

Note from the Codifier: The OAH website includes notices and the text of proposed temporary rules as required by G.S. 150B-21.1(a1). Prior to the agency adopting the temporary rule, the agency must hold a public hearing no less than five days after the rule and notice have been published and must accept comments for at least 15 business days.
For questions, you may contact the Office of Administrative Hearings at 984-236-1850 or email oah.postmaster@oah.nc.gov.

TITLE 08 – STATE BOARD OF ELECTIONS

Notice is hereby given in accordance with G.S. 150B-21.1(a3) that the State Board of Elections intends to adopt the rules cited as 08 NCAC 20 .0102, .0103, and amend the rule cited as 08 NCAC 20 .0101.

Codifier of Rules received for publication the following notice and proposed temporary rules on: November 29, 2023.

Public Hearing:

Date: December 14, 2023

Time: 11:00 am

Location: State Board of Elections, Dobbs Building, 3d Floor, 430 N Salisbury St, Raleigh, NC

Reason for Proposed Temporary Action: The effective date of a recent act of the General Assembly or of the U.S. Congress, cite: SL 2023-140, sec. 7(b), effective date: January 1, 2024. Pursuant to GS 150B-21.1(a)(11), the need for the State Board of Elections to adopt a temporary rule upon any abbreviated notice or hearing the agency finds practical for the following: To implement provisions of state law for which the State Board of Elections has been authorized to adopt rules, and the need for the rule to become effective immediately in order to preserve the integrity of upcoming elections and the elections process. The State Board of Elections unanimously found the following, at an open meeting conducted on November 28, 2023, regarding the use of temporary rulemaking procedures for these proposed election observer rules:

- (1) adherence to the notice and hearing requirements of permanent rulemaking would be contrary to the public interest in this instance, because it would mean that the rules could not go into effect for the next round of in-person voting, leaving obsolete observer rules in place;
- (2) the immediate adoption of the proposed rules is required to implement provisions addressing election observers that were recently enacted by the General Assembly and which the State Board has been authorized to adopt rules for;
- (3) the abbreviated notice and hearing schedule put forth in this motion are of practical necessity, to gather public input on the proposed rules in enough time to propose their adoption in advance of voting in the 2024 primary; and
- (4) the rules need to become effective immediately in order to preserve the integrity of upcoming elections and the elections process.

Comment Procedures: Comments from the public shall be directed to: Rulemaking Coordinator, PO Box 27255, Raleigh, NC 27611-7255; email rulemaking.sboe@ncsbe.gov. The comment period begins November 29, 2023 and ends December 20, 2023.

CHAPTER 20 – ELECTION OBSERVERS

08 NCAC 20 .0101 ELECTION OBSERVERS CHALLENGE TO THE APPOINTMENT OF AN OBSERVER

~~(a) Observer Lists. The chair of each political party in a county may designate two precinct specific observers to attend each voting place on Election Day and each one stop site during a primary or general election in accordance with this Rule. The precinct specific observer list may include up to eight names and shall include the times that each observer shall serve. The county party chair may designate 10 additional at large observers who may attend any voting place in the county. The list of observers for one stop must designate the names of the observers who will be present on each day of early voting and, for precinct specific observers, at each one-stop site. At large observers may serve at any one stop site. The chair of each State political party may designate up to 100 additional at large observers who are residents of the State who may attend any voting place in the State.~~

~~(b) Submission of Lists. The county party chair shall submit a written, signed list of county at large observers to the county director of elections, with two copies provided to the chair of the county board of elections, prior to 10:00 a.m. on the fifth day prior to Election Day. The county party chair shall submit a written, signed list of the observers appointed for each precinct to the chief judge of each precinct, with two copies provided to the chair of the county board of elections, prior to 10:00 a.m. on the fifth day prior to Election Day; the list may be delivered in care of the county director of elections. The county party chair shall submit the list of observers for one stop before 10:00 a.m. on the fifth day before the observer is to observe. The list of at large observers to serve on Election Day may be amended prior to Election Day to substitute one or all of the at large observers. The list of at large observers who serve during early voting may not be amended after 10:00 a.m. on the fifth day before the at large observer is to observe. The list of precinct specific observers to serve on Election Day may not be amended after 10:00 a.m. on the fifth day prior to Election Day. The State party chair shall submit the written, signed list of State at large observers by 10:00 a.m. on the fifth day prior to Election Day to the State Board, which shall disseminate the list to the county boards of elections. The list shall include the full name of each at large observer and the county in which the observer is registered. The State Board shall confirm that each State at large observer is a registered voter of the State. Party chairs may provide the lists by facsimile or email provided the letters are signed. Scanned signatures are permissible.~~

~~(c) Observers at Voting Place. No more than two precinct specific observers from each political party may be in the voting enclosure at any time. Only one at large observer from each political party may be in the voting enclosure at any time, even if no precinct specific observers are present. All observers, whether precinct specific or at large, may be relieved after serving no less than four hours; however, the total number of observers from each party cannot exceed three total observers in the voting enclosure at one time: two precinct specific observers and one county or State at large observer. An observer may leave the voting place without having served for four hours, but the observer cannot be replaced by a new observer until at least four hours have passed since the first observer began serving.~~

~~An observer who leaves the voting place for any reason may be prohibited by the chief judge from returning if the observer's return would cause a disruption in the voting enclosure.~~

~~(d) Observer Conduct. Observers who engage in prohibited conduct after receiving a warning may be required by the chief judge to leave the voting enclosure. Prohibited activities by observers include:~~

- ~~(1) Wearing or distributing campaign material or electioneering;~~
- ~~(2) Impeding or disrupting the voting process or speaking with voters or election assistants;~~
- ~~(3) Interfering with the privacy of the voter, including positioning themselves in such a way that they can view confidential voter information on poll books or laptops or standing in such a way that they can view the contents of ballots inserted into a tabulator;~~
- ~~(4) Using an electronic device to film or take photographs inside the voting enclosure;~~
- ~~(5) Taking photographs, videos, or recording a voter without the consent of the voter and the chief judge;~~
- ~~(6) Entering the voting booth area or attempting to view voted ballots;~~
- ~~(7) Boarding a vehicle containing curbside voters; and~~
- ~~(8) Providing voter assistance.~~

~~(e) Eligibility. No person who is a candidate on the ballot in a primary or general election may serve as an observer or runner in that primary or that general election. No person who serves as an observer or runner in a primary or general election may serve as a precinct official or one-stop election official in that primary or that general election.~~

~~(f) Observers for unaffiliated candidates. An unaffiliated candidate or the candidate's campaign manager may appoint two observers at each voting place as set forth in this Rule.~~

~~(g) The use of the term "chief judge" includes one-stop site managers.~~

(a) Filing of Challenges. A county board of elections may challenge the appointment of any observer appointed to serve in that county, and a chief judge of a voting place may challenge the appointment of any observer who is eligible to serve in that voting place. The challenge shall be submitted electronically or in writing to the county board of elections office before the observer is scheduled to serve. The challenge shall contain the following information:

- (1) the name of the observer;
- (2) the party or unaffiliated candidate that appointed the observer; and
- (3) the basis for the challenge pursuant to G.S. 163-45.1(f).

The county board of elections office shall immediately provide a copy of the challenge to the chair of the political party or candidate that appointed the observer.

(b) Hearing of Challenges. Upon receiving a challenge pursuant to Paragraph (a) of this Rule, the county board of elections shall hold a hearing and decide the challenge as expeditiously as possible but no later than two days after the challenge is filed. The chair of the county board of elections shall set the time of the hearing. The hearing may be held remotely, including by telephone. The county board shall provide notice of the hearing by electronic mail or telephone to the chair of the political party or the unaffiliated candidate that appointed the observer. The notice shall inform the chair of the political party or the candidate that they may waive the hearing or decline to contest the challenge, in which case no hearing shall be held, and the county board may decide the challenge, as submitted, at a meeting held at the same time as the noticed hearing. At the hearing, the county board may accept written or oral submissions from elections officials, observers, witnesses, and other individuals with pertinent information. If a majority of board members is unable to attend the meeting to consider the challenge, the chair of the county board of elections shall act on behalf of the county board of elections and decide on the challenge. The decision on the challenge shall be rendered at the meeting for which the challenge was noticed. The decision shall be reduced to writing and served the same day as the meeting, either electronically or by personal service, on the chair of the political party or on the candidate appointing the observer.

(c) Appeals on Challenges. The decision by a county board of elections on a challenge to the appointment of an observer pursuant to Paragraph (b) of this Rule may be appealed by the political party or candidate that appointed the observer. The county board's decision shall not be stayed pending appeal. The appeal shall be filed with the State Board of Elections via email to legal@ncsbe.gov no later than two hours after the county board's decision is served. The appeal shall contain an argument explaining why the county board's decision should be reversed on account of one or more of the grounds listed in G.S. 150B-51(b) and shall be signed by the person filing the appeal. A copy of the county board decision must be filed with the appeal. Upon receiving an appeal, the State Board shall decide the appeal on the basis of the record and may permit oral argument on the appeal. The appeal shall be decided as expeditiously as possible. The executive director of the State Board may inspect any appeals filed under this Paragraph and, within one business day after the receipt of an appeal, transmit a copy of the appeal to the State Board members along with a written statement indicating the executive director's recommendation either to grant or to deny the appeal. The executive director's recommendation shall become final unless any State Board member raises an oral or written objection within one calendar day, in which case the full State Board shall decide the appeal at a meeting. The decision of the State Board, or the executive director's recommendation if it becomes final, shall be served electronically on the chair of the political party or on the candidate appointing the observer.

Authority G.S. 163-22; 163-45; 163-166.6; 163-166.7; 163-22.2; 163-45.1.

08 NCAC 20 .0102 APPEAL OF REMOVAL OF AN OBSERVER FROM A VOTING SITE

(a) Filing of Appeal. The decision by a chief judge to remove an observer pursuant to G.S. 163-45.1(j) may be appealed by the chair of the political party or the candidate that appointed the observer. The appeal shall be filed with the county board of elections in the county where the observer was removed. The appeal shall be submitted electronically or in writing to the county board of elections office as follows:

- (1) If the observer was removed from an early voting site, the appeal shall be filed within one business day of when the observer was removed.

- (2) If the observer was removed from an Election Day voting site, the appeal shall be filed within two hours of when the observer was removed.

The appeal shall contain an argument explaining why the chief judge's decision should be reversed on account of one or more of the grounds listed in G.S. 150B-51(b). It shall state whether a hearing is requested and shall be signed by the person filing the appeal. The decision to remove an observer shall not be stayed pending appeal.

(b) Hearing of Appeal. Pursuant to Paragraph (a) of this Rule, the county board shall consider the appeal as follows:

- (1) If the observer was removed from an early voting site, the county board shall decide the appeal as expeditiously as possible but no later than two days after the appeal was received.
- (2) If the observer was removed from an Election Day voting site, the county board shall decide the appeal as expeditiously as possible but no later than four hours after the appeal was received.

The county board shall provide notice of the meeting at which the appeal will be decided by electronic mail or telephone to the chair of the political party or the unaffiliated candidate that appointed the observer. The meeting may be held remotely, including by telephone. The county board may accept written or oral submissions from elections officials, observers, witnesses, and other individuals with pertinent information. If no hearing is requested, the county board may decide the appeal, based on written submissions only, at a meeting held at the same time as the noticed hearing. If a majority of board members is unable to attend the meeting to consider the appeal, the chair of the county board of elections shall act on behalf of the county board of elections and decide the appeal on his or her own. The decision shall be reduced to writing and served the same day as the meeting, either electronically or by personal service, on the chair of the political party or on the candidate appointing the observer.

Authority G.S. 163-22; 163-22.2; 163-45.1.

08 NCAC 20 .0103 IDENTIFICATION OF OBSERVERS

Every appointed observer serving at a voting site pursuant to G.S. 163-45.1 shall wear an identification tag to make voters and elections officials aware of the observer's role in the voting site. The tag shall read "Observer for [Name] Party" or "Observer for Candidate [Name]" with the "[Name]" being the name of the political party or the candidate, as applicable.

Authority G.S. 163-22; 163-22.2; 163-45.1.