

# SOUTH CAROLINA APPELLATE COURT RULES

## RULE 408 - CONTINUING LEGAL EDUCATION AND SPECIALIZATION

### PREAMBLE

In the modern legal environment, the law continues to grow more complex and it changes with increasing frequency. Continuing education is no longer a luxury, but is a necessity for all lawyers. Mindful of the improvements in the administration of justice that have resulted from our judicial continuing legal education and mandatory continuing legal education requirements, we believe that all judges and lawyers must meet certain minimum continuing legal education requirements if they are to maintain their competency. We have provided for the continuing legal education of elected and selected other judges in Rule 504. It is our intention that all active members of the Bar and those judges (other than federal judges) who are not required to satisfy the requirements of Rule 504 shall fulfill the mandatory continuing legal education requirements specified in this Rule.

- (a) **Continuing Legal Education Requirements.** All persons admitted to the South Carolina Bar shall be required to attend at least fourteen (14) hours of approved continuing legal education (CLE) courses each year. The annual reporting period for purposes of this Rule shall run from March 1 through the last day of February. At least two (2) of the fourteen (14) hours required annually shall be devoted to legal ethics/professional responsibility. Failure to meet these requirements will result in suspension from the practice of law pursuant to Rule 419, SCACR. Only in cases involving extraordinary hardship or extenuating circumstances may this requirement be waived or modified. The following members of the South Carolina Bar shall be exempt from these requirements:
- (1) specialists certified pursuant to this Rule who satisfy the continuing legal education (CLE) requirements of their specialty; provided, however, that at least two (2) hours of the CLE credits completed by certified specialists shall be devoted to legal ethics/professional responsibility.
  - (2) lawyers at least 60 years old who have been admitted to practice law for thirty (30) or more years, and who apply to the Commission on Continuing Legal Education and Specialization for this exemption. (Exemptions granted prior to June 23, 1994 remain in effect.) Provided, however, that if a lawyer who receives an exemption or is entitled to an exemption under this provision is suspended for a definite period of more than six (6) months under Rule 413, SCACR, this exemption shall not apply or be granted during the suspension period;
  - (3) lawyers, including members of the judiciary, who are not enrolled as "active members" of the Bar. Provided, however, that except in the case of federal judges (including federal magistrates and federal administrative law judges),

all judicial members of the Bar not required to fulfill the judicial continuing legal education requirements of Rule 504, SCACR, shall be considered "active members" for the purpose of satisfying the continuing legal education requirements of this Rule and shall not be entitled to an exemption therefrom based upon their status as "judicial members" of the Bar.

**(b) Commission on Continuing Legal Education and Specialization.**

- (1) Membership and Terms of Office.** The Commission on Continuing Legal Education and Specialization shall consist of twelve (12) members. The Supreme Court shall appoint to the Commission: one (1) member of the Supreme Court or Court of Appeals; one (1) circuit court judge; one (1) family court judge; two (2) attorneys from each of the four (4) judicial regions established by order of the Chief Justice dated January 9, 1992; and one (1) additional attorney from Region II. Of the members first appointed to the Commission, four (4) shall serve a term of one (1) year; four (4) shall serve a term of two (2) years; and four (4) shall serve a term of three (3) years. Members thereafter appointed shall be appointed for three (3) years, but shall continue to serve until their successors are appointed. A member appointed to fill an unexpired term shall serve only to the completion of that term and until his or her successor is appointed. Except for the initial appointments to the Commission, the House of Delegates of the South Carolina Bar shall nominate up to two (2) members of the South Carolina Bar to fill each attorney position on the Commission. No person shall be appointed for more than two (2) consecutive terms. The Supreme Court shall appoint a chairperson and a secretary of the Commission from among the Commission's membership.
- (2) Duties.** Subject to the continuing jurisdiction of the Supreme Court, the Commission shall have general jurisdiction over all matters pertaining to mandatory continuing legal education and specialization in the practice of law and shall:
- (A) administer the programs established pursuant to this Rule and Rule 504, SCACR;
  - (B) select fields of specialization in which South Carolina lawyers may be certified;
  - (C) appoint and supervise Specialization Advisory Boards, each consisting of at least five (5) lawyers practicing in the specialty field. Each Specialization Advisory Board shall be charged with the responsibility for establishing standards and procedures for certification, recertification and decertification of lawyers in specialty fields approved by the Commission;

- (D) subject to the approval of the Supreme Court, make and publish rules, regulations, bylaws, standards and procedures implementing its duties. No proposed rule, regulation, by-law, set of standards or procedures, or any substantive amendment to the preceding shall be adopted by the Commission or any Specialization Advisory Board unless it is first published in the South Carolina Bar News or its successor publication for the information and comments of members of the Bar at least ninety (90) days prior to the proposed effective date. A public hearing shall be ordered by the Commission or Specialization Authorization Board upon receipt, at least ten (10) days prior to the effective date, of a petition for a hearing signed by at least ten (10) members of the Bar. Notice of the hearing shall be given in the South Carolina Bar News or its successor publication. An adopted rule, regulation, by-law, set of standards or procedures, or any substantive amendment to the preceding shall not become effective until it is filed with and approved by the Supreme Court. The final versions shall be included in any publication of the South Carolina Appellate Court Rules. The procedures contained in this paragraph shall not apply to internal operating procedures of the Commission;
- (E) direct a staff headed by an Executive Director appointed by the Supreme Court. The staff shall assist the Commission and the Specialization Advisory Boards in administering this Rule, including processing applications for certified specialist status and for recertification, processing decertification orders, advising Specialization Advisory Boards on CLE course accreditation, providing information about the requirements of the Rule, assisting the Commission and Specialization Advisory Boards in preparing reports, and performing other administrative assignments as directed by the Commission;
- (F) report, at least annually, to the Supreme Court and the South Carolina Bar; and
- (G) may promulgate regulations approving organizations which certify lawyers as specialists in specialty fields in which the Supreme Court of South Carolina does not certify specialists.

**(c) Designation of Specialty Fields.**

- (1) Subject to approval by the Supreme Court, the Commission may designate a specialty field and define the scope of practice of the field. The designation may be made by the Commission on its own initiative or upon the petition of 100 members of the Bar. Prior to the Commission's designation of a specialty field, notice of the proposed designation must be published in the

South Carolina Bar News or its successor publication and at least one (1) public hearing relating to the proposed designation must be held.

In designating and defining a specialty field, the Commission shall consider:

- (A) whether the public interest would be served;
  - (B) whether there is sufficient interest to warrant the designation;
  - (C) whether appropriate standards of proficiency can be established for the specialty field;
  - (D) whether there is satisfactory evidence of the existence or prospect of an adequate program of continuing legal education in the specialty field; and
  - (E) whether the designation of the specialty field would fulfill the objectives and further the orderly growth of certified specialization in South Carolina.
- (2) No standard governing lawyer certification shall be approved which shall in any way limit the right of any certified lawyer to practice in all fields of law. Any lawyer, alone or in association with any other lawyer, shall have the right to practice in all fields of law, even though certified as a specialist in a particular field. No lawyer shall be required to attain certified specialist status before practicing in any designated specialty field. Any lawyer, alone or in association with any other lawyer, shall have the right to practice in any field of law, even though not certified under the program as a specialist in that field.

All requirements for and all benefits to be derived from certification as a specialist are individual and may not be fulfilled nor attributed to a law firm of which the specialist may be a member.

Participation in the specialization program shall be on a completely voluntary basis.

- (d) **Specialization Advisory Boards.** Each designated specialty field shall have a Specialization Advisory Board charged with the responsibility of establishing standards and procedures for the certification, recertification and decertification of lawyers in the specialty field. No rules or standards shall be adopted in contravention of the South Carolina Appellate Court Rules. Each Specialization Advisory Board shall:

- (1) make and publish reasonable and nondiscriminatory standards concerning education, experience and other relevant matters for the certification of lawyers as specialists in its specialty field;

- (2) provide procedures for investigating the qualifications of applicants and certificate holders;
- (3) make and publish reasonable and nondiscriminatory standards for recertification and decertification;
- (4) recommend to the Supreme Court, for the issuance of certificates, lawyers who have qualified for certification in the designated specialty fields;
- (5) make and publish rules, regulations and by-laws to implement its authority and duties;
- (6) cooperate with the Supreme Court, the Commission and other agencies of the Court and the Bar in establishing and enforcing standards of professional conduct for certified lawyers;
- (7) cooperate with the Special Committee on Specialization of the American Bar Association and with agencies in other states engaged in regulating legal specialization;
- (8) accredit CLE courses to be taken by certified specialists for recertification, subject to the right of a certified specialist to appeal accreditation decisions to the Commission and from the Commission to the Supreme Court; and
- (9) report, at least annually, to the Commission.

**(e) Minimum Standards for Specialist Certification.**

- (1) To qualify for certification in a designated specialty field, an applicant must, at a minimum:
  - (A) be an active member in good standing of the South Carolina Bar;
  - (B) submit the names of five (5) other attorneys who are familiar with the applicant's practice, not including attorneys who currently practice in the same law firm as the applicant, who can attest to the applicant's reputation for involvement and competency in the specialty field;
  - (C) have been engaged in the practice of law for at least five (5) years. If a Specialization Advisory Board finds that an applicant who has not been engaged in the practice of law for five (5) years has had specialized post-graduate education or concentrated experience in a particular area of practice and that the experience is equal to or greater than the experience the applicant would have gained in that area from five (5) years of practice, the Specialization Advisory Board may recommend to the Supreme Court that the requirement of five (5)

years of practice be waived and that the applicant be certified as a specialist; and

- (D) pay any fee required by the Commission.
- (2) As determined by each Specialization Advisory Board, an applicant must:
- (A) make a satisfactory showing of substantial involvement (i.e. actual performance) in the specialty field during a five (5) year period, or other reasonable period of not less than three (3) years, immediately preceding the application, which demonstrates according to objective and verifiable standards that the applicant has been substantially involved in the specialty field for which certification is sought; and
  - (B) successfully complete a program of instruction approved by the Specialization Advisory Board; and
  - (C) undergo and satisfactorily complete an examination approved and administered by the Specialization Advisory Board. The examination shall consist of oral and/or written parts and shall be designed to test the applicant's knowledge of and ability in the specialty field for which certification is sought.
- (3) "Substantial involvement" shall be defined by each Specialization Advisory Board as to its particular field of law from a consideration of the complexity and the extent of necessary devotion to the particular field of practice. It is intended to be a measurement of the actual experience within that particular field. It may be measured by any of several standards such as the time spent on legal matters within the specialty field, the number or type of matters handled within a certain period of time, the time spent in teaching the law of the specialty field, or any combination of these or other appropriate factors. However, within each specialty field, experience requirements shall be measured by objective standards.
- (4) The limit on the number of specialties in which a lawyer may be certified shall be determined by such practical limits as are imposed by the requirement of substantial involvement and such other standards as may be established by the Commission and approved by the Supreme Court as a prerequisite to certification.
- (f) **Standards for Renewal of Certification.** Renewal of certification in a designated specialty field shall be required every five (5) years. Each applicant for recertification must:
- (1) make a satisfactory showing of substantial involvement in the particular designated specialty field during the period of certification;

- (2) make a satisfactory showing of attendance, during the preceding period of certification, at a minimum of sixty (60) hours of continuing legal education in the designated specialty field for which certification was granted. Only attendance at courses accredited by the pertinent Specialization Advisory Board shall count as credit toward the mandatory continuing legal education requirement for certified specialists. The Specialization Advisory Boards shall determine the number of hours credit to be given for each course and the specialty field entitled to credit. On the application of any interested person, the Specialization Advisory Boards, with the assistance of the staff described in section (b)(2)(E) of this Rule, shall make a determination of the qualification of, and credit to be allowed for, particular continuing legal education courses; and
- (3) pay any fees prescribed by the Commission.

**(g) Revocation of Certification.** The Specialization Advisory Board may revoke certification of any lawyer if the certification program for that field is terminated or if it is determined after hearing, on appropriate notice, that:

- (1) certification was granted contrary to the rules of the Specialization Advisory Board, the Commission, or the Supreme Court; or
- (2) certification was granted to a lawyer who was not eligible to have been certified in a specialty or who made any false representation or misstatement of material fact; or
- (3) the certified lawyer has failed to abide by all rules and regulations covering the program promulgated by the Specialization Advisory Board, as amended from time to time, including the continuing legal education requirement for maintenance of certified status; or
- (4) the certified lawyer has failed to pay any fee prescribed by the Commission; or
- (5) the certified lawyer no longer meets the qualifications established by a Specialization Advisory Board; or
- (6) the lawyer fails to meet the standards of competence for his particular specialty. Competency in a special area shall be determined in the same manner violations of the Rules of Professional Conduct are determined by the Board of Commissioners on Grievances and Discipline.

**(h) Right of Hearing and Appeal.**

- (1) Except for denial of certification because of failure to receive a passing grade on a specialty field's written examination, a lawyer who is refused certified status, renewal of certification, or whose certified status is revoked shall have the right to a hearing before the appropriate Specialization Advisory Board and the right to appeal the Advisory Board's ruling to the Commission under rules and regulations prescribed by the Commission and approved by the Supreme Court. The exhaustion of this right to appeal shall be a condition precedent to judicial review.

Under rules and regulations prescribed by the Commission and approved by the Supreme Court, an examination and grade review process shall be established for lawyers who fail to receive a passing grade on a specialty field's written examination.

- (2) Except as provided otherwise with respect to the issue of whether a lawyer passed a specialty field's written examination, decisions of the Commission may be appealed to the Supreme Court under rules and regulations prescribed by the Commission and approved by the Supreme Court. Decisions of the Commission concerning whether a lawyer passed or failed a specialty field's written examination shall be final.

- (i) **Responsibilities of Certified Specialists.** When a client is referred by a lawyer to a lawyer who is certified under this program, on a matter within the lawyer's specialty field, the certified lawyer shall not take unfair advantage of the certification to enlarge the scope of the representation and shall strictly comply with the requirements of the Rules of Professional Conduct.

Any certified specialist or any lawyer who holds himself or herself out as a specialist in a particular field shall be held to a standard of competence set by the Supreme Court for a certified specialist in that field.

- (j) **Financing.** Fees approved by the Commission shall be charged for filing applications for certification or renewal of certification by a Specialization Advisory Board, issuance of the certificate evidencing certified status and mandatory continuing legal education registration. The fees shall be reasonable and in an amount as may be necessary to defray the expense of administering the specialization and mandatory continuing legal education programs, and may be changed from time to time.

- (k) **Confidentiality.** The following records regarding lawyer specialization shall be confidential and shall not be disclosed except upon order of the Supreme Court of South Carolina.

- (1) All statements or other matter submitted by persons asked to provide a reference for an applicant seeking certification or recertification as a specialist; and

- (2) All files or records relating to any applicant who has been denied certification or recertification as a specialist.