

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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HOUSE BILL 908  
Committee Substitute Favorable 4/29/93

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 is unable to comply with the provisions of G.S. 1-109. A person is deemed to be an indigent within the meaning of this section if the person makes an affidavit that he is unable to comply with the provisions of G.S. 1-109 and if the person:

- (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, or
- (5) Is represented by private counsel working on the behalf of or under the auspices of a legal services organization under subdivision (4) of this subsection,

and the clerk of the superior court shall authorize this person to sue as an indigent. A superior or district court judge or clerk of superior court may, in his discretion,

1 authorize a person who is not deemed to be an indigent under subdivisions (1) through  
2 (6) of this subsection to proceed as an indigent, if such person is unable to comply with  
3 the provisions of G.S. 1-109. The court to which such summons is returnable may  
4 assign to the person suing as a pauper an indigent learned counsel, who shall prosecute  
5 his action. The court to which such summons is returnable may dismiss the case:

6 (1) If the allegations contained in the affidavit are determined to be untrue;  
7 or

8 (2) If the court is satisfied that the action is frivolous or malicious,  
9 and the court costs of such action may be charged to the person suing as an indigent."

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

11 "(b1) A person desiring to appeal as a ~~pauper~~ an indigent shall, within 10 days of  
12 entry of judgment by the magistrate, file an affidavit that he is unable by reason of his  
13 poverty to pay the costs of appeal and proves, ~~by one or more witnesses, that he has a~~  
14 ~~meritorious cause of action or defense.~~ appeal. Within 20 days after entry of judgment, a  
15 superior or district court judge, magistrate, or the clerk of the superior court may  
16 authorize a person to appeal to district court as a ~~pauper~~ an indigent.

17 A person desiring to appeal as an indigent is deemed to be unable, by reason of  
18 poverty, to pay the costs of appeal if the person makes affidavit as provided herein, and  
19 if the person:

20 (1) Receives food stamps,

21 (2) Receives Aid to Families with Dependent Children (AFDC),

22 (3) Receives Supplemental Security Income (SSI),

23 (4) Is represented by a legal services organization that has as its primary  
24 purpose the furnishing of legal services to indigent persons, or

25 (5) Is represented by private counsel working on behalf of or under the  
26 auspices of such organization,

27 and in such case the clerk of superior court shall authorize a person to appeal to district  
28 court as an indigent. A superior or district court judge or the clerk of the superior court  
29 may, in his discretion, authorize a person who is not deemed to be an indigent under  
30 subdivisions (1) through (6) of this subsection to proceed as an indigent if such person  
31 cannot pay the costs of appeal. A district court judge may dismiss the appeal if the  
32 allegations contained in the affidavit are determined to be untrue, or if the judge is  
33 satisfied that the action is frivolous or malicious; and in such case the judgment of the  
34 magistrate shall be affirmed and court costs of such action may be charged to the person  
35 appealing as an indigent."

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

37 "**§ 1-288. Appeals in forma pauperis; by indigents; clerk's fees.**

38 When any party to a civil action tried and determined in the superior or district court  
39 at the time of trial or special proceeding desires an appeal from the judgment rendered  
40 in the action to the Appellate Division, and is unable, by reason of his poverty, to make  
41 the deposit or to give the security required by law for ~~said~~ the appeal, it shall be the duty  
42 of the judge or clerk of said court to make an order allowing ~~said~~ the party to appeal  
43 from the judgment to the Appellate Division as in other cases of appeal, without giving  
44 security therefor. The party desiring to appeal from the judgment or order in a civil

1 action or special proceeding shall, within 30 days after the entry of the judgment or  
2 order, make affidavit that he is unable by reason of his poverty to give the security  
3 required by law, and that he is advised by a practicing attorney that there is error in  
4 matter of law in the decision of the court in ~~said~~the action. The affidavit must be  
5 accompanied by a written statement from a practicing attorney of said court that he has  
6 examined the affiant's case, and is of opinion that the decision of the court, in ~~said~~the  
7 action, is contrary to law. A person is deemed to be unable, by reason of poverty, to  
8 give the security required by law for the appeal, if the person makes affidavit as  
9 provided herein, and if the person:

- 10 (1) Receives food stamps,
- 11 (2) Receives Aid to Families with Dependent Children (AFDC),
- 12 (3) Receives Supplemental Security Income (SSI),
- 13 (4) Is represented by a legal services organization that has as its primary  
14 purpose the furnishing of legal services to indigent persons, or
- 15 (5) Is represented by private counsel working on behalf of or under the  
16 auspices of such organization,

17 and in such case the clerk of superior court shall make an order allowing the party to  
18 appeal without giving security as long as all other requirements contained in this section  
19 are satisfied. The superior or district court judge or the clerk of the superior court may,  
20 in his discretion, make an order allowing a party who is not deemed under subdivisions  
21 (1) through (6) of this section to be unable, by reason of poverty, to give security to  
22 appeal to the Appellate Division without giving security. Nothing contained in this  
23 section deprives the clerk of the superior court of his right to demand his fees for his  
24 certificate and seal as now allowed by law in such cases. Provided, that where the judge  
25 or the clerk has made an order allowing the appellant to appeal as a ~~pauper~~an indigent  
26 and the appeal has been filed in the Appellate Division, and an error or omission has  
27 been made in the affidavit or certificate of counsel, and the error is called to the  
28 attention of the court before the hearing of the argument of the case, the court shall  
29 permit an amended affidavit or certificate to be filed correcting the error or omission."

30 Sec. 4. This act becomes effective October 1, 1993, and applies to all suits or  
31 appeals prosecuted on or after that date.