

**§ 7A-228. New trial before magistrate; appeal for trial de novo; how appeal perfected; oral notice; dismissal.**

(a) The chief district court judge may authorize magistrates to hear motions to set aside an order or judgment pursuant to G.S. 1A-1, Rule 60(b)(1) and order a new trial before a magistrate. The exercise of the authority of the chief district court judge in allowing magistrates to hear Rule 60(b)(1) motions shall not be construed to limit the authority of the district court to hear motions pursuant to Rule 60(b)(1) through (6) of the Rules of Civil Procedure for relief from a judgment or order entered by a magistrate and, if granted, to order a new trial before a magistrate. After final disposition before the magistrate, the sole remedy for an aggrieved party is appeal for trial de novo before a district court judge or a jury. Notice of appeal may be given orally in open court upon announcement or after a judgment is rendered. If not announced in open court, written notice of appeal must be filed in the office of the clerk of superior court within 10 days after a judgment is rendered. The appeal must be perfected in the manner set out in subsection (b). Upon announcement of the appeal in open court or upon receipt of the written notice of appeal, the appeal shall be noted upon the judgment. If the judgment was mailed to the parties, then the time computations for appeal of such judgment shall be pursuant to G.S. 1A-1, Rule 6.

(b) The appeal shall be perfected by (1) oral announcement of appeal in open court; or (2) by filing notice of appeal in the office of the clerk of superior court within 10 days after a judgment is rendered pursuant to subsection (a), and by serving a copy of the notice of appeal on all parties pursuant to G.S. 1A-1, Rule 5. Failure to pay the costs of court to appeal within 10 days after a judgment is rendered in a summary ejection action, and within 20 days after a judgment is rendered in all other actions, shall result in the automatic dismissal of the appeal. Notwithstanding the foregoing deadlines, if an appealing party petitions to qualify as an indigent for the appeal and is denied, that party shall have an additional five days to perfect the appeal by paying the court costs. The failure to demand a trial by jury in district court by the appealing party before the time to perfect the appeal has expired is a waiver of the right thereto.

(b1) A person desiring to appeal as an indigent shall, within 10 days of a magistrate rendering a judgment, file an affidavit that the person is unable by reason of poverty to pay the costs of appeal. Within 20 days after a judgment is rendered, a superior or district court judge, magistrate, or the clerk of the superior court may authorize a person to appeal to district court as 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.

(b2) A superior or district court judge, magistrate, or clerk of superior court authorizing a person to appeal to district court as an indigent pursuant to subsection (b1) of this section shall do at least one of the following:

- (1) Make written findings including (i) all criteria listed in G.S. 1-110 that led to the authorization of the person to appeal to district court as an indigent and (ii) all information or evidence used to determine that one or more criteria in G.S. 1-110 existed.
- (2) Make written findings indicating (i) that the authorization of the person to appeal to district court as an indigent was not based upon criteria listed in G.S. 1-110 and (ii) all information or evidence used to determine that the person would otherwise be authorized to appeal to district court as an indigent.

(c) Whenever such appeal is docketed and is regularly set for trial, and the appellant fails to appear and prosecute his appeal, the presiding judge may have the appellant called and the appeal dismissed; and in such case the judgment of the magistrate shall be affirmed.

(d) When a defendant in a summary ejectment action has given notice of appeal and perfected the appeal in accordance with G.S. 7A-228(b), the plaintiff may serve upon the defendant a motion to dismiss the appeal if the defendant failed to raise a defense orally or in writing in the small claims court and failed to do at least one of the following:

- (1) Repealed by Session Laws 2024-54, s. 3(a), effective October 1, 2024, and applicable to judgments rendered on or after that date.
- (2) File a motion, answer, or counterclaim in the district court.
- (3) Comply with any obligation set forth in the Bond to Stay Execution on Appeal of Summary Ejectment Judgment entered by the court.

The motion to dismiss the appeal shall state that the defendant failed to raise a defense orally or in writing in the small claims court and list any of the deficiencies committed by the defendant, as described in subdivisions (2) and (3) of this subsection, and shall state that the court will decide the motion to dismiss without a hearing if the defendant fails to respond within 10 days of receipt of the motion. The defendant may defeat the motion to dismiss by responding within 10 days of receipt of the motion by doing at least one of the following acts: (i) if the motion is filed alleging a deficiency described in subdivision (2) of this subsection, by filing a responsive motion, answer, or counterclaim and serving the plaintiff with a copy thereof or (ii) if the motion is filed alleging a deficiency described in subdivision (3) of this subsection, by paying the amount due under the bond to stay execution, if any amount is owed by the defendant. If the defendant is not required by law to make any payment under the bond to stay execution, the court shall not use the failure to make a payment as a basis to dismiss the appeal. The court shall review the file, determine whether the motion satisfies the requirements of this subsection, determine whether the defendant has made a sufficient response to defeat the motion, and shall enter an order resolving the matter without a hearing.

(e) Notwithstanding G.S. 84-4, any party in an action appealed for a trial de novo, as provided for in this section, shall not be required to obtain legal representation. (1965, c. 310, s. 1; 1969, c. 1190, s. 22; 1979, 2nd Sess., c. 1328, s. 3; 1981, c. 599, s. 3; 1985, c. 753, ss. 1, 2; 1987, c. 553; 1993, c. 435, s. 2; 1998-120, s. 1; 2013-334, s. 3; 2014-115, s. 19(a); 2017-143, s. 2(b); 2024-47, s. 9(b); 2024-54, ss. 2(b), 3(a).)