1. **OVERVIEW**

A person who files a notice of candidacy for any elected office may have his or her qualifications challenged by a formal complaint called a “candidate challenge.” State law allows any qualified voter in the same district as the office sought by the candidate to challenge the candidate’s eligibility for elected office based on the grounds that the candidate does not meet the constitutional or statutory qualifications for office, including residency.

A candidate challenge begins when a voter registered in the same district as the office sought by the candidate files an affidavit with the county board of elections that received notice of the candidacy. The form is available on the State Board’s website and must be notarized. A challenge to a candidate can only be filed between the date the candidate files his or her notice of candidacy or petition and 10 business days after the close of the filing period for notice of candidacy or petition.

Once challenged, the burden is on the candidate to show by a preponderance of the evidence that he or she is qualified to be a candidate for the office.

If the challenge is based upon a question of residency, the candidate must show all of the following:

1. An actual abandonment of the first domicile, coupled with an intent not to return to the first domicile;
2. The acquisition of a new domicile by actual residence at another place; and
3. The intent of making the newer domicile a permanent domicile.¹

¹ G.S. § 163–127.5(b).
## 2. Filing a Candidate Challenge

| **Who may file** | Any qualified voter who is registered in the same district as the office for which the candidate has filed or petitioned. ² |
| **Where to file** | A challenge to a candidate may be filed with the board of elections receiving the notice of candidacy. ³ |
| **What form to use** | The challenge must be made in a verified affidavit by a challenger, based on reasonable suspicion or belief of the facts stated. It is recommended but not required that the [Candidate Challenge Form](#) be used. Grounds for filing a challenge are that the candidate does not meet the constitutional or statutory qualifications for the office, including residency. ⁴ |
| **When to file** | Candidate challenges must be filed no later than 10 business days after the close of the filing period for notice of candidacy or petition. ⁵ |
| **Untimely challenge** | If a challenger discovers one or more grounds for challenging a candidate after the deadline, the grounds may be the basis for an election protest. ⁶ More information about election protests can be found in the [Election Protest Procedures Guide](#). Untimely election protests shall be referred to the State Board of Elections. ⁷ The State Board has broad authority to consider election protests on its own, including those that were not filed on time, if it chooses. ⁸ |

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² G.S. § 163–127.1(3).  
³ G.S. § 163–127.2(a).  
⁴ G.S. § 163–127.2(b).  
⁵ G.S. § 163–127.2(b).  
⁶ G.S. § 163–127.2(a).  
⁷ 08 NCAC 02. 0110(b).  
⁸ G.S. § 163–182.12.
3. CONSIDERATION BY HEARING PANEL

A. Hearing Panel Composition
The panel that hears the challenge depends on the district for the office sought:

- If the district is located in a single county, the county board of elections in that county hears the challenge.
- If the district is in more than one county but less than the entire state, the State Board of Elections will appoint a hearing panel within two business days after the challenge is filed. The panel will have three or five members. The State Board will appoint members from each county in proportion to the relative total number of registered voters of the counties in the district for the office. If the district covers more than five counties, the panel must consist of five members, with at least one member from the county receiving the notice of candidacy or petition and at least one member from the county of residency of the challenger. The State Board shall, to the extent possible, appoint members affiliated with different political parties in proportion to the representation of those parties on the county boards of elections in the district for the office.
- If the district consists of the entire state, then the State Board of Elections shall hear the challenge.

B. Hearing Schedule
Within five business days after the challenge is filed, the panel shall designate and announce the time and location of the hearing. The hearing shall be held at a location in the district reasonably convenient to the public and shall preferably be held in the county receiving the notice of the candidacy or petition. If the district for the office covers only part of a county, the hearing shall be at a location in the county convenient to residents of the district, but need not be in the district.9

C. Depositions and Subpoenas
If the challenger or candidate requests depositions before the time of the hearing is designated and announced, the panel must allow for depositions prior to the hearing.10 Additionally, the panel shall issue subpoenas for witnesses and documents at the request of the parties or upon its own motion.11

D. Notice
The panel shall give notice of the hearing and a copy of the challenge to:

- the challenger;
- the candidate;
- other candidates filing or petitioning to be elected to the same office;
- the county chair of each political party in every county in the district for the office; and

9 G.S. § 163–127.4(a)(1).
10 G.S. § 163–127.4(a)(2).
• those persons who have requested to be notified.\textsuperscript{12}

Failure to provide notice shall not delay the hearing nor invalidate the results if the above individuals have been notified.\textsuperscript{13}

E. Tips for County Boards of Elections
A county board must provide to the State Board a copy of any filed candidate challenge and attachments within 24 hours after it is filed. Documents should be e-mailed to legal@ncsbe.gov.

Notify your county attorney immediately after a candidate challenge is filed. County attorneys can offer guidance and assistance at the hearing and in drafting orders. The county attorney may also be able to help find you a court reporter. The county attorney should be present at the candidate challenge hearing.

The challenge hearing shall be recorded by a reporter or by mechanical means. The full record of the hearing shall be preserved by the panel until directed otherwise by the State Board.\textsuperscript{14}

F. Conduct of Hearing
The panel may allow evidence to be presented at the hearing in the form of affidavits, supporting documents, or witness testimony. The chair or any two members of the panel may subpoena witnesses or documents. The parties shall be allowed to issue subpoenas for witnesses or documents, or both, including for the candidate.\textsuperscript{15} Each witness must be placed under oath before testifying.\textsuperscript{16} The following oath as outlined in G.S. § 11–11 may be used:

“Do you swear (or affirm) that the testimony you shall give to the board shall be the truth, the whole truth, and nothing but the truth; so help you, God?”

The panel may receive evidence from any person with information concerning the subject of the challenge. The presentation of such evidence at the hearing shall be subject to the North Carolina Rules of Evidence (Chapter 8C of the General Statutes). The challenger shall be permitted to present evidence at the hearing, but the challenger shall not be required to testify unless subpoenaed by a party. The panel may allow anyone who is present to present evidence.\textsuperscript{17}

The candidate has the burden of proof and must show by a \textit{preponderance of the evidence of the record as a whole} that he or she is qualified to be a candidate for the office.\textsuperscript{18} The “\textit{preponderance of the evidence}” standard asks whether the decision-maker is satisfied that the circumstance exists. It may—though need not be—described as showing circumstances are “more

\textsuperscript{12} G.S. § 163–127.4(b).
\textsuperscript{13} G.S. § 163–127.4(b).
\textsuperscript{14} G.S. § 163–127.4(c)(3).
\textsuperscript{15} G.S. § 163–127.4(c)(1).
\textsuperscript{16} G.S. § 163-127.4(a)(2)-(3).
\textsuperscript{17} G.S. § 163–127.4(c)(2).
\textsuperscript{18} G.S. § 163–127.5(a).
likely than not.” The preponderance of the evidence requires less proof than beyond a reasonable doubt.\textsuperscript{20}

The “whole record” test requires the examination of all the evidence in the record to determine whether there is substantial evidence to support a decision. “\textit{Substantial evidence}” is defined as “relevant evidence a reasonable mind might accept as adequate to support a conclusion.”\textsuperscript{21}

\textbf{G. Decision}

The panel shall render a written decision within 20 business days after the challenge is filed and serve that written decision on the parties.\textsuperscript{22} The written decision shall separately state the finding of facts, conclusions of law, and an order stating what is to happen.\textsuperscript{23}

\textbf{4. Appeal to the State Board}

A decision from a challenge not heard by the State Board is appealable to the State Board. The State Board shall base its appellate decision on the whole record of the hearing conducted by the panel or county board of elections. The State Board will not consider new evidence on appeal. The “whole record” test requires the examination of all the evidence in the record to determine whether there is substantial evidence to support a decision. “\textit{Substantial evidence}” is defined as “relevant evidence a reasonable mind might accept as adequate to support a conclusion.”\textsuperscript{24} The State Board will render its opinion on an expedited basis.\textsuperscript{25}

<table>
<thead>
<tr>
<th>Who may appeal a panel decision</th>
<th>Only the challenger or an adversely affected candidate may appeal the decision of a county board of elections or a multicounty panel to the State Board.\textsuperscript{26}</th>
</tr>
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<tbody>
<tr>
<td>When to file an appeal of a panel decision</td>
<td>To be considered by the State Board of Elections, the appeal form must be delivered or deposited in the mail to the State Board by the end of the second business day after the panel serves its written decision the party. If the panel personally serves the order, service occurs when the order is handed to the appealing party. If the order is mailed, service will be deemed to have occurred three days after the order is put in the mail to the appealing party.\textsuperscript{27}</td>
</tr>
<tr>
<td>What form to use</td>
<td>The appealing party must use the \textcolor{blue}{Candidate Challenge Appeal Form}.</td>
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</tbody>
</table>

\textsuperscript{19} \textit{See State v. Payne}, 337 N.C. 505, 531–32 (1994) (instruction that preponderance of the evidence meant evidence which satisfies the jury is not plain error).

\textsuperscript{20} \textit{Id.} at 531–32.

\textsuperscript{21} \textit{Meza v. Division of Social Services}, 364 N.C. 61, 69–70 (2010).

\textsuperscript{22} G.S. § 163–127.4(a)(4).

\textsuperscript{23} G.S. § 163–127.4(d).

\textsuperscript{24} \textit{Meza v. Division of Social Services}, 364 N.C. 61, 69–70 (2010).

\textsuperscript{25} G.S. § 163–127.6(a).

\textsuperscript{26} G.S. § 163–127.6(a).

\textsuperscript{27} G.S. § 163–127.6(a).
5. Appeal to the N.C. Court of Appeals

A decision by the State Board is appealable to the Court of Appeals. The decision may be appealed by the challenger or a candidate adversely affected by the panel’s decision. Appeal must be taken within two business days after the panel files the written decision. The written appeal must be delivered or deposited in the mail to the Court of Appeals by the end of the second business day after the written decision was filed by the panel.28

28 G.S. § 163-127.6.