

**Senator Grassley
Questions for the Record**

**Robert F. Rossiter, Jr.
Nominee, U.S. District Judge for the District of Nebraska**

1. Throughout your career as a litigator, you have successfully represented many employers in lawsuits brought by former employees alleging sexual harassment and religious discrimination in the workplace. Because of this, some future litigants who bring similar claims against their employers could be wary of appearing before you.

a. If confirmed, how will you reassure these litigants and ensure all sides receive a fair trial?

Response: I take seriously and will abide by the oath taken under 28 U.S. Code § 453 and will "faithfully and impartially discharge and perform all the duties incumbent upon me. . . ." I understand the difference between the role of an advocate and that of a United States District Judge. If confirmed, I assure the Committee and any litigants that I will act impartially and with an open mind.

b. Do you believe that you have any bias toward employees bringing sexual harassment or religious discrimination suits?

Response: No. While I have handled this type of litigation throughout my career, one of my duties to my clients was to objectively advise them including when claims brought against them had merit. I believe that I can view such suits in an objective and impartial way.

2. You have made donations to partisan candidates running for public offices. If confirmed, what assurances can you give the Committee that you will be fair to all litigants who come before you, particularly those with different political beliefs than your own?

Response: I have made very limited political contributions over time. I have made small contributions to candidates of both major political parties. I assure the Committee that any such contributions would not be indicative of or lead to any political leanings becoming a part of my impartial decision making process as a United States District Judge.

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

Response: I believe the most important attribute of a judge is fairness. That term includes patience, an even temperament, and an unbiased view of the facts and application of the law to each case. I believe I have those attributes and would utilize them in performing my duties, if confirmed.

4. **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: Judicial temperament is important to the fair and impartial application of the law. A judge must be patient and respectful in dealing with litigants, attorneys, and witnesses; and the judge's actions must engender respect for the court and the rule of law. I believe that I have displayed the appropriate temperament through my interactions with other attorneys, litigants, witnesses, and judges in numerous cases during my years of practice.

5. **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: Should I be confirmed, I will follow all precedents of the United States Supreme Court and of the United States Court of Appeals for the Eighth Circuit. My personal agreement or disagreement with such precedent would have no place in my decision making process.

6. **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: If faced with a case of first impression involving a statute, and if the plain language of the statute were ambiguous, I would apply the established rules of statutory construction. If that process would not be dispositive, I would view similar cases from the United States Supreme Court, the Eighth Circuit Court of Appeals, and if necessary, similar cases from other districts and circuit courts.

7. **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 follow and apply the precedents of either the United States Supreme Court or the United States Court of Appeals for the Eighth Circuit. Any belief that either court might have erred would not provide a basis to stray from that precedent.

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

Response: I would deal only with the constitutionality of a statute if it were necessary to decide the case. Consistent with precedent, I would start with the presumption that the

statute is constitutional. Finding that a statute is unconstitutional should occur only in the very limited circumstance involved when Congress has exceeded its authority or a statute unquestionably is in violation of the Constitution.

- 9. 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: I do not believe it is proper for a United States District Judge to rely on foreign law or the views of the "world community" when striving to determine the meaning of the United States Constitution. If confirmed, I would not rely upon or apply foreign law or the views of the "world community". I would apply law and precedents as established by the United States Supreme Court and the United States Court of Appeals for the Eighth Circuit.

- 10. 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: If confirmed, my decisions would be grounded in precedent and the text of the law. The oath I would take would require me to apply precedent and statutory text rather than relying upon any political ideology, motivation or other bias.

- 11. 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: If confirmed, I assure this committee and future litigants that I would put aside any personal views I have on issues and would be fair to all who appear before me. I would seriously and respectfully carry out the oath of office for a United States District Court judge.

- 12. If confirmed, how do you intend to manage your caseload?**

Response: As a practitioner for over 30 years, I have seen the hardship that ineffective docket control, in some courts, causes for attorneys and litigants. Ongoing case management is essential to the timely and fair determination of pending cases. If confirmed, I would follow the procedures and rules of the United States District Court and utilize the tools available to me, including technology, court staff, and magistrate judges to assist in moving cases towards disposition. Other tools would include the use of status conferences, scheduling orders, and the timely determination of motions filed by the parties.

- 13. 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: Judges play a critical role in controlling the pace and conduct of litigation. If I am confirmed, I would actively utilize the tools set forth in question 12 to control my docket.

- 14. 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: If confirmed, I would decide cases on my docket by carefully reviewing and considering the legal issues raised by the parties consistent with statutory language and precedent. I would impartially review the legal arguments of the parties and would apply applicable statutes and precedent to the relevant facts.

- 15. 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 statement or the context in which it was presented. Having said that, I believe that a judge should decide cases by following the law, including statutes and any precedent. I believe a judge should fairly and impartially apply that law to the relevant facts of each case.

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

Response: On October 7, 2015, the foregoing questions were forwarded to me by the Office of Legal Policy at the United States Department of Justice. I reviewed and considered each of the questions proposed and drafted my responses. Following the drafting of my responses, I did have discussions with an attorney from the Office of Legal Policy at the Department of Justice. Following those conversations, I finalized my responses and requested that the Department of Justice attorney submit my answers to the Senate Judiciary Committee.

- 17. 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

Robert F. Rossiter, Jr., Nominee, U.S. District Judge for the District of Nebraska

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: If faced with a case of first impression involving a statute, and if the plain language of the statute were ambiguous, I would apply the established rules of statutory construction. If that process would not be dispositive, I would view similar cases from the United States Supreme Court, the Eighth Circuit Court of Appeals, and if necessary, similar cases from other districts and circuit courts. A judge should look at the legislative history of a statute only when relevant and appropriate under United States Supreme Court and Eighth Circuit Court of Appeals precedent. *See, e.g., Argus Leader Media v. United States Department of Agriculture*, 740 F.3d 1172, 1175-76 (8th Cir. 2014).

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

Response: The 10th Amendment of the Constitution provides 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." In a case involving a 10th Amendment challenge, I would apply controlling precedent of the United States Supreme Court and the Eighth Circuit Court of Appeals.

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

Response: Article 3 of the United States Constitution defines judicial power of the federal courts to deciding actual "cases" or "controversies". The United States Supreme Court has held that "[o]ne essential aspect of this requirement is that any person invoking the power of a federal court must demonstrate standing to do so. This requires the litigant to prove that he has suffered a concrete and particularized injury that is fairly traceable to the challenged conduct, and is likely to be redressed by a favorable judicial decision. In other words, for a federal court to have authority under the Constitution to settle a dispute, the party before it must seek a remedy for personal and tangible harm." *Hollingsworth v. Perry*, 133 S. Ct. 2652, 2661 (2013). If confirmed, I would apply applicable precedent relating to the issue of standing. I am unable to comment generally on whether precedent regarding standing either fosters or impedes the ability of litigants to obtain relief in our legal system.