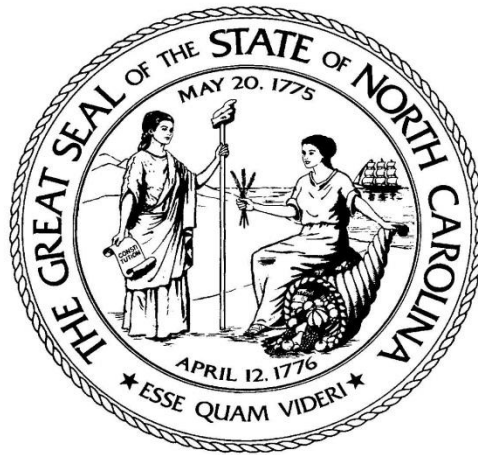


LEGISLATIVE RESEARCH COMMISSION  
COMMITTEE ON PRIVATE PROCESS  
SERVERS (LRC)(2017)  
NORTH CAROLINA GENERAL ASSEMBLY



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

APRIL 2018

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## TRANSMITTAL LETTER

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May 16, 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



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Representative David Lewis

Co-Chairs  
Legislative Research Commission

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# LEGISLATIVE RESEARCH COMMISSION MEMBERSHIP

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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 Jonathan C. Jordan  
Representative John R. Bradford, III

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## PREFACE

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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 [Committee Membership](#). 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.



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# COMMITTEE PROCEEDINGS

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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), Landlord/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 serving 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.

### **April 12, 2018**

- Co-Chair Representative Jonathan C. Jordan called the meeting to order.
- Norman Fisher, Statewide Process Service, LLC, spoke to the committee about his first-hand experience serving summons in South Carolina as both a law enforcement officer and a private process server.
- Co-Chair Senator Warren Daniel took over as presiding Chair and requested that Staff Attorney Kristen Harris, Legislative Analysis Division, present the committee's draft Findings and Recommendations to the committee members. Ms. Harris reviewed the Committee Proceedings and 2017-TUz-2[v.5] which would clarify the service timelines in G.S. 42-29, the service of summons statute for summary ejection proceedings.
- Co-Chair Representative Jonathan C. Jordan spoke to the committee about 2017-TUz-1 [v.10] which would clarify the service timelines in G.S. 42-29 and also allow private process servers to post summary ejection summons in counties with populations of 200,000 or more.
- The committee members discussed both proposed bill drafts, including specific questions concerning the definition of "process server" and what counties should be included in the private process server legislation.
- Following committee discussion, Representative David R. Lewis made a motion to amend 2017-TUz-1 [v.10] to change the population requirement from 200,000 residents or more to 900,000 residents or more and to change the definition of "process server" to read as follows:

"(c) Definition. – As used in this section, a "process server" shall be any person who a plaintiff, a plaintiff's agent or attorney may cause service to be made for the purpose of serving the summons and complaint for summary ejection and who meets the requirements listed in G.S. 1A-1, Rule 4(h1)."

- The motion to amend was approved by the committee.
- Co-Chair Representative Jonathan C. Jordan made a motion to amend the draft report to delete the Findings and Recommendations #1 and 2017-TUz-2 [v.5] from the report and make other conforming changes. The motion to amend was approved by the committee.
  - With a quorum present, Representative David R. Lewis made a motion for the committee to approve the report and recommendations, as amended, and authorize staff to revise the report to reflect the meeting's proceedings and address any technical corrections to the report and proposed legislation and to transmit the report to the Legislative Research Commission. The motion was approved.

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## FINDINGS AND RECOMMENDATIONS

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### **Finding #1 – Ambiguity in G.S. 42-29. Service of Summons and Allow Private Process Servers to Serve Summary Ejection Claims by Posting.**

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 ejection 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 ejection 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 ejection claims.
- The Committee's proposed legislation is limited in scope and would allow a plaintiff, in counties with a population of 900,000 or more, to utilize a private process server to serve only the summary ejection portion of a claim on a defendant and allow such service to be made only by posting rather than in-person.

**Recommendation #1 – 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 900,000 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].)

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## COMMITTEE MEMBERSHIP

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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

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## COMMITTEE CHARGE

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**Private Process Servers** – 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.

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## STATUTORY AUTHORITY

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### 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.



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## **LEGISLATIVE PROPOSALS**

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GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2017

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D

BILL DRAFT 2017-TUz-1 [v.12]

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)  
04/13/2018 11:57:06 AM

Short Title: Amend Sum Eject Service/Allow Process Server. (Public)

Sponsors:

Referred to:

A BILL TO BE ENTITLED

AN ACT TO ALLOW SUMMARY EJECTMENT CLAIMS TO BE SERVED BY A PRIVATE  
PROCESS SERVER WHEN RETURNED UNEXECUTED; TO CLARIFY THE  
CALCULATION OF TIMELINES WHEN SERVING A SUMMONS IN SUMMARY  
EJECTMENT CASES; AND TO ALLOW THE PLAINTIFF IN A SUMMARY  
EJECTMENT ONLY CLAIM TO UTILIZE A PRIVATE PROCESS SERVER IN  
COUNTIES WITH POPULATIONS OF NINE HUNDRED THOUSAND OR GREATER,  
AS RECOMMENDED BY THE LEGISLATIVE RESEARCH COMMISSION  
COMMITTEE ON PRIVATE PROCESS SERVERS.

The General Assembly of North Carolina enacts:

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

**"Rule 4. Process.**

...

(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~~ 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.**

(a) 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.

(b) In counties with 900,000 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:

Appendix D

1           (1) Return the summons to the plaintiff for service by a process server pursuant  
2           to G.S. 42-29(b).

3           (2) Forward the summons to the sheriff for service.

4           (c) If the magistrate severs the claim for monetary damages pursuant to G.S. 7A-223(b1),  
5 the plaintiff may extend the action in accordance with G.S. 1A-1, Rule 4(d)."

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

7 **"§ 42-29. Service of summons.**

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

25           (b) Service by process server. – Only with respect to service for summary ejectment  
26 proceedings in counties with 900,000 or more residents as of the most recent decennial federal  
27 census, a process server, who receives a copy of the summons and complaint from the plaintiff  
28 pursuant to G.S. 42-28(b)(1), may effectuate proper service upon a defendant solely for purposes  
29 of summary ejectment by mailing a copy of the summons and complaint to the defendant no later  
30 than the end of the next business day or as soon as practicable at the defendant's last known  
31 address in a stamped addressed envelope provided by the plaintiff to the action. The process  
32 server shall then deliver a copy of the summons together with a copy of the complaint to the  
33 defendant by affixing copies of same to some conspicuous part of the premises claimed and make  
34 due return showing compliance with this subsection in the form of an affidavit of service. Said  
35 affidavit of service shall set forth the time, place, and manner by which the requirements set forth  
36 herein were completed.

37           (c) Definition. – As used in this section, a "process server" shall be any person who a  
38 plaintiff or a plaintiff's agent or attorney may cause service to be made for the purpose of serving  
39 the summons and complaint for summary ejectment and who meets the requirements listed in  
40 G.S. 1A-1, Rule 4(h1).

41           (d) Computation of time. – Notwithstanding G.S. 1A-1, Rule 6 and except for periods of  
42 time involving the mailing of a copy of a summons and a complaint to the defendant by an officer,  
43 when computing any period of time prescribed in subsection (a) of this section, the time shall be  
44 computed by excluding only legal holidays when the courthouse is closed for transactions. "

45           **SECTION 4.** This act becomes effective October 1, 2018, and applies to actions for  
46 summary ejectment in which the summons is issued by the clerk of superior court on or after that  
47 date.