

**Nomination of R. Stan Baker to the
United States District Court for the
Southern District of Georgia
Questions for the Record
Submitted December 20, 2017**

QUESTIONS FROM SENATOR WHITEHOUSE

- 1. During his confirmation hearing, Chief Justice Roberts likened the judicial role to that of a baseball umpire, saying “[m]y job is to call balls and strikes and not to pitch or bat.”**

- a. Do you agree with Justice Roberts’ metaphor? Why or why not?**

Yes. Like good umpires, good judges make decisions based on the facts and rules before them and not based on what end result they personally prefer. Judges and umpires should make certain that all participants play by the rules, and they should apply the rules equally to both sides. As a lawyer who litigated hundreds of cases in courts throughout the state of Georgia and in several states across the country, I always appreciated a judge who approached my client’s case with an open and impartial mind, who let the lawyers try the case, but who would not shy away from the judge’s obligation to “make a call” based on the law and the facts presented. As a United States Magistrate Judge, I strive to provide that same impartial and efficient decision making process for the litigants that appear before me. Moreover, as a former Davidson College football player and track and field captain, where I was often the “underdog,” I have a particular appreciation for impartial referees.

- b. What role, if any, should the practical consequences of a particular ruling play in a judge’s rendering of a decision?**

Generally, a judge should not consider the practical consequences of a particular ruling. Rather, a judge should faithfully and impartially apply the law to the facts of the case even if it leads to a result that the judge would not personally prefer. In some limited circumstances, the law requires a judge to consider the practical consequences of a decision. For example, when ruling on a motion for preliminary injunction, a judge must consider, among other factors, whether the moving party would suffer “irreparable injury” if the court does not issue the requested injunction. FF Cosmetics FL, Inc. v. City of Miami Beach, 866 F.3d 1290, 1298 (11th Cir. 2017).

- c. Federal Rule of Civil Procedure 56 provides that a court “shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact” in a case. Do you agree that determining whether there is a “genuine dispute as to any material fact” in a case requires a judge to make a subjective determination?**

No. When ruling on a summary judgment motion under Rule 56, a judge must objectively assess whether the evidence is such that a reasonable jury could return a verdict for the non-moving party. When making this assessment, a judge must draw all reasonable inferences in the nonmovant’s favor and construe the facts in the light most favorable to the nonmoving party. Feliciano v. City of Miami Beach, 707 F.3d 1244, 1252 (11th Cir. 2013). The judge must not weigh evidence or make credibility

determinations, as these are “are jury functions, not those of a judge.” Id. (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986)). Even if a district court judge “believes that the evidence presented by one side is of doubtful veracity, it is not proper to grant summary judgment on the basis of credibility choices.” Miller v. Hargett, 458 F.3d 1251, 1256 (11th Cir. 2006). I have consistently applied this objective standard of review when ruling on motions for summary judgment as a United States Magistrate Judge.

2. During Justice Sotomayor’s confirmation proceedings, President Obama expressed his view that a judge benefits from having a sense of empathy, for instance “to recognize what it’s like to be a young teenage mom, the empathy to understand what it's like to be poor or African-American or gay or disabled or old.”

a. What role, if any, should empathy play in a judge’s decision-making process?

A judge should impartially assess the facts of each case and determine the law applicable to the case without regard to a party’s circumstances. See 28 U.S.C. § 453. Therefore, a judge may not allow empathy for a party to sway the judge’s ultimate decision. However, empathy for all parties can remind a judge to remain open minded and to listen patiently to all sides before rendering a decision. Additionally, empathy can assist a judge in treating every litigant and attorney that appears before the court with equal dignity and respect.

b. What role, if any, should a judge’s personal life experience play in his or her decision-making process?

Our system of justice requires a judge to render decisions based on the facts and law before the Court rather than the judge’s personal experiences and beliefs. However, a judge’s life experiences can better prepare the judge to fulfill that role. For example, as a United States Magistrate Judge, I have presided in over 1,300 federal civil cases and approximately 300 federal criminal cases that are of the same type and variety that I would preside in as a District Judge. I have issued thousands of orders and over 600 reports and recommendations in those cases. Prior to my service as a Magistrate Judge, I litigated approximately 800 cases to verdict or other judgment as an attorney, and I served as a federal judicial law clerk. These life experiences provide a deep knowledge of the substantive, evidentiary, and procedural issues that I would face every day as a United States District Judge. Additionally, my judicial temperament benefits from my life experiences including being raised by a single mother who, despite the difficult circumstances we faced, stressed integrity, kindness, and compassion. This early life experience enhances my ability to treat everyone who comes before me with equal dignity, respect, and patience.

3. In your view, is it ever appropriate for a judge to ignore, disregard, refuse to implement, or issue an order that is contrary to an order from a superior court?

No. If I were fortunate enough to be a United States District Court Judge for the Southern District of Georgia, I would be bound by two levels of precedent. First, I must follow all decisions of the United States Supreme Court unless or until the Supreme Court exercises its authority to overrule one of its own decisions. See Rodriguez de Quijas v.

Shearson/American Express, Inc., 490 U.S. 477, 484 (1989). Second, where there is no binding Supreme Court precedent, I must follow all binding precedent from the United States Court of Appeals for the Eleventh Circuit unless or until it is overruled by the Supreme Court or Circuit Court sitting *en banc*. See United States v. Vega-Castilla, 540 F.3d 1235, 1236 (11th Cir. 2008). I have faithfully followed all binding precedent as a United States Magistrate Judge, and I would do the same as a United States District Judge.

4. What assurance can you provide this Committee and the American people that you would, as a federal judge, equally uphold the interests of the “little guy,” specifically litigants who do not have the same kind of resources to spend on their legal representation as large corporations?

My professional record and personal history should assure the Committee and the American people that I will render decisions impartially and treat all persons that come before the Court with equal dignity and respect.

In my law practice, I represented a diverse group of clients, each of whom received the same level of attention regardless of their race, background, socioeconomic status, or education. This included hundreds of individuals that would be referred to as the “little guy,” including school teachers, indigent criminal defendants, and small business owners. I always served these clients zealously and provided them with the same level of respect, courtesy, and diligent representation as my large corporate clients.

As a United States Magistrate Judge, I have taken measures to ensure that cases are resolved through a fair and impartial process and that litigants with scant resources have a fair opportunity to present their side. For example, in civil cases filed by *pro se* plaintiffs, I frequently provide plaintiffs with the opportunity to amend deficient complaints, and I construe their claims and motions liberally, so that their claims can be resolved on the merits rather than dismissed out of hand. Additionally, in criminal cases, I ensure that indigent defendants receive appointed counsel capable of representing them on serious federal charges and that appointed counsel has the resources necessary to mount a vigorous defense.

In addition to my professional record, my personal background should assure the Committee and the American people of my impartiality. At my investiture as a United States Magistrate Judge, I promised the American people that I would “administer justice without respect to persons, and do equal right to the poor and to the rich, and . . . faithfully and impartially discharge and perform all the duties incumbent upon me.” If I am fortunate enough to be sworn in as a United States District Court Judge, I will make that same pledge. That oath is not only one that I apply to professional endeavors, it is a hallmark of my life thanks in large part to two people – my mom and Coach Billy Henderson. As mentioned in response to Question 2(b), my mother raised my siblings and me in some difficult circumstances, but she instilled in us a deep sense of integrity and compassion. Coach Henderson is one of the winningest high school football coaches in Georgia history. During his time at Clarke Central High School, he succeeded because he taught my fellow teammates and me that we were one team, regardless of the color of our skin or what neighborhood we came from. He ingrained in each of us that we must honor our commitments and keep our promises. Thus, my oath of office would not merely be words at an investiture ceremony, but a charge that will guide my life.

- a. In civil litigation, well-resourced parties commonly employ “paper blizzard” tactics to overwhelm their adversaries or force settlements through burdensome discovery demands, pretrial motions, and the like. Do you believe these tactics are acceptable? Or are they problematic? If they are problematic, what can and should a judge do to prevent them?**

The “paper blizzard” tactics described above are unacceptable, and they can be problematic if the court does not take action to prevent them. As a United States Magistrate Judge, I have implemented several case management initiatives to prevent such tactics and to ensure the “just, speedy and inexpensive determination of every action and proceeding.” Fed. R. Civ. P. 1.

For example, I have revised our court’s Rule 26 Report form to require parties to devise a concrete discovery plan and to address problematic areas of discovery at the initiation of every case. After receiving the parties’ Rule 26 Report, I regularly hold Rule 16 conferences prior to issuing a scheduling order to ensure, among other things, that the proposed scope of discovery meets the proportionality requirements of Rule 26(b)(1). I often implement other cost and time saving measures including phased discovery plans, periodic status reports, and additional Rule 16 case management conferences. In every case, if the parties have a discovery dispute that they cannot resolve through the meet and confer requirement of Rule 37, counsel must schedule a telephonic discovery conference with me prior to filing a discovery motion. With rare exceptions, I am able to resolve the dispute during this conference and, therefore, obviate the need for a discovery motion. These measures prevent cases from devolving into a series of needless and costly discovery disputes.

Additionally, I have implemented court-assisted settlement procedures where a United States Magistrate Judge acts as a mediator during an in person settlement conference. I have presided in more than fifty of these settlement conferences. I hold these conferences at a point in the case where the parties agree that they have enough information to assess the merits of their respective positions but before they have spent such time and resources that settlement would be burdensome or impossible. By being available to the parties for these conferences, I ensure a fair, non-coercive process for the parties to resolve their disputes in an efficient manner.

I would employ these same case management measures as a District Judge.