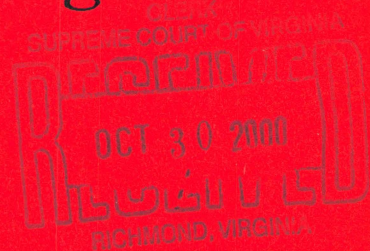


262 VC 68

IN THE
Supreme Court of Virginia

RECORD NO. 001371



**COUNTY OF GILES; and BOARD OF SUPERVISORS
OF GILES COUNTY, VIRGINIA,**

Appellants,

v.

D. CHAD WINES,

Appellee.

JOINT APPENDIX

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Plaintiff's Exhibit 8 - Copy of letter to Gregory J. Haley regarding D. Chad Wines, dated January 19, 1996, signed by Richard D. Chidester, Giles County Attorney, and Roger Mullins, Interim County Administrator	343
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VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF GILES

D. CHAD WINES,

Plaintiff,

v.

Law No. 7536

COUNTY OF GILES, VIRGINIA,

BOARD OF SUPERVISORS OF
GILES COUNTY, VIRGINIA,

and

W.P. FREEMAN,

BARBARA M. HOBBS,

LARRY JAY WILLIAMS,

LARRY A. BLANKENSHIP,

W. WILLIAMS,

Defendants.

**AMENDED MOTION FOR DECLARATORY JUDGMENT
AND MOTION FOR JUDGMENT**

The plaintiff, D. Chad Wines, by counsel, files his Amended Motion for Declaratory Judgment and Motion for Judgment pursuant to 42 U.S.C. § 1983, the Fourteenth Amendment to the United States Constitution, and Article I, § 11 of the Constitution of Virginia in this matter and in support thereof states as follows:

PARTIES AND JURISDICTIONAL ALLEGATIONS

1. The plaintiff is D. Chad Wines. Mr. Wines is a citizen of the United States and is currently a resident of Front Royal, Virginia. He is a former employee of Giles County.
2. The County of Giles is a political subdivision of the Commonwealth of Virginia.
3. The Board of Supervisors of Giles County is the local governing body of Giles County.
4. On January 2, 1996, defendant W. P. Freeman was a member of the Board of Supervisors of Giles County (the "Board of Supervisors").
5. On January 2, 1996, defendant Barbara M. Hobbs was a member of the Board of Supervisors.
6. On January 2, 1996, defendant Larry Jay Williams was a member of the Board of Supervisors.
7. On January 2, 1996, defendant Larry A. Blankenship was a member of the Board of Supervisors.
8. On January 2, 1996, defendant R. W. Williams was a member of the Board of Supervisors.
9. The individual defendants are sued in their official and their individual capacities.
10. The plaintiff's claim arises under 42 U.S.C. § 1983, the Fourteenth Amendment to the United States Constitution and Article I, § 11 of the Constitution of

Virginia. It involves the deprivation of the plaintiff's protected rights by the defendants' actions under color of state law. This Court has jurisdiction over this matter pursuant to Va. Code Ann. §§ 17-123 and 8.01-184 et seq.

11. The actions taken by the defendants, as set forth below, were all taken under color of state law.

12. The plaintiff also asserts a state law breach of contract claim against the County of Giles and the Board of Supervisors of Giles County, Virginia.

FACTS

13. Mr. Wines was employed by the County as Manager of the Castle Rock Recreation Area ("Castle Rock") from early 1994 through January 2, 1996.

14. Mr. Wines had a contractually created, protected property interest in his continued employment as the Manager of Castle Rock pursuant to the Giles County Personnel Policy. Mr. Wines was not an at-will employee of the County. The Giles County Personnel Policy provides that an employee may be discharged only for just cause.

15. During his employment with the County, Mr. Wines performed his duties in an acceptable manner. Mr. Wines received pay increases during his employment. Mr. Wines was not advised by his supervisor of dissatisfaction with his job performance.

16. The individual defendants were elected to the Board of Supervisors for terms beginning on January 1, 1996.

17. At the organizational meeting of the newly elected Board of Supervisors, on January 2, 1996, the defendants voted unanimously to terminate Mr. Wines' employment as of that day. The Board acted by public vote. The Board's action was reported in the media.

18. Prior to his termination, the defendants did not give Mr. Wines notice of the intent to terminate his employment or of the basis for termination, nor was he given any type of pre-termination hearing.

19. No basis for the termination of Mr. Wines' employment existed consistent with the County's Personnel Policy. In terminating Mr. Wines' employment, the defendants failed to follow the progressive discipline and counseling procedures required by the County's Personnel Policy.

20. On January 3, 1996, the Acting County Administrator told Mr. Wines that the Board's action was based on a personality conflict and was not Mr. Wines' fault. The Acting County Administrator further stated that Mr. Wines was a casualty of bad decisions made by other people.

21. The defendants refused Mr. Wines access to any post-termination procedure after the January 2, 1996 termination.

22. Mr. Wines, by letter dated January 18, 1996 from his attorney, advised the Board of Supervisors that the Board's termination of his employment was a violation of his constitutionally protected rights and a violation of his rights pursuant to his employment contract with the Board as set out in the County's Personnel Policy.

23. On or about January 18, 1996, in response to the letter by Mr. Wines' attorney, at a special meeting, Mr. Wines was reinstated and simultaneously terminated by the defendants effective January 26, 1996.

24. The Board offered Mr. Wines no meaningful opportunity to be heard concerning the Board's action in terminating his employment.

25. The defendants refused Mr. Wines access to any post-termination procedure including access to the County's grievance procedure.

26. The defendants failed to satisfy the requirements of due process with regard to the termination of Mr. Wines' employment.

27. The defendants' actions caused Mr. Wines to lose his job, income and benefits.

28. In addition, the defendants' actions caused Mr. Wines great emotional distress, humiliation, worry and stress.

29. The defendants have denied: that Mr. Wines had a protected property interest in his employment; that any process was due him prior to his termination on January 2, 1996; and that their actions violated his constitutionally protected rights.

30. The County's Personnel Policy constitutes an employment contract between the County and its employees.

31. The County's Personnel Policy provides that an employee may be discharged only for just cause and that the County will follow progressive discipline and dismissal procedures.

32. At the time of the termination of Mr. Wines' employment, Mr. Wines was earning \$25,268 per year. In addition, Mr. Wines was receiving additional employment benefits worth approximately \$6,563 per year.

33. The defendants have failed to pay Mr. Wines compensatory, vacation, and sick leave in the amount of \$7,173 due to him pursuant to the County's Personnel Policy and the County's compensation policies.

34. The defendants' termination of Mr. Wines' employment breached the County's and the Board of Supervisor's contractual obligations to Mr. Wines.

35. As a result of the defendants' actions and breach of the employment contract with Mr. Wines, Mr. Wines has incurred damages of at least \$135,173.

36. The plaintiff has complied with the requirements of Article 4, Chapter 12 of Title 15.2, Va. Code Ann. § 15.2-1243 et. seq., in asserting his breach of contract claim.

COUNT I - DECLARATORY JUDGMENT

37. The plaintiff hereby incorporates paragraphs 1 - 36 as though fully set forth herein.

38. An actual controversy exists between Mr. Wines and the defendants. Mr. Wines has no adequate remedy at law to resolve this dispute.

COUNT II - ACTION FOR DAMAGES

39. The plaintiff hereby incorporates paragraphs 1 - 38 as though fully set forth herein.

40. Mr. Wines had a right to a meaningful opportunity to be heard before he was fired.

41. The defendants' actions in terminating Mr. Wines without notice, and in denying him a meaningful opportunity to respond to the charges against him, denied him due process of law, in violation of the Fourteenth Amendment of the United States Constitution and Article I, § 11 of the Constitution of Virginia.

COUNT III - BREACH OF CONTRACT

42. The plaintiff hereby incorporates paragraphs 1 - 41 as though fully set forth herein.

43. The defendants' actions in terminating Mr. Wines' employment violated the defendants' obligations pursuant to the employment contract with Mr. Wines and caused Mr. Wines damages as alleged above.

WHEREFORE, the defendant, D. Chad Wines, respectfully requests the following relief.

- a. A declaratory judgment that the defendants violated his rights to due process of law.
- b. Compensatory damages in the amount of \$150,000;
- c. An award of his attorney's fees and costs in this matter; and
- d. Such other relief as the Court may deem appropriate.

The plaintiff demands trial by jury.

D. CHAD WINES

By: 
Of Counsel

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Counsel for Plaintiff

D. CHAD WINES,

v.

Defendants.

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SCARBOROUGH, ME
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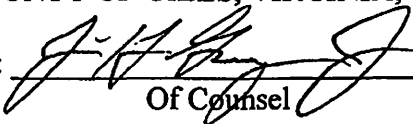
Come now the defendants, by counsel, and for their grounds of defense state as follows:

- 8

6. Defendants deny they are indebted to or liable to the plaintiff for the amounts or reasons set forth in the Amended Motion for Declaratory Judgment and Motion for Judgment or any other amounts or reasons whatsoever.

7. Defendants cannot be held liable for the allegations contained in the Amended Motion for Declaratory Judgment and Motion for Judgment on the grounds of qualified and sovereign immunity.

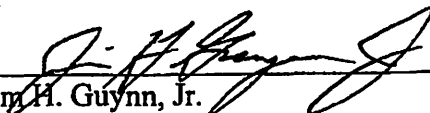
COUNTY OF GILES, VIRGINIA, et al.

By: _____
Of Counsel

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Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that I have this 20 day of September, 1999, served the foregoing by mailing and faxing same to Gregory J. Haley, Esq., Gentry, Locke, Rakes & Moore, P.O. Box 40013, Roanoke, VA 24038-0013, counsel for Plaintiff.

_____
Jim H. Guynn, Jr.

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF GILES

D. CHAD WINES,)	
)	
Plaintiff,)	
)	
v.)	Law No. 7536
)	
COUNTY OF GILES, VIRGINIA,)	
et al.,)	
)	
Defendants.)	

TRIAL MEMORANDUM

COME NOW the Defendants, by counsel, and for their trial memorandum, state as follows:

STATEMENT OF THE CASE

The Plaintiff, D. Chad Wines, is a former employee of Giles County. He claims that the Defendants deprived him of property without due process of law and breached an employment contract. In particular, he claims he had a property interest in his previous employment with Giles County and that the County terminated him without due process of law. The case comes to trial upon the Amended Motion for Declaratory Judgment and Motion for Judgment of the Plaintiff and the Pleas in Bar and Responsive Pleadings of the Defendants. At the close of the Plaintiff's evidence, the Defendants intend to raise the issues specified in the Pleas in Bar in a motion to strike and enter summary judgment.

STATEMENT OF FACTS

On January 2, 1996, the Board of Supervisors of Giles County voted unanimously to terminate the employment of D. Chad Wines as the director of the Castle Rock Recreation Area

in Giles County. As director of Castle Rock Recreation Area, Mr. Wines was a department head as defined by the Giles County personnel policy. The personnel policy in effect on January 2, 1996, provided in paragraph 8-5 (page 16), "an employee may be discharged for inefficiency, insubordination, misconduct, or other just cause." (See Exhibit A attached hereto.)

Wines hired counsel and argued that he had a property right to continued employment as the director of Castle Rock Recreation Area. He contended that he was entitled to due process prior to his termination. Out of an abundance of caution, the County reinstated Wines on January 19, 1996, with full back pay, and advised him of the charges against him, and advised him that he would be terminated effective January 28, 1996. He scheduled a hearing with the County Administrator to be heard in response to the charges prior to the effective date of termination. After the hearing, the County Administrator decided to uphold the termination. Mr. Wines was paid his entire wage and benefit package through January 28, 1996.

ARGUMENT AND AUTHORITY

I. THE EXPRESS TERMS OF THE GILES COUNTY PERSONNEL POLICY DO NOT REQUIRE JUST CAUSE FOR TERMINATION.

The Plaintiff had no substantive property right in continued employment. In order for an employee to have a protected property interest in public employment, the employee must have contractual or statutory provisions that guarantee continued employment. See Prince v. Bridges, 537 F.2d 1269, 1271 (4th Cir. 1976); Perry v. Sindermann, 408 U.S. 593, 602 (1971). The Supreme Court has stated:

To have a property interest in a benefit [job], a person clearly must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it.

Board of Regents v. Roth, 408 U.S. 564, 577 (1972). In the instant case, Plaintiff contends that he could only be discharged for just cause and therefore had an expectation of continued employment. An at-will employee has no legitimate claim of continued entitlement to their job. Beckham v. Harris, 756 F.2d 1032, 1037 (4th Cir. 1985).

Virginia adheres to the common law rule of employment at will. This doctrine states:

When the intended duration of a contract for the rendition of services cannot be determined by fair inference by the terms of the contract, then either party is ordinarily at liberty to terminate the contract at-will, upon giving the other party reasonable notice.

Miller v. SEVAMP, Inc., 234 Va. 462, 465, 362 S.E.2d 915, 917 (1987); see e.g., Bowman v. State Bank of Keysville, 229 Va. 534, 535, 331 S.E.2d 797, 798 (1985).

A rebuttable presumption arises that an employee is terminable at will where no specific time is fixed for the duration of the employment. See, e.g., Addison v. Amalgamated Clothing and Textile Workers Union of America, 236 Va. 233, 235, 372 S.E.2d 403, 405 (1988); Miller, 234 Va. at 465, 362 S.E.2d at 917. As for fulfilling the durational component, the Virginia Supreme Court previously held "that an employment condition which allows termination only for cause sets a definite term for the duration of the employment." Progress Printing Company v. Nichols, 244 Va. 337, 341, 421 S.E.2d 428 (1992) (citing Norfolk Southern Railway Co. v. Harris, 190 Va. 966, 59 S.E.2d 110 (1950)) (emphasis added). If the putative contract does not set forth a specific duration, the plaintiff has the burden of proving that the contract is supported by some "substantial additional consideration" or must assert a public policy exception to rebut the at-will presumption. Miller, 234 Va. at 466, 362 S.E.2d at 918.

Paragraph 8-5 of the Giles County Personnel Policy does not state that termination will be only for "just cause." It states "an employee may be discharged for inefficiency, insubordination, misconduct, or other just cause." (Personnel Policy, p. 16.) (Emphasis added.)

Essentially, "just cause" is one of a number of reasons for which an employee may be discharged. If terminating an employee for cause is merely an option or alternative, just cause is not required for discharge. "The mere availability of suggested disciplinary procedures, when no limit is placed on an employer's discretion in their application, does not imply that an employer may discharge an employee only for just cause." Sullivan v. Snap-On Tools Corp., 708 F. Supp. 750, 753 (E.D. Va. 1989), aff'd, 896 F.2d 547 (4th Cir. 1990). No provision stipulating that termination be only for just cause is contained in the Personnel Policy. See Progress Printing Company, 244 Va. at 341, 421 S.E.2d at _____.

The Virginia Supreme Court has made it clear that it will not rewrite an agreement to supply a "just cause" provision and create a durational component of employment where none exists. Addison, 236 Va. at 235-236, 372 S.E.2d at 405. As stated in Sullivan v. Snap-On Tools Corp., 708 F. Supp. 750, 753 (E.D. Va. 1989), aff'd, 896 F.2d 547 (4th Cir. 1990), "[a]n employer's promise to discharge an employee only for just cause should be explicit and unambiguous, and such an intent should be clearly expressed." (Emphasis added).

Under Virginia law, in cases in which the at-will presumption has been rebutted by a so-called "just cause" provision, the alleged contract stated that the employment relationship could be terminated "only for just or good cause." Norfolk Southern Railway Co. v. Harris, 190 Va. 966, 59 S.E.2d 110 (1950), is the seminal case for this proposition. In Norfolk Southern, the plaintiff was party to a collective bargaining agreement which stated that "[e]ngineers will not be disciplined or dismissed from the service without a just cause." Id. at 969, 59 S.E.2d at 111 (emphasis added). No such requirement is found in the alleged contract before this Court.

Similarly in Seabolt v. Westmoreland, 703 F. Supp. 1235, 1238 (W.D. Va. 1989), the plaintiffs were subject to the provisions of an employee relations manual which stated that

"[w]hen discharge becomes necessary, it is further our philosophy that discharge will be only for cause." Id. at 1238 (emphasis added). No such provision exists in the Personnel Policy relied upon by Plaintiff.

Although the at-will presumption is "rebutted when the employer promises that the relationship will end only for a good cause and the employee relies on that promise," it is legally uncontroverted that Giles County did not promise explicitly and unambiguously that its employment relationship with the plaintiff was terminable only for good or just cause. Frazier v. Colonial Williamsburg Foundation, 574 F. Supp. 318, 320 (E.D. Va. 1983) (emphasis added). A provision which states that "[a]n employee may be terminated . . . for just cause" does not require that just cause exist for a valid termination. (Emphasis added). In fact, it suggests discretion or choice among alternatives. Such a provision is legally insufficient to create the specific duration of employment necessary to rebut the presumption of at-will employment. Thus, D. Chad Wines was an at-will employee and did not have a property right in continued employment with Giles County.

II. THE PLAINTIFF DID NOT HAVE A PROPERTY INTEREST IN HIS JOB.

The case of Prince v. Bridges, 537 F.2d 1269 (4th Cir. 1976), is instructive as to Plaintiff's lack of a property right. In Prince, plaintiff, a clerical supervisor with a local department of social services, was dismissed for acting in an unprofessional manner and making malicious statements about other employees. She was immediately discharged and given a letter stating the reasons for her discharge. She noted an appeal to the State Merit System Council. She prevailed on appeal but the Director declined to reinstate her. She sued alleging that her dismissal without a hearing denied her due process.

The Fourth Circuit held that plaintiff "had no legitimate 'property' interest in her continued employment." Prince, 537 F.2d at 1271. The Court noted that statutory authority stated that employees served at the pleasure of the local appointing authority subject to the merit system plan. Thus, the employees served at the will of the defendant subject to the plan. The Court held that the merit plan had not been violated because the plan stated that it was within defendant's discretion to immediately terminate plaintiff.¹ The Court cited the Virginia Department of Welfare and Institutions Instructions § 402.10-B (1971) (the predecessor to Volume IA). That section read, "[i]f the reason for dismissal is such that in the discretion of the appointing authority it is in best interest of the agency for the employee's service to be terminated immediately, this may be done." Id. at 1272 n.4.

Moreover, the Supreme Court and the Fourth Circuit have held that property rights in a job may not be created by procedural rights. See Olim v. Wakinekona, 461 U.S. 238, 250-51 (1982); Jackson v. Long, 102 F.3d 722, 729 (4th Cir. 1996) (holding that procedural rights do not create substantive property rights protected by the Fourteenth Amendment). In Olim, the Supreme Court stated:

Process is not an end in itself. Its constitutional purpose is to protect a substantive interest to which the individual has a legitimate claim of entitlement.... The State may choose to require procedures for reasons other than protection against deprivation of substantive rights, of course, but in making that choice the State does not create an independent substantive right.

Olim at 250-51. See also Bradley v. Colonial Mental Health & Retardation Services Board, 856 F.2d 703, 708 n.11 (4th Cir. 1988) ("the mere availability of procedures does not create a

¹ See also Kersey v. Shipley, 673 F.2d 730 (4th Cir. 1982) (plaintiffs' due process rights not violated where they did not receive pre-termination hearing, but applicable provisions provided no automatic right to pre-termination hearing).

constitutionally protected interest where no substantive limits are placed on discretion"). Additionally, the Fourth Circuit has held that a personnel manual containing disciplinary guidelines indicating that a permanent employee may be terminated only for cause does not establish a property right where the employee serves "at the pleasure of" his employer. Beckham, 756 F.2d at 1036-37 n.7.

Thus, Mr. Wines, who was an at-will employee, cannot be said to have a legitimate claim of entitlement to his job. He had no property right in his employment and the Court should sustain the Pleas in Bar and the motion to strike.

III. ALTERNATIVELY, IF THE PLAINTIFF DID HAVE A PROPERTY RIGHT IN HIS CONTINUED EMPLOYMENT, HE HAS NO CAUSE OF ACTION FOR HIS INITIAL TERMINATION AND THE PROCESS FOLLOWED BY THE BOARD IN THE LATER TERMINATION DID NOT VIOLATE THE FEDERAL STANDARD OF DUE PROCESS.

Assuming arguendo that the Plaintiff did have a protected property interest in his continued employment, he has no cause of action for the initial termination when he is reinstated with back pay and benefits, Holland v. Rimmer, 25 F.3d 1251 (4th Cir. 1994), and the process due for the later termination is defined under federal law and not controlled by state-created procedures. Gray v. Laws, 51 F.3d 426 (4th Cir. 1995); Riccio v. County of Fairfax, Virginia, 907 F.2d 1459, 1469 (4th Cir. 1990). The Fourth Circuit, in Riccio, stated that "alleged violations of due process in the deprivation of a protected interest are to be measured against a federal standard of what process is due and that standard is not defined by state-created procedures. . . ." Riccio, 907 F. 2d at 1469.

In Holland v. Rimmer, a director of social services was terminated by the local board. 25 F.3d 1251 (4th Cir. 1994). Indeed, the director was terminated twice. No notice or opportunity to be heard was given when the director was initially terminated. The local board then reinstated

the director, after almost one month, and gave him back pay and benefits. He was then later terminated and given notice and an opportunity to be heard, but the director filed suit alleging that since the board did not follow the procedures outlined in the personnel manual, namely failing to provide written notice as specified in the manual, he had been denied due process under the Fourteenth Amendment. The Fourth Circuit rejected the director's claims.

The director in Holland argued, as does Plaintiff here, that he suffered a deprivation of property without due process during the time between his initial termination (which was followed by a reinstatement) and his final termination. The Court, however, held that the director suffered no deprivation of a property right during this time as he "received all the pay and benefits to which he was entitled." Holland, 25 F.3d 1251, ____ (4th Cir. 1994) (citing Sewell v. Jefferson County Fiscal Court, 863 F.2d 461, 467 (6th Cir. 1988); Gearhart v. Thorne, 768 F.2d 1072, 1073 (9th Cir. 1985); and Royster v. Board of Trustees of Anderson City School, 774 F.2d 618, 621 n.15 (4th Cir. 1985). Since Mr. Wines was reinstated with full pay and benefits retroactive to January 2, 1996, the date of his initial termination, he has no cause of action for deprivation of a property right with regard to that termination.

The Court in Holland then examined the second argument of the director regarding the board's failure to follow its own procedures. Citing the Supreme Court's decision in Cleveland Board of Education v. Loudermill, 470 U.S. 532 (1985), the Fourth Circuit rejected the director's claim stating that while the process utilized by the board may not have followed the exact procedures set out in the personnel manual, the notice of the charges given did meet the requirement of federal due process. Id. at 1257. See also Morris v. City of Danville, 744 F. 2d 1041, 1048 n.9 (4th Cir. 1984) (holding that the mere fact that a state agency violates its own procedures does not, *ipsofacto*, mean that it had contravened federal due process requirements);

Bowers v. North Carolina Dep't of Human Resources, 710 F.2d 1015, 1019 (4th Cir. 1983) (stating that "an agency's violation of its regulations is not unconstitutional unless the regulations are necessary to afford due process").

"Due process has no fixed content; it is 'flexible and calls for such procedural protections as the particular situation demands.'" Mallette v. Arlington County Employees' Retirement System II, 91 F.3d 630, 640 (4th Cir. 1996) (quoting Morrissey v. Brewer, 408 U.S. 471, 481 (1972)). Generally, courts look to three factors to determine what process is due: (1) plaintiff's interest that will be affected; (2) the risk of erroneous deprivation through the procedures used and the value, if any, of additional procedures; and (3) the government's interest, including fiscal and administrative burdens. Id. (citing Mathews v. Eldridge, 424 U.S. 319 (1976)). The United States Supreme Court explained the reason for procedural due process rules in Carey v. Piphus, 435 U.S. 247, 259-60 (1978),

Procedural due process rules are meant to protect persons not from the deprivation, but from the mistaken or unjustified deprivation of life, liberty, or property. Thus, in deciding what process constitutionally is due in various contexts, the Court repeatedly has emphasized that 'procedural due process rules are shaped by the risk of error inherent in the truth-finding process....' Mathews v. Eldridge, 424 U.S. 319, 344 (1976). n.14 Such rules 'minimize substantively unfair or mistaken deprivations of 'life, liberty, or property by enabling persons to contest the basis upon which a State proposes to deprive them of protected interests. (Citing Fuentes v. Shevin, 407 U.S. 67, 81 (1972)).

Generally, the Fourth Circuit has interpreted the requirements of federal due process in the employment context to consist of a notice of the charges, a pretermination opportunity to respond, coupled with post-termination administrative procedures. See Holland, 25 F.3d at 1258; Buschi v. Kirven, 775 F.2d 1240, 1255 (4th Cir. 1985). The pretermination hearing "need not be elaborate and need not definitively resolve the propriety of the discharge." Buschi, 775 F.2d at 1255. According to the Supreme Court anything more "would intrude to an unwarranted extent

on the government's interest in quickly removing an unsatisfactory employee." Loudermill, 470 U.S. at 546.

The case at hand is different from the above-cited cases involving terminations in that Plaintiff admits that he made long distance personal calls from County telephones without reimbursing the County. See letter dated January 25, 1996. Thus, while the interest of the Plaintiff is high in not being deprived of his job, the second factor in determining what process is due is non-existent. There is absolutely no risk of an erroneous deprivation in light of Plaintiff's admission. Since this is the ultimate purpose behind procedural requirement, there is some question in this case whether any post-termination proceedings are even required.

Even if pre-termination and post-termination process were required, in the present action, the Plaintiff was given a notice of the charges by letter dated January 19, 1996. He was given an opportunity to speak with the County Administrator and respond to the Board's concerns and did so on January 25, 1996. He responded by meeting in person with the County Administrator and, through counsel, in a lengthy letter dated January 25, 1996, and admitted that he made personal telephone calls from County telephones without reimbursing the County. After Plaintiff's termination, Plaintiff filed a grievance. The Fourth Circuit has held that Virginia's grievance procedures satisfy due process requirements. Detweiler v. Commonwealth Dept. of Rehabilitative Servs., 705 F.2d 557 (4th Cir. 1984). 7

Plaintiff argues that he was wrongfully deprived of use of the grievance procedure as the County Administrator found that Department Heads were not allowed to grieve their terminations. Even if the grievance procedure had been required to fulfill due process requirements and Plaintiff was wrongfully denied access to it, Plaintiff has an adequate state court remedy which he can and is pursuing. Since Plaintiff is not contesting the adequacy of the

grievance procedure itself and Plaintiff has an adequate state court remedy, Plaintiff cannot prevail on his constitutional property deprivation claim. Random and unauthorized acts of officials or employees in contravention of established procedures do not constitute due process deprivations where an adequate state court remedy is provided. Parratt v. Taylor, 451 U.S. 527 (1981); Fun v. Virginia Military Institute, 245 Va. 249, 427 S.E.2d 181 (1993) (Fun identified a property interest in continued employment and alleged denial of access to established dismissal procedures, but did not allege inadequacy in the procedures themselves).

IV. THE BOARD MEMBERS IN THEIR INDIVIDUAL CAPACITIES ARE ENTITLED TO QUALIFIED IMMUNITY.

A government official, performing a discretionary function, is entitled to qualified immunity protecting him from damages liability if his actions were objectively reasonable in light of the then existing circumstances. Anderson v. Creighton, 483 U.S. 635 (1987); Gooden v. Howard County, Md., 954 F.2d 960, 964 (4th Cir. 1992) (en banc); Seigny v. Dicksey, 846 F.2d 953, 956 (4th Cir. 1988). The reasonableness of the official's belief is judged from an objective standard in light of the clearly established law at the time of the official's actions, under the circumstances then confronting the official. Anderson, 483 U.S. at 639.

In Anderson, plaintiff argued that his constitutional rights were clearly established; thus, the official was not entitled to immunity. The Supreme Court disagreed:

[t]he right the official is alleged to have violated must have been "clearly established" in a more particularized, and hence more relevant, sense: The contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right.

Id. at 640 (citations omitted). Because the right is particularized, the determination of the reasonableness includes an examination of the information possessed by the official in addition to an examination of the clearly established law. Id. at 641. The unlawfulness of the alleged

actions must have been apparent to the defendants in this case. Id.; Jackson v. Long, 102 F.3d 722, 727-28 (4th Cir. 1996).

It is apparent from the cases cited within this brief that whether or not Wines had a property right in his employment is not clearly established. A reasonable Board member looking at the law regarding property rights could certainly believe that Plaintiff did not have such a right. Thus, the Board could reasonably believe that its actions in terminating Plaintiff were entirely lawful. Moreover, the Board could reasonably believe that the process provided Plaintiff, notice and an opportunity to be heard, comported with the requirements of due process. Thus, the individual defendants, in their individual capacities, are entitled to qualified immunity barring any claim for damages against them.

V. PLAINTIFF'S STATE CLAIM FAILS AS A MATTER OF LAW AND, EVEN IF PLAINTIFF WERE ENTITLED TO AN AWARD OF DAMAGES WITH REGARD TO HIS FEDERAL CLAIM, SUCH AWARD IS LIMITED TO NOMINAL DAMAGES AS JUST CAUSE EXISTED FOR PLAINTIFF'S TERMINATION AS A MATTER OF LAW.

The evidence at trial will show the Plaintiff admitted, by letter dated January 25, 1996, that he used the County telephone to make personal long distance telephone calls without reimbursing the County. In other words, Plaintiff has admitted to theft. As a matter of law, even if just cause were required for Plaintiff's termination, theft constitutes "misconduct" and "just cause" pursuant to the personnel policy. Thus, Plaintiff's breach of contract claim fails.

With regard to Plaintiff's federal claim, assuming arguendo that Plaintiff had a property right and was denied the process that was due, Plaintiff's damages are limited to nominal damages. See Carey v. Piphus, 435 U.S. 247 (1978). Carey involved a case in which two students were suspended from school allegedly without procedural due process. The Court noted that, [p]rocedural due process rules are meant to protect persons not from the deprivation, but

from the mistaken or unjustified deprivation of life, liberty, or property.” Carey, 435 U.S. at 259. Thus, the Court held, if the students would have been suspended even if a proper hearing had been held, they cannot recover damages for the suspensions themselves as the lack of procedure was not the cause of those damages. The Court stated: “the injury caused by a justified deprivation, including distress, is not properly compensable under § 1983.” Id. at 263. The Court, in instructing the lower court on remand, allowed only a recovery for nominal damages not to exceed one dollar if the suspensions were justified. Id. at 266-67.

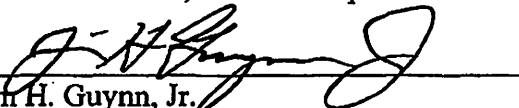
COUNTY OF GILES, VIRGINIA,
BOARD OF SUPERVISORS OF
GILES COUNTY, VIRGINIA, et al.

By: 
Of Counsel

GUYNN & DILLON, P.C.
By: Jim H. Guynn, Jr. (VSB #22299)
1215 Corporate Circle, Suite 201
Roanoke, VA 24018
Phone: (540) 772-2320
Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that I have this 21 day of September, 1999, served the foregoing by hand-delivering a true and correct copy of the same to Gregory J. Haley, Esq., Gentry, Locke, Rakes & Moore, P.O. Box 40013, Roanoke, VA 24038-0013, counsel for plaintiff.


Jim H. Guynn, Jr.

Instruction No. 1

Issues / Allocation of Burden of Proof

Your verdict must be based on the facts as you find them and on the law contained in all of these instructions?

The issues in this case are:

1. Did the Defendants deny to D. Chad Wines any right to pre-termination due process?

2. If so, what is the amount of Mr. Wines' damages, if any?

On Issue Nos. 1 and 2, Mr. Wines had the burden of proof.

3. Did the Defendants deny to Mr. Wines any right to post-termination due process through participation in the County grievance procedure?

4. If so, what is the amount of Mr. Wines' damages, if any?

On issue Nos. 3 and 4, Mr. Wines had the burden of proof.

5. Did the Defendants deny to Mr. Wines any contractual rights under the Giles County Personnel Policy?

6. If so, what is the amount of Mr. Wines' damages, if any?

On issue Nos. 5 and 6, Mr. Wines had the burden of proof.

Sever
W&K

Instruction No. 2

Credibility of Witnesses

You are the judges of the facts, the credibility of the witnesses, and the weight of the evidence. You may consider the appearance and manner of the witnesses on the stand, their intelligence, their opportunity for knowing the truth and for having observed the things about which they testified, their interest in the outcome of the case, their bias, and, if any have been shown, their prior inconsistent statements, or whether they have knowingly testified untruthfully as to any material fact in the case.

You may not arbitrarily disregard believable testimony of a witness. However, after you have considered all the evidence in the case, then you may accept or discard all or part of the testimony of a witness as you think proper.

You are entitled to use your common sense in judging any testimony. From these things and all the other circumstances of the case, you may determine which witnesses are more believable and weigh their testimony accordingly.

Instruction No. 3

Circumstantial Evidence

Any fact that may be proved by direct evidence may be proved by circumstantial evidence; that is, you may draw all reasonable and legitimate inferences and deductions from the evidence.

Sever
Wen

VMJI 2.100, Vol. I

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Instruction No. 4

Verdict Not to be Based on Sympathy,
Bias, Guesswork, or Speculation

You must not base your verdict in any way upon sympathy, bias, guesswork or speculation. Your verdict must be based solely upon the evidence and instructions of the court.

Heuer
WSEH

VMJI 2.220, Vol. I

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Instruction No. 5

Standard of Proof: Definition of Greater Weight of the Evidence

The greater weight of all the evidence is sometimes called the preponderance of the evidence. It is that evidence which you find more persuasive. The testimony of one witness whom you believe can be the greater weight of the evidence.

Sevin
WSE

VMJI 3.100, Vol. I

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Instruction No. 6

Deposition Testimony

During the trial of this case, certain testimony has been presented to you by way of deposition, consisting of sworn recorded answers to questions asked of the witness in advance of the trial by one or more of the lawyers for the parties to the case.

You are to treat such deposition testimony in the same way as if the witness had testified from the witness stand.

Steven
WSP

Plaintiff's Instruction No. 7

(Existence of Just Cause Employment Contract)

The parties dispute whether the Giles County Personnel Policy provides for an employment at-will relationship or whether the plaintiff could only be terminated for just cause. It is for the jury to determine whether the Giles County Personnel Policy establishes an employment contract under which the defendants could fire Mr. Wines for just cause.

Swain
W861

Instruction No. 8

(Just Cause/Burden of Proof)

The defendants have the burden to prove by the preponderance of the evidence that the plaintiff's discharge was justified in fact.

Steven
LOEH

Instruction No. 9

Ordinary Meaning of Words

Words used by the parties should be given their ordinary, usual, and popular meaning, unless you find that the parties clearly intended such words to have another meaning.

Ami
1086

Instruction No. 10

Construction Against the User of Language

In interpreting a contract, you should resolve any doubts about the meaning of a words or phrase against the party who used the language in the contract.

*Kevin
WSPM*

Instruction No. 11

Damages: Breach of Contract

If you find your verdict for the plaintiff, then he is entitled to recover as damages all of the financial losses he sustained which are a direct and natural result of the breach of his employment contract and which he has proved by the greater weight of the evidence. The losses must have been reasonably foreseeable by the parties when they entered into the contract.

Hevi
WFM

Instruction No. 12

Finding Instruction / Breach of Contract Claim

You shall find your verdict for the plaintiff, Chad Wines, if he has proved by the greater weight of the evidence that:

(1) The Giles County Personnel Policy was a contract between Mr. Wines and Giles County;

(2) The defendant breached the Personnel Policy by dismissing Mr. Wines for reasons other than those set out in the Policy and without following those procedures required by the Personnel Policy; and/or

(3) The defendant breached the Personnel Policy by failing to pay Mr. Wines for accrued vacation time and compensatory time, if any is due.

You shall find your verdict for the defendant if the plaintiff Chad Wines failed to prove any of the elements above or if you find that just cause existed for the termination.

Wines
WFW

Instruction No. 13

Denial of Pre-termination Due Process

The plaintiff Chad Wines claims that defendants violated Section 1983 of Title 42 of the United States Code. That section entitles a person to recover damages against a defendant who, while appearing to act under the authority of law, deprived the plaintiff of rights guaranteed by the Constitution.

In this case Mr. Wines claims that, while he was employed by the County of Giles, he was discharged without first having been given a hearing. To prove his claim, plaintiff must prove the following four things by a preponderance of the evidence:

- First: That he was employed by the defendant County of Giles; and could only be terminated for just cause.
- Second: That he was discharged from that employment;
- Third: That before his discharge he was not given a hearing, told of the reasons for the discharge; and given an opportunity to contest them; and
- Fourth: That as a result of the discharge, he suffered damages.

Wines
WDM

Instruction No. 14

Denial of Post-termination Due Process

The plaintiff Chad Wines claims that defendants violated Section 1983 of Title 42 of the United States Code. That section entitles a person to recover damages against a defendant who, while appearing to act under the authority of law, deprived the plaintiff of rights guaranteed by the Constitution.

In this case Mr. Wines claims that, while he was employed by the County of Giles, he was discharged and denied the right to any due process after his termination. To prove his claim, plaintiff must prove the following four things by a preponderance of the evidence:

First: That he was employed by the defendant County of Giles; and could only be terminated for just cause.

Second: That he was discharged from that employment;

Third: That after his discharge he was not allowed a hearing or other proceeding to contest his discharge; and

Fourth: That as a result of the discharge, he suffered damages.

Instruction No. 15

You are instructed that as to the federal claim, damages are not presumed to occur but may occur from procedural irregularities. If you believe from a preponderance of the evidence that the termination of plaintiff was justified and would have occurred regardless of any lack of a hearing or irregularities in a hearing, then the plaintiff is not entitled to recover damages for the termination itself or damages arising from the termination, but is entitled only to recover damages, if any, for the lack of or irregularities in the hearing. If the plaintiff suffered no distress over any procedural irregularities, then he is entitled only to nominal damages.

Hein
WJH

Plaintiff's Instruction No. 16

Due Process Claim - Damages

If you find that the plaintiff Chad Wines was entitled to but not given either of the pretermination or post-termination hearing, then you must decide whether he suffered any damages as a direct result. A damages award to plaintiff may provide such amount as would make him whole and also compensate him for any mental or emotional distress he suffered. To award any element of damages, you must find that plaintiff has proved a basis for such damages in the evidence. You may not award damages based on speculation or guess work.

If you find that the plaintiff has lost salary or benefits or other damages caused by the denial of notice and an opportunity for a meaningful hearing to contest the charge against him, both before and after his discharge, then you may award such damages for lost salary and benefits which flow naturally from the defendants' actions.

If you find that plaintiff suffered mental or emotional distress, loss of reputation or other damage caused by the denial of an opportunity for a meaningful hearing to contest the charges against him, both before and after his discharge, then you may award such damages which flow naturally from the defendants' actions.

Where mental or emotional distress or loss of reputation are proven, the Court cannot give you any rule by which to measure the specific amount of damages resulting from such an

injury. This is a matter that is left to the conscience, good sense and sound judgment of the jury. You should not act unreasonably through bias, passion or sympathy, but should exercise common sense and fix an amount of damages, that in accordance with the evidence and the law, will fairly compensate plaintiff for all the injuries suffered.

Steven
KOSU

Instruction No. 17

Damages: Reasonable Proof

The burden is on the plaintiff to prove by the greater weight of the evidence that he sustained damages. He is not required to prove the exact amount of his damages, but he must show sufficient facts and circumstances to permit you to make a reasonable estimate of them. If the plaintiff fails to do so, then he cannot recover.

Given
WEM

Instruction No. 18

Prejudgment Interest

You may provide for interest on any principal sum awarded as damages, or any part thereof, and fix the period at which the interest shall begin.

If you find that Mr. Wines is entitled to be compensated for damages based on denial of pre-termination due process, denial of post termination due process, and/or breach of contract, you may provide for interest on any sum awarded, or any part thereof, and fix the period at which the interest shall begin at the time the denial of due process or breach of contract occurred or at some other time.

Plaintiff's Instruction No. ____

(Equal Standing)

This case should be considered and decided by you as an action among persons of equal standing in the community, of equal worth, and holding the same or similar stations in life. All persons stand equal before the law, and are to be dealt with as equals in a court of justice.

DEM
Refused

Instruction No. ____

(Procedural Due Process)

A local government employee may have a protected property interest in continued employment. Such a protected property interest in continued employment can be established by state law, contract, rules, employee manuals or understandings. An employment relationship that provides that a government employee can be discharged only for just cause establishes the employee's protected property interest in his continued employment.

Once a protected property interest in continued employment is established, the local government employer cannot deprive the employee of his continued employment without due process.

An essential principle of due process is that a deprivation of property be preceded by notice and an opportunity for hearing appropriate to the nature of the case. The basic requirement of the due process clause is that an individual be given a meaningful opportunity for a hearing before he is deprived of any significant property interest.

Even when the facts are clear, the appropriateness or necessity of the discharge may not be clear; in such cases, the only meaningful opportunity to

Refused
DEM

invoke the discretion of the decision-maker is likely to be before the termination takes effect.

A public employee with a protected property interest in continued employment is entitled to oral or written notice of the charges against him, an explanation of the employer's evidence, and an opportunity to present his side of the story prior to any discharge. This right to notice and a meaningful hearing prior to discharge recognizes the severe impact on an employee of depriving an employee of his livelihood.

The right to a hearing does not depend on a demonstration of certain success.

The failure of a government employer to provide a hearing at a meaningful time after the discharge, that is a post-termination hearing, is a separate claim an employee may assert.

A government employer that fails to offer a meaningful opportunity to be heard, both before and after a discharge, violates the due process rights of an employee as established and protected by the Federal Constitution.

Cleveland Board of Education v. Loudermill, 470 U.S. 532, 538-539, 542-544, 546 (1985); Riccio v. County of Fairfax, Virginia, 907 F.2d 1459, 1463 (1990); Bradley v. Colonial Mental Health and Ret. Services, 856 F.2d 703, 707 (4th Cir. 1988); Bockes v. Fields, 798 F. Supp. 1219, ____ (W.D.Va. 1992).

Crocker

Plaintiff's Instruction No. _____

(Preemptory Instruction/Protected Property Interest)

As a matter of law, the Court instructs the jury that the plaintiff Chad Wines had a property interest in his continued employment with Giles County protected by the due process requirements of the Federal Constitution. The defendants, therefore, could not act to deprive Mr. Wines of his property interest in his continued employment without satisfying the requirements of procedural due process.

VMJI 2.190 (adapted);

Cleveland Board of Education v. Loudermill, 470 U.S. 532, 538-539 (1985);

Bradley v. Colonial Mental Health & Ret. Services, 856 F.2d 703, 707 (4th Cir. 1988).

Refused
DEM

Plaintiff's Instruction No. ____

(Preemptory Instruction/Just Cause Contract)

As a matter of law, the Court instructs the jury that the Giles County Personnel Policy establishes a contract of employment under which the defendants could discharge Mr. Wines only for just cause.

Refused
WEM

MJI No. 2.190 (adapted); Cleveland Board of Education v. Loudermill, 470 U.S. 532, 538-539 (1985); Bradley v. Colonial Mental Health and Ret. Services, 856 F.2d 703, 707 (4th Cir. 1988).

Plaintiff's Instruction No. ____

(Just Cause)

The Giles County Personnel Policy states that an employee may be discharged for inefficiency, insubordination, misconduct or other just cause. When a contract is subject to termination for just cause, the grounds for termination must be reasonable and should not be an abuse of the conferred right. It must be a fair and honest cause or reason, regulated by good faith on the part of the party exercising the power to terminate. It limits the party to the exercise of good faith, based upon just and fair grounds as distinguished from an arbitrary power. It is for the jury to determine based on all of the evidence whether the defendants have established just cause for terminating Mr. Wines' employment.

Refused
WEM

Norfolk Southern Railway Co. v. Harris, 190 Va. 966, 970, 977 (1950);
Hughes v. Cole, 251 Va. 3, 22 (1996).

Instruction No. 1

Issues / Allocation of Burden of Proof

Your verdict must be based on the facts as you find them and on the law contained in all of these instructions?

The issues in this case are:

1. Did the Defendants deny to D. Chad Wines any right to pre-termination due process?

2. If so, what is the amount of Mr. Wines' damages, if any?

On Issue Nos. 1 and 2, Mr. Wines had the burden of proof.

3. Did the Defendants deny to Mr. Wines any right to post-termination due process through participation in the County grievance procedure?

4. If so, what is the amount of Mr. Wines' damages, if any?

On issue Nos. 3 and 4, Mr. Wines had the burden of proof.

5. Did the Defendants deny to Mr. Wines any contractual rights under the Giles County Personnel Policy?

6. If so, what is the amount of Mr. Wines' damages, if any?

On issue Nos. 5 and 6, Mr. Wines had the burden of proof.

Instruction No. 2

Credibility of Witnesses

You are the judges of the facts, the credibility of the witnesses, and the weight of the evidence. You may consider the appearance and manner of the witnesses on the stand, their intelligence, their opportunity for knowing the truth and for having observed the things about which they testified, their interest in the outcome of the case, their bias, and, if any have been shown, their prior inconsistent statements, or whether they have knowingly testified untruthfully as to any material fact in the case.

You may not arbitrarily disregard believable testimony of a witness. However, after you have considered all the evidence in the case, then you may accept or discard all or part of the testimony of a witness as you think proper.

You are entitled to use your common sense in judging any testimony. From these things and all the other circumstances of the case, you may determine which witnesses are more believable and weigh their testimony accordingly.

Instruction No. 3

Circumstantial Evidence

Any fact that may be proved by direct evidence may be proved by circumstantial evidence; that is, you may draw all reasonable and legitimate inferences and deductions from the evidence.

Instruction No. 4

**Verdict Not to be Based on Sympathy,
Bias, Guesswork, or Speculation**

You must not base your verdict in any way upon sympathy, bias, guesswork or speculation. Your verdict must be based solely upon the evidence and instructions of the court.

Instruction No. 5

Standard of Proof: Definition of Greater Weight of the Evidence

The greater weight of all the evidence is sometimes called the preponderance of the evidence. It is that evidence which you find more persuasive. The testimony of one witness whom you believe can be the greater weight of the evidence.

Instruction No. 60

Deposition Testimony

During the trial of this case, certain testimony has been presented to you by way of deposition, consisting of sworn recorded answers to questions asked of the witness in advance of the trial by one or more of the lawyers for the parties to the case.

You are to treat such deposition testimony in the same way as if the witness had testified from the witness stand.

Plaintiff's Instruction No. 7

(Existence of Just Cause Employment Contract)

The parties dispute whether the Giles County Personnel Policy provides for an employment at-will relationship or whether the plaintiff could only be terminated for just cause. It is for the jury to determine whether the Giles County Personnel Policy establishes an employment contract under which the defendants could fire Mr. Wines for just cause.

Instruction No. 8

(Just Cause/Burden of Proof)

The defendants have the burden to prove by the preponderance of the evidence that the plaintiff's discharge was justified in fact.

Norfolk Southern Railway Co. v. Harris, 190 Va. 966, 977 (1950).

Instruction No. 9

Ordinary Meaning of Words

Words used by the parties should be given their ordinary, usual, and popular meaning, unless you find that the parties clearly intended such words to have another meaning.

VMJI 45.305

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Instruction No. 10

Construction Against the User of Language

In interpreting a contract, you should resolve any doubts about the meaning of a words or phrase against the party who used the language in the contract.

VMJI 45.310

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Instruction No. 11

Damages: Breach of Contract

If you find your verdict for the plaintiff, then he is entitled to recover as damages all of the financial losses he sustained which are a direct and natural result of the breach of his employment contract and which he has proved by the greater weight of the evidence. The losses must have been reasonably foreseeable by the parties when they entered into the contract.

Instruction No. 12

Finding Instruction / Breach of Contract Claim

You shall find your verdict for the plaintiff, Chad Wines, if he has proved by the greater weight of the evidence that:

(1) The Giles County Personnel Policy was a contract between Mr. Wines and Giles County;

(2) The defendant breached the Personnel Policy by dismissing Mr. Wines for reasons other than those set out in the Policy and without following those procedures required by the Personnel Policy; and/or

(3) The defendant breached the Personnel Policy by failing to pay Mr. Wines for accrued vacation time and compensatory time, if any is due.

You shall find your verdict for the defendant if the plaintiff Chad Wines failed to prove any of the elements above or that just cause existed for the termination.

Instruction No. 12

Finding Instruction / Breach of Contract Claim

You shall find your verdict for the plaintiff, Chad Wines, if he has proved by the greater weight of the evidence that:

(1) The Giles County Personnel Policy was a contract between Mr. Wines and Giles County;

(2) The defendant breached the Personnel Policy by dismissing Mr. Wines for reasons other than those set out in the Policy and without following those procedures required by the Personnel Policy; and/or

(3) The defendant breached the Personnel Policy by failing to pay Mr. Wines for accrued vacation time and compensatory time, if any is due.

You shall find your verdict for the defendant if the plaintiff Chad Wines failed to prove any of the elements above or if you find that just cause existed for the termination.

Instruction No. 13

Denial of Pre-termination Due Process

The plaintiff Chad Wines claims that defendants violated Section 1983 of Title 42 of the United States Code. That section entitles a person to recover damages against a defendant who, while appearing to act under the authority of law, deprived the plaintiff of rights guaranteed by the Constitution.

In this case Mr. Wines claims that, while he was employed by the County of Giles, he was discharged without first having been given a hearing. To prove his claim, plaintiff must prove the following four things by a preponderance of the evidence:

First: That he was employed by the defendant County of Giles; and could only be terminated for just cause.

Second: That he was discharged from that employment;

Third: That before his discharge he was not given a hearing, told of the reasons for the discharge; and given an opportunity to contest them; and

Fourth: That as a result of the discharge, he suffered damages.

Instruction No. 14

Denial of Post-termination Due Process

The plaintiff Chad Wines claims that defendants violated Section 1983 of Title 42 of the United States Code. That section entitles a person to recover damages against a defendant who, while appearing to act under the authority of law, deprived the plaintiff of rights guaranteed by the Constitution.

In this case Mr. Wines claims that, while he was employed by the County of Giles, he was discharged and denied the right to any due process after his termination. To prove his claim, plaintiff must prove the following four things by a preponderance of the evidence:

First: That he was employed by the defendant County of Giles; and could only be terminated for just cause.

Second: That he was discharged from that employment;

Third: That after his discharge he was not allowed a hearing or other proceeding to contest his discharge; and

Fourth: That as a result of the discharge, he suffered damages.

Instruction No. 15

You are instructed that as to the federal claim, damages are not presumed to occur but may occur from procedural irregularities. If you believe from a preponderance of the evidence that the termination of plaintiff was justified and would have occurred regardless of any lack of a hearing or irregularities in a hearing, then the plaintiff is not entitled to recover damages for the termination itself or damages arising from the termination, but is entitled only to recover damages, if any, for the lack of or irregularities in the hearing. If the plaintiff suffered no distress over any procedural irregularities, then he is entitled only to nominal damages.

Plaintiff's Instruction No. 16

Due Process Claim - Damages

If you find that the plaintiff Chad Wines was entitled to but not given either of the pretermination or post-termination hearing, then you must decide whether he suffered any damages as a direct result. A damages award to plaintiff may provide such amount as would make him whole and also compensate him for any mental or emotional distress he suffered. To award any element of damages, you must find that plaintiff has proved a basis for such damages in the evidence. You may not award damages based on speculation or guess work.

If you find that the plaintiff has lost salary or benefits or other damages cause by the denial of notice and an opportunity for a meaningful hearing to contest the charge against him, both before and after his discharge, then you may award such damages for lost salary and benefits which flow naturally from the defendants' actions.

If you find that plaintiff suffered mental or emotional distress, loss of reputation or other damage caused by the denial of an opportunity for a meaningful hearing to contest the charges against him, both before and after his discharge, then you may award such damages which flow naturally from the defendants' actions.

Where mental or emotional distress or loss of reputation are proven, the Court cannot give you any rule by which to measure the specific amount of damages resulting from such an

injury. This is a matter that is left to the conscience, good sense and sound judgment of the jury. You should not act unreasonably through bias, passion or sympathy, but should exercise common sense and fix an amount of damages, that in accordance with the evidence and the law, will fairly compensate plaintiff for all the injuries suffered.

Instruction No. 17

Damages: Reasonable Proof

The burden is on the plaintiff to prove by the greater weight of the evidence that he sustained damages. He is not required to prove the exact amount of his damages, but he must show sufficient facts and circumstances to permit you to make a reasonable estimate of them. If the plaintiff fails to do so, then he cannot recover.

Instruction No. 18

Prejudgment Interest

You may provide for interest on any principal sum awarded as damages, or any part thereof, and fix the period at which the interest shall begin.

If you find that Mr. Wines is entitled to be compensated for damages based on denial of pre-termination due process, denial of post termination due process, and/or breach of contract, you may provide for interest on any sum awarded, or any part thereof, and fix the period at which the interest shall begin at the time the denial of due process or breach of contract occurred or at some other time.

VERDICT FORM

QUESTION 1: On Mr. Wines' claim for denial of pre-termination due process, please answer the following question:

Do you find in favor of Mr. Wines and against the Defendants?

Yes ☒ No ☐

QUESTION 2: On Mr. Wines' claim for denial of post-termination due process, please answer the following question:

Do you find in favor of Mr. Wines and against the Defendants?

Yes ☒ No ☐

If your answers to Question 1 and Question 2 were in the affirmative, then you must answer Question 3.

QUESTION 3: Was the termination of Mr. Wines justified and would it have occurred regardless of any lack of a hearing or irregularities in a hearing?

Yes ☐ No ☒

If your answer to Question 3 is yes, you can only award nominal damages for the due process claim or award damages for emotional distress if any resulted from the failure to give Mr. Wines a hearing.

QUESTION 4: On the Mr. Wines' claim of breach of contract, please answer the following question:

Did you find in favor of Mr. Wines and against the Defendants?

Yes ☒ No ☐

If you found in favor of Mr. Wines and against the Defendants on any of Mr. Wines' claims, please indicate the amount, if any, that you award Mr. Wines for compensatory damages:

\$ ~~75~~ 000.00

If you decide to award prejudgment interest on any judgment in favor of Mr. Wines, please answer the following questions:

(a) on what amount, if any, do you award interest:

\$ ~~48~~ 956.67
48 956.67

(b) from what date do you award interest?

Jan 27 1996 To Jan 5 1998

In this verdict, each of us concurs.

John O'Kelly
Foreperson

Date: September 22, 1999

TWENTY-SEVENTH JUDICIAL CIRCUIT
OF VIRGINIA



DUANE E. MINK, JUDGE
MUNICIPAL BUILDING
619 SECOND STREET
RADFORD, VIRGINIA 24141
TELEPHONE (540) 731-3811
FACSIMILE (540) 731-5044

CIRCUIT COURT FOR THE COUNTIES OF:
BLAND, CARROLL, FLOYD, GILES,
GRAYSON, MONTGOMERY, PULASKI AND WYTHE
CIRCUIT COURT FOR THE CITIES OF:
CALAIX AND RADFORD

COMMONWEALTH OF VIRGINIA

December 17, 1999

Mr. Gregory J. Haley
Gentry, Locke, Rakes & Moore
Attorneys at Law
10 Franklin Road, S.E.
P. O. Box 40013
Roanoke, Virginia 24022-0013

Mr. Jim H. Guynn
Guynn & Dillon
Attorneys at Law
1215 Corporate Circle, Suite 201
Roanoke, Virginia 24018-1400

Re: D. Chad Wines v. County of Giles, Virginia

Dear Greg and Jim:

Please be advised that I am in receipt of your memorandums concerning the above referenced case, for which I thank you.

In consideration of all of which, the Court has determined that under the facts of this case that Mr. Wines' evidence was sufficient to rebut the presumption that Mr. Wines was an "at will" employee of Giles County. A review of the Giles County Personnel Policy leads to the conclusion that the policy provisions became a part of the plaintiff's employment contract. Under the terms and conditions of said policy, the rules set forth therein applied to all appointed paid employees of the Board of Supervisors of Giles County, except temporary or unclassified employees as defined therein. The stated purpose was to establish a uniform equitable system of personnel administration. To govern the appointment, the classification, the pay, work, experience, leaves of absence, discipline, separation and grievance procedures of the employee of the Board of Supervisors of Giles County. The policy further mandated that the County Administrator furnish

Mr. Gregory J. Haley
Mr. Jim H. Guynn, Jr.
Page 2
December 17, 1999

complete copies of all the rules and changes thereto to all the County employees in an up-to-date and current status.

The critical issue is language set forth in Section 8-5 of the Policy which provides, "an employee may be discharged for inefficiency, insubordination, misconduct or other just cause". The Court is of the opinion that this language entitled the employee to expect continued employment as long as the position was available unless there is cause to terminate his employment. In the context of the policy may is used in Section 8-5 as well as Section 8-7 setting forth causes for which an employee may be suspended, demoted or dismissed permits the administration to impose such discipline as may suit the violation under consideration, or to elect not to impose any discipline as a result of the violations. In other words, there are grades of punishment. The appropriate supervising authorities may issue warnings, Section 8-1; impose fines, Section 8-2; impose suspensions, Section 8-3; impose demotions and lastly may discharge pursuant to Section 8-5. Therefore, all of the permissible forms of punishments are discretionary as opposed to mandatory. However, under the terms thereof in order to discharge an employee there must be a finding of inefficiency, insubordination, misconduct, or other just cause. Causes are further itemized in Section 8-7 of said Policy. In consideration of all of the foregoing, the Court is of the opinion that at times relevant to these proceedings, the Personnel Policy was an integral part of the employment contract between the employees and the County, and that just cause must have existed in order to terminate the employment contract between the County and the plaintiff in this action.

The Court further finds that after the expiration of the probationary period the contract of employment created a property interest in continued employment with the County and therefore, entitled to due process in connection with his dismissal.

In addition to the foregoing, the Court is of the opinion that the Motion to Strike the action against the individual supervisors is well taken. The Court finds that they were entitled to qualified immunity and they were acting within the scope of that immunity at all times relevant to these proceedings. Therefore, the Motion to Strike as to the individual defendants is granted.

All of the other issues raised in the memorandums are questions of fact which have been resolved adversely to the defendant by the jury, and the jury verdict is therefore affirmed.

I request that Mr. Haley prepare an appropriate order in accordance with the Court's

Mr. Gregory J. Haley
Mr. Jim H. Guynn, Jr.
Page 3
December 17, 1999

ruling, saving all appropriate objections on behalf of the Board. I will leave it up to you gentlemen to arrange with my secretary a time to take up the issues of counsel fees at a time that is convenient to all concerned.

With best regards.

Yours very truly,


Duane E. Mink

DEM:nc

cc: Mr. Richard L. Chidester

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF GILES

D. CHAD WINES,

Plaintiff,

v.

Law No.: 7536

COUNTY OF GILES, VIRGINIA,

BOARD OF SUPERVISORS OF
GILES COUNTY, VIRGINIA,

and

W. P. FREEMAN,
BARBARA M. HOBBS,
LARRY JAY WILLIAMS,
LARRY A. BLANKENSHIP,
R. W. WILLIAMS,

Defendants.

ORDER AFFIRMING JURY VERDICT

On September 21 and 22, 1999, the parties to this action appeared in person and by counsel for the trial of this case.

Thereupon came a jury panel of fourteen persons, one panel member was struck by the Court for cause, and the plaintiff having struck three of said jurors, and the defendant having struck three of said jurors, the remaining seven were: Elizabeth H. Dooley, Ida Davis, John Donald Kelley, Margaret Lively Lane, Connie Speckmeir, Anthony Dale Gray, and Theresa Runion Bowles. These jurors were sworn to well and truly try the issues joined between the plaintiff and the defendants and a true verdict give according to the law and evidence.

Thereafter, the plaintiff proceeded to introduce evidence and then rested. After the plaintiff had rested, the defendants moved to strike the plaintiff's evidence. The Court took the

defendants' Motion to Strike under advisement. The defendants then introduced their evidence and rested. The Court then received and reviewed instructions tendered by the parties. Each party made timely objections to such instructions as were either given or refused over objection. The grounds for such objections were set forth in the presence of the Court, and are more fully reflected in the transcript of these proceedings.

The jury, having heard all of the evidence, received the instructions of the Court and heard the arguments of counsel. Thereafter, the jury retired to their room to consider their verdict. After some time, the jury returned to the Court with the following verdict:

QUESTION 1: On Mr. Wines' claim for denial of pre-termination due process, please answer the following question:

Do you find in favor of Mr. Wines and against the Defendants?

YES ☒ NO ☐

QUESTION 2: On Mr. Wines' claim for denial of post-termination due process, please answer the following question:

Do you find in favor of Mr. Wines and against the Defendants?

YES ☒ NO ☐

If your answers to Question 1 and Question 2 were in the affirmative, then you must answer Questions 3.

QUESTION 3: Was the termination of Mr. Wines justified and would it have occurred regardless of any lack of a hearing or irregularities in a hearing?

YES ☐ NO ☒

If your answer to Question 3 is yes, you can only award nominal damages for the due process claim or award damages for emotional distress if any resulted from the failure to give Mr. Wines a hearing.

QUESTION 4: On the Mr. Wines' claim of breach of contract, please answer the following question:

Did you find in favor of Mr. Wines and against the Defendants?

YES ☒ NO ☐

If you found in favor of Mr. Wines and against the Defendants on any of Mr. Wines' claims, please indicate the amount, if any, that you award Mr. Wines for compensatory damages:

\$ 75,000.00

If you decide to award prejudgment interest on any judgment in favor of Mr. Wines, please answer the following questions:

(a) on what amount, if any, do you award interest:

\$48,956.67

(b) from what date do you award interest?

Jan. 27, 1986 to Jan. 5, 1998

In this verdict, each of us concurs.

John O. Kelley

/s/ Foreperson

Date: September 22, 1999.

The jury was then discharged.

Upon consideration of the trial memoranda and post-trial memoranda of the parties, the Court DENIES the Motion to Strike of the defendants County of Giles, Virginia and the Board of Supervisors of Giles County, Virginia. The Court GRANTS the Motion to Strike of the individual defendants W. P. Freeman, Barbara M. Hobbs, Larry Jay Williams, Larry A. Blankenship and R. W. Williams. The reasons for these rulings are stated in the letter opinion of this Court dated December 17, 1999, and incorporated by reference as a part of this Order. The objections of the defendants Giles County, Virginia and the Board of Supervisors of Giles County, Virginia to the denial of their Motion to Strike are noted. The objection of the plaintiff to the granting of the Motion to Strike as to the individual defendants is noted.

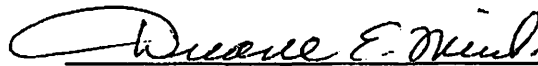
The Court, affirms the jury's verdict, in the amount of Eighty Eight Thousand and Thirty Five and 45/100 Dollars (\$88,035.45), plus the plaintiff's taxable court costs with interest thereon at the judgment rate of nine percent annually from September 22, 1999 until paid.

The only matter remaining before the Court is the plaintiff's application for attorneys' fees pursuant to 42 U.S.C. § 1988. This matter shall be retained on the docket for further proceedings in regard to such application.

The Court directs the Clerk of this Court to forward certified copies of this Order to counsel of record for the parties.

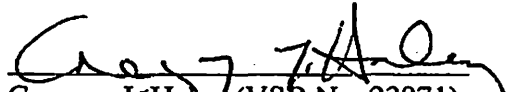
IT IS SO ORDERED.

ENTER this 28th day of January 2000.



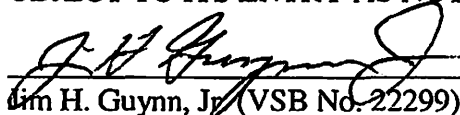
Duane E. Mink, Circuit Court Judge

WE HAVE SEEN THIS ORDER AND
CONSENT TO ITS ENTRY WITH THE
OBJECTION NOTED:



Gregory J. Haley (VSB No. 23971)
GENTRY LOCKE RAKES & MOORE
800 Crestar Plaza
P.O. Box 40013
Roanoke, Virginia 24022-0013
Phone: 540-983-9368
Facsimile 540-983-9468
Counsel for Plaintiff

WE HAVE SEEN THIS ORDER AND
OBJECT TO ITS ENTRY AS NOTED:



Jim H. Guynn, Jr. (VSB No. 22299)
GUYNN & DILLON, P.C.
1215 Corporate Circle, Suite 201
Roanoke, VA 24018
Phone: 540-772-2320
Counsel for Defendants

TWENTY-SEVENTH JUDICIAL CIRCUIT
OF VIRGINIA



DUANE E. MINK, JUDGE
MUNICIPAL BUILDING
819 SECOND STREET
RADFORD, VIRGINIA 24141
TELEPHONE (540) 731-3811
FACSIMILE (540) 731-5044

CIRCUIT COURT FOR THE COUNTIES OF:
BLAND, CARROLL, FLOYD, GILES,
GRAYSON, MONTGOMERY, PULASKI AND WYTHE
CIRCUIT COURT FOR THE CITIES OF:
GALAX AND RADFORD

COMMONWEALTH OF VIRGINIA

February 16, 2000

Mr. Gregory J. Haley
Gentry, Locke, Rakes & Moore
Attorneys at Law
P. O. Box 40013
Roanoke, Virginia 24038-9913

Mr. Jim H. Guynn, Jr.
Attorney at Law
1215 Corporate Circle, Suite 201
Roanoke, Virginia 24018

Re: D. Chad Wines v. Board of Supervisors of Giles County

Dear Mr. Haley and Mr. Guynn:

Please be advised that I have given due consideration to the plaintiff's request for attorney's fees and expenses incurred as a result of the above referenced litigation. Likewise, I have given due consideration to the memorandum submitted and oral arguments of counsel with regard thereto.

It is uncontested that a prevailing party in a 42 U.S.C., Section 1983, Civil Rights may, in the discretion of the trial court be entitled to reasonable attorney's fees and costs expended in connection with such action. The Court is of the opinion that in view of the complexity of the issues involved in the trial of this case, that it would be an abuse of discretion if counsel fees and costs were not awarded to the plaintiff in this action.

In order to assess the reasonableness of the request I have reviewed the same in light of the opinion rendered by The Honorable Clifford R. Weckstein, Judge of the Circuit Court of the City of Roanoke, in the case of Teresa A. Mullins versus Virginia Lutheran Homes, Incorporated, wherein Judge Weckstein found that a requested fee at the hourly rate of \$175.00 was an appropriate rate for services rendered in connection with that proceeding. Those services were rendered over an extended period of time resulting in

Mr. Gregory L. Haley
Mr. Jim H. Guynn, Jr.
Page 2
February 16, 2000

the opinion written by Judge Weckstein December 8, 1997. I have also given due consideration to the 12 factors enumerated by the plaintiff in his brief, relying upon the factors enumerated in Johnson versus Georgia Highway Express, 488 Fed.2d, 714 (Fifth Circuit) (1974), and relied upon in Cook v. Andrews, 7 F.2d 733 and 735 (EDVA) (1998). The Court is of the opinion that due to the nature of the case, and the lack of Virginia State Court precedent on the issues raised by the parties in the prosecution and defense thereof, that the time and the effort required to be expended was over and above the time and effort that one would ordinarily expend in cases that are routinely tried before the state courts in this area. In fact, both of the trial attorneys were from the Roanoke area as opposed to being members of the local bar. The expertise required to try these proceedings required a certain degree of specialization not ordinarily pursued by the members of the local bar. The Court considers the opinion of Judge Weckstein to be most persuasive and agrees with his conclusion that the sum of \$175.00 per hour is a reasonable fee for lead counsel in such cases.

In reviewing the itemized bill submitted on behalf of Mr. Haley, it appears that these services were rendered over an extended period of time beginning in 1996. The fees requested for 1999 reflects an hourly rate of \$175.00 on behalf of Mr. Haley, for the year 1998 \$160.00 per hour, 1997 \$150.00 per hour, and 1996 \$140.00 an hour. I find that those fees are reasonable and that the hours expended are sufficiently documented. There has been some question with regard to the reasonableness of other fees reflecting conferences with senior members of the firm, but the Court finds that that approach to evaluating one's position on legal issues and trial tactics is customary in the profession and lends to better preparation and overall representation of a client's interest. Likewise, lesser fees charged on behalf of associate attorneys for research and preparation are reasonable and sufficiently documented for approval.

Accordingly, the Court will approve the bill as submitted on behalf of the plaintiff in this action. Legal fees prior to trial in the sum of \$35,369.50, together with supplemental fees of \$5,806.25. The documentation of the request for expenses and costs incurred was reviewed and those item are approved.

I request that Mr. Haley prepare an appropriate order in accordance with the Court's ruling and forward the same for endorsement by Mr. Guynn.

Mr. Gregory L. Haley
Mr. Jim H. Guynn, Jr.
Page 3
February 16, 2000

With best regards.

Yours very truly,


Duane E. Mink

DEM:nc

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF GILES

D. CHAD WINES,

Plaintiff,

v.

Law No.: 7536

COUNTY OF GILES, VIRGINIA,

BOARD OF SUPERVISORS OF
GILES COUNTY, VIRGINIA,

and

W. P. FREEMAN,
BARBARA M. HOBBS,
LARRY JAY WILLIAMS,
LARRY A. BLANKENSHIP,
R. W. WILLIAMS,

Defendants.

FINAL JUDGMENT ORDER

The plaintiff, by counsel, filed his Verified Application for Attorneys' Fees and Expenses through trial with supporting Exhibits and a Memorandum on October 4, 1999. The plaintiff filed his Supplemental Verified Application for Attorneys' Fees and Expenses on January 4, 2000. The parties appeared before this Court by counsel on February 3, 2000, and presented argument on the pending applications for attorneys' fees and expenses.

Upon consideration of the plaintiff's applications and supporting materials and the arguments of counsel, this Court hereby GRANTS and APPROVES the Plaintiff's Verified Application for Attorneys' Fees and Expenses and the Plaintiff's Supplemental Verified Application for Attorneys' Fees and Expenses as submitted by the plaintiff. The reasons for this

ruling are stated in the letter opinion of this Court dated February 16, 2000 and incorporated by reference as part of this Order. The objection of the defendants to this Order is noted.

In accordance with the rulings stated above and the Order Affirming Jury Verdict entered January 28, 2000, the Court hereby ENTERS judgment in this action in favor of the plaintiff and hereby ORDERS and ADJUDGES that the plaintiff recover and have judgment against the defendants County of Giles, Virginia and the Board of Supervisors of Giles County, Virginia in the amount of Eighty Eight Thousand and Thirty Five Dollars and Forty Five Cents (\$88,035.45) plus the plaintiff's taxable court costs with interest thereon at the judgment rate of 9% annually from September 22, 1999 until paid; and that the plaintiff shall further recover and have judgment against the defendants County of Giles, Virginia and the Board of Supervisors of Giles County, Virginia in the amount of Forty Five Thousand Five Hundred Twenty Four Dollars and Fifty Four Cents (\$45,524.54) with interest thereon at the judgment rate of 9% annually from the date of this Order until paid.


The Court DIRECTS and ORDERS that the Clerk of this Court docket the judgment herein rendered on the Judgment Lien Docket of this Court.

The Court DIRECTS the Clerk of this Court to forward certified copies of this Order to counsel of record for the parties.

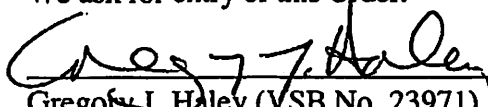
There being nothing left to be done in this action, the matter is hereby STRICKEN from the docket of this Court.

IT IS SO ORDERED:

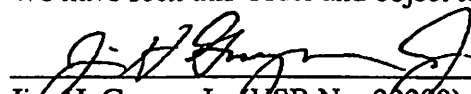
ENTER this 7th day of March, 2000.


Duane E. Mink, Circuit Court Judge

We ask for entry of this Order:


Gregory I. Haley (VSB No. 23971)
GENTRY LOCKE RAKES & MOORE
800 Crestar Plaza
P.O. Box 40013
Roanoke, Virginia 24022-0013
Phone: 540-983-9368
Facsimile 540-983-9468
Counsel for Plaintiff

We have seen this Order and object to its entry as noted: *for the reasons stated at the Feb 3 hearing*


Jim H. Guynn, Jr. (VSB No. 22299)
GUYNN & DILLON, P.C.
1215 Corporate Circle, Suite 201
Roanoke, VA 24018
Phone: 540-772-2320
Counsel for Defendants

ASSIGNMENTS OF ERROR

1. THE TRIAL COURT ERRED IN DENYING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT ON THE GROUNDS THAT WINES WAS AN AT-WILL EMPLOYEE.
2. THE TRIAL COURT ERRED IN DENTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT ON THE GROUNDS THAT WINES DID NOT HAVE A PROPERTY INTEREST IN HIS EMPLOYMENT WITH GILES COUNTY.
3. THE TRIAL COURT ERRED IN OVERRULING DEFENDANTS' OBJECTION TO ADMISSION OF EVIDENCE REGARDING THE FIRST TERMINATION OF WINES' EMPLOYMENT.
4. THE TRIAL COURT ERRED IN DENYING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT ON THE GROUNDS THAT WINES RECEIVED DUE PROCESS FROM DEFENDANTS.

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1.

VIRGINIA: IN THE CIRCUIT COURT OF GILES COUNTY

D. CHAD WINES,

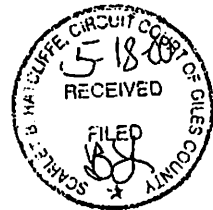
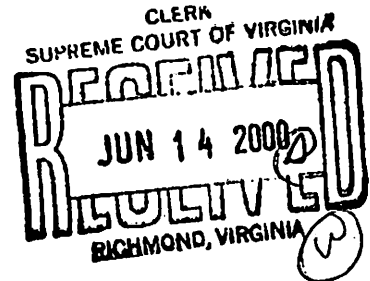
Plaintiff,

vs.

**COUNTY OF GILES, VIRGINIA,
BOARD OF SUPERVISORS OF GILES
COUNTY, VIRGINIA,
and W. P. FREEMAN, BARBARA
M. HOBBS, LARRY JAY WILLIAMS,
LARRY A. BLANKENSHIP,
and R. W. WILLIAMS,**

Defendants.

AT LAW 7536



TRIAL BY JURY

Pearisburg, Virginia

September 21 and 22, 1999

ORIGINAL

**BLUE RIDGE COURT REPORTING, INC.
P. O. BOX 251
GALAX, VIRGINIA 24333-0251
(540) 236-9426**

VIRGINIA: IN THE CIRCUIT COURT OF GILES COUNTY

D. CHAD WINES,

AT LAW 7536

Plaintiff,

vs.

**COUNTY OF GILES, VIRGINIA,
BOARD OF SUPERVISORS OF GILES
COUNTY, VIRGINIA,
and W. P. FREEMAN, BARBARA
M. HOBBS, LARRY JAY WILLIAMS,
LARRY A. BLANKENSHIP,
and R. W. WILLIAMS,**

Defendants.

Report of all the testimony, together with the motions, objections, and exceptions on the part of the respective parties, the action of the Court in respect thereto and other incidents of the trial by jury held in the case of D. Chad Wines, Plaintiff, vs. County of Giles, Virginia, Board of Supervisors of Giles County, Virginia, and W. P. Freeman, Barbara M. Hobbs, Larry Jay Williams, Larry A. Blankenship and R. W. Williams, Defendant, tried at the Giles County Courthouse, Pearisburg, Virginia, on the 21st and 22nd days of September, 1999, before the Honorable Duane E. Mink, Judge of the Circuit Court of Giles County, Virginia.

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1 A. Well, the Board had made a decision
2 that the position should be filled and so steps were taken
3 to advertise that position; first of all, to develop the
4 description, job description; advertise the position.

5 It was advertised in area newspapers after which
6 applicants sent in their resumes, any information they had
7 about themselves, references and so forth.

8 That information was then reviewed. Usually I
9 would take a look at it. Board members also looked at and
10 sometimes other individuals would and we would generally
11 select the top candidates.

12 Q. Mrs. Tuckwiller, I may interrupt you
13 and it and it's just to, so we can keep you on track a
14 little bit and I apologize. I'm not trying to be rude.

15 When the County hired a new Castle Rock manager
16 in March, 1994, was there an interview process?

17 A. Yes. There was.

18 Q. O. K. And how many candidates were
19 interviewed?

20 A. I don't recall the exact number, but
21 there were several that were interviewed at the time.

22 Q. And was there a leading candidate?

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1 A. Yes.

2 Q. Did you discuss with that candidate
3 about taking the job?

4 A. Well, we discussed about recommending
5 that candidate to the Board of Supervisors.

6 Q. Would you tell ...

7 A. For the position.

8 Q. Would you tell us what happened?

9 A. In terms of who was recommended or ...

10 Q. Yeah. Who was recommended and what
11 happened to that candidate?

12 A. Mr. Wines was recommended for the
13 position. He then attended a subsequent Board meeting and
14 the Board approved his hiring.

15 Q. O. K. Was there another serious
16 candidate at the time, too?

17 A. There was another candidate who
18 emerged near the top, but when he found out more about
19 what the position entailed, he really decided that it was
20 not suitable for him.

21 Q. Of the candidates that were available
22 who felt the position was suitable for them, who was your

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1 best candidate?

2 A. The best candidate from the pool was
3 Mr. Wines.

4 Q. What were Mr. Wines' duties at Castle
5 Rock?

6 A. His responsibilities primarily were to
7 manage the facility, to guide and direct all the efforts
8 there, to make improvements, to see that it ran
9 efficiently and effectively.

10 Q. What were your duties as County
11 Administrator with respect to Castle Rock, not the whole
12 County?

13 A. My responsibilities were to work with
14 the individuals who were responsible for all aspects of
15 the County operation and to make sure that they were doing
16 their jobs effectively.

17 Q. Do you know how Mr. Wines found out
18 that the job was open?

19 A. My husband had sent him a copy of the
20 advertisement.

21 Q. Had you ever met Mr. Wines?

22 A. No. I had not.



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1 manner.

2 Q. Would you, could you describe his
3 attitude and whether he was energetic and things like that
4 for the job?

5 A. Yes. He was, he was energetic. He
6 always had a positive attitude. He was always looking for
7 ways to make improvements and to try to make the facility
8 better and there were some improvements that were made
9 during that time that we felt did make the facility
10 better.

11 Q. Did he work under, how frequently did
12 you have contact with him?

13 A. Well, I had contact with him at
14 regular staff meetings. Often times, he would call. I
15 also had individual meetings. Sometimes I would go there
16 and sometimes he would come to my office. So it was on a
17 regular basis.

18 Q. Did Mr. Wines' responsibilities at
19 Castle Rock include the supervision of employees?

20 A. Yes.

21 Q. Did he ever consult with you about how
22 to go about doing that?

BLUE RIDGE COURT REPORTING, INC.

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1 A. Yes.

2 Q. Could you describe for the jury some
3 of the improvements that you can, you know, that you can
4 recall that Mr. Wines, you know, the physical
5 improvements, actual buildings and things like that that
6 were done while he was there?

7 A. Well, during the time that he was
8 there, there was a new building that was completed to
9 house the shop supplies, different things like that where
10 people would actually check in, register to play golf or
11 to book the facility, whatever. It had some office space
12 in it, too.

13 There were also pool improvements that were
14 made, a new pool filtration system.

15 Also some painting, some work to the greens,
16 paving of the cart paths, there were numerous facility
17 improvements that were made.

18 Q. Was there a computer system put in?

19 A. Yes. There was a computer, an effort
20 made to computerize the sales there to make that more
21 manageable.

22 Q. How was all that stuff paid for?



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J. Tuckwiller - Direct Examination by Mr. Haley

64

1 eighty-seven cents (\$22,539.87) to twenty-five thousand
2 two hundred sixty-eight dollars (\$25,268.00) effective
3 this month."

4 Q. Who was responsible for approving that
5 raise?

6 A. The Board.

7 Q. The Board of Supervisors?

8 A. Board of Supervisors. Uh-huh.

9 Q. Were raises for employees at Mr.
10 Wines' level, were they considered individually or as a
11 group?

12 A. I guess it was sort of a combination.
13 At the, the budgeting process really involved looking at
14 all departments and all employees and that was the time
15 that decisions were made concerning increases on the, on
16 the employees.

17 Q. But did the Board go through each
18 employee and say what, what amount of raise should this
19 one (1) get?

20 A. Yes.

21
22 THE COURT: Before you move on to

BLUE RIDGE COURT REPORTING, INC.

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1 something else, you want to mark that as Plain-
2 tiff's Exhibit #1?

3 MR. HALEY: Yes.

4
5 Q. Would a raise of this magnitude, from
6 twenty-two thousand five hundred dollars (\$22,500.00) to
7 twenty-five thousand two hundred dollars (\$25,200.00),
8 does that reflect in your judgment good performance or
9 poor performance?

10 A. A salary increase would reflect good
11 performance.

12 Q. Would you tell the jury why?

13 A. Based on the efforts that were made,
14 Mr. Wines was performing his responsibilities in an
15 acceptable manner and, for that reason, it was recommended
16 that the increase of this nature be, be awarded.

17 Q. Did you recommend an increase?

18 A. Yes.

19 Q. And did the Board approve your
20 recommendation?

21 A. Yes.

22 Q. Change the subject a little bit. Was



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1 Q. Did you used to serve on the Board of
2 Supervisors?

3 A. Yes.

4 Q. When did you serve on the Board?

5 A. I was there eight (8) years. I was
6 defeated four (4) years ago.

7 Q. In 1995?

8 A. Yes.

9 Q. Were you on the Board of Supervisors
10 when Mr. Chad Wines was at Castle Rock?

11 A. Yes.

12 Q. Could you explain to the jury your
13 impression of how he did his job and how you felt about
14 his performance?

15 A. Well, we had a committee to select Mr.
16 Wines. We had a committee to interview the people to be
17 the manager at Castle Rock and he was recommended to us by
18 the committee. So I voted for him to be the manager at
19 Castle Rock.

20 So, as manager, he made some changes which
21 wasn't very popular with the people over there. I don't
22 remember them all, but one (1) I do remember, something

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1 about the golf carts, you put them in a shed and you're
2 supposed to be the only one (1) to use a golf cart. If
3 you go over there to play golf, you're supposed to rent a
4 cart from Castle Rock because that's how we got our money.
5

6 So what they were doing, if they weren't going
7 to play that day, they'd just give a key to somebody else
8 and they'd go over there and use the golf cart and, of
9 course, Castle Rock didn't get any money and he instituted
10 that change and that wasn't very popular.

11 So what we had is the former manager wanted his
12 job back and so he - and he did a good job, he had
13 petitions out and the Lions Club working for him - so Chad
14 done a couple of things unpopular so you had people
15 calling one (1) night to vote for ...

16 Q. Mr. Compton?

17 A. Yeah.

18 Q. We need to speak about what you know
19 from your personal knowledge.

20 A. O. K. About ...

21 Q. Could you describe for us what was
22 your impression on how Mr. Wines did his job while you

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1 were supervising him?

2 A. He did his job to the wishes of the
3 Board of Supervisors.

4 Q. Were you satisfied with his
5 performance?

6 A. Yes.

7 Q. Was, did the Board of Supervisors
8 approve the construction of a new building?

9 A. No. We, we bought the, the County
10 had, was doing an addition down at Narrows and they had a
11 double-wide and so Jay Williams worked with them to get
12 that double-wide and so we agreed to take the double-wide
13 over to Castle Rock and remodel it.

14 Q. And I misspoke. That was sloppy
15 language on my part. So there was a relocation of a
16 modular or an existing building from one (1) location to
17 Castle Rock?

18 A. Right. We got that building at a good
19 price.

20 Q. And did you, did the County ...

21 A. In fact, I don't think we even paid
22 for it.



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B. Compton - Direct Examination by Mr. Haley

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1 a Board of Supervisors decision?

2 A. No. We decided to get the building
3 from the School Board after they abandoned it.

4 Q. Now, you indicated that the former
5 manager had petitions out. Is that something you know
6 about personally?

7 A. Yeah.

8 Q. O. K. Who's the former manager?

9 A. Mr. Hazelwood.

10 Q. O. K. Did he give a petition to you
11 seeking his job, seeking that job?

12 A. Well, they, yes, he presented a
13 petition to the Board of Supervisors. Yes. In an open
14 meeting down there.

15 Q. And when you, did Mr. Wines meet your
16 expectations as Castle Rock manager?

17 A. He did what he was instructed by the
18 Board to do.

19 Q. I have no further questions. Thank
20 you, Mr. Compton. Mr. Guynn will ask you some questions.

21
22 CROSS EXAMINATION BY MR. GUYNN:

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1 Q. How are you, Mr. Compton?

2 A. Pretty good. How are you?

3 Q. I'm fine. Thank you. When you say
4 the Board was satisfied, you're talking about the Board as
5 it was constituted prior to January of 1996?

6 A. Yes. The previous Board.

7 Q. And that would have been the Board
8 where the four (4) members were defeated in the November,
9 '95, election?

10 A. Yes.

11 Q. You indicated, I believe, that Mr.
12 Wines, that his changes were not very popular?

13 A. Some of the changes he made was not
14 popular with the golfers over there. Yes.

15 Q. And, you know, let me check my note.
16 Did you say that maybe Mr. Wines wasn't very popular with
17 the members as well?

18 A. No. I don't, I got calls one (1)
19 night for Mr. Hazelwood as manager. The next night I got
20 them for Wines, if I'd vote for Wines, they'd vote for me
21 and it just got all out of hand.

22 Q. This was a campaign issue?

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R. Martin - Direct Examination by Mr. Haley

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1 A. Well, I think the tee time was one
2 (1). There never was tee times and he established tee
3 times and I don't know what else that he, but he made some
4 other changes which was good for the course.

5 Q. O. K. And did you think those were
6 good changes or bad changes?

7 A. No. I think they was good.

8 Q. Did you have any problems with Chad
9 Wines?

10 A. No. No.

11 Q. Could you describe for the jury how
12 you felt he did his job?

13 A. Well, Chad and I was good friends and
14 I didn't know him prior to Castle Rock, but he came there
15 and I got to know him well and he was doing a good job.
16 He made mistakes, I'm sure, and he done a lot of good
17 things.

18 Q. Was he a hard worker or was he lazy?

19 A. No. He did his work.

20 Q. Did he get out, did he just let the,
21 the other employees do the hard physical labor or did he
22 go out and participate with them?

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1 A. No. I think he did some of that, too,
2 some of the hard labor.

3 Q. Did he do some physical labor with you
4 in working on the building?

5 A. Yeah.

6 Q. He would, did he, he wasn't somebody
7 that just stayed in his office all the time?

8 A. No. He, he would go with you if you
9 wanted him to go help you.

10 Q. Now, in December, 1995, when Ms.
11 Tuckwiller left, did you become Acting County
12 Administrator?

13 A. No. I don't think I became Acting
14 Administrator until sometime in November.

15 Q. O. K. November, 1995?

16 A. Yeah.

17 Q. O. K. During the time when you were
18 Acting County Administrator, were you responsible for
19 managing the affairs of the County on a day to day basis?

20 A. Yeah.

21 Q. Did any supervisor, any of the old
22 supervisors or any of the new supervisors or anybody come



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1 it. He would have questions about things and how they
2 were.

3 Q. O. K. When he came and asked you
4 questions, did you respond to them?

5 A. Oh, yes, sir.

6 Q. Did he ever say I think you should do
7 this or did he ever make suggestions on how things ought
8 to be better?

9 A. Well, he made suggestions on personnel
10 matters, but he ...

11 Q. I'll get to that in just a minute.

12 A. O. K.

13 Q. Did he ever make any suggestions about
14 changing the rules or anything like that?

15 A. No.

16 Q. Now, you said he made suggestions on
17 personnel. What were you talking about?

18 A. Well, he came to me one (1) time.
19 Well, actually, more than once, it was twice. Once was
20 with Ms. Tuckwiller and once was by myself. He had come
21 to me and told me that he thought one (1) of the employees
22 wasn't doing a very good job and he thought that we should

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1 get rid of them and replace them with someone else.

2 Q. Who was the employee he was
3 dissatisfied with?

4 A. He was dissatisfied with Mr. Andrews.

5 Q. Neal Andrews?

6 A. The superintendent, Neal Andrews, the
7 superintendent.

8 Q. And what did he suggest doing with Mr.
9 Andrews?

10 A. He suggested getting rid of him and
11 replacing him with another person.

12 Q. Who did he want to replace him with?

13 A. Mr. Hazelwood.

14 Q. How did you respond to Mr. Williams'
15 suggestion that you fire Mr. Andrews and replace him with
16 Mr. Hazelwood?

17 A. Well, when you have someone that's
18 doing a good job and working as hard as Neal was, you
19 don't, you don't knock someone down. You know, they're
20 being successful. They're doing a great service to their
21 organization.

22 He was a hard worker and he worked a lot to make



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Exhibit #6.

MR. HALEY: #6, Your Honor?

THE COURT: Yes.

PLAINTIFF'S EXHIBIT #6, the Giles County
Personnel Policy manual amended November 8, 1989, is
received and filed as a part of the Court record in this
case.

Q. I'd ask that you turn to the very
first page, Mr. Wines. Under the Applicability of Rules
section ...

A. Yes, sir.

Q. Would you read us the first paragraph
slowly and clearly?

A. O. K. "The rules herein established
shall apply to appointed paid employees of the Board of
Supervisors of Giles County except for temporary or
unclassified employees as defined herein. These rules and
policies shall specifically not apply to elected
officials, members of citizen boards, committees,
commissions or authorities, nor to any other personnel

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1 appointed to serve without monetary compensation."

2 Q. Were you an appointed paid employee of
3 Giles County?

4 A. Yes, sir.

5 Q. O. K. Were you a temporary or
6 unclassified employee?

7 A. No, sir.

8 Q. And were you, were you in any of those
9 categories that were specifically taken out of the policy
10 - elected officials, members of citizen boards,
11 committees, those kinds of things?

12 A. No, sir.

13 Q. If you would, flip forward a couple of
14 pages to the page that's numbered #1 in the right hand
15 corner. I direct your attention to Section 1-1 which is
16 entitled *Establishment and Purpose of the Personnel Rules*.

17 Could you read that first sentence slowly and
18 clearly for us?

19 A. O. K. "The rules are adopted for the
20 purpose of establishing a uniform and equitable system of
21 personnel administration to govern the appointment,
22 classification, pay, work periods, leaves of absence,

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1 discipline, separation and grievance procedures of the
2 employees of the Board of Supervisors of Giles County and
3 other county offices that agree to participate."

4 Q. Were you an employee of the Board of
5 Supervisors of Giles County?

6 A. Yes, sir.

7 Q. Did you understand that this policy
8 governed the appointment, classification, pay, work,
9 discipline and separation of employment?

10 A. Yes, sir.

11 Q. If you would, turn to Section 5-9 on
12 Page #8 in the right hand corner.

13 A. O. K.

14 Q. Would you read the first sentence of
15 Section 5-9, *Compensatory Time*?

16 A. O. K. "On occasions when emergencies
17 require irregular or unscheduled overtime work for
18 salaried employees, compensatory time may be allowed on
19 the basis of one and one-half (1½) hours time off earned
20 for one (1) hour of overtime worked."

21 Q. O. K. Stop right there. Were you a
22 salaried employee?

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1 A. Yes, sir.

2 Q. Would you, would you read the first
3 sentence of the next paragraph, beginning "Upon the
4 termination"?

5 A. "Upon the termination of employment,
6 the employee shall be paid for all accrued compensatory
7 time, compensatory leave at the rate of pay at the time of
8 termination."

9 Q. O. K. You can stop there.

10 A. O. K.

11 Q. When you left Giles County, did they
12 pay you the compensatory time that you had reported in
13 your time sheets?

14 A. No, sir.

15 Q. And you are a salaried employee?

16 A. Yes, sir.

17 Q. If you would, turn to Article VII, 7-1
18 on Page #11, I'm sorry, on Page #12. Under this personnel
19 policy, how much vacation time did you accrue?

20 A. Well, you can earn, one (1) to five
21 (5) years, you can earn one (1) work day per full month.

22 Q. O. K. Would you read that first



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C. Wines - Direct Examination by Mr. Haley

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1 A. No, sir. Not at all.

2 Q. Mr. Wines, you can put that aside. At
3 the time when you left Castle Rock, were there more
4 members or fewer members than the time when you got there?

5 A. More members.

6 Q. Were the improvements which we've been
7 discussing about essentially complete?

8 A. Yes, sir.

9 Q. I want to ask you some questions now
10 about how you were fired.

11 Could you tell us, were you at work on the
12 afternoon of January 2nd, 1996?

13 A. Yes, sir.

14 Q. Tell the jury what happened while you
15 were at work.

16 A. January 2nd, I was at work working on
17 some paperwork or something and I received a phone call
18 and that phone call ...

19 Q. Who was the phone call from?

20 A. The phone call was from Mr. Mullins.

21 Q. Mr. Butch Mullins?

22 A. Mr. Butch Mullins. Yes, sir.

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1 Q. What did he tell you?

2 A. Well, he, he told me I needed to come
3 to a meeting, a Board meeting that the new supervisors
4 were having, but what I couldn't understand is why he was
5 calling me because I didn't know who, I mean, I knew Mr.
6 Mullins, but I didn't know why he was calling me.

7 Q. And what, what did he tell you to do?

8 A. He told, he told me that the
9 supervisors wanted me at a meeting and so I asked him, I
10 said do I need to give a report because at other Board
11 meetings I'd given reports and statements and progress
12 notes.

13 I said do I need to bring a report, do I need to
14 bring statements, do I need to bring anything with me when
15 I come, you know, to, to give a presentation to the Board
16 and he said no, just come, just come to the meeting.

17 And it was late afternoon when I got the phone
18 call, about an hour before the meeting was to start.

19 Q. Just give me a moment, Mr. Wines.

20 A. I'm sorry.

21 Q. Mr. Wines, did you go to that meeting
22 that night?

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1 A. Yes, sir.

2 Q. Where was that meeting held?

3 A. In this, in this room.

4 Q. In this room?

5 A. Yes, sir.

6 Q. How many people were here?

7 A. Packed, I mean, I'd say about the
8 eighth or ninth row back there. It was full.

9 Q. Tell us what happened.

10 A. Well, I came in. I wasn't, I mean,
11 there was no direction. I just came in and sat down. The
12 meeting was proceeding. I listened.

13 There were some people given jobs or sworn in or
14 whatever and it progressed and there were some motions
15 made regarding employees, part-time employees, dismissal
16 of them and then there was a motion made.

17 Q. O. K. What was the nature of the
18 motion?

19 A. The motion was raised by Mr. Jay
20 Williams and in that motion he stated that he, his motion
21 was I move to advertise, well, his motion was I move to
22 have Mr. Wines removed as manager of Castle Rock Golf and

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1 Recreation effective immediately.

2 Q. Who seconded the motion?

3 A. There was another, Mr. Robert
4 Williams.

5 Q. O. K. Was there any discussion that
6 followed?

7 A. There was a vote. There was no
8 discussion.

9 Q. And what was the vote?

10 A. I guess when motions are made, they're
11 seconded and then they're voted upon and this was done
12 immediately. It was voted 5 to nothing and effective, I
13 was jobless.

14 Q. And did the Board before they voted
15 discuss it at all, say anything?

16 A. No. There was one (1) statement, one
17 (1) statement made by Mr. Williams and wham bam, it was
18 over.

19 Q. O. K. Prior to being, was that your
20 firing as far as you knew?

21 A. As far as I knew.

22 Q. O. K. Prior to being fired on January

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1 2nd, 1996, did you receive any notice that it was proposed
2 that you would be fired?

3 A. None whatsoever. I mean, I came here
4 to give a report or do whatever they asked of me.

5 Q. Was any reason given to you as why you
6 had been fired?

7 A. None. I even sat back there and
8 waited to see if they were going to talk to me and tell me
9 what had just happened.

10 Q. And what was your reaction?

11 A. I was, I was sick to my stomach
12 because, first of all, I came to a meeting where I thought
13 there should be a presentation. They, in a public forum,
14 they humiliated me and told me I was fired with no reason
15 or explanation.

16 Q. Did you go to Castle Rock the next
17 day?

18 A. Yes, sir.

19 Q. And what, why did you go?

20 A. Well, I mean, first of all, I had
21 worked with a lot of people out there for a long time.
22 Well, it seemed like a long time. They were my employees

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1 and I owed it to them to tell them what had happened.

2 I, you know, I had to go over there. I had to
3 straighten things up. You know, we were in the middle of
4 our quarter billing process. It was supposed to go out
5 that next day.

6 Those employees didn't know what was coming.
7 They didn't know that they were going to be jobless also.
8 All the part-time people were going to be gone and so I
9 had to go tell them that. I felt I owed them that just
10 because they had given me good service over the year.

11 I wanted to straighten it up. I wanted to make
12 sure that they knew that we were going to, that I was
13 leaving. I wanted to tell them that I was no longer
14 employed by the County, that they were going to have to be
15 responsible for stuff.

16 I couldn't leave county business unattended to
17 without, you know, without going over there plus I had to
18 get my stuff out of my desk.

19 Q. While you were there, did Mr. Mullins
20 come in?

21 A. Yes. After I had talked to the
22 employees, it was about an hour or so later or two (2)

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1 that he showed up. Yes, sir.

2 Q. O. K. And did you know he was coming?

3 A. No. I didn't have any idea he was
4 coming.

5 Q. Did you, did you talk to him?

6 A. After he, I was in the office. He
7 spoke to some of the employees and then he was outside my
8 door and was talking to Mrs. Lusk and I walked out there
9 and asked him if I could speak to him privately.

10 Q. What did you ask him?

11 A. I said Mr. Mullins, could I speak to
12 you and he said yes, he said I'm kind of busy, but I'll
13 give you a couple of minutes and we went into my office
14 and we sat down and I said Mr. Mullins, I said I'm not
15 really sure what happened last night.

16 He went on to say that well, you understand that
17 you were dismissed last night at the meeting and I said
18 well, yes, sir, but, I said is there, can you offer me an
19 explanation of why I was dismissed. I mean, I had no clue
20 what had happened.

21 Q. When you asked him for an explanation
22 or a reason for why you had been fired, what did he tell

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1 you?

2 A. Well, he, he went on to state that
3 things had happened in the County that weren't my fault.
4 He said there were personality, personality conflicts and
5 I just happened to be a casualty of poor judgments and
6 these personality conflicts within the County and
7 supervisors.

8 Q. Did, did he refer to the new building?

9 A. Oh, yeah. He, he referred to that and
10 the fact that we had spent a lot of money on that and that
11 the old Board, you know, chose to put that building up
12 there.

13 You know, it was out of my control, but because
14 they had spent money, that it was, that I was getting the
15 blame for it and that's why I was a casualty of this
16 process.

17 Q. O. K. Did you talk about grievances
18 with Mr. Mullins?

19 A. Yeah. Near the end. After we talked
20 and he told me the so-called reasons why, you know, I'm
21 not working any more, I, I verbally communicated to him
22 that I didn't feel that was an acceptable reason and that

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1 I would file, I would probably file a grievance in that
2 regard.

3 Q. What did he, what did he say when you
4 told him you were going to file a grievance?

5 A. He said that that was fine and that I
6 could do what I had to do, that that was an option
7 available to me and that I could go to his office and his
8 secretary and pick up a copy of that grievance, I mean,
9 the personnel policy which, you know, highlighted or
10 outlined the process of this procedure.

11 Q. So did he specifically direct you to
12 the personnel policy?

13 A. Oh, yes, sir. Yeah.

14 Q. Did you file a grievance?

15 A. Yes. I did.

16 Q. Mr. Wines, I've handed you a document
17 which is dated January 10th, 1996. Is that your signature
18 on there?

19 A. Yes, sir.

20 Q. Is that the grievance you filed?

21 A. Yes, sir.
22

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1 MR. HALEY: Your Honor, we ask that it
2 be admitted.

3 MR. GUYNN: No objection.

4 THE COURT: With no objection, it will
5 be Exhibit #6.

6 COURT REPORTER: #7.

7 THE COURT: Excuse me. #7.

8
9 PLAINTIFF'S EXHIBIT #7, the letter grievance
10 filed with Giles County on behalf of D. Chad Wines, dated
11 January 10, 1996, is received and filed as a part of the
12 Court record in this case.

13
14 Q. Who did you file this with?

15 A. Mr. Mullins.

16 Q. And would you read the first two (2)
17 paragraphs please?

18 A. "Dear Mr. Mullins: This is my written
19 notice in regards to the Giles County personnel policy.
20 In this letter, I am formally filing a written grievance
21 concerning my dismissal of an employee of the County of
22 Giles, Giles County.



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C. Wines - Direct Examination by Mr. Haley

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1 they're ready to come back.

2

3 **THE JURY RETURNS TO THE COURTROOM**

4

5 **THE COURT:** You may proceed with your
6 examination.

7

8 Q. Mr. Wines, with reference to the
9 January 18th letter, did you instruct your lawyer, me, to
10 send a letter complaining about the process and the
11 procedures and the absence of procedures that they
12 require?

13 A. Yes, sir.

14 Q. And did that letter actually get sent?

15 A. Yes, sir.

16 Q. Did the County respond to the letter?

17 A. Yes, sir.

18 Q. O. K. Do you know when it was?

19 A. Right after it was received.

20 Q. Mr. Wines, did you receive a copy of a
21 letter that was signed by Mr. Chidester, the County
22 Attorney, and Mr. Mullins, the County Administrator?

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1 A. Yes, sir.

2 Q. What was the date of that letter?

3 A. January 19th, 1996.

4

5 MR. HALEY: Your Honor, we'd move that
6 it be admitted.

7 THE COURT: Any objections?

8 MR. GUYNN: No, sir.

9

10 Q. O. K. If you would read to the jury

11 ...

12

13 THE COURT: Excuse me. Let me number
14 it.

15 MR. HALEY: I'm sorry.

16 THE COURT: It will be numbered
17 Exhibit #8.

18 MR. HALEY: I'm sorry, Your Honor.

19 THE COURT: No problem.

20 MR. HALEY: Thank you.

21

22 PLAINTIFF'S EXHIBIT #8, a letter to Gregory J.

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1 Haley regarding D. Chad Wines, dated January 19, 1996,
2 signed by Richard D. Chidester, Giles County Attorney, and
3 Roger C. Mullins, Interim County Administrator, is
4 received and filed as a part of the Court record in this
5 case.

6
7 Q. Could you read for the jury the first
8 three (3) paragraphs?

9 A. O. K. "Thank you for your letter of
10 January 18, 1996, regarding Mr. Wines. This matter was
11 brought to the attention of the Board of Supervisors at
12 their meeting last evening.

13 "At that meeting, the Giles County Board of
14 Supervisors voted to reinstate Mr. Wines with full pay and
15 benefits retroactive to January 2, 1996, the date of his
16 prior termination.

17 "The Board also voted to terminate Mr. Wines'
18 employment with the County effective January 26, 1996, for
19 the following reasons."

20 Q. And we'll get to the other stuff in a
21 minute. If you would, go to the next page.

22 A. All right.

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1 Q. If you would, read the second
2 paragraph on the next page.

3 A. "Mr. Wines may also avail himself of
4 the grievance procedure adopted as part of the Giles
5 County personnel policy if he so, if he so desires. I
6 believe that he had initiated a grievance due to his first
7 termination which we now deem moot since he had been
8 reinstated with back pay and benefits."

9 Q. Pursuant to this letter, were you
10 allowed to return back to work?

11 A. No, sir.

12 Q. O. K. Were you specifically
13 instructed not to return back to work?

14 A. Not to return to the premises.

15 Q. O. K. Did you have your lawyer send a
16 response to that letter?

17 A. Yes, sir.

18 Q. And did that response happen January
19 25th?

20 A. Yes, sir.

21 Q. In that response, did you accept or
22 protest the process that the County was proposing?

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1 A. I didn't accept it. I protested it.

2 Q. What was the basis of your protest?

3 What did you tell the County in the letter from the lawyer
4 to the County's lawyer?

5 A. Basically that what you've done was
6 unfair. You didn't follow procedure and it was, it was
7 false accusations, I guess.

8 Q. Did you advise, did the letter to the
9 County specifically advise the County that it was your
10 belief that their actions were a sham and a pretext and
11 not meaningful?

12 A. Most definitely a sham. Yes.

13 Q. Was that specifically stated in the
14 letter?

15 A. Yes, sir.

16 Q. Did you list for the County Admini-
17 strator's benefit the achievements you'd accomplished
18 while at Castle Rock in that January 25th letter?

19 A. I believe I did.

20 Q. Did you, did you have a meeting with
21 the County Administrator on January 26th?

22 A. Yes, sir.

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1 Q. Who was at that meeting?

2 A. Well, who was there - when I arrived
3 for the meeting, I figured it would be me and my attorney,
4 which is you; the County Attorney, Mr. Chidester; and
5 Mr. Mullins. We were there, but there was another person
6 there also.

7 Q. Who was there?

8 A. Mr. Jay Williams.

9 Q. Do you know why he was there?

10 A. No. Not at all.

11 Q. Did he participate?

12 A. He was there. I don't ...

13 Q. Did he say anything?

14 A. Not that I recall. Not a word.

15 Q. He just sat at the table ...

16 A. He just sat there and passed papers
17 around.

18 Q. O. K. Was he just sitting at the same
19 table?

20 A. Yes, sir.

21 Q. Describe that meeting to the jury.

22 A. Well, that meeting was supposed to be

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1 an opportunity for me to explain why I felt things were
2 unfair and to answer their so-called charges. I was
3 afforded the opportunity. It was very, I guess, the
4 organization was kind of unsettling, but it allowed me to
5 answer the charges that they had presented for my reason
6 for my second dismissal after the fact of the first
7 dismissal.

8 Q. Did you address each and every
9 accusation that Mr. Mullins had made?

10 A. I address every one (1) - every, #1
11 through how many they piled up or whatever.

12 Q. Describe Mr. Mullins' conduct. What
13 did he say?

14 A. He just kind of sat back, listened and
15 didn't offer much.

16 Q. Did he ask any questions?

17 A. No.

18 Q. Did he indicate any additional
19 information was necessary?

20 A. No.

21 Q. Did he respond at all?

22 A. No. He, I, I answered the accusations

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1 and it was really different. No. No response whatsoever.

2 Q. After that meeting on January 26th,
3 did he ever request any additional information from you?

4 A. Not to my knowledge.

5 Q. To your knowledge, did he do any
6 investigation at all?

7 A. No.

8 Q. I'd like to talk about some of the
9 things that are in this accusation letter for a moment.

10 The first accusation is that you failed "to
11 follow the directive of the Board of Supervisors that
12 Castle Rock Recreation Area employees not be allowed to
13 work overtime or accumulate compensatory time for hours
14 worked in excess of forty (40) hours per week".

15 Is that an accurate accusation?

16 A. No. It's very general because, as
17 we've, well, as has been discussed, I wasn't ever, I never
18 received a directive that employees couldn't work over
19 forty (40).

20 As has been stated, we're a seasonal facility
21 and, as I stated, certain things arose, whether it be non-
22 emergency, emergency, course care involved that you had to

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1 work extra to get the job done. There was just no way
2 around it. That's part of a seasonal facility.

3 Q. Was your boss, the County
4 Administrator, aware that employees were earning
5 compensatory time?

6 A. Yes, sir.

7 Q. Were they were aware that they working
8 overtime hours?

9 A. Yes.

10 Q. And were the Board of Supervisors
11 aware of that?

12 A. Of course. Because they were, they
13 paid them. They knew.

14 Q. Have you ever been told you are not to
15 allow any accumulation of compensatory time?

16 A. No. Not at all.

17 Q. O. K. Did you ever receive a policy
18 directive consistent with, with the accusation in
19 Paragraph #1?

20 A. No.

21 Q. O. K. Did you tell Mr. Mullins all
22 that?

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1 A. Yes. Oh, yes. Yes. I told him that
2 there was no directive. Because of situations that the
3 employees worked and it was a non-deviated process.

4 Q. Were you ever warned that you had
5 taken too long, I mean, that, were you ever warned that
6 too much compensation time was being accumulated and you
7 could be fired if you allowed it to continue?

8 A. No. Because, no, and whatever time
9 had been earned before me was reduced, but reduced in
10 necessity because when I got there, I had a handle on it.

11 Q. And #2 says "use of the County
12 telephone to make personal long distance telephone calls
13 without reimbursing the County for such calls". Could you
14 describe to the jury the procedure that was in place when
15 you arrived and was in place for the first year or so
16 while you were there?

17 A. When I got here, the County had a
18 policy of if you make calls, you check off your calls, you
19 pay for them. They give you a list if you had other
20 things. It come from the bookkeeper, Mrs. Sarver, or
21 whatever and I would pay her. I would write, either check
22 or cash. I'd pay that either to AT&T or the County or

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1 give it to her for reimbursement.

2 Q. And where did phone bills come?

3 A. Originally, for the first close to
4 thirteen (13) months, they came to Castle Rock. Then they
5 just stopped coming and they weren't there.

6 Q. During the thirteen (13) months the
7 phone bills came to Castle Rock, did you routinely check
8 off and pay for personal calls?

9 A. Yeah. Yes, sir.

10 Q. Did the procedure change?

11 A. Did the procedure change?

12 Q. Yes. Where the bills weren't coming
13 ...

14 A. Yes. Once the bills stopped coming.
15 Yes.

16 Q. How, how did it change?

17 A. Well, when the bills stopped coming,
18 you know, it, it just happened and there wasn't no more
19 reimbursement. Well, there was reimbursement for faxes,
20 but I don't think there was anything else.

21 Q. O. K. Did the bills continue to come
22 to Castle Rock?

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1 A. No. The bills stopped coming and I
2 had no idea where they were going.

3 Q. Did you make some personal phone
4 calls?

5 A. Yes, sir.

6 Q. O. K. Did you reimburse the County?

7 A. I offered to reimburse the County.

8 Q. O. K. I mean, but during, during that
9 five (5) or six (6) months when the bills were going to
10 the County Administrator's office ...

11 A. Oh, no, sir. No.

12 Q. Did you reimburse the County?

13 A. No, sir.

14 Q. Why not?

15 A. Basically I didn't think about it
16 because when the bills came to me. I got, whether it
17 would be for course or personal, you know, or phone or
18 electric or whatever, I got to see it. Once I wasn't
19 seeing them, I just never even thought about it. It was
20 like an oversight.

21 Q. And when you were told that we have,
22 you know, you used the, you did not reimburse some calls,

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1 what was your response?

2 A. When, when they, when they told me
3 that, I told them that I would be more than happy to
4 reimburse the County for calls made.

5 Q. Did you not pay for phone calls out of
6 an intent to steal from the County or was it an oversight?

7 A. It was an oversight. I mean, I
8 wouldn't have offered to pay for them if I wanted to get
9 by with it.

10 Q. Now, in your County duties, did you
11 use your own phone and your own car?

12 A. All, a great amount. I used my own
13 phone. I used my own car. I did a lot of, I did live in
14 Blacksburg. I would go, a lot of stuff we had to pick up
15 from Christiansburg, Blacksburg.

16 Instead of getting in my car, coming over all
17 the way over to Giles, Pembroke, get there, come, go all
18 the way back to, you know, Christiansburg or Blacksburg
19 and waste an hour and a half to do all this traveling, I
20 would go directly to the places I needed to get equipment
21 and then bring it from there with my own car back to work.

22 Q. And look at #3, "failure to supervise,

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1 failure to properly supervise the employees under his
2 control, specifically including ... one (1) or more
3 employees to be idle or engage in personal activities
4 during working hours".

5 When you read that, did you have any idea what
6 they were talking about?

7 A. I had no clue. I mean, it's just a
8 broad general statement that's just made.

9 Q. Did anyone ever explain to you this is
10 exactly, this is what we're talking about here?

11 A. No. No one (1) gave me examples of
12 what they were talking about. No one (1) said that it was
13 happening. It wasn't happening, so I don't know what
14 they're talking about.

15 Q. Is that an accurate or inaccurate
16 charge?

17 A. Inaccurate.

18 Q. Were you aware of any idle time by,
19 spent by employees?

20 A. No, sir.

21 Q. Had you ever been warned or counseled
22 that you're not doing a proper job of supervising

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1 employees?

2 A. No, sir. It was never brought to my
3 attention.

4 Q. Look at #4. #4 says "tampering with
5 the Castle Rock computer system after his previous
6 termination which resulted in the County being locked out
7 in the computer system".

8 Is that accurate?

9 A. It's inaccurate.

10 Q. Why is it inaccurate?

11 A. Well, tampering is not the proper
12 word.

13 Q. Tell the jury what happened.

14 A. Tampering is not the proper word.
15 When I found out I was dismissed, I was there with my
16 clerk, Ms. Lusk, and with me leaving, they needed to know
17 how to get into the computer and I wanted to remove my
18 passwords. There were four (4) levels, four (4)
19 passwords, separate passwords.

20 The computer was established by a company out
21 of, I mean, was brought to us by a company out of
22 Blacksburg. That gentleman was aware of the passwords

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1 because he installed it. I needed to take my passwords
2 out or they couldn't get to it.

3 So I thought let me remove them so whoever you
4 put in here, whoever is coming next can establish their
5 own passwords and have access. During the time that Pat
6 and I were back there trying to fix this or get it
7 corrected or remove them, we got locked out of the
8 computer.

9 We were unable to attain access to all levels.

10 Q. Were you locked out of the computer or
11 just one (1) level?

12 A. One (1) level. The fourth level is
13 the one (1) we were locked out of and that was, that may
14 have been a good thing, I mean, it was unfortunate that we
15 got locked out, but the fourth level was established so
16 people who worked with that computer couldn't go in and
17 change members fees, members amounts owed, things like
18 that. That was an administrative level.

19 We did get locked out. It was not personally,
20 we tried in angst to correct the problem and when we found
21 out we couldn't, I instructed Ms. Lusk to call Integrity
22 Enterprises which is the computer installer and tell them

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1 what had happened and see if we couldn't get it corrected
2 that moment.

3 Q. So even the day you left, you
4 instructed her what steps to take to fix the problem?

5 A. Right. Once we couldn't correct it,
6 I, even before I left, I asked her to call that company
7 and tell them we had a problem.

8 Q. On January 26th, did you tell Mr.
9 Mullins that?

10 A. One hundred percent (100%). Yes, sir.

11 Q. Did he ask any questions?

12 A. Not at all.

13 Q. Did he question the accuracy of what
14 you said?

15 A. No, sir.

16 Q. #5. #5 says "inefficiency in the
17 management of Castle Rock Recreation Area which resulted
18 in a substantial reduction of the net revenues of the
19 facility as compared to previous years".

20 Had you ever been counseled or warned that there
21 was a problem with the financial performance at Castle
22 Rock before this moment?

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1 A. No. Because I was carrying out my job
2 as directed by the Board of Supervisors.

3 Q. Was this an accurate statement?

4 A. Inaccurate.

5 Q. Why?

6 A. Well, inefficiency in the management -
7 no one (1) told me there was anything wrong and I
8 proceeded on at the will of the Board doing what they
9 requested. I did the job they asked me to do.

10 And substantial is very un-, an unfair word.
11 Substantial is not even accurate. Substantial reduction
12 of revenues.

13 Q. And, again, you receive no notice that
14 that was a problem beforehand.

15 A. None whatsoever. Right. The first
16 time I heard of all these things was when they came on
17 January 20, 19th.

18 Q. Was your termination effective again
19 on January 26th?

20 A. The second time again. Yes, sir.

21 Q. O. K. Did you file a grievance?

22 A. Yes, sir.

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1 Q. And what was the date of that
2 grievance?

3 A. I'm not sure.

4 Q. Let me show you a letter. What was
5 the date you filed your grievance?

6 A. February 2nd, 1996.

7 Q. What was the relief you requested in
8 your grievance? It's on the second page.

9 A. I asked to be reinstated with back pay
10 and full benefits.

11 Q. O. K. And read the next sentence.

12 A. *"Given the current status of this*
13 *matter, we would suggest that these issues be promptly*
14 *presented to a grievance panel."*

15 Q. And did you specifically request to
16 allow a grievance panel to hear this matter?

17 A. I requested to have it proceed that
18 far.

19 Q. Are you sent in your grievance on
20 February 2nd, 1996, how did the County respond to your
21 grievance?

22 A. I received another letter back and it

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1 said that it wouldn't, it wasn't going to happen. The
2 process couldn't be continued.

3 Q. I've handed you a document, Mr. Wines,
4 that is dated February 5th, 1996. Is that the document
5 you received?

6 A. Yes, sir.

7 Q. Who signed it?

8 A. Roger Mullins, County Administrator.

9
10 MR. HALEY: Your Honor, we'd ask
11 admission.

12 THE COURT: Any objection?

13 MR. GUYNN: No objection.

14 THE COURT: Exhibit #9.

15
16 PLAINTIFF'S EXHIBIT #9, a letter to Gregory J.
17 Haley, regarding D. Chad Wines, dated February 5, 1996,
18 signed by Roger Mullins, County Administrator, is received
19 and filed as a part of the Court record in this case.

20
21 Q. After you received Plaintiff's
22 Exhibit, could you read the first paragraph?

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1 A. In a moment. "As County Administrator
2 for Giles County, I have determine that the grievance
3 which was filed by Mr. Wines through your letter of
4 February 2nd, 1996, not grievable because Mr. Wines is not
5 covered by the Giles County grievance procedure."

6 Q. O. K. Now, I would refer you back to
7 Plaintiff's Exhibit #8 and if you would, turn to the
8 second page. I believe Mr. Mullins, he's the person who
9 signed or whose letter this went out on behalf of.

10 A. Mr. Mullins and Mr. Chidester.

11 Q. O. K. If you would, read the second
12 paragraph.

13 A. "Mr. Wines may also avail himself of
14 the grievance procedure adopted as part of the Giles
15 County personnel policy if he so, if he so desires."

16 Q. And that was done on January 18th,
17 January 19th, 1996. Is that correct?

18 A. Yes, sir.

19 Q. And on February 5th, 1996, slightly
20 over two (2) weeks later, he denied your grievance. Is
21 that correct?

22 A. Yes, sir.

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1 Q. Did you thereafter request a meeting
2 with the Board of Supervisors?

3 A. Yes, sir.

4 Q. Did the Board grant you that
5 opportunity?

6 A. No, sir.

7 Q. Mr. Wines, I've handed you another
8 document which is March 5th, 1996, signed by Mr. Chidester
9 with a carbon copy to Mr. Mullins.

10 Did you receive a copy of that letter?

11 A. Yes, sir.

12

13 MR. HALEY: And, Your Honor, we'd move
14 that it be admitted.

15 THE COURT: Any objection?

16 MR. GUYNN: No objection.

17 THE COURT: It will be received and
18 marked #10.

19

20 PLAINTIFF'S EXHIBIT #10, a letter to Gregory J.
21 Haley, regarding D. Chad Wines, dated March 5, 1996,
22 signed by Richard D. Chidester, County Attorney, is

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1 received and filed as a part of the Court record in this
2 case.

3
4 Q. Could you read the first paragraph for
5 the jury please?

6 A. *"The Board of Supervisors has*
7 *indicated they see no useful purpose for any type of*
8 *evidentiary hearing before the Board regarding Mr. Wines'*
9 *termination as this was already done before Mr. Mullins*
10 *prior to termination."*

11 Q. At that point, after you had had a
12 meeting with Mr. Mullins and after he had ruled that your
13 grievance was non-grievable and after you had requested to
14 appear before the Board of Supervisors and they saw no
15 useful purpose in that, what was your reaction?

16 A. I couldn't believe it.

17 Q. I mean, how did, did that effect your
18 emotional state?

19 A. It did because, for all those months,
20 I did the job that the Board asked me. I worked hard. I
21 worked lots of hours and I, I did, you know, tried to
22 become a part of this community and then all of a sudden



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C. Wines - Direct Examination by Mr. Haley

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1 many, many hours of overtime and on call time just so I
2 could make more money.

3 Q. So you're making more money than you
4 did in Giles County but you're getting paid, you're
5 working overtime for that?

6 A. Oh, I'm working, I work, if a normal
7 year is two thousand (2,000) hours, I work thirty-three
8 percent (33%) more hours last, that last year just to make
9 a lot, to make more money. Thirty-three (33%) - that's,
10 that's basically six hundred (600) or seven hundred (700)
11 more hours in that year.

12 Q. And do you still work there today?

13 A. Yes, sir. I still work there.

14 Q. Did you file a Notice of Claim with
15 the County?

16 A. Yes, sir.

17 Q. When you, when you, Mr. Wines, I've
18 handed you a document dated December 31, 1997, and it
19 continues for two (2) pages. What is the title of the
20 second page?

21 A. Notice of Claim.

22 Q. And on the last page of the document,

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1 is that your signature?

2 A. Yes, sir.

3 Q. Did you instruct me to send this
4 document to the County?

5 A. Yes, sir.

6
7 MR. HALEY: Your Honor, we ask it be
8 moved as the next document.

9 THE COURT: Any objection?

10 MR. GUYNN: No, sir.

11 THE COURT: It will be received. It
12 will be Exhibit #11.

13
14 PLAINTIFF'S EXHIBIT #11, the Notice of Claim
15 filed by D. Chad Wines to the Board of Supervisors of
16 Giles County, Virginia, dated December 31, 1997, is
17 received and filed as a part of the Court record in this
18 case.

19
20 Q. In this Notice of Claim document, Mr.
21 Wines, did you request that the County pay you for lost
22 salary and lost benefits?

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1 A. Yes, sir.

2 Q. And did you request that the County
3 pay your compensatory time?

4 A. Yes, sir.

5 Q. That you had accrued when you left?

6 A. Yes, sir.

7 Q. Did you ask the County pay you
8 vacation time that you had accrued when you left?

9 A. Yes, sir.

10 Q. How did the Board of Supervisors
11 respond to your, to your claim?

12 A. They, no, they denied that they owed
13 it to me.

14 Q. They denied it in its entirety?

15 A. Yes, sir.

16 Q. And did you ever get paid your
17 compensatory time?

18 A. No, sir.

19 Q. And did you ever get paid your
20 vacation time?

21 A. Not until a minute before we started
22 this procedure.

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1 Q. So today you have received a check
2 from the County for unpaid accrued vacation time?

3 A. Just vacation time.

4 Q. And was that vacation time part of
5 what you asked for in your Notice of Claim?

6 A. Yes, sir.

7 Q. Did the Board of Supervisors give you
8 any reason or explanation why they denied your claim in
9 its entirety?

10 A. No, sir.

11
12 MR. HALEY: Your Honor, may I display
13 this document to the jury?

14 THE COURT: Any objection to
15 displaying the document to the jury?

16 MR. GUYNN: None, sir.

17 THE COURT: All right. Yes, you may.

18
19 Q. Mr. Wines, have you calculated the
20 lost salary and benefits that you have suffered as a
21 result of these actions?

22 A. Yes, sir.

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1 Q. Directing your attention to the
2 Paragraph #1 dealing with lost salary, what is the amount
3 claimed there for the period from January 27, 1996,
4 through January 26, 1997?

5 A. Twenty-five thousand two hundred and
6 sixty-eight dollars (\$25,268.00).

7 Q. What does that number represent?

8 A. That was the rate of my pay for,
9 yearly pay.

10 Q. And is that consistent with what was
11 in Ms. Tuckwiller's letter dated June, July 25, 1995?

12 A. July, sometime in July, yes, sir.

13 Q. Now, under Paragraph #1B, January 27
14 to January 5th, 1998, what's that time-frame refer to?

15 A. That, that would be, that would be the
16 time after the second firing, the date, the day after that
17 to the following year's salary, year's pay.

18 Q. O. K. Is it, but how come is it less
19 than the amount of above?

20 A. Because I had, through that
21 reinstatement for two and a half (2½), three (3) weeks,
22 they paid me some, a little bit of money.

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1 Q. O. K. But, I mean, ...

2 A. That's a difference between a twelve
3 (12) month to eleven and a quarter (11¼), something like
4 that.

5 Q. And why did you reduce, with respect
6 to the period from January of 1997 through January 5th,
7 1998, why did you reduce the time period?

8 A. Because ...

9 Q. What happened on January 5th, 1998?

10 A. Oh, because I was employed. I'm
11 sorry. I took a new job.

12 Q. In Paragraph #2, I'd ask that you
13 refer to, well, in Paragraph #2, under compensatory time,
14 it's two hundred forty (240) hours?

15 A. Yes, sir.

16 Q. Where did you get that figure?

17 A. Well, that, that's not the actual
18 figure, but that's, through the personnel policy, that's
19 all that's allowed by their standard. I mean, it was
20 considerably higher than that, but they only allow you
21 that much per year.

22 Q. What personnel policy?

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1 A. My, the, the Giles County personnel
2 policy.

3 Q. So it puts a cap at two forty (240)?

4 A. Yes, sir.

5 Q. And how do you, where did the twelve
6 dollars and sixty-three cents (\$12.63) per hour come from?

7 A. That takes approximately, I guess, two
8 thousand (2,000) hours and divides it into my, my yearly
9 pay and divides it up per hour earned.

10 Q. And the next line, vacation time -
11 where did you get the hundred and fifty-two (152) hours?

12 A. The hundred and fifty-two (152) hours
13 comes from the one (1) day per month accrued multiplied by
14 eight (8) hour days multiplied by the twelve dollars and
15 sixty-three cents (\$12.63) that I made.

16 Q. And what is the total there shown for
17 vacation time?

18 A. One thousand nine hundred nineteen
19 dollars and seventy-six cents (\$1,919.76).

20 Q. What is the gross amount of the
21 payment that you received from Giles County before taking
22 out taxes?

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1 A. One thousand eight hundred forty-six
2 dollars and eighty cent (\$1,846.80).

3 Q. And is your understand that this one
4 thousand eight hundred forty-six dollar (\$1,846.00) check
5 is for vacation time?

6 A. I guess. Yes.

7 Q. So that amount would have to be taken
8 off of this amount?

9 A. Yes, sir.

10 Q. Since they've already paid that
11 amount?

12 A. Yes, sir.

13 Q. O. K. Did you calculate these amounts
14 due, the hours based on what is in the Giles County
15 personnel policy?

16 A. Yes, sir.

17 Q. What is the total compensatory time
18 and vacation time you claim?

19 A. The total amount?

20 Q. Yeah.

21 A. The total amount is four thousand nine
22 hundred and fifty dollars and ninety-six cents

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1 (\$4,950.96).

2 Q. Do you, would you also ask the jury to
3 compensate you for your lost retirement pay?

4 A. Yes, sir.

5 Q. O. K. What was the value of that lost
6 retirement pay?

7 A. The, the yearly fee that the County
8 paid for my retirement was two thousand two hundred and
9 six dollars and eighty-three cent (\$2,206.83).

10 Q. Where did you get that figure?

11 A. That came from the County.

12 Q. And health insurance? Did the County
13 pay your health insurance?

14 A. Yes, sir.

15 Q. How much did they pay?

16 A. They paid two hundred and thirty-three
17 dollars (\$233.00) per month.

18 Q. For how, and how long were you
19 unemployed?

20 A. Twenty-four (24) months.

21 Q. And so what's that amount?

22 A. Five thousand five hundred and ninety-

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1 two dollars and (\$5,592.00+), five thousand five hundred
2 ninety-two dollars (\$5,592.00).

3 Q. So if you include the lost salary for
4 your almost two (2) years unemployed while you were in
5 training - it comes to forty-eight thousand nine hundred
6 and fifty-six dollars (\$48,956.00). Is that correct?

7 A. Yes, sir.

8 Q. And then if you include the
9 compensatory time and the vacation time, that's an
10 additional four thousand nine hundred and fifty dollars
11 (\$4,950.00)?

12 A. Yes, sir.

13 Q. But that would have to be reduced by
14 one thousand eight hundred forty-six dollars (\$1,846.00)
15 because now the County had agreed and has paid you for
16 vacation time pursuant to the personnel policy?

17 A. Yes, sir.

18 Q. And for retirement pay, you ask as
19 damages four thousand four hundred thirteen dollars
20 (\$4,413.00)?

21 A. Yes, sir.

22 Q. For a two (2) year period. And health

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1 insurance, five thousand five hundred and ninety-two
2 dollars (\$5,592.00), again for a two (2) year period?

3 A. Yes, sir.

4 Q. What's the total amount?

5 A. Sixty-three thousand dollars
6 (\$63,000.00), nine hundred and thirteen (\$913.00), well,
7 sixty-three thousand nine hundred and thirteen dollars and
8 twenty-nine cents (\$63,913.29) which would be minus the
9 eighteen hundred dollars (\$1,800.00).

10 Q. Thank you, Mr. Wines. I have no
11 questions. Mr. Guynn will have some questions.

12
13 MR. HALEY: Your Honor, was this
14 admitted?

15 THE COURT: There was no request to
16 admit it.

17 MR. HALEY: Oh, I'm sorry. I would
18 ask that it be admitted as the next Plaintiff's
19 Exhibit.

20 THE COURT: Any objection to admission
21 of the itemization?

22 MR. GUYNN: No, sir.

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1 THE COURT: All right. Do you want to
2 reflect the change before you admit it or just
3 let the - the minus the eighteen (\$1,800.00)?

4 MR. HALEY: Yeah. Which is going to
5 be the official copies? The ones you've got?

6 THE COURT: She marks the official one
7 (1).

8 MR. HALEY: I think that would be
9 helpful to the jury.

10 THE COURT: All right.

11 MR. HALEY: It's one thousand eight
12 hundred forty-six (\$1,846.00).

13 COURT REPORTER: I wrote one eight
14 four six eighty (\$1,846.80).

15 MR. HALEY: Yes. That's correct.
16 Thank you.

17 THE COURT: All right. As amended, it
18 will be Exhibit #12.

19
20 PLAINTIFF'S EXHIBIT #12, the statement of lost
21 wages, benefits and damages for D. Chad Wines, is received
22 and filed as a part of the Court record in this case.

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1 CROSS EXAMINATION BY MR. GYNN:

2
3 Q. Mr. Wines, with regard to Exhibit #12
4 there, did you do the math?

5 A. Yes, sir.

6 Q. And are you the one (1) that divided
7 your salary of twenty-five thousand two hundred and sixty-
8 eight dollars (\$25,268.00) by two thousand (2,000) hours?

9 A. Uh-huh.

10
11 MR. HALEY: You have to answer yes or
12 no, Chad.

13
14 A. Oh, I'm sorry. Yes. I'm sorry. Yes,
15 sir. I apologize.

16 Q. What did you use to make that
17 calculation?

18 A. My twenty-five thousand two hundred
19 and sixty-eight dollar (\$25,268.00) yearly pay.

20 Q. Did you use your brain or a
21 calculator?

22 A. A calculator.

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1 Q. Would you do that again for me please?

2 A. Twenty-five two sixty-eight
3 (\$25,268.00) divided by two thousand (2,000), twelve
4 sixty-three four (\$12.634).

5 Q. You said two thousand (2,000).
6 Shouldn't it be two thousand eighty (2,080)? Fifty-two
7 (52) weeks?

8 A. I just based it on two thousand
9 (2,000) hours, two thousand (2,000) hours.

10 Q. You were paid for fifty-two (52)
11 weeks?

12 A. I'm, I don't know about that.

13 Q. You don't?

14 A. Huh-uh. No.

15 Q. You didn't get vacation pay?

16 A. Not until today.

17 Q. You were entitled to it?

18 A. Yes, sir.

19 Q. I mean, you sat here and made a big
20 deal out of it and now you're telling us you're only going
21 to do it fifty (50) weeks instead of fifty-two (52)?

22 A. Yes. I guess. Say that again please.



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1 Q. O. K. And so you were expected, how
2 many work weeks were you expected to work if you were an
3 employee for Giles County, if you took your full twelve
4 (12) days?

5 In a fifty-two (52) week year, how many work
6 weeks were you expected to work?

7 A. All of them.

8 Q. O. K. But if you, a week, a year is
9 fifty-two (52) weeks. Correct?

10 A. Yes, sir.

11 Q. If you take twelve (12) days of
12 vacation, how many weeks have you worked? Are you working
13 fifty-two (52)?

14 A. Fifty point two (50.2) maybe.

15 Q. So it's not fifty-two (52)?

16 A. It's not. Right? Well, actually,
17 yeah, fifty point two (50.2).

18 Q. Was it your understanding that
19 pursuant to the Giles County personnel policy you would
20 receive payment for vacation time accrued and not used
21 when you left your employment?

22 A. Yes, sir.

* * *
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* * *

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1 PEARISBURG, VIRGINIA. SEPTEMBER 22, 1999. 9:00 A.M.

2
3 (Court Reporter is sworn to take down and
4 transcribe the proceedings in this case faithfully and
5 accurately to the best of her ability and to be subject to
6 the control and discipline of the Court.)
7

8 IN THE COURTROOM -- IN OPEN COURT
9

10 THE COURT: All right, gentlemen.
11 Both parties ready to proceed?

12 MR. HALEY: Yes, sir, Your Honor. We
13 are.

14 THE COURT: I understand that we need
15 to put some things on the record that we did out
16 of the presence of the Reporter. Would you like
17 to go ahead and, who wants to go first?

18 MR. HALEY: Jim, why don't you?

19 MR. GUYNN: Fine. Your Honor,
20 yesterday, pre-trial, both at a conference we
21 had before the trial as well as yesterday
22 morning, I guess the conference was last week,

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1 we moved to exclude evidence regarding the
2 January 2nd action of the Board on the grounds
3 that it was irrelevant given that Mr. Wines was
4 not deprived of any property pursuant to *Holland*
5 *vs. Rimmer* and that therefore that the procedure
6 that took place should be related to the January
7 26th termination because he was paid in full
8 through January 26th.

9 And we made the motion, the grounds
10 being that there is no due process violation of
11 the Defendant, deprivation of property and we
12 object to the Court's ruling allowing that
13 evidence in. I just wanted to make sure that
14 was on the record.

15 THE COURT: All right. Do you wish to
16 add anything on that point?

17 MR. HALEY: Yes, sir, Your Honor. We
18 think the Court's ruling is correct. The
19 admission of that evidence is part and parcel of
20 the course of events in this case. It is
21 necessary for the jury to understand the nature
22 of the cause of action both on the breach of

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1 contract action and on the procedural due
2 process action.

3 The Board's abrupt and arbitrary
4 action on January 2nd, 1996, goes to pretext, it
5 goes to sham, it goes to lack of cause, it goes
6 to lack of a meaningful opportunity to be heard
7 and it goes to the deprivation of both pre-
8 termination and post-termination rights and in
9 the *Holland vs. Rimmer* case, the Court
10 emphasized that there were post-termination
11 grievance rights available which were granted to
12 the employee which resulted in his
13 reinstatement. In that factual context was what
14 the Court was ruling.

15 So therefore we think the Court's
16 ruling was correct yesterday.

17 THE COURT: All right, gentlemen. At
18 the time I made the ruling, of course, I did
19 rely upon the pleadings that the Plaintiff was
20 going to attempt to prove his case through the
21 pretextural hearing that was granted later and I
22 admitted that evidence with, with regard to that

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1 element and so I'm going to adhere to that
2 ruling.

3 Anything else we need to put on the
4 record?

5 MR. HALEY: Yes, Your Honor. One (1)
6 matter, we'd like to proffer a piece of
7 evidence. May I approach?

8 THE COURT: Yes.

9 MR. HALEY: Your Honor, we would like
10 to, yesterday in pre-trial conference, we
11 discussed and the Court ruled that we would not
12 be permitted to admit as evidence in this trial
13 the change or amended Giles County personnel
14 policy dated March 1, 1996.

15 You will recall that these events took
16 place in January and February, 1996, and
17 effective March 1, 1996, Giles County changed
18 its personnel policy to address one (1) of the
19 specific issues in dispute and we think that is
20 a relevant fact and is admissible under
21 applicable Virginia law.

22 We would proffer the evidence through



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1 Q. Are you aware that Mr. Wines has made
2 a claim for unpaid compensation time in this lawsuit?

3 A. No, sir.

4 Q. Is that all news to you?

5 A. Well, I knew he had a suit against us,
6 but I didn't, I hadn't read through the whole suit. We
7 leave it up to the County Administrator and our attorney.

8 Q. Do you know whether the County is,
9 strike that, in 1995, at the end of 1995 and the beginning
10 of 1996, did you have an understanding one (1) way or the
11 other as a supervisor about what procedures were required
12 to be followed with respect to terminating Mr. Wines?

13 A. I knew it had to be done by the
14 personnel policy, yes, sir.

15 Q. Were those procedures, in fact,
16 followed?

17 A. At first, ...

18 Q. How so? Could you ...

19 A. No, sir, they probably wasn't. On the
20 second, ...

21 Q. Why weren't they followed at the
22 beginning?

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1 A. I guess we made a mistake.

2 Q. Why did you make a mistake?

3
4 MR. HALEY: Line 18.

5 THE CLERK: Line 18? I see 12 is "*Why*
6 *did you make a mistake?*" and then 13 is blank.

7 MR. HALEY: O. K.

8 THE CLERK: 14.

9 MR. HALEY: But 17 is "*Why did you*
10 *make a mistake?*"

11 THE CLERK: "*Can you identify for us*
12 *any other employees ...*"

13 MR. HALEY: No. No. Line 17.

14 Question: "*What did you make a mistake?*"

15 THE CLERK: O. K.

16
17 A. We just made a, I just made a mistake.

18
19 MR. HALEY: And that concludes the
20 reading, Your Honor.

21 THE COURT: Thank you.

22 MR. HALEY: Thank you, Mrs. Ratcliffe.

* * *

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R. Mullins - Direct Examination by Mr. Haley

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1 until it was announced at the first meeting in February of
2 '96.

3 Q. Wasn't it January 27th, 1996?

4 A. No. I think it was formally announced
5 at the meeting, at the first meeting in February. I'm not
6 sure, but I think that's when it was.

7 Q. You may be right, but let me check.
8 Mr. Mullins, I'm going to hand you a piece of paper that
9 is an excerpt from the Board meeting dated January 27th,
10 1996. Do you see that?

11 A. Uh-huh.

12 Q. O. K. What is the action taken at the
13 bottom?

14 A. The Board voted unanimously to offer
15 the position of County Administrator to Roger C. Mullins
16 for an annual salary of thirty-seven two (\$37,200.00).

17 Q. O. K. Did you know that took place on
18 January 27th?

19 A. No. I thought it was the first
20 February meeting.

21 Q. So you didn't even know about this?

22 A. Well, evidently I did. I was probably

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1 there, but I was under the mistaken impression that it was
2 on the, it was not a special meeting, but occurred at the
3 February meeting.

4 Q. O. K. But you would now agree with me
5 that you receive a permanent appointment on January 27th?

6 A. I would. Yes.

7 Q. What did you do before you became
8 County Administrator?

9 A. I worked for the *Virginia Leader*.

10 Q. And when did you resign from the
11 *Virginia Leader*?

12 A. Effective at the end of December.

13 Q. And when you resigned from the
14 *Virginia Leader*, did you have another job?

15 A. I had been offered the position as
16 Interim County Administrator.

17 Q. So you resigned your permanent job at
18 the newspaper to take an interim position with the County?

19 A. I did.

20 Q. And then your interim position was
21 made permanent on January 27th?

22 A. Yes.

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1 Q. And that was the day after you had the
2 meeting with Mr. Wines and the day after Mr. Wines'
3 termination became effective. Is that correct?

4 A. Yes.

5 Q. His second termination?

6 A. Yes.

7 Q. Not his first. Now, in December,
8 1995, you attended various pre-meetings of the Board of
9 Supervisors. Is that correct?

10 A. Yes.

11 Q. And after one (1) of those meetings,
12 Jay Williams and Bobby Williams asked you to become the
13 Acting County Administrator. Is that correct?

14 A. After the meeting?

15 Q. Yes. After, you know, after one (1)
16 of the meetings.

17 A. Subsequent to the first meeting, it
18 may have been a couple of days later, but I was approached
19 by Mr. Williams, both Mr. Williams, in fact.

20 Q. O. K. So Jay Williams came to talk to
21 you and Bobby Williams came to talk to you?

22 A. As I recall, yes.

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1 Q. And when you decided to take the job,
2 you went to see Jay Williams and said yes, I'll take the
3 job. Is that correct?

4 A. I don't recall going to see him. I
5 might have, I might have run into him somewhere and told
6 him that, that I had decided that I would serve as Interim
7 County Administrator.

8 Q. Yeah. But Mr. Jay Williams was the
9 one (1) you went to to say yes, I will take the job?

10 A. I think he was the first one (1) that
11 I had discussed it with. Yes.

12 Q. Now, at these pre-meetings of the new
13 Board before they became the Board of Supervisors in
14 December, 1995, Chad Wines' firing, the firing of Chad
15 Wines was never discussed, was it?

16 A. No.

17 Q. Never came up at all?

18 A. No.

19 Q. And on January 2nd, 1996, the new
20 Board of Supervisors attend their first organizational
21 meeting. Is that correct?

22 A. That's correct.

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1 Q. And before that meeting, did you call
2 Mr. Wines and tell him to come?

3 A. I don't recall making a phone call.
4 No.

5 Q. But you could have?

6 A. Sure.

7 Q. Now, at that meeting, Mr. Jay Williams
8 made a motion - I move that we terminate Chad Wines
9 effective today. Is that correct?

10 A. Yes.

11 Q. Jay Williams, the man you had accepted
12 the job from? The man who had come to you about coming to
13 work for the County? Made the same motion?

14 A. Yes. Made the motion.

15 Q. And then Bobby Williams, the other man
16 who had come to you, said I second that motion.

17 A. Yes.

18 Q. Describe for the jury what discussion
19 the Board had on that motion.

20 A. No discussion.

21 Q. And then they voted unanimously, 5-0,
22 to fire Mr. Wines?

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1 A. Yes.

2 Q. And that surprised you?

3 A. Yes.

4 Q. And there was no recommendation from
5 you?

6 A. No.

7 Q. And you hadn't looked at the personnel
8 policy?

9 A. I might have looked at the personnel
10 policy at some time prior, but not that I really recall.

11 Q. Now, there wasn't any recommendation
12 from Ross Martin, the Acting County Administrator right up
13 until January 2nd, was there?

14 A. Not that I would be aware of.

15 Q. Did anyone ever talk to Ross Martin,
16 to your knowledge, about Mr. Wines' performance?

17 A. Not to my knowledge. No.

18 Q. Now, at the time Mr. Wines was fired
19 on January 2nd, 1996, would you tell them, tell the Court
20 what notice did he have that he was about to be fired?

21 A. None that I was aware of.

22 Q. What explanation was given to him of

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1 the charges against him?

2 A. Prior to?

3 Q. On January 2nd, 1996.

4 A. None.

5 Q. Was the evidence that was being used
6 to fire him explained to him in any way?

7 A. Not to my knowledge. No.

8 Q. Was he given a reason why he was
9 fired?

10 A. Not at the meeting, not that I was
11 aware of.

12 Q. Was he given an opportunity to have a
13 say, to contest the allegations that had been made against
14 which hadn't been made against him?

15 A. As I recall, later on in the, later on
16 in the meeting, there was some discussion pertaining to
17 Castle Rock and, as I recall, Mr. Wines did, did make some
18 remarks.

19 Q. O. K. But he had been fired by that
20 point, hadn't he? The Board had already ...

21 A. Yes. The action had taken place prior
22 to that discussion.

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1 Q. And the decision to fire Mr. Wines was
2 made on January 2nd, 1996, wasn't it?

3 A. I can't tell you when the decision was
4 made. The action of the Board took place at the January
5 2nd meeting.

6 Q. Do you remember, do you remember being
7 deposed on February 10th, 1999?

8 A. Yes.

9 Q. Were you answering the questions
10 truthfully and at the best of your ability at that time?

11 A. Yes. Which, which question are you
12 talking about?

13 Q. No. I mean, when you took your
14 deposition, when I took your deposition in February, 1999,
15 ...

16 A. Yes.

17 Q. Were you answering the questions to
18 the best of your ability at that time?

19 A. Yes.

20 Q. O. K. You see in Line 6 where I asked
21 the question "Had the decision already been made
22 terminate" ...

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1 MR. GUYNN: Is there a Page Number?

2 MR. HALEY: Oh, I'm sorry. Page 55.

3 I apologize.

4 MR. GUYNN: And Line what?

5 MR. HALEY: Line 6.

6

7 Q. "Had the decision already been made to
8 terminate him?" Could you read your answer?

9 A. "The decision, the decision was made
10 in an open meeting on January 2nd to the best of my
11 knowledge. That was when a decision was made by the Board
12 of Supervisors to terminate Mr. Wines' employment."

13 Q. O. K. Tell the jury what other option
14 other than firing Mr. Wines was ever considered by the
15 Board of Supervisors?

16 A. I'm not aware of any option.

17 Q. What investigation was done, to your
18 knowledge prior to January 2nd, 1996, when the decision
19 was made to fire him?

20 A. None.

21 Q. Did you review his personnel file?

22 A. I think I did sometime, sometime in

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1 the month of January. Yes.

2 Q. And there are compliments in that
3 personnel file, a lot of them, aren't there?

4 A. I can't recall that I specifically
5 remember any particular comments. I think there were a
6 couple of letters in there pertaining to ...

7 Q. Go ahead.

8 A. Well, like I said, I just, there were
9 a couple of letters in there that might have been
10 complimentary. I think there were a couple of letters in
11 there - one (1) pertaining to, I think it was entered
12 yesterday as far as the golf course receipts or something
13 of that nature, some problems there and then the other one
14 (1) was pertaining to the complaint from the Lions Club.

15 Q. I understand, but there were
16 compliment letters in there, too, wasn't there?

17 A. Yes. I recall there were a couple of
18 compliment letters.

19 Q. And the compliment letters
20 complimenting the County on an excellent facility, an
21 excellent golf course and cheerful employees?

22 A. Yes.

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1 Q. And prior to January 2nd, 1996, did
2 anybody look at his personnel file?

3 A. I, I wouldn't know.

4 Q. Now, did you have any personal
5 knowledge of Mr. Wines' performance on January 2nd, 1996?

6 A. No.

7 Q. Did you know anything about it?

8 A. No.

9 Q. And there had been a financial loss at
10 Castle Rock. Is that correct? They had lost money the
11 prior year.

12 A. I think, yes, that was part of the
13 discussion, as I recall, during the campaign, that there
14 had been a loss at the golf course the previous year.

15 Q. And you understood that the loss had
16 been caused by the new building, didn't you?

17 A. I would, I would assume that that
18 would have been my impression at that time. Yes.

19 Q. Now, on January 3rd, 1996, you went to
20 Castle Rock and ran into Mr. Mullins as he was, I mean,
21 Mr. Wines as he was getting his things and stuff. Is that
22 correct?

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1 A. Yes. I did.

2 Q. And he told you that he was right in
3 the middle of billing and that he had made arrangements to
4 get the billing finished. Is that correct?

5 A. Yes. I think he was working with Ms.
6 Lusk at that time.

7 Q. And he also talked with you afterwards
8 about the possibility that Castle Rock should examine
9 acquiring some additional property as a buffer to protect
10 it in the future, if the County could find the money to do
11 so?

12 A. Yes.

13 Q. Was he, in your mind, concerned about
14 Castle Rock at that moment, what was best for Castle Rock?
15 Did he express that to you?

16 A. Yes. That's the feeling I got. Yes.

17 Q. And you heard Mr. Wines' testimony
18 about what you told him and the discussion you had at that
19 meeting?

20 A. Yes.

21 Q. That was substantially accurate?
22 Those were the things you did tell him?

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1 A. Correct.

2 Q. That he was, there was a personality
3 conflict, that he was a casualty of situations that he
4 hadn't caused and that there were bad decisions made by
5 others?

6 A. I, I wouldn't characterize it as a
7 personality conflict. I said I think, in review of the
8 transcription of the, of a piece of evidence, I think I,
9 my statement was "we could call it".

10 Q. You said we can call it a personality
11 conflict?

12 A. Yeah. We can call it or we can call
13 it whatever we want to, I think was my statement.

14 Q. Now, at that meeting, you referred Mr.
15 Wines to the Giles County personnel policy?

16 A. Yes.

17 Q. And he told you he was going to file a
18 grievance?

19 A. He did.

20 Q. And you understood that?

21 A. I did.

22 Q. And on January 10th, 1996, he did, in

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1 fact, file a grievance.

2 A. Is that a question?

3 Q. Yes. I'm sorry. On January 10th,
4 1996, did he, in fact, file a grievance?

5 A. I received a letter, I'm not sure of
6 the date, but it was some, I would think that January 10th
7 would be about right.

8 As I recall, the letter also asked for some,
9 some forms because the, if that's the letter I'm thinking
10 about.

11 Q. I'll direct your attention to Plain-
12 tiff's Exhibit #7. Is January 10th the right day?

13 A. Yes.

14 Q. And did he direct that grievance to
15 you?

16 A. Yes.

17 Q. And did he request reinstatement?

18 A. Yes.

19 Q. And did he tell you that the reasons
20 for dismissal for communicated to you verbally, by you
21 verbally to Mr. Wines does not fall within the realm of
22 the Giles County personnel policy.

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1 A. That statement is in the letter. Yes.

2 Q. On January 18th, the Board of
3 Supervisors met. Is that correct?

4 A. Yes.

5 Q. And they reinstated Mr. Wines?

6 A. Yes.

7 Q. And at that time they had received a
8 letter from me saying that the procedures had been unfair
9 and no cause existed. Is that correct?

10 A. I can't be sure, but I believe, yes,
11 that they had received a letter from you as Mr. Wines'
12 attorney.

13 Q. Why was Mr. Wines reinstated on
14 January 18th?

15 A. I think it was based on discussions
16 that were held in executive session and on the advice of
17 legal counsel.

18 Q. And if Mr. Wines can be fired at any
19 time for any reason by the County, why reinstate him?

20
21 MR. GUYNN: Objection, Your Honor.
22 He's asking a legal question now.

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1 THE COURT: Do you want to take it up
2 out of the ...

3 MR. HALEY: Let me rephrase the
4 question.

5 THE COURT: O. K.
6

7 Q. If Mr. Wines should be, if it's the
8 County's position today - and I don't know if it is - that
9 he could be fired at any time for any reason, can you tell
10 us the factual basis for his reinstatement?

11 A. No. I can't.

12 Q. Now, on January 19th, 1996, you wrote
13 Mr. Wines a letter. Is that correct?

14 A. Yes.

15 Q. I'd ask the Court Reporter give you
16 Plaintiff's Exhibit #8.

17 A. All right.

18 Q. Now, Plaintiff's Exhibit #8 is a
19 letter that you are a signatory on dated January 19th,
20 1996. Is that correct?

21 A. That's correct.

22 Q. Did you ultimately sign this letter



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R. Mullins - Direct Examination by Mr. Haley

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1 Q. But on January 19th, 1996, the County
2 Attorney and you specifically wrote Mr. Wines a letter
3 telling him he could file a grievance.

4 A. Yes. We did.

5 Q. I assume that that letter was written
6 with care and thought?

7 A. Yes.

8 Q. Now, on January 19th, 1996, you
9 certainly thought Mr. Wines had the right to file a
10 grievance, didn't you?

11 A. I did.

12 Q. Now, I wrote you a letter, you and Mr.
13 Chidester a letter on January 25th. Is that correct?

14 A. I would assume that it is correct.

15 Q. O. K. Would you like to see it?

16 A. Yes.

17 Q. Did you receive a copy of that letter
18 on January, 1996?

19 A. January what?

20 Q. January 25th, 1996?

21 A. Yes.

22 Q. O. K. And in the second, on the

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1 second page at the top, did we advise the County that "We
2 consider the Board's current action as a sham."?

3 A. You did.

4 Q. "The Board has already fired Mr. Wines
5 ..."

6
7 MR. GUYNN: Objection, Your Honor.
8 Now, we're arguing with the witness.

9 MR. HALEY: I'll, I'll move on, Your
10 Honor.

11 THE COURT: All right. Sustain the
12 objection.

13
14 Q. And on Page 6 at the bottom, did we
15 again advise the County that we thought that the reasons
16 given were pretextural?

17
18 MR. GUYNN: Make the same objection.

19 THE COURT: Yes?

20 MR. GUYNN: You know, we need to
21 strike that.

22 MR. HALEY: Your Honor, we covered

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1 this matter yesterday without objection.

2 THE COURT: Well, if there's no
3 objection, I don't think that means he can't
4 object today if it's inappropriate. I sustain
5 the objection. Disregard the last two (2)
6 questions, members of the jury, and the answers.

7
8 Q. Mr. Mullins, were you aware that Mr.
9 Wines was objecting to the process?

10 A. Yes.

11 Q. Did Mr. Wines provide you with a
12 letter which addressed each of the issues that you had
13 stated in your accusation letter?

14 A. Yes. I think he did.

15 Q. At that January 26th meeting, Jay
16 Williams was there, wasn't he?

17 A. Yes.

18 Q. Did you invite him?

19 A. No.

20 Q. Did he have any role there?

21 A. I don't recall anything other than the
22 fact that, I think at the, the letter that was written

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1 subsequent to the Board meeting on the, on January 18th,
2 that it was decided that if Mr. Wines wanted to have a
3 meeting, we would be meeting on the 26th.

4 So the Board was aware, all of the members of
5 the Board was aware of the fact that there would probably
6 be a meeting on January 26th.

7 Q. Did Mr. Williams have any role at that
8 meeting?

9 A. Not to my knowledge, no.

10 Q. Do you know why he was there?

11 A. No.

12 Q. Did he say anything?

13 A. Not that I recall.

14 Q. But he sat at the table quietly and
15 didn't say a word, just sat there. Isn't that correct?

16 A. That's, I think you're right. Yes,
17 sir.

18 Q. At that meeting, Mr. Wines, he told
19 you the facts of the accusations that had been made. Is
20 that accurate?

21 A. Mr. Wines made statements pertaining
22 to the reasons cited in the letter of January 19th for his

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1 dismissal.

2 Q. Did you ask any questions?

3 A. No. Not that I recall.

4 Q. Did you ask for any additional
5 information?

6 A. No.

7 Q. Did you ask for any documents to look
8 at?

9 A. No.

10 Q. After you had that meeting with Mr.
11 Wines, what follow-up investigation did you do?

12 A. No investigations.

13 Q. And did you ever talk about that
14 meeting with Mr. Jay Williams after he attended that
15 meeting?

16 A. Not that I recall.

17 Q. Now, Mr. Wines was terminated that
18 same day, effective that same day?

19 A. Yes.

20 Q. And the next day, you got the
21 permanent appointment as County Administrator. Is that
22 correct?

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1 A. Yes.

2 Q. Now, one (1) of the accusations you
3 make in that January 19th letter is that Mr. Wines had
4 violated the compensatory time rule and, in fact, the
5 accusation says "Failure to follow the directive of the
6 Board of Supervisors that Castle Rock Recreation employees
7 not be allowed to work overtime or accumulate compensatory
8 time for hours worked in excess of forty (40) hours a
9 week".

10 Do you remember that accusation you made?

11 A. Yes.

12 Q. Do you have any idea whether Mr. Wines
13 was ever told do not allow employees to accumulate any
14 compensation time or work overtime?

15 A. I, I seem to recall that Mr. Williams,
16 Jay Williams had ...

17 Q. O. K. I would ask you what, what you
18 know.

19
20 MR. GUYNN: I'm sorry. I thought the
21 question was does he have any idea.

22 MR. HALEY: Let me rephrase the

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1 question.

2

3 Q. Do you know whether Mr. Wines violated
4 a, do you know whether Mr. Wines had been issued a
5 directive that no compensation, no compensation time or
6 overtime would be allowed?

7 A. I had been told that the previous
8 Board had instructed the County Administrator to issue
9 such a directive.

10 Q. Do you know whether one (1) was ever
11 issued or not?

12 A. No. I do not.

13 Q. Did you make any effort to find out?

14 A. As I recall, I did - at some point
15 later on, I did discover that there were a couple of
16 letters written by the previous County Administrator
17 pertaining to compensation or comp time.

18 Q. And did Mr. Wines violate those
19 policies?

20 A. As stated in those two (2) letters?

21 Q. No. As stated in your letter - that
22 there be no compensatory time at all?

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1 A. I have to assume that he did.

2 Q. On what facts do you base that?

3 A. On the fact that on the morning of
4 January 3rd when I arrived at, at Castle Rock, I was
5 informed that Mr. Andrews was on vacation and would not be
6 there that entire month.

7 Q. Do you, does Mr. Andrews still
8 accumulate compensatory time today?

9 A. He does.

10 Q. And does he accumulate substantial
11 compensatory time today?

12 A. He better not be.

13 Q. Is compensatory time necessary given
14 the seasonal work that is done at Castle Rock and the
15 number of employees that are available?

16 A. There is some comp time generated
17 there. It's, I would view it in compliance with our
18 current personnel policy.

19 Q. And isn't there a whole, an additional
20 full-time course employee now that wasn't there when Mr.
21 Wines was there?

22 A. Yes.

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1 Q. O. K. So there's a whole other
2 person?

3 A. There is.

4 Q. What efforts, do you have any
5 knowledge about any efforts by Mr. Wines to manage the
6 comp time in cooperation with the County Administrator?

7 A. I would not have any knowledge of
8 that.

9 Q. Now, on, did you know whether the
10 compensation time that Mr. Andrews accumulated while
11 working for Mr. Wines, do you know whether that was
12 necessary or not?

13 A. There would be no way of making that
14 determination on my behalf.

15 Q. So you could not make that kind of
16 determination whether it was necessary, given the staffing
17 and the seasonal nature of the work?

18 A. No.

19 Q. Did you make any effort to find out at
20 the time?

21 A. No. I didn't.

22 Q. Had Mr. Wines received any notice that

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1 Mr. Andrews or anyone else was receiving too much
2 compensation time? Had he been warned or counseled you've
3 got to work on this better?

4 A. As I recall, in previous Board
5 meetings that I had attended, going back over ...

6 Q. O. K. To your knowledge, Mr. Mullins,
7 did anyone ever tell Mr. Wines you need to change the way,
8 what's happening with compensation time out there?

9 A. My personal knowledge, no, sir.

10 Q. Now, there's an allegation in there
11 that Mr. Wines did not properly supervise the employees.
12 Do you have any personal knowledge about this issue?

13 A. No personal knowledge.

14 Q. Do you know whether Mr. Wines received
15 any warnings or counseling about you've got to do a better
16 job of supervising employees?

17 A. No.

18 Q. Did you see any reason to ask Mr.
19 Wines about that when he met with you on January '26th?

20 A. No.

21 Q. Did you ever talk to Ross Martin?

22 A. No.

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1 Q. Did you ever talk to Janet Tuckwiller?

2 A. No.

3 Q. Now, there's an allegation in there
4 that Mr. Wines tampered with the computer. You know that
5 there was one (1) level of the computer that was locked
6 out. You know that much?

7 A. Yes.

8 Q. O. K. Do you know whether that
9 happened on purpose or by accident?

10 A. I have no idea.

11 Q. O. K. Do you know whether it was an
12 inherent flaw in the software or was it something that Mr.
13 Wines did?

14 A. Again, I have no, no knowledge.

15 Q. Do you, the allegation, the accusation
16 you've stated in here that Mr. Wines tampered with the
17 computer system, do you know whether that's true or not?

18 A. There was a problem with the computer
19 system.

20 Q. Do you have any, do you have any way
21 of knowing whether, what caused that problem?

22 A. It happened when Mr. Wines and I think

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1 Ms. Lusk were working on the computer.

2 Q. Do you, now, the allegation you made
3 was that Mr. Wines had tampered with the computer system.
4 Is that correct?

5 A. Yes.

6 Q. Do you have any, do you know whether,
7 in fact, do you know whether, in fact, he did tamper with
8 it?

9 A. As I stated earlier, I think the, the
10 only knowledge I had was that he was working on the
11 computer with Ms. Lusk and at some point they were locked
12 out.

13 Q. O. K. But you don't have any idea
14 whether that happened, whether it was something that was
15 done as a result of tampering or whether it was an
16 accident, do you?

17 A. Based on what was stated in the
18 letter, I think I must have thought that it was likely the
19 result of tampering.

20 Q. Now, when you wrote the letter on
21 January 19th, is that what you're saying, you thought it
22 was tampering?

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1 A. Otherwise, I don't think it would have
2 been stated in the letter that way.

3 Q. O. K. Now, Mr. Wines told you what
4 happened on January 26th, didn't he?

5 A. Yes. He did.

6 Q. And after that meeting, do you have
7 any reason to think that anything Mr. Wines didn't tell
8 you wasn't true?

9 A. Oh, I think subsequent to that, I did
10 discuss it with Ms. Lusk and she said she would
11 characterize it as accidental or as on purpose or
12 anything, it just happened.

13 Q. So you don't know whether that
14 accusation that there was tampering, you don't know
15 whether that was true or not, do you?

16 A. Based on the discussion later on,
17 that's exactly right.

18 Q. So you found out later that the
19 accusation you made on January 19th, you didn't know
20 whether it was true or not based on later discussion?

21 A. Say that again please.

22 Q. Based on later discussion, the

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1 tampering allegation, you don't know whether that's true
2 or not?

3 A. Yes.

4 Q. Now, there is an allegation in there
5 that there has been "inefficiency in the management ...
6 result[ing] in a substantial reduction of the net revenues
7 ... as compared to previous years".

8 Did you do any financial figuring to reach that
9 accusation? Did you write down any analysis or anything?

10 A. I probably did some calculations based
11 on some profit and loss statements that had been generated
12 by the previous County Administrator which showed a
13 reduction in revenue.

14 Q. Did you take into account the capital
15 improvements in doing that?

16 A. Capital improvements and reduction in
17 revenue, I'm, that doesn't, capital improvements don't
18 impact on revenue.

19 Q. And these documents that you created,
20 you didn't save them. They're gone. Right?

21 A. Yes. They were work papers.

22 Q. You threw them away?

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1 A. I did not save them.

2 Q. So you threw them away?

3 A. Yes.

4 Q. Now, with respect to the phone calls
5 issue, how many phone calls were there?

6 A. I couldn't give you a number.

7 Q. O. K. In your deposition, you told me
8 it was a few.

9 A. I think based on the number of calls
10 that were recorded in the, in the phone logs, that I would
11 characterize the personal calls as being a few. Yes.

12 Q. O. K. And they were written in the
13 phone logs?

14 A. The ones that I had determined were
15 most likely personal calls. They weren't written as
16 personal calls. These were based on my review of some
17 numbers that he had paid for earlier.

18 Q. And there had been a prior practice
19 where he had reimbursed?

20 A. Yes. That's what I was told.

21 Q. And when he found out that, and then
22 the phone bills stopped coming to Castle Rock. Isn't that

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1 true?

2 A. That's what I've been told. Yes.

3 Q. And Mr. Wines, when he was advised of
4 it, he certainly said I'll, you know, I'll be happy to
5 pay.

6 A. Yes. He did say that.

7 Q. And he also told you that he uses his
8 personal car all the time for County business and that he
9 made long distance phone calls from home and never sought
10 reimbursement. Didn't he tell you that?

11 A. Yes.

12 Q. Now, and you knew that certain members
13 of the Board of Supervisors right up until January 2nd,
14 1996, had cell phones that were handled through the
15 County. Didn't you know that?

16 A. When, when in January would I have
17 known that? I guess that's my ...

18 Q. Right up until January, 1996. They
19 turned in all the cell phones on January 2nd, 1996, didn't
20 they?

21 A. Yes.

22 Q. O. K. But up until then, some of the

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1 supervisors had cell phones?

2 A. Yes.

3 Q. Did you ever make any effort to
4 determine whether the supervisors had reimbursed for all
5 their personal calls?

6 A. No.

7 Q. Did you make any effort to find out
8 whether Mr. Wines was doing a good job or not?

9 A. No.

10 Q. Are you aware of anything good that he
11 ever did?

12 A. No.

13 Q. On that letter dated January 25th,
14 1996, wasn't there a long list of accomplishments and
15 achievements?

16 A. Yes.

17 Q. Did you make any effort to follow-up
18 and see whether he's done a good job and had some
19 accomplishments and achievements?

20 A. No.

21 Q. Was any action with respect to Mr.
22 Wines ever considered other than firing him? Counseling,



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* * *

R. Mullins - Direct Examination by Mr. Haley

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1 A. He filed a grievance.

2 Q. And on February 5th, you sent him a
3 letter that, saying your grievance is not grievable and
4 will not be heard.

5 A. We did send that letter. Yes.

6 Q. And that is inconsistent with what you
7 wrote him on January 19th, isn't it?

8 A. Yes. It would be.

9 Q. And it was inconsistent with your
10 discussion with him on January 3rd?

11 A. Yes.

12 Q. And if he had gotten that grievance
13 rights, he would have had a right to have an impartial
14 panel hear his grievance. Is that correct?

15

16 MR. GUYNN: Objection. That's
17 speculative as well as argumentative.

18 MR. HALEY: Your Honor, I mean, on the
19 basis of the objection ...

20

21 Q. What happens if an employee files a
22 grievance and it goes through the management steps, what's

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1 the next, what's the last step?

2 A. There is a process that it goes
3 through and I think the last step is, is a grievance board
4 or a grievance panel.

5 Q. At a grievance panel. And one (1)
6 member is selected by the County, one (1) member is
7 selected by the employee and those two (2) select a third
8 member?

9 A. I would have to review the, the
10 procedure, but that sounds correct.

11 Q. And the, and that process is what Mr.
12 Wines would have been entitled to if you had let him have
13 the grievance. Is that correct?

14 A. Yes.

15 Q. And after you had denied his
16 grievance, there was no further process available to Mr.
17 Wines, was there?

18 A. Not to my knowledge.

19 Q. But Mr. Wines asked for an opportunity
20 to appear before the Board of Supervisors anyway, didn't
21 he?

22 A. Yes. He did.

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1 Q. And the Board of Supervisors said no?

2 A. The Board said no.

3 Q. In fact, at the meeting, they said it
4 would be a waste of time, didn't they?

5 A. I can't say that I recall that
6 specifically. No.

7 Q. I'm going to hand you a copy of the
8 Board minutes. Did Mr. Chidester tell the Board that he
9 understood it was a waste of time to have Mr. Wines appear
10 before the Board?

11 A. Yes.

12 Q. Now, I'm going to ask you some
13 questions about the personnel policy.

14

15 MR. HALEY: If you could, give him
16 Plaintiff's #6 please.

17 COURT REPORTER: Yes, sir.

18

19 Q. Could you turn to the first page?
20 Under Section 1-2, there's a list that says "The rules
21 herein established shall apply to appointed paid employees
22 of ... Giles County". You see that?

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1 A. Yes.

2 Q. Does, did Mr. Wines fit that category?

3 A. Yes.

4 Q. Now, there's a long list of people who
5 are excepted here, that it does not apply to. Is Mr.
6 Wines within any of those exceptions?

7 A. I don't see it.

8 Q. Look at 1-1. I'm sorry. Strike that.
9 I apologize. Now, Mr. Mullins, you're the chief personnel
10 officer?

11 A. Yes.

12 Q. Of Giles County. And you're
13 responsible for administering the grievance procedure. Is
14 that correct?

15 A. Yes.

16 Q. And you understood that Section 8-5
17 dealing with discharges, you understood that that applied
18 to Mr. Wines, did you not?

19 A. When I, when I met with him on January
20 3rd or when I went to the golf course on January 3rd, I
21 ran into Mr. Wines.

22 Q. Mr. Mullins, answer my question

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1 please. You understood ...

2
3 MR. GUYNN: Your Honor, I think he's
4 trying to.

5 THE COURT: Well, go ahead and repeat
6 your question.

7
8 Q. You would agree that Section 8-5
9 applies to department heads, would you not?

10 A. Yes. The department head is mentioned
11 in 8-5, so it would apply to them.

12 Q. O. K. And it was your understanding
13 that under the personnel policy that Mr. Wines could be
14 fired only for cause?

15 A. That was my original interpretation of
16 the personnel policy.

17 Q. Now, in this case, for the reasons Mr.
18 Wines was fired, did he receive warnings?

19 A. No.

20 Q. Was he, prior to January 2nd, 1996,
21 did he get any notice he was about to be fired?

22 A. Not to my knowledge.

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1 Q. Did you explain the evidence
2 supporting the County's decision to Mr. Wines?

3 A. No. I think I told him that I
4 couldn't explain it to him.

5 Q. Did you make a just cause
6 determination?

7 A. I believe that I would have considered
8 what was listed in the January 19th letter as just cause
9 basis. Yes.

10 Q. Did you ever make a just cause
11 determination with respect to Mr. Wines?

12 A. Based on discussion with the County
13 Attorney, I would say yes, I did.

14 Q. Do you remember if you, would you look
15 at Page 45 of your deposition?

16 A. O. K.

17 Q. And I asked you "Who made the
18 determination" - on Line 16, "Who made the determination
19 that just cause existed?" - and you answered "I can't
20 answer that. I guess, in my mind, it was, I considered
21 the information that I had received from ..."

22 Question: "Did you make the determination?"



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R. Mullins - Direct Examination by Mr. Haley

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1 vacation time that Mr. Wines sought, check to see if they
2 were accurate?

3 A. The only, the only time that that
4 would have been done, to my knowledge, would have been
5 with his pay in January of '96.

6 Q. And he wasn't paid the vacation time
7 he was due in January of '96, was he?

8 A. I, based on information that was
9 discovered on Monday, you're correct.

10 Q. O. K. And that information that was
11 discovered on Monday, was it unavailable to the Board of
12 Supervisors in January of 1996?

13 A. Well, it was available, but I don't
14 recall that it was ever discussed or used. I would not
15 have, would not have been aware of it.

16 Q. Isn't it normal County practice to pay
17 employees vacation time when they leave?

18 A. Yes. It is.

19 Q. O. K. And they didn't, the County did
20 not do that for Mr. Wines, did it?

21 A. No.

22 Q. And, in fact, he filed a formal Notice

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1 of Claim with the Board of Supervisors saying please pay
2 me my vacation time in 1997.

3 A. Could I review that document please?

4 Q. Sure. it's Exhibit, Plaintiff's #11.

5 A. Did that Notice of Claim include a
6 request for vacation time?

7 A. The Notice of Claim in Paragraph #3
8 talks about compensatory, vacation and sick leave.

9 Q. O. K. And did Mr. Wines in the cover
10 letter offer to provide any additional information you
11 needed?

12 A. Yes.

13 Q. And was the information that you
14 discovered on Monday not available to the County in 1997
15 or 1998?

16 A. Again, it was available, but I'm not,
17 I'm not sure what you're asking.

18 Q. The County paid his vacation time
19 yesterday, some of it. Is that correct?

20 A. The County paid him, based on the
21 information that Ms. Sarver found on Monday, there was a
22 document that showed that, it was dated in 19-, in October



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1 was he?

2 A. No. He was not.

3 Q. And that was money the County owed
4 him, wasn't it?

5 A. Yes. It was.

6 Q. Now, when you paid the vacation time,
7 you didn't include any interest or anything, did you?

8 A. No.

9 Q. O. K. And so he should have had that
10 money, you would agree with us today, that he should have
11 had that money back in January, 1996?

12 A. Yes.

13 Q. And the County kept that money?

14 A. The County didn't pay him, so, yes,
15 the County kept the money.

16 Q. And they didn't pay him any comp time
17 either?

18 A. No. There was no comp time listed on
19 the statement nor on the information that we discovered on
20 Monday.

21 Q. O. K. And the information you
22 discovered on Monday, you said it was in storage. It

* * *

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1 THE JURY RETIRES TO THE JURY ROOM, OUT OF HEARING OF ANY
2 MATTERS HELD IN THE COURTROOM

4 THE COURT: You may proceed.

5 MR. GUYNN: Thank you, Your Honor. At
6 this time, Your Honor, the Defendant moves to
7 strike the Plaintiff's evidence and have a
8 judgment entered in favor of the Defendants and
9 the grounds for that are submitted within the
10 trial memorandum which we had provided the Court
11 yesterday.

12 It is my understanding from the Court
13 yesterday that your preference in handling this
14 would be to rely on the trial memorandum to, you
15 know, you said you were going to take it under
16 advisement.

17 I'm hoping on hope that perhaps a good
18 night's sleep changed that attitude. However,
19 what I do need is to preserve that I did make a
20 motion here, that the grounds for the motion are
21 contained in that trial memorandum and basically
22 that he did not have a property interest and

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1 even if he did, that just cause exists and that
2 the supervisors believed that at the time they
3 were doing it and therefore they would be
4 immune.

5 So there are, those would be the
6 grounds for it, as well as anything else that is
7 stated in here and I understand that the Court
8 is going to want this filed and that it will be
9 a part of the record.

10 THE COURT: All right.

11 MR. HALEY: And, Your Honor, we would
12 also, consistent with the Court's comments
13 yesterday evening, we would also rely on our
14 memorandum.

15 We filed two (2) different memorandums
16 - one (1) dealing with the just cause issue, one
17 (1) dealing with procedural due process issue
18 and we would rely on our arguments stated in
19 those memos and we would be delighted to answer
20 any questions the Court may have.

21 THE COURT: Gentlemen, I don't know
22 that further questioning will help me a whole

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1 lot. I am going to take it under advisement. I
2 feel like I need more time to study it.

3 I have no prior experience with this
4 type of claim and I can address it better when
5 I've got more time to think about it. So I'm
6 going to take it under advisement and we'll
7 proceed with the rest of the evidence.

8 MR. HALEY: Your Honor, at the, you
9 know, after the decision, there are some points
10 in the trial, in the Defendants' memorandum
11 which are not addressed in our memorandum and we
12 think they can be easily disposed of and we may
13 reserve the opportunity post-trial to address
14 those issues if you may.

15 THE COURT: Yes. That will be fine.
16 I'll give you some time to either respond, you
17 know, later verbally or with a written
18 memorandum which we can put in time constraints
19 and responses.

20 MR. HALEY: Thank you, Your Honor.

21 THE COURT: O. K.?

22 MR. GUYNN: Yes, sir.

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1 THE COURT: O. K. Then are you ready
2 to go forward with your evidence?

3 MR. GUYNN: Yes.

4 THE COURT: Let's call the jury.

5
6 THE JURY RETURNS TO THE COURTROOM

7
8 THE COURT: All right. Everyone else
9 may be seated. The jury has returned. Call
10 your first witness.

11 MR. GUYNN: Kim Sarver.

12
13 *****

14
15 KIM SARVER, first being duly sworn to tell the
16 truth, the whole truth and nothing but the truth, was
17 examined and testified as follows:

18
19 DIRECT EXAMINATION BY MR. GUYNN:

20
21 Q. Please state your name.

22 A. Kim Sarver.

* * *

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* * *

K. Sarver - Direct Examination by Mr. Guynn

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1 A. Nothing.

2 Q. And even Janet Tuckwiller?

3 A. Nothing.

4 Q. Now, there are other people that had
5 zeros. What does that mean?

6 A. They would have used their comp, if
7 they had comp time, they would have used it up by the time
8 I did this report.

9 Q. Do you know why in January of 1996
10 when Mr. Wines' employment ended that there was not a
11 payment made for his vacation time?

12 A. No. I would do the normal payroll
13 check and if anything extra was to be done, it would have
14 to be approved and given to me.

15 Q. Were you aware at that time of the
16 dispute that was going on between Mr. Wines and the
17 County?

18 A. Yes.

19 Q. Do you know where these documents,
20 that is, Exhibit #7, were ordinarily kept?

21 A. Well, probably, it would have been in
22 a file cabinet until probably the end of the year and then

* * *

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1 that notebook?

2 A. Yes.

3 Q. And you could have used those
4 documents to determine how much vacation time or
5 compensatory time was due Mr. Wines, couldn't you?

6 A. Yes.

7 Q. And that's what you normally do when
8 somebody leaves?

9 A. Yes.

10 Q. And you, you were aware - I assume
11 everybody was aware of the dispute Mr. Wines was having
12 with the Board of Supervisors at that point?

13 A. Yes.

14 Q. And Mr. Wines' termination pay was not
15 handled like everybody else's, was it?

16 A. I don't remember.

17 Q. He didn't get his vacation pay, did
18 he?

19 A. If, I guess not.

20 Q. Now, you also testified that there was
21 a time - and I assume it was an extended period of time,
22 over a year - when the phone bills would go to Castle Rock

* * *

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1 tell the truth, the whole truth and nothing but the truth,
2 was examined and testified as follows:

3

4 DIRECT EXAMINATION BY MR. GUYNN:

5

6 Q. Please state your name.

7 A. Larry Jay Williams.

8 Q. Where do you live, Mr. Williams?

9 A. I live in Pembroke or in the Hoges
10 Chapel community east of Pembroke.

11 Q. And are you a member of the Board of
12 Supervisors here of Giles County?

13 A. Yes, sir. I am.

14 Q. How long have you been a member?

15 A. This is my second term. I guess it
16 will be my eighth year.

17 Q. And you were re-elected in November of
18 1995. Is that correct?

19 A. Yes, sir. Correct.

20 Q. And you plan on running again this
21 year, I guess?

22 A. Yes, sir.

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1 Q. O. K. In the course of your tenure at
2 the Board of Supervisors, has the County always operated
3 the Castle Rock recreational facility?

4 A. Yes, sir. Uh-huh.

5 Q. During that eight (8) years?

6 A. Yes, sir. Correct.

7 Q. And what's been the history of the
8 managers at Castle Rock during your tenure? Who was there
9 when you first got here?

10 A. Dave Hazelwood.

11 Q. And was there a change?

12 A. Yes, sir.

13 Q. Who was the change from and to?

14 A. Well, Mr. Hazelwood left and Mr.
15 Martin, he interim managed the course for a while, Mr.
16 Ross Martin, and then Mr. Wines and then back to Mr.
17 Hazelwood.

18 Q. All right. Now, how, how did it come
19 to be that Mr. Wines was hired for that position?

20 A. Well, Mr. Hazelwood had left and the
21 Board advertised to fill that position in the local
22 newspapers.



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J. Williams - Cross Examination by Mr. Haley

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1 went to work, I think that was, that was the, no, it was
2 actually his. I think the pro shop and stuff was his at
3 one (1) time. That was before my time. I can't really
4 ...

5 Q. Now, after Mr. Hazelwood started again
6 in 1996, the Board of Supervisors approved a full-time
7 position, an additional full-time position for course
8 work, work on the golf course. Is that correct?

9 A. Another position? Yeah. I think we,
10 they decided to go to, instead of having so many part-time
11 ones, they, and going and coming and all, they decided to
12 go to two (2), two (2) full-times or we did. Yes, sir.
13 That's correct, I think. Uh-huh.

14 Q. Now, it was your idea to hire Mr.
15 Mullins as Acting County Administrator, was it not?

16 A. Yes, sir. It was, probably from the
17 start.

18 Q. And you went to talk to him? You
19 asked him to fill the job?

20 A. Would he consider it, yes, sir. I
21 didn't make any promise.

22 Q. And then when he accepted it, he came

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1 back and accepted it to you?

2 A. He told me that, yes, sir.

3 Q. And you testified in response to Mr.
4 Guynn's questions that the only reason that Mr. Wines was
5 reinstated was because the attorney recommended it?

6 A. As far as myself, yes, sir. That's,
7 the attorney recommended we reinstate him.

8 Q. Now, you attended the January 26th
9 meeting with Mr. Mullins?

10 A. Yes, sir. I did.

11 Q. No one (1) invited you there, did
12 they?

13 A. After, after I got to thinking about
14 it, I think they did. Yes, sir. I think Mr. Chidester
15 asked me, I may should be there. The day you asked me
16 that, you get me, I just, like I said, this stuff's been
17 three (3) or four (4) years ago and it's hard to, but
18 after some thought and as a matter of fact, I even asked
19 Mr. Chidester yesterday and he said yeah, he thought that
20 he had maybe, just wanted me to be there. I had a
21 knowledge of the accusations that had went on over there.

22 Q. And the next day Mr. Mullins got



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1 OFF THE RECORD FOR THE PREPARATION OF THE COURT'S
2 INSTRUCTIONS

3
4 *****

5
6 IN THE COURTROOM -- IN OPEN COURT

7
8 THE JURY RETURNS TO THE COURTROOM

9
10 THE COURT: All right. You may be
11 seated. Members of the jury, first let me
12 apologize for the delay.

13 As I indicated, we have to get these
14 instructions together. They are the
15 instructions of the Court. Customarily, the
16 Court has model instructions that I can rely
17 upon to, to prepare those instructions to give
18 you the law that covers the case.

19 Today, we didn't have that many model
20 instructions so we had to review the applicable
21 law and draft our instructions to inform you as
22 to what the law is and without the models, it

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1 took us a little longer. So we do apologize,
2 but I think that's a brief statement of why we
3 took two (2) hours instead of the customary
4 forty-five (45) minutes to an hour.

5 In any event, the first thing I want
6 to tell you about is the verdict forms. We have
7 two (2) verdict forms and I'm going to leave it
8 up to the attorneys to discuss these, these two
9 (2) forms that we have prepared.

10 They are for your convenience in
11 arriving at your verdict and when the Court
12 furnishes these verdict forms, I'm not trying to
13 tell you what your verdict should be. It's for
14 your convenience and once you have arrived at
15 your verdict, your foreman should fill in the
16 appropriate verdict form and then you return
17 your verdict in open court.

18 I'll now read the instructions that
19 govern the, that will give you the law of the
20 case.

21 Instruction #1: Issues - Allocation
22 of Burden of Proof Your verdict must be based

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1 on the facts as you find them and on the law
2 contained in all of these instructions.

3 The issues in this case are:

4 (1) Did the Defendants deny to D.
5 Chad Wines any right to pre-termination due
6 process?

7 (2) If so, what is the amount of Mr.
8 Wines' damages, if any?

9 On Issues (1) and (2), Mr. Wines has
10 the burden of proof.

11 (3) Did the Defendants deny to Mr.
12 Wines any right to post-termination due process
13 through participation in the County grievance
14 procedure?

15 (4) If so, what is the amount of Mr.
16 Wines' damages, if any?

17 On Issues (3) and (4), Mr. Wines had
18 the burden of proof.

19 (5) Did the Defendants deny to Mr.
20 Wines any contractual rights under the Giles
21 County personnel policy?

22 (6) If so, what is the amount of Mr.

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1 Wines' damages, if any?

2 On Issues (5) and (6), Mr. Wines had
3 the burden of proof.

4 Instruction #2: Credibility of
5 *Witnesses* You are the judges of the facts, the
6 credibility of the witnesses and the weight of
7 the evidence. You may consider the appearance
8 and manner of the witnesses on the stand, their
9 intelligence, their opportunity for knowing the
10 truth and for having observed the things about
11 which they testified, their interest in the
12 outcome of the case, their bias and, if any have
13 been shown, their prior inconsistent statements
14 or whether they have knowingly testified
15 untruthfully as to any material fact in the
16 case.

17 You may not arbitrarily disregard
18 believable testimony of a witness. However,
19 after you have considered all of the evidence in
20 the case, then you may accept or discard all or
21 part of the testimony of a witness as you think
22 proper.

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1 You are entitled to use your common
2 sense in judging any testimony. From these
3 things and all the other circumstances of the
4 case, you may determine which witnesses are more
5 believable and weigh their testimony
6 accordingly.

7 Instruction #3: Circumstantial
8 *Evidence* Any fact that may be proved by direct
9 evidence may be proved by circumstantial
10 evidence. That is, you may draw all reasonable
11 and legitimate inferences and deductions from
12 the evidence.

13 Instruction #4: Verdict Not to be
14 *Based on Sympathy, Bias, Guesswork or*
15 *Speculation* You must not based your verdict in
16 any way upon bias, upon sympathy, bias,
17 guesswork or speculation. Your verdict must be
18 based solely upon the evidence and the
19 instructions of the Court.

20 Instruction #5: Standard of Proof -
21 *Definition of Greater Weight of the Evidence*
22 The greater weight of all the evidence is

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1 sometimes called the preponderance of the
2 evidence. It is that evidence which you find
3 more persuasive. The testimony of one (1)
4 witness whom you believe can be the greater
5 weight of the evidence.

6 Instruction #6: *Deposition Testimony*

7 During the trial of this case, certain testimony
8 has been presented to you by way of deposition
9 consisting of sworn recorded answers to
10 questions asked of the witness in advance of the
11 trial by one (1) or more of the lawyers for the
12 parties of the case.

13 You are to treat such deposition
14 testimony in the same way as if the witness had
15 testified from the witness stand.

16 Instruction #7: *Existence of Just*

17 *Cause Employment Contract* The parties dispute
18 whether the Giles County personnel policy
19 provides for an employment at will relationship
20 or whether the Plaintiff could only be
21 terminated for just cause.

22 It is for the jury to determine

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1 whether the Giles County personnel policy
2 establishes an employment contract under which
3 the Defendants could fire Mr. Wines for just
4 cause.

5 Instruction #8: *Just Cause - Burden*
6 *of Proof* The Defendants have a burden of proof,
7 have the burden to prove by the preponderance of
8 the evidence that the Plaintiff's discharge was
9 justified in fact.

10 Instruction #9: *Ordinary Meaning of*
11 *Words* Words used by the parties should be given
12 their ordinary usual and popular meaning unless
13 you find that the parties clearly intended such
14 words to have another meaning.

15 Instruction #10: *Construction Against*
16 *the User of Language* In interpreting a
17 contract, you should resolve any doubts about
18 the meaning of a word, let me correct that just
19 a little - I'm going to re-read it.

20 In interpreting a contract, you should
21 resolve any doubts about the meaning of words or
22 phrases against the party who used the language

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1 in the contract.

2 Any objection to the change,
3 gentlemen?

4 MR. HALEY: No, Your Honor.

5 MR. GUYNN: No, sir.

6 THE COURT: O. K. I just changed
7 that.

8 Instruction #11: Damages - Breach of
9 Contract If you find your verdict for the
10 Plaintiff, then he is entitled to recover as
11 damages all of the financial losses he sustained
12 which are a direct and natural result of the
13 breach of his employment contract and which he
14 has proved by the greater weight of the
15 evidence.

16 The losses must have been reasonably
17 foreseeable by the parties when they entered
18 into the contract.

19 Instruction #12: Finding Instruction
20 - Breach of Contract Claim You shall find your
21 verdict for the Plaintiff, Chad Wines, if he has
22 proved by the greater weight of the evidence

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1 that:

2 (1) the Giles County personnel policy
3 was a contract between Mr. Wines and Giles
4 County;

5 (2) the Defendant breached the
6 personnel policy by dismissing Mr. Wines for
7 reasons other than those set out in the policy
8 and without following those procedures required
9 by the personnel policy; and/or

10 (3) the Defendant breached the
11 personnel policy by failing to pay Mr. Wines for
12 accrued vacation time and compensatory time, if
13 any is due.

14 You shall find your verdict for the
15 Defendant if the Plaintiff, Chad Wines, failed
16 to prove any of the elements above or if you
17 find that just cause existed for the
18 termination.

19 Instruction #13: Denial of Pre-
20 Termination Due Process The Plaintiff, Chad
21 Wines, claims that the Defendants violated §1983
22 of Title 42 of the United States Code. That

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1 section entitles a person to recover damages
2 against a Defendant who, while appearing to act
3 under the authority of law, deprived the
4 Plaintiff of rights guaranteed by the
5 Constitution.

6 In this case, Mr. Wines claims that
7 while he was employed by the County of Giles, he
8 was discharged without first having been given,
9 after first having been given a hearing to prove
10 his claim. Plaintiff must prove the following
11 four (4) things by a preponderance of the
12 evidence:

13 First, that he was employed by the
14 Defendant County of Giles and could only be
15 terminated for just cause;

16 Second, that he was discharged from
17 that employment;

18 Third, that before his discharge, he
19 was not given a hearing, told of the reasons for
20 the discharge and given an opportunity to
21 contest them; and

22 Fourth, that, as a result of the

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1 discharge, he suffered damages.

2 Instruction #14: Denial of Post-
3 Termination Due Process The Plaintiff, Chad
4 Wines, claims that Defendants violated §1983 of
5 Title 42 of the United States Code. That
6 section entitles a person to recover damages
7 against a Defendant who, while appearing to act
8 under the authority of law, deprived the
9 Defendant, deprived the Plaintiff of rights
10 guaranteed by the Constitution.

11 In this case, Mr. Wines claims that
12 while he was employed with the County of Giles,
13 he was discharged and denied the right to any
14 due process after his termination. To prove his
15 claim, the Plaintiff must prove the following
16 four (4) things by a preponderance of the
17 evidence:

18 First, that he was employed by the
19 Defendant County of Giles and could only be
20 terminated for just cause;

21 Second, that he was discharged from
22 that employment;

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1 Third, that after his discharge, he
2 was not allowed a hearing or other proceeding to
3 contest his discharge; and

4 Fourth, that, as a result of the
5 discharge, he suffered damages.

6 Instruction #15: You are instructed
7 that as to the federal claim, damages are not
8 presume to occur but may occur from procedural
9 irregularities.

10 If you believe from a preponderance of
11 the evidence that the termination of Plaintiff
12 was justified and would have occurred regardless
13 of any lack of a hearing or irregularities in a
14 hearing, then the Plaintiff is not entitled to
15 recover damages for the termination itself or
16 damages arising from the termination, but is
17 entitled only to recover damages, if any, for
18 the lack of or irregularities in the hearing.

19 If the Plaintiff suffered no distress
20 over any procedural irregularities, then he is
21 entitled only to nominal damages.

22 Instruction #16: Due Process Claim -

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1 *Damages* If you find that the Plaintiff, Chad
2 Wines, was entitled, let's see, okay, if you
3 find that the Plaintiff, Chad Wines, was
4 entitled to, but not given either the pre-
5 termination or post-termination hearing, then
6 you must decide whether he suffered any damages
7 as a direct result.

8 A damage award to Plaintiff may
9 provide such amount as would make him whole and
10 also compensate him for any mental or emotional
11 distress he suffered. To award any element of
12 damages, you must find that Plaintiff has proved
13 a basis for such damages in the evidence.

14 You may not award damages based on
15 speculation or guesswork. If you find that the
16 Plaintiff has lost salary or benefits or damages
17 caused by the denial of notice and opportunity,
18 and an opportunity for a meaningful hearing to
19 contest the charge against him both before and
20 after his discharge, then you may award such
21 damages for lost salary and benefits which flow
22 naturally from the Defendants' actions.

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1 If you find that the Plaintiff
2 suffered mental or emotional distress, loss of
3 reputation or other damage caused by the denial
4 of an opportunity for a meaningful hearing to
5 contest the charges against him both before and
6 after his discharge, then you may award such
7 damages which flow naturally from the Defen-
8 dants' action.

9 Where a mental or emotional distress
10 or a loss of reputation are proven, the Court
11 cannot give you any rule by which to measure the
12 specific amount of damages resulting from such
13 an injury. This is a matter that is left to the
14 conscience, good sense and sound judgment of the
15 jury.

16 You should not act unreasonably
17 through bias, passion or sympathy, but should
18 exercise common sense and fix an amount of
19 damages that, in accordance with the evidence
20 and the law, will fairly compensate Plaintiff
21 for all the injuries suffered.

22 Instruction #17: Damages - Reasonable

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Proof The burden is on the Plaintiff to prove by the greater weight of the evidence that he sustained damages. He is not required to prove the exact amount of his damages, but he must show sufficient facts and circumstances to permit you to make a reasonable estimate of them.

If the Plaintiff fails to do so, then he cannot recover.

Instruction #18: *Pre-Judgment*

Interest You may provide for interest on any principle sum awarded as damages or any part thereof and fix the period of which the interest shall begin.

If you find that Mr. Wines is entitled to be compensated for damages based on denial of pre-termination due process, denial of post-termination due process and/or breach of contract, you may provide for interest on any sum awarded or any part thereof and fix the period of which the interest shall begin at the, at the time the denial of due process or breach

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1 of contract occurred or at some other time.

2 That concludes the reading of the
3 instructions. I now invite your attention to
4 the closing arguments of the attorneys.

5 MR. HALEY: Your Honor, may I move the
6 podium?

7 THE COURT: Oh, yes.

8
9 *****

10
11 CLOSING ARGUMENT BY MR. HALEY:

12
13 Ladies and gentlemen of the jury, thank you very
14 much for your attention over the last two (2) days. I
15 know it is an imposition. We'll be as quick as we can on
16 it and I know we know that you listened and heard the
17 evidence that was presented to you over the last two (2)
18 days.

19 Remember during opening statement I asked you to
20 keep some issues in your mind - to fix in your mind some
21 questions that were going to be answered by the evidence.

22 The questions I asked you to consider was did



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* * *

649

1 MR. HALEY: Well, I mean, isn't it,
2 there's a smaller ...

3 THE COURT: The smaller can and it was
4 marked as an exhibit. Let me have the
5 instructions for a minute.

6

7 THE COURT STANDS IN RECESS AWAITING THE JURY'S VERDICT

8

9

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[While the jury was deliberating, counsel
entered the following objections on the record to the
Court's instructions as given and to the instructions
which were refused by the Court.]

19

20

21

22

MR. GUYNN: We begin by objecting to
Part #1 in the Issues: Allocation of Burden of
Proof with regard to the issues in this case.
We have moved to strike.

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1 We would renew our, that motion
2 through this objection with regard to there
3 being no claim for any pre-termination based
4 upon *Holland vs. Rimmer* and the previous
5 arguments that we've made. Their, our position
6 is that post-termination process is satisfied by
7 having the breach of contract action and that
8 these issues and burden of proof do not
9 accurately state the law.

10 All right. We object to the giving of
11 the just cause instruction, #8, on the grounds
12 that as a matter of law the personnel policy
13 does not contract, does not constitute an
14 employment contract with an implied duration and
15 is, in fact, an at will employment contract and
16 therefore we should not be required to prove
17 just cause to support the termination.

18 We object to Instruction #12, again on
19 the grounds that just cause was not necessary
20 because it was an at will contract between the
21 County and Mr. Wines and also the Paragraph,
22 which is numbered #2, which indicates that there

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1 can be recovery for a failure to follow the
2 procedures and should not have been included
3 within the instruction.

4 We object to Instruction #10 on the
5 grounds that the contract was not ambiguous and
6 therefore there was no need to give this
7 particular instruction.

8 Our position would be that a breach of
9 contract instruction is not appropriate in this
10 case, that as a matter of law, the Court should
11 have ruled that Mr. Wines was an at will
12 employee and therefore not entitled to any due
13 process and that this employment contract being
14 at will was subject to termination at any time
15 and for any reason by, short of public policy
16 violations by the County.

17 I think the previous one was
18 Instruction #12, the one on breach of contract.

19 On the breach of contract damages
20 claim which is Instruction #11, the Court
21 modified it to include financial losses, but our
22 position is that there could be no damages for

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1 breach of, of an at will employment contract
2 under the circumstances.

3 This personnel policy did not rise to
4 the level of, did not overcome the presumption
5 of at will employment.

6 We object to Instruction #16 entitled
7 *Due Process Claim Damages* on the grounds that
8 the instruction does not fairly and adequately
9 set forth the Defendants' arguments with regard
10 to damages, that is, it is, fails to note the
11 possibility of the jury returning nominal
12 damages in a situation where they would find
13 that there was just cause for the termination.

14 We object to Instructions #13 and #14,
15 those are the denial of the post-termination and
16 pre-termination due process on the grounds that
17 there was no denial on pre-termination after he
18 was reinstated and brought current on his back
19 pay and the post-termination is satisfied by his
20 breach of contract state action and also that
21 these are not accurate statements of the law in
22 that regard.

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1 I object to #18 on the grounds that
2 there should not be an instruction for pre-
3 judgment interest, that it should just be
4 covered in the verdict form.

5 MR. HALEY: We object Instruction #15
6 as read by the Court because it is an
7 instruction that is constructed out of piecemeal
8 sentences, lifted out of context from a judicial
9 opinion that does not accurately state the law
10 and allows the jury to consider improper factors
11 or issues in determining the existence of
12 compensatory vis-à-vis nominal damages.

13 We would also note our objection to
14 the long two (2) page verdict form with respect
15 to Question #3 inserted by the Court over the
16 objection of the Plaintiff which fails to
17 adequately advise the jury of the availability
18 of compensatory damages for a violation based
19 solely on the January 2nd, 1996, termination
20 without procedural due process.

21 O. K. As to instructions refused,
22 equal standing, we object to the refusal of the

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1 equal standing instruction. We believe it is a
2 correct statement of the law and, given the
3 relative position of the parties with respect to
4 official status and other factors, should have
5 been read to the jury.

6 We also object to the refusal of the
7 procedural due process instruction. It is a
8 long instruction, two (2) pages long. The
9 instruction is an accurate statement of the law
10 upon which the jury should have been instructed
11 and upon which the Plaintiff had a right to have
12 the jury instructed.

13 We object, the Plaintiff objects to
14 the refusal of the instruction titled *Peremptory*
15 *Instruction/Protected Property Interest*. The
16 evidence at trial established that the Plaintiff
17 had a protected property interest in employment
18 and that Plaintiff was entitled to a peremptory
19 on this point.

20 The Plaintiff further objects to the
21 refusal of the instruction titled *Peremptory*
22 *Instruction/Just Cause Contract*. The evidence

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1 presented at trial established that the
2 contract, that the Giles County personnel policy
3 established an employment relationship and an
4 employment contract by which an employee could
5 only be terminated for just cause. The
6 Plaintiff was entitled to a peremptory
7 instruction because the evidence was not in
8 conflict as to the existence of the just cause
9 provision in the employment relationship.

10 The Plaintiff objects to the one page
11 instruction entitled *Just Cause*. The statement,
12 the instruction is a correct statement of the
13 law and the Plaintiff was entitled to the
14 instruction of the jury on applicable law
15 governing the case.

16
17 THE COURT CONTINUES TO STAND IN RECESS AWAITING THE JURY'S
18 VERDICT

19
20 THE JURY KNOCKS ON THE DOOR WITH A QUESTION

21
22 THE COURT: They'll have to come out

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1 and ask the question in open court.
2

3 THE JURY RETURNS TO THE COURTROOM AT 7:07 P.M.
4

5 THE COURT: No need to be seated. If
6 you'll just, just where everybody can hear the
7 question.

8 JURY FOREMAN: We wondered in Question
9 #3 - Was the termination of Mr. Wines justified
10 and would it have occurred regardless of any
11 lack of a hearing or irregularities in a hearing
12 - and we were, we were under the impression that
13 that was a two (2) question answer for that.

14 THE COURT: Let me, could I see it for
15 a minute? That is really just this wording -
16 Was the termination of Mr. Wines justified and
17 would it have occurred regardless of any lack of
18 a hearing or irregularities in a hearing?

19 That is really just one question.

20 JURY FOREMAN: O. K.

21 THE COURT: Gentlemen, do you agree
22 with what I've told?

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1 MR. HALEY: I think it is one
2 question. Yes.

3 THE COURT: Do you agree?

4 MR. GUYN: Yes, sir.

5 THE COURT: That's one question and
6 just one answer.

7 JURY FOREMAN: Okay then.

8 THE COURT: All right. You need to,
9 does that, have you finished your ...

10 JURY FOREMAN: Yes, sir.

11 THE COURT: Your deliberations?

12 JURY FOREMAN: Yes, sir.

13 THE COURT: All right. Is that your
14 verdict that you have in your hands?

15 JURY FOREMAN: Yes, sir.

16 THE COURT: May I review that before
17 we receive it then?

18 All right. Would you come in and be
19 seated?

20
21 THE JURY IS SEATED IN THE JURY BOX
22

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THE COURT: All right. Members of the jury, have you arrived at your verdict?

JURY FOREMAN: Yes, sir. We have.

THE COURT: All right. I'm going to read the verdict form that that jury has handed to me.

On Question #1, do you find in favor of Mr. Wines and against the Defendants? Yes.

On Question #2, do you find in favor of Mr. Wines and against the Defendants? Yes.

If your answers to Questions #1 and #2 were in the affirmative, then you must answer Question #3.

Question #3: Was the termination of Mr. Wines justified and would it have occurred regardless of any lack of a hearing or irregularities in a hearing? Your answer was no.

Question #4: Did you find in favor of Mr. Wines and against the Defendants? That's on the breach of, maybe I better read Question #4.

Question #4: On Mr. Wines' claim of

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Verdict of the Jury

659

1 breach of contract, please answer the following
2 question: Did you find in favor of Mr. Wines
3 and against the Defendants? Yes.

4 If you found in favor of Mr. Wines and
5 against the Defendants in any of Mr. Wines'
6 claims, please indicate the amount, if any, that
7 you award Mr. Wines for compensatory damages:
8 seventy-five thousand dollars (\$75,000.00).

9 If you decide to award pre-judgment
10 interest on any judgment in favor of Mr. Wines,
11 please answer the following questions:

12 On what amount, if any, do you award
13 interest? Forty-eight thousand nine hundred and
14 fifty-six dollars and sixty-seven cents
15 (\$48,956.67).

16 From what date do you award interest?
17 January 27, 1996, to January 5, 1998.

18 Is this your verdict and it's signed
19 John D. Kelley, Foreperson.

20 Mr. Kelley, is that the jury's
21 verdict?

22 JURY FOREMAN: Yes, sir.

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THE COURT: Members of the jury, so
say you all?
(The entire jury indicates an affirmative
response.)

THE COURT: All of you agree with the
verdict?
(The entire jury indicates an affirmative
response.)

THE COURT: Anything to take up before
the jury leaves? Any questions? Do you wish to
poll the jury or anything?

MR. GUYNN: Yes.

THE COURT: Members of the jury, as we
call your name, the Clerk will ask you ...

THE CLERK: No. If they'll just state
their name, I'll ask them if it's their verdict.
I can't find the original jury list.

THE COURT: We've left the list in the
back.

THE CLERK: It's in the file back
there. That's where I was. So if you'll just
state your name as we go and then I'll ask you

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1 if that's your verdict and you can respond.

2 JUROR COOLEY: Eleanor Cooley.

3 THE CLERK: Is this your verdict?

4 JUROR COOLEY: Yes.

5 JUROR DAVIS: Ida Davis.

6 THE CLERK: Is this your verdict?

7 JUROR DAVIS: Yes.

8 THE CLERK: Herman Cyrus Stafford, and
9 this is your verdict?

10 JUROR STAFFORD: Yes, ma'am.

11 JUROR KELLEY: John Kelley.

12 THE CLERK: Is this your verdict?

13 JUROR KELLEY: Yes. It is.

14 JUROR GRAY: Anthony Gray.

15 THE CLERK: Is this your verdict?

16 JUROR GRAY: Yes, ma'am. It is.

17 JUROR SPECKMEIR: Connie Speckmeir.

18 THE CLERK: Is this your verdict?

19 JUROR SPECKMEIR: Yes.

20 JUROR LANE: Margaret Lane.

21 THE CLERK: Is this your verdict?

22 JUROR LANE: Yes, ma'am.

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1 THE COURT: Members of the jury, thank
2 you very much for staying with us and concluding
3 the case and for serving the last two (2) days
4 and for the term. I understand this is the last
5 jury during this term. So thank you very much
6 and you're now excused. We need to stay and do
7 some things.

8
9 JURY IS EXCUSED FROM THE COURTROOM

10
11 THE COURT: All the jurors have
12 departed. All right. Any motions from either
13 party? Of course, we still have the one motion
14 under advisement.

15 Any other, other than the issue that's
16 under advisement, anything else? Any other
17 motions?

18 MR. GUYNN: No. I think we have to
19 renew the one that's under advisement, Your
20 Honor.

21 THE COURT: Well, consider it done for
22 the record.

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1 MR. GUYNN: And other than that, we
2 would add the, you know, from the general
3 standpoint that the verdict would be, should be
4 set aside as contrary to law and evidence.

5 THE COURT: All right. I'll take that
6 under advisement. I've got one thing under
7 advisement, so - and I think I need to take this
8 under advisement pending the ruling that I have,
9 I have to make.

10 MR. HALEY: Your Honor, just to make
11 sure we all understand the procedure, I'm not, I
12 mean, the things that occur to me that need to
13 be done ...

14 THE COURT: All right.

15 MR. HALEY: Are obviously we need to
16 file some sort of response to their trial
17 memorandum and they'll probably want to file a
18 reply.

19 THE COURT: Yes.

20 MR. HALEY: And we will have to file a
21 petition for attorney's fees, assuming the Court
22 affirms the verdict, and I guess we need to do a

* * *

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County of Giles

BOBBY L. COMPTON
MEMBER AT LARGE

GEORGE P. HEDRICK II
MEMBER AT LARGE

JANET E. TUCKWILLER
COUNTY ADMINISTRATOR



Board of Supervisors

120 NORTH MAIN STREET
PEARISBURG, VIRGINIA 24134

Confidential

HERBERT H. BROWN
WESTERN DISTRICT

SAMUEL G. TIMBERLAKE
CENTRAL DISTRICT

LARRY JAY WILLIAMS
EASTERN DISTRICT

July 24, 1995

D. Chad Wines
Castle Rock Golf and Recreation Area
P. O. Box 492
Pembroke, Virginia 24136

Dear Chad:

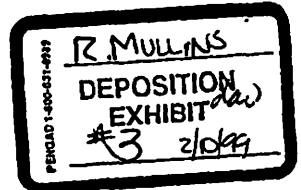
The purpose of this letter is to communicate an adjustment in your base salary from \$22,539.87 to \$25,268.00 effective this month.

If you should have any questions, please feel free to discuss them with me. Thank you very much.

Sincerely,

Janet E. Tuckwiller
County Administrator

cc: George P. Hedrick, II, Chairman, Board of Supervisors





GILES COUNTY
PERSONNEL POLICY
AMENDED
November 8, 1989

AMENDMENT OF ARTICLE I, SECTION 1-2 OF THE PERSONNEL RULES
FOR THE COUNTY OF GILES

Be it resolved by the Board of Supervisors of Giles County, Virginia, that Article I, Section 1-2 of the Personnel Rules of Giles is hereby amended and replaced with the following Section designated 1-2 effective on the date of this resolution:

1-2 Applicability of Rules

The rules herein established shall apply to appointed paid employees of the Board of Supervisors of Giles County, except for temporary or unclassified employees as defined herein. These rules and policies shall specifically not apply to elected officials, members of citizen boards, committees, commissions or authorities, nor to any other personnel appointed to serve without monetary compensation.

These rules shall specifically not apply to any constitutional officer or their employees, except however that employees of the County Treasurer, Commissioner of Revenue, Clerk of the Circuit Court and Commonwealth's Attorney shall receive two weeks paid vacation and seven days paid sick leave as provided for in Section 15.1-19.3 of the Code of Virginia. Such vacation and sick leave for such employees shall be accumulated and terminate under the same provisions of Section 7-2 and 7-3 of these personnel rules. Nothing contained herein shall be deemed to prevent constitutional officers from controlling vacation and sick leave for their employees, however this provision shall be deemed to limit the obligation of the County of Giles to compensate employees of constitutional officers for unused vacation leave. The County shall have no obligation to compensate employees of constitutional officers for unused sick leave. The actual constitutional officer shall have complete control over his or her own vacation and sick leave time and the County of Giles shall have no obligation to compensate any constitutional officer for unused sick leave or vacation leave.

Adopted at a meeting of the Board of Supervisors of Giles County, Virginia held on Jan. 21, 1992.

Bobby Compton
Bobby Compton, Chairman

attest: Kenneth Weaver, Clerk

To: Mr. Kenneth Weaver, Administrator
From: Rhonda Tickle, Personnel
Date: March 16, 1992
Re: Pay Scale 1992-93

I have attached the new projected pay scale for County Employees. I have adjusted the scale to reflect the percentage increases given by the Board of Supervisors during the previous two out of three years, and have adjusted the scale for employees who were given step increases to be placed on the scale.

If this scale is approved this will only affect the lower (which were within .02 per hour of minimum wage). So the employees who will benefit from the scale will be the lower wage earner ie Ambulance Drivers, Animal Control.

As you will note establishment of Litter Co-ordinator and Office Assistant/Zoning Assistant has been placed on the scale for approval.

All employees are currently on the scale as times designate, however, the equipment operator at the landfill is still off scale due to the starting pay determined by the previous administrator.

ARTICLE I - GENERAL

1-1 Establishment and Purpose of the Personnel Rules

These rules are adopted for the purpose of establishing a uniform and equitable system of personnel administration to govern the appointment, classification, pay, work periods, leaves of absence, discipline, separation, and grievance procedure of the employees of the Board of Supervisors of Giles County and other County offices that agree to participate.

1-2 Applicability of Rules

The rules herein established shall apply to appointed paid employees of the Board of Supervisors of Giles County, except for temporary or unclassified employees as defined herein. These policies shall specifically not apply to elected officials, members of citizen boards, committees, commissions or authorities, nor to any other personnel appointed to serve without monetary compensation.

1-3 Organization for Personnel

The County Administrator is designated as the senior personnel officer and he is responsible for personnel administration for the County. He has the authority to take appropriate action in dealing with violations of the established rules, under the general guidance of the Board of Supervisors.

1-4 Dissemination of Rules

The County Administrator will furnish complete copies of all the rules, and changes thereto, to all County offices and employees, and shall be responsible for maintaining a complete current set of rules and for the bringing of these rules and changes to the attention of all employees under his supervision.

1-5 Definitions

Where used within these personnel rules the following words and terms shall have the meaning indicated below; all terms and provisions as used in these rules shall be deemed to be gender neutral, regardless of the fact that such rules may refer to gender, which was done only as a matter of convenience in drafting such rules:

(a) APPOINTING AUTHORITY. That officer or body having been granted by the Board of Supervisors and these rules to make appointments or positions.

(b) CLASSIFICATION. The entire process of assigning and reassigning individuals to positions, classes, and grades, so that employees will be compensated on the basis of fitness and actual duties performed.

(c) COMPENSATORY LEAVE. A period which employee may be permitted to be absent from their duties with pay in compensation for overtime worked.

(d) CLASS OF POSITIONS. A group of positions sufficiently similar in duties to justify the same position title and ranges of pay.

(e) DEPARTMENT HEAD. Current department heads include the Ambulance Service Captain, Castle Rock Recreation Area Manager, Maintenance Supervisor, and Landfill Supervisor. Other persons may be designated as department heads by the Board of Supervisors.

(f) FULL TIME POSITION. A position of employment in the administration of the County requiring at least 1600 work hours or more per year.

(g) GRADE (PAY GRADE). The numerical designation of a fixed salary range assigned to a position or class of positions. The term pay grade shall be synonymous with pay range.

(h) INSURED SICK LEAVE. A period during which employees may, when absent from work caused by a disability arising from performance of their duties, be absent from their work and receive (and not be charged for a portion of their accumulated sick leave) pay equal to an amount which will, when added to Worker's Compensation insurance benefits, equal their total regular take home pay and provided benefits. No insured sick leave payments shall be made for more than six months for any one injury, unless a specific exception is made by the Board of Supervisors.

(i) STEP (PAY STEP). The letter designation of a fixed salary range assigned to a position or a class of positions.

(j) PART TIME POSITION. A position of employment in the administration of the County requiring less than 1600 work hours per year. Part-time employees shall accrue benefits under this policy which are pro-rated in accordance with the number of hours worked. For example, a part time employee working twenty (20) hours per week shall accrue one half of the benefits of a regular full time employee who normally works a forty (40) hour work week.

(k) POSITION DESCRIPTION. A detailed written description of the specific duties assigned, qualifications

for, and pay grade assigned to and performed by a particular employee; to serve as the basis for classification.

(l) OVERTIME. A period of time worked by an employee in excess of regular work hours required for the employee's position during a work period. The regular work period shall generally consist of forty (40) hours per week.

(m) REGULAR WORK HOURS. Those hours in a work period during which an employee is required to be at his work.

(n) SICK LEAVE COMPENSATION. A period during which an employee, his or her spouse, children, parents or other relatives who live in the employee's household, are sick and during which time the employee may be absent from his duties with pay, excluding insured sick leave.

(o) SUSPENSION. A period during which an employee, for disciplinary or other reasons shall not work or receive compensation.

(p) TEMPORARY EMPLOYEE. An employee appointed to and holding a position not provided by title in the annual budget, but whose pay or salary is either provided for by the annual budget, or by funds from other governments or private means.

(q) UNCLASSIFIED EMPLOYEES. The positions of County Administrator, Assistant County Administrator/Planner, and County Attorney.

(r) VACATION LEAVE. A period during which employees may, when permitted by the appointing authority or the department head, be absent from his duties with pay.

(s) WORK PERIOD. A period of time during which each employee is scheduled to perform duties in a set number of hours, according to the individual position description.

ARTICLE II: QUALIFICATION FOR APPOINTMENT AND CONTINUED EMPLOYMENT

2-1 Physical Standards

Applicants for employment and employees, except temporary employees, may be given a physical examination at any time and must meet the physical requirements established for the position for which they apply as a condition to employment or continued employment.

2-2 Identification

All applicants for employment must be interviewed, and when deemed necessary a background check or investigation will be made through the various agencies including law enforcement agencies.

2-3 Application

All applicants for employment must furnish complete information on the application form established for the position for which they apply.

2-4 Other Standards of Employment

(a) All persons, regardless of race, color, religion, sex, or national origin shall have equal access to classified positions of the Board of Supervisors in Giles County. Selection of new employees will be based on the ability of the applicant to do the work.

(b) Where other standards or requirements for a particular position are established, all applicants shall be required to meet those standards as a condition of employment. Any standards developed must have the approval of the County Administrator before being adopted, and shall then be entered on the applicable position description. Any substitution for, or deviation from established standards must have prior approval of the County Administrator. The County Administrator may establish and must approve tests or examinations which are developed and which are warranted to determine whether or not an applicant or employee meets established standards.

2-5 Operators of County-Owned Motor Vehicles

Any applicant, or employee, who will operate a county-owned motor vehicle must possess a valid Virginia motor vehicle operators license at the time of and during his employment. The license must be appropriate to the type of vehicle he or she operates.

ARTICLE III - APPOINTMENTS

3-1 Vacancies

The County Administrator shall publicize vacancies to be filled by publication notice of the vacancy in the Virginian-Leader newspaper, and in any other places deemed necessary or appropriate to attract qualified candidates. Qualified County employees will be encouraged to apply for upward classification. The County Administrator, with the consent of the Board of Supervisors may advertise a job

vacancy only among current county employees. If no qualified current employee is selected for such job vacancy, then the public notice process shall commence.

3-2 Appointing Authority

(a) The appointing authority for the position of County Administrator and Assistant County Administrator/Planner is the Giles County Board of Supervisors.

(b) The County Administrator is the appointing authority for the various department heads, except as stated in subparagraph "a" above, and such other persons that are not assigned to a particular department. His appointments are subject to approval of the Board of Supervisors.

(c) Department heads are the appointing authority for persons placed within their various departments and under his/her supervision, subject to the approval of the County Administrator.

(d) The appointing authority shall examine applications and interview applicants for employment. Appointments shall be made on the basis of ability, training, and experience without regard to age, race, religion, color, sex, or national origin. When two or more applicants are equally qualified in the opinion of the appointing authority, priority consideration will be given to applicants living within the boundaries of Giles County.

3-3 Types of Appointment

(a) Permanent Appointment: Appointment to permanent positions shall be made when a vacancy exists and such appointment shall be subject to a six (6) month probationary period of employment during which time the employee is required to demonstrate by actual performance his fitness for the duties to which he is appointed, and suitability as a public employee. The probationary period shall be served by both new or promoted employees. The appointment is subject to rejection during the probationary period for an employee whose performance does not meet the required standards.

(b) Temporary Appointment: Temporary appointments shall not be made for a term of greater than six (6) months and shall not exceed a total of six (6) months in one fiscal year. Employment under temporary appointment will be counted as part of the probationary period of the appointment becomes permanent. When the State or Federal government allocates funds to hire extra persons, the appointment will be considered temporary, but will not be subject to the six month time limitation.

(c) Emergency Appointment: When an emergency exists and in order to prevent stoppage of public service or loss or inconvenience to the public, emergency appointments may be made for a period not to exceed thirty (30) days. The County Administrator will make all emergency appointments with the approval of the Board of Supervisors.

ARTICLE IV - CLASSIFICATION PLAN

4-1 General

A classification plan is hereby established and designated as Appendix "A" to these rules. No deviation shall be made from the classification without proper amendment by the County Administrator with the approval of the Board of Supervisors. A list of positions is to be prepared and added to the annual budget each year, and after Board of Supervisors approval, will represent the approved numbers and classification of permanent employees.

4-2 Coverage

The classification plan shall include all permanent classified positions in the County service.

4-3 Assignment of Positions to Grades

The County Administrator shall make all assignments of positions to grades, and this authority cannot be delegated. The Board of Supervisors will approve the list of positions to grades. Positions which are sufficiently alike in duties and/or responsibility will be accorded the same pay grade.

4-4 Maintenance

Department Heads shall be responsible for bringing to the attention of the County Administrator any material change in the nature of duties, responsibilities, working conditions, or other factors affecting the classification of any position. Following the receipt of such information the County Administrator shall restudy the position and determine if the position description, pay grade or pay level should be changed.

4-5 Classification of New Positions

The County Administrator with the advice of the department heads, is responsible for recommending new positions to the existing list of positions. The County Administrator shall report any recommendations of new positions to the Board of Supervisors for approval.

ARTICLE V - PAY FOR EMPLOYEES

5-1 Pay Plan

The pay of all employees is established by the pay plan for the position in which they are employed. See appendix "B". The County Administrator shall be responsible for the development of a uniform and equitable pay plan which shall consist of minimum and maximum grades and steps of pay for each position listed. In determining salary ranges, consideration shall be given to prevailing rates for comparable work in other public employment and private business, the current cost of living, responsibilities of the position, and the counties financial condition and policy.

5-2 Pay Grades and Steps

Each position will have a pay grade assigned, and each position within that grade will have nine pay steps based on length of service.

5-3 New Appointees

Usually a new employee will be paid the lowest step of pay for his position. The minimum rate for each position is based upon the assumption that a new employee meets the minimum qualifications stated in the class specification. However, exceptions may be granted by the County Administrator and approved by the Board of Supervisors in the following cases:

(a) When it is necessary to appoint a new employee whose qualifications are less than the minimum, he shall enter service at one or more grades below the minimum rate of the class.

(b) When a new employee more than meets the minimum qualifications, he may be appointed within a grade at Steps "B" or "C".

5-4 Promotions

When an employee is promoted to a position in a higher grade, his salary shall be increased to the minimum step for the higher position. In the case of overlapping pay scales, the promoted employee shall be increased to the step in the pay range for his position which is immediately above his present salary step.

5-5 Reinstated Employees

A reinstated employee shall be paid at a salary rate within the approved grade for the position to which he is reinstated.

5-6 Part-Time Employment

When employment is on a part-time basis, only the proportional part of the rate for the time actually employed shall be paid. (usually paid on an hourly basis without regard to annual salary).

5-7 Transfer, Demotion

The pay of an employee transferred to another position in the same pay grade shall remain unchanged. The pay of an employee demoted to a position with a lower grade shall be reduced to the same step in the lower grade as the employee occupied in the higher grade prior to his demotion.

5-8 Pay and Allowances

Rates of pay established are gross and total compensation for service in the various classifications. The hours of work for full-time and part-time service are established by the position description. Rates of pay and salary for regular and additional work is designated in the pay plan.

5-9 Compensatory Time

On occasions when emergencies require irregular or unscheduled overtime work for salaried employees, compensatory time may be allowed on the basis of one and one half hours time off earned for for one hour of overtime worked. No compensatory leave shall be granted or allowed to accrue beyond a maximum of 240 hours at any one time. Compensatory time off shall be permitted within a reasonable period after it is earned provided it does not unduly disrupt the operations of the County, and must be taken within six months from the date it is earned. Any compensatory time not taken within six months from the date it is earned will be compensated at the employees regular rate of pay as set forth below. Supervisors shall be responsible to ensure that accrued compensatory time is granted within such six month period, unless the granting of such time off would disrupt normal County operations.

Upon the termination of employment, the employee shall be paid for all accrued compensatory leave at the rate of pay at the time of termination, but not less than the average regular pay rate received by the employee during the last three years of employment.

5-10 Overtime Pay

Overtime pay, except for those employees specifically exempted, may be awarded at the rate of one and a half times the regular pay figured at an hourly rate for overtime work outside of the normal work hours during a work period. Except in the case of an emergency when prior approval cannot be obtained, all overtime must be approved in advance by the County Administrator. When an employee is required to work overtime and such overtime continues beyond the regular mealtime, the employee may be granted compensation for such meals.

5-11 Uniform and Equipment Allowance

(a) Uniformed employees may be provided adequate work uniforms in accordance with the policy of the County, and as approved in the annual budget.

(b) Safety equipment, such as safety hats, face shields, goggles, safety glasses and other items as required, will be furnished free of charge in accordance with County policy.

5-12 Deductions

The County bookkeeper is authorized to make established deductions from an employee's gross pay to cover Federal and State income taxes, F.I.C.A., contributions for retirement, group life insurance, and hospitalization and surgical insurance premiums. When authorized by an employee, the bookkeeper may also make payroll deductions for the purchasing of U.S. Savings Bonds, cancer insurance, United Fund contributions and credit union deductions. Individual deductions other than the above shall be made only with the approval of the County Administrator.

5-13 Deductions on Termination

On termination of employment, if an employee is indebted to the county, the bookkeeper shall deduct and withhold from the final pay check any amount owed. The final pay check shall not be issued until the extent of indebtedness to the County has been determined and cleared.

5-14 Administrative Salary Adjustment

The position description of each employee shall be reviewed annually by the department heads and the County Administrator for the purpose of determining if employees should receive salary adjustments. Changes due to demonstration of an increase or decrease or responsibility or skill level may, based on the County Administrator's findings, and on the financial condition of the County,

change the pay grade accordingly. Adoption of the annual budget shall constitute approval of amendments to the pay plan by the Board of Supervisors. Adjustments can only be made as budget adjustments and with the approval of the Board of Supervisors.

5-15 Salary Adjustments

Salary adjustments must be part of the budget process and any increases are subject to approval by the Board of Supervisors.

ARTICLE VI - WORK PERIODS AND OTHER MATTERS

6-1 All Departments

The work period for all employees is designated as one month. The number of regular hours to be worked during the work period is described in each employees position description, but usually is not more than an average of forty (40) hours per five day work week.

6-2 On the Job Injuries

Any employee who is injured during the hours of his employment shall report the facts and circumstances of his injury to his immediate supervisor as soon as possible. If the employee requires medical attention, such medical attention should be secured from a member of the panel of treating physicians designated by the Board of Supervisors. Failure to do so could result in the employee having to pay for the cost of the medical expenses. Supervisors must make an immediate report of all injuries to the County Administrator. Failure to do so may result in disciplinary action against the supervisor. Employees should recognize that Worker's compensation benefits are paid by a private insurance carrier and that necessary reports must be made to that insurance carrier before benefits can be paid. Any assistance that the employee can provide in giving information to the insurance carrier will expedite the payment of benefits.

6-3 Accidents or Damage to County Property

Employees shall immediately report an accident involving a County vehicle to the appropriate law enforcement agency and shall also summons any medical assistance which may be needed. The employee shall also report such accident to his supervisor and to the County Administrator.

Damage to other County owned property shall be immediately reported to the employee's supervisor.

6-4 Inclement Weather

County employees are expected to report for work when this can be done in reasonable safety. In the event that inclement weather necessitates the closing of County offices, this decision will be made by the County Administrator. Employees who anticipate difficulty in reporting to work shall notify their supervisor or department head as soon as possible. If County offices are closed due to inclement weather, time missed from working hours will be considered holiday leave. Inclement weather will not cause the closing of County departments providing emergency services and may in fact increase the need for such services.

ARTICLE VII - LEAVES OF ABSENCE

7-1 Holidays

The following paid holidays are designated for all employees of the Board of Supervisors of Giles County:

New Year's Day	January 1st
President's Day	Third Monday in February
Good Friday	Friday before Easter
Memorial Day	Last Monday in May
Independence Day	July 4th
Labor Day	First Monday in September
Columbus Day	Second Monday in October
Veterans' Day	November 11th
Thanksgiving Day	Last Thursday in November
Christmas	Christmas Eve after 12 Noon and December 25th

For purposes of compensation, when a designated holiday falls on Saturday or Sunday, the holiday shall be considered to be celebrated on the Friday preceding the Saturday holiday or the Monday following the Sunday holiday, respectively. Employees required to work on a holiday will be paid on an hour for hour worked basis, unless such holiday work will amount to work in excess of the regular work week had the holiday not occurred. In that event, the employee shall receive either compensatory leave or overtime as set forth herein.

7-2 Annual Vacation Leave

Annual vacation leave is accumulated as the following table reflects, based on the length of service with the county.

<u>Years of Service</u>	<u>Vacation Earned/Month</u>
1-5	1 work day per full month
5-10	1 1/4 work days per full month
10 or more	1 1/2 work days per full month

Vacation leave shall accrue and may be taken by an employee as follows:

One half of the vacation leave to which the employee would be entitled for the calendar year upcoming will accrue to the employee's earned vacation leave on January 1st of each year. The remainder of such vacation leave for that calendar year shall accrue on July 1st of that calendar year. In the event that the employee shall terminate employment for any reason before the end of the calendar year, no compensation shall be received or paid for unused vacation leave unless the employee actually worked the number of months which would have earned the unused leave if leave accrued on a monthly basis.

A new employee will accrue annual leave beginning with the first full month of employment for the County, however, he/she is not eligible to take annual leave for the first full six (6) month period and if the probationary period is not successfully completed, then no compensation shall be granted for accrued vacation leave upon termination of employment.

All annual leave should be planned well in advance and must be approved by the employee's Department Head. Vacation leave must be utilized within twelve (12) months of such leave accruing to the employee. In the event that the needs of the County prevent an employee from taking requested vacation leave, the County Administrator shall have the authority to grant the employee an extension of time in which to use accrued vacation leave. Employees desiring such extension shall apply for the extension to the County Administrator.

If a holiday is observed within an employees vacation period, the employee will not be charged vacation leave for the holiday, provided that the employee would have been entitled to receive holiday pay for that holiday.

7-3 Sick Leave

Sick leave is granted at the rate of one and one-quarter (1 1/4) work days for each full month of employment and shall accumulate from year to year providing that no employee shall accumulate in excess of 180 days. This time may be used when the employee is unable to work due to personal illness, or has a doctor's or dentist's appointment. Such leave shall accumulate to each employee on January 1st of each year except that employees with less than one year's service will be granted one and one-quarter work days for each full month of employment served. A limited amount of sick leave may be used due to the illness of a spouse, child or other relative residing in the employee's household. This leave must be coordinated with the employee's Department Head. At the discretion of the County Administrator, proof of illness may be required before sick leave time is approved. After completing five years of service as a county employee, upon termination of employment, the employee shall receive compensation on an hour for hour basis, at the employee's regular rate of pay at the time of termination, for one fourth (1/4) of the employee's accrued and unused sick leave. (for example if the employee has accrued 160 hours of sick leave, the employee shall receive compensation for forty hours of such unused sick leave.

In the event that the employee shall terminate employment for any reason before the end of the calendar year, no compensation shall be received or paid for unused sick leave unless the employee actually worked the number of months which would have earned the unused leave if leave accrued on a monthly basis.

Employees are required to notify their Department Heads prior to the time set for the beginning of the daily work hours and, at the discretion of the Department Head, to file a physician's certificate stating if the employee was unable to work or if the employee is able to return or work. The Department Head shall verify actual sickness in all cases where absence continues longer than three (3) days. In the event of absence longer than twenty (20) days, the Department Head may require that the employee consent to one or more examinations by a physician chosen by the county as a condition of these examinations. In all cases where absence continues longer than forty (40) days the County Administrator shall report such absence to the Board of Supervisors.

When an employee is transferred to another position, any unused sick leave which may have accumulated to his credit shall continue or be available for his use as necessary. The County Administrator may grant extra-

ordinary sick leave where warranted, subject to the approval of the Board of Supervisors.

Insured sick leave up to the amount authorized by worker's compensation insurance benefits will not be charged against an employee's annual sick leave. In the event that the employee is entitled to receive worker's compensation benefits, and cannot perform his regular job duties or other light duties which may be offered to him, the County will supplement the employee's worker's compensation benefits to the extent necessary for the employee to receive the same net pay after deductions, which the employee would have received if working, including county provided benefits. Such insured sick leave shall not extend beyond six (6) months unless a specific exception is granted by the Board of Supervisors, however nothing shall prohibit the employee continuing to receive worker's compensation benefits for which he may be eligible. Vacation leave and sick leave shall not be earned during a period of insured sick leave.

7-4 Maternity Leave

Permanent employees that require time off due to pregnancy will be required to utilize accumulated sick leave. Only that period of the employee's absence from work that is certified by her physician can be charged to sick leave accumulation. In the event that all accumulated sick leave is used, the employee's annual leave accumulation may be used. All other time required, as certified by the physician, will be charged to leave without pay, but her absence due to pregnancy will not jeopardize her employment.

7-5 Death Leave

Permanent employees may be granted up to three (3) days leave for each occurrence of death of a spouse, child, parent, parent-in-law, brother, sister, brother or sister-in-law or any relative residing in the employee's household.

7-6 Civil (Jury) Leave

When appropriate civil duty warrants an employee's absence, the County Administrator may authorize such leave not to exceed three weeks with pay. Examples of appropriate civil duty shall include jury duty, attendance at meetings and conferences which will be of benefit to the County, and participation in meetings which will be of general civic benefit.

7-7 Military Leave

Permanent employees entering active military service of the United States by enlistment or by call to active duty through the Reserve or National Guard units shall be granted

a leave of absence without pay to extend for ninety (90) days beyond the date of termination of active military service. Upon or prior to the expiration of the military leave of absence, each permanent employee must inform the County Administrator of his willingness and ability to return to County employ and produce evidence of his other than dishonorable discharge from active military service. The employee shall then be returned to his/her former position. Employees granted military leave may count such service as time spent on the job for seniority purposes.

Further, County employees who are members of Reserve or National Guard units shall be granted up to fifteen (15) calendar days military leave without loss of pay and without prejudice and without sacrificing vacation time to attend required annual training programs, in accordance with the provisions of Section 44-93 of the Code of Virginia.

7-8 Compensatory Leave

See 5-9.

7-9 Leave Without Pay

The County Administrator may grant an employee leave without pay, with a positive recommendation from the Department Head.

7-10 Unauthorized Absences

An employee's absence from work for part or all of a day that is not authorized may result in disciplinary action.

ARTICLE VIII - DISCIPLINE

8-1 Warnings

Formal warnings are written statements that an employee has been found inefficient, insubordinate, careless, negligent, below standards in conduct, or lacking in other serious matters. Written warnings normally follow one or more verbal warnings by the Department Head. A written statement for the reasons for such action shall be furnished to the employee warned, and a copy will be filed in the personnel file of the individual. See Appendix "C" for the form which may be used.

8-2 Fines

Fines are disciplinary measures specifically levied to recover real value of lost County property or repair costs of damaged County property where, in the opinion of the

Department Head, the employee was grossly careless, negligent, or through inattention to his duties, failed to properly care for County equipment or property. Fines up to \$100 may be levied by the Department Head, with the approval of County Administrator. Fines of more than \$100 may be levied, but must have the approval of the Board of Supervisors. A written statement for the reasons for such action shall be furnished to the employee fined, and a copy will be made a part of the personnel file of the individual.

8-3 Suspensions

Suspensions are imposed separations from the employment of the County for disciplinary reasons, where the offense is not sufficiently grave to merit dismissal. An employee may be suspended up to three days by the Department Head with the approval of the County Administrator. An employee may be suspended for up to 21 days by the County Administrator with the approval of the Board of Supervisors. Such approval need not be granted prior to the imposition of the suspension, however if Board approval is not received, the suspension shall be for three days only and retroactive pay shall be granted for the time of suspension in excess of three days. A written statement for the reasons for such action shall be furnished to the employee suspended, and a copy will be made part of the personnel file of the individual.

8-4 Demotions

Demotions are sometimes necessary for employees whose work has not been satisfactory, but does not warrant dismissal, and whose skills can be utilized at a lower pay grade. The County Administrator may demote a person, after recommendation by the Department Head, with the approval of the Board of Supervisors.

8-5 Discharges

An employee may be discharged for inefficiency, insubordination, misconduct, or other just cause. Discharge may be made by the Department Head with approval of the County Administrator in the case of employees below department head level. The County Administrator with the approval of the Board of Supervisors may discharge other employees. A written statement of the reasons for such action shall be furnished the employee and a copy shall be made part of the personnel file of the individual.

8-6 Disciplinary Procedures

Upon receiving a report of an offense or act which might result in disciplinary action, the Department Head will investigate the matter to ascertain the correct facts,

both from the accuser and the accused. If just cause is found by the Department Head, disciplinary action will be initiated as described above. In all cases, the County Administrator will be given the details of the discipline and the causes therefore. If the employee feels aggrieved by the decision, he may exercise his right according to the grievance procedure shown in Article X of these rules.

8-7 Causes for Suspension, Demotion, or Dismissal

An employee may be suspended, demoted, or dismissed if he or she:

- (a) Violates any of the provisions of these rules.
- (b) Has been convicted of a felony or of a misdemeanor involving turpitude. The fact that an employee has been charged with and is awaiting trial upon an offense may result in disciplinary action consistent with the offense charged, considering the circumstances and nature of the offense, any admission of guilt by the employee and the effect that such charge may have upon the public's or employer's confidence in the employee's ability to perform his duties as a county employee. .
- (c) Is offensive in his conduct or language in public, or toward the public, County officials, or fellow employees, either during work or non-working hours.
- (d) Uses intoxicants or misuses drugs while working, or reports to work under the influence of intoxicants or other controlled drugs not prescribed by a physician. If the prescribed use of medication renders the employee unfit to perform his job duties, then the employee shall not report for work and shall notify his supervisor as with other sick leave.
- (e) Becomes afflicted with any disease, or has, or obtains any physical ailment or defect which, in the opinion of the County Administrator, on advise from the Department Head and after confirmation by a physical examination, renders him/her unfit for further employment by the County.
- (f) Is incompetent or inefficient in the performance of the duties of his/her position.
- (g) Is careless or negligent with the monies or other property of the County or takes any property of the County for his personal use or for sale or for gift to others.
- (h) Fails to pay or make reasonable provisions for the future payments of his debts or to provide for proper family support and to pay his just financial obligations.
- (i) Has used or threatened to use, or attempted to use personal or political influence in securing promotion, leave of absence, transfer, change of pay rate, or in any matter related to his work.
- (j) Induces or has attempted to induce any employee of the County to commit an unlawful act or to act in violation of any lawful order or official regulation or order.

(k) Takes for his personal use from any person, any fee, gift or other valuable consideration in the course of his work or in connection with it, when such a gift or other valuable consideration is given in the hope or expectation of receiving a favor or better treatment than that accorded other persons. He/she shall not accept any bribe, gift, token, monies, or other valuable consideration intended as an inducement to perform or refrain from performing any official act. He/she shall not engage in any action or extortion, or other means of obtaining money or other things of value through his position in the County government.

(l) Speaks disrespectfully, publicly criticizes, or maliciously ridicules any official or employee or any department of the County, judges, justices, or any other officer of the court.

(m) Divulges or discusses any County business not having previously been made public or discloses confidential information to any person unless directed to do so by his Department Head and shall not give out interviews or make public speeches concerning information not previously made public.

(n) Through gross neglect or inattention to his duties, fails to properly protect or maintain, or loses County property or equipment.

(o) Acts in any manner, whether during work hours or otherwise such that the acts of the employee reflect unfavorably on the County, it being the intent of the County to employ persons who are honest, trustworthy and of good character.

(p) Engages in conduct deemed to be sexual harassment of any person, including a subordinate employee or any member of the public.

ARTICLE IX - SEPARATION OF EMPLOYEE

9-1 Resignation

To resign in good standing an employee must give the Department Head at least fourteen calendar days prior notice, unless the appointing authority agrees to permit a shorter period of notice time.

9-2 Layoffs

The County Administrator may lay off employees by reason of shortage of funds as certified by the Board of Supervisors. Positions may be eliminated or changed to best fulfill the duties of County government. Layoffs shall generally be made with consideration given the inverse order of the date of employment, however all efforts shall be made to retain the most qualified and capable employees regardless of the date employed.

9-3 Retirement

When an employee subject to the provisions of the County Retirement System has reached the age of mandatory retirement:

(1) It shall be the duty of the Department Head to recommend such action. Nothing contained herein however shall be deemed to require the mandatory retirement of any employee if such requirement would violate any State or Federal Law or Regulation.

(2) In the event an employee becomes incapable of satisfactorily performing his/her duties before the mandatory retirement age, the Department Head may recommend demotion or transfer to any available position that the employee is eligible and capable of satisfactorily performing.

ARTICLE X - GRIEVANCE PROCEDURE

10-1 Adoption of grievance procedure

The Board of Supervisors hereby adopts the Model Grievance Procedure promulgated by the Commonwealth of Virginia, Department of Employee Relations Counselors, which is attached hereto as Exhibit "D". For the purposes of the Giles County Grievance procedure, the following terms as set forth in the Model Grievance Procedure referred to above shall have the following meanings:

- (a) AGENCY: County of Giles
- (b) AGENCY HEAD: Board of Supervisors of Giles County
- (c) DIRECTOR, DEPT. OF EMPLOYEE RELATIONS COUNSELORS:
County Administrator
- (d) DIRECTOR, DEPT. OF PERSONNEL AND TRAINING:
Chairman, Board of Supervisors of Giles County
- (e) STATE: County of Giles

OVERVIEW OF THE MODEL GRIEVANCE PROCEDURE

During the past year, the state grievance procedure has been under review. Revisions to the present procedure have just been completed. The majority of the changes pertain to the format of the procedure and to the rules of conduct for panel hearings. Attached is a model grievance procedure for your use which incorporates the proposed changes to the grievance procedure. The model is stamped "draft" because the changes have not received final approval and, therefore, the model procedure should not be distributed to your employees. It is anticipated, however, that any changes made to the draft procedure during the approval process will be minor.

By statute, the Director of the Department of Employee Relations Counselors may allow modifications to the three management steps of the grievance procedure. Therefore, a reduction in the number of management steps may be allowed for smaller organizations. Every approved grievance procedure, however, must have at least two steps; an informal face-to-face verbal presentation followed by the initiation of a written grievance and a full final management step hearing. For those organizations which, because of their size, will have a two-step process, an illustration of this two-step grievance process has been included at the end of the model grievance procedure.

Throughout the model procedure, certain position designations appear in brackets []. Depending on the type of organization, you may have to substitute different position designations for the ones appearing in the model. The following is a list of these bracketed designations and a description of the appropriate substitutions.

Agency - insert the name of your organization (e.g. "board", "department", "housing authority", "local governing body").

Agency Head - insert the position title of that person who serves as the chief administrative officer of your organization. For local departments of social services and community service boards, the board is the agency head; the respective boards may delegate their responsibilities.

Director, Department of Employee Relations Counselors - for local governing bodies, insert the title of the person who will be responsible for issuing grievability and compliance rulings.

Director, Department of Personnel and Training - for social services boards, community service boards and housing authorities, insert the position title of that person who serves as the chief administrative officer of your organization; for local governing bodies, insert the title of the person who will be responsible for reviewing panel decisions.

State - insert the name of your organization.

I. ACCESS TO PROCEDURE

A. COVERAGE OF PERSONNEL

1. All full-time employees are eligible to file grievances, with the following exceptions:
 - a. probationary employees;
 - b. appointees of elected groups or individuals;
 - c. department heads or chief executive officers;
 - d. law enforcement officers who have elected to pursue a grievance under Section 2.1-116.5 of the Code of Virginia;
 - e. employees of judicial and legislative agencies;
 - f. employees electing to resolve complaints pursuant to any other state or local administrative procedure.
2. Employees of local governing bodies employing 15 or more employees if the local governing body does not have an approved local grievance procedure.
3. Employees of local social service boards or departments and community service boards if:
 - a. they have not been accepted into the grievance procedure of a local governing body; or
 - b. they are not in an excluded position.
4. Employees of regional housing authorities or redevelopment and housing authorities if:
 - a. they have not been accepted into the grievance procedure of a local governing body; or
 - b. they are not covered by a procedure approved by the Director of the Department of Employee Relations Counselors.

B. VOLUNTARY RESIGNATION

An employee who has voluntarily resigned may not initiate a grievance after the effective date of the resignation.

C. RULINGS ON ACCESS

If an employee is denied access to the grievance procedure, the employee may seek a ruling from the [Director of the Department of Employee Relations Counselors]. The request for a ruling must be made in writing to the [Department of Employee Relations Counselors] within five (5) work days of the denial. A copy of the request also must be sent to the [agency head].

II. DEFINITION OF GRIEVANCE

A. GRIEVABLE ISSUES

A grievance is a complaint or dispute of an employee relating to his employment with his [agency], including but not necessarily limited to:

1. Disciplinary actions;
2. Demotions, suspensions and dismissals whether resulting from formal discipline or unsatisfactory job performance;
3. Application of personnel policies, procedures, rules, and regulations, including the application of policies involving matters referred to in subsection B;
4. Reprisal as a result of utilization of the grievance procedure or participation in the grievance of another state employee;
5. Discrimination on the basis of race, color, creed, political affiliation, age, disability, national origin, or sex;
6. Annual evaluation of performance where the employee can show that the evaluation was arbitrary or capricious or was the result of misapplication of policy;
7. Failure to be selected for a position where the employee can show that established personnel policies or procedures were not followed or applied fairly;
8. Involuntary resignations.

B. NON-GRIEVABLE ISSUES

Management reserves the exclusive right to manage the affairs and operations of government. Accordingly, the following complaints are not grievable:

1. Establishment and revision of wages, salaries, position classifications, or general benefits;
2. Work activity accepted by the employee as a condition of employment or work activity which may reasonably be expected to be part of the job content;
3. Methods, means, and personnel by which work activities are carried on;
4. Contents of ordinances, statutes or established personnel policies, procedures, rules, and regulations;
5. Relief of employees from duties during emergencies;
6. Hiring, promotion, or retention of employees within the [agency];
7. Transfer or assignment except where such actions constitute disciplinary actions;
8. Termination, layoff, demotion, or suspension from duties because of lack of work, reduction in the work force or job abolition except where such action affects an employee who has been reinstated within the previous six months as the result of the final determination of a grievance. In any grievance brought under this exception, the action taken by the [agency] shall be upheld upon a showing by the [agency] that:
 - a. there was a valid business reason for the action, and
 - b. the employee was notified of such reason in writing prior to the effective date of the action.

III. MANAGEMENT REVIEW

The grievance procedure is the formal process by which an employee can present a complaint to successively higher levels of management. The goal of the procedure is management resolution of the complaint through open discussion of the facts and issues.

A. FIRST STEP

1. Verbal Presentation:

- a. The employee shall inform the first-step respondent of the grievance in an informal face-to-face meeting within thirty (30) calendar days after knowledge of the event or action which is the basis for the grievance. The employee should state the nature of the grievance and the relief sought at this time.
- b. The first-step respondent shall give a verbal response to the employee within five (5) work days.
- c. This phase provides supervisors and employees the opportunity to discuss the problem informally. Both parties are encouraged to seek solutions to the dispute.
- d. If a resolution is not reached, the employee must initiate a written grievance within five (5) work days of the verbal response (see Section III.A.2).
- e. The first-step respondent shall be the immediate supervisor who is responsible for hiring, evaluating performance, and/or taking disciplinary action.
 - (1) When a grievance regarding discrimination or reprisal is based on actions taken by the person designated as the employee's first-step respondent, the employee may go to his [agency's] personnel officer to request that another supervisor who meets the criteria set out above be designated as the first-step respondent. If no appropriate first-step respondent can be designated, the employee may initiate the grievance with the second-step respondent.
 - (2) When a grievance is initiated regarding disciplinary action, the appropriate first-step respondent is the person who took the disciplinary action. If the person who took the disciplinary action is not the immediate supervisor, the number of management steps may be reduced. However, regardless of the number of management steps, the employee must be afforded a full third-step meeting as provided in Section IIIC.

2. Initiation of Written Grievance

- a. The employee shall submit his grievance in writing on the grievance form to the first-step respondent within five (5) work days of the verbal response. The nature of the grievance and the specific relief requested should be clearly stated.
- b. The first-step respondent shall respond in writing on the grievance form within five (5) work days.

- c. If the first step respondent raises the issue of grievability (which includes access to the procedure) or compliance, the employee may request a ruling on this matter from the [Director of the Department of Employee Relations Counselors] (See Section IIL.D.).
- d. If the employee accepts the first-step response, the grievance shall be closed by marking the appropriate box on the grievance form.

B. SECOND STEP:

1. If the employee does not accept the first-step response, and neither the issue of grievability nor compliance has been raised, the employee may advance the grievance to the second step by marking the appropriate box on the grievance form and submitting the form A to the second-step respondent within five (5) work days of receiving the first-step written response.
2. The second-step respondent shall meet with the employee within five (5) work days after receiving the grievance form. Only the employee and the second-step respondent are to be at this meeting. Appropriate witnesses may be called; after testifying each witness is to be excused.
3. The second-step respondent shall respond in writing on the grievance form within five (5) work days after the meeting.
4. If the second-step respondent raises the issue of grievability (which includes access to the procedure) or compliance, the employee may request a ruling on this matter from the [Director of the Department of Employee Relations Counselors] (See Section IIL.D.).
5. If the employee accepts the second-step response, the grievance shall be closed by marking the appropriate box on the grievance form.

C. THIRD STEP:

1. If the employee does not accept the second-step response, and neither the issue of grievability nor compliance has been raised, the employee may advance the grievance to the third step by marking the appropriate box on the grievance form and submitting the form to the third-step respondent within five (5) work days of receiving the second-step written response.
2. The third-step respondent shall meet with the employee within five (5) work days after receiving the grievance form. Prior to the day of the meeting, the third-step respondent must be notified whether the employee will have representation at the meeting. If the employee is represented by legal counsel, management has the option of being represented. Each party is responsible for the cost of his own legal counsel or other representative.

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3. Only the employee and the third-step respondent, with representation as provided above, are to be present at this meeting. Appropriate witnesses may be called; after testifying each witness is to be excused. In addition, by agreement of the [agency] and the employee, a human resources representative may be present at the third-step meeting to insure procedural compliance and to inform the parties of applicable policies and procedures.
 4. The third-step respondent shall respond in writing on the grievance form within five (5) work days after the meeting.
 5. If the employee accepts the third-step response, the grievance shall be closed by marking the appropriate box on the grievance form.

D. RULINGS

1. Grievability

- a. If the first or second-step management response indicates that a given issue(s) is not grievable or that the employee does not have access to the procedure, the employee may request a ruling from the [Director of the Department of Employee Relations Counselors]. To request a ruling, the employee must mark the appropriate box on the grievance form and forwards the form to the [Director] within five (5) work days after receiving the response.
- b. If the [Director] determines that the issue(s) is grievable, the grievance may be pursued through the management steps.
- c. If the [Director] finds that the issue(s) is not grievable, the employee may request on the grievance form an immediate determination by the [agency head] as to whether the issue qualifies for a panel hearing (See Section III.E.).

2. Compliance

- a. If the issue of compliance is raised, a ruling on the matter may be requested from the [Director of the Department of Employees Relations Counselors]. To request a ruling, the employee must mark the appropriate box on the grievance form and forwards the form to the [Director] within five (5) work days after receiving the response.
- d. The decision of the [Director] on compliance issues is final and is not appealable.

E. QUALIFICATION FOR A HEARING

1. After receiving the third-step response or after receiving a non-grievable response from the [Director of the Department of Employee Relations Counselors], an employee may request that the grievance be qualified for a panel hearing.

2. To request qualification for a hearing, the employee must mark the appropriate box on the grievance form and forward the form to the [agency head] within five (5) work days.
3. The [agency head] shall determine within five (5) work days whether the issue(s) in the grievance qualify for a hearing. A ruling by the [Director of the Department of Employee Relations Counselors] on the issue of grievability is not binding on the [agency head].
4. If the [agency head] determines that the issue(s) qualifies for a panel hearing, the management-step process should be completed before proceeding to panel (unless the grievance is otherwise resolved).
5. If the [agency head] determines that the issue(s) do not qualify for a panel hearing, the employee may appeal to the circuit court by marking the appropriate box on the grievance form and submitting the form to the [agency head] within five (5) work days after receiving the [agency head's] decision. This appeal to the circuit court is available at no cost to the employee.
 - a. Within five (5) work days after receiving the request for an appeal, the [agency head] shall transmit a copy of the grievance record and a notice of appeal to the clerk of the circuit court in the locality in which the employee is employed. A copy of the record transmitted to the court shall also be sent to the employee.
 - b. The failure of the [agency head] to transmit the record within the time allowed shall not prejudice the rights of the employee. The court, on motion of the employee, may issue a writ of certiorari requiring the agency head to transmit the record.
 - c. Within thirty (30) calendar days after receiving the record, the court, sitting without a jury, shall hear the appeal on the record transmitted by the [agency] head and such additional evidence as may be necessary to resolve any controversy as to the correctness of the record. The decision of the court shall be rendered within fifteen (15) calendar days of the conclusion of the hearing.
 - d. If the circuit court qualifies the issue(s) for a panel hearing, and the management-step process has not been completed, the management steps must be concluded before the grievance proceeds to panel (unless the grievance is otherwise resolved). Once completed, the employee and the [agency] shall proceed with the selection of the panel members as provided in Section IV.A.
 - e. The court's decision is final and is not appealable.

IV. PANEL HEARING

A. SELECTION OF PANEL MEMBERS:

1. The employee and the [agency] shall each select a panel member within five (5) work days after receiving the decision that the grievance qualifies for a panel hearing. The [agency] and the employee must provide the other with the name, address and telephone number of the individual selected to serve as a panel member.
2. Third panel member
 - a. In grievances not involving termination, the two panel members shall jointly select a third panel member within five (5) work days of their appointment. Names of individuals willing to serve may be submitted by the employee and the [agency] to the panel members for consideration. If the two panel members cannot agree on a third panel member, they must notify the [agency]. Within five (5) work days, the [agency] shall request that the chief judge of the circuit court in the locality where the employee is employed appoint a third panel member.
 - b. In cases of termination, the third panel member shall be appointed by the Executive Secretary of the Virginia Supreme Court from a list of approved hearing officers.
 - c. In all grievances, the third panel member shall serve as chair of the panel. The chair shall be responsible for coordinating the activities of the panel.
3. The following individuals are disqualified from serving as panel members:
 - a. Persons having a direct involvement with the grievance being heard or with the problem giving rise to the grievance, management-step respondents, the [agency head], witnesses, and representatives of the parties.
 - b. Managers in a direct line of supervision of the employee at the time the challenged action occurred or at the time the panel is constituted.
 - c. Attorneys having direct involvement with the subject matter of the grievance, or partners, associates, employees or co-workers of such attorneys.
 - d. Relatives of a participant in the grievance process or the spouse of a participant (e.g. spouse, parent, child, descendants of a child, sibling, niece, nephew, first cousin, aunt, uncle).
 - e. Members of the employee's or management-step respondents' immediate household.
4. Panels chosen in compliance with these requirements shall be deemed to be impartial.
5. Each panel member should be informed by the [agency] of the time periods required under this procedure and should not agree to serve if unable to meet the time frames prescribed.
6. Panel members are not spokesmen or advocates for either party, but should view their role as an impartial decision maker.

7. Challenges to the selection of a panel member must be made in writing to the [Department of Employee Relations Counselors] with a copy to the opposing party. The [Department] will issue a ruling whether the selection is in compliance with the procedure. If it is not in compliance, the noncomplying party will have five (5) work days from receipt of the ruling to select a new panel member.

B. COMMUNICATION WITH PANEL MEMBERS

1. The parties shall not discuss the substance or the merits of the grievance with any panel member prior to the hearing. Any matters requiring the attention of the panel should be communicated to all panel members in writing with a copy to the other party.
2. Panel members are not to investigate matters pertaining to the grievance prior to the panel hearing. Any evidence to be considered must be brought to the attention of the panel by the parties.

C. PRE-HEARING

1. The full panel shall set the date, the time and place for the hearing, which should be held within ten (10) work days following the selection of the full panel. The date selected shall be as convenient for both parties as possible. The panel chair shall immediately notify the parties of the hearing date. The panel shall conduct the hearing in the locality where the employee was employed when the grievance arose unless the panel unanimously decides that another location is more appropriate.
2. Any requests for postponement of the hearing date should be made in writing to the panel chair with a copy to the other party no later than five (5) work days before the scheduled hearing date. The panel shall grant or deny a request to change the date of the hearing by majority vote.
3. Five (5) work days before the scheduled hearing date, the [agency] personnel officer shall forward to the panel members the following information:
 - a. the grievance record;
 - b. if the grievance involves a disciplinary action, a copy of the disciplinary action;
 - c. panel decision form;
 - d. a copy of the grievance procedure.
4. Five (5) work days before the scheduled hearing date, each party shall provide the panel and the other party the following information:
 - a. a list of the witnesses each party intends to call at panel;
 - b. copies of the documents to be relied upon at the hearing, including personnel policies and procedures not previously provided to the panel.

5. Nothing in this section shall prevent the panel from considering additional information or testimony at the panel hearing relating to the issue(s) qualified.

D. HEARING PROCEDURE

1. The parties to the hearing are the employee and an individual selected by the [agency].
2. Each party may be represented by legal counsel or other representative at the panel hearing. The legal counsel or representative may examine, cross-examine and present evidence on behalf of the party before the panel.
3. Each party has a right to be present throughout the hearing and may be called to give testimony.
4. Presentation of Evidence
 - a. Presentation of the case to the panel should be as follows:
 - (1) in all grievances challenging disciplinary actions, suspensions, demotions and dismissals, the [agency] shall present its evidence first. In these matters, the [agency] must show that its actions were more likely than not appropriate under the circumstances.
 - (2) in all other grievances the employee shall present his evidence first. In these matters, the employee must show that the allegations are more likely than not correct.
 - (3) the panel may, at its discretion, vary the order of presentation, but shall afford full and equal opportunities for the parties to present all relevant and material evidence.
 - b. At the option of each party, opening statements may be made at the beginning of the hearing. The panel may ask for such statements in order to clarify the issue(s) involved in the grievance.
 - c. The panel chair will administer an oath to each witness prior to receiving testimony from the witness.
 - d. The witnesses, other than the parties, shall remain outside the hearing room and shall be present only to give testimony before the panel.
 - e. The parties may call witnesses in the order of their choosing. Each party must be afforded the opportunity to examine and cross-examine each witness and to provide rebuttal testimony.
 - f. The panel may question the witnesses to clarify points made in testimony.
 - g. The parties shall produce any additional documentation or information requested by the panel, unless specifically prohibited by law. Personnel information is not, by law, confidential. Information from personnel records may be disclosed in a manner which

does not breach the privacy interests of third parties. Neither panel members nor parties shall disclose or discuss with any third party information obtained during the panel hearing.

- h. Exhibits offered by the parties should be received in evidence by the panel. The evidence should be marked as the grievant's exhibit or the agency's exhibit and made a part of the record.
- i. After the close of all evidence, the parties shall be given an opportunity to make closing statements summarizing their positions.
- j. Following closing statements, the panel chair shall declare the hearing closed.

5. Panel Authority

- a. The panel has the specific and final authority to determine the propriety of the attendance at the hearing of all persons not participating in the hearing. However, the hearing shall be closed at the request of either party.
- b. At the panel's discretion, a human resource officer may be present at the hearing and may be called as a witness; however, the officer may not be present or advise the panel during its deliberations.
- c. Panel members are not advocates for either party; they are to decide the issues on the evidence presented to the panel.
- d. By majority vote the panel must decide procedural questions and rule on objections raised during the course of the hearing.
- e. The panel may, on its own initiative, request the attendance of witnesses at the hearing. Additionally, either party may request the panel to ask witnesses to appear. However, the panel does not have the authority to compel the attendance of any witness. It is expected that in the furtherance of justice all parties will cooperate in encouraging witnesses to appear.
- f. Panel hearings are not meant to be conducted as full court proceedings and panels shall not be bound by the technical rules of evidence. Panels, however, should permit all material and relevant evidence to be presented.
- g. All hearings shall be recorded. If a court reporter is requested, the party requesting the court reporter shall bear the costs for this service. In other cases, the [agency] shall provide a recording device. The party requesting a transcript or copy will bear all expenses associated with producing the copy.
- h. If the panel requires assistance on procedural matters during the hearing or during deliberations, the panel should contact the [Director of the Department of Employee Relations Counselors] for advice. If necessary, the panel hearing should be postponed or delayed while seeking guidance from the [Director].

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E. POST HEARING

1. Panel Decision

- a. The panel shall render its decision on the panel decision form within ten (10) work days of the conclusion of the hearing.
- b. Panels are to decide cases on the merits, not on compliance matters occurring prior to or during panel hearings. Compliance issues raised during the panel hearing should be referred to the [Director of the Department of Employee Relations Counselors].
- c. The panel, in rendering its decision, shall be guided but not bound by the relief requested by the employee on the grievance form.
- d. Panels have the authority to affirm or reverse the action of the [agency] or, in appropriate circumstances, choose a modified remedy. Panels may also recommend actions to be taken by management.
- e. A panel's responsibility is to ensure the proper application of personnel policies and procedures. A panel does not have the authority to formulate or change policies or procedures or to consider matters which are not grievable.
- f. When a panel directs reinstatement, the panel has the authority to award full, partial, or no back pay for the period of separation. An award of back pay shall be offset by interim earnings, including unemployment or workers compensation, received during the period of separation.
- g. Panels may not order damages or attorneys' fees.
- h. The panel chair shall mail copies of the panel decision form to the employee and the [agency].
- i. The decision of the panel is final and binding if it is consistent with written policy. All decisions will be reviewed by the [Director of the Department of Personnel and Training] to determine whether the decision is consistent with written policy.

2. Challenges to Panel Hearing

- a. Challenges regarding the conduct of the panel must be made within five (5) work days of the alleged violation by requesting in writing a ruling from the Director of the [Department of Employee Relations Counselors] with a copy to the other party. If the violation occurs at the hearing, such challenge must be made within five (5) work days of the hearing, regardless of whether the panel has rendered a decision.
- b. Challenges to a panel decision on the grounds that it is inconsistent with written policy must be made to the [Director of the Department of Personnel and Training] within five (5) work days of receipt of the decision. The [Director of the Department of Personnel and Training] may, on his own action, require the panel to modify the relief afforded in order for the decision to conform to written policy.

- c. Either party may request the panel to reconsider the evidence heard and/or reopen the hearing to accept additional testimony. Such request must be made to the panel chair, in writing, with a copy to the other party within five (5) work days after receiving the panel decision. The panel shall decide the matter by majority vote and issue a decision within five (5) work days.

F. IMPLEMENTATION

The [agency head] is responsible for assuring that the panel decision is implemented. Either party may petition the circuit court having jurisdiction in the locality in which the grievant is employed for an order requiring implementation of the decision of the panel.

V. GENERAL PROVISIONS

A. PROCEDURAL COMPLIANCE

1. Failure of either party without just cause to comply with all substantial procedural requirements of the the grievance procedure may result in a decision in favor of the other party. The granting to an employee of the relief sought on procedural noncompliance by the [agency] may be made only after a determination that the issue is grievable. In any case in which relief is granted on the basis of noncompliance, the relief provided must be reviewed by the [Director of the Department of Personnel and Training] and found to be consistent with written policy.
2. During the management steps of the grievance process, if a party fails to comply with a procedural requirement the challenging party must notify the party in writing of the compliance violation within five (5) work days.
 - a. Notification by the employees shall be made to the [agency head].
 - b. The notification must inform the noncomplying party of his right to correct the violation within five (5) work days.
 - c. If the party out of compliance fails to correct the noncompliance within five (5) work days after receiving notification, the challenging party may request a ruling from the [Director of the Department of Employee Relations Counselors] within five (5) work days.
3. After a grievance is qualified for a panel hearing, a party may challenge a procedural error by requesting a ruling from the [Director of the Department of Employee Relations Counselors] within five (5) work days of the alleged violation.
4. Notwithstanding the above, the [Director of the Department of Employee Relations Counselors] may on his own initiative render official compliance rulings whenever there appears to be noncompliance with a substantial requirement of the procedure.

B. EXTENSION OF TIME PERIODS

The time periods contained in this policy are substantial procedural requirements. However, such time periods may be extended by agreement of the parties. It is recommended that any extensions be agreed to in writing and be for a reasonable and definite period. The panel may, with just cause, extend the time periods applicable to the panel.

C. COMPENSATION AND REIMBURSEMENT

1. With the exception of hearing officers appointed by the Executive Secretary of the Supreme Court, employees serving as panel members, including those selected by a circuit court judges, are not compensated or reimbursed for any expenses associated with the hearing.
2. [State] employees who participate in the grievance process shall receive leave from their [agency] for the time served in accordance with [state] personnel policy and are to be reimbursed by the [agency] for the reasonable costs of transportation, meals and lodging in accordance with [state] travel regulations.
3. Employees who are grieving termination are not compensated except in cases where a panel decision results in reinstatement with back pay. Reimbursement for travel expenses in this instance is limited to those expenses which would have been incurred in travel from the work location in which the grievance arose to the location of the hearing.
4. In grievances challenging a termination, the employing [agency] of the employee shall bear the per diem expenses and other costs of the administrative hearing officer.

E. RECORDERS

Recorders shall not be permitted in the management steps. They must be used at the panel hearing.

F. HEARING DISABLED EMPLOYEES

A hearing disabled employee shall be allowed to have an interpreter during all steps of the grievance procedure.

AUTHORITY

This state grievance procedure is revised effective July 1, 1989, and supersedes all state grievance procedures previously issued. This procedure may be revised, changed or eliminated as allowed by statute. Statutory authority Section 2.1-114.5:1 of the Code of Virginia (Cum. Supp. 1989).

**REDUCTION IN THE NUMBER OF MANAGEMENTS STEPS FOR
ORGANIZATIONS WITH LESS THAN THREE LEVELS OF SUPERVISION**

NOTE: In all organizations, regardless of size, the grievant shall be provided at least two steps in the grievance process. Those steps are designated below as "first step" and "final step". In cases in which there is only one level of supervision for purposes of the grievance process, the "first-step respondent" and the "final-step respondent" will be the same individual. If there is only one level of supervision, sections A.1.e.(1) and (2) of the model procedure should be deleted.

III. MANAGEMENT REVIEW

The grievance procedure is the formal process by which an employee can present a complaint to successively higher levels of management. The goal of the procedure is management resolution of the complaint through open discussion of the facts and issues.

A. FIRST STEP

1. Verbal Presentation:

- a. The employee shall inform the first-step respondent of the grievance in an informal face-to-face meeting within thirty (30) calendar days after knowledge of the event or action which is the basis for the grievance. The employee should state the nature of the grievance and the relief sought at this time.
- b. The first-step respondent shall give a verbal response to the employee within five (5) work days.
- c. This phase provides supervisors and employees the opportunity to discuss the problem informally. Both parties are encouraged to seek solutions to the dispute.
- d. If a resolution is not reached, the employee must initiate a written grievance within five (5) work days of the verbal response (see Section III.A.2).
- e. The first-step respondent shall be the immediate supervisor who is responsible for hiring, evaluating performance, and/or taking disciplinary action.
 - (1) When a grievance regarding discrimination or reprisal is based on actions taken by the person designated as the employee's first-step respondent, the employee may go to his [agency's] personnel officer to request that another supervisor who meets the criteria set out above be designated as the first-step respondent. If no appropriate first-step respondent can be designated, the employee may initiate the grievance with the final-step respondent.
 - (2) When a grievance is initiated regarding disciplinary action, the appropriate first-step respondent is the person who took the disciplinary action. If the person who took the disciplinary action is not the immediate supervisor, the number of management steps may be reduced. However, regardless of the number of management steps, the employee must be afforded a full final-step meeting as provided in Section III.B.

2. Initiation of Written Grievance

- a. The employee shall submit his grievance in writing on the grievance form to the first-step respondent within five (5) work days of the verbal response. The nature of the grievance and the specific relief requested should be clearly stated.
- b. The first-step respondent shall respond in writing on the grievance form within five (5) work days.
- c. If the first step respondent raises the issue of grievability (which includes access to the procedure) or compliance, the employee may request a ruling on this matter from the [Director of the Department of Employee Relations Counselors] (See Section III.D.).
- d. If the employee accepts the first-step response, the grievance shall be closed by marking the appropriate box on the grievance form.

B. FINAL STEP:

1. If the employee does not accept the first-step response, and neither the issue of grievability nor compliance has been raised, the employee may advance the grievance to the final step by marking the appropriate box on the grievance form and submitting the form to the final-step respondent within five (5) work days of receiving the first-step written response.
2. The final-step respondent shall meet with the employee within five (5) work days after receiving the grievance form. ~~Prior to the day of the meeting, the final-step respondent must be notified whether the employee will have representation at the meeting.~~ If the employee is represented by legal counsel, management has the option of being represented. Each party is responsible for the cost of his own legal counsel or other representative.
3. Only the employee and the final-step respondent, with representation as provided above, are to be present at this meeting. Appropriate witnesses may be called; after testifying each witness is to be excused. In addition, by agreement of the [agency] and the employee, a human resources representative may be present at the final-step meeting to insure procedural compliance and to inform the parties of applicable policies and procedures.
4. The final-step respondent shall respond in writing on the grievance form within five (5) work days after the meeting.
5. If the employee accepts the final-step response, the grievance shall be closed by marking the appropriate box on the grievance form.



January 10, 1996

Mr. Roger C. Mullins
Interim County Administrator
County of Giles
120 N. Main Street
Pearisburg, VA 24134

Dear Mr. Mullins:

This is my written notice in regards to the Giles County Personnel Policy. In this letter I am formally filing a written grievance concerning my dismissal as an employee of Giles County.

The reasons for dismissal, communicated by you verbally to me does not fall within the realm of the policy.

With my request for this policy, grievance forms were not included. This letter will serve as the written response for this step in place of the form. If a form must be filled out, I would be glad to fill it out once I have received the aforementioned form.

Through this grievance process I request reinstatement to my position as manager of Castle Rock Golf and Recreation. Furthermore, I request reimbursement of lost wages to the point of reinstatement.

Your attention to these matters is greatly appreciated.

Sincerely,

D. Chad Wines

D. Chad Wines

LAW OFFICES
HARTLEY, CHIDESTER & STEELE, P.C.
PEARISBURG, VIRGINIA 24134-0511
503 MOUNTAIN LAKE AVENUE
P. O. BOX 511

JAMES A. HARTLEY
RICHARD L. CHIDESTER
PHILLIP C. STEELE

January 19, 1996

TELEPHONE
(540) 921-1703
FACSIMILE
(540) 921-2008

via telecopier to (540) 983-9400
and first class mail

Gregory J. Haley, Esq.
Gentry, Locke, Rakes & Moore
P. O. Box 40013
Roanoke, VA 24038-0013



RE: D. Chad Wines

Dear Greg:

Thank you for your letter of January 18, 1996, regarding Mr. Wines. This matter was brought to the attention of the Board of Supervisors at their meeting last evening.

At that meeting, the Giles County Board of Supervisors voted to reinstate Mr. Wines with full pay and benefits retroactive to January 2, 1996, the date of his prior termination.

The Board also voted to terminate Mr. Wines employment with the County effective January 26, 1996, for the following reasons:

1. Failure to follow the directive of the Board of Supervisors that Castle Rock Recreation Area employees not be allowed to work overtime or accumulate compensatory time for hours worked in excess of forty hours per week.
2. Use of the County telephone to make personal long distance telephone calls without reimbursing the County for such calls.
3. Failure to properly supervise the employees under his control, specifically including allowing one or more employees to be idle or engage in personal activities during working hours.
4. Tampering with the Castle Rock computer system after his previous termination which resulted in the County being locked out of certain functions of the computer system.
5. Inefficiency in the management of the Castle Rock Recreation Area which resulted in a substantial reduction of the net revenues of the facility as compared to previous years.

Mr. Wines may schedule an appointment to respond to these reasons for termination with Roger Mullins, the interim County Administrator, who according to the County Personnel Policy is the Chief Personnel Officer for the County. This meeting must occur no later than January 26, 1996, the date of his termination. Should Mr. Mullins find sufficient cause to believe that the charges have no basis, then Mr. Wines will have a further opportunity to appear before the Board of Supervisors at their meeting on February 1, 1996. Should Mr. Mullins not be persuaded that the charges have no basis, Mr. Wines employment will be terminated effective 5:00 PM on January 26, 1996.

Mr. Wines may also avail himself of the Grievance Procedure adopted as a part of the Giles County personnel policy if he so desires. I believe that he has initiated a grievance due to his first termination which we now deem moot since he has been reinstated with back pay and benefits.

In the meantime, the Board of Supervisors has suspended Mr. Wines from his duties, however he will receive full pay and benefits during his period of suspension. Due to the incident with the computer system, Mr. Wines is not to come on the Castle Rock property unless specifically authorized to do so in writing by the County Administrator.

If you have any questions about this matter, please do not hesitate to contact me. With kindest regards, I am,

Very truly yours,

Richard L. Chidester
Giles County Attorney

Roger C. Mullins, Interim
County Administrator

RLC:tg

cc: D. Chad Wines, via first class mail

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County of Giles

W. P. Freeman
Member at Large

R. W. Williams
Member at Large

Roger C. Mullins
County Administrator (Interim)



Board of Supervisors

120 North Main Street
Pearisburg, Virginia 24134

Larry A. Blankenship
Western District

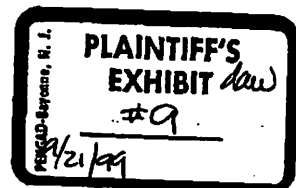
Barbara M. Hobbs
Central District

Larry Jay Williams
Eastern District

February 5, 1996

Gregory J. Haley, Esq.
Gentry Locke Rakes & Moore
P. O. Box 40013
Roanoke, VA 24038-0013

RE: D. Chad-Wines



Dear Mr. Haley:

As County Administrator for Giles County I have determined that the grievance which was filed by Mr. Wines through your letter of February 2, 1996, not grievable because Mr. Wines is not covered by the Giles County Grievance Procedure.

Section I (A) (1) (c) of the procedure excludes department heads from coverage under the procedure. Section 1-5 (e) of the Giles County Personnel Policy clearly designates the Castle Rock Recreation Area Manager as a department head.

Please contact our County Attorney, Mr. Chidester, if you have any further questions about this matter.

Sincerely,

Roger C. Mullins
Roger Mullins
County Administrator

RM:jd

cc: County Attorney

GENTRY LOCKE
RAKES & MOORE

Attorneys at Law

540-983-9300

Facsimile 540-983-9400

Direct No. 540-983-9368

JAN 02 1998

10 Franklin Road, S.E.

Post Office Box 40013

Roanoke, Virginia 24038-0013

December 31, 1997



Mr. Roger C. Mullins
County Administrator
Giles County
120 North Main Street
Pearisburg, Virginia 24134-1697

Re: Notice of Claim/D. Chad Wines

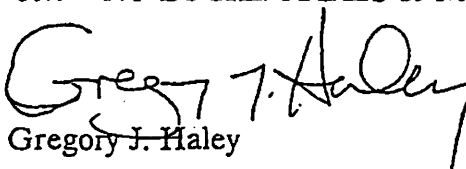
Dear Mr. Mullins:

We have enclosed a Notice of Claim to be filed on behalf of Chad Wines. The enclosed document includes a facsimile signature. We will send the original on to you when we receive it back from Mr. Wines. We would ask that you present Mr. Wines' Notice of Claim to the Board at its next meeting. We will attend the Board meeting to respond to any questions the Board may have if that is desired.

Please call if you have any questions.

Very truly yours,

GENTRY LOCKE RAKES & MOORE


Gregory J. Haley

GJH/bd

Enclosure

cc: Richard Chidester, Esq.

NOTICE OF CLAIM

To: BOARD OF SUPERVISORS OF GILES COUNTY, VIRGINIA
c/o Mr. Roger C. Mullins
County Administrator
Giles County
120 North Main Street
Pearisburg, Virginia 24134-1697

Re: D. Chad Wines

The Claimant, D. Chad Wines, files this Notice of Claim pursuant to Va. Code Ann. § 15.2-1243, *et seq.*, asserting his claim against the Board of Supervisors of Giles County, Virginia (the "County") based on the County's actions in breach of its employment contract with Mr. Wines. In support of this claim, Mr. Wines states as follows:

1. The County breached its employment contract with Mr. Wines by terminating his employment without just cause in violation of §§ 8-5 and 8-7 of the Giles County Personnel Plan. The County also failed to follow the progressive discipline and dismissal procedures required by §§ 8-1, 8-5 and 8-6 of the County's Personnel Plan. The specific facts related to Mr. Wines' claim are reviewed in correspondence by Mr. Wines' counsel to Mr. Chidester dated January 18, 1996 and January 25, 1996.
2. At the time of the County's termination of Mr. Wines' employment, Mr. Wines was earning \$25,268 per year. In addition, Mr. Wines was receiving additional employment benefits worth approximately \$6,563.31 per year.
3. The County has also failed to pay Mr. Wines accrued compensatory, vacation, and sick leave in the amount of approximately \$7,173. This amount is due pursuant to §§ 5-9, 7-2 and 7-3 of the County's Personnel Policy.
4. As a result of the County's actions in breach of its employment contract with Mr. Wines, Mr. Wines has incurred damages of \$135,173. This amount reflects the approximate value of four years of employment compensation plus the value of employment benefits during that time and the approximate value of accrued but unpaid compensatory, vacation and sick leave.
5. As of December 31, 1997, Mr. Wines has not obtained employment in his field comparable to his position prior to the County's actions.

(a)	January 27, 1996 – January 26, 1997	=	\$ 25,268.00
(b)	January 27, 1997 – January January 5, 1998	=	<u>\$ 23,688.67</u>
(c)	Total lost salary		\$ 48,956.67

(a)	Compensatory Time: 240 hrs. x \$12.63 per hr.	=	\$ 3,031.20
(b)	Vacation Time: 152 hrs. x \$12.63 per hr.	=	<u>\$ 1,919.76</u>
(c)	Total Compensatory Time and Vacation Time	=	\$ 4,950.96

(a) \$2,206.83 per year x 2 years = \$ 4,413.66

(a) \$233 per month x 24 months = \$ 5,592.00

= \$ 63,913.29

Vacation Pay Received — 1,846.80