

Responses of Mary Elizabeth Phillips
Nominee to be United States District Judge for the Western District of Missouri
to the Written Questions of Senator Chuck Grassley

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

Response: A judge must be able to render a fair and impartial decision that is void of any bias, prejudice or preconceived ideas. Yes, I believe that I possess that ability.

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: A judge should possess an even and calm temperament. I believe it is most important that a judge treat all individuals who appear in front of her with dignity, respect, patience and humility. Yes, I believe that I meet such a 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: If faced with a case of first impression, I would first look to analogous cases from the Supreme Court, the Eighth Circuit or other circuits. If no such precedent existed and the matter involved interpretation of a statute or a Constitutional provision, I would determine and apply the plain and ordinary meaning of the statute or provision.

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 fully recognize that a district court judge is bound by the precedent of the Court of Appeals and the Supreme Court. In all matters I would apply the precedent of the Eighth Circuit and the Supreme Court.

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

Response: I believe it is only under rare circumstances that a district court judge should declare a statute enacted by Congress unconstitutional. One such circumstance might be if the statute violated the plain and ordinary meaning of the Constitution.

7. During your time in United States Attorney's Office, did you ever prosecute someone who was death penalty eligible? If so, have you ever sought the death penalty?

Response: As U.S. Attorney for the Western District of Missouri I have requested permission from the Attorney General to seek the death penalty against two defendants. The Capital Committee of the Department of Justice and the Attorney General concurred with my request with respect to both defendants. As U.S. Attorney I have also responded to various habeas corpus motions of defendants who received the death penalty prior to my tenure as U.S. Attorney. In such habeas corpus proceedings, my office has argued that the ruling of the trial court and the imposition of the sentence of death should be upheld.

a. If you have ever elected not to seek the death penalty for a defendant who was eligible, please explain why you determined the death penalty was not appropriate in that instance.

Response: As U.S. Attorney I requested permission from the Attorney General to not seek the death penalty against one defendant. In deciding to request permission to not seek the death penalty, I considered the aggravating and mitigating factors outlined in 18 U.S.C. § 3592, any non-statutory aggravating and mitigating factors, and the recommendations of the Assistant U.S. Attorney handling the case. The Capital Committee of the Department of Justice and the Attorney General concurred with my request to not seek the death penalty against the defendant.

8. Do you believe that the death penalty is an acceptable form of punishment?

Response: I believe that within the framework established by Chapter 228 of the United States Code and the precedent of the Eighth Circuit and the Supreme Court the death penalty is an acceptable form of punishment.

9. In *Roper*, the Supreme Court relied on foreign law in holding that the execution of minors violated the Eighth Amendment. Do you believe that foreign law should be considered in determining the meaning of the Eighth Amendment?

Response: As a district court judge, I would be bound by and would follow all Supreme Court precedent.

10. 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: As a district court judge, I would only rely on foreign law or the views of the “world community” if directed to do so by the precedent of the Eighth Circuit or the Supreme Court.

11. 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 district court judge, I would be engaged in and knowledgeable about the cases on my caseload. I would work with the attorneys to set reasonable yet firm scheduling deadlines. I would rule on issues in a timely manner and would be available to attorneys to address unexpected issues that arise during the pendency of the case.

12. 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 do believe that judges have a role in controlling the pace and conduct of litigation. As I described in my response to Question 11, I would work with the attorneys to set reasonable yet firm scheduling deadlines. I would be engaged in and knowledgeable about the issues of the case and would be responsive to requests of attorneys to address issues that arise during the pendency of the case.

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

Response: I received the questions on September 28, 2011. I prepared my answers on September 29, 2011 and submitted them to the Department of Justice for submission to the Committee on September 30, 2011.

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

Response: Yes