

## **Mike Rice, Jr., For Cause or Not For Cause -- You Make the Call**

Mike Rice, Jr. (Rice) was an assistant collegiate basketball coach at a number of universities, including Marquette (1994-1997), and became the head basketball coach at Robert Morris University from 2007-2010. At Robert Morris, Rice compiled a record of 73 wins and 31 losses during his tenure and participated in the first round of the NIT and NCAA tournaments.<sup>1</sup>

In 2010 he was hired as head basketball coach at Rutgers University (Rutgers), a member of the Big East Conference.<sup>2</sup> His record at Rutgers through the 2013 season was 44 wins and 51 losses, without a tournament appearance.<sup>3</sup>

On or about May 6, 2010, Rice and Rutgers entered into an employment contract. The term of the contract was from May 6, 2010 through April 7, 2015.<sup>4</sup> Rice received two forms of compensation, a base salary and guaranteed compensation.

### Base Salary<sup>5</sup>:

April 8, 2012 through April 7, 2013 - \$300,000  
April 8, 2013 through April 7, 2014 - \$325,000  
April 8, 2014 through April 7, 2015 - \$350,000

### Additional Guaranteed Compensation<sup>6</sup>:

April 8, 2012 through April 7, 2013 - \$350,000  
April 8, 2013 through April 7, 2014 - \$375,000  
April 8, 2014 through April 7, 2015 - \$400,000.

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<sup>1</sup> MIKE RICE, <http://www.sports-reference.com/cbb/coaches/mike-rice-2.html> (last visited July 17, 2013).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> RUTGERS UNIVERSITY, *Employment Contract Between The State University of New Jersey and Michael T. Rice* (May 6, 2010)[hereinafter Rice Contract].

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

Rice was also entitled to a retention incentive. According to his employment contract, if Rice was serving as head coach for the final game of the 2012-2013 basketball season, whether the game was a regular season or post-season tournament game, he was entitled to be paid a one-time retention payment of \$100,000 to be paid within thirty (30) days of the final game of said season.<sup>7</sup>

In December of 2011, Rice became the center of national attention. Eric Murdock, former NBA player and Director of Player Development for Rutgers at the time, gave to the Rutgers administration a video that showed over 30 minutes of multiple practice sessions conducted by Rice as head basketball coach.<sup>8</sup> The 30-minute video was professionally edited from a collection of 219 DVDs covering hundreds of hours of practices, materials that Rutgers had voluntarily provided to Murdock pursuant to an open records request.<sup>9</sup> The video shows Rice throwing basketballs at his players' heads, shoving his players, grabbing and kicking them, and calling them an assortment of names including mother\*\*\*\*\*ers, sissy bitches, and f,,,g f\*\*\*\*s.<sup>10</sup> Murdock claimed that Rice's actions caused at least three players to transfer.<sup>11</sup>

Murdock claims that he first told Rutgers Athletic Director Tim Perneti (Perneti) about the abuse in summer of 2012, but Perneti took no action until he viewed the

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<sup>7</sup> *Id.*

<sup>8</sup> Don Van Natta Jr., *Video Shows Mike Rice's Ire*, ESPN.COM (Apr. 3, 2013), [http://espn.go.com/espn/otl/story/\\_id/9125796/practice-video-shows-rutgers-basketball-coach-mike-rice-berated-pushed-used-slurs-players](http://espn.go.com/espn/otl/story/_id/9125796/practice-video-shows-rutgers-basketball-coach-mike-rice-berated-pushed-used-slurs-players).

<sup>9</sup> Steve Eder, *Rutgers Officials Long Knew of Coach's Actions*, NYTIMES.COM (Apr. 6, 2013), <http://www.nytimes.com/2013/04/07/sports/ncaabasketball/rutgers-officials-long-knew-of-coach-mike-rices-actions.html?pagewanted=all>.

<sup>10</sup> Van Natta Jr., *supra* note 8.

<sup>11</sup> *Id.*

video on November 26, 2012.<sup>12</sup> Perneti is not the only person who watched the edited videos. The athletic department's Human Resources and Chief Financial Officer viewed the video, as did the University outside legal counsel, as well as at least one member of the Board of Governors.<sup>13</sup>

However, Perneti was first alerted to Rice's behavior abuses before June 2012 by Rice's assistant coaches and "tried to rein in Rice by personally reprimanding him, attending Rice's practices, and even assigning the university sports psychologist to work with the team."<sup>14</sup>

The news of Rice's actions via the video came at an extraordinarily sensitive time for the University.

"Rutgers has been working for years to improve its reputation and financing in large part by elevating its athletic program. The University had expanded and renovated its football stadium at a cost of close to \$100 million and had been negotiating to join the prestigious Big Ten Conference, a move that would raise its athletic and academic profile and generate huge revenues in athletics."<sup>15</sup>

Joining the Big Ten was crucial to those broader ambitions. Rutgers' President Robert Barchi (Barchi) and other university officials "adamantly maintain that the Big Ten negotiations, which proved successful, had nothing to do with how the administration handled Mr. Rice...[b]ut it is clear that a scandal during those months could have proved damaging in the university's bid for membership."<sup>16</sup> On November

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<sup>12</sup> *Eric Murdock Files Whistleblower Lawsuit Against Rutgers University*, CBS NEW YORK (Apr. 5, 2013), <http://newyork.cbslocal.com/2013/04/05/eric-murdock-files-whistleblower-lawsuit-against-rutgers-university/>.

<sup>13</sup> Eder, *supra* note 9.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

20, 2012, with great fanfare, Perneti and Barchi announced their acceptance into the Big Ten Conference.<sup>17</sup>

After reviewing the videos on November 26, 2012, Perneti's first instinct was to fire Rice immediately. The utilization of homophobic slurs should have been a particularly sensitive issue to Rutgers given the recent suicide of Tyler Clementi, the Rutgers student taunted about his sexual orientation.<sup>18</sup> Rutgers had previously dismissed one basketball coach, Kevin Bannon, for ordering players to strip during practice as punishment, and fired another, Fred Hill, Jr., after an alleged verbal altercation at a baseball game where he jumped on top of the dugout and delivered a profane, drunken tirade.<sup>19</sup>

However, instead Perneti sought second opinions and commissioned a report by an independent investigator. On November 27, 2012, Rutgers hired a former federal prosecutor, John P. Lacey (Lacey) of the law firm of Connell, Foley, LLP, to conduct an independent investigation of Rice.<sup>20</sup> Lacey was retained by Rutgers to investigate the following matters:

(1) Allegations regarding Rice's conduct as head coach of the Rutgers men's basketball team and a hostile work environment.

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<sup>17</sup> Tom Luicci, *Rutgers Joins Big Ten, Marking 'Transformative Moment' for School and Conference*, NJ.COM (Nov. 20, 2012), [http://www.nj.com/rutgersfootball/index.ssf/2012/11/rutgers\\_joins\\_big\\_ten\\_marking.html](http://www.nj.com/rutgersfootball/index.ssf/2012/11/rutgers_joins_big_ten_marking.html).

<sup>18</sup> Ed Pilkington, *Tyler Clementi, Student Outed as Gay on Internet, Jumps to His Death*, THE GUARDIAN (Sept. 30, 2010), <http://www.guardian.co.uk/world/2010/sep/30/tyler-clementi-gay-student-suicide>.

<sup>19</sup> Robert Strauss, *Briefing: Sports; Rutgers Coach Released*, NY TIMES (Mar. 25, 2001), <http://www.nytimes.com/2001/03/25/nyregion/briefing-sports-rutgers-coach-released.html?ref=kevinbannon>. Brian Lewis, *Conduct Costs Hill His Rutgers Job*, NEW YORK POST (Apr. 9, 2010), [http://www.nypost.com/p/sports/college/basketball/conduct\\_costs\\_hill\\_ru\\_job\\_JJvg6Ek08N1S8bqyEGEoRL](http://www.nypost.com/p/sports/college/basketball/conduct_costs_hill_ru_job_JJvg6Ek08N1S8bqyEGEoRL).

<sup>20</sup> Don Van Notta Jr., *Inside Rutgers' 17-Day Investigation: From first instincts to a final decision on the punishment of coach Mike Rice*, ESPN.COM (Apr. 7, 2013), [http://espn.go.com/espn/otl/story/\\_id/9139703/first-instincts-final-decision-punishment-basketball-coach-mike-rice](http://espn.go.com/espn/otl/story/_id/9139703/first-instincts-final-decision-punishment-basketball-coach-mike-rice).

(2) Allegations regarding Rice's conduct and Rutgers' policy relating to bullying, harassment, or assault.

(3) Allegations regarding Rice's violation of NCAA Rules

(4) Rice's conduct and Rutgers' Conscientious Employee Protection Policy.<sup>21</sup>

"But the primary goal of the report was not to determine whether Rice had abused his players or whether he was a suitable authority figure for a group of young men; instead, it focused largely on whether Rice created a hostile work environment which could result in future lawsuits and whether Murdock was wrongfully terminated."<sup>22</sup>

In Lacey's 52-page report to the University, he made some interesting observations:

(1) Based on the credible information provided to us, we find that many of the actions of Coach Rice, while sometimes unorthodox, politically incorrect or very aggressive, were within the bounds of proper conduct and training methods in the context of preparing for the extraordinary physical and mental challenges that players would regularly face during NCAA Division I basketball games. This permissible training includes screaming at players, cursing, using other foul and distasteful language and expressing frustration and even anger at times. It also includes physical contact during drills and unorthodox training methods

(2) Rice was passionate, energetic, and demanding and his intense tactics seemed genuinely aimed at improving his team and were in no way motivated by animus.

(3) "In sum, we believe there is sufficient evidence to find that certain actions of Coach Rice did 'cross the line' of permissible conduct and that such actions constituted harassment or intimidation within Rutgers' Policy, Section 60.1.13."

(4) "Furthermore, due to the intensity with which Coach Rice engaged in some of the misconduct, we believe that AD Perneti could reasonably determine that Coach Rice's actions tended to embarrass and bring

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<sup>21</sup> Report of Special Counsel Concerning Investigation of Claims Asserted and Evidence Presented by Counsel for Eric Murdock on Monday November 26, 2012, as presented by John T. Lacey, Esq., Special Counsel, Connell & Foley [hereinafter *Lacy Report*].

<sup>22</sup> Eder, *supra* note 9.

shame or disgrace to Rutgers in violation of Coach Rice's employment with Rutgers."

(5) "Accordingly, we find that the conduct of Coach Rice did not create a hostile work environment as that term is understood in connection with anti-discrimination and anti-harassment policies."

(6) Rice "did engage in certain conduct that went beyond mere cursing, including occasions where Coach Rice used coarse, inappropriate and insulting language during practices and workouts, verbally attacked players in a manner outside the bounds of proper coaching, shoved and grabbed players on multiple occasions and engaged in other boorish and immature behavior."

(7) "These improper actions constitute grossly demeaning behavior directed at players and occasionally at coaches that did not appear necessary to build a high quality basketball program or to build a winning Division 1 basketball team."

(8) Murdock's assertion that he was wrongly terminated from his position at Rutgers is without merit.<sup>23</sup>

Lacey said he was not hired to make recommendations about the punishment for Rice. "I was retained to conduct a factual investigation. I concluded that Coach Rice had violated University policy and that he had breached the terms of his employment contract. I reported these findings to the University. My retention did not include making a recommendation concerning any penalty."<sup>24</sup>

On December 12, 2012, Rice was suspended for three games without pay, which is estimated to have cost him nearly \$75,000 or roughly 25% of his base salary for the 2012-2013 season, fined \$50,000 for abusive behavior toward his players, and ordered

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<sup>23</sup> Lacy Report, *supra* note 21.

<sup>24</sup> Van Natta Jr., *supra* note 20.

to undergo anger management.<sup>25</sup> Perneti said, "Mike Rice wavered from Rutgers' standard and we thought the punishment was fair for a first offense."<sup>26</sup>

The situation dramatically worsened when on April 2, 2013, ESPN Outside the Lines aired clips from Murdock's video of Rice's practices.<sup>27</sup>

The day after the video aired on ESPN Outside the Lines (i.e. April 3, 2012), Rice was dismissed as head coach. Assistant Coach Jimmy Martelli resigned just one day after Rice was fired.<sup>28</sup>

Less than an hour after Rice's dismissal, Barchi released the following statement:

Rutgers University has a long and proud history as one of the nation's most diverse and welcoming academic institutions. Coach Rice's abusive language and actions are deeply offensive and egregiously violate the university's core values. When video excerpts of basketball practices were reviewed last fall by athletic director Tim Perneti, he immediately notified me and sought the advice of internal and outside counsel. The university hired an independent investigator to look into this matter thoroughly. Based on the external investigator's findings and recommendations, Tim and I agreed that Coach Rice should be suspended, penalized \$75,000 in fines and lost salary, ordered to undergo anger management counseling, and put on notice that his behavior would be closely monitored. Tim Perneti also made it clear to Coach Rice that there would be zero tolerance for additional infractions. Tim kept me fully apprised and I supported his actions.<sup>29</sup>

Barchi further indicated that:

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<sup>25</sup> Teri Thompson, *Mike Rice Remains at In-Patient Anger Clinic Stemming From His Firing From Rutgers*, NYDAILYNEWS.COM (May 26, 2013), <http://www.nydailynews.com/news/national/rutgers-coach-anger-management-article-1.1355249>.

<sup>26</sup> Dana O'Neil, *With Mike Rice, We Must Draw A Line*, ESPN.COM (Apr. 2, 2013), [http://espn.go.com/mens-college-basketball/story/\\_id/9126491/mike-rice-actions-rutgers-reprehensible-tolerated-college-basketball](http://espn.go.com/mens-college-basketball/story/_id/9126491/mike-rice-actions-rutgers-reprehensible-tolerated-college-basketball).

<sup>27</sup> *Id.* See also A second-by-second analysis of mental and physical abuses by Rice based on ESPN Outside the Lines video as undertaken by Ryan Session and is attached to this article as Exhibit A.

<sup>28</sup> Don Van Natta Jr., *Rutgers Assistant on Video Resigns*, ESPN.COM (Apr. 5, 2013), [http://espn.go.com/espn/otl/story/\\_id/9134814/assistant-rutgers-basketball-coach-seen-video-pushing-players-using-slurs-resigns](http://espn.go.com/espn/otl/story/_id/9134814/assistant-rutgers-basketball-coach-seen-video-pushing-players-using-slurs-resigns).

<sup>29</sup> Associated Press, *Rutgers Fires Head Coach Rice Following Damaging Video Release, Public Outcry*, NCAA.COM (Apr. 3, 2013), <http://www.ncaa.com/news/basketball-men/article/2013-04-03/rutgers-fires-head-coach-rice-following-damaging-video-releas>.

Yesterday, I personally reviewed the video evidence, which shows a chronic and pervasive pattern of disturbing behavior. I have now reached the conclusion that Coach Rice cannot continue to serve effectively in a position that demands the highest levels of leadership, responsibility and public accountability. He cannot continue to coach at Rutgers University.<sup>30</sup>

With respect to Rice's dismissal, New Jersey Governor Chris Christie also issued a statement indicating:

This was a regrettable episode for the University, but I completely support the decision to remove Coach Rice. It was the right and necessary action to take in light of the conduct displayed on the videotape. Parents entrust their sons to the Rutgers athletic department and the men's basketball program at an incredibly formative period of their lives. The way these young men were treated by the head coach was completely unacceptable and violates the trust those parents put in Rutgers University. All of the student-athletes entrusted to our care deserve much better.<sup>31</sup>

Ray Allen, a member of the University of Connecticut's Board of Directors and a member of the Miami Heat, also reacted angrily after watching the video of Rice.

"It was despicable," Allen told ESPN.com. "Throwing the ball at them -- it made me want to fight [Rice]. It made me want to fight this guy. Because that was me -- wanting to learn, making mistakes. "You're not doing it on purpose. You're trying to learn. And that's what coaches should do -- you teach. Yelling at kids and throwing the ball at them, there's no place to that." Allen also said he would try to get Rice fired had the incidents occurred at UConn. "I would do everything I could to make sure that coach got fired -- in any sport -- because there's no place for that," he said.<sup>32</sup>

Assembly Speaker Sheila Oliver (D-Essex/Passaic) called Rice's conduct "unacceptable not only at our state university, but in all circumstances. It is offensive and unbecoming of our state. Mike Rice should no longer be employed by Rutgers

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<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> Ernie Smith, *College Athlete's Group Speaks Out On Rutgers Coaching Scandal*, ASSOCIATIONS NOW (Apr. 8, 2013), <http://associationsnow.com/2013/04/college-athletes-group-speaks-out-on-rutgers-coaching-scandal/>.

University. He must go. Meanwhile, the decision not to dismiss him last year needs a complete and thorough review."<sup>33</sup>

Murdock was fired by Rutgers on July 2, 2012. Murdock claimed he was fired because he voiced concerns about Rice's behavior and that Rutgers retaliated against him for complaining about the mistreatment of players.<sup>34</sup>

On April 5, 2013, Murdock filed a wrongful-termination lawsuit against Rutgers, Barchi, former president Richard L. McCormick, Rice, and Perneti claiming that he was fired for being a whistle-blower.<sup>35</sup> Rice claimed that Murdock was terminated for insubordination because he attended a motivational talk at his son's basketball camp for approximately 35 minutes against Rice's wishes.<sup>36</sup>

The F.B.I. is investigating Murdock's lawyer demand for \$950,000 to settle employment issues with Rutgers on the basis of extortion.<sup>37</sup>

It should be noted that not only was Rice a victim of his own actions, but caused the ultimate resignation of Perneti on April 5, 2012 as athletic director, and John B. Wolf, Rutgers' interim senior vice president and general counsel, on April 4, 2012.<sup>38</sup> Both were given handsome settlements as part of their resignation. Perneti's resignation came as a result for only suspending Rice for three games after reviewing

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<sup>33</sup> Associated Press, *supra* note 29.

<sup>34</sup> Lester Munson, *Rutgers' Tangled Legal Mess*, ESPN.COM (Apr. 8, 2013), [http://espn.go.com/espn/otl/story/\\_id/9148105/rutgers-whistleblower-eric-murdock-tough-road-wrongful-termination-lawsuit-likely-face-extortion-charges](http://espn.go.com/espn/otl/story/_id/9148105/rutgers-whistleblower-eric-murdock-tough-road-wrongful-termination-lawsuit-likely-face-extortion-charges).

<sup>35</sup> *Eric Murdock Files Whistleblower Lawsuit Against Rutgers university*, *supra* note 12.

<sup>36</sup> *Id.*

<sup>37</sup> Steve Eder, *F.B.I. Investigating Former Rutgers Assistant*, NYTIMES.COM (Apr. 6, 2013), <http://www.nytimes.com/2013/04/07/sports/ncaabasketball/fbi-said-to-be-investigating-ex-assistant-to-rice.html>.

<sup>38</sup> Kate Zernike & Steve Eder, *Rutgers Tries to Calm Furor as More Officials Quit*, NYTimes.com (Apr. 5, 2013), <http://www.nytimes.com/2013/04/06/sports/ncaabasketball/athletic-director-tim-pernetti-is-out-in-rutgers-abuse-scandal.html>.

the tapes rather than recommending firing him. In his resignation letter to Barchi, Perneti states:

I write in confirmation of our conversation earlier today during which we agreed that it was in the best interests of Rutgers University that I step down from my position as Director of Intercollegiate Athletics. I do so reluctantly because I always have and always will love Rutgers. I want to thank the people who have supported me throughout my years as a student-athlete and Athletic Director and help them understand my reasoning in this situation.

My continued tenure as Athletic Director is no longer sustainable for the University which I attended and where a piece of me will always remain. In connection with the incidents involving former basketball Coach Mike Rice, as was the case with all other matters which I handled on behalf of the University, I always tried my best to do what is right. I have spent a great deal of time reflecting on the events which led to today. As you know, my first instincts when I saw the videotape of Coach Rice's behavior was to fire him immediately. However, Rutgers decided to follow a process involving university lawyers, human resources professionals, and outside counsel. Following review of the independent investigative report, the consensus was that university policy would not justify dismissal. I have admitted my role in, and regret for, that decision, and wish that I had the opportunity to go back and override it for the sake of everyone involved.

I trust that my tenure at Rutgers will not be judged by this one incident. I am proud of my efforts to lead Rutgers into the Big Ten, and of all of the accomplishments of our student-athletes in the classroom and on the field of play. I want to thank our great fans, the hardest working staff in collegiate athletics, and every one of our fine student-athletes. It has been my great pleasure to serve my alma mater.<sup>39</sup>

Barchi placed the blame for the decision to suspend rather than fire Rice in December of 2012 squarely on Perneti and the University's lawyers, saying that he had not watched the video of Rice's actions last fall and instead had relied on their

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<sup>39</sup> Dylan Murphy, *Here's Tim Perneti's Resignation Letter In Which He Blames Rutgers, And Not Himself, For Not Initially Firing Mike Rice*, SportsGrid.com (Apr. 5, 2013), <http://www.sportsgrid.com/ncaa-basketball/heres-tim-pernettis-resignation-letter-in-which-he-blames-rutgers-and-not-himself-for-not-firing-mike-rice/>.

descriptions of it.<sup>40</sup> Barchi and other university officials blamed the Lacey report for contributing to the initial decision to suspend Rice instead of firing him. "We paid dearly for good advice and I'm not sure we got good advice in this case," said Ralph Izell (Izell), Chairman of the Rutgers Board of Governors.<sup>41</sup> While many faculty members have signed a petition calling for Barchi's resignation, Izell has expressed his confidence in Barchi's leadership.<sup>42</sup>

Article XV of Rice's Employment Agreement, Compliance Provisions, Section B, Discipline and Termination for Cause, outlines the reasons as to why Rice could be terminated for cause by Rutgers.<sup>43</sup> Section C of Article XV also indicates the contractual requirements for Termination without Cause:

B. Discipline and Termination for Cause.

1. Termination of employment for cause or other discipline may occur for any of the following: material breach of this Contract (won-loss record shall not constitute material breach), neglect of duty, willful misconduct, act(s) of moral turpitude, conduct tending to bring shame or disgrace to the University as determined in good faith by the Director of Intercollegiate Athletics, violation of University regulations, policies, procedures or directives not remedied after thirty (30) days written notice, violation of Mr. Rice's responsibilities set forth in Section XV. A (Compliance Standards), criminal conviction, or unapproved absence from duty, other than for a bona fide use of sick leave in accordance with University policy, without the consent of the Director.

3. Notwithstanding anything in this Contract to the contrary, if Mr. Rice is terminated for cause, the University shall not be liable for payment of base salary, additional guaranteed compensation, bonuses, benefits or any other items that would or could have been earned after the date of termination.

C. Termination without Cause.

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<sup>40</sup> Zernike, *supra* note 38.

<sup>41</sup> Kelly Heyboer, *Mike Rice Could Have Been Fired For Violating Contract, Independent Report Finds*, NJ.COM (Apr. 6, 2013), [http://www.nj.com/news/index.ssf/2013/04/independent\\_report\\_mike\\_rice\\_c.html](http://www.nj.com/news/index.ssf/2013/04/independent_report_mike_rice_c.html).

<sup>42</sup> Zernike, *supra* note 38.

<sup>43</sup> Rice Contract, *supra* note 4.

In case of termination of Mr. Rice by the University without cause, Rutgers shall continue to pay Mr. Rice his base salary and annual additional guaranteed compensation at seventy-five percent (75%) of the levels set forth in this Contract for the remaining term of the Contract. In such event, Mr. Rice will have an obligation to exert reasonable efforts to secure other employment. Should Mr. Rice subsequently accept a position as a head coach or assistant coach in the NBA or college basketball (Division 1-A), Rutgers shall be entitled to offset the amounts it owes Mr. Rice pursuant to this Section XV.C. by income earned by Mr. Rice in those positions. Accordingly, as a condition of Rutgers paying the foregoing amounts, Mr. Rice, shall upon Rutgers' written request, promptly furnish then current information to Rutgers in order to implement this offset provision.<sup>44</sup>

On April 18, 2013, Rutgers announced that it had reached a settlement agreement with Rice with respect to his termination by the University.<sup>45</sup> It would appear that Rice was fired without cause pursuant to Article XV(C). According to Rice's contract, he is owed 75% of his remaining base salary and additional guaranteed compensation. The total of that base salary and additional guaranteed compensation over the last two years of the contract is \$1.45 million, meaning Rice would be entitled to \$1.087 million, which is 75%.<sup>46</sup>

However, the settlement ultimately reached would only pay Rice \$475,000 without benefits.<sup>47</sup>

A Term Sheet to enter into a separation and general release, which was binding upon the parties executing the same, was executed by the University and Rice on April 18, 2013.<sup>48</sup> The Term Sheet provided as follows:

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<sup>44</sup> *Id.*

<sup>45</sup> Matt Sugam, *Rutgers and Mike Rice Come to a Settlement*, SNYRUTGERS.COM (Apr. 18, 2013), <http://snyrutgers.com/basketball/rutgers-and-mike-rice-come-to-a-settlement/>.

<sup>46</sup> Terrence Payne, *Mike Rice Fired Without Cause Means Rutgers Owes Him A Million Dollars Over the Next Two Years*, NBCSPORTS.COM (Apr. 5, 2013), <http://collegebasketballtalk.nbcsports.com/2013/04/05/mike-rice-fired-without-cause-means-rutgers-owes-him-a-million-dollars/>.

<sup>47</sup> Sugam, *supra* note 45.

- Within 45 days after Mr. Rice's execution and delivery of this Term Sheet or at such other dates mutually agreed upon in writing by the parties, the University will pay to Mr. Rice the sum of \$375,000.00, less lawful and required deductions, in lieu of all compensation, benefits and other obligations due to Mr. Rice under his Employment Contract, except contractual bonuses.
- Within 45 days after the execution of this Term Sheet or at such other dates mutually agreed upon in writing by the parties, the University will pay to Mr. Rice the sum of \$100,000.00, less lawful and required deductions, in lieu of all unpaid bonuses otherwise due to Mr. Rice under his Employment Contract.
- The foregoing payments shall not be cause for recomputation of any of Mr. Rice's benefits that may have been provided by the University.
- Mr. Rice shall not be entitled to any fringe benefits provided by the University. Under separate correspondence, Mr. Rice will be advised of his rights under CBRA to seek continued medical coverage.
- The University and Mr. Rice each agree to hereby mutually release all claims against the other.
- Mr. Rice agrees that, for a period of two years from the date of execution of this Term Sheet, he will not solicit any current employees of the University's Athletic Department to leave their employment for another position.
- Mr. Rice shall assist and provide reasonable cooperation with the University in connection with any administrative, legal, internal, NCAA proceeding or other matters in which the University requires his assistance; all of Mr. Rice's reasonable out-of-pocket expenses related to such cooperation shall be paid by the University in accordance with the University's travel and business expense reimbursement policy. The University will reimburse Mr. Rice for any reasonable and necessary expenses incurred by him in connection with such cooperation. Such expenses must be pre-approved by the University. If the University does not approve such reasonable and necessary expenses, Mr. Rice will be relieved of his duty to cooperate only with respect to the matters related to such expenses.
- Mr. Rice agrees to return to the University within 30 days after the execution of this Term Sheet all University property in his possession, custody or control.
- Nothing in this Term Sheet constitutes an admission that either Mr. Rice or the University has violated any statute, regulation, ordinance or any other legal obligation.
- Any dispute, controversy or claim arising out of or related to this Term Sheet or any breach of this Term Sheet shall be submitted to and decided by final and binding arbitration conducted within the State of New Jersey. Unless selected by mutual agreement of the parties, the arbitrator shall be selected in accordance with the Labor Arbitration Rules of the American Arbitration Association. Each party shall be responsible for its own attorneys' fees and costs incurred in connection with the negotiation of this Term Sheet and any dispute over the terms of this term Sheet.

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<sup>48</sup> RUTGERS UNIVERSITY, TERM SHEET OF AGREEMENT BETWEEN THE UNIVERSITY AND MICHAEL T. RICE (2013).

- If proceedings and/or litigation are commenced that include claims brought against Mr. Rice in his capacity as Head Men's Basketball Coach at the University, the University agrees to indemnify Mr. Rice to the fullest extent possible, subject to applicable law.
- The parties agree that this Term Sheet represents their entire agreement and supersedes any prior understanding concerning its subject matter. The parties intend that it shall be fully enforceable. No changes to the provision of this Term Sheet shall be effective unless in writing and signed by both parties.
- The parties agree that they shall prepare and execute a mutually agreed upon Separation Agreement and General Release more fully describing and incorporating the provisions of this Term Sheet. Nonetheless, this Term Sheet is binding upon the parties' execution and delivery thereof.
- New Jersey law governs this Term Sheet.<sup>49</sup>

Barchi said, "tonight's agreement is in the best interest of the University. I'm pleased this issue has been resolved."<sup>50</sup>

Prior to the announcement of the settlement, Barchi indicated in an Assembly Budget Committee hearing that the University did not plan to pay Rice the full \$1.45 million that was owed under and pursuant to the liquidated damage clause of the contract.<sup>51</sup> Barchi, in his remarks, echoed the language in Rice's contract which states the coach could be fired for cause for bringing shame to Rutgers. My personal position is the University was damaged by his actions. According to the settlement agreement, Rice's lawyers and Rutgers have agreed not to label Rice's firing with a specific cause, i.e., then the firing would be categorized as not for cause.<sup>52</sup>

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<sup>49</sup> *Id.*

<sup>50</sup> Matt Norlander, *After Firing, Rutgers Settles With Mike Rice for \$475k*, CBSSPORTS.COM (Apr. 19, 2013), <http://www.cbssports.com/collegebasketball/blog/eye-on-college-basketball/22105338/after-firing-rutgers-settles-with-mike-rice-for-475k>.

<sup>51</sup> Sugam, *supra* note 45.

<sup>52</sup> Norlander, *supra* note 50.

In the announcement of Rice's firing on April 5, 2013, Barchi said Rice was fired without cause. Barchi said "The coach was not fired for cause. The outside counsel says that could not be done...I fired him. Not for cause. I just fired him."<sup>53</sup>

Governor Chris Christie, a lawyer and a father of a collegiate athlete, also has publicly said that Rice should have been fired for cause.<sup>54</sup>

Certainly physical and mental abuse of players over an extended period of time should be grounds for termination for cause. Under the Rutgers' contract, Rice would have been terminated for cause on the basis of engaging in conduct tending to bring shame or disgrace to the University as determined in good faith by the director of intercollegiate athletics.

In a cursory review of many coaches' contracts, I could find no specific provision under termination for cause for physical and mental abuse of players. Rather, most contracts have similar language to that of Rutgers that make it a basis for termination if the University is brought into public disrepute, scandal or ridicule. For instance:

Amended Employment Agreement by and between John Cooper and Miami University, dated May 31, 2012.<sup>55</sup>

5.1(n) Commission of or participation in by Coach of any act, situation or occurrence which, in Miami's reasonable judgment, brings Coach into public disrepute, contempt, scandal or ridicule or failure by Coach to conform his/her personal conduct to conventional standards of good citizenship, with such conduct offending prevailing social mores and values and/or reflecting unfavorably upon Miami's reputation and overall primary mission and objective, including but not limited to, acts of dishonesty, misrepresentation, fraud or violence that may or may not rise to a level warranting criminal prosecution by the relevant authorities.<sup>56</sup>

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<sup>53</sup> Payne, *supra* note 46.

<sup>54</sup> Zernike, *supra* note 38.

<sup>55</sup> AMENDED EMPLOYMENT AGREEMENT BY AND BETWEEN JOHN COOPER AND MIAMI UNIVERSITY ¶ 5.1(n) (2012).

<sup>56</sup> *Id.*

Contract dated August 16, 2012 by and between Terry Bowden and University of Akron.<sup>57</sup>

Section V.B (Termination for Cause) paragraph 15: Commission of or participation in by Coach of any act, situation, or occurrence, which, in University's judgment, brings Coach into public disrepute, contempt, scandal, ridicule, or failure by Coach to confirm his personal conduct to conventional standards of good citizenship, with such conduct offending prevailing social mores and values and/or reflecting unfavorably upon University's reputation and overall primary mission and objections, including, but not limited to, acts of dishonesty, misrepresentation, fraud or violence that may or may not rise to the level warranting criminal prosecution by the relevant authorities.<sup>58</sup>

Employment Agreement dated April 6, 2012, by and between Timothy D. Beckman and University of Illinois.<sup>59</sup>

4.2.c Willful and egregious conduct of Head Coach which offends public decency or morality as shall be determined by the standards prevailing in the community, (i.e., Champaign, Illinois).<sup>60</sup>

Employment Agreement dated August 11, 2008 by and between Thomas Crean and Indiana University.<sup>61</sup>

6.02(B)(5). Any conduct, including acts or omissions, of the Employee which, in the sole judgment of the University, is seriously prejudicial to the best interests of the University or the Athletics Department or which violates the University's stated mission or which conduct may, in the sole judgment of the University, reflect adversely upon the University or its athletic program.<sup>62</sup>

Rice could also have been terminated for cause if he was in violation of University regulations, policies, and procedures not remedied after thirty days' written notice, pursuant to Section XV of his contract. Certainly Rice could have been terminated for cause, but for the thirty-day prior written notice, for violation of University

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<sup>57</sup> EMPLOYMENT CONTRACT BETWEEN THE UNIVERSITY OF AKRON AND TERRY BOWDEN ¶ V(B)(15) (2012)

<sup>58</sup> *Id.*

<sup>59</sup> EMPLOYMENT AGREEMENT BETWEEN THE BOARD OF TRUSTEES OF THE UNIVERSITY OF ILLINOIS AND TIMOTHY D. BECKMAN ¶ 4.2(c) (2012).

<sup>60</sup> *Id.*

<sup>61</sup> EMPLOYMENT AGREEMENT BETWEEN THE TRUSTEES OF INDIANA UNIVERSITY AND THOMAS CREAN ¶ 6.02(B)(5) (2008).

<sup>62</sup> *Id.*

regulations, policies, procedures or directives, and the provisions set forth in Section XV.A (Compliance Standards).

Murdock, in his complaint, contends that his termination was a direct result of Murdock's complaints and report of Rice's unlawful conduct including, but not limited to, violation of New Jersey's anti-bullying law, assault (both physical and verbal), battery, harassment, intimidation, bullying and discrimination (including repeated use of hostile and insulting homophobic and racial slurs) against student-athletes, staff members and others, in violation of the University's Policy Against Verbal Assault, Harassment, Intimidation, Bullying and Defamation, and in violation of the terms of his employment with the University.<sup>63</sup>

It may now be time to add language to existing coaches' contracts that makes mental and physical abuse of players an absolute basis for termination without further benefits or pay. No NCAA Rule either addresses the issue or penalizes the conduct.

Although Rice's behavior was clearly a basis for termination for cause, the unknowns, cost of litigation, and the continued public exposure was probably good reason to simply pay Rice a settlement figure and close the door on the matter.

Another way of looking at the Rice situation is that Rutgers punished Rice for his behavior via suspension, fine, and anger management training in December of 2012 for the causes that created such punitive action. In April of 2013, Rice was dismissed by Barchi as a result of a video airing on ESPN. Rutgers' legal position simply may have been that Rice had already been punished and that the video airing was not for cause and necessitated a dismissal and financial settlement.

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<sup>63</sup> ERIC MURDOCK, COMPLAINT AND JURY DEMAND, SUPERIOR COURT OF NEW JERSEY. On file with Author.

Rice's behavior may not be limited. There have been alleged reports of player abuse involving Bobby Knight and Billy Gillespie.<sup>64</sup>

As a final note, the Rutgers University Board of Governors commissioned the law firm of Skadden, Arps, Slate, Meagher & Flom, LLP (Skadden Arps) to prepare another report relative to the Athletics Department and University handling of the Rice matter. The report, Rutgers Case Study and Recommendations, was released on July 22, 2013.<sup>65</sup>

“Top athletic officials at Rutgers University initially wanted to fire Mike Rice, Jr., when they saw a video last year of the head men’s basketball coach orally and physically abusing players, but an insular review process that largely circumvented the university’s human resources office ended in lighter sanctions.”<sup>66</sup>

The report as prepared by Skadden Arps outlines how the University mishandled the allegations against deposed Head Coach Rice and recommends improvements to University policies and procedures.

Some of the recommendations of Skadden Arps include:

1. Pay renewed attention to implementation of reforms proposed in 2008 by University-sponsored Athletic Review Committee which advocated University administration close oversight of the division of intercollegiate athletics. The University conducted its own review of athletics in 2008 to

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<sup>64</sup> Andrew Sharp, *Mike Rice and the Bigger Problem*, SBNation.com (Apr. 3, 2013), <http://www.sbnation.com/college-basketball/2013/4/3/4178392/mike-rice-fired-abuse>.

<sup>65</sup> SKADDEN, ARPS, SLATE, MEAGHER & FLOM, LLP, RUTGERS CASE STUDY AND RECOMMENDATIONS (2013) [hereinafter Skadden Arps Report].

<sup>66</sup> Jack Stripling, *Independent Report Outlines Insularity Behind Scandal in Rutgers U. Athletics*, THE CHRONICLE (July 23, 2013), <http://chronicle.com/article/Independent-Report-Outlines/140497/>.

deal with concerns about contractual agreements with a sports-marketing company and coaches' pay.<sup>67</sup>

2. The report raises concerns regarding the insularity and autonomy of the Athletics Department as well as insufficient oversight by the President's office and Board.<sup>68</sup>
3. The report recommends that Rutgers establish a "dotted-line reporting requirement" between human resources liaisons and University vice president for faculty and staff resources. "Such a change would provide for the possibility of more transparency in departmental decisions."<sup>69</sup>
4. The report suggests that Rutgers develop a better system of risk management to assess threats to the University and its reputation. The Skadden Arps report also found that:
  - a. Former director of player development Eric Murdock's request for practice videos, the release of which touched off the scandal, was not handled according to University policy toward open records requests. The existence of the request, under the advice of former University chief counsel John Wolf was kept between former athletics Tim Perneti and Janine Purcaro, the athletics department's chief financial officer and human resources liaison. Perneti asked Rice if there was a reason to be concerned about the videos and was told there was not, leading the University to release them without anyone viewing their contents.<sup>70</sup>
  - b. After Perneti and Purcaro viewed contents of the practice videos, Wolf relied on Perneti to convey the information to school president Robert Barchi without making sure that information was conveyed himself.<sup>71</sup>
  - c. Communication to the University Board of Trustees about the videos was inadequate.<sup>72</sup>

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<sup>67</sup> Skadden Arps Report, *supra* note 65 at 8.

<sup>68</sup> Stripling, *supra* note 66; Skadden Arps Report, *supra* note 65 at 6.

<sup>69</sup> Skadden Arps Report, *supra* note 65 at 9.

<sup>70</sup> *Id.* at 2.

<sup>71</sup> *Id.* at 4.

<sup>72</sup> *Id.* at 8.

"I'm pleased that this important review is now complete," Rutgers University President Dr. Robert L. Barchi said in a statement. "The Skadden firm conducted a thorough analysis and its detailed recommendations will help us reassess our administrative structures and policies. I look forward to studying the report and we will take the appropriate steps to improve our internal procedures."

## **LESSONS TO BE LEARNED:**

1. One of the ways to show this specific behavior, mental and physical abuse towards players, will not be tolerated is to change our contract structure under termination for cause and include those kinds of activities as a basis for absolute termination without settlement benefits or pay.
2. "Rice's public humiliation and disgrace offers a warning to the coaching community from Division I down to Little League: Coaching buffoonery no longer will be tolerated."<sup>73</sup>
3. Coaches get presidents and chancellors fired.
4. Repeated physical and verbal abuse of student-athletes must constitute grounds for immediate dismissal and a basis for termination for cause. "Every time a university looks the other way or dishes out a dismissive punishment, it's like sending an abuser back into the home of the domestic violence victim."
5. Homophobic words and intolerance coming from high profile university employees who work with student-athletes doesn't merit merely a time out or a second chance, it merits dismissal.
6. Rutgers is not only about Mike Rice. It is time for upper echelon of administrators at the state universities to face the firing squad.

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<sup>73</sup> Jeff Roberts, *Were Any Lessons Learned From Mike Rice Debacle?*, NORTHJERSEY.COM (May 1, 2013), [http://www.northjersey.com/sports/205513731\\_Were\\_any\\_lessons\\_learned\\_from\\_Mike\\_Rice\\_debacle\\_.html](http://www.northjersey.com/sports/205513731_Were_any_lessons_learned_from_Mike_Rice_debacle_.html).

7. Rutgers took the slow play path with respect to discipline and firing of Rice after two years of abusive behavior, a cover-up that with full knowledge might have impacted its entry into the Big Ten.
8. Rutgers was far more concerned with protecting itself from legal action than with protecting its students from an abusive coach.
9. There should be checks and balances on coaches.
10. Scandals are expensive.<sup>74</sup>

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<sup>74</sup> A) \$1.2 million settlement agreement for Tim Pernetto to resign as athletics director amid the fallout of the men's basketball scandal. B) \$475,000 settlement for Mike Rice, who was fired April 2 after a videotape showed the Scarlet Knights men's basketball coach physically abusing and berating his players in practice. While the University saved more than half of the approximately \$1.1 million it was expected to owe Rice when school President Robert L. Barchi fired the coach, it was debated by legal experts that Rutgers should have been obligated to pay Rice anything considering the clause in his contract that stipulated his contract could have been terminated for "conduct tending to bring shame or disgrace to the university." C) \$420,000 payout to general counsel John Wolf, who was pressured to resign for his role in advising the University to suspend rather than fire Rice in December. D) \$150,000 to Hill and Knowlton Strategies, a crisis management firm hired in the wake of the Rice scandal. E) \$70,000 paid to Parker Executive Search, a firm the University employed to identify candidates and perform background checks during a six-week search that resulted in the appointment of embattled incoming AD Julie Hermann.

The \$2.3 million does not include the \$575-an-hour rate the University has agreed to pay the law firm Skadden Arps to conduct an independent review of its basketball coaching scandal.

Special thanks to third-year Marquette University law student Ryan Session for his help in editing and footnoting this article.

## EXHIBIT A

This analysis references a video from ESPN at the web address:

[http://espn.go.com/espn/otl/story/\\_/id/9125796/practice-video-shows-rutgers-basketball-coach-mike-rice-berated-pushed-used-slurs-players](http://espn.go.com/espn/otl/story/_/id/9125796/practice-video-shows-rutgers-basketball-coach-mike-rice-berated-pushed-used-slurs-players)

Within the four minute and fifty-five second video concerning Rice's abuse of his players, there were a total of approximately twenty-five different incidents of abuse or mistreatment. The instances of abuse and misconduct are as hereinafter listed:

1. The video opens with Rice throwing a basketball at a player while yelling expletives. Rice throws a chest pass at the players legs/feet followed by forcefully shoving the player out of the way, apparently so Rice could demonstrate the correct positioning he demanded of the player. At time 00:02.
2. Rushing up to a player who is looking the other way and forcefully shoving him. At time 00:04.
3. Shoving another player after stopping practice. At time 00:07.
4. Running up behind a player while the player was running and pushing the player from behind. The player stumbled several steps before catching himself and almost falling face first into the court floor. At time 00:08.
5. Throwing another ball at the legs/feet of two players guarding each other, seemingly to get their attention. At time 00:12
6. Throwing a basketball full force at a player's midsection while yelling an expletive at him. At time 00:14.
7. Pushing a player from behind then following and screaming in the player's ear. At time 00:15
8. Grabbing a player by the practice jersey and forcefully pulling and pushing him into position (without any resistance by the player for the duration of the pushing). At time 00:20
9. Yelling at a player then sprinting over to him and putting him in a headlock dragging him several feet by the head and neck. At time 00:24

10. During a drill with a blocking pad, hitting a player multiple (three) times with the pad after the player had already lost the ball and the drill had ended. At time 00:28.
11. Throwing a basketball at a player. At time 00:58.
12. Punching/hitting a player on the upper arm while yelling at him. At time 01:00.
13. Grabbing a player's jersey and shirt from behind and forcefully pulling him backwards. At time 01:02.
14. Kicking a player. At time 01:04.
15. Rice quoted as using a homophobic slur "flip-flops are for faggots" to demoralize ten- year-old basketball camp attendees for wearing flip-flops. At time 01:43.
16. Video of Rice himself using homophobic slurs "fairy" and "faggot" while screaming at the entire team during Rutgers practice. At time 01:57.
17. Video showing Rice violently screaming in players faces to "shut the fuck up...shut the fuck up" during Rutgers practice. At time 02:07.
18. Throwing a basketball at the feet/legs of a player while yelling an expletive. At time 02:36.
19. Series of quotes claiming Rice specifically targeted and belittled a Lithuanian player consistently and more often and more harshly than others. At time 02:35.
20. Video depicting the abuse of the Lithuanian player during practice. At time 02:50.
21. Video of commentators watching Rice throw a basketball at the Lithuanian player despite the player performing the play correctly. At time 03:30.
22. Rice throwing a ball full force directly at the back of a player's head while the player was facing the other direction during practice. At time 04:39.
23. Forcefully ripping a ball from a player's hands and screaming expletives at him from within inches of that player's face. At time 04:45.
24. Hitting a player on the back of his head while he walked past Rice during practice. At time 04:50.
25. Throwing a ball at a player's legs. At time 04:54.

