The Legal Intelligencer

Bidding a Fond Farewell to US Magistrate Judge Rice on His Retirement

As an homage to Judge Timothy R. Rice, I wanted to take a look at the last two employment law opinions authored by him.

By **Jeffrey Campolongo** | May 23, 2022

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For those of us who have the privilege of practicing employment law in the Delaware Valley, one thing holds true: there is no shortage of excellent jurists. The judges hearing our cases always show impeccable patience and skill. Employment law cases are truly unique. The law can be nuanced with burden shifting paradigms, pretext, mixed motive analysis and a myriad of other complexities. And this says nothing of the parties and litigators who never fail to keep the bench on its proverbial toes.

As many lawyers (and judges know), the backbone of a vibrant federal bench is a stable of U.S. Magistrate judges. Congress established the role of federal magistrate judges in 1968 with the Federal Magistrates Act of 1968. The position replaced the role of federal court commissioner with the broader and more powerful office of U.S. Magistrate. Magistrate judges are empowered to dispose of a great range of matters including:

- To preside over criminal arraignments.
- The authority to conduct misdemeanor trials, if the defendant agreed.
- To serve as special masters in civil actions.
- Where requested by district judges, to preside over discovery and other pre-trial proceedings.

(Source: https://ballotpedia.org/Federal_magistrate_judge (https://ballotpedia.org/Federal_magistrate_judge))

Strangely missing from this list, however, is the significant role played by magistrate judges in resolving and trying civil cases. No greater purpose is served than removing a case from the court's docket, sometimes to the (dis)satisfaction of the parties. Throughout federal courts in the tri-state area, U.S. Magistrates are involved early and often in settlement discussions, at times staying involved in the case for post-settlement issues. Magistrate judges also routinely issue precedential decisions and written opinions that help shape the employment law landscape.

Which brings us to the recent news regarding the retirement of U.S. Magistrate Judge Timothy R. Rice. There is not an employment lawyer within a 50-mile radius of 601 Market St. who has not had the distinct privilege of appearing before Rice. His Honor's friendly, familiar, charming demeanor could disarm even the most vociferous counsel. No matter the issue, or the complexity of the case, Rice had an ability to make everyone feel welcome in his chambers. To his credit, Rice could make a defendant actually want to write a check, while simultaneously convincing a plaintiff to give it right back. If an issue came up after an agreement was reached, he would get the parties on the phone with the calm, reverence of a priest, and before long one or the other would be saying an "Our Father" and two "Hail Mary's" as penance for their sins.

So, as an homage to Rice, I wanted to take a look at the last two employment law opinions authored by him. If you read them closely, you will see the same attention to detail and deliberation in both opinions, one of which is a boon for plaintiffs lawyers, and the other a win for the defense side.

'Ray v. AT&T Mobility Services'

In an opinion issued on April 22, Rice awarded $764,825 in attorney fees and $38,643.86 in costs to a plaintiffs law firm after it won a jury verdict and judgment of $2.254 million in a single-plaintiff age discrimination case against AT&T. See *Ray v. AT&T Mobility Services,* Case No. 2:18-cv-03303 (E.D. Pa. Apr. 22, 2022). Legal opinions on counsel fees in fee-shifting cases are nothing new. In fact, it is quite common for a prevailing plaintiff to file their fee petition only to see it get slashed by a large percentage. That was not the case here, as Rice actually awarded the plaintiffs attorneys the highest rate available under the Community Legal Services (CLS) rate table (https://clsphila.org/about-community-legal-services/attorney-fees/).

At the outset, Rice addressed AT&T's objection to the plaintiff's request for fees for mock trial preparation. Labeling it "an indispensable part of litigation," Rice rejected AT&T's argument that the time spent on mock trial preparation should be excluded from the fee petition. He wrote: "sharpening advocacy skills in advance of trial is as important as effective legal research and writing. One cannot exist without the other

in a courtroom. A persuasive and well delivered trial presentation, honed and refined with help from others, significantly improves the chances of a successful outcome. This is often overlooked or underestimated in fee litigation."

Of note, Rice refused to cut the mock trial preparation merely because it was done before dispositive motions were decided. In this case, he wrote, "it worked in their favor because they ultimately prevailed on summary judgment, making trial preparation necessary. I shall not deduct time spent on the mock presentations merely because Ray's attorneys took this risk."

AT&T also contested the hourly rates sought by three senior attorneys on the case. The plaintiff requested $847,945 in attorney fees based on 1,734.7 hours of work performed over four years by eight different attorneys, seeking rates between $220 and $900 per hour. The senior attorneys sought fees at the hourly rates of $900 and $730, respectively. In looking to the CLS fee schedule, which is commonly used as starting point for market rates, Rice cautioned that "its reference to experience should not serve as a cap that precludes exceptionally talented trial lawyers from receiving fair compensation because of age or gender."

While not all of the attorneys had 25 years or more of experience, Rice found that neither the gender nor age of the attorneys should impact their rates. "Historically, women in law earn less than their male counterparts, a discrepancy that may reflect hidden bias. See, Deborah Cassens Weiss, "Pay Gap Has Widened for Male and Female Partners in Larger Firms, New Report Says (https://www.abajournal.com/news/article/pay-gap-has-widened-for-male-and-female-partners-in-larger-law-firms-report-says)." As a result, awarded the senior attorneys fees at the highest rate available on the CLS fee schedule of $700 per hour.

'Regan v. Temple University'

Plaintiff Keith Regan sued defendant Temple University for discrimination, retaliation, and failure to accommodate under the Americans with Disabilities Act (ADA) and interference with, and retaliation prohibited by, the Family and Medical Leave Act (FMLA), following termination of his employment. See *Regan v. Temple University*, Case No. 19-3742 (E.D. Pa. Apr. 7, 2022). Regan was hired by Temple University in January 2014 as audiovisual and instructional technologies manager for Temple's Fox School of Business and School of Tourism and Hospitality Management. Regan applied for and received intermittent FMLA leave in anticipation of his daughter's birth. In February 2015, Regan's daughter was born with significant physical impairments and he began utilizing his FMLA benefits on a continuous and intermittent basis.

Over the course of the next few years, Regan became embroiled in ongoing disputes with his immediate supervisor, culminating in progressive discipline. Eventually, Regan was terminated for his disciplinary history and his performance during a large conference hosted by the Fox Business School. The gravamen of Regan's complaints related to his use of intermittent FMLA leave to care for his daughter, as well as an ADA request for accommodations due to several medical conditions.

In his summary judgment opinion, Rice thoroughly considered all of the facts, in the light most favorable to Regan, and concluded that Regan's ADA claims failed because Regan failed to return the requisite paperwork to Temple for several weeks. By the time Regan returned the completed ADA paperwork, he

was already in the midst of his final suspension. Regan failed to produce any evidence that Temple knew of his qualifying disability during his progressive discipline and termination. This was a determinative factor for Rice.

Regan's FMLA interference claim also failed because he failed to identity any evidence that Temple prohibited him from taking FMLA leave. Regan argued that he was entitled to take intermittent leave on the day of the large conference, however, the opinion notes that he failed to provide advance notice. Rice concluded: "even at the summary judgment stage, I am not required to make unreasonable inferences in Regan's favor by finding that Regan was simply using his intermittent FMLA leave when he decided to skip the busy morning hours of the conference."

As seen in his last two written opinions before his retirement, Rice exemplified what we expect of a fair and impartial jurist. Always even handed in his approach. Deliberate, thoughtful, and compassionate. His presence on the bench, in chambers, during settlement conferences, and on the softball field will be sorely missed. We wish him well in his next chapter of life.

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