

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H.B. 1040
May 30, 2018
HOUSE PRINCIPAL CLERK

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HOUSE BILL DRH40723-TUz-1

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

Sponsors: Representatives Jordan, Bradford, Earle, and Szoka (Primary Sponsors).

Referred to:

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 served 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).
- (2) Forward the summons to the sheriff for service.



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

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

4 "**§ 42-29. Service of summons.**

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

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

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

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

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