

**Johnnie L Cochran, Jr. and Cyrus Mehri
Leading Employment Discrimination Attorneys
Reveal Disturbing Double Standard
In U. S. Appellate Court Appeals**

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Johnnie L. Cochran, Jr. and Cyrus Mehri, leading employment discrimination attorneys, released "Double Standard on Appeal: An Empirical Analysis of Employment Discrimination Cases in the U.S. Courts of Appeals," a report based on the official computerized data of the federal courts.

The report reveals that employment discrimination plaintiffs (employees) who win at trial fare "miserably on appeal" and that appellate courts seldom reverse a case in which the defendant (employer) won at trial. This gap raises the specter that appellate courts have a double standard for employment discrimination cases - "harshly scrutinizing" employee trial court victories while "gazing benignly " on employers.

The Eisenberg-Schwab Report highlights a disturbing disparity in the way federal appellate courts treat employment discrimination cases in comparison to other types of cases. For example, when a plaintiff appeals a defendant's victory at trial, she has no more than a 5% chance of reversing the defendant's victory on appeal. However, if a defendant appeals a plaintiff's trial victory, the defendant has an incredible 43% chance of reversing the plaintiff's victory.

"Today is a turning point in the struggle for fairness in America's workplace," said Cyrus Mehri of Mehri, Malkin & Ross, PLLC, "For the first time, there is irrefutable empirical evidence that the federal appellate courts use a double standard. Employment discrimination plaintiffs are treated as second class citizens in the workplace, and as second class litigants in the federal courts of appeal."

Earlier this year, Cochran and Mehri commissioned two highly distinguished professors from Cornell Law School, Theodore Eisenberg and Stewart J. Schwab, to review and analyze data that the Administrative Office of the United States Courts collects on every federal case. Eisenberg and Schwab, both individually and jointly, are at the forefront of empirical research on the federal court system.

Johnnie L. Cochran, Jr. of Cochran, Cherry, Givens & Smith, P.C. said, "The few employment discrimination plaintiffs who prevail against powerful employers and the corporate law firms defending them are today's unsung heroes. These plaintiffs are not treated fairly on appeal and are too frequently robbed of their hard-won victories by federal appellate judges, who may be distanced from the realities of discrimination in the workplace."

Typically, plaintiffs who are reversed on appeal have already overcome difficult summary judgment motions, prevailed at trial, and survived post-trial motions. Further, employment discrimination cases that reach trial are almost always fact-intensive, and appellate courts are obligated to defer to the district court fact-finders with respect to factual determinations.

"The results reported in the Eisenberg-Schwab Report suggest that federal courts of appeals use this deference to trial court findings as a shield for winning employers, but toss that shield away when a plaintiff's trial court victory is appealed," Cochran said.

The Eisenberg-Schwab Report raises concerns about whether the intent of Congress to reduce workplace discrimination is being fulfilled. The report raises the specter that employees' federally protected rights to work free of discrimination is being systemically diminished.

Mehri added. "We hope the Eisenberg-Schwab Report will spur a national dialogue in the legal community, in Congress and in the workplace about what appears to be a systemic judicial bias against

employment discrimination plaintiffs in our federal appellate courts. Perhaps there are innocent explanations for the double standard on appeal, but the disturbing implications of this report will never be understood unless such a dialogue takes place."

Electronic copies of the Eisenberg-Schwab Report are available at www.findjustice.com. Copies may also be obtained by calling Anne Marie Elliott at 202-822-5100.