

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

Short Title: Suits and Appeals by Indigents.

(Public)

Sponsors:

Referred to: Finance.

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. 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.
- (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 section.

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

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

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

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

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

26 **"§ 1-288. Appeals in forma pauperis; by indigents; clerk's fees.**

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

1 certificate of counsel, and the error is called to the attention of the court before the
2 hearing of the argument of the case, the court shall permit an amended affidavit or
3 certificate to be filed correcting the error or omission."

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

5 **"§ 1-109. Plaintiff's, Bond required of plaintiff for costs.**

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

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

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

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

27 **"§ 6-24. Suits ~~in forma pauperis; no costs unless recovery.~~ by an indigent; payment of**
28 **costs by an indigent.**

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

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

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

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