

Responses of David Nuffer
Nominee to be United States District Judge for the District of Utah
to the Written Questions of Senator Chuck Grassley

- 1. Do you believe that our federal government is one of limited and enumerated powers?**

Response: Yes.

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

Response: I believe diligence is the most important attribute of a judge. Many other attributes are vital, but without diligence the work will not get done. My parents taught me to work hard and I have not forgotten that lesson.

- 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's temperament must include patience, respect for others, and a disposition to learn. Because judges must deal with many people and many cases, the work may encourage a tendency to rush or be cursory or even abrupt. These pressures must be consciously resisted. No decision should be made without due consideration of the actual case, as presented by the parties. A judge's ability to listen is key because true listening demonstrates patience, due consideration for others, and willingness to learn. I believe I have the ability to listen patiently, respecting the parties and attorneys, and I have a genuine desire to learn.

- 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, this is my oath as a judge. I have fulfilled this oath since first taking it in May 1995.

- 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 have not yet encountered a case of complete first impression. Features of a case may be unique but there are always guiding principles found first in the Constitution and statutes and then in regulatory and case law. Those principles may be in the precise field in which the dispute arises or in analogous or corollary circumstances. Thorough research to gather this applicable law and precedent enables a sound decision. I have not hesitated, when I have felt that counsel have not provided enough information on a legal principle, to request additional briefing and argument, which has often resulted in the clarification that was needed. To the extent that in the future I encounter issues in which

there is not a statute or case precisely on point, I would continue the practices I have described.

- 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: It is not the place of a lower court judge to disregard binding precedent. I have not done so and would not do so in the future. Counsel may appeal to the body which has set precedent, and make arguments for changes in that court, but a lower court cannot evade binding precedent. I apply the precedent of the Supreme Court and Tenth Circuit Court of Appeals.

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

Response: In fifteen years of judicial experience I have never seen such a situation. Such a claim should be considered carefully, deliberately and with the participation of all parties affected by the claim. My duty as a judge is to construe and apply statutes to avoid interpretations that might render the statute unconstitutional.

- 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: The meaning of our Constitution is contained in the document itself. Where that language has been construed by the United States Supreme Court or the Tenth Circuit Court of Appeals, I would consider that construction to understand the meaning. Commentary or opinion of those outside the United States does not determine what our Constitution means.

- 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: Because the federal court dockets and documents are electronic, I have the ability to use management tools to track cases. I have worked with the Future Case Management design team in the U. S. Courts to develop even better management tools for judges and I have designed case and motion tracking tools that we use in our chambers. I personally review case status reports. I will continue to use the assistance of my designated case manager and law clerks to monitor and report on case progress and pending issues that can move cases forward.

- 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: For the last several years, I have handled civil case scheduling and schedule amendments for the active district judges in our court. I usually consider and enter over 500 scheduling orders each year. I am convinced that judicial intervention leads to case resolution. Parties come to court for a decision of a dispute they cannot resolve

themselves, so judicial management and availability is key to moving cases toward resolution. I will continue to make myself available on short notice, by telephone or otherwise for counsel to receive answers to questions as cases move forward. I will continue to give counsel firm trial dates within a short period after an answer is filed in civil cases, and I will promptly resolve pretrial motions in criminal cases.

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

Response: I received these questions Wednesday September 28, 2011, and began drafting answers that evening. I reviewed the answers again on Thursday September 29, 2011, and later that day sent them for review to staff at the Department of Justice with a cover letter for submission to the Senate Judiciary Committee.

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

Response: Yes.