

Response of Nelson Stephen Román
Nominee to be United States District Judge for the Southern District of New York
to the Written Questions of Senator Chuck Grassley

1. Do you believe that diversity on the bench is important?

Response: Yes.

a. If so, why?

Response: Diversity in the judiciary helps promote public trust and confidence.

b. Does the gender or ethnic background of a judge influence the way a judge views the law, shape a judge's approach to interpreting text, or otherwise affect the judicial process?

Response: A judge's gender or ethnic background should not influence his or her view of the law, shape his or her approach to interpreting text, or otherwise affect the judicial process.

c. What steps should a judge take to ensure personal views or background does not influence the outcome of the judicial process.

Response: To ensure personal views and background do not influence the outcome of the judicial process, a judge should first give each party equal opportunity to be heard and to present its case. Then, the judge should adhere strictly to the applicable law, interpreting statutes carefully, following precedent faithfully, and applying the law to the facts accordingly. My track record as a judge for over 15 years demonstrates my ability to refrain from allowing my personal views to affect my decisionmaking process.

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

Response: The most important attribute of a judge is the ability to apply the law fairly and impartially to all cases. In so doing, the judge must be mindful of his or her duty to exercise judicial restraint, thereby deciding only the issues in controversy and applying applicable precedent. I believe I possess this attribute.

3. 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 exercise patience and civility, and should behave in a dignified and professional manner at all times. I believe I meet this standard.

4. **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.

5. **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: Absent controlling precedent, when interpreting statutes, I would look first to the plain meaning of the statutory language, and then to legislative history only if necessary to resolve ambiguities. I would also look to federal court interpretations of similar statutory language. For other issues, I would look to opinions of the Supreme Court and the Court of Appeals for the Second Circuit that were rendered in analogous situations. If no such opinions existed, I would look to decisions of other federal circuit courts.

6. **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: It is the duty of a district court judge to apply precedential authority issued by the Supreme Court and the Court of Appeals of the circuit in which he or she sits. As a district court judge, I would apply the law as articulated in decisions with which I disagreed regardless of my personal feelings. I have demonstrated over the course of my career as a state court judge that I am fully prepared to apply such precedent.

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

Response: When a party challenges the constitutionality of a federal statute, a federal court may appropriately declare that statute unconstitutional either when it violates a constitutional provision or when Congress had exceeded its authority in enacting the statute. In making any such determination, I would proceed cautiously and follow strictly the Supreme Court's interpretation of the pertinent constitutional provision.

8. **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, I do not believe it is proper for a U.S. district court judge to rely on foreign law, or the views of the “world community,” in determining the meaning of the U.S. 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 trial court judge, I also faced the pressure of a heavy caseload. My approach there was to insist upon strict adherence to established scheduling calendars, to streamline discovery wherever possible, to facilitate settlement negotiations, to encourage mediation, and to resolve motions expeditiously. If confirmed, I would continue these proactive management techniques in coordination with the magistrate judges of the Southern District of New York.

- 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: Judges certainly have a role in controlling the pace and conduct of litigation. Regarding the pace of litigation, a judge owes the parties a duty to administer the proceedings impartially and efficiently. If confirmed, I would decide the issues before me carefully, practically and as quickly as possible, set reasonable scheduling timetables, and encourage and facilitate mediation and settlement. Regarding the conduct of litigation, a judge must exude dignity, professionalism and civility, and ensure that the parties follow his or her example. I would continue to comport myself appropriately and insist upon the same from all involved.

- 11. 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: Before reaching a decision, I consider testimony, documents submitted by the parties, and the arguments made. I then rely on applicable statutes, regulations, and precedential interpretations of law in deciding whether to grant judgment to one party or another.

- 12. Please explain your understanding of the major differences you will encounter between being a state court judge and a United States District Judge. How will you prepare for and accomplish this transition?**

Response: While state courts may hear most cases and controversies arising under the Constitution and laws of the United States, such cases tend to be brought infrequently. If confirmed, I would expect to hear many more cases dealing with federal questions, meaning that consideration of federal law will be much more common. Rules of evidence and procedure differ to a degree between state and federal courts. I would accomplish the transition to federal court by diligent study

and application of federal law, just as I have done with state law. Additionally, I have observed several district court proceedings, reviewed materials provided by the Federal Judicial Center, and attended several continuing legal education courses dealing with substantive federal law topics.

13. What effect will your experience as an appellate judge have on your performance as a trial judge?

Response: As a former trial court judge for over ten years, I have experience conducting hearings and trials, managing a case load, setting discovery schedules, facilitating settlement discussions, and tracking motions and setting time schedules for the efficient resolution of pending motions. As an appellate judge I learned firsthand the necessity of a full and accurate record to the proper resolution of a motion or a case. If confirmed, my previous experience would help me to fully delineate the applicable rule of law and to provide a clear legal analysis after fostering a full development of the factual record by the parties.

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

Response: After considering each question carefully, I drafted responses that were reviewed by representatives from the Department of Justice. I then finalized my responses and forwarded them to the Department of Justice for submission to the Judiciary Committee.

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

Response: Yes.