



SENATE BILL 88: Landlord/Tenant-Alias & Pluries Summary Eject.

2017-2018 General Assembly

Committee:	Senate Judiciary. If favorable, re-refer to Rules and Operations of the Senate	Date:	February 28, 2017
Introduced by:	Sen. Randleman	Prepared by:	Amy Darden
Analysis of:	First Edition		Committee Co-Counsel

OVERVIEW: *Senate Bill 88: 1) allows for the severance of summary ejectment and monetary claims in small claims actions where there is no personal service of process; 2) allows for the severed monetary claim to be continued with an alias and pluries summons; and, 3) clarifies that a party is not required to have legal representation in an action appealed for a trial de novo in district court.*

CURRENT LAW: G.S. 7A-217 describes how a small claims court may obtain jurisdiction over a defendant. That includes (1) personal service, (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 requires the sheriff to attempt service on the defendant. 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"; and
- 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"; or
- Affix copies to a conspicuous part of the premises at issue if no one can be found at the dwelling.

Summary ejectment cases can be appealed by requesting a trial de novo in district court. Currently, business entities are required to be represented by attorneys at the district and superior court level. Small claims court is exempt from this requirement.

BILL ANALYSIS:

Section 1: Provides that in any small claims action for summary ejectment and monetary damages, where service of process has been achieved solely by first class mail and affixing the summons and complaint to the premises, 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 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.

Karen Cochrane-Brown
Director



Legislative Analysis
Division
919-733-2578

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If the magistrate severs the claim for monetary damages, the plaintiff may extend the action for monetary damages by using an alias and pluries summons, 90 days after the issuance of the original summons or 90 days after the last extension.

Section 2: Provides that any party in an action appealed for a trial de novo in district court is not required to be represented by an attorney.

Section 3: Allows service of process to be made by a third party process agent where claims for monetary damages are severed by a magistrate from claim seeking summary ejectment.

EFFECTIVE DATE: This act becomes effective October 1, 2017.

Brad Krehely substantially contributed to this summary.