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Clerk, Supreme Court of Appeals
Richmond, Va.

201 Va. 552

Record No. 5040

In the Supreme Court of Appeals of Virginia at Richmond

CLYDE R. ROYALS, SR.

v.

CITY OF HAMPTON

FROM THE CIRCUIT COURT OF THE CITY OF HAMPTON

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.

HOWARD G. TURNER, Clerk.

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

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND

Record No. 5040

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Thursday the 18th day of June, 1959.

CLYDE R. ROYALS, SR., Plaintiff in Error,

against

CITY OF HAMPTON, Defendant in Error.

From the Circuit Court of the City of Hampton

Upon the petition of Clyde R. Royals, Sr., a writ of error and *supersedeas* is awarded him to a judgment rendered by the Circuit Court of the City of Hampton on the 4th day of February, 1959, in a prosecution by the City of Hampton against the said petitioner for a misdemeanor; but said *supersedeas,* however, is not to operate to discharge the petitioner from custody, if in custody, or to release his bond if out on bail.

RECORD

• • • • •

COURT COPY
36803

POLICE DEPARTMENT
City of Hampton, Virginia
COURT SUMMONS

17466

Car #1

Date July 11, 1958

License number 36-103 State Va. operator's license OK257527 Tab ..... Name of Operator Clyde R. Royal Sr. Operator's Address 201 Harbor Dr. Hpt., Va. Age 53 Sex M Color W Time:.... A. M. 5:05 P. M. Location 350 W. Pembroke Ave., Make of car 58 Olds hardtop sedan. stop sign [ ] reckless driving [x] stop light [ ] accident [x] speeding [ ] speed zone [ ] passing school bus [ ] no operator's license [ ] no registration card [ ] improper muffler [ ] improper equipment [ ] crossing solid line [ ] failed to yield right of way [ ]

You are hereby summoned to appear before the Police Justice Court, Hampton, Va., on July 31 1958 at 9:00 A. M. to answer the above checked charge: or the following charge ..... Officer Davis No. 21.

I promise to appear before the Police Justice Court, Hampton, Va., at the above stated time:

Signed CLYDE R. ROYAL, SR.
Operator of vehicle stated above.

(on back)

JUDGEMENT OF THE COURT.

Date 8-14 1958 failed to yield right of way. 15 & Costs.

Police Justice MACY M. CARMEL.

• • • • •

page 2 } State of Virginia, City of Hampton, to-wit:

To any or all the Police Officers of said City:

WHEREAS Officer Davis of the said City, has this day made complaint and information on oath before me, Harry A. Lyons Justice of the Peace of the City of Hampton, that Clyde Royals, Sr. on the 11 day of July, 1958, in the said City, did violate the City ordinance of said City and did unlawfully Operate a motor vehicle on the public Highway in a careless and reckless manner, involving an accident.

THESE ARE, THEREFORE, in the name of the Commonwealth, to command you forthwith to apprehend and bring before the Police Justice of the City of Hampton, the body of the above accused to answer the said complaint and be further dealt with according to law,

Given under my hand and seal this 11 day of July, in the year 1958.

HARRY A. LYONS
Justice of the Peace.

(on back)

Virginia, City of Hampton, to-wit:

BE IT REMEMBERED, That on the 14 day of Aug., 1958, Clyde Royals Sr. and W. Worth Martin, N. N. .... Atty. came before me, undersigned Police Justice of the City of Hampton, Virginia, and jointly and severally, respectively, acknowledge themselves to be indebted to the City of Hampton, Virginia, in the sum of One hundred Dollars good and lawful money of the United States, to be levied of their respective goods and chattels, lands, and tenements, for the use of the said City; but to be void, if the said Clyde Royals Sr. shall personally appear before Circuit Court, ... of the ....., on the 8 day of Sept., 1958, at 10 o'clock A. M., and at any time or times to which the proceedings may be continued or further heard and before any Court Judge or Justice thereof having or holding any proceedings in connection with the said charge, to answer for the offense with which he is charged, the said recognizance to remain in full force and effect until the charge is finally disposed of or until it is declared void by order of a competent Court, and shall in the meantime keep the peace and be of good be-

haviour toward all citizens of this Commonwealth, and shall not depart thence without leave of the said Court, else to remain in full force and virtue.

"If the within charge constitutes a misdemeanor, the failure of the said ..... to appear in a Court of Record, in accordance with the conditions of this recognizance, shall be deemed a waiver of a trial by jury by such non appearance, in accordance with Title 19, Section 168, of the Code of Virginia, 1950."

Taken and acknowledged by the obligors herein before me in my City the day and year first above written.

HARRY A. LYONS
Justice of the Peace.

Upon hearing the evidence in this case, I do find the accused ..... guilty as charged in the within warrant and adjudge reduced to fail to give right of way 15 & costs.

8/14/58.

Appeal noted.

Fine	$15.00
Justice	3.50
Officer Arrest	.....
Jail Fee	.....
Witnesses	.....
Clerk	.75
Other Cost	.....
Total	$19.25

MACY M. CARMEL
Police Justice, City of Hampton, Virginia.

Upon hearing the evidence in this case I do find the accused guilty as charged in the within warrant and adjudge he be fined $20 and cost.

11/20/58.

F. A. K., Judge.

A-56803

City of Hampton,

v.

Clyde Royals, Sr., 201 Harbor Dr. City.

WARRANT OF ARREST.

Executed this August 14 day of August, 1958 by S. M. Davis Police Dept. City of Hampton.

W. WORTH MARTIN, JR.

page 3 } The Commonwealth of Virginia,

To the Sergeant of the City of Hampton, Greeting:

WE COMMAND YOU, That you summon S. M. Davis, 141 Freeman Drive, Kenneth C. Farnham, 2 Donald Street to appear before the Judge of our Circuit Court of the City of Hampton at the Court-house thereof, on the 20th day of November, 1958, at 10:00 o'clock A. M., to testify and the truth to say in behalf of the City of Hampton in a certain matter of controversy in our said Court before the said Judge depending and undertermined between City of Hampton, Plaintiff, ... and Clyde Royals, Sr., Defendant....
And have then there this writ.

WITNESS, C. M. GIBSON, Clerk of our said Court, at the Court-house, this 17th day of November, 1958, and in the 182nd year of the Commonwealth.

C. M. GIBSON, Clerk
By ..... Dep. Clerk.

NOTE: Appear before the Clerk and claim your attendance.

(on back)

Executed in the City of Hampton, Va., this 17 day of Nov. 1958 at .... M. by delivering a true copy of that within summon to S. W. Davis in person.

A. A. ANDERSON, City Sergeant
By J. W. .....
Deputy Sergeant.

The within named Kenneth C. Farnham or any member of his family over the age of 16 years old, not being found at his usual place of abode, I executed the within summon in the City of Hampton, Va., this 17 day of Nov. 1958 at .... M. by posting a true copy hereof on the front door of his usual place of abode and leaving the same there posted.

A. A. ANDERSON, City Sergeant
By J. W. .....
Deputy Sergeant.

* * * * *

page 4 } The Commonwealth of Virginia,

To the Sergeant of the City of Newport News, Greeting:

WE COMMAND YOU, That you summon Mrs. B. E. Pegram 714 36th Street to appear before the Judge of our Circuit Court of the City of Hampton at the Court-house thereof, on the 20th day of November, 1958, at 10:00 o'clock A. M., to testify and the truth to say in behalf of the City of Hampton in a certain matter of controversy in our said Court before the said Judge depending and undertermined between City of Hampton, Plaintiff...., and Clyde Royals, Sr., Defendant....

And have then there this writ.

WITNESS, C. M. Gibson, Clerk of our said Court, at the Court-house, this 17th day of November, 1958, and in the 182nd year of the Commonwealth.

C. M. GIBSON, Clerk
By ....., Dep. Clerk.

NOTE: Appear before the Clerk and claim your attendance.

(on back)

Executed 11/18 1958 in the City of Newport News, Virginia, by delivering a true copy of the within subpoena for witness to Mrs. B. E. Pegram in person.

J. E. GARDNER, Sergeant
City of Newport News, Va.
By C. R. FLOWERS
Deputy Sergeant.

* * * * *

page 5 } Circuit Court of the City of Hampton, Virginia on Thursday, the twentieth day of November, in the year of our Lord one thousand nine hundred and fifty-eight.

* * * * *

This day came the Attorney for the City and the defendant appeared in discharge of his recognizance and pled not guilty to the warrant, and with the consent of the Attorney for the City, concurred in by the Court, waived his right of trial by jury and submitted all questions of law and fact to the Court for trial, and the Court having heard the evidence of the City, the defendant by counsel moved the Court to dismiss the warrant on the grounds that the defendant was convicted in the Municipal Court of failure to yield right of way and that there is no such ordinance in the City of Hampton, which motion the Court doth overrule, and having heard the remainder of the evidence doth find the defendant guilty of reckless driving and doth fix his punishment at a fine of Twenty dollars ($20.00) and costs.

It is therefore considered by the Court that the City of Hampton recover her fine of Twenty dollars ($20.00) from the defendant, Clyde Royals, Sr., and her costs by her about her prosecution in this behalf expended.

Whereupon, the defendant by counsel noted his appeal and deposited a cash bond in the sum of One hundred dollars ($100.00) with the Clerk of this Court.

A Copy—Teste:

C. M. GIBSON, Clerk.

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* * * * *

MOTION TO SET ASIDE JUDGMENT AND AWARD NEW TRIAL.

The defendant, Clyde R. Royals, Sr., by his attorney, hereby moves the Circuit Court for the City of Hampton, Virginia, for a new trial, and/or re-hearing, in the above case, on the ground of after-discovered evidence; and there is attached hereto an Affidavit of one James Cinnamon, a material witness in this case, which evidence was discovered after the

trial of this matter in the Circuit Court for the City of Hampton, Virginia, on November 20, 1958.

CLYDE R. ROYALS, SR.
By W. WORTH MARTIN
His Attorney.

Filed Dec. 9, 1958 3:11 P. M.

C. M. GIBSON, Clerk.

.....

Book # .... Page # .... City of Hampton, Va.

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* * * * *

AFFIDAVIT.

I, JAMES CINNAMON,
having been duly sworn, do hereby depose and state that I am forty years of age, and live at 12 Shelton Road, Hampton, Virginia. At the present time I am employed as an Assistant Manager at Turner's Pure Oil Station, on Langley Field Road at West Military Road, Hampton, Virginia.

On July 11, 1958, I was employed at Jimmie's Amoco Service Station, located on the corner of Waverly Street and Pembroke Avenue, in the City of Hampton, Virginia. This particular Amoco Service Station is across from the Hampton Fire Station, and is located on the south side of Pembroke Avenue, and on the west side of Waverly Street.

Royals' Motor Service is located on the north side of Pembroke Avenue, about 300 feet to the west of the service station.

On this particular day, in the late afternoon, Mr. Clyde R. Royals, Sr. drove into Jimmie's Amoco Service Station and got out of his car and got a Coca-Cola and drank it. Mr. Royals and I talked for a few minutes, and then he got into his car and drove it from the service station proper in a general northerly direction onto Pembroke Avenue, and then turned left on Pembroke Avenue to proceed west. I stood on the service station grounds and watched Mr. Royals as he went out onto Pembroke Avenue. At this time there were no cars in view on Pembroke Avenue, in close proximity to Mr.

James Cinnamon.

Royals' car. I know definitely that there were no cars directly ahead of him, going west on Pembroke Avenue, that he could possibly have caught up with within two or three hundred feet, nor were there any cars to the east of the point where Mr. Royals entered Pembroke Avenue, which were in close proximity. Mr. Royals entered Pembroke Avenue page 8 } and made the left turn to proceed west on Pembroke Avenue in a normal manner. After watching him get onto Pembroke Avenue, I then turned to go into the service station building. I then heard a loud thump and looked around to the west and saw that Mr. Royals' car and another vehicle had come into contact with each other. When I saw the two cars, the car which ran into Mr. Royals was re-bounding from the original impact. At this time the Royals vehicle, which was a 1958 Oldsmobile, was entirely in the driveway to the Royals' Motor Company, with the exception of the back wheels, which were in the gutter on the north side of the highway; and the vehicle which ran into the Royals vehicle, which I understand was also an Oldsmobile, was completely up over the curb on the north side of the highway, with the exception of the left rear wheel, which was in the gutter on the north side of the highway.

I know that there were no vehicles going west on Pembroke Avenue, at the time Mr. Royals pulled out of the service station, which were ahead of him and which he could have overtaken in traveling from the service station to Royals' Motor Company; and the only place that this vehicle which ran into the Royals car could have come from was from the east and from behind Mr. Royals.

Witness my hand this 9th day of December, 1958.

JAMES M. CINNAMON.

State of Virginia,
City of Hampton, to-wit:

Subscribed and sworn to before me, this 9th day of December, 1958. My commission expires on the 19th day of July, 1960.

HOWARD F. .....
Notary Public.

Filed 12/9/58.

* * * * *

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* * * * *

ANSWER.

The City of Hampton by its City Attorney hereby answers the Motion To Set Aside Judgment and Award New Trial as follows:

1. That the Motion should be denied because if due diligence had been exercised to discover the witness, he could have been brought to Court at the time of the trial which was more than four (4) months after the date of arrest.
2. That the after discovered evidence is merely cumulative and corroborated of evidence offered at the trial and no new evidence is presented.
3. The purportedly after discovered evidence, even if true, is not such evidence as to grant a new trial or to indicate that the previous trial was unfair.

WHEREFORE, the City of Hampton by its City Attorney prays that the said Motion To Set Aside Judgment and Award New Trial be dsimissed.

CITY OF HAMPTON. VIRGINIA
By JOHN D. GRAY
City Attorney.

Filed Dec. 17, 1958 1:24 P. M.

C. M. GIBSON, Clerk
E. H. MELLER

Book # .... Page # .... City of Hampton, Va.

* * * * *

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* * * * *

NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR.

To the Clerk of the said Court:

The defendant, Clyde R. Royals, Sr., hereby gives notice of his intention to appeal from a final judgment entered in this cause on the 20th day of November, 1958.

The defendant, Clyde R. Royals, Sr., hereby files his assignments of error, as follows:

The Court erred:

1. In convicting the defendant of reckless driving, when the conviction appealed from the Municipal Court of the City of Hampton, Virginia, was of a charge of a lesser nature, that of failing to yield the right of way, thus placing the defendant, who had been acquitted of the charge of reckless driving in the lower court, in double jeopardy.

CLYDE R. ROYALS, SR.
By W. WORTH MARTIN
His Attorney.

Filed Jan. 13, 1959 3:55 P. M.

C. M. GIBSON, Clerk.

Book # .... Page # .... City of Hampton, Va.

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page 11 }

• • • • •

Filed 1/16/59.

F. A. K., Judge.

STATEMENT OF FACT.

This case was tried in the Circuit Court for the City of Hampton, Virginia on November 20, 1958; and as no court reporter was present and the evidence was not recorded or transcribed, the following statement of fact has been agreed

upon for the purposes of appeal to the Supreme Court of Appeals of Virginia.

MR. S. M. DAVIS,

testified that he is a police officer employed by the City of Hampton, Virginia, and that he investigated an accident which occurred on July 11, 1958, about 4:40 p. m., on Pembroke Avenue in the City of Hampton, Virginia. He testified that Pembroke Avenue is a four-lane highway, running east and west, and that the accident occurred just about in front of the driveway to Royals' Motor Company, which is located on the north side of the highway, some three hundred feet (300′) to the west of Waverly Street. He further testified that on the southwest corner of Waverly Street and Pembroke Avenue is located an Amoco filling station. He said that when he got to the scene of the accident, he found the Royals vehicle had been removed from the scene on Pembroke Avenue and parked on the Royals' Motor Company lot, and that this car had been struck and damaged on the right side at the rear of the door (this having been a two-door automobile), and that a car driven by Mrs. Jeanette R. Traylor was stopped with the right front of the automobile up on the curb and the rest of the vehicle in Pembroke Avenue, headed in a general westerly direction. The Royals vehicle was driven by Clyde R. Royals, Sr., the defendant in this action.

Mr. Davis said that Mr. Royals told him he was turning into the driveway of Royals' Motor Company, after having proceeded west on Pembroke Avenue, and was struck on the right side by the Traylor car, which was also proceeding west on Pembroke Avenue.

page 12 } MR. KENNETH C. FARNHAM,

testified that he was proceeding in a westerly direction on Pembroke Avenue following the automobile being driven by Mrs. Traylor, both cars (his and Mrs. Traylor's) were proceeding within the speed limit and west in the outside, westbound traffic lane; that the Royals vehicle was also traveling west in the inside traffic lane alongside the Traylor vehicle; that when these vehicles got to the driveway leading into the Royals' Motor Company, the Royals vehicle cut to its right across the front of Mrs. Traylor's car; that he saw no signal given by the defendant; and that the left front of the Traylor vehicle came in contact with the right side at the door, of the Royals vehicle. He further said that he had seen the Royals vehicle in the driveway, on the south side of the

highway, of the Amoco service station located on the southwest corner of Waverly Street and Pembroke Avenue, but did not remember the Royals vehicle coming out into the street, and the next time he observed it, it was alongside the Traylor car. He testified that after the accident part of the Traylor vehicle was up over the curb on the north side of the street.

MRS. B. E. PEGRAM,

testified that she was riding in the front seat of the vehicle being driven by Mrs. Traylor, and that they were proceeding in a westerly direction within the speed limit in the outside westbound traffic lane on Pembroke Avenue; and as they approached the driveway into the Royals' Motor Company, she noticed the Royals vehicle alongside and to the left of the Traylor car; and that this vehicle, the Royals vehicle, as it got to the driveway to the Royals' Motor Company, cut to its right across the front of the Traylor car, and the left front of the Traylor vehicle came in contact with the right side at the door, of the Royals car.

MR. CLYDE R. ROYALS, SR.,

the defendant in the case, testified that he had driven his car into the Amoco filling station on the southwest corner of the intersection of Waverly Street and Pembroke Avenue, and shortly thereafter had driven in a general northerly direction in the service station areaway to the edge of Pembroke Avenue, and had stopped to let traffic on Pembroke Avenue pass by him. He stated that he had looked to his right and left and saw the Traylor vehicle about a block or a block and a half away, to the east of the filling station, and as there was no other traffic in close proximity, page 13 } he drove his car out onto Pembroke Avenue, made a left turn, and proceeded in a westerly direction in the outside, westbound traffic lane, until he approached the driveway into Royals' Motor Company on the north side of the highway. At that time he switched on his directional signal lights and then started to make a right turn into the driveway. As the front of his car got into the driveway, the Traylor vehicle, which evidently was behind it, came up on the right-hand side, up over the curb, and struck the right side of the Royals vehicle at the rear of the door. He said that after the accident, the right and left front wheels and the right rear wheel of the Traylor vehicle were up over the curb, and the only part of the Traylor vehicle which was in Pembroke Avenue was the left rear wheel. He denied that he

had bren taveling in the inside, westbound traffic lane, or that he had been alongside the Traylor vehicles and had cut in front of it.

There was introduced as evidence, an ordinance making it unlawful to operate a motor vehicle in the City of Hampton in a reckless manner, defining reckless driving, and imposing a penalty for violation thereof. The Court found the defendant guilty of reckless driving and imposed a fine within the limits as was set forth in the ordinance, which ordinance paralleled the State law on the same subject.

The above statement of fact is stipulated to be a true statement of the facts testified to by the above mentioned witnesses in the trial of this cause.

JOHN D. GRAY
City Attorney for the City of Hampton, Virginia.

W. WORTH MARTIN
Attorney for Clyde R. Royals, Sr.

Approved:

FRANK A. KEARNEY
Judge of the Circuit Court for the City of Hampton, Virginia.

1/16/59.

Jan. 16, 1958 1:47 P. M.

C. M. GIBSON, Clerk

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* * * * *

The Commonwealth of Virginia,
City of Hampton, to-wit:

BE IT REMEMBERED, That on the 17th day of January, 1959, Clyde Royals, Sr., principal, and Clyde Royals, Jr., surety personally appeared before me, C. M. Gibson Clerk of

the Circuit Court of Hampton, and respectively acknowledged themselves to owe and stand indebted to the Commonwealth of Virginia, in manner and form following, that is to say, the said Clyde Royals, Sr. in the sum of Three hundred Dollars, and the said Clyde Royals, Jr. in the sum of Three hundred Dollars, to be levied, each, of their respective real estate, goods and chattels, to the use of the said Commonwealth, to be rendered, and respectively waived the benefit of their respective homestead exemptions as to this debt.

THE CONDITION OF THE ABOVE RECOGNIZANCE IS SUCH, That if the above bound Clyde Royals, Sr. shall personally appear before the Circuit Court of the City of Hampton on the 19th day of January, 1959, at 10:00 o'clock A. M., and at any time or times to which the proceedings may be continued or further heard, and before any Court, Judge or Justice thereafter having or holding any proceedings in connection with the said charge, then and there to answer the Commonwealth for and concerning a misdemeanor —reckless driving by him alleged to have been committed, viz: City of Hampton *v.* Clyde Royals, Sr., Misdemeanor Appeal—Reckless Driving and shall not depart thence without the leave of the said Court, and shall in the meantime keep the peace and be of good behavior, then this recognizance to be void when said charge is finally disposed of or when this recognizance is declared void by order of a competent Court; else to remain in full force and virtue.

Witness our signatures and seals, this 17th day of January, 1959.

Signed, sealed and acknowledged by each of the above-mentioned parties before me, on the 17th day of January, 1959, in the City of Hampton.

Given under my hand, this 17th day of January, 1959.

CLYDE ROYALS, SR.
C. N. ROYALS, JR.

All of the foregoing is hereby certified to the Clerk of the Circuit Court of the City of Hampton, this 17 day of Jan., 1959.

C. M. GIBSON, Clerk
By NANY BURKE, Dep. Clk.

page 15 } Circuit Court of the City of Hampton, Virginia on Wednesday, the fourth day of February, in the year of our Lord one thousand nine hundred and fifty-nine.

* * * * *

This day came the City Attorney and the defendant Clyde Royals, Sr., by counsel, on a motion heretofore filed by the defendant to set aside the judgment rendered by the Court on the 20th day of November, 1958, and award a new trial.

Whereupon the Court, after having duly considered said motion, doth deny same.

A Copy—Teste:

C. M. GIBSON, Clerk.

* * * * *

A Copy—Teste:

H. G. TURNER, Clerk

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§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 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 the 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.

CLERK
SUPREME COURT OF APPEALS
RECEIVED
SEP 21 1959
RECEIVED
RICHMOND, VIRGINIA