

GENERAL ASSEMBLY OF NORTH CAROLINA
1993 SESSION

CHAPTER 435
HOUSE BILL 908

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.
- (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.

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

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

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

unable to pay the costs of appeal. The clerk of superior court shall authorize a person to appeal as an indigent if the person files the required affidavit and meets one or more of the criteria listed in G.S. 1-110. A superior or district court judge, a magistrate, or the clerk of the superior court may authorize a person who does not meet any of the criteria listed in G.S. 1-110 to appeal as an indigent if the person cannot pay the costs of appeal.

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

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

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

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

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

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

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

- (1) Give an undertaking with sufficient surety in the sum of two hundred dollars, with the condition that it will be void if the plaintiff pays the defendant all costs which the latter recovers of him in the action.
- (2) Deposit two hundred dollars (\$200.00) with him as security to the defendant for these costs, in which event the clerk must give to the

plaintiff and defendant all costs which the latter recovers of him in the action.

- (3) File ~~with him a written authority~~ a copy of an order from a superior or district court judge or clerk of a superior ~~court,~~ court authorizing the plaintiff to sue as a ~~pauper. Provided, however, that the~~ an indigent.

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

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

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

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

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

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

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

In the General Assembly read three times and ratified this the 22nd day of July, 1993.

Dennis A. Wicker
President of the Senate

Daniel Blue, Jr.
Speaker of the House of Representatives