

Responses of Timothy M. Cain
Nominee to be United States District Judge for the District of South Carolina
to the Written Questions of Senator Chuck Grassley

- 1. In *Price v. Turner*, the defendant-father owed approximately \$6,000 in child support. You found he was in willful contempt of court, and sentenced him to 12 months in prison. The defendant-father was not represented by counsel at that civil contempt hearing. Your decision was affirmed by the South Carolina Supreme Court, and is currently pending before the Supreme Court of the United States. Opponents of your position argue that an indigent litigant has a constitutional right to counsel in civil proceedings if he is facing incarceration. Why, in your view, should courts not extend the right of counsel in these cases?**

Response: The issue of appointment of counsel for the Defendant was not raised before me at the contempt hearing, which was conducted utilizing the same procedure employed by all family courts in South Carolina in conducting hundreds of such hearings each week. Although the Defendant secured counsel shortly after the hearing, no motion for reconsideration or other post-hearing motion was made to present this issue to me. The Defendant raised the issue for the first time on appeal.

The opinion of the South Carolina Supreme Court, which affirmed my ruling, stated that the sentence was permitted by South Carolina statute and that the result was consistent with controlling precedent. In the event the Supreme Court of the United States rules that the right to appointed counsel should be extended in such cases, I will be bound by and follow such precedent.

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

Response: The most important attribute of a judge is adherence to the rule of law and its equal application to all parties. I believe that my work as a state court judge for more than eleven years demonstrates that I possess this attribute.

- 3. 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 should be patient, courteous and respectful to all parties and give careful attention to the issues before the court. I believe my work as a state court judge reflects that I meet this standard.

- 4. 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.

- 5. 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 consider the opinions of the Supreme Court of the United States and the Fourth Circuit Court of Appeals. In the event there was no controlling precedent from those courts, I would look to opinions of the federal appellate courts in other circuits. If the matter involved a case of first impression, in the absence of controlling or persuasive authority, I would look to the text of the applicable constitutional or statutory provision and construe the words in accordance with the plain and ordinary meaning.

- 6. 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 be bound by and follow the precedents of the Fourth Circuit Court of Appeals and United States Supreme Court.

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

Response: It is appropriate for a federal court to declare a statute enacted by Congress unconstitutional if Congress, in enacting the statute, has exceeded the authority granted by the Constitution or enacted a statute which is in conflict with the Constitution.

- 8. At your hearing, you were asked about the use of precedent and the role of courts in interpreting laws. You mentioned factors you would use. Is it ever appropriate for a judge to use foreign law in determining the meaning or application of U.S. law?**

Response: It would not be appropriate to use foreign law to determine the meaning or application of U.S. law unless directed by the Constitution, U.S. statutes or binding precedent established by the United States Supreme Court or Fourth Circuit Court of Appeals.

- 9. Of what value is legislative report language or floor debate in attempting to determine legislative intent of statutory language?**

Response: When a statute is clear and unambiguous, the court should look to the plain language contained in the text, and controlling precedent of the United States Supreme Court and the Court of Appeals. If a statute is ambiguous, the sources referenced in the question could be utilized to develop insight into the process which brought about the enactment of the statute.

10. 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: I would work closely with the Bar, Clerk of Court staff and U.S. Magistrate Court Judges and utilize a case management system which would track the progress of cases assigned to me for disposition. Deadlines for completion of pre-trial, discovery and procedural issues would be established so as to minimize delay.

11. 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: I believe that judges do have an important role in controlling the pace and conduct of litigation. If confirmed, I would utilize a case management system as described in the answer to Question 10. In addition, I would schedule and conduct pre-trial status conferences to assure that discovery issues and other procedural matters are appropriately addressed in a timely manner so as to put cases in a posture for trial. I would also encourage the use of alternative dispute resolution such as mediation to resolve cases and narrow the issues to be decided by the court, and consult the learned judges in my district as to successful strategies to maximize the efficient use of court time and personnel.

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

Response: I received the questions on May 11, 2011, and prepared my answers. I discussed my responses with a representative of the Department of Justice and after finalizing the same, authorized transmission to the Senate Judiciary Committee.

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

Response: Yes.