

**Nomination of Hala Y. Jarbou
to the United States District Court for the
Western District of Michigan
Questions for the Record
Submitted July 1, 2020**

QUESTIONS FROM SENATOR WHITEHOUSE

1. If you have not already done so, please read a copy of the draft Advisory Opinion 117, circulated by the Codes of Conduct Committee of the Judicial Conference of the United States. A draft of the opinion is available here: <https://fixthecourt.com/wp-content/uploads/2020/02/Guide-Vol02B-Ch02-AdvOp117.pdf>. If the Committee formally adopts its draft Advisory Opinion as written, will you comply with it?

Yes, I will comply with all adopted advisory opinions of the Code of Conduct Committee.

2. A Washington Post report from May 21, 2019 (“A conservative activist’s behind-the-scenes campaign to remake the nation’s courts”) documented that Federalist Society Executive Vice President Leonard Leo raised \$250 million, much of it contributed anonymously, to influence the selection and confirmation of judges to the U.S. Supreme Court, lower federal courts, and state courts. If you haven’t already read that story and listened to recording of Mr. Leo published by the Washington Post, I request that you do so in order to fully respond to the following questions.

- a. Have you read the Washington Post story and listened to the associated recordings of Mr. Leo?

Yes.

- b. Do you believe that anonymous or opaque spending related to judicial nominations of the sort described in that story risk corrupting the integrity of the federal judiciary? Please explain your answer.

As a district court nominee, it would be inappropriate under Canon 2A, 3A(6), and 5 of the Code of Conduct for United States Judges to express a view on this issue. If confirmed, I will follow any Sixth Circuit and Supreme Court precedent which may exist on this issue.

- c. Mr. Leo was recorded as saying: “We’re going to have to understand that judicial confirmations these days are more like political campaigns.” Is that a view you share? Do you believe that the judicial selection process would benefit from the same kinds of spending disclosures that are required for spending on federal elections? If not, why not?

Article III of the Constitution provides for the independence of the judiciary and under Canon 1 of the Code of Conduct for United States Judges, “[a]n independent and honorable judiciary is indispensable to justice in our society.” Further, as a district court nominee, it would be inappropriate under Canon 2A, 3A(6), and 5 of the Code of Conduct for United States Judges to express a view on these issues. If confirmed, I will faithfully follow all Canons of the Code of Conduct for United States Judges, as well as any Sixth Circuit and Supreme Court precedent which may exist on these issues.

- d. Do you have any knowledge of Leonard Leo, the Federalist Society, or any of the entities identified in that story taking a position on, or otherwise advocating for or against, your judicial nomination? If you do, please describe the circumstances of that advocacy.

No.

- e. As part of this story, the Washington Post published an audio recording of Leonard Leo stating that he believes we “stand at the threshold of an exciting moment” marked by a “newfound embrace of limited constitutional government in our country [that hasn’t happened] since before the New Deal.” Do you share the beliefs espoused by Mr. Leo in that recording?

Prior to answering this question, I was not familiar with this story or that statement. As a district court nominee, it would be inappropriate for me to opine as the propriety of Mr. Leo’s views.

3. 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?

I agree with the metaphor if it means that a judge must act fairly and impartially in applying the law to the facts of a case.

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

A judge should apply the law to the facts of a case fairly and impartially. There are instances where the practical consequences of a particular ruling do play a role in a judge’s rendering of a decision (for example, in ruling on a motion for preliminary injunction). If confirmed, I will faithfully follow all Sixth Circuit and Supreme Court precedent that is applicable to this issue.

4. 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 trial judge to make a subjective determination?

No, the court must look at the law to determine whether there is a material fact in question. If confirmed, I will faithfully follow all Sixth Circuit and Supreme Court precedent in ruling on motions for summary judgment.

5. 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?

It is important for a judge to understand the circumstances of the parties that come before that judge. Certainly, in sentencing a defendant, one of the factors to be considered pursuant to 18 U.S.C. § 3553(a) is the history and characteristics of the defendant.

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

A judge must fairly and impartially apply the law to the facts of the case, irrespective of the judge's personal life experience.

6. 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.

7. When, if ever, is it appropriate for a district judge to publish an opinion that includes dicta challenging the correctness of a binding precedent?

It is generally inappropriate for a district judge to publish an opinion that includes dicta challenging the correctness of a binding precedent. If confirmed as a district judge, I will fully and faithfully apply both Sixth Circuit and Supreme Court precedent.

8. When, if ever, is it appropriate for a district judge to publish an opinion that includes a proclamation of the judge's personal policy preferences or political beliefs?

It is never appropriate for a district judge to publish an opinion that includes a proclamation of the judge's personal preference or political beliefs.

9. The Seventh Amendment ensures the right to a jury "in suits at common law."

- a. What role does the jury play in our constitutional system?

The jury plays a vital role in our constitutional system. Juries are a guarantee to each party that a case will be decided by a group of their peers.

- b. Should the Seventh Amendment be a concern to judges when adjudicating issues related to the enforceability of mandatory pre-dispute arbitration clauses?

I will faithfully apply all Sixth Circuit and Supreme Court precedent on this issue.

- c. Should an individual's Seventh Amendment rights be a concern to judges when adjudicating issues surrounding the scope and application of the Federal Arbitration Act?

I will faithfully apply all Sixth Circuit and Supreme Court precedent on this issue.

10. What deference do congressional fact findings merit when they support legislation expanding or limiting individual rights?

It would be inappropriate for me under the Canons of the Code of Conduct for United States Judges to express my view on this issue. If confirmed, I will faithfully apply Sixth Circuit and Supreme Court precedent on this issue.

11. The Federal Judiciary's Committee on the Codes of Conduct recently issued "Advisory Opinion 116: Participation in Educational Seminars Sponsored by Research Institutes, Think Tanks, Associations, Public Interest Groups, or Other Organizations Engaged in Public Policy Debates." I request that before you complete these questions you review that Advisory Opinion.

a. Have you read Advisory Opinion #116?

Yes.

b. Prior to participating in any educational seminars covered by that opinion will you commit to doing the following?

- i. Determining whether the seminar or conference specifically targets judges or judicial employees.
- ii. Determining whether the seminar is supported by private or otherwise anonymous sources.
- iii. Determining whether any of the funding sources for the seminar are engaged in litigation or political advocacy.
- iv. Determining whether the seminar targets a narrow audience of incoming or current judicial employees or judges.
- v. Determining whether the seminar is viewpoint-specific training program that will only benefit a specific constituency, as opposed to the legal system as a whole.

If confirmed as a district judge, in considering my participation in any educational seminars, I commit to following the Canons of the Code of Conduct for United States Judges, as well considering any advisory opinions that may impact that participation.

c. Do you commit to not participate in any educational program that might cause a neutral observer to question whether the sponsoring organization is trying to gain influence with participating judges?

Yes.

12. In your view, what is the evidentiary significance of Congress's failure to enact a proposed amendment to a previously enacted statute for how you would interpret the previously enacted statute? In general, what significance do you attach to evidence of Congress's failure to enact any piece of proposed legislation?

In interpreting a previously enacted statute, there is no evidentiary significance of Congress's failure to enact a proposed amendment to that previously enacted statute. In general, I do not attach any significance to evidence of Congress's failure to enact any piece of proposed legislation.

13. In your view, what constitutes the ordinary or plain meaning of statutory and constitutional text? When interpreting the text of a statute in the absence of binding precedent, is it proper for a district judge to (a) apply the text's plain meaning to current circumstances without considering its historical origins or (b) limit the text's meaning to how it would have been defined or

understood at the time of enactment? If (b), how should a district judge determine how the text would have been defined or understood at the time of enactment?

As a district court judge, I will apply the law fairly and impartially as written, not as some may view it should be applied or as some may believe it was intended to be applied. In so doing, I will look at the plain meaning of the word(s), what the term meant at the time the law was passed as understood by the general public. If confirmed, I will follow Sixth Circuit and Supreme Court precedent that address acceptable methods of constitutional and statutory construction.