

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

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HOUSE BILL 1040

Short Title: Amend Sum Eject Service/Allow Process Server. (Public)

Sponsors: Representatives Jordan, Bradford, Earle, and Szoka (Primary Sponsors).
For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Judiciary III

May 31, 2018

A BILL TO BE ENTITLED

AN ACT TO ALLOW SUMMARY EJECTMENT CLAIMS TO BE SERVED BY A PRIVATE
PROCESS SERVER WHEN RETURNED UNEXECUTED, TO CLARIFY THE
CALCULATION OF TIME LINES WHEN SERVING A SUMMONS IN SUMMARY
EJECTMENT CASES, AND TO ALLOW THE PLAINTIFF IN A SUMMARY
EJECTMENT ONLY CLAIM TO UTILIZE A PRIVATE PROCESS SERVER IN
COUNTIES WITH POPULATIONS OF NINE HUNDRED THOUSAND OR GREATER,
AS RECOMMENDED BY THE LEGISLATIVE RESEARCH COMMISSION
COMMITTEE ON PRIVATE PROCESS SERVERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 1A-1, Rule 4(h1), reads as rewritten:

"Rule 4. Process.

...

(h1) Summons – When process returned unexecuted. – If a proper officer returns a summons or other process unexecuted, the plaintiff or his agent or attorney may cause service to be made by anyone who is not less than 21 years of age, who is not a party to the action, and who is not related by blood or marriage to a party to the action or to a person upon whom service is to be made. ~~Except for claims severed by a magistrate pursuant to G.S. 7A-223(b1), this~~ This subsection shall not apply to executions pursuant to Article 28 of Chapter 1 ~~or summary ejectment pursuant to Article 3 of Chapter 42~~ of the General Statutes."

SECTION 2. G.S. 42-28 reads as rewritten:

"§ 42-28. Summons issued by clerk.

(a) When the lessor or his assignee files a complaint pursuant to G.S. 42-26 or 42-27, and asks to be put in possession of the leased premises, the clerk of superior court shall issue a summons requiring the defendant to appear at a certain time and place not to exceed seven days from the issuance of the summons, excluding weekends and legal holidays, to answer the complaint. The plaintiff may claim rent in arrears, and damages for the occupation of the premises since the cessation of the estate of the lessee, not to exceed the jurisdictional amount established by G.S. 7A-210(1), but if he omits to make such claim, he shall not be prejudiced thereby in any other action for their recovery.

(b) In counties with 900,000 or more residents as of the most recent decennial federal census, after the summons is issued, at the election of the plaintiff, the clerk shall do either of the following:

(1) Return the summons to the plaintiff for service by a process server pursuant to G.S. 42-29(b).



1 (2) Forward the summons to the sheriff for service.

2 (c) If the magistrate severs the claim for monetary damages pursuant to G.S. 7A-223(b1),
3 the plaintiff may extend the action in accordance with G.S. 1A-1, Rule 4(d)."

4 **SECTION 3.** G.S. 42-29 reads as rewritten:

5 **"§ 42-29. Service of summons.**

6 (a) Service by Officer. – The officer receiving the summons shall mail a copy of the
7 summons and complaint to the defendant no later than the end of the next business day or as soon
8 as practicable at the defendant's last known address in a stamped addressed envelope provided
9 by the plaintiff to the action. The officer may, within five days of the issuance of the summons,
10 attempt to telephone the defendant requesting that the defendant either personally visit the officer
11 to accept service, or schedule an appointment for the defendant to receive delivery of service
12 from the officer. If the officer does not attempt to telephone the defendant or the attempt is
13 unsuccessful or does not result in service to the defendant, the officer shall make at least one visit
14 to the place of abode of the defendant within five days of the issuance of the summons, but at
15 least two days prior to the day the defendant is required to appear to answer the ~~complaint,~~
16 ~~excluding legal holidays,~~ complaint. The officer shall visit the place of abode of the defendant at
17 a time reasonably calculated to find the defendant at the place of abode to attempt personal
18 delivery of service. He or she then shall deliver a copy of the summons together with a copy of
19 the complaint to the defendant, or leave copies thereof at the defendant's dwelling house or usual
20 place of abode with some person of suitable age and discretion then residing therein. If such
21 service cannot be made the officer shall affix copies to some conspicuous part of the premises
22 claimed and make due return showing compliance with this ~~section.~~ subsection.

23 (b) Service by Process Server. – Only with respect to service for summary ejectment
24 proceedings in counties with 900,000 or more residents as of the most recent decennial federal
25 census, a process server, who receives a copy of the summons and complaint from the plaintiff
26 pursuant to G.S. 42-28(b)(1), may effectuate proper service upon a defendant solely for purposes
27 of summary ejectment by mailing a copy of the summons and complaint to the defendant no later
28 than the end of the next business day or as soon as practicable at the defendant's last known
29 address in a stamped, addressed envelope provided by the plaintiff to the action. The process
30 server shall then deliver a copy of the summons together with a copy of the complaint to the
31 defendant by affixing copies of same to some conspicuous part of the premises claimed and make
32 due return showing compliance with this subsection in the form of an affidavit of service. Said
33 affidavit of service shall set forth the time, place, and manner by which the requirements set forth
34 herein were completed.

35 (c) Definition. – As used in this section, a "process server" shall be any person who a
36 plaintiff or a plaintiff's agent or attorney may cause service to be made for the purpose of serving
37 the summons and complaint for summary ejectment and who meets the requirements listed in
38 G.S. 1A-1, Rule 4(h1).

39 (d) Computation of Time. – Notwithstanding G.S. 1A-1, Rule 6, and except for periods
40 of time involving the mailing of a copy of a summons and a complaint to the defendant by an
41 officer, when computing any period of time prescribed in subsection (a) of this section, the time
42 shall be computed by excluding only legal holidays when the courthouse is closed for
43 transactions."

44 **SECTION 4.** This act becomes effective October 1, 2018, and applies to actions for
45 summary ejectment in which the summons is issued by the clerk of superior court on or after that
46 date.