

GENERAL ASSEMBLY OF NORTH CAROLINA
1995 SESSION

CHAPTER 441
HOUSE BILL 694

AN ACT TO PROVIDE FOR PRIVATE SERVICE OF PROCESS IN WAKE
COUNTY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1A-1, Rule 4(a) reads as rewritten:

"(a) Summons – Issuance; who may serve. – Upon the filing of the complaint, summons shall be issued forthwith, and in any event within five days. The complaint and summons shall be delivered to some proper person for service. In this State, such proper person shall be the sheriff of the county where service is to be ~~made~~made, a private process server appointed by the clerk of court, or some other person duly authorized by law to serve summons. Upon the request of a party seeking service of process or that party's agent or attorney, service shall be made by a private process server appointed by the clerk of court. Outside this State, such proper person shall be anyone who is not a party and is not less than 21 years of age or anyone duly authorized to serve summons by the law of the place where service is to be made. Upon request of the plaintiff separate or additional summons shall be issued against any defendants. A summons is issued when, after being filled out and dated, it is signed by the officer having authority to do so. The date the summons bears shall be prima facie evidence of the date of issue."

Sec. 2. Article 12 of Chapter 7A of the General Statutes is amended by adding a new section to read:

"§ 7A-114. Appointment of private process server.

(a) Qualifications. – The clerk of court of each county shall appoint persons as private process servers in accordance with this section. To be appointed as a private process server, a person must apply to the clerk of court for the appointment and must meet all of the following qualifications:

- (1) Be at least 21 years old.
- (2) Be a resident of this State.
- (3) Have no mental or legal disability.
- (4) Not be the defendant in a pending criminal action.
- (5) Not have been convicted of a felony.
- (6) In the five-year period before the date the application is filed, not have been convicted of a misdemeanor involving moral turpitude or dishonesty.

- (7) Pass a written examination given by the clerk testing the applicant's knowledge of the laws and rules of procedure concerning the service of process.
- (8) Post with the clerk a performance bond in the amount of one hundred thousand dollars (\$100,000).
- (9) Pay the application fee and the examination fee set by the clerk.

(b) Exam. – The clerk of court shall determine the content of the examination an applicant must take to become a private process server and the passing grade for the examination. The clerk shall determine the number of times and the locations at which the examination is given in a year. The clerk shall give the examination at least once a year.

(c) Bond. – A performance bond required for appointment as a private process server must be approved by the clerk of court and must be filed for the benefit of any person injured by malfeasance, misfeasance, neglect of duty, or incompetence in performing the duties of a private process server. If an applicant is or will be employed by an entity whose employees are covered by a bond of the employer, the applicant is not required to post a bond if the employer gives a written statement to the clerk affirming that the employer's bond applies or will apply to the applicant in performing the duties of a private process server.

The clerk of court may redeem, in whole or in part, a performance bond filed by a private process server when the clerk determines that a person has been injured by the malfeasance, misfeasance, neglect of duty, or incompetence of the private process server in serving process. Before the clerk redeems a bond, the clerk must hold a hearing on the matter.

(d) Appointment. – The clerk of court shall appoint a person who meets the qualifications set in subsection (a) of this section as a private process server. The clerk shall issue each person appointed an identification number and an identification card. The card shall bear the process server's identification number, printed name, signature, photograph, and date the appointment expires. The clerk of court may contract with the City-County Bureau of Identification to make the identification cards. The person to whom a card is issued shall pay the fee required for issuance of the card. The clerk shall maintain a list of persons who hold appointments as private process servers.

(e) Effect. – A person appointed as a private process server is authorized to serve civil process, except executions pursuant to Article 28 of Chapter 1 of the General Statutes or summary ejection pursuant to Article 3 of Chapter 42 of the General Statutes. A person appointed as a private process server shall take an oath that the person will honestly, diligently, and faithfully exercise the duties of a private process server. Process served by a private process server has the same effect as if it had been served by a sheriff.

(f) Renewal of Appointment. – An appointment as a private process server expires one year after the date the clerk of court makes the appointment. An appointment may be renewed by filing an application for renewal with the clerk. The clerk shall renew an appointment if the process server has properly fulfilled the duties of

a private process server during the year and the bond posted by the process server remains in effect.

(g) Revocation or Refusal to Renew Appointment. – The clerk of court may revoke or refuse to renew a person's appointment as a private process server whenever the clerk determines that the private process server has not fully and properly discharged the duties of a private process server. Before the clerk revokes or refuses to renew an appointment for cause, the clerk must hold a hearing on the matter.

(h) Hearing. – A clerk of court must notify a private process server of the time and date of a hearing. At the hearing, the process server may cross-examine witnesses, present evidence, and be heard. If the clerk decides to redeem the process server's bond or to revoke or to refuse to renew the process server's appointment, the clerk must make a written record of the findings of fact and set out in detail the reasons why the clerk decided to take that action. A person whose bond is redeemed or whose appointment is revoked or not renewed may appeal the action to the superior court of the county whose clerk made the appointment.

(i) Fees. – The clerk of court shall set fees for filing an application to become a private process server, taking an examination to become a private process server, and issuing an identification card to a person appointed as a private process server. The application fee may not exceed one hundred dollars (\$100.00). The fee for an identification card may not exceed ten dollars (\$10.00).

The fee set in G.S. 7A-311 for service of civil process applies to process served by a private process server. The person who engages a private process server to serve process shall pay the fee set by that statute to the appropriate county at the time required by that statute.

The amount charged by a private process server for serving process is governed by the agreement between the process server and the person who engages the process server. The amount charged is not a process fee under G.S. 7A-311 and is not assessable under G.S. 7A-305 as a cost of a civil action.

(j) Offense. – A private process server who, knowing that the person served is not the person named, serves process on a person not named in the paper is guilty of a Class 1 misdemeanor."

Sec. 3. This act applies to Wake County only.

Sec. 4. This act is effective upon ratification. This act shall sunset July 1, 1997.

In the General Assembly read three times and ratified this the 17th day of July, 1995.

Dennis A. Wicker
President of the Senate

Harold J. Brubaker
Speaker of the House of Representatives