

Responses of Mark E. Walker
Nominee to be United States District Judge for the Northern District of Florida
to the Written Questions of Senator Chuck Grassley

- 1. In a case comment you wrote while in law school, you criticized the Florida Supreme Court for its refusal in a worker’s compensation case to create a judicially recognized exception to the employment-at-will doctrine. You stated, “The Florida Supreme Court cloak[ed] its decision in the mantle of judicial deference to proper legislative authority. Judicial nonactivism, however, smacks of activism.” You advocated for a “[b]road[] constru[ction]” of the relevant statute in order to better pursue th[e] perceived legislative goal.**

a. What did you mean by the term “judicial nonactivism”?

Response: I meant that a court does not discharge its constitutional obligation if it ignores the plain language of a statute and advances a particular agenda either through action or inaction. With that said, my analysis in the case comment was flawed. While I argued the court should recognize a common law tort for retaliatory discharge, I recognize now that it would have been improper for the Florida Supreme Court to rely on section 440.205 to create such a cause of action. As you noted, I wrote the case comment as a law student. As a sitting judge, I would not interpret a statute in such a manner and my record so reflects.

b. What has been your approach as a judge when you have to interpret a statute?

Response: First, I look to see if the Florida Supreme Court or any of the five state appellate courts have interpreted the statute. Under Florida law, I am bound to follow all five appellate courts unless there is a conflict among appellate courts. Second, if faced with a case of first impression, I start with the plain language of the statute. If the statute is unambiguous, the inquiry ends. If an ambiguity exists, then I apply canons of statutory construction and consider case law construing analogous language.

c. When, if ever, do you think it would be appropriate for a judge to look beyond the text of a statute?

Response: If the statute at issue is ambiguous, then I would apply canons of statutory construction and consider case law construing analogous language. In so stating, I do not believe that I would be looking beyond the text of the statute. Rather, I would be using such tools to interpret ambiguous language.

d. How might your approach to statutory interpretation as a federal judge be different than your experience as a state judge?

Response: If confirmed, I do not believe my approach to statutory interpretation as a federal judge would be different than my experience as a state judge.

- 2. You have spent the majority of your career in state court. What are some of the changes that you would expect as you move to federal court? How will you prepare for those new duties?**

Response: While I spent a majority of my career in state court, I also have significant experience in federal court. I began my career by clerking for both Judge Cox of the United States Court of Appeals for the Eleventh Circuit and Judge Hinkle of the United States District Court for the Northern District of Florida. Moreover, while in private practice, I regularly handled cases in the United States District Court for the Northern District of Florida.

The greatest challenge for any new trial judge is case management and presiding over trials. As a state judge, I have successfully managed a docket of approximately 1,000 cases. Moreover, I have presided over more than 75 jury trials including a high profile death penalty case. While I continue to learn and grow as a state judge, I believe I will have less of a learning curve if I am confirmed and move to federal court based on my experience as a state judge.

For me, the biggest change will be to master new areas of the law. For example, I have had limited exposure to ERISA, bankruptcy, and other complex areas of federal law. With that said, I welcome the opportunity to learn and will take advantage of the many resources made available through the Federal Judicial Center. Moreover, I am a quick study and will employ the same strong work ethic for which I am known as a state judge.

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

Response: The most important attribute of a judge is fairness. A judge must fairly and impartially interpret and apply the law. I believe I possess that attribute and have earned the reputation as a fair and impartial state judge.

- 4. 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 must be open-minded, even-tempered, thoughtful, patient and respectful. I believe I meet this standard and have earned such a reputation as a state judge.

- 5. 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.

- 6. At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on 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 case of first impression involving the interpretation of a statute, I would start with the plain language of the provision at issue. If the provision were unambiguous, the inquiry would end. If an ambiguity existed, then I would apply canons of statutory construction and consider case law construing analogous language.

- 7. 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 best judgment of the merits to decide the case?**

Response: I would, without qualification, follow precedent from the United States Supreme Court and the United States Court of Appeals for the Eleventh Circuit regardless of my personal views.

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

Response: A court should not reach the constitutionality of a statute if a case can be resolved on other grounds. If a court reaches the issue, then the court must start its analysis with a strong presumption that the statute is constitutional. A statute should be declared unconstitutional only if Congress has clearly exceeded its authority or the statute clearly runs afoul of a provision of the Constitution.

- 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: As a state judge, I have managed a caseload of almost 1,000 cases. If confirmed, I would apply the same lessons learned while on the state bench. First, a judge must effectively use staff. Second, a judge must set and enforce deadlines for the litigants. Third, a judge must promptly rule. At the end of the day, however, there is no substitute for hard work. A judge must be prepared to work long hours and weekends to keep the docket moving.

- 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. I will use all mechanisms at my disposal to control my docket including the practices described above in response to question number nine.

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

Response: On May 16, 2012, an attorney from the Department of Justice Office of Legal Policy emailed me the questions. I provided my initial responses the same day. Over the next couple of days, I edited my responses before submitting my final responses on May 21, 2012.

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

Response: Yes.