

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 40
Committee Substitute Favorable 5/6/09

Short Title: Summary Ejectment/Appeals.

(Public)

Sponsors:

Referred to:

February 4, 2009

1 A BILL TO BE ENTITLED
2 AN ACT REQUIRING THAT NOTICE OF APPEAL FROM A MAGISTRATE'S
3 JUDGMENT IN A SUMMARY EJECTMENT PROCEEDING BE GIVEN WITHIN
4 FIVE DAYS AFTER ENTRY OF JUDGMENT.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. G.S. 7A-228 reads as rewritten:

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

9 (a) The chief district court judge may authorize magistrates to hear motions to set aside
10 an order or judgment pursuant to G.S. 1A-1, Rule 60(b)(1) and order a new trial before a
11 magistrate. The exercise of the authority of the chief district court judge in allowing magistrates
12 to hear Rule 60(b)(1) motions shall not be construed to limit the authority of the district court to
13 hear motions pursuant to Rule 60(b)(1) through (6) of the Rules of Civil Procedure for relief
14 from a judgment or order entered by a magistrate and, if granted, to order a new trial before a
15 magistrate. After final disposition before the magistrate, the sole remedy for an aggrieved party
16 is appeal for trial de novo before a district court judge or a jury. Notice of appeal may be given
17 orally in open court upon announcement or after entry of judgment. If not announced in open
18 court, written notice of appeal must be filed in the office of the clerk of superior court within 10
19 days after entry of ~~judgment~~judgment, except that in a summary ejectment proceeding under
20 Article 3 of Chapter 42 of the General Statutes, written notice of appeal must be filed in the
21 office of the clerk of superior court within five days after entry of judgment. The appeal must
22 be perfected in the manner set out in subsection (b). Upon announcement of the appeal in open
23 court or upon receipt of the written notice of appeal, the appeal shall be noted upon the
24 judgment. If the judgment was mailed to the parties, then the time computations for appeal of
25 such judgment shall be pursuant to G.S. 1A-1, Rule 6.

26 (b) The appeal shall be perfected by (1) oral announcement of appeal in open court; or
27 (2) by filing notice of appeal in the office of the clerk of superior court within five days after
28 entry of judgment in a summary ejectment proceeding and within 10 days after entry of
29 judgmentjudgment in all other proceedings, pursuant to subsection (a), and by serving a copy
30 of the notice of appeal on all parties pursuant to G.S. 1A-1, Rule 5. Failure to pay the costs of
31 court to appeal within 10 days after entry of judgment in a summary ejectment proceeding and
32 within 20 days after entry of judgment in all other proceedings shall result in the automatic
33 dismissal of the appeal. The failure to demand a trial by jury in district court by the appealing
34 party before the time to perfect the appeal has expired is a waiver of the right thereto.

35 (b1) A person desiring to appeal as an indigent shall, within five days of entry of
36 judgment by the magistrate in a summary ejectment proceeding and within 10 days of entry of
37 judgment by the ~~magistrate~~magistrate in all other proceedings, file an affidavit that he or she is



1 unable by reason of poverty to pay the costs of appeal. Within 10 days after entry of judgment
2 in a summary ejection proceeding and within 20 days after entry of judgment, judgment in all
3 other proceedings, a superior or district court judge, magistrate, or the clerk of the superior
4 court may authorize a person to appeal to district court as an indigent if the person is unable to
5 pay the costs of appeal. The clerk of superior court shall authorize a person to appeal as an
6 indigent if the person files the required affidavit and meets one or more of the criteria listed in
7 G.S. 1-110. A superior or district court judge, a magistrate, or the clerk of the superior court
8 may authorize a person who does not meet any of the criteria listed in G.S. 1-110 to appeal as
9 an indigent if the person cannot pay the costs of appeal.

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

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

17 **SECTION 2.** This act becomes effective October 1, 2009, and applies to appeals
18 filed on or after that date.