

4035
198 Va. 311

Record No. 4566

In the
Supreme Court of Appeals of Virginia
at Richmond

JOHN H. HAILMAN

v.

**FAIRFAX COUNTY POLICE PENSION
BOARD, ET AL.**

FROM THE CIRCUIT COURT OF FAIRFAX COUNTY.

RULE 5:12—BRIEFS.

§5. NUMBER OF COPIES. Twenty-five copies of each brief shall be filed with the clerk of the Court, and at least three copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

§6. SIZE AND TYPE. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

H. G. TURNER, Clerk.

Court opens at 9:30 a. m.: Adjourns at 1:00 p. m.

198VA311

RULE 5:12—BRIEFS

§1. Form and Contents of Appellant's Brief. The opening brief of appellant shall contain:

(a) A subject index and table of citations with cases alphabetically arranged. The citation of Virginia cases shall be to the official Virginia Reports and, in addition, may refer to other reports containing such cases.

(b) A brief statement of the material proceedings in the lower court, the errors assigned, and the questions involved in the appeal.

(c) A clear and concise statement of the facts, with references to the pages of the printed record when there is any possibility that the other side may question the statement. When the facts are in dispute the brief shall so state.

(d) With respect to each assignment of error relied on, the principles of law, the argument and the authorities shall be stated in one place and not scattered through the brief.

(e) The signature of at least one attorney practicing in this Court, and his address.

§2. Form and Contents of Appellee's Brief. The brief for the appellee shall contain:

(a) A subject index and table of citations with cases alphabetically arranged. Citations of Virginia cases must refer to the Virginia Reports and, in addition, may refer to other reports containing such cases.

(b) A statement of the case and of the points involved, if the appellee disagrees with the statement of appellant.

(c) A statement of the facts which are necessary to correct or amplify the statement in appellant's brief in so far as it is deemed erroneous or inadequate, with appropriate references to the pages of the record.

(d) Argument in support of the position of appellee.

The brief shall be signed by at least one attorney practicing in this Court, giving his address.

§3. Reply Brief. The reply brief (if any) of the appellant shall contain all the authorities relied on by him not referred to in his opening brief. In other respects it shall conform to the requirements for appellee's brief.

§4. Time of Filing. As soon as the estimated cost of printing the record is paid by the appellant, the clerk shall forthwith proceed to have printed a sufficient number of copies of the record or the designated parts. Upon receipt of the printed copies or of the substituted copies allowed in lieu of printed copies under Rule 5:2, the clerk shall forthwith mark the filing date on each copy and transmit three copies of the printed record to each counsel of record, or notify each counsel of record of the filing date of the substituted copies.

(a) If the petition for appeal is adopted as the opening brief, the brief of the appellee shall be filed in the clerk's office within thirty-five days after the date the printed copies of the record, or the substituted copies allowed under Rule 5:2, are filed in the clerk's office. If the petition for appeal is not so adopted, the opening brief of the appellant shall be filed in the clerk's office within thirty-five days after the date printed copies of the record, or the substituted copies allowed under Rule 5:2, are filed in the clerk's office, and the brief of the appellee shall be filed in the clerk's office within thirty-five days after the opening brief of the appellant is filed in the clerk's office.

(b) Within fourteen days after the brief of the appellee is filed in the clerk's office, the appellant may file a reply brief in the clerk's office. The case will be called at a session of the Court commencing after the expiration of said fourteen days unless counsel agree that it be called at a session of the Court commencing at an earlier time; provided, however, that a criminal case may be called at the next session if the Commonwealth's brief is filed at least fourteen days prior to the calling of the case, in which event the reply brief for the appellant shall be filed not later than the day before the case is called. This paragraph does not extend the time allowed by paragraph (a) above for the filing of the appellant's brief.

(c) With the consent of the Chief Justice or the Court, counsel for opposing parties may file with the clerk a written stipulation changing the time for filing briefs in any case; provided, however, that all briefs must be filed not later than the day before such case is to be heard.

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of the Court, and at least three copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

§6. Size and Type. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

§7. Effect of Noncompliance. If neither party has filed a brief in compliance with the requirements of this rule, the Court will not hear oral argument. If one party has but the other has not filed such a brief, the party in default will not be heard orally.

IN THE
Supreme Court of Appeals of Virginia

AT RICHMOND

Record No. 4566

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Wednesday the 11th day of January, 1956.

JOHN H. HAILMAN, Plaintiff in Error,

against

FAIRFAX COUNTY POLICE PENSION BOARD, ET AL.,
Defendant in Error.

From the Circuit Court of Fairfax County

Upon the petition of John H. Hailman a writ of error is awarded him to a judgment rendered by the Circuit Court of Fairfax County on the 12th day of August, 1955, in a certain proceeding then therein depending wherein the said petitioner was plaintiff and Fairfax County Police Pension Board and others were defendant; upon the petitioner, or some one for him, entering into bond with sufficient security before the clerk of the said Circuit Court in the penalty of three hundred dollars, with condition as the law directs.

RECORD

* * * * *

Filed in Circuit Court Clerk's Office Dec. 27, 1954.

THOMAS P. CHAPMAN, JR.
Clerk Fairfax County, Va.

PETITION.

Comes now your petitioner, John H. Hailman, and in and for his appeal from a decision of the Fairfax County Police Pension Board, defendant herein, respectfully represents unto this Honorable Court as follows :

1. That this appeal is filed under the provisions of Title 51, Section 126.1 of the Code of Virginia, 1950, as amended.

2. That your Petitioner was a member of the Fairfax County Police Department, having been a member on active duty for approximately 12 years, and contributed to and was a member of the Retirement and Pension system established by said County.

3. That your petitioner is suffering from Chronic Glaucoma of both eyes, which condition was induced by his occupation as a police officer, and because of said condition your petitioner became incapable of continuing active duty as a police officer and requested retirement.

4. That on November 22, 1954 at a regular meeting of Fairfax County Police Pension Board your Petitioner's request for disability retirement was denied by the aforesaid board and therefore your Petitioner was aggrieved by the action of said board.

Wherefore the premises considered your petitioner requests this Honorable Court to decree that your petitioner be retired on account of disabilities resulting from activities in discharge of official duties as set forth in Title 51, Section 122, of the Code of Virginia, or in the alternative, to decree that your petitioner be retired for disability from natural causes not originating in performance of official duties as set forth in Title 51, Section 121, of the Code of Virginia and that he be

awarded and the defendants required to pay such monthly sums as are due your petitioner under the applicable statutes.

JOHN H. HAILMAN, Petitioner
By PEYTON H. GIBSON
His Attorney.

GIBSON & HIX, Attorneys
By PEYTON H. GIBSON
Attorney for Petitioner.

page 3 } PROOF OF SERVICE.

* * * * *

Returns shall be made hereon, showing service of Notice issued December 27, 1954, with copy of Motion for Judgment filed December 27, 1954, attached:

Executed on the 30 day of Dec., 1954, in the County of Fairfax, Virginia, by delivering a true copy of the above mentioned papers attached to each other, to Author Shoffer in person.

JOHN E. TAYLOR
Sheriff, County of Fairfax, Va.
By W. S. MOHLER, Deputy Sheriff.

(Use the space below if a different form of return is necessary).

Received Dec. 30, 1954, Fairfax County, Virginia, Sheriff's Office.

Returned by Sheriff Dec. 30, 1954.

THOMAS P. CHAPMAN, JR.
Clerk.

PROOF OF SERVICE.

* * * * *

Returns shall be made hereon, showing service of Notice issued December 27, 1954, with copy of Motion for Judgment filed December 27, 1954, attached:

Executed on the 29 day of December, 1954, in the County of Fairfax, Virginia, by delivering a true copy of the above mentioned papers attached to each other, to Maurice A. Fox in person.

JOHN E. TAYLOR
Sheriff, County of Fairfax, Va.
By GUY R. McGLINAY, Deputy
Sheriff.

(Use the space below if a different form of return is necessary).

Received Dec. 28, 1954, Fairfax County, Virginia, Sheriff's Office.

Returned by Sheriff Dec. 30, 1954.

THOMAS P. CHAPMAN, JR.
Clerk.

PROOF OF SERVICE.

* * * * *

Returns shall be made hereon, showing service of Notice issued December 27, 1954, with copy of Motion for Judgment filed December 27, 1954, attached:

Executed on the 29 day of Dec., 1954, in the County of Fairfax, Virginia, by delivering a true copy of the above mentioned papers attached to each other, to James Mahoney in person.

JOHN E. TAYLOR
Sheriff, County of Fairfax, Va.
By W. S. MOHLER, Deputy Sheriff.

(Use the space below if a different form of return is necessary).

Received Dec. 28, 1954, Fairfax County, Virginia, Sheriff's Office.

Sheriff's fees \$3.75, paid Clerk.

Returned by Sheriff, Dec. 30, 1954.

THOMAS P. CHAPMAN, JR.
Clerk.

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PROOF OF SERVICE.

* * * * *

Returns shall be made hereon, showing service of Notice issued December 27, 1954, with copy of Motion for Judgment filed December 27, 1954, attached:

Executed on the 29 day of Dec., 1954, in the County of Fairfax, Virginia, by delivering a true copy of the above mentioned papers attached to each other, to Lewis Shumate in person.

JOHN E. TAYLOR
Sheriff, County of Fairfax, Va.
By M. C. WELLS, Deputy Sheriff.

(Use the space below if a different form of return is necessary).

Received Dec. 28, 1954, Fairfax County, Virginia Sheriff's Office.

Filed Dec. 29, 1954.

THOMAS P. CHAPMAN, JR.
Clerk of the Circuit Court of
Fairfax County, Va.

PROOF OF SERVICE.

* * * * *

Returns shall be made hereon, showing service of Notice issued December 17, 1954, with copy of Motion for Judgment filed December 27, 1954, attached:

Executed on the 29 day of Dec., 1954, in the County of Fairfax, Virginia, by delivering a true copy of the above mentioned papers attached to each other, to Lewis Shumate Secretary in person.

(Use the space below if a different form of return is necessary).

Received Dec. 28, 1954 Fairfax County, Virginia Sheriff's Office.

Filed Dec. 29, 1954.

THOMAS P. CHAPMAN, JR.
Clerk of the Circuit Court of Fairfax County, Va.

* * * * *

Filed Jan. 20, 1955.

THOMAS P. CHAPMAN, JR.
Clerk of the Circuit Court of Fairfax County, Va.

ANSWER.

Now come the defendants, individually, and as a body and for their answer to the Petition, filed herein by the Petitioner, John H. Hailman, respectfully present unto this Honorable Court as follows:

1. They admit the allegation contained in Paragraph 1 of the Petition.

2. They admit the allegation contained in Paragraph 2 of the Petition.

3. They neither admit nor deny that the Petitioner is suffering from chronic *claucoma* of both eyes, but deny that the condition was induced by the Petitioner's occupation as a police officer, and deny that the Petitioner is incapable of continuing active duty as a police officer. They admit the Petitioner requested retirement.

page 9 } 4. They admit that on November 22, 1954, at a regular meeting of the Fairfax County Police Pension Board the Petitioner's request for disability retirement was denied. The Defendants further state that such action was taken in the discharge of their official duties as members of the Fairfax County Police Pension Board.

Wherefore the Defendants request that this Honorable Court deny the request and relief sought by the Petitioner, and that the findings and holding of the Fairfax County Police Pension Board be upheld.

JAMES MAHONEY, President
Fairfax County Police Pension Board.
LOUIS COYNER, Treasurer
Fairfax County Police Pension Board.
MAURICE FOX, Member
Fairfax County Police Pension Board.
ARTHUR SHAFFER, Member
Fairfax County Police Pension Board.
LEWIS SHUMATE, Secretary
Fairfax County Police Pension Board.

ROBERT C. FITZGERALD
Attorney for Defendants.

I hereby certify that a copy of this pleading was mailed to Gibson & Hix, Attorneys for the Petitioner this 20th day of January, 1955.

ROBERT C. FITZGERALD.

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* * * * *

FINAL ORDER.

This matter came on to be heard the 27th day of June, 1955, upon the petition of the Petitioner and other pleadings filed herein; and upon stipulation of counsel that this proceeding is being held under and by virtue of Chapter 303 of the Acts of Assembly of 1944; and was argued by counsel.

IT APPEARING TO THE COURT, from the evidence taken herein, that:

1. The Petitioner is not entitled to retirement for disability incurred in the line of duty in that chronic glaucoma of the eyes, the condition complained of, is not the type of injury or disability which would entitle the Petitioner to retirement for disability incurred in the line of duty, regardless of when or how the disability was incurred or the extent there-
page 11 } of.

2. The Petitioner is not entitled to retirement for disability incurred not in the line of duty because there was not sufficient showing by the Petitioner that he was in fact disabled, and for that reason the action of the Fairfax County Police Pension Board in denying the Petitioner such retirement did not constitute a flagrant disregard of the Petitioner's right to retirement, and that such action was not arbitrary, unreasonable and capricious, which would be necessary for this Court to grant the relief prayed for.

Therefore, it is ADJUDGED and ORDERED that the relief prayed for in the Petition herein, be and the same is denied, to all of which Petitioner, by counsel, duly excepts.

And this Order is final.

Enter this 12th day of August, 1955.

PAUL E. BROWN
Judge.

* * * * *

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* * * * *

Filed Sep. 16, 1955.

THOMAS P. CHAPMAN, JR.
Clerk of the Circuit Court of
Fairfax County, Va.

NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR.

To: The Clerk of the Circuit Court of Fairfax County, Virginia.

Counsel for John H. Hailman, Petitioner in the above styled cause in the Circuit Court of Fairfax County, Virginia, does hereby give notice of appeal from the final decree entered in this cause on August 12, 1955, and does hereby set forth the following assignments of error:

1. That the Court erred in ruling that chronic glaucoma of the eyes, is not the type of injury or disability which would entitle the Petitioner to retirement for disability incurred in the line of duty, regardless of when or how the disability was incurred or the extent thereof.

2. That the Court erred in ruling that Petitioner must show that the Police Pension Board in denying Petitioner's request for retirement for disability incurred not in the line of duty constituted a flagrant disregard of the Petitioner's right to retirement, and that such action by the Police Pension Board was arbitrary, unreasonable and capricious.

page 13 } 3. That the Court erred in its final order, said order being contrary to the law and the evidence, in that chronic glaucoma is a type of injury entitling the Petitioner to retirement benefits and that evidence established Petitioner was disabled and was entitled to retirement benefits.

BURCH MILLSAP
Attorney for Petitioner.

GIBSON & HIX, Attorneys
By BURCH MILLSAP.

I hereby certify that a true copy of the foregoing notice of appeal and assignments of error was mailed to Robert C. Fitzgerald, Fairfax, Virginia, and Andrew W. Clarke, 108 N. Fairfax St., Alexandria, Virginia, Attorneys for Defendants this 15th day of September, 1955.

BURCH MILLSAP
Attorney for Petitioner.

* * * * *

Filed Nov. 8, 1955.

THOMAS P. CHAPMAN, JR.
Clerk of the Circuit Court of
Fairfax County, Va.

DESIGNATION OF PORTION OF THE RECORD TO
BE PRINTED.

Comes now the appellant, John H. Hailman, by counsel and designates certain and specific parts of the record in the above styled case to be printed under Rule 5:1 §6.

1. Petition filed on or about December 27, 1954.
2. Return of service for each Defendant.
3. Answer of Defendants James Mahoney, President, Louis Coyner, Treasurer, Maurice Fox, Member, Arthur Shaffer, Member and Lewis Shumate, Secretary, filed on or about January 20, 1955.
4. Order entered by Judge Brown on August 12, 1955.
5. Notice of Appeal and Assignments of Error filed on or about September 16, 1955.
6. This designation.

GIBSON & HIX, Attorneys
By BURCH MILLSAP

I hereby certify that a copy of the above designation of portion of the record to be printed was mailed to page 15 } Robert C. Fitzgerald, Fairfax, Virginia, and Andrew W. Clarke, 108 N. Fairfax Street, Alexandria, Virginia, Attorneys for Defendants, this 8th day of November, 1955.

BURCH MILLSAP
Attorney for Appellant.

* * * * *

A Copy—Teste:

H. G. TURNER, Clerk.

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