

**Responses of John J. McConnell, Jr.**  
**Nominee to be United States District Judge for the District of Rhode Island**  
**to the Written Questions of Senator Charles Grassley**

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

Response: The most important attribute of a judge is intellect. A judge's ability to understand the law, both statutory and case law, and to apply the facts to the law is the most important attribute of a judge. Yes, I believe that I possess the necessary intellect to be a good judge.

**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: My view of judicial temperament is that a judge should be fair to all parties; listen closely; be open-minded; be polite, respectful, and courteous; and be decisive. I consider fairness to all parties as the most important of these qualities. I believe I meet all of these standards.

**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 no precedent existed that controlled an issue before me I would first turn to the plain language of the text of the matter at issue. If that did not provide a clear meaning, I would consider the legislative purpose in enacting the provision. I would also look to precedent from circuit courts in other circuits, and then other district courts.

**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: If confirmed, I would apply the precedent of the Supreme Court and the Court of Appeals for the First Circuit regardless of whether I believed a higher court had seriously erred in rendering a decision.

**6. 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 actively manage my docket. I would issue decisions in a timely fashion. Litigants would be required to adhere to deadlines set by the Court. Regular consultation with counsel in the case would occur in order to expedite pre-trial matters.

**7. 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 believe judges have role in controlling the pace and conduct of litigation. I believe good docket management requires that cases be assessed for the speed that they can get through the system while preserving the parties' rights to a full and fair hearing.

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

Response: In considering a constitutional challenge to a statute, a district judge should be guided by the precedent of the Supreme Court and the Court of Appeals for the circuit regarding any relevant constitutional provisions. A federal court should declare a statute unconstitutional only if it violates a provision clearly set forth in the U.S. Constitution.

**9. How many times, if any, have you appeared before United States Magistrate Judge Lincoln D. Almond? Have you ever requested that Judge Almond be recused from a case in which you were to appear?**

Response: I believe I have only appeared before Magistrate Judge Almond once. It was for a mediation in a case filed in federal court. I have never asked Magistrate Judge Almond to recuse himself.

**10. How would you characterize your relationship with Judge Almond?**

Response: I have a very cordial and professional relationship with Magistrate Judge Almond. He has contacted me several times since my nomination and offered to assist me with my potential transition to and education about the workings of Rhode Island's federal district court system.

**11. If confirmed to be a United States District Judge for the District of Rhode Island, what would you bring to the collegiality of the District Court for Rhode Island?**

Response: I would bring a sense of cooperation, respect, and mutual support among the judges, magistrate judges, and other court personnel.

**12. What was the fee arrangement you or your firm had with the State of Rhode Island in connection with the DuPont litigation and settlement?**

Response: My law firm entered into an agreement with the State of Rhode Island that set forth the attorney fees as 16 2/3% of any recovery obtained as a result of the litigation.

**a. Were those obligations, if any, satisfied?**

Response: Yes, as it relates to the agreement between the State and DuPont. There was no other recovery in the case requiring payment of a fee.

**b. In your response to Senator Sessions, you stated your firm waived its attorney fees that would be due, on the condition that those fees be directed to a charitable cause. When was this condition created, and to whom was it announced?**

Response: The condition was created during a conversation between my client, the Rhode Island Attorney General, and me shortly before the agreement was announced in June 2005. I do not know if the condition was publicly announced at the time.

**c. Did you or your firm make any public statements that attorney fees were being waived? If so, please provide copies.**

Response: In August 2006, the *Providence Journal* reported the following: "Lawyers for Motley Rice, who said they saw the historic value of getting a company to pay money to help clean up the lead-paint problem, agreed to waive their fee." (August 9, 2006, p. 1).

**d. Did you or your firm make any public statements regarding the existence of your pledge to Brigham & Women's Hospital? If so, please provide copies.**

Response: Yes. In August 2006, the *Providence Journal* reported the following: "Jack McConnell, Motley Rice's lead lawyer in the lead-paint case, says he expects that the \$2.5 million will count toward the firm's pledge." (August 9, 2006, p. 1).

- e. **Was DuPont aware of your firm's pledge to Brigham & Women's Hospital? If not, was it ethical to withhold this knowledge from DuPont and/or its counsel?**

Response: Yes.

**13. What was the fee arrangement you or your firm had with any co-counsel in connection with the DuPont litigation and settlement?**

Response: There was an agreement among the three law firms involved in the litigation that any fees would be divided 40% to Motley Rice, 40% to Decof & Decof, and 20% to Thornton & Naumes.

- a. **Were those obligations, if any, satisfied?**

Response: Yes.

- b. **What is your understanding of the circumstances leading up to any claim or lien filed by Leonard Decof alleging entitlement to a portion of the funds committed by DuPont?**

Response: My understanding is that Mr. Decof wanted a percentage of the money designated for charity to be paid to his law firm as attorney fees instead.

- c. **Are you aware of any settlement regarding payment of fees to Leonard Decof or his law firm? If so, please provide the terms of that settlement.**

Response: My understanding is that the case brought by Mr. Decof against the State and DuPont was settled. While I do not know all of the details of the settlement, my understanding is that Decof & Decof received \$400,000.00 from the \$2.5 million charitable contribution to Brigham & Women's to resolve the lawsuit they filed against the state.

- d. **Please describe any arrangement you, your firm, or the State of Rhode Island had with the law firm Thornton and Naumes in the lead paint litigation. Has this law firm made a claim for a portion of the waived legal fees? If so, has that claim been satisfied?**

Response: Thornton & Naumes was entitled to 20% of any recovery of attorney fees in the litigation. It has not made a claim for any waived legal fees.

**14. In your testimony at your hearing, you indicated it was a tradition in Rhode Island for attorneys to critique the law. However your op-ed appears to go beyond critiquing the law, to one of criticizing the court.**

**a. Do you think your op-ed went beyond critiquing the law? Please explain.**

Response: I do not believe the op-ed went beyond critiquing the law. The op-ed set forth the position that the State consistently took throughout the litigation.

**b. In how many previous instances did you write an article or editorial in which you “critiqued the law”? Please provide copies, if you have not previously done so.**

Response: None that I can recall.

**c. Do you believe your op-ed demonstrates appropriate judicial temperament? Please explain.**

Response: I do not think it would be appropriate for a judge to have authored an op-ed of the type referenced. I was an attorney for a party in litigation and we were asked by our client to submit the editorial.

**15. What degree of awareness or notification did you or your firm have in relation to public protests organized by the Association of Community Organizers for Reform Now (ACORN) or any other group during annual meetings or board meetings of the National Paint & Coatings Association?**

Response: None.

**16. What degree of awareness or notification did you or your law firm have related to rallies outside or near the Superior Court in Providence during the lead paint trials in September 2002?**

Response: None.

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

Response: I received these questions Monday evening February 28, 2011 through the Department of Justice (DOJ). I reviewed the questions and I prepared my responses to them. I later discussed my responses with the DOJ. I then finalized my responses. I asked the DOJ to forward my responses to the Senate Judiciary Committee on my behalf.

**18. Do these answers reflect your true and personal views?**

Response: Yes.

**Responses of John J. McConnell**  
**Nominee to be United States District Judge for the District of Rhode Island**  
**to the Written Questions of Senator Mike Lee**

- 1. You said in an interview published in the *Providence Journal* in 2005, “I am an emotional person about injustice at any level—personal, societal, global.” Do you continue to consider yourself an emotional person when it comes to injustice?**

Response: As a lawyer I have represented some clients who had sympathetic stories with whom I made an emotional connection. However, emotions would have no role in my position as a district court judge if I am confirmed.

- a. How have your strong feelings regarding various injustices influenced your legal career?**

Response: Cases that I have brought as a lawyer were brought on the merits on behalf of people or entities that had legitimate legal claims. According to the ABA Model Rules of Professional Conduct, the role of a lawyer acting as an advocate, as I have at times in my career as an attorney, is to “zealously assert[] the client's position under the rules of the adversary system.”

- b. How will you go about checking your emotions if you become a judge?**

Response: If confirmed, I am committed to deciding cases based on legal precedent and within the facts presented by the parties. Emotions would not play a role in this process if I become a district judge.

- 2. You were quoted in a 2003 article in the *Providence Journal* as saying that “[a]ffordable, accessible and quality health care should be a right of citizenship.”**

- a. Do you still believe that healthcare is a right that the government should provide?**

Response: Whatever views I may have on healthcare, they would not be relevant to my work as a district court judge where I would simply apply the law to the facts of any case that came before me.

- b. Do you believe that the federal government may constitutionally compel citizens to purchase health insurance? If so, in what specific circumstances would that action be constitutional?**

Response: I do not have any present belief on this issue. Because the issue is being litigated in federal courts throughout the country and may ultimately be decided in the Supreme Court, I am committed to following the decisions from the Supreme Court and the First Circuit on the issue.

3. In his questions for the record, Senator Kyl asked about your familiarity with the documents at issue in the Sherwin-Williams litigation involving your firm. (Sherwin Williams Co. v. Motley Rice LLC, No. CV 09 689237 (Ohio Ct. Common Pleas Apr. 03, 2009)). In response, you said, “I would not say I was familiar with the documents in any fashion.”

In the September 8, 2010, deposition for that case, you mention having repeatedly handled the documents, providing opportunity to familiarize yourself with them. You said that you reviewed the documents for several minutes when they first arrived, recognizing that they were from the whistleblower and that they contained the Sherwin-Williams logo, which you had not seen on documents outside of discovery. You were the primary drafter of an Op-Ed that used figures drawn from the documents. You also signed a brief that you had reviewed that contained a portion of the documents as an exhibit.

- a. Were you actually familiar with the documents at issue?

Response: Senator Kyl asked me a similar question last year. He asked me:

*Were you familiar with these documents, prior to this suit being filed in Ohio? Please explain your answer.*

My complete answer to Senator Kyl has not changed:

*Response: I saw the documents prior to suit being filed in Ohio. I briefly saw them when they were first faxed to our firm and then again a few years later, I saw them when we submitted one page of the documents to the court in Rhode Island. I would not say I was familiar with the documents in any fashion.*

- b. If not, do you think you should have been familiar with them, considering the contact you had with them and the information you used from them?

Response: No. I believe I had sufficient knowledge of them for the limited purposes for which they were used as described above.

4. Based on your understanding of the original intent behind the text of the Commerce Clause, do you believe that Congress has at any time overstepped its authority under that provision since *Wickard*, other than in *Lopez* and *Morrison*?

Response: If confirmed as a district court judge, I would follow the precedent of the Supreme Court and the First Circuit. It is my understanding that in the time between the *Wickard* decision (1942) and the Supreme Court ruling in *Lopez* (1995), the Supreme Court had not declared that Congress overstepped its authority under the Commerce Clause.