

08 NCAC 02 .0111 ELECTION PROTEST FORM

All persons bringing an election protest under Article 15A shall complete and timely file the following form. For the purposes of this Rule, "timely" means within the time required by G.S. 163-182.9(b). Please note this form shall not be used to challenge the registration of an individual voter or to report an incident other than an irregularity affecting the outcome of an election.

ELECTION PROTEST

(Use of this form is required by G.S. 163-182.9(c))

This form must be filed with the county board of elections within the timeframes set out in G.S. 163-182.9(b)(4). Please print or type your answers. Use additional sheets if needed to answer the below questions fully. Number the pages of all additional sheets. Please note that filings will be a public record. Please redact all confidential information, such as date of birth, Social Security number, and driver's license number.

Respond to all prompts. Failure to complete this form as required may result in the dismissal of your protest. Attach additional sheets as necessary, including all exhibits and supplemental documents. All attachments are deemed incorporated and covered under the Protest Certification.

PROTESTOR

1. Provide your preferred contact information:

Name: YVONNE DEATHERAGE County of Residence: LENOIR

YVONNE@ICLOUD.COM Phone: [REDACTED]

Mailing Address: PO BOX 181 PINK HILL, NC 28572

NOTE: You will be deemed to consent to service at all of the above addresses (including email), unless you attach an addendum indicating otherwise.

2. Are you represented by counsel? Yes No

NOTE: If you answered Yes, above, your counsel must complete and you must attach the Counsel Certification Addendum.

3. Mark all that describe you:

Candidate for the office of Mayor of Town of Pink Hill

Registered voter eligible to participate in the protested election contest

Neither of the above*

**If you select this option, you are not eligible to file a protest.*

PROTEST SCOPE

4. List all election contests subject to your protest and calculate the margin of votes separating the apparent winner from the runner-up as of the date of filing. Your response does not waive your right to contest the validity of the current vote count. If your protest concerns all contests on the ballot, you must include the vote margin for each contest.

Protested Contest(s)

Current Vote Margin
(subtract runner-up totals from apparent winner's totals)

RECEIVED

SEP 11 2023

5. This protest alleges (select at least one):

LENOIR COUNTY ELECTIONS

- A defect in the manner by which votes were counted or results tabulated sufficient to cast doubt on the apparent results of the election.
- A violation of election law, irregularity, or misconduct sufficient to cast doubt on the apparent results of the election.

FACTUAL BASIS & LEGAL ARGUMENT

6. Provide all factual allegations in support of your protest. If any fact you allege is outside the scope of your personal knowledge, you may attach affidavits from those who have personal knowledge of that fact. All facts you allege in connection with this protest must be true and accurate to the best of your knowledge, and brought in the sincere belief that the facts alleged form a good faith basis to protest the conduct and results of the election.

SEE ATTACHED DOCUMENT FACTUAL BASIS & LEGAL ARGUMENT (5 PAGES)

8. Cite any statute or case, administrative rule or decisions, and election policy or procedure that supports your claim set out under Prompt 5.

§ 163-127.5 (b)

Hall v. Wake County Bd. of Elections, 280 N.C. 600, 605, 187 S.E.2d 52, 55 (1972)

Farnsworth v. Jones, 114 N.C. App. 182, 189 (1994)

RELIEF

9. What effect do you believe the facts alleged in response to Prompt 6, if proven, will have on the electoral outcome in the protested contest(s)? Your response should account for the current vote margin calculated in response to Prompt 4.

- The electoral outcome of the protested contest(s) will change.
- The electoral outcome of the protested contest(s) will not change.
- I am uncertain whether the outcome of the contest(s) will change.
- Other: SOMEONE NOT A RESIDENT COULD BE ELECTED

10. What relief do you seek?

- Correct the vote count
- A new election
- Other: DISQUALIFY AND REMOVE CANDIDATE FROM BALLOT

11. List all persons who assisted you in preparing the contents of this protest and indicate the nature of the assistance provided:

DOUGLAS STROUD - COMPLETING FORMS AND STATEMENT

Note: For protestors represented by an attorney, this protest is the initial filing in a proceeding as defined by N.C. State Bar Rules. See 27 N.C.A.C. 02 Rule 1.00(n).

12. Has any candidate, political party, organization, or person acting on behalf of the same requested that you bring this protest?

- Yes
- No

13. Have you received any financial or other benefit or promise of future financial or other benefit in exchange for filing this protest?

- Yes
- No

AFFECTED PARTIES & SERVICE

You must serve copies of all filings on every person with a direct stake in the outcome of this protest ("Affected Parties"). Affected Parties include every candidate seeking nomination or election in the protested contest(s) listed under Prompt 4, not only the apparent winner and runner-up. If a protest concerns the eligibility or ineligibility of particular voters, all such voters are Affected Parties and must be served. Address information for registered voters is available from the county board of elections or using the Voter Lookup at www.ncsbe.gov.

Materials may be served by personal delivery, transmittal through U.S. Mail or commercial carrier service to the Affected Party's mailing address of record on file with the county board of elections or the State Board, or by any other means affirmatively authorized by the Affected Party. If you know the Affected Party is represented by an attorney, service must be made on his or her counsel. Service must occur within one (1) business day of filing materials with the county board of elections. If service is by transmittal through the U.S. Mail or commercial carrier service, service will be complete when the properly addressed, postage-paid parcel is deposited into the care and custody of the U.S. Mail or commercial carrier service. It is your responsibility to ensure service is made on all Affected Parties.

14. List all Affected Parties, including their service address:

Affected Party
MICHAEL HORNE
DAVID FILLIPELI, JR (COUNSEL)

Service Address
PO BOX 309 PINK HILL, NC 28572
PO BOX 3169 KINSTON, NC 28502

PROTESTOR CERTIFICATION

15. By signing this protest application, you affirm the following:

I, Vonne Stroud Deatherage (full name), swear, under penalty of perjury, that the information provided in this protest filing is true and accurate to the best of my knowledge, and that I have read and understand the following:

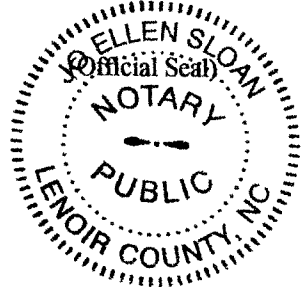
- YSD (initial) I have reviewed the statutes and administrative rules governing election protests, including all deadlines.
- YSD My protest must originate with a filing at the county board of elections.
- YSD I must timely serve all Affected Parties.
- YSD I must prove by *substantial evidence* either the existence of a defect in the manner by which votes were counted or results tabulated or the occurrence of a violation of election law, irregularity, or misconduct, either of which were sufficient to cast doubt on the apparent results of the election.
- YSD It is a crime to interfere unlawfully with the conduct and certification of an election.
- YSD It is a crime to interfere unlawfully with the ability of a qualified individual to vote and to have that vote counted in the election.
- YSD The facts I allege in connection with this protest are true and accurate to the best of my knowledge, and I have a good faith basis to protest the conduct and results of the election.

Submitting fraudulently or falsely completed declarations is a Class I felony under Chapter 163 of the General Statutes. This notice is provided pursuant to S.L. 2013-381, s. 5.4.

Signature of Protestor: Vonne Stroud Deatherage Date: 9/11/23
(This signature must be signed in the presence of a notary)

State of North Carolina, County of Lenoir

Sworn to (or affirmed) and subscribed before me this the 11 day of September, 2023.



Ellen Sloan
Official Signature of Notary
JoEllen Sloan, Notary Public

Printed Name Joelle Sloan

My commission expires: 9-3-2027

.....
Date/Time Filed with County Board

9/11/2023 2pm
(completed by the county board)

NOTE: The county board must provide the State Board with a complete copy of a filed protest within one business day after it is filed. In addition, the county board shall provide a copy of the election audit with this copy of the protest.

Please direct any questions to your county board of elections or the North Carolina State Board of Elections & Ethics Enforcement, PO Box 27255, Raleigh, NC 27611-7255.

SEC 6. FACTUAL BASIS & LEGAL ARGUMENT

Facts

Michael Horne is a resident of Cape Carteret, NC. His primary residence is at 253 STAR HILL DRIVE, CAPE CARTERET, NC 28584. He filed to be a candidate for Mayor of Pink Hill in July 2023.

He claims legal domicile for voter registration purposes and to qualify to run for office in Pink Hill at 201 E LYNWOOD AVENUE, PINK HILL, NC 28572. The dwelling he describes as his domicile is a small apartment above a house. He registered at this address on May 3, 2023. I have submitted photos documenting the property electronically to the County Board of Elections.

According to property records, he moved to the home in Cape Carteret in or around 2017 and has made continual improvements to the property, documented in supplied property records and in the supporting material where he has shared these life moments on social media. The photos of his home in Cape Carteret is in the supporting documentation emailed to your office.

There is no dispute that Mr. Horne is a native of Pink Hill or owns businesses in Pink Hill. However, it is common knowledge that he moved to Cape Carteret. Although he would go back and forth to oversee his business, his legal domicile ceased to be in Pink Hill when he purchased his home and relocated to Carteret County.

I. Legal Standard

A residence is a place a person occupies either temporarily or permanently, but a domicile is a permanent, established home where one intends to remain permanently or for an indefinite length of time unless an event happens to induce the person to leave. The fact that one operates a business in a town is not a legal basis to establish residency.

Section 163-57 states: "All election officials in determining the residence of a person offering to register or vote, shall be governed by the following rules, so far as they may apply:

1. That place shall be considered the residence of a person in which that person's habitation is fixed, and to which, whenever that person is absent, that person has the intention of returning."

If a candidate challenge is based upon a question of residency, § 163-127.5 (b), the candidate's actual residence will be determined based on a test established in *Hall v. Wake County Bd. of Elections*, 280 N.C. 600, 605, 187 S.E.2d 52, 55 (1972). This case provides a three-prong test to determine a candidate's residency. These are:

- (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.

(3) The intent of making the newer domicile a permanent domicile.

The standard of proof by which these elements must be proven is a substantial evidence standard. Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion" and "is more than a scintilla or a permissible inference." *Lackey v. Dep't of Human Resources*, 306 N.C. 231, 238, 293 S.E.2d 171, 176 (1982).

The information will provide substantial evidence that Mr. Horne's residence is in Carteret County. Thus, he should be found ineligible to be a candidate for Mayor of Pink Hill, NC, as he does not meet the Residency requirement.

II. Analysis

The first prong of the test is that there must be an actual abandonment of the first domicile, coupled with an intent not to return to the first domicile.

In *Hall v. Wake County Bd. of Elections*, 280 N.C. 600, 605, 187 S.E.2d 52, 55 (1972); see N.C. Gen. Stat. § 163-57(3) (1991), the court held that where someone retains his home with all its incidental privileges and rights, there is no change in domicile.

First, Mr. Horne still maintains the home in Cape Carteret. He has made no efforts to, and there is no evidence to support that he is selling the house, abandoning the home, or facing changes in life circumstances such as divorce. He and his wife changed their registration to Pink Hill, with him registering on May 3, 2023, and her on May 8, 2023. He is not living apart from his spouse based on her voter registration, which means he claims they both live in the small apartment pictured in the evidence, not separately.

The second prong is that there needs to be the acquisition of a new domicile by actual residence at another place. The place Mr. Horne is using as his residence in Pink Hill has been in his family for decades. His son lives in the property now with his family, and the part of the property Mr. Horne claims as his legal domicile appears to be a small guest or rental apartment above his son's home. It is accessible by tall stairs to climb on the exterior to reach it. The Board has been supplied with a photo from Google Maps of that home, marking the apartment above the central part of the structure.

Third, nothing suggests he intends to make this his permanent domicile.

In *Farnsworth v. Jones*, 114 N.C. App. 182, 189 (1994), the candidate took a month-to-month apartment in Gastonia and told people he would "see what would happen" in the election but had no intent to sell his mountain home. He won the election and kept the apartment. Despite his win and keeping the apartment, the court ruled the mountain home was his legal domicile.

At a town board meeting in or around May 2023, Mr. Horne stated that he had just "moved his residency back to Pink Hill" (this coincides with the time he registered to vote in Pink Hill after

having been registered to vote at his home in Carteret County for many years) because he didn't like the way things were going in the town. Mr. Horne now claims that this small apartment over the home of his son is and has been his primary abode.

Although Mr. Horne's situation is even more egregious, it is similar to that of the Farnsworth case. Just as in the Farnsworth case, Mr. Horne has found an apartment to use as his legal residence for the sole purpose of running for office. He also has no plans to sell his primary residence and make this small apartment his primary residence. Thus, the third prong is not satisfied by intending to make the new home his permanent domicile. Just as the Court of Appeals in Farnsworth ruled that the mountain home was the candidate's legal residence, the Board of Elections should find that Mr. Horne's legal residence is his home in Carteret County.

III. Summary

In this instance, Mr. Horne has substantially and continually improved his Cape Carteret property and retains all its incidental privileges and rights. Nothing indicates he does not plan to return to that home. Thus, he fails the first prong of the test articulated in *Hall*.

Mr. Horne stated in a Facebook post in August, when rumors were swirling of a residency challenge: "For inquiring Minds that feel they need to Question my residency. As of March of this year I changed my residency back to my Pink Hill Home to be closer to our Grandchildren."

However, when responding to a news report about the September 7 challenge hearing, he told media outlet Neuse News: "I have never left my town." Pointing to the fact he operates two businesses in the town. He then claimed his home in Carteret County is a "beach home" and said, "We enjoy our beautiful second home every weekend and holidays." This statement is not consistent with the evidence. The home in Cape Carteret is in a suburban neighborhood in a wooded golf course community. It is not a beach house as commonly understood by reasonable and prudent person.

If he moved to Pink Hill in March, as he claims on the one hand, then his tax returns in April should show his new address. But then he said in the other statement that he never left Pink Hill. This is also in direct conflict with his statement at the Board of Commissioners meeting in May that he and his wife "just moved their residency back to Pink Hill." His inconsistent statements make it hard to know what, if any, of this is true.

Horne has articulated reasons and made contradictory statements about the fact he has moved and the reasons for the move. However, his intent matters. The fact you say you live somewhere is not what matters. What you do and how you live is what matters.

As the North Carolina Court of Appeals stated in *Farnsworth*, "We have not ignored defendant's declarations concerning his [residence]. We must point out, however, that conduct is of greater evidential value than expressions of intent."

Let's be clear. The Court of Appeals says his **conduct is what matters**, not his words.

The Board has been supplied with an ongoing stream of social media posts from Mr. Horne that are evidence of his conduct and legal domicile. When you view the posts, it is apparent to any reasonable person that he considers his domicile as the home in Cape Carteret.

In these social media posts, he will express feeling "at home in Cape Carteret." He will detail his love for his home in Cape Carteret. You can review the documentation provided for an extensive display of his conduct, but here are examples of the things described in these posts:

- Voting in Cape Carteret in the 2020 and 2022 Federal elections. The post shows that he and his wife voted in Cape Carteret.
- Rehab shoulder surgery, Horne exercise at a gym in Cape Carteret. This is important because Mr. Horne owns a gym in Pink Hill. Any reasonable person would assume that if he lived in Pink Hill, he would rehab in Pink Hill at a gym he owns and not travel to a gym over an hour away owned by someone else.
- Celebrating life events such as birthdays, Father's Day, Mother's Day and Christmas, all at the home in Cape Carteret. Horne's March 13, 2022, post celebrating wife's birthday "at home in Cape Carteret, North Carolina."
- He describes in detail his garage renovation to house his motorcycle collection. He announced that his "garage is complete." He posted a photo of a new motorcycle he acquired as his "new work ride," which contemplates that the garage housing the bike is his home, and he would ride the motorcycle to work and then back home — home in Cape Carteret, where the garage is located.
- In a 2020 post on growing up and his journey to where he is now and a motorcycle that went on that journey that he kept and refurbished and, he states in a post showing the bike in the 80s and now "the same bike redone and still ready to ride in our home in Cape Carteret, NC 2020."
- April 5, 2019 on a post about improvements to the Cape Carteret home: "just finished up a project we started right after Christmas. Took our back deck and turned it into a beautiful SunRoom. With the help of my beautiful side kick we have finished the inside and have really enjoyed our Morning Coffee & All I have to do is install the vinyl and it will be complete. We love our Home projects!"
- In a post from July 10, 2020: Yard work complete On My Hustler Mower 10 minutes later we are on the boat on ski beach island I Gotta love living in Cape Carteret Nc 5 miles to the Country or Island Life in 5
- In a comment section chatting with a person on Facebook who lives in the Cape Carteret area, the person mentions she has a problem with her lawn mower. Mr. Horne, who owns a lawn mower repair service in Pink Hill, tells the woman he will bring a trailer "back home" from the store in Pink Hill.

- In a Facebook post from February 18, 2021, Mr. Horne captions a photo of his Cape Carteret home with "My Hobby is my Family and My Yard and Home."
- December 20, 2022, post announcing "Merry Christmas" with a post of his home in Cape Carteret with Christmas decorations in the yard how one might do in their primary home not a beach house. Someone in comments even replies "from our house to yours."

It strains credulity for anyone to believe that Mr. Horne has made the small apartment in Pink Hill his legal domicile, abandoned and has no intent to return to the beautiful property in a golf club community in Cape Carteret. These posts show that his mindset and conduct are that Cape Carteret is his home, not Pink Hill.

IV. Conclusion

The evidence presented conclusively shows his actual legal domicile to be Cape Carteret. However, the substantial evidence standard in this instance requires less proof from the challenger.

The Board has the power to fact-check his claims. The Board can subpoena information such as income tax records, utility bills, utility bill usage, internet bills, internet usage, security camera footage from the two properties (if such footage exists), and other personal property and licensing records that would show his actual legal residence. If Pink Hill is his legal domicile, he should have no problem producing such proof. You would think he would want to confirm this with the Board and voters.

Our election laws were put in place to deter the abuse of the election process and to ensure candidates and elected officials live among the residents they represent. The Board should rule that Michael Horne is not a qualified voter in Pink Hill and Lenoir County and, therefore, is not eligible to run for any office in Pink Hill.