

Responses of Cathy Ann Bencivengo
Nominee to be United States District Judge for the Southern District of California
To the Written Questions of Senator Chuck Grassley

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

Response: I believe there are many attributes a judge must possess, including intellectual capacity, energy and enthusiasm, decisiveness and patience. Fairness and impartiality in the finding of facts and application of law are the most important judicial attributes to preserve and protect the integrity of the legal system. I believe I possess these attributes.

2. 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: I believe an appropriate judicial temperament is one of civility and respect for everyone in the courtroom, patience, consideration and humility. A judge by word and deed should uphold the dignity of the court and instill confidence in all those appearing in court that they will be treated with fairness and impartiality. I believe I meet this standard.

3. 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.

4. 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: I would first look to the text of the relevant statute, regulation or provision at issue and any legislative history if available for guidance. I would also consider rulings in Supreme Court or Circuit Court cases on analogous issues. I would finally consider district court and state court decisions on analogous issues for persuasive authority. Using those sources, I would consider the case narrowly on the facts before me.

5. **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: I would adhere to the precedent of the Supreme Court or the Circuit Court regardless of my personal beliefs. It is never appropriate for the District Judge to substitute his or her own judgment for binding precedent.

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

Response: A federal court should only declare a statute enacted by Congress unconstitutional if Congress has exceeded its constitutional authority or enacted a statute in contravention of a constitutional provision. In making that determination, a federal court must apply any relevant precedent in its evaluation.

7. **As you know, the federal courts are facing enormous pressures as their caseload mounts. If confirmed, how do you intend to manage your caseload? Please describe actions you have taken as a sitting U.S. Magistrate Judge.**

Response: The U.S. District Court for the Southern District of California has a large criminal and civil caseload, including many complex civil matters. The Court has instituted a number of case management tools to assist in the efficient resolution of matters, including early and regular settlement conferences and local rules for patent cases. The District utilizes Magistrate Judges to provide for the efficient management of discovery to keep cases moving toward resolution. As a Magistrate Judge, it has been my practice to fully review party submissions, be prepared for argument and promptly issue orders. If confirmed as a District Judge, I would continue those practices and work cooperatively with the Magistrate Judges to manage my civil and criminal docket efficiently.

8. **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? Please describe actions you have taken as a sitting U.S. Magistrate Judge.**

Response: Parties have the right to fair and efficient resolution of their matters. Judges set the pace for litigation. Clear and reasonable scheduling orders provide guidance and set the expectations for the conduct of the litigation and the prompt resolution of motions encourages early resolution and avoids unnecessary expense. As a Magistrate Judge, when appropriate I

resolve disputes informally, convene regular status conferences to minimize discovery delays, and issue orders promptly. If confirmed as a District Judge, I will continue those practices as well as the case management techniques discussed above.

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

Response: I received and carefully reviewed all the questions. I personally prepared my responses and forwarded them to the Department of Justice for submission to the Senate Judiciary Committee.

10. Do these answers reflect true and personal views?

Response: Yes.