

## **21 NCAC 48G .0511 DISQUALIFICATION OF BOARD MEMBERS**

- (a) Self-disqualification. No Board member shall discuss with any party the merits of any case pending before the Board. Any Board member who has direct knowledge about a case prior to the commencement of the proceeding shall disqualify himself or herself from any participation in the case. If for any other 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.
- (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 will be considered timely if filed 10 days before commencement of the hearing. Any other affidavit will 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.
- (e) Where a petition for disqualification is filed less than 10 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 the 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 will not participate in further deliberation or decision of the case.
- (f) Procedure for Determining Disqualification:
- (1) The Board will appoint a board member or the Board's attorney to investigate the allegations of the affidavit.
  - (2) At a special proceeding convened to consider the petition for disqualification, the investigator will report to the Board the findings of the investigation.
  - (3) The Board shall decide whether to disqualify the challenged individual, and issue its decision in the record.
  - (4) The person whose disqualification is to be determined will not participate in the decision but may be called upon to furnish information at the special proceeding.
  - (5) When a Board member is disqualified prior to the commencement of the hearing or after the hearing has begun, such hearing will continue with the remaining members sitting provided that the remaining members still constitute a majority of the Board.
  - (6) If a sufficient number of Board members are disqualified pursuant to this Rule so that a majority of the Board cannot conduct the hearing, 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. 90-270.92; 150B-40; Eff. October 1, 1995; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018.*