

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

H

1

HOUSE BILL 398

Short Title: Pro Se Indigent Prisoners/AB.

(Public)

Sponsors: Representatives Baker; Cansler, Capps, Clary, Culp, Hurley, McMahan, Redwine, Russell, Thompson, and Warner.

Referred to: Judiciary II.

March 9, 1995

A BILL TO BE ENTITLED

AN ACT TO PROVIDE A PROCEDURE FOR ELIMINATING FRIVOLOUS LAWSUITS BY PRISONERS AND TO ESTABLISH A PARTIAL FILING FEE FOR PRISONERS PROCEEDING AS INDIGENTS.

The General Assembly of North Carolina enacts:

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

"§ G.S. 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.

1           (5)    Is represented by private counsel working on the behalf of or under the  
2                    auspices of a legal services organization under subdivision (4) of this  
3                    section.

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

10          (b)    Whenever a motion to proceed as an indigent is filed pro se by an inmate in the  
11 custody of the Department of Correction, the motion to proceed as an indigent and the  
12 proposed complaint shall be presented to any superior court judge of the judicial district.  
13 This judge shall determine whether the complaint is frivolous. In the discretion of the  
14 court, a frivolous case may be dismissed by order. All such cases that are not dismissed  
15 shall be returned to the clerk for further inquiry into the inmate's ability to pay a filing  
16 fee. The clerk of superior court shall request the Division of Prisons of the Department  
17 of Correction to provide a certified copy of the trust fund account of the inmate for the  
18 six months preceding submission of the complaint. The inmate may proceed as an  
19 indigent conditioned upon payment of a partial filing fee based upon fifteen percent  
20 (15%) of the income received within the six-month period preceding submission of the  
21 complaint, subject to adjustment by the court for special circumstances the prison may  
22 bring to the court's attention. The clerk of superior court shall notify the prison inmate of  
23 the amount of the filing fee required by the court. If the fee is not received within 20  
24 days of that notice, the motion to proceed as an indigent shall be denied and the action  
25 dismissed. If a partial filing fee as set by the court is tendered within 20 days, service of  
26 process upon the defendant shall issue without further order of the court."

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