

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

S

D

SENATE BILL 88
PROPOSED COMMITTEE SUBSTITUTE S88-PCS45125-BB-1

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

(Public)

Sponsors:

Referred to:

February 15, 2017

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, TO ALLOW FOR THE SEVERED MONETARY CLAIM TO BE CONTINUED WITH ALIAS AND PLURIES SUMMONS, AND TO ALLOW PRO SE REPRESENTATION ON APPEAL.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-223 is amended by adding a new subsection to read:

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



* S 8 8 - P C S 4 5 1 2 5 - B B - 1 *

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

5 **SECTION 2.(a)** G.S. 7A-222 reads as rewritten:

6 "**§ 7A-222. General trial practice and procedure.**

7 ...

8 (c) Notwithstanding G.S. 84-4, a party in a small claim action shall not be required to
9 obtain legal representation."

10 **SECTION 2.(b)** G.S. 7A-228 reads as rewritten:

11 "**§ 7A-228. New trial before magistrate; appeal for trial de novo; how appeal perfected; oral**
12 **notice; dismissal.**

13 ...

14 (e) Notwithstanding G.S. 84-4, any party in an action appealed for a trial de novo, as
15 provided for in this section, shall not be required to obtain legal representation."

16 **SECTION 3.** G.S. 1A-1, Rule 4(h1), reads as rewritten:

17 "**Rule 4. Process.**

18 ...

19 (h1) Summons – When process returned unexecuted. – If a proper officer returns a
20 summons or other process unexecuted, the plaintiff or his agent or attorney may cause service to
21 be made by anyone who is not less than 21 years of age, who is not a party to the action, and who
22 is not related by blood or marriage to a party to the action or to a person upon whom service is to
23 be made. ~~This~~ Except for claims severed by a magistrate pursuant to G.S. 7A-223(b1), this
24 subsection shall not apply to executions pursuant to Article 28 of Chapter 1 or summary ejection
25 pursuant to Article 3 of Chapter 42 of the General Statutes.

26"

27 **SECTION 4.** This act becomes effective October 1, 2017.