

## **21 NCAC 21 .0513           DISQUALIFICATION OF BOARD MEMBERS**

(a) Self-disqualification. If for any reason a Board member determines that personal bias or other factors render him or her unable to participate in a contested case hearing and perform all duties in an impartial manner, he or she shall submit, in writing, to the Board, his or her disqualification and the reasons.

(b) Petition for Disqualification. If for any reason any party in a contested case believes that a Board member is personally biased or otherwise unable to participate in a contested case hearing and perform all duties in an impartial manner, the party may file a sworn, notarized affidavit with the Board. The title of such affidavit shall bear the notation: AFFIDAVIT OF DISQUALIFICATION OF BOARD MEMBER IN THE CASE OF [name of case].

(c) Contents of Affidavit. The affidavit shall state all facts the party deems relevant to the disqualification of the Board member.

(d) Timeliness and Effect of Affidavit. An affidavit of disqualification shall be considered timely if filed ten days before the commencement of the hearing or at the first opportunity after the party becomes aware of facts set forth in the affidavit. Where a petition for disqualification is filed less than ten days before or during the course of a hearing, the hearing shall continue with the challenged Board member sitting. Petitioner shall have the opportunity to present evidence supporting his or her petition, and the petition and any evidence relative thereto presented at the hearing shall be made a part of the record. The Board, before rendering its decision, shall decide whether the evidence justifies disqualification. In the event of disqualification, the disqualified member shall not participate in further deliberation or decision of the case.

(e) Procedure for Determining Disqualification:

- (1) the Board shall appoint a Board member to investigate the allegations of the affidavit;
- (2) the investigator shall report to the Board the findings of the investigation;
- (3) the Board shall decide whether to disqualify the challenged individual;
- (4) the person whose disqualification is to be determined shall not participate in the decision but may be called upon to furnish information to the other members of the Board;
- (5) when a Board member is disqualified prior to the commencement of the hearing or after the hearing has begun, such hearing shall continue with the remaining members sitting provided that the remaining members still constitute a majority of the Board; and
- (6) if three or more members of the Board are disqualified pursuant to this Rule, the Board shall petition the Office of Administrative Hearings to appoint an administrative law judge to hear the contested case pursuant to G.S. 150B-40(e).

*History Note: Authority G.S. 89E-20; 150B-11; 150B-38; 150B-40;  
Eff. February 1, 1986;  
Amended Eff. April 1, 1989;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 16, 2014;  
Amended Eff. June 1, 2017.*