

Article 9.

Prosecution Bonds.

§ 1-109. Bond required of plaintiff for costs.

At any time after the issuance of summons, the clerk or judge, upon motion of the defendant, may, upon a showing of good cause, 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 a copy of an order from a superior or district court judge or clerk of a superior court authorizing the plaintiff to sue as 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. (R.C., c. 31, s. 40; C.C.P., s. 71; Code, s. 209; Rev., s. 450; C.S., s. 493; 1935, c. 398; 1949, c. 53; 1955, c. 10, s. 1; 1957, c. 563; 1961, c. 989; 1971, c. 268, s. 3; 1993, c. 435, s. 4; 1999-106, s. 1.)

§ 1-110. Suit as an indigent; 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 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 electronic food and nutrition benefits.
- (2) Receives Work First Family Assistance.
- (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.
- (6) Repealed by Session Laws 2002-126, s. 29A.6(d), effective October 1, 2002.

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 Division of Prisons of the Department of Adult 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, the clerk of superior court shall issue service of process nunc pro tunc to the date of filing upon the defendant. (C.C.P., s. 72; 1868-9, c. 96, s. 2; Code, ss. 210, 211; Rev., ss. 451, 452; C.S., s. 494; 1971, c. 268, s. 4; 1993, c. 435, s. 1; 1995, c. 102, s. 1; 1995 (Reg. Sess., 1996), c. 591, s. 4; 1997-443, s. 12.22; 2002-126, s. 29A.6(d); 2007-97, s. 1; 2011-145, s. 19.1(h); 2017-158, s. 19; 2017-186, s. 2(a); 2021-180, s. 19C.9(p).)

§ 1-111. Defendant's, for costs and damages in actions for land.

In all actions for the recovery or possession of real property, the defendant, before he is permitted to plead, must execute and file in the office of the clerk of the superior court of the county where the suit is pending an undertaking with sufficient surety, in an amount fixed by the court, not less than two hundred dollars (\$200.00), to be void on condition that the defendant pays to the plaintiff all costs and damages which the latter recovers in the action, including damages for the loss of rents and profits. (1869-70, c. 193; Code, s. 237; Rev., s. 453; C.S., s. 495.)

§ 1-112. Defense without bond.

(a) The undertaking prescribed in G.S. 1-111 is not necessary if an attorney practicing in the court where the action is pending certifies to the court in writing that he has examined the case of the defendant and is of the opinion that the plaintiff is not entitled to recover; and if the defendant also files an affidavit stating that he is unable to give and is not worth the amount of the undertaking in any property whatsoever.

(b) An undertaking shall not be required in any summary ejectment action brought pursuant to Articles 3 or 7 of Chapter 42 of the General Statutes. (1869-70, c. 193; Code, s. 237; Rev., s. 454; C.S., s. 496; 1997-473, s. 2.)