

GENERAL ASSEMBLY OF NORTH CAROLINA

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HOUSE BILL 908
Committee Substitute Favorable 4/29/93
Committee Substitute #2 Favorable 5/12/93
Senate Judiciary II Committee Substitute Adopted 6/16/93
Senate Finance Committee Substitute Adopted 7/15/93

Short Title: Suits and Appeals by Indigents.

(Public)

Sponsors:

Referred to:

April 13, 1993

A BILL TO BE ENTITLED

AN ACT TO AMEND THE STATUTES THAT ADDRESS SUITS BROUGHT BY
INDIGENTS AND APPEALS PROSECUTED BY INDIGENTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1-110 reads as rewritten:

"§ 1-110. ~~Suit as a pauper;~~ **an indigent; counsel.**

Any superior or district court judge or clerk of the superior court may authorize a person to sue as ~~a pauper~~ an indigent in their respective courts when ~~he proves, by one or more witnesses, that he has a good cause of action, and the person~~ makes affidavit that he or she is unable to comply with the provisions of G.S. 1-109. advance the required court costs.

The clerk of superior court shall authorize a person to sue as an indigent if the person makes the required affidavit and meets one or more of the following criteria:

- (1) Receives food stamps.
- (2) Receives Aid to Families with Dependent Children (AFDC).
- (3) Receives Supplemental Security Income (SSI).
- (4) Is represented by a legal services organization that has as its primary purpose the furnishing of legal services to indigent persons.

1 (5) Is represented by private counsel working on the behalf of or under the
2 auspices of a legal services organization under subdivision (4) of this
3 section.

4 A superior or district court judge or clerk of superior court may authorize a person
5 who does not meet one or more of these criteria to sue as an indigent if the person is
6 unable to advance the required court costs. ~~The court to which such summons is returnable~~
7 may assign to the person suing as a pauper learned counsel, who shall prosecute his action. ~~The~~
8 court to which the summons is returnable may dismiss the case and charge the court
9 costs to the person suing as an indigent if the allegations contained in the affidavit are
10 determined to be untrue or if the court is satisfied that the action is frivolous or
11 malicious."

12 Sec. 2. G.S. 7A-228(b1) reads as rewritten:

13 "(b1) A person desiring to appeal as ~~a pauper~~ an indigent shall, within 10 days of
14 entry of judgment by the magistrate, file an affidavit that he or she is unable by reason
15 of ~~his~~ poverty to pay the costs of ~~appeal and proves, by one or more witnesses, that he has a~~
16 ~~meritorious cause of action or defense.~~ appeal. Within 20 days after entry of judgment, a
17 superior or district court judge, magistrate, or the clerk of the superior court may
18 authorize a person to appeal to district court as ~~a pauper~~ an indigent if the person is
19 unable to pay the costs of appeal. The clerk of superior court shall authorize a person to
20 appeal as an indigent if the person files the required affidavit and meets one or more of
21 the criteria listed in G.S. 1-110. A superior or district court judge, a magistrate, or the
22 clerk of the superior court may authorize a person who does not meet any of the criteria
23 listed in G.S. 1-110 to appeal as an indigent if the person cannot pay the costs of appeal.

24 The district court may dismiss an appeal and require the person filing the appeal to
25 pay the court costs advanced if the allegations contained in the affidavit are determined
26 to be untrue or if the court is satisfied that the action is frivolous or malicious. If the
27 court dismisses the appeal, the court shall affirm the judgment of the magistrate."

28 Sec. 3. G.S. 1-288 reads as rewritten:

29 "**§ 1-288. Appeals in forma pauperis; by indigents; clerk's fees.**

30 When any party to a civil action tried and determined in the superior or district court
31 at the time of trial or special proceeding desires an appeal from the judgment rendered
32 in the action to the Appellate Division, and is unable, by reason of ~~his~~ poverty, to make
33 the deposit or to give the security required by law for ~~said~~ the appeal, it shall be the duty
34 of the judge or clerk of said court to make an order allowing ~~said~~ the party to appeal
35 from the judgment to the Appellate Division as in other cases of appeal, without giving
36 security therefor. The party desiring to appeal from the judgment or order in a civil
37 action or special proceeding shall, within 30 days after the entry of the judgment or
38 order, make affidavit that he or she is unable by reason of ~~his~~ poverty to give the
39 security required by law, and that he or she is advised by a practicing attorney that there
40 is error in a matter of law in the decision of the court in ~~said~~ the action. The affidavit
41 must be accompanied by a written statement from a practicing attorney of ~~said~~ the court
42 that ~~he~~ the attorney has examined the affiant's case, and is of opinion that the decision of
43 the court, in ~~said~~ the action, is contrary to law. Nothing contained in this section
44 deprives the clerk of the superior court of ~~his~~ the right to demand ~~his~~ the fees for ~~his~~ the

1 certificate and seal as now allowed by law in such cases. Provided, that where the judge
 2 or the clerk has made an order allowing the appellant to appeal as ~~a pauper~~ an indigent
 3 and the appeal has been filed in the Appellate Division, and an error or omission has
 4 been made in the affidavit or certificate of counsel, and the error is called to the
 5 attention of the court before the hearing of the argument of the case, the court shall
 6 permit an amended affidavit or certificate to be filed correcting the error or omission."

7 Sec. 4. G.S. 1-109 reads as rewritten:

8 **"§ 1-109. Plaintiff's, Bond required of plaintiff for costs.**

9 At any time after the issuance of summons, the clerk or judge, upon motion of the
 10 defendant, shall require the plaintiff to do one of the following things and the failure to
 11 comply with such order within 30 days from the date thereof shall constitute grounds for
 12 dismissal of such civil action or special proceeding:

- 13 (1) Give an undertaking with sufficient surety in the sum of two hundred
 14 dollars, with the condition that it will be void if the plaintiff pays the
 15 defendant all costs which the latter recovers of him in the action.
- 16 (2) Deposit two hundred dollars (\$200.00) with him as security to the
 17 defendant for these costs, in which event the clerk must give to the
 18 plaintiff and defendant all costs which the latter recovers of him in the
 19 action.
- 20 (3) File ~~with him a written authority~~ a copy of an order from a superior or
 21 district court judge or clerk of a superior ~~court,~~ court authorizing the
 22 plaintiff to sue as ~~a pauper~~. ~~Provided, however, that the~~ an indigent.

23 The requirements of this section shall not apply to the State of North Carolina or any
 24 of its agencies, commissions or institutions, or to counties, drainage districts, cities and
 25 towns; provided, further, that the State of North Carolina or any of its agencies,
 26 commissions or institutions, and counties, drainage districts, cities and towns may
 27 institute civil actions and special proceedings without being required to give a
 28 prosecution bond or make deposit in lieu of bond."

29 Sec. 5. G.S. 6-24 reads as rewritten:

30 **"§ 6-24. Suits in forma pauperis; no costs unless recovery. by an indigent; payment of**
 31 **costs by an indigent.**

32 ~~When any~~ A person who sues as a pauper, an indigent is not required to advance the
 33 required court costs and no officer shall require of him any fee, and he shall recover no
 34 costs, except in case of recovery by him. fee of the person. If a court enters a judgment in
 35 favor of a person suing as an indigent and does not require another party to the suit to
 36 pay the costs of the suit, the court may require the indigent person to pay any costs of
 37 the suit that were not required to be paid because the person was indigent."

38 Sec. 6. G.S. 7A-305(c) reads as rewritten:

39 "(c) The clerk of superior court, at the time of the filing of the papers initiating the
 40 action or the appeal, shall collect as advance court costs, the facilities fee and General
 41 Court of Justice fee, except in suits ~~in forma pauperis~~ by an indigent. ~~He~~ The clerk shall
 42 also collect the fee for discovery procedures under Rule 27(a) and (b) at the time of the
 43 filing of the verified petition."

1 Sec. 7. This act becomes effective October 1, 1993, and applies to all suits or
2 appeals prosecuted on or after that date.