

**Responses of Dana L. Christensen
Nominee to be United States District Judge for the District of Montana
to the Written Questions of Senator Chuck Grassley**

1. According to your questionnaire, your practice has been limited almost exclusively to civil litigation.

a. Please explain your experience in criminal law cases and trials?

Response: Between the years 1977 and 1981 I was appointed by U.S. District Court Judge James F. Battin to represent indigent Native American defendants from the Northern Cheyenne and Crow reservations in at least five different criminal matters pending in U.S. District Court. One of those cases proceeded to jury trial in 1978 [United States v. Springfield] where I received a directed verdict of acquittal of my client following the government's case in chief. All of the other cases were concluded through dismissals or plea agreements. I have also handled two criminal matters in state district court. One of those cases was tried to a verdict where my criminal defendant client was acquitted by the jury, and in the other one my criminal defendant client entered an Alford Plea.

b. What will you do to prepare yourself in this area? What assurances can you provide both the Committee and future litigants that your judgment on criminal matters will be informed, sound, and fair?

Response: There are significant resources that will be available to prepare me to handle the criminal docket, including training and education programs offered by the Federal Judicial Center, written publications and materials, and consultation with fellow federal judges within the Montana District. You have my assurance that I will do everything possible immediately upon assuming my duties to become proficient in this aspect of the docket so that my judgment on criminal matters will be informed, sound, and fair. I also believe my 35 years of real trial experience will aid me in this regard.

2. You have been an active participant in conservation matters. Given this background, will you recuse yourself in cases that may provide, at least the appearance, of a conflict? For instance, would you recuse yourself in cases involving land use, ranching, logging, and wilderness recreation?

Response: I will recuse myself in all cases that present a conflict or the appearance of a conflict. In making this determination, I will consult with the Code of Judicial Conduct, publications and guidelines of the Administrative Office of the United States Courts, and fellow judges.

My participation in conservation matters relates to my experience as a member of the Board of Trustees of the Montana Chapter of The Nature Conservancy [2003-2011], and pro bono work that I performed for the Flathead Land Trust in a single litigation

matter in 2009. I have never represented The Nature Conservancy in any legal matters, and I immediately resigned from the Board of Trustees of that organization on May 5, 2011, the day following my nomination by President Obama.

In any event, I would recuse myself from any matters involving The Nature Conservancy or the Flathead Land Trust that present a conflict or the appearance of a conflict.

a. If not, please explain why not?

Response: Please see above response.

b. What, if any, assurances can you provide the committee that you can approach these issues with an open-mind and render a fair judgment?

Response: Fairness and impartiality are the hallmark of a good judge. It is my belief that all litigants are entitled to be treated fairly. I can assure you that I will adhere to the highest ethical standards as a judge, and that I will recuse myself in all cases that present a conflict or the appearance of a conflict.

3. Can you pledge to the Committee that you will treat all litigants who appear before you in a fair and non-partisan fashion?

Response: Yes.

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

Response: There are many important attributes of a judge, including fairness, impartiality, common sense, diligence, a strong work ethic, experience, intellectual curiosity and decisiveness. I believe one of the most important attributes of a judge is humility, not just personal humility, but judicial humility which manifests itself in deciding only the narrow issue that is before the court, and by deferring to the legislative and executive branches of the government. I believe I possess these attributes.

5. 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 at all times be respectful to the parties and their attorneys, and everyone the judge comes in contact with on a daily basis, including jurors, witnesses, court personnel, law enforcement, probation and parole officers, and fellow judges. A judge should also maintain an open mind, and not decide matters until he or she has a complete record and has given the parties and their attorneys an opportunity to be fully heard. All parties, regardless of their station in life, are entitled to fairness and impartiality, respect, and an expeditious ruling on the matter before the court. I

have always adhered to these standards as a practicing attorney, and you have my assurance that I will continue to do so if I am confirmed by the Senate and sworn-in as a judge.

6. **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.

7. **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: In a matter of first impression, I would look first to the plain meaning of any statute I was called upon to interpret. If the statute was ambiguous, I would look to the purpose of the statute, and available legislative history. I would look for analogous law within the Court of Appeals for the Ninth Circuit or the United States Supreme Court for guidance in deciding the case. Finally, I would consider cases from other Circuit or District Courts that might have dealt with the same issue. I would exercise restraint and prudence in deciding cases of first impression.

8. **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 apply the decision of the Supreme Court or the Court of Appeals irrespective of whether I personally agree with that decision.

9. **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 declare a statute enacted by Congress unconstitutional only where it clearly violates the United States Constitution or where Congress has clearly exceeded its constitutional boundaries. When analyzing a constitutional challenge to a statute enacted by Congress, a federal judge should apply United States Supreme Court precedent.

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 intend to manage my caseload by adhering to the local Montana Federal Court practice of convening an early, substantive and meaningful preliminary pretrial conference pursuant to Rules 16 and 26 of the Federal Rules of Civil Procedure, establishing clear deadlines, and through regular status conferences with the parties and counsel. I also believe that management of the caseload is facilitated by providing the parties and their counsel with an expeditious trial setting at the time of the preliminary pretrial conference.

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: Yes, judges must play a role in controlling the pace and conduct of litigation. In addition to the steps outlined in response to question No. 10 above, I would endeavor to identify and anticipate problems that may arise, and take the initiative in addressing any problems or issues through status conferences with the parties and their counsel. In my 35 years of trial experience in Montana I have found that the vast majority of attorneys who practice in this state in federal court are well versed in the importance of deadlines, and prosecute and defend their cases in an appropriate and workmanlike manner. Nevertheless, the court can and should intervene when necessary.

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

Response: I received these questions on September 14, 2011. I drafted my answers and asked the U.S. Department of Justice to submit them on my behalf.

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

Response: Yes.