

What Small Claims Magistrates Need to Know About S.L. 2017-143 (S 88)

S.L. 2017-143 (aka the “Severance Law”) is likely to keep the appellate courts interested in landlord-tenant law for a while to come, but its provisions are pretty straightforward for magistrates. The new law amends GS 7A-223 to add a new section (b1).

The new law has potential application only under the following conditions:

- The plaintiff has filed an action seeking summary ejectment and money damages.
- Service of process was accomplished by posting.
- The plaintiff asks that you sever the claim for possession and the claim for money damages.

What is required if conditions are met:

- Magistrate must make finding that at least one defendant has not been personally served and that, upon plaintiff’s request, claim for money damages has been severed.
- Magistrate hears claim for possession only and enters judgment, including findings required for clerk to enter stay of execution in event of appeal.
- If judgment is in favor of landlord, do not award costs in favor of landlord.

When severed claim for money damages appears on small claims docket:

- Magistrate should verify that all defendants have been personally served. NOTE: Service by private process server is permitted for this claim.
- Magistrate should hear claim for money damages without regard to prior action for possession.
- Enter judgment, including costs, as appropriate.

Matter of local policy: What instructions/explanation do you provide at each trial?

Unanswered legal questions: Many of the pressing questions related to this new law are of concern to clerks, who must determine how to modify recordkeeping and tracking procedures, and district court judges, who must resolve issues related to appeal. For magistrates, perhaps the most significant question is the application of the various “special rules” for summary ejectment to Case #2. Because the justification for many of these rules is that expedited procedures are necessary for landlords to accomplish rapid turnover of rental property, there’s a good argument that Case #2 is no longer a “summary ejectment action” despite sharing case number with Case #1. For this reason, there is a good legal argument for the non-applicability of rules limiting time for continuances, reserving judgment, and paying costs of appeal, as well as for requiring service of process at least five business days prior to trial.