

Responses of Kevin H. Sharp
Nominee to be United States District Judge for the Middle District of Tennessee
to the Written Questions of Senator Charles Grassley

- 1. You have been very active in politics over the course of your career. There is certainly nothing wrong with your participation in the political process. But, your political history may concern future litigants, should you be confirmed.**
 - a. Can you assure this Committee that, if confirmed, your decisions will remain grounded in the precedent and the text of the law rather than any underlying political ideology or motivation?**

Response: Yes.

- b. What assurances or evidence can you provide the Committee and future litigants that you will be fair to all who appear before you, if confirmed?**

Response: As a private citizen I have been engaged in the political process; however, during my involvement I always tried to conduct myself with the utmost integrity and respect for those with differing opinions on a particular candidate or issue. Above all else, my involvement was based upon a respect for the system and the role of participants in the governing process. As a lawyer, I have tried to apply that same level of integrity and respect to the judicial process and my role in that process. If confirmed, I would fulfill my duties as a district court judge consistently and objectively, following the precedent of the Supreme Court and the Court of Appeals without regard to ideology or personal motivation.

- 2. If confirmed, federal criminal cases will comprise a substantial portion of your docket. However, you have very little experience in this area of the law. What steps do you plan to take to prepare yourself to handle criminal cases?**

Response: My legal career has been primarily in the federal judicial system, so although I lack criminal experience I do have a firm grasp of the federal rules and practice. I also understand the importance of thorough preparation for any case that may come before me should I be confirmed. To that end, I will take advantage of the comprehensive written and classroom material on the criminal component of the job offered through the Federal Judicial Center, as well as the materials generated by Chief Judge Todd Campbell for use in the Middle District of Tennessee. I will also work closely with the other judges and staff in the Middle District to ensure that I am completely prepared to exercise my duties in both the criminal and civil docket.

- 3. You have spent your entire career as an advocate. How do you anticipate making the transition from advocate to a neutral arbiter?**

Response: I believe my prior roles, whether advocating for the defense or the plaintiff, a company or an individual, or acting as a neutral in the Office of Compliance, have positioned me to analyze issues from every angle and perspective. I have a great respect

for the institution, and I understand the role of a judge in that system. Furthermore, it is axiomatic that the judicial system only works when members of the court exercise judgment and not will, and that respect for the courts only exists when the participants in the system feel as if they received a fair and impartial hearing. I am committed to maintaining the integrity and impartiality that are the hallmarks of our judicial system.

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

Response: I believe the most important attribute of a judge is to maintain impartiality toward, and respect for, the law and the participants in the judicial system. I believe I possess those qualities.

5. 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: I believe the appropriate temperament of a judge is to be thoughtful, respectful, open-minded and impartial. Although each of these qualities overlap to a certain extent, the most important elements are thoughtfulness and respect for both the rule of law and the participants in the legal system. I believe I meet each of these standards.

6. 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.

7. 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: When reviewing a case of first impression, I would look first to the language of the statute or law. I would also review and analyze any analogous U.S. Supreme Court or Court of Appeals rulings, and if available, any similar district court opinions. Legislative history or purpose, if available, might also provide guidance on a case of first impression.

8. 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: The role of a district court judge is to apply the law as defined by the Supreme Court or the Court of Appeals to the case or controversy presented. I would carry out that duty regardless of any personal beliefs.

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: If confirmed, I intend to manage my caseload by initially working closely with the parties to set reasonable but firm scheduling deadlines, and where appropriate, to integrate the magistrate judges into the management process to ensure the parties stay on track. I will also frequently conduct a review of my cases to ensure that they are progressing toward resolution and are being handled consistent with the policies and procedures established by the Chief Judge of the Middle District.

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. If confirmed, I would work with the parties to set reasonable and firm deadlines for completion of the various stages of litigation and frequently review matters before me to ensure compliance. I would further work to minimize and quickly resolve any interim issues such as discovery disputes, incorporating magistrate judge assistance where appropriate. Also, I would work closely with my staff to make certain that those items ripe for dispositive resolution are handled expeditiously and that trials are conducted efficiently with careful attention to the mandates of due process and equity.

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

Response: It would be appropriate to declare all or part of a congressional action unconstitutional if a statute violates the plain meaning of a constitutional provision or Supreme Court/Circuit Court interpretation of a particular provision of the Constitution.

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

Response: I received these written questions on Wednesday evening, March 9, 2011. I reviewed the questions carefully and prepared my responses. I then shared and discussed my written answers with representatives of the Department of Justice. After finalizing my responses, I forwarded them to the Department of Justice for transmittal to the Senate Judiciary Committee on my behalf.

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

Response: Yes.