

This is an amendment to 1.10.15 NMAC, Sections 3, 6, 8, 9 and 10, effective 8/24/2021.

1.10.15.3 STATUTORY AUTHORITY: This rule is authorized by ~~[Sections]~~ Section 1-2-1 ~~[and 1-12-72;]~~ NMSA 1978 of the Election Code.
[1.10.15.3 NMAC - N, 9/29/2020; A, 8/24/2021]

1.10.15.6 OBJECTIVE: The purpose of this rule is to provide a uniform system of ~~[conducting a general election based on legislative changes in]~~ handling and challenging mailed ballots consistent with the Election Code.
[1.10.15.6 NMAC - N, 9/29/2020]

1.10.15.8 [COUNTY CLERK MAILED BALLOT REJECTION OF QUALIFICATION:

~~A. Upon receipt of a mailed ballot, the county clerk shall remove the privacy flap to verify that the voter signed the official mailing envelope and to confirm that the last four digits of the social security number provided by the voter matches the information on the voter's certificate of registration.~~

~~B. If either the voter's signature is missing or the last four digits of the voter's social security number are not provided or do not match, the county clerk shall reject the mailed ballot and make the appropriate notation in the absentee ballot register and shall transfer the ballot to the special deputy for mailed ballots for delivery to the absent voter election board. Mailed ballots that are rejected must be secured and kept separate from the accepted mailed ballots.~~

~~C. If the mailed ballot is rejected, the county clerk shall within one working day send the voter a notice of rejection, in the voter's preferred language, along with information regarding how the voter may cure the reason for the rejection.~~

~~D. If the last four digits of the voter's social security number are either missing or does not match, the county clerk shall send a notice via electronic mail, or regular mail if no email address is on file, to the voter instructing them on how to cure the discrepancy.~~

~~E. If the signature is missing, the county clerk shall send notice via electronic mail instructing them to sign an affidavit and return it via email to the county clerk's office. This affidavit of cured mailed ballot should contain a space for the voter to provide the voter's signature and attest that this constitutes the required voter identification to cure the rejected mailed ballot. If the voter does not have an email address, the county clerk shall send a notice containing a signature form and a prepaid envelope for the voter to return and must indicate that the voter may also appear in person at the county clerk's office to cure the rejected mailed ballot.~~

~~F. The county clerk has a duty to attempt to contact any voter twice whose mailed ballot is rejected by either telephone, electronic mail, or mailed notice within one working day of rejection. If attempting to call by telephone the county clerk shall leave a message if there is an ability to do so.~~

~~G. If the voter cures the violation either electronically, by mail or in person the county clerk shall mark "accepted" in the absentee ballot register and shall transfer the ballot and any document that evidences the cured mailed ballot to the special deputy for mailed ballots for delivery to the absent voter election board.~~

~~H. The determination of the county clerk to accept or reject a mailed ballot is subject to a later challenge before the absent voter election board.] [RESERVED]~~
[1.10.15.8 NMAC - N, 9/29/2020; Repealed, 8/24/2021]

1.10.15.9 INTERPOSING ELECTION CHALLENGES:

A. A properly appointed challenger or member of the election board may interpose challenges only for the specific reasons outlined in Sections 1-12-20 and Subsection C of Section 1-6-14 NMSA 1978.

~~**B.** For the purposes of interposing challenges, a challenger's permitted activities are those listed in Section 1-2-23, NMSA 1978. No other written information will be provided to challengers by election board members. A challenger will not be allowed to view a voter's full date of birth or any portion of the voter social security number except as provided on the official mailing envelope pursuant to Subsection C of Section 1-6-14 NMSA 1978.]~~

~~**C.**~~ **B.** The election board ~~[must]~~ shall allow a challenger to view the application to vote form, signature roster, precinct voter list, and the voting machine pursuant to Section 1-2-23 NMSA 1978. The county clerk and the presiding judge have the discretion regarding whether the signature roster or precinct voter list be provided in electronic or paper form, however, under no circumstance will a challenger be allowed to view a voter's full date of

birth or any portion of the voter's social security number. A challenger may view a voting machine only before the polls are opened to ensure that the public counter is at zero, that the results tape contains no votes and that there are no voted ballots in the voting machine bins.

C. In accordance with Subsection C of Section 1-6-14 NMSA 1978, a challenger may view the official mailing envelope prior to the time that it is opened by the election board.

D. Challengers must conduct themselves in an orderly manner at all times. A challenger can be expelled from the precinct for unnecessarily obstructing or delaying the work of the election inspectors; touching ballots, election materials or voting equipment; campaigning; or acting in a disorderly manner.

E. Challenges may not be made indiscriminately or without good cause. Doing so constitutes disrupting a polling place.

F. Challengers do not have the authority to approach voters or talk to voters inside the polling location.

G. Challengers do not have the right to use video cameras or recording devices inside a polling location.

~~[H. — If two challengers are representing a political party, candidate, or election related organization in a polling location, only one of the challengers may hold the authority to challenge at any given time. The challengers may alternate the authority to challenge at their discretion. The challengers must advise the precinct board each time the authority is alternated. This provision does not apply to challengers' conduct pursuant to Paragraph (6) of Subsection A of Section 1-2-25 NMSA 1978.]~~

~~[E.]~~ H. County clerks must ensure that they include training on the rules and statutes relating to interposing election challenges at their school of instruction for all election board members.

[1.10.15.9 NMAC - N, 9/29/2020; A, 8/24/2021]

1.10.15.10 ABSENT VOTER ELECTION BOARD; CHALLENGES; DISPOSITION:

A. Challenges in front of the absent voter election board are handled in accordance with ~~[Section 1-42-22]~~ Subsections C and D of Section 1-6-14 NMSA 1978.

B. If a challenge is made in front of the absent voter election board, a designated election board member ~~may~~ shall notate [the challenge] "challenged" on the absentee ballot envelope but the absent voter election board does not have to rule on the challenge at that time, and may do so when it is otherwise convenient.

C. If the challenge is unanimously affirmed by the ~~[absentee]~~ absent voter election board, an election board member shall mark "affirmed" on the ballot envelope and ~~[indicate this in the absent voter record]~~ mark "rejected" on the absent voter's record on the absentee register. A unanimously affirmed challenged ballot shall not be opened but placed in a container provided for challenged ballots.

~~[D. — Any unanimously affirmed challenged mailed ballots shall be given to the special deputy for mailed ballots for delivery to the County Clerk. Once received, the county clerk must comply with Subsections C—G of 1.10.15.8 NMAC, to attempt to have the voter cure the reason the challenge was affirmed.~~

~~— [E.]~~ D. If the reason for the challenge is satisfied by the voter before the conclusion of the county canvass or as part of an appeal, the voter's record on the absentee ballot register shall be changed from "rejected" to "accepted," the notation "challenge affirmed" on the absentee ballot envelope shall be crossed out and signed and dated by the presiding judge and the county clerk, and the official mailing envelope shall be opened and the vote counted by ~~[the county canvass board]~~ an election board convened by the county clerk. If the ballot is hand tallied it shall be recorded in the absentee by-mail hand tally counting group. If the ballot is tabulated by a voting tabulator, it shall be recorded in the absentee by-mail machine counting group. If the ballot is counted after the county canvass report has been adopted, the county canvass board shall reconvene to amend the report prior to the state canvassing board convening. If the county canvass board is unable to convene prior to the date of the meeting of the state canvassing board due to the date of the appeal, the county clerk shall provide the information to the secretary of state to present to the state canvassing board. The state canvassing board shall review and adopt the change to the county canvass report in lieu of the county canvass board reconvening, however, if the change results in a change to the winner of a single-county candidate contest or ballot question, the state canvassing board shall order the county canvassing board to reconvene to adopt the change to the county canvassing report.

~~[F. — If the voter cures the reason for the challenge, the voter's record on the absentee ballot register shall be changed to "accepted", and the notation "challenged-affirmed" on the mailed ballot envelope shall be crossed out, signed and dated by either the presiding judge of the absentee precinct board or a member of the county canvassing board, dependent upon when the voter satisfies the reason for the not-affirmed challenge.]~~

[1.10.15.10 NMAC - N, 9/29/2020; A, 8/24/2021]

History of 1.10.15 NMAC: [RESERVED]

History of Repealed Material:

1.10.15.8 NMAC: County Clerk Mailed Ballot Rejection of Qualification, filed 9/29/2020; Repealed 8/24/2021.