



SENATE BILL 269: Landlord/Tenant-Alias & Pluries Summary Eject

2015-2016 General Assembly

Committee: Senate Judiciary I
Introduced by: Sen. Randleman
Analysis of: First Edition

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Prepared by: Brad Krehely
Committee Counsel

SUMMARY: *Senate Bill 269 would allow for the severance of summary ejectment and monetary claims in small claims actions when service of process only meets summary ejectment standards and to allow for the severed monetary claim to be continued with an alias and pluries summons.*

CURRENT LAW: G.S. 7A-217 describes how a small claims court may obtain jurisdiction over a defendant. That includes (1) personal service (delivering a copy of the summons and of the complaint to the defendant or by leaving copies thereof at the defendant's dwelling house or usual place of abode with some resident of suitable age and discretion), (2) registered or certified mail, signature confirmation, or designated delivery service, (3) defendant's written acceptance of service or by voluntary appearance and (4) in summary ejectment cases only, service as provided in G.S. 42-29 is also authorized.

G.S. 42-29 sets forth the procedure for summary ejectment cases. The sheriff is responsible for attempting to effect service on the defendants. It requires the officer to mail a copy of the summons and complaint to each defendant in the stamped envelope provided by the plaintiff "no later than the end of the next business day or as soon as practicable at the defendant's last known address." In addition to mailing a copy of the summons and complaint to each defendant, the officer, within five days from summons issuance, may either attempt to call the defendants to arrange for service, or if unsuccessful, then the officer must "make at least one visit to the place of abode of the defendant within five days of the issuance of the summons, but at least two days prior to the day the defendant is required to appear." The officer must either deliver a copy of the summons and complaint to the defendants personally at their dwelling or leave copies with a resident of suitable age and discretion. If no one can be found at the dwelling, then the officer is to "affix copies to some conspicuous part of the premises claimed."

BILL ANALYSIS: Senate Bill 269 provides that in any small claims action for summary ejectment and monetary damages, and where service of process has been achieved solely by first class mail and affixing the summons and complaint to the premises pursuant to G.S. 42-29, the plaintiff, or an agent may ask that the claim for summary ejectment be severed from the claim for monetary damages. If the magistrate finds that that personal service was not achieved for one or more defendants, the magistrate must sever the claim for monetary damages and proceed with the claim for summary ejectment.

If the magistrate severs the claim for monetary damages, the plaintiff may extend the action in accordance with G.S. 1A-1, Rule 4(d) (i.e. 90 days after the issuance of the original summons or 90 days after the last extension). The judgment of the magistrate in the severed claim for summary ejectment must not prejudice the claims or defenses of any party in the severed claim for monetary damages.



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Section 2 provides that Rule 4(h1) will apply if a summary ejectment claim has been severed from a claim for monetary damages. This would provide that when a proper officer returns a summons unexecuted, the plaintiff, or plaintiff's agent or attorney may cause service to be made by anyone who is not less than 21 years of age, not a party to the action, and not related by blood or marriage to a party or a person upon whom service is to be made.

EFFECTIVE DATE: This act becomes effective October 1, 2015.