

Note from the Codifier: The OAH website includes notices and the text of proposed temporary rules as required by G.S. 150B-21.1(a)(1). For questions, you may contact the Office of Administrative Hearings at 984-236-1850 or email oah.postmaster@oah.nc.gov.

TITLE 08 – STATE BOARD OF ELECTIONS

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

Codifier of Rules received for publication the following notice and proposed temporary rule(s) on: July 15, 2022.

Public Hearing:

Date: July 28, 2022

Time: 10:00 a.m.

Location: WebEx - <https://ncgov.webex.com/ncgov/onstage/g.php?MTID=e0f64ed219ade80b9fd456a76fd33ee62>

Reason for Proposed Temporary Action: To implement provisions of state or federal law for which the State Board of Elections has been authorized to adopt rules, and the need for the rule to become effective immediately in order to preserve the integrity of upcoming elections and the elections process. The amendments clarify the procedures for appointing election observers and the conduct that is prohibited from election observers at the polls. Temporary adoption is required for the rules to be in effect ahead of the upcoming statewide general election on November 8, 2022.

Comment Procedures: Comments from the public shall be directed to: Rulemaking Coordinator, NC State Board of Elections, 6400 Mail Service Center, Raleigh, NC 27603-1362; email rulemaking.sboe@ncsbe.gov. The comment period begins July 22, 2022 and ends August 8, 2022.

CHAPTER 20 - ELECTION OBSERVERS

08 NCAC 20 .0101 ELECTION OBSERVERS

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

(b) Submission of Lists.

- (1) Precinct-specific observers. The county party chair shall submit a written, signed list of county at-large observers for each precinct to the county director of elections elections, with two copies provided to the chair of the county board of elections, prior to 10:00 a.m. on the fifth day prior to Election Day. On Election Day, the county party chair shall provide the same signed list to the chief judge of each precinct, and the list may be delivered by a party-appointed observer. The county party chair shall submit a written, signed list of the observers appointed for each precinct to the chief judge of each precinct, with two copies provided to the chair of the county board of elections, prior to 10:00 a.m. on the fifth day prior to Election Day; the list may be delivered in care of the county director of elections. The list of precinct-specific observers to serve on Election Day may not be amended after 10:00 a.m. on the fifth day prior to Election Day.
- (2) One-stop observers. The county party chair shall submit the a written, signed list of observers for each one-stop site to the county director of elections before 10:00 a.m. on the fifth day before the observer is to observe. Any changes to the list of one-stop observers submitted after 10:00 a.m. on the fifth day before the start of one-stop voting will not take effect until the fifth day after submission if submitted before 10:00 a.m., or on the sixth day after submission if submitted after 10:00 a.m.
- (3) County at-large observers. The county party chair shall submit a written, signed list of county at-large observers to the county director of elections prior to 10:00 a.m. on the fifth day prior to Election Day. The list of at-large observers to serve on Election Day may be amended prior to Election Day to substitute one or all of the at-large observers, but no later than 5:00 p.m. on the day before Election Day. For any at-large observers to serve during one-stop voting, the county party chair must submit the at-large observer list by 10:00 a.m. on the fifth day before any at-large observer on the list is to observe.
- (4) State at-large observers. The list of at-large observers to serve on Election Day may be amended prior to Election Day to substitute one or all of the at-large observers. The list of at-large observers who serve during early voting may not be amended after 10:00 a.m. on the fifth day before the at-large observer is to observe. The list of precinct-specific observers to serve on Election Day may not be amended after 10:00 a.m. on the fifth day prior to Election Day. The State party chair shall submit the written, signed list of State at-large observers to the State Board of Elections by 10:00 a.m. on the fifth day prior to Election Day. to the State Board, which The State Board shall disseminate the list

to the county boards of elections. The list shall include the full name of each at-large observer and the county in which the observer is registered. The State Board shall confirm that each State at-large observer is a registered voter of the State. The list of State at-large observers to serve on Election Day may be amended prior to Election Day to substitute one or all of the at-large observers, but no later than 5:00 p.m. on the day before Election Day. For any at-large observers to serve during one-stop voting, the state party chair must submit the at-large observer list by 10:00 a.m. on the fifth day before any at-large observer on the list is to observe.

The county director shall provide copies of each list they receive to the chair of the county board of elections. Party chairs may provide the lists by facsimile or email provided the letters are signed. Scanned Typed signatures are permissible. When a deadline to submit an observer list falls on a weekend, a holiday, or another day when the county board office is closed, the list may be submitted on the next day the office is open, consistent with G.S. 103-5.

(c) Observers at Voting Place. No more than two precinct-specific observers from each political party may be in the voting enclosure at any time. Only one at-large observer from each political party may be in the voting enclosure at any time, even if no precinct-specific observers are present. All observers, whether precinct-specific or at-large, may be relieved after serving no less than four hours; however, the total number of observers from each party cannot exceed three total observers in the voting enclosure at one time: two precinct-specific observers and one county or State at-large observer. An observer may leave the voting place without having served for four hours, but the observer cannot be replaced by a new observer until at least four hours have passed since the first observer began serving. An observer who repeatedly exits and reenters leaves the voting place ~~for any reason~~ may be ~~prohibited~~ removed from observing at the voting location by the chief judge ~~from returning~~ if the observer's ~~return would cause~~ conduct is causing a disruption in the voting enclosure.

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

- (1) Wearing or distributing campaign material or electioneering;
- (2) Impeding or disrupting the voting process or speaking with voters or election assistants;
- (3) Interfering with the privacy of the voter, including positioning themselves ~~in such a way that they can~~ so close to a tabulator, laptop, pollbook, or other voting document that they are able to view confidential voter information on poll books or laptops or standing in such a way that they can view or the contents of marked ballots inserted into a tabulator;
- (4) Using an electronic device to film or take photographs inside the voting enclosure;
- (5) Taking photographs, videos, or recording a voter without the consent of the voter and the chief judge;
- (6) Entering the voting booth area or attempting to view voted ballots;
- (7) Boarding a vehicle containing curbside voters; ~~and~~
- (8) Providing voter ~~assistance.~~ assistance;
- (9) Using doors designated for precinct officials or one-stop workers;
- (10) Leaving the area designated for observers by the county board of elections, provided the area designated allows the observer to observe each part of the voting process except for the marking of ballots; and
- (11) Distributing or posting any written material in the voting enclosure.

(e) Eligibility. No person who is a candidate on the ballot in a primary or general election may serve as an observer or runner in that primary or that general election. No person who serves ~~as an observer or runner in a primary or general election may serve~~ as a county board member, county board staff, precinct official, or one-stop election official in that primary or that general election. ~~election~~ may serve as an observer or runner in that primary or general election. No person who is a parent, parent-in-law, spouse, child, child-in-law, sibling, or sibling-in-law of a precinct official or one-stop election official may serve as an observer or runner in that primary or that general election.

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

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

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