

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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HOUSE BILL 881
Committee Substitute Favorable 4/29/15

Short Title: Landlord/Tenant-Alias & Pluries Summary Eject.

(Public)

Sponsors:

Referred to:

April 15, 2015

A BILL TO BE ENTITLED

AN ACT TO ALLOW FOR SEVERANCE OF SUMMARY EJECTMENT AND
MONETARY CLAIMS IN SMALL CLAIMS ACTIONS WHEN SERVICE OF
PROCESS ONLY MEETS SUMMARY EJECTMENT STANDARDS AND TO ALLOW
FOR THE SEVERED MONETARY CLAIM TO BE CONTINUED WITH ALIAS AND
PLURIES SUMMONS AND TO PROVIDE FOR AN ELECTION BY THE PLAINTIFF
TO UTILIZE A PRIVATE PROCESS SERVER IN COUNTIES WITH POPULATIONS
OF TWO HUNDRED THOUSAND OR GREATER.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-223 reads as rewritten:

"§ 7A-223. Practice and procedure in small claim actions for summary ejectment.

(a) In any small claim action demanding summary ejectment or past due rent, or both, the complaint may be signed by an agent acting for the plaintiff who has actual knowledge of the facts alleged in the complaint. If a small claim action demanding summary ejectment is assigned to a magistrate, the practice and procedure prescribed for commencement, form and service of process, assignment, pleadings, and trial in small claim actions generally are observed, except that if the defendant by written answer denies the title of the plaintiff, the action is placed on the civil issue docket of the district court division for trial before a district judge. In such event, the clerk withdraws assignment of the action from the magistrate and immediately gives written notice of withdrawal, by any convenient means, to the plaintiff and the magistrate to whom the action has been assigned. The plaintiff, within five days after receipt of the notice, and the defendant, in his answer, may request trial by jury. Failure to request jury trial within the time limited is a waiver of the right to trial by jury.

(b) If either party in a small claim action for summary ejectment moves for a continuance, the magistrate shall render a decision on the motion in accordance with Rule 40(b) of the Rules of Civil Procedure. The magistrate shall not continue a matter for more than five days or until the next session of small claims court, whichever is longer, without the consent of both parties.

(b1) In any small claim action demanding summary ejectment and monetary damages, and where service of process has been achieved solely by first-class mail and affixing the summons and complaint to the premises pursuant to G.S. 42-29, the plaintiff, or an agent pursuant to subsection (a) of this section, may request that the claim for summary ejectment be severed from the claim for monetary damages. Upon a finding that personal service was not achieved for one or more defendants, the magistrate shall sever the claim for monetary damages and proceed with the claim for summary ejectment. If the magistrate severs the claim for monetary damages, the plaintiff may extend the action in accordance with G.S. 1A-1, Rule



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1 4(d). The judgment of the magistrate in the severed claim for summary ejectment shall not
2 prejudice the claims or defenses of any party in the severed claim for monetary damages.

3 (c) The Administrative Office of the Courts is directed to develop a form for parties in
4 small claim actions for summary ejectment to inform them of the time line and process in
5 summary ejectment actions. The clerk of superior court shall make the form available to the
6 parties."

7 **SECTION 2.** G.S. 1A-1, Rule 4(h1), reads as rewritten:

8 **"Rule 4. Process.**

9 ...
10 (h1) Summons – When process returned unexecuted. – If a proper officer returns a
11 summons or other process unexecuted, the plaintiff or his agent or attorney may cause service
12 to be made by anyone who is not less than 21 years of age, who is not a party to the action, and
13 who is not related by blood or marriage to a party to the action or to a person upon whom
14 service is to be made. This subsection shall not apply to executions pursuant to Article 28 of
15 ~~Chapter 1 or summary ejectment pursuant to Article 3 of Chapter 42 of the General~~
16 ~~Statutes.~~ Chapter 1 of the General Statutes."

17 **SECTION 3.** G.S. 42-28 reads as rewritten:

18 **"§ 42-28. Summons issued by clerk.**

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

27 (b) In counties with 200,000 or more residents as of the most recent decennial federal
28 census, after the summons is issued, at the election of the plaintiff, the clerk shall either (i)
29 return the summons to the plaintiff or (ii) forward the summons to the sheriff for service. If the
30 magistrate severs the claim for monetary damages pursuant to G.S. 7A-223(b1), the plaintiff
31 may extend the action in accordance with G.S. 1A-1, Rule 4(d)."

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

33 **"§ 42-29. Service of summons.**

34 (a) The officer receiving the summons shall mail a copy of the summons and complaint
35 to the defendant no later than the end of the next business day or as soon as practicable at the
36 defendant's last known address in a stamped addressed envelope provided by the plaintiff to the
37 action. The officer may, within five days of the issuance of the summons, attempt to telephone
38 the defendant requesting that the defendant either personally visit the officer to accept service,
39 or schedule an appointment for the defendant to receive delivery of service from the officer. If
40 the officer does not attempt to telephone the defendant or the attempt is unsuccessful or does
41 not result in service to the defendant, the officer shall make at least one visit to the place of
42 abode of the defendant within five days of the issuance of the summons, but at least two days
43 prior to the day the defendant is required to appear to answer the complaint, excluding legal
44 holidays, at a time reasonably calculated to find the defendant at the place of abode to attempt
45 personal delivery of service. He then shall deliver a copy of the summons together with a copy
46 of the complaint to the defendant, or leave copies thereof at the defendant's dwelling house or
47 usual place of abode with some person of suitable age and discretion then residing therein. If
48 such service cannot be made the officer shall affix copies to some conspicuous part of the
49 premises claimed and make due return showing compliance with this section.

50 (b) As used in this Article, and only with respect to service for summary ejectment
51 proceedings in counties with 200,000 or more residents as of the most recent decennial federal

1 census, the term "process server" shall mean any person over the age of 21 years who is not a
2 party to the action, who is not related by blood or marriage to a party to the action or to a
3 person upon whom service is to be made, and who is hired by the plaintiff or the plaintiff's
4 agent or attorney for the purpose of serving the summons and complaint for summary
5 ejectment; and the term "officer" shall mean the sheriff of the county where the subject
6 premises is situated.

7 (c) As used in this Article, and only with respect to service for summary ejectment
8 proceedings in counties with 200,000 or more residents as of the most recent decennial federal
9 census, a process server may effectuate proper service upon a defendant solely for purposes of
10 summary ejectment by mailing a copy of the issued summons and signed complaint to the
11 defendant no later than the end of the next business day after receipt of said summons and
12 complaint or as soon as practicable at the defendant's last known address in a stamped
13 addressed envelope provided by the plaintiff to the action. The process server shall then deliver
14 a copy of the summons together with a copy of the complaint to the defendant by affixing
15 copies of same to some conspicuous part of the premises claimed and make due return showing
16 compliance with this section in the form of an affidavit of service. Said affidavit of service
17 shall set forth the time, place, and manner by which the requirements set forth herein were
18 completed."

19 **SECTION 5.** This act becomes effective October 1, 2015.