SPECIAL

00-218

December 8, 2000

To: EEAC Members

From: Jeffrey A. Norris
President

Re: **EEAC's "Guided Tour" Through the U.S. Court System**

Recent events have focused public attention on the nation's court system, as both state and federal courts have weighed in on the Presidential election. As you know, EEAC's weekly memoranda often deal with the status of case law developments, in which we typically make reference to court procedures and related legal terms. It occurred to us, with the courts in the news, that now might be an appropriate time to provide some nonlegal guidance on exactly what it is we are talking about when we discuss such things as "motions for summary judgment," "petitions for *certiorari*," and other terms that are relevant to the topic being covered in an EEAC memo, but are not necessarily familiar to nonlawyers.

For example, you may wonder about the significance of a decision by a three-judge panel in contrast to an "en banc" ruling, or how one case gets to the Supreme Court while another does not. Perhaps you have wondered if you should be interested in a decision by a federal appeals court located on the West Coast if your company does business only on the East Coast.

It is our intent in this special memorandum to explain these court procedures and terms in a context that will make our periodic legally oriented memos more meaningful to all member company representatives. While lawyers have our permission to stop reading now, we invite everyone to join us on an EEAC-guided tour of the various courts that make up the judicial branch of the U.S. government.

Overview

Because EEAC concentrates primarily on federal employment antidiscrimination laws such as Title VII, the Americans with Disabilities Act (ADA), the Age Discrimination in Employment Act (ADEA), and the Family and Medical Leave Act (FMLA), this EEAC special memorandum focuses on the federal "civil" court system, where individuals have the right to bring employment-related claims under these statutes. Other parts of the system (which may or may not involve the same courts) deal with such things as criminal charges and bankruptcies. In a "civil" case, the parties are the "plaintiff" (the person who brings the suit) and the "defendant"

(the person being sued). There may be more than one plaintiff and defendant in a case, and a "person" may be an individual, a group of individuals, a business, or a government agency such as the Equal Employment Opportunity Commission.

It is important to remember that there is not just one court system, but many. In addition to the *federal* courts, each state has its own individual court system as well, as part of its own government. We briefly discuss state court systems below, but our primary focus is on the federal courts.

The Federal Court Structure and Jurisdiction

The U.S. Constitution placed judicial power in "one supreme Court" and authorized Congress to create lesser courts as well. Congress in turn created two levels of courts beneath the Supreme Court: a trial level (the federal district courts) and an appeals level (the federal circuit courts of appeals). All federal judges are appointed for life terms by the President, subject to confirmation (advice and consent) by the U.S. Senate.

The federal court system handles cases that arise under the U.S. Constitution or under a federal law, such as claims under Title VII, the ADEA, the ADA, and the FMLA. For cases arising under the Constitution or under federal laws such as these, there is no minimum dollar value (jurisdictional limit) necessary before a suit can be brought.

The federal court system also handles so-called "diversity of citizenship" cases, where the plaintiff and defendant are citizens of different states, and the claim is for at least $75,000. In a "diversity of citizenship" case, a party may take the case into the federal court system even though the claims are based solely on state statutes or state common law. The idea is to provide a forum that will not be biased because one of the parties is from out of state.

Federal courts sometimes also consider claims that are based on state laws, but arise in the same case as other, closely related claims based on federal law or the U.S. Constitution. For example, a plaintiff may bring in federal court a Title VII claim for sexual harassment and state law claims for assault and battery arising out of the same facts. The related state law claims, which the federal court can rule on, are called "pendent" claims.

Federal District Courts

The first — that is, lowest— level of federal court is the federal district court. There are 94 of them. District court lines are drawn along state boundaries. Each of the 50 states constitutes at least one judicial district, as do the District of Columbia and Puerto Rico. Some states, however, have as many as four judicial districts. For example, a small state like Rhode Island makes up one judicial district, and has one federal district court, the U.S. District Court for the District of Rhode Island. In contrast, a large state like Texas has four judicial districts: Northern,

Southern, Eastern, and Western, and four district courts: the U.S. District Court for the Northern District of Texas, and so on. No state has more than four judicial districts.

These district courts are the federal trial courts. This is where plaintiffs file their lawsuits and try them before a federal judge and sometimes before a jury. While there is no automatic right to a jury trial in a civil case (unlike the right to jury in a criminal case under the Seventh Amendment to the Constitution), many of the federal statutes that provide for a right to sue also include the right to a jury. For example, when Title VII originally was enacted in 1964, it did not include the right to a jury trial. When Congress passed the Civil Rights Act of 1991, amending Title VII, it gave *either* the plaintiff or the defendant the right to demand a jury trial in a case in which the plaintiff was asking for money damages. Jury trials also are available under the ADEA, the ADA, and the FMLA.

Federal District Court Procedures

In the federal district courts, the progress of a case is governed by a set of standards known as the Federal Rules of Civil Procedure. In essence, the progression of a case is as follows.

Complaint and Answer

The plaintiff first must file a "complaint" that sets forth his or her claim. The defendant then responds with an "answer" in which the facts alleged in the complaint are admitted or denied. If the defendant has any legal defenses, they may be raised (indeed, some must be raised) in the answer. Some defenses also may be raised in a "motion" that gets submitted to the court even before the answer is filed. In addition, if the defendant has any claims against the plaintiff, they may be raised in something called a "counterclaim."

Discovery

In the next stage of the case, referred to as "discovery," each party uses various tools to try to find out what evidence the other side has to support their claims and defenses. A party may question the other side's witnesses under oath in a "deposition," or require that the other side answer written questions that are called "interrogatories." As part of this discovery process, each side also may require the other to "produce documents" related to the case. The discovery stage can last for months and even years, depending upon the complexity of the case and the time limits set by the court.

Summary Judgment

Before a case goes to trial, either party has the right to file a motion (or "move") for "summary judgment," which essentially asks the judge to rule in the moving party's favor based

on the evidence presented to date. Summary judgment motions typically are filed after the discovery stage and are used frequently by defendant employers in discrimination cases. The defendant asking for summary judgment will argue two things: (1) that there are no material (important) facts on which the parties disagree; and (2) under the applicable law, they are entitled to win the case. If the plaintiff, in response to such a motion, cannot show either that there is a significant factual dispute or that the law does not support the defendant's position, the trial judge can, and should, order judgment for the defendant.

Trial

If the case does proceed to trial, both sides present witnesses and other evidence, the plaintiff going first, then the defendant. At the close of the evidence, the jury, if there is one, decides whatever factual disputes there are and how the law applies to the facts. If there are multiple claims, one party may win on all counts, or the plaintiff may win some and the defendant some. If the plaintiff wins, the jury may award damages, according to the particular law under which the claim was brought.

After the jury reaches a verdict, the losing party sometimes asks the judge to overturn it, arguing that the jury's verdict was not supported by the evidence, by making a formal "motion for judgment as a matter of law." In appropriate circumstances, the losing party also may ask the court for a new trial. Eventually, the trial judge will enter "judgment," either confirming the jury's verdict, changing the size of any damages awarded, or overturning the verdict and entering judgment for the other side.

Within 30 days after final judgment is entered (whether by means of granting summary judgment or after a trial), the losing party has the right to appeal to the appropriate U.S. circuit court of appeals.

The U.S. Circuit Courts of Appeals

There are twelve United States circuit courts of appeals that hear appeals from the federal district courts. The circuit courts are named numerically from the First to the Eleventh Circuits, plus the U.S. Court of Appeals for the District of Columbia Circuit. The jurisdiction of the federal appeals' courts is divided geographically, with each of the circuit courts hearing appeals from federal district courts in the states in that circuit. See Attachment 1 for a map of the current federal circuits.

Each of the circuits has a number of judges. The Ninth Circuit (on the West Coast) is the largest, with 28. The First Circuit (in New England) is the smallest, with six. The rest of the circuits have between 11 and 17 judges each.

Federal Circuit Court of Appeals Procedures

Circuit court of appeals proceedings are governed by a set of standards known as the Federal Rules of Appellate Procedure.

The Briefing Stage

Under normal circumstances, the party who lost the case in the district court and took the appeal (the "Appellant") first files a written brief with the appeals court arguing why the district court's decision was wrong. The winning side, called the "Appellee," then is given time to file its own written brief in response. Finally, the Appellant is given the opportunity to file a "reply" brief for the last word.

Oral Argument

After the briefs have been filed, the case is scheduled for oral argument in front of a panel of three of the circuit court judges, who are chosen according to the local rules of the particular circuit court. The three-judge panel, required by law, in essence sits for the entire court in hearing the case. Some cases do not go to oral argument, either because the parties have agreed to submit the case to the court on the briefs alone, or because the court determines that oral argument is not needed. When the day comes, lawyers for each party present their arguments and answer questions from the panel of judges.

Decision

Some time after the oral argument, the panel of three judges will issue a "decision." The judges may affirm, or uphold, the decision of the trial court. Or, they may reverse the district court's decision. In so doing, they also may "remand" the case — in other words, send it back to the district court for further proceedings. For example, if the circuit court panel concludes that the district court erroneously granted summary judgment for the defendant, the judges will reverse that ruling and remand the case to the district court where it then goes to trial.

The panel's decision may be unanimous, but need not be. If one judge disagrees, he or she will write a "dissenting" opinion explaining the reasons why he or she would have ruled for the other side. A judge also may write a "concurring" opinion, agreeing with the court's opinion but elaborating on the decision, or agreeing with the outcome but for different reasons.

Rehearing

After a decision from the three-judge panel, the party who lost the ruling may file a "motion for rehearing," asking the panel judges to reconsider their decision, arguing that the judges did not follow the law correctly. The losing party also may file a "motion for rehearing

en banc." En banc is the legal term for the entire court, and such a motion is a formal request for all of the judges on the circuit court to hear the case. If the motion is granted, the parties will go another round, either before the panel again or before the entire court.

After the proceedings conclude in the circuit court, the losing party may seek review by the U.S. Supreme Court.

The U.S. Supreme Court

It is important to point out that in a civil case, there is no automatic right to appeal to the Supreme Court. Rather, the party who lost in the court of appeals, now called the "Petitioner," has 90 days to ask the Supreme Court to review the decision, in a document called a "petition for a writ of *certiorari*." The Supreme Court grants only a very small percentage of these petitions each year. For example, in the most recent term, the Court granted *certiorari* in only 78 of 2,092 cases in which a petitioner paid a filing fee, less than 4% of all petitions filed.

In general, the court will not grant *certiorari* unless the case presents a substantial federal question, or where there is a difference of opinion between two or more circuit courts of appeals (commonly referred to as a "circuit split") or between a federal circuit court of appeals and the highest court of the state. While these conditions are met in many of the cases presented to the Court, *certiorari* still is rare. This underscores why circuit courts of appeals decisions can be so important, since so few of them are reviewed in practice.

There are nine judges (Justices) on the Supreme Court, the Chief Justice of the United States and eight Associate Justices. One of the Associate Justices, Clarence Thomas, previously served as Chairman of the Equal Employment Opportunity Commission.

Supreme Court Procedures

The Supreme Court procedures are similar to those followed by the circuit courts. If the Court grants a petition for a writ of *certiorari*, the Petitioner then ordinarily has 45 days[1] to file a brief with the Court making legal arguments explaining why the decision of the circuit court of appeals was incorrect. The "Respondent" (typically the party that prevailed in the circuit court) then has 30 days to file a responding brief, after which the Petitioner may file a reply brief.

The Court then schedules oral argument. At oral argument, the lawyers for each side make their legal arguments and answer questions from the Court. Later, the Justices meet and vote on the outcome. While some cases are unanimous, most are not. Justices in the minority typically write or join a dissenting opinion. Concurring opinions also are not unusual. The

[1] These time frames sometimes can be shortened by the Supreme Court in emergencies, as just happened in the appeal from the Florida Supreme Court involving the Presidential election.

Supreme Court's decision is the final word on the law, although it is not uncommon for cases to be returned to the lower courts for further proceedings consistent with the Court's guidance.

Amicus Curiae Briefs

In many cases that go before the federal courts, the actual parties to the case may not be the only ones interested in the outcome. For this reason, courts sometimes allow other interested parties to file a brief as well that is referred to as an *amicus curiae* brief, which in Latin means "friend of the court." *Amicus curiae* briefs are common in the Supreme Court, not unusual in the circuit courts of appeals, and rather rare at the district court level.

An *amicus curiae* may file a brief if the court gives it permission, or if all of the actual parties to the case give their consent. As member companies are aware, EEAC frequently files *amicus curiae* briefs in cases in the Supreme Court and the circuit courts of appeals involving important employment law issues.

Legal Significance of Federal Court Decisions

The final court decision in a case is, of course, binding on the parties. In addition, the rule of law announced in the case is "precedent," or binding, on all of the courts below it. For example, a decision of the Supreme Court is binding on all of the federal circuit and district courts, in other words, on everyone. A decision of a circuit court of appeals is binding on all of the district courts in that circuit, but not on other circuit courts of appeals or the district courts in those circuits.

For example, if the Second Circuit decides a case a certain way, any rule of law it states will be binding on all of the federal district courts in that circuit (New York, Vermont, and Connecticut), but not on the Seventh Circuit or any of the federal district courts there. While a circuit court may find another circuit court's decision persuasive, it is not required to follow it. Nevertheless, particularly on a case of "first impression" where a circuit court decides an important legal issue for the first time, it is not uncommon for other circuit courts to look to that ruling if and when the issue comes up before them. Thus, circuit court rulings can have significance beyond their own boundaries.

Similarly, while federal courts technically are not bound to follow their <u>own</u> decisions, they customarily do so, and are unlikely to overrule their own prior decisions absent a very good reason for doing so.

Unpublished Opinions

The above discussion applies to so-called "published" decisions. All of the circuit courts of appeals also have procedures for issuing "unpublished" decisions that have substantially less

precedential value than published ones. The exact circumstances under which an unpublished decision can be used, if at all, as precedent in a later case vary among the circuits.

State Court Systems

Just as federal courts hear cases brought under federal law, state courts hear cases brought under state law. This includes cases brought under state "fair employment practices" statutes that are similar to federal antidiscrimination laws. It also includes claims that arise under "common law" theories developed by judges over the years. In the employment area, this would include claims like "wrongful termination" or "breach of contract."

Like the federal government, each of the states has its own internal court system. In general, there is a trial court level, one or more appeals levels, and a "supreme" court that has the final say. There is no common system of names among the states, however, and they can be very confusing. For example, in Pennsylvania and Ohio, the trial court level is called the "court of common pleas," while in a number of states, including Maryland and Virginia, the trial court level is the "circuit court." In most states, the highest-level court is called the "supreme court," but in New York, "supreme court" is the trial level and the highest court is the "court of appeals." In general, though, the procedure in state courts functions much like that in the federal system.

In conclusion, as a general rule, state courts decide state law and federal courts decide federal law.

Case Citations

EEAC memoranda where we refer to a case frequently contain a "citation" to that case, that is, the letter and number abbreviations that immediately follow the name of the case. These citations are the method by which lawyers, courts, and other interested parties are able to locate a case. For example, the West Publishing Company publishes decisions of the U.S. circuit courts of appeals in the "Federal Reporter" series, abbreviated as F., F.2d, or F.3d, and decisions of the federal district courts in the "Federal Supplement," abbreviated as F. Supp. or F. Supp. 2d.

Legal citations point the way to find a copy of a decision by stating the volume and page number of the reporter in which it is published. For example, one citation for the U.S. Supreme Court decision confirming that sexual harassment is a form of sex discrimination prohibited by Title VII is *Meritor Savings Bank v. Vinson*, 477 U.S. 57 (1986). This shows that the decision can be found at Volume 477, page 57, of the U.S. Supreme Court Reports, and was decided in 1986.

Many court decisions also are available electronically. The Supreme Court recently launched its website at *http://www.supremecourtus.gov/*, which offers not only opinions, but also

oral argument transcripts, dockets, schedules, and general information about the Court. The circuit courts of appeals decisions are available on the internet as well, as are decisions of some of the federal district courts. The Administrative Office of the U.S. Courts provides links to the various court websites at *http://www.uscourts.gov/links.html*.

Some state court decisions also are available on the internet. One source for links to state courts is *http://www.washlaw.edu/*.

Commercial services such as LEXIS® and WESTLAW® also provide access to court opinions for a fee. These services provide elaborate search capabilities and other extras not available from simple internet access.

Conclusion

We hope you have found our journey through the federal court system to be informative and that you will have a better understanding the next time you pick up an EEAC memorandum that describes an important case ruling.

Questions concerning this memorandum may be addressed to Ann Elizabeth Reesman at 202-789-8650.

Attachment 1

U.S. Circuit Courts of Appeals