

Responses of Rudolph Contreras
Nominee to be United States District Judge for the District of Columbia
to the Written Questions of Senator Chuck Grassley

1. **Although you have had significant experience in a courtroom trying cases, in your Senate Questionnaire you indicated that 100% of your experience has been civil. Do you believe you are prepared to preside over criminal trials? If not, how do you plan prepare yourself to handle criminal cases?**

Response: Yes, I believe I will be prepared by the time I preside over my first criminal trial. Although I have not been a prosecutor, I have had significant exposure to criminal law through: 1) my defense of numerous cases brought against prosecutors and federal agents alleging constitutional violations (*e.g.*, due process, excessive force, warrantless searches, etc.); 2) my handling of civil fraud cases in which I worked side-by-side with criminal prosecutors, developing parallel civil and criminal fraud cases (including issuing non-grand jury subpoenas, obtaining search warrants, interviewing witnesses, etc.); and 3) my eight years on the senior staff of two U.S. Attorney's offices, in which I was exposed to a wide variety of complex issues that arise in criminal cases. Additionally, the same rules of evidence apply to both civil and criminal trials. With that said, I will need to work hard to prepare for my first criminal trial. I will consult extensively with my judicial colleagues, with whom I have developed excellent relationships over the last seventeen years. Additionally, I will avail myself of all of the resources available through the Administrative Office of the United States Courts. Finally, I will spend long hours in the library, educating myself about the issues that will arise.

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

Response: I believe the most important attribute of a judge is fairness/impartiality. I believe I possess that attribute. I also believe that patience, even-temperedness, diligence, and intellectual curiosity are important attributes that I possess.

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: The Code of Conduct for United States Judges, Canon 3, describes an appropriate judicial temperament as follows: "A judge should be patient, dignified, respectful, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity." I concur and add that, as a role model for the community in which one serves, a judge should also exhibit these characteristics toward those with whom he deals in an unofficial capacity. I believe I meet this standard and believe others (colleagues, judges, opposing counsel) concur with this assessment of me.

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: When faced with a matter of first impression that requires an interpretation of the Constitution, a statute, a regulation, or a rule, if unambiguous, I would rely upon the plain language of the provision. If the plain language is unclear, I would deferentially look at the relevant administrative agency's reasonable interpretation of the provision. I would also look at authority from the United States Supreme Court and Court of Appeals for the District of Columbia Circuit in analogous situations. Next, I would look at precedent from other United States Courts of Appeal and District Courts. If ambiguity remains, I would look at relevant legislative or regulatory history, cognizant that such history is difficult to discern and sometimes inaccurate.

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 apply the binding precedent of the United States Supreme Court and the D.C. Circuit, regardless of my personal opinions about the wisdom of the decision.

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

Response: A statute enacted by Congress should be declared unconstitutional only if Congress has clearly exceeded its authority under the Constitution or if controlling United States Supreme Court precedent makes it clear that the statute is unconstitutional.

8. **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: The hallmark of my career to date has been my hard work. I expect the same from all of the attorneys I currently supervise. If confirmed, the first principle of my chambers will be continued hard work by me and my staff. I will also work to triage cases to identify those that can be disposed of quickly and those that will require more thorough consideration and complex decision-making. Additionally, I would manage my civil cases with a very hands-on approach that would include: an early scheduling conference to discuss, *inter alia*, the parties' respective plans for discovery and potential for settlement or referral to mediation; a mid-discovery status conference designed to identify and solve problems before discovery ends and to ensure that the parties are making progress; my availability for a telephone conference to quickly resolve discovery disputes without the need for an extensive motions practice; a post-discovery status conference to set a trial date and substantively discuss potential dispositive motions; and a mandatory post-discovery referral to mediation. Because of the Speedy Trial Act and the much smaller criminal docket in the District of Columbia, less intense management is required in criminal cases in order to control one's docket. Nevertheless, in criminal cases too, after a defendant has had some time to consider his/her plea options, I would issue clear scheduling orders with fixed deadlines for discovery and motions practice. I feel strongly that in both civil and criminal cases, it is imperative that the significant issues be decided by the judge substantially in advance of trial so that the parties can make intelligent decisions about settlement or pleas based on a clear understanding of what evidence will be admitted, witnesses will be heard, and law applied. Such early decision-making by a court provides the clearest route to resolving cases and managing one's docket.

9. 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 that a judge must play an active role in controlling the pace and conduct of litigation and, if confirmed, I intend to use all of the mechanisms at my disposal to manage my docket, including those described above in my response to question number eight.

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

Response: I carefully reviewed and considered the questions sent to me. I also visited the Senate Judiciary Committee's website and reviewed responses to questions submitted by prior nominees who have been confirmed. After I prepared and edited my responses to the questions, I submitted them to Department of Justice representatives. After a conversation with these representatives, I authorized them to forward my responses to the Committee.

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

Response: Yes.