

Responses of William F. Kuntz, II
Nominee to be United States District Judge for the Eastern District of New York
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 possession of a firm commitment to the rule of law and the consistent due administration of justice. The judge must embody the integrity of the judicial system by the systematic application of the applicable law to the facts of the case before the court. That administration of justice must be exercised in a manner thoughtful, respectful, fair and impartial to all counsel and to all parties. Patience and courtesy must always be preserved to ensure the dignity of the proceedings. I believe I possess that 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: The most important elements of judicial temperament are, first and foremost, that any judge be consistently respectful, modest, fair, courteous, patient, impartial, objective, evenhanded and ready, willing and able to rule clearly and decisively. I believe I meet that 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: Should I face a case of first impression for which there was no controlling precedent, I would take considerable care to review most thoroughly any and all analogous Supreme Court and Circuit Court rulings. I would also review all constitutional and all statutory provisions that might arguably bear on the issue. I would also exercise my discretion and authority narrowly and with the greatest restraint, and would only decide those issues that necessarily require resolution.

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 understand and recognize that as a District Court Judge I would be bound by the precedents of the higher courts. I would therefore apply the decision of the Supreme Court or of 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 declare a statute enacted by Congress unconstitutional when Congress has exceeded its constitutional authority or enacted a statute in contravention of a constitutional provision. Therefore, I would be guided by and systematically follow the precedents of the higher courts, including the Supreme Court and the Court of Appeals for the Second Circuit.

7. **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: No.

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

Response: The Supreme Court has ruled that when a statute is clear and unambiguous on its face the text controls and there is no need to resort to a review of legislative intent.

9. **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: In consultation with counsel for all parties to the action I would set firm and reasonable deadlines for motions and pretrial discovery. I would enforce those deadlines most firmly. I would determine pretrial motions expeditiously. I would encourage settlement and support the use of mediation. I would rely on the uniformly excellent magistrate judges of the Eastern District of New York to handle appropriate aspects of cases assigned to me, consistent with their statutory authority. I would establish firm trial dates and preside over trials with efficiency. I would learn about and deploy the best practices of more experienced Eastern District Judges in managing my caseload efficiently.

10. **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 have a crucial role in controlling the pace and the conduct of litigation. Judges must ensure the due administration of justice by the prompt resolution of disputes without undue expense. Please see my response to question 9 with respect to those specific steps I would undertake to control my docket if confirmed.

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

Response: I prepared my responses after receiving these questions on May 11, 2011. I then reviewed my responses with representatives of the Department of Justice, after which I finalized my responses. I then authorized their transmittal to the Committee.

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

Response: Yes.