

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

(a) The county board shall transmit by email a copy of any filed election protest, including any attachments, to the State Board, affected candidates, and county party chairs as follows:

- (1) if hand delivered or mailed, within 24 hours after the election protest is filed;
- (2) if faxed, the same day the election protest is filed; or
- (3) if emailed, the same day the election protest is filed.

(b) The county board shall not consider election protests not timely filed, but shall refer, in the same manner and within the time period provided in Paragraph (a) of this Rule, all such untimely protests, along with copies of the protest and attachments, to the State Board office for consideration under G.S. 163-182.12. For the purposes of this Rule, timely means within the time specified in G.S. 163-182.9.

(c) Upon receipt of a timely filed election protest, the county board of elections shall hold a preliminary consideration meeting in accordance with G.S. 163-182.10 within two business days of when the protest is filed. If the protest is filed before election day and is stayed pursuant to G.S. 163-182.9(b)(4)d., the preliminary consideration meeting shall be held within two business days of election day. If the county board dismisses the protest upon preliminary consideration, the county board shall file its written decision at the board office within two business days of the preliminary consideration meeting and shall serve the written decision in the manner provided under Subparagraph (e)(2) of this Rule. If the county board determines that a hearing is necessary, the board shall set the hearing no later than seven business days from the date of the preliminary consideration meeting 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 as determined by the county board. Only for good cause and upon informing the State Board office, may a hearing be set on or continued to a weekend day or holiday. Examples of good cause include, but are not limited to, procuring documentary evidence or securing witness testimony necessary to conclude the hearing.

(d) Notice of hearing as required by G.S. 163-182.10(b)(2) shall be given at least five business days prior to the day of the hearing, and the notice shall be provided by any of the following means: in-person oral notice, written notice to an email address supplied by any person required to receive notice, or, only if the county board lacks an email address, by U.S. mail to an address supplied by any person required to receive notice followed immediately by a phone call, if the person has supplied a phone number to the board. Any oral notice of the hearing shall be followed with a written notice sent prior to the hearing date. The oral notice shall constitute valid notice meeting the five-day notice requirement.

(e) The county board shall follow these procedures when considering an election protest:

- (1) Upon request by a protester or interested person, the chair or any two members of the county board shall issue subpoenas for witnesses or documents, when the chair or two members of the county board conclude that the witnesses or documents are likely to provide information that is both relevant and material to the questions the county board must adjudicate in the protest, the information sought is not unnecessarily duplicative of other available evidence, and the subpoena is not likely to subject the recipient to undue burden or expense. Such subpoenas shall be served in the same manner 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 conclusion of the hearing, in the manner provided in Paragraph (d) of this Rule. No separate notice is required if any person requiring notice was present at the hearing when the decision was announced. The board shall file at the board office a written decision within the mandates of G.S. 163-182.10(d) by 5:00 p.m. three business days after the conclusion of the protest hearing. Such written decision shall be served at the same time it is filed at the board office by email to an email address supplied by any person required to receive notice under G.S. 163-182.10(b). If the county board has no email address for any person required to receive notice under G.S. 163-182.10(b), the board shall serve that person by U.S. mail and immediately call that person, if the person has supplied a phone number to the board, to notify them that the decision has been filed. Nothing herein shall discourage more prompt decisions and written orders.
- (3) All election protest hearings before county boards shall be recorded by a court reporter or by mechanical means. 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. Transcripts of hearings shall be kept for two years after their creation.

- (f) A county board of elections shall hear and decide all timely filed protests, unless:
- (1) the protest is administratively dismissed pursuant to 08 NCAC 02 .0114; or
 - (2) the county board of elections receives alternative instructions from the State Board issued under G.S. 163-182.12.

If a protest does not concern the manner in which votes were counted or results tabulated, a county board of elections shall not delay canvass in order to hear the protest. A protest that alleges the occurrence of an election law violation regarding an insufficient number of votes to change the outcome of a contest within the jurisdiction of a county board of elections under G.S. 163-182.4 shall not delay canvass by a county board of elections.

*History Note: Authority G.S. 163-22; 163-182.10;
Temporary Adoption Eff. April 15, 2002;
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