

08 NCAC 23 .0104 is proposed for adoption as follows:

08 NCAC 23 .0104 CHALLENGE HEARING

(a) A challenge hearing shall be held no later than 20 business days after the county board has ordered the challenge to proceed to a challenge hearing under Rule .0103(d)(1) of this Section. The challenge hearing shall be noticed as a special meeting in accordance with G.S. 143-318.12(b). The written notice required by G.S. 143-318.12(b)(2) shall be emailed at least 10 business days before the challenge hearing to the county board's notice list and any other person who has requested that the county board give them notice of proceedings under this Section.

(b) The county board shall send written notice of the challenge hearing to the challenged voter no later than three business days after the county board has ordered the challenge to proceed to a challenge hearing under Rule .0103(d)(1) of this Section. The notice to the challenged voter shall include the information required under G.S. 163-86(b) and shall be sent by U.S. mail using a method of delivery that documents receipt. The notice shall also be provided by any email address that the county board possesses for the challenged voter.

(c) The county board shall conduct the challenge hearing using the procedures in G.S. 163-86(c) and (d) as well as the following additional procedures:

(1) The challenge hearing shall be recorded by a court reporter or by mechanical means.

(2) Upon request by the challenged voter, 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 challenged voter's citizenship, 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.

(3) After the challenged voter has been administered the first oath under G.S. 163-86(c), the county board shall provide the challenged voter with the information and documents included with the notice of the challenge under Rule .0102(b) of this Section as well as any additional information and documents considered by the county board at the preliminary hearing.

(4) The challenged voter shall be permitted the opportunity to present documentation of citizenship and sworn testimony as to their citizenship before being tendered the second oath under G.S. 163-86(c). The county board shall continue the challenge hearing to a later date upon oral or written request to do so by the challenged voter if that request is accompanied by documentation showing the challenged voter has made a request to a government agency to obtain documentation of citizenship.

(5) If the challenged voter or an authorized representative does not appear at the challenge hearing, and the challenged voter has not submitted any documentation of citizenship for the county

board's consideration, then the notice of non-citizenship shall be treated by the county board as affirmative proof necessary to sustain the challenge under G.S. 163-90.1(b).

(6) If the challenged voter has not submitted documentation of citizenship but has provided sworn testimony or other evidence regarding their citizenship, then the county board shall consider that testimony or other evidence when determining whether to sustain or overrule the challenge.

(d) The county board's decision on the challenge shall be announced at the conclusion of the challenge hearing and the grounds for the county board's decision shall be recorded in a written decision within five business days of the challenge hearing. A copy of the written decision shall be sent to the challenged voter using the same method of delivery used to send the notice of the challenge under Rule .0102(b) of this Section. In making its decision on the challenge, the county board shall do one of the following:

(1) If the challenged voter refuses to take the second oath under G.S. 163-86(c) or submit to the county board the affidavit required by G.S. 163-86(d), or if the county board finds that the challenged voter is not a United States citizen, then the county board shall sustain the challenge and proceed in accordance with G.S. 163-90.2(a). The time in which the voter has the right to appeal under G.S. 163-90.2(c) shall be measured from the date on which the written decision is recorded and sent to the challenged voter in accordance with this Paragraph.

(2) If the county board decides that the challenge cannot be substantiated by affirmative proof, or finds that the challenged voter is a United States citizen, then the county board shall overrule the challenge and proceed in accordance with G.S. 163-90.2(b). The official entering the challenge shall have no right of appeal of the county board's decision to overrule the challenge.

History Note: Authority G.S. 163-22; 163-82.14; 163-82.26; 163-86; 163-90.1; 163-90.2;
Eff. May 1, 2026.