21 NCAC 61 .0710 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. Any other affidavit shall be considered timely provided it is filed at the first opportunity after the party becomes aware of facts which give rise to a reasonable belief that a Board member may be disqualified under this Rule. Where a petition for disqualification is filed less than 10 days before a hearing or during the course of a hearing, the Board may continue the hearing with the challenged Board member sitting. Petitioner shall have the opportunity to present evidence supporting his 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 when a timely Affidavit of Disqualification is filed:

(1) The Board will appoint a Board member to investigate the allegations of the affidavit.

(2) The investigator will 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.

(6) 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. 90-652(2),(5),(8);*
Temporary Adoption Eff. October 15, 2001;
Eff. August 1, 2002;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 22, 2015.