

## **CHAPTER 8**

### **CONDUCT OF ELECTIONS**

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#### **8.1 General Provisions**

In Alabama, elections are conducted by electronic vote counting systems and in some small municipalities by paper ballot. Aside from this, the use of hand-counted paper ballots has been generally discontinued except in unusual situations.

Procedures employed at voting centers established by special legislation differ somewhat from those required by the general statutory provisions explained in this handbook. Municipal election laws are found in Title 11, Chapter 46, and Title 17. Where these two sources conflict, Title 11, Chapter 46 prevails. Municipal elections are generally held at different times than other elections and are the responsibility of the municipality. The laws for state, county, and federal elections are specified in Title 17 of the Alabama Code.

## **8.2 Precinct Election Officials**

Each county has an appointing board made up of the Judge of Probate, Sheriff, and Circuit Clerk. The appointing board must appoint at least four precinct election officials for each polling place. Their duties and assignments are as follows:

- (a) **Inspector** – in charge of the polling place, serves as official challenger of the votes and as returning officer for the precinct. § 17-8-1(b)(1);
- (b) **Registration List Clerk** – checks off names against the list of registered voters and writes in the names of voters who vote by provisional ballot or after presenting a certificate from the board of registrars. § 17-8-1(b)(2);
- (c) **Poll List Clerk** – ensures that each voter signs the voters' poll list, records each voter's name on the clerk's poll list, and gives ballots to voters. § 17-8-1(b)(3); and,
- (d) **Ballot Clerk** – assists the voter in depositing ballots in the precinct ballot counter. § 17-8-1(b)(4).

For municipal election officials, see § 11-46-28.

### **8.2.1 Qualifications**

Precinct election officials must be qualified electors, be qualified to vote in the county where they are to serve, not be members of a candidate's immediate family to the second degree of kinship, and not be a member of a candidate's political committee. §§ 17-8-1(a) and 11-46-27(b).

The appointing board may select poll workers who are registered to vote in the county to serve at any precinct in the county. § 17-8-1.

The appointed officials must attend a precinct election officials' training school organized by the judge of probate. § 17-8-9(a).

### **8.2.2 Compensation**

Precinct election officials are each entitled to a minimum of \$50 per day for county elections. However, counties may prescribe a greater amount by local act. § 17-8-12(a). Additionally, in state elections, clerks and inspectors are entitled to additional compensation paid by the state such that

clerks earn at least \$75 per day and inspectors earn at least \$100 per day. § 17-8-12(b).

Each clerk or inspector who attends a precinct election official training school or is certified as a qualified precinct election official by the judge of probate is entitled to an additional \$25 per day in compensation from the state for statewide elections. § 17-8-12(b).

An election official who works a split shift of not less than six (6) consecutive hours of work is paid half of the per day compensation. § 17-8-1(c).

### **8.2.3 Failure to Serve**

A duly appointed poll worker who fails to attend the election without an excuse may be charged with committing a violation. §§ 17-8-6 and 17-17-11.

### **8.2.4 Additional Poll Workers**

The appointing board may authorize the appointment of additional poll workers as necessary to serve at any polling place. The appointing board may appoint the number of precinct election officials necessary for each precinct, however, the county commission must approve any additional precinct election workers beyond the number paid in the November 2004 general elections. In the event of a change in the number of precincts, the appointing board may appoint according to the average number of precinct officials in the November 2004 election. § 17-8-1.

The appointing board may select poll workers who are registered to vote in the county to serve at any precinct in the county. § 17-8-1.

### **8.2.5 Alternate Poll Workers**

The judge of probate or other appropriate county election officials may appoint additional clerks and inspectors from within the county to serve as dedicated alternates. The salaries of these officials are eligible for state reimbursement. Up to four alternate officials may be appointed in counties of less than 100,000 people, with up to 12 alternates in counties of 100,000 to 250,000 and up to 24 alternates in counties of more than 250,000. Priority may be given for the appointment of alternates who are registered voters at the precinct where a vacancy exists. § 17-8-1.

### **8.3 Voting Systems**

Every county and municipality in the State of Alabama uses paper ballots. Alabama does not certify or allow for use any voting machine that has modem technology, and no voting machine in Alabama is capable of communicating by cellular network.

An Electronic Vote Counting System is a system in which votes are recorded on a ballot and subsequently counted and tabulated by automatic tabulating equipment at one or more counting locations. § 17-7-20. To become certified for use, electronic vote counting systems must meet the requirements for approval listed in Alabama Code Section 17-7-21, et al.

Electronic vote counting systems must be certified by the Alabama Electronic Voting Committee. The committee consists of five members: a representative appointed by the Secretary of State; a representative appointed by the Attorney General; and one judge of probate who shall be recommended by the Alabama Probate Judges Association and appointed by the Chief Justice of the Supreme Court and shall serve without pay or reimbursement for expenses; one member from the House of Representatives and one member from the Senate, to be appointed by the presiding officer of each house. The judge of probate shall be the chair. § 17-7-22.

The Secretary of State maintains the listing of certified electronic vote counting systems and provides the same to all county governing bodies of the counties in the state. There are currently two vendors with certified equipment for use.

The governing body of a county or municipality is authorized to adopt and direct the use of electronic vote counting systems and is authorized to determine which type of equipment to utilize, as long as it has been certified by the Alabama Electronic Voting Committee.

### **8.4 Voting Place Administration**

Precinct election officials are responsible for the administration of the polling place on election day. Precinct election officials are responsible for opening, closing, and operating the polls. § 11-46-28 and § 11-46-52. Poll watchers, who represent the interests of candidates or parties, may be present during the operation and closing of the polls. § 17-8-7.

### **8.4.1 Polling Place Materials**

At the counties' expense, the judge of probate of each county must have printed all ballots, forms, and other supplies necessary for the conduct of any state or county election. § 17-6-47. When two parties participate in a primary election, ballots and other election stationery must be printed on a different color paper for each party. § 17-13-8. The judge of probate furnishes these supplies to the sheriff.

It is the duty of the sheriff to deliver the supplies, together with boxes containing the ballots, to each polling place not later than one hour before the polls are scheduled to open on election day. §§ 17-6-47 and 17-13-9. Poll workers should receive a packet of supplies as follows:

- (a) ballots (at least one ballot for each registered voter at that place) (§ 17-6-44);
- (b) the list of qualified voters for the precinct (§ 17-6-5);
- (c) precinct election officials and poll watchers -- printed forms on which their oaths may be sworn;
- (d) provisional ballot supplies;
- (e) poll lists—blank, numbered forms provided for the names of those individuals who vote in the election;
- (f) at least three instructional posters to be posted in each precinct (§ 17-6-46);
- (g) precinct ballot counters (§ 17-6-4);
- (h) other stationery or blank forms (§ 17-6-47);
- (i) sample ballot (§ 17-6-46); and,
- (j) voter update forms and voter registration forms (Ala. Admin. Code r. 820-2-2-.13).

### **8.4.2 Precinct Election Officials Reporting for Duty**

Precinct election officials report to the polling place no later than 30 minutes before the polls open to organize themselves and prepare for voters. § 17-9-7. The necessary supplies and equipment will be delivered to the polling place. The list of registered voters will also be delivered. Names of persons who have obtained absentee ballots will be identified as absentee voters. § 17-11-5. Precinct election officials should check the physical arrangement of the polling place before the voters arrive. At the appointed time, an inspector announces that the polls are open. § 17-9-9.

### **8.4.3 Absent Officials**

The polls open at 7:00 a.m. § 17-9-6. If any election officials have not arrived at the polling place by that time, the remaining officials may fill the vacancies with qualified electors who are eligible to vote in that county. If the inspector is not present, the remaining officials may choose one of their number to serve as inspector and appoint a replacement clerk. §§ 17-8-6 and 17-17-11.

However, before taking such a step, it is wise to contact the appointing board for advice. The missing officials may simply be late or trained alternates may be available. Precinct election officials should be told which official they should call in case of problems.

### **8.4.4 Oath**

Before beginning their duties, the inspectors and clerks must take an oath to uphold the law, perform their duties and affirm that they will not discriminate in any manner against any voter because of race, sex, religion, or political affiliation. This oath may be administered by any person authorized by law to administer oaths or by the inspector. §§ 17-8-8, 17-13-48, and 11-46-28; *Harris v. Siegelman*, 700 F. Supp. 1083 (M.D. Ala. 1988).

Poll watchers are also sworn to faithfully observe the law for the conduct of elections. §§ 17-8-7 and 11-46-35(b).

### **8.4.5 Absentee Voters**

Before the polls open, the absentee election manager will underscore on the list of qualified voters the names of those who have already cast an absentee ballot and mark beside the name the word “absentee.” The Secretary of State may also provide for electronic access to the absentee election manager’s county list of voters. The absentee election manager furnishes to each voting place a list of the voters registered there who have applied for absentee ballots. § 17-11-5. In municipal elections the city clerk prepares and distributes this list. §§ 11-46-28(e) and 11-46-57.

### **8.4.6 Physical Arrangement**

There are certain legal and practical requirements for the physical arrangement of the voting place:

- (a) Voters should have a place to stand (or sit in the case of the infirm) while waiting to have their registration checked.
- (b) A sample ballot should be posted where voters can examine it before they reach the official's table. Sample ballots will be included in the election supplies. § 17-6-46.
- (c) There should be places for voters to prepare their ballots confidentially and with privacy. § 17-6-34; Ala. Admin. Code r. 307-X-1-.09.
- (d) Instructions on the procedure to vote including how to cast a vote and how to cast a provisional ballot must be posted. § 17-6-46.
- (e) Voter instructions on how to correct the ballot before it is cast and how to correct or change a ballot through the issuance of a replacement ballot. § 17-2-4.
- (f) The voting place must be accessible for individuals with disabilities in a manner that assures privacy and confidentiality. § 17-2-4(c).
- (g) It is very important to locate the nearest telephone which will be available throughout election day if a polling official does not have a cell phone. Workers may have to contact the sheriff, judge of probate, or board of registrars at any time. Note that some offices may close before the polls do, so be sure to locate a telephone or cell phone that will be available whenever it is needed.
- (h) A public notice should be posted to inform voters who are either mobility disabled or over the age of 70 that they may request to move to the front of the voting line. § 17-9-13(c).

#### **8.4.7 Voting Equipment**

Where electronic voting is conducted, voting equipment consists of an electronic voting machine for reading and tabulating votes with an attached receptacle for storing ballots. In municipal elections using paper ballots, there must be one voting booth or compartment for every 100 voters. § 11-46-34.

The judge of probate must have each electronic voting device tested before each election. Ala. Admin. Code r. 307-X-1-.04. Additionally, the inspector is responsible for testing each precinct ballot counter before the polls open on election day. A printout is produced to verify the registers are set at zero. Procedures for this check will vary by manufacturer, but all equipment

certified for use in Alabama must have a procedure to ensure that all votes register and the public counter is set at zero before the polls open. All precinct election officials and at least two watchers of opposing interests (if any are present) sign a certificate indicating that the check has been conducted and that the equipment is in order. Ala. Admin. Code r. 307-X-1-.23.

No voting machine may be installed or operated outside of the interior of the enclosed building designated as a voting place. Additionally, no ballots shall be taken into or out of any voting place, except in performing the authorized pre-election and post-election duties of transporting ballots. § 17-6-4.

Any error must be reported to the custodian and the judge of probate. No vote can be tabulated on the equipment until the equipment is repaired or a substitute is provided. Ala. Admin. Code r. 307-X-1-.11. However, the polls must remain open and voters may deposit ballots in a ballot box or other suitable container. Once the polls close, these ballots must be either counted by hand or deposited into a working ballot counter. Ala. Admin. Code r. 307-x-1-.17(5)

#### **8.4.8 Voting Hours**

Polls open at 7:00 a.m. and close at 7:00 p.m. All polling places in the eastern time zone open and close pursuant to the eastern time except that such polling places in Chambers and Lee county may, by resolution of the county commission, open according to central time. § 17-9-6.

### **8.5 General Rules of Polling Place**

The Code provides a number of rules governing election day activities. These rules cover keeping order in the polling place, the secrecy of the ballot, the integrity of the process, and accessibility.

#### **8.5.1 Keeping Order**

Poll workers and watchers are forbidden to drink intoxicating beverages. § 17-17-12. In primaries, it is a violation for anyone to be drunk or intoxicated at the polling place on election day. § 17-17-51.



According to the Attorney General's Office, private property owners that permit their property to be used as a polling place can restrict the use of that property beyond thirty feet of the entrance to the polling place. Unless otherwise permitted by private property owners, the public may use only those portions of the private property open to the public for voting purposes. AG AO 99-00243. This prevents campaigners from assembling or distributing literature at the polling place against the will of the property owner on the portions of the property not generally open for voting purposes.

The sheriff is responsible for the preservation of order in all elections. In municipal elections this function is performed by the chief law enforcement officer of the municipality. §§ 17-9-1, 17-17-2, and 11-46-28(i).

The Attorney General has issued advisory opinions concerning firearms at polling places. Local governments may not ban firearms at polling places on private property. However, "owners of private property may also choose to forbid firearms on their property, even if the person with the firearm has a permit." AG AO 2014-074. The power to restrict firearms at public polling places may vary.

### **8.5.2 No Loitering Around Polls**

No loitering is permitted within 30 feet of the door of the building of the polling place. A person who has voted must immediately leave the polling place, go beyond the 30-foot limit, and may not enter the polling place again. §§ 17-9-13 and 17-17-21. The only persons who may remain continuously at the polls are the election officials, the judge of probate, the sheriff or his deputy, and poll watchers. § 17-9-50.

### **8.5.3 Penalties Applicable to Election Officials**

State election laws prescribe penalties for failure of the election officials to conduct the election in the proper manner. *See generally* §§ 17-17-2, 17-17-12, and 11-46-61 through 65.

The National Voter Registration Act further provides criminal penalties for wrongful acts committed during voter registration and conduct of the election. 52 U.S.C. § 20511 and § 17-4-60.

#### **8.5.4 Secrecy of the Ballot**

Every voter has the right to vote a secret ballot and that ballot should be kept secret and inviolate. §§ 17-6-34 and 17-13-10. It is a Class A misdemeanor for election officials to disclose votes. § 17-17-18.

Except in a contest, it is illegal to break the seal on the voted ballot box or the record of election container to copy a poll list or to compare poll list numbers with ballot numbers. §§ 17-17-7, 17-17-16, and 17-17-29. Provisional ballots will be numbered and sealed. Ala. Admin. Code r. 820-2-6-.06 et seq.

#### **8.5.5 Integrity of the Process**

It is a violation for electors to interfere with other electors in their ballot preparation. § 17-17-21.

It is also a misdemeanor for an inspector to alter a ballot or substitute a ballot. § 17-17-42.

It is a Class A misdemeanor to vote more than once, to vote illegally, to vote both in this state and another state or territory in the same equivalent election, or to impersonate another voter. Any second or subsequent violation of this is a Class C felony. §§ 17-17-36, 17-17-15, 17-13-24, and 17-13-25. In municipal elections, such is a Class C felony upon the first offense. § 17-17-37.

It is illegal for anyone to attempt to bribe, influence, or hinder a voter in the exercise of a free vote. §§ 17-17-17, 17-17-33, 17-17-34, 17-17-38, 17-17-39, and 17-17-43.

An employer, an officer or agent of a corporation may not intimidate employees to influence their votes. §§ 17-17-44 and 17-17-45. A candidate guilty of bribing or influencing a voter is ineligible for the term of office to which they may be elected. § 17-17-41.

The National Voter Registration Act further provides criminal penalties for wrongful acts during voter registration and conduct of the election. 52 U.S.C. § 20511 and § 17-4-60.

### **8.5.6 Accessibility**

Chief election officials are required to post a notice at each polling place to inform voters who are mobility disabled or over the age of 70 that they may request to move to the front of the polling line. § 17-9-13(c).

Under federal law each political subdivision in every state is charged with making certain that all polling places have a reasonable number of permanent registration facilities, and registration and voting aids are made available to the elderly and the handicapped. 52 U.S.C. §§ 20102, 20103. Should a state or political subdivision fail to comply with the Act, the United States Attorney General or the person who is personally aggrieved by the non-compliance may bring an action for declaratory or injunctive relief in the appropriate federal district court. 52 U.S.C. § 20105. Polling places must also comply with the Americans with Disabilities Act. *See* 42 U.S.C. § 12101 et seq.

### **8.5.7 Photographs and Videotape**

Every voter has the right to vote a secret ballot and the ballot be kept secret and inviolate. § 17-6-34. It is a Class A misdemeanor for a person to reveal or take a photograph of another voter's ballot. § 17-9-50.1(a). However, a person may photograph their own ballot and may post such photos on the Internet. § 17-9-50.1.

A person is allowed to photograph general election activities at a polling place as long as they remain 30 feet outside a polling place and do not photograph voters marking their ballots. After the polling places close, one member of the news media may enter the polling place and photograph vote tabulation. AG AO 2000-160.

### **8.5.8 Model and Diagrams**

The election officers must post at least three large type posters (sample ballots) around the voting place. These posters are provided by the judge of probate. One set must be posted near the entrance of the voting place. Another set must be plainly visible near the place where voters are identified. The remaining set may be placed in visible locations according to the layout of the voting facility. § 17-6-46. In counties where five percent of the voting age public has a language other than English, instructions must also appear in the alternative language. § 17-6-46.

## **8.6 Voting Procedures**

When the polls are open, electors will present themselves to the poll workers for the purpose of voting. There are five basic steps for each voter: checking registration; checking identification; signing the poll list; recording the voter's name; and the act of voting. In addition, there are some general rules governing the conduct of the polling place.

### **8.6.1 List of Qualified Voters**

A ballot cast in any election in a precinct, district, ward, or any other subdivision in which the voter's name does not appear on the official list of the precinct, district or ward is illegal and must be excluded from being counted. § 17-10-3. The list of registered voters must be published in a newspaper of general circulation at least 20 days before the primary election. Any voters whose names were inadvertently omitted from the list have 10 days to satisfy the board of registrars that their names should be on the list. A supplemental printing of these omitted names must be published seven days preceding the election. § 17-4-1.

### **8.6.2 List of Registered Voters**

A list of persons registered to vote in the precinct is provided by the city clerk in municipal elections and the judge of probate in all other elections. § 17-1-2(14). Some individuals whose names appear on the list of registered voters may have acquired absentee ballots. The absentee election manager sends a list of their names to each polling place. These names are to be stricken from the list of registered voters and "absentee" should be written next to the name to indicate why it was stricken. § 17-11-5(c). The purpose of this procedure is to prevent a person from voting an absentee ballot and also casting a "regular vote" at the polling place. Any person whose name does not appear on the official list of voters may cast a "provisional" ballot. § 17-10-2.

### **8.6.3 Only Party Members May Vote in Primaries**

Although there is no party registration, a person must choose to be a member of the political party whose ballot he or she requests and may vote that party's ballot only. The voter attests to membership in the party by signing the poll list used at primary elections, which contains at its top a statement indicating the voter's preference for that party and when voting in the Democratic Party primary that they will support its nominees in the

ensuing general election. The Republicans do not have such a statement. §§ 17-13-7 and 17-13-8. The Alabama Republican Party obtained an injunction preventing this pledge from being placed on its ballot materials. *Alabama Republican Party v. State of Alabama*, No. 90-0267-BH, (Ala. 1991).

In 1986, the United States District Court for the Middle District of Alabama held that the Democratic Party rule prohibiting crossover voting in a primary was enforceable and did not violate the United States Constitution or the Alabama Constitution. The Court ruled the Alabama Attorney General in 1986 violated Section 5 of the Voting Rights Act when, without pre-clearing his actions with the Justice Department, he encouraged citizens who had voted in the state Republican primary to vote in the Democratic Party runoff election in violation of Democratic Party rules prohibiting crossover voting. *Henderson v. Graddick*, 641 F.Supp. 1192 (M.D. Ala. 1986).

The lists of qualified voters are not divided according to party, and no designation of party membership follows the voter's name. Hence, there is no convenient method of establishing party membership in case of doubt. But in no event may a voter cast a vote for candidates in different primaries on the same day.

#### **8.6.4 Voters May Not Change Political Parties from Primary to Primary Runoff**

If a voter participates in a political party's primary election, the voter may only participate in the primary runoff election of the same party. A voter who does not participate in a primary election may participate in any party's primary runoff election. § 17-13-7.1; *see also* Ala. Admin. Code r. 820-2-6.1-.01.

#### **8.6.5 Checking Registration**

Before allowing a person to vote, poll workers must determine that they are a qualified elector in that precinct. AG AO 2004-041. For most voters the process is quite simple because their names appear on the list of registered voters. Whenever a prospective voter's name does not appear on the list, additional steps are required to determine their eligibility:

**8.6.5.1 Check List of Registered Voters.** The clerk should attempt to locate the person's name in the list of registered voters. If the name appears, it should be marked through so that the same name may not be voted twice. The voter must then sign his or her name on one of the poll lists before being allowed to vote. § 17-9-11.

**8.6.5.2 Check Inactive Voter List.** Inactive voters will either be so designated in the voter list, or contained in a separate roster. Inactive voters must update their voter registration record before being permitted to vote. § 17-4-9. Update forms are included in the election supplies. Once the form is completed, the voter may cast a regular ballot. The clerk should place the completed update form in an envelope addressed to the board of registrars. § 17-4-9.

These update forms are a critical part of the voter file maintenance process. Updating inactive voters ensures that the board of registrars has an accurate address for each voter.

**8.6.5.3 Written Proof of Registration.** If a person's name is not on the list of registered voters, poll workers should ask for a proof of registration certificate from the board of registrars. § 17-10-3.

The board of registrars should be notified of all persons voting by certificate. This is because the certificate issued to voters when they originally register is not collected when people change their residence or otherwise become ineligible. The clerk should take the certificate and keep it with the list of registered voters to prevent it being used twice in a single election and to have it available in the event of a contest. If the person presents acceptable proof, the clerk should add their name to the list of registered voters, mark it to indicate that the person has voted, and allow them to vote.

If the person does not have written proof of registration, the clerk should call the board of registrars. The registrars may have a record of the individual's registration and if so, they may obtain a certificate by returning to the courthouse.

A person whose name is not on the list of registered voters may be allowed to vote if the board of registrar's office confirms that person is registered to vote and gives authorization over the phone for that person to vote a regular ballot. The individual must complete a voter reidentification/update form. The poll worker who spoke to the registrar must fill out that portion on the

back of the voter reidentification/update form indicating the name of the registrar who gave authorization for the individual to vote. The poll worker must also sign the form. Ala. Admin. Code r. 820-2-6-.04.

**8.6.5.4 Checking Other Poll Lists.** People may vote in the county and precinct of their domicile and nowhere else. § 17-9-10. A poll list is often provided to each polling place with lists of registered voters for all other precincts so that poll workers may check for registration in other precincts without calling the courthouse. Copies of the poll lists and seven-day supplement published in the newspaper should also be provided.

**8.6.5.5 Voting by Provisional Ballot.** Any qualified voters residing in a precinct or voting district may vote a provisional ballot when their name is not on the official list. § 17-10-3. For more information on provisional voting, *see also Chapter 10*.

**8.6.5.6 Voter Update Forms.** Voters who are inactive are required to complete a voter reidentification/update form prior to voting at the polling place so that their voter registration can be updated. § 17-4-9.

## **8.6.6 Voter Identification**

Prior to voting, each voter must present one of the following forms of valid photo identification to an appropriate election official:

- (a) A valid Alabama driver's license or non-driver identification (ID) card (not expired or has been expired less than 60 days)
- (b) An Alabama Law Enforcement Agency Digital Driver's License or Digital Non-driver ID
- (c) A valid Alabama Photo Voter ID card
- (d) A valid state issued ID (Alabama or any other state)
  - i. Valid AL Department of Corrections Release- Temporary ID (Photo Required)
  - ii. Valid AL Movement/Booking Sheet from Prison/Jail System (Photo Required)
  - iii. Valid Pistol Permit (Photo Required)
- (e) A valid Federal Issued ID
- (f) A valid U.S. passport
- (g) A valid employee photo ID issued by the federal government, State

of Alabama, or local county government, municipality, board, authority, or other entity of this state

- (h) A valid student or employee photo ID from a college or university in the State of Alabama (including post-graduate technical or professional schools)
- (i) A valid U.S. military photo ID card
- (j) A valid tribal photo identification card
- (k) Any other valid photo identification card issued by an entity of federal, state, or local government authorized by law to issue personal identification.

The Secretary of State's Office maintains a list of valid forms of identification that can be accessed on their website; in addition, see § 17-9-30(a).

An individual who is unable to present valid photo identification may vote by provisional ballot. § 17-10-2. Alternatively, such an individual may vote if the individual is positively identified by two election officials as a voter on the poll list who is eligible to vote and both election officials sign the voters list alongside where the voter signs. §§ 17-9-30(f) and 17-17-28.

Voters entitled to vote by absentee ballot pursuant to the Uniformed and Overseas Citizens Absentee Voting Act, Section 3(b)(2)(B)(ii) of the Voting Accessibility for the Elderly and Handicapped Act, or any other federal law, are not required to produce identification prior to voting. §§ 17-9-30(d) and 17-17-28.

### **8.6.7 Completing the Poll List**

All voters must sign a poll list unless they are illiterate or disabled, in which case assistance may be provided. §§ 17-17-15 and 17-9-11. Poll lists are provided in the election supplies. The lists are usually printed in the form of booklets with numbered lines on each page. However, counties or municipalities may choose to utilize electronic poll books instead of printed lists. § 17-4-2.1. The Secretary of State's regulations governing electronic poll books are provided in Appendix S of this Handbook.

The poll list clerk also records each voter's name on a separate poll list, which is often titled "Names of Voters" but which will be referred to here as the "clerk's poll list." The clerk's poll list must match the voters' poll list in the number and order of names. § 17-8-1. Having a clerk record



names ensures that voters can be identified in case of a contest, even if their signatures are illegible.

In primary elections there will be separate lists for each party. The poll list may contain a pledge of support for the party's nominees, and by signing the poll list the voter is also signing the pledge.

Electors may vote only in the primary of the party whose poll list they sign. When constitutional amendments are voted on during a primary, there should also be a poll list for persons who wish to vote only on the amendments. § 17-13-7.

Assistance in signing the poll list may be required by voters who are disabled or illiterate. In the case of a physical handicap, a poll worker writes the voter's name on the poll list, and then signs his or her own name on the same line. §§ 17-17-15 and 17-9-11.

In the case of illiteracy, the voter makes his or her mark on the list, a poll worker writes the voter's name beside it, then the worker signs his or her own name on the same line as a witness. §§ 17-17-15 and 17-9-11.

To obtain assistance, the voter must specifically request assistance by identifying the person from whom assistance is sought including a poll official, and by signing in the appropriate column of the voters' poll list. The person providing assistance signs in the appropriate column on the same line as the assisted voter. By signing, the assistants attest to the statement printed on the form that they are not the voter's employer, an agent of the employer, or an officer or agent of the voter's union. If the voter is unable to sign the poll list, the person giving assistance will write the voter's name in the appropriate column and sign his or her name in the appropriate column. § 17-9-11.

#### **8.6.8 Voter Receiving the Ballot**

After the voter's registration has been established and he or she has signed the poll list, the poll list clerk will take a ballot from the ballot package and give it to the voter.

The ballot must be given to the voter inside the confines of the polling place. No election officer or poll worker shall take a ballot into or out of any polling place except in the performance of official duties that include the transporting of ballots to and from the polling place as part of established

election procedures. § 17-6-4.

### **8.6.9 The Act of Voting**

The voter goes to a suitable area in the polling place and marks the ballot. Depending upon the type of tabulating equipment used, the voter will either mark a designated space next to the candidate's name or use one of the options listed below. These options may be used in completing the ballot in general elections only. A ballot marking device with touchscreen capability and alternative input methods for persons with disabilities (e.g., "sip and puff" tube) is provided in every polling place to allow voters to electronically record a vote on a ballot that is later fed into the ballot counter. Special operating instructions will also be provided.

### **8.6.10 Straight and Split Ticket Voting**

In general elections, voters may complete their ballots in a variety of ways:

- (a) **Split ticket.** The voter may mark by the name of each candidate for which he or she wishes to vote. The "yes" or "no" blocks for constitutional amendments and referenda are marked in similar fashion. If a voter does not mark any candidate for a particular office, no vote will be counted for that office. § 17-6-38.
- (b) **Straight ticket.** The voter may vote a straight ticket by marking the areas immediately under the name of one party. This action will cause votes to be counted for every candidate of that party and no others. § 17-6-35. However, when a ballot is marked for a straight party ticket but does not carry a party candidate for all offices to be filled, the voter may vote for candidates in other parties in the offices omitted or write in the names of candidates in the blank space under the title of the office. § 17-6-39.
- (c) **Straight ticket with exceptions.** After marking beneath the party's name the voter may make exceptions by marking the names of some candidates for other parties. §§ 17-6-36, 17-6-27 and 17-6-39. Additionally, when two or more candidates are to be elected to the same office (for instance, to a county commission) and a voter desires to vote for candidates for this office in different parties, the voter marks before the names of these candidates on his or her ballot. § 17-6-37.
- (d) **Write-in votes.** The voter may also write in candidates whose names are not on the ballot. §§ 17-6-40, 17-6-27, and 17-6-28. Write-in procedures vary somewhat by manufacturer. Instructions

must be posted in general elections.

In primary elections, of course, there are no separate party lists or “tickets,” and a mark must be made by the name of each candidate to cast a vote for them.

#### **8.6.11 Voter Assistance**

Any person is allowed voting assistance as long as the registered voter seeking assistance and the person providing assistance sign the proper column on the voting list, and the person assisting is not the employer, agent of the employer, or union agent of the voter. § 17-9-13(a). A poll watcher or candidate may assist a voter at the request of the voter. Earlier statutory assistance provisions that required an oath were found unconstitutional in *Harris v. Siegelman*, 700 F. Supp. 1083 (M.D. Ala. 1988). The court does provide that “any person who wishes assistance in voting may have that assistance from any person the voter chooses, except as prohibited in the Voting Rights Act of 1965.”

In municipal elections, if voters are unable to read or write, or are physically disabled and cannot make their marks on the ballot, the voter may select a person to provide assistance and if that person is not present the inspector may send for the person. §§ 11-46-40 and 11-46-51.

#### **8.6.12 Time to Vote**

Poll workers must make every effort to give each voter adequate time to vote. A previous limit of three (3) minutes was declared unconstitutional in *Harris v. Siegelman*, 700 F. Supp. 1083 (M.D. Ala. 1988). That court held that a five (5) -minute waiting period, when there are other voters in line, was more appropriate. If there is a line waiting, poll workers may use the following procedures to prevent long delays:

- (a) After four (4) minutes, ask the voter if he or she needs assistance. Tell the voter that anyone of the voter’s choice who is currently in the polling place, including another voter or poll worker, may assist (except for the voter’s employer, an agent of the employer, or an officer or agent of the voter’s union).
- (b) If the voter does not request assistance, allow him or her one (1) more minute. Then, if others are waiting, inform the voter that time is up and ask him or her to leave.
- (c) If the voter does request assistance, the poll worker should provide the assistance or get the person requested so long as the person is

already in the polling place and does not have a disqualifying interest as provided above. If there is no line, the voter and the assistant have as much time as necessary to finish voting. If there is a line, they may have five (5) minutes after the assistant enters the booth.

- (d) When the voter asks for assistance after entering the booth, both the voter and the assistant must sign the poll list as provided under the rules for assistance after voting and before leaving the polling place. If the voter has already signed in the appropriate column, the voter must simply sign again on the same line in the appropriate column. The assistant must sign on the same line in the appropriate column. § 17-9-13(b).

#### **8.6.13 Submitting the Ballot**

When the voter has completed the ballot, the voter must deposit the ballot in the electronic voting machine. The ballot clerk assists with this process. § 17-8-1.

#### **8.6.14 Spoiled Ballots**

If any voter makes a mistake or otherwise spoils a ballot such that it cannot be used conveniently or safely to vote, the voter may return the ballot and receive a replacement ballot. Spoiled ballots should be retained by election officials in a separate spoiled ballot envelope or other designated container. § 17-9-14.

#### **8.6.15 Curbside Voting Prohibited**

Curbside voting is now specifically prohibited by Alabama law. Election officials are prohibited from removing ballots from within a polling place or bring ballots inside, except as required for the performance of official duties for pre- and post-election procedures. § 17-6-4.

### **8.7 Write-in Votes**

Write-in votes may be cast in general elections for state and county officers, but not in primary or municipal elections. If a voter desires to vote for any person whose name does not appear on the general election ballot, the voter writes the name in the proper place in the blank column and fills in the voting space by the name written in. §§ 17-6-27, 17-6-28, 17-6-40, and 11-

46-43. *See also* Ala. Admin. Code r. 307-X-1-.16.

The name of a write-in vote must be physically written on the ballot. It is not valid to use a rubber stamp or stick on label in lieu of actually writing in the name. AG AO 81-00029. Write-in votes should be counted only for living human beings. A write-in vote for a fictitious party such as "Mickey Mouse" will not constitute a vote. AG AO 2000-048.

Write-in votes are counted only upon a determination that the total number of write-in votes for a specific office is greater than or equal to the difference in votes between the two candidates receiving the greatest number of votes for the specific office. Alternatively, the write-in votes cast for a specific election may be counted upon written request of a voter who participated in the election. The request must be accompanied by a bond or certified check in an amount sufficient to cover the cost of counting the write-in votes. Such requests must be submitted to the judge of probate for county offices or to the Secretary of State for state and federal offices by 5:00 p.m. on the first Friday following the election. § 17-6-28.

## **8.8 Poll Watchers**

State law authorizes poll watchers and prescribes certain rules for them. *See* §§ 17-8-7, 17-13-11, and 11-46-35. Poll watchers are designated by candidates or political parties to watch the voting process inside the precinct on election day. A watcher must be a resident and qualified elector of the state. § 17-8-7. Each watcher should have an appointment letter or “credential” signed by an appropriate person.

### **8.8.1 Number**

In a primary election, any candidate may have one (1) watcher in a polling place. § 17-13-11. In a general election, there may be one (1) watcher in a polling place for each party or organization which has nominated candidates for that election. § 17-8-7.

### **8.8.2 Appointment**

In both primaries and general elections, each poll watcher’s appointment must be in writing. § 17-13-11. In general elections, poll watchers may be named by the chair of the county executive committee, by nominees for office, or by beat committee members so long as the limit on one watcher

per party or organization per polling place is not exceeded. § 17-8-7.

In a special election in which there are no candidates, each political party, through a writing submitted to the inspector by the chair of the county executive committee, may appoint a watcher for each polling place. § 17-8-7.

A poll watcher must present the appointment letter to the precinct inspector when entering the voting center. The inspector will administer the oath of office to the poll watcher and retain the appointment letter as long as the poll watcher remains in the precinct. When the poll watcher wants to leave, the poll watcher should retrieve the appointment letter from the inspector so the poll watcher will have it to present to the inspector at the next location.

### **8.8.3 Time**

Poll watchers may be present in the polling place from the time that the preliminaries of opening the polls begin until the results are posted and certificates of the results are signed. § 17-8-7.

### **8.8.4 Oath**

Each watcher must be sworn to faithfully observe the rule of law for the conduct of the election. § 17-8-7. The oath for poll watchers is the same as that taken by poll workers.

### **8.8.5 Permissible Activities**

Poll watchers may observe the conduct of the election. They may be present to observe the preliminaries at the opening of the polls at 7:00 a.m., observe the voters during the day and see the ballots as they are counted at the end of the day. Poll watchers may also observe absentee ballots and affidavits when they are reviewed during the count in the absentee box. § 17-8-7.

A poll watcher cannot wear any clothing, stickers, hats, etc., that identify the poll watcher with a particular party or candidate. A watcher cannot attempt to influence voters in any way. §17-8-7(d). A watcher is generally allowed to observe all aspects of the voting process at a precinct, but the poll watcher cannot interfere or hinder the voting process. A watcher is allowed to check the number of ballots cast on the ballot counters, as well as to observe the signing of the poll lists and to monitor voter check-in at

the registration table.

Poll watchers may not simultaneously serve as election officials. §§ 17-8-7 and 17-13-11. In addition, poll watchers must observe the general rules for the conduct of the polling place. They may not disturb or attempt to influence voters, campaign, or electioneer. §§ 17-17-21, 17-13-11, 17-17-38, and 17-17-43. While inside the polling place, they should refrain from wearing buttons, badges, or ribbons which have a candidate's name printed on them. AG AO 84-00020.

## **8.9 No Counting of Votes During Polling Hours**

Votes are not counted until the polls are closed. §§ 17-12-6 and 11-46-44.

The procedure for counting the absentee ballots in electronic voting equipment is generally the same as for poll workers in precincts and may not be tabulated until the polls close. For absentee voting, ballots may be tabulated beginning at 7:00 a.m. on Election Day, but the final tape will not be run until the close of polls after 7:00 p.m. §§ 17-11-10 and 17-11-11.

## **8.10 Closing the Polls**

The polls in state and county elections close at 7:00 p.m. §§ 17-9-6 and 11-46-28(a). Anyone who is within the voting room at closing time, but has not voted, will be permitted to vote. § 17-12-1.

A federal or state court order may extend the time for closing the polls beyond 7:00 p.m. Persons who vote during the extended time period must vote a provisional ballot. § 17-10-2(a)(4).

### **8.10.1 Clearing the Polling Place**

At the time appointed for closing the poll, the poll workers should begin to clear the polling place of voters. Qualified voters who are waiting in the room (or in a line which extends outside the room) must be permitted to vote. § 17-12-1.

Voters are not allowed to leave the line and return after the polls are closed. As soon as the last ballot has been given out, the poll list clerk must record the number of that ballot on a certificate. § 17-12-1.

### **8.10.2 Voting Officials May Not Adjourn**

At the end of the voting day no recess or adjournment is permitted. The inspectors and clerks proceed immediately to count the votes and continue without interruption until the certificates of results have been signed. § 17-9-8.

## **8.11 Sealing Records**

### **8.11.1 General Elections**

Before the inspectors begin to count ballots, the poll list that was signed by the voters must be sealed in a special envelope included in the election supplies. § 17-9-12.

### **8.11.2 Primaries**

Before the ballots are counted, each party's poll list that was signed by the voters must be sealed in an envelope designated to the appropriate political party chair, and the inspector must sign across every fold of the envelope. § 17-13-14. (The envelopes provided for this purpose have the appropriate places for signatures clearly designated). The list of registered voters must be sealed and signed in the same fashion. § 17-13-14.

## **8.12 Certificates of Result**

A certificate of result is a printout from the electronic voting machine detailing the election results recorded by that machine. Under Alabama law, several of each of these certificates are necessary as they must be provided to a number of different election officials, as described below.

### **8.12.1 Creating Certificates of Result**

After closing the polls and sealing the required records as prescribed above, the officials are to follow the manufacturer's instructions to lock the equipment against further voting and to obtain a printout of the votes on each office and ballot question. The paper should not be torn from the machine until after the first printout of the results has been made so that all printing during the day, from the initial test before the polls opened through



the first complete printout of results, will be on one continuous sheet or roll of paper. § 17-12-1.

All election officials should immediately sign the sheet. This printout, together with any necessary additions as outlined below, is the original certificate of result. Then at least four more printouts of the results must be produced and torn out to be distributed as required by statute. § 17-12-1.

The next step is to complete the certificates of results by adding any necessary information that is not automatically printed. This information may include: the name of the precinct, the date, the identifying number (serial number) of the tabulating equipment, the value on the public counter indicating the number of votes cast, the name of each candidate next to the total number of votes for that candidate, the number and short title of each proposition next to the number of votes for and against that proposition., and in general elections only, the number of write-in votes cast in each race on the ballot. § 17-12-1 and Ala. Admin. Code r. 307-x-1-.18.

### **8.12.2 Dispatching Certificates of Result**

In each election, a number of certificates of result are needed.

First, the original certificate of result should be sent to the judge of probate for public inspection and use in an election challenge. § 17-12-16.

Another copy of the certificate of result must be posted in front of the polling place immediately following the count. § 17-12-10. In primary elections, this copy must be posted within two hours after closing the polls. § 17-13-14(b).

In a primary election, the county executive committees act as canvassing boards, and a certificate should be sent to the chairs of each these committees along with the voters poll list for their primary. Also in primaries, a copy must be sent to the chairs of the state executive committees of the political parties. § 17-13-16

In any election, one copy of the certificate of result must also be preserved in case the original is lost or destroyed. This copy must be signed by the inspector and sealed in an envelope. The inspector must then write their name across the folds of this envelope. This copy must be delivered to the judge of probate. § 17-12-12.

A copy of the certificate of result should also be sealed in the records of election container in both primary and general elections. §§ 17-12-12(1)(c) and 17-13-14(a)(1).

Placing large numerals (1, 2, 3, 4, etc.) on envelopes and corresponding numerals on the certificate of results sheets can help ensure that each envelope contains the appropriate sheet and that each county election official receives the appropriate envelope. A simple instruction sheet can be included with the supplies to indicate, by number, which certificate of results is posted, left in the machine, returned to the judge of probate, sent to the sheriff, sent to the county committee chair, etc. Not only does this permit a quicker tabulation of the results but should also prevent confusion.

Within two hours after the polls close, the inspectors of each voting place must post their results in the county courthouse at a place designated by the judge of probate. §§ 17-12-8 and 17-13-13(b).

In municipal elections, a signed “statement of the votes” must be placed in a sealed envelope along with the poll list signed by the voters and the list of registered voters and delivered to the city clerk by the returning officer. Additionally, a separate list of the vote totals must be attached to the outside of ballot box once they have been counted and sealed. § 11-46-45.

### **8.12.3 Ballot Accounting Certificate**

The ballot accounting certificate(s) must also be completed. It must list the number of each ballot style issued to the precinct, the number of voted ballots, the number of signatures on the poll list, the number of spoiled ballots, the number of challenged ballots, and the number of unused ballots. Ala. Admin. Code r. 307-x-1-.18. Any discrepancies from the required totals on these forms must be reported to the judge of probate.

## **8.13 Return of the Ballots and Other Election Supplies**

### **8.13.1 Primaries**

The inspector of the precinct is given the envelope containing the poll list signed by the voters, along with another containing a certificate of results. Municipal elections may also have a tally sheet. These envelopes are addressed to the chair of the county committee of each party participating in the primary, and it is the responsibility of the inspector of the precinct to

deliver these envelopes, the voted ballots container and the records of election container to the sheriff, the county returning officer. §§ 17-13-12 and 17-13-14.

The following items are to be placed in a records of election container:

- (a) one certificate of result;
- (b) spoiled ballot envelope;
- (c) clerk's poll list;
- (d) all partial pads; and,
- (e) stubs of ballot pads. § 17-13-14(a).

After the voted ballot container has been sealed, it is given to the inspector who must deliver it together with the sealed envelopes to the sheriff. The sheriff must then deliver the envelopes to the county committee chairs at the office of the judge of probate no later than 10:00 a.m. on the Wednesday following the election. §§ 17-13-12 and 17-13-14.

In practice, however, these deliveries are made during the election night after the work at the polls has been completed. In any event, the sheriff retains the voted ballots container, record of election container and provisional ballot box and the county chair retains the envelope containing the poll list, unopened except in instances provided by law (such as election contests). § 17-13-10. After the prescribed time, the election records are destroyed by the county chairs. § 17-13-15.

### **8.13.2 General Elections**

After completing the certificates of result, election officials must seal voted ballots in a voted ballot box. As with the primaries, a separate records of election container must contain all spoiled ballots, unused ballots, and ballot stubs, as well as the clerk's poll list and a certificate of result. The containers must be sealed and signed by all the election officials. Additionally, the electronic memory packs must be delivered to the judge of probate. § 17-12-12; *see also Appendix S for additional regulations concerning electronic voting systems.*

The inspectors take ballots, seal them securely, and label the bundle to identify the election and offices that were on the ballot. For cities using paper ballots, the sealed envelope containing the second poll list also goes into the ballot box. § 11-46-45.

Compliance with this provision means sealing the ballots in a box on which is printed the date and kind of election. Any provisional ballots are labeled as provisional, and sealed in a separate box. The ballot box is then sealed and labeled to show the nature of its contents. In practice, the box is securely fastened by locks and a label is affixed bearing a printed list of the contents of the box. The ballot boxes are then turned over to the returning officer of that district or precinct, who must then deliver them (along with the other poll list, certificates of results, and list of registered voters) to the sheriff within two hours of departing the precinct. §§ 17-12-8 and 17-12-14.

In municipal elections, the returning officer takes the election materials and ballot box to the municipal clerk not later than 11:00 a.m. on the day after the polls close. § 11-46-45.

### **8.14 Candidate Examination of Ballots**

In all election contests (other than political party primaries or runoffs), candidates are allowed to examine ballots cast, given, or rejected in the election. § 17-16-45.

### **8.15 System of Canvassing the Ballots**

A system of canvassing is an important aspect of any smooth running election. The following example is a system that is useful to counties or municipalities that have their own computer facilities.

Each precinct within the county has at least one electronic voting machine and each machine has a data pack or memory card which is the “brains” of the electronic voting machine and contains all of the voting information compiled on that particular machine on election day, including the number of votes each candidate or ballot issued received.

The data packs, or memory cards, are removed from the electronic voting machine at the end of the day, after polls have closed, and placed in an envelope which contains a computer generated label that lists the precinct (beat) and box number for that precinct. The envelope is then sealed and signed by all the election officials in that precinct and returned by the inspector of the precinct to the sheriff, who immediately delivers to the judge of probate at election central.

The data packs, or memory cards, are then placed in a computer tabulator which immediately transfers the vote totals from the precinct to the computer. The next datapack or memory card from another precinct is then placed in the tabulator and the computer will generate cumulative totals. This continues until the results from all precincts have been counted.

Periodic precincts and updates of cumulative totals are distributed to parties, candidates, and news media. The tabulation of results is unofficial until certified by the official canvass. Some counties project the results of the election from the computer on to a big screen to enable the candidates and the public to view the box by box results.

A system similar to the one above will speed up the tabulation and canvassing procedure and increase the credibility of the election process.

## **8.16 Penalties for Violation of Election Code**

Alabama law provides penalties for violations of the election code ranging from violations to felonies. *See* Chapter 17 of Title 17; *see also*, municipal election laws §§ 11-46-59 thru 68 (municipal election laws) and §§ 13A-7-26, 13A-9-2, 13A-9-4, 13A-10-12, 13A-10-102, 13A-10-103, 13A-10-109, and 13A-11-10 (criminal code).

The offense levels range from a violation to Class C felony. Jail sentences may be for as long as 10 years. In view of this impressive set of penalties, it is obviously to the advantage of individuals involved with elections to become thoroughly familiar with the duties and responsibilities that the election laws place upon them.

Examples of unlawful conduct proscribed by the election laws are failure of officers to perform duties required by the election laws, bribery or wrongfully influencing a voter, fraudulent voting, and violations of ballot secrecy.

The Alabama Code prohibits an Alabama voter from voting more than once, or attempting to vote more than once, in the same election in both this state and another state or territory in the same or equivalent election. § 17-13-24. The Code prohibits any voter from attempting to vote when they have knowledge that they are not entitled to vote, or to commit any kind of unlawful or fraudulent voting. § 17-17-36.

