

**Response of Sheri Polster Chappell
Nominee to be United States District Judge for the Middle District of Florida
to the Written Questions of Senator Chuck Grassley**

- 1. You have given many lectures to judges on how to use technology to their benefit. A common phrase you've used is "Judges have a tremendous unwillingness to admit what they don't know". While I asked about this at your hearing, I wanted to give you an opportunity to give a more complete response.**

- a. Can you please explain in what areas you have seen this philosophy apply to a judges' work, other than technology?**

Response: As you indicate, this quote was taken from a group presentation used in the context of teaching trainers and judges how to use the newest computer tools and technology. It was not intended to apply outside that context, and I do not believe that judges are unwilling to admit what they do not know when they are hearing and deciding cases.

- b. Have you experienced this unwillingness yourself as a judge? If so, how do you approach this issue?**

Response: No, I have not experienced this unwillingness in the use of technology or more broadly. During my 12 years as a judge, I have encountered new, unique, and ever-changing areas of the law and have willingly admitted "what I don't know." I have relied on researching new issues, reviewing legal memoranda from the parties, and asking questions during oral argument. I believe I show humility on the bench and an openness and willingness to be educated in areas that are not within the scope of my current knowledge.

- c. Has an unwillingness to admit what you don't know ever affected your ability to judge fairly and impartially?**

Response: No. As a judge for the past 12 years, I have shown a willingness to educate myself or be educated, and have judged the cases before me based upon the facts presented and binding precedent, and I have rendered a just, fair, and impartial decision.

- 2. During your hearing I referenced a speech you gave at Canterbury School in Fort Meyers Florida entitled "Open Doors to the Federal Courts". In one of your slides you indicated that one of the goals of a 'fair court' is diversity on the bench. I have a few follow up questions.**

- a. Your answer did not make it clear to me why diversity is necessary for a fair court. Will you please elaborate on the connection between diversity across the court and fairness in a particular courtroom?**

Response: The slide to which you are referring was intended to encourage discussion amongst the students as to whether the factors listed – judicial elections/appointments in the state courts, judicial appointments in the federal courts, diversity on the bench, canons of judicial conduct, judicial independence and the concept of federalism – assist in achieving the goal of a fair and independent judiciary. Diversity can ensure that the bench better reflects the makeup of the public it serves. But, to be clear, I do not believe that diversity is necessary for a particular court to be fair. A judge's background or other personal characteristics should play no role in how he or she decides cases.

- b. Do you believe that a court is not perceived as fair, neutral, and just in resolving legal matters if the makeup of its bench is not diverse as you would define it?**

Response: No. Judges who respectfully consider the perspectives and arguments of those that come before them and decide cases based on the law will be perceived as fair and impartial.

- c. How does the presence of different races, genders, or social backgrounds on a court increase the likelihood that the court will be fair?**

Response: Fairness should not be measured by the presence of different races, genders, or social backgrounds on a court. A judge, irrespective of race, gender, or social background, ensures fairness by listening carefully to the facts presented, applying binding precedent to those facts, and making a well-reasoned decision.

- 3. Since *United States v. Booker*, the Federal Sentencing Guidelines have been advisory rather than mandatory. If confirmed, how much deference would you afford the Guidelines?**

Response: The purpose of the Federal Sentencing Guidelines is to promote uniformity in the sentencing process by avoiding “unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct.” 18 U.S.C. § 3553(a)(6). I would give great deference to the Guidelines as they were established by the Sentencing Commission at the direction of Congress regarding the proper punishment. The Guidelines assist the court in assuring that the length of sentence is not dependent upon the presiding

judge, but on the nature and severity of the crime, the defendant's history, and all other relevant factors.

a. Under what circumstances would you be willing to depart from the Guidelines?

Response: In every case, I would first determine the applicable sentencing guidelines range. I would then consider all relevant information including the Presentence Report, the recommendations of the probation officer, the evidence, the arguments of counsel, and other factors under 18 U.S.C. § 3553(a). If confirmed as a United States District Judge, I would give the Guidelines substantial weight and would impose a sentence outside the Guidelines range only in limited instances – for example, in a case involving aggravating or mitigating circumstances that were not accounted for by the Guidelines themselves.

b. Under what circumstances do you believe it is appropriate for a district court judge to depart downward from the Sentencing Guidelines?

Response: Please see my response to 3(a).

4. Do you agree that the sentence a defendant receives for a particular crime should not depend on the judge he or she happens to draw? Please explain how you would apply this, if confirmed.

Response: The sentence a defendant receives for a particular crime should not depend on the judge he or she appears before. As a District Court Judge, I would look to the Federal Sentencing Guidelines to ensure uniformity in the sentencing process.

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

Response: The most important attribute that a judge can have is integrity, which results in the ability to be fair and impartial in applying the law without exhibiting bias, sympathy, or prejudice. I believe that I have exhibited integrity during my 12 years on the bench.

6. 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's temperament must include patience, humility, and the ability to be an attentive listener. A judge must treat all attorneys, parties, or members of the public, with the utmost respect, thereby setting the standard for courtroom decorum for all to emulate. I believe I have demonstrated the appropriate judicial temperament during my 12 years on the bench.

- 7. 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. Please describe your commitment to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?**

Response: I remain committed to following the precedent of all higher courts pursuant to my oath as a judge. A judge's personal beliefs or opinions should have no role in the judicial decision-making process.

- 8. 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: If faced with a case of first impression involving a statute or Constitutional provision, I would first look at the express language of the statute or provision to consider its plain and ordinary meaning. If the text is unambiguous, I would apply the plain and ordinary meaning. If ambiguous, I would look to analogous cases from the United States Supreme Court and the Eleventh Circuit Court of Appeals to provide guidance. If warranted, I would further research persuasive appellate and trial court decisions from other jurisdictions.

- 9. 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: As a prospective United States District Court Judge, I would be bound by the precedent of the United States Supreme Court and the Eleventh Circuit Court of Appeals. I would not let my personal beliefs enter into the decision.

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

Response: Federal statutes are presumed to be constitutional. However, if an act of Congress exceeds the authority specifically granted by the Constitution, or if the statute, in whole or in part, violates the plain and ordinary meaning of the Constitution, the court has the duty and obligation to find it wholly or partially unconstitutional.

- 11. In your view, is it ever proper for judges to rely on foreign law, or the views of the "world community", in determining the meaning of the Constitution?**

Response: No, it is not proper for judges to rely on foreign law, or the views of the "world community," in determining the meaning of the Constitution.

- 12. As you know, the federal courts are facing enormous pressures as their caseload mounts. If confirmed, how do you intend to manage your caseload? What is your current practice?**

Response: If confirmed I would continue to consistently and regularly monitor the cases on my docket. With electronic filing of documents, I would continue to use the tools at my disposal to track pending motions, daily filings, and status reports. I would rule on dispositive issues in a timely manner, and would assure that I was available to attorneys and parties to address issues as they arise. I would refer appropriate matters to the magistrate judges, refer matters to mediation, and actively supervise all cases from the time of filing to disposition.

- 13. 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? What is your current practice?**

Response: Federal District Judges play an integral role in controlling both the pace and conduct of litigation. The Federal Rules of Civil Procedure direct that the rules should be “construed and administered to secure the just, speedy and inexpensive determination of every action and proceeding.” Fed. R. Civ. P. 1. The Sixth Amendment and the Speedy Trial Act dictate a “speedy” trial in criminal cases. I would continue to actively engage the parties early in the proceedings, develop appropriate and timely scheduling orders, remain firm in having parties meet reasonable deadlines, and make myself available to assist them in moving their cases forward. I would timely set cases for trial in civil matters, and would promptly rule on criminal motions.

- 14. As a judge, you have experience deciding cases and writing opinions. Please describe how you reach a decision in cases that come before you and to what sources of information you look for guidance.**

Response: In deciding cases and writing opinions, I review the parties’ memoranda, research binding precedent of the United States Supreme Court and the Eleventh Circuit Court of Appeals, apply that precedent to the facts of the case, and rule accordingly.

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

Response: I received these questions on the evening of September 26, 2012. I prepared my responses to the questions on September 27 and 28, 2012. I forwarded my responses to representatives with the United States Department of Justice on October 1, 2012. I subsequently finalized my responses and authorized the Department of Justice to submit my responses to the Judiciary Committee of the United States Senate.

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

Response: Yes.