

Responses of Kristine Gerhard Baker
Nominee to be United States District Judge for the Eastern District of Arkansas
to the Written Questions of Senator Chuck Grassley

- 1. You indicated in your questionnaire that you have very little experience dealing with criminal matters. If confirmed, how will you prepare yourself to be fully competent to handle the criminal cases that will come before you?**

Response: Although my experience with criminal matters as a practicing lawyer is limited, I observed criminal proceedings and assisted with them during my two years as a federal law clerk for a district court judge who remains on the bench in the Eastern District of Arkansas. I also have handled civil fraud cases in which I consulted with criminal counsel on behalf of clients, and I have appeared in minor criminal matters as counsel for individuals. Even with that, I recognize my limited experience as a practicing lawyer in dealing with criminal matters. I will utilize all available resources to study this area of the law, including utilizing the resources available through the Administrative Office of the United States Courts, participating in the education programs offered by the Federal Judicial Center, and spending time reading and studying on my own about the issues that will arise. I have confidence in my ability to master an area of the law in which I have limited experience. I have tried a variety of cases in a variety of courts throughout my legal career, educating myself on the complex substantive areas of the law and mastering new procedural rules to be applied by the courts in which I have appeared. If fortunate enough to be confirmed, I believe I will have the opportunity, and will avail myself of the opportunity, to observe criminal matters and trials and to consult with fellow judges in the Eastern District of Arkansas should I have general questions about criminal trial practice and the criminal docket.

- 2. At your hearing you stated that political beliefs or personal views have no place in the role of a district court judge. I agree with that sentiment but I have a few follow-up questions based on that statement. To clarify, please respond to the following:**

- a. You seemed to emphasize that a district court judge should not allow political beliefs or personal views while deciding cases. How about Circuit Court judges?**

Response: Circuit court judges also should not permit political beliefs or personal views to decide a case. Cases should be decided by judges impartially finding or reviewing facts, as appropriate, and then faithfully applying the law to those facts, with respect for the rule of law and without fear of or favor for a particular party or outcome.

- b. If confirmed as a federal judge, what steps will you take avoid showing partiality?**

Response: Throughout my legal career, I have endeavored to interpret and advocate the law faithfully and to treat all parties fairly, without regard to their political beliefs, economic condition, or social status. I believe that my experience demonstrates that, if I am confirmed as a district judge, my decisions will be rooted exclusively in the law and I will treat all parties who come before me fairly and courteously. Should I be confirmed, I pledge that each person who appears before me will receive equal access, just treatment, and a decision grounded in precedent and the text of the law.

c. Would you recuse yourself from any case involving a political party dispute or if any party in the case was associated with a political party?

Response: I have never held a paid or unpaid position in a political party, political campaign, or election committee. My participation has been limited to serving as a fundraising co-host for a variety of candidates, including non-partisan state court judicial candidates, as my primary focus has always been on the full-time practice of law. If confirmed and confronted with a case involving a political party dispute or if a party in the case was associated with a political party, I would carefully review and address any real or potential conflict in accordance with the provisions of 28 U.S.C. § 455, the Code of Conduct for United States Judges, including Canon 3 of the Code, as well as all applicable policies and procedures of the United States Courts. I would follow all applicable laws, orders, rules, customs, and practices in addressing any real or potential conflict or the appearance of conflict at the outset of each case.

d. What plans do you have to support future Democratic candidates as a federal judge?

Response: If confirmed, I will not be involved in any political activities or support any future candidates. I will abide by the letter and spirit of the Code of Conduct for United States Judges, including Canon 5 of the Code.

3. What is the most important attribute of a judge, and do you possess it?

Response: The most important attribute of a judge is integrity. A judge must be able to render a fair and impartial decision based on the facts and applicable law that is void of any bias or preconceived ideas. A judge must not be swayed by passion, sympathy, or prejudice but must decide cases on the rule of law. I believe I possess the integrity necessary to be a good judge.

4. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?

Response: A judge must be an attentive listener and treat all individuals who appear before him or her with dignity, respect, patience, and humility. I believe I meet this standard.

5. **In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?**

Response: Yes. The Supreme Court and the Eighth Circuit Court of Appeals sitting en banc each can change its precedent with justification, making clear the reasons for rejecting it or departing from it. However, that is not the role of a district court judge.

6. **At times, judges are faced with cases of first impression. If there were no controlling precedent that dispositively concluded an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?**

Response: If confirmed as a district court judge, to resolve a case of first impression involving the interpretation of a statute or a Constitutional provision, I would determine and apply the plain and ordinary meaning of the statute or provision. If the language of the statute or provision is unclear, for persuasive authority, I would look to analogous cases or issues presented in cases first from the Supreme Court and then from the following courts in this order: the Eighth Circuit, other circuits, the district courts in Arkansas, other district courts within the Eighth Circuit, and other district courts in other circuits. I would reach a decision that is narrowed to the facts of the case presented, explaining fully the basis for the decision.

7. **What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your own judgment of the merits, or your best judgment of the merits?**

Response: A district court judge is bound by the precedent of the Supreme Court and Court of Appeals. In all matters, I would apply the precedent of the Supreme Court and Eighth Circuit Court of Appeals.

8. **Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

Response: Assuming the litigants presented the case with proper jurisdiction and standing, the federal court must first ascertain whether a construction of the statute is fairly possible by which the constitutional question may be avoided. If that is not possible and only in rare circumstances should a district court judge declare a statute

enacted by Congress unconstitutional. Such circumstances might be if the statute violated the plain and ordinary meaning of the Constitution or if Congress clearly exceeded its constitutional boundaries.

9. As you know, the federal courts are facing enormous pressures as their caseload mounts. If confirmed, how do you intend to manage your caseload?

Response: If confirmed, I will employ a case management schedule that ensures the prompt and efficient resolution of cases. I will set reasonable and timely deadlines in scheduling orders, require adherence to the schedule except in exceptional circumstances for good cause, adhere to the Speedy Trial Act, promptly resolve pending motions, and continually monitor case reports and dockets. I will be available to address and promptly decide discovery issues or other issues that arise in a case.

10. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?

Response: Yes, I believe a judge should be involved in controlling the pace and conduct of litigation. If confirmed, I will hold attorneys and litigants accountable for moving their cases along to ensure that all parties secure the just, speedy, and inexpensive determination of every action and proceeding. I would decide all matters before the court as quickly as would be consistent with the ends of justice, and I would make full use of all the business hours of the courthouse to conduct the court's business. In addition, if confirmed, I would follow the specific steps outlined in response to Question 9 to control the docket.

11. Please describe with particularity the process by which these questions were answered.

Response: I received the questions on February 2, 2012. I reviewed the questions and prepared my answers over the next several days. I submitted my answers in final form to the Department of Justice on February 5, 2012, for submission to the Committee on February 6, 2012.

12. Do these answers reflect your true and personal views?

Response: Yes.