

## CHAPTER 09 - CONDUCT OF VOTE RECOUNTS BY COUNTY BOARDS OF ELECTIONS

<b>08 NCAC 09 .0101</b>	<b>RECOUNTS TO FOLLOW CUSTOMARY PROCEDURES</b>
<b>08 NCAC 09 .0102</b>	<b>LOCATIONS OF RECOUNTS</b>
<b>08 NCAC 09 .0103</b>	<b>NOTICE OF RECOUNT</b>
<b>08 NCAC 09 .0104</b>	<b>OFFICIALS CONDUCTING RECOUNT</b>
<b>08 NCAC 09 .0105</b>	<b>CHALLENGE OF RECOUNT PROCEDURES</b>

*History Note:* Authority G.S. 163-179.1; 163-192.1;  
ARRC Objection May 19, 1988;  
Temporary Rule Eff. April 18, 1988 for a period of 136 days to expire on August 31, 1988;  
Expired Eff. August 31, 1988;  
Eff. October 1, 1988;  
Temporary Repeal Eff. April 15, 2002;  
Repealed Eff. August 1, 2004.

### **08 NCAC 09 .0106 GENERAL GUIDELINES**

- (a) Prior to each recount under G.S. 163-182.7, the county board of elections or State Board shall inform the political parties and candidates of the recount and describe to them the process of conducting recounts. A county board of elections shall notice the recount at least 48 hours prior to the start of the recount. The county board shall send notice by email to the county board's regular notice list, county party chairs, and the candidates in the contest subject to the recount.
- (b) In the case of tie votes, the winner shall be determined by lot only in the case set out in G.S. 163-182.8(2). Where there are 5,000 or fewer votes cast, there shall be only one determination by lot for each tied election. There shall be no determination by lot until the time has expired for the affected candidate(s) to request a recount, unless all of the affected candidate(s) waive their right in writing to request a recount.
- (c) During the conduct of recounts, ballots shall be counted in accordance with the principles in G.S. 163-182.1(a).
- (d) In conducting hand to eye recounts or recounts of paper ballots, a bipartisan team of four shall be used: two officials (one from each of the two parties in the State with the largest number of registered voters) to relay the results of each ballot with one person reading the ballot and the other official observing the ballot and the person reading the results of the ballot, and two officials (one from each of the two parties in the State with the largest number of registered voters) each separately recording the tally of votes for each candidate on paper while stating aloud after each choice is read on the fifth tally for a particular candidate, the word "tally." If, after diligently seeking to fill the positions with voters affiliated with each of the two parties in the State with the largest number of registered voters, the county board still has an insufficient number of officials for the recount, the county board by a majority vote of its members, including at least one board member of each political party represented on the board, may appoint to the bipartisan team an unaffiliated voter or voter affiliated with one of the other political parties. In no instance shall the county board appoint more than two members to a bipartisan team who are unaffiliated or affiliated with one of the other political parties. Bipartisan team members shall be registered voters in the State. County board members shall not serve on the bipartisan team.
- (e) The county board of elections shall conduct recounts only as follows:
- (1) the recount is mandatory under G.S. 163-182.7(b) or (c) or G.S. 163-182.7A; or
  - (2) the recount is not mandatory but the county board of elections or the State Board of Elections determines, using its authority in G.S. 163-182.7(a), that in order to complete the canvass a recount is necessary.
- (f) A candidate shall have the right to call for a hand-eye recount within 24 hours after a discretionary recount in G.S. 163-182.7(a) or by noon on the next business day of the county board office, whichever is later, if the apparent winner is the apparent loser after the discretionary recount. A candidate shall have the right to call for a hand-eye sample recount within 24 hours after a mandatory machine recount, pursuant to G.S. 163-182.7A.
- (g) Any candidate shall have the right to file an election protest within 24 hours after a recount is completed or by noon of the next business day of the county board office, whichever is later, if the protest relates to the conduct of the recount. Allegations unrelated to the recount may not be included in the protest.
- (h) Recounts shall be performed in the presence of a quorum of county board members or in the presence of a bipartisan team of two county board members. Determinations of voter intent shall be made by a quorum of the board and at least one board member of each political party shall be represented.

*History Note:* Authority G.S. 163-22; 163-182.7;

*Temporary Adoption Eff. April 15, 2002;*  
*Eff. August 1, 2004;*  
*Readopted Eff. June 1, 2019;*  
*Amended Eff. September 1, 2021.*

**08 NCAC 09 .0107 FIRST RECOUNT**

In the first recount conducted by the county board of elections in accordance with G.S. 163-182.7, all ballots that were originally counted shall be counted again by machine. All ballots that are rejected for tabulation purposes by the machines shall be recounted by a bi-partisan team of four in accordance with 08 NCAC 09. 0106(d) or duplicated and counted by machine. Ballots accepted by the machines shall not be counted by hand, regardless of whether the ballot is marked, contains overvotes, or is blank.

*History Note: Authority G.S. 163-22; 163-182.7;*  
*Temporary Adoption Eff. April 15, 2002;*  
*Eff. August 1, 2004;*  
*Readopted Eff. June 1, 2019;*  
*Amended Eff. September 1, 2021.*

**08 NCAC 09 .0108 RECOUNT OF DIRECT RECORD ELECTRONIC VOTING MACHINES**

*History Note: Authority G.S. 163-22; 163-182.7;*  
*Temporary Adoption Eff. April 15, 2002;*  
*Eff. August 1, 2004;*  
*Readopted Eff. June 1, 2019;*  
*Repealed Eff. September 1, 2021.*

**08 NCAC 09 .0109 GUIDELINES FOR DETERMINING VOTER INTENT**

(a) As provided in G.S. 163-182.1(a), voter intent is the governing standard when questions arise about how to adjudicate markings on a ballot. Questions about voter intent may arise during a hand-to-eye recount if a voter marks the ballot in an inappropriate manner, places marks in the wrong location on the ballot, or otherwise marks the ballot in a manner that causes the voter's choice to be in dispute. Determinations of voter intent shall be made by the county board. If the bipartisan team of four provided for in 08 NCAC 09 .0106(d) encounters a ballot that cannot be clearly identified as a vote for one candidate or another, the ballot must be set aside. During a hand-to-eye audit or recount, all ballots with a potential overvote or undervote shall be adjudicated by the county board at the conclusion of the tallying by the bipartisan team. If the subject to the recount was left blank—meaning there are no marks in the target or candidate area for the contest—the county board shall not need to determine voter intent and the ballot shall not be counted for any candidate in that contest.

(b) For purposes of this Rule, the following definitions apply:

- (1) "Target area" is the square or oval next to the candidate's name on the printed ballot.
- (2) "Candidate area" is the area between the lines separating candidate names, or the area that is clearly closer to one candidate's name than another, and includes the candidate's name and party affiliation, if listed.

(c) For any printed ballot that is to be counted hand-to-eye, the following guidelines shall be used in determining voter intent:

- (1) Any ballot that is properly marked in the target area for one candidate only shall be designated as a vote for that candidate.
- (2) If the names of all but one candidate are stricken through, the ballot shall be counted for the one candidate whose name was not stricken through.
- (3) If there are identical marks for two or more candidates, clarified by an additional or different mark or marks that appear to indicate support for one candidate, the ballot shall be counted as a vote for the candidate with the additional or different marks.
- (4) Any ballot that has any other mark or marks in the target area or candidate area for one candidate only, including circling the target area, the candidate's name, or both, or making a mark in or around the target area or candidate's name, provided no other candidate for that office is similarly marked, shall be counted as a vote for that candidate.

- (5) Any ballot that has a mark or marks in the target area or candidate area for one candidate, which extends partially into one or more other target areas or candidate areas, shall be counted as a vote for the candidate so marked only if a majority of the mark is in that candidate's area or target area, it is readily apparent that the voter intended to vote for that candidate, and no other candidate is similarly marked.
- (6) Marks extending across more than one candidate's area may be counted if the lines of the "x" or the bottom point of the check mark clearly lie inside the box or on top of the name or party affiliation or candidate area of one candidate, and no other candidate is similarly marked.
- (7) Any ballot that has a mark in the target area or candidate area for one candidate, and on which other marks in the target areas or candidate areas for any other candidates have been partially erased, scratched out, or otherwise obliterated, shall be counted as a vote for the candidate for which the mark was not erased, scratched out, or otherwise obliterated, provided no other candidate is similarly marked.
- (8) Any ballot that has a mark that is clearly next to (either before or after) a candidate's name, or across the name, shall be recognized as a mark for that candidate. Similarly, a mark between or over the "timing marks" of the ballot, that are clearly opposite or next to one candidate's name and not near another candidate's name, shall be recognized as a mark.
- (9) A mark that is between or across more than one candidate's name, candidate area, or target area shall not be recognized as a vote.
- (10) Any writing or comment on the ballot (other than a write-in) that clearly indicates the voter's support for one and only one candidate for the office, and that cannot be interpreted as a comment in favor of any other candidate in that election, shall be counted as a vote for that candidate.
- (11) Any ballot that is marked for more than one candidate for the office shall be deemed an overvote and no vote shall be counted for that ballot item.
- (12) Any ballot on which there is no mark under the office, or any other mark or comment indicating support for a candidate for the office, is an undervote and shall not be counted as a vote for any candidate.
- (13) A mark that is clearly a negative or extraneous comment, or that indicates the voter's opposition to one or more candidates, shall be considered an undervote, provided the ballot is not so marked to indicate which candidate the voter supports.
- (14) If a substantial part of the candidate's name is crossed through or stricken out, the mark shall be considered an undervote and shall not be counted.

Examples of these guidelines applied to ballot markings are located in Numbered Memo 2020-32 on the State Board of Elections' website, <http://www.ncsbe.gov>.

*History Note: Authority G.S. 163-22; 163-182.7;  
Temporary Adoption Eff. April 15, 2002;  
Eff. August 1, 2004;  
RRC Objection August 16, 2018 and rule returned to agency on June 1, 2019;  
Eff. September 1, 2021.*