Please Note: This communication is either 1) only the recommendation of an RRC staff attorney as to action that the attorney believes the Commission should take on the cited rule at its next meeting, or 2) an opinion of that attorney as to some matter concerning that rule. The agency and members of the public are invited to submit their own comments and recommendations (according to RRC rules) to the Commission.

AGENCY: State Board of Elections and Ethics Enforcement

RULE CITATION: 08 NCAC 01.0104

RECOMMENDED ACTION:

Approve, but note staff's comment

X Object, based on:

Lack of statutory authority

X Unclear or ambiguous

X Unnecessary

Failure to comply with the APA

Extend the period of review

# **COMMENT:**

Staff believes that this Rule is unclear or ambiguous as written. Staff believes this Rule is ambiguous as written as it includes language such as "immediately" without providing any additional information as to the meaning of this term. In addition, Paragraph (d) provides for a "statutory penalty" without providing a specific cross-reference to say what that penalty is.

Further, this Rule contains references to statutes that no longer exist as the statutory references have been recodified.

Staff is also recommending objection with regard to necessity. Paragraphs (a) and (c) of this Rule appear to recite G.S. 163A-1413(a) and (b)(9).

1 08 NCAC 01 .0104 is readopted as published in 31:23 NCR 2311 as follows: 2 3 08 NCAC 01 .0104 PROCEDURES FOR POLITICAL COMMITTEES 4 (a) Political treasurers appointed pursuant to G.S. 163-278.7(a) must be a resident of North Carolina. 5 (b) All bank accounts, safety deposit boxes, and other depositories utilized by political committees and listed on the 6 statement of organization as required by G.S. 163-278.7(b)(7) must be maintained in North Carolina. 7 (c) As an alternative to (a) and (b) of this Rule, a political action committee may designate and appoint an assistant 8 treasurer who is a resident of North Carolina and who shall be the person upon whom service and process may be 9 served and who shall be responsible for the production in North Carolina of all financial records of the political 10 committee. 11 (d) Whenever a political committee or referendum committee shall fail to file with the State Board of Elections any 12 report required to be filed under the provisions of G.S. 163-278.9 or G.S. 163-278.9A, the Board, by certified mail, 13 shall issue a formal NOTICE OF NONCOMPLIANCE to the political treasurer of said committee and shall order that 14 the report be filed immediately. In the event said committee does not file its report within 20 days of the issuance of 15 the NOTICE OF NONCOMPLIANCE, the Board, by certified mail, shall issue NOTICE OF TERMINATION OF 16 ACTIVE STATUS, which shall render said committee ineligible to receive or make contributions until such time as 17 it has filed the delinquent report and has satisfied any statutory penalty incurred as a result of noncompliance with the 18 provisions of Article 22A of Chapter 163. 19 20 Authority G.S. 163-278.7; 163-278.8; 163-278.21; 163-278.22; 163-278.23; History Note: 21 163-278.27; 22 Eff. December 1, 1982; 23 Amended Eff. February 1, 1990. 24 Readopted Eff. September 1, 2018.

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AGENCY: State Board of Elections and Ethics Enforcement

RULE CITATION: 08 NCAC 02 .0110

RECOMMENDED ACTION:

Approve, but note staff's comment

X Object, based on:

Lack of statutory authority

X Unclear or ambiguous

Unnecessary

Failure to comply with the APA

Extend the period of review

# **COMMENT:**

Staff believes this Rule is unclear or ambiguous. Staff believes this Rule is ambiguous as it contains several ambiguous terms including "should", "good cause", actual notice", "as soon as possible", "reasonable and relevant", and "timely" without providing any additional clarifying information.

Further, in (b), the Board has indicated that they "may not consider election protests not filed in time", but provides no additional information as to how this will be decided.

1 2 3

## 08 NCAC 02 .0110 ACTIONS OF COUNTY BOARD AS TO ELECTION PROTESTS

- 4 (a) The county board shall deliver or place in the mail, a copy of an election protest form and any attachments to it, 5 to the State Board of Elections-within 24 hours after it is filed. Faxing the protest, with attachments, on that same day
- 6 it was filed to the State Board shall constitute the required delivery. Sending the protest and attachments, by e-mail,
- 7 on the same day it was filed shall also constitute the required delivery.
- 8 (b) The county board may not consider election protests not filed in time, but shall refer all such untimely protests,
- 9 along with copies of the protest and attachments, to the State Board of Elections office for consideration of a possible
- hearing by the State Board of Elections under G.S. 163 182.12163A-1180.
- 11 (c) If after preliminary consideration of a protest, the county board determines that a hearing should be held as
- authorized by G.S. 163–182.10163A-1178, the board shall set the hearing no later than ten business days from the date
- of the preliminary consideration, and shall start no earlier than 8:00 a.m. and no later than 8:00 p.m. at any location
- set by the county board of elections. The county board may continue hearings for good cause. Only for good cause
- and upon informing the State Board of Elections-office, may a hearing be set on or continued to a weekend day or
- 16 holiday.

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- 17 (d) Notice of hearing as required by G.S. 163 182.10 (b)(2)163A-1178(b)(2) shall be given at least three business
  - prior to the day of the hearing, and the notice required shall be actual notice by any means chosen by the county board.
  - Any oral notice of the hearing shall be followed as soon as possible with a written notice. The oral notice shall
- 20 constitute valid notice meeting the three-day notice requirement.
  - (1) Upon a reasonable and relevant request by a protester or interested person, the chair or any two members of the county board may issue subpoenas for persons or documents. Such subpoenas shall
  - be served in the same matter as allowed in the North Carolina Rules of Civil Procedure.
    - (2) The county board shall notify the person protesting, any affected candidate, and any affected
      - officeholder of its decision in a protest hearing no later than 5:00 p.m. the next day after the
- 26 conclusion of the hearing itself. The board shall file at the board office a written decision within the
- 27 mandates of G.S. 163 182.10 (d) 163A-1178(d) by 5:00 p.m. five business days after the oral
- decision is given to the person filing the protest. Such written decision shall be served by any means
- of actual delivery upon the protestor and any affected candidate or officeholder within 24 hours after
- being filed at the board office. Nothing herein shall discourage more prompt decisions and written
- 31 orders.
- 32 (3) All election protest hearings before county boards shall be recorded by a court reporter. The hearing
- need not be transcribed unless the board's decision is appealed. Upon notice of appeal to the State
- Board of an election protest, the county board shall cause the record of the hearing to be transcribed
- and delivered to the State Board, at the county board's expense, within seven business days of the
- notice of appeal. A county board may cause hearings, that on their face do not present merit to be
- 37 recorded by mechanical means and not by court reporter only with prior permission of the Executive

4 1 of 2

1		Director of the State Board of Elections. Any non-transcripted record of the county hearings may
2		be destroyed 60 days after the date of hearing if not appealed, or 60 days after the entry of any final
3		order or decision in an appealed hearing. Transcripts of hearings shall be kept for two years after
4		their creation.
5	(4)	If the State Board sets an appeal for hearing, it shall designate who shall appear on behalf of the
6		county board.
7	(e) A county b	oard of elections shall timely hear and decide all protests, unless (1) the protest is administratively
8	dismissed pursu	ant to 08 NCAC 02 .0114 or (2) the county board of elections receives alternative instructions from
9	the State Board	issued under G.S. 163-182.12163A-1180. If a protest does not concern the manner in which votes
10	were counted or	r results tabulated, a county board of elections shall not delay canvass in order to hear the protest. A
11	protest that alleg	ges the occurrence of an election law violation regarding an insufficient number of votes to change the
12	outcome of a co	ontest within the jurisdiction of a county board of elections shall not delay canvass by a county board
13	of elections.	
14		
15	History Note:	Authority G.S. <del>163-22</del> <u>163A-741</u> ; <del>163-182.10163-182-10</del> <u>163A-1178</u> ;
16		Temporary Adoption Eff. April 15, 2002;
17		Eff. August 1, 2004.
18		Readopted Eff. September 1, 2018.
19		

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AGENCY: State Board of Elections and Ethics Enforcement

RULE CITATION: 08 NCAC 02 .0111

RECOMMENDED ACTION:

Approve, but note staff's comment

X Object, based on:

Lack of statutory authority

X Unclear or ambiguous

Unnecessary

Failure to comply with the APA

Extend the period of review

# **COMMENT:**

Staff believes this Rule is ambiguous as it requires a "timely" filing, without providing any additional information regarding timing requirements.

Further it notes that "this form should not be used to challenge the registration..." It is unclear to staff whether this is intended to be a requirement or an aspirational statement that does not meet the definition of a Rule.

1 2	08 NCAC 02 .0111 is readopted with changes as publis	shed in 31:23 NCR 2313-18 as follows:
3	08 NCAC 02 .0111 ELECTION PROTEST F	ORM
4		of Article <u>15A20</u> shall complete and timely file the following
5	form. Please note this form should not be used to ch	allenge the registration of an individual voter or to report an
6	incident other than an irregularity affecting the outcom	e of an election.
7		
8	ELECTI	ON PROTEST
9	(Use of this form is required	by G.S. <del>163-182.9(c)</del> 163A-1177(c)
10		
11	This form must be filed with the county board of election	ns within the timeframes set out in G.S. <del>163-182.9 (b)(4)</del> 163A-
12	1177(b)(4). Please print or type your answers. Use ac	lditional sheets if needed to answer the below questions fully.
13	Number the pages of all additional sheets. Please note the	hat filings will be a public record. Please redact all confidential
14	information, such as date of birth, Social Security number	ber, and driver's license number.
15		
16	Respond to all prompts. Failure to complete this form	as required may result in the dismissal of your protest. Attach
17	additional sheets as necessary, including all exhibits	and supplemental documents. All attachments are deemed
18	incorporated and covered under the Protest Certificatio	n.
19		
20	PROTESTOR	
21		
22	1. Provide your preferred contact information:	
23	Name:	County of Residence:
24	Email:	Phone:
25	Mailing	Address:
26		
27		
28	NOTE: You will be deemed to consent to serv	rice at all of the above addresses (including email), unless you
29	attach an addendum indicate otherwise.	
30		
31	2. Are you represented by counsel? ☐ Yes ☐	No
32		
33	NOTE: If you answered Yes, above, your	counsel must complete and you must attach the Counsel
34	Certification Addendum.	
35		
36		
37	3. Mark all that describe you:	

1 of 8 7

1	☐ Candidate for the office of			
2	☐ Registered voter eligible to participate in the protested election contest			
3	☐ Neither of the above*			
4 5	*If you select this option, you are not eligible to file a protest.			
6	PROTEST SCOPE			
7	11012012			
8	4. List all election contests subject to your protest	and calculate the margin of votes separating the apparent winner		
9		response does not waive your right to contest the validity of the		
10		ontests on the ballot, you must include the vote margin for each		
11	contest.			
12				
	Protested Contest(s)	Current Vote Margin		
		(subtract runner-up totals from apparent winner's totals)		
	Example: Mayor of Townsville	75		
13				
14				
15	5. This protest alleges ( <i>select at least one</i> ):			
16 17	☐ A defect in the manner by which votes were counted or results tabulated sufficient to cast doubt on the appare results of the election.			
18	☐ A violation of election law, irregularity, or	misconduct sufficient to cast doubt on the apparent results		
19	of the election.			
20				
21	FACTUAL BASIS & LEGAL ARGUMENT			
22				
23	6. Provide all factual allegations in support of your	protest. If any fact you allege is outside the scope of your personal		
24	knowledge, you may attach affidavits from those who have personal knowledge of that fact. All facts you allege i			
25	•	ate to the best of your knowledge, and brought in the sincere belief		
26	that the facts alleged form a good faith basis to prot	est the conduct and results of the election.		
27				
28				
29				
30	- <del></del>			

8 2 of 8

	tute or case, administrative rule or decisions, and election policy or procedure that supports your clair
set out under P	
RELIEF	
9. What effect	
n the proteste	do you believe the facts alleged in response to Prompt 6, if proven, will have on the electoral outcom
Prompt 4.	
=	
☐ The elect	do you believe the facts alleged in response to Prompt 6, if proven, will have on the electoral outcome d contest(s)? Your response should account for the current vote margin calculated in response to toral outcome of the protested contest(s) will change.  toral outcome of the protested contest(s) will not change.
☐ The elect	d contest(s)? Your response should account for the current vote margin calculated in response to toral outcome of the protested contest(s) will change.

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Т	
2	
3	
4	10. What relief do you seek?
5	☐ Correct the vote count
6	☐ A new election
7	□ Other:
8	
9	
10	ASSISTANCE
11	
12	11. List all persons who assisted you in preparing the contents of this protest and indicate the nature of the assistance
13	provided:
14	
15	
16	
17	
18	
19	Note: For protestors represented by an attorney, this protest is the initial filing in a <i>proceeding</i> as defined by N.C.
20	State Bar Rules. See 27 N.C.A.C. 02 Rule 1.00(n).
21	
22	12. Has any candidate, political party, organization, or person acting on behalf of the same requested that you bring
23	this protest?
24	□ Yes.
25	□ No.
26	
27	13. Have you received any financial or other benefit or promise of future financial or other benefit in exchange for
28	filing this protest?
29	$\Box$ Yes.
30	□ No.
31	
32	
33	AFFECTED PARTIES & SERVICE
34	
35	You must serve copies of all filings on every person with a direct stake in the outcome of this protest ("Affected
36	Parties"). Affected Parties include every candidate seeking nomination or election in the protested contest(s) listed
37	under Prompt 4, not only the apparent winner and runner-up. If a protest concerns the eligibility or ineligibility of

10 4 of 8

1	particular voters, all such voters are Affected Parties and must be served. Address information for registered voters			
2	is available from the county board of elections or using the Voter Lookup at www.ncsbe.gov.			
3				
4	Materials may be served by personal delivery, transmittal through U.S. Mail or commercial carrier service to the			
5	Affected Party's mailing address of record on file with the county board of elections or the State Board of Elections,			
6	or by any other means affirmatively authorized by the Affected Party. If you know the Affected Party is represented			
7	by an attorney, service must be made on his or her counsel. Service must occur within one (1) business day of filing			
8	materials with the county board of elections. If service is by transmittal through the U.S. Mail or commercial carrier			
9	service, service will be complete when the properly addressed, postage-paid parcel is deposited into the care and			
10	custody of the U.S. Mail or commercial carrier service. It is your responsibility to ensure service is made on all			
11	Affected Parties.			
12				
13	14. List all Affected Parties, including their service address:			
14				
15	Affected Party Service Address			
16				
17				
18				
19				
20				
21				
22				
23				
24	PROTESTOR CERTIFICATION			
25				
26	15. By signing this protest application, you affirm the following:			
27	I,(full name), swear, under penalty of perjury, that the information provided in this protest			
28	filing is true and accurate to the best of my knowledge, and that I have read and understand the following:			
29				
30	(initial)			
31	I have reviewed the statutes and administrative rules governing election protests, including all deadlines.			
32	My protest must originate with a filing at the county board of elections.			
33	I must timely serve all Affected Parties.			
34	I must prove by <i>substantial evidence</i> either the existence of a defect in the manner by which votes were			
35	counted or results tabulated or the occurrence of a violation of election law, irregularity, or misconduct,			
36	either of which were sufficient to cast doubt on the apparent results of the election.			
37	It is a crime to interfere unlawfully with the conduct and certification of an election.			

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1	It is a crime to interfere unlawfully with the ability of a qualified individual to vote and to have that vote			
2	counted in the election.			
3	The facts I allege in connection with this protest are true and accurate to the best of my knowledge, and I			
4	have a good faith basis to protest the conduct and results of the election.			
5				
6	Submitting fraudulently or falsely completed declarations is a Class I felony under Chapter 163 <u>A</u> of the General			
7	Statutes. This notice is provided pursuant to S.L. 2013-381, s. 5.4.			
8				
9				
10	Signature of Protestor: Date:			
11	(This signature must be signed in the presence of a notary)			
12				
13				
14				
15	State of North Carolina, County of			
16 17 18	Sworn to (or affirmed) and subscribed before me this the day of			
19 20 21	(Official Seal) Official Signature of Notary			
22	, Notary Public			
23 24	Printed Name			
25	My commission expires:			
26				
27 28				
29	Data/Time Filed with County Deard			
30	Date/Time Filed with County Board			
31	(completed by the county board)			
32	(completed by the county board)			
33	<b>NOTE:</b> The county board must provide the State Board with a complete copy of a filed protest within one business			
34	day after it is filed. In addition, the county board shall provide a copy of the election audit with this copy of the protest.			
35	day arter it is fried. In addition, the county board shan provide a copy of the election addit with this copy of the protest.			
36	Please direct any questions to your county board of elections or the North Carolina State Board of Elections & Ethics			
37	Enforcement, PO Box 27255, Raleigh, NC 27611-7255.			
38	Emorcement, 10 Box 27255, Raicigii, NC 27011-7255.			
JU				

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	C	COUNSEL OF RECORD ADDENDUM
If you answered	d Yes to Prompt 2 on th	e above, your attorney must complete this form and you must file it with your
Election Protes	t Application.	
Attorney Must	complete all of the follo	owing:
	:	
	:	
Attorney Email	:	Attorney Phone:
☐ I am a mem	ber in good standing wi	th the North Carolina State Bar
☐ I am not lice	nsed to practice law in N	orth Carolina but am a member in good standing in
(State or Distri	ct of Columbia), and de	o hereby apply to appear pro hac vice and certify that I have or will file all
appropriate doc	uments required under	G.S. <del>§ 84</del> 4.1.
Law Firm:		
Bar Number:		
I (choose one)	□ am □ am not:	
Subjec	et to any order of any co	ourt or administrative agency disbarring, suspending, enjoining, restraining, or
otherw	vise restricting me in the	e practice of law. If you are subject to any orders, explain in the space below.
•		is provided above. I have read and understand the laws governing election utes Chapter 163A and Title 8 of the N.C. Administrative Code. I swear/attest
that the informa	ntion I have provided in	this Addendum is true and accurate to the best of my knowledge.
Attorney Signar	ture	Date
History Note:	Authority G.S. <del>163-2.</del>	<u>2163A-741; <del>163-182.9</del>163A-1177</u> ;
	Temporary Adoption	Eff. April 15, 2002;
	Eff. August 1, 2004.	

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<u>Readopted Eff. September 1, 2018.</u>

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AGENCY: State Board of Elections and Ethics Enforcement

RULE CITATION: 08 NCAC 02 .0112

RECOMMENDED ACTION:

Approve, but note staff's comment

X Object, based on:

Lack of statutory authority

X Unclear or ambiguous

Unnecessary

Failure to comply with the APA

Extend the period of review

## **COMMENT:**

Staff believes this Rule is unclear as written as it contains references to statutes that no longer exist as the statutory references contained in this Rule have been recodified.

1 08 NCAC 02 .0112 is readopted as published in 31:23 NCR 2311 as follows: 2 3 08 NCAC 02 .0112 APPEAL TO THE STATE BOARD OF ELECTIONS 4 All appeals of a county board of election protest decision must use the following form: 5 6 APPEAL OF ELECTION PROTEST TO STATE BOARD OF ELECTIONS 7 (Use of this form is required by G. S. 163-182.11 (a)) 8 9 A copy of this appeal must be given to the county board of elections within 24 hours (weekends and holidays excluded) 10 after the county board files its written decision at its office. This same appeal must be filed with or mailed to the State 11 Board of Elections by the end of the second day following the county board decision if the protest involves a first 12 primary. As to a protest of any other election, this appeal must be filed or deposited in the mail by the end of the fifth day following the county board decision. See G.S. 163-182.11 (a). A copy of the original election protest form with 13 14 attachments must be filed with this appeal. A copy of the county board decision must be filed with this appeal. The 15 county board will provide the record on appeal. As many additional sheets as are necessary to answer the questions below may be attached, but they must be numbered. Please print or type your answers. 16 17 18 1. Full name, mailing address, home and business phone, fax number, and e-mail address of undersigned. 19 20 21 2. Are you the person who filed the original protest, a candidate or office holder adversely affected by the county 22 decision, or someone else whose interest has been adversely affected by the county decision? 23 24 25 3. State the date, place, kind of election, and results of the election protested (if different from the information on the 26 election and its results as set out in the attached original protest form). 27 28 29 4. State the name, mailing address, home phone, and business phone of all candidates involved in the protested 30 election. 31 32 33 5. State the date of the county board hearing 34 6. State the legal and factual basis for your appeal. 35 36

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are the state of t		
tify and state why it was not presented to the county board. Why do you think the State Board of		
Elections should consider it?		
ne State Board will make its decision in an appeal based upon the record from the county board. If you		
rd in this matter to be supplemented, additional evidence to be considered, or a completely new hearing,		
ch desire and why it should be allowed in this appeal. See G.S. 163-182.11 (b).		
do you seek? Why?		
read and reviewed G.S. 163-182.11 through G.S. 163-182.14 and the current North Carolina State		
ions regulations on appeals of election protests?		
copy of the original protest and the county board decisions, this appeal includes pages of additional		
pages of exhibits and documents not included in the original protest and decision.		
project of vinited and accountance new medical in the original project and account		
erson Appealing Date Appeal Signed		
erson Appealing Date Appeal Signed		
erson Appealing Date Appeal Signed		
Date Appeal Signed  Date appeal received by State Board of Elections		
Date appeal received by State Board of Elections		
Date appeal received by State Board of Elections		
Date appeal received by State Board of Elections  (To be entered by the State Board of Elections staff)		
Date appeal received by State Board of Elections  (To be entered by the State Board of Elections staff)  real to, or it you have questions contact: North Carolina State Board of Elections, P.O. Box 27255,		
Date appeal received by State Board of Elections  (To be entered by the State Board of Elections staff)  real to, or it you have questions contact: North Carolina State Board of Elections, P.O. Box 27255,		
Date appeal received by State Board of Elections  (To be entered by the State Board of Elections staff)  real to, or it you have questions contact: North Carolina State Board of Elections, P.O. Box 27255, 7611-7255, (919) 733-7173.		
Date appeal received by State Board of Elections  (To be entered by the State Board of Elections staff)  real to, or it you have questions contact: North Carolina State Board of Elections, P.O. Box 27255, 7611-7255, (919) 733-7173.  Authority G.S.163-22; 163-182.11;		

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AGENCY: State Board of Elections and Ethics Enforcement

RULE CITATION: 08 NCAC 02 .0113

RECOMMENDED ACTION:

Approve, but note staff's comment

X Object, based on:

Lack of statutory authority

X Unclear or ambiguous

Unnecessary

Failure to comply with the APA

Extend the period of review

## **COMMENT:**

Staff believes this Rule is unclear as written as it contains references to statutes that no longer exist as the statutory references contained in this Rule have been recodified.

1	08 NCAC 02 .01	13 is readopted as published in 31:23 NCR 2311 as follows:
2		
3	08 NCAC 02 .01	13 NEW ELECTIONS ORDERED BY STATE BOARD OF ELECTIONS
4	(a) Eligibility to	vote in a new election shall be determined by the voter's eligibility and circumstances at the time of
5	the new election.	
6	(b) Eligibility to	register to vote and to vote in a new election shall be governed by G.S. 163-82.6.
7	(c) The date of a	any new non-municipal election, in which absentee ballots are to be required or allowed, shall be set
8	by the State Boa	rd no earlier than 75 days after the date of the order for a new election. In the case of a municipal
9	election where a	bsentee ballots are allowed, a new election shall not be set earlier than 55 days after the date of the
10	order for a new e	lection. This is required in order to provide sufficient time for absentee ballots to be prepared, printed
11	and made availab	ble and for "one-stop" voting to be provided within the mandates set out in G.S. 163, Article 20.
12	(d) The date of	any new election ordered in a county covered by the preclearance requirements of Section 5 of the
13	Voting Rights A	ct of 1965 shall be set no earlier than 75 days from the date of the new election order in order to
14	prepare, submit,	and obtain preclearance approval.
15	(e) If a new prin	nary is ordered by the State Board, no person who voted in the initial primary of one party shall be
16	allowed to vote i	in the new primary of another party. County board documentation of the voter's participation in the
17	initial primary sh	all be prima facie evidence sufficient to disallow the voter from participating in the primary of another
18	party in the new	election.
19		
20	History Note:	Authority G.S. 163-22; 163-182.13(c);
21		Temporary Adoption Eff. April 15, 2002;
22		Eff. August 1, 2004.
23		Readopted Eff. September 1, 2018.

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AGENCY: State Board of Elections and Ethics Enforcement

RULE CITATION: 08 NCAC 03.0101

RECOMMENDED ACTION:

Approve, but note staff's comment

X Object, based on:

Lack of statutory authority

X Unclear or ambiguous

Unnecessary

Failure to comply with the APA

Extend the period of review

## COMMENT:

Staff believes this Rule is ambiguous as written as it contains terms such as "brief", "intelligent", and "official" without providing any additional information.

Further, the history note contains references to statutes that no longer exist as the statutory references contained in this Rule have been recodified.

1	08 NCAC 03 .0	101 is readopted as published in 31:23 NCR 2311 as follows:
2		
3	08 NCAC 03 .0	101 VOTER COMPLAINTS
4	Any elector des	siring to prefer charges with the State Board of Elections against a member of any county board of
5	elections may de	o so by filing with the board a statement, in writing, verified by the oath of the elector, which statement
6	must contain:	
7	(1)	the name and post office address of the official against whom the charges are preferred;
8	(2)	a brief, intelligent statement of the facts constituting the official misconduct alleged, with a reference
9		to the date and place of such misconduct;
10	(3)	the names and addresses, so far as may be known to the persons filing the charges, of persons who
11		have knowledge or information of the matters referred to in the charges as filed.
12		
13	History Note:	Authority G.S. 163-22;
14		Eff. March 12, 1976.
15		Readopted Eff. September 1, 2018.

Please Note: This communication is either 1) only the recommendation of an RRC staff attorney as to action that the attorney believes the Commission should take on the cited rule at its next meeting, or 2) an opinion of that attorney as to some matter concerning that rule. The agency and members of the public are invited to submit their own comments and recommendations (according to RRC rules) to the Commission.

AGENCY: State Board of Elections and Ethics Enforcement

RULE CITATION: 08 NCAC 03 .0102

RECOMMENDED ACTION:

Approve, but note staff's comment

X Object, based on:

Lack of statutory authority

X Unclear or ambiguous

Unnecessary

Failure to comply with the APA

Extend the period of review

# **COMMENT:**

Staff believes this Rule is unclear as includes language such as "if the charges thus filed show" and "by such other methods as the board may adopt" without providing any additional information as to how these determinations will be made. Also, this Rule contains terms such as "official" and "intentional" without providing any additional clarifying information.

Further, the history note contains references to statutes that no longer exist as the statutory references contained in this Rule have been recodified.

1	08 NCAC 03 .0	102 is readopted as published in 31:23 NCR 2311 as follows:
2		
3	08 NCAC 03 .0	102 CHARGES
4	If the charges th	nus filed show prima facie a violation of the election law, a breach of official duty, a participation in
5	intentional irreg	ularities, incapacity or incompetency to discharge the duties of the office, the State Board of Elections
6	will cause notic	e thereof to be given to the official against whom the charges are preferred, by mail or by such other
7	methods as the	board may adopt, of such charges and name a day and place for the hearing thereof.
8		
9	History Note:	Authority G.S. 163-22;
10		Eff. March 12, 1976.
11		Readopted Eff. September 1, 2018.

Please Note: This communication is either 1) only the recommendation of an RRC staff attorney as to action that the attorney believes the Commission should take on the cited rule at its next meeting, or 2) an opinion of that attorney as to some matter concerning that rule. The agency and members of the public are invited to submit their own comments and recommendations (according to RRC rules) to the Commission.

AGENCY: State Board of Elections and Ethics Enforcement

RULE CITATION: 08 NCAC 03 .0103

RECOMMENDED ACTION:

Approve, but note staff's comment

X Object, based on:

Lack of statutory authority

X Unclear or ambiguous

Unnecessary

Failure to comply with the APA

Extend the period of review

## COMMENT:

Staff believes this Rule is unclear as it includes language such as "unless otherwise ordered or permitted by the Board" without providing any additional information as to how this determination will be made.

Further, the history note contains references to statutes that no longer exist as the statutory references contained in this Rule have been recodified.

1	08 NCAC 03 .0	103 is readopted as published in 31:23 NCR 2311 as follows:
2		
3	08 NCAC 03 .0	103 HEARING
4	At such hearing	g the persons preferring such charges shall appear, and by affidavits, unless otherwise ordered or
5	permitted by the	e board, present the evidence tending to support the charges. Such affidavits must be served on the
6	official against	whom such charges have been filed, by the person filing the charges, at least three days before the time
7	set for the heari	ng thereof.
8		
9	History Note:	Authority G.S. 163-22;
10		Eff. March 12, 1976.
11		Readopted Eff. September 1, 2018.

Please Note: This communication is either 1) only the recommendation of an RRC staff attorney as to action that the attorney believes the Commission should take on the cited rule at its next meeting, or 2) an opinion of that attorney as to some matter concerning that rule. The agency and members of the public are invited to submit their own comments and recommendations (according to RRC rules) to the Commission.

AGENCY: State Board of Elections and Ethics Enforcement

RULE CITATION: 08 NCAC 03.0104

RECOMMENDED ACTION:

Approve, but note staff's comment

X Object, based on:

Lack of statutory authority

X Unclear or ambiguous

Unnecessary

Failure to comply with the APA

Extend the period of review

## **COMMENT:**

Staff believes this Rule is unclear as it includes language such as "unless otherwise ordered by the Board" without providing any additional information as to how this determination will be made. Also, this Rules requires that affidavits "be served" with no additional information as to how service is required to be effectuated.

Further, the history note contains references to statutes that no longer exist as the statutory references contained in this Rule have been recodified.

1	08 NCAC 03 .0	104 is readopted as published in 31:23 NCR 2311 as follows:
2		
3	08 NCAC 03 .0	0104 RIGHTS
4	The official aga	inst whom charges are preferred shall have the right to be heard by affidavit, or otherwise as the board
5	may direct, in d	enial, rebuttal, explanation, or extenuation of the charges.
6		
7	History Note:	Authority G.S. 163-22;
8		Eff. March 12, 1976.
9		Readopted Eff. September 1, 2018.

Please Note: This communication is either 1) only the recommendation of an RRC staff attorney as to action that the attorney believes the Commission should take on the cited rule at its next meeting, or 2) an opinion of that attorney as to some matter concerning that rule. The agency and members of the public are invited to submit their own comments and recommendations (according to RRC rules) to the Commission.

AGENCY: State Board of Elections and Ethics Enforcement

RULE CITATION: 08 NCAC 03 .0105

RECOMMENDED ACTION:

Approve, but note staff's comment

X Object, based on:

Lack of statutory authority

X Unclear or ambiguous

Unnecessary

Failure to comply with the APA

Extend the period of review

## COMMENT:

Staff believes this Rule is unclear as written as it contains references to statutes that no longer exist as the statutory references contained in this Rule have been recodified.

1	08 NCAC 03 .0	105 is readopted as published in 31:23 NCR 2311 as follows:
2		
3	08 NCAC 03 .0	105 SCOPE
4	The inquiry sha	all be confined to the charges as filed, but the board, as a matter of course, may of its own motion
5	investigate any	matter coming to its attention or notice as the result of hearing said charges.
6		
7	History Note:	Authority G.S. 163-22;
8		Eff. March 12, 1976.
a		Readonted Eff Sentember 1 2018

Please Note: This communication is either 1) only the recommendation of an RRC staff attorney as to action that the attorney believes the Commission should take on the cited rule at its next meeting, or 2) an opinion of that attorney as to some matter concerning that rule. The agency and members of the public are invited to submit their own comments and recommendations (according to RRC rules) to the Commission.

AGENCY: State Board of Elections and Ethics Enforcement

RULE CITATION: 08 NCAC 03.0106

RECOMMENDED ACTION:

Approve, but note staff's comment

X Object, based on:

Lack of statutory authority

X Unclear or ambiguous

Unnecessary

Failure to comply with the APA

Extend the period of review

## COMMENT:

Staff believes this Rule is ambiguous as it includes language such as "brief" without providing any additional clarifying information.

Further, the history note contains references to statutes that no longer exist as the statutory references contained in this Rule have been recodified.

1	08 NCAC 03 .0106 is readopted as published in 31:23 NCR 2311 as follows:		
2			
3	08 NCAC 03 .0	106 WITNESSES	
4	Either party may	y make application to the chairman of the board for subpoenas for witnesses to be heard orally at such	
5	hearing; but such application, in addition to listing the names of the witnesses, shall contain a brief statement of what		
6	is expected to b	e proved by each witness and the reason for not obtaining the affidavit of such witness or witnesses.	
7	If, upon such a	pplication for subpoenas, a majority of the board is of the opinion that the oral evidence of such	
8	witnesses will b	e helpful to the board, subpoena will be issued for the personal appearance of the witnesses, and if	
9	required by the	subpoena, the witness shall produce such books, papers, or records as may be called for in said	
10	subpoena.		
11			
12	History Note:	Authority G.S. 163-22;	
13		Eff. March 12, 1976.	
14		Readopted Eff. September 1, 2018.	

Please Note: This communication is either 1) only the recommendation of an RRC staff attorney as to action that the attorney believes the Commission should take on the cited rule at its next meeting, or 2) an opinion of that attorney as to some matter concerning that rule. The agency and members of the public are invited to submit their own comments and recommendations (according to RRC rules) to the Commission.

AGENCY: State Board of Elections and Ethics Enforcement

RULE CITATION: 08 NCAC 03 .0201

**RECOMMENDED ACTION:** 

Approve, but note staff's comment

X Object, based on:

Lack of statutory authority

X Unclear or ambiguous

Unnecessary

Failure to comply with the APA

Extend the period of review

## COMMENT:

Staff believes this Rule is unclear as written as it contains references to statutes that no longer exist as the statutory references contained in this Rule have been recodified.

1	08 NCAC 03 .0	201 is readopted as published in 31:23 NCR 2311 as follows:
2		
3	08 NCAC 03 .0	201 FILING CHARGES: ADOPTION OF PROCEDURES
4	Any elector may	y file with the chairman of any county board of elections charges against any precinct election official,
5	appointed pursu	ant to G.S. 163-41, and the county board of elections shall, in the hearing of such charges, adopt the
6	same procedure	as is prescribed in Section .0100 of this Chapter for hearing of charges filed with the State Board of
7	Elections agains	st a member of the county board of elections.
8		
9	History Note:	Authority G.S. 163-22;
10		Eff. March 12, 1976.
11		Readopted Eff. September 1, 2018.

Please Note: This communication is either 1) only the recommendation of an RRC staff attorney as to action that the attorney believes the Commission should take on the cited rule at its next meeting, or 2) an opinion of that attorney as to some matter concerning that rule. The agency and members of the public are invited to submit their own comments and recommendations (according to RRC rules) to the Commission.

AGENCY: State Board of Elections and Ethics Enforcement

RULE CITATION: 08 NCAC 03 .0202

**RECOMMENDED ACTION:** 

Approve, but note staff's comment

X Object, based on:

Lack of statutory authority

X Unclear or ambiguous

Unnecessary

Failure to comply with the APA

Extend the period of review

## COMMENT:

Staff believes this Rule is ambiguous as it includes language such as "forthwith", "immediately", and "at once" without providing any additional information as to the meaning of these terms. Also, this Rule indicates that the Board "may" hear a matter "'de novo,' or, in the judgement of the Board may be dismissed, remanded to the county or heard on petition and affidavit…" without providing information as to how this determination will be made.

Further, the history note contains references to statutes that no longer exist as the statutory references contained in this Rule have been recodified.

1	08 NCAC 03 .0	202 is readopted as published in 31:23 NCR 2311 as follows:	
2			
3	08 NCAC 03 .0	202 HEARING DATE AND DISPOSITION	
4	Upon the filing	of such charges with the county board of elections, the chairman of such board shall forthwith set the	
5	date for the hearing of such charges and immediately transmit to the State Board of Elections a copy of such charges		
6	advising this board of the date set for the hearing, and at once, after the hearing, advise the state board of disposition		
7	made by the county board of the charges thus heard.		
8	From the decision of the county board the petitioning elector, or responding official, may appeal to the State Board of		
9	Elections, where	e the matter may be heard "de novo," or, in the judgment of the board may be dismissed, remanded to	
10	the county or he	eard on petition and affidavit by the State Board of Elections.	
11			
12	History Note:	Authority G.S. 163-22;	
13		Eff. March 12, 1976.	
14		Readopted Eff. September 1, 2018.	

Please Note: This communication is either 1) only the recommendation of an RRC staff attorney as to action that the attorney believes the Commission should take on the cited rule at its next meeting, or 2) an opinion of that attorney as to some matter concerning that rule. The agency and members of the public are invited to submit their own comments and recommendations (according to RRC rules) to the Commission.

AGENCY: State Board of Elections and Ethics Enforcement

RULE CITATION: 08 NCAC 03 .0301

**RECOMMENDED ACTION:** 

Approve, but note staff's comment

X Object, based on:

Lack of statutory authority

X Unclear or ambiguous

Unnecessary

Failure to comply with the APA

Extend the period of review

## COMMENT:

Staff believes this Rule is ambiguous as it includes language such as "prompt", "efficient", and "proper" without providing any additional information as to the meaning of these terms. Also, this Rule appears to create a waiver that will enable the Board to "suspend these rules" without providing any factors that the Board will use in making that determination.

Further, the history note contains references to statutes that no longer exist as the statutory references contained in this Rule have been recodified.

1	08 NCAC 03 .0	301 is readopted as published in 31:23 NCR 2311 as follows:
2		
3	08 NCAC 03 .0	301 SUMMARY INVESTIGATION
4	The State Boar	d of Elections may, whenever the circumstances of any matter pending before it may indicate the
5	necessity theref	or, suspend these rules and proceed in a summary manner or make any inquiry or investigation which
6	in its judgment	may be necessary or desirable for the prompt and efficient enforcement of the laws pertaining to
7	elections, and the	ne proper performance of their duties by election officials.
8		
9	History Note:	Authority G.S. 163-22;
10		Eff. March 12, 1976.
11		Readopted Eff. September 1, 2018.

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Please Note: This communication is either 1) only the recommendation of an RRC staff attorney as to action that the attorney believes the Commission should take on the cited rule at its next meeting, or 2) an opinion of that attorney as to some matter concerning that rule. The agency and members of the public are invited to submit their own comments and recommendations (according to RRC rules) to the Commission.

AGENCY: State Board of Elections and Ethics Enforcement

RULE CITATION: 08 NCAC 03.0302

**RECOMMENDED ACTION:** 

Approve, but note staff's comment

X Object, based on:

Lack of statutory authority

X Unclear or ambiguous

X Unnecessary

Failure to comply with the APA

Extend the period of review

## **COMMENT:**

Staff believes that this Rule is unnecessary as it does not provide any additional requirements or information beyond those contained in G.S. 163A-741(d).

## § 163A-741. Powers and duties of State Board.

(d) The State Board shall investigate when necessary or advisable, the administration of election laws, frauds and irregularities in elections in any county and municipality and special district, and shall report violations of the election laws to the Attorney General or district attorney or prosecutor of the district for further investigation and prosecution.

If the RRC determines that this Rule is necessary, Staff believes that it is unclear as the history note contains references to statutes that no longer exist as the statutory references contained in this Rule have been recodified.

1	08 NCAC 03 .0	302 is readopted as published in 31:23 NCR 2311 as follows:
2		
3	08 NCAC 03 .0	REPORTS OF EVIDENCE OF CRIMINAL VIOLATION
4	The State Board	d of Elections and every county board of elections, upon the completion of any hearing with respect to
5	the violation of	the election laws, shall report in writing to the appropriate prosecuting officer a resume or summary
6	of all evidence	heard by such board which tends to show that any person or persons probably have been guilty of one
7	or more violation	ons of the election laws, the violation of which is made a crime by law. A record shall be kept by such
8	board of all suc	h reports to such prosecuting officers. Upon request by any prosecuting officer, the written evidence
9	heard by either	board shall be made available for his examination and official use.
10		
11	History Note:	Authority G.S. 163-22;
12		Eff. March 12, 1976.
13		Readopted Eff. September 1, 2018.

1 of 1 39

Please Note: This communication is either 1) only the recommendation of an RRC staff attorney as to action that the attorney believes the Commission should take on the cited rule at its next meeting, or 2) an opinion of that attorney as to some matter concerning that rule. The agency and members of the public are invited to submit their own comments and recommendations (according to RRC rules) to the Commission.

AGENCY: State Board of Elections and Ethics Enforcement

RULE CITATION: 08 NCAC 04.0302

RECOMMENDED ACTION:

Approve, but note staff's comment

X Object, based on:

Lack of statutory authority

X Unclear or ambiguous

Unnecessary

Failure to comply with the APA

Extend the period of review

## **COMMENT:**

Staff believes this Rule is ambiguous as written as it contains an approval standard for modification of voting systems, without providing any additional information as how the approval determination will be made. In addition, this Rule contains ambiguous terms such as "substantially" and "satisfactory."

Further, the history note contains references to statutes that no longer exist as the statutory references contained in this Rule have been recodified.

1	08 NCAC 04 .0	302 is readopted as published in 31:23 NCR 2311 as follows:
2		
3	08 NCAC 04 .0	302 APPROVAL OF VOTING SYSTEMS
4	(a) Before app	roving a voting system for use in North Carolina, the State Board of Elections shall do all of the
5	following:	
6	(1)	Obtain a current financial statement from the proposed vendor and manufacturer's contact
7		information (mail address, telephone and fax numbers, email address);
8	(2)	Cause staff to review and appraise the voting system;
9	(3)	Witness a demonstration of the voting system by the proposed vendor;
10	<u>(4)</u>	Obtain a copy of Independent Testing Authority certification as authorized by National Association
11		of State Elections Directors or Federal Agency:
12	(5)	Ensure that a copy of the system's source code is held in escrow by a third party approved by the
13		State Board of Elections for the purpose of taking custody of all source codes, including all revisions
14		or modifications of source codes. Proprietary information is not subject to North Carolina Public
15		Records laws:
16	<u>(6)</u>	Any discussion of proprietary information by the State Board of Elections shall take place in Closed
17		Session as authorized by the Open Meetings requirements of North Carolina law;
18	(7)	Ensure performance of system complies with North Carolina laws and rules related to voting
19		systems:
20	<u>(8)</u>	Obtain a copy of the manufacturer's instructions and maintenance manual;
21	<u>(9)</u>	Obtain a list of all jurisdictions currently using the voting system; and
22	(10)	Review any other information made available to the Board.
23	(b) Modificatio	ns or Enhancement of Voting Systems. A change to any voting system or unit, including software and
24	hardware modif	ication, shall be submitted in writing for the review of the Executive Director of the State Board of
25	Elections. Follo	owing the review, the Executive Director shall determine whether the change is a modification of the
26	voting system a	s certified by the State Board of Elections. If it is determined to be a modification, the voting system
27	as modified sha	ll be submitted to the State Board of Elections for approval. If the Executive Director shall determine
28	the change is an	n enhancement that does not substantially alter the voting system as certified by the State Board of
29	Elections, the E	xecutive Director may approve the enhancement and the review of the State Board of Elections shall
30	not be required.	
31	(c) Disapprova	l of Voting System. The State Board of Elections shall have the right to hear and act on complaints
32	arising by petiti	on or otherwise, on the failure or neglect of a voting system or vendor marketing a system to comply
33	with any part of	the election laws of the State of North Carolina or for any other satisfactory cause, including but not
34	limited to, perfo	rmance of the system in an election setting. Before exercising this power, the State Board of Elections
35	shall notify the	voting system vendor and/or county boards of elections affected and give opportunity to be heard at a
36	hearing to be se	t by the State Board of Elections.
37		

1 of 2 41

History Note: Authority G.S. 163-22; 163-165.7;
 Temporary Adoption Eff. April 15, 2002;
 Eff. August 1, 2004.
 Readopted Eff. September 1, 2018.

**42** 2 of 2

Please Note: This communication is either 1) only the recommendation of an RRC staff attorney as to action that the attorney believes the Commission should take on the cited rule at its next meeting, or 2) an opinion of that attorney as to some matter concerning that rule. The agency and members of the public are invited to submit their own comments and recommendations (according to RRC rules) to the Commission.

AGENCY: State Board of Elections and Ethics Enforcement

RULE CITATION: 08 NCAC 04.0304

RECOMMENDED ACTION:

Approve, but note staff's comment

X Object, based on:

Lack of statutory authority

X Unclear or ambiguous

Unnecessary

Failure to comply with the APA

Extend the period of review

# **COMMENT:**

Staff believes this Rule is ambiguous as it includes language such as "properly" without providing any additional information as to the meaning of this term.

Further, the history note contains references to statutes that no longer exist as the statutory references contained in this Rule have been recodified.

2 3 08 NCAC 04 .0304 OPERATION AND MATTER OF VOTING ON VOTING SYSTEMS 4 (a) Prior to the opening of the polls, the precinct officials shall open the voting system and examine the ballot for 5 accuracy and examine the counters or other method to determine there is a zero balance. Any persons interested in 6 viewing this procedure may observe but shall not interfere or impede the process. If the system prints a zero tape or 7 other paper document, the document shall be maintained and secured in the manner prescribed by the manufacturer 8 and the county board of elections. 9 (b) The voter shall follow the instructions contained on the voting system. Only properly voted official ballots shall 10 be introduced into the voting system. If a voter improperly marks or damages a ballot, it shall be returned to the 11 precinct official, marked as spoiled and maintained as specified by the county board of elections. The voter may not 12 receive a replacement ballot until the spoiled or damaged ballot is returned to the precinct official. The voter shall not 13 be given more than three replacement ballots. 14 (c) Except as provided for curbside voting, official ballots shall not leave the voting enclosure during the time that 15 voting is being conducted there. 16 17 History Note: Authority G.S. 163-22; 163-165.7; 18 Temporary Adoption Eff. April 15, 2002; 19 Eff. August 1, 2004. 20 Readopted Eff. September 1, 2018.

08 NCAC 04 .0304 is readopted as published in 31:23 NCR 2311 as follows:

1

Please Note: This communication is either 1) only the recommendation of an RRC staff attorney as to action that the attorney believes the Commission should take on the cited rule at its next meeting, or 2) an opinion of that attorney as to some matter concerning that rule. The agency and members of the public are invited to submit their own comments and recommendations (according to RRC rules) to the Commission.

AGENCY: State Board of Elections and Ethics Enforcement

RULE CITATION: 08 NCAC 04 .0305

RECOMMENDED ACTION:

Approve, but note staff's comment

X Object, based on:

Lack of statutory authority

X Unclear or ambiguous

Unnecessary

Failure to comply with the APA

Extend the period of review

## COMMENT:

Staff believes this Rule is ambiguous as written as it includes language such as "proper" without providing any additional information as to the meaning of this term.

Further, the history note contains references to statutes that no longer exist as the statutory references contained in this Rule have been recodified.

1	08 NCAC 04 .03	05 is readopted as published in 31:23 NCR 2311 as follows:
2		
3	08 NCAC 04 .03	INSTRUCTION OF PRECINCT OFFICIALS AND VOTERS IN THE USE OF
4		VOTING SYSTEMS
5	(a) The chairm	an of the county board of elections in a county where a voting system is used shall conduct an
6	instructional med	eting before any primary or election to instruct the precinct officials in the use of the voting system.
7	The chairman m	ay use any persons deemed knowledgeable or useful to the instruction of the precinct officials. The
8	instructions on the	ne use and operation of the voting system shall be according to manufacturer's instructions furnished
9	with the voting	system, whether the system is purchased or leased by the county board of elections. The precinct
10	officials shall be	qualified to instruct the voters on the use of the voting system.
11	(b) The chairma	n of the county board of elections shall not permit a voting system to be used in any precinct in any
12	election unless t	he chairman shall be satisfied that the precinct officials of the precinct have learned the proper use
13	and operation of	the system. Such additional instruction as determined by the county board of elections to be needed
14	shall be provided	<u>l.</u>
15	(c) A voter may	request instruction for the proper use of the voting system from a precinct official. The precinct
16	official shall pro	vide such technical instruction to the voter but shall not seek to influence or intimidate the voter in
17	any manner.	
18		
19	History Note:	Authority G.S. 163-22; 163-165.7;
20		Temporary Adoption Eff. April 15, 2002;
21		Eff. August 1, 2004.
22		Readopted Eff. September 1, 2018.

Please Note: This communication is either 1) only the recommendation of an RRC staff attorney as to action that the attorney believes the Commission should take on the cited rule at its next meeting, or 2) an opinion of that attorney as to some matter concerning that rule. The agency and members of the public are invited to submit their own comments and recommendations (according to RRC rules) to the Commission.

AGENCY: State Board of Elections and Ethics Enforcement

RULE CITATION: 08 NCAC 04 .0306

RECOMMENDED ACTION:

Approve, but note staff's comment

X Object, based on:

Lack of statutory authority

X Unclear or ambiguous

Unnecessary

Failure to comply with the APA

Extend the period of review

## COMMENT:

Staff believes this Rule is ambiguous as it includes language such as "properly", "safe", "appropriate", "secure", "proper", and "direct" without providing any additional information as to the meaning of these terms.

Further, the history note contains references to statutes that no longer exist as the statutory references contained in this Rule have been recodified.

1 08 NCAC 04 .0306 is readopted as published in 31:23 NCR 2311 as follows: 2 3 08 NCAC 04 .0306 **DUTIES OF CUSTODIANS OF VOTING SYSTEMS** 4 (a) The chairman of the county board of elections shall be responsible for the safekeeping, storage, maintenance and 5 care of the voting system. The voting system shall be properly stored in a safe, appropriate and secure location so that 6 the system cannot be tampered with when not in use on election day. The county board of elections may appoint as 7 many persons as determined necessary for the maintenance, storage and care of the voting system and for the proper 8 preparation and testing of the voting system and delivery to the voting precincts preceding a primary or an election. 9 Persons employed for this purpose shall be compensated for their services as authorized by the county board of 10 elections. 11 (b) On election day when the system is used for voting purposes and until the county board chairman collects the 12 system, the voting system shall be under the direct supervision and control of the chief judge unless provision for its 13 custody is otherwise authorized. 14 15 History Note: Authority G.S. 163-23; 163-165.7; 16 Temporary Adoption Eff. April 15, 2002; 17 Eff. August 1, 2004. 18 Readopted Eff. September 1, 2018.

Please Note: This communication is either 1) only the recommendation of an RRC staff attorney as to action that the attorney believes the Commission should take on the cited rule at its next meeting, or 2) an opinion of that attorney as to some matter concerning that rule. The agency and members of the public are invited to submit their own comments and recommendations (according to RRC rules) to the Commission.

AGENCY: State Board of Elections and Ethics Enforcement

RULE CITATION: 08 NCAC 04 .0307

RECOMMENDED ACTION:

Approve, but note staff's comment

X Object, based on:

Lack of statutory authority

X Unclear or ambiguous

Unnecessary

Failure to comply with the APA

Extend the period of review

## COMMENT:

Staff believes this Rule is ambiguous as written as it includes language such as "properly" and "accurately" without providing any additional information as to the meaning of these terms.

Further, the history note contains references to statutes that no longer exist as the statutory references contained in this Rule have been recodified.

1	08 NCAC 04 .0	307 is readopted as published in 31:23 NCR 2311 as follows:
2		
3	08 NCAC 04 .0	TESTING OF VOTING SYSTEM BEFORE USE IN AN ELECTION
4	The county boa	rd of elections shall test or cause to be tested each voting system or unit that will be used in the election
5	to ensure that the	ne system is operating properly and has been programmed to count votes accurately. There shall be a
6	record maintair	ed along with the voted and unvoted ballots at the county board of elections office that shall include
7	at a minimum t	he dates, times and method of testing used, the results of the test, and the persons conducting the test.
8	Any interested	person may observe the testing of the voting system but shall not interfere or impede the process. For
9	the purpose of t	esting a voting system prior to the purchase or lease of the system, testing at a one-stop absentee voting
10	site shall fulfill	the requirement to test the voting system in a precinct within the county.
11		
12	History Note:	Authority G.S. 163-22; 163-165.7;
13		Temporary Adoption Eff. April 15, 2002;
14		Eff. August 1, 2004.
15		Readopted Eff. September 1, 2018.

Please Note: This communication is either 1) only the recommendation of an RRC staff attorney as to action that the attorney believes the Commission should take on the cited rule at its next meeting, or 2) an opinion of that attorney as to some matter concerning that rule. The agency and members of the public are invited to submit their own comments and recommendations (according to RRC rules) to the Commission.

AGENCY: State Board of Elections and Ethics Enforcement

RULE CITATION: 08 NCAC 06B .0103

RECOMMENDED ACTION:

Approve, but note staff's comment

X Object, based on:

Lack of statutory authority

X Unclear or ambiguous

Unnecessary

Failure to comply with the APA

Extend the period of review

## COMMENT:

Staff believes this Rule is ambiguous as written as it includes language such as "as soon as practicable" without providing any additional information as to the meaning of this term.

Further, the history note contains references to statutes that no longer exist as the statutory references contained in this Rule have been recodified.

1	08 NCAC 06B.	0103 is readopted as published in 31:23 NCR 2311 as follows:
2		
3	08 NCAC 06B	.0103 ARRANGEMENT OF OFFICIAL BALLOTS
4	(a) As soon as j	practicable after the close of the filing period, the State Board of Elections shall certify to the county
5	boards of election	ons the order of the offices and candidate names to be voted on the official ballot. The State Board of
6	Elections shall p	provide the text and arrangement of referenda to be voted on the official ballot.
7	(b) Generally, t	he order of precedence for candidate ballot items shall be as follows:
8	(1)	Federal Offices;
9	(2)	State Offices in the order certified by the State Board of Elections;
10	<u>(3)</u>	District and local offices;
11	(4)	Non-partisan offices; and
12	(5)	Referenda, unless the voting system design requires referenda to be before candidate ballot items.
13	Ballot items for	full terms of an office shall be listed before ballot items for partial terms of the same office. The term
14	of the unexpired	office only shall be listed as part of the title of the office.
15	(c) Names of ca	andidates shall be printed in the exact form either certified by the State Board of Elections for those
16	candidates who	are required to file the Notice of Candidacy with the State Board of Elections, by convention or by
17	petition. Candio	dates for all offices shall provide their name exactly as it is to appear on the ballot. Candidates may
18	request in writin	ig a change in the manner that their name is to appear on the ballot during the time the filing period is
19	open.	
20		
21	History Note:	Authority G.S. 163-22; 163-165.6;
22		Temporary Adoption Eff. April 15, 2002;
23		Eff. August 1, 2004.
24		Readopted Eff. September 1, 2018.

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AGENCY: State Board of Elections and Ethics Enforcement

RULE CITATION: 08 NCAC 06B .0104

RECOMMENDED ACTION:

Approve, but note staff's comment

X Object, based on:

Lack of statutory authority

X Unclear or ambiguous

Unnecessary

Failure to comply with the APA

Extend the period of review

# **COMMENT:**

Staff believes this Rule is unclear as written as it contains references to statutes that no longer exist as the statutory references contained in this Rule have been recodified.

1	08 NCAC 06B	.0104 is readopted as published in 31:23 NCR 2311 as follows:
2		
3	08 NCAC 06B	.0104 LATE CHANGES IN BALLOTS
4	After the officia	al ballots for a general or special election have been printed and the absentee voting period has begun,
5	the death, resig	nation, or disqualification of a candidate whose name appears on the official ballots shall not require
6	that the ballots	be reprinted. If the vacancy occurs before the absentee voting period begins, the responsible board of
7	elections may d	etermine whether it is practical to have the ballots reprinted with the name of the replacement nominee
8	as authorized by	y G.S. 163-114. If the ballots are not reprinted, a vote cast for the candidate whose name is printed on
9	the ballot shall	be counted as a vote for the replacement nominee.
10		
11	History Note:	Authority G.S. 163-22; 163-165.3;
12		Temporary Adoption Eff. April 15, 2002;
13		Eff. August 1, 2004.
14		Readopted Eff. September 1, 2018.

Please Note: This communication is either 1) only the recommendation of an RRC staff attorney as to action that the attorney believes the Commission should take on the cited rule at its next meeting, or 2) an opinion of that attorney as to some matter concerning that rule. The agency and members of the public are invited to submit their own comments and recommendations (according to RRC rules) to the Commission.

AGENCY: State Board of Elections and Ethics Enforcement

RULE CITATION: 08 NCAC 06B .0105

RECOMMENDED ACTION:

Approve, but note staff's comment

X Object, based on:

Lack of statutory authority

X Unclear or ambiguous

Unnecessary

Failure to comply with the APA

Extend the period of review

# **COMMENT:**

Staff believes this Rule is ambiguous as written as it includes language such as "requisite documentation", "clearly", and "unavoidable necessity" without providing any additional information as to the meaning of these terms.

Further, this Rule contains references to statutes that no longer exist as the statutory references have been recodified.

1	08 NCAC 06B .	0105 is readopted as published in 31:23 NCR 2311 as follows:
2		
3	08 NCAC 06B	.0105 COUNTING OF OFFICIAL BALLOTS
4	(a) Following the	ne close of the polls the official ballots shall be counted. Precinct officials shall follow the procedures
5	specified by the	voting system manufacturer and in compliance with G.S. 163-182.1 and 163-182.2. The counting o
6	the ballots shall	be completed in the presence of the precinct election officials, observers, and any persons desiring to
7	observe the cou	nt. All official ballots shall be counted at the precinct unless authorized by legislative local act and
8	approved by the	State Board of Elections.
9	(b) The counting	g of the ballots at the precinct shall be continuous until completed. From the time the counting of the
10	ballots is begur	until the votes are counted and the requisite documentation is signed, certified as required, and
11	delivered to the	chief judge or judge chosen to deliver the documentation to the county board of elections, the precinc
12	chief judge and	judges shall not separate, nor shall any of them leave the voting place except for unavoidable necessity
13	(c) In the cases	where the precinct officials must interpret the voter's choice, the following shall apply:
14	<u>(1)</u>	When it is impossible to determine a voter's choice for an office, the ballot shall not be counted for
15		that office but shall be counted for all other offices;
16	<u>(2)</u>	If a ballot is marked for more names than there are positions to be filled, it shall not be counted for
17		that office but shall be counted for all other offices;
18	(3)	If a ballot has been defaced or torn by a voter so that it is impossible to determine that voter's choice
19		for one or more offices, it shall not be counted for such offices but shall be counted for all offices
20		for which the voter's choice can be determined; and
21	<u>(4)</u>	If a voter has done anything to a ballot other than mark it properly, it shall be counted unless such
22		action by the voter makes it impossible to determine the voter's choice.
23	(d) When the c	ounting is completed the chief judge or his or her designee shall announce the results at the precinct
24	The announcem	ent of the results shall clearly state the results are unofficial. The unofficial results shall be transmitted
25	to the county be	pard of elections in the manner determined by the county board of elections and the voting system
26	This report shall	be unofficial and shall have no binding effect upon the official county canvass to follow. As soon as
27	the precinct rep	orts are received, the chairman, secretary or designee shall publish the unofficial reports to the news
28	media.	
29	(e) Provisional	official ballots shall be counted by the county board of elections before the canvass. If the county
30	board finds that	an individual voting a provisional official ballot is not eligible to vote in one or more ballot items or
31	the official ballo	ot, the board shall not count the official ballot in those ballot items, but shall count the official ballo
32	in any ballot ite	ms for which the individual is eligible to vote.
33		
34	History Note:	Authority G.S. 163-22; 163-182.1; 163-182.2;
35		Temporary Adoption Eff. April 15, 2002;
36		Eff. August 1, 2004.
37		Readopted Eff. September 1, 2018.

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AGENCY: State Board of Elections and Ethics Enforcement

RULE CITATION: 08 NCAC 08.0104

**RECOMMENDED ACTION:** 

Approve, but note staff's comment

X Object, based on:

X Lack of statutory authority

Unclear or ambiguous

Unnecessary

Failure to comply with the APA

Extend the period of review

# **COMMENT:**

Staff is recommending objection to 08 NCAC 08 .0104 for lack of statutory authority as the only cited authority was repealed in 1993.

2 3 08 NCAC 08 .0104 HANDICAPPED TRANSFER PRIOR TO ELECTION DAY 4 At any time during the period of absentee voting in any primary, general or special election, a handicapped or elderly 5 voter registered in a precinct wherein there exists no polling place accessible to the elderly and handicapped may 6 request in advance to be transferred from that precinct to the office of the county board of elections for the purpose of 7 voting at the county board of elections on election day under the following procedure: 8 An application to be transferred in advance to the county board of elections for the purpose of voting 9 on election day shall be made and signed only by the voter or the voter's near relative, as defined in 10 G.S. 163-227(c)(4), or legal guardian and shall be valid only when transmitted to the chairman or 11 supervisor of elections of the county board of elections by mail or delivered in person by the voter 12 or his near relative or legal guardian. 13 (2) Upon receipt of a written request for transfer, the county board of elections, after determining the 14 validity of such request, shall enter the voter's name and precinct into the book referred to in Rule 15 .0001(a)(6) of this Chapter and shall place the designation "HT" beside the voter's name as it appears 16 on registration records sent to that voter's precinct for use on election day. 17 (3) No voter who has requested advance transfer shall be allowed to vote on election day at that voter's 18 precinct if the designation "HT" appears on the records of that precinct, but instead shall be directed 19 to the offices of the county board of elections. 20 <u>(4)</u> On election day, the precinct transfer assistant at the county board of elections, when the elderly or 21 handicapped voter appears and indicates that advance request for transfer was made, shall verify 22 such fact by reference to the book referred to in Rule .0001(a)(6) and, having determined that such request was made, shall provide the voter with the proper ballots and follow the procedures set forth 23 24 in Rule .0001 (a)(5)-(9). 25 26 History Note: Filed as a Temporary Rule Eff. April 18, 1988 for a period of 136 days to expire on 27 August 31, 1988; 28 Statutory Authority G.S. 163-69.2; 29 ARRC Objection May 19, 1988; 30 Eff. October 1, 1988.

08 NCAC 08 .0104 is readopted as published in 31:23 NCR 2311 as follows:

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Readopted Eff. September 1, 2018.

1

31

Please Note: This communication is either 1) only the recommendation of an RRC staff attorney as to action that the attorney believes the Commission should take on the cited rule at its next meeting, or 2) an opinion of that attorney as to some matter concerning that rule. The agency and members of the public are invited to submit their own comments and recommendations (according to RRC rules) to the Commission.

AGENCY: State Board of Elections and Ethics Enforcement

RULE CITATION: 08 NCAC 09 .0106

**RECOMMENDED ACTION:** 

Approve, but note staff's comment

X Object, based on:

X Lack of statutory authority

X Unclear or ambiguous

Unnecessary

Failure to comply with the APA

Extend the period of review

## **COMMENT:**

Staff is recommending objection to 08 NCAC 09 .0106 for lack of statutory authority as G.S. 163A-1109 prohibits the use of punch-card ballots and lever machine voting systems. Paragraphs (d) and (h) of this Rule appear to provide provisions for counting punch card ballots. Paragraph (e) appears to provide provisions for lever voting.

In addition, Staff is recommending objection to this Rule as being unnecessary as (b) of this Rule appears to recite G.S. 163A-1176 without providing any additional information.

Staff is also recommending objection as Staff believes that this Rule is unclear or ambiguous as written. Staff believes this Rule is ambiguous as written as it includes language such as "properly" without providing any additional information as to the meaning of this term.

Further, the history note contains references to statutes that no longer exist as the statutory references contained in this Rule have been recodified.

Staff notes that additional information relating to the clarity of this Rule is noted in this Rule's corresponding technical change requests.

# § 163A-1109. Punch-card ballots and lever machines.

(a) No ballot may be used in any referendum, primary, or other election as an official ballot if it requires the voter to punch out a hole with a stylus or other tool.

Amber May Commission Counsel

- (b) No lever machine voting system may be used in any referendum, primary, or other election as a means of voting the official ballot. A "lever machine voting system" is a voting system on which the voter casts a vote by pressing a lever and the vote is mechanically recorded by the machine.
- (c) In any counties that used punch-card ballots as official ballots or lever machines in the election of November 2000, and in any municipalities located in those counties, this section becomes effective January 1, 2006. It is the intent of the General Assembly that any county that uses county funds to replace voting equipment to satisfy this section shall be given priority in appropriations to counties for voting equipment. (2001-310, ss. 1, 3; 2003-226, s. 12; 2017-6, s. 3.)

## § 163A-1176. Determining result in case of a tie.

If the count, upon completion of canvass by the proper board of elections, shows a tie vote other than in a primary, the tie shall be resolved as follows:

- (1) If more than 5,000 voters cast official ballots in the ballot item, the State Board shall order a new election in which only the candidates or positions tied will be on the official ballot. The State Board shall set the schedule for publication of the notice, preparation of absentee official ballots, and the other actions necessary to conduct the election. Eligibility to vote in the new election shall be determined by the voter's eligibility at the time of the new election.
- (2) If 5,000 or fewer voters cast official ballots in the ballot item, the board of elections with jurisdiction to certify the election shall break the tie by a method of random selection to be determined by the State Board. (2001-398, s. 3; 2017-6, s. 3.)

1	08 NCAC 09 .0106 is readopted as published in 31:23 NCR 2311 as follows:	
2		
3	08 NCAC 09 .0106 GENERAL GUIDELINES	
4	(a) Prior to each recount, the board of elections shall confer with affected parties and candidates and describe to the	m
5	the process of conducting recounts.	
6	(b) In the case of tie votes, the winner shall be determined by lot only in the case set out in G.S. 163-182.8(2). When	re
7	there are 5,000 or fewer votes cast, there shall be only one determination by lot for each tied election. There shall be	<u>be</u>
8	no determination by lot until the time has expired for the affected candidate(s) to request a recount, unless all of the	<u>he</u>
9	affected candidate(s) waive their right in writing to request a recount.	
LO	(c) During the conduct of recounts, in the cases where the board of elections must interpret the voter's choice, the	he
<b>l</b> 1	following shall apply:	
L2	(1) When it is impossible to determine a voter's choice for an office, the ballot shall not be counted f	or
L3	that office but shall be counted for all other offices;	
L4	(2) If a ballot is marked for more names than there are positions to be filled, it shall not be counted f	or
L5	that office but shall be counted for all other offices;	
L6	(3) If a ballot has been defaced or torn by a voter so that it is impossible to determine that voter's choice	ce
L7	for one or more offices, it shall not be counted for such offices but shall be counted for all office	es
L8	for which the voter's choice can be determined; and	
L9	(4) If a voter has done anything to a ballot other than mark it properly with pen or pencil, it shall	be
20	counted unless such action by the voter makes it impossible to determine the voter's choice.	
21	(d) The following shall apply in counting punch card ballots:	
22	(1) All of the candidates for whom the voter has indicated a preference shall be counted if the	<u>he</u>
23	corresponding chad is completely punched out or hanging by one corner (showing that three of the	<u>he</u>
24	four corners have been punched out); and	
25	(2) If the chad has not been punched out or is not hanging by one corner, then the determination mu	<u>1st</u>
26	be made if the voter has shown consistency in marking the ballot. If the voter has shown consistence	сy
27	in marking choices on the ballot - all of the candidates for whom the voter has indicated a preference	ce
28	shall be counted.	
29	(e) In conducting recounts of lever, direct record electronic, and any other types of voting machines that require	<u>: a</u>
30	county board member or designated official to reprint tapes and to read the totals and another board member to reco	rd
31	the totals for each candidate such recount shall be conducted by a bi-partisan team of four: two officials (one fro	m
32	each of the two parties having the largest number of registered voters in the state) reading and confirming the total	als
33	per machine and two officials (one from each of the two parties having the largest number of registered voters in the	he
34	state) recording the results simultaneously.	
35	(f) In conducting hand to eye recounts or recounts of paper ballots, a bi-partisan team of four shall be used: tw	<u>vo</u>
36	officials (one from each of the two parties in the State with the largest number of registered voters) to relay the result	<u>lts</u>
37	of each ballot with one person reading the ballot and the other official observing the ballot and the person reading the	he

1 of 2

Т	results of the ba	allot, and two officials (one from each of the two parties in the State with the largest number of
2	registered voters	s) recording the tally of votes for each candidate on paper while stating aloud after each choice is read
3	on the fifth tally	for a particular candidate, the word "tally."
4	(g) The county	board of elections shall conduct recounts in two circumstances. In the first circumstance, the recount
5	is mandatory un	der G.S. 163-182.7(b). In the second circumstance, the recount is not mandatory but the county board
6	of elections or	the State Board of Elections determines, using its authority in G.S. 163-182.7(a), that in order to
7	complete the car	nvass a recount is necessary.
8	(h) A candidate	shall have the right to call for a hand-eye recount, as to elections conducted by optical scan marksense
9	or punchcard sy	stems, within 24 hours after a mandatory or discretionary recount or by noon on the next business day
10	of the county bo	ard office, whichever is later, if the apparent winner is the apparent loser after the first recount, unless
11	human error res	ulted in the vote count change.
12	(i) Any candida	te shall have the right to file an election protest within 24 hours after a recount or by noon of the next
13	business day of	the county board office, whichever is later.
14		
15	History Note:	Authority G.S. 163-22; 163-182.7;
16		Temporary Adoption Eff. April 15, 2002;
17		Eff. August 1, 2004.

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Readopted Eff. September 1, 2018.

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AGENCY: State Board of Elections and Ethics Enforcement

RULE CITATION: 08 NCAC 09.0107

**RECOMMENDED ACTION:** 

Approve, but note staff's comment

X Object, based on:

X Lack of statutory authority

X Unclear or ambiguous

Unnecessary

Failure to comply with the APA

Extend the period of review

## **COMMENT:**

Staff is recommending objection to 08 NCAC 09 .0107 for lack of statutory authority as G.S. 163A-1109 prohibits the use of punch-card ballots and lever machine voting systems. This Rule appears to provide provisions for the recounting of punch card ballots. Staff notes that the text of G.S. 163A-1109 is available in the Staff Opinion for 08 NCAC 09 .0106.

Staff is also recommending objection to this Rule as Staff believes this Rule is unclear or ambiguous as Subparagraph (b)(9) uses the word "should." It is unclear to staff whether this is intended to be a mandate or an aspiration statement that does not meet the definition of a rule. Also, the history note contains references to statutes that no longer exist as the statutory references have been recodified.

1 2	08 NCAC 09 .01	107 is readopted as published in 31:23 NCR 2311 as follows:
3	08 NCAC 09 .03	107 RECOUNT OF OPITICAL SCAN/MARKSENSE/PUNCHCARD BALLOTS
4	(a) How to cond	duct the first recount. In the first recount, all ballots that were originally counted by the optical scan
5	equipment are to	be counted again by the optical scan equipment producing another machine count. A "machine
6	count" total is a	ballot count produced by a voting system that uses machines. All ballots that were rejected for
7	tabulation purpo	ses by the machines - commonly called "outstacked" or center bin ballots - are to be recounted by
8	hand and eye us	ing the team of four guidelines outlined in 08 NCAC 09 .0106.
9	(b) The steps af	ter the first recount. When the first recount, including absentee and provisional ballot recount totals.
10	has been comple	sted, the board of elections shall follow these steps:
11	<u>(1)</u>	The county board must determine whether the first recount produces a change in the winner;
12	(2)	If the apparent winner after the initial balloting is the apparent loser after the first recount, that
13		candidate shall be entitled to demand a second recount, by hand and eye, of all ballots;
14	(3)	If the apparent winner after the initial balloting remains the apparent winner after the first recount.
15		Subparagraph (4) of this Rule must be considered;
16	<u>(4)</u>	The county board must determine whether there is a discrepancy in the machine totals between the
17		initial balloting and the first recount;
18	<u>(5)</u>	If the machine totals from the initial balloting and the first recount are the same, no second recount
19		is necessary;
20	<u>(6)</u>	If the machine totals from the initial balloting and the first recount are not the same, Subparagraph
21		(b)(7) of this Rule must be considered;
22	<u>(7)</u>	The county board must determine whether the discrepancy in the machine total can be reconciled;
23	<u>(8)</u>	The county board shall determine if the discrepancy in the machine total between the initial balloting
24		and the first recount can be explained. The county board shall examine the outstack/center bin
25		ballots from the first recount, determine how they should be counted, and reconcile the count with
26		the machine count on the initial balloting. If this reconciliation produces the same machine total for
27		the first recount as the machine total in the initial balloting, no second recount is necessary; and
28	<u>(9)</u>	If the reconciliation produces a different machine total for the first recount than the machine total in
29		the initial balloting, the losing candidate is entitled to demand a second recount, by hand and eye.
30		of all ballots.
31		
32	History Note:	Authority G.S. 163-22; 163-182.7;
33		Temporary Adoption Eff. April 15, 2002;
34		Eff. August 1, 2004.
35		Readopted Eff. September 1, 2018.

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AGENCY: State Board of Elections and Ethics Enforcement

RULE CITATION: 08 NCAC 09 .0108

RECOMMENDED ACTION:

Approve, but note staff's comment

X Object, based on:

X Lack of statutory authority

X Unclear or ambiguous

Unnecessary

Failure to comply with the APA

Extend the period of review

## COMMENT:

Staff is recommending objection to 08 NCAC 09 .0107 for lack of statutory authority as G.S. 163A-1109 prohibits the use of punch-card ballots and lever machine voting systems. This Rule appears to provide provisions for the recounting of lever voting. Staff notes that the text of G.S. 163A-1109 is available in the Staff Opinion for 08 NCAC 09 .0106.

Staff is also recommending objection to this Rule as Staff believes this rule is unclear or ambiguous as written. Staff believes this Rule is unclear as (d) provides for an appeals process of the recount vote without providing any further information.

Further, the history note contains references to statutes that no longer exist as the statutory references contained in this Rule have been recodified.

1	08 NCAC 09 .0	108 is readopted as pu	blished in 31:	23 NCR 2311 as fo	llows:			
2								
3	08 NCAC 09 .0	108 DIRECT	RECORD	ELECTRONIC	AND	LEVER	(DIRECT	RECORD
4		MECHAN	ICAL) VOT	ING MACHINES				
5	(a) In the first r	ecount, all votes cast o	n each unit sh	all be retabulated ar	nd result	s provided.	The results p	rovided shall
6	be re-read using	the team of four rules	outlined in S	ection I of these Ru	<u>les.</u>			
7	(b) When the fi	rst recount has been co	ompleted, the	board of elections s	hall foll	ow these ste	eps:	
8	(1)	The county board m	ust determine	whether the first re	count pr	oduces a ch	nange in the w	<u>vinner;</u>
9	(2)	If the apparent win	ner after the	initial balloting is t	he appa	rent loser a	fter the first	recount, that
10		candidate shall be en	ntitled to dem	and a second recour	<u>1t;</u>			
11	(3)	If the apparent winn	er after the in	uitial balloting rema	ins the a	pparent wir	ner after the	first recount,
12		Subparagraph (b)(4)	of this Rule	must be considered;				
13	<u>(4)</u>	The county board m	ust determine	whether there is a	discrepa	ncy in the n	nachine totals	between the
14		initial balloting and	the first recou	<u>ınt;</u>				
15	(5)	If the unit totals fro	m the initial b	palloting and the fir	st recou	nt are the s	ame, no secon	nd recount is
16		necessary;						
17	(6)	If the unit totals from	n the initial ba	alloting and the first	recount	are not the	same, Subpara	agraph (b)(7)
18		of this Rule must be	considered;					
19	(7)	The county board m	ust determine	whether the discrep	pancy in	the machin	e total can be	reconciled;
20	(8)	The county board sl	nall determine	e if the discrepancy	in the u	nit totals be	tween the ini	tial balloting
21		and the first recount	can be explain	ned. (Possible accep	table ex	planations r	nay include p	roblems with
22		the setup of the ball	ot, problems v	with the software or	other ur	nit malfunct	ion); and	
23	(9)	If the reconciliation	produces a di	fferent unit total for	the first	recount that	n the unit total	l in the initial
24		balloting, the losing	candidate is e	entitled to demand a	second	recount pro	vided by the	county board
25		of elections.						
26	(c) A manual re	count, by hand and ey	e, of ballots is	not possible whene	ver a lev	er machine	or direct reco	ord electronic
27	voting machine	error occurs.						
28	(d) The State B	oard of Elections shall	hear any app	eals of recount prot	ests.			
29								
30	History Note:	Authority G.S. 163-2	22; 163-182.7	<sup>7</sup> .				
31		Temporary Adoption	ı Eff. April 15	5, 2002;				
32		Eff. August 1, 2004.						
33		Readonted Eff Sent	ember 1 2018	3.				

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AGENCY: State Board of Elections and Ethics Enforcement

RULE CITATION: 08 NCAC 09 .0109

RECOMMENDED ACTION:

Approve, but note staff's comment

X Object, based on:

X Lack of statutory authority

X Unclear or ambiguous

Unnecessary

Failure to comply with the APA

Extend the period of review

## COMMENT:

Staff is recommending objection to 08 NCAC 09 .0109 for lack of statutory authority as G.S. 163A-1109 prohibits the use of punch-card ballots and lever machine voting systems. This Rule appears to provide provisions for the recounting of punch card ballots. Staff notes that the text of G.S. 163A-1109 is available in the Staff Opinion for 08 NCAC 09 .0106.

Staff is also recommending objection to this Rule as Staff believes this Rule is unclear as written.

Further, the history note contains references to statutes that no longer exist as the statutory references contained in this Rule have been recodified.

1	08 NCAC 09 .0109 is readopted as published in 31:23 NCR 2311 as follows:			
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3	08 NCAC 09 .0	109 MANUAL HAND TO EYE RECOUNTS		
4	Mandatory reco	unts, as set out in G.S. 163-182.7, by hand-eye optical scan/marksense/punchcard voting shall be		
5	conducted as fo	conducted as follows: If a sample of the precincts of the voting units in question were recounted by hand-eye and		
6	produced results	produced results with that of the mandatory recount in those precincts such that one could reliably assume that any		
7	problems with scanning equipment was confined to those precincts in which there was a difference that could not be			
8	reconciled in the totals between the original count and the mandatory recount, then:			
9	(1)	The mandatory recount by hand-eye initially shall occur in only 10 percent of the voting		
10		jurisdiction's precincts.		
11	(2)	Those precincts shall include all those precincts in which a different total was produced by the		
12		machine-read count of ballots for the first count, including the outstacked/center bin, and the		
13		mandatory recount, as well as a sufficient number of additional precincts to constitute a total of at		
14		least 10 percent of the precincts of the voting jurisdiction.		
15	(3)	However, in any event, at least five percent of the voting jurisdiction's precincts included in the		
16		sample shall have experienced the same count for machine-read ballots, including the		
17		outstacked/center bin, in the original count, and in the mandatory recount.		
18	<u>(4)</u>	The precincts included in the sample which had the same machine-read count in the original and		
19		mandatory recount shall be chosen by random draw by lot from a container held by the Chair of the		
20		county board of elections, with all precincts which did not experience a difference in count by		
21		number being placed into the container, with the candidate whom appears to have been the loser		
22		after the mandatory recount drawing said lots.		
23	<u>(5)</u>	If the hand-eye recount of those precincts which did not experience a difference in count from the		
24		original count and the mandatory recount results in a different total from that produced on the		
25		previous counts, in any precinct, then upon request of the apparent losing candidate, all precincts		
26		for that race shall be recounted by hand-eye.		
27	<u>(6)</u>	After two machine count of votes (including the initial election or primary night count), any recount		
28		conducted in cases involving optical scan marksense and punchcard voting equipment shall be a		
29		manual hand-eye recount.		
30				
31	History Note:	Authority G.S. 163-22; 163-182.7;		
32		Temporary Adoption Eff. April 15, 2002;		
33		Eff. August 1, 2004.		
34		Readopted Eff. September 1, 2018.		

Please Note: This communication is either 1) only the recommendation of an RRC staff attorney as to action that the attorney believes the Commission should take on the cited rule at its next meeting, or 2) an opinion of that attorney as to some matter concerning that rule. The agency and members of the public are invited to submit their own comments and recommendations (according to RRC rules) to the Commission.

AGENCY: State Board of Elections and Ethics Enforcement

RULE CITATION: 08 NCAC 10B .0101

RECOMMENDED ACTION:

Approve, but note staff's comment

X Object, based on:

Lack of statutory authority

X Unclear or ambiguous

Unnecessary

Failure to comply with the APA

Extend the period of review

## COMMENT:

Staff believes this Rule is ambiguous as written as it includes language such as "promptly", "good cause", "open means", "prompt", "orderly", "short notice", "immediately", "secure", "properly" and "improperly", and "clearly" without providing any additional information as to the meaning of these terms.

Further, the history note contains references to statutes that no longer exist as the statutory references contained in this Rule have been recodified.

08 NCAC 10B .0101 is readopted as published in 31:23 NCR 2311 as follows:

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(8)

3	08 NCAC 10B.	0101 TASKS AND DUTIES OF PRECINCT OFFICALS AT VOTING PLACES
4	(a) This Rule a	Summary - The provisions of this Section provide a nonexclusive summary of the tasks and duties
5	given to official	s under G.S. 163. The legal duty is contained, not in this Rule, but in G.S. 163. For purposes of this
6	Chapter, unless	otherwise noted, the term "precinct officials" shall mean chief judge, precinct judge, assistants,
7	emergency elect	ion-day assistants, and ballot counters. Observers are not precinct officials and shall not act or presume
8	to act on behalf	of a county board of elections. Observers shall only be allowed in partisan or ABC elections and are
9	not legally author	orized in any non-partisan election involving either candidates or issues.
10	(b) Tasks of Pro	ecinct Chief Judge - Precinct Chief Judges, in accordance with election statutes, within the Rules of
11	the State Board	of Elections, and under the supervision of the county board of elections, shall have the following tasks
12	to perform as to	each primary or election. Where the precinct chief judge does not have the exclusive statutory mandate
13	to perform a tasl	or duty, a precinct judge may be designated to perform such task or duty.
14	(1)	Attend an instructional meeting presented by the county board of elections prior to each primary or
15		election as required by G.S. 163-46.
16	(2)	Upon learning that any parent, spouse, child, or sibling has filed for elective office, to inform the
17		county board of elections so that the provisions of the law prohibiting a precinct official from serving
18		in an election with a close relative as a candidates can be followed.
19	(3)	Inform the county board of elections if any blood relative of kinship of first cousin or nearer or a
20		parent in-law, child in-law or sibling in-law is a precinct official/worker serving with you in the
21		same precinct, and not to serve with that relative in the same precinct. Also inform the county board
22		of elections of any relationship, as described in the previous sentence, that you may have with an
23		emergency election-day assistant and not serve with that person in the same precinct.
24	<u>(4)</u>	Prior to day of the primary or election, receive and review from the county board the precinct
25		observer list and promptly make any objection for good cause to the county board as provided in
26		<u>G.S. 163-45.</u>
27	<u>(5)</u>	Receive, prior to the election or primary, sample ballots from the county board of elections, and to
28		post a sample ballot at the voting place prior to opening on the primary or election day as set out in
29		<u>G.S. 163-165.2.</u>
30	<u>(6)</u>	Promptly notify the county board of elections of any sickness, emergency, or other circumstances
31		that will or might prevent the person from performing as precinct chief judge on a primary or
32		election day.
33	<u>(7)</u>	Receive, prior to the day of the primary or election, from the county board of elections any security

keys or codes as to any voting systems or units that are to be operated at the precinct.

Prior to the opening of the polls, administer to any precinct official, not previously sworn, the oath

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of office as set out in G.S. 163-41.

1	<u>(9)</u>	Prior to the opening of the polls, to ensure there is open means of phone/radio communication
2		between the voting place and the county board of elections office or director.
3	(10)	If at the time of opening the voting place, a judge has not appeared, to appoint another person to act
4		as precinct judge, until the chairman of the county board of elections appoints a replacement as set
5		out in G.S. 163-41, or ratifies the selection of the chief judge.
6	(11)	Be present at the voting place at 6:00 a.m., and ensure the prompt opening of the polls at 6:30 a.m.
7		as mandated by G.S. 163-166 and any Rules promulgated under that statute.
8	(12)	Respond to any voter's request to have assistance to vote as set out in the provisions of G.S. 163-
9		<u>166.8(b).</u>
LO	<u>(13)</u>	Ensure the continued arrangement of the voting enclosure as required in G.S. 163-166.2.
l1	<u>(14)</u>	Supervise the orderly closing of the voting place at 7:30 p.m. in compliance with procedures set out
L2		in G.S. 163-166.10 and any rules promulgated under that statute.
L3	<u>(15)</u>	Handle challenges made on election or primary day in accordance with G.S. 163-87, and to conduct
L4		the hearing upon said challenge in accordance with G.S. 163-88.
L5	(16)	Be responsible, as mandated by G.S. 163-182.3, for adherence to all rules pertaining to counting,
L6		reporting, and transmitting official ballots.
L7	<u>(17)</u>	Be responsible for the maintenance of and appearance of efficient, impartial, and honest election
L8		administration at the precinct as required by G.S. 163-166.5(3).
L9	(18)	Be responsible for the maintenance of the voting place buffer zone, and ensure compliance with the
20		same.
21	(19)	Ensure peace and good order at the voting place as required by G.S. 163-48.
22	(20)	Ensure that voters are able to cast their votes in dignity, good order, impartiality, convenience, and
23		privacy as required in G.S. 163-166.7(c) and any rules promulgated under that statute.
24	(21)	If needed, to check or assist in checking the registration of voters at the voting place.
25	(22)	If ballot counters are needed, receive the list of counters from the county board, or appoint counters
26		if authorized to do so by the county board. Swear in any ballot counters prior to their county votes.
27		Report to the county board of elections the names and addresses of any ballot counters to the county
28		board at the county canvass as set out in G.S. 163-163-43.
29	(23)	Perform the required legal duties of chief precinct judge/judge or face criminal consequences as set
30		out in G.S. 163-274 (1).
31	(24)	Not accept money from candidates, commit fraud, false statements, or false writings in performing
32		election duties, or face the criminal consequences set out in G.S. 163-275(3)(8)(9) and (12).
33	(c) Tasks of Pre	cinct Judge- Precinct Judges, in accordance with election statutes, within rules of the State Board of
34	Elections, and ur	nder the supervision of the county board of elections, shall have the following tasks to perform as to
35	each primary or	election. A precinct judge may be designated to perform tasks and duties of a chief precinct judge,
36	where those duties are not statutorily made exclusive to the chief precinct judge.	

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1	(1)	Attend an instructional meeting presented by the county board of elections prior to each primary or
2		election as required by G.S. 163-46.
3	(2)	Upon learning that any parent, spouse, child, or sibling has filed for elective office, to inform the
4		county board of elections so that the provisions of the law prohibiting a precinct official from serving
5		in an election with a close relative as a candidates can be followed.
6	<u>(3)</u>	Inform the county board of elections if any blood relative of kinship of first cousin or nearer or a
7		parent in-law, child in-law or sibling in-law is a precinct official/worker serving with you in the
8		same precinct, and not to serve with that relative in the same precinct. Also inform the county board
9		of elections of any relationship, as described in the previous sentence, that you may have with an
10		emergency election-day assistant and not serve with that person in the same precinct.
11	<u>(4)</u>	If the chief judge fails to appear at the opening of poll, to appoint, with the other precinct judge, a
12		person to act as chief judge until the chairman of the county board appoints a new chief judge as per
13		<u>G.S. 163-41.</u>
14	(5)	Promptly notify the county board of elections of any sickness, emergency, or other circumstances
15		that will or might prevent the person from performing as precinct chief judge on a primary or
16		election day.
17	<u>(6)</u>	Be present at the voting place at 6:00 a.m., and ensure the prompt opening of the polls at 6:30 a.m.
18		as mandated by G.S. 163-166 and any rules promulgated under that statute.
19	<u>(7)</u>	Perform the required legal duties of chief precinct judge/judge or face criminal consequences as set
20		out in G.S. 163-274 (1).
21	<u>(8)</u>	Not accept money from candidates, commit fraud, false statements, or false writings in performing
22		election duties, or face the criminal consequences set out in G.S. 163-275(3)(8)(9) and (12).
23	<u>(9)</u>	To aid and cooperate with the precinct chief judge, as requested or needed, as to those duties noted
24		in Subparagraphs (12) through (21) of Paragraph (b) of this Rule.
25	(d) Tasks of Elec	ction Assistants- Election Assistants, in accordance with election statutes, within the rules of the State
26	Board of Election	ons, and under the supervision of the county board of elections, shall have the following tasks to
27	perform as to eac	ch primary or election: Aid the chief judge and other precinct judges in the performances of their tasks
28	and duties as nee	eded or directed.
29	<u>(1)</u>	Check the registration of voters at the voting place as per G.S. 163-166.7(a).
30	<u>(2)</u>	Guide voters to voting units or provide voters ballots as per G.S. 163-166.7(b).
31	(3)	Prior to performing duties and tasks after being duly appointed, take the oath required by G.S. 163-
32		<u>41.</u>
33	<u>(4)</u>	Promptly notify the county board of elections of any sickness, emergency, or other circumstances
34		that will or might prevent the person from performing as an election assistant on a primary or
35		election day.

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Т	(3)	Upon learning that any parent, spouse, child, or slotling has filed for elective office, to inform the
2		county board of elections so that the provisions of the law prohibiting a precinct official from serving
3		in an election with a close relative as a candidates can be followed.
4	<u>(6)</u>	Inform the county board of elections if any blood relative of kinship of first cousin or nearer or a
5		parent in-law, child in-law or sibling in-law is a precinct official/worker serving with you in the
6		same precinct, and not to serve with that relative in the same precinct. Also inform the county board
7		of elections of any relationship, as described in the previous sentence, that you may have with an
8		emergency election-day assistant and not serve with that person in the same precinct.
9	(e) Tasks of En	nergency Election -Day Assistant-Emergency Election-Day Assistants, in accordance with election
LO	statutes, within t	the rules of the State Board of Elections, and under the supervision of the county board of elections,
l1	shall have the fo	llowing tasks to perform as to each primary or election:
L2	<u>(1)</u>	To be prepared prior to and on the day of a primary or election to serve, on short notice given by the
L3		county board of elections, to travel to and work at any voting place within the county.
L4	(2)	Perform all the tasks and duties of an election assistant as set out in Paragraph (d) of this Rule.
L5	(3)	Promptly notify the county board of elections of any sickness, emergency, or other circumstances
L6		that will or might prevent the person from performing as an election assistant on a primary or
L7		election day.
L8	(4)	Upon learning that any parent, spouse, child, or sibling has filed for elective office, to inform the
L9		county board of elections so that the provisions of the law prohibiting a precinct official from serving
20		in an election with a close relative as a candidates can be followed.
21	(5)	Inform the county board of elections if any blood relative of kinship of first cousin or nearer or a
22		parent in-law, child in-law or sibling in-law is a precinct official/worker serving with you in the
23		same precinct, and not to serve with that relative in the same precinct. Also inform the county board
24		of elections of any relationship, as described in the previous sentence, that you may have with an
25		emergency election-day assistant and not serve with that person in the same precinct.
26	(f) Tasks of Ba	llot Counters - All ballot counters, in accordance with election statutes, with the rules of the State
27	Board of Electic	ons and under supervision of the county board of elections, shall perform all the following. There is
28	no requirement t	to have ballot counters appointed or used by a county board of elections unless they are needed.
29	<u>(1)</u>	After appointment, to appear at the poll immediately at close of the polls and to be prepared to count
30		ballots under the direction and control of the chief and other precinct judges.
31	(2)	To be sworn into office, by the precinct chief judge prior to starting counting.
32	(3)	Upon learning that any parent, spouse, child, or sibling has filed for elective office, to inform the
33		county board of elections so that the provisions of the law prohibiting a precinct official from serving
34		in an election with a close relative as a candidates can be followed.
35	<u>(4)</u>	Inform the county board of elections if any blood relative of kinship of first cousin or nearer or a
36		parent in-law, child in-law or sibling in-law is a precinct official/worker serving with you in the
37		same precinct, and not to serve with that relative in the same precinct. Also inform the county board

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1		of elections of any relationship, as described in the previous sentence, that you may have with an
2		emergency election-day assistant and not serve with that person in the same precinct.
3	(g) General dut	ies of all Precinct Officials - All precinct officials, in accordance with election statutes, with the rules
4	of the State Boa	ard of Elections and under the supervision of the county board of elections, shall perform all of the
5	following:	
6	(1)	Count votes when votes are required to be counted at the voting place, G.S. 163-182.2;
7	(2)	Make an unofficial report of returns to the county board of elections, G.S. 163-182.2;
8	(3)	Certify the integrity of the vote and the security of the official ballots at the voting place, G.S. 163-
9		<u>182.2;</u>
10	<u>(4)</u>	Return official ballots and equipment to the county board of elections, G.S. 163-182.2;
11	<u>(5)</u>	Ensure that the voting system remains secure throughout the period voting is being conducted:
12	<u>(6)</u>	Ensure that only properly voted official ballots are introduced into the voting system;
13	<u>(7)</u>	Ensure that, except as provided by G.S. 163-166.9, no official ballots leave the voting enclosure
14		during the time voting is being conducted there;
15	<u>(8)</u>	Ensure that all improperly voted official ballots are returned to the precinct officials and marked as
16		spoiled;
17	<u>(9)</u>	Ensure that voters leave the voting place promptly after voting:
18	<u>(10)</u>	Ensure that voters not clearly eligible to vote in the precinct but who seek to vote there are given
19		proper assistance in voting a provisional official ballot or guidance to another voting place where
20		they are eligible to vote;
21	<u>(11)</u>	Ensure that information gleaned through the voting process that would be helpful to the accurate
22		maintenance of the voter registration records is recorded and delivered to the county board of
23		elections;
24	(12)	Ensure that registration records are kept secure;
25	(13)	Ensure that party observers are given access as provided by G.S. 163-45 to current information about
26		which voters have voted;
27	(14)	Aid any voter, as needed, in curbside voting as provided for in G.S. 163-166.9;
28	(15)	Provide Spanish ballot instructions as needed to voters, when such instructions are required to be
29		available by law. Direct all language needs which can not be handled at the precinct to the county
30		board office;
31	(16)	Register and help, at the voting place, those persons eligible to register and vote on election day as
32		allowed by G.S. 163-254 and G.S. 163-82.6(d);
33	(17)	Promptly report to the county board of elections, any physical or mental ailment, impairment, or
34		deterioration that may adversely affect the performance of an election related task or duty. Report
35		any such conditions known in any other precinct officials to the county board;
36	(18)	Promptly report any violation of election laws or regulations to the chief judge, or to the county
37		board of elections if the chief precinct judge is involved in the violation:

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1	(19)	Provide any person who requests it any information on how to contact the county director of
2		elections, the county board of elections, or the office of the State Board of Elections; and
3	(20)	Work and stay at the voting place, at all times during the voting day, until closure. By prior
4		agreement with the county board of elections and pursuant to G.S. 163-42, election assistants and
5		emergency election-day assistants may work less than the entire voting day.
6		
7	History Note:	Authority G.S. 163-22; 163-166.6;
8		Temporary Adoption Eff. April 15, 2002;
9		Eff. August 1, 2004.
10		Readopted Eff. September 1, 2018.

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AGENCY: State Board of Elections and Ethics Enforcement

RULE CITATION: 08 NCAC 10B .0102

RECOMMENDED ACTION:

Approve, but note staff's comment

X Object, based on:

Lack of statutory authority

X Unclear or ambiguous

Unnecessary

Failure to comply with the APA

Extend the period of review

## COMMENT:

taff believes this Rule is ambiguous as written as it includes language such as "other approved communications devices", "other necessary identifiers", "necessary mechanisms", "correctly", "good working order", "continual adequate", "proper", and "official timepiece" without providing any additional information as to the meaning of these terms.

In addition (e) says that "units should be locked... and should remain that way..." It is unclear to staff whether this is a requirement related to the units or if this is an aspirational statement that does not meet the definition of a Rule. Paragraph (i) also contains the word "should."

Further, the history note contains references to statutes that no longer exist as the statutory references contained in this Rule have been recodified.

1 08 NCAC 10B .0102 is readopted as published in 31:23 NCR 2311 as follows:

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## 08 NCAC 10B .0102 SETTING UP POLLING PLACE PRIOR TO VOTING

- 4 (a) The Chief Judge, Judges, and Assistants shall arrive at the voting place no later than 6:00 a.m. on the day of the
- 5 <u>election</u>.
- 6 (b) The Chief Judge shall administer the oath to Judges and Assistants who have not taken the oath.
- 7 (c) The Chief Judge shall assign tasks regarding the set up of the polling place to ensure the participation of judges
- 8 and assistants of each represented party. The tasks and duties assigned shall adhere to the rules and orders promulgated
- 9 by the State Board of Elections. At least one official shall be directed by the Chief Judge to manage curbside voting
- and facilitate the process for voters with special needs.
- 11 (d) The Chief Judge or designated official shall ensure that the telephone or other approved communications device
- 12 is working.
- 13 (e) The members of the County Board of Elections shall ensure that each voting system is delivered to the voting
- 14 place and placed in the custody of the Chief Judge or designated official within three days before the election with the
- 15 <u>ballot labels or other necessary identifiers already in place on each unit. Keys and other security devices necessary</u>
- for the operation of the voting system shall be delivered to the Chief Judge in a sealed container. Together, a board
- 17 member or agent of the County Board of Elections and the Chief Judge or designated official shall inspect the contents
- 18 of the sealed container to ensure that all necessary mechanisms are provided to the Chief Judge. All numbers stamped
- on the keys and security devices should correspond to the number of the voting units. Together they shall also ensure
- that the ballots are correctly in position and that no votes have been cast or recorded on any unit, and that the units are
- 21 <u>in good working order. Voting tabulating units should be locked and sealed (or otherwise secured in the manner</u>
- 22 recommended by the manufacturer) and should remain that way until the polls are closed.
- 23 (f) The Chief Judge, with the cooperation of at least one official of the other major political party shall verify the
- 24 <u>delivery of all election supplies, records and equipment necessary for the conduct of the election.</u>
- 25 (g) The Chief Judge shall ensure that all applicable instructions, signs, and sample ballots are posted around the
- 26 polling place, including signs designating the voting place, the buffer zone, temporary and/or permanent accessible
- 27 parking, and the curbside voting area.
- 28 (h) The Chief Judge shall ensure that the polling place is arranged to provide private spaces so voters may cast votes
- 29 <u>unobserved</u>. The Chief Judge shall also ensure that there is continual adequate space and furniture for separate areas
- for voter registration records, ballot distribution, and private discussions with voters concerning irregular situations.
- 31 The voting enclosure must be set up so that all equipment and furniture can be generally seen. The exterior of the
- 32 voting units and every part of the voting enclosure shall be in plain view of the Chief Judge and Judges.
- 33 (i) The door to the voting place/enclosure should be sufficiently wide to accommodate voters in wheelchairs. The
- door width, hardware, and thresholds shall comply with the Americans with Disabilities Act Accessibility Guidelines
- 35 (ADAAG) or shall be made to comply on election day. The County Board of Elections must approve any plan that
- 36 would cause a deviation in the set up and arrangement of the voting enclosure. For example, generally the door into
- 37 the voting place/enclosure should be the same door used to exit the voting place/enclosure. However, if by doing so

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1	the flow of vote	ers is disturbed, a separate door may be used to exit the voting place/enclosure. If a separate door is	
2	used, it should b	be in plain view of the Chief Judge, Judges, and Assistants so that no unauthorized persons may enter	
3	the voting enclosure through the exit door.		
4	(j) The Chief Judge shall assign a Judge or Assistant to provide demonstrations to voters, upon request, in the proper		
5	use of the voting system.		
6	(k) At the Chief Judge's request at 6:30 a.m. (according to the official timepiece used by the Chief Judge), one of the		
7	Judges shall and	nounce that the polls are open and shall state the hour at which they will be closed.	
8			
9	History Note:	Authority G.S. 163-22; 163-165.5;	
10		Temporary Adoption Eff. April 15, 2002;	
11		Eff. August 1, 2004;	
12		Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 3,	
13		2017.	

Readopted Eff. September 1, 2018.

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Please Note: This communication is either 1) only the recommendation of an RRC staff attorney as to action that the attorney believes the Commission should take on the cited rule at its next meeting, or 2) an opinion of that attorney as to some matter concerning that rule. The agency and members of the public are invited to submit their own comments and recommendations (according to RRC rules) to the Commission.

AGENCY: State Board of Elections and Ethics Enforcement

RULE CITATION: 08 NCAC 10B .0103

RECOMMENDED ACTION:

Approve, but note staff's comment

X Object, based on:

Lack of statutory authority

X Unclear or ambiguous

Unnecessary

Failure to comply with the APA

Extend the period of review

## **COMMENT:**

Staff believes this Rule is ambiguous as written as it includes language such as "clearly", "fail-safe", "adequate", "proper", "other approved record", "secure", and "properly" without providing any additional information as to the meaning of these terms.

Further, the history note contains references to statutes that no longer exist as the statutory references contained in this Rule have been recodified.

08 NCAC 10B .0103 is readopted as published in 31:23 NCR 2311 as follows:

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#### 08 NCAC 10B .0103 **VOTING PROCEDURES**

(a) From the time the polls are opened until the precinct count has been completed, the returns signed, and the results declared, no person shall take or remove from the voting enclosure election supplies and materials, including official ballots, containers of official ballots, provisional official ballots, spoiled ballots, the pollbook or voter authorization slip(s), the registration record(s) or any voting units or devices that are part of the voting system, except as authorized by law to accommodate curbside voters. Provisions for secure removal of election supplies and materials at any time would be permissible under the emergency management plan of a county board of elections in the cases of natural or man-made emergencies.

(b) A person seeking to vote shall enter the voting enclosure at the voting place through the designated entrance and shall clearly communicate the person's name and place of residence to one of the judges of election. In some cases, the precinct judge may prompt the voter to provide this information. In a primary election, the voter shall also state the political party with which the voter affiliates and in whose primary the voter desires to vote, or if the voter is an unaffiliated voter permitted to vote in the primary of a particular party, the voter shall state the name of the authorizing political party in whose primary the voter wishes to vote. This information, including the political party's primary in which the voter elected to participate, provided by the voter shall be recorded in the precinct pollbook or on the voter authorization slip. The judge or assistant to whom the voter gives this information shall announce the name and residence of the voter so that the information may be heard by the necessary officials and observers. After examining the precinct registration records, the judge or assistant shall state whether the person seeking to vote is registered. The precinct judge or assistant shall not presume the identity/name, address, or party affiliation of any person seeking to

(c) If the person is found to be registered and is not challenged, or if the challenge is overruled, the responsible judge of election shall provide the voter with each official ballot the voter is entitled to vote. In a primary election the voter shall be allowed to vote the political party ballot(s) the voter is entitled to vote and no others, except non-partisan ballots. Unaffiliated voters may choose to participate in only one party's primary and no others on the same day. In the case of a second primary, unaffiliated voters who participated in a party's primary in the first primary may only vote that party's ballot in the second primary. However, if an unaffiliated voter did not participate in the first primary, the voter may choose which party's primary to participate in during the second primary. Note that unaffiliated voter participation in party primaries is subject to authorization by the respective state party executive committees.

- 31 Unaffiliated voters who are otherwise qualified may always participate in non-partisan primaries.
  - (d) If the person is found to not be registered to vote in the precinct, the responsible judge of election shall inform the person of the fail-safe voting process. First, based on information provided by the person the responsible judge shall determine whether or not the person may be eligible to vote an official provisional ballot. The person is eligible to vote an official provisional ballot if the person resides in the precinct and either:
    - is a registered voter in the county and has moved into the precinct 30 days or more prior to the election and has not reported the change to the board of elections; or

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1	(2) claims to have applied for voter registration in the county but there is no record of the person's name
2	on the registration records; or
3	(3) was removed from the list, but the person maintains continuous eligibility within the county; or
4	(4) disputes the voting districts (and ballots) to which the person has been assigned.
5	(e) If the person is found to not be registered to vote in the precinct and the responsible judge of election learns from
6	the person that the person resides in a different precinct, the responsible judge shall provide the person with adequate
7	information in order to direct the person to the proper voting place.
8	(f) It is the duty of the chief judge and judges to gather any voter information regarding changes of name and address
9	in order to assist the county board of elections in updating voter records. If the county board of elections has identified
10	a voter's record pursuant to law to gather additional information, the responsible judge shall require the voter to update
11	the information.
12	(g) It is the duty of the chief judge and judges to give any voter any technical information the voter desires in regard
13	to ballot items. In response to questions asked by the voter, the chief judge and judges shall communicate to the voter
14	only technical information necessary to enable the voter to vote the ballot.
15	(h) The Chief Judge shall assign two precinct officials, one from each political party if possible, to keep the pollbook
16	or other voting record and to keep the registration list. The names of all persons voting shall be checked on the
17	registration record and entered on the pollbook or other voting record. In an election where observers may be
18	appointed each voter's party affiliation shall be entered in the proper column of the pollbook or other approved record
19	opposite the voter's name. The designated official shall make each entry at the time the ballots are handed to the voter.
20	The information about the voter's political party registration shall be obtained from the registration record and not
21	from the voter.
22	(i) The chief judge, judges, and assistants must ensure that registration records are kept secure and do not leave the
23	voting enclosure for any purpose. Properly designated observers are entitled to obtain a list of the persons who have
24	voted in the precinct so far in that election day at least at the following times: 10 a.m., 2 p.m. and 4 p.m. Counties
25	using authorization to vote documents as opposed to traditional pollbooks may comply with the requirement by
26	permitting each observer to inspect election records so that the observer may create a list of persons who have voted
27	in the precinct. A party may designate more than two observers for each precinct, but only two may serve in the voting
28	place at the same time. Observers may serve in shifts, as long as the shifts are at least four hours long and the persons
29	serving in the shifts have been properly appointed as observers.
30	
31	History Note: Authority G.S. 163-22; 163-166.7; 163-119;
32	Temporary Adoption Eff. April 15, 2002;
33	Eff. August 1, 2004.
34	Readopted Eff. September 1, 2018.

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AGENCY: State Board of Elections and Ethics Enforcement

RULE CITATION: 08 NCAC 10B .0104

RECOMMENDED ACTION:

Approve, but note staff's comment

X Object, based on:

X Lack of statutory authority

X Unclear or ambiguous

Unnecessary

Failure to comply with the APA

Extend the period of review

## COMMENT:

Staff is recommending objection to 08 NCAC 10B .0104 as this Rule for lack of statutory authority as G.S. 163A-1109 prohibits the use of punch-card ballots and lever machine voting systems. This Rule appears to provide provisions regarding both punch card ballots and lever voting. Staff notes that the text of G.S. 163A-1109 is available in the Staff Opinion for 08 NCAC 09 .0106.

Staff is also recommending objection to this Rule as Staff believes that this Rule is unclear or ambiguous as written. Staff believes this Rule is ambiguous as written as it includes language such as "immediately", "undue delay", "proper", and "appropriate" without providing any additional information as to the meaning of these terms.

Further, the history note contains references to statutes that no longer exist as the statutory references contained in this Rule have been recodified.

08 NCAC 10B .0104 is readopted as published in 31:23 NCR 2311 as follows:

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# 08 NCAC 10B .0104 LEAVING THE VOTING ENCLOSURE, SPOILED OR INCOMPLETE BALLOTS

- (a) When the voter has been presented with the official ballots by the judge, the voter shall be deemed to have begun
- 6 the act of voting, and the voter shall not leave the voting enclosure until the voter has finalized the act of voting by
- 7 performing whatever action is necessary to cause the act of voting to be finalized. On receiving the ballots, the voter
- 8 shall immediately retire alone to one of the voting booths unless the voter is entitled to assistance and without any
- 9 undue delay, the voter shall mark the ballots. The voter shall return any unvoted ballot(s) to the precinct officials.
- 10 (b) If a voter spoils or damages a ballot, the voter may obtain another upon returning the spoiled or damaged ballot
- 11 to the chief judge or other designated official. A voter shall not be given a replacement ballot until the voter has
- 12 returned the spoiled or damaged ballot. The voter shall not be permitted to receive more than three replacement
- ballots. The chief judge shall deposit each spoiled or damaged ballot in the container provided for that purpose.
- 14 (c) When the voter has marked the ballot the voter shall ensure the ballot(s) are cast. If the voter has been challenged
- and the challenge has been overruled, before casting the ballot(s), the voter shall write the voter's name on each of the
- 16 ballot so they may be identified in the event the voter's right to vote is again questioned. After casting the ballots in
- the proper manner, the voter shall immediately leave the voting enclosure unless the voter is one of the persons
- authorized by law to remain within the enclosure for purposes other than voting.
- 19 (d) No voter shall be permitted to occupy a voting booth already occupied by another voter, provided, however,
- 20 husbands and wives may occupy the same voting booth if both wish to do so. Excluded from this prohibition are
- 21 persons lawfully providing assistance.
- 22 (e) When the voter leaves the voting enclosure, whether or not the voter has finalized voting, the voter shall not be
- permitted to enter the voting enclosure again for the purpose of voting.
- 24 (f) If a voter leaves the voting enclosure and is found not to have finalized the act of voting by pressing the appropriate
- button or touching the screen in the appropriate space in the case of Direct Record Electronic Voting Machines, by
- 26 feeding their ballot into the appropriate tabulator in the case of Optical Scan/Marksense and Punchcard Voting
- 27 Equipment, by pulling the appropriate lever in the case of Lever Voting Machines, or by depositing the paper ballot
- 28 into the ballot box, the chief judge or judges of election may find, by unanimous vote, that the votes marked by the
- 29 voter had not been disturbed by any other person and may execute the ballot for the voter who has vacated the voting
- 30 enclosure. If the Chief Judge and Judges of election cannot unanimously confirm that the ballot marked by the voter
- 31 <u>has not been disturbed, the ballot must be marked as spoiled and placed with other spoiled ballots (or in the case of</u>
- direct record electronic and lever machines, the ballot must be cleared according to the voting system specifications).
- 33 The fact that a ballot is only partially and not fully marked shall have no bearing on the decision of the Chief Judge
- 34 and Judges. In each instance where this type of incident occurs, the Chief Judge and Judges must document the
- 35 <u>circumstances and make the information known to the county board of elections.</u>

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*History Note: Authority G.S.* 163-22; 163-166.7;

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- Temporary Adoption Eff. April 15, 2002;
  Eff. August 1, 2004.
- 3 <u>Readopted Eff. September 1, 2018.</u>

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AGENCY: State Board of Elections and Ethics Enforcement

RULE CITATION: 08 NCAC 10B .0105

RECOMMENDED ACTION:

Approve, but note staff's comment

X Object, based on:

Lack of statutory authority

X Unclear or ambiguous

Unnecessary

Failure to comply with the APA

Extend the period of review

## **COMMENT:**

Staff believes this Rule is ambiguous as written as it includes language such as "orderly" without providing any additional information as to the meaning of this term.

Further it notes that "the container should be sealed..." It is unclear to staff whether this is intended to be a requirement or an aspirational statement that does not meet the definition of a Rule.

Further, the history note contains references to statutes that no longer exist as the statutory references contained in this Rule have been recodified.

08 NCAC 10B .0105 is readopted as published in 31:23 NCR 2311 as follows:

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#### 08 NCAC 10B .0105 PROCEDURES AT THE CLOSE OF VOTING

- 4 (a) Before each primary and election, the chairman of the county board of elections shall furnish each chief judge
- 5 written instructions on how ballots shall be marked and counted. Before starting the counting of ballots in the precinct,
- 6 the chief judge shall instruct all of the judges, assistants, and ballot counters in how differently marked ballots shall
- 7 <u>be counted and tallied.</u>
- 8 (b) The Chief Judge shall announce or have it announced that the polls are closed at 7:30 p.m. unless the time has
- 9 been extended until 8:30 p.m. Time shall be determined by the same timepiece used to determine the opening of the
- 10 polls.
- 11 (c) Any person who is in line at the close of polls shall be afforded an opportunity to vote. A list shall be made,
- starting at the end of the line and moving forward, of everyone standing in line at the close of polls and anyone whose
- 13 name is on that list shall be permitted to vote. No person entering the voting enclosure after the close of polls has
- been announced, other than those whose names are on the list, shall be permitted to vote under any circumstance.
- 15 (d) The Chief Judge and Judges must subscribe their names to each pollbook.
- 16 (e) Only official ballots shall be voted and counted. No official ballot shall be rejected because of technical errors in
- 17 marking it, unless it is impossible to determine the voter's choice under the rules for counting ballots. Such
- determination shall be made by the county board of elections if the chief judge and judges are unable to determine the
- voter's choice, or whether a particular ballot should be counted.
- 20 (f) No person shall purposely deface or tear an official ballot in any manner, and no person, other than the voter, shall
- 21 purposely erase any name or mark written on a ballot by a voter.
- 22 (g) The Chief Judge, along with a Judge of another political party, shall "close the polls" on each voting unit. The
- 23 results sheet from each unit shall be placed in an "Official Precinct Returns Envelope." As soon as the polls are closed
- 24 the chief judge and judges shall, without adjournment or postponement, count the ballots. The counting of ballots at
- 25 the precinct shall be continuous until completed. More than one voting unit may be counted at the same time by the
- 26 precinct officials, assistants, and ballot counters, but the chief judge and judges shall supervise the counting of all
- 27 units and shall be responsible for them. From the time the first unit is read or opened and the count of votes begun
- 28 until the votes are counted and the statement of returns made out, signed, certified and provided to the chief judge or
- 29 judge responsible for delivering them to the county board office, the precinct chief judge and judges shall not separate,
- 30 nor shall any one of them leave the voting place except in case of unavoidable necessity as determined by the Chief
- 31 Judge.
- 32 (h) The counting of the ballots shall be made in the presence of the precinct election officials and witnesses and
- 33 observers who are present and desire to observe the count. Observers shall not interfere with the orderly counting of
- 34 the ballots. As soon as the votes have been counted and the precinct returns certified, the chief judge, or one of the
- 35 judges selected by the chief judge, shall report the total precinct vote for each ballot item to the witnesses and observers
- 36 who are present and also by telephone or other electronic means to the county board of elections. This report shall be
- unofficial and shall have no binding effect upon the official county canvass to follow.

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- 1 (i) The Chief Judge and Judges shall sign the consolidation and accounting sheets and statement of returns and shall
- 2 place them in the "official precinct returns" envelope or container.
- 3 The Chief Judge shall place or cause to be placed by an authorized person under the Chief Judges direction and control:
- 4 voter registration documents and information, provisional ballot envelope, payroll information, county board
- 5 communication devices, unit keys and security devices and the official returns envelope. The container should be
- 6 sealed with non-transparent tape of sufficient size to contain signatures. It shall be signed by the Chief Judge and two
- 7 Judges.
- 8 (k) Consolidation sheets, including the statement of returns for all voted official ballots, shall be completed by adding
- 9 curbside votes to the totals. In any precinct using direct record electronic voting equipment, the county board of
- 10 <u>elections</u>, with the approval of the State Board of Elections, may provide for any paper ballots to be transported upon
- 11 closing of the polls to the office of the county board of elections for counting. An accounting form shall be completed
- 12 that accounts for every used and unused ballot—providing the number of blank ballots received from the board of
- elections, the number of regular voted ballots, provisional voted ballots, and spoiled ballots.
- 14 (1) Voted provisional ballots must be placed in a sealed envelope or container and the seal must be signed by the Chief
- 15 <u>Judge and Judges.</u>
- 16 (m) The Chief Judge shall bring (or have delivered by secure means) the results cartridge (or reading) from each unit
- to the board of elections office.
- 18 (n) All supplies must be collected for return to the board of elections office. Any items brought into the polling place
- 19 <u>facility shall be removed upon vacating the polling place</u>. <u>Precinct Judges shall ensure that the facility is left in the</u>
- 20 <u>same condition in which it was received for voting purposes.</u>
- 21 (o) Under no circumstance shall voting items be left in the polling place facility out of the custody of the Chief Judge
- or other designee.

24 History Note:

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Authority G.S. 163-22; 163-166.10;

Temporary Adoption Eff. April 15, 2002;

26 Eff. August 1, 2004.

27 <u>Readopted Eff. September 1, 2018.</u>

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AGENCY: State Board of Elections and Ethics Enforcement

RULE CITATION: 08 NCAC 10B .0106

RECOMMENDED ACTION:

Approve, but note staff's comment

X Object, based on:

Lack of statutory authority

X Unclear or ambiguous

Unnecessary

Failure to comply with the APA

Extend the period of review

## COMMENT:

Staff believes this Rule is ambiguous as written as it includes language such as "immediately" and "unsecured."

Further, the history note contains references to statutes that no longer exist as the statutory references contained in this Rule have been recodified.

1	08 NCAC 10B .0	0106 is readopted as published in 31:23 NCR 2311 as follows:
2		
3	08 NCAC 10B.	0106 ELECTION SUPPLIES RETURN
4	(a) After an ele	ction or primary, all election supplies shall be immediately taken to the county board of elections
5	office.	
6	(b) Election mat	erials and supplies, used or unused, shall not remain in the custody of the Chief Judge, Judges, or any
7	other person in u	nsecured locations overnight. However, if it is not possible for a county board of elections to have
8	all precincts retu	rn materials and supplies on the night of the election, the county board of elections must submit a
9	security plan to	he Executive Director of the State Board of Elections 30 days prior to the election. The Executive
10	Director will pro	vide either approval or required modifications to the plan in writing no later than 15 days prior to the
11	election. The box	ard of elections shall have an emergency backup plan that will enable board of elections employees
12	or other authoriz	ed persons to retrieve the items from the custody of the Chief Judge and Judges and transport them
13	to the board of o	elections office. A county board must have an alternative security plan approved by the Executive
14	Director in order	to use it.
15	(c) All materials	shall be transported with a "chain of custody" form that includes the signatures and times in which
16	the supplies are	n the custody of each official. All supplies, once received at the board of elections, will be verified
17	and signed for by	a board of elections representative.
18		
19	History Note:	Authority G.S. 163-22; 163-166.10;
20		Temporary Adoption Eff. April 15, 2002;
21		Eff. August 1, 2004.
22		Readopted Eff. September 1, 2018.

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AGENCY: State Board of Elections and Ethics Enforcement

RULE CITATION: 08 NCAC 10B .0107

RECOMMENDED ACTION:

Approve, but note staff's comment

X Object, based on:

Lack of statutory authority

X Unclear or ambiguous

X Unnecessary

Failure to comply with the APA

Extend the period of review

## **COMMENT:**

Staff is recommending objection to 08 NCAC 10B .0107 as Staff believes that this Rule is unclear or ambiguous as written. Staff believes this Rule is ambiguous as written as it includes language such as "near relative", "illegally excluded", "properly", "good cause" and "reasonable grounds" and "unlawful assistance" without providing any additional information as to the meaning of these terms.

Further, the history note contains references to statutes that no longer exist as the statutory references contained in this Rule have been recodified.

Staff notes that additional information relating to the clarity of this Rule is noted in this Rule's corresponding technical change requests.

In addition, Staff is recommending objection regarding the necessity of this Rule as Staff reads Subparagraphs (a)(1) and (2) and Paragraphs (b) and (c) to essentially recite G.S. 163A-1139 witihout providing any additional information.

## § 163A-1139. Assistance to voters.

- (a) Any registered voter qualified to vote in the election shall be entitled to assistance with entering and exiting the voting booth and in preparing ballots in accordance with the following rules:
  - (1) Any voter is entitled to assistance from the voter's spouse, brother, sister, parent, grandparent, child, grandchild, mother-in-law, father-in-law, daughter-in-law, son-in-law, stepparent, or stepchild, as chosen by the voter.

- (2) A voter in any of the following four categories is entitled to assistance from a person of the voter's choice, other than the voter's employer or agent of that employer or an officer or agent of the voter's union:
  - a. A voter who, on account of physical disability, is unable to enter the voting booth without assistance.
  - b. A voter who, on account of physical disability, is unable to mark a ballot without assistance.
  - c. A voter who, on account of illiteracy, is unable to mark a ballot without assistance.
  - d. A voter who, on account of blindness, is unable to enter the voting booth or mark a ballot without assistance.
- (b) A qualified voter seeking assistance in an election shall, upon arriving at the voting place, request permission from the chief judge to have assistance, stating the reasons. If the chief judge determines that such assistance is appropriate, the chief judge shall ask the voter to point out and identify the person the voter desires to provide such assistance. If the identified person meets the criteria in subsection (a) of this section, the chief judge shall request the person indicated to render the assistance. The chief judge, one of the judges, or one of the assistants may provide aid to the voter if so requested, if the election official is not prohibited by subdivision (a) (2) of this section. Under no circumstances shall any precinct official be assigned to assist a voter qualified for assistance, who was not specified by the voter.
- (c) A person rendering assistance to a voter in an election shall be admitted to the voting booth with the voter being assisted. The State Board shall promulgate rules governing voter assistance, and those rules shall adhere to the following guidelines:
  - (1) The person rendering assistance shall not in any manner seek to persuade or induce any voter to cast any vote in any particular way.
  - (2) The person rendering assistance shall not make or keep any memorandum of anything which occurs within the voting booth.
  - (3) The person rendering assistance shall not, directly or indirectly, reveal to any person how the assisted voter marked ballots, unless the person rendering assistance is called upon to testify in a judicial proceeding for a violation of the election laws. (2001-460, s. 3; 2017-6, s. 3.)

08 NCAC 10B .0107 is readopted as published in 31:23 NCR 2311 as follows:

_		
3	08 NCAC 10B .0107 ASSISTANCE TO VOTERS IN PRIMARIES AND GENERAL ELEC	CTIONS
4	(a) In any primary or election, including one-stop absentee voting, a registered voter qualified to vote	e in the primary
5	or election shall be entitled to assistance in getting to and from the voting booth, entering and exiting the	ne voting booth
6	and in preparing their ballots in accordance with the following:	
7	(1) Any assistance rendered must be performed in person, and shall not be allowed by el	ectronic, paper
8	or mechanical means of communication with a person outside the voting bo	oth, except ir
9	circumstances of disabled voters with special needs. The use of electronic, paper	or mechanica
10	devices by the voter, while alone in the voting booth and not in contact with another	person outside
11	the voting booth, shall not be considered voting assistance;	
12	(2) Any voter shall be entitled to assistance from a near relative, as defined in G.S. 163	-166.8(a)(1), of
13	his choice. Under no circumstances shall any other relative, friend, guardian, person	nolding a power
14	of attorney, or any other person be allowed to render assistance except as allowed	ınder G.S. 163-
15	166.8(a)(2) and in Paragraph (b) of this Rule; and	
16	(3) The person rendering assistance shall not in any manner seek to persuade or induce a	ny voter to cast
17	any vote in any particular way.	
18	(b) Any voter in any of the following four categories shall be entitled to assistance from any person	n of the voter's
19	choice, other than the voter's employer or agent of that employer or officer or agent of the voter's union	on:
20	(1) One who, on account of physical disability, is unable to enter the voting booth with	out assistance;
21	(2) One who, on account of physical disability, is unable to mark his or her ballot with	out assistance;
22	(3) One who, on account of illiteracy, is unable to mark his or her ballot without assista	ince;
23	(4) One who, on account of visual impairment, is unable to enter the voting booth or	mark the ballo
24	without assistance.	
25	No precinct official may refuse the voter's choice of the person to assist him, unless the person so n	amed is legally
26	excluded, does not appear at the voting place to assist the voter prior to the close of the polls, or refu	ses to assist the
27	voter. If the voter's choice of the assisting person cannot be met on the ground(s) set out herein, the	e voter shall be
28	allowed to make an additional choice until a willing assisting person is available to assist the voter. T	here shall be no
29	limitation on the number of voters a person can assist, as long as the assisting person is properly chose	n by each voter
30	to assist.	
31	(c) A person seeking assistance in any election shall, upon arriving at the voting place, first request the	e chief judge to
32	permit him to have assistance, communicating the reasons. If the chief judge determines that the vo	er is entitled to
33	assistance, the chief judge shall ask the voter to identify the person the voter desires to provide as	sistance. If that

person is not present, the voter is entitled to contact the person and to wait for the person at the voting place, but

outside the voting enclosure. When that person is available to assist or is already present to assist, the voter, along with that person, shall present themselves to the chief judge. The chief judge shall thereupon request the person

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1	indicated to rend	er the requested aid. In the case of assistance requested at a one-stop voting site, the assistance may	
2	be requested and received from any election official available at such site.		
3	(d) Any chief judge, judge, or assistant shall provide assistance to a voter if so requested, except for good cause,		
4	unless the election official is prohibited from doing so by his status as the voter's employer, official of the voter's		
5	union, or agent of	of the voter's employer or union. Under no circumstances shall any precinct official or person be	
6	assigned to assist	t a voter who was not specified by the voter.	
7	(e) Conduct of Po	ersons Rendering Assistance Anyone rendering assistance to a voter shall be admitted to the voting	
8	booth with the pe	erson being assisted and shall be governed by G.S. 163-166.8(c). The assisting person shall not do the	
9	following:		
10	<u>(1)</u>	Give, present, or display within the vision of the voter, any list of preferred candidates, a marked	
11		sample ballot, or any other type of document, item, or display that conveys a choice of candidate(s).	
12		unless it was brought to the voting booth by the voter. An assisting person may respond to an inquiry	
13		of a hearing impaired voter in writing if needed, as long as a ballot choice is not communicated to	
14		the voter:	
15	<u>(2)</u>	Speak or play within the hearing or vision of the voter, any conversation, communication, or	
16		recording that conveys a choice of candidate(s):	
17	(3)	Operate a phone, radio, computer, or any other means of communication while in the voting booth	
18		with the voter:	
19	<u>(4)</u>	Communicate to others how the voter voted, unless ordered by a court, or make a memorandum of	
20		anything that occurred in the voting booth; and	
21	<u>(5)</u>	Violate any election law set out in G.S. 163 or violate any election rule set out in Title 8 of the NC	
22		Administrative Code.	
23	(f) It shall be pro	esumed that the operation by a voter of any means of communication capable of being received by a	
24	voter in the votin	g booth shall constitute an attempt to receive unlawful voting assistance, except in cases of a disabled	
25	voter with specia	l needs. Upon having reasonable grounds to suspect such communication or operation by the voter,	
26	a precinct officia	I may make inquiry and investigate the alleged operation of the communication equipment. The voter	
27	shall be informed	d of this presumption of unlawful assistance, and the prohibitions contained within G.S. 163-166.8 as	
28	to voter assistance	e. Regardless, any voter suspected of such conduct shall be allowed to vote and cast his or her ballot.	
29			
30	History Note:	Authority G.S. 163-22; G.S. 163-166.8;	
31		Temporary Adoption Eff. April 15. 2002;	
32		Eff. August 1, 2004.	
33		Readopted Eff. September 1, 2018.	

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Please Note: This communication is either 1) only the recommendation of an RRC staff attorney as to action that the attorney believes the Commission should take on the cited rule at its next meeting, or 2) an opinion of that attorney as to some matter concerning that rule. The agency and members of the public are invited to submit their own comments and recommendations (according to RRC rules) to the Commission.

AGENCY: State Board of Elections and Ethics Enforcement

RULE CITATION: 08 NCAC 10B .0108

RECOMMENDED ACTION:

Approve, but note staff's comment

X Object, based on:

Lack of statutory authority

X Unclear or ambiguous

Unnecessary

Failure to comply with the APA

Extend the period of review

## **COMMENT:**

Staff believes this Rule is ambiguous as written as it includes language such as "sufficient" without providing any additional information as to the meaning of this term.

Further, the history note contains references to statutes that no longer exist as the statutory references contained in this Rule have been recodified.

08 NCAC 10	B .0108 is readopted as published in 31:23 NCR 2311 as follows:
08 NCAC 10	B .0108 CURBSIDE VOTING
In any prima	y or election any qualified voter who is able to travel to the voting place, but because of age, or phys
disability and	physical barriers encountered at the voting place is unable to enter the voting place or enclosure to v
n person wit	nout physical assistance, shall be allowed to vote either in the vehicle conveying such person to the vot
lace or in th	e immediate proximity of the voting place under the following restrictions.
<u>(1)</u>	The county board of elections shall have printed and numbered a sufficient supply of affidavit
	be distributed to each precinct chief judge which shall be in the following form:
	Affidavit of Person Voting Outside Voting Place or Enclosure
State of Nort	n Carolina
County of	
<u> </u>	
do solemn	y swear (or affirm) that I am a registered voter in precinct. T
ecause of a	e or physical disability I am unable to enter the voting place to vote in person without physical assistan
Date	Signature of Voter
	Address
	Signature of precinct election official who administered oath:
(2)	The chief judge or a judge may designate one of the assistants to attend the voter, or assist the vo
	himself or herself. Upon arrival outside the voting place, the voter shall execute the affidavit a
	being sworn by a precinct election official. The ballot(s) shall then be delivered to the voter v
	shall mark the ballot(s) and hand them to the assisting precinct election official. The ballot(s) si
	then be delivered to one of the judges of elections who shall deposit the ballot(s) in the proper box
	then be delivered to one of the judges of elections who shall deposit the ballot(s) in the proper box.  The affidavit shall be delivered to a different judge of election:
(3)	
(3)	The affidavit shall be delivered to a different judge of election;
( <u>3</u> )	The affidavit shall be delivered to a different judge of election:  The voter and any assisting person shall be entitled to the same assistance and subject to the same.

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1		paper ballots of each kind for use by persons authorized to vote outside the voting place by this
2		section. In any precinct using direct record electronic voting equipment, the county board of
3		elections, with the approval of the State Board of Elections, may provide for all such paper ballots
4		to be transported upon closing of the polls to the office of the county board of elections for counting
5		Those ballots may be transported only by the chief judge, judge, or assistant. Upon receipt by the
6		county board of elections, these ballots shall be counted and canvassed in the same manner as one-
7		stop ballots cast under G.S. 163-227.2, except that the count shall commence when the board has
8		received from each precinct either that precinct's ballots or notification that no such ballots were
9		cast. The total for ballots counted by the county board of elections under this subdivision shall be
10		canvassed as if it were a separate precinct.
11		
12	History Note:	Authority G.S. 163-22;
13		Temporary Adoption Eff. April 15, 2002;
14		Eff. August 1, 2004.
15		Readopted Eff. September 1, 2018.

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