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Washington, D.C., 20005

Chairman Charles Grassley and Ranking Member Dianne Feinstein
United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C., 20510-6050

April 13, 2018

Dear Chairman Grassley and Ranking Member Feinstein:

During the years that the two of you have served on this Committee, the questionnaire that each judicial nominee fills out ahead of his or her confirmation hearing has become more thorough, as over time, the Committee has requested greater specificity from district court, circuit court and Supreme Court nominees on their employment history and casework. With nominees ever more reluctant to answer direct questions during their hearings, these changes have helped senators better evaluate individuals nominated for lifetime judgeships.

One aspect of the SJQ that has not changed in several decades, however, is the set of questions – just two – about nominees’ views on transparency and the ethical obligations of federal jurists. The first question, under the heading “Recusal,” asks nominees who have served as judges to “identify the basis by which you have assessed the necessity or propriety of recusal” for cases they have participated in, with their answers comprising a list local recusal rules and their previous jobs, cases or relations that could yield future disqualifications.

The second such question, under “Potential Conflicts of Interest,” asks nominees to “identify the [people], parties, categories of litigation and financial arrangements that are likely to present potential conflicts of interest” and to “explain how you would address any such conflict if it were to arise.” For this answer, nominees typically reiterate much of their earlier “Recusal” response and add that they “would resolve any conflict of interest by looking to the letter and spirit of the Code of Conduct for United States Judges [...], the Ethics Reform Act of 1989 [and] 28 U.S.C. 455,” which is the federal recusal statute. (That quote was from the 2005 SJQ of then-Judge John Roberts, though nearly verbatim answers were provided by then-Judges Sonia Sotomayor, Samuel Alito and Gorsuch in their SJQs.)

These milquetoast responses leave transparency advocates like myself wanting.

Given our changing world and the ever-present need for citizens to maintain their faith in the judiciary, I ask that you consider amending the questionnaire to ask about issues that more comprehensively capture the actions and attitudes of a modern nominee. I submit these questions for your consideration:

1. As of 2018, all U.S. courts of appeals release argument audio online within 24 hours, and three circuits have permitted live audio streaming. Do you view **same-day and live audio** more as distractions or as tools for educating the public about the judiciary’s work?
2. Though judges and justices are required to recuse themselves from cases and petitions in which their investments are a named party, most federal judges do not own individual stocks, instead choosing to invest in the type of blended funds and retirement accounts that are unlikely to induce recusals. **What are views on holding individuals stock**, and if you do own individual stock, **would you consider placing your securities into a blind trust** for the duration of your judicial service?
3. As you likely know, several outside groups are supporting your confirmation, and others are opposing it. To the extent that you are aware, are any of your current or former colleagues, family or close friends involved in funding these efforts, and if so, **will you recuse yourself** from any cases that reach your court involving these groups and their funders should you be confirmed?
4. Please provide a **list of all your social media handles** – including Facebook, Twitter and Instagram – and a list of websites on which you have submitted blog posts.

I know you share the goal of improved transparency in the judiciary, and I hope you consider amending the SJQ as a means of achieving that.

Sincerely,
Gabe Roth
Fix the Court
Executive Director