

21 NCAC 68 .0709 DISQUALIFICATION OF BOARD MEMBER

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

(b) Petition for Disqualification. If for any reason any party in a contested case believes that the Board member personally is biased or otherwise unable to conduct or participate in the hearing and perform all duties in an impartial manner, the party may file a sworn, notarized affidavit with the Board. The envelope 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 relevant to the disqualification of the Board member.

(d) Timeliness of Affidavit. An affidavit of disqualification shall be considered timely if filed at least 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 the facts which give rise to a reasonable belief that the Board member may be disqualified pursuant to this Rule.

(e) Procedure for Determining Disqualification is as follows:

- (1) The President of the Board may appoint a member of the Board to investigate the allegations of the affidavit and report his or her findings and recommendations to the Board.
- (2) The Board, with such assistance as it deems appropriate, shall decide whether to disqualify the challenged individual.
- (3) The person whose disqualification is to be determined will not participate in the decision but will have the right to furnish information to the Board.
- (4) A record of proceedings and the reasons for decisions reached shall be maintained as part of the contested case.

(f) Disqualification or withdrawal of a Board member because of personal bias or otherwise will not cause the hearing to be postponed unless a quorum is not available.

*History Note: Authority G.S. 90-113.30; 90-113.39; 90-113.40;
Eff. August 1, 1996.*