

## CHAPTER 1

# Phases of Employment Litigation

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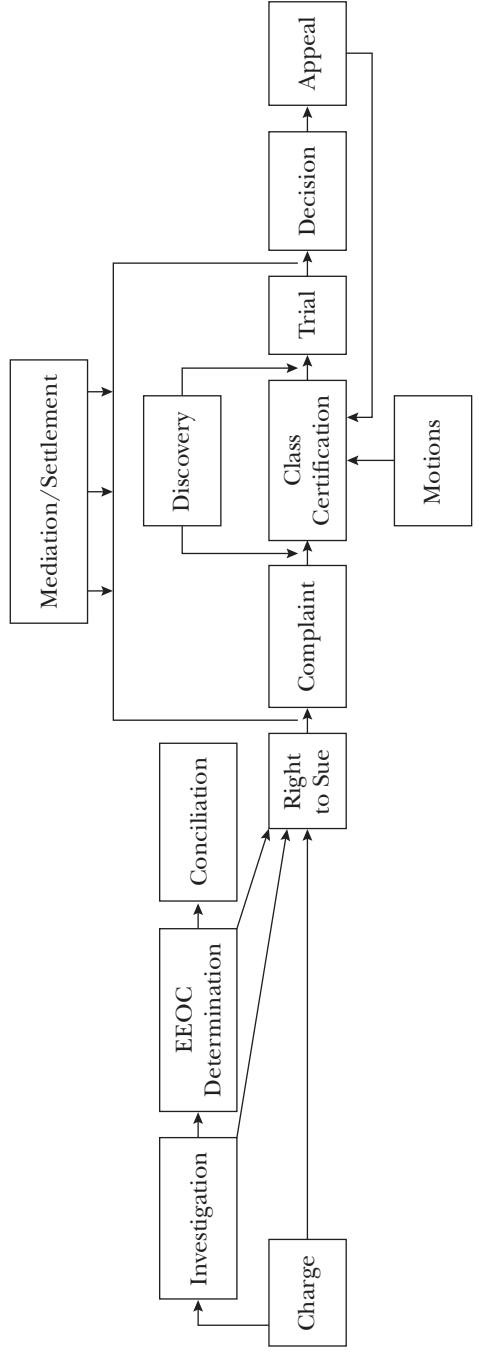
A typical employment discrimination case can be bewildering in its complexity. From start to finish it may last for five or more years. Various stages (for example, discovery) may be postponed or extended. The trial itself may be delayed for various reasons, including requests by one or both of the parties or a scheduling problem experienced by the judge. What will be presented in this chapter is a common, though not universal, series of stages in an employment discrimination trial from its inception to its ultimate conclusion. Because the most complex and encompassing lawsuits tend to be class actions, the description will follow the course of a class action employment discrimination lawsuit. Further, I will present a disparate impact (unintentional discrimination) rather than a disparate treatment (intentional discrimination) scenario. Figure 1.1 presents a simplified version of the flow of a discrimination case. It may be helpful to return to this figure as the various stages are introduced. A more elaborate view of the process can be found in Lindemann and Grossman (1996).

## Investigation and Conciliation

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When an applicant, employee, or former employee feels that he or she has been treated unjustly, the first step is most often contacting a federal, state, or local governmental agency (the Equal

**Figure 1.1. Phases of Employment Litigation.**



Employment Opportunity Commission [EEOC], a state or local human relations commission, and so forth) to register that protest formally. That agency will then contact the employer and request some basic information about the charge of discrimination. This phase of the process is often known as an *investigation*. Using the information gathered in the investigation, the agency will render a determination on the merits of the charge. If the agency finds that the charge has merit, the agency will then attempt to achieve an amicable resolution through a process known as *conciliation*. The agency may suggest a remedy, the employer may counter with an alternative resolution, and the dispute may be settled at this stage. Or the employer and the agency may fail to reach an agreement, and the dispute may enter the more formal arena of litigation. Alternatively, following an investigation the agency may find the charge to be without merit.

## The Right to Sue

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When an individual or group believes that an employment practice is illegal, the first step in challenging that practice is the filing of a formal charge of discrimination with an administrative agency, as I have just described. The individual filing a charge is known as the *charging party*. In order to file a formal lawsuit in federal court under Title VII of the 1964 Civil Rights Act, the administrative charge needs to be processed by an agency (for example, the EEOC). The individual or group must go through this regulatory agency before filing a suit. By requiring such processing, it is hoped that the more frivolous claims by charging parties may be abandoned after a negative regulatory review. Nevertheless, a charging party has an absolute right to file a lawsuit regardless of the findings of a regulatory agency such as the EEOC. This means in practice that anyone who is upset about an employer's decision can file a federal lawsuit, thus increasing the case load in the civil court system. (The interviews with federal judges presented in Chapter Fifteen show that this is exactly what some judges believe is happening.) A charging party may receive a *right to sue* notification in three ways: (1) the charging party may simply ask for it after a fixed time period has passed, and the EEOC is required to comply; (2) it will be automatically issued if the EEOC finds the charge without

merit; and (3) it will be automatically issued if the EEOC finds the charge to have merit but is not able to resolve the charge with the employer.

Note that if the defendant is a public employer, such as a state personnel department or municipal police department, the case may be taken over by the Department of Justice. If the defendant is a private employer such as Home Depot or the Ford Motor Company, the case may be litigated by the EEOC. The Department of Justice and the EEOC do not get involved in very many cases in which a right-to-sue letter has been issued. Like the Supreme Court these agencies pick and choose cases which they choose to litigate. Thus, even though the EEOC may be the agency that permits a suit to be filed, this does not make it an “EEOC” case. Typically a charge to the EEOC must be filed within 300 days of the practice that gives rise to the claim of discrimination. If a right-to-sue letter has been issued by the EEOC, the complainant (whom we will call the *plaintiff*) may then retain a lawyer and pursue the charge against the employer in federal court. The overwhelming majority of charging parties do not file lawsuits.

## The Complaint

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For those charging parties who choose to file a lawsuit, the next step in an employment case is the filing of a formal complaint with the court. The complaint will identify the plaintiff or plaintiffs; the reason for the complaint; the right that the plaintiff has to file the charge, including things such as protected status (for example, race or gender); the practice purported to be discriminatory; and the remedy sought by the plaintiff.

## Class Certification

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A plaintiff can sue an employer individually, as part of a group of other plaintiffs, or on behalf of a class of *similarly situated* individuals. For example, a rejected African American applicant for a job with a manufacturing company might attempt to file a suit in which he or she represents not only himself or herself but also all African Americans who were rejected by that company in the three previous years. This larger group of applicants would be proposed

by plaintiff's counsel to be a *class* (this designation having produced in turn the term *class action suit*). If the plaintiff wins the case, then all members of the class may be entitled to share in the award, although the actual plaintiffs who file the suit (called *named plaintiffs*) will usually be awarded a larger amount because of their continued involvement in the case. Surprisingly, very few lawsuits are filed by rejected job applicants.

A judge decides whether or not the lawsuit may proceed on behalf of a class (that is, the judge determines whether class certification is warranted). A number of criteria must be met for class certification; the most important are (1) that the plaintiffs are all members of a protected class (for example, women or African Americans), (2) that the named plaintiff does actually have a claim that is common to a large group of people (for example, failure to hire), (3) that the number of plaintiffs is so large as to make consolidation of complaints more efficient (for example, 500 or more potential plaintiffs), and (4) that there is a common basis for the complaints of class members (for example, the same hiring process was used to reject all the plaintiffs). The advantages to the lawyers representing the plaintiffs of gaining class certification are substantial. If a lawyer represents a single individual in a discrimination case, a win and an award of \$400,000 may result in a fee of \$100,000 to the lawyer. If, instead, a class is certified and that class includes 500 plaintiffs, the award may be in the multimillion-dollar range and the fee for the lawyer may be in the millions of dollars. A winning plaintiff in a Title VII lawsuit is normally awarded back pay and often is awarded front pay as well. Title VII imposes no limit on the amount of those awards, but they must bear a direct relation to the actual monetary losses of income suffered by the plaintiff. In addition to these actual damages, which are not capped, Title VII provides for punitive damages and damages for emotional distress. The range for such extra damages to each plaintiff has a ceiling that runs between \$50,000 and \$300,000 for each award, depending on the size of the company—the larger the company, the higher the ceiling. For companies with less than 100 employees, the ceiling for the extra damages is set at \$50,000. For companies with more than 500 employees, the ceiling is \$300,000.

In the class certification stage, an I-O psychologist is often called on to determine whether the members of the class were all

subject to the same practice. For example, the challenged practice may be a hiring system that used several different standardized tests or procedures over a period of three years—a different practice each year. The practice in year 1 might have included a written test of intelligence and an interview. In year 2 the organization might have changed to a series of work sample tests. And in year 3 the company might have used a situational interview. The I-O psychologist would examine the practices in question. In this case it is likely that the psychologist would offer the opinion that each of the devices was conceptually and psychometrically different, making the applicants within each year similar, but across the three years dissimilar. And, basing the decision on the opinion of the psychologist, the judge might certify three separate subclasses of plaintiffs, one class for each of the three years. In contrast, if instead of three distinct practices, the company had used three tests (one each year), tests that were simply parallel forms of the same basic test, then the psychologist might agree that the tests represent a common practice, and a single class might be certified by the court.

The process by which classes are certified may take different forms. It is within the discretion of the judge to simply examine reports submitted by both sides in favor of or opposing class certification. Alternatively the judge may request both sides to submit reports, then hold an actual hearing or mini-trial with oral testimony from expert and nonexpert witnesses as a way of making a decision. In either case the judge will issue a written opinion identifying which, if any, classes have been certified. This opinion is subject to appeal and may be questioned by either party in a U.S. court of appeals.

A word of explanation might be in order here for the reader new to the judicial process. The lowest of the three levels of the federal judicial system consists of the U.S. district (trial) courts. The actual employment discrimination suit is heard by a district court judge (and possibly a jury). The trial judge or jury renders an opinion at the conclusion of the trial, declaring a judgment in favor of the plaintiff or the defendant. Either party may claim that the judge has made legal errors during the trial and may appeal the decision to the next level, which consists of the U.S. courts of appeals (also referred to as *circuit courts*, in reference to the eleven geographical areas in which they have jurisdiction, or by circuit

number, for example, *ninth circuit*). For example, a losing party might complain that the trial judge made a legal error by excluding the testimony of the losing party's expert witness. The court of appeals will review the written record of the trial as well as the motions supporting and attacking the appeal and render a decision regarding the legitimacy of the appeal. But the court addresses only legal issues, not factual issues. The losing party at trial has an automatic right of appeal to the court of appeals, and the court of appeals must accept the appeal and rule on its merits.

The third and highest level of the federal judiciary is the U.S. Supreme Court. The losing party at the court of appeals does not have an automatic right to appeal to the Supreme Court. The losing party at the court of appeals must file a special *petition* that explains why the Supreme Court should accept an appeal in this particular case. The Supreme Court hears only a small fraction of the appeals it receives. The Supreme Court has no written standards for determining which appeals to accept, although a few trends have appeared over time. For example, the Supreme Court is more likely to accept an appeal when important constitutional issues are at stake or when there is conflict between the legal rulings of two or more circuit courts of appeal.

## Discovery

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In television dramas and movies depicting high-profile civil and criminal trials there is often a moment of high suspense when a witness blurts out an admission or explanation that comes as a complete surprise to the examining lawyer, resulting in a radical shift in the course of the trial. This virtually never happens in real-life civil trials because of a process called *discovery*. Through the discovery process, lawyers are given access to witnesses who will be called by the other side and to any documents relevant to the allegations of discrimination. Lawyers may send a series of *interrogatories* to the opposing party asking for specific written answers to specific questions. A plaintiff may contend, for example, that he or she was passed over for a position in favor of a less qualified applicant. The plaintiff will be asked to identify explicitly who that less qualified person was and to state why the plaintiff believes that this person was less qualified. In addition the lawyers may ask for documents

such as the past employment record of the plaintiff or the company policy covering promotions or discipline. Finally, the lawyers may request to take the depositions of any persons who may testify at trial. A *deposition* is a formal interview under oath conducted by an opposing attorney. If the lawyers are good at what they do, by the time a trial actually occurs there are few secrets or uncharted areas of testimony. Lawyers use the information gathered through the discovery process to plan their trial strategy.

The role of the I-O psychologist in the discovery process is varied. The most obvious role is as an expert. The I-O psychologist will be deposed by the opposing attorney. Prior to deposition the expert submits a report containing any and all opinions the expert expects to offer at trial and the foundation for each opinion. This represents a valuable document for the opposing attorney and forms the foundation for the deposition of the expert. Occasions often arise when the initial report may be supplemented. These occasions may involve additional data that are uncovered or the presentation of an opposing expert report that warrants rebuttal in the form of a supplemental report. Procedures for submission of expert reports vary. Often reports by opposing experts are filed simultaneously, at the court's direction. In these cases supplemental reports are more common. Alternatively the plaintiff expert may be required to file a report first, and then the defendant expert will be required to file a responding report within some time period, often thirty to forty-five days, with a rebuttal report by the plaintiff's expert after that. Supplemental reports are somewhat less common when the initial reports are not filed simultaneously. Experts may be subsequently redeposed on supplemental reports after the deposition based on their initial report. If reports are filed by experts for class certification requests, the experts will likely be deposed on those reports as well. Thus it is conceivable that a given expert might be deposed on at least three separate occasions in a large complex case—after a class certification report, after an initial report on the substance of the case (often called a *merits report*), and after any supplemental reports have been submitted.

The I-O psychologist can also be of help in other parts of the discovery process. He or she can advise the lawyers about the technical or procedural documents to request from either the plaintiff

or defendant. In our example, defendant documents might include the tests themselves and their technical manual and backup information, as well as company policy statements, procedural memos, and the like. Plaintiff documents might include training records, correspondence with the employer, and so forth. Because the I-O psychologist is very familiar with human resource (HR) procedures and test information, he or she can help the lawyers understand the meaning and relevance of these documents. The psychologist may also be involved in helping the lawyers prepare for the deposition of witnesses on the other side, both fact witnesses and other expert witnesses. In some cases the psychologist may attend the deposition of the opposing expert and assist his or her lawyer in understanding technical answers or in framing technical follow-up questions.

Discovery may also involve data sets that will provide the foundation for statistical analyses carried out by the I-O psychologist or by a retained statistician. There is often lengthy discussion of the appropriate data set and of the interpretation and management of the data set, because the data are seldom in a form amenable to easy or immediate analysis. On some occasions a court (judge or magistrate) may rule on what data set will be used by each side (often referred to as a *stipulated database*). Once an expert does a particular analysis on a data set and that analysis becomes the foundation for an expert opinion, then the specific analysis and underlying data must be provided to an opposing expert for verification.

Although I discuss discovery as if it followed the class certification process, discovery will also precede a class certification hearing or motion. Either side may request information that would assist in the determination of who does and does not belong in a particular proposed class.

## Motions

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Throughout the course of the litigation, lawyers will file various motions with the judge asking for a wide range of actions. As an example, in the course of discovery, lawyers for the plaintiffs may request information from the defendant company and the company

may decline to provide that information, claiming that it is irrelevant as well as expensive to produce. The opposing lawyers will then file a motion asking the judge to compel or require the defendant to provide the information.

### ***In Limine* Motions**

As will be seen in later chapters (especially Chapters Six, Fourteen, and Fifteen), motions to exclude the testimony of an expert are often made by opposing attorneys. These motions are usually referred to as *in limine* motions, meaning that the judge is being asked to either exclude or limit the testimony of the expert. It is not unusual for *in limine* motions to be filed before a motion for class certification. As will be discussed in Chapter Six, *Daubert* motions are attempts to exclude the testimony of an expert on the argument that the expert testimony is not sufficiently scientific and would mislead the judge or the jury. A motion may also be made to exclude an expert because he or she does not possess the relevant credentials (for example, education, training, or experience) to be qualified as an expert. *Daubert* motions are usually made before a trial begins. Often there will be a *Daubert* hearing preceding the trial, conducted by the judge to determine what testimony will be permitted at trial. At the *Daubert* hearing the I-O psychologist may be expected to defend his or her opinions as scientifically sound. In defending these opinions as based on science the psychologist is expected to present relevant literature showing that the theory on which his or her opinion is based is accepted in the I-O literature, can be tested, and so forth.

Challenges to expert credentials are commonly made at trial, immediately preceding the expert's testimony. First, the lawyer representing the side that retained the expert questions the expert regarding his or her credentials. Following that questioning the lawyer requests that the judge *qualify* the witness as an expert in some area (for example, testing, psychometrics, or HR). The judge then permits the opposing attorney to cross-examine the expert in an attempt to demonstrate that the witness is *not* qualified to testify as an expert. After the direct and cross-examination testimony the judge rules that the witness is or is not qualified to testify as an expert.

## Summary Judgment Motions

A motion for *summary judgment* asks the judge either to rule on behalf of the plaintiff (if filed by the lawyers for the plaintiffs) or to dismiss the complaint (if filed by lawyers for the defendants) before going to trial. Summary judgment motions are often filed after discovery has been completed. They may be filed earlier when a clear legal issue is present. Plaintiffs might argue that the evidence uncovered to that point shows a clear violation of the law by the defendant company. Defendants might argue that the discovery process has demonstrated that there was no factual foundation for the charges in the first place. Whichever side makes the motion for summary judgment is claiming that the material facts are not subject to dispute, that there is no need for a trial to determine the factual issues. There may be legal issues to be decided, but the judge alone always decides those issues. A trial is needed only to resolve factual issues. If a judge grants a summary judgment motion, then the litigation is over and there is no trial. As evidenced in the interviews with judges (Chapter Fifteen), motions for summary judgment are considered seriously by judges and often granted.

## Mediation and Settlement

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Because trials are costly and risky for both sides, the parties often conduct settlement discussions in an attempt to reach a mutually satisfying resolution of the complaint before proceeding with all the other steps that lead to a trial. Such discussions are often facilitated (and sometimes required) by the judge assigned to the trial or possibly by a federal magistrate associated with the court to which the case has been assigned. Because the case load of federal judges is so high, it is to the advantage of the judge to use any means possible to eliminate the need for a trial. Most cases do settle before trial, and settlement discussions can start at any time from the filing of an initial complaint to the moment before the jury is about to announce its verdict. In fact most settlement discussions begin well in advance of any trial. Of course, in the early discussions the parties are often far apart. As the trial date approaches, settlement discussions become more serious, and the gap between the parties often narrows.

Settlement agreements may involve money (for example, back pay) as well as changes in procedures (for example, an agreement by a company to stop using a particular hiring procedure). Serious settlement discussions usually occur after discovery has been completed and each side is aware of the relative strengths and weaknesses of its respective case. In addition, if the plaintiffs prevail at trial, their lawyers may be awarded substantial fees. Winning defendants almost never are awarded fees. A winning plaintiff gets attorney's fees automatically. This is an additional driving force in settlement discussions.

I-O psychologists are not directly involved in settlement discussions. The actual discussions include lawyers, plaintiffs, and possibly the judge. Nevertheless, to the extent that the discussions revolve around HR practices, the I-O psychologist may be asked to assist the lawyer, defendant, or plaintiff in understanding the implications of any changes in that practice. As an example, the plaintiffs might demand that a particular test or testing technique be dropped from the hiring sequence. The I-O psychologist helps both sides understand the implications for validity of dropping that test and may suggest alternative techniques or tests acceptable to both parties.

## Trial

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When an actual trial is held, it may last anywhere from a week to a month or more, depending on the complexity of the case. The trial may take place in front of a jury or in front of a judge, although most Title VII cases involve jury trials. If it is a jury trial, it will typically take longer, because juries are typically less familiar than a judge is with the technical issues and more time must be taken to educate the jury on issues such as statistics, HR policy, and scientific literature. The role of the judge in a jury trial is to rule on objections and motions that occur in the course of the trial and to deal with all legal issues. It is the responsibility of the jury to deal with all fact issues. In addition the judge may ask questions of witnesses in order to provide the jury with additional relevant information or to clear up any confusion in the testimony. Finally, after both sides rest, the judge issues a *charge* to the jury, instructing its members with respect to the law and what they are to consider in

their deliberations. Ultimately, however, in a jury trial it is the jury that decides the outcome of the case, not the judge. In a bench trial the judge rules on both legal and factual issues.

In the trial itself the plaintiffs present their case first. This is followed by the defendants' case, which is expected to respond to and rebut the case presented by the plaintiffs. After both sides have presented their respective cases, there may be additional rebuttal testimony permitted for both sides. Occasionally the judge will further refine the presentation of evidence, asking the plaintiffs to first present evidence of adverse impact (the *prima facie* burden of the plaintiffs) to be rebutted by the defendants and then asking the plaintiffs to present their evidence on the substantive issues (a *merits* or job-relatedness defense, assuming adverse impact has been shown) to be rebutted by the defendants. There is often a third phase of the trial as well—the consideration of *alternatives*. If the plaintiffs demonstrate adverse impact for a device or procedure and the defendants demonstrate the job-relatedness of that device or procedure, the plaintiffs still have the opportunity to demonstrate that there was an alternative device or procedure available to the defendants for making the personnel decision, an alternative that had equal validity and less adverse impact. The defendants typically attempt to rebut that showing of an alternative by demonstrating that it was not a “real” alternative (that is, had never been shown to reduce adverse impact while leaving validity intact) or that it was not a “feasible” alternative (for example, it would have been impossible to administer fairly and effectively or would have been prohibitively expensive). I-O psychologists and statisticians are commonly involved in testifying about alternatives. For an individual expert there are often several phases of testimony. First, the expert is questioned by his or her lawyer regarding opinions. This is known as *direct testimony*. Then the opposing lawyer cross-examines the expert on his or her direct testimony. This may be followed by *redirect testimony* in which the lawyer for the side that retained the expert may follow up on the cross-examination questions and answers. Finally, the opposing counsel may have an opportunity to re-cross-examine the expert on testimony elicited during redirect. Expert testimony may last as little as an hour or may extend over several days, depending on the complexity of the case. It is also not uncommon for each side to have more than one expert

(for example, an I-O psychologist, an economist, and a statistician), extending the period of expert testimony even longer.

In the trial phase an I-O psychologist may play a central role. Because much of what will be discussed is technical and unfamiliar to both the judge and the jury, it is the psychologist's role to help the judge and jury understand the intricacies of things such as validity designs, test reliability, and validity generalization theory. Because the psychologist testifies as an expert, his or her credibility and expertise may be pivotal to the outcome of the case. In nonjury trials the judge will often cite the testimony of the I-O psychologist in the written opinion.

## Witnesses

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There are two types of witnesses in employment discrimination trials. *Fact witnesses* provide information about the factual issues in the case. For example, plaintiffs may testify as fact witnesses with respect to what happened to them when they applied for a job or a promotion and what the consequences of the company action were for them in terms of lost income or physical or psychological distress. Managers may testify about how they gathered and analyzed information about applicants or about discussions with individual plaintiffs.

Another type of fact witness (called a *30(b)6 witness* in reference to the section of the Federal Rules of Procedure that define this person) may testify as an official spokesperson for the company about a policy or procedure. This person is knowledgeable about the history and implementation of one or more parts of company policy. Although other fact witnesses may have things to say about the policy and its implementation, their statements reflect personal experiences with the policy. Because the 30(b)6 witness speaks for the company, that testimony carries substantial weight in the case.

The second type of witness is the *expert witness*, and I have discussed the role of that person earlier in this chapter. The expert witness is qualified by training, education, or experience to offer opinions about issues in the case, such as the effectiveness of an assessment device or a staffing strategy. In employment discrimination cases the typical expert witnesses include statisticians who consider issues related to adverse impact determination, econo-

mists who consider issues of monetary damages, social psychologists who discuss issues of stereotyping, and I-O psychologists who consider HR and psychometric issues. These issues may be as detailed as the specific method for setting a cut score or as broad as “best practices” in implementing a downsizing. Because I-O psychologists are likely to be retained by both the plaintiffs and the defendant, it is also necessary for the I-O psychologist to understand what an opposing expert is saying and to explain to the judge or jury why he or she disagrees with the other expert.

## Decision

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When all of the evidence has been presented, a decision is rendered by the judge or the jury. If it is a jury trial, the decision may come in hours or days, depending on the extent of the jury deliberations. In a nonjury trial (also called a *bench trial*), the ruling or verdict may not come for a year or more. A jury trial results in a verdict without any written explanation by the jurors. A bench trial usually results in a lengthy written opinion from the judge, describing what he or she sees to be the facts of the case, the relevant law and previous court decisions on similar topics, and the conclusion about which side prevailed. Thus reviews of the factors that may influence the outcome of an employment discrimination trial (for example, persuasive expert testimony, prior court decisions) are limited to bench trials for which a written opinion is available. Very little is known, at least in any formal way, about the factors that influence jury members in rendering a decision.

When the decision is in favor of the plaintiffs, there is usually a monetary award of some amount. In addition to a monetary award a judge may also order changes in procedures or practices. When the defendants win, the judge may order the plaintiffs to pay some portion of the costs incurred by the defendants in defending against the charge, but these costs are usually minimal and cover only administrative expenses such as copying, fees for court reporters, and limited travel costs. The cost award may represent less than 1 percent of the total costs incurred by the company. When the decision requires a change in a practice (for example, the performance appraisal process), the judge may direct the company to install a new practice with the assistance of a trained I-O psychologist.

## Appeals

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It is common for the losing party in a case to be dissatisfied with the outcome. This often results in an appeal, because a losing party has the automatic right to appeal an unfavorable decision and when an appeal is filed the court of appeals must hear that appeal. Whether a trial is a bench trial or a jury trial, decisions on factual issues are final and may not be appealed. Only legal issues may be appealed. The appeal is heard by a panel of judges in the judicial circuit in which the case was tried. These judges do not reconsider the factual issues of the case, but look only at the record to make sure that correct procedures or processes were used. For example, the trial judge may have decided to exclude the testimony of a particular witness. The losing party may argue that the judge made an incorrect decision and that this testimony would have changed the verdict.

An appeal to the court of appeals can result in one of three actions. The appeals court will either affirm (that is, agree with), reverse (come to a conclusion different from the trial judge's), or remand (send the case back to the trial judge with a requirement to reconsider a particular issue). Remands usually result in a new trial, although the second trial may be much narrower than the first, simply requiring the judge to consider points raised by the appeals court judges. In some cases the losing party on appeal may request the entire roster of circuit judges to consider the appeal (known as a request for an *en banc* hearing). This request may be granted or denied.

The highest level of appeal is to the U.S. Supreme Court. The nine justices of the Supreme Court will consider appeals related to any legal issues. They will often decide to hear an appeal to resolve inconsistencies in decisions between circuits. The Supreme Court agrees to consider a very small fraction of the cases sent to it. Unlike the court of appeals, the Supreme Court can simply decline to become involved or can affirm a decision, reverse a decision, or remand a case to a lower court for rehearing. Various appeals will often add years to the length of a litigation action.

Because appeals are based on procedural arguments and legal issues and not factual issues, the I-O psychologist will not have an

active role. If the appeal is successful, and the case is remanded for a rehearing, the I-O psychologist may be involved as an expert witness once again in the rehearing.

**Reference**

Lindemann, B., & Grossman, P. (1996). *Employment discrimination law* (3rd ed., Vol. II). Washington, DC: Bureau of National Affairs.