. Chambers also need to determine if the correct defendants are named to the case. There must be a

53. Song, *supra* note 44. *See also* LI'AN WORK REGULATIONS, Art. 9.
54. *See* CIVIL PROCEDURE LAWS, Art. 108.1.
55. *Id.* at Art. 108.2.
56. *Id.*
57. *Id.* at Art. 108.3.
58. *Id.* at Art. 108.4.
59. *Id.*
60. *Id.* at Art. 109.
61. All defendants to a suit need to be named when plaintiffs file the suit. *See* Song, *supra* note 47.

"legal connection" between the party named as defendant and the party harmed.[62] All these decisions are made based only on the facts mentioned in the complaint or in evidence provided by the parties.

Similarly, *Civil Procedure Laws* require plaintiffs to bring "concrete" ("ju ti") complaints to the court, yet it is difficult to interpret what constitutes a "concrete" complaint.[63] The law requires that complaints are grounded in "reality" and "reason" ("shi shi", "li you"), and parties are required to ask the court to resolve specific disputes.[64] However, it does not give further instructions for docketing chambers to interpret the law. What type of investigation should be done to determine if plaintiffs brought a "concrete" complaint grounded in reason? Again, only limited discovery has been conducted when plaintiffs bring their suit, and thus, chambers encounter difficulty in determining the "concreteness" of a claim based solely on the plaintiff's initial filings.

Additionally, docketing chamber judges are given little guidance on how to conduct docketing investigations. There are no guidelines for chambers to follow. Judges sort through filings and evidence at their own discretion.[65] For example, the *Li'an ("Docketing") Work Regulations* state that chambers judges are to ask litigants to supplement evidence when they find a deficiency during investigation.[66] However, in practice, judges rarely follow the regulations, and often opt to simply refuse to *accept a case.[67] Judges are not held accountable when they fail to follow prescriptions from the *Regulations*.

There is also little transparency in the process. Docketing investigations are not openly conducted.[68] It is difficult to determine how docketing chambers reached their decisions as it is not known what sort of investigation was conducted. Docketing chambers do not conduct open hearings. Litigants cannot challenge the decision of the chambers or voice their opinion.

62. Song, *supra* note 44.

63. *See* CIVIL PROCEDURE LAWS, Art. 108.3.

64. *Id. See also* Song, *supra* note 44.

65. *See* Mao Junmin, *Wo guo minshi qi su yao jian zhi zhong gou* [*China's Civil Litigation Composite*], 2005 RENMIN SIFA [PEOPLE'S JUDICATURE] 6, 55 (2005), *available at* http://www.cqvip.com/qk/80624X/200506/16047359.html (describing the judge's difficult job of protecting a litigant's right to bring lawsuits given the interests of judicial economy given vagueness of the laws. When there are no guidelines, whose interests should the judge protect?)

66. *See* LI'AN WORK REGULATIONS, Art. 9.

67. Mao Junmin, *Wo guo min shi qi su shou li zhi du zhi que shi ji dui ce* [*Methods to Deal with China's *Acceptance System Deficiencies*], 2005 RENMIN SIFA [PEOPLE'S JUDICATURE] 11, 52 (2005), *available at* http://engine.cqvip.com/content/d/80624x/2005/000/011/sk82_d2_20693314.pdf.

68. Song, *supra* note 47.

Rather, investigations are tightly controlled, and there is no channel for litigants to participate in the investigatory process. Ironically, I find that litigants are offered more procedural protections after they pass the docketing process. Once their case is accepted by the court, litigants are usually guaranteed open court proceedings.[69] Moreover, the laws provide a regulated framework for litigants to appear in court and voice their arguments and concerns.

The vagueness of the law coupled with unclear procedures has resulted in the muddling of roles. Docketing chambers overstep their boundaries and complete adjudicative work that should be left for adjudication chambers. Investigations go beyond examining if litigants filed their papers correctly, and docketing chambers make substantive decisions based on the papers, such as determining the "concreteness" of a litigant's claims. Moreover, transparency is clearly missing from the investigations. Parties do not know how chambers conduct investigations or how it reached its decisions. As a result, the muddled nature of the investigatory proceedings allows docketing chambers to legitimately stop cases from entering formal adjudication, again reflecting China's aversion to formal litigation.

C. THE ROLE OF EVIDENCE

Docketing chambers are also given little to no guidance on how it ought to treat evidence. It appears that docketing chambers may use evidence provided by litigants to conduct its investigations and make its docketing decision.[70] Article 110.3 of the *Civil Procedure Laws* requires that litigants include evidence, information about the origin of the evidence, and names of witnesses to docket.[71] Similarly, Article 1 of the SPC's *Regarding Civil Litigation Evidence Regulations* states that plaintiffs and defendants need to attach relevant evidence to their claim or counterclaim, and evidence ought to be used to support or refute a

69. Article 7 of the Court Organization Law states that courts must have open adjudication proceedings, provided that the case does not involve State secrets, personal private matters, or juvenile delinquents. ZHONG HUA REN MIN GONG HE GUO MIN SHI FA YUAN ZU ZHI FA [COURT ORGANIZATION LAW (P.R.C.)]. *But see* Mure Dickie, *Beijing Neighbourhood Campaign Suffer Blow*, FINANCIAL TIMES, Nov. 3, 2008, *available at* http://us.ft.com/ftgateway/superpage.ft?news_id=fto1103200807330 79849 (reporting that residents suing over the forced demolition of their homes where not allowed to speak at the court hearing before their case was dismissed. More importantly, journalist and other would-be observers were not allowed into the hearing, despite the non-sensitive nature of the case).

70. *See* CIVIL PROCEDURE LAWS, Art. 110.1. *See also* LI'AN WORK REGULATIONS, Art. 9-10

71. *See* CIVIL PROCEDURE LAWS, Art. 108.3.

claim.[72] Article 3 emphasizes that the evidence ought to be complete, truthful, and correct.[73]

However, there is no instruction on how docketing chambers should use or weigh evidence. For example, chambers may use evidence to determine if the named defendant is the "apparent" defendant to a case, but there is no discussion on the type of evidence or burden of proof standard docketing chambers should consider.[74] Parties do not know *how* complete, *how* truthful, or *how* correct the evidence must be at various stages of litigation. Should docketing chambers determine if the evidence actually supports the facts and claims in a complaint? Are these adjudicative decisions properly left for the adjudication chamber? What standard should docketing chambers use to look at the evidence? It appears that litigants need to meet the same burden of proof no matter what stage they are in the litigation. Yet, it is difficult to imagine that litigants must provide docketing chambers enough evidence to meet the burden of proof for their claim when full discovery has not yet occurred.

There are recent reports[75] of courts failing (or refusing) to return the evidence materials to litigants after it decided not to *accept the litigants' complaints.[76] It prevents litigants from bringing their grievances again because they no longer possess key pieces of evidence. Frustrated, litigants have taken matters into their own hands by introducing the practice of notarizing[77]

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72. *See* GUAN YU MIN SHI SU SONG ZHENG JU DE RUO GAN GUI DING [SUP. PEOPLE'S CT. REGARDING CIVIL LITIGATION EVIDENCE REGULATIONS] (defining the role evidence in civil litigation. This SPC opinion intends to clarify the burden of proof for parties and also define the scope and requirements for court-lead evidence investigation). *See also* CIVIL PROCEDURE LAWS, Art. 64 (providing that a party to an action has the duty to provide evidence in support of his allegations. However, it is unclear how the court ought to weigh the persuasiveness of the evidence).

73. *Id.* at Art. 3.

74. In general (not only during the docketing process), there is little guidance for judges to weigh/ evaluate evidence. Article 64 of the Civil Evidence Regulations give "the judge discretion to make an independent determination on provability of the evidence after a full and objective examination of the evidence under prescribed procedures." Mo Zhang & Paul J. Zwier, *Burden of Proof: Development in Modern Chinese Evidence Rules*, 10 TULSA J. COMP. & INT'L L. 419, 452 (2003). The judge may draw from "logical reasoning and daily living experiences" to determine if the evidence proves the facts of the case. *Id.* However, these vague provisions still leave too much unanswered. Since the judge is both the trier of fact and law, the judge is left with enormous discretion to match laws, facts, and evidence together.

75. Wang Zichen, *Gong zheng li an: wei xian de bei lun* [*Notarized Li'an: the Dangerous Paradox*], http://www.civillaw.com.cn/article/default.asp?id=35338 (last visited Nov. 11, 2008).

76. *But See* LI'AN WORK REGULATIONS, Art. 10 (providing that if the court refuses to docket, the evidence should be returned and the litigant should sign upon receiving his evidence).

77. Notaries occupy a different status in China. Unlike American notaries who perform administrative tasks, Chinese notaries are entrusted to certify the truthful-

docketing evidence. To prevent their materials from getting "lost in the sea" of filings, litigants notarize their materials to keep official records of their materials. The *Legal Daily* reported an interesting incident regarding three litigants from Hubei Province who took notarization to another level.[78] They filed their complaint with the court but heard nothing within the seven day docketing time frame. They inquired nine times but were met with no response. The court never issued a formal decision document and never returned their evidence. Thus, they attempted to notarize the docketing chamber's behavior in hopes to create documentation.[79]

When evidentiary standards are unclear, litigants cannot gauge what type of evidence is needed to successfully docket and courts may weigh evidence however it wants. Moreover, improper handling of evidence forces litigants to create new extrajudicial procedures. Litigants hope to protect themselves by seeking an extra notarization "blessing" on their evidence. Also, notarized evidence may occupy a higher status in the eyes of the chamber and create an unfair advantage to parties who notarized their materials.[80] It favors parties who can pay for the additional notarization step. More importantly, this trend shows the people's distrust towards the courts. Litigants see the need to guard themselves from the very institution that ought to give them fair adjudication. "It's hard to docket" rings especially true here.

D. REFUSAL TO *ACCEPT CASES AND APPEALING DECISIONS

To frustrate the docketing process even further, docketing chambers practice controversial policies on refusing and rejecting complaints. It is important to first understand the mechanisms courts may use to dismiss cases from its docket. Three different

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ness and lawfulness of juridical acts, documents and facts. Notaries are trained legal professionals who are employed by the state. They also perform other tasks such as preserving evidence for court proceedings. *See* RALPH H. FOLSOM & JOHN H. MINAN, LAW IN THE PEOPLE'S REPUBLIC OF CHINA: COMMENTARY, READINGS, AND MATERIALS 263- 270 (1989); ALBERT H.Y. CHEN, AN INTRODUCTION TO THE LEGAL SYSTEM OF THE PEOPLE'S REPUBLIC OF CHINA 191-93 (2004) . *See also* ZHONG HUA REN MIN GONG HE GUO GONG ZHENG FA [NOTARY LAW (P.R.C.)].

78. Wang, *supra* note 75.

79. *Id.*

80. Because notaries attest to the truthfulness and lawfulness of evidence, the court may find notarized evidence more "truthful" or convincing. Evidence appears more "official" because a State worker placed his stamp of approval on it. Yet, I question the usefulness of this extra proceeding. Despite the higher status of Chinese notaries, they are still not the trier of law or fact. Courts are mistaken if they give more difference to notarized evidence. Again, see RALPH H. FOLSOM & JOHN H. MINAN, LAW IN THE PEOPLE'S REPUBLIC OF CHINA: COMMENTARY, READINGS, AND MATERIALS 263- 270 (1989), for further discussions on Chinese notaries.

mechanisms are available at various stages of litigation.[81] "Refusal to *accept" ("bu yu shou li") is used at the initial stage, *before* the court decides to docket a case. Docketing chambers make "refuse to *accept" decisions after it conducts investigations and determines that a complaint does not meet filing requirements.[82] "Rejection of complaint" ("bo hui qi su") occurs *after* the court decides to docket a case, and this is issued by the adjudication chamber. If the court cannot make a docketing decision within seven days after the complaint is brought, courts should *accept the case regardless. Upon further investigation, the adjudication chamber can issue a "rejection of complaint" if it determines that pleading requirements are not met.[83] Finally, "rejection of litigation" ("bo hui su song qing qiu") occurs at the *end* of the litigation process.[84] This mechanism is used when the case becomes moot during litigation – often when the law no longer provides a legal remedy to the issues in contest.[85]

Sadly, courts often abuse these formal mechanisms. What actually occurs in practice does not always match what is written on paper. First, there are problems with the mechanisms themselves. The court is required to issue a formal document to litigants when it decides to refuse or reject a complaint. However, this document does not include a reasoned opinion, and litigants do not know what led the court to make its decision.[86] Was the case outside the court's scope? If so, who or what agency should resolve the dispute? Was evidence missing? If so, how should parties supplement it? Should they re-file their complaint?

Additionally, the decisions by docketing chambers are rarely overturned. In theory, parties have the ability to appeal the docketing chamber's decision. Article 112 of the *Civil Procedure*

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81. Fa lu jiao yu wang [Legal Education Online], *Min shi su song fa fu xi zhi dao: bu yu shou li, bo hui qi su yu bo hui su song qing qu* [*Review of Civil Litigation: Refusal to *Accept, Rejection of Complaint, and Rejection of Litigation*], http://www.chinalawedu.com/news/1300/23230/2007/4/li16833184313470027254-0.htm (last visited Nov. 11, 2008)[hereinafter *Review of Civil Litigation*].

82. *Id.* Article 112 of the Civil Procedure Laws provides that when courts receive a complaint, they have seven days to docket a case. If the court determines that the complaint does not meet pleading requirements, they need to make their "refusal to *accept" decision in seven days. CIVIL PROCEDURE LAWS, Art. 112.

83. *Review of Civil Litigation*, *supra* note 81. *See also* ZUI GAO REN MIN FA YUAN GUAN YU ZHI XING XING ZHENG SU SONG FA RUO GAN WEN TI DE JIE JUE [SUP. PEOPLE'S CT. DECISION ON EXECUTING ADMINISTRATIVE LITIGATION LAWS], Art. 32; ZUI GAO REN MIN FA YUAN GUAN YU SHE YONG MIN SHI SU SONG FA RUO GAN WEN TI DE YI JIAN [SUP. PEOPLE'S CT. OPINION ON USING THE CIVIL PROCEDURE LAWS], Art. 139 (proscribing that the court should issue a "rejection of complaint" decision if the complaint does not meet requirements but has already docketed).

84. *Review of Civil Litigation*, *supra* note 81.

85. *Id.*

86. *See* Song, *supra* note 44.

Laws specifically states that parties unhappy with the chamber's decision may appeal it. However, in practice, it appears that appellate courts rarely change the docketing chamber's decision. *Table 1* (below) shows statistics from the Beijing Chongwen Basic Court.[87] These statistics illustrate the docketing chambers' aversion to overturning appeals. From 2004-2006, the Court refused or rejected between seventy to a hundred cases. Four to eleven litigants attempted to appeal the Basic Court's decision, but not a single party succeeded. While this may be an isolated sample from one basic court, it is reflective of the greater sentiment towards avoiding confrontational litigation. Docketing chambers are given enormous gate-keeping powers, and even explicit laws giving parties the opportunity to appeal do little to check the power.

Table 1: Beijing Chongwen Municipal Court – 2004-2006 Statistics on "Refusal to *Accept" and "Rejection of Complaint" Decisions.[88]

	Total Number of Civil Cases	Refusal to *Accept	Rejection of Complaint	Case Not Within the Court's *Acceptance Scope	Appeals	Overturned Decisions
2004	4242	4	66	8	7	0
2005	7998	6	109	18	11	0
2006	10460	10	71	10	4	0

Most controversially, courts often act outside the powers afforded to them by the *Civil Procedure Laws*. Docketing chambers often refuse to both *accept complaints *and* to issue a formal decision document – despite explicit provisions in Article 112 and the *Li'an ("Docketing") Work Regulations*. Without the formal decision document, litigants have no proof that the docketing chamber heard their complaint. Moreover, litigants cannot appeal the docketing chamber's decision. Without the document in hand, appellate courts will not consider the litigant's claims. This extra-judicial practice is known colloquially as "decline to docket" ("ju jue li an"),[89] and it is surprisingly encouraged by

87. Ceng, *supra* note 46, at 165. From investigations conducted by Ceng (the author of the article), these statistics show general Chinese court trends when it comes to overturning decisions. It is important to recognize that this is an isolated example from one Beijing court, but nevertheless, it provides the reader with a general grasp of the appeals situation. In theory, litigants have the procedural right to appeal docketing decisions, but the statistics show that in practice this is not the case.

88. Ceng, *supra* note 55, at 165.

89. Wang, *supra* note 75.

policy makers. For example, the Shijiazhuang Xinhua Basic Court officially announced that tainted milk litigants will not *accept cases or issue "refusal to *accept" decision documents.[90] In most instances, however, this phenomenon is not widely reported in formal newswires or articles because of its extra-judicial nature. Nevertheless, it is important to recognize that it is a common occurrence that deeply concerns the general public.[91]

IV. TURNING TO ALTERNATIVES

Given the pitfalls of the docketing process, litigants look to different channels to resolve their disputes. Some choose to reach compromises or enter mediation, which occurs outside formal adjudication but under the court's purview. Others resort to using the extra-judicial "petitioning" system. Petitioners plea with higher authorities to resolve their grievances against lower authorities. Since the Chinese appear to disfavor adversarial adjudication, there is a suspicion that the government strongly supports these alternatives because they are seen as less confrontational and more "harmonious." Yet, while these channels all provide an outlet to air grievances, I find that the effectiveness and fairness of these alternatives is limited.

A. COMPROMISE AND MEDIATION

Official government policy encourages mediation over formal adjudication. Despite the development of courts, it remains an important dispute resolution tool. Mediation has historical roots that stem from the founding of the PRC. After the Cultural Revolution, the Ministry of Justice "not only revived mediation but emphasized that it was to be the primary avenue for resolving civil disputes."[92] It is seen as the "first line of defense."[93] Cultural preferences for maintaining "harmony" makes mediation a popular dispute resolution mechanism. The Chinese emphasize maintaining personal relationships, and often people

90. Zhang, *supra* note 6.

91. Due to the extra-judicial nature of the court's action, there are few published accounts of "decline to docket." However, when I run the term "ju jue li an" through *Baidu*, a popular Chinese search engine, I see many posting on blogs and online bulletin boards by angry litigants who were treated unfairly by the court's docketing system. Searches in November 2008 include reports of courts declining to take complaints regarding illegal property takings and victims of illegal pollution. *See also* Wang Min, *Gong zheng li an: fa yuan you wu nai*, http://www.linying.gov.cn/html/200708/14/093252600.htm (last visited Nov. 12, 2008) (describing cases where litigants with legitimate complaints could not docket because they could not pass the local government's "big calf.").

92. STANLEY LUBMAN, BIRD IN A CAGE 219 (1999).

93. Id.

do not want to "use law to handle ordinary disputes and injure relationships."[94]

During the docketing process, laws provide outlets for litigants to exit formal adjudication and enter mediation. To shorten the time to resolve disputes and lessen pressures on the courts, the SPC has issued an opinion guiding courts to encourage parties to either enter "compromise" ("he jie") or "mediation" ("tiao jie").[95] The SPC's March 2007 *Opinion* states that courts are to inform the litigant of the merits of compromise and mediation when the court dockets the complaint.[96] Depending on the complexity of the dispute, courts should encourage litigants to either seek compromise or provide mediation services to the parties.[97] Moreover, courts may also look beyond the courts and refer parties to dispute resolution committees in work units.[98]

If the docketing chamber determines that the issue in dispute is "simple", it should encourage parties to reach a compromise.[99] These types of disputes include marriage/family disputes, inheritance disputes, disputes with neighbors, animal injury disputes, and disputes among friends.[100] By encouraging these parties to reach compromise, it is seen to benefit the livelihood of

94. Id. at 235.

95. Compromise and mediation are often confused, and each stems from very different theoretical roots. First, their legal status differs. Courts conduct mediation if both parties voluntarily agree to enter into it. CIVIL PROCEDURE LAWS, Art. 9. However, compromise involves parties reaching mutual agreements without court oversight. Second, the effect of the two vehicles differ. Mediation decisions are issued as formal court decisions. Parties must sign the agreement, and it is legally enforceable. On the other hand, compromise is reached when both parties come to a consensus. There are no formal documents for courts to enforce. Finally, the formalities are different. Mediations are conducted by trained judges who follow set procedures. Compromise involves informal oral negotiations to reach a mutual decision. Zhan Jusheng, *Yi qu fen su song zhong de tiao jie yu he jie* [*Differentiating Between Compromise and Mediation*], FA LU JIAO YU WANG [LEGAL EDUCATION ONLINE], http://www.chinalawedu.com/news/20800/21690/2006/1/li0106184044142160 02200160_182303.htm (last visited Nov. 11, 2008)

96. GUAN YU JIN YI BU FA HUI SU SONG TIAO JIE ZAI YOU JIAN SHE HUI ZHU YI HE SHE SHI HUI ZHONG JI JI ZUO YONG DE RUO GAN YI JIAN, [SUP. PEOPLE'S CT. REGARDING THE NEXT STEP TOWARDS LITIGATION DEVELOPMENT ACCORDING TO SOCIALIST PRINCIPALS AND HARMONIOUS SOCIETY OPINION], Art. 10 [hereinafter HARMONIOUS SOCIETY OPINION].

97. Compromise is conducted by the courts (as distinguished from mediation by people's mediation committees or arbitrators in arbitration) if parties voluntarily agree to enter it before mediation. CHEN, *supra* note 85, 219-20 (citing ZHANG YOUYU, ZHONGGUO FA XUE SI SHI NIAN, FORTY YEARS OF PRC'S LEGAL SCIENCE 508 (1989).

98. Zheng Shengju, *Guan yu li an jie duan he jie yu tiao jie jie can de ruo gan si kao*, 11 FA LU SHI YONG [JOURNAL OF LAW APPLICATION] 1 (2007), *available at* www.cnki.com.cn/Article/CJFDTotal-FLSY200711007.htm.

99. *See* CIVIL PROCEDURE LAWS, Art. 51.

100. *Id.*

the individuals involved and help maintain societal harmony. On the other hand, the *Opinion* specified six types of disputes which should be especially encouraged to enter mediation at the docketing stage.[101] The specific six disputes were those involving groups of litigants or multiple government agencies, complex disputes with unclear evidence, disputes involving sensitive or secret issues, and those arising from retrials.[102] Interestingly, these six categories are similar to cases that fall outside the court's scope. Thus, perhaps SPC policy provides that cases outside the court's scope ought to enter formal mediation.

While encouraging compromise or mediation may be good policy,[103] courts should be wary of abusing the two mechanisms. The *Opinion* stated that courts need to maintain oversight and investigate unfair compromises.[104] They must also watch out for the interests of the government, society, and other affected third parties. Moreover, courts need to carefully watch for an uneven balance of power. Stronger parties with more resources should not force the weaker party to reach a settlement that hurts the weaker party. Similarly, stronger parties should not gain unfair advantages when they opt to compromise. Attempts to maintain "harmony" and quiet disputes should not come at the expense of the weaker party.

B. PETITIONING ("XINFANG") SYSTEM

Due to high barriers, many disputes in China enter into the "xinfang" or "petitioning" system. This refers to the practice of "go[ing] past basic level institutions to reach higher-level bodies, express problems and request their resolution."[105] Petitioners with grievances against the government can submit their petitions to petitioning offices, and the offices will review and inves-

101. *See* HARMONIOUS SOCIETY OPINION, Art. 10.

102. *Id.*

103. For a counterargument, see Own M. Fiss, *Against Settlement*, 93 YALE L.J. 1073 (1984). Fiss warns against praising alternative dispute resolution (ADR) mechanisms. While parties reach settlement, there is a danger of power imbalance and lack of judicial oversight. Moreover, Fiss emphasizes that a judge's "job is not to maximize the ends of private parties, nor simply to secure the peace, but to explicate and *give force to the values* embodied in . . . the Constitution and statues: to interpret those values and to bring reality into accord with them." *Id.* at 1085 (emphasis added). Fiss was writing during a time of great judicial activism, and he saw judges use law to desegregate schools and protect rights of the poor. The situation may not be analogous to China, but it is important to recognize the potential power of courts to bring greater societal change. Courts will not have these powers if they do not have opportunities to adjudicate.

104. HARMONIOUS SOCIETY OPINION, Art. 14.

105. Carl F. Minzer, *Xinfang: An Alternative to Formal Chinese Legal Institutions*, 42 STAN. J. INT'L. L. 103, 110 (quoting HAN YU DA CI DIAN [CHINESE DICTIONARY] 121 (Luo Zhufen ed., 1997)).

tigate the complaint and issue a letter regarding the matter.[106] Petitioning offices are found within almost all government agencies and bureaus, but in particular, I will focus on the petitioning system within courts. The court's petitioning office specifically handles petitioners' grievances against the courts. Litigants unhappy with the court's handling of a case or the results from a docketing decision may petition the court (or a higher court) to reconsider or overturn a decision.[107] It is seen as a populist mechanism for those without legal knowledge to pressure the courts and make their voices heard.

Yet, this extra-judicial channel places unwarranted pressure on the courts. Petitions inhibit the court's ability to carry out its adjudication work. It must divert resources to handle petitions, wasting time and energy better spent adjudicating disputes on its docket.[108] Moreover, formal procedures prescribed by law may be overlooked when faced with pressures from petitioners. *Civil Procedure Laws* provide that litigants are entitled to two *de nevo* trials ("yi shen, er shen") and may appeal for retrial ("zai shen"). However, angry petitioners threaten courts and force them to forego procedure and retry cases.[109]

The petitioning system also affects the morale of judges. At times, judges are forced to make decisions with petitioners in mind. To avoid petitions, judges may attempt to appease litigants and avoid creating petitioners who harass the courts. Judge Yu Xisheng, from the Heilongjian Beian Shi Basic Court, writes about his "sleepless nights" and "emotional pressure" he faces from petitioners.[110] He recounts an experience where a petitioner threatened him by saying, "Are you changing the verdict? If you do not change it, I will go to the provincial capital to petition. You will be forced to spend money to retrieve me and take criticism from above. You will suffer either way!"[111] Petitioners also often ask judges to do the impossible. At times, there is no legal remedy for the wrong a plaintiff (or petitioner) brings to court. Judges are placed in precarious positions. They are bounded by laws and procedures but yet subject to petitioners' threats and harassment.

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106. *See id.* at 116-19.

107. *See* Ji, *supra* note 10, at 42.

108. *See* Yu Xisheng, *Lun she su xin fang zhi du de gai ge he yuan shan* [*Discussing Reforms to the Petitioning System*], http://www.chinacourt.org/html/article/200804/23/297913.shtml (last visited Nov. 12, 2008).

109. Judge Yu Xisheng, *supra* note 115, describes petitioners who threaten courts by suicide attempts such as ingesting lethal drugs or jumping off buildings. Petitioners hope that using such drastic means will force courts to rehear cases or change verdicts.

110. *Id.*

111. *Id.*

Most critically, the integrity of the judicial system and judicial profession is at stake. In China, courts are already weak institutions in comparison with its foreign counterparts.[112] The petitioning system further erodes its powers and taints its image as a final arbitrator. Courts cannot be neutral administrators of justice when petitioners may pressure (even harass) courts to change verdicts and disregard procedural laws. Citizens will not respect the judicial system and its role in resolving disputes. Judges cannot carry out their work in peace. They are not checked by peers, but rather are subjected to pressures from the uneducated public.

Petitioning also rarely solves the petitioner's grievances. A recent Chinese study reported that less than 0.2% of petitioners succeed in having their grievances addressed.[113] Moreover, there have been many reports of petitioner abuse. The Chinese Academy of Social Sciences reported that 50% of petitioners have been beaten by officials and 19% have been sentenced to re-education through labor.[114]

Some scholars call for reforming the petitioning system,[115] but I advocate for eliminating the petitioning system (especially petitioning courts) and targeting efforts to reform the formal docketing process. Like the docketing process, few guidelines and procedures currently govern petitioning offices and its handling of petitions. Thus, rather than reforming two in-take channels, courts should consolidate their energies into creating one transparent "gateway" for litigants to bring their grievances to the attention of courts. Increasing access to courts will help to diminish the "It's hard to docket" mentality. Petitioners who are upset at courts because their complaints failed to docket would be far fewer in number. Most importantly, procedural clarity and increased transparency will give parties more assurance that their complaint was properly handled by the courts.

112. Again, it is important to recognize the status of China's courts. Courts are not yet independent entities, though recent reforms have increased judicial independence. Liebman, *supra* note 45, at 634; Zhong, *supra* note 45, at 438.

113. Minzer, *supra* note 105, at 106.

114. Sara Davis, *"We Could Disappear At Any Time": Retaliation and Abuses Against Chinese Petitioners*, 17 HUMAN RIGHTS WATCH 11(C), 42 (2005).

115. Scholars call for vague reforms such as calling for "proper" use of petitioning. Yet, what does this mean? There is talk about creating a "scientific"/ procedural based petitioning system. However, adding procedures to an extra-judicial dispute resolution mechanism does nothing to address the fundamental problem – litigants cannot access formal adjudication. *See* Ji, *supra* note 10, at 49-55.

V. COMPARISON WITH OTHER CIVIL LAW TRADITIONS

The docketing process stands out amongst other initial filing systems because of unique Chinese additions to the pleadings system, giving the docketing chambers unusually wide discretion to dismiss cases. In other civil law countries, the initial complaint serves as a roadmap for the court and the parties involved in investigating and adjudicating issues in contention. Meritless lawsuits are dismissed from the system when parties can no longer push the suit forward. Yet, in China, it appears that courts are not only concerned with dismissing meritless lawsuits, but rather, courts are using the docketing process to keep out even legitimate suits at its initiation.

The German Code of Procedure models the civil (continental) law tradition and has heavily influenced modern civil procedure in Asian countries such as Japan and China.[116] Unlike the American system, it is important to recognize that there is no explicit pre-trial phase. Rather, parties engage in unlimited exchanges of written pleadings and an equally unlimited number of hearings in which the facts advanced by the parties are contrasted and tested for their legal sufficiency.[117] Cases are allowed to gradually ripen. When one party fails to sufficiently meet the legal standard for the issue in contention, the judge will dismiss the case accordingly and find for the other party.[118] The court (the judge) plays an active role in guiding the case from initiation to resolution.[119]

Germans and Japanese begin lawsuits with parties filing their initial complaint; the complaint is fact intensive, with nominations of witnesses and other means of proof. Parties need to include a statement of facts necessary to support the complaint.[120] Factual pleading is required, and thus, parties must not

116. *See* JOHN MERRYMAN ET. AL., THE CIVIL LAW TRADITION: AN INTRODUCTION TO THE LEGAL SYSTEMS OF EUROPE AND LATIN AMERICA 1-4 (2007) (commenting on the development and spread of the civil law tradition).

117. *See* Ronald J. Allen et. al., *The German Advantage in Civil Procedure: A Plea For More Details and Fewer Generalities in Comparative Scholarship*, 82 NW. U. L. REV. 705, 725-26 (1988) (citing David Gerber, *Extraterritorial Discovery and the Conflict of Procedural Systems: Germany and the United States*, 34 AM. J. COMP. L. 745, 750 (1986)).

118. *Id.*

119. Benjamin Kaplan et. al., *Phases of German Civil Procedure I*, 71 HARV. L. REV. 1193, 1206-08 (1958). *See generally* John H. Langbein, *The German Advantage in Civil Procedure*, 52 U. CHI. L. REV. 823 (1985).

120. For the German system, see Kaplan, *supra* note 119, at 1215 (citing *Zivilprozessordnung* [German Code of Civil Procedure] §253 [hereinafter ZPO]). For the Japanese system, see CARL GOODMAN, JUSTICE AND CIVIL PROCEDURE IN JAPAN 67 (2004) (citing MINJI SOHOHO [JAPANESE CODE OF CIVIL PROCEDURE], Art. 58 [hereinafter CCP]).

only make claims based on fact but also plead significant and relevant facts to be proved.[121] Moreover, documents plaintiffs expect to rely on must be attached to the complaint.[122] In theory, plaintiffs should include all documents that they will rely on for oral arguments, but in practice, judges, at their discretion, often allow the documents to be produced later.[123] The court will review the complaint and documents for proper and sufficient filing.[124]

The written complaint functions like a road map for the court to follow.[125] Together with the presiding judge, parties participate in shaping the issues and content of a claim at oral argument.[126] If the court finds that the facts are not adequately or properly alleged, the court may require the party to supplement the complaint.[127] Failure to make appropriate changes will lead to dismissal.[128] A litigant may supplement his complaint if he omits an essential allegation, and omissions of proof are treated in the same fashion.[129] Parties do not refer to the applicable law, but rather, courts find and apply the law.[130]

The German and Japanese courts see the filing of the initial complaint as only the first of many steps to resolve issues in dispute. The moving party needs to properly make initial filings and allege appropriate facts. In turn, the court will determine the adequacy of the first filings and decide whether to allow the case to continue (thereby framing the next set of issues and burden of

121. For the German system, see Kaplan, *supra* note 119, at 1215 (citing ZPO §253). For the Japanese system, see GOODMAN, *supra* note 120, at 67 (2004) (citing CCP, Art. 53(1)).

122. For the German system, see Kaplan, *supra* note 119, at 1215 (citing ZPO §253). For the Japanese system, see GOODMAN, *supra* note 120, at 271-72 (citing CCP, Art. 55).

123. For the German system, see Kaplan, *supra* note 119, at 1218. For the Japanese system, see GOODMAN, *supra* note 120, at 271-72 (citing CCP, Art. 55).

124. For the German system, see Kaplan, *supra* note 119, at 1218. For the Japanese system, see GOODMAN, *supra* note 120, at 272-73(citing CCP, Art. 137).

125. In theory, "commentaries speaks of power in the court to refuse to set a time for oral-argument if the complaint is obviously defective, but the point is disputed and is practically of no importance." Kaplan, *supra* note 119, at 1218. *See also* ZPO § 279.

126. *See* Benjamin Kaplan, *Civil Procedure: Reflections on the Comparison of Systems*, 9 BUFF. L. REV. 409, 410-11 (1960) ("In short, pleadings merge into, and are an ingredient of the conferences. What is wanted from the pleadings is adopted and perhaps revised at conference is a narrative of facts as the parties see them at the time, with offers of proof – mainly designated witnesses and documents – and demands for relief.").

127. For the German system, see Kaplan, *supra* note 119, at 1218. For the Japanese system, see GOODMAN, *supra* note 120, at 272-73 (citing CCP, Art. 56 & 137).

128. For the German system, see Kaplan, *supra* note 119, at 1218. For the Japanese system, see GOODMAN, *supra* note 120, at 272-73 (citing CCP, Art. 140).

129. *Id.*

130. *See* Kaplan, *supra* note 120, at 1217.

proof parties need to meet) or dismiss the case from its docket. German and Japanese courts are not interested in flat-out dismissal of cases, but rather, courts want to determine if the case is worthy to continue litigating. Courts weed out meritless complaints through this back and forth exchange between parties.

In form, China's docketing process appears quite analogous to other civil law countries, but several Chinese additions to the process raise the initial filings bar much higher than those in other countries, thereby further demonstrating China's aversion to formal litigation. Influenced by the German model, Chinese court officials called for creating separate chambers within the court. However, unlike Germany, the Chinese have split the docketing process and created separate docketing chambers to handle the intake of litigation. Other civil law countries have one court or chamber to handle a lawsuit from initial filings to final judgment. In particular, the German model places emphasis on the judge as an active participant guiding the case through the adjudication system. However, by splitting the docketing process from adjudication, the Chinese system works against the key principal of the German system. Judges cannot actively guide the case from one point to another because their adjudication powers are discontinued. Where should the judge stop? Should he anticipate future issues and problems?

Next, while the German and Japanese systems emphasize pleading facts and providing evidence to support the facts, none of the countries require judges to determine if the evidence *actually supports* the facts at the initial filings stage. Factual pleadings are required to support claims, and documents later used to support the facts need to be attached. The judge will only dismiss a case if he finds that the facts are not adequately alleged. However, docketing chambers are permitted to delve much deeper into a complaint's substance. Judges not only dismiss if facts are not properly alleged, but rather, they have power to use the evidence attached to the complaint to conduct full investigations. Judges are interested in flat-out dismissal of complaints rather than seeing if the case is worthy of further litigation.

Finally, the Chinese docketing process lacks oral arguments. The German and Japanese systems require factual pleadings so that the court and parties may discuss it at oral arguments. Complaints are written with the end goal of reaching the next step in litigation in mind – the first oral argument. There, the judge and the parties can work out the path for litigation. At the proceeding, parties have the opportunity to verbally supplement the written complaint. Without oral arguments, the docketing chambers are exercising its vast discretion without input from the parties involved.

The docketing process appears to have the trappings of a civil law pleadings system, but yet, key Chinese additions result in losing the essence of the civil law pleadings system. On the surface, the docketing process, like other civil law countries, also employs split chambers, factual pleadings, and require attachment of evidence. Yet, by dividing the docketing work, requiring in-depth investigations, and forbidding hearings, the docketing process frustrates the civil law system's goal of using the factual pleadings in a complaint to guide the case through litigation. Rather, the Chinese seem to see the docketing process as a way to stop litigation from entering the adjudication system. Courts go beyond determining if the complaint has merit on its face but use the docketing process to rid cases, often without providing reasoning or explanations. Moreover, the docketing process lacks procedural safe-guards, such as open oral arguments or hearings, to keep the docketing chamber from abusing its power. The docketing process achieves the goal of stopping lawsuits at initiation rather than facilitating it through stages of litigation.

VI. THE DOCKETING PROCESS AND THE DISCIPLINARY MODEL

What accounts for the Chinese aversion to formal adversarial adjudication? Is it a philosophy or mindset that shapes Chinese society and government policy? The Chinese attitude towards the docketing process could perhaps stem from China's unique view towards dispute resolution. It explains the complexity of the docketing process and the high threshold litigants need to overcome to bring lawsuits in China, and it shows why courts shy away from accepting legitimate cases and why continuing procedural and transparency problems remain intact.

Stemming from Confucian thinking, Chinese tradition places importance on the concept of "harmony."[131] Thomas Stephens, a Chinese legal scholar, writes that in traditional Chinese society

131. For a contrasting opinion, see Teemu Ruskola, *Legal Orientalism*, 101 MICH. L. REV. 179 (2002). Ruskola argues that seeing China as non-legal and lacking in subjectivity imposes "Orientalist" views on the understanding of Chinese law. Scholars, such as Stephens, "Orientalize" Chinese law by overemphasizing China's lack of "law" in the Western sense. Ruskoa warns against perpetuating "the Confucian ideological fiction that the Chinese naturally delight in submitting themselves to dictates of group morality." *Id* at 230. The Chinese should not be painted as a people group with a "genius for mediation and harmony." *Id.* at 229-30. By pitting the West against China, scholars see China as "an anti-model" that "stands for everything that we [Westerners] would not wish to be – or admit to being." *Id.* at 215. Moreover, Ruskola argues that Westerners brought "baggage" to understandings of Chinese law by adding Confucian rhetoric. The view that "Confucian ideology systematically privileged morality over law as a means for social control" "orientalizes" the Chinese legal system and its role in governing society. *Id.*

"disputes were resolved and disturbances of harmony corrected (ideally within the immediate group where they arose) by relating them to the personalities, the exigencies, and the surrounding circumstances of the particular case, with a view to the instruction of the parties in the conduct expected of them, and the punishment of those disturbing harmony."[132] This "disciplinary" or "parental" model places special emphasis on hierarchical order and the cohesion of the group.[133]

Stephens defines discipline as a "state of mind which accepts without question the submission of the will and the subordination of the interests of the individual to the will and to the interests of a hierarchical superior in a group."[134] In the superiors' interests, lower ranks preserve "harmony" by obeying superiors and keeping quarrels from the attention of superiors. "It is the very definite duty of the lower ranks and the common people not to quarrel at all, and if they do they must at all costs settle it among themselves, and certainly not on any account trouble their ruler or any government official with it."[135] Parties do not resolve disputes amongst themselves by appealing to codified laws that protect individual rights, but rather, parties work out problems amongst themselves for the sake of greater societal harmony.

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132. THOMAS STEPHENS, ORDER AND DISCIPLINE IN CHINA: THE SHANGHAI MIXED COURT, 5 (1992). *See also* RP. Peerenboom, *What's Wrong with Chinese Right? Toward a Theory of Rights with Chinese Characteristics*, 6 HARV. HUM. RTS. J. 30, 41 (1993) ("The Confucian (and socialist) challenge then is to inspire in members of society the desire to achieve a humane society and to encourage them to direct their energies towards the attainment of a harmonious social order where the interests of individuals and of the state are reconciled. This requires a willingness to participate in collective living, to search for a cooperative solution, to become humane . . . It is in this sense that humanity is not something that can be conferred by law or by right of birth.").

133. Stephens, *supra* note 132, at 4-5, argues that Western models of jurisprudence do not explain the Chinese way of resolving disputes. In the West, "the antithesis of chaos is order." *Id.* at 4. This "order is maintained by a set of universal or man-made codes or laws that govern conduct and preserve order." *Id.* Disputes arise when order is breached, and "breaches of order are corrected by measuring them against rigid universal codes of imperatives external to the parties, in an adjudication." *Id.* This Western "adjudicative" system seeks to balance the rights and duties of a party against predetermined laws and codes. *Id.*

134. Stephens, *supra* note 132, at 17, compares submission to superiors to soldiers who obey the commands of a sergeant regardless of the dangers that accompanies it. Moreover, he quotes Oliver Wendell Holmes who describes obedience as the characteristic "which leads a soldier to throw away his life in obedience to a blindly accepted duty, in a cause which he little understands, in a plane of campaign of which he has no motion, under tactics of which he does not see the use." *Id.* at 17-18 (quoting MARK DE WOLFE HOWE, THE OCCASIONAL SPEECHES OF JUSTICE OLIVER WENDELL HOMES 75 (1962)).

135. *Id.* at 5.

The disciplinary model does not only describe China's traditional past, but it also proves to be descriptive of China's post-1949 view on resolving disputes. In "*On the Correct Handling of Contradictions Among the People*", Chairman Mao Zedong writes on the distinction between "non-antagonistic" contradictions and "antagonistic" contradictions.[136] "Non-antagonistic" contradictions could almost be described as "good" antagonism that occurs between members of the "people" – the working class, peasants, and certain members of the national bourgeoisie.[137] Members are encouraged to resolve these "good" contradictions in a "peaceful way," such as through criticism and re-education.[138] The goal was to keep "within the bounds of socialist discipline."[139] On the other hand, Mao frowns upon "antagonistic" contradictions where contradictions are solved in an adversarial manner against the "enemy." Mao encourages discipline much like Stephens' description of the traditional Chinese model. The "people" maintain discipline by obeying superiors. They resolve disputes amongst themselves. Those who bring antagonism are "enemies" that must be fought.

I observe that China's docketing process fits into the theoretical framework established in traditional China and continued by Mao. Entering into direct conflict with the opposing side through a lawsuit is not encouraged, and thus, the high threshold to docket a case prevents citizens from creating too many "disharmonious" lawsuits. When possible, disputes should be resolved using other more peaceable methods – such as reaching a compromise.[140] The adversarial nature of adjudication does not fit into the disciplinary model's emphasis on maintaining societal harmony, and the docketing process plays an important role in diverting conflicts from entering formal adjudication. There is little incentive to clean up the docketing process, but rather, courts need flexibility to discard suits from its docket. For example, the government does not want to disrupt social stability by allowing tainted milk victims to bring formal lawsuits. Thus, they

136. Mao Zedong (Mao Tse-tung), *On the Correct Handling of Contradictions Among the People* (1957), *in* STUART SCHRAM, THE POLITICAL THOUGHT OF MAO TSE-TUNG 236-55 (1963).

137. *Id.* at 238.

138. *Id. See also* Peerenboom, *supra* note 132, at 49 ("Conflicts among the people were to be handled through 'democratic' means – education and persuasion – with formal legal punishment meted out only to those resistant to persuasion and rehabilitation.").

139. Mao, *supra* note 136, at 239.

140. *See e.g.*, Peerenboom, *supra* note 132, at 46 ("[O]ne must be willing to negotiate, to compromise. Even when the legal system is invoked, the emphasis most often remains on compromise.")

are using the docketing process to stop the influx of lawsuits and requiring victims to wait for government compensation.

VII. PROPOSED REFORMS AND LOOKING FORWARD

China may very well prefer the disciplinary approach to dispute resolution and prefer keeping disputes out of formal channels. Moreover, courts need to exercise judicial economy and weed frivolous cases from their docket. However, I stress that these preferences should never be at the expense of procedural fairness and transparency, and my reform recommendations will revolve around these two matters. Courts should not go too far in efforts to "keep the peace" or raise the court access bar too high. Tainted-milk victims (or their families) should not be forced to wait for government compensation and denied the right to file their complaint with the court without the opportunity to appeal the decision.

To improve procedural fairness, I would first recommend that courts reunify docketing and adjudication chambers. Though the separation of the chambers was hailed as progressive reform, I find that the division has actually resulted in more problems than progress. It has not professionalized or systemized the docketing process, but rather, it has caused confusion over the roles of docketing and adjudication judges. Docketing judges do not know the boundaries of their powers and it is impossible to draw bright-line distinctions. Moreover, the very essence of the civil law trial is hurt by dividing the docketing and adjudication process. Judges in the civil law tradition are supposedly active participants in the adjudication process, and they use a series of hearings to reach their final decision. When the chambers split, judges cannot actively guide the case from its inception to resolution. Next, courts need to adhere to prescribed procedure, especially when it comes to refusing to docket. Courts should only refuse to docket after giving parties the chance to amend their complaint and supplement evidence. After refusing to docket, courts should return evidence to litigants and issue an official document so that parties may appeal the court's decision. Finally, the docketing process needs to include hearings or oral argument. Perhaps the most important reform, hearings will give litigants the opportunity to explain discrepancies to the court and advocate for themselves. If factual pleading is required (as is the case for many civil law countries), it is difficult to determine the adequacy of a complaint on its face, and thus, the judge needs hearings to parse out the issues in contention.

To increase transparency, the court needs to make decisions based on clear, defined laws. For example, the court's "scope"

has been an ill-defined area of law often abused by docketing chambers. Disputes outside of the court's scope broadly range from disputes arising from the Cultural Revolution to the SARS epidemic outbreak. Scholars find it hard to pinpoint what constitutes "scope" and can only look at general court trends to determine "scope" at a given time. Scope cannot change to fit government policies. There needs to be parameters in place so that future litigants can anticipate how the court determines scope. Next, courts should limit their review to the adequacy of the facts plead in the complaint. No other civil law country uses evidence to determine if the facts and claims on the complaint's face actually give rise to issues which the court can resolve. When discovery is incomplete, it is too difficult for courts to make this determination fairly. Finally, the court needs to keep its "refusal to docket" process clean. Courts need to write a reasoned opinion explaining why it reached its decision. Then, parties will know how to correct their complaint or bring their complaint to the correct court. Courts also need to get out of the practice of "declining to docket." Refusing to act on a complaint is not appropriate court behavior. Courts are tasked to handle disputes and must give litigants a fair chance at entering the court system.

China may also want to rethink its preference for avoiding formal adjudication. While culture emphasizes maintaining "harmony," courts should also consider what role litigation can play in shaping Chinese society. Is using the docketing process to keep cases out of the court system what is best for a country who claims to rule by laws? Why not allow parties to litigate? Why not solve greater societal problems through law? Why not allow tainted milk victims to seek legal remedies? Whilst courts occupy a different status in China, the use of the docketing process to keep cases out only further weakens a weak court system. When litigants cannot enter the system, courts cannot even carry out its task of solving disputes. Moreover, courts cannot be a player in greater policy decisions. While Chinese courts may not desegregate schools, there may be space for it to take an active role in shaping products liability policies and food safety standards. If courts could enforce their decisions against Sanlu, perhaps citizens would see the courts in a new light and manufacturers would make more of an effort to improve their quality control.

Improving court accessibility is the first of many steps China needs to take to strengthen its court system. Perhaps litigation should not be feared, and society as a whole may benefit from allowing citizens to bring disputes to the attention of the court. Still, the docketing process needs to fix its procedural flaws and improve its transparency so that citizens can actually use the

court system. Then, the court system can also play a larger role in resolving disputes. Lowering the threshold to docket is the next crucial step in judicial reform.

APPENDIX I

TRANSLATION OF ARTICLES 108 – 112 FROM THE *CIVIL PROCEDURE LAWS*[141]

ARTICLE 108. The following conditions must be met before a lawsuit is filed:

(1) The plaintiff must be a citizen, legal person, or an organization having a direct interest with the case;
(2) There must be a specific defendant;
(3) There must be a concrete claim, a factual basis, and a cause for the lawsuit; and
(4) The lawsuit must be within the scope of civil lawsuits to be accepted by the people's courts and within the jurisdiction of the people's court to which the lawsuit is filed.

ARTICLE 109. When filing a lawsuit, the motion of complaint shall be submitted to the people's court with enough copies of the motion for all members of defendants.

If a plaintiff finds it too difficult to write a motion of complaint, he may file his complaint orally, and the court shall record his complaint in the transcript and inform the other party.

ARTICLE 110. A motion of complaint shall clearly state the following items:

(1)The name, sex, age, ethnicity, occupation, working unit, and address of parties or, if the parties are legal persons or organizations, their names and addresses and the names and positions of their legal representatives or principal leading personnel;
(2)The claims of the lawsuit and the facts and grounds on which the lawsuit is based; and
(3)Evidence and its source, as well as the names and addresses of witnesses.

ARTICLE 111. People's courts shall accept the lawsuits filed in conformity with the provisions of Article 108 of this Law. For the lawsuits described below, people's courts shall handle them according to their specific circumstances:

(1) For the cases within the scope of administrative lawsuits according to the provisions of the Administrative Procedure Law, the plaintiffs shall be informed to file administrative lawsuits;

(2) For the cases where both parties have voluntarily reached a written agreement according to law to submit their contract dis-

141. Translation of the ZHONG GUO REN MIN GONG HE GUO MIN SHI SU SONG FA (2007 XIU GAI) [CIVIL PROCEDURE LAWS (2007 REVISIONS) (P.R.C)] (2007) by BEI DA FA LU XIN XI WANG [CHINALAWINFO], available at http://www.lawinfochina.com/law/display.asp?id=6459&keyword= (last visited Nov. 22, 2008).

putes to an arbitration agency for an arbitration, no one shall file a lawsuit in a people's court and the plaintiffs shall be notified to submit the disputes to the arbitration agencies for arbitration;

(3) For the disputes which, according to law, should be handled by other organs, the plaintiffs shall be notified to petition the relevant organs for settlement;

(4) For the cases that are not within their jurisdictions, the people's courts shall notify the plaintiffs to bring their lawsuits to the proper people's courts that have the jurisdictions;

(5) Where one side of the parties file lawsuits against the same cases in which their judgments or orders have become legally effective, the people's courts shall notify the plaintiffs to file a grievance instead except those cases in which the orders rendered by the people's courts to allow the lawsuits to be withdrawn;

(6) If cases that are not permitted by law to be filed within a specified period of time are filed during the same period of time, they shall not be accepted by any courts; or

(7) For those divorce cases in which the judgments did not grant divorce or both parties have become reconciled after mediation and for those adoption cases in which the judgments have been given to maintain the adoptive relationship or that have been mediated to maintain the adoptive relationship, if there are no new developments or reasons, the plaintiffs are bared from filing new lawsuits regarding the same cases for six months.

ARTICLE 112. When a people's court receives a motion of complaint or an oral complaint and finds the complaint meets the requirements of a civil lawsuit after reviewing the complaint, the court shall accept the case within seven days and notify the parties involved; if the complaint does not meet the requirements of a civil lawsuit, the court shall, within seven days, make a ruling to reject the complaint. If the plaintiff does not agree with the ruling, he may appeal on the ruling.

APPENDIX II

TRANSLATION OF RELEVANT PORTIONS OF THE *LI'AN ("DOCKETING") WORK REGULATIONS*

ARTICLE 1. The court's docketing work is for the benefit of helping citizens bring lawsuits and helping the courts with adjudication.

ARTICLE 2. The higher level courts regulate/ supervise the docketing work of lower courts.

ARTICLE 3. The task of docketing work is to protect the right of citizens to bring lawsuits, ensure that the court does its job properly, and ensure that suits are decided in a timely manner.

ARTICLE 4. The court needs to legally conduct investigations into the filed lawsuit, if the lawsuit meets the docketing requirements then the court will *accept the case and timely docket.

ARTICLE 5. There is separation between docketing and adjudication.

ARTICLE 6. The court's docketing work will be conducted by a specialized unit. This unit may be within the reporting or appellate chamber but cannot be in the adjudication chamber. It could also be in an independent chamber.

ARTICLE 7. The scope of the docketing work:

1. Investigate to see if the lawsuit involves civil matters, economic disputes or administrative cases and determine whether or not to docket (same with criminal cases).
2. Investigate the cases sent up from lower courts after the first trial and determine whether or not to docket.
3. Investigate cases for retrial.
4. Investigate other cases that the court is legally supposed to *accept.
5. Calculate and inform litigants or appellants of the litigation fee.

ARTICLE 8. After the court receives the lawsuit, it should conduct investigations according to law on these matters:

1. Litigants must have legal qualifications to bring the suit.
2. There must be an apparent defendant.
3. Litigants must have a concrete request of the court and a foundation based in reality.
4. Litigants must be within the court's scope and jurisdiction.

ARTICLE 9. During the investigation, if the main evidence of the plaintiff/ defendant is not complete, the court should notify parties to supplement the evidence.

ARTICLE 10. When the court receives the complaint and relevant evidence, the court must register the items and issue a receipt to the parties. The evidence received must be named, photocopied, time-stamped, and the pages numbers should be recorded. It must also have the signature of the person conducting the investigation. If the court refuses to docket, the evidence will be returned and the party must sign upon receiving.

ARTICLE 11. If the case does not meet docketing requirements and the plaintiff persists, the court should not *accept. If the plaintiff appeals the court should reject the case.

ARTICLE 12. Cases that the courts do not *accept or reject should be issued a decision document that has been approved by the courtroom official or court official. The document must include the name and signature of the judge and the court stamp.

ARTICLE 13. Appeals decisions (from previous docket rejections) should be made by the judge on a case to case basis. Large/important and difficult cases should be given to the court president or the panel of court officials to decide.

ARTICLE 15. After deciding to docket, the case should be moved to the appropriate chamber within two days.

ARTICLE 16. For civil cases, courts have seven days to make their decision whether or not to *accept.