



## Numbered Memo 2023-06

**TO:** County Boards of Elections  
**FROM:** Karen Brinson Bell, Executive Director<sup>1</sup>  
**RE:** Election Observers  
**DATE:** December 13, 2023

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This numbered memo provides guidance about election observers in accordance with the changes made by Session Law 2023-140 (SB 747). It replaces Numbered Memo 2016-21.

Election observers appointed by political parties and candidates serve an important role in our elections, by making the voting process transparent to representatives of the parties and candidates vying for office. Observers are in the voting place to witness the conduct of voting. They can report any perceived problems to the chief judge, the boards of elections, or the party or candidate that appointed them. The State Board and county boards are accustomed to regularly communicating with the parties during the conduct of voting, to address any such perceived issues. By law, the voting place must remain peaceful and orderly. To that end, observers should be welcome to witness the voting process, but may not be permitted to interfere with voters or election officials, or to engage in any other conduct that is unlawful or disruptive.

### 1. Appointment of Observers

Observers shall be appointed as follows:<sup>2</sup>

- The chair of a county political party may:
  - Designate two site-specific observers per voting place (including early voting and Election Day sites) wherever the party has a candidate on the ballot;<sup>3</sup> and

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<sup>1</sup> This memo is issued under the authority delegated by the State Board to the executive director pursuant to G.S. § 163-22(p).

<sup>2</sup> See G.S. § 163-45.1(b) (S.L. 2023-140, sec. 7(b)).

<sup>3</sup> As of January 1, 2024, the parties may appoint observers where the party “has a candidate appearing on the ballot.” G.S. § 163-45.1(b)(1)–(3) (S.L. 2023-140, sec. 7(b)). This means that there must be an official party nominee on the ballot, identified on the ballot with the party. This change in the law means that political parties are no longer entitled to appoint observers in nonpartisan elections.

- Designate ten at-large observers wherever the party has a candidate on the ballot. County at-large observers may serve at any voting site in the county.
- The chair of a state political party may:
  - Designate 100 state at-large observers wherever the party has a candidate on the ballot. State at-large observers may serve at any voting site in the state.
- An unaffiliated candidate may:
  - Designate two site-specific observers per voting place wherever the candidate is on the ballot.<sup>4</sup>
- The proponents and opponents for an alcoholic beverage election, as determined by the county board of elections, may appoint two observers to attend each voting place.<sup>5</sup>

## 2. Submission of Lists of Observers

The list of observers may be submitted electronically or in writing by noon on the business day before the observer is scheduled to observe as follows:

- Site-specific or county at-large observers shall be submitted to county elections director.
- State at-large observers shall be submitted to the Executive Director of the State Board of Elections, who will forward a copy to each county board of elections.

Before each voting place opens for voting, the county board shall provide a complete list of observers to the chief judge of each voting place.<sup>6</sup>

## 3. Identification of Observers

Observer shall check in with the chief judge when the observer arrives at the voting site. The chief judge must ensure that only authorized persons are present in the voting site, and must therefore ensure that individuals entering the voting site to observe are authorized to do so.<sup>7</sup> The chief judge should verify the identity of individuals appearing at the voting place to serve as an observer, which may include asking the observer to show photo ID. Observers are not required to sign the log of non-voters that is required by the new law (SB 747),<sup>8</sup> but the county board or

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<sup>4</sup> An “unaffiliated candidate” is a candidate who has successfully petitioned to appear as “unaffiliated” on a general election ballot in a partisan contest. See G.S. §§ 163-122, -296. The term does not include a candidate in a nonpartisan contest.

<sup>5</sup> G.S. § 18B-601(i) (S.L. 2023-140, sec. 7(d)).

<sup>6</sup> G.S. § 163-45.1(c) (S.L. 2023-140, sec. 7(b)).

<sup>7</sup> See G.S. § 163-166.3(a), which lists those persons who may enter the voting enclosure.

<sup>8</sup> See G.S. § 163-166.8(d) (S.L. 2023-140, sec. 24).

chief judge may wish to maintain a separate log of observers and runners, to keep track of who has entered and exited the voting place.

County boards shall require every observer on duty to wear an identification tag or badge to make voters and election officials aware of the observer's role in the voting place.<sup>9</sup> County boards of elections shall prepare and provide a sufficient supply of tags for the observers that may be present at each voting site.

#### 4. Presence of Observers

No more than three observers from the same political party shall be in the voting enclosure at any time.

Observers appointed to serve at a particular voting place may be relieved during the day after serving no less than four hours. That means that a new observer cannot take the place of a site-specific observer before that site-specific observer's four-hour shift has concluded (i.e., four hours after the observer first checked in at the voting place). Observers appointed to serve countywide or statewide may be relieved at any time throughout the day, including by a properly appointed site-specific observer.<sup>10</sup>

#### 5. Challenges to Appointment of Observers

The county board of elections or chief judge of a voting place may challenge the appointment of an observer for "good cause, which shall include evidence that the observer could impact the conduct of the election."<sup>11</sup> For example, "good cause" may include one or more previous instances where the observer's conduct led to their removal from the voting site, factoring in how long ago this occurred. The county board or chief judge would need to provide documentation, witness accounts, or other records to substantiate their conclusion that the proposed observer could impact the conduct of the election.

The county board shall promptly decide the challenge, providing notice to the party that appointed the observer and an opportunity for that party to be heard in opposition to the challenge.<sup>12</sup>

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<sup>9</sup> G.S. § 163-45.1(d) (S.L. 2023-140, sec. 7(b)).

<sup>10</sup> G.S. § 163-45.1(e) (S.L. 2023-140, sec. 7(b)).

<sup>11</sup> G.S. § 163-45.1(e) (S.L. 2023-140, sec. 7(b)).

<sup>12</sup> Please consult any effective Administrative Code rules concerning the details of challenge proceedings.

No challenge is required if an observer does not meet the statutory qualifications for appointment—e.g., they appear on the ballot as a candidate or serve as an election official in the primary or election in which the observer is serving as an observer, or they are not a registered voter of the county (for county-appointed observers) or of the state (for state-appointed observers). The county board shall promptly inform the party that state law does not permit the observer to serve, and a replacement observer may be named by the deadline set forth in G.S. § 163-45.1(c).

## 6. Conduct of Observers

### 6.1 Permitted Conduct<sup>13</sup>

Under the observer statute, an observer is permitted to engage in the following activities, **as long as the observer does not interfere with the privacy of any voter or the conduct of the election, or violate any other election law, whether state or federal:**

- Take notes in the voting place, including using an electronic device to take notes.
  - This does not authorize video or audio recording in the voting place.<sup>14</sup>
- Listen to conversations between a voter and election official that take place in the voting place, provided the conversation is related to election administration.
  - However, to protect the privacy of the voter, an election official may not allow an observer to listen to a voter (1) discussing how they will vote their ballot (whether with an election official or an authorized voter assistant),<sup>15</sup> or (2) sharing personal information with an election official that the law makes confidential (e.g., birth date, Social Security number, driver’s license number, confidential address for confidential voters).<sup>16</sup>
  - State law also requires county boards to provide a space in the voting place for “[p]rivate discussion with voters concerning irregular situations.”<sup>17</sup> And an observer may not “interfere with the privacy of any voter” when listening to

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<sup>13</sup> G.S. § 163-45.1(g) (S.L. 2023-140, sec. 7(b)).

<sup>14</sup> See [Statement of Interest of the United States](#), *League of Women Voters v. Lions of Liberty*, 3:22-cv-08196-MTL, Doc. 17, at 11-12, 15-18 (Oct. 31, 2022), which addresses how recording voters in the act of voting can be intimidation.

<sup>15</sup> G.S. § 163-165.1(e).

<sup>16</sup> G.S. § 163-82.10(a1), (e).

<sup>17</sup> G.S. § 163-166.2.

conversations between a voter and an election official.<sup>18</sup> To comply with these requirements, election officials should exercise their discretion to prevent observers from listening to conversations with voters concerning sensitive personal matters (e.g., discussions of impairments or disabilities, registration while applying for public assistance, domestic issues and restraining orders, etc.).

- Move about the voting place, including the designated area for curbside voting.
  - However, election officials must not allow observers to position themselves in a way that obstructs, intimidates, or interferes with a voter.<sup>19</sup> Voter interference is a state crime.<sup>20</sup> Voter intimidation is a state and federal crime, as explained in Section 6.3 below.
  - To protect the privacy of voters, a county board or chief judge may find it necessary to forbid observers from entering the voting booth section of a voting place. In many voting places, there is so little distance between the rows of voting booths that it is possible to see how a person is filling out their ballot from every location in the voting booth area. Under no circumstances should an observer be allowed to position themselves close enough to a voter in the act of voting such that the observer can see how the voter is filling out their ballot, including when the voter is feeding their ballot into the tabulator.<sup>21</sup>
  - To ensure that observers moving about the voting place do not interfere with the conduct of the election, election officials must ensure that unsupervised observers do not get close to tabulators, voted and unvoted ballots, pollbooks, or other

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<sup>18</sup> G.S. § 163-45.1(g) (S.L. 2023-140, sec. 7(b)).

<sup>19</sup> G.S. § 163-48 states that the chief judge and judges of election “shall prevent and stop improper practices and attempts to obstruct, intimidate, or interfere with any person in registering or voting.”

<sup>20</sup> G.S. § 163-273(a)(3), (4).

<sup>21</sup> See G.S. § 163-165.1(e), which states, “[v]oted ballots and paper and electronic records of individual voted ballots shall not be disclosed to members of the public in such a way as to disclose how a particular voter voted, unless a court orders otherwise. Any person who has access to an official voted ballot or record and knowingly discloses in violation of this section how an individual has voted that ballot is guilty of a Class 1 misdemeanor. See also G.S. § 163-273(a)(1), (6), addressing other criminal sanctions for accessing another person’s voted ballot.

sensitive voting materials which, if tampered with, could undermine the integrity of the election.<sup>22</sup>

- Leave and reenter the voting enclosure.
  - If a site-specific observer leaves and reenters the voting enclosure during their four-hour shift, that does not restart their shift for the purposes of when they may be replaced.
- Communicate via phone outside of the voting enclosure.
- Witness any opening and closing procedures at the voting place.
  - “Opening procedures” on the first day of early voting and on Election Day refer to the opening of the voting system, examination of the ballots for accuracy, and examination of the tabulation counters to ensure there is a zero balance.<sup>23</sup> Opening procedures on every other day of early voting include turning on the voting system and checking that the tabulator counters align with the end of voting for the previous day.
  - “Closing procedures” on Election Day refer to closing the polls on the tabulators, counting ballots (including curbside), and certifying and announcing results.<sup>24</sup> Closing procedures during early voting refer to turning off the tabulators, checking and noting the counters on the tabulators to compare with the next morning, and securing all ballots.
- Take photographs inside the voting place before voting begins and after voting has concluded (i.e., during “opening” and “closing” procedures), provided that the taking of photographs does not impair any election official in executing opening and closing procedures or compromise the security of ballots, election equipment, or election results.<sup>25</sup>

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<sup>22</sup> See 08 NCAC 04 .0306 and 08 NCAC 10B .0101(g)(5), which prohibit access to voting machines by non-election officials. See also G.S. § 163-274(a)(4), which makes it a criminal offense “to interfere with the possession of any ballot box, election book, ballot, or return sheet by those entitled to possession of the same under the law, or to interfere in any manner with the performance of any duty imposed by law upon any election officer or member of any board of elections.”

<sup>23</sup> 08 NCAC 04 .0304(a).

<sup>24</sup> 08 NCAC 10B .0105(g)–(m).

<sup>25</sup> See [Numbered Memo 2022-14](#) for information about public viewing of opening and closing procedures.

- This does not authorize video or audio recording.<sup>26</sup>
- As explained in [Numbered Memo 2022-14](#), observers must always remain at a secure distance from the tabulator. A secure distance is at a minimum out of arm's reach. They may not take photographs of any security features of the voting system, including any passwords entered into the tabulator.<sup>27</sup> If a tabulator's zero tape contains a configuration report showing the Election Qualification Code (EQC), the configuration report portion of the zero tape may not be shown to observers or photographed since the EQC is a "security feature" of the voting system and therefore may not be disclosed until the election has been finally certified.

## 6.2 Prohibited Conduct

Prohibited conduct by observers must be addressed promptly by the chief judge. It is the chief judge's duty to "prevent and stop improper practices and attempts to obstruct, intimidate, or interfere with any person in registering or voting," and to "enforce peace and good order in and about the place of registration and voting."<sup>28</sup>

**The observer statute** forbids an observer from doing any of the following inside the voting place:<sup>29</sup>

- Look at, photograph, videotape, or otherwise record the image of any voter's marked ballot;
- Impede the access of any voter to the voting place;
- Inhibit or interfere with any election official in the performance of his or her duties, including interfering with the transport of sealed ballot boxes, election equipment, or election results to the county board of elections;
- Engage in electioneering;
- Make or receive phone calls while in the voting place;
- Interfere with the privacy of the voter; or
- Interfere with the conduct of the election.

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<sup>26</sup> See also [Numbered Memo 2022-14](#), which explains that the authority to "view" or "observe" does not encompass recording.

<sup>27</sup> 08 NCAC 10B .0101(g); see also G.S. § 163-166.7(c).

<sup>28</sup> G.S. § 163-48.

<sup>29</sup> G.S. § 163-45.1(h) (S.L. 2023-140, sec. 7(b)).

**Other provisions of law** forbid an observer from doing any of the following:

- Photograph, videotape, or otherwise record the image of any voter within the voting enclosure, except with the permission of both the voter and the chief judge;<sup>30</sup>
- Interfere with a voter at any point inside the voting enclosure;<sup>31</sup>
  - The chief judge should not allow observers to question voters in the voting place, which constitutes interference with voters and with the conduct of the election. It is the duty of sworn election officials to interact with voters and determine their qualifications to vote.<sup>32</sup> An observer who has grounds to believe a voter is ineligible may follow the process set forth in law to challenge that voter.<sup>33</sup> An observer's questioning of a voter could also constitute voter harassment or intimidation, both of which are illegal, as discussed below.
- Attempt to see how a voter voted or, if an observer somehow learns how a voter voted, revealing that information;<sup>34</sup>
- Retain a voter's signature, full or partial Social Security number, date of birth, the identity of the public agency at which the registrant registered, any email address submitted for the voter's registration, or driver's license number;<sup>35</sup>
- Provide false information to voters about the voting process;<sup>36</sup>
- Knowingly swear falsely on a voter challenge form;<sup>37</sup>
- Harass others—whether voters, voter assistants, election officials, or other observers;<sup>38</sup>
- Interfere with election officials' possession of any ballot box, election book, ballot, or return sheet, or with an eligible voter's possession of a ballot;<sup>39</sup>

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<sup>30</sup> G.S. § 163-166.3(b).

<sup>31</sup> G.S. § 163-273(a)(3)–(4).

<sup>32</sup> G.S. § 163-166.7.

<sup>33</sup> See G.S. § 163-87.

<sup>34</sup> G.S. § 163-165.1(e).

<sup>35</sup> G.S. § 163-274(a)(16).

<sup>36</sup> It is a crime to misrepresent the law to the public in any communication “where the intent and effect is to intimidate or discourage potential voters from exercising their lawful right to vote.” G.S. § 163-275(17).

<sup>37</sup> G.S. §§ 163-90.3, -275(4).

<sup>38</sup> G.S. § 163-166.4(a).

<sup>39</sup> G.S. § 163-274(4).



- Interfere in any manner with the performance of any duty imposed by law on election officials;<sup>40</sup>
  - It is the duty of election officials to determine a voter's qualifications at check-in and to direct voters on voting procedures,<sup>41</sup> to assist provisional voters (including photo ID provisionals/ID Exception Forms),<sup>42</sup> to decide whether a voter bears a reasonable resemblance to their photo ID,<sup>43</sup> and to count ballots,<sup>44</sup> among many other official duties. Observers may not interfere with these duties.
- Assault, intimidate, or attempt to intimidate a chief judge, judge, or other election official;<sup>45</sup>
- Remove official ballots, paper records or copies of individually voted ballots, or any other device or item whose removal from the voting enclosure could permit compromise of the integrity of either the machine count or the paper record;<sup>46</sup> and
- Intimidate voters (*discussed in more detail below*).

### 6.3 What is Voter Intimidation?

Voter intimidation is conduct that would make the voter reasonably fearful, threatened, or coerced during the voting process.<sup>47</sup> It is a crime under state and federal law<sup>48</sup> and may take

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<sup>40</sup> G.S. § 163-274(4)–(5).

<sup>41</sup> G.S. § 163-166.7(a)-(b).

<sup>42</sup> G.S. §§ 163-166.7(c)(6), -166.11.

<sup>43</sup> G.S. § 163-166.16(b).

<sup>44</sup> G.S. § 163-182.2.

<sup>45</sup> G.S. § 163-275(10)–(11).

<sup>46</sup> G.S. § 163-166.7(c)(3).

<sup>47</sup> The voting process covers all procedures in obtaining and casting a ballot, so it covers all voter activity at the voting place. See 52 U.S.C. § 10310(c)(1).

<sup>48</sup> State law makes it a crime to “intimidate or oppose any legally qualified voter on account of any vote such voter may cast or consider or intend to cast, or not to cast, or which that voter may have failed to cast.” G.S. § 163-274(a)(7). Voter intimidation is also a prohibited under federal law: “No person, whether acting under color of law or otherwise, shall intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for voting or attempting to vote, or intimidate, threaten, or coerce any person for urging or aiding any person to vote or attempt to vote, or intimidate, threaten, or coerce any person for exercising any powers or duties” under certain provisions of the Voting Rights Act. 52 U.S.C. § 10307(b). See also 18 U.S.C. § 594; 52 U.S.C. § 20511(1).

many forms. Voter intimidation can include both threats of violence or bodily harm as well as “threats of economic harm, legal action, dissemination of personal information, and surveillance,” depending on the circumstances.<sup>49</sup> Voter intimidation includes an attempt to intimidate a voter that is not completed or is not successful.<sup>50</sup>

Whether an action constitutes voter intimidation depends on the circumstances.

**In determining whether a person’s conduct constitutes intimidation, the election official should ask themselves whether the specific circumstances confronting the voter would make the voter reasonably fearful, threatened, or coerced during the voting process, considering those circumstances from the voter’s point of view.**<sup>51</sup>

Some examples of acts at the polls that have been found to constitute voter intimidation include:

- The presence of “ballot security forces”;<sup>52</sup>
- Wearing or carrying items that create the appearance that the individual is performing an official government function such as public or private security uniforms, armbands with the title “National Ballot Security Taskforce,” or carrying guns or badges;<sup>53</sup>
- Videoing or photographing voters during a part of the voting process;<sup>54</sup>

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<sup>49</sup> *Nat’l Coal. on Black Civic Participation v. Wohl*, 498 F. Supp. 3d 457, 477 (S.D.N.Y. 2020).

<sup>50</sup> *United States v. Clark*, 249 F. Supp. 720, 728 (S.D. Ala. 1965).

<sup>51</sup> See 52 U.S.C. § 10307(b); *State v. Hines*, 122 N.C. App. 545, 552, 471 S.E.2d 109, 114 (1996) (defining “intimidate” in the elections context as “to make timid or fearful: inspire or affect with fear: frighten”); N.C. Pattern Jury Instructions—Criminal 230.66 (using same definition for witness intimidation). See also *Nat’l Coal. on Black Civic Participation v. Wohl*, 498 F. Supp. 3d 457, 482–85 (S.D.N.Y. 2020), which explains that voter intimidation can involve placing a voter in fear of violent injury or many forms of nonviolent injury, and that the full context confronted by the voter is important to determining whether a particular behavior is reasonably intimidating to that voter.

<sup>52</sup> See [Statement of Interest of the United States](#), *League of Women Voters v. Lions of Liberty*, 3:22-cv-08196-MTL, Doc. 17, at 11–12 (Oct. 31, 2022) (citing Letter from John Tanner, Acting Chief, Voting Section, Civil Rights Div., Dep’t of Justice to Edward S. Allen Esq. (Nov. 2, 1994)) (“Although lawful poll-watching activities can support democratic transparency and accountability, when private citizens form ‘ballot security forces’ and attempt to take over the State’s legitimate role of overseeing and policing elections, the risk of voter intimidation—and violating federal law—is significant.”).

<sup>53</sup> *Democratic Nat. Comm. v. Republican Nat. Comm.*, 671 F. Supp. 2d 575, 579–80 (D.N.J. 2009).

<sup>54</sup> See source cited in note 52 at pp. 12–13.

- Following minority voters around and recording their license plate numbers;<sup>55</sup>
- Filing baseless voter challenges of predominantly-minority individuals;<sup>56</sup>
- Cursing at or threatening someone based on a disagreement about whether a voter is eligible to vote the assigned ballot.<sup>57</sup>

The above list is not exhaustive and merely includes examples when voter intimidation has resulted in federal litigation. As discussed, whether something constitutes voter intimidation will depend on the specific circumstances.

## 7. Removal of Observers for Misconduct

In those hopefully rare occasions when an observer engages in misconduct, a chief judge has a duty to maintain order at the voting place,<sup>58</sup> which could include the removal of that observer, when warranted.

### 7.1 Grounds for Removal

The chief judge may remove an observer for:

- Engaging in conduct specifically prohibited by the observer statute, G.S. § 163-45.1, which includes the items in the first bulleted list in Section 6.2.
- “Good cause,” which “shall include evidence that the observer could impact the conduct of the election.”<sup>59</sup> Engaging in conduct that the law prohibits at the voting place—which includes all of the items listed in Section 6.2—may impact the conduct of the election. Additionally, conduct that is not clearly prohibited in Section 6.2, but which could nonetheless impact the conduct of the election, is also grounds for removal.

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<sup>55</sup> See *Daschle v. Thune*, No. 4:04-cv-4177, Doc. 6 (D.S.D. Nov. 1, 2004) (issuing a temporary restraining order prohibiting defendants from “following Native Americans from the polling places and directing that they not copy the license plates of Native Americans driving to the polling places, or being driven to the polling places, and further directing that the license plates of Native Americans driving away from the polling places also not be recorded”).

<sup>56</sup> *Democratic Nat. Comm. v. Republican Nat. Comm.*, 671 F. Supp. 2d 575, 610–12 (D.N.J. 2009).

<sup>57</sup> See *State v. Hines*, 122 N.C. App. 545, 552, 471 S.E.2d 109, 114 (1996) (“Clearly, in G.S. 163-275(11) the legislature intended to prohibit anyone from frightening an individual while conducting election duties.”). This case dealt with a person intimidating an election official, but the behavior would also constitute voter intimidation if directed at the voter or if it occurred in the voter’s presence and could make the voter reasonably fearful during the voting process.

<sup>58</sup> G.S. §§ 163-47, -48.

<sup>59</sup> G.S. § 163-45.1(j) (S.L. 2023-140, sec. 7(b)).

The chief judge would need to assess the situation and determine, in their best judgment, whether the conduct at issue “could impact the conduct of the election.”

## 7.2 Procedure for Removal

If possible, the chief judge shall first issue a verbal or written warning to the observer.<sup>60</sup> It is preferable that the warning be in writing, so that there is documentation of the warning. The warning shall include the time and nature of the offense, and the chief judge must provide the observer a reasonable opportunity to correct the behavior.

If warranted by the seriousness of the situation, the chief judge has the authority to immediately remove an observer, without a warning.<sup>61</sup> The chief judge should exercise his or her best judgment in such situations and document the interaction on an incident form.

If the chief judge determines the observer should be removed, the law requires the chief judge to then immediately notify the director of the county board that the observer was removed. And the director must immediately notify the appointing authority so that a replacement observer can be appointed.

The grounds for the removal shall be recorded in an incident report, which details the observer conduct that resulted in the removal. The chief judge should ensure that any witness accounts are included in the report. Proper documentation of the grounds for removal is important because the decision to remove an observer may be appealed to the county board.<sup>62</sup>

If the observer refuses to leave after the chief judge has communicated that they are being removed, then the chief judge should exercise their authority under G.S. § 163-48 to call law enforcement.

## 7.3 Other Recourses

If warranted by the situation, the chief judge shall report an alleged violation of State or federal law to the appropriate authority and, in extreme cases, may “order the arrest of any person

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<sup>60</sup> G.S. § 163-45.1(j) (S.L. 2023-140, sec. 7(b)).

<sup>61</sup> The warning is required “if possible.” G.S. § 163-45.1(j) (S.L. 2023-140, sec. 7(b)). The chief judge has a duty under the law to “enforce peace and good order” and to “stop improper practices and attempts to obstruct, intimidate, or interfere with any person.” G.S. § 163-48. If misconduct is serious enough, it may not be possible to provide a warning and permit the observer to remain in the voting site.

<sup>62</sup> See G.S. § 163-45.1(k)(3) (S.L. 2023-140, sec. 7(b)). Please consult any effective Administrative Code rules concerning the details of appeal proceedings.

violating any provision of the election laws.”<sup>63</sup> See [Numbered Memo 2022-12](#) for information about maintaining order at the polls.

## 8. Duty to Maintain Order

The chief judge and judges have a statutory duty to maintain “peace and good order” at the voting place.<sup>64</sup> This includes the duty to:

- Keep “open and unobstructed” access to the voting place;
- “[P]revent and stop improper practices and attempts to obstruct, intimidate, or interfere with any person in registering or voting;” and
- “[P]revent riots, violence, tumult, or disorder.”

The recent amendments to the observer statute do not diminish the chief judge and judges’ duty to maintain order and prevent attempts to obstruct, intimidate, or interfere with any voter or election official at the voting place.

## 9. Obtaining Lists of Voters Who Voted

Observers are entitled to obtain a list of the individuals who have voted in the voting site so far on that day at certain times. This applies at early voting sites and on Election Day.<sup>65</sup>

The chair of a county political party may send a runner to obtain copies of the list of persons who have voted at each voting place during the times the voting place is open for voting. The chair of the county political party shall provide a written list of runners to be used in the same way as the process for appointing observers pursuant to G.S. § 163-45.1. The runner shall only enter the voting enclosure to announce the runner's presence and obtain a copy of the list of the persons who have voted that day. The runner must leave immediately after being provided a copy of the list.<sup>66</sup>

**Observers and runners may obtain a list of the individuals who have voted at the voting site so far in that day at least at the following times: 10 a.m., 2 p.m. and 4 p.m.** This includes during early voting days and on election day. Counties using authorization-to-vote (ATV) documents as opposed to traditional pollbooks may comply with the requirement by permitting

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<sup>63</sup> G.S. § 163-48.

<sup>64</sup> G.S. § 163-48.

<sup>65</sup> G.S. § 163-45.1(l) (S.L. 2023-140, sec. 7(b)).

<sup>66</sup> G.S. § 163-45.2 (S.L. 2023-140, sec. 7(b)).

each observer to inspect election records so that the observer may create a list of persons who have voted in the precinct.<sup>67</sup>

In providing access to these records, elections officials must ensure all registration records are kept secure and do not leave the voting enclosure for any purpose.

## 10. Frequently Asked Questions About Observers

1. A countywide observer arrives at the voting site at 8am and leaves at 9am, when they are replaced by a different countywide observer. Is this allowed?

Yes. There is no minimum amount of time a countywide or statewide observer may serve before being replaced.

2. When may a site-specific observer be replaced?

A site-specific observer, whether serving on Election Day or at an early voting site, may be replaced after serving for at least four hours. For example, if the observer arrives at 6:30 a.m., the observer may be replaced by another site-specific observer at 10:30 a.m. This assumes that there are two site-specific observers from that party serving. If there is only one site-specific observer serving, a second site-specific observer may arrive and serve at the same time.

3. An observer continually leaves and returns from the voting place. Is this allowed?

In general, yes. An observer is allowed to leave and reenter the voting enclosure. However, if the observer's activity interferes with the conduct of the election or otherwise constitutes prohibited conduct as defined in Section 6.2 of this memo, the observer is subject to removal after having been given appropriate warning.<sup>68</sup>

4. What should we do if an observer refuses to comply with the rules of conduct at the polls?

If possible, the chief judge must first give the observer a written or oral warning. It is preferable that the warning be in writing if possible so that there is documentation of the warning. The warning shall include the time and nature of the offense, and the chief judge must provide the observer a reasonable opportunity to correct the behavior.

If the observer does not correct their behavior and the chief judge determines the observer should be removed, the chief judge must immediately notify the director of the county board of

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<sup>67</sup> G.S. § 163-45.1(l) (S.L. 2023-140, sec. 7(b)) and 08 NCAC 10B .0103(h).

<sup>68</sup> G.S. § 163-45.1(g) (S.L. 2023-140, sec. 7(b)).

elections. The director of the county board of elections must immediately notify the appointing authority so that a replacement observer can be appointed.

5. Are observers permitted to board a bus that contains curbside voters?

The county board of elections has no authority to authorize observers to board a private vehicle. Observers may observe the voting process from outside the vehicle provided they respect the privacy of the voter, including not standing so close that they may observe how the voter marks their ballot.

6. Where is an observer allowed to be in the voting place?

In general, observers are permitted to move around the voting place. However, as described in this memo, observers are not permitted to interfere with the privacy of any voter or the conduct of the election, or to violate any other election law. Observers may not stand so close to a voting booth or tabulator that they can see how a voter voted. Depending on the setup of a given voting place, there are certain areas that may be completely off-limits, such as when the voting place is small and all the voting booths are located closely together.

7. Are immediate family members of candidates allowed to be observers?

Yes. A candidate who appears on the ballot may not serve as an observer, but a family member of the candidate may serve as an observer.