IN THE SUPREME COURT

OF THE

STATE OF SOUTH DAKOTA

* * * *

IN THE MATTER OF THE AMENDMENT) RULE 20-05 OF JUDICIAL CANON 3(B)(9)

A hearing was held on August 25, 2020, at Pierre, South Dakota, relating to the amendment of Judicial Canon 3(B)(9) and the Court having considered the proposed amendment, and being fully advised in the premises, now, therefore, it is

ORDERED that Canon 3(B)(9) of the Code of Judicial Conduct found in SDCL ch. 16-2 (appendix) be amended in its entirety as follows:

CANON 3 A Judge Shall Perform the Duties of Judicial Office Impartially and Diligently.

B. Adjudicative Responsibilities.

* * *

(9) A judge shall not, while a proceeding is pending or impending in any court, make any public comment that might reasonably be expected to affect its outcome or impair its fairness or make any nonpublic comment that might substantially interfere with a fair trial or hearing. The judge shall require * similar abstention on the part of court personnel * subject to the judge's direction and control. This Section does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court. This Section does not apply to proceedings in which the judge is a litigant in a personal capacity. In connection with a judicial election or recall campaign, this canon does not prohibit a judge from making a public comment about a pending or past proceeding, provided (a) the comment would not reasonably be expected to affect the outcome or impair the fairness of the proceeding, and (b) the comment is about the procedural, factual, or legal basis of a decision about which a judge has been criticized during the election or recall campaign.

(10) A judge shall not, with respect to cases, controversies or issues that are likely to come before the court, make pledges, promises or commitments that are inconsistent with the impartial * performance of the adjudicative duties of the office.

B(9)(10) COMMENTARY

Sections 3B(9) and (10) restrictions on judicial speech are essential to the maintenance of the integrity, impartiality, and independence of the judiciary. A pending proceeding is one that has begun but not yet reached final disposition. An impending proceeding is one that is anticipated but not yet begun. The requirement that judges abstain from public comment regarding a pending or impending proceeding continues during any appellate process and until final disposition. Sections 3B(9) and (10) do not prohibit a judge from commenting on proceedings in which the judge is a litigant in a personal capacity, but in cases such as a writ of mandamus where the judge is a litigant in an official capacity, the judge must not comment publicly. The conduct of lawyers relating to trial publicity is governed by South Dakota Rule of Professional Conduct 3.6.

IT FURTHER ORDERED that this rule shall become effective immediately.

DATED at Pierre, South Dakota, this 26th day of August, 2020.

THE COURT:

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David Gilbertson, Chief

ATTES'

the Supreme Court

(SEAL)

SUPREME COURT STATE OF SOUTH DAKOTA FILED

AUG 2 6 2020

STATE OF SOUTH DAKOTA In the Supreme Court

I, Shirley A. Jameson-Fergel, Clerk of the Supreme Court of South Dakota, hereby certify that the within instrument is a true and correct copy of the original thereof as the same appears on record in my office. In witness whereof, I have hereunto set my hand and affixed the seal of said court at Pierre, S.D. this

usteme Court