

# Withdrawn



NORTH CAROLINA GENERAL ASSEMBLY  
AMENDMENT  
Senate Bill 88

AMENDMENT NO. A1  
(to be filled in by  
Principal Clerk)

S88-ATU-28 [v.3]

Page 1 of 3

Amends Title [YES]  
Second Edition

Date \_\_\_\_\_, 2017

Representative Bradford

1 moves to amend the bill on page 1, line 6, by rewriting the line to read:

2 "TO ALLOW PRO SE REPRESENTATION ON APPEAL, AND TO PROVIDE FOR AN  
3 ELECTION BY THE PLAINTIFF TO UTILIZE A PRIVATE PROCESS SERVER IN  
4 DURHAM, FORSYTH, GUILFORD, MECKLENBURG, AND WAKE COUNTIES.";

5  
6 and on page 2, lines 16-27, by rewriting the lines to read:

7 "SECTION 3. 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 ejection pursuant to Article 3 of Chapter 42 of the General~~  
16 ~~Statutes.~~ Chapter 1 of the General Statutes."

17 SECTION 4.(a) 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) After the summons is issued, at the election of the plaintiff, the clerk shall either (i)  
28 return the summons to the plaintiff or (ii) forward the summons to the sheriff for service. If the  
29 magistrate severs the claim for monetary damages pursuant to G.S. 7A-223(b1), the plaintiff  
30 may extend the action in accordance with G.S. 1A-1, Rule 4(d)."

31 SECTION 4.(b) This section applies only to Durham, Forsyth, Guilford,  
32 Mecklenburg, and Wake Counties.



\* S 8 8 - A T U - 2 8 - V - 3 \*

NORTH CAROLINA GENERAL ASSEMBLY  
AMENDMENT  
Senate Bill 88

Withdrawn

AMENDMENT NO. A1  
(to be filled in by  
Principal Clerk)

S88-ATU-28 [v.3]

Page 2 of 3

1                   **SECTION 5.(a)** G.S. 42-29 reads as rewritten:

2   "**§ 42-29. Service of summons.**

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

19       **(b)** As used in this Article, the term "process server" shall mean any person over the age  
20 of 21 years who is not a party to the action, who is not related by blood or marriage to a party  
21 to the action or to a person upon whom service is to be made, and who is hired by the plaintiff  
22 or the plaintiff's agent or attorney for the purpose of serving the summons and complaint for  
23 summary ejectment; and the term "officer" shall mean the sheriff of the county where the  
24 subject premises is situated.

25       **(c)** As used in this Article, a process server may effectuate proper service upon a  
26 defendant solely for purposes of summary ejectment by mailing a copy of the issued summons  
27 and signed complaint to the defendant no later than the end of the next business day after  
28 receipt of said summons and complaint or as soon as practicable at the defendant's last known  
29 address in a stamped addressed envelope provided by the plaintiff to the action. The process  
30 server shall then deliver a copy of the summons together with a copy of the complaint to the  
31 defendant by affixing copies of same to some conspicuous part of the premises claimed and  
32 make due return showing compliance with this section in the form of an affidavit of service.  
33 Said affidavit of service shall set forth the time, place, and manner by which the requirements  
34 set forth herein were completed."

35                   **SECTION 5.(b)** Section 5.(a) in this section applies only to Durham, Forsyth,  
36 Guilford, Mecklenburg, and Wake Counties.

37                   **SECTION 6.** This act becomes effective on October 1, 2017."  
38  
39  
40

NORTH CAROLINA GENERAL ASSEMBLY  
AMENDMENT  
Senate Bill 88

**Withdrawn**

AMENDMENT NO. A1  
(to be filled in by  
Principal Clerk)

S88-ATU-28 [v.3]

Page 3 of 3

SIGNED \_\_\_\_\_  
Amendment Sponsor

SIGNED \_\_\_\_\_  
Committee Chair if Senate Committee Amendment

ADOPTED \_\_\_\_\_ FAILED \_\_\_\_\_ TABLED \_\_\_\_\_