

RULE 425
MANDATORY LAWYER MENTORING PROGRAM

(a) Mentoring Program. Following successful lawyer mentoring pilot programs, this rule has been promulgated by the Supreme Court of South Carolina to establish a mandatory lawyer mentoring program. The program shall be administered by the Commission on Continuing Legal Education and Specialization (Commission).

(b) Qualifying Lawyer Defined. A qualifying lawyer is any lawyer admitted under Rule 402, SCACR, on or after April 1, 2012, if that lawyer (1) is a resident of the State of South Carolina or practices law in an office located in South Carolina on more than a temporary basis; and (2) has not previously practiced law actively in another jurisdiction for more than two years.

(c) Mandatory Participation and Completion. The mentoring program is mandatory for all qualifying lawyers. Unless participation is deferred or waived under Section (d) below, qualifying lawyers admitted in South Carolina from January 1 through June 30 must complete the mentoring program not later than December 31 of the following calendar year. Unless participation is deferred or waived under Section (d) below, qualifying lawyers admitted in South Carolina from July 1 through December 31 must complete the mentoring program not later than one year after June 30th of the year following their admission.

(d) Deferment or Waiver of Participation Based on Special Circumstances.

(1) A qualifying lawyer who is employed as a non-permanent, full-time clerk to a state or federal judge during the first year of admission to the South Carolina Bar may elect to fulfill the requirements of the mentoring program either during the clerkship by participating in an approved program, or immediately following the clerkship. If the lawyer elects the latter option, the lawyer shall provide written notice to the Commission not later than thirty days after completion of the clerkship.

(2) A qualifying lawyer who is not engaged in the representation of clients nor any other form of the active practice of law may request a waiver of this requirement by certifying that he or she is not engaged in the active practice of law in South Carolina and does not intend to do so for a period of at least two years. If within the first two years of admission to the South Carolina Bar, the new lawyer later begins to actively practice law in South Carolina, he or she must notify the Commission in writing within thirty days and participate in and complete the mentoring program in a timely manner as provided in Section (c) above.

(3) A qualifying lawyer who begins the mentoring program, but, prior to the completion of the program, moves his or her residency out of the state and no longer practices regularly in the state, is not required to complete the mentoring program. The new lawyer must, however, provide notice to the Commission of his or her move from the state as the basis for not completing the program. The new lawyer shall not be subject to the sanctions as provided in Section (l) below for the failure to complete the program in this circumstance. If that lawyer subsequently returns to South Carolina prior to having been engaged in the active practice of law as a member of another bar for at least two years, he or she shall notify the Commission in writing within thirty days of the lawyer's return to South Carolina. Such lawyer shall complete the mentoring program in a timely manner as provided in Section (c) above.

(4) A qualifying lawyer who is enrolled in a further graduate program during the first year of admission to the South Carolina Bar must participate in the mentoring program after the completion of his or her graduate program provided that he or she completes the program within

two years after admission to the South Carolina Bar. The new lawyer is required to provide written notice to the Commission within thirty days after completion of the graduate program.

(e) Application. Within thirty days of admission under Rule 402, SCACR, new lawyers must complete and submit a New Lawyer Application to the Commission. This form must be submitted even if the lawyer is not a qualified lawyer as defined by Section (b) above. Further, this form shall be used to request any deferment or waiver of participation in the program as provided in Section (d) above.

(f) Purpose of Program. The purpose of the mentoring program is to provide assistance to the new lawyer in the following respects:

(1) The mentor should assist the new lawyer in developing an understanding of how law is practiced in a manner consistent with the duties, responsibilities, and expectations that accompany membership in the legal profession. The mentor should provide guidance or introduce the new lawyers to others who can provide guidance as to proper law practice management, including the handling of funds, even if the new lawyer is not currently in a setting that requires the use of those practices. Guidance should be given not only as to a lawyer's ethical duties, but also as to the development of a higher sense of professionalism based upon internalized principles of appropriate behavior consistent with the ideals of the profession.

(2) The mentor should assist the new lawyer in developing specific professional skills and habits necessary to gain and maintain competency in the law throughout his or her career and should assist the new lawyer in developing a network of other persons from whom the new lawyer may seek personal or professional advice or counsel when appropriate or necessary throughout the lawyer's career. While a strong mentoring relationship (particularly if the mentor and new lawyer are in the same firm or office) may also include specific advice to or training of a new lawyer regarding substantive aspects of the law, such substantive legal training should not be required of a mentor in this program.

(3) The mentor should assist the new lawyer in identifying and developing specific professional skills and habits necessary to create and maintain professional relationships based upon mutual respect between the lawyer and client; the lawyer and other parties and their counsel; the lawyer and the court, including its staff; the lawyer and others working in his or her office, including both lawyers and staff; and the lawyer and the public. The mentor should assist the new lawyer in understanding the appropriate boundaries between advocacy and overzealous or uncivil behavior and in developing appropriate methods of responding to inappropriate behavior by others.

(4) The mentor should introduce the new lawyer to others in the lawyer's local or regional legal community and encourage the new lawyer to become an active part of that community.

(g) Structure of the Program.

(1) Generally; Uniform Mentoring Plan. Mentoring shall be made available through either individual or group mentoring. Unless a different mentoring plan is approved under Section (h) below, each qualifying new lawyer is required to complete the mentoring tasks set forth in the Uniform Mentoring Plan prepared by the Commission, which has been approved by the Supreme Court. The uniform plan may include a recommended schedule for completing the tasks, but the actual order and timing of completion of the tasks shall be within the discretion of the participants, provided that the full plan is completed as required in Section (c) above. In addition to completing the specific required tasks, it should be expected that, in an individual mentoring

arrangement, the mentor and new lawyer will consult throughout the year-long mentoring period as either may deem necessary or appropriate.

The mentor and new lawyer may choose the method of communication that best suits their needs. However, if a mentor and new lawyer do not otherwise have regular in-person contact, they should schedule at least some periodic in-person discussions throughout the mentoring period. Each person should be cognizant of demands on the other's schedule and attempt to find a mutually acceptable time for these meetings. If there is a recurrent failure by either party to make time available for this purpose, or if other difficulties arise which cannot be resolved by the parties and which threaten the timely and effective completion of the mentoring program, the parties to the relationship (or either of them) should advise the Commission of the situation and request the assistance of the Commission in resolving the matter.

Using the Uniform Mentoring Plan as a guide, the mentor and new lawyer must jointly draft an individualized mentoring plan for the coming twelve months. The individual mentoring plan shall be submitted to the Commission for approval within thirty days of the start of the mentoring term. The mentor and new lawyer are required to meet the nine objectives in the Uniform Mentoring Plan through a series of action steps over the course of a year-long mentoring relationship.

(2) Individual Mentoring. Most new lawyers will have an individual mentor approved by the Commission. Preference should be given to the appointment of a mentor selected by the new lawyer, who may be, but is not required to be, a lawyer working in the same firm or office as the new lawyer.

If a new lawyer does not select a qualified mentor, then one of the following options will apply:

(A) if the new lawyer is employed and another lawyer in the same firm or office could serve as a mentor, the Commission shall contact the firm or office and seek the voluntary agreement of a qualified lawyer in the firm or office to serve as the new lawyer's mentor;

(B) if the new lawyer wishes to have an individual mentor and either no mentor is obtained under Subsection (A) above or the new lawyer is not employed in a firm or office able to supply a mentor, then the Commission shall seek to recruit a qualified individual mentor from among the members of the South Carolina Bar. In this event, a reasonable effort should be made to designate a mentor from the same or a nearby geographic area with experience in a practice setting similar to that of the new lawyer; or

(C) the new lawyer shall be assigned to participate in group mentoring.

(3) Group Mentoring. The Commission has developed a program of group mentoring for those new lawyers not assigned an individual mentor. A group mentoring program should have some element of live contact with members of the mentoring group, but it may be a combination of live contact and electronic or other forms of distance mentoring as may be deemed sufficient by the Commission. The preferred ratio of new lawyers to mentors in a group mentoring program shall be no greater than 3 to 1.

(h) Certification of Internal Programs. A law firm or office (including, but not limited to, governmental agencies, corporate legal departments, state and local prosecutors, and public defenders) which has an internal mentoring program in place that it believes achieves all of the purposes of this program may apply to the Commission to have its mentoring plan certified as compliant with the mentoring obligation under the program. The application for certification shall include a detailed description of the internal program and a detailed showing of how each

of the purposes of this program will be achieved under the internal program. If a program is certified, completion of that program by a qualifying new lawyer shall be deemed to satisfy the mentoring requirement. The new lawyer and the lawyer responsible for the certified program shall be required to file a statement for each new lawyer verifying that the new lawyer has completed all requirements of the program within thirty days of completion of the program, as provided in Section (c) above. If the duration of the internal program extends beyond a period of one year, the nine objectives, as found in the Uniform Mentoring Plan, must be met within the first twelve months of the internal mentoring program. Once certified, a program shall remain certified unless it is altered or unless certification is removed after notice by the Commission. A law firm or office desiring to alter its internal program shall submit such request to the Commission. Internal programs certified under the second pilot mentoring program remain certified, subject to the conditions herein.

(i) General Qualifications of Mentors. Mentors must be active members of the South Carolina Bar or persons who have taken retired or inactive status within the preceding two years. Mentors must have at least five years' experience in the active practice of law. It is preferable that mentors have experience with the court system, although it is understood that not all mentors will have litigation experience. A lawyer without such litigation experience may nevertheless be an appropriate mentor if that lawyer has otherwise developed an understanding of appropriate behavior in a lawyer's relationship with the court.

Mentors should display, through their own conduct, an understanding of and commitment to ethical responsibilities and the prevailing expectations with regard to a lawyer's appropriate professional behavior. A mentor must have a good reputation for professional behavior. Further, a mentor must not, in any jurisdiction, have been publicly reprimanded within the past 10 years, or have been suspended or disbarred from the practice of law for misconduct at any time; and must not be a respondent in a pending disciplinary proceeding in which a formal charge or its equivalent has been filed under the Rules for Lawyer Disciplinary Enforcement contained in Rule 413, SCACR, or the rules of another jurisdiction.

Mentors should be able to assist the new lawyer in developing a style of lawyering that is compatible both with professional expectations and with the personality of the new lawyer.

(j) Appointment of Mentors; Education and Support of Mentors. A lawyer may serve as a mentor for purposes of this program only if first approved by the Commission. The prospective mentor must submit an application to the Commission in an approved form certifying that the lawyer meets the qualifications specified in Section (i) above.

Upon determining that a mentor applicant meets the threshold qualifications, the Commission may conduct such further investigation of a prospective mentor's qualifications and reputation for professional behavior as it may deem appropriate. The Commission has authority to appoint qualified lawyers as mentors or, in its discretion, to decline to appoint an applicant to serve as a mentor under this program.

An appointment shall qualify a lawyer to serve as a mentor in this program for five years, unless earlier removed as a mentor. A lawyer may be appointed to multiple consecutive terms as a qualified mentor. If at any time a lawyer appointed as a mentor is publicly reprimanded, suspended, disbarred in any jurisdiction, or becomes a respondent in a formal disciplinary proceeding, the lawyer shall be removed immediately as an approved mentor. If the lawyer is serving as a mentor at the time that his or her name is removed from the list of approved mentors, the Commission shall immediately appoint a new mentor for the lawyer being mentored.

A lawyer appointed as a mentor is not required to attend a training session, but will be provided access to materials gathered or prepared by the Commission that will assist the mentor in carrying out his or her responsibilities. The Commission will provide at least annually a voluntary mentor orientation program that will qualify for ethics MCLE credit. Mentors are encouraged to contact other mentors to discuss issues, the most effective approaches to be used in working with new lawyers, the most effective means of resolving problems that are encountered in the relationship, or other concerns that arise during the mentoring relationship.

(k) Migration of a Mentor or a New Lawyer. From time to time, either a mentor or a new lawyer may change jobs during the mentoring year. It is expected that, whenever possible, the mentoring relationship, once established, will be maintained despite such a move. When maintenance of the relationship is not possible because one of the parties to the relationship has moved to a distant location or because of other extraordinary circumstances, the mentor or new lawyer should notify the Commission, and that office may assign a substitute mentor or take such other measures as are appropriate.

(l) Addressing Situations in Which a Mentor is in a Position of Authority Regarding the New Lawyer. If a mentor participates in or has responsibility for any performance evaluations of the new lawyer being mentored, the mentor and new lawyer should set forth clearly at the outset of the relationship how information learned by the mentor during the mentoring relationship might be used in that evaluation process. If the role of the mentor as a supervisor or evaluator may conflict with the new lawyer's need for advice in some situations, the mentor should assist the new lawyer in making contacts with other lawyers who could provide advice in those situations.

(m) Certification of Completion; Sanctions for Failure to Complete.

(1) A qualifying lawyer must complete the mentoring program in a timely manner, as provided in Section (c) above. Not later than thirty days after completion of the program, the new lawyer must file with the Commission a document signed by the mentor certifying such completion. If the new lawyer has not completed all requirements of the mentoring program by that time or is otherwise unable to obtain a certificate from the mentor, the new lawyer shall provide a detailed response to the Commission explaining the reasons, including hardship reasons, for noncompliance. The Commission, in its discretion, may grant such additional time as the Commission deems appropriate to file the certificate of completion.

(2) A willful failure to complete the program in a timely manner shall be a ground for discipline under Rule 7 of the Rules for Lawyer Disciplinary Enforcement contained in Rule 413, SCACR, and may subject the lawyer to sanctions under that rule. If a qualifying lawyer fails to complete the program, the Commission may refer the matter to the Office of Disciplinary Counsel.

(n) Limitation on Advice Regarding Legal Issues.

(1) In fulfilling his or her responsibilities as a mentor, a mentor may provide general advice and guidance to the new lawyer on typical matters of practical concern to the new lawyer. However, it is not the purpose of the mentoring program to provide case-specific legal advice to the new lawyer. To this end, except as provided in Subsection (2) below, a mentor is expressly prohibited from giving case-specific legal advice to the new lawyer. Moreover, the mentor may not serve as co-counsel with the new lawyer, unless full disclosure is made, the client consents, and the relevant provisions of the South Carolina Rules of Professional Conduct are satisfied.

(2) Notwithstanding Subsection (1) above, when a mentor is associated with the same law firm or office as the new lawyer, the mentoring relationship does not preclude the mentor from

assisting the new lawyer in resolving a specific substantive or procedural legal issue. The extent to which such advice or supervision occurs should be determined by the policies of the law firm or office.

(3) When a mentor is not associated with the same firm or office as the new lawyer, the mentor should instruct the new lawyer at the outset of the relationship about the duty of the new lawyer not to share with the mentor confidential information about any representation. If a new lawyer needs advice about a particular situation, the mentor may discuss with the new lawyer the general area of law at issue, without reference to the facts of a specific matter, and may direct the new lawyer to resources that may assist the new lawyer in finding the necessary information. By virtue of acting as a mentor, the mentor does not undertake to represent the client of the new lawyer or assume any responsibility for the quality or timeliness of the work on a matter being handled by the new lawyer. The lawyer being mentored remains solely responsible for the client's matter. If a mentor does consult with the new lawyer about a specific legal matter, however, both the mentor and the new lawyer must keep in mind that the same professional duties apply as would apply whenever two lawyers not in the same firm consult about a matter.

(o) Satisfaction of Mandatory Continuing Legal Education (MCLE) Requirements. During any MCLE compliance reporting period in which a lawyer completes a full year as a mentor for one or more new lawyers, the mentor shall be deemed to have completed 4.00 hours of CLE credit, of which 2.00 hours shall constitute ethics CLE credit. The mentor shall not receive additional CLE credit for mentoring more than one lawyer in the same reporting period.