

# **REGULATIONS FOR MANDATORY CONTINUING LEGAL EDUCATION FOR JUDGES AND ACTIVE MEMBERS OF THE SOUTH CAROLINA BAR<sup>1</sup>**

## **I. Purpose**

These Regulations implement Rules 408, 419 and 504, SCACR.

## **II. Requirements**

### **A. Active Members of the South Carolina Bar.**

1. Except as otherwise provided in Regulation III, each active member of the South Carolina Bar, as defined in the By-Laws of the South Carolina Bar, shall complete a minimum of 14 hours of accredited continuing legal education (CLE) each annual reporting period.
2. At least 2 hours of the 14 hours shall be devoted to legal ethics/professional responsibility (LEPR). LEPR shall include, but not be limited to, instruction focusing on the Rules of Professional Conduct as they relate to law firm management, malpractice avoidance, lawyer fees, legal ethics, and the duties of lawyers to the judicial system, the public, clients and other lawyers.
3. As part of the legal ethics/professional responsibility (LEPR) requirement set forth in paragraph 2, at least once every three annual reporting periods, each lawyer must complete one hour of LEPR devoted exclusively to instruction in substance abuse or mental health issues and the legal profession.
4. An active member who accumulates in excess of 14 hours credit in an annual reporting period may carry a maximum of 14 hours forward to the next annual reporting period, of which a maximum of 2 hours may be LEPR credit (earned LEPR credit in excess of the required 2 hours may be applied to CLE requirements and/or carried forward not to exceed the maximum of 14 hours).

### **B. Judicial Members.**

1. **Minimum Requirements.**  
Judicial members specified in Rule 504(a), SCACR, shall complete a minimum of 15 hours of accredited judicial continuing legal education (JCLE) each annual reporting period. JCLE credit accumulated in any annual reporting period in excess of 15 hours may be carried forward to the next

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<sup>1</sup>These Regulations were approved by the South Carolina Supreme Court by an order date October 12, 2001.

annual reporting period; provided, however, that not more than 30 hours credit may be carried forward to the next annual reporting period. At least once every three annual reporting periods, each judicial member must complete one hour of JCLE devoted exclusively to instruction in substance abuse or mental health issues and the legal profession.

**2. Mandatory Attendance at Designated Educational Activities.**

Without regard to any JCLE credit accumulated pursuant to the requirements of Regulation II(B)(1), judicial members shall attend any educational activity designated as mandatory by the Supreme Court of South Carolina or the Commission on Continuing Legal Education and Specialization (Commission). "Educational activity" means any seminar, program, conference, roundtable, or other activity which has been accredited for JCLE purposes and which has been designated mandatory for judicial members. Attendance at an educational activity may be designated as mandatory for all judicial members or only for certain specified categories of judicial members (for example: mandatory for probate judges only).

**III. Exemptions**

The following shall be exempt from the requirements of Regulation II:

- A.** Active members of the South Carolina Bar who are at least 60 years old, who have been admitted to practice law for 30 or more years and who submit to the Commission affidavits establishing that fact and requesting exemption (exempt status pursuant to this provision shall apply to both the CLE and LEPR requirements);
- B.** Certified specialists who comply with the CLE requirements of their specialty; provided, however, that at least 2 hours of the CLE credits completed by certified specialists shall be devoted to LEPR and that any certified specialist who completes more than 2 hours of LEPR credit may carry forward to the next annual reporting period up to 2 hours of such credit;
- C.** Newly admitted lawyers in the year in which they are licensed; and
- D.** For JCLE requirements imposed by Regulation II(B), judicial members in the year in which they are sworn into office, provided they have satisfied the CLE requirements for active members of the South Carolina Bar.

**IV. Hours and Accreditation**

**A. General.**

One (1) hour of accredited CLE means 60 minutes of instruction as teacher or student at any CLE program which has been accredited by the Commission or which is sponsored or co-sponsored by an accredited organization. A list of currently accredited sponsors can be obtained from the Commission.

**B. Application for Accredited Sponsor Status.**

A sponsor wishing to apply for sponsor accreditation shall submit to the Commission:

1. An application for status as an accredited sponsor of CLE activities (forms available from the Commission);
2. Copies of written materials described in that application form; and
3. Any further information the Commission requires.

Except for accredited sponsors designated by the Commission, sponsor accreditation must be renewed every 5 years; provided, however, that sponsor accreditation may be withdrawn for cause at any time after 60 days notice to the sponsor and the South Carolina Bar.

**C. Accreditation of Courses Sponsored by Non-Accredited Sponsors.**

CLE courses presented by sponsors which have not been granted sponsor accreditation will be considered for accreditation on an individual basis. An application for accreditation of a program may be obtained from the Commission and must be submitted to the Commission by the sponsor or by a lawyer who desires credit for attending the program. Except as provided in IV(D), the Commission will consider applications for the retroactive as well as prospective accreditation of programs.

**D. In-House CLE.**

In-House CLE, which is defined as CLE courses, training, programs, etc., sponsored or offered by law firms (individually or collectively), corporate legal departments, and similar organizations (but excluding public/governmental organizations and their subdivisions, agencies, etc.) primarily for the education of their members and employees, may be approved for credit under the rules and regulations applicable to other sponsors, subject to the following additional conditions:

1. The courses shall be submitted for approval on a course-by-course rather than an approved-sponsor basis;

2. The courses, including all written materials related thereto, must be filed with an application for accreditation on or before the date on which the course is to be held;
3. The courses must be attended by at least 5 lawyers, not including the instructors; and
4. Not more than one-half of the approved credits for any reporting period may be earned through in-house programs.

**E. Client Seminars.**

Client seminars, which are defined as educational activities sponsored by a law firm in which the target audience is clients or potential clients of the sponsoring law firm, shall not be accredited even though the educational activities otherwise satisfy the accreditation standards specified in Regulation V. For this purpose, a law firm may be a professional corporation, professional association, partnership, sole practitioner or any other association of lawyers engaged in the private practice of law.

**F. Fees.**

Fees for the processing of applications for accreditation of individual programs or applications for accredited sponsor status and fees for other applications and purposes shall be as specified by the Commission.

**G. Enhanced Credit for Teaching.**

Upon application to the Commission, enhanced CLE credit may be earned through teaching at an accredited CLE activity. Information regarding the enhanced credit, including qualifications for the credit, the formula for calculating the credit, and exceptions to the credit, may be obtained from the Commission.

**H. CLE Credit for Legal Writing.**

Upon application to the Commission, CLE credit may be earned through authorship of articles or books concerning substantive or procedural law which are published or accepted for publication in approved third party publications. Information about this credit may be obtained from the Commission.

## **V. Accreditation Standards**

The following standards will be considered by the Commission in the granting, denying, or withdrawal of accreditation of sponsors, programs, or parts of programs:

- A. Courses must have significant intellectual or practical content;

- B.** Subject matter must deal primarily with the theory, practice, or ethics of law and the legal profession;
- C.** Courses must be directed to and intended for an audience of lawyers or judges;
- D.** Faculty members must be qualified by practical or academic experience to teach the subject;
- E.** High quality written materials must be distributed to participants;
- F.** Suitable classroom or laboratory setting must be provided for participants;
- G.** Ethical considerations pertaining to the subject matter should be included in the program;
- H. Audio-Visual and Media Presentations.**
  - 1. Audio-visual or media presentations, including telephone and on-line seminars, are acceptable provided:
    - (a) A faculty member is in attendance or available by telephone hook-up to comment and answer questions; or
    - (b) Other appropriate mechanisms, as determined by the Commission, are present to enable the attendee to participate or react with the presenters and other attendees. Appropriate mechanisms include quizzes or examinations, response tracking, user prompts, and instant messaging.
  - 2. In addition to meeting the standards of A through G above, audio-visual or medial presentations must:
    - (a) Utilize some mechanism to monitor course participation and completion in such a manner that certification of attendance is controlled by the provider. Courses must not be susceptible to a "fast forward" finish by attendees;
    - (b) High quality written materials must be available to be downloaded or otherwise furnished so that the attendees will have the ability to refer to such materials during and subsequent to the presentation;
    - (c) Telephone and on-line educational activities must be pre-approved by the Commission;

- (d) Telephone activities will be accredited for the actual time spent to a maximum of 90 minutes per activity, and on-line educational activities, to include live webcasts, will be accredited for the actual time spent to a maximum of 6 hours per activity; and
  - (e) Providers shall furnish to the Commission password and/or log-in capabilities for accredited programs. Access will allow for review of course mechanisms, such as interactive functionality. Any such activity may be audited by 1 or more representatives of the Commission without charge.
3. CLE credit earned through audio-visual or media presentations and applied to the annual 14 hours minimum requirement shall not exceed 6 hours of credit per annual reporting period.
- I. A list of course/program attendees must be kept and retained for 2 years to assist the Commission in verifying course attendance; and
  - J. A written report of attendees shall be submitted to the Commission within 30 days of the course/program.

## **VI. Reports and Fees**

### **A. Active Members.**

On forms prepared by the Commission and available through its offices (or a reasonable facsimile), each active member of the South Carolina Bar not exempt from Regulation II(A) shall, not later than March 1 of each year, file with the Commission a sworn annual report of compliance for the preceding annual reporting period and pay an annual filing fee of as specified by the Commission. Any active member submitting a report of compliance after March 1 shall pay, in addition to the annual filing fee, a late filing fee as specified by the Commission. The late filing fee shall be doubled for any member who files after the filing deadline and who has filed late and paid a late filing fee on any prior occasion.

### **B. Judicial Continuing Legal Education (JCLE).**

On forms prepared by the Commission and available through its offices (or a reasonable facsimile), each judicial member specified in Rule 504(a), SCACR shall, not later than April 15 of each year, file with the Commission an annual report of compliance for the preceding educational period and pay an annual filing fee as specified by the Commission. Any judicial member submitting a report of compliance after April 15 shall pay, in addition to the annual filing fee, a late fee as specified by the Commission.

**C. Amended Reports of Compliance.**

For the purposes of these Regulations, an amended report of compliance is one that seeks to change a report of compliance previously submitted to the Commission. A report of compliance may be amended within 1 year from the date that the original report was received by the Commission or 1 year from the filing deadline for the original report, whichever date is later. An amended report shall be executed in the same manner as the report it is amending and shall be accompanied by the filing fees specified for such original report, to include late filing fees if appropriate.

**D. Revenue from Filing and Other Fees.**

The fees specified in these Regulations and fees paid by certified specialists shall be used only to defray operating expenses of the Commission and its staff and may be adjusted by the Commission from time to time in order to produce the actual income required for the expenditures, plus a reasonable reserve fund.

**VII. Non-Compliance**

**A. Active Members.**

1. Automatic Suspension. An active member of the South Carolina Bar who is neither exempt nor excused from the requirements of Regulation II(A) and/or VI(A) and who has failed to comply with these requirements by March 31 shall be automatically suspended from the practice of law.
2. Notice of Suspension. Notice of suspension will be provided to suspended members, the Clerk of the South Carolina Supreme Court, and to the judge or judges of the judicial circuit in which any suspended lawyer principally practices and/or maintains a principal residence. Suspended members will also be advised that unless they comply and are reinstated by the Commission by May 1, their names will be published in the Advance Sheets.
3. Publication of Names of Suspended Lawyers. The names of suspended lawyers who have not been reinstated by May 1 shall be provided to the Clerk of the South Carolina Supreme Court for publication in the Advance Sheets.

**B. Judicial Members.**

Any judicial member specified in Rule 504(a), SCACR, who is not exempt from the requirements of Regulation II(B)(1), II(B)(2), and/or VI(B) and who is in violation thereof shall be notified of the violation by certified mail at the judicial member's last

known address. The judicial member shall then have 60 days after the date the notice was mailed to file an affidavit responding to the notice. Any response may include documents establishing that the judicial member concerned has cured the deficiency. If any judicial member fails to respond to the notice of violation or if after considering a judicial member's response the Commission believes the judicial member is still in violation of Rule 504, SCACR, and these Regulations, the Commission shall report the matter to the South Carolina Supreme Court for action as deemed appropriate by the Court.

### **VIII. Petition for Reinstatement**

#### **A. Reinstatement by the Commission.**

An active member of the South Carolina Bar who has been suspended for failure to comply with these Regulations may petition the Commission for reinstatement. Petitions for reinstatement by the Commission must be received by the Commission not later than June 1. Each petition for reinstatement shall be accompanied by proof that the petitioner is then in compliance and that a reinstatement fee of as specified by the Commission plus filing fees and late fees have been paid. If the petitioner is found to be in compliance by the Commission, to include payment of all fees, the petition shall be granted and the Commission will notify the petitioner, the Clerk of the South Carolina Supreme Court, and the judge or judges of the judicial circuit in which the petitioner principally practices and/or maintains a principal residence. The Commission shall inform the petitioner of the curative actions necessary for reinstatement if the petition is found not to be in compliance.

#### **B. Reinstatement after June 1.**

Petitions received after June 1 will be returned to the petitioner who will be informed that the petition for reinstatement must be filed with the Clerk of the South Carolina Supreme Court.

#### **C. Notice to the Clerk of the South Carolina Supreme Court.**

Promptly after June 1, the Commission shall provide to the Clerk of the South Carolina Supreme Court the names of all lawyers who remain suspended.

## **IX. Waivers and Extensions**

### **A. Waivers.**

In individual cases involving extraordinary hardship or extenuating circumstances, the Commission may waive or modify the requirements of Regulation II(A) or extend the requirements of Regulation VI(A). When appropriate, and as a condition for any such waiver or modification, the Commission may proportionally increase the member's requirements for the succeeding annual reporting period. For example, if a member receives a waiver of 6 hours credit for one annual reporting period, the requirement for the following annual reporting period may be increased by 6 hours.

### **B. Extensions.**

The Commission has no authority to extend the deadlines for compliance reporting or automatic suspension and all requests for such extensions made to the Commission will be denied.

## **X. Reconsideration**

Any judicial member or active member of the South Carolina Bar or any sponsor aggrieved by a decision or action of the Commission may request reconsideration. A request for reconsideration must be submitted to the Commission (a) in writing, (b) within 30 days from the mailing of notice of the decision to the requesting judge or active member of the South Carolina Bar or sponsor or the publication of notice of the action in the *South Carolina Bar News* (or successor publication), and (c) may be accompanied by supporting evidence or documentation including affidavits. The request for reconsideration may, but need not, include a demand for a hearing. If a hearing is demanded, the judicial member, active member, or sponsor requesting the hearing will be heard by the Commission or by a committee appointed by the Commission for that purpose and may present evidence and argument in support of the request for reconsideration.

## **XI. Appeals**

Any person aggrieved by the operation of these Regulations and who has exhausted all other remedies available hereunder, may petition the South Carolina Supreme Court for redress; provided, however, that any such appeal must be submitted to the Court, in writing, not later than 30 calendar days after notice of final action by the Commission is mailed (via United States Postal Service) to the individual concerned.