

Responses of Michael Walter Fitzgerald
Nominee to be United States District Judge for the Central 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: The most important attribute of a judge is integrity, which includes impartiality between the parties and making rulings solely on the basis of the law and the facts. I possess this attribute.

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: My view is that the appropriate temperament conveys to the parties that their case is being fairly and fully heard. The elements of this appropriate temperament are patience, modesty, civility, diligence and punctuality. It is also important to be well-prepared and knowledgeable about the matters before the court, which conveys to the parties that their case is viewed as important and allows a judge to maintain control over his or her calendar. I believe that 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 cases by the Supreme Court or the Court of Appeals for the Ninth Circuit in analogous areas. If there were no such cases, I would look to cases of other Courts of Appeals for their persuasive authority. In a case involving a statute or rule, I would look to the plain meaning of the text. In the absence of a plain meaning, I would examine the structure of the statute or rule and attempt to ascertain its purpose.

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 apply the decision of the Supreme Court or the Court of Appeals.

- 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, if possible, interpret the statute in a way that avoids the constitutional question. If the constitutional question cannot properly be avoided, it is appropriate to declare a statute unconstitutional if Congress has exceeded its enumerated powers or if the statute contravenes a provision of the Constitution.

- 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?**

Response: If confirmed, I would establish firm deadlines, especially for trial. I would also issue rulings promptly after hearings. In civil cases, I would actively use the magistrate judges in my District. I would insist that the parties make the required initial disclosures (Fed. R. Civ. P. 26) and comply with the required pretrial procedures (Fed. R. Civ. P. 16). I would also insist that the parties attempt to settle their case by using one of the three procedures set forth in the Local Rules of the Central District of California. In criminal cases, I would obey the Speedy Trial Act. I would also establish a firm motion schedule so that all motions were made and decided early in the case.

- 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?**

Response: Yes, a district judge has a role in controlling the pace and conduct of litigation. If confirmed, I would take the specific steps that I mention in response to Question 7.

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

Response: On October 11, 2011, I received these questions from the Department of Justice. On October 12, 2011, I drafted these responses. I then discussed the responses with an official of the Department of the Justice. I finalized my responses and sent them to the Department of Justice on October 14, 2011, to be conveyed to the Committee.

- 10. Do these answers reflect your true and personal views?**

Response: Yes.