

STATE OF SOUTH DAKOTA
In the Supreme Court
I, Shirley A. James, 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

5 day of JAN 20 22

Shirley A. James
Clerk of Supreme Court
Deputy

SUPREME COURT
STATE OF SOUTH DAKOTA
FILED

JAN -5 2022

Shirley A. James
Clerk

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

* * * *

IN THE MATTER OF THE AMENDMENT)
OF THE COMMENTARY TO CANON 3(B))
(5) AND (6) CONTAINED IN APPENDIX)
A TO SDCL CHAPTER 16-2 SOUTH)
DAKOTA CODE OF JUDICIAL CONDUCT)
-----)
RULE 22-04

A hearing was held on November 9, 2021, at Pierre, South Dakota, relating to the amendment of the commentary to Canon 3(B) (5) and (6) contained in appendix A to SDCL Chapter 16-2 South Dakota Code of Judicial Conduct to clarify the responsibilities and expectations for members of the judiciary related to sexual harassment or sexual misconduct and the Court having considered the proposed amendment, oral presentation relating thereto and being fully advised in the premises, now, therefore, it is

ORDERED that the commentary to Canon 3(B) (5) and (6) contained in appendix A to SDCL Chapter 16-2 South Dakota Code of Judicial Conduct be amended to read in its entirety as follows:

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

B. Adjudicative Responsibilities.

Canon 3(B) (5) and (6)

(5) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability or age, and shall not permit staff, court officials and others subject to the judge's direction and control to do so.

(6) A judge shall require* lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice based upon race, sex, religion, national origin,

Rule 22-04

disability or age, against parties, witnesses, counsel or others. This Section 3B(6) does not preclude legitimate advocacy when race, sex, religion, national origin, disability or age, or other similar factors, are issues in the proceeding.

B(5) and (6) COMMENTARY


A judge must refrain from speech, gestures or other conduct that could reasonably be perceived as sexual harassment or sexual misconduct and must require the same standard of conduct of others subject to the judge's direction and control. Sexual harassment or sexual misconduct by a judge while engaging in judicial or administrative responsibilities or any law-related functions undermines the confidence in the legal profession and the legal system and, as a result, is prejudicial to the administration of justice. Sexual harassment or sexual misconduct includes unwelcome sexual advances, requests for sexual favors, and other objectively offensive verbal or physical conduct or communications sexual in nature.

A judge must perform judicial duties impartially and fairly. A judge who manifests bias on any basis in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute. Facial expression and body language, in addition to oral communication, can give to parties or lawyers in the proceeding, jurors, the media and others an appearance of judicial bias. A judge must be alert to avoid behavior that may be perceived as prejudicial.

IT IS FURTHER ORDERED that this rule shall become effective February 1, 2022.

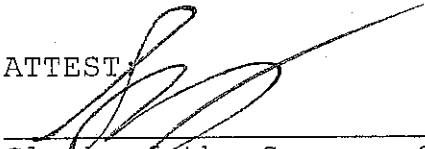
DATED at Pierre, South Dakota, this 5th day of January, 2022.

BY THE COURT:



Steven R. Jensen, Chief Justice

ATTEST:



Clerk of the Supreme Court
(SEAL)