

## EMPLOYMENT LAW UPDATE

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### ***Bell v. Clackamas County (9<sup>th</sup> Cir., August 20, 2003) 03 C.D.O.S. 7495***

#### ***Employee Proves Retaliation Claim Based On Timing Of Protected Activity And Evidence Of Employer's Irritation With Employee's Complaints Of Discrimination.***

*By Jason A. Geller*

A primary issue in this case was the sufficiency of an employee's evidence of retaliation to support a jury award of substantial damages on that claim.

Plaintiff Carmichell Bell was the first African-American deputy to be hired by the Clackamas County Sheriff's Office ("Sheriff"). After Bell's successful performance as an officer from February 1996 through December 1997, he accepted a new position in the Sheriff's office as a probationary recruit deputy.

During March 1998 through May 1998, his supervisors made various derogatory comments to him about immigrants and African-Americans. One supervisor scolded him for being "unprofessional" because he was "talking like a black person."

In late May 1998 and June 1998, Bell filed formal complaints of discrimination with the Sheriff's office of which his supervisors were aware. During the period June 1998 through the Fall 1998, his supervisors issued him negative performance reviews. These reviews

were inconsistent with his positive performance reviews that he had received before May 1998.

The Sheriff retained an outside consultant to investigate the discrimination claims and produce a report. The outside consultant interviewed several officers and ultimately concluded that there was no evidence of discrimination. In December 1998, the Sheriff terminated Bell for poor performance.

Thereafter, Bell sued the Sheriff and several of his supervisors for discrimination and retaliation under Title VII of the Civil Rights Act. A jury returned a verdict in his favor, awarding him over \$1 million in damages. Both parties appealed to the Ninth Circuit Court of Appeal.

The Ninth Circuit upheld the jury's verdict against the Sheriff and several of the individual defendants with the exception of one. The Court focused on the timing between Bell's complaints of discrimination and the subsequent

criticisms of his performance and his termination. These events occurred just after the consultant had concluded the investigation of the discrimination claims. The Court focused on Bell's evidence of his supervisors' "contemporaneous displeasure" with his complaints in May 1998. The Court also considered that Bell had received consistent superior performance evaluations before his complaints and that after Bell's termination, the Sheriff continued to hire deputies but did not hire any African-Americans.

Based on this evidence, the Court concluded that Bell had offered "specific and substantial" circumstantial evidence to support the jury's verdict in his favor on the retaliation claim.

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