2018

COMMITTEE ON PRIVATE PROCESS SERVERS (LRC)

MINUTES



NORTH CAROLINA GENERAL ASSEMBLY

Committee on Private Process Servers (LRC) (2017)

Representative Jonathan Jordan - Co-Chair

300 N. Salisbury Street, Room 420 Raleigh, North Carolina 27603 919-733-7727 (Office) Jonathan.Jordan@ncleg.net

Senator Warren Daniel - Co-Chair

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Representative Beverly M. Earle

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Representative Scott Stone

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Senator Danny Earl Britt, Jr.

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Senator Shirley B. Randleman

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Representative John Szoka

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Senator Norman W. Sanderson

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Representative David R. Lewis

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Senator Bill Rabon

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ATTENDANCE

Committee on Private Process Servers (LRC) (2017)

(Name of Committee)

DATES	2/15/18	3/15/18	4/12/18	_											
Rep. Jonathan C. Jordan, Co-Chair	X	X	X			_		_					<u> </u>		
Sen. Warren Daniel, Co-Chair	X	X_	X		_					-					
Rep. Beverly M. Earle	X	X	X			_								_	
Rep. Duane Hall	X							_							
Rep. Scott Stone			X							<u> </u>					
Rep. John Szoka	igsqcup	X		,			_			1			<u> </u>		
Sen. Danny Earl Britt, Jr.			X			-	_								
Sen. Floyd B. McKissick, Jr.	<u> </u>	X	X		<u> </u>				_						
Sen. Shirley B. Randleman	X	X	X												
Sen. Norman W. Sanderson	X	X	X		:			_						_	
Rep. David R. Lewis, Ex Officio			X		_										
Sen. Bill Rabon, Ex Officio															
Kristen Harris, Legislative Analysis	X	X	X												
Brad Krehely, Legislative Analysis	X	X	X	*							<u> </u>				
Emma King, House Clerk	X	X_	X												
Andy Perrigo, Senate Clerk	_														_
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LEGISLATIVE RESEARCH COMMISSION COMMITTEE ON PRIVATE PROCESS SERVERS

Thursday February 15, 2018 Room 423

The Legislative Research Commission Committee on Private Process Servers met on Thursday, February 15, 2018, at 10:00 AM. The meeting was held in Room 423. Members present were: Representatives Jordan, Earle and Duane Hall, and Senators Daniel, Randleman, and Sanderson. Kristen Harris and Brad Krehely with Legislative Analysis were present as well as the House Committee Clerk, Emma King.

Representative Jonathan Jordan presided.

Chairman Jordan called the Legislative Research Commission Committee on Private Process Servers to order at 10:02 AM. He recognized the House Sergeants at Arms Jonas Cherry, Rey Cooke, and Will Crocker and the Senate Sergeants at Arms Jim Hamilton and Charles Marsalis, and thanked them for their service (Attachment 1). A visitor registration sheet was circulated for members of the public, and made a part of these minutes (Attachment 2).

Chairman Jordan provided opening comments.

Chairman Jordan recognized Kristen Harris, Staff Attorney of the Legislative Analysis division, to present the committee charge.

Chairman Jordan recognized Kristen Harris, Staff Attorney of the Legislative Analysis division, to present the interpretation of G.S. 42-29 Service of Summons in Summary Ejectment Cases (Attachments 3, 4, 5, and 6). Ms. Harris reviewed the statute, highlighting ambiguity and multiple interpretations of the statute.

Sen. Daniel asked for a definition of a "Legal Holiday". Ms. Harris responded that there is no formal definition in the statute, but there is a formal definition from the Administrative Office of the Courts. This definition allowed for twelve holidays within the year.

Sen. Randleman asked to clarify when the hearing date is. Ms. Harris responded that the summons must be served two days prior to the hearing.

Rep. Earle asked to clarify that the hearing is an extra two days after the deadline by which the officer must serve the summons.



Chairman Jordan confirmed that we have two timelines that need to be addressed – the possible ambiguity is if "excluding legal holidays" applies to both the five days and two days.

Sen. Randleman stated that when the summons is issued, the court date is determined. This date can affect the timeline as well.

Chairman Jordan recognized Brad Fowler, Research, Policy and Planning Officer of the N.C. Administrative Office of the Courts (AOC) to present the Median Age to Disposition for Summary Ejectment Proceedings for calendar year 2017 (Attachment 7).

Chairman Jordan recognized Will Brownlee, Executive Director and General Counsel of the Apartment Association of N.C., to present an overview of Private Service in North Carolina, and methods for analyzing performance via AOC data (Attachment 8).

Sen. Randleman asked if foreclosures could be posted as well, not just summary ejections. Mr. Brownlee responded that is correct.

Sen. Randleman asked if Mr. Brownlee has heard complaints about the execution of writs of possession, and if people are being evicted in a timely fashion.

Mr. Brownlee responded that no, there have not been formal complaints about this.

Sen. Sanderson asked if any money the landlord loses is recovered throughout the eviction process.

Mr. Brownlee responded before the process starts, landlords are well deep into a month where they have not received payment. The deposit is generally "eaten up" by then. Most landlords don't charge more than a month's rent for a security deposit, so it is unlikely they obtain that lost money.

Sen. Sanderson asked if there are any state-wide database that identifies the bad players – those who have gone through summary ejections in the past, and if one could be started.

Sen. Randleman advised that all landlords should check with the civil courts to see if possible tenants have undergone ejection.

Chairman Jordan recognized Sheriff Carson Smith, President of the N.C. Sheriff's Association, Eddie Caldwell, Executive Vice President and General Counsel of the N.C. Sherriff's Association, and Dustin Elliott and Andrey Melkonyan, Management Analysts of the Mecklenburg County Sheriff's Office, to present a Summary Ejectment Statistical Analysis (Attachment 9).

Sheriff Carson Smith presented information on the original bill, House Bill 706 Landlord/Tenant – Alias & Pluries Summary Eject.



Executive Vice President Eddie Caldwell proceeded to analyze the data presented by AOC, and then discussed the duties that are currently expected from the Sheriffs. Mr. Caldwell distributed a more detailed copy of slide 5 from their power point presentation (Attachment 10).

Rep. Earle asked why the Clerk issued the summons on January 16, even though the complaint was filed on the 8th in the example on Attachment 10.

Mr. Caldwell explained that this was based off the current law's expectations.

Sen. Randleman asked if there has been a court ruling within the last year that clarified the filing date is the date the Clerk records.

Sen. Randleman asked ahout the delay in collecting the process fee, and what would occur.

Mr. Caldwell confirmed that this could cause a delay in the service.

Rep. Earle made it clear that a \$35.00 fee is necessary when the landlord originally files for summary ejectment. She then asked how this calendar complies with General Statute 42-29.

Dustin Elliott and Andrey Melkonyan presented analysis of the data from slide 15 of the power point presentation in attachment ten.

Sen. Daniel asked for clarification on whether or not weekends and holidays were included.

Mr. Elliott confirmed that weekends and holidays were excluded.

Sen. Daniel asked if they could rerun the data and include weekends and holidays.

Mr. Elliott responded that yes, they could alter and rerun the data.

Sen. Daniel formally requested that the data be reworked to include weekends and holidays.

Rep. Earle pointed out that it appears there is a problem with the timeline from when the Clerk formally gets the paperwork to the sheriff's office.

Mr. Melkonyan points out that according to the statute this could be an issue, but the file date is what is included in the data.

Chairman Jordan recognized Michelle Liakos, President of Signature Property Group of Greensboro, N.C. and Amy Hedgecock of Fowler Realtors of High Point, N.C. and President of the NC Realtors to present on the financial impacts on North Carolina landlords. Both presenters provided anecdotal evidence of the effects of this legislation on the industry.



There being no further business, the meeting adjourned at 12:30 PM.

Rep Jonathan C. Jordan
Presiding



NORTH CAROLINA GENERAL ASSEMBLY

Raleigh, North Carolina 27601

May 24, 2018

MEMORANDUM

TO: Members, Committee on Private Process Servers (LRC)(2017)

FROM: Sen. Warren Daniel, Co-Chair

Rep. Jonathan C. Jordan, Co-Chair

SUBJECT: Meeting Notice

The Committee on Private Process Servers (LRC)(2017) will meet at the following time:

DAY	DATE	TIME	LOCATION
Thursday	February 15, 2018	10:00 AM	423 LOB

Parking for non-legislative meeting attendees is available in the visitor parking deck #75 located on Salisbury Street across from the Legislative Office Building. Parking is also available in the parking lot across Jones Street from the State Library/Archives. You can view a map of downtown by visiting http://www.ncleg.net/graphics/downtownmap.pdf.

If you are unable to attend or have any questions concerning this meeting, please contact Laura Bone at laurab@ncleg.net.

cc:	Committee Record	_X.
	Interested Parties	X_{-}



Attachments

- 1. Sgt, at Arms
- 2. Visitor Registration Sheet
- 3. Federal Statute authorizing service of process by a private process server
- 4. N.C. Statutes authorizing service of process by a private process server
- 5. Application of G.S. 42-29
- 6. Interpretation of N.C.G.S. 42-29
- 7. Summary Ejectment Proceedings
- 8. Overview of Private Process Service in NC
- 9. Summary Ejectment Statistical Analysis
- 10. Slide Five, Summary Ejectment Statistical Analysis

Committee Sergeants at Arms

NAME OF COMMITTEE _	Jt. Committee Private Process Servers (
DATE: 2/15/2018	Room: LOB 424
	House Sgt-At Arms:
1. Name: Jonas Cherry	
2. Name: Rey Cooke	
Name: Will Crocker	
4. Name:	
5. Name:	
5-	
	Senate Sgt-At Arms:
L. Name: <u>Jim Hamilton</u>	
1. Name: Charles Marsa	alis
. Name:	
i. Name:	· -
Name:	
1 40	

VISITOR REGISTRATION SHEET

Committee on Private Process Servers (LRC) (2017)

Name of Committee

2-15-2018 Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLER

NAME	FIRM OR AGENCY AND ADDRESS			
ANDREY MELKONYI	9N MECKLENBURG COUNTY SHERIFF'S OFFICE			
Dustin Elliott	11 11 11			
Sheritt Carson Smit	h Pender County Steries Octace			
Eddie Caldwell	NC Sheriffs' ASSN.			
Rhaeger Jackson	Tocus Carolina			
Bran Fowler	- BANCAOC			
Audy Mun				

VISITOR REGISTRATION SHEET

Committee on Private Process Servers (LRC) (2017)

2-15-2018

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Michile L'akos	Signature Property Group 305 Blandward Stre, Greensbors, NK 27401
Will Brownlee	AANC 3717 Nahinal Dr. Ste 215 Raleigh NC 276/2
Mildred Spearman	NAOC
Jonardan SINK	Speaker's Office
Leo John	Secretary of State
-Amandu Fallenbury	JDA
Jason Deans	JAPA
Colleentochowek	Kochanele Law Group
Alex Miller	AMGA
John Aldeidge	N.C. Sheriffs' Association
Doug Miskew	PSG
0	

VISITOR REGISTRATION SHEET

Jt. Committee Private Process Servers (LRC)
Name of Committee

2/15/2018 Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Amy Hedgerock	\varepsilon
Set Peru	NC REALTORS
Ruth Reynolds	Reynald Pay Sorevie Charlalle
Jarob Rojes	Triangle Community Coalition
Hoy Thomas	Tocas
Bill Row	NC Justice Cinta
	•
	E.A.

Federal statute authorizing service of process by a private process server.

Rule 4 - Summons.

(c) Service.

...

- (2) By Whom. Any person who is at least 18 years old and not a party may serve a summons and complaint.
- (3) By a Marshall or Someone Specially Appointed. At the plaintiff's request, the court may order that service be made by a United States marshal or deputy marshal or by a person specially appointed by the court. The court must so order if the plaintiff is authorized to proceed in forma pauperis under 28 U.S.C. §1915 or as a seaman under 28 U.S.C. §1916.

N.C. Statutes authorizing service of process by a private process server.

1A-1, Rule 4(h1) Summons - When process returned unexecuted. -

If a proper officer returns a summons or other process unexecuted, the plaintiff...may cause service to be made by anyone who is not less than 21 years of age, who is not a party to the action, and who is not related by blood or marriage to a party to the action or to whom service is to be made. Except for claims severed by a magistrate pursuant to G.S. 7A-223(b1), this subsection shall not apply to executions pursuant to Article 28 of chapter 1 or summary ejectment pursuant to Article 3 of Chapter 42 of the General Statutes.

(The underlined language was added by S.L. 2017-143.)

Application of G.S. 42-29's "at least two days prior..., excluding legal holidays" language involving a legal holiday.

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
December 24	December 25	December 26	December 27	December 28	December 29 Summons Issued by the Clerk.	December 30
December 31 Deadline by which the Officer must serve the Summons.	January 1 New Year's Day	January 2	January 3 Answer to Complaint Due	January 4	January 5	January 6
Day 2		Day 3	Day 4	Day 5		



Interpretation of N.C.G.S. 42-29. Service of summons.

Legislative Research Commission's Committee on Private Process Servers

Kristen Harris, Legislative Analysis Division, February 15, 2018

G.S. 42-29. Service of summons.

- Chapter 42 of the General Statutes which governs Landlord Tenant law.
- · Article 3 which governs summary ejectment cases.
- Summary ejectment is the process by which a landlord can have a tenant removed from the leased premises, usually a simplified legal process without a trial.

G.S. 42-29. Service of summons.

The officer receiving the summons shall mail a copy of the summons and complaint to the defendant no later than the end of the next business day or as soon as practicable at the defendant's last known address in a stamped addressed envelope provided by the plaintiff to the action. The officer may, within five days af the issuance of the summons, attempt to telephone the defendant requesting that the defendant either personally visit the officer to accept service, or schedule an appointment for the defendant to receive delivery of service from the officer. If the officer does not attempt to telephone the defendant or the attempt is unsuccessful or does not result in service to the defendant,...

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G.S. 42-29. Service of summons. (cont.)

... the officer shall 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 to answer the complaint, excluding legal holidays, at a time reasonably calculated to find the defendant at the place of abode to attempt personal delivery of service. He then shall deliver a copy of the summons together with a copy of the complaint to the defendant, or leave copies thereof at the defendant's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. If such service cannot be made the officer shall affix copies to some conspicuous part of the premises claimed and make due return showing compliance with this section.

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G.S. 42-29. Service of summons. Sequence of events.

Step One:

The clerk of superior court issues the summons.

Step Two:

The officer receives the summons.

Step Three:

The officer **must** mail a copy of the summons and complaint by the end of the next business day or as soon as practicable to the defendant's last known address.

G.S. 42-29. Service of summons. Sequence of events.

Step Four:

The officer **may**, within 5 days of the issuance of the summons, attempt to call the defendant asking the defendant to either:

- Visit the officer to accept service, or
- Schedule an appointment for the defendant to receive service from the officer.

G.S. 42-29. Service of summons. Sequence of events.

Step Five:

If the officer does not attempt Step Four or it is unsuccessful, the officer **must** visit the defendant's home at least once within 5 days of the issuance of the summons, but at least 2 days prior to the day the defendant is required to appear to answer the complaint, excluding legal holidays, at a time when the defendant could reasonably be served.

G.S. 42-29. Service of summons. Sequence of events.

Step Six:

The officer **must** then deliver a copy of the summons and complaint to the defendant or leave copies at the defendant's house with a suitable person.

Step Seven:

If the officer cannot complete Step Six, the officer **must** affix copies of the summons and complaint to a conspicuous part of the premises and make due return showing compliance with G.S. 42-29.

G.S. 42-29. Service of summons.

The actual statutory language in **Step Five**.

"[T]he officer shall 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 to answer the complaint, excluding legal holidays, at a time reasonably calculated to find the defendant at the place of abode to attempt personal delivery of service."

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Interpreting G.S. 42-29. Service of summons.

- To compute timelines, look to the General Statutes for guidance.
 - G.S. 1-593. How computed. The time within which an act is to be done, as provided by law, shall be computed in the manner prescribed by Rule 6(a) of the Rules of Civil Procedure.
 - G.S. 1A-1, Rule 1. Scope of rules. These rules shall govern the procedure in the superior and district courts of the State of North Carolina in all actions and proceedings of a civil nature except when a differing procedure is prescribed by statute...

)

Interpreting G.S. 42-29. Service of summons.

- To compute timelines, look to the General Statutes for guidance.
 - G.S. 1A-1, Rule 6, Time.

(a) Computation. – In computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute, including rules, orders or statutes respecting publication of notices, the day of the act, event, default or publication after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or a legal holiday when the courthouse is closed for transactions, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or a legal holiday when the courthouse is closed for transactions. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and holidays shall be excluded in the computation. A half holiday shall be considered as other days and not as a holiday.

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Interpreting G.S. 42-29. Service of summons.

What does "within five days of the issuance of the summons, but at least two days prior to the day the defendant is required to appear to answer the complaint, excluding legal holidays" mean?

- "within five days of the issuance of the summons" language added to G.S. 42-29 by HB 899/S.L.1995-460.
- "but at least two days prior to the day the defendant is required to appear to answer the complaint, excluding legal holidays" language added to G.S. 42-29 by HB 630/S.L. 2009-246. The original language also excluded weekends, but was amended to only exclude legal holidays.

Interpreting G.S. 42-29. Service of summons.

What does "within five days of the issuance of the summons, but at least two days prior to the day the defendant is required to appear to answer the complaint, excluding legal holidays" mean?

- "within five days of the issuance of the summons" language is the service of summons requirement.
- "but at least two days prior to the day the defendant is required to appear to answer the complaint, excluding legal holidays" language is the notice to the defendant requirement.

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Interpreting G.S. 42-29's "at least two days prior...but excluding legal holidays" language.

What does "within five days of the issuance of the summons, but at least two days prior to the day the defendant is required to appear to answer the complaint, excluding legal holidays" mean?

- The officer must serve the summons and complaint (must complete Steps Five and Six or Steps Five and Seven) at least 2 days prior to the hearing, or if a legal holiday falls within the 2 days, then the officer must serve it more than 2 days prior to the hearing.
 - Step Five: visit the defendant's home at least once when the defendant could reasonably be served
 - Step Six: deliver summons and complaint to the defendant or leave copies with someone
 - Step Seven: affix summons and complaint to the premises and make due return showing compliance with G.S. 42-29.

Interpreting G.S. 42-29's "at least two days prior...but excluding legal holidays" language.

- The timeline is computed by applying G.S.1A-1, Rule 1 and the language in G.S. 42-29.
- Rule 1 states that "these rules shall govern...except when a differing procedure is prescribed by statute."
- G.S. 42-29 prescribes a differing procedure from that in Rule 6(a) to compute the hearing notice requirement for the defendant.
- G.S. 42-29 excludes legal holidays, but not weekends. Whereas, Rule (6) excludes both legal holidays and weekends when the time prescribed is less than seven days.

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Application of G.S. 42-29's "at least two days prior..., excluding legal holidays" language not involving a legal holiday.

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
December 31	January 1 New Year's Day	January 2	January 3	January 4	January 5	January 6
January 7	January 8 Summons Issued by the clerk.	January 9	January 10 Deadline by which the officer must serve the	January 11	January 12 Answer to Complaint due	January 13
	Day 0	Day 1	summons. Day 2	Day 3	Day 4	

Application of G.S. 42-29's "at least two days prior..., excluding legal holidays" language involving a legal holiday.

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
December 24	December 25	December 26	December 27	December 28	December 29 Summons Issued by the Clerk.	December 30
December 31 Deadline by which the Officer must serve the Summons.	January 1 New Year's Day	Day3	January 3 Answer to Complaint Due	January 4	January 5	January 6
Day 2	6 × 3	Day 4	Day4	Days	11	

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Interpreting G.S. 42.-29's "within five days of issuance of summons" language.

What does "within five days of the issuance of the summons, but at least two days prior to the day the defendant is required to appear to answer the complaint, excluding legal holidays" mean?

- "within five days of the issuance of the summans" means the officer has 0-5 days to serve the summons and complaint (complete Steps Five and Six or Steps Five and Seven)
 - Step Five: visit the defendant's home at least once when the defendant could reasonably be served
 - Step Six: deliver summons and complaint to the defendant or leave copies with someone
 - Step Seven: affix summons and complaint to the premises and make due return showing compliance with G.S. 42-29.

Interpreting G.S. 42-29's "within five days of issuance of summons" language.

"[T]he officer shall 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 to answer the complaint, excluding legal holidays, at a time reasonably calculated to find the defendant at the place of abode to attempt personal delivery of service."

- Under the current wording and grammatical structure of the sentence, the language can be interpreted in two ways, and therefore, the timeline can be computed in two ways.
- The question is whether "excluding legal holidays" applies only to the two-day notice requirement for the defendant, or if it also applies to the five-day service of summons requirement.
- Whether or not it applies determines how the 0-5 days timeline is computed.

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Interpreting G.S. 42-29's "within five days of issuance of summons" language.

Interpretation of G.S. 42-29.	Rules to Apply	Effect	
If "excluding legal holidays" does apply to the "within five days of issuance of summons" service requirement	Rule 1 states "these rules shall governexcept when a differing procedure is prescribed by statute" G.S. 42-29 prescribes a differing procedure than Rule 6(a), so G.S. 42-29 controls the timeline.	G.S. 42-29 would exclude only legal holidays and not weekends.	
If "excluding legal holidays" does NOT apply to the "within five days of issuance of summons" service requirement	No differing procedure is prescribed in G.S. 42-29. The timeline is computed by applying Rule 6(a) which states "When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and holidays shall be excluded in the computation."	Rule 6(a) would exclude both holidays and weekends,	

Application of G.S. 42-29's "within five days of issuance of summons" language calculated under G.S. 42-29 not involving a legal holiday.

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
December 31	January 1 New Year's Day	January 2 Summons Issued by the clerk.	January 3	January 4	January 5	January 6
		Day 0	Day 1	Day 2	Day 3	Day 4
January 7 Deadline by which the officer must serve the summons. Day 5	January 8	January 9	January 10	January 11	January 12	January 13

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Application of G.S. 42-29's "within five days of issuance of summons" language calculated under G.S. 42-29 involving a legal holiday.

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
December 24	December 25	December 26	December 27	December 28	December 29 Summons issued by the Clerk. Day 0	December 30
December 31 Day 2	January 1 New Year's Day	January 2	January 3	January 4 Deadline by which the officer must serve the summons. Day 5	January 5	January 6

Interpreting G.S. 42-29's "within five days of issuance of summons" language.

Interpretation of G.\$, 42-29.	Rules to Apply	Effect
If "excluding legal holidays" does apply to the "within five days" service requirement	Rule 1 states "these rules shall governexcept when a differing procedure is prescribed by statute" G.S. 42-29 prescribes a differing procedure than Rule 6(a), so G.S. 42-29 controls the timeline.	G.S. 42-29 would exclude only legal holidays and not weekends.
If "excluding legal holidays" does NOT apply to the "within five days" service requirement	No differing procedure is prescribed in G.S. 42-29. The timeline is computed by applying Rule 6(a) which states "When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and holidays shall be excluded in the computation."	Rule 6(a) would exclude both holidays and weekends.

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Application of G.S. 42-29's "within five days of issuance of summons" language calculated under Rule 6(a) not involving a legal holiday.

Sunday	Monday	Tuesday	Wednesdoy	Thursday	Friday	Saturday
December 31	January 1 New Year's Day	January 2 Summons Issued by the clerk.	January 3	January 4	January 5	January 6
		Day 0	Day 1	Day 2	Day 3	
January 7	January 8	January 9 Deadline by which the officer must serve the summons. Day 5	January 10	January 11	January 12	January 13

Application of G.S. 42-29's "within five days of issuance of summons" language calculated under Rule 6(a) involving a legal holiday.

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
December 24	December 25	December 26	December 27	December 28 Summons issued by the clerk.	December 29	December 30
December 31	January 1 New Year's Day	January 2	January 3	January 4	January 5 Deadline by which the officer must serve the summons. Day 5	January 6

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N.C.G.S. 42-29. Service of summons.

Questions and Discussion



Summary Ejectment Proceedings

Calendar Year 2017

* COUNTY	FILINGS	DISPOSITIONS	MEDIAN AGE TO DISPOSITION (IN DAYS)	90 PERCENT DISPOSITION (TIME TO DISPOSITION FOR 90% OF CASES)
STATEWIDE	166,762	166,276	12.0	18.0
ALAMANCE	2,719	2,690	15.0	20.0
ALEXANDER	155	158	10.0	17.0
ALLEGHANY	34	35	7.0	39.0
ANSON	237	232	17.0	27.0
ASHE	83	82	10.0	28.0
AVERY	33	33	10.0	18.0
BEAUFORT	360	351	13.0	27.0
BERTIE	167	163	11.0	23.0
BLADEN	285	296	9.0	18.0
BRUNSWICK	630	640	14.0	22.0
BUNCOMBE	2,166	2,208	14.0	23.0
BURKE	515	519	8.0	14.0
CABARRUS	3,031	3,030	13.0	19.0
CALDWELL	756	751	10.0	23.0
CAMDEN	33	32	7.0	20.0
CARTERET	375	358	9.0	22.0
CASWELL	92	95	14.0	27.0
CATAWBA	1,867	1,859	8.0	15.0
CHATHAM	239	241	13.0	25.0
CHEROKEE	126	123	9.0	14.0
CHOWAN	62	63	16.0	26.0
CLAY	65	65	14.0	30.0
CLEVELAND	1,457	1,459	7.0	14.0
COLUMBUS	367	370	9.0	16.0
CRAVEN	1,104	1,087	11.0	16.0
CUMBERLAND	9,144	9,110	9.0	15.0
CURRITUCK	82	81	9.0	14.0
DARE	161	161	9.0	16.0
DAVIDSON	1,856	1,850	13.0	16.0
DAVIE	186	183	11.0	20.0



Summary Ejectment Proceedings

Calendar Year 2017

COUNTY	FILINGS	DISPOSITIONS	MEDIAN AGE TO DISPOSITION (IN DAYS)	90 PERCENT DISPOSITION (TIME TO DISPOSITION FOR 90% OF CASES)
DUPLIN	301	307	13.0	27.0
DURHAM	9,475	9,500	14.0	20.0
EDGECOMBE	3,150	3,154	12.0	15.0
FORSYTH	10,268	10,271	12.0	17.0
FRANKLIN	498	480	9.0	15.0
GASTON	4,714	4,717	10.0	15.0
GATES	31	29	8.0	20.0
GRAHAM	30	30	7.0	10.0
GRANVILLE	585	592	7.0	12.0
GREENE	94	98	15.0	33.0
GUILFORD	16,242	16,175	11.0	17.0
HALIFAX	569	553	8.0	14.0
HARNETT	1,217	1,183	12.0	17.0
HAYWOOD	443	414	10.0	25.0
HENDERSON	587	584	11.0	29.0
HERTFORD	200	195	12.0	25.0
HOKE	544	528	9.0	15.0
HYDE	7	6	8.0	33.0
IREDELL	1,616	1,566	9.0	16.0
JACKSON	219	213	8.0	13.0
JOHNSTON	1,383	1,349	12.0	15.0
JONE5	51	53	12.0	30.0
LEE	697	693	8.0	12.0
LENOIR	1,558	1,528	12.0	15.0
LINCOLN	483	473	7.0	16.0
MACON	166	169	8.0	31.0
MADISON	69	73	14.0	52.0
MARTIN	281	252	9.0	13.0
MCDOWELL	256	257	7.0	11.0
MECKLENBURG	29,799	29,958	12.0	17.0
MITCHELL	50	50	10.0	53.5



Summary Ejectment Proceedings

Calendar Year 2017

COUNTY	FILINGS	DISPOSITIONS	MEDIAN AGE TO DISPOSITION (IN DAYS)	90 PERCENT DISPOSITION (TIME TO DISPOSITION FOR 90% OF CASES)
MONTGOMERY	140	135	13.0	23.0
MOORE	348	361	12.0	19.0
NASH	5,134	5,099	14.0	19.0
NEW HANOVER	3,606	3,585	12.0	16.0
NORTHAMPTON	113	121	16.0	35.0
ONSLOW	2,375	2,351	11.0	18.0
ORANGE	1,054	1,041	14.0	21.0
PAMLICO	39	37	14.0	26.0
PASQUOTANK	578	568	8.0	13.0
PENDER	301	298	9.0	21.0
PERQUIMANS	65	66	9.0	15.0
PERSON	304	311	12.0	14.0
PITT	4,926	4,911	13.0	20.0
POLK	54	49	10.0	48.0
RANDOLPH	1,390	1,395	8.0	21.0
RICHMOND	477	485	9.0	20.0
ROBESON	1,892	1,865	12.0	22.0
ROCKINGHAM	899	893	8.0	14.0
ROWAN "	1,928	1,939	12.0	21.0
RUTHERFORD	494	496	12.0	15.0
SAMPSON	482	477	14.0	21.0
SCOTLAND	402	423	10.0	17.0
STANLY	404	401	8.0	17.0
STOKES	162	159	10.0	20.0
SURRY	346	347	13.0	21.0
SWAIN	30	31	6.0	12.0
TRANSYLVANIA	191	197	7.0	14,0
TYRRELL	19	19	12.0	109.0
UNION	1,155	1,164	11.0	19.0
VANCE	1,572	1,555	8.0	12.0
WAKE	15,649	15,535	13.0	18.0



SUMMARY EJECTMENT PROCEEDINGS

Calendar Year 2017

COUNTY	FILINGS	DISPOSITIONS	MEDIAN AGE TO DISPOSITION (IN DAYS)	90 PERCENT DISPOSITION (TIME TO DISPOSITION FOR 90% OF CASES)		
WARREN	186	185	9.0	16.0		
WASHINGTON	129	130	8.0	12.0		
WATAUGA	240	232	9.5	17.0		
WAYNE	2,063	2,069	12.0	15.0		
WILKES	378	365	7.0	14.0		
WILSON	3,068	3,005	9.0	14.0		
YADKIN	151	153	8.0	20.0		
YANCEY	48	48	7.0	12.0		

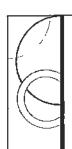


OVERVIEW OF PRIVATE SERVICE IN NC,
ANALYZING PERFORMANCE VIA AOC DATA,
& FINANCIAL IMPACTS ON N.C. LANDLORDS

PRESENTED FOR THE
COMMITTEE ON PRIVATE PROCESS SERVERS
(LRC-2017)



WILL BROWNLEE
EXECUTIVE DIRECTOR & GENERAL COUNSEL
APARTMENT ASSOCIATION OF NORTH CAROLINA



PRIVATE PROCESS IN N.C.



Generally: N.C. Gen. Stat. § 1A-1, Rule 4(a)

Rule 4(a):

"...The complaint and summons shall be delivered to some proper person for service. In this State, such proper person shall be the sheriff of the county where service is to be made or some other person duly authorized by law to serve summons. Outside this State, such proper person shall be anyone who is not a party and is not less than 21 years of age or anyone duly authorized to serve summons by the law of the place where service is to be made."

PRIVATE PROCESS IN N.C. Serving Private Persons: N.C. Gen. Stat. § 1A-1, Rule 4(j)(1) Rule 4(j)(1): "... Upon a natural person by one of the following: a. By delivering a copy of the summons and of the complaint to the natural person or by leaving copies thereof at the defendant's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein [NOTE: usually Sheriff Only]. b. By delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to be served or to accept service of process or by serving process upon such agent or the party in a manner specified by any statute [NOTE: usually Sheriff Only]. c. By mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the party to be served, and delivering to the addressee [NOTE: U.S. Postal Service]. d. By depositing with a designoted delivery service authorized pursuant to 26 U.S.C. § 7S02(f)(2) a copy of the summons and complaint, addressed to the party to be served, delivering to the addressee, and obtaining a delivery receipt. As used in this sub-subdivision, "delivery receipt" includes an electronic or facsimile receipt. [Note: This method refers to FedEx, UPS, etc.] e. By mailing a copy of the summons and of the complaint by signature confirmation as provided by the United States Postal Service, addressed to the party to be served, and delivering to the addressee." [NOTE: U.S. Postal Service).



PRIVATE PROCESS IN N.C.

How Does One Prove Service Other Than By Sheriff? N.C. Gen. Stat. § 1A-1, Rule 4(j2)(2):

"(2) Registered or Certified Mail, Signature Confirmation, or Designated Delivery Service. – Before judgment by default may be had on service by registered or certified mail, signature confirmation, or by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt, the serving party shall file an affidavit with the court showing proof of such service in accordance with the requirements of G.S. 1-75.10(a)(4), 1-75.10(a)(5), or 1-75.10(a)(6), as appropriate. This affidavit together with the return receipt, copy of the proof of delivery provided by the United States Postal Service, or delivery receipt, signed by the person who received the mail ar delivery if not the addressee raises a presumption that the person who received the mail or delivery and signed the receipt was an agent of the addressee authorized by appointment or by law to be served or to accept service af process or was a person of suitable age and discretion residing in the addressee's dwelling hause or usual place of abade"



PRIVATE PROCESS IN N.C.

Who Can Serve When A Sheriff Is Unable to Serve? N.C. Gen. Stat. § 1A-1, Rule 4(h1):

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

NOTE: This same set of qualifications for private servers (over 21, not a party, not related, etc.) was recently amended by S.L. 2017-143 (Senate Bill 88), whereby landlords may hire a private process server to serve a defendant upon a magistrate's severing of a summary ejectment case into possessory and money-owed components.



PRIVATE PROCESS IN N.C.

Alternate Method for Summary Ejectments: G.S. § 42-29 Established a "in rem" (service by posting) method.

§ 42-29. Service of summons. The officer receiving the summons shall mail a copy of the summons and complaint to the defendant no later than the end of the next business day or as soon as practicable at the defendant's last known address. in a stamped addressed envelope provided by the plaintiff to the action. The officer may, within five days of the issuance of the summons, attempt to telephone the defendant requesting that the defendant either personally visit the officer to accept service, or schedule an appointment for the defendant to receive delivery of service from the officer. If the officer does not attempt to telephone the defendant or the attempt is unsuccessful or does not result in service to the defendant, the officer shall 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 to answer the comploint, excluding legal halldays, at a time reasonably calculated to find the defendant at the place of abode to attempt personal delivery of service. He then shall deliver a copy of the summons together with a copy of the complaint to the defendant, or leave copies thereof at the defendant's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. If such service cannot be made the officer shall affix copies to some conspicuous part of the premises claimed and make due return showing compliance with this section.



PRIVATE PROCESS IN N.C.

G.S. § 42-29's Posting of Service Requirement is An Exception to the General Rule of N.C. Gen. Stat. § 1A-1, Rule 6(a)

- Rule 6(a) excludes both weekends and holidays in terms of a required action
- However, G.S. § 42-29 created a different standard for summary ejectment, only excluding legal holidays
- This reality is confirmed by N.C. School of Government's Dona Lewandowski:
 - "The law applicable to summary ejectment actions specifically requires that service be accomplished 'at least two days priar to the day the defendant is required to appear to answer the camplaint, excluding legal holidays.' The first version of this legislation excluded "weekends and legal holidays" but the reference to "weekends" was deleted from the final legislation. The result is an exception to the general rule set out in GS 1A-1, Rule 6, with weekend days counted taward satisfaction of the two-day requirement." 1
 - ¹ Dona Lewandowski, "Minimum Notice Requirements in Small Claims Actions,"
 On the Civil Side (UNC School of Government Website, March 2, 2016)(emphasis added).





ANALYSIS OF AOC DATA

- Clerks of Court are required to set court dates within 7 days (excluding weekends and holidays) of the filing of a summary ejectment, per N.C. Gen. Stat. § 42-28:
 - "When the lessor or his assignee files a complaint pursuant to G.S. 42-26 or 42-27, and asks to be put in possession of the leased premises, the clerk of superior court shall issue a summons requiring the defendant to appear at a certain time and place not to exceed seven days from the issuance of the summons, excluding weekends and legal holidays, to answer the complaint. The plaintiff may claim rent in arrears, and damages for the occupation of the premises since the cessation of the estate of the lessee, not to exceed the jurisdictional amount established by G.S. 7A-210(1), but if he omits to make such claim, he shall not be prejudiced thereby in any other action for their recovery."



- Only legal holidays are excluded from service, per the requirements of § 42-29:
 - "... the officer shall 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 to answer the complaint, excluding legal holidays..."
- Assuming Clerks of Court are honoring N.C. Gen. Stat. § 42-28
 and its court-date-within-7-business-days rule, Sheriffs must
 serve within at least 5 days, but not more than 7 days, of
 filing for summary ejectments to operate as intended.
- 4. The data results should place Sheriff performance in the best light possible, since the analysis did not capture cases for which there was no service reparted, thus allowing for complete failures of service to be excluded.



ANALYSIS OF AOC DATA

Procedure Used in Reviewing AOC Court Data:

Filter Out all Non-Summary Ejectment cases

- CASE_COURT_TYPE: CVM only limited to magistrate court cases
- ISSUE_TYPE = SUME summary ejectment only

Filter out unserved cases or judgment executions

- SERVE_DT = NOT BLANK to indicate cases actually served
- TYPE = REGU OR ALPL eliminate writs and other types of service

Filter duplicative entries of same case numbers

- Eliminate duplicate case numbers as case numbers entries in data were repeated for each defendant and also for writs, subsequent fillings, etc.
- Filter for N.C. Legal Holidays
- N.C. State Employee holiday schedule used to exclude dates in the count.
 Establish number of days between filing and service, per G.S. § 42-29, by calculating difference between the two columns of data, counting date of filing as Day 0, the next day as Day 1, etc.:
 - INIT_DATE: the date that the case was created in the AOC system.
 - SERVE_DT is the date that the sheriff reported serving the defendant.

Create metrics of 0-5 days; 6-7 days, and 8+ days after filing.

- Service exceeding 5 days considered a failure of first prong of § 42-29
- Service at 6-7 days considered potential failure of second prong
- Service at 8+ days considered likely failure of both prongs



ANALYSIS OF AOC DATA (2016)

COUNTY	Total 0-5 Days to S		o Serve			6-7 Days Serve	to	8+ Days to Serve (Failure Rate of Second Prong)		
BUNCOMBE	2,620	2,355	87.9%	265	10.1%	227	8.7%	38	1,5%	
CUMBERLAND	4,737	4,673	98.6%	64	1.4%	. 38	0.8%	26	0.5%	
DURHAM	12,225	9,703	79.4%	2.522	20.6%	2,007	16.4%	515	4.2%	
FORSYTH	8,497	5,039	59.3%	3,458	40.7%	2,207	26,0%	1,251	14.7%	
GASTON	4,916	4,779_	97.2%	137	2,8%	123	2.5%	. 14	0.3%	
GUILFORD	12,528	10,336	82.5%	2,192	17.5%	1,579	12.6%	6 3	4,9%	
MECKLENBURG	39,370	31,372	79,7%	7,998	20,3%	6,359	16.2%	1.639	4,2%	
NEW HANOVER	4,817	4,322	89.7%	495	10,3%	445	9.2%	50	1.0%	
UNION	1,678	1,179	71.5%	479	28.3%	265	15.8%	214	12.8%	
WAKE	21,145	14,793	70.0%	6,352	30.0%	4,474	21.2%	1,878	8.9%	



ANALYSIS OF CLERK DATA

A tangent to a review of service data was a review of daysto-court – i.e., the date the Clerk of Court set for trial after filing. Findings for the largest urban counties in 2016:

COUNTY	Total Cases	Total Cases to Court*	0-10 Days	to Court	II+ Days	o Court
GUILFORD	12,440	8,105	1,373	17%	6,732	83%
MECKLENBURG	38,922	25,715	11,210	44%	14,505	56%
WAKE	20,573	11,326	1,914	17%	9,412	83%
Grand Totals	71,935*	45,146	14,497	32%	30,649	68%

^{*}There were 26,789 filed cases listed in the data (37%) that didn't go to Court.

This seems to echo recent AOC analysis of 2016 court disposition dates for summary ejectment cases.





Conclusions:

- There are measurable failures by local Sheriffs to serve summary ejectment cases within the timeframes required by law.
- The inability of local Sheriffs to serve summary ejectments is further compounded by some Clerk of Courts' apparent failure to set trial dates within 7 business days, as required by law.
- Effect: Landlords are caught in the middle between these two realities, suffering needless delays and the significant costs associated with them.

FINANCIAL IMPACTS UPON
LANDLORDS - GENERALLY





- In the face of a defaulting tenant, whether for nonpayment, crime, or other material violations of a lease, the only meaningful remedy a landlord has is Summary Ejectment.
- Realities:
 - Residential tenants will rarely pay rent when in default and facing eviction.
 - Judgments for money are practically uncollectible against consumers.
 - Thus, the only real remedy is to remove the breaching tenant via the summary ejectment process and replace them with a new tenant as fast as possible.

FINANCIAL IMPACTS



- As re-gaining possession of a rental dwelling and re-renting to another tenant is a landlord's only real remedy, a landlord's losses are measured by the loss of daily rent, an ever-ticking clock.
- Current rental rates range from \$900 \$1,200 per month, based on city and location.
- Thus, each day lost accounts for \$30.00 \$40.00 per day
- Consider the following scenarios:
 - Delay of service and/or court date by 3 days:
 \$30 \$40/day x 3 days = \$90 \$120 per case
 - A court date continued by 7 days due to lack of timely service:
 - \$30 \$40/day x 7 days = \$210 \$280 per case



FINANCIAL IMPACTS

- For apartment communities and management companies, economies of scale drive these losses further.
- Some communities file as many as 5, or 10, or 15 or more summary ejectment cases per month. Some management companies collectively file over 100 cases per month.
- Imagine a management company filing 100 cases in a month, and the losses suffered in the following events:
- Delay/continuance of 1 week: (7 days x \$30 \$40/day x 100 cases) = \$21,000 \$28,000.
- The cost of a court date occurring 15 days after filing instead of 10 days (5 additional days x \$30 \$40/day x 100 cases) = \$15,000 \$20,000.
 - Even small percentages/delays significantly impact NC landlords.
 - For example, assume just <u>5%</u> of all eviction cases in the state (approximately 165,000) experienced either a delay in service or court date, either of which caused a delay of just 3 days.
 - The impact on NC landlords: \$30 \$40/day x 8,250 cases (5% of 165,000) x 3 days = \$742,500 - \$990,000 per year.



FINANCIAL IMPACTS

- Any Lawsuit = A Plaintiff's "Golden Package."
- To every plaintiff, their lawsuit is the most important one that day.
- We respectfully ask that you consider the following:
- The variety of available service methods.
- 2. The commonplace use of affidavits of service.
- The relative simplicity of posting summons and a complaint on the door of a dwelling owned by the landlord.
- Thus, it would seem only reasonable for a Landlord-Plaintiff to have an choice of how their "Golden Package" is delivered to the door.
- This is especially true considering the significant financial impacts caused by any delay in the eviction process.

Summary Ejectment Statistical Analysis



Summary Ejectment Statistical Analysis

Carson H. Smith, Jr.

Sheriff, Pender County

President, North Carolina Sheriffs' Association



Summary Ejectment Statistical Analysis

Eddie Caldwell

Executive Vice President and General Counsel

North Carolina Sheriffs' Association



Calculation of Time Limits for the Service of Summary Ejectment Summonses

 Our analysis began with the law.



	Monday		Tuesday		Wednesday	r	Thursday		Friday		Salurday		Sunday	
1	New Year's Day	1	140000	2	P) Building	3	monacay	4	, rically	5	Salutary	6	Durkay	
2	Complaint Floring ANT Clark Zy (archited)		Dezy 1	9	Day 2	'n	Dey 3	11	Day 4	12	ĸ	13	×	t
3	Mil King Day	15	Cary 5 Summons lyse by Clark		Day I for whose	17	Day 2 for service	18	Day à for service	19	x	20	x	2
4	Day 4 for service	22	Day 5 Staryrens Sarv by Strary	23	Day to ful Equal	24	Electric 2 For Could	25		26		21		2
		29		30		31	art Planning Hel	d						
5														
Court Dat	t delivered by La e (in compliance s elapsed ≈ 17													

Calculation of Time Limits for the Service of Summary Ejectment Summonses

 N.C. Gen. Stat. § 42-29 sets forth several time limits within which a sheriff <u>must</u> act for purposes of serving summary ejectment summonses.



Calculation of Time Limits for the Service of Summary Ejectment Summonses (continued)

- The sheriff must mail a copy of the summons and complaint to the defendant by the end of the next business day.
- The sheriff <u>may</u>, within five days of the issuance of the summons, attempt to telephone the defendant to request that the defendant accept service of process or schedule an appointment for the defendant to receive service of process from the deputy sheriff.

Calculation of Time Limits for the Service of Summary Ejectment Summonses (continued)

- If the telephone call does not result in service, the deputy sheriff <u>must</u> make at least one visit to the defendant's home.
- On this visit to the defendant's home, the deputy sheriff must deliver a copy of the summons and complaint to the defendant or leave copies of the summons and complaint at the home.

Calculation of Time Limits for the Service of Summary Ejectment Summonses (continued)

- The sheriff must serve the summary ejectment summons both:
 - within five days of the issuance of the summons (regardless of when the court date is set); and
 - > at least two days prior to the scheduled court date.

The Five Day Standard

- The five-day service requirement begins when the summons is signed and dated by the clerk (i.e. issued).
- This date is not necessarily the date: (1) on which the complaint is delivered by the landlord to the Clerk of Court; or (2) when the summons is file stamped by the Clerk of Court.
- Pursuant to the law, we included the fifth day in our calculations unless the fifth day fell on a Saturday, Sunday or a legal holiday.

The Two Day Standard

- N.C. Gen. Stat. § 42-29 states specifically that the visit to the home of the defendant two days prior to the court date excludes <u>only</u> legal holidays.
- Therefore, when calculating the two days prior to the court date, we did <u>not</u> include legal holidays but we did include weekends.

Summary Ejectments Issued from 2013 - 2016

County	#Me#9 bay	# Met 2 Day	# Met Both	Total Ejectments
Вилсотре	5,834	6,829	6,915	6,550
Cumborland	31,057	30,493	30,445	31,131
Durham	33,287	34,549	98,215	34,691
Gaston	13,901	13,875	19,870	13,936
Guilford*	17,551	12,746	17,550	12,877
New Hanover	11,969	12,000	11,740	12,312
Unign	4,084	4,300	4,053	4,359
Mecklenburg	88,730	95,934	56,607	96,757
Farsyth	34,058	35,725	24,035	35,774
Wake**	23,065	25,639	23,050	25,697
	fotal: 259,536	272,093	258,361	274,334

Guilford data only includes Summary Ejectments issued between Apr. 2016-Dac. 201

^{**} Wake data only includes Summary Ejectments insued between Feb. 2015- Jun. 2010

Summary Ejectments Issued from 2013 - 2016

	Colony		% the 5 bay		% Met 2 Day		% Mar.Both	
Buncombe				99.8%	9	9,7%		09150
Cumberland				99.8%	9	8 0%		97.6
Durham				96.0%		9:6%		95 74
Gaston				99.7%	9	9.6%		99.5
Gullford*				97.8%		9,4%		91.7
New Hanover				97.2%		7.5%		95,45
Union		=		93.7%	-91	8.7%		93.0
Mecklenburg				91.7%	9	9.1%		91.6
Forsyth			-	95.2%	9	9.9%		95.11
Wake**				89.8%	9	9,8%		89.7°
				94.6%	9	9.2%		94.2

^{*} Gulfford finta anly includes Summing Ejectments insued between Apr. 2016-Dec. 2016

Statistical Analysis Conducted By:

- Dustin Elliott, Management Analyst
 Mecklenburg County Sheriff's Office
- Andrey Melkonyan, Management Analyst Mecklenburg County Sheriff's Office

^{**} Wake data only includes Summary Ejectments acred between Feb. 2015-Jun. 2014

Calculation of the Statistics

- Q Where did we get our data?
- A -
 - From the sheriffs' offices covered by HB 706
 i.e. the 10 largest counties
 200,000 or more population
 - Each Sheriff's Office provided an export from their respective paper service tracking system.

Calculation of the Statistics (continued)

- Q What data did we ask those 10 counties to provide?
- A -
- Unique Process ID
- Clerk of Court Issue Date
- Sheriff's Office Receipt Date
- Paper Service Date
- Court Date

Calculation of the Statistics (continued)

- Q What is a Unique Process ID?
- A -
- Each paper is given a unique ID number by the sheriff's office tracking system.
- It is the way we determined the number of processes and differentiated them.

Calculation of the Statistics (continued)

- Q What process was used to analyze the data?
- A -
- Data was calculated utilizing formulas in Microsoft Excel.
- The 5-day service requirement date excluded weekends and holidays.

Calculation of the Statistics (continued)

- The two-day prior to court requirement excluded holidays only.
- Successful service of process required service on or before both the five-day and the two-day service dates.

QUESTIONS?

January 2018

Nº	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
1	New Year's Day	2	3	4	5	6	
2	Complaint Filed with Clerk by Landlord	9 Day 1	10 Day 2	11 Day 3	12 Day 4	13 X	x 14
3	M L King Day	Day 5 Summons Issued by Clerk	Day 1 for service	Day 2 for service	Day 3 for service	20 X	21 X
4	Day 4 for service		Sheriff Mails Copies 24 Day 6 for Court	Day 7 for Court	26	27	28
5	29	30		Court Hearing Held			
				n ala'a aga ataka diin alaha da ara ata ata ata ata			

Complaint delivered by Landlord to Clerk on January 8 Court Date (in compliance with the law) on January 25 Total days elapsed = 17

Attachment Ten

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LEGISLATIVE RESEARCH COMMISSION COMMITTEE ON PRIVATE PROCESS SERVERS Thursday March 15, 2018 Room 423

The Legislative Research Commission Committee on Private Process Servers met on Thursday, March 15, 2018 at 10:00 AM. The meeting was held in Room 423. Members present were: Representatives Jordan, Earle, and Szoka, and Senators Daniel, McKissick, Randleman, and Sanderson. Kristen Harris and Brad Krehely with Legislative Analysis were present as well as the House Committee Clerk, Emma King.

Senator Warren Daniel presided.

Chairman Daniel called the Legislative Research Commission Committee on Private Process Servers to order at 10:09 AM. He recognized the House Sergeants at Arms Jonas Cherry, Rey Cooke, and Dean Marshbourne and the Senate Sergeants at Arms Giles Jeffreys and Becky Myrick, and thanked them for their service (Attachment 1). A visitor registration sheet was circulated for members of the public, and made a part of these minutes (Attachment 2).

Chairman Daniel recognized Will Brownlee, Executive Director and General Counsel of the Apartment Association of N.C., to speak on the safety and efficiency of the use of private process servers (Attachment 3).

Mr. Brownlee discussed House Bill 265: Private Service of Process (Attachment 4).

Rep. Jordan asked Mr. Brownlee to confirm that 21 states allow private process servers.

Mr. Brownlee responded that this is correct, and that he has provided the committee with a document in which the states have been broken down and further analyzed (Attachment 5).

Sen. Mckissick asked what the licensing requirements consist of in states that allow private process servers.

Mr. Brownlee responded that requirements can vary, such as registration with a state agency.

Chairman Daniel recognized Ruth Reynolds, President and Founder of the N.C. Association of Professional Process Servers, to speak on the safety and efficiency of the use of private process servers (Attachment 6).



Sen. Mckissick asked how to stop wrongful conduct such as when people attempt to serve the incorrect recipient.

Ms. Reynolds responded that the process needs to be tightened up so people of wrongdoing will not be able to serve.

Sen. Daniel asked how many hours should be required for a standard private process course, and how often continuing education courses should take place.

Ms. Reynolds responded that they are currently working on this, that about six hours on safety and procedure of law to be repeated annually would be sufficient.

Chairman Daniel recognized the Sheriff's Association to present before the committee.

Sheriff Asa Buck III of Carteret County Sheriff's Office spoke on the safety and efficiency of the use of private process servers.

Sheriff Alan Cloniger of the Gaston County Sheriff's Office presented on safety and accountability of private process servers.

Rep. Szoka asked how many times in 2017 the sheriff's office was called due to a private process server problem.

Sheriff Cloniger responded that the exact number is unknown.

Rep. Szoka asked how many incidents within the sheriff's department were reportable, meaning that an incident had occurred.

Sheriff Cloniger responded he could not provide that information at this time.

Captain Mike Radford of the Gaston County Sheriff's Office spoke about his personal experiences regarding process servers.

Rep. Szoka asked how many times in 2017 was Captain Radford called when a private process server had a problem.

Captain Radford responded he had not been called.

Sen. Mckissick asked if there is any centralized data to determine how many widespread cases exist regarding reportable incidents with process serving.

Captain Radford responded that he is unaware, but that reports are generated when incidents occur.

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Rep. Jordan asked about Captain Radford's experience with just posting notices.

Captain Radford responded that by law you must attempt to make contact with the individual, that you cannot just post the service to the front door of the residence.

Major Charles Young of Mecklenburg County Sheriff's Office spoke on the checks and balances that are currently in place with process servers within their office.

Rep. Earle asked how many summary ejections were filed in Mecklenburg County.

Major Young responded that he will get this information to the committee at a future time.

Rep. Earle asked if new deputies had been assigned to serve summons.

Major Young responded that 90 deputies are assigned per day to serve a wide range of papers.

Rep. Earle stated that summary ejectment in Mecklenburg County are increasing. Rep. Earle brought up that the goal is to bring relief to the landlords and property owners and it is difficult to keep up with this growing population if the number of Sheriffs working on process serving is not increasing as well.

Major Young responded that they are able to handle this growing population by having deputies that only work on serving papers. Checks and balances are in place in order to insure these needs are being met.

Sen. Randleman asked if the sheriff's office staff is looking at dates when these processes are logged, and if they prioritize by date.

Major Young responded that yes, and they are aware of the deadlines and dates that must be respected.

Sen, McKissick asked how the number of staff has increased over the past five years.

Major Young responded that that if a big influx of ejectments occurs, then they pull staff from other departments who are properly trained to serve as well.

Sen. Mckissick asked if looking over a five-year period of civil documents that must be served, what is the increase over the past five years.

Major Young responded that he does not have that number on him.

Lieutenant Tera Greger of New Hanover County Sheriff's Office spoke on current training programs that are available for deputies, as well as anecdotal evidence to support that Sheriffs must serve all process papers.



Sen Daniel opened the floor for discussion.

Sen. McKissick asked if it would be possible for more data to be presented on the current condition of process servers and if the sheriffs currently have a problem being able to meet the demands of this service.

Chairman Daniel responded that we had data at our February meeting, and that would be available on the committee website shortly.

Sen. Randleman stated that there needs to be clarity in the law about how the days should be calculated regarding the summary ejectment deadlines.

Rep. Earle asked how many summary ejections are posted as opposed to served.

Captain Radford responded that during the first attempt to post, they look for evidence that the home is either abandoned or occupied. Depending on evidence, they will make additional attempts to serve the papers if it appears the home is occupied. Captain Radford does not have an exact number of posts versus serving.

Rep. Jordan stated that GS 42-28 has the language that excludes weekends and legal holidays. If we wanted to exclude the weekends, then it would have been directly stated.

Kristen Harris of Legislative Analysis responded that specific language could be written up once the committee's suggestion through the committee report has been made.

Being no further business, the meeting adjourned at 11:49 PM.

Sen. Warren Daniel

Presiding

Emma King, Committee Clerk



NORTH CAROLINA GENERAL ASSEMBLY

Raleigh, North Carolina 27601

May 24, 2018

MEMORANDUM

TO:	Members, Committee on Private Process Servers (LRC)(2017)
FROM:	Sen. Warren Daniel, Co-Chair
	Rep. Jonathan C. Jordan, Co-Chair

SUBJECT: Meeting Notice

The Committee on Private Process Servers (LRC)(2017) will meet at the following time:

DAY	DATE	TIME	LOCATION
Thursday	March 15, 2018	10:00 AM	423 LOB

Parking for non-legislative meeting attendees is available in the visitor parking deck #75 located on Salisbury Street across from the Legislative Office Building. Parking is also available in the parking lot across Jones Street from the State Library/Archives. You can view a map of downtown by visiting http://www.ncleg.nct/graphics/downtownmap.pdf.

If you are unable to attend or have any questions concerning this meeting, please contact Laura Bone at laurab@ncleg.net.

cc:	Committee Record	$_{X}$
	Interested Parties	$_{X}_{-}$



Attachments

- 1. Sgt. at Arms
- 2. Visitor Registration Sheet
- 3. Power Point Presentation, Apartment Association
- 4. House Bill 265
- 5. States/Jurisdictions in Which Service Allowed by Adult Private Server
- 6. Ruth Reynolds, Presentation Handout

Committee Sergeants at Arms

NAME OF COMMITTEE _	It. Committee on Private Process Server
DATE: 15 March 2018	Room: 423 LOB
	House Sgt-At Arms:
1. Name: Jonas Cherry	
2. Name: Rey Cooke	
Name: Dean Marshbor	urne
4. Name:	•
5. Name:	•
	•
	Senate Sgt-At Arms:
L. Name: Giles Jeffreys	,
% Name: Becky Myrick	1
i. Name:	
l. Name:	
Name:	
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VISITOR REGISTRATION SHEET

Jt. Committee on Private Process Servers March 15, 2018 Name of Committee Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLEF

NAME	FIRM OR AGENCY AND ADDRESS	
Zach Fige	NCGA LAD-Exton	
Sell Paper Amanda Den	NCR	
Amanda Den	NWC	
960	MWC	
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VISITOR REGISTRATION SHEET

Committee on Private Process Servers (LRC) (2017) 03-15-18

Name of Committee Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND A	ADDRESS
Doug Misken	PSG	
Mildred Spearman	NCAOG	
Died Fouler	NCtoc	
George South	NP	
Colleen Kochanek	AAWC	
Ruth Reynolds	NCAPPS	Charlelle

VISITOR REGISTRATION SHEET

Committee on Private Process Servers (LRC) (2017)

03-15-18

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

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FIRM OR AGENCY AND ADDRESS

Asa Buch	Coldent Eway Shrift
Feddre Caldwell	NCSA
Alan Chrise	autor County South DFico
Tera Greger	New Hunarer County Sherits Office
Marks agana	Mecklerbung bunty Sherift's Office
Gary Williams	Gaston County Sheriff's Office
Michaels. Rodford	Caston County Sheriff's Office
Eddie Caldwell	NC Sheriffs' Assn.
Yancey Washington	Granville Co. Clerk of Court
Jamie Lassiter	cont of CSC
Bill Rane	NC Justice Centu



PRIVATE SERVICE OF PROCESS IN OTHER STATES & COMPARISON WITH NORTH CAROLINA

PRESENTED FOR THE COMMITTEE ON PRIVATE PROCESS SERVERS (LRC -2017)



WILL BROWNLEE

EXECUTIVE DIRECTOR & GENERAL COUNSEL

APARTMENT ASSOCIATION OF NORTH CAROLINA

Attachment 3



- N.C. has private process of personal service has been available since 1995, in the form of Rule 4(h1) of the NC Rules of Civil Procedure
- "(h1) Summons--When process returned unexecuted,--If a proper officer returns a summons or other process unexecuted, the plaintiff or his agent or attorney may cause service to be made by anyone who is not less than 21 years of age, who is not a party to the action, and who is not related by blood or marriage to a party to the action or to a person upon whom service is to be made. Except for claims severed by a magistrate pursuant to G.S. 7A-223(b1), this subsection shall not apply to executions pursuant to Article 28 of Chapter 1 or summary ejectment pursuant to Article 3 of Chapter 42 of the General Statutes."
- This rule was recently referenced in S88/SL2017-143 when a landlord-tenant case is "severed" into possessory and monetary portions when the case isn't personally served.
- Since 1995, there have been no calls, no public outcry, no lobbying efforts of any kind to repeal or amend Rule 4(h1) in any way even though private process via personal service has existed all this time and in federal courts as well.
- Thus, there is NO SIGNIFICANT SAFETY ISSUE in play.

PRIVATE PROCESS SERVERS IN FEDERAL COURTS AND STATES OTHER THAN N.C.



- Private Service of Process is a common feature in federal court systems in the United States, including federal courts in North Carolina.
- This includes such venues as the U.S. District Courts and U.S. Bankruptcy Courts in North Carolina.
- Authority: Federal Rules of Civil Procedure, Rule 4(c)(1):
 - "(c) Service.
 - (2) By Whom. Any person who is at least 18 years old and not a party may serve a summons and complaint."



PRIVATE PROCESS: OTHER STATES

- Private Service of Process is also a common feature of most state court systems in the United States.
- At present, THIRTY-FOUR (34) states, plus D.C., allow some form of private service of process as a primary means of delivering complaints and summons.
- Of those 35 states, TWENTY ONE (21) generally allow private service to be performed by any adult.
 Common features:
 - Must be 18 (some 19 or even 21) years or older.
 - Must neither be a party to, nor related to a party to, the lawsuit.
- Of those 34 states, THIRTEEN (13) permit various forms of private service that involve either registration, licensure, and/or required education as a prerequisite.



PRIVATE PROCESS: ANY ADULT STATES

- As mentioned previously, TWENTY ONE (21) states, plus D.C., generally allow private service to be performed by most any adult, other than parties to the action or persons related to such parties.
- Those states / jurisdictions are:
- Alabama
- Colorado
- District of Columbia
- Hawaii
- Idaho
- Indiana
- lowa
- Maryland
- Michigan
- Minnesota
- Mississippi

- New Jersey
- New Mexico
- North Dakota
- Oregon
- South Carolina
- South Dakota
- Tennessee
- Utah
- Virginia
- West Virginia
- Wisconsin



PRIVATE PROCESS: PERMITTED WITH PREREQUISITES

- As mentioned previously, THIRTEEN (13) states allow private service, though with certain additional requirements.
- Those states / jurisdictions are:
- Alaska
- Arizona
- California
- Florida *
- Illinois **
- Missouri ***
- Montana

- Nevada
- Nebraska
- New York ****
- Oklahoma
- Texas
- Washington
- * Requires court certification.
- ** Only in cities with population less than 2,000,000
- *** St. Louis area only
- **** New York City; other areas have varying requirements

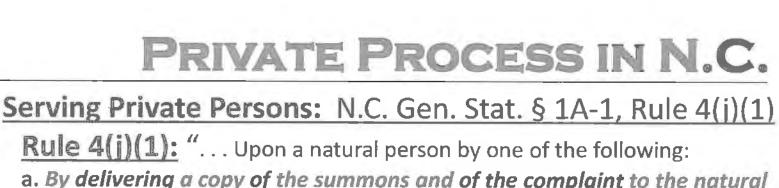
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PRIVATE PROCESS IN N.C.

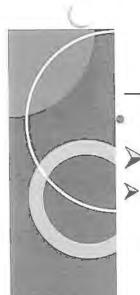


PRIVATE PROCESS IN N.C.

- At present, North Carolina does not permit private service of process by hand-delivery of the summons and complaint by a private person – unless (1) appointed by the Clerk of Superior Court or (2) a returned, unexecuted summons.
- Authority: N.C. Rules of Civil Procedure, Rule 4(h) and Rule
 (4)(h1).
- (h) Summons When proper officer not available. If at any time there is not in a county a proper officer, capable of executing process, to whom summons or other process can be delivered for service, or if a proper officer refuses or neglects to execute such process, or if such officer is a party to or otherwise interested in the action or proceeding, the clerk of the issuing court, upon the facts being verified before him by written affidavit of the plaintiff or his agent or attorney, shall appoint some suitable person who, after he accepts such process for service, shall execute such process in the same manner, with like effect, and subject to the same liabilities, as if such person were a proper officer regularly serving process in that county.
- (h1) Summons When process returned unexecuted. If a proper officer returns a summons or other process unexecuted, the plaintiff or his agent or attorney may cause service to be made by anyone who is not less than 21 years of age, who is not a party to the action, and who is not related by blood or marriage to a party to the action or to a person upon whom service is to be made. This subsection shall not apply to executions pursuant to Article 28 of Chapter 1 or summary ejectment pursuant to Article 3 of Chapter 42 of the General Statutes.



- a. By delivering a copy of the summons and of the complaint to the natural person or by leaving copies thereof at the defendant's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein [NOTE: usually Sheriff Only].
- b. By delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to be served or to accept service of process or by serving process upon such agent or the party in a manner specified by any statute [NOTE: usually Sheriff Only].
- c. By mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the party to be served, and delivering to the addressee [NOTE: U.S. Postal Service].
- D.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the party to be served, delivering to the addressee, and obtaining a delivery receipt. As used in this sub-subdivision, "delivery receipt" includes an electronic or facsimile receipt. [Note: This method refers to FedEx, UPS, etc.]
- e. By mailing a copy of the summons and of the complaint by signature confirmation as provided by the United States Postal Service, addressed to the party to be served, and delivering to the addressee." [NOTE: U.S. Postal Service].



PRIVATE PROCESS IN N.C.

How Does One Prove Service Other Than By Sheriff?

N.C. Gen. Stat. § 1A-1, Rule 4(j2)(2):

"(2) Registered or Certified Mail, Signature Confirmation, or Designated Delivery Service. – Before judgment by default may be had on service by registered or certified mail, signature confirmation, or by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt, the serving party shall file an affidavit with the court showing proof of such service in accordance with the requirements of G.S. 1-75.10(a)(4), 1-75.10(a)(5), or 1-75.10(a)(6), as appropriate. This affidavit together with the return receipt, copy of the proof of delivery provided by the United States Postal Service, or delivery receipt, signed by the person who received the mail or delivery if not the addressee raises a presumption that the person who received the mail or delivery and signed the receipt was an agent of the addressee authorized by appointment or by law to be served or to accept service of process or was a person of suitable age and discretion residing in the addressee's dwelling house or usual place of abode"



CONCLUSIONS

- Clearly, Private Service of Process is a viable, reasonably safe, and efficient method of service of summons and complaints.
- Why?
- 1. It is used in federal courts nationwide, including locations in North Carolina.
- 2. It is used in thirty-four (34) states and the District of Columbia.
- It is even used in North Carolina's state courts when appointed by the Clerk of Court or upon the severing of a small claims summary ejectment case.
- 4. Nothing is completely safe. However, it is clear that the national use of private servers in a significant majority of states establishes the practice as reasonably safe. Any potential issues for private service are the same as for law enforcement officers.
- 5. Limited private personal service has been available in NC since <u>1995</u> without significant safety issues in the 23 years of its existence.

H266 >

PRIVATE SERVICE OF PROCESS-1 1995-1996 Session

BIII Text	Fiscal Note	Last Action:	RATIFIED CH 0275 on 06/19/1995
Edition 1 (FITML) Edition 2 (FITML)		Sponsors:	McCrary; (Primary) R. Hunter; Michaux;
SL 1995-275 (HTML)		Attributes:	Public; Text has changed;
		Countles:	No counties specifically cited
		Statutes:	1A (Chapter); 001A-0001(R.04), 007A-0305 (Sections)
		Keywords:	ADMINISTRATIVE RULES, ATTORNEYS, CIVIL PROCEDURÉ, MAGISTRATES, RATIFIED, REP. MCCRARY
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& Date	Chambe	r Action	Documents
02/23/1995	House	Referred to Committee on Judiciary	
05/08/1995	House	REPTD FAV COM SUBSTITUTE	
05/08/1995	House	CAL PURSUANT RULE 36(A)	
05/08/1995	House	PLACED ON CAL FOR 05-09	
05/09/1995	House	PASSED 2ND READING	
05/10/1995	House	PASSED 3RD READING	
05/10/1995	Senate	REC FROM HOUSE	
05/25/1995	Senate	REF TO COM ON JUDIC II	
06/13/1995	Senate	REPTD FAV	
06/14/1995	Senate	PASSED 2ND READING	
06/15/1995	Senate	PASSED 3RD READING	
08/19/1995	House	RATIFIED CH.0275	

Note: a bill listed on this website is not law until passed by the House and the Senate, ratified, and, if required, signed by the Governor.

1995-1996 Session

Bill Number: |enter bill # (i.e., S25) | Look-Up,

GENERAL ASSEMBLY OF NORTH CAROLINA 1995 SESSION

CHAPTER 275 HOUSE BILL 265

AN ACT TO ALLOW SERVICE OF PROCESS BY A PRIVATE PROCESS SERVER WHEN A PROPER OFFICER RETURNS SERVICE OF PROCESS UNEXECUTED.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1A-1, Rule 4, is amended by adding a new subsection (h1) to read:

"(h1) Summons - When process returned unexecuted. - If a proper officer returns a summons or other process unexecuted, the plaintiff or his agent or attorney may cause service to be made by anyone who is not less than 21 years of age, who is not a party to the action, and who is not related by blood or marriage to a party to the action or to a person upon whom service is to be made. This subsection shall not apply to executions pursuant to Article 28 of Chapter 1 or summary ejectment pursuant to Article 3 of Chapter 42 of the General Statutes."

Sec. 2. G.S. 7A-305(d) reads as rewritten:

- "(d) The following expenses, when incurred, are also assessable or recoverable, as the case may be:
 - (1) Witness fees, as provided by law.
 - (2) Jail fees, as provided by law.
 - (3) Counsel fees, as provided by law.
 - (4) Expense of service of process by certified mail and by publication.
 - (5) Costs on appeal to the superior court, or to the appellate division, as the case may be, of the original transcript of testimony, if any, insofar as essential to the appeal.
 - (6) Fees for personal service and civil process and other sheriff's fees, as provided by law. Fees for personal service by a private process server may be recoverable in an amount equal to the actual cost of such service or fifty dollars (\$50.00), whichever is less, unless the court finds that due to difficulty of service a greater amount is appropriate.
 - (7) Fees of guardians ad litem, referees, receivers, commissioners, surveyors, arbitrators, appraisers, and other similar court appointees, as provided by law. The fee of such appointees shall include reasonable reimbursement for stenographic assistance, when necessary.
 - (8) Fees of interpreters, when authorized and approved by the court.
 - (9) Premiums for surety bonds for prosecution, as authorized by G.S. 1-109."
- Sec. 3. This act becomes effective October 1, 1995, and applies to actions that are filed or have not reached final judgment on or after that date.

In the General Assembly read three times and ratified this the 19th day of June, 1995.

Dennis A. Wicker President of the Senate

Harold J. Brubaker Speaker of the House of Representatives

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States / Jurisdictions in Which Service Allowed by Adult Private Servers (No Education/Registration Requirements)

Alabama

- GENERALLY: Adult Private Persons Permitted. AL Rules of Civ.Pro., Rule 4(i)(1)(B): "By Designated Person. As an alternative to delivery by the sheriff, or when process is to be delivered personally outside this state, process issuing from any court governed by these rules may be served by any person not less than nineteen (19) years of age, who is not a party and is not related within the third degree by blood or marriage to the party seeking service of process."
- EVICTIONS: Same as general rule. AL Code 1975 § 35-9A-461(c): "Service of process shall be made in accordance with the Alabama Rules of Civil Procedure."

Colorado

- GENERALLY: Adult Private Persons Permitted. CO Rules of Civ.Pro., Rule 4(d): "Process may
 be served within the United States or its Territories by any person whose age is eighteen years or
 older, not a party to the action."
- EVICTIONS: Same as general rule. CO Revised Statutes Ann. § 13-40-112(1) and (2): (1) "Such summons may be served by personal service as in any civil action. A copy of the complaint must be served with the summons. (2) If personal service cannot be had upon the defendant by a person qualified under the Colorado rules of civil procedure to serve process, after having made diligent effort to make such personal service, such person may make service by posting a copy of the summons and the complaint in some conspicuous place upon the premises."

District of Columbia [Federal Rules of Service Apply – Private Persons Permitted under FRCP 4]

Hawaii

- GENERALLY: Adult Private Persons Permitted. HI Rules of Civ. Pro., Rule 4(c): "Service of all process shall be made: (1) anywhere in the State by the sheriff or the sheriff's deputy, by some other person specially appointed by the court for that purpose, or by any person who is not a party and is not less than 18 years of age; or (2) in any county by the chief of police or the chief's duly authorized subordinate. A subpoena, however, may be served as provided in Rule 45."
- EVICTIONS: Same as general rule. Hi Revised Statutes Ann. § 666-8: "The summons shall be served as provided by the rules of court."

Idaho

- GENERALLY: Adult Private Persons Permitted. ID Rules of Civ. Pro., Rule 4(c)(2): "By Whom.
 An officer authorized by law to serve process, or any person over the age of eighteen (18), not
 a party to the action may serve a summons and complaint."
- EVICTIONS: Same as general rule. ID Code Ann. § 6-310(2): "Upon filing the complaint, a summons must be issued, served and returned as in other actions . . .".

Indiana

 GENERALLY: Adult Private Persons Permitted – As Designated by a party or their attorney when filing. IN Rules of Civ.Pro., Rule 4(D): "The person seeking service or his attorney may designate the manner of service upon the summons." • EVICTIONS: Same as general rule. IN Code § 32-31-6-8(b) "The clerk shall serve the respondent with the summons to appear in accordance with Rule 4.1 of the Rules of Trial Procedure." [Note: Party or attorney may designate server on summons, Per Rule 4].

lowa

- GENERALLY: Adult Private Persons Permitted. IA Code Ann. Rule 1.302(4): "Original notices may be served by any person who is neither a party nor the attorney for a party to the action.
 A party or party's agent or attorney may take an acknowledgment of service and deliver a copy of the original notice in connection therewith and may mail a copy of the original notice when mailing is required or permitted under any rule or statute."
- EVICTIONS: Same as general rule. IA Code Ann. Rule 648.5(2)b): "Personal service pursuant to rule of civil procedure 1.305 [Note: i.e., personal service as permitted above], lowa court rules, for the personal service of original notice."

Maryland

- GENERALLY: Adult Private Persons Permitted. MD Rules, Rule 3-123(a): "Service of process may be made by a sheriff or, except as otherwise provided in this Rule, by a competent private person, 18 years of age or older, including an attorney of record, but not by a party to the action." [Note: the exceptions relate to execution of judgments, writs, etc.].
- EVICTIONS: Same as general rule. MD Code, Real Property, § 14-132(d): "(3) If, for any reason, the person in actual possession cannot be found, the person authorized to serve process by the Maryland Rules shall affix an attested copy of the summons conspicuously on the property. (4) If notice of the summons is sent to the person in possession by first-class mail, the affixing of the summons in accordance with paragraph (3) of this subsection shall constitute sufficient service to support restitution of possession."

Michigan

- GENERALLY: Adult Private Persons Permitted. MI Compiled Laws Ann. 600.1908(1): "Process in civil actions may be served by any person of suitable age and discretion who is not a party nor an officer of a corporate party."
- EVICTIONS: Same as general rule. MI Compiled Laws Ann. 600.5735(1): "The court in which a summary proceeding is commenced shall issue a summons, which may be served on the defendant by any officer or person authorized to serve process of the court."

Minnesota

- GENERALLY: Adult Private Persons Permitted. MN Rules of Civ. Pro., Rule 4.02: "Unless otherwise ordered by the court, the sheriff or any other person not less than 18 years of age and not a party to the action, may make service of a summons or other process."
- EVICTIONS: Same as general rule. MN Statutes Ann. § 504B.331(a): "The summons must be served at least seven days before the date of the court appearance specified in section 504B.321, in the manner provided for service of a summons in a civil action in district court. It may be served by any person not named a party to the action."

Mississippi

GENERALLY: Adult Private Persons Permitted. MS Rules of Civ. Pro., Rule 4(c)(1): "By Process Server. A summons and complaint shall, except as provided in subparagraphs (2) [Note: Sheriff] and (4) [Note: Publication] of this subdivision, be served by any person who is not a party and is not less than 18 years of age. When a summons and complaint are served by process server, an amount not exceeding that statutorily allowed to the sheriff for service of process may be taxed as recoverable costs in the action."

 EVICTIONS: Same as general rule. MS Code Annotated § 89-7-33: "Such summons shall be served as a summons is served in other cases, if the tenant can be found; if not, then by putting up a copy in some conspicuous place on the premises where the tenant last or usually resided."

New Jersey

- GENERALLY: Adult Private Persons Permitted. N.J. Statutes Ann. § 4:4-3: "Summonses shall
 be served, together with a copy of the complaint, by the sheriff, or by a person specially appointed
 by the court for that purpose, or by plaintiff's attorney or the attorney's agent, or by any other
 competent adult not having a direct interest in the litigation."
- EVICTIONS: Same as general rule. N.J. Statutes Ann. § 2A:18-54: "Where for any reason... a summons and complaint cannot be served as in other actions, such notices or summons and complaint may be served upon any person actually occupying the premises, either parsonally or by leaving same with a member of his family above the age of 14 years, or when admission to the premises is denied or the tenant or occupant and all members of his family above the age of 14 years are absent from the premises, or there is no person actually occupying them, the officer or other person may post or affix a copy of the same upon the door or other conspicuous part of such premises. Such posting shall be deemed to be lawful service."

New Mexico

- GENERALLY: Adult Private Persons Permitted. NM Rules Ann., Rule 4(D)(1): "Process shall be served as follows: (1) if the process to be served is a summons and complaint, petition or other paper, service may be made by any person who is over the age of eighteen (18) years and not a party to the action . . ."
- EVICTIONS: Same as general rule. NM Statutes Ann. 1978, § 35-10-3(G): "All laws and procedures governing magistrate courts apply to actions for forcible entry or unlawful detainer in the magistrate court except as otherwise provided by law."

North Dakota

- GENERALLY: Adult Private Persons Permitted. ND Rules of Civ. Pro., 4(d)(1)(A): "By whom service of all process may be made: within the state by any person of legal age and not a party to nor interested in the action . . ."
- EVICTIONS: Same as general rule. ND Century Code Ann. § 47-32-02: "... If the person cannot be found in the county, of which the return of the sheriff **or process server** is prima facie proof, and service has been attempted at least once between the hours of six p.m. and ten p.m. upon the filing of an affidavit of the plaintiff or the plaintiff's attorney stating that the defendant cannot be found or on belief that the defendant is not in this state and a copy of the summons has been mailed to the defendant at the defendant's last-known address if any is known to the plaintiff, service of the summons may be made upon the defendant by the sheriff **or process server** posting the summons upon the door of the residential unit."

Oregon

- GENERALLY: Adult Private Persons Permitted. OR Rules of Civ. Pro., Rule 7(E): "A summons may be served by any competent person 18 years of age or older who is a resident of the state where service is made or of this state and is not a party to the action nor, except as provided in ORS 180.260, an officer, director, or employee of, nor attorney for, any party, corporate or otherwise."
- EVICTIONS: Same as general rule. OR Revised Statutes § 105.135(1): "Except as provided in this section *[Note: the section does not prohibit private servers]*, the summons shall be served and returned as in other actions."

South Carolina

- GENERALLY: Adult Private Persons Permitted. SC Rule of Civ. Pro., Rule 4(c): "Service of summons may be made by the sheriff, his deputy, or by any other person not less than eighteen (18) years of age, not an attorney in or a party to the action . . ."
- EVICTIONS: Same as general rule. S.C. Code § 27-37-30(A): "The copy of the rule provided for in Section 27-37-20 may be served in the same manner as is provided by law for the service of the summons in actions pending in the court of common pleas or magistrates courts of this State. The methods of service described in subsections (B) and (C) may be used as alternatives to the method of service described in this subsection."

South Dakota

- GENERALLY: Adult Private Persons Permitted. S.D. Codified Laws § 15-6-4(c)("The summons may be served by the sheriff or a constable of the county or other comparable political subdivision where the defendant may be found, or in the District of Columbia by the United States marshal or a deputy, or by any other person not a party to the action who at the time of making such service is an elector of any state.") Note: "Elector" is defined under SD law as a person registered to vote.
- EVICTIONS: Same as general rule. S.D. Codified Laws § 21-16-6: "The complaint must be in writing and verified by the plaintiff or his agent or signed by his attorney, and served with a summons, and the procedure, except as otherwise provided, shall be the same as in other actions in the court where the action is pending."

Tennessee

- GENERALLY: Adult Private Persons Permitted. Tennessee Rule of Civ. Pro., Rule 4.01(2): "A summons and complaint may be served by any person who is not a party and is not less than 18 years of age. The process server must be identified by name and address on the return."
- EVICTIONS: Same as general rule. Though unlawful detainer statute (T.C.A. § 29-18-115(b)) all but implies that the service will be made by constable or sheriff, T.C.A. 66-28-105(a) (part of the Tennessee URLTA): "The general sessions and circuit courts of this state shall exercise original jurisdiction over any landlord or tenant with respect to any conduct in this state governed by this chapter. In addition to any other method provided by rule or by statute, personal jurisdiction over the parties may be acquired in a civil action or proceeding instituted in law or equity by service of process in the manner provided by law."

Utah

- GENERALLY: Adult Private Persons Permitted. UT Rules of Civ. Pro. Rule 4(d)(1): "Personal service. The summons and complaint may be served by any person 18 years of age or older at the time of service and not a party to the action or a party's attorney. If the person to be served refuses to accept a copy of the summons and complaint, service is sufficient if the person serving them states the name of the process and offers to deliver them."
- EVICTIONS: Same as general rule. UT Code Ann. 1953 § 78B-6-807(7): "The summons shall be changed in form to conform to the time of service as ordered, and shall be served as in other cases."

Virginia

- GENERALLY: Adult Private Persons Permitted. Except for Service of Teachers on School Property in Custody Cases. Virginia Code Annotated, § 8.01-293(A)(2) and (A)(3):
 - (2) Any person of age 18 years or older and who is not a party or otherwise interested in the subject matter in controversy. However, in any case in which custody or visitation of a minor child or children is at issue and a summons is issued for the attendance and testimony

- of a teacher or other school personnel who is not a party to the proceeding, if such summons is served on school property, it shall be served only by a sheriff or his deputy; or
- (3) A private process server. For purposes of this section, "private process server" means any person 18 years of age or older and who is not a party or otherwise interested in the subject matter in controversy, and who charges a fee for service of process.
- EVICTIONS: Same as general rule. Virginia Code Annotated, § 8.01-126(A): "The process issued upon any such summons issued by a magistrate, clerk or judge *may be served as provided in § 8.01-293*, 8.01-296, or 8.01-299."

West Virginia

- GENERALLY: Adult Private Persons Permitted. W. Va. Code § 56-3-11: "... Process or notice
 to commence actions or suits, including writs of scire facias, mandamus, quo warranto, certiorari,
 prohibition, and alias or other process where the original is returned not executed, *may also be*served by any credible person; and the return of such person, verified by his affidavit, shall be
 evidence of the manner and time of service."
- EVICTIONS: Same as general rule. W. Va. Code § 37-6-19: "... and obtain service either in person or by publication, as in other such actions, which service shall be in lieu of a demend and reentry; and upon proof to the court, by affidavit in case of judgment by default ..."

Wisconsin

- GENERALLY: Adult Private Persons Permitted. WI Statutes Ann. § 801.10(1): "An authenticated copy of the summons may be served by *any adult resident of the state* where service is made who is not a party to the action. Service shall be made with reasonable diligence."
- EVICTIONS: Same as general rule. WI Statutes Ann. § 799.12(1): "Except as otherwise provided in this chapter, all provisions of chs. 801 to 847 [Wi Rule of Civil Procedure, including § 801.10(1), above] with respect to jurisdiction of the persons of defendants, the procedure of commencing civil actions, and the mode and manner of service of process, shall apply to actions and proceedings under this chapter."

Private Process Servers of North Carolina

Presenting to the Committee on Private Process Servers

Ruth Reynolds Founder and President NCAPPS – North Carolina Association of Professional Process Servers

Website: NCAPPS.org

March 15, 2018

The Association was founded in 2013 by a group of concerned Process Servers and Private Investigators. We had support from NAPPS — National Association of Professional Process Servers, which is 35 years old. One of the Training and Educational Directors from New Jersey joined us at our first meeting to assist in establishing the professional ground work for this new association. Below is our Mission Statement.

NCAPPS Mission Statement

Dedicated to ensuring all North Carolina Process Servers are qualified and to further the profession by improving procedures, education and training for all servers in the state. To promote the profession in all courts, legal community and legislature and the general public. To insure that each member is of the highest integrity. Ruth Reynolds of Reynolds Professional Service in Charlotte, North Carolina started the First Service of Process Company in our state. She has over thirty years experience in the field. She is a licensed Private Investigator in North Carolina and South Carolina. She is a member of the following associations: NAPPS, NCAPPS, NCAPI and SCALI and also NCISS member too. She is also a member of multiple State Association for Process Servers. The North Carolina Private Protective Services **Board within the Department of Public Safety** has approved her three hour classroom course on Service of Process. The only other course approved is an online course of Service of Process.

In early 1994, Ruth Reynolds and another Process Server in our state, lobbied to get the law changed from having to file a motion and order and affidavit for each service of process we received. We helped establish Rule 4 – H1.

- North Carolina does not require registration or license to serve Process in North Carolina
- Rule 4 of N.C. General Statutes states if it is filed in N.C. it has to go to the Sheriffs office first (unless it is a Subpoena)
- Under Rule 4 H 1 Anyone over the age of 21 years old and not a party to the action or related by blood or marriage may serve.
- Some states that required licensing and registrations are Alaska, Arizona, California, Illinois, Montana, Nevada, and Oklahoma.
- Due to the growth of N.C. and people from other states moving here that serve process – we need to have requirements in place to ensure proper training and some form of accreditation for servers that think they can do Process without following rules of Civil Procedure.
- Most states are going to some form of education and regulations for this industry.

- State laws making assault on a Process Servers or Private Investigators a Class D Felony are: Illinois, California, Florida, New York, Arizona and Hawaii, which is working on laws currently.
- Process Services from out-of-state does not have to go to the County Sheriffs, where service is to be affected.
- Process Services from another state must follow the rules of the originating state.
- Process Serving is changing in our state, E-filing, servicing by Face book and the future is unknown.
- Five ways of Serving Process in North Carolina are: Personal, Substitute Service, Certified Mail, Fed EX/ UPS and Publication. With all these options – how are you going to get an affidavit of Service from Fed Ex/ UPS that requires a notary?

- Companies that support our industry with databases for inputting cases and keeping up with notifying our clients immediately upon service. More Servers are using GPS technology that give date and time stamp along with GPS coordinates showing exactly when and where the service occurred. Others may include pictures and or video of services.
- PAAPRS Promoting Assault Awareness and Protective Regulations for Servers – This Company is out of Colorado and helps monitor all states and supplies information and updates on changing laws and new technology. Offering webinars on subjects related to the industry.
- Proper documentation is essential to completing an assignment. Your affidavit is your finished products. It has to be detailed and factual.



LEGISLATIVE RESEARCH COMMISSION COMMITTEE ON PRIVATE PROCESS SERVERS Thursday April 12, 2018 Room 421

The Legislative Research Commission Committee on Private Process Servers met on Thursday, April 12, 2018, at 8:30 AM. The meeting was held in Room 421. Members present were: Representatives Jordan, Earle, Stone, and Lewis and Senators Daniel, Britt, McKissick, Randleman, and Sanderson, and Kristen Harris and Brad Krehely with Legislative Analysis and committee clerk Emma King.

Rep. Jordan began the meeting.

A visitor registration sheet was circulated amongst the committee guests (Attachment One).

Rep. Jordan recognized the Sergeant at Arms and thanked them for their service (Attachment Two).

Rep. Jordan recognized Norman Fisher of the Statewide Process Service, LLC (South Carolina) to speak. Mr. Fisher shared anecdotal evidence in support of private process servers.

Rep. Lewis asked if Mr. Fisher is currently a private process server. Mr. Fisher replied yes.

Rep. Lewis asked if in that capacity, has Mr. Fisher experienced any situation where he felt less capable or in danger due to lack of a police presence. Mr. Fisher replied no.

Sen. Randleman asked if Mr. Fisher is a current deputy. Mr. Fisher responded yes. Sen. Randleman followed up asking if Mr. Fisher conceal carries while fulfilling private process serving. Mr. Fisher responded that yes, he does conceal carry.

Sen. McKissick asked for clarification on the certification process. Mr. Fisher confirmed that there is no mandatory certification process, but if necessary North Carolina could provide one.

Senator Daniel chaired the meeting.

Senator Daniel recognized Kristen Harris with Legislative Analysis to explain the draft report (Attachment Three).

Senator Daniel opened the floor for comment.



Rep. Jordan made a motion to vote on the second recommendation with amendments to include only posting by a private process server and to only affect cities with a population of 200,000 or more.

Sen. Randleman asked for clarification on the definition of private process servers (page 23 line 38). Sen. Randleman asked if the word "hired" could be changed to another term. Ms. Harris with Legislative Analysis will look into this.

Sen. Sanderson stated that he does not see the private process servers as a necessary option given that the sheriffs currently have a 99% success rate with serving papers, and questioned why this recommendation only affects those areas with a population of 200,000 or greater.

Rep. Jordan explained that the population of over 200,000 was compromise language between the Apartment Association and the Sheriffs. This bill would simply give landlords the option to use private process servers – if unsuccessful, landlords still have the option to utilize the Sheriffs Department.

Sen. Sanderson asked Mr. Fisher what the success rate is in South Carolina for posting. Mr. Fisher replied that for simply posting a paper to the door, there should be a 100% success rate.

Sen. McKissick brought up that during his first few years of law and working with federal cases, he had plenty of experience with private process servers. Sen. McKissick recently had an experience at his law office where a private process server served a paper incorrectly, which leads him to believe a certification process is necessary to establish private process servers.

Rep. Lewis stated that this report is simply a recommendation not legislation, and that he fully supports Rep. Jordan's recommendation and changes can be made to the recommendation through the legislative process.

Rep. Stone stated that if there were no problems with the current set up then no one would be asking for a private process server option. Rep. Stone explains that his district has had an influx of apartments and landlord opportunities and that the volume and increase requires a secondary option for process servers.

Rep. Jordan stated that he is glad to work with Sen. McKissick to make changes to the bill as he sees fit.

Rep. Earle stated that Mecklenburg County is not the only county having these problems.

Sen. McKissick stated that he could not support the current recommendation, but if the population threshold moved from 200,000 to 900,000, then he could support the recommendation.



Rep. Lewis proposed an amendment to raise the population threshold from 200,000 to 900,000, in addition to specifying the definition of a private process server (Attachment Four). Seeing no objection, the amendment was adopted.

Rep. Lewis made a motion to approve the report and recommendation as amended and authorize staff to revise the report to reflect proceedings of this meeting and address any technical corrections to the report and proposed legislation and to Transmit Report to Legislative Research Commission. The motion carried.

There being no further business, the meeting adjourned at 9:28 AM.

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Emma King, Committee Clerk



Attachments

- Visitor Registration
 Sergeant at Arms
 Draft Report
 Amendment One, Rep. Lewis



Updated #1: Date and Time Change

NORTH CAROLINA GENERAL ASSEMBLY

Raleigh, North Carolina 27601

May 24, 2018

MEMORANDUM

TO: Members, Committee on Private Process Scrvers (LRC)(2017)

FROM: Sen. Warren Daniel, Co-Chair

Rep. Jonathan C. Jordan, Co-Chair

SUBJECT: Meeting Notice

The Committee on Private Process Servers (LRC)(2017) will meet at the following time:

DAY	DATE	TIME	LOCATION
Thursday	April 12, 2018	8:30 AM	421 LOB

Parking for non-legislative meeting attendees is available in the visitor parking deck #75 located on Salisbury Street across from the Legislative Office Building. Parking is also available in the parking lot across Jones Street from the State Library/Archives. You can view a map of downtown by visiting http://www.ncleg.net/graphics/downtownmap.pdf.

If you are unable to attend or have any questions concerning this meeting, please contact Laura Bone at laurab@ncleg.net.

cc:	Committee Record	_X_
	Interested Parties	$_X_{}$

Joint Legislative Committee On Private Process Servers April 12, 2018

Room 421, LOB
8:30 AM
House Sergeant at Arms:
BILL BASS
JOE CROOK
DAVID LEIGHTON
Senate Sergeant at Arms:
JIM HAMILTON
CHARLES MARSALIS



Joint Legislative Committee On Private Process Servers April 12, 2018 – Room 421 LOB – 8:30 AM

PLEASE SIGN IN BELOW

NAME	FIRM OR AGENCY
Anythedoecock Susumna Fantoy	NC Realtors NC PEALTORS
Sell Priver	NCE
Will Brownlee	AANC
Alex M. Mar	AMGA
Colleen Kochsmeh	AANC
CADy Thomas	FC
Amande tilkenbury	
Bill Rowe	NC Justice Center
Jillian Tolman	MUCLIC
JIMAN IOMAN	1110000



Joint Legislative Committee On Private Process Servers April 12, 2018 – Room 421 LOB – 8:30 AM

PLEASE SIGN IN BELOW

NAME	FIRM OR AGENCY
Dauld Firell	NP
Eddie Caldwell	NC Sheriff 'Assw.
Doug Miskey Delicrah & Barker Mildred Spearman	Clark of Court-Person Co. NCAOC
Mildred Spearman	NCAOC
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NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE RESEARCH COMMISSION STATE LEGISLATIVE BUILDING RALEIGH, NC 27601



April XX, 2018

TO THE MEMBERS OF THE LEGISLATIVE RESEARCH COMMISSION:

Attached for your consideration is the report to the 2018 Regular Session of the 2017 General Assembly. This report was prepared by the Legislative Research Commission's Committee on Private Process Servers (LRC)(2017), pursuant to G.S. 120-30.17(1).

Senator Warren Daniel Representative Jonathan C. Jordan Co-Chair Co-Chair

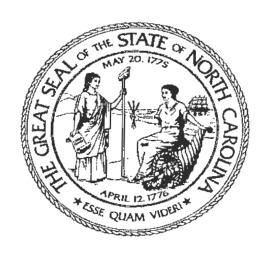
Co-Chairs
Committee on Private Process Servers (LRC)(2017)
Legislative Research Commission

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LEGISLATIVE RESEARCH COMMISSION

COMMITTEE ON PRIVATE PROCESS SERVERS (LRC)(2017)

NORTH CAROLINA GENERAL ASSEMBLY



REPORT TO THE
2018 SESSION
of the
2017 GENERAL ASSEMBLY
OF NORTH CAROLINA

APRIL, 2018

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TRANSMITTAL LETTER

April XX, 2018

TO THE MEMBERS OF THE 2018 REGULAR SESSION OF THE 2017 GENERAL ASSEMBLY

The Legislative Research Commission herewith submits to you for your consideration its report and recommendations to the 2018 Regular Session of the 2017 General Assembly. The report was prepared by the Legislative Research Commission's Committee on Private Process Servers (LRC)(2017), pursuant to G.S. 120-30.17(1).

Respectfully submitted,

Senator Bill Rabon

Representative David Lewis

Co-Chairs Legislative Research Commission This page intentionally left blank

LEGISLATIVE RESEARCH COMMISSION MEMBERSHIP

2017 - 2018

Senator Bill Rabon

Co-Chair

Representative David Lewis

Co-Chair

Senator Phil Berger, Ex Officio

Representative Timothy Moore, Ex

Officio

Senator Dan Blue Senator Warren Daniel Senator Ralph Hise Senator Paul A. Lowe, Jr. Representative William Brawley Representative Becky Carney Representative Ted Davis Representative Jason Saine

PREFACE

The Legislative Research Commission, established by Article 6B of Chapter 120 of the General Statutes, is the general purpose study group in the Legislative Branch of State Government. The Commission is co-chaired by the President Pro Tempore of the Senate and the Speaker of the House of Representatives, or their designees, and has five additional members appointed from each house of the General Assembly. Among the Commission's duties is that of making or causing to be made, upon the direction of the General Assembly, "such studies of and investigation into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner" (G.S. 120-30.17(1)).

The Legislative Research Commission authorized the study of Private Process Servers (LRC)(2017), under authority of G.S. 120-30.17(1). The Committee was chaired by Senator Warren Daniel and Representative Jonathan C. Jordan, Co-Chairs of the Committee. The full membership of the Committee is listed under <u>Committee Memhership</u>. A committee notebook containing the committee minutes and all information presented to the committee will be filed in the Legislative Library by the end of the 2017-2018 biennium.

COMMITTEE PROCEEDINGS

The Legislative Research Commission's Committee on Private Process Servers (LRC)(2017) met 3 times after the 2017 Regular Session. The Committee's Charge can be found here. The following is a brief summary of the Committee's proceedings. Detailed minutes and information from each Committee meeting are available in the Legislative Library.

February 15, 2018

- Presiding Committee Co-Chair Representative Jonathan C. Jordan called the meeting to order and made introductory remarks.
- Kristen Harris, Staff Attorney, Legislative Analysis Division, reviewed the Committee's Charge.
- Kristen Harris, Staff Attorney, Legislative Analysis Division, presented information on when private process servers are currently being used under North Carolina and federal law and on G.S. 42-29, the service of summons statute for summary ejectment proceedings.
- Brad Fowler, Research, Policy, and Planning Officer, North Carolina Administrative Office of the Courts (AOC), discussed state-wide data collected by the AOC for all North Carolina counties in 2017 showing the median length of time between the filing of a summary ejectment claim and its disposition.
- Will Brownlee, Executive Director and General Counsel, Apartment Association of North Carolina (AANC), presented an overview of service of process in North Carolina and explained the AANC's analysis of statistical data of service of summons percentage rates by sheriffs in the 10 most populous North Carolina counties (i.e. counties with populations of 200,000 or more and those that would be affected by H706 (2017-2018 Session), Landlord/Tenant- Alias & Pluries Summary Eject., namely Buncombe, Cumberland, Durham, Gaston, Guilford, Forsyth, Mecklenburg, New Hanover, Union, and Wake.) The presentation also included how the AANC interprets the language and computes the service timelines referenced in G.S. 42-29. Mr. Brownlee also spoke on the financial impact delayed service of summons has on North Carolina landlords.
- Sheriff Carson Smith, Pender County, President, North Carolina Sheriff's Association (NCSA), spoke to the committee in opposition to H706 (2017-2018 Session), Landford/Tenant- Alias & Pluries Summary Eject.
- Eddie Caldwell, Executive Vice President and General Counsel, NCSA, presented timelines of G.S. 42-28 (the issuance of a summons statute in summary ejectment proceedings) and G.S. 42-29 and discussed the NCSA's interpretation of G.S. 42-29's service timelines and the NCSA's service of summons statistical data for the 10 counties affected by H706, Landlord/Tenant- Alias & Pluries Summary Eject.
- Dustin Elliot and Andrey Melkonyan, Management Analysts, Mecklenburg County Sheriff's Office, explained the raw data used by the NCSA for its data analysis and its method of analysis.

- Michelle Liakos, President, Signature Property Group, Greensboro, NC, spoke to
 the committee about the financial impact delayed service of summons has on
 landlords and the value of having a choice between using a sheriff and a private
 process server for service.
- Amy Hedgecock, Fowler Realtors, High Point, NC, spoke about the number of summons that are served by posting versus in-person and the costs in addition to rent that landlords incur with delayed service.

March 15, 2018

- Presiding Co-Chair Senator Warren Daniel called the meeting to order.
- Will Brownlee, Executive Director and General Counsel, Apartment Association
 of North Carolina (AANC), discussed the safety and efficiency of private service
 of process in North Carolina and the federal system and presented information on
 how other states allow and utilize private process servers.
- Ruth Reynolds, President and Founder, North Carolina Association of Professional Process Servers (NCAPPS), spoke to the committee about her first-hand experience as a private process server and the need for regulations related to private service of process in North Carolina such as licensing and CLE requirements for process servers and laws against assaulting process servers.
- Sheriff Asa B. Buck, III, Carteret County, on behalf of the North Carolina Sheriff's
 Association (NCSA), stated that the number of assaults on private process servers
 in North Carolina is low because it is currently a limited practice, but that that will
 change if the practice is expanded. Sheriff Buck also discussed the mental health
 crisis in North Carolina and that when a sheriff or a deputy serves a summons, if
 there is another issue occurring, a sheriff or deputy is trained to and can get the
 person the assistance he or she needs.
- Sheriff Alan Cloninger, Gaston County Sheriff's Office, on behalf of the NCSA, discussed that a certification program for private process servers would be an unnecessary duplication of the training deputies already receive. Sheriff Cloninger also discussed that with the current system both landlords and tenants are being properly protected by the sheriff's departments and with the CAD system there is additional verification for proof of service.
- Captain Mike Radford, Gaston County Sheriff's Office, on behalf of the NCSA, spoke to the committee about his first-hand experience serving summons and described situations he has encountered including drug houses, deceased individuals, and persons with active warrants and weapons.
- Major Charles Young, Mecklenburg County Sheriff's Office, on behalf of the NCSA, spoke to the committee about the training deputies undergo for scrving summons and the efforts that are made to serve a summons personally before posting it.
- Lieutenant Tera Greger, New Hanover County Sheriff's Office, on behalf of the NCSA, spoke to the committee about her first-hand experience serving summons and the several attempts that are made to serve a summons personally before posting it.

 The committee members discussed clarifying the ambiguous language relating to the five-day service timeline in G.S. 42-29. Staff was instructed to draft proposed legislation for the next meeting specifying that the five days was to be calculated by excluding legal holidays when the courthouse is closed for transactions, but not weekends.



FINDINGS AND RECOMMENDATIONS

Finding #1 – Ambiguity in G.S. 42-29. Service of Summons.

The Committee on Private Process Servers has considered the speakers' presentations and materials presented on the different interpretations and applications of G.S. 42-29 and the information obtained during question and answer sessions and discussions at the committee meetings and finds the following:

- G.S. 42-29 addresses the service of summons in summary ejectment proceedings. The third sentence reads as follows: "[T]he officer shall 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 to answer the complaint, excluding legal holidays, at a time reasonably calculated to find the defendant at the place of abode to attempt personal delivery of service."
- Based on the current wording and grammatical structure of the third sentence in G.S. 42-29, it is not clear if the "excluding legal holidays" language applies only to the two-day notice requirement for the defendant, or if it also relates to the "within five days of the issuance of the summons" service requirement. Because of this ambiguity, it is unclear how the five days should be computed.
- As evidenced by their presentations to the committee, the Apartment Association of North Carolina (AANC) and the North Carolina Sheriff's Association (NCSA) are computing and applying the five-day service timeline in G.S. 42-29 differently. The AANC is only excluding legal holidays when computing the time period. The NCSA is excluding both legal holidays and weekends in its computations.
- The committee found that the ambiguity in G.S. 42-29 needs to be remedied to facilitate its uniform application.
- The committee determined that the third sentence in G.S. 42-29 should be amended to clarify that when computing and applying the five-day service requirement only legal holidays when the courthouse is closed for transactions, and not weekends, should be excluded.

Recommendation #1 - Clarify Ambiguity in G.S. 42-29. Service of Summons.

Based on the above findings, the Committee on Private Process Servers recommends that G.S. 42-29 be amended to clarify the method of computation for the five-day service requirement. Therefore, the Committee recommends that during the 2018 Regular Session, the General Assembly enact legislation resolving ambiguous language currently found in G.S. 42-29. (See Appendix D of Proposed Legislation [2017-TUz-2].)

<u>Finding #2 — Ambiguity in G.S. 42-29. Service of Summons and Allow Private Process</u> <u>Servers to Serve Summary Ejectment Claims by Posting.</u> The Committee on Private Process Servers has considered the speakers' presentations and materials presented on the different interpretations and applications of G.S. 42-29 and the use of private process servers currently under North Carolina and federal law and in other jurisdictions and the information obtained during question and answer sessions and discussions at the committee meetings and finds the following:

- G.S. 42-29 addresses the service of summons in summary ejectment proceedings. The third sentence reads as follows: "[T]he officer shall 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 to answer the complaint, excluding legal holidays, at a time reasonably calculated to find the defendant at the place of abode to attempt personal delivery of service."
- Based on the current wording and grammatical structure of the third sentence in G.S. 42-29, it is not clear if the "excluding legal holidays" language applies only to the two-day notice requirement for the defendant, or if it also relates to the "within five days of the issuance of the summons" service requirement. Because of this ambiguity, it is unclear how the five days should be computed.
- As evidenced by their presentations to the committee, the Apartment Association
 of North Carolina (AANC) and the North Carolina Sheriff's Association (NCSA)
 are computing and applying the five-day service timeline in G.S. 42-29 differently.
 The AANC is only excluding legal holidays when computing the time period.
 Whereas, the NCSA is excluding both legal holidays and weekends in its
 computations.
- The committee found that the ambiguity in G.S. 42-29 needs to be remedied to facilitate its uniform application.
- The committee determined that the third sentence in G.S. 42-29 should be amended
 to clarify that when computing and applying the five-day service requirement only
 legal holidays when the courthouse is closed for transactions, and not weekends,
 should be excluded.
- Under current law, a plaintiff must use a sheriff, or his or her lawful deputies, to serve the initial summons and complaint in a summary ejectment claim. The officer must make an attempt to serve the defendant in-person pursuant to G.S. 42-29.
- It is in the interest of commerce that there be a choice of who can execute service of process in summary ejectment claims.
- The Committee's proposed legislation is limited in scope and would allow a
 plaintiff, in counties with a population of 200,000 or more, to utilize a private
 process server to serve only the summary ejectment portion of a claim on a
 defendant and allow such service to be made only by posting rather than in-person.

Recommendation #2 - Clarify Ambiguity in G.S. 42-29. Service of Summons and Allow Private Process Servers to Serve Summary Ejectment Claims by Posting.

Based on the above findings, the Committee on Private Process Servers recommends that G.S. 42-29 be amended to clarify the method of computation for the five-day service requirement and that plaintiffs be allowed to use private process servers in summary ejectment claims only in North Carolina counties with a population of 200,000 or more.

Therefore, the Committee recommends that during the 2018 Regular Session, the General Assembly enact legislation resolving ambiguous language currently found in G.S. 42-29 and legislation authorizing limited service of process by private process servers in summary ejectment only claims. (See Appendix D of Proposed Legislation [2017-TUz-1].)

COMMITTEE MEMBERSHIP

2017-2018

Senate Members:

Senator Warren Daniel, Co-Chair

Senator Danny Earl Britt, Jr. Senator Floyd B. McKissick, Jr. Senator Shirley B. Randleman Senator Norman W. Sanderson Senator Bill Rabon, Ex Officio

House of Representatives Members:

Representative Jonathan C. Jordan, Co-Chair

Representative Beverly M. Earle Representative Duane Hall Representative Scott Stone Representative John Szoka Representative David R. Lewis, Ex Officio

COMMITTEE CHARGE

<u>Private Process Servers</u> – Study the safety and efficiency of the use of private process servers in summary ejectment proceedings. In doing so, the Committee may consider the following:

- 1. The percentage of North Carolina summary ejectment cases where each Sheriff fails to effectuate service of process within the five-day period required by G.S. 42-29;
- 2. The safety and efficiency of the use of private process servers in summary ejectment proceedings in other states;
- 3. The safety and efficiency of the use of private process servers in those circumstances where private process servers are already allowed under North Carolina or Federal law; and
- 4. The economic impact of delayed service of process in summary ejectment proceedings.

STATUTORY AUTHORITY

NORTH CAROLINA GENERAL STATUTES ARTICLE 6B.

Legislative Research Commission.

§ 120-30.17. Powers and duties.

The Legislative Research Commission has the following powers and duties:

- (1) Pursuant to the direction of the General Assembly or either house thereof, or of the chairmen, to make or cause to be made such studies of and investigations into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner.
- (2) To report to the General Assembly the results of the studies made. The reports may be accompanied by the recommendations of the Commission and bills suggested to effectuate the recommendations.
- (3), (4) Repealed by Session Laws 1969, c. 1184, s. 8.
- (5), (6) Repealed by Session Laws 1981, c. 688, s. 2.
- (7) To obtain information and data from all State officers, agents, agencies and departments, while in discharge of its duty, pursuant to the provisions of G.S. 120-19 as if it were a committee of the General Assembly.
- (8) To call witnesses and compel testimony relevant to any matter properly before the Commission or any of its committees. The provisions of G.S. 120-19.1 through G.S. 120-19.4 shall apply to the proceedings of the Commission and its committees as if each were a joint committee of the General Assembly. In addition to the other signatures required for the issuance of a subpoena under this subsection, the subpoena shall also be signed by the members of the Commission or of its committee who vote for the issuance of the subpoena.
- (9) For studies authorized to be made by the Legislative Research Commission, to request another State agency, board, commission or committee to conduct the study if the Legislative Research Commission determines that the other body is a more appropriate vehicle with which to conduct the study. If the other body agrees, and no legislation specifically provides otherwise, that body shall conduct the study as if the original authorization had assigned the study to that body and shall report to the General Assembly at the same time other studies to be conducted by the Legislative Research Commission are to be reported. The other agency shall conduct the transferred study within the funds already assigned to it.

LEGISLATIVE PROPOSALS

GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 2017

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BILL DRAFT 2017-TUz-2 [v.5] (03/26)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION) 03/28/2018 10:11:01 AM

Short Title:	Clarify Summary Eject Service Timeline.	(Public)	
Sponsors:			
Referred to:			

1 A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE CALCULATION OF TIMELINES WHEN SERVING A SUMMONS IN SUMMARY EJECTMENT CASES, AS RECOMMENDED BY THE LEGISLATIVE RESEARCH COMMISSION COMMITTEE ON PRIVATE PROCESS SERVERS.

6 The General Assembly of North Carolina enacts:

SECTION 1. G.S. 42-29 reads as rewritten:

"§ 42-29. Service of summons.

- Service by officer. The officer receiving the summons shall mail a copy of the summons and complaint to the defendant no later than the end of the next business day or as soon as practicable at the defendant's last known address in a stamped addressed envelope provided by the plaintiff to the action. The officer may, within five days of the issuance of the summons, attempt to telephone the defendant requesting that the defendant either personally visit the officer to accept service, or schedule an appointment for the defendant to receive delivery of service from the officer. If the officer does not attempt to telephone the defendant or the attempt is unsuccessful or does not result in service to the defendant, the officer shall 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 to answer the complaint, excluding legal holidays, complaint. The officer shall visit the place of abode of the defendant at a time reasonably calculated to find the defendant at the place of abode to attempt personal delivery of service. He or she then shall deliver a copy of the summons together with a copy of the complaint to the defendant, or leave copies thereof at the defendant's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. If such service cannot be made the officer shall affix copies to some conspicuous part of the premises claimed and make due return showing compliance with this section. subsection.
- (b) Computation of time. Notwithstanding G.S. 1A-1, Rule 6 and except for periods of time involving the mailing of a copy of a summons and a complaint to the defendant by an officer, when computing any period of time prescribed in this section, the time shall be computed by excluding only legal holidays when the courthouse is closed for transactions."

SECTION 2. 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.

GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 2017

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BILL DRAFT 2017-TUZ-1 [v.10] (03/21)

03/28/2018 11:31:06 AM

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

	Short Title: Amend Sum Eject Service/Allow Process Server. (Public)
	Sponsors:
	Referred to:
1	A BILL TO BE ENTITLED
2	AN ACT TO ALLOW SUMMARY EJECTMENT CLAIMS TO BE SERVED BY A PRIVATE
3	PROCESS SERVER WHEN RETURNED UNEXECUTED; TO CLARIFY THE
4	CALCULATION OF TIMELINES WHEN SERVING A SUMMONS IN SUMMARY
5	EJECTMENT CASES; AND TO ALLOW THE PLAINTIFF IN A SUMMARY
6	EJECTMENT ONLY CLAIM TO UTILIZE A PRIVATE PROCESS SERVER IN
7	COUNTIES WITH POPULATIONS OF TWO HUNDRED THOUSAND OR GREATER,
8	AS RECOMMENDED BY THE LEGISLATIVE RESEARCH COMMISSION
9	COMMITTEE ON PRIVATE PROCESS SERVERS.
10	The General Assembly of North Carolina enacts:
11	SECTION 1. G.S. 1A-1, Rule 4(h1), reads as rewritten:
12	"Rule 4. Process.
13	AND THE TOWARD.
14	(h1) Summons – When process returned unevecuted. If a proper officer returns of

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

SECTION 2. G.S. 42-28 reads as rewritten: "§ 42-28. Summons issued by clerk.

When the lessor or his assignee files a complaint pursuant to G.S. 42-26 or 42-27, and asks to be put in possession of the leased premises, the clerk of superior court shall issue a summons requiring the defendant to appear at a certain time and place not to exceed seven days from the issuance of the summons, excluding weekends and legal holidays, to answer the complaint. The plaintiff may claim rent in arrears, and damages for the occupation of the premises since the cessation of the estate of the lessee, not to exceed the jurisdictional amount established by G.S. 7A-210(1), but if he omits to make such claim, he shall not be prejudiced

thereby in any other action for their recovery.

In counties with 200,000 or more residents as of the most recent decennial federal census, after the summons is issued, at the election of the plaintiff, the clerk shall do either of the following:

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- (1) Return the summons to the plaintiff for service by a process server pursuant to G.S. 42-29(b).
- (2) Forward the summons to the sheriff for service.
- (c) If the magistrate severs the claim for monetary damages pursuant to G.S. 7A-223(b1), the plaintiff may extend the action in accordance with G.S. 1A-1, Rule 4(d)."

SECTION 3. G.S. 42-29 reads as rewritten:

"§ 42-29. Service of summons.

- Service by officer. The officer receiving the summons shall mail a copy of the summons and complaint to the defendant no later than the end of the next business day or as soon as practicable at the defendant's last known address in a stamped addressed envelope provided by the plaintiff to the action. The officer may, within five days of the issuance of the summons, attempt to telephone the defendant requesting that the defendant either personally visit the officer to accept service, or schedule an appointment for the defendant to receive delivery of service from the officer. If the officer does not attempt to telephone the defendant or the attempt is unsuccessful or does not result in service to the defendant, the officer shall 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 to answer the complaint, excluding legal holidays, complaint. The officer shall visit the place of abode of the defendant at a time reasonably calculated to find the defendant at the place of abode to attempt personal delivery of service. He or she then shall deliver a copy of the summons together with a copy of the complaint to the defendant, or leave copies thereof at the defendant's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. If such service cannot be made the officer shall affix copies to some conspicuous part of the premises claimed and make due return showing compliance with this section. subsection.
- (b) Service by process server. Only with respect to service for summary ejectment proceedings in counties with 200,000 or more residents as of the most recent decennial federal census, a process server, who receives a copy of the summons and complaint from the plaintiff pursuant to G.S. 42-28(b)(1), may effectuate proper service upon a defendant solely for purposes of summary ejectment by mailing a copy of the summons and complaint to the defendant no later than the end of the next business day or as soon as practicable at the defendant's last known address in a stamped addressed envelope provided by the plaintiff to the action. The process server shall then deliver a copy of the summons together with a copy of the complaint to the defendant by affixing copies of same to some conspicuous part of the premises claimed and make due return showing compliance with this subsection in the form of an affidavit of service. Said affidavit of service shall set forth the time, place, and manner by which the requirements set forth herein were completed.
- (c) Definition. As used in this section, a "process server" shall be any person who is hired by the plaintiff or plaintiff's agent or attorney for the purpose of serving the summons and complaint for summary ejectment and who meets the requirements listed in G.S. 1A-1, Rule 4(b1).
- (d) Computation of time. Notwithstanding G.S. IA-1, Rule 6 and except for periods of time involving the mailing of a copy of a summons and a complaint to the defendant by an officer, when computing any period of time prescribed in subsection (a) of this section, the time shall be computed by excluding only legal holidays when the courthouse is closed for transactions. "
- **SECTION 4.** 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.

SUPPORTING DOCUMENTS





NORTH CAROLINA GENERAL ASSEMBLY **AMENDMENT**

Bill

AMENDMENT NO. (to be filled in by Principal Clerk) U-ATU-31 [v.5] Page 1 of ,2018 Amends Title [NO] PPS LRC Report Jordan Representative moves to amend the report page 5, by deleting the lines that begin with the phrase "APPENDIX E" and end with "24"; and on page 14, by deleting the first line that begins with "Finding #1 - Ambiguity in G.S. 42-29. Service of Summons." through to the line that ends with "(See Appendix D of Proposed Legislation [2017-TUz-2].)"; and on page 14, by deleting the phrase "Finding #2" and substituting the phrase "Finding #1"; and on page 15, by deleting the phrase "Recommendation #2" and substituting the phrase "Recommendation #1"; and on page 21, by deleting that page; and on page 24, by deleting that page. Amendment Sponsor SIGNED Committee Chair if Senate Committee Amendment

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NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

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	EDITION No.
	H. B. No DATE April 12, 2018
	S. B. No Amendment No (to be filled in by
	COMMITTEE SUBSTITUTE Principal Clerk)
	Rep.)
	Sen.)
	moves to amend the bilt on page 22 , line 31
1	moves to amend the bill on page, line, line
2	of steleting the phrase "200,000" and Substituting
	the phrase "900,000";
4	ina privatse 100,000
5	2 72 1: . 7 1 811 15 11
	and on p. 22 line 7 by deleting the
7	phrase "Two HUNDIZED THOUSAND" and
8	Substituting the phrase "NINE HUNDRED
9	THOUSAND"
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11	and on page 23, line 26 by deleting the
	phrase "200,000" and Substituting the
	phrasa " 900,000";
14	
15	and on page 23 lines 37-38 by
18	Vewriting the lines to read:
47	11 (c) Definition As used in this section
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18	a "process server" shall be any person who
19	a plaintiff or a plaintiff's agent or attorney man cause Service to be made for the purpose of serving the summons and " 'SIGNED
y.	the 5 ummons and " SIGNED
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