

The Supreme Court of South Carolina

These regulations will be effective May 1, 2019

APPENDIX C

REGULATIONS FOR MANDATORY CONTINUING LEGAL EDUCATION FOR JUDGES, MEMBERS OF THE SOUTH CAROLINA BAR, AND FOREIGN LEGAL CONSULTANTS

I. Purpose

These Regulations implement Rules 408, 419, and 504 of the South Carolina Appellate Court Rules (SCACR).

II. Requirements

A. Members of the South Carolina Bar.

1. Continuing Legal Education Requirements. Rule 408, SCACR, governs the mandatory continuing legal education (MCLE) requirements for members of the South Carolina Bar.
2. Legal Ethics/Professional Responsibility Credit. Legal ethics/professional responsibility (LEPR) credit 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. LEPR may also include, but not be limited to, instruction focusing on the elimination of bias in the legal profession. Elimination of bias instruction includes programming designed to educate lawyers on the recognition, identification, prevention, and elimination of bias in the legal setting as well as programming on diversity in the legal profession.
3. Carry-forward CLE Credit. A member may carry a maximum of fourteen (14) hours forward to the next reporting year, of which a maximum of two (2) hours may be LEPR credit. Credit for online and telephone courses in excess of the maximum eight (8) hours per reporting year cannot be carried

forward. Credit for Substance Abuse Mental Health (SA/MH) courses may not be carried forward from one two-year reporting cycle to the next.

B. Newly Admitted Members of the South Carolina Bar Admitted Pursuant to Rule 402, SCACR.

1. Rule 408, SCACR, governs the MCLE requirements for newly admitted members admitted pursuant to Rule 402, SCACR. New members are exempt from MCLE requirements during the reporting year of their admission. Except for the South Carolina Bar's Essential Series credits, CLE hours earned by new admittees during the reporting year of their admission cannot be carried forward to satisfy the MCLE requirements of their first reporting year.

2. Failure to complete the Essentials Series course as specified in Rule 408, SCACR, will result in administrative suspension pursuant to Rule 419, SCACR.

C. Newly Admitted Limited Certificate Members.

1. Limited certificate members licensed under Rule 405, SCACR (Limited Certificate of Admission to Practice Law in South Carolina), Rule 414, SCACR (Limited Certificate of Admission for Clinical Law Program Teachers), Rule 427, SCACR (Limited Certificate of Admission for Judge Advocates), and Rule 430, SCACR (Limited Certificate of Admission for Military Spouse Attorneys) are not exempt from MCLE requirements during the reporting year of their admission; however, compliance with the MCLE requirements is waived for limited certificate members admitted to practice after December 31 of that reporting year.

2. Rule 408, SCACR, exempts limited certificate members licensed under Rule 415, SCACR (Limited Certificate of Admission for the Retired and Inactive Attorney Pro Bono Participation Program) from the MCLE requirements.

D. Foreign Legal Consultants.

Rule 408, SCACR, governs the MCLE requirements for foreign legal consultants admitted to practice pursuant to Rule 424, SCACR (Licensing of Foreign Legal Consultants).

E. Judicial Members.

1. Judicial Continuing Legal Education Requirements. Rule 504, SCACR, governs the mandatory judicial continuing legal education (JCLE) requirements for judicial members of the South Carolina Bar.

2. Carry-forward JCLE Credit. Not more than thirty (30) hours of JCLE credit may be carried forward from one reporting year to the next reporting year. If a Bar member's status changes from a judicial member to a regular member, carry-forward credit cannot exceed the maximum carry-forward credit approved for Bar members.

3. Mandatory Attendance at Designated Educational Activities. Without regard to any JCLE credit accumulated pursuant to the requirements of Regulation II(E)(1), judicial members shall attend any educational activity designated as mandatory by the Supreme Court of South Carolina. "Educational activity" means any course, seminar, program, conference, roundtable, or other activity which has been accredited for JCLE purposes and which has been designated as 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

A. Rule 408 SCACR, governs members who are exempt from the MCLE requirements.

B. For JCLE requirements imposed by Rule 504, SCACR, judicial members are exempt in the year in which they are sworn into office, provided they have satisfied the MCLE requirements for members of the South Carolina Bar.

IV. Hours and Accreditation

A. General.

One (1) hour of accredited CLE means sixty (60) minutes of actual instruction as

teacher or student at any CLE course which has been accredited by the Commission on Continuing Legal Education and Specialization (Commission). The duration of the course accreditation extends through the last day of the calendar year in which the course is held. Except for In-House CLE courses under Regulation IV(D) and Online and Telephone courses under Regulation V(B), which must be prospectively accredited, the Commission will consider applications for retroactive and prospective accreditation of courses.

B. Accredited Sponsor Status.

The Commission may extend presumptive approval to a sponsor for all CLE courses or activities presented by that sponsor which are in compliance with the accreditation standards set forth in Regulation V. Notwithstanding a sponsor's accredited sponsor status, the Commission may deny accreditation for any course found not to meet the standards and may revoke accredited sponsor status for good cause at any time after sixty (60) days' notice to the accredited sponsor. Accredited sponsor status is not available to law firms, corporate legal departments, and similar organizations.

A sponsor seeking accredited sponsor status shall submit to the Commission:

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

Sponsors granted accredited sponsor status, as designated by the Commission, shall pay an annual fee as specified by the Commission. Accredited sponsor status must be renewed every five (5) years. A list of sponsors granted accredited sponsor status can be obtained from the Commission.

C. Accreditation of Courses.

1. CLE courses presented by sponsors that have not been granted accredited sponsor status will be considered for accreditation on an individual basis. A Uniform Application of Approval for an individual course may be obtained

from the Commission and shall be submitted to the Commission, along with the required fee, by the sponsor or by a lawyer who desires credit for attending the course. The non-accredited sponsor or lawyer shall also submit the required attachments as found on the Uniform Application for Approval.

2. Application for approval of CLE by a sponsor granted accredited sponsor status may be made by submitting a Uniform Application of Approval. The Commission may waive the submission of any of the attachments as found on the Uniform Application for Approval.

D. In-House CLE.

1. In-house CLE, which is defined as CLE courses, training, and programs sponsored or offered by law firms (individually or collectively), corporate legal departments, and similar organizations 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:

(a) Courses shall be submitted for approval on a course-by-course basis.

(b) The Uniform Application for Approval, including all written material, must be received by the Commission on or before the date on which the course is to be held.

(c) The course must be attended by at least five (5) lawyers, not including the instructors.

(d) Not more than one-half of the approved credits for any annual reporting year may be earned through in-house courses.

(e) In-House courses must be submitted for accreditation on a prospective basis. Retroactive requests for the accreditation of these courses will be denied.

2. Courses, training, and programs sponsored by public or governmental organizations and their subdivisions, agencies, etc. are not defined as in-house programming. These entities shall follow the regular procedures for

submitting courses for accreditation.

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 Uniform Applications for Approval of individual courses 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. Written requests for teaching credit must be received by the Commission within sixty (60) days after the live presentation or within sixty (60) days after the sponsor's recording of the online or telephone presentation.

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. Written requests for writing credit must be received by the Commission within one (1) year of the publication of the article or book.

V. Accreditation Standards

A. Standards.

The following standards will be considered by the Commission in the granting, denying, or revoking of accredited sponsor status and the granting, denying, or revoking of accreditation of a course or a part of a course:

1. Courses shall have significant intellectual, educational, or practical content, and their primary objective shall be to increase Bar members' professional competence.
2. Subject matter shall deal primarily with the theory, practice, or ethics of law and the legal profession.
3. Courses shall be directed to and intended for an audience of lawyers or judges.
4. Faculty members shall be qualified by practical or academic experience to teach the subject.
5. High quality written materials shall be distributed to participants.
6. Traditional CLE courses or activities, such as live presentations and video replays, shall be conducted in a suitable classroom setting conducive to learning.
7. Ethical considerations pertaining to the subject matter should be included in the course.
8. The course must consist of not less than thirty (30) minutes of actual instruction in order to qualify for educational credit.
9. The sponsor shall keep accurate attendance records and retain them for a period of at least two (2) years. Additionally, sponsors shall maintain copies of the Uniform Application for Approval for a period of one (1) year following course accreditation.
10. The sponsor shall report attendance in a form or manner prescribed by the Commission within thirty (30) days of the end of the course. The attendance report shall include the course number assigned by the Commission and the attendees' names and South Carolina Bar numbers.

11. The sponsor shall provide attendees with an evaluation form to complete and shall retain this information for a period of two (2) years following the course. The Commission shall make available sample evaluation forms for use by sponsors.

12. The sponsor shall retain course material for a period of two (2) years following the course.

13. The sponsor shall not advertise course accreditation until the course is approved by the Commission. Course advertisement shall include a representation of the level of instruction, e.g. introductory, intermediate, advanced, or multiple levels.

14. Sponsors shall offer assistance to any attorney with a dispute regarding the administration, representation, or content of a course. Disputes are to be resolved between the attorney and the sponsor.

15. The Commission has the authority to audit, examine, inspect, and review the operations of sponsors, including instructors, classes, curricula, teaching materials, and facilities, to assure compliance with the applicable South Carolina Appellate Court Rules and these Regulations. Sponsors have the obligation to provide the Commission, upon request, with such information and documents concerning their operations.

16. Failure to comply with sponsor requirements, or other good cause shown, may result in the Commission's denial or revocation of a course accreditation, or denial of future accreditation of the sponsor's courses, or any other sanction deemed appropriate by and in the discretion of the Commission.

B. Accreditation of Online and Telephone Courses.

1. Online and telephone courses, including teleseminars, teleconferences, webcasts, webinars, and on-demand courses are acceptable provided:

(a) A faculty member is in attendance or available by telephone or e-mail to comment and answer questions; or

(b) Other appropriate mechanisms, as determined by the Commission, are present to enable the attendee to participate or interact 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 Paragraph (A), above, online and telephone courses:

(a) Shall utilize some mechanism to monitor course participation and completion in such a manner that certification of attendance is controlled by the provider. Courses shall not be susceptible to a "fast forward" finish by attendees.

(b) High quality written materials shall be available to be downloaded or otherwise furnished so that attendees have the ability to refer to such materials during and subsequent to the presentation.

(c) The Uniform Application for Approval of an online/telephone course shall be received and approved by the Commission before the start of the course.

(d) Telephone courses will be accredited for the actual time spent to a maximum of ninety (90) minutes per activity, and online courses, to include live webcasts, will be accredited for the actual time spent to a maximum of eight (8) hours per activity.

(e) Sponsors shall furnish to the Commission password and/or log-in capabilities for accredited courses. Access will allow for review of course mechanisms, such as interactive functionality. Any such activity may be audited by one or more representatives of the Commission without charge.

(f) Online and telephone courses must be submitted for accreditation on a prospective basis. Retroactive requests for accreditation of these courses will be denied.

3. CLE credit earned through online or telephone courses and applied to the annual fourteen (14) hour minimum requirement shall not exceed eight (8) hours of credit per reporting year.

VI. Reports and Fees

A. Members of the South Carolina Bar and Foreign Legal Consultants.

On forms prepared by the Commission and available through its offices (or a reasonable facsimile), each member of the South Carolina Bar and foreign legal consultant 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 year and pay an annual filing fee as specified by the Commission. Any member or foreign legal consultant 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 increased as specified by the Commission for any member or foreign legal consultant who files after the filing deadline if that member or foreign legal consultant has filed late and paid a late filing fee on any prior occasion.

B. Judicial Members.

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.

1. For the purposes of these Regulations, an amended compliance report is one that seeks to change a report of compliance previously submitted to the Commission. A report of compliance may be amended within one (1) year from the date that the original report was received by the Commission or one (1) year from the filing deadline for the original report, whichever date is later.

2. An amended report shall be executed in the same manner as the original report it is amending and shall be accompanied by an amended filing fee in the same amount as the original filing fee. A late fee may be required if appropriate. An amended filing fee is assessed for each occasion that the Bar member resubmits his or her compliance report.

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. Establishing Compliance; Non-Compliance

A. Members of the South Carolina Bar and Foreign Legal Consultants.

1. To establish compliance, members of the South Carolina Bar and foreign legal consultants subject to MCLE requirements shall:

(a) Complete the minimum annual CLE and LEPR requirements set forth in Rule 408, SCACR, or other applicable rule, or have obtained sufficient carry-forward hours from a previous reporting year;

(b) If required for that annual reporting period, complete the SA/MH requirement pursuant to Rule 408, SCACR;

(c) File an annual compliance report reflecting completion of the MCLE requirements; and

(d) Pay all fees.

2. Filing Deadline; Filing Defined. The filing deadline is March 1 of each reporting year. To be timely filed, reports and fees must either be delivered to the CLE Commission no later than March 1, or if mailed, postmarked by the United States Postal Service no later than March 1 of that reporting year. Office machine postmarks are insufficient to establish compliance with the filing deadline. Reports and fees may also be sent using UPS, FedEx, and similar carriers, provided they are sent no later than March 1. Package tracking numbers will be used to determine compliance with the March 1 filing deadline.

3. Non-Compliance; Amended Reports; Amended and Late Filing Fees.

(a) Compliance reports filed without sufficient CLE hours, LEPR hours, or SA/MH hours listed in CLE Transcripts do not establish

compliance with the MCLE requirements. The Commission will notify persons whose compliance reports do not reflect sufficient hours. Members and foreign legal consultants must resubmit these reports with the amended information in the CLE Transcript showing that the deficit hours were earned. An amended filing fee will be assessed for the resubmitted reports. If the resubmitted report is filed after the reporting deadline of March 1, a late filing fee will be assessed in addition to the amended filing fee.

(b) An amended filing fee will be assessed for each occasion in which the member or foreign legal consultant resubmits a report in order to establish compliance, including where an amended report is filed prior to the March 1 deadline.

(c) Reports filed March 2 or later will be assessed a late filing fee, which must accompany the report when it is submitted for filing. If a report is timely filed, but fees are not included, a late filing fee will be assessed.

4. A member of the Bar or a foreign legal consultant who fails to comply with the MCLE requirements will be suspended as provided by Rule 419, SCACR. Provisions governing notice of failure to comply, notice of suspension, the publication of names of suspended lawyers, and reinstatement of lawyers who have failed to comply are set forth in Rule 419, SCACR.

B. Judicial Members.

Rule 504, SCACR, governs compliance and non-compliance with the mandatory JCLE requirements for judicial members, as specified in Rule 504(a), SCACR, who are not otherwise exempt.

VIII. 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). 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 year. For example, if a member receives a waiver of six (6) hours credit for one reporting year, the requirement for the following reporting year may be increased by six (6) hours.

B. Extensions.

1. Members of the South Carolina Bar or Foreign Legal Consultants. The Commission has no authority to extend the deadlines for compliance reporting, and all requests for such extensions made to the Commission will be denied.

2. Judicial Members. Rule 504, SCACR, governs the extension of the deadline for filing annual compliance reports by judicial members.

IX. Reconsideration

Any sponsor or person subject to these regulations who is aggrieved by a decision or action of the Commission (aggrieved party) may request reconsideration. A request for reconsideration must be submitted to the Commission in writing within thirty (30) days from the mailing of notice of the decision to the aggrieved party; or, if an action is required to be published in a South Carolina Bar publication, within thirty (30) days of the publication of notice of the action in a South Carolina Bar publication. A request for reconsideration 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 hearing will be heard by the Commission or by a committee appointed by the Commission for that purpose, and the aggrieved party may present evidence and argument in support of the request for reconsideration.

X. Appeals

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