

GENERAL ASSEMBLY OF NORTH CAROLINA
1995 SESSION

CHAPTER 102
SENATE BILL 41

AN ACT TO PROVIDE A PROCEDURE FOR ELIMINATING FRIVOLOUS
LAWSUITS BY PRISONERS.

The General Assembly of North Carolina enacts:

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

"§ 1-110. Suit as an indigent; ~~counsel~~; counsel; suits filed pro se by prison inmates.

(a) Subject to the provisions of subsection (b) of this section with respect to prison inmates, any ~~Any~~ superior or district court judge or clerk of the superior court may authorize a person to sue as an indigent in their respective courts when the person makes affidavit that he or she is unable to 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 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.

(b) Whenever a motion to proceed as an indigent is filed pro se by an inmate in the custody of the Department of Correction, the motion to proceed as an indigent and the proposed complaint shall be presented to any superior court judge of the judicial district. This judge shall determine whether the complaint is frivolous. In the discretion of the court, a frivolous case may be dismissed by order. The clerk of superior court shall serve a copy of the order of dismissal upon the prison inmate. If the judge determines that the inmate may proceed as an indigent, service of process upon the defendant shall issue without further order of the court."

Sec. 2. This act is effective upon ratification and applies to actions filed on or after that date.

In the General Assembly read three times and ratified this the 25th day of May, 1995.

Dennis A. Wicker
President of the Senate

Harold J. Brubaker
Speaker of the House of Representatives