



# HOUSE BILL 1040: Amend Sum Eject Service/Allow Process Server.

2017-2018 General Assembly

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<b>Committee:</b> House Judiciary III	<b>Date:</b> June 6, 2018
<b>Introduced by:</b> Reps. Jordan, Bradford, Earle, Szoka	<b>Prepared by:</b> Kristen L. Harris
<b>Analysis of:</b> Filed Edition	Committee Co-Counsel

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**OVERVIEW:** *House Bill 1040 would 1) allow all summary ejectment cases to be served under Rule 4(h1); 2) allow plaintiffs in counties with 900,000 or more residents to obtain service for summary ejectment on a defendant by posting with a private process server without first attempting service by a sheriff in-person; and 3) clarify the method of computation for the five-day service of summons requirement in summary ejectment cases.*

**CURRENT LAW:** Under G.S. 42-29, a plaintiff must first attempt to serve a summary ejectment summons on a defendant by sheriff and in-person. If the attempt is not successful and the service is only achieved by posting and not on all the defendants, pursuant to G.S. 7A-223(b1), the plaintiff may ask the magistrate to sever the summary ejectment and money damages claims and seek judgment for the summary ejectment portion. When the claims are severed, the plaintiff may obtain an Alias & Pluries Summons under Rule 4(d) on the money damages claim and attempt service under Rule 4(h1) (Summons – When process returned unexecuted) with a person other than an officer.

## **BILL ANALYSIS:**

**Section 1** would allow all summary ejectment actions to be served by someone other than an officer when the summons has been returned unexecuted by an officer.

**Section 2** would allow magistrates in counties with 900,000 or more residents (currently Mecklenburg and Wake counties), in summary ejectment cases after the summons has been issued, to either: 1) return the summons to the plaintiff for service of process by a private process server or 2) forward it to the sheriff for service.

**Section 3** would do the following:

- In counties with 900,000 or more residents, allow a plaintiff to obtain service for summary ejectment only by using a private process server who would post the summons on the defendant's premises.
- Define the term "process server".
- Clarify the method of computation for the five-day service of summons requirement in summary ejectment proceedings by specifying that the time should be computed by excluding only legal holidays and not weekends.

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

**BACKGROUND:** According to the most recent decennial federal census, Mecklenburg County had a population of 919,628 and Wake County had a population of 900,993.

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The Legislative Research Commission's Committee on Private Process Servers submitted a report to the members of the 2018 Regular Session of the 2017 General Assembly. The report included findings on the service of summons in summary ejectment cases. A copy of the Committee's report can be found in the Legislative Library.