



This Bill Analysis reflects the contents of the bill as it was presented in committee.

HOUSE BILL 881: Landlord/Tenant-Alias & Pluries Summary Eject

2015-2016 General Assembly

Committee:	House Judiciary IV	Date:	April 29, 2015
Introduced by:	Reps. Jordan, Bryan, Bradford, Earle	Prepared by:	Layla Cummings Committee Counsel
Analysis of:	PCS to First Edition H881-CSTS-6		

SUMMARY: *The Proposed Committee Substitute (PCS) to House Bill 881 would allow for the following in summary ejectment proceedings: (1) the severance of summary ejectment and monetary claims in small claims actions when service of process only meets summary ejectment standards; (2) the severed monetary claim to be continued with an alias and pluries summons; (3) in certain counties, the clerk of court may issue a summons to the plaintiff and the plaintiff may cause service to be made by a private process server.*

The PCS makes the following changes: (1) limits private process service of summons in summary ejectment proceedings to counties with 200,000 or more residents; (2) defines the terms "process server" and "officer"; and (3) provides the process for private process service of summons in summary ejectment proceedings.

CURRENT LAW: G.S. 7A-217 describes how a small claims court may obtain jurisdiction over a defendant. That includes (1) personal service (delivering a copy of the summons and of the complaint to the defendant or by leaving copies thereof at the defendant's dwelling house or usual place of abode with some resident of suitable age and discretion), (2) registered or certified mail, signature confirmation, or designated delivery service, (3) defendant's written acceptance of service or by voluntary appearance and (4) in summary ejectment cases only, service as provided in G.S. 42-29 is also authorized.

G.S. 42-29 sets forth the procedure for summary ejectment cases. The sheriff is responsible for attempting to effect service on the defendants. It requires the officer to mail a copy of the summons and complaint to each defendant in the stamped envelope provided by the plaintiff "no later than the end of the next business day or as soon as practicable at the defendant's last known address." In addition to mailing a copy of the summons and complaint to each defendant, the officer, within five days from summons issuance, may either attempt to call the defendants to arrange for service, or if unsuccessful, then the officer must "make at least one visit to the place of abode of the defendant within five days of the issuance of the summons, but at least two days prior to the day the defendant is required to appear." The officer must either deliver a copy of the summons and complaint to the defendants personally at their dwelling or leave copies with a resident of suitable age and discretion. If no one can be found at the dwelling, then the officer is to "affix copies to some conspicuous part of the premises claimed."

BILL ANALYSIS:

Section 1 would provide that in any small claims action for 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 may ask that the claim for summary ejectment be severed from the claim for monetary damages. If the magistrate finds that that

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personal service was not achieved for one or more defendants, the magistrate must 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 for monetary damages in accordance with G.S. 1A-1, Rule 4(d) (i.e. 90 days after the issuance of the original summons or 90 days after the last extension). The judgment of the magistrate in the severed claim for summary ejectment must not prejudice the claims or defenses of any party in the severed claim for monetary damages.

Section 2 would provide that Rule 4(h1) will apply to actions subject to summary ejectment procedures. This would provide that when a proper officer returns a summons unexecuted, the plaintiff, or plaintiff's agent or attorney may cause service to be made by anyone who is not less than 21 years of age, not a party to the action, and not related by blood or marriage to a party or a person upon whom service is to be made.

Section 3 would provide that in an action for summary ejectment in counties with 200,000 or more residents, after the summons is issued, the summons may be returned to the plaintiff or forwarded to the sheriff for service. If the magistrate severs the claim for monetary damages as provided by Section 1 of the bill, the plaintiff may extend the action for monetary damages in accordance with G.S. 1A-1, Rule 4(d) (i.e. 90 days after the issuance of the original summons or 90 days after the last extension).

Section 4 would provide that in an action of summary ejectment in counties with 200,000 or more residents, the term "officer" as used in service for summary ejectment proceedings will mean the sheriff and the term "process server" will mean any person over the age of 21 years who is not a party to the action, is not related by blood or marriage to a party or a person upon whom service is to be made, and is hired by the plaintiff or the plaintiff's agent or attorney for the purpose of serving the summons and complaint.

In counties with 200,000 or more residents, a process server may serve the summons and complaint by mailing a copy of the issued summons and signed complaint to the defendant at the defendant's last known address by the end of the next business day after receipt or as soon as practicable. The process server will then deliver a copy of the summons and complaint to the defendant by affixing copies to a conspicuous part of the defendant's premises. The process server will certify an affidavit of service that states the time, place, and manner service was completed in compliance with this section.

EFFECTIVE DATE: This act would become effective October 1, 2015.

BACKGROUND: As of the 2010 U.S. Census, the following North Carolina counties have more than 200,000 residents: Mecklenburg, Wake, Guilford, Forsyth, Cumberland, Durham, Buncombe, New Hanover, Union, and Gaston.

Source: U.S. Census Bureau, U.S. Department of Commerce, Annual Estimates of Resident Population, <http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk>.

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Brad Krehely, counsel to Senate Judiciary I, substantially contributed to this summary.