

**Senator Grassley
Questions for the Record**

**Brian R. Martinotti
Nominee, U.S. District Judge for the District of New Jersey**

- 1. In your testimony you noted that the Bellwether settlements you supervised were entirely voluntary and the litigants could easily opt out of the litigation at any time and proceed to trial with their case. Some individuals contend that the option to opt out of litigation is often not an informed choice. Specifically, Bellwether settlements in multi district litigation (MDL) are often for a fixed amount and plaintiffs are not able to determine their own recovery before they must accept the settlement or proceed to trial. How would you respond to these critics?**

Response: In contrast to global settlements, where a sum of money is placed into a fund and distributed to plaintiffs by a third-party administrator, a bellwether settlement is the product of individual mediations with individual plaintiffs, who are represented by their own counsel, have varying degrees of damages, and are geographically diverse. The plaintiffs mediate their individual cases at arm's length and arrive at mutually acceptable resolutions (i.e., the bellwether settlement). These resolutions then become data points to establish a voluntary program for settlement. Plaintiffs can "opt in" if they so choose. As this process evolves, the parties also proceed on a parallel track of pre-trial discovery. This procedure ensures an avenue of litigation always remains viable, and is not delayed, for those parties that choose not to participate in the voluntary settlement program.

- 2. Commentators have raised concerns about mass torts and the "vanishing trials." Most of these settlement negotiations occur outside of the courtroom and outside of the public view—consequently, mass tort attorneys are not monitored by either their clients or the courts. What steps would you take to ensure that the cases in your docket were subject to sufficient judicial oversight?**

Response: In my experience, as a Multicounty Litigation (MCL) judge, I have worked closely with federal judges overseeing multi district litigation (MDL) cases. In that capacity, and always with all parties' consent, I have personally and successfully mediated thousands of matters to conclusion, working with the federal MDL judges and/or court-appointed mediators. Throughout all stages of a case, I require frequent status reports via regular case management conferences as well as telephonic reports to assure all cases are subject to sufficient judicial oversight. If I am fortunate enough to be confirmed as a District Judge, I will continue to actively involve myself in all aspects of litigation, including, but not limited to, overseeing in-court and outside settlement discussions and procedures to ensure all cases are transparent and subject to sufficient judicial oversight. I will also follow the Code of Conduct for United States Judges with regard to my involvement in settlement procedures, taking care to ensure that my role is limited to facilitating and monitoring, but not coercing, settlements.

3. **Concerns about “vanishing trials” in mass torts largely address the rising number of claims that are resolved outside of the courtroom and the impact that this trend may have on the American justice system; particularly, in regard to the shifting role of courts and judges. If confirmed, how would you view your role in light of this shifting landscape?**

Response: I firmly believe every litigant has the right to open, fair and equal access to the court system. In my thirteen years as a Superior Court Judge, I have never denied a litigant an opportunity to be heard on the merits. However, I do (and will continue to) encourage settlement discussions with the goal of reaching an amicable resolution to disputes which I believe provides litigants with certainty of outcome. In my opinion, a judge must encourage the parties to discuss an amicable resolution to their matters while maintaining and ensuring equal access to the court system for all litigants who wish to try their case on the merits. I believe I have demonstrated this ability, from my thirteen years as a Superior Court Judge, and will continue to do so if I am fortunate enough to be confirmed as a District Judge.

4. **Your legal career is primarily compromised of civil practice. What steps have you taken or will you take to prepare to handle the complex criminal cases that would come before you, if confirmed?**

Response: Although my career has been primarily comprised of civil matters, I have experience in the criminal justice system, based on the approximately seven years I served as a municipal prosecutor and public defender. In addition, as a Superior Court Judge for over thirteen years, although not handling criminal matters, I have presided over hundreds of cases in which I have applied the rules of evidence that govern criminal cases as well as civil cases. I believe my judicial experience, along with my experience as a prosecutor and public defender, have prepared me to handle complex criminal cases. I will attend continuing legal education classes and utilize the services of the Administrative Office of the U.S. Courts to gain the necessary background in all areas of law that would come before me, including federal criminal law and practice.

5. **In your testimony before the committee you discussed your experience coordinating MDL parallel litigation with federal courts. Parallel litigation, in the context of MDL, presents significant challenges because MDL litigation often proceeds alongside unconsolidated state court actions that cannot be removed to federal court. How would unconsolidated state court actions related to MDL proceedings before you in federal court change your case management strategy?**

Response: While an MCL Judge I have coordinated with several federal MDL judges in the area of scheduling, discovery, substantive motions, pre-trial hearings and trial. The Federal Judicial Center’s Manual for Complex Litigation encourages this coordination in order to avoid unnecessary and duplicative court appearances and redundant procedures in an effort to manage the litigation in an efficient manner. If I am fortunate enough to be confirmed as a District Judge, I will continue to encourage and maintain an open dialogue with judges in sister courts, both state and federal, through direct communication with

those judges and/or through the use of liaison counsel with cases both in the MDL and state court proceedings.

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

Response: The most important attribute of a judge is impartiality; namely, an objective application of the law to the facts. I believe my record over the past thirteen years as a Superior Court Judge has demonstrated I possess this attribute.

7. 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: Judges must understand that each case may be a litigant's only interaction with the justice system. Therefore, a judge should be patient, fair and impartial. I believe that, during my thirteen years on the Superior Court bench, I have demonstrated that I meet this standard.

8. 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. Please describe your commitment to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents.

Response: If I am fortunate enough to be confirmed as a District Judge, I will follow all cases decided by the Supreme Court and Third Circuit giving them full force and effect regardless of any personal beliefs I may have.

9. At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on 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: In a case of first impression, I would initially look to the plain meaning of the statute's text. If the language is clear and unambiguous, I would apply its plain meaning. If there were any ambiguity, I would look to similar or analogous Supreme Court or Third Circuit precedent in addition to the canons of statutory construction.

10. 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 best judgment of the merits to decide the case?

Response: I would apply all binding precedents decided by the Supreme Court and Third Circuit regardless of any personal opinions I may have about the binding precedent.

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

Response: Initially, a federal court should not address the constitutionality of a statute unless it is necessary to resolve the case before it. Furthermore, federal statutes are presumed to be constitutional. If there is a reasonable interpretation to a statute that would avoid declaring it unconstitutional, the federal court should employ that interpretation. Only when Congress exceeds its authority or if the statute violates a constitutional provision should a federal court declare a federal statute unconstitutional.

12. 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? Please explain.

Response: No.

13. What assurances or evidence can you give this Committee that, if confirmed, your decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation?

Response: I believe my record as a Superior Court Judge for thirteen years demonstrates that my decisions are grounded in precedent and the text of the law, rather than any underlying political ideology or motivation. If I am fortunate enough to be confirmed as a District Judge, I will continue to maintain this impartial method of adjudicating disputes.

14. What assurances or evidence can you give the Committee and future litigants that you will put aside any personal views and be fair to all who appear before you, if confirmed?

Response: I believe my record as a Superior Court Judge for thirteen years provides sufficient evidence that I have put any personal views aside and applied the rule of law to the facts before me in an objective fashion. If I am fortunate to be confirmed as a District Judge, I will continue to put aside any personal views and be fair to all who appear before me.

15. If confirmed, how do you intend to manage your caseload?

Response: I believe in regular case management conferences and maintaining frequent contact with the lawyers appearing before me. During my thirteen years as a Superior Court Judge, I have remained proactive with the lawyers appearing before me and always encourage constant dialogue with the court, either in person, by telephone or by e-mail. As an MCL judge, I have a docket of approximately 15,000 cases that I actively coordinate with state and federal judges throughout the country. If fortunate enough to be confirmed as a District Judge, I would continue to manage my caseload in the same manner.

16. 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. A judge should and must control the pace and conduct of litigation. As discussed above, this is accomplished by regular contact with counsel either in person or through the use of technology. I also encourage settlement discussions at every stage of the litigation and frequently order individual parties to appear at conferences. In my opinion, allowing litigants to play an active role in the litigation and settlement process provides them with an opportunity to observe how the litigation is evolving and dictate its ultimate resolution.

17. If confirmed, you will be charged with deciding cases and writing opinions. Please describe how you will reach a decision in cases that come before you and to what sources of information you will look for guidance.

Response: I have decided thousands of cases during my thirteen years as a Superior Court Judge. I review the submissions by counsel and authorities they cite, and conduct my own independent research. After reading the submissions, I may schedule oral argument to permit counsel to present their case if I believe it will assist in the resolution of the issues presented. When appropriate, I either rule from the bench or issue a written opinion to ensure cases are decided as expeditiously as possible.

18. President Obama said that deciding the “truly difficult” cases requires applying “one’s deepest values, one’s core concerns, one’s broader perspectives on how the world works, and the depth and breadth of one’s empathy . . . the critical ingredient is supplied by what is in the judge’s heart.” Do you agree with this statement?

Response: I am not familiar with this quote or the context in which it was made. I will make my decisions by applying the rule of law to the facts presented in an objective manner. Any personal beliefs of the judge should not be employed in the decision making process.

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

Response: I received these Questions for the Record from the Office of Legal Policy on October 7, 2015. I reviewed the questions and drafted my answers, which I submitted to the Office of Legal Policy for review. Thereafter I finalized my responses before submitting them to the Committee.

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

Response: Yes.

Written Questions of Senator Jeff Flake
U.S. Senate Committee on the Judiciary
Judicial Nominations
October 5, 2015

Brian R. Martinotti, Nominee, U.S. District Judge for the District of New Jersey

- 1. What is your approach to statutory interpretation? Under what circumstances, if any, should a judge look to legislative history in construing a statute?**

Response: In a case of first impression, I would initially look to the plain meaning of the statute's text. If the language is clear and unambiguous, I would apply its plain meaning. If there were any ambiguity, I would look to similar or analogous Supreme Court or Third Circuit precedent in addition to the canons of statutory construction. To the extent that legislative history is relevant and appropriate I would look to Supreme Court and Third Circuit case law for guidance.

- 2. What is the proper scope of the 10th Amendment to the Constitution? In what circumstances should a judge apply it?**

Response: As the Supreme Court has explained, "the Tenth Amendment makes explicit that the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people..." New York v. United States, 505 U.S. 144, 155 (1992) (quoting U.S. Const. amend. X) (internal marks omitted). Faced with a challenge under the Tenth Amendment, a federal judge should objectively apply the law as promulgated by the Supreme Court and circuit courts. As the Supreme Court stated, "[a]s an initial matter, Congress may not simply commandeer the legislative processes of the States by directly compelling them to enact and enforce a federal regulatory program." Id. at 161 (internal marks and citations omitted).

- 3. Does current standing doctrine foster or impede the ability of litigants to obtain relief in our legal system?**

Response: The standing doctrine, as established by the Supreme Court, recognizes that federal courts are courts of limited jurisdiction. Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992). Similar to the jurisdictional challenges many litigants face, in the event a litigant does not have standing to bring their claims in federal court, there often remains an alternate avenue for redress in the state courts or otherwise.