

Senator Chuck Grassley
Questions for the Record
Patricia M. McCarthy
Nominee, Judge for the U.S. Court of Federal Claims

- 1. Your Senate Questionnaire indicates that your time practicing before the Court of Federal Claims was largely devoted to a single contract termination case. In addition to contract cases, the Court of Federal Claims adjudicates cases pertaining to tax, Fifth Amendment Takings, military and civilian pay, and many other types of claims against the federal government brought by many diverse claimants.**
- a. Do you have any experience in these other areas within the jurisdiction of the Court of Claims?**

Response: Yes. In addition to numerous actions filed in the Court of Federal Claims involving various types of government contracts and fraud counterclaims, I have acted as attorney of record in cases filed in the Court involving Fifth Amendment Takings, civilian pay, and procurement challenges, among other statutory and constitutional claims. As a supervisory attorney for the past 11 years, I have been personally involved in cases filed in the Court involving government contracts, fraud counterclaims, procurement challenges, military and civilian pay, Fifth Amendment Takings, and various other types of statutory and constitutional claims brought against the United States.

In addition, between 2011 and 2013, I served as Editor-in-Chief of *Inside 717*, which is a publication for all members of the United States Court of Federal Claims Bar Association that summarizes, in a neutral fashion, new and noteworthy cases issued in each of the Court's diverse areas of subject-matter jurisdiction, and I obtained familiarity with those subject areas of the Court's jurisdiction in which I have not been personally involved as either attorney of record or a supervisory attorney. Moreover, I have served as a member of the Board of Governors of the Court's bar association and attended judicial and bench and bar conferences.

- b. What assurances or evidence can you give the Committee that you will be able to preside over the wide range of cases that arise in the Court of Federal Claims?**

Response: In addition to having substantial experience, as either attorney of record or as supervisory attorney, in numerous diverse areas of the Court's subject-matter jurisdiction, I have demonstrated, throughout my career, an ability to quickly master various technical and specialized areas of law. For example, in 2003, when I was promoted to a supervisory attorney, I assumed responsibility for assisting in the management of the Commercial Litigation Branch's international trade group, whose attorneys appear in the Court of International Trade and the Court of Appeals for the Federal Circuit, and represent the

government in highly technical and specialized areas of law. These were areas of law with which I had had little familiarity at the time, but I successfully achieved the necessary knowledge and understanding of the complex statutory and regulatory schemes underlying the claims presented in customs and trade cases.

More recently, in 2008, I had the privilege of leading a team of government attorneys in the first state-to-state arbitration ever brought in what was then known as the London Court of International Arbitration (now LCIA). Because the Department of Justice typically does not represent the United States in international arbitrations, this high-profile arbitration against Canada required my co-counsel and me, as counsel of record, to obtain, on a highly-expedited basis, a thorough understanding of the substantive law and procedures of international arbitration. The United States ultimately prevailed.

Given my extensive base of substantive expertise in many of the Court's areas of subject-matter jurisdiction, and my demonstrated ability, throughout my career, to quickly learn and master new and complex areas of law, I can assure the Committee that I will be able to preside over the wide range of cases that arise in the Court of Federal Claims, should I be so fortunate as to be confirmed and appointed as a Judge of the Court.

2. As an attorney for the Department of Justice it is your responsibility to zealously represent the United States. If confirmed, how do you plan to transition to neutrally presiding over cases?

Response: The role of advocates, which is to zealously represent their clients' interests by advancing good-faith positions reasonably based in law and fact, differs greatly from that of a judge, which is to ascertain the law through a neutral examination of applicable constitutional provisions, statutes, regulations, and judicial precedent, and then impartially apply that law to thoroughly-understood facts. Should I be fortunate to be confirmed and appointed as a judge of the Court of Federal Claims, I would be fully mindful of, and committed to, my obligation to act in an impartial, neutral, transparent, and fair manner. I would draw upon experience in working with members of the private and public bars of multiple courts to find common ground among practitioners. In transitioning into the role of a judge, I would approach a case from a neutral position, ascertain the law in an unbiased manner, gain a thorough understanding of the facts, and then faithfully apply the law to the facts of the case. I would then communicate that process in language that is clear and accessible to allow all parties to have respect for and confidence in the decision, even if they do not necessarily agree with the outcome.

3. 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: As an advocate, I would never want to appear before a judge whose conduct and decision-making are influenced by personal views. I can assure the Committee that,

were I fortunate to be confirmed and appointed as a judge of the Court, I would treat all who appear before me with impartiality, fairness, and respect. As evidence, during my 20-year career as an advocate for the United States, I have consistently advanced positions that are in the government's best interests, without regard to my personal views. Before I joined the Department of Justice, I represented a variety of private clients for over five years, without regard to my personal views. Finally, I have worked with members of the bars of the Court of Federal Claims, the Court of International Trade, and the Federal Circuit, to find common ground and believe that I have a reputation for fairness, collegiality, and integrity.

4. 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: As a career government attorney representing the United States over the course of multiple administrations, I have never allowed my legal analysis to be in any way affected by political ideology or motivation. If I were fortunate to be confirmed, I can assure the Committee unequivocally that each and every one of my decisions would be grounded in the text of the law and in precedent interpreting that text, without regard to any political ideology or motivation.

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

Response: A judge must possess, above all, an abiding respect for the rule of law. I possess this attribute.

6. 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 should be fair, patient, well-prepared, and fully engaged in the law, the record, and the parties' respective positions. A judge should also be firm and efficient, while respectful toward all who appear in the courtroom, including counsel, witnesses, clerks, court staff, and members of the public. Further, a judge must behave always with dignity and respect for the Court's rules and procedures. I consider all of these elements of judicial temperament to be important, and I believe I meet them all.

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

Response: If I were fortunate to be confirmed and appointed as a judge of the Court of Federal Claims, I would manage my caseload by conducting weekly docket reviews with my law clerks and judicial assistant, reviewing new complaints immediately upon their filing and assignment, and engaging the parties in status conferences to ensure the expeditious and efficient resolution of the claims presented, including through alternative dispute resolution where appropriate. In addition, I would consult with more experienced colleagues regarding their views of the best practices in case management. Most

importantly, I would undertake to issue decisions in cases as expeditiously as possible, without compromising careful analysis and full and complete consideration of the parties' positions.

8. 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. Judges play a critical role in controlling the pace and conduct of litigation. In addition to the specific steps outlined in my response to Question 7, if I were fortunate to be confirmed, I would ensure that scheduling orders are clear and achievable and enforce them to ensure that litigation is efficiently resolved.

9. In general, Supreme Court precedents are binding on all lower federal courts and Federal Circuit Court precedents are binding on the Court of Federal Claims. 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: Should I be fortunate to be confirmed and appointed as a judge of the Court of Federal Claims, I would be wholly committed to faithfully following and giving full force and effect to Supreme Court and Federal Circuit precedent.

10. In your view, are there particular challenges facing the Court of Claims? Do you see any areas where improvement is needed?

Response: Currently the Court of Federal Claims faces an increasingly heavy caseload, particularly in the form of procurement challenges brought by disappointed bidders and offerors. Because the relief sought in those cases is injunctive in nature, they tend to be highly expedited. Accordingly, the Court currently must ensure that, within its limited resources, it can efficiently resolve expedited procurement challenges while not delaying resolution of its other cases. If confirmed, I would work hard to ensure that the Court functions as effectively as possible, including working to improve the Court if necessary, but I am not now in a position to identify any specific area where improvement is needed.