

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

(a) The county board shall deliver any filed election protest, including any attachments, to the State Board 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 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 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 hearing in accordance with G.S. 163-182.10. If the county board determines that a hearing is necessary, 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 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) shall be given at least three business days prior to the day of the hearing, and the notice required shall be notice by any means chosen by the county 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 three-day notice requirement.

(e) Required procedures include:

- (1) Upon 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 conclusion of the hearing itself. 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. 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 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 orders.
- (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. Transcripts of hearings shall be kept for two years after their creation.
- (4) If the State Board sets an appeal for hearing, it shall designate who shall appear on behalf of the county board.

(f) A county board of elections shall timely hear and decide all 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 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;
Eff. August 1, 2004;
Readopted Eff. September 1, 2018;
Amended Eff. November 1, 2020.*