

**21 NCAC 17 .0511            DISQUALIFICATION OF BOARD MEMBERS**

- (a) Self-disqualification. If for any reason a Board member determines that personal bias or other factors render that member unable to hear a contested case and perform all duties in an impartial manner, that Board member shall voluntarily decline to participate in the hearing or decision.
- (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 hear a contested case 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 must state all facts the party deems to be relevant to the disqualification of the Board member.
- (d) Timeliness and Effect of Affidavit. An affidavit of disqualification shall be considered timely if filed 10 days before commencement of the hearing.
- (e) A party may file and serve a motion for disqualification less than ten days before or during a hearing only when the motion is 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. Petitioner shall have the opportunity to present evidence supporting their 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 final decision, shall decide whether the evidence justifies disqualification. The decision about the disqualification of a Board member shall be made by the other Board members who are not the subject of the disqualification. 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, in their discretion, may determine the method of resolving the motion for disqualification 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 four 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. 90-356; 150B-40;*  
                          *Eff. January 1, 2023.*