

OHIO LAWYERS WEEKLY

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Pioneering Civil Rights Lawyer

BY MARC HOGAN

Ellen S. Simon is not only a pioneering civil rights lawyer — she's also a lifelong fan of the Cleveland Browns.

So when Reggie Rucker gave her office a call, Simon recognized the former Browns receiver's name immediately.

"I definitely knew who he was when that phone call came," she told Lawyers Weekly.

The experienced Cleveland litigator took on Rucker's lawsuit against a securities company on claims of promissory estoppel and racial discrimination.

A Cuyahoga County Common Pleas court recently tossed Rucker \$2.2 million in a verdict the Plain Dealer dubbed "the greatest catch of his life."

Simon has made a career of championing individuals' claiming violations of their rights. She represented the ACLU in one of the first AIDS discrimination cases, secured an Ohio-record \$31 million age discrimination verdict two years ago, and prevailed in Ohio's first same-sex sexual harassment case.

"I went to law school to try to effect social change, and I hope maybe in a small way that I have," she observes.

Legal Dreams

A child of Holocaust survivors and self-described "product of the '60s," Simon always knew she wanted to be a lawyer. As an undergraduate, the Cleveland native ventured east to Brandeis University near Boston, volunteering for the Massachusetts Commission Against Discrimination in her spare time.

Upon graduating in 1974 she went to work in the Office for Civil Rights of what was then the federal Department of Health, Education and Welfare. At a time when Boston's public schools were being segregated, Simon performed civil rights investigations of school systems and migrant work camps.

Her office also did the first review in the country of Title IX, a 1972 law banning sex discrimination in collegiate sports programs. The Bush administration recently created a panel to review the portions of which the President objected to during his 2000 campaign.

"It's unfortunate if any civil rights litigation or civil rights activities are being backed," Simon opines. "If anything, I think they should be expanded."

In 1979, Simon graduated from Suffolk University Law School in Boston before returning back to Cleveland to start a family, despite being in Massachusetts for much of Reggie Rucker's career, Simon remained devotedly loyal to the Browns. "Oh, I definitely watched him play," she recalls. "I would have always followed the wins, even if I was in Boston."

Cleveland Loves Its Browns

More than 20 years later, Simon's deep commitment to civil rights and her lifelong love for the Browns came together in a crossing pattern. Reggie Rucker brought his case to her office.

Rucker's on-field accomplishments are well known among Browns' fans. He caught touchdown passes for the Browns from 1956 to 1962, but never earned the kind of smooth salaries made by current players. He worked as a broadcaster for NBC in the early 1980s, and eventually became an investment broker for Dean Witter. In 1995 he was hired as a broker at Everen Securities Inc., now owned by First Union Securities Inc., the defendant in his lawsuit.



Photo by Ron Kurtz

And Rucker has remained involved with the Browns organization, becoming the club's director of alumni relations. Did his celebrity status affect the jury?

"Common sense would tell you that it's certainly not going to hurt that your client is a Cleveland Brown when Cleveland loves its Browns so dearly," Simon concedes.

Rucker's claim was two-fold.

First, he claimed that Everen, for whom he had worked until 1999, had not kept a promise to help him set up a minority investment company, costing him financial opportunities as a result. He also contended the company had discriminated against him for being black.

The promissory estoppel claim was fairly cut-and-dry, according to Simon: "The defendant argued that it had fulfilled its promises, and we claimed that they hadn't."

But the nature of the business involved in the promises was important to explain, she said, because jurors are unfamiliar with it.

To shed some light on the subject, Simon called as a witness an investment banker with expertise in the minority business enterprise area at investment firms.

A former Everen employee of 11 years, this witness told jurors about the opportunities available at the time and the results that had been achieved by businesses similar to the one Rucker wanted to establish.

Cleveland lawyer George L. Forbes, head of the Cleveland NAACP and former City Council president, also testified on Rucker's behalf.

In addition, Rucker himself testified at great length. He helped to explain the business, but also described instances in which he felt he had been discriminated against.

"He had been in broadcasting, so he's certainly comfortable speaking to a jury," Simon points out. "He's a nice man and he certainly conveyed that he was not treated appropriately, and that combination of factors ended up in a positive result for him."

She called the discrimination issue "complex."

"The manager was perceived by a lot of people to be a bad guy to everyone," not necessarily just racial minorities, according to Simon.

On April 18, the jury found that Everen had reneged on its promises to Rucker, but not that it had discriminated against him. The promissory estoppel verdict was unanimous, while the discrimination claim was decided 6-2.

"We were thrilled that we won the case, and that Reggie was awarded compensation for the money that he lost," Simon remarks.

Cleveland attorney Ellen S. Simon (left) helped former Cleveland Brown receiver Reggie Rucker win a \$2.2 million jury verdict against a securities firm.

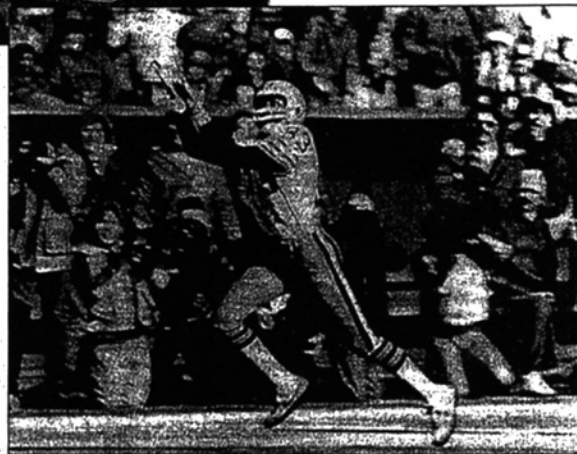


Photo courtesy of the Cleveland Browns

Rucker in his NFL glory days.

Other Career Highlights

The Rucker verdict may be the most recent clip in Simon's courtroom highlight reel, but it's not the only one.

In 2000, a Mahoning County Common Pleas jury awarded \$31 million to 71-year-old Donna Frederickson of Poland, Ohio. At the time the award may have been the largest ever in Ohio in a civil rights or employment case, according to Simon.

Frederickson was dismissed three years earlier from her position as a regional manager for Olsten Health Services Inc. after 13 years of employment.

"The company told her that there was no job for her anywhere in the company, while at the same time they were hiring people who were much younger and much less experienced than she," Simon explains. "That was very significant to the jury."

In another much-publicized case, Simon represented a Lakewood man who claimed he had been sexually harassed by a male supervisor. Both men were heterosexual, lawyers for both sides told the Plain Dealer.

"It seemed to me that if women were protected from sexual harassment, men should be entitled to the same protection," Simon recalls.

In 1997 a Cuyahoga County Common Pleas jury awarded Simon's client \$1.65 million for allegedly being taunted and humiliated by a supervisor with regard to a sex act.

The Ohio Supreme Court upheld the verdict, but only on the claim of intentional infliction of emotional distress.

"The court held that he was harassed, but they did not believe that he was harassed because of his gender," Simon says.

But Simon is most proud of some cases that didn't show up in the headlines.

Not long after the 1990 passage of the Americans with Disabilities Act, Simon worked on behalf of the ACLU in what she believes was the nation's first AIDS discrimination trial. The case involved a man whom a hospital had refused to admit because he had AIDS, and it remains very important to her.

In another case that brings her particular pride, Simon once represented a woman who was terminated because she went to chemotherapy treatments.

"That case went to the Supreme Court and we were successful," she recalls.

As far the future is concerned, Simon expects to stick with the game plan that has gotten her this far.

"It's very rewarding when you can take a situation and get it corrected, and it's also very sad when you can't," she points out. "In a larger sense, the changes that we've seen taking place (over the last 20 years) on behalf of civil rights victims have been very important to me, and very rewarding."

After devoting herself to the law so intensely that she says she has had very little time to develop any outside interests other than her family, Simon does hope to take a little more time off now that both of her children will be in college.

As long as she keeps her Sundays free, that's just fine. □