

Responses of Thomas O. Rice
Nominee to be United States District Judge for the Eastern District of Washington
to the Written Questions of Senator Chuck Grassley

1. A minority of the ABA Standing Committee on the Federal Judiciary found you “Not Qualified” for this position.

a. Do you have any insight as to why the ABA gave you a partial “Not Qualified” rating?

Response: No, the process the ABA uses to evaluate judicial candidates does not provide for the disclosure of the reason for the rating.

b. What can you tell the Committee about your background and experiences that make you qualified to sit as a federal district court judge?

Response: I have served the public for over 25 years in the Department of Justice. As you know, the United States is no ordinary litigant and as a lawyer for the Department of Justice my obligation and goal has been to see that justice was done and that the citizens of this country were treated fairly. Since I have represented the United States on both civil and criminal matters in the federal courts, I believe I have witnessed firsthand what it takes to be qualified to be a federal district court judge. As my Senate Judiciary Committee Questionnaire more fully reflects, I believe I possess the knowledge, skill, maturity, temperament, and qualities necessary to make me a successful judge.

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

Response: The most important attribute of a judge is his or her integrity, which would include the firm adherence to seeking the factual truth and applying the rule of law to those facts. 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: I believe a judge should be patient, humble, respectful, courteous and fair. A judge should not be swayed by passion, sympathy or prejudice, but must decide cases on the rule of law. I believe these are the most important elements of judicial temperament and I possess these qualities.

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 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: I would first turn to the plain meaning of the words of the statute. If necessary, I would seek to determine the context and intent of Congress. I would also look to analogous cases from the Supreme Court and the Ninth Circuit Court of Appeals for guidance. If no other similar cases were available, I would consult other federal court decisions that considered the issue or like issues.

- 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 own judgment of the merits, or your best judgment of the merits?**

Response: I would apply binding Supreme Court and Court of Appeals precedent without regard to my personal judgment.

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

Response: Absent controlling precedent holding otherwise and assuming the litigants presented the case with proper jurisdiction and standing, the court must first ascertain whether a construction of the statute is fairly possible by which the constitutional question may be avoided. Then, a federal court should declare a statute enacted by Congress unconstitutional only where it clearly violates the Constitution or where Congress has clearly exceeded its constitutional boundaries.

- 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.

- 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 would set reasonable and timely scheduling orders, adhere to the Speedy Trial Act, promptly resolve pending motions and continually monitor case aging reports.

- 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: I believe judges play a vital role in controlling the pace and conduct of litigation. I would set reasonable and timely scheduling orders in every case. I believe that one of the most important aspects of keeping cases moving is the prompt resolution of pending motions before the court. Litigants often cannot advance the discovery

process, settlement negotiations or trial preparation without rulings from the court on numerous pretrial issues.

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

Response: I received these questions on September 28, 2011. I drafted my answers and forwarded them on September 29, 2011, to the Department of Justice for review and submission to the Senate Judiciary Committee.

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

Response: Yes.