

21 NCAC 46 .2011 DISQUALIFICATION OF BOARD MEMBERS

- (a) If a Board member determines that personal bias or other reason for that Board member's disqualification exists in a contested case, that Board member shall decline to participate in the hearing or decision.
- (b) If any party in a contested case, in good faith, has evidence that a Board member is personally biased or another reason for disqualification exists, the party may file and serve a motion for disqualification, which must be supported by a sworn, notarized affidavit testifying to the facts relevant to disqualification.
- (c) Ex parte communication by or on behalf of a party with a Board member about the facts of a case at any time during either the investigation or prosecution of potential violations shall be grounds for disqualification of that Board member, other than communications by Board counsel and staff during the course of seeking a summary suspension or communications during any other proceeding before the Board. Before a hearing begins, or during the hearing, if applicable, both the Board member and the party must disclose the communications between the Board member and a party about the facts of the case to the Board and to the parties.
- (d) A party may file and serve a motion for disqualification less than ten days before or during a hearing only when based on newly discovered evidence that by due diligence could not have been discovered in time to file a timely motion. Under these circumstances, the hearing shall continue with the challenged Board member sitting.
- (e) The Board shall decide whether the evidence requires disqualification before it renders the final agency decision in the contested case. The decision about the disqualification of a Board member shall be made by the other Board members. The Board is not required to grant a new hearing if a Board member is disqualified during the course of a hearing.
- (f) The presiding officer may determine the method of resolving the motion for disqualification in the presiding officer's discretion under G.S. 150B-40. This may include the authority to direct that the Board's Executive Director oversee an investigation of the allegations and report the findings to the Board.
- (g) In the event of disqualification, the disqualified member shall not participate in further deliberation or decision of the case but may be called on to furnish information to the other members of the Board.
- (h) 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. 90-85.6; 150B-38; 150B-39; 150B-40; 150B-41;*
Eff. July 1, 1988;
Amended Eff. May 1, 1989;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 3,
2017;
Amended Eff. August 1, 2020.