

JUDICIAL IMPROVEMENTS ACT OF 2002

MAY 14, 2002.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. SENSENBRENNER, from the Committee on the Judiciary, submitted the following

R E P O R T

[To accompany H.R. 3892]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 3892) to amend title 28, United States Code, to make certain modifications in the judicial discipline procedures, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Judicial Improvements Act of 2002”.

**SEC. 2. JUDICIAL DISCIPLINE PROCEDURES.**

(a) IN GENERAL.—Part I of title 28, United States Code, is amended by inserting after chapter 15 the following new chapter:

**“CHAPTER 16—COMPLAINTS AGAINST JUDGES AND JUDICIAL DISCIPLINE**

“Sec.

“351. Complaints; judge defined.

“352. Review of complaint by chief judge.

“353. Special committees.

“354. Action by judicial council.

“355. Action by Judicial Conference.

“356. Subpoena power.

“357. Review of orders and actions.

“358. Rules.

“359. Restrictions.

“360. Disclosure of information.

“361. Reimbursement of expenses.

“362. Other provisions and rules not affected.

“363. Court of Federal Claims, Court of International Trade, Court of Appeals for the Federal Circuit.

“364. Effect of felony conviction.

**“§ 351. Complaints; judge defined**

“(a) FILING OF COMPLAINT BY ANY PERSON.—Any person alleging that a judge has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts, or alleging that such judge is unable to discharge all the duties of office by reason of mental or physical disability, may file with the clerk of the court of appeals for the circuit a written complaint containing a brief statement of the facts constituting such conduct.

“(b) IDENTIFYING COMPLAINT BY CHIEF JUDGE.—In the interests of the effective and expeditious administration of the business of the courts and on the basis of information available to the chief judge of the circuit, the chief judge may, by written order stating reasons therefor, identify a complaint for purposes of this chapter and thereby dispense with filing of a written complaint.

“(c) TRANSMITTAL OF COMPLAINT.—Upon receipt of a complaint filed under subsection (a), the clerk shall promptly transmit the complaint to the chief judge of the circuit, or, if the conduct complained of is that of the chief judge, to that circuit judge in regular active service next senior in date of commission (hereafter, for purposes of this chapter only, included in the term ‘chief judge’). The clerk shall simultaneously transmit a copy of the complaint to the judge whose conduct is the subject of the complaint. The clerk shall also transmit a copy of any complaint identified under subsection (b) to the judge whose conduct is the subject of the complaint.

“(d) DEFINITIONS.—In this chapter—

“(1) the term ‘judge’ means a circuit judge, district judge, bankruptcy judge, or magistrate judge; and

“(2) the term ‘complainant’ means the person filing a complaint under subsection (a) of this section.

**“§ 352. Review of complaint by chief judge**

“(a) EXPEDITIOUS REVIEW; LIMITED INQUIRY.—The chief judge shall expeditiously review any complaint received under section 351(a) or identified under section 351(b). In determining what action to take, the chief judge may conduct a limited inquiry for the purpose of determining—

“(1) whether appropriate corrective action has been or can be taken without the necessity for a formal investigation; and

“(2) whether the facts stated in the complaint are either plainly untrue or are incapable of being established through investigation.

For this purpose, the chief judge may request the judge whose conduct is complained of to file a written response to the complaint. Such response shall not be made available to the complainant unless authorized by the judge filing the response. The chief judge or his or her designee may also communicate orally or in writing with the complainant, the judge whose conduct is complained of, and any other person who may have knowledge of the matter, and may review any transcripts or other relevant documents. The chief judge shall not undertake to make findings of fact about any matter that is reasonably in dispute.

“(b) ACTION BY CHIEF JUDGE FOLLOWING REVIEW.—After expeditiously reviewing a complaint under subsection (a), the chief judge, by written order stating his or her reasons, may—

“(1) dismiss the complaint—

“(A) if the chief judge finds the complaint to be—

“(i) not in conformity with section 351(a);

“(ii) directly related to the merits of a decision or procedural ruling;

or

“(iii) frivolous, lacking sufficient evidence to raise an inference that misconduct has occurred, or containing allegations which are incapable of being established through investigation; or

“(B) when a limited inquiry conducted under subsection (a) demonstrates that the allegations in the complaint lack any factual foundation or are conclusively refuted by objective evidence; or

“(2) conclude the proceeding if the chief judge finds that appropriate corrective action has been taken or that action on the complaint is no longer necessary because of intervening events.

The chief judge shall transmit copies of the written order to the complainant and to the judge whose conduct is the subject of the complaint.

“(c) REVIEW OF ORDERS OF CHIEF JUDGE.—A complainant or judge aggrieved by a final order of the chief judge under this section may petition the judicial council of the circuit for review thereof. The denial of a petition for review of the chief judge’s order shall be final and conclusive and shall not be judicially reviewable on appeal or otherwise.

“(d) REFERRAL OF PETITIONS FOR REVIEW TO PANELS OF THE JUDICIAL COUNCIL.—Each judicial council may, pursuant to rules prescribed under section 358, refer a petition for review filed under subsection (c) to a panel of no fewer than 5 members of the council, at least 2 of whom shall be district judges.

**“§ 353. Special committees**

“(a) APPOINTMENT.—If the chief judge does not enter an order under section 352(b), the chief judge shall promptly—

“(1) appoint himself or herself and equal numbers of circuit and district judges of the circuit to a special committee to investigate the facts and allegations contained in the complaint;

“(2) certify the complaint and any other documents pertaining thereto to each member of such committee; and

“(3) provide written notice to the complainant and the judge whose conduct is the subject of the complaint of the action taken under this subsection.

“(b) CHANGE IN STATUS OR DEATH OF JUDGES.—A judge appointed to a special committee under subsection (a) may continue to serve on that committee after becoming a senior judge or, in the case of the chief judge of the circuit, after his or her term as chief judge terminates under subsection (a)(3) or (c) of section 45. If a judge appointed to a committee under subsection (a) dies, or retires from office under section 371(a), while serving on the committee, the chief judge of the circuit may appoint another circuit or district judge, as the case may be, to the committee.

“(c) INVESTIGATION BY SPECIAL COMMITTEE.—Each committee appointed under subsection (a) shall conduct an investigation as extensive as it considers necessary, and shall expeditiously file a comprehensive written report thereon with the judicial council of the circuit. Such report shall present both the findings of the investigation and the committee’s recommendations for necessary and appropriate action by the judicial council of the circuit.

**“§ 354. Action by judicial council**

“(a) ACTIONS UPON RECEIPT OF REPORT.—

“(1) ACTIONS.—The judicial council of a circuit, upon receipt of a report filed under section 353(c)—

“(A) may conduct any additional investigation which it considers to be necessary;

“(B) may dismiss the complaint; and

“(C) if the complaint is not dismissed, shall take such action as is appropriate to assure the effective and expeditious administration of the business of the courts within the circuit.

“(2) DESCRIPTION OF POSSIBLE ACTIONS IF COMPLAINT NOT DISMISSED.—

“(A) IN GENERAL.—Action by the judicial council under paragraph (1)(C) may include—

“(i) ordering that, on a temporary basis for a time certain, no further cases be assigned to the judge whose conduct is the subject of a complaint;

“(ii) censuring or reprimanding such judge by means of private communication; and

“(iii) censuring or reprimanding such judge by means of public announcement.

“(B) FOR ARTICLE III JUDGES.—If the conduct of a judge appointed to hold office during good behavior is the subject of the complaint, action by the judicial council under paragraph (1)(C) may include—

“(i) certifying disability of the judge pursuant to the procedures and standards provided under section 372(b); and

“(ii) requesting that the judge voluntarily retire, with the provision that the length of service requirements under section 371 of this title shall not apply.

“(C) FOR MAGISTRATE JUDGES.—If the conduct of a magistrate judge is the subject of the complaint, action by the judicial council under paragraph (1)(C) may include directing the chief judge of the district of the magistrate judge to take such action as the judicial council considers appropriate.

“(3) LIMITATIONS ON JUDICIAL COUNCIL REGARDING REMOVALS.—

“(A) ARTICLE III JUDGES.—Under no circumstances may the judicial council order removal from office of any judge appointed to hold office during good behavior.

“(B) MAGISTRATE AND BANKRUPTCY JUDGES.—Any removal of a magistrate judge under this subsection shall be in accordance with section 631 and any removal of a bankruptcy judge shall be in accordance with section 152.

“(4) NOTICE OF ACTION TO JUDGE.—The judicial council shall immediately provide written notice to the complainant and to the judge whose conduct is the subject of the complaint of the action taken under this subsection.

“(b) REFERRAL TO JUDICIAL CONFERENCE.—

“(1) IN GENERAL.—In addition to the authority granted under subsection (a), the judicial council may, in its discretion, refer any complaint under section 351, together with the record of any associated proceedings and its recommendations for appropriate action, to the Judicial Conference of the United States.

“(2) SPECIAL CIRCUMSTANCES.—In any case in which the judicial council determines, on the basis of a complaint and an investigation under this chapter, or on the basis of information otherwise available to the judicial council, that a judge appointed to hold office during good behavior may have engaged in conduct—

“(A) which might constitute one or more grounds for impeachment under article II of the Constitution, or

“(B) which, in the interest of justice, is not amenable to resolution by the judicial council,

the judicial council shall promptly certify such determination, together with any complaint and a record of any associated proceedings, to the Judicial Conference of the United States.

“(3) NOTICE TO COMPLAINANT AND JUDGE.—A judicial council acting under authority of this subsection shall, unless contrary to the interests of justice, immediately submit written notice to the complainant and to the judge whose conduct is the subject of the action taken under this subsection.

#### “§ 355. Action by Judicial Conference

“(a) IN GENERAL.—Upon referral or certification of any matter under section 354(b), the Judicial Conference, after consideration of the prior proceedings and such additional investigation as it considers appropriate, shall by majority vote take such action, as described in section 354(a)(1)(C) and (2), as it considers appropriate.

“(b) IF IMPEACHMENT WARRANTED.—

“(1) IN GENERAL.—If the Judicial Conference concurs in the determination of the judicial council, or makes its own determination, that consideration of impeachment may be warranted, it shall so certify and transmit the determination and the record of proceedings to the House of Representatives for whatever action the House of Representatives considers to be necessary. Upon receipt of the determination and record of proceedings in the House of Representatives, the Clerk of the House of Representatives shall make available to the public the determination and any reasons for the determination.

“(2) IN CASE OF FELONY CONVICTION.—If a judge has been convicted of a felony under State or Federal law and has exhausted all means of obtaining direct review of the conviction, or the time for seeking further direct review of the conviction has passed and no such review has been sought, the Judicial Conference may, by majority vote and without referral or certification under section 354(b), transmit to the House of Representatives a determination that consideration of impeachment may be warranted, together with appropriate court records, for whatever action the House of Representatives considers to be necessary.

#### “§ 356. Subpoena power

“(a) JUDICIAL COUNCILS AND SPECIAL COMMITTEES.—In conducting any investigation under this chapter, the judicial council, or a special committee appointed under section 353, shall have full subpoena powers as provided in section 332(d).

“(b) JUDICIAL CONFERENCE AND STANDING COMMITTEES.—In conducting any investigation under this chapter, the Judicial Conference, or a standing committee appointed by the Chief Justice under section 331, shall have full subpoena powers as provided in that section.

**“§ 357. Review of orders and actions**

“(a) REVIEW OF ACTION OF JUDICIAL COUNCIL.—A complainant or judge aggrieved by an action of the judicial council under section 354 may petition the Judicial Conference of the United States for review thereof.

“(b) ACTION OF JUDICIAL CONFERENCE.—The Judicial Conference, or the standing committee established under section 331, may grant a petition filed by a complainant or judge under subsection (a).

“(c) NO JUDICIAL REVIEW.—Except as expressly provided in this section and section 352(c), all orders and determinations, including denials of petitions for review, shall be final and conclusive and shall not be judicially reviewable on appeal or otherwise.

**“§ 358. Rules**

“(a) IN GENERAL.—Each judicial council and the Judicial Conference may prescribe such rules for the conduct of proceedings under this chapter, including the processing of petitions for review, as each considers to be appropriate.

“(b) REQUIRED PROVISIONS.—Rules prescribed under subsection (a) shall contain provisions requiring that—

“(1) adequate prior notice of any investigation be given in writing to the judge whose conduct is the subject of a complaint under this chapter;

“(2) the judge whose conduct is the subject of a complaint under this chapter be afforded an opportunity to appear (in person or by counsel) at proceedings conducted by the investigating panel, to present oral and documentary evidence, to compel the attendance of witnesses or the production of documents, to cross-examine witnesses, and to present argument orally or in writing; and

“(3) the complainant be afforded an opportunity to appear at proceedings conducted by the investigating panel, if the panel concludes that the complainant could offer substantial information.

“(c) PROCEDURES.—Any rule prescribed under this section shall be made or amended only after giving appropriate public notice and an opportunity for comment. Any such rule shall be a matter of public record, and any such rule promulgated by a judicial council may be modified by the Judicial Conference. No rule promulgated under this section may limit the period of time within which a person may file a complaint under this chapter.

**“§ 359. Restrictions**

“(a) RESTRICTION ON INDIVIDUALS WHO ARE SUBJECT OF INVESTIGATION.—No judge whose conduct is the subject of an investigation under this chapter shall serve upon a special committee appointed under section 353, upon a judicial council, upon the Judicial Conference, or upon the standing committee established under section 331, until all proceedings under this chapter relating to such investigation have been finally terminated.

“(b) AMICUS CURIAE.—No person shall be granted the right to intervene or to appear as amicus curiae in any proceeding before a judicial council or the Judicial Conference under this chapter.

**“§ 360. Disclosure of information**

“(a) CONFIDENTIALITY OF PROCEEDINGS.—Except as provided in section 355, all papers, documents, and records of proceedings related to investigations conducted under this chapter shall be confidential and shall not be disclosed by any person in any proceeding except to the extent that—

“(1) the judicial council of the circuit in its discretion releases a copy of a report of a special committee under section 353(c) to the complainant whose complaint initiated the investigation by that special committee and to the judge whose conduct is the subject of the complaint;

“(2) the judicial council of the circuit, the Judicial Conference of the United States, or the Senate or the House of Representatives by resolution, releases any such material which is believed necessary to an impeachment investigation or trial of a judge under article I of the Constitution; or

“(3) such disclosure is authorized in writing by the judge who is the subject of the complaint and by the chief judge of the circuit, the Chief Justice, or the chairman of the standing committee established under section 331.

“(b) PUBLIC AVAILABILITY OF WRITTEN ORDERS.—Each written order to implement any action under section 354(a)(1)(C), which is issued by a judicial council, the Judicial Conference, or the standing committee established under section 331, shall

be made available to the public through the appropriate clerk's office of the court of appeals for the circuit. Unless contrary to the interests of justice, each such order shall be accompanied by written reasons therefor.

**“§ 361. Reimbursement of expenses**

“Upon the request of a judge whose conduct is the subject of a complaint under this chapter, the judicial council may, if the complaint has been finally dismissed under section 354(a)(1)(B), recommend that the Director of the Administrative Office of the United States Courts award reimbursement, from funds appropriated to the Federal judiciary, for those reasonable expenses, including attorneys' fees, incurred by that judge during the investigation which would not have been incurred but for the requirements of this chapter.

**“§ 362. Other provisions and rules not affected**

“Except as expressly provided in this chapter, nothing in this chapter shall be construed to affect any other provision of this title, the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure, the Federal Rules of Appellate Procedure, or the Federal Rules of Evidence.

**“§ 363. Court of Federal Claims, Court of International Trade, Court of Appeals for the Federal Circuit**

“The United States Court of Federal Claims, the Court of International Trade, and the Court of Appeals for the Federal Circuit shall each prescribe rules, consistent with the provisions of this chapter, establishing procedures for the filing of complaints with respect to the conduct of any judge of such court and for the investigation and resolution of such complaints. In investigating and taking action with respect to any such complaint, each such court shall have the powers granted to a judicial council under this chapter.

**“§ 364. Effect of felony conviction**

“In the case of any judge or judge of a court referred to in section 363 who is convicted of a felony under State or Federal law and has exhausted all means of obtaining direct review of the conviction, or the time for seeking further direct review of the conviction has passed and no such review has been sought, that judge shall not hear cases unless the judicial council of the circuit (or, in the case of a judge of a court referred to in section 363, that court) determines otherwise.”

(b) CONFORMING AMENDMENT.—The table of chapters for part I of title 28, United States Code, is amended by inserting after the item relating to chapter 15 the following new item:

“16. Complaints against judges and judicial discipline ..... 351”.

**SEC. 3. TECHNICAL AMENDMENTS.**

(a) RETIREMENT FOR DISABILITY.—(1) Section 372 of title 28, United States Code, is amended—

(A) in the section caption by striking “; **judicial discipline**”; and

(B) by striking subsection (c).

(2) The item relating to section 372 in the table of sections for chapter 17 of title 28, United States Code, is amended by striking “; judicial discipline”.

(b) JUDICIAL CONFERENCE.—Section 331 of title 28, United States Code, is amended in the fourth undesignated paragraph by striking “section 372(c)” each place it appears and inserting “chapter 16”.

(c) JUDICIAL COUNCILS.—Section 332 of title 28, United States Code, is amended—

(1) in subsection (d)(2)—

(A) by striking “section 372(c) of this title” and inserting “chapter 16 of this title”; and

(B) by striking “372(c)(4)” and inserting “353”; and

(2) by striking the second subsection designated as subsection (h).

(d) RECALL OF BANKRUPTCY JUDGES AND MAGISTRATE JUDGES.—Section 375(d) of title 28, United States Code, is amended by striking “section 372(c)” and inserting “chapter 16”.

(e) DIRECTOR OF THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS.—Section 604 of title 28, United States Code, is amended—

(1) in subsection (a)(20)—

(A) in subparagraph (B), by striking “372(c)(11)” and inserting “358”; and

(B) in subparagraph (C), by striking “372(c)(15)” and inserting “360(b)”; and

(2) in subsection (h)—

(A) in paragraph (1), by striking “section 372” each place it appears and inserting “chapter 16”; and

(B) in paragraph (2), by striking “section 372(c)” and inserting “chapter 16”.

(f) COURT OF APPEALS FOR VETERANS CLAIMS.—Section 7253(g) of title 38, United States Code, is amended—

(1) in paragraph (1)—

(A) by striking “section 372(c)” and inserting “chapter 16”; and

(B) by striking “such section” and inserting “such chapter”;

(2) in paragraph (2)—

(A) in the first sentence, by striking “paragraphs (7) through (15) of section 372(c)” and inserting “sections 354(b) through 360”; and

(B) in the second sentence, by striking “paragraph (7) or (8) of section 372(c)” and inserting “section 354(b) or 355”; and

(3) in paragraph (3)(B), by striking “372(c)(16)” and inserting “361”.

#### PURPOSE AND SUMMARY

The purpose of H.R. 3892, the “Judicial Improvements Act of 2002,” is to reorganize and clarify the existing statutory mechanism that allows individuals to file complaints against Article III judges. These reforms will offer more guidance to circuit chief judges when evaluating individual complaints, while providing individuals with more insight as to the disposition of their cases. The overall reorganization will make the process of learning about and filing a complaint more user-friendly.

#### BACKGROUND AND NEED FOR THE LEGISLATION

The statutory mechanism by which citizens may register complaints against sitting Federal judges is the “Judicial Councils Reform and Judicial Conduct and Disability Act of 1980” (the “Act” or the “1980 Act”).<sup>1</sup> One of the contributors to the development and implementation of the Act observed that

[it] was the product of extensive dialogues between the legislative and judicial branches of government. Congress made it . . . evident to the judiciary that there be in place a formal and credible supplement to the impeachment process for resolving complaints of misconduct or disability brought against Federal judges, while the judiciary revealed to Congress its concern that any such system not prove to be a cure worse than the disease. . . . The 1980 Act recognized that judicial independence and public accountability are not mutually exclusive. [It] satisfied the constitutional parameters by asking the judiciary to self-regulate and by reserving removal authority to the House and Senate. The Act establishes procedures and mechanisms within the judicial branch to consider and respond to complaints against judges. Most complaints are handled initially by the chief judges of the circuits and then by the judicial councils of the circuits, but when impeachable offenses are identified, the councils and the Judicial Conference are empowered to refer the matter directly to the Congress.<sup>2</sup>

<sup>1</sup>28 U.S.C. § 372(c).

<sup>2</sup>*Operations of Federal Judicial Misconduct Statutes: Hearings Before the Subcomm. On Courts, the Internet, and Intellectual Property of the House Comm. on the Judiciary*, 107th Cong., 1st Sess. [hereinafter “Subcommittee Hearing”] 56, 58 (testimony of Michael J. Remington).

The Act and its self-regulatory construct, for the most part, have been generally well-received over the past 22 years by Congress, the Judiciary, and legal critics. At the same time, and not surprisingly, it has also inspired a body of scholarly critique and evaluation<sup>3</sup> which has identified select provisions within the statute that could be improved upon to ensure that legitimate complaints are more thoroughly evaluated without diminishing the independence of the Judiciary.

Given that Congress has not thoroughly evaluated the operations of the Act in more than a decade, and mindful of its oversight responsibilities under House rules and the U.S. Constitution, the Subcommittee on Courts, the Internet, and Intellectual Property conducted a November 29, 2001, hearing on the judicial misconduct statutes. In the wake of the hearing and based on testimony<sup>4</sup> received at that time, the Committee now finds that the following provisions within the Act should be revised:

1. The Act should be reorganized as a separate chapter within title 28 of the U.S. Code so as to publicize its existence and to facilitate its use.
2. The power of a circuit chief judge to conduct a “limited inquiry” should be defined more clearly, both for the benefit of the chief judge in articulating reasons for disposing of a case and for a complainant who wishes to understand such a disposition.
3. The concept of dismissing a case for “frivolousness” should be expanded upon for the same reason.
4. A judicial council should be given the explicit authority to refer a complaint to a five-member panel for greater scrutiny.

In sum, the Committee finds that the Act functions well but could function better. These changes, if implemented pursuant to enactment of H.R. 3892, will respond to the needs of chief judges, judicial councils, and the Judicial Conference in understanding their obligations under the Act. This legislation also addresses the concerns of complainants and the American public who must have confidence that the application of the Act is premised on fairness and accessibility.

#### HEARINGS

The Subcommittee on Courts, the Internet, and Intellectual Property conducted an oversight hearing on the Operation of Federal Judicial Misconduct Statutes<sup>5</sup> and Recusal Statutes on November 29, 2001. Four witnesses testified at the hearing: Michael J. Remington, a private attorney who worked for the 1993 National Commission on Judicial Discipline and Removal; Arthur Hellman, Professor at the University of Pittsburgh School of Law; Douglas T. Kendall, Executive Director of Community Rights Counsel, a citi-

<sup>3</sup> See REPORT OF THE NATIONAL COMMISSION ON JUDICIAL DISCIPLINE AND REMOVAL (August 1993), and Jeffrey N. Barr & Thomas E. Willgang, *Decentralized Self-Regulation, Accountability, and Judicial Independence Under the Federal Judicial Conduct and Disability of 1980*, 142 U. Pa. L. Rev. (1993).

<sup>4</sup> See especially Subcommittee Hearing 39–52 (testimony of Arthur D. Hellman, Professor of Law and Distinguished Faculty Scholar, University of Pittsburgh School of Law).

<sup>5</sup> 28 U.S.C. § 372(c).

zens advocacy group; and Judge William L. Osteen, U.S. district judge for the middle district of North Carolina.

#### COMMITTEE CONSIDERATION

On March 20, 2002, the Subcommittee on Courts, the Internet, and Intellectual Property met in open session and ordered favorably reported the bill H.R. 3892 with a single amendment in the nature of a substitute, by voice vote, a quorum being present. On April 24, 2002, the Committee met in open session and ordered favorably reported the bill H.R. 3892 with a single amendment in the nature of a substitute, a quorum being present.

#### VOTE OF THE COMMITTEE

There were no recorded votes on H.R. 3892.

#### COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

#### PERFORMANCE GOALS AND OBJECTIVES

The general consensus among Members of the Subcommittee and the witnesses who testified at the oversight hearing on the operations of the judicial misconduct statutes is that the Federal judiciary is held in high esteem by Congress and the American public. In proposing a basic reorganization of and other amendments to 28 U.S.C. § 372(c), the Committee believes that the Federal Judiciary will be better positioned to accomplish two primary goals or objectives.

First, the responsibilities of a chief judge in evaluating the merits of a complaint will be more clearly defined, especially when a decision is made to dismiss a complaint. In conjunction with new statutory authority for a judicial council to refer a complaint to a five-member panel, the Federal Judiciary will be empowered to make dispositive decisions that are more fully informed and articulated. This will not only assist a chief judge or judicial council with their responsibilities, but will also enable a complainant to understand more fully the reasoning behind the disposition of a petition. The goal, therefore, is to instill greater public confidence in this self-regulatory system by enabling judges to offer greater explicitness in rendering decisions.

Second, the basic reorganization of 28 U.S.C. § 372(c)—by codifying it as a new chapter in title 28 of the Code—not only elevates the statute to a more deserved and appropriate level of importance, it spotlights its very existence. If for no other reason, this change will assist the Congress and the Federal Judiciary in attaining a second goal or objective: to publicize the existence of a statutory mechanism that allows individuals to register and pursue meritorious complaints against sitting judges. This is a highly worthwhile goal, because it evinces a willingness on the part of the judi-

ciary to develop an even more open and honest relationship with the public, thereby enhancing public regard for Federal judges in their professional capacities as public servants.

The Committee also notes that the Chairman of the Subcommittee on Courts, the Internet, and Intellectual Property, Representative Coble, and the Ranking Subcommittee Member, Representative Berman, sent a letter to the Chief Justice<sup>7</sup> regarding additional reforms that the Judicial Conference might wish to pursue in its efforts to increase public confidence in the ethical stature of its members. These suggestions include the development of links to the rules and forms governing judicial complaint procedures on every Federal court's web site; the posting of "conflict lists" on these same web sites for recusal purposes; and renewing a commitment to the timely and thorough filing of financial disclosure forms. These reforms will help the Judiciary to meet the goals or objectives previously mentioned.

Finally, Chairman Coble and Ranking Member Berman have written to the Federal Judicial Center,<sup>8</sup> requesting an update on the disposition of cases under the Act. It is hoped that the information provided by the Center will help the Committee to understand if the relevant dispositions lack sufficient explanation as to their outcome, and what percentage of the dispositions are directly related to the merits of a decision or procedural ruling. The Center's response will better inform the Committee's understanding of the operation of the Act and the Judiciary as to its obligations under it.

#### NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of House rule XIII is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

#### CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 3892, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974.

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, May 7, 2002.*

Hon. F. JAMES SENSENBRENNER, Jr., *Chairman,*  
*Committee on the Judiciary,*  
*House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3892, the Judicial Improvements Act of 2002.

<sup>7</sup>Letter from the Honorable Howard Coble, Chairman, and the Honorable Howard L. Berman, Ranking Member, the Subcommittee on Courts, the Internet, and Intellectual Property of the House Committee on the Judiciary [hereinafter "Chairman Coble and Ranking Member Berman"], to the Honorable William H. Rehnquist, Chief Justice, United States Supreme Court (February 27, 2002). (Reprinted on page 16).

<sup>8</sup>Letter from Chairman Coble and Ranking Member Berman to the Honorable Fern M. Smith, Director, the Federal Judicial Center (January 29, 2002). (Reprinted on page 19).

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Lanette J. Walker, who can be reached at 226–2860.

Sincerely,

DAN L. CRIPPEN, *Director*.

Enclosure

cc: Honorable John Conyers, Jr.  
Ranking Member

*H.R. 3892—Judicial Improvements Act of 2002.*

H.R. 3892 would establish a new chapter in the Federal judicial code regarding complaints against judges and disciplinary procedures. Based on information from the Administrative Office of the United States Courts, CBO estimates that enacting the bill would have no impact on the budget of the courts because similar procedures are followed under current law. Because enacting H.R. 3892 would not affect direct spending or receipts, pay-as-you-go procedures would not apply to the bill.

H.R. 3892 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on State, local, or tribal governments.

The CBO staff contact for this estimate is Lanette J. Walker, who can be reached at 226–2860. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

#### CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in article III, section 1 of the Constitution.

#### SECTION-BY-SECTION ANALYSIS AND DISCUSSION

*Section 1. Short Title.* The short title of H.R. 3892 is the “Judicial Improvements Act of 2002.”

*Section 2. Judicial Discipline Procedures.* Section 2 reorganizes the current “Judicial Conduct and Disability Act of 1980” by creating a new chapter (16) in Part 1 of title 28 to address the issue of judicial complaints and misconduct. Given the importance of providing citizens a mechanism by which they may question judicial conduct, the statute should not be buried in a subsection of the code. The reorganization is easier to follow and easier to find. (The November 29, 2001, hearing on the matter revealed that judicial complaint procedures are under-publicized, to the public detriment.) Changes to the text of the current statute are, for the most part, few in number, and either clarifying or technical in nature.

More specifically, section 2 creates the following new sections of new chapter 16 of title 28 of the U.S. Code:

*New Section 351. Complaints; judges defined.* Any person who believes a judge has indulged in conduct “prejudicial” to the business of the courts, or who alleges that a judge cannot discharge the duties of office based on a mental or physical disability, may file a written complaint with the clerk of court for the circuit in which the judge presides. The clerk then transfers the complaint to the

chief judge of the circuit for disposition, or if the chief judge is the subject of the complaint, to the circuit judge next most senior.

Circuit, district, bankruptcy, and magistrate judges are explicitly covered by the statute.

This new section clarifies that bankruptcy judges are covered, consistent with original intent of current statute.

*New Section 352. Review of complaint by chief judge.* The chief judge shall review a complaint upon receipt, and may conduct a “limited inquiry” to determine: (1) whether “appropriate corrective action” has been taken or may be taken, thereby obviating the need for a formal investigation; and (2) whether the facts stated in the complaint are plainly untrue or are incapable of being established through investigation.

The chief judge is empowered to request a written response from the judge who is the subject of the complaint, and also to communicate with the complainant and anyone else who has knowledge about the matter. The chief judge may not undertake fact findings about any matter that is “reasonably in dispute.”

The chief judge may dismiss a complaint, by written order stating the reasons why, if the complaint is filed inconsistent with the requirements of new § 351; is directly related to the merits of a decision or ruling; or is frivolous, lacks sufficient evidence to raise an inference that misconduct has occurred, or contains allegations which are incapable of being established through investigation. In addition, the chief judge may dismiss a complaint when a limited inquiry demonstrates that the allegations “lack any factual foundation or are conclusively refuted by objective evidence.” The proceeding may also be concluded if the chief judge believes that appropriate corrective action has been taken or that further action is unwarranted because of “intervening events.”

A complainant who disagrees with a chief judge’s final order under new § 352 may petition a judicial council within that circuit for review. A decision by a judicial council to deny review is final and may not be reviewed or appealed further. A judicial council which elects to review a petition may refer it to a panel of no fewer than five members, at least two of whom must be district judges.

The power of a chief judge to conduct a “limited inquiry” pursuant to these changes is consistent with the views of the National Commission on Judicial Discipline and Removal, the circuits, and the Judicial Conference. Such power should be defined more clearly and not left to implication from other sources, as is the case in the current statute. The expansion of the concept of a complaint dismissed for frivolousness tracks recommendations set forth in the Illustrative Rules Governing Judicial Misconduct and Disability, developed by the Judicial Conference, and those offered by the Federal Judicial Center. This offers greater guidance to the chief judge and will better inform a complainant in the event of a dismissal. Finally, permitting a judicial council to refer a petition to a panel of at least five members for review creates flexibility and enhances the likelihood that the petition will receive greater scrutiny and process.

*New Section 353. Special committees.* If the complaint is not dismissed under new § 352, the chief judge shall appoint himself/herself and an equal number of district and circuit judges to a “special

committee” to investigate the facts and allegations contained in the complaint. Notice is given to the complainant and affected judge.

The Committee is empowered to conduct an investigation as extensive as it considers necessary, and must expeditiously file a comprehensive written report—containing findings and recommendations for action—with the judicial council of the circuit.

There is no change to current law beyond reorganization in new § 353.

*New Section 354. Action by judicial council.* Upon receipt of a report, a judicial council may conduct a further investigation; dismiss the complaint; or, failing dismissal, take such action as is “appropriate.”

Possible courses of action if a complaint is not dismissed include: ordering, on a temporary basis, that the affected judge may no longer be assigned cases; privately censuring/reprimanding the judge; or publicly censuring/reprimanding the judge.

In any case involving an Article III judge who cannot discharge his/her responsibilities based on a permanent mental or physical disability, a judicial council may certify the disability pursuant to 28 U.S.C. § 372(b) and request that the judge voluntarily retire.

In the case of a magistrate judge, a judicial council may direct the chief judge of the district of the magistrate judge to take such action as the judicial council deems appropriate.

A judicial council may not order the removal of any Article III judge, and removals of magistrate or bankruptcy judges must be done in conformity with other provisions in title 28.

A judicial council is further empowered, in its discretion, to share a complaint and related findings, or other information otherwise available to the judicial council, with the Judicial Conference. A judicial council must share any information which suggests that a judge has committed an impeachable offense, or has indulged in behavior that “is not amenable to resolution” by the judicial council.

There is no change to current law beyond reorganization in new § 354.

*New Section 355. Action by Judicial Conference.* New § 355 empowers the Judicial Conference, after reviewing the information forwarded by a judicial council pursuant to new § 354, to take appropriate action by majority vote. The Conference is required to submit any recommendation of impeachment to the House of Representatives, including a recommendation based on State or Federal felony conviction of a judge.

In this section, the reference to “felony” in the current statute is clarified with the substituted “felony under State or Federal law” in new chapter 16. This dovetails with the treatment of felony convictions in new § 364. Otherwise, there is no other change to existing law.

*New Section 356. Subpoena power.* New § 356 confers full subpoena power on judicial councils, special committees, the Judicial Conference, and any standing committees appointed by the Chief Justice which are conducting investigations related to judicial misconduct under this chapter.

There is no change to current law beyond reorganization in new § 356.

*New Section 357. Review of orders and actions.* An aggrieved judge may petition the Judicial Conference to review the action of

a judicial council taken pursuant to new § 354. Except as otherwise permitted under this section or new § 352, all orders and determinations are final and not subject to review.

There is no change to current law beyond reorganization in new § 357.

*New Section 358. Rules.* New § 358 authorizes each judicial council and the Judicial Conference to prescribe rules for the conduct of proceedings in an investigation. Minimum standards governing notice and process for the complainant and affected judge are included. Rules may not be amended in the absence of public notice and comment; and the Judicial Conference may modify the rules developed by a judicial council.

There is no change to current law beyond reorganization in new § 358.

*New Section 359. Restrictions.* No judge who is the subject of an investigation may serve upon a special committee, judicial council, Judicial Conference, or standing committee until “all related proceedings” of an investigation under new chapter 16 are complete.

There is no change to current law beyond reorganization in new § 359.

*New Section 360. Disclosure of Information.* Unless otherwise provided in new chapter 16, all papers, documents, and records of an investigation are confidential and may not be disclosed, subject to three exceptions: (1) a judicial council elects to release a report developed by a special committee to the complainant and the affected judge; (2) the judicial council, Judicial Conference, or the Senate or House of Representatives by resolution releases information related to an impeachment investigation; or (3) the affected judge, and either the chief judge of the circuit, the Chief Justice, or the chairman of a standing committee authorize in writing their joint desire to disclose information.

Each written order to implement any action which is issued by a judicial council, the Judicial Conference, or a standing committee shall be made available to the appropriate clerk of court’s office. Unless contrary to the interests of justice, each order shall be accompanied by written reasons explaining the decision.

There is no change to current law beyond reorganization in new § 360.

*New Section 361. Reimbursement of expenses.* An affected judge may request that he/she be reimbursed through the Administrative Office of the Courts for reasonable expenses incurred in the course of an investigation when a complaint is dismissed.

There is no change to current law beyond reorganization in new § 361.

*New Section 362. Other provisions and rules not affected.* Except as expressly provided in new chapter 16, the legislation does not affect the Federal Rules of Procedure, Evidence, Criminal Procedure, or Appellate Procedure.

There is no change to current law beyond reorganization in new § 362.

*New Section 363. Court of Federal Claims, Court of International Trade, Court of Appeals for the Federal Circuit.* The Court of Federal Claims, Court of International Trade, and Court of Appeals for the Federal Circuit shall establish procedures for the filing of complaints regarding the conduct of any judge of such court and for the

investigation and resolution of complaints. Each of these courts will have the same powers granted to judicial councils under new chapter 16.

There is no change to current law beyond reorganization in new § 363.

*New Section 364. Effect of felony conviction.* If a judge under new chapter 16 is convicted of a State or Federal felony, and has exhausted all means of direct review of the conviction, or the time for obtaining such review has passed, that judge may not hear cases unless the relevant judicial council (or the court of a judge as set forth in new § 363) determines otherwise.

New § 364 implements a recommendation developed by the 1993 National Commission on Judicial Discipline and Removal. There is no other change beyond reorganization in new § 364.

*Section 3. Technical Amendments.* Section 3 makes technical and conforming amendments to the relevant provisions of the U.S. Code based on the content of sections 1 and 2.

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ONE HUNDRED SEVENTH CONGRESS

**Congress of the United States**  
**House of Representatives**

COMMITTEE ON THE JUDICIARY  
 2138 RAYBURN HOUSE OFFICE BUILDING  
 WASHINGTON, DC 20515-6216

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February 27, 2002

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The Honorable William H. Rehnquist  
 Chief Justice  
 Supreme Court of the United States  
 United States Supreme Court Building  
 One First Street, NE  
 Washington, DC 20543

Dear Mr. Chief Justice:

We are writing in the wake of our November 29, 2001, Subcommittee oversight hearing on the operations of federal judicial misconduct statutes. The hearing confirmed what we already knew; that is, the Third Branch remains in good shape, and is highly regarded by the general public as well as the Congress. At the same time, no branch of government is immune from evaluation or improvement. In that light, and with great respect, we offer the following recommendations to you and the Judicial Conference for your consideration. We believe that these suggestions will both improve the operations of Article III courts and instill even greater public confidence in your work.

*Web site linkage to rules/forms governing complaints.* The Judicial Conduct and Disability Act of 1980 ("Act") is the vehicle by which individuals may register complaints concerning the behavior of federal judges. For the most part, the statute has worked well, but is under-publicized, as the Federal Judicial Center noted in report which was released at the behest of the National Commission on Judicial Discipline and Removal in 1993. This inadvertently may create the impression in the minds of would-be complainants and journalists that the courts are trying to discourage filings by complicating the process. Such a result not only creates a public-relations problem for the courts, it may also inhibit the filing of truly meritorious grievances.

In response, we suggest that the Conference require that every federal court include a prominent link on its web site to the rules and forms for filing complaints under the Act concerning any judge of that court. In addition, we would encourage chief judges and judicial councils to send more of their non-routine dispositions of cases filed pursuant to the Act for on-line publication by

The Honorable William H. Rehnquist  
February 27, 2002  
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Westlaw, Lexis, Findlaw, and other services. The Federal Judicial Center could also serve as an electronic distribution source for these cases that would ultimately benefit other courts, Congress, researchers, and journalists.

*Posting of conflict lists.* You will recall the *Kansas City Star* articles from 1998 that detailed alleged instances of judges adjudicating cases in which they held financial interests. The Community Rights Counsel, which had a representative testify at our hearing, also has published literature that raises questions in some minds about judges' compliance with the laws governing disqualification. While the hearing did not reveal that the practice was systemic or based on a conscious desire by individual judges to influence the value of personal holdings, the damage that such stories or other publications inflict on the reputation of the courts is self-evident.

Part of the problem, according to journalists and other interested parties, is that judicial disclosure forms filed pursuant to the Ethics in Government Act are difficult to obtain. The Northern and Southern Districts of Iowa have responded to this situation in a manner that might serve as a template for the rest of the federal judiciary. Both Districts post "conflict lists" on their respective web sites. The benefits of this practice are manifest: the likelihood increases that genuine conflicts will be flagged earlier in the litigation process; journalists and advocacy groups will have greater access to relevant information that will enable them to monitor judicial compliance with conflict-of-interest requirements; the lists can be more easily updated than annual hard-copy disclosure filings; and the legitimate privacy and safety interests of judges is not compromised (since the lists only indicate that a judge is recused from cases involving specific corporations, and nothing more).

Consistent with this precedent, we urge the Conference to require all federal courts to adopt the Iowa model. Specifically, each court should implement and monitor procedures for assuring that judges regularly inform the appropriate Clerk of Court of those changes in stock holdings and other financial holdings which would necessitate revisions to the appropriate conflict list. Judges should also be encouraged to work with their brokers or other financial advisors to ensure that the relevant portfolio information is available in a timely manner to the Clerk for such purposes.

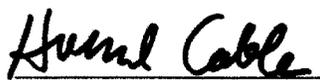
*Timely and thorough filing of disclosure forms.* The witness representing the Community Rights Counsel at our hearing renewed that organization's complaint that information on financial disclosure forms is not always accurate and/or complete. Also, he complained that federal judges are not observing the spirit or letter of Advisory Opinion 67, issued by the Judicial Conference Committee on Codes of Conduct, regarding sponsorship and funding for judicial travel and seminar participation. We urge the Conference to remind its members to file their disclosure reports on time and with sufficient content consistent with their obligations.

The Honorable William H. Rehnquist  
February 27, 2002  
PAGE THREE

In closing, we emphasize that all of the witnesses at our hearing spoke highly of the federal judiciary, and we share their respect for your work and your integrity. We offer these suggestions as part of our oversight responsibilities, and we hope that you and the members of the Judicial Conference will find them useful.

Thank you for your time and consideration.

Sincerely,



HOWARD COBLE  
Chairman  
Subcommittee on Courts, the Internet  
and Intellectual Property



HOWARD L. BERMAN  
Ranking Member  
Subcommittee on Courts, the Internet,  
and Intellectual Property

HC/bsm

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January 29, 2002

The Honorable Fern M. Smith  
 Director  
 The Federal Judicial Center  
 Thurgood Marshall Federal Judiciary Building  
 One Columbus Circle, NE  
 Suite 6100  
 Washington, DC 20002-8003

Dear Judge Smith:

We write to request the assistance of the Federal Judicial Center regarding a matter relevant to the oversight authority of the House Judiciary Committee's Subcommittee on Courts, the Internet, and Intellectual Property.

The Subcommittee recently held an oversight hearing on the operation of the federal judicial misconduct and recusal statutes. This is a subject on which the Center conducted an empirical study for the National Commission on Judicial Discipline and Removal nearly a decade ago. The results of the FJC study have proven enormously useful in helping the Subcommittee and others to understand more thoroughly how the federal courts have implemented important provisions of the Judicial Conduct and Disability Act of 1980.

It would be very valuable to the Subcommittee if the Center would consider undertaking some limited follow-up research to your earlier work. Specifically, we would welcome an analysis of the §372(c) dispositions that are already on file with your agency to determine: (1) whether the orders of the chief judges set forth factual allegations raised in the complaints and the reason(s) for the subsequent disposition; and (2) what percentage of dismissals are based on the grounds that the complaint is directly related to the merits of a decision or procedural ruling.

We would be very appreciative if the FJC would be willing to conduct this research, as the results of the study will be helpful to the Subcommittee. We ask that either you or a member of your

The Honorable Fern M. Smith  
January 29, 2002  
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staff contact Subcommittee counsels Alec French (minority) and Blaine Merritt (majority) with the details of your intended response to our request. If possible, we would like to know by February 6, 2002, whether the Center is willing to undertake the study.

The Subcommittee greatly values the work of the Center and its contributions to the sustenance of the federal judiciary. Thank you for your time and consideration.

Sincerely,

  
HOWARD COBLE  
Chairman  
Subcommittee on Courts, the Internet,  
and Intellectual Property

  
HOWARD L. BERMAN  
Ranking Member  
Subcommittee on Courts, the Internet,  
and Intellectual Property

HC/bsm

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

TITLE 28, UNITED STATES CODE

\* \* \* \* \*

PART I—ORGANIZATION OF COURTS

Chapter	Sec.
1. Supreme Court .....	1
* * * * *	
16. <i>Complaints against judges and judicial discipline</i> .....	351
* * * * *	

CHAPTER 15—CONFERENCES AND COUNCILS OF JUDGES

\* \* \* \* \*

§ 331. Judicial Conference of the United States

The Chief Justice of the United States shall summon annually the chief judge of each judicial circuit, the chief judge of the Court

of International Trade, and a district judge from each judicial circuit to a conference at such time and place in the United States as he may designate. He shall preside at such conference which shall be known as the Judicial Conference of the United States. Special sessions of the Conference may be called by the Chief Justice at such times and places as he may designate.

The district judge to be summoned from each judicial circuit shall be chosen by the circuit and district judges of the circuit and shall serve as a member of the Judicial Conference of the United States for a term of not less than 3 successive years nor more than 5 successive years, as established by majority vote of all circuit and district judges of the circuit. A district judge serving as a member of the Judicial Conference may be either a judge in regular active service or a judge retired from regular active service under section 371(b) of this title.

If the chief judge of any circuit, the chief judge of the Court of International Trade, or the district judge chosen by the judges of the circuit is unable to attend, the Chief Justice may summon any other circuit or district judge from such circuit or any other judge of the Court of International Trade, as the case may be. Every judge summoned shall attend and, unless excused by the Chief Justice, shall remain throughout the sessions of the conference and advise as to the needs of his circuit or court and as to any matters in respect of which the administration of justice in the courts of the United States may be improved.

The Conference shall make a comprehensive survey of the condition of business in the courts of the United States and prepare plans for assignment of judges to or from circuits or districts where necessary. It shall also submit suggestions and recommendations to the various courts to promote uniformity of management procedures and the expeditious conduct of court business. The Conference is authorized to exercise the authority provided in [section 372(c)] *chapter 16* of this title as the Conference, or through a standing committee. If the Conference elects to establish a standing committee, it shall be appointed by the Chief Justice and all petitions for review shall be reviewed by that committee. The Conference or the standing committee may hold hearings, take sworn testimony, issue subpoenas and subpoenas duces tecum, and make necessary and appropriate orders in the exercise of its authority. Subpoenas and subpoenas duces tecum shall be issued by the clerk of the Supreme Court or by the clerk of any court of appeals, at the direction of the Chief Justice or his designee and under the seal of the court, and shall be served in the manner provided in rule 45(c) of the Federal Rules of Civil Procedure for subpoenas and subpoenas duces tecum issued on behalf of the United States or an officer or any agency thereof. The Conference may also prescribe and modify rules for the exercise of the authority provided in [section 372(c)] *chapter 16* of this title. All judicial officers and employees of the United States shall promptly carry into effect all orders of the Judicial Conference or the standing committee established pursuant to this section.

The Conference shall also carry on a continuous study of the operation and effect of the general rules of practice and procedure now or hereafter in use as prescribed by the Supreme Court for the other courts of the United States pursuant to law. Such changes in

and additions to those rules as the Conference may deem desirable to promote simplicity in procedure, fairness in administration, the just determination of litigation, and the elimination of unjustifiable expense and delay shall be recommended by the Conference from time to time to the Supreme Court for its consideration and adoption, modification or rejection, in accordance with law.

The Judicial Conference shall review rules prescribed under section 2071 of this title by the courts, other than the Supreme Court and the district courts, for consistency with Federal law. The Judicial Conference may modify or abrogate any such rule so reviewed found inconsistent in the course of such a review.

The Attorney General shall, upon request of the Chief Justice, report to such Conference on matters relating to the business of the several courts of the United States, with particular reference to cases to which the United States is a party. The Chief Justice shall submit to Congress an annual report of the proceedings of the Judicial Conference and its recommendations for legislation.

### § 332. Judicial councils of circuits

(a) \* \* \*

\* \* \* \* \*

(d)(1) \* \* \*

(2) All judicial officers and employees of the circuit shall promptly carry into effect all orders of the judicial council. In the case of failure to comply with an order made under this subsection or a subpoena issued under [section 372(c) of this title] *chapter 16 of this title*, a judicial council or a special committee appointed under section [372(c)(4)] 353 of this title may institute a contempt proceeding in any district court in which the judicial officer or employee of the circuit who fails to comply with the order made under this subsection shall be ordered to show cause before the court why he or she should not be held in contempt of court.

\* \* \* \* \*

[(h)(1) The United States Court of Appeals for the Federal Circuit may appoint a circuit executive, who shall serve at the pleasure of the court. In appointing a circuit executive, the court shall take into account experience in administrative and executive positions, familiarity with court procedures, and special training. The circuit executive shall exercise such administrative powers and perform such duties as may be delegated by the court. The duties delegated to the circuit executive may include but need not be limited to the duties specified in subsection (e) of this section, insofar as they are applicable to the Court of Appeals for the Federal Circuit.

[(2) The circuit executive shall be paid the salary for circuit executives established under subsection (f) of this section.

[(3) The circuit executive may appoint, with the approval of the court, necessary employees in such number as may be approved by the Director of the Administrative Office of the United States Courts.

[(4) The circuit executive and staff shall be deemed to be officers and employees of the United States within the meaning of the statutes specified in subsection (f)(4).

[(5) The court may appoint either a circuit executive under this subsection or a clerk under section 711 of this title, but not

both, or may appoint a combined circuit executive/clerk who shall be paid the salary of a circuit executive.】

\* \* \* \* \*

## **CHAPTER 16—COMPLAINTS AGAINST JUDGES AND JUDICIAL DISCIPLINE**

Sec.

351. *Complaints; judge defined.*

352. *Review of complaint by chief judge.*

353. *Special committees.*

354. *Action by judicial council.*

355. *Action by Judicial Conference.*

356. *Subpoena power.*

357. *Review of orders and actions.*

358. *Rules.*

359. *Restrictions.*

360. *Disclosure of information.*

361. *Reimbursement of expenses.*

362. *Other provisions and rules not affected.*

363. *Court of Federal Claims, Court of International Trade, Court of Appeals for the Federal Circuit.*

364. *Effect of felony conviction.*

### **§ 351. Complaints; judge defined**

(a) *FILING OF COMPLAINT BY ANY PERSON.*—Any person alleging that a judge has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts, or alleging that such judge is unable to discharge all the duties of office by reason of mental or physical disability, may file with the clerk of the court of appeals for the circuit a written complaint containing a brief statement of the facts constituting such conduct.

(b) *IDENTIFYING COMPLAINT BY CHIEF JUDGE.*—In the interests of the effective and expeditious administration of the business of the courts and on the basis of information available to the chief judge of the circuit, the chief judge may, by written order stating reasons therefor, identify a complaint for purposes of this chapter and thereby dispense with filing of a written complaint.

(c) *TRANSMITTAL OF COMPLAINT.*—Upon receipt of a complaint filed under subsection (a), the clerk shall promptly transmit the complaint to the chief judge of the circuit, or, if the conduct complained of is that of the chief judge, to that circuit judge in regular active service next senior in date of commission (hereafter, for purposes of this chapter only, included in the term “chief judge”). The clerk shall simultaneously transmit a copy of the complaint to the judge whose conduct is the subject of the complaint. The clerk shall also transmit a copy of any complaint identified under subsection (b) to the judge whose conduct is the subject of the complaint.

(d) *DEFINITIONS.*—In this chapter—

(1) the term “judge” means a circuit judge, district judge, bankruptcy judge, or magistrate judge; and

(2) the term “complainant” means the person filing a complaint under subsection (a) of this section.

### **§ 352. Review of complaint by chief judge**

(a) *EXPEDITIOUS REVIEW; LIMITED INQUIRY.*—The chief judge shall expeditiously review any complaint received under section 351(a) or identified under section 351(b). In determining what ac-

tion to take, the chief judge may conduct a limited inquiry for the purpose of determining—

(1) whether appropriate corrective action has been or can be taken without the necessity for a formal investigation; and

(2) whether the facts stated in the complaint are either plainly untrue or are incapable of being established through investigation.

For this purpose, the chief judge may request the judge whose conduct is complained of to file a written response to the complaint. Such response shall not be made available to the complainant unless authorized by the judge filing the response. The chief judge or his or her designee may also communicate orally or in writing with the complainant, the judge whose conduct is complained of, and any other person who may have knowledge of the matter, and may review any transcripts or other relevant documents. The chief judge shall not undertake to make findings of fact about any matter that is reasonably in dispute.

(b) *ACTION BY CHIEF JUDGE FOLLOWING REVIEW.*—After expeditiously reviewing a complaint under subsection (a), the chief judge, by written order stating his or her reasons, may—

(1) dismiss the complaint—

(A) if the chief judge finds the complaint to be—

(i) not in conformity with section 351(a);

(ii) directly related to the merits of a decision or procedural ruling; or

(iii) frivolous, lacking sufficient evidence to raise an inference that misconduct has occurred, or containing allegations which are incapable of being established through investigation; or

(B) when a limited inquiry conducted under subsection

(a) demonstrates that the allegations in the complaint lack any factual foundation or are conclusively refuted by objective evidence; or

(2) conclude the proceeding if the chief judge finds that appropriate corrective action has been taken or that action on the complaint is no longer necessary because of intervening events.

The chief judge shall transmit copies of the written order to the complainant and to the judge whose conduct is the subject of the complaint.

(c) *REVIEW OF ORDERS OF CHIEF JUDGE.*—A complainant or judge aggrieved by a final order of the chief judge under this section may petition the judicial council of the circuit for review thereof. The denial of a petition for review of the chief judge's order shall be final and conclusive and shall not be judicially reviewable on appeal or otherwise.

(d) *REFERRAL OF PETITIONS FOR REVIEW TO PANELS OF THE JUDICIAL COUNCIL.*—Each judicial council may, pursuant to rules prescribed under section 358, refer a petition for review filed under subsection (c) to a panel of no fewer than 5 members of the council, at least 2 of whom shall be district judges.

### **§ 353. Special committees**

(a) *APPOINTMENT.*—If the chief judge does not enter an order under section 352(b), the chief judge shall promptly—

(1) appoint himself or herself and equal numbers of circuit and district judges of the circuit to a special committee to investigate the facts and allegations contained in the complaint;

(2) certify the complaint and any other documents pertaining thereto to each member of such committee; and

(3) provide written notice to the complainant and the judge whose conduct is the subject of the complaint of the action taken under this subsection.

(b) *CHANGE IN STATUS OR DEATH OF JUDGES.*—A judge appointed to a special committee under subsection (a) may continue to serve on that committee after becoming a senior judge or, in the case of the chief judge of the circuit, after his or her term as chief judge terminates under subsection (a)(3) or (c) of section 45. If a judge appointed to a committee under subsection (a) dies, or retires from office under section 371(a), while serving on the committee, the chief judge of the circuit may appoint another circuit or district judge, as the case may be, to the committee.

(c) *INVESTIGATION BY SPECIAL COMMITTEE.*—Each committee appointed under subsection (a) shall conduct an investigation as extensive as it considers necessary, and shall expeditiously file a comprehensive written report thereon with the judicial council of the circuit. Such report shall present both the findings of the investigation and the committee's recommendations for necessary and appropriate action by the judicial council of the circuit.

#### **§ 354. Action by judicial council**

(a) *ACTIONS UPON RECEIPT OF REPORT.*—

(1) *ACTIONS.*—The judicial council of a circuit, upon receipt of a report filed under section 353(c)—

(A) may conduct any additional investigation which it considers to be necessary;

(B) may dismiss the complaint; and

(C) if the complaint is not dismissed, shall take such action as is appropriate to assure the effective and expeditious administration of the business of the courts within the circuit.

(2) *DESCRIPTION OF POSSIBLE ACTIONS IF COMPLAINT NOT DISMISSED.*—

(A) *IN GENERAL.*—Action by the judicial council under paragraph (1)(C) may include—

(i) ordering that, on a temporary basis for a time certain, no further cases be assigned to the judge whose conduct is the subject of a complaint;

(ii) censuring or reprimanding such judge by means of private communication; and

(iii) censuring or reprimanding such judge by means of public announcement.

(B) *FOR ARTICLE III JUDGES.*—If the conduct of a judge appointed to hold office during good behavior is the subject of the complaint, action by the judicial council under paragraph (1)(C) may include—

(i) certifying disability of the judge pursuant to the procedures and standards provided under section 372(b); and

(ii) requesting that the judge voluntarily retire, with the provision that the length of service requirements under section 371 of this title shall not apply.

(C) *FOR MAGISTRATE JUDGES.*—If the conduct of a magistrate judge is the subject of the complaint, action by the judicial council under paragraph (1)(C) may include directing the chief judge of the district of the magistrate judge to take such action as the judicial council considers appropriate.

(3) *LIMITATIONS ON JUDICIAL COUNCIL REGARDING REMOVALS.*—

(A) *ARTICLE III JUDGES.*—Under no circumstances may the judicial council order removal from office of any judge appointed to hold office during good behavior.

(B) *MAGISTRATE AND BANKRUPTCY JUDGES.*—Any removal of a magistrate judge under this subsection shall be in accordance with section 631 and any removal of a bankruptcy judge shall be in accordance with section 152.

(4) *NOTICE OF ACTION TO JUDGE.*—The judicial council shall immediately provide written notice to the complainant and to the judge whose conduct is the subject of the complaint of the action taken under this subsection.

(b) *REFERRAL TO JUDICIAL CONFERENCE.*—

(1) *IN GENERAL.*—In addition to the authority granted under subsection (a), the judicial council may, in its discretion, refer any complaint under section 351, together with the record of any associated proceedings and its recommendations for appropriate action, to the Judicial Conference of the United States.

(2) *SPECIAL CIRCUMSTANCES.*—In any case in which the judicial council determines, on the basis of a complaint and an investigation under this chapter, or on the basis of information otherwise available to the judicial council, that a judge appointed to hold office during good behavior may have engaged in conduct—

(A) which might constitute one or more grounds for impeachment under article II of the Constitution, or

(B) which, in the interest of justice, is not amenable to resolution by the judicial council,

the judicial council shall promptly certify such determination, together with any complaint and a record of any associated proceedings, to the Judicial Conference of the United States.

(3) *NOTICE TO COMPLAINANT AND JUDGE.*—A judicial council acting under authority of this subsection shall, unless contrary to the interests of justice, immediately submit written notice to the complainant and to the judge whose conduct is the subject of the action taken under this subsection.

### **§ 355. Action by Judicial Conference**

(a) *IN GENERAL.*—Upon referral or certification of any matter under section 354(b), the Judicial Conference, after consideration of the prior proceedings and such additional investigation as it considers appropriate, shall by majority vote take such action, as described in section 354(a)(1)(C) and (2), as it considers appropriate.

(b) *IF IMPEACHMENT WARRANTED.*—

(1) *IN GENERAL.*—If the Judicial Conference concurs in the determination of the judicial council, or makes its own determination, that consideration of impeachment may be warranted, it shall so certify and transmit the determination and the record of proceedings to the House of Representatives for whatever action the House of Representatives considers to be necessary. Upon receipt of the determination and record of proceedings in the House of Representatives, the Clerk of the House of Representatives shall make available to the public the determination and any reasons for the determination.

(2) *IN CASE OF FELONY CONVICTION.*—If a judge has been convicted of a felony under State or Federal law and has exhausted all means of obtaining direct review of the conviction, or the time for seeking further direct review of the conviction has passed and no such review has been sought, the Judicial Conference may, by majority vote and without referral or certification under section 354(b), transmit to the House of Representatives a determination that consideration of impeachment may be warranted, together with appropriate court records, for whatever action the House of Representatives considers to be necessary.

#### **§ 356. Subpoena power**

(a) *JUDICIAL COUNCILS AND SPECIAL COMMITTEES.*—In conducting any investigation under this chapter, the judicial council, or a special committee appointed under section 353, shall have full subpoena powers as provided in section 332(d).

(b) *JUDICIAL CONFERENCE AND STANDING COMMITTEES.*—In conducting any investigation under this chapter, the Judicial Conference, or a standing committee appointed by the Chief Justice under section 331, shall have full subpoena powers as provided in that section.

#### **§ 357. Review of orders and actions**

(a) *REVIEW OF ACTION OF JUDICIAL COUNCIL.*—A complainant or judge aggrieved by an action of the judicial council under section 354 may petition the Judicial Conference of the United States for review thereof.

(b) *ACTION OF JUDICIAL CONFERENCE.*—The Judicial Conference, or the standing committee established under section 331, may grant a petition filed by a complainant or judge under subsection (a).

(c) *NO JUDICIAL REVIEW.*—Except as expressly provided in this section and section 352(c), all orders and determinations, including denials of petitions for review, shall be final and conclusive and shall not be judicially reviewable on appeal or otherwise.

#### **§ 358. Rules**

(a) *IN GENERAL.*—Each judicial council and the Judicial Conference may prescribe such rules for the conduct of proceedings under this chapter, including the processing of petitions for review, as each considers to be appropriate.

(b) *REQUIRED PROVISIONS.*—Rules prescribed under subsection (a) shall contain provisions requiring that—

(1) adequate prior notice of any investigation be given in writing to the judge whose conduct is the subject of a complaint under this chapter;

(2) the judge whose conduct is the subject of a complaint under this chapter be afforded an opportunity to appear (in person or by counsel) at proceedings conducted by the investigating panel, to present oral and documentary evidence, to compel the attendance of witnesses or the production of documents, to cross-examine witnesses, and to present argument orally or in writing; and

(3) the complainant be afforded an opportunity to appear at proceedings conducted by the investigating panel, if the panel concludes that the complainant could offer substantial information.

(c) *PROCEDURES.*—Any rule prescribed under this section shall be made or amended only after giving appropriate public notice and an opportunity for comment. Any such rule shall be a matter of public record, and any such rule promulgated by a judicial council may be modified by the Judicial Conference. No rule promulgated under this section may limit the period of time within which a person may file a complaint under this chapter.

### **§ 359. Restrictions**

(a) *RESTRICTION ON INDIVIDUALS WHO ARE SUBJECT OF INVESTIGATION.*—No judge whose conduct is the subject of an investigation under this chapter shall serve upon a special committee appointed under section 353, upon a judicial council, upon the Judicial Conference, or upon the standing committee established under section 331, until all proceedings under this chapter relating to such investigation have been finally terminated.

(b) *AMICUS CURIAE.*—No person shall be granted the right to intervene or to appear as amicus curiae in any proceeding before a judicial council or the Judicial Conference under this chapter.

### **§ 360. Disclosure of information**

(a) *CONFIDENTIALITY OF PROCEEDINGS.*—Except as provided in section 355, all papers, documents, and records of proceedings related to investigations conducted under this chapter shall be confidential and shall not be disclosed by any person in any proceeding except to the extent that—

(1) the judicial council of the circuit in its discretion releases a copy of a report of a special committee under section 353(c) to the complainant whose complaint initiated the investigation by that special committee and to the judge whose conduct is the subject of the complaint;

(2) the judicial council of the circuit, the Judicial Conference of the United States, or the Senate or the House of Representatives by resolution, releases any such material which is believed necessary to an impeachment investigation or trial of a judge under article I of the Constitution; or

(3) such disclosure is authorized in writing by the judge who is the subject of the complaint and by the chief judge of the circuit, the Chief Justice, or the chairman of the standing committee established under section 331.

(b) *PUBLIC AVAILABILITY OF WRITTEN ORDERS.*—Each written order to implement any action under section 354(a)(1)(C), which is issued by a judicial council, the Judicial Conference, or the standing committee established under section 331, shall be made available to the public through the appropriate clerk’s office of the court of appeals for the circuit. Unless contrary to the interests of justice, each such order shall be accompanied by written reasons therefor.

**§ 361. Reimbursement of expenses**

Upon the request of a judge whose conduct is the subject of a complaint under this chapter, the judicial council may, if the complaint has been finally dismissed under section 354(a)(1)(B), recommend that the Director of the Administrative Office of the United States Courts award reimbursement, from funds appropriated to the Federal judiciary, for those reasonable expenses, including attorneys’ fees, incurred by that judge during the investigation which would not have been incurred but for the requirements of this chapter.

**§ 362. Other provisions and rules not affected**

Except as expressly provided in this chapter, nothing in this chapter shall be construed to affect any other provision of this title, the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure, the Federal Rules of Appellate Procedure, or the Federal Rules of Evidence.

**§ 363. Court of Federal Claims, Court of International Trade, Court of Appeals for the Federal Circuit**

The United States Court of Federal Claims, the Court of International Trade, and the Court of Appeals for the Federal Circuit shall each prescribe rules, consistent with the provisions of this chapter, establishing procedures for the filing of complaints with respect to the conduct of any judge of such court and for the investigation and resolution of such complaints. In investigating and taking action with respect to any such complaint, each such court shall have the powers granted to a judicial council under this chapter.

**§ 364. Effect of felony conviction**

In the case of any judge or judge of a court referred to in section 363 who is convicted of a felony under State or Federal law and has exhausted all means of obtaining direct review of the conviction, or the time for seeking further direct review of the conviction has passed and no such review has been sought, that judge shall not hear cases unless the judicial council of the circuit (or, in the case of a judge of a court referred to in section 363, that court) determines otherwise.

**CHAPTER 17—RESIGNATION AND RETIREMENT OF JUSTICES AND JUDGES**

\* \* \* \* \*

- Sec. 371. Retirement on salary; retirement in senior status.
- 372. Retirement for disability; substitute judge on failure to retire[; judicial discipline].

\* \* \* \* \*

**§ 372. Retirement for disability; substitute judge on failure to retire[; judicial discipline]**

(a) \* \* \*

\* \* \* \* \*

[(c)(1) Any person alleging that a circuit, district, or bankruptcy judge, or a magistrate judge, has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts, or alleging that such a judge or magistrate judge is unable to discharge all the duties of office by reason of mental or physical disability, may file with the clerk of the court of appeals for the circuit a written complaint containing a brief statement of the facts constituting such conduct. In the interests of the effective and expeditious administration of the business of the courts and on the basis of information available to the chief judge of the circuit, the chief judge may, by written order stating reasons therefor, identify a complaint for purposes of this subsection and thereby dispense with filing of a written complaint.

[(2) Upon receipt of a complaint filed under paragraph (1) of this subsection, the clerk shall promptly transmit such complaint to the chief judge of the circuit, or, if the conduct complained of is that of the chief judge, to that circuit judge in regular active service next senior in date of commission (hereafter, for purposes of this subsection only, included in the term “chief judge”). The clerk shall simultaneously transmit a copy of the complaint to the judge or magistrate judge whose conduct is the subject of the complaint.

[(3) After expeditiously reviewing a complaint, the chief judge, by written order stating his reasons, may—

[(A) dismiss the complaint, if he finds it to be (i) not in conformity with paragraph (1) of this subsection, (ii) directly related to the merits of a decision or procedural ruling, or (iii) frivolous; or

[(B) conclude the proceeding if he finds that appropriate corrective action has been taken or that action on the complaint is no longer necessary because of intervening events.

The chief judge shall transmit copies of his written order to the complainant and to the judge or magistrate judge whose conduct is the subject of the complaint.

[(4) If the chief judge does not enter an order under paragraph (3) of this subsection, such judge shall promptly—

[(A) appoint himself and equal numbers of circuit and district judges of the circuit to a special committee to investigate the facts and allegations contained in the complaint;

[(B) certify the complaint and any other documents pertaining thereto to each member of such committee; and

[(C) provide written notice to the complainant and the judge or magistrate judge whose conduct is the subject of the complaint of the action taken under this paragraph.

A judge appointed to a special committee under this paragraph may continue to serve on that committee after becoming a senior judge or, in the case of the chief judge of the circuit, after his or her term as chief judge terminates under subsection (a)(3) or (c) of section 45 of this title. If a judge appointed to a committee under this paragraph dies, or retires from office under section 371(a) of this title, while serving on the committee, the chief judge of the cir-

cuit may appoint another circuit or district judge, as the case may be, to the committee.

[(5) Each committee appointed under paragraph (4) of this subsection shall conduct an investigation as extensive as it considers necessary, and shall expeditiously file a comprehensive written report thereon with the judicial council of the circuit. Such report shall present both the findings of the investigation and the committee's recommendations for necessary and appropriate action by the judicial council of the circuit.

[(6) Upon receipt of a report filed under paragraph (5) of this subsection, the judicial council—

[(A) may conduct any additional investigation which it considers to be necessary;

[(B) shall take such action as is appropriate to assure the effective and expeditious administration of the business of the courts within the circuit, including, but not limited to, any of the following actions:

[(i) directing the chief judge of the district of the magistrate judge whose conduct is the subject of the complaint to take such action as the judicial council considers appropriate;

[(ii) certifying disability of a judge appointed to hold office during good behavior whose conduct is the subject of the complaint, pursuant to the procedures and standards provided under subsection (b) of this section;

[(iii) requesting that any such judge appointed to hold office during good behavior voluntarily retire, with the provision that the length of service requirements under section 371 of this title shall not apply;

[(iv) ordering that, on a temporary basis for a time certain, no further cases be assigned to any judge or magistrate judge whose conduct is the subject of a complaint;

[(v) censuring or reprimanding such judge or magistrate judge by means of private communication;

[(vi) censuring or reprimanding such judge or magistrate judge by means of public announcement; or

[(vii) ordering such other action as it considers appropriate under the circumstances, except that (I) in no circumstances may the council order removal from office of any judge appointed to hold office during good behavior, and (II) any removal of a magistrate judge shall be in accordance with section 631 of this title and any removal of a bankruptcy judge shall be in accordance with section 152 of this title;

[(C) may dismiss the complaint; and

[(D) shall immediately provide written notice to the complainant and to such judge or magistrate judge of the action taken under this paragraph.

[(7)(A) In addition to the authority granted under paragraph (6) of this subsection, the judicial council may, in its discretion, refer any complaint under this subsection, together with the record of any associated proceedings and its recommendations for appropriate action, to the Judicial Conference of the United States.

[(B) In any case in which the judicial council determines, on the basis of a complaint and an investigation under this subsection,

or on the basis of information otherwise available to the council, that a judge appointed to hold office during good behavior may have engaged in conduct—

[(i) which might constitute one or more grounds for impeachment under article II of the Constitution; or

[(ii) which, in the interest of justice, is not amenable to resolution by the judicial council,

the judicial council shall promptly certify such determination, together with any complaint and a record of any associated proceedings, to the Judicial Conference of the United States.

[(C) A judicial council acting under authority of this paragraph shall, unless contrary to the interests of justice, immediately submit written notice to the complainant and to the judge or magistrate judge whose conduct is the subject of the action taken under this paragraph.

[(8)(A) Upon referral or certification of any matter under paragraph (7) of this subsection, the Judicial Conference, after consideration of the prior proceedings and such additional investigation as it considers appropriate, shall by majority vote take such action, as described in paragraph (6)(B) of this subsection, as it considers appropriate. If the Judicial Conference concurs in the determination of the council, or makes its own determination, that consideration of impeachment may be warranted, it shall so certify and transmit the determination and the record of proceedings to the House of Representatives for whatever action the House of Representatives considers to be necessary. Upon receipt of the determination and record of proceedings in the House of Representatives, the Clerk of the House of Representatives shall make available to the public the determination and any reasons for the determination.

[(B) If a judge or magistrate judge has been convicted of a felony and has exhausted all means of obtaining direct review of the conviction, or the time for seeking further direct review of the conviction has passed and no such review has been sought, the Judicial Conference may, by majority vote and without referral or certification under paragraph (7), transmit to the House of Representatives a determination that consideration of impeachment may be warranted, together with appropriate court records, for whatever action the House of Representatives considers to be necessary.

[(9)(A) In conducting any investigation under this subsection, the judicial council, or a special committee appointed under paragraph (4) of this subsection, shall have full subpoena powers as provided in section 332(d) of this title.

[(B) In conducting any investigation under this subsection, the Judicial Conference, or a standing committee appointed by the Chief Justice under section 331 of this title, shall have full subpoena powers as provided in that section.

[(10) A complainant, judge, or magistrate judge aggrieved by a final order of the chief judge under paragraph (3) of this subsection may petition the judicial council for review thereof. A complainant, judge, or magistrate judge aggrieved by an action of the judicial council under paragraph (6) of this subsection may petition the Judicial Conference of the United States for review thereof. The Judicial Conference, or the standing committee established under section 331 of this title, may grant a petition filed by a complainant, judge, or magistrate judge under this paragraph. Except as ex-

pressly provided in this paragraph, all orders and determinations, including denials of petitions for review, shall be final and conclusive and shall not be judicially reviewable on appeal or otherwise.

[(11) Each judicial council and the Judicial Conference may prescribe such rules for the conduct of proceedings under this subsection, including the processing of petitions for review, as each considers to be appropriate. Such rules shall contain provisions requiring that—

[(A) adequate prior notice of any investigation be given in writing to the judge or magistrate judge whose conduct is the subject of the complaint;

[(B) the judge or magistrate judge whose conduct is the subject of the complaint be afforded an opportunity to appear (in person or by counsel) at proceedings conducted by the investigating panel, to present oral and documentary evidence, to compel the attendance of witnesses or the production of documents, to cross-examine witnesses, and to present argument orally or in writing; and

[(C) the complainant be afforded an opportunity to appear at proceedings conducted by the investigating panel, if the panel concludes that the complainant could offer substantial information.

Any such rule shall be made or amended only after giving appropriate public notice and an opportunity for comment. Any rule promulgated under this subsection shall be a matter of public record, and any such rule promulgated by a judicial council may be modified by the Judicial Conference. No rule promulgated under this subsection may limit the period of time within which a person may file a complaint under this subsection.

[(12) No judge or magistrate judge whose conduct is the subject of an investigation under this subsection shall serve upon a special committee appointed under paragraph (4) of this subsection, upon a judicial council, upon the Judicial Conference, or upon the standing committee established under section 331 of this title, until all related proceedings under this subsection have been finally terminated.

[(13) No person shall be granted the right to intervene or to appear as amicus curiae in any proceeding before a judicial council or the Judicial Conference under this subsection.

[(14) Except as provided in paragraph (8), all papers, documents, and records of proceedings related to investigations conducted under this subsection shall be confidential and shall not be disclosed by any person in any proceeding except to the extent that—

[(A) the judicial council of the circuit in its discretion releases a copy of a report of a special investigative committee under paragraph (5) to the complainant whose complaint initiated the investigation by that special committee and to the judge or magistrate judge whose conduct is the subject of the complaint;

[(B) the judicial council of the circuit, the Judicial Conference of the United States, or the Senate or the House of Representatives by resolution, releases any such material which is believed necessary to an impeachment investigation or trial of a judge under article I of the Constitution; or

[(C) such disclosure is authorized in writing by the judge or magistrate judge who is the subject of the complaint and by the chief judge of the circuit, the Chief Justice, or the chairman of the standing committee established under section 331 of this title.

[(15) Each written order to implement any action under paragraph (6)(B) of this subsection, which is issued by a judicial council, the Judicial Conference, or the standing committee established under section 331 of this title, shall be made available to the public through the appropriate clerk’s office of the court of appeals for the circuit. Unless contrary to the interests of justice, each such order issued under this paragraph shall be accompanied by written reasons therefor.

[(16) Upon the request of a judge or magistrate judge whose conduct is the subject of a complaint under this subsection, the judicial council may, if the complaint has been finally dismissed under paragraph (6)(C), recommend that the Director of the Administrative Office of the United States Courts award reimbursement, from funds appropriated to the Federal judiciary, for those reasonable expenses, including attorneys’ fees, incurred by that judge or magistrate judge during the investigation which would not have been incurred but for the requirements of this subsection.

[(17) Except as expressly provided in this subsection, nothing in this subsection shall be construed to affect any other provision of this title, the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure, the Federal Rules of Appellate Procedure, or the Federal Rules of Evidence.

[(18) The United States Court of Federal Claims, the Court of International Trade, and the Court of Appeals for the Federal Circuit shall each prescribe rules, consistent with the foregoing provisions of this subsection, establishing procedures for the filing of complaints with respect to the conduct of any judge of such court and for the investigation and resolution of such complaints. In investigating and taking action with respect to any such complaint, each such court shall have the powers granted to a judicial council under this subsection.]

\* \* \* \* \*

**§ 375. Recall of certain judges and magistrate judges**

(a) \* \* \*

\* \* \* \* \*

(d) A certification under subsection (a) may be terminated in accordance with [section 372(c)] *chapter 16* of this title, and such a certification shall be terminated upon the death of the recalled judge or magistrate judge involved.

\* \* \* \* \*

**PART III—COURT OFFICERS AND EMPLOYEES**

\* \* \* \* \*

**CHAPTER 41—ADMINISTRATIVE OFFICE OF UNITED STATES COURTS**

\* \* \* \* \*

**§ 604. Duties of Director generally**

(a) The Director shall be the administrative officer of the courts, and under the supervision and direction of the Judicial Conference of the United States, shall:

(1) \* \* \*

\* \* \* \* \*

(20) Periodically compile—

(A) \* \* \*

(B) the rules which are prescribed under section [372(c)(11)] 358 of this title; and

(C) the orders which are required to be publicly available under section [372(c)(15)] 360(b) of this title; so as to provide a current record of such rules and orders;

\* \* \* \* \*

(h)(1) The Director shall, out of funds appropriated for the operation and maintenance of the courts, provide facilities and pay necessary expenses incurred by the judicial councils of the circuits and the Judicial Conference under [section 372] chapter 16 of this title, including mileage allowance and witness fees, at the same rate as provided in section 1821 of this title. Administrative and professional assistance from the Administrative Office of the United States Courts may be requested by each judicial council and the Judicial Conference for purposes of discharging their duties under [section 372] chapter 16 of this title.

(2) The Director of the Administrative Office of the United States Courts shall include in his annual report filed with the Congress under this section a summary of the number of complaints filed with each judicial council under [section 372(c)] chapter 16 of this title, indicating the general nature of such complaints and the disposition of those complaints in which action has been taken.

\* \* \* \* \*

**SECTION 7253 OF TITLE 38, UNITED STATES CODE**

**§ 7253. Composition**

(a) \* \* \*

\* \* \* \* \*

(g) RULES.—(1) The Court shall prescribe rules, consistent with the provisions of [section 372(c)] chapter 16 of title 28, establishing procedures for the filing of complaints with respect to the conduct of any judge of the Court and for the investigation and resolution of such complaints. In investigating and taking action with respect to any such complaint, the Court shall have the powers granted to a judicial council under [such section] such chapter.

(2) The provisions of [paragraphs (7) through (15) of section 372(c)] sections 354(b) through 360 of title 28, regarding referral or certification to, and petition for review in, the Judicial Conference

of the United States and action thereon, shall apply to the exercise by the Court of the powers of a judicial council under paragraph (1) of this subsection. The grounds for removal from office specified in subsection (f)(1) shall provide a basis for a determination pursuant to **[paragraph (7) or (8) of section 372(c)]** *section 354(b) or 355* of title 28, and certification and transmittal by the Conference shall be made to the President for consideration under subsection (f).

(3)(A) \* \* \*

(B) The Court shall have the power provided under section **[372(c)(16)]** 361 of title 28 to award reimbursement for the reasonable expenses described in that section. Reimbursements under this subparagraph shall be made from funds appropriated to the Court.

\* \* \* \* \*

MARKUP TRANSCRIPT

**BUSINESS MEETING**  
**WEDNESDAY, APRIL 24, 2002**

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON THE JUDICIARY,  
*Washington, DC.*

The Committee met, pursuant to notice, at 10:09 a.m., in Room 2141, Rayburn House Office Building, Hon. F. James Sensenbrenner, Jr. [Chairman of the Committee] presiding.

Chairman SENSENBRENNER. [Presiding.] The Committee will be in order.

[Intervening business.]

At this point in time, because the gentleman from California, Mr. Berman, had an appointment, the Committee stands in recess subject—okay. Then the Chair recognizes the gentleman from North Carolina, Mr. Coble.

The next item on the agenda is H.R. 3892, the “Judicial Improvements Act of 2002.”

[The bill, H.R. 3892, follows:]

107TH CONGRESS  
2D SESSION

# H. R. 3892

To amend title 28, United States Code, to make certain modifications in the judicial discipline procedures, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 7, 2002

Mr. COBLE (for himself and Mr. BERMAN) introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To amend title 28, United States Code, to make certain modifications in the judicial discipline procedures, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Judicial Improvements  
5 Act of 2002”.

6 **SEC. 2. JUDICIAL DISCIPLINE PROCEDURES.**

7 (a) IN GENERAL.—Part I of title 28, United States  
8 Code, is amended by inserting after chapter 15 the fol-  
9 lowing new chapter:

1    **“CHAPTER 16—COMPLAINTS AGAINST JUDGES**  
 2                                   **AND JUDICIAL DISCIPLINE**

“Sec.

“351. Complaints; judge defined.

“352. Review of complaint by chief judge.

“353. Special committees.

“354. Action by judicial council.

“355. Action by Judicial Conference.

“356. Subpoena power.

“357. Review of orders and actions.

“358. Rules.

“359. Restrictions.

“360. Disclosure of information.

“361. Reimbursement of expenses.

“362. Other provisions and rules not affected.

“363. Court of Federal Claims, Court of International Trade, Court of Appeals  
   for the Federal Circuit.

“364. Effect of felony conviction.

3    **“§ 351. Complaints; judge defined**

4           “(a) FILING OF COMPLAINT BY ANY PERSON.—Any  
 5 person alleging that a judge has engaged in conduct preju-  
 6 dicial to the effective and expeditious administration of the  
 7 business of the courts, or alleging that such judge is un-  
 8 able to discharge all the duties of office by reason of men-  
 9 tal or physical disability, may file with the clerk of the  
 10 court of appeals for the circuit a written complaint con-  
 11 taining a brief statement of the facts constituting such  
 12 conduct.

13           “(b) IDENTIFYING COMPLAINT BY CHIEF JUDGE.—  
 14 In the interests of the effective and expeditious adminis-  
 15 tration of the business of the courts and on the basis of  
 16 information available to the chief judge of the circuit, the  
 17 chief judge may, by written order stating reasons therefor,

1 identify a complaint for purposes of this chapter and  
2 thereby dispense with filing of a written complaint.

3       “(c) TRANSMITTAL OF COMPLAINT.—Upon receipt of  
4 a complaint filed under subsection (a), the clerk shall  
5 promptly transmit the complaint to the chief judge of the  
6 circuit, or, if the conduct complained of is that of the chief  
7 judge, to that circuit judge in regular active service next  
8 senior in date of commission (hereafter, for purposes of  
9 this chapter only, included in the term ‘chief judge’). The  
10 clerk shall simultaneously transmit a copy of the com-  
11 plaint to the judge whose conduct is the subject of the  
12 complaint. The clerk shall also transmit a copy of any  
13 complaint identified under subsection (b) to the judge  
14 whose conduct is the subject of the complaint.

15       “(d) DEFINITIONS.—In this chapter—

16               “(1) the term ‘judge’ means a circuit judge, dis-  
17 trict judge, bankruptcy judge, or magistrate judge;  
18 and

19               “(2) the term ‘complainant’ means the person  
20 filing a complaint under subsection (a) of this sec-  
21 tion.

22 **“§ 352. Review of complaint by chief judge**

23       “(a) EXPEDITIOUS REVIEW; LIMITED INQUIRY.—  
24 The chief judge shall expeditiously review any complaint  
25 received under section 351(a) or identified under section

1 351(b). In determining what action to take, the chief  
2 judge may conduct a limited inquiry for the purpose of  
3 determining—

4 “(1) whether appropriate corrective action has  
5 been or can be taken without the necessity for a for-  
6 mal investigation; and

7 “(2) whether the facts stated in the complaint  
8 are either plainly untrue or are incapable of being  
9 established through investigation.

10 For this purpose, the chief judge may request the judge  
11 whose conduct is complained of to file a written response  
12 to the complaint. Such response shall not be made avail-  
13 able to the complainant unless authorized by the judge fil-  
14 ing the response. The chief judge or his or her designee  
15 may also communicate orally or in writing with the com-  
16 plainant, the judge whose conduct is complained of, and  
17 any other person who may have knowledge of the matter,  
18 and may review any transcripts or other relevant docu-  
19 ments. The chief judge shall not undertake to make find-  
20 ings of fact about any matter that is reasonably in dispute.

21 “(b) ACTION BY CHIEF JUDGE FOLLOWING RE-  
22 VIEW.—After expeditiously reviewing a complaint under  
23 subsection (a), the chief judge, by written order stating  
24 his or her reasons, may—

25 “(1) dismiss the complaint—

1           “(A) if the chief judge finds the complaint  
2           to be—

3                   “(i) not in conformity with section  
4                   351(a);

5                   “(ii) directly related to the merits of  
6                   a decision or procedural ruling; or

7                   “(iii) frivolous, lacking sufficient evi-  
8                   dence to raise an inference that mis-  
9                   conduct has occurred, or containing allega-  
10                  tions which are incapable of being estab-  
11                  lished through investigation; or

12                  “(B) when a limited inquiry conducted  
13                  under subsection (a) demonstrates that the alle-  
14                  gations in the complaint lack any factual foun-  
15                  dation or are conclusively refuted by objective  
16                  evidence; or

17                  “(2) conclude the proceeding if the chief judge  
18                  finds that appropriate corrective action has been  
19                  taken or that action on the complaint is no longer  
20                  necessary because of intervening events.

21 The chief judge shall transmit copies of the written order  
22 to the complainant and to the judge whose conduct is the  
23 subject of the complaint.

24           “(c) REVIEW OF ORDERS OF CHIEF JUDGE.—A com-  
25 plainant or judge aggrieved by a final order of the chief

1 judge under this section may petition the judicial council  
2 of the circuit for review thereof. The denial of a petition  
3 for review of the chief judge’s order shall be final and con-  
4 clusive and shall not be judicially reviewable on appeal or  
5 otherwise.

6 “(d) REFERRAL OF PETITIONS FOR REVIEW TO PAN-  
7 ELS OF THE JUDICIAL COUNCIL.—Each judicial council  
8 may, pursuant to rules prescribed under section 358, refer  
9 a petition for review filed under subsection (c) to a panel  
10 of no fewer than 5 members of the council, at least 2 of  
11 whom shall be district judges.

12 **“§ 353. Special committees**

13 “(a) APPOINTMENT.—If the chief judge does not  
14 enter an order under section 352(b), the chief judge shall  
15 promptly—

16 “(1) appoint himself or herself and equal num-  
17 bers of circuit and district judges of the circuit to  
18 a special committee to investigate the facts and alle-  
19 gations contained in the complaint;

20 “(2) certify the complaint and any other docu-  
21 ments pertaining thereto to each member of such  
22 committee; and

23 “(3) provide written notice to the complainant  
24 and the judge whose conduct is the subject of the  
25 complaint of the action taken under this subsection.

1       “(b) CHANGE IN STATUS OR DEATH OF JUDGES.—  
2 A judge appointed to a special committee under subsection  
3 (a) may continue to serve on that committee after becom-  
4 ing a senior judge or, in the case of the chief judge of  
5 the circuit, after his or her term as chief judge terminates  
6 under subsection (a)(3) or (c) of section 45. If a judge  
7 appointed to a committee under subsection (a) dies, or re-  
8 tires from office under section 371(a), while serving on  
9 the committee, the chief judge of the circuit may appoint  
10 another circuit or district judge, as the case may be, to  
11 the committee.

12       “(c) INVESTIGATION BY SPECIAL COMMITTEE.—  
13 Each committee appointed under subsection (a) shall con-  
14 duct an investigation as extensive as it considers nec-  
15 essary, and shall expeditiously file a comprehensive written  
16 report thereon with the judicial council of the circuit. Such  
17 report shall present both the findings of the investigation  
18 and the committee’s recommendations for necessary and  
19 appropriate action by the judicial council of the circuit.

20 **“§ 354. Action by judicial council**

21       “(a) ACTIONS UPON RECEIPT OF REPORT.—

22               “(1) ACTIONS.—The judicial council of a cir-  
23       cuit, upon receipt of a report filed under section  
24       353(c)—

1           “(A) may conduct any additional investiga-  
2           tion which it considers to be necessary;

3           “(B) may dismiss the complaint; and

4           “(C) if the complaint is not dismissed,  
5           shall take such action as is appropriate to as-  
6           sure the effective and expeditious administra-  
7           tion of the business of the courts within the cir-  
8           cuit.

9           “(2) DESCRIPTION OF POSSIBLE ACTIONS IF  
10          COMPLAINT NOT DISMISSED.—

11          “(A) IN GENERAL.—Action by the judicial  
12          council under paragraph (1)(C) may include—

13                 “(i) ordering that, on a temporary  
14                 basis for a time certain, no further cases  
15                 be assigned to the judge whose conduct is  
16                 the subject of a complaint;

17                 “(ii) censuring or reprimanding such  
18                 judge by means of private communication;  
19                 and

20                 “(iii) censuring or reprimanding such  
21                 judge by means of public announcement.

22          “(B) FOR ARTICLE III JUDGES.—If the  
23          conduct of a judge appointed to hold office dur-  
24          ing good behavior is the subject of the com-

1           plaint, action by the judicial council under  
2           paragraph (1)(C) may include—

3                   “(i) certifying disability of the judge  
4                   pursuant to the procedures and standards  
5                   provided under section 372(b); and

6                   “(ii) requesting that the judge volun-  
7                   tarily retire, with the provision that the  
8                   length of service requirements under sec-  
9                   tion 371 of this title shall not apply.

10                  “(C) FOR MAGISTRATE JUDGES.—If the  
11                  conduct of a magistrate judge is the subject of  
12                  the complaint, action by the judicial council  
13                  under paragraph (1)(C) may include directing  
14                  the chief judge of the district of the magistrate  
15                  judge to take such action as the judicial council  
16                  considers appropriate.

17                  “(3) LIMITATIONS ON JUDICIAL COUNCIL RE-  
18                  GARDING REMOVALS.—

19                   “(A) ARTICLE III JUDGES.—Under no cir-  
20                   cumstances may the judicial council order re-  
21                   moval from office of any judge appointed to  
22                   hold office during good behavior.

23                   “(B) MAGISTRATE AND BANKRUPTCY  
24                   JUDGES.—Any removal of a magistrate judge  
25                   under this subsection shall be in accordance

1 with section 631 and any removal of a bank-  
2 ruptcy judge shall be in accordance with section  
3 152.

4 “(4) NOTICE OF ACTION TO JUDGE.—The judi-  
5 cial council shall immediately provide written notice  
6 to the complainant and to the judge whose conduct  
7 is the subject of the complaint of the action taken  
8 under this subsection.

9 “(b) REFERRAL TO JUDICIAL CONFERENCE.—

10 “(1) IN GENERAL.—In addition to the authority  
11 granted under subsection (a), the judicial council  
12 may, in its discretion, refer any complaint under sec-  
13 tion 351, together with the record of any associated  
14 proceedings and its recommendations for appropriate  
15 action, to the Judicial Conference of the United  
16 States.

17 “(2) SPECIAL CIRCUMSTANCES.—In any case in  
18 which the judicial council determines, on the basis of  
19 a complaint and an investigation under this chapter,  
20 or on the basis of information otherwise available to  
21 the judicial council, that a judge appointed to hold  
22 office during good behavior may have engaged in  
23 conduct—

1           “(A) which might constitute one or more  
2           grounds for impeachment under article II of the  
3           Constitution, or

4           “(B) which, in the interest of justice, is  
5           not amenable to resolution by the judicial coun-  
6           cil,

7           the judicial council shall promptly certify such deter-  
8           mination, together with any complaint and a record  
9           of any associated proceedings, to the Judicial Con-  
10          ference of the United States.

11          “(3) NOTICE TO COMPLAINANT AND JUDGE.—

12          A judicial council acting under authority of this sub-  
13          section shall, unless contrary to the interests of jus-  
14          tice, immediately submit written notice to the com-  
15          plainant and to the judge whose conduct is the sub-  
16          ject of the action taken under this subsection.

17          **“§ 355. Action by Judicial Conference**

18          “(a) IN GENERAL.—Upon referral or certification of  
19          any matter under section 354(b), the Judicial Conference,  
20          after consideration of the prior proceedings and such addi-  
21          tional investigation as it considers appropriate, shall by  
22          majority vote take such action, as described in section  
23          354(a)(1)(C) and (2), as it considers appropriate.

24          “(b) IF IMPEACHMENT WARRANTED.—

1           “(1) IN GENERAL.—If the Judicial Conference  
2 concurs in the determination of the judicial council,  
3 or makes its own determination, that consideration  
4 of impeachment may be warranted, it shall so certify  
5 and transmit the determination and the record of  
6 proceedings to the House of Representatives for  
7 whatever action the House of Representatives con-  
8 siders to be necessary. Upon receipt of the deter-  
9 mination and record of proceedings in the House of  
10 Representatives, the Clerk of the House of Rep-  
11 resentatives shall make available to the public the  
12 determination and any reasons for the determina-  
13 tion.

14           “(2) IN CASE OF FELONY CONVICTION.—If a  
15 judge has been convicted of a felony under State or  
16 Federal law and has exhausted all means of obtain-  
17 ing direct review of the conviction, or the time for  
18 seeking further direct review of the conviction has  
19 passed and no such review has been sought, the Ju-  
20 dicial Conference may, by majority vote and without  
21 referral or certification under section 354(b), trans-  
22 mit to the House of Representatives a determination  
23 that consideration of impeachment may be war-  
24 ranted, together with appropriate court records, for

1       whatever action the House of Representatives con-  
2       siders to be necessary.

3   **“§ 356. Subpoena power**

4       “(a) JUDICIAL COUNCILS AND SPECIAL COMMIT-  
5   TEES.—In conducting any investigation under this chap-  
6   ter, the judicial council, or a special committee appointed  
7   under section 353, shall have full subpoena powers as pro-  
8   vided in section 332(d).

9       “(b) JUDICIAL CONFERENCE AND STANDING COM-  
10   MITTEES.—In conducting any investigation under this  
11   chapter, the Judicial Conference, or a standing committee  
12   appointed by the Chief Justice under section 331, shall  
13   have full subpoena powers as provided in that section.

14   **“§ 357. Review of orders and actions**

15       “(a) REVIEW OF ACTION OF JUDICIAL COUNCIL.—  
16   A complainant or judge aggrieved by an action of the judi-  
17   cial council under section 354 may petition the Judicial  
18   Conference of the United States for review thereof.

19       “(b) ACTION OF JUDICIAL CONFERENCE.—The Judi-  
20   cial Conference, or the standing committee established  
21   under section 331, may grant a petition filed by a com-  
22   plainant or judge under subsection (a).

23       “(c) NO JUDICIAL REVIEW.—Except as expressly  
24   provided in this section and section 352(c), all orders and  
25   determinations, including denials of petitions for review,

1 shall be final and conclusive and shall not be judicially  
2 reviewable on appeal or otherwise.

3 **“§ 358. Rules**

4       “(a) IN GENERAL.—Each judicial council and the  
5 Judicial Conference may prescribe such rules for the con-  
6 duct of proceedings under this chapter, including the pro-  
7 cessing of petitions for review, as each considers to be ap-  
8 propriate.

9       “(b) REQUIRED PROVISIONS.—Rules prescribed  
10 under subsection (a) shall contain provisions requiring  
11 that—

12           “(1) adequate prior notice of any investigation  
13 be given in writing to the judge whose conduct is the  
14 subject of a complaint under this chapter;

15           “(2) the judge whose conduct is the subject of  
16 a complaint under this chapter be afforded an oppor-  
17 tunity to appear (in person or by counsel) at pro-  
18 ceedings conducted by the investigating panel, to  
19 present oral and documentary evidence, to compel  
20 the attendance of witnesses or the production of doc-  
21 uments, to cross-examine witnesses, and to present  
22 argument orally or in writing; and

23           “(3) the complainant be afforded an oppor-  
24 tunity to appear at proceedings conducted by the in-

1       investigating panel, if the panel concludes that the  
2       complainant could offer substantial information.

3       “(c) PROCEDURES.—Any rule prescribed under this  
4       section shall be made or amended only after giving appro-  
5       priate public notice and an opportunity for comment. Any  
6       such rule shall be a matter of public record, and any such  
7       rule promulgated by a judicial council may be modified  
8       by the Judicial Conference. No rule promulgated under  
9       this section may limit the period of time within which a  
10      person may file a complaint under this chapter.

11      **“§ 359. Restrictions**

12      “(a) RESTRICTION ON INDIVIDUALS WHO ARE SUB-  
13      JECT OF INVESTIGATION.—No judge whose conduct is the  
14      subject of an investigation under this chapter shall serve  
15      upon a special committee appointed under section 353,  
16      upon a judicial council, upon the Judicial Conference, or  
17      upon the standing committee established under section  
18      331, until all proceedings under this chapter relating to  
19      such investigation have been finally terminated.

20      “(b) AMICUS CURIAE.—No person shall be granted  
21      the right to intervene or to appear as amicus curiae in  
22      any proceeding before a judicial council or the Judicial  
23      Conference under this chapter.

1 **“§ 360. Disclosure of information**

2       “(a) CONFIDENTIALITY OF PROCEEDINGS.—Except  
3 as provided in section 355, all papers, documents, and  
4 records of proceedings related to investigations conducted  
5 under this chapter shall be confidential and shall not be  
6 disclosed by any person in any proceeding except to the  
7 extent that—

8               “(1) the judicial council of the circuit in its dis-  
9 cretion releases a copy of a report of a special com-  
10 mittee under section 353(e) to the complainant  
11 whose complaint initiated the investigation by that  
12 special committee and to the judge whose conduct is  
13 the subject of the complaint;

14               “(2) the judicial council of the circuit, the Judi-  
15 cial Conference of the United States, or the Senate  
16 or the House of Representatives by resolution, re-  
17 leases any such material which is believed necessary  
18 to an impeachment investigation or trial of a judge  
19 under article I of the Constitution; or

20               “(3) such disclosure is authorized in writing by  
21 the judge who is the subject of the complaint and by  
22 the chief judge of the circuit, the Chief Justice, or  
23 the chairman of the standing committee established  
24 under section 331.

25       “(b) PUBLIC AVAILABILITY OF WRITTEN ORDERS.—  
26 Each written order to implement any action under section

1 354(a)(1)(C), which is issued by a judicial council, the Ju-  
2 dicial Conference, or the standing committee established  
3 under section 331, shall be made available to the public  
4 through the appropriate clerk's office of the court of ap-  
5 peals for the circuit. Unless contrary to the interests of  
6 justice, each such order shall be accompanied by written  
7 reasons therefor.

8 **“§ 361. Reimbursement of expenses**

9 “Upon the request of a judge whose conduct is the  
10 subject of a complaint under this chapter, the judicial  
11 council may, if the complaint has been finally dismissed  
12 under section 354(a)(1)(B), recommend that the Director  
13 of the Administrative Office of the United States Courts  
14 award reimbursement, from funds appropriated to the  
15 Federal judiciary, for those reasonable expenses, including  
16 attorneys' fees, incurred by that judge during the inves-  
17 tigation which would not have been incurred but for the  
18 requirements of this chapter.

19 **“§ 362. Other provisions and rules not affected**

20 “Except as expressly provided in this chapter, noth-  
21 ing in this chapter shall be construed to affect any other  
22 provision of this title, the Federal Rules of Civil Proce-  
23 dure, the Federal Rules of Criminal Procedure, the Fed-  
24 eral Rules of Appellate Procedure, or the Federal Rules  
25 of Evidence.

1 **“§ 363. Court of Federal Claims, Court of Inter-**  
2 **national Trade, Court of Appeals for the**  
3 **Federal Circuit**

4 “The United States Court of Federal Claims, the  
5 Court of International Trade, and the Court of Appeals  
6 for the Federal Circuit shall each prescribe rules, con-  
7 sistent with the provisions of this chapter, establishing  
8 procedures for the filing of complaints with respect to the  
9 conduct of any judge of such court and for the investiga-  
10 tion and resolution of such complaints. In investigating  
11 and taking action with respect to any such complaint, each  
12 such court shall have the powers granted to a judicial  
13 council under this chapter.

14 **“§ 364. Effect of felony conviction**

15 “In the case of any judge or judge of a court referred  
16 to in section 363 who is convicted of a felony under State  
17 or Federal law and has exhausted all means of obtaining  
18 direct review of the conviction, or the time for seeking fur-  
19 ther direct review of the conviction has passed and no such  
20 review has been sought, that judge shall not hear cases  
21 unless the judicial council of the circuit (or, in the case  
22 of a judge of a court referred to in section 363, that court)  
23 determines otherwise.”.

24 (b) CONFORMING AMENDMENT.—The table of chap-  
25 ters for part I of title 28, United States Code, is amended

1 by inserting after the item relating to chapter 15 the fol-  
 2 lowing new item:

“**16. Judicial discipline** ..... **351**”.

3 **SEC. 3. EN BANC HEARINGS OF CIRCUIT JUDGES.**

4 Section 46(e) of title 28, United States Code, is  
 5 amended by inserting after the first sentence the fol-  
 6 lowing: “For purposes of determining a majority under the  
 7 preceding sentence, there shall be excluded any judge who  
 8 is recused from the case or controversy at issue.”.

9 **SEC. 4. TECHNICAL AMENDMENTS.**

10 (a) **RETIREMENT FOR DISABILITY.**—(1) Section 372  
 11 of title 28, United States Code, is amended—

12 (A) in the section caption by striking “; **judi-**  
 13 **cial discipline**”; and

14 (B) by striking subsection (c).

15 (2) The item relating to section 372 in the table of  
 16 sections for chapter 17 of title 28, United States Code,  
 17 is amended by striking “; judicial discipline”.

18 (b) **JUDICIAL CONFERENCE.**—Section 331 of title 28,  
 19 United States Code, is amended in the fourth undesig-  
 20 nated paragraph by striking “section 372(c)” each place  
 21 it appears and inserting “chapter 16”.

22 (c) **JUDICIAL COUNCILS.**—Section 332 of title 28,  
 23 United States Code, is amended—

24 (1) in subsection (d)(2)—

1 (A) by striking “section 372(c) of this  
2 title” and inserting “chapter 16 of this title”;  
3 and

4 (B) by striking “372(e)(4)” and inserting  
5 “353”; and

6 (2) by striking the second subsection designated  
7 as subsection (h).

8 (d) RECALL OF BANKRUPTCY JUDGES AND MAG-  
9 ISTRATE JUDGES.—Section 375(d) of title 28, United  
10 States Code, is amended by striking “section 372(c)” and  
11 inserting “chapter 16”.

12 (e) DIRECTOR OF THE ADMINISTRATIVE OFFICE OF  
13 THE UNITED STATES COURTS.—Section 604 of title 28,  
14 United States Code, is amended—

15 (1) in subsection (a)(20)—

16 (A) in subparagraph (B), by striking  
17 “372(e)(11)” and inserting “358”; and

18 (B) in subparagraph (C), by striking  
19 “372(e)(15)” and inserting “360(b)”; and

20 (2) in subsection (h)—

21 (A) in paragraph (1), by striking “section  
22 372” each place it appears and inserting “chap-  
23 ter 16”; and

24 (B) in paragraph (2), by striking “section  
25 372(c)” and inserting “chapter 16”.

1 (f) COURT OF APPEALS FOR VETERANS CLAIMS.—  
2 Section 7253(g) of title 38, United States Code, is  
3 amended—

4 (1) in paragraph (1)—

5 (A) by striking “section 372(c)” and in-  
6 serting “chapter 16”; and

7 (B) by striking “such section” and insert-  
8 ing “such chapter”;

9 (2) in paragraph (2)—

10 (A) in the first sentence, by striking  
11 “paragraphs (7) through (15) of section  
12 372(c)” and inserting “sections 354(b) through  
13 360”; and

14 (B) in the second sentence, by striking  
15 “paragraph (7) or (8) of section 372(c)” and  
16 inserting “section 354(b) or 355”; and

17 (3) in paragraph (3)(B), by striking  
18 “372(c)(16)” and inserting “361”.

○

Chairman SENSENBRENNER. The Chair recognizes the gentleman from North Carolina, Mr. Coble, Chairman of the Subcommittee on Courts, the Internet, and Intellectual Property, for a motion.

Mr. COBLE. Mr. Chairman, the Subcommittee on Courts, the Internet, and Intellectual Property reports favorably the bill H.R. 3892, with a single amendment in the nature of a substitute, and moves its favorable recommendation to the full House.

Chairman SENSENBRENNER. Without objection, the bill will be considered as read and open for amendment at any point, and the Subcommittee amendment in the nature of a substitute which the Members have before them will be considered as read and be considered as the original text for purposes of amendment.

[The amendment in the nature of a substitute follows:]

**AMENDMENT IN THE NATURE OF A SUBSTITUTE  
TO H.R. 3892  
AS REPORTED BY THE SUBCOMMITTEE ON  
COURTS, THE INTERNET, AND INTELLECTUAL  
PROPERTY**

Strike all after the enacting clause and insert the following:

**1 SECTION 1. SHORT TITLE.**

2       This Act may be cited as the “Judicial Improvements  
3 Act of 2002”.

**4 SEC. 2. JUDICIAL DISCIPLINE PROCEDURES.**

5       (a) IN GENERAL.—Part I of title 28, United States  
6 Code, is amended by inserting after chapter 15 the fol-  
7 lowing new chapter:

**8 “CHAPTER 16—COMPLAINTS AGAINST JUDGES  
9 AND JUDICIAL DISCIPLINE**

“Sec.

“351. Complaints; judge defined.

“352. Review of complaint by chief judge.

“353. Special committees.

“354. Action by judicial council.

“355. Action by Judicial Conference.

“356. Subpoena power.

“357. Review of orders and actions.

“358. Rules.

“359. Restrictions.

“360. Disclosure of information.

“361. Reimbursement of expenses.

“362. Other provisions and rules not affected.

“363. Court of Federal Claims, Court of International Trade, Court of Appeals  
for the Federal Circuit.

“364. Effect of felony conviction.

1 **“§ 351. Complaints; judge defined**

2       “(a) FILING OF COMPLAINT BY ANY PERSON.—Any  
3 person alleging that a judge has engaged in conduct preju-  
4 dicial to the effective and expeditious administration of the  
5 business of the courts, or alleging that such judge is un-  
6 able to discharge all the duties of office by reason of men-  
7 tal or physical disability, may file with the clerk of the  
8 court of appeals for the circuit a written complaint con-  
9 taining a brief statement of the facts constituting such  
10 conduct.

11       “(b) IDENTIFYING COMPLAINT BY CHIEF JUDGE.—  
12 In the interests of the effective and expeditious adminis-  
13 tration of the business of the courts and on the basis of  
14 information available to the chief judge of the circuit, the  
15 chief judge may, by written order stating reasons therefor,  
16 identify a complaint for purposes of this chapter and  
17 thereby dispense with filing of a written complaint.

18       “(c) TRANSMITTAL OF COMPLAINT.—Upon receipt of  
19 a complaint filed under subsection (a), the clerk shall  
20 promptly transmit the complaint to the chief judge of the  
21 circuit, or, if the conduct complained of is that of the chief  
22 judge, to that circuit judge in regular active service next  
23 senior in date of commission (hereafter, for purposes of  
24 this chapter only, included in the term ‘chief judge’). The  
25 clerk shall simultaneously transmit a copy of the com-  
26 plaint to the judge whose conduct is the subject of the

1 complaint. The clerk shall also transmit a copy of any  
2 complaint identified under subsection (b) to the judge  
3 whose conduct is the subject of the complaint.

4 “(d) DEFINITIONS.—In this chapter—

5 “(1) the term ‘judge’ means a circuit judge, dis-  
6 trict judge, bankruptcy judge, or magistrate judge;  
7 and

8 “(2) the term ‘complainant’ means the person  
9 filing a complaint under subsection (a) of this sec-  
10 tion.

11 **“§ 352. Review of complaint by chief judge**

12 “(a) EXPEDITIOUS REVIEW; LIMITED INQUIRY.—  
13 The chief judge shall expeditiously review any complaint  
14 received under section 351(a) or identified under section  
15 351(b). In determining what action to take, the chief  
16 judge may conduct a limited inquiry for the purpose of  
17 determining—

18 “(1) whether appropriate corrective action has  
19 been or can be taken without the necessity for a for-  
20 mal investigation; and

21 “(2) whether the facts stated in the complaint  
22 are either plainly untrue or are incapable of being  
23 established through investigation.

24 For this purpose, the chief judge may request the judge  
25 whose conduct is complained of to file a written response

1 to the complaint. Such response shall not be made avail-  
2 able to the complainant unless authorized by the judge fil-  
3 ing the response. The chief judge or his or her designee  
4 may also communicate orally or in writing with the com-  
5 plainant, the judge whose conduct is complained of, and  
6 any other person who may have knowledge of the matter,  
7 and may review any transcripts or other relevant docu-  
8 ments. The chief judge shall not undertake to make find-  
9 ings of fact about any matter that is reasonably in dispute.

10 “(b) ACTION BY CHIEF JUDGE FOLLOWING RE-  
11 VIEW.—After expeditiously reviewing a complaint under  
12 subsection (a), the chief judge, by written order stating  
13 his or her reasons, may—

14 “(1) dismiss the complaint—

15 “(A) if the chief judge finds the complaint  
16 to be—

17 “(i) not in conformity with section  
18 351(a);

19 “(ii) directly related to the merits of  
20 a decision or procedural ruling; or

21 “(iii) frivolous, lacking sufficient evi-  
22 dence to raise an inference that mis-  
23 conduct has occurred, or containing allega-  
24 tions which are incapable of being estab-  
25 lished through investigation; or

1           “(B) when a limited inquiry conducted  
2           under subsection (a) demonstrates that the alle-  
3           gations in the complaint lack any factual founda-  
4           tion or are conclusively refuted by objective  
5           evidence; or

6           “(2) conclude the proceeding if the chief judge  
7           finds that appropriate corrective action has been  
8           taken or that action on the complaint is no longer  
9           necessary because of intervening events.

10 The chief judge shall transmit copies of the written order  
11 to the complainant and to the judge whose conduct is the  
12 subject of the complaint.

13       “(c) REVIEW OF ORDERS OF CHIEF JUDGE.—A com-  
14 plainant or judge aggrieved by a final order of the chief  
15 judge under this section may petition the judicial council  
16 of the circuit for review thereof. The denial of a petition  
17 for review of the chief judge’s order shall be final and con-  
18 clusive and shall not be judicially reviewable on appeal or  
19 otherwise.

20       “(d) REFERRAL OF PETITIONS FOR REVIEW TO PAN-  
21 ELS OF THE JUDICIAL COUNCIL.—Each judicial council  
22 may, pursuant to rules prescribed under section 358, refer  
23 a petition for review filed under subsection (c) to a panel  
24 of no fewer than 5 members of the council, at least 2 of  
25 whom shall be district judges.

1 **“§ 353. Special committees**

2 “(a) APPOINTMENT.—If the chief judge does not  
3 enter an order under section 352(b), the chief judge shall  
4 promptly—

5 “(1) appoint himself or herself and equal num-  
6 bers of circuit and district judges of the circuit to  
7 a special committee to investigate the facts and alle-  
8 gations contained in the complaint;

9 “(2) certify the complaint and any other docu-  
10 ments pertaining thereto to each member of such  
11 committee; and

12 “(3) provide written notice to the complainant  
13 and the judge whose conduct is the subject of the  
14 complaint of the action taken under this subsection.

15 “(b) CHANGE IN STATUS OR DEATH OF JUDGES.—  
16 A judge appointed to a special committee under subsection  
17 (a) may continue to serve on that committee after becom-  
18 ing a senior judge or, in the case of the chief judge of  
19 the circuit, after his or her term as chief judge terminates  
20 under subsection (a)(3) or (c) of section 45. If a judge  
21 appointed to a committee under subsection (a) dies, or re-  
22 tires from office under section 371(a), while serving on  
23 the committee, the chief judge of the circuit may appoint  
24 another circuit or district judge, as the case may be, to  
25 the committee.

1       “(c) INVESTIGATION BY SPECIAL COMMITTEE.—  
2 Each committee appointed under subsection (a) shall con-  
3 duct an investigation as extensive as it considers nec-  
4 essary, and shall expeditiously file a comprehensive written  
5 report thereon with the judicial council of the circuit. Such  
6 report shall present both the findings of the investigation  
7 and the committee’s recommendations for necessary and  
8 appropriate action by the judicial council of the circuit.

9       **“§ 354. Action by judicial council**

10       “(a) ACTIONS UPON RECEIPT OF REPORT.—

11               “(1) ACTIONS.—The judicial council of a cir-  
12       cuit, upon receipt of a report filed under section  
13       353(c)—

14                       “(A) may conduct any additional investiga-  
15       tion which it considers to be necessary;

16                       “(B) may dismiss the complaint; and

17                       “(C) if the complaint is not dismissed,  
18       shall take such action as is appropriate to as-  
19       sure the effective and expeditious administra-  
20       tion of the business of the courts within the cir-  
21       cuit.

22               “(2) DESCRIPTION OF POSSIBLE ACTIONS IF  
23       COMPLAINT NOT DISMISSED.—

24                       “(A) IN GENERAL.—Action by the judicial  
25       council under paragraph (1)(C) may include—

1           “(i) ordering that, on a temporary  
2           basis for a time certain, no further cases  
3           be assigned to the judge whose conduct is  
4           the subject of a complaint;

5           “(ii) censuring or reprimanding such  
6           judge by means of private communication;  
7           and

8           “(iii) censuring or reprimanding such  
9           judge by means of public announcement.

10          “(B) FOR ARTICLE III JUDGES.—If the  
11          conduct of a judge appointed to hold office dur-  
12          ing good behavior is the subject of the com-  
13          plaint, action by the judicial council under  
14          paragraph (1)(C) may include—

15               “(i) certifying disability of the judge  
16               pursuant to the procedures and standards  
17               provided under section 372(b); and

18               “(ii) requesting that the judge volun-  
19               tarily retire, with the provision that the  
20               length of service requirements under sec-  
21               tion 371 of this title shall not apply.

22          “(C) FOR MAGISTRATE JUDGES.—If the  
23          conduct of a magistrate judge is the subject of  
24          the complaint, action by the judicial council  
25          under paragraph (1)(C) may include directing

1           the chief judge of the district of the magistrate  
2           judge to take such action as the judicial council  
3           considers appropriate.

4           “(3) LIMITATIONS ON JUDICIAL COUNCIL RE-  
5           GARDING REMOVALS.—

6                   “(A) ARTICLE III JUDGES.—Under no cir-  
7                   cumstances may the judicial council order re-  
8                   moval from office of any judge appointed to  
9                   hold office during good behavior.

10                   “(B) MAGISTRATE AND BANKRUPTCY  
11                   JUDGES.—Any removal of a magistrate judge  
12                   under this subsection shall be in accordance  
13                   with section 631 and any removal of a bank-  
14                   ruptcy judge shall be in accordance with section  
15                   152.

16                   “(4) NOTICE OF ACTION TO JUDGE.—The judi-  
17                   cial council shall immediately provide written notice  
18                   to the complainant and to the judge whose conduct  
19                   is the subject of the complaint of the action taken  
20                   under this subsection.

21                   “(b) REFERRAL TO JUDICIAL CONFERENCE.—

22                           “(1) IN GENERAL.—In addition to the authority  
23                           granted under subsection (a), the judicial council  
24                           may, in its discretion, refer any complaint under sec-  
25                           tion 351, together with the record of any associated

1 proceedings and its recommendations for appropriate  
2 action, to the Judicial Conference of the United  
3 States.

4 “(2) SPECIAL CIRCUMSTANCES.—In any case in  
5 which the judicial council determines, on the basis of  
6 a complaint and an investigation under this chapter,  
7 or on the basis of information otherwise available to  
8 the judicial council, that a judge appointed to hold  
9 office during good behavior may have engaged in  
10 conduct—

11 “(A) which might constitute one or more  
12 grounds for impeachment under article II of the  
13 Constitution, or

14 “(B) which, in the interest of justice, is  
15 not amenable to resolution by the judicial coun-  
16 cil,

17 the judicial council shall promptly certify such deter-  
18 mination, together with any complaint and a record  
19 of any associated proceedings, to the Judicial Con-  
20 ference of the United States.

21 “(3) NOTICE TO COMPLAINANT AND JUDGE.—  
22 A judicial council acting under authority of this sub-  
23 section shall, unless contrary to the interests of jus-  
24 tice, immediately submit written notice to the com-

1 plainant and to the judge whose conduct is the sub-  
2 ject of the action taken under this subsection.

3 **“§ 355. Action by Judicial Conference**

4 “(a) IN GENERAL.—Upon referral or certification of  
5 any matter under section 354(b), the Judicial Conference,  
6 after consideration of the prior proceedings and such addi-  
7 tional investigation as it considers appropriate, shall by  
8 majority vote take such action, as described in section  
9 354(a)(1)(C) and (2), as it considers appropriate.

10 “(b) IF IMPEACHMENT WARRANTED.—

11 “(1) IN GENERAL.—If the Judicial Conference  
12 concurs in the determination of the judicial council,  
13 or makes its own determination, that consideration  
14 of impeachment may be warranted, it shall so certify  
15 and transmit the determination and the record of  
16 proceedings to the House of Representatives for  
17 whatever action the House of Representatives con-  
18 siders to be necessary. Upon receipt of the deter-  
19 mination and record of proceedings in the House of  
20 Representatives, the Clerk of the House of Rep-  
21 resentatives shall make available to the public the  
22 determination and any reasons for the determina-  
23 tion.

24 “(2) IN CASE OF FELONY CONVICTION.—If a  
25 judge has been convicted of a felony under State or

1 Federal law and has exhausted all means of obtain-  
2 ing direct review of the conviction, or the time for  
3 seeking further direct review of the conviction has  
4 passed and no such review has been sought, the Ju-  
5 dicial Conference may, by majority vote and without  
6 referral or certification under section 354(b), trans-  
7 mit to the House of Representatives a determination  
8 that consideration of impeachment may be war-  
9 ranted, together with appropriate court records, for  
10 whatever action the House of Representatives con-  
11 siders to be necessary.

12 **“§ 356. Subpoena power**

13 “(a) JUDICIAL COUNCILS AND SPECIAL COMMIT-  
14 TEES.—In conducting any investigation under this chap-  
15 ter, the judicial council, or a special committee appointed  
16 under section 353, shall have full subpoena powers as pro-  
17 vided in section 332(d).

18 “(b) JUDICIAL CONFERENCE AND STANDING COM-  
19 MITTEES.—In conducting any investigation under this  
20 chapter, the Judicial Conference, or a standing committee  
21 appointed by the Chief Justice under section 331, shall  
22 have full subpoena powers as provided in that section.

23 **“§ 357. Review of orders and actions**

24 “(a) REVIEW OF ACTION OF JUDICIAL COUNCIL.—  
25 A complainant or judge aggrieved by an action of the judi-

1 cial council under section 354 may petition the Judicial  
2 Conference of the United States for review thereof.

3 “(b) ACTION OF JUDICIAL CONFERENCE.—The Judi-  
4 cial Conference, or the standing committee established  
5 under section 331, may grant a petition filed by a com-  
6 plainant or judge under subsection (a).

7 “(c) NO JUDICIAL REVIEW.—Except as expressly  
8 provided in this section and section 352(e), all orders and  
9 determinations, including denials of petitions for review,  
10 shall be final and conclusive and shall not be judicially  
11 reviewable on appeal or otherwise.

12 **“§ 358. Rules**

13 “(a) IN GENERAL.—Each judicial council and the  
14 Judicial Conference may prescribe such rules for the con-  
15 duct of proceedings under this chapter, including the proe-  
16 cessing of petitions for review, as each considers to be ap-  
17 propriate.

18 “(b) REQUIRED PROVISIONS.—Rules prescribed  
19 under subsection (a) shall contain provisions requiring  
20 that—

21 “(1) adequate prior notice of any investigation  
22 be given in writing to the judge whose conduct is the  
23 subject of a complaint under this chapter;

24 “(2) the judge whose conduct is the subject of  
25 a complaint under this chapter be afforded an op-

1 portunity to appear (in person or by counsel) at pro-  
2 ceedings conducted by the investigating panel, to  
3 present oral and documentary evidence, to compel  
4 the attendance of witnesses or the production of doc-  
5 uments, to cross-examine witnesses, and to present  
6 argument orally or in writing; and

7 “(3) the complainant be afforded an oppor-  
8 tunity to appear at proceedings conducted by the in-  
9 vestigating panel, if the panel concludes that the  
10 complainant could offer substantial information.

11 “(c) PROCEDURES.—Any rule prescribed under this  
12 section shall be made or amended only after giving appro-  
13 priate public notice and an opportunity for comment. Any  
14 such rule shall be a matter of public record, and any such  
15 rule promulgated by a judicial council may be modified  
16 by the Judicial Conference. No rule promulgated under  
17 this section may limit the period of time within which a  
18 person may file a complaint under this chapter.

19 **“§ 359. Restrictions**

20 “(a) RESTRICTION ON INDIVIDUALS WHO ARE SUB-  
21 JECT OF INVESTIGATION.—No judge whose conduct is the  
22 subject of an investigation under this chapter shall serve  
23 upon a special committee appointed under section 353,  
24 upon a judicial council, upon the Judicial Conference, or  
25 upon the standing committee established under section

1 331, until all proceedings under this chapter relating to  
2 such investigation have been finally terminated.

3 “(b) AMICUS CURIAE.—No person shall be granted  
4 the right to intervene or to appear as amicus curiae in  
5 any proceeding before a judicial council or the Judicial  
6 Conference under this chapter.

7 **“§ 360. Disclosure of information**

8 “(a) CONFIDENTIALITY OF PROCEEDINGS.—Except  
9 as provided in section 355, all papers, documents, and  
10 records of proceedings related to investigations conducted  
11 under this chapter shall be confidential and shall not be  
12 disclosed by any person in any proceeding except to the  
13 extent that—

14 “(1) the judicial council of the circuit in its dis-  
15 cretion releases a copy of a report of a special com-  
16 mittee under section 353(c) to the complainant  
17 whose complaint initiated the investigation by that  
18 special committee and to the judge whose conduct is  
19 the subject of the complaint;

20 “(2) the judicial council of the circuit, the Judi-  
21 cial Conference of the United States, or the Senate  
22 or the House of Representatives by resolution, re-  
23 leases any such material which is believed necessary  
24 to an impeachment investigation or trial of a judge  
25 under article I of the Constitution; or

1           “(3) such disclosure is authorized in writing by  
2           the judge who is the subject of the complaint and by  
3           the chief judge of the circuit, the Chief Justice, or  
4           the chairman of the standing committee established  
5           under section 331.

6           “(b) PUBLIC AVAILABILITY OF WRITTEN ORDERS.—  
7           Each written order to implement any action under section  
8           354(a)(1)(C), which is issued by a judicial council, the Ju-  
9           dicial Conference, or the standing committee established  
10          under section 331, shall be made available to the public  
11          through the appropriate clerk’s office of the court of ap-  
12          peals for the circuit. Unless contrary to the interests of  
13          justice, each such order shall be accompanied by written  
14          reasons therefor.

15          **“§ 361. Reimbursement of expenses**

16          “Upon the request of a judge whose conduct is the  
17          subject of a complaint under this chapter, the judicial  
18          council may, if the complaint has been finally dismissed  
19          under section 354(a)(1)(B), recommend that the Director  
20          of the Administrative Office of the United States Courts  
21          award reimbursement, from funds appropriated to the  
22          Federal judiciary, for those reasonable expenses, including  
23          attorneys’ fees, incurred by that judge during the inves-  
24          tigation which would not have been incurred but for the  
25          requirements of this chapter.

1 **“§ 362. Other provisions and rules not affected**

2 “Except as expressly provided in this chapter, noth-  
3 ing in this chapter shall be construed to affect any other  
4 provision of this title, the Federal Rules of Civil Proce-  
5 dure, the Federal Rules of Criminal Procedure, the Fed-  
6 eral Rules of Appellate Procedure, or the Federal Rules  
7 of Evidence.

8 **“§ 363. Court of Federal Claims, Court of Inter-  
9 national Trade, Court of Appeals for the  
10 Federal Circuit**

11 “The United States Court of Federal Claims, the  
12 Court of International Trade, and the Court of Appeals  
13 for the Federal Circuit shall each prescribe rules, con-  
14 sistent with the provisions of this chapter, establishing  
15 procedures for the filing of complaints with respect to the  
16 conduct of any judge of such court and for the investiga-  
17 tion and resolution of such complaints. In investigating  
18 and taking action with respect to any such complaint, each  
19 such court shall have the powers granted to a judicial  
20 council under this chapter.

21 **“§ 364. Effect of felony conviction**

22 “In the case of any judge or judge of a court referred  
23 to in section 363 who is convicted of a felony under State  
24 or Federal law and has exhausted all means of obtaining  
25 direct review of the conviction, or the time for seeking fur-  
26 ther direct review of the conviction has passed and no such

1 review has been sought, that judge shall not hear cases  
 2 unless the judicial council of the circuit (or, in the case  
 3 of a judge of a court referred to in section 363, that court)  
 4 determines otherwise.”.

5 (b) CONFORMING AMENDMENT.—The table of chap-  
 6 ters for part I of title 28, United States Code, is amended  
 7 by inserting after the item relating to chapter 15 the fol-  
 8 lowing new item:

“**16. Judicial discipline** ..... **351**”.

9 **SEC. 3. TECHNICAL AMENDMENTS.**

10 (a) RETIREMENT FOR DISABILITY.—(1) Section 372  
 11 of title 28, United States Code, is amended—

12 (A) in the section caption by striking “; **judi-**  
 13 **cial discipline**”; and

14 (B) by striking subsection (c).

15 (2) The item relating to section 372 in the table of  
 16 sections for chapter 17 of title 28, United States Code,  
 17 is amended by striking “; judicial discipline”.

18 (b) JUDICIAL CONFERENCE.—Section 331 of title 28,  
 19 United States Code, is amended in the fourth undesig-  
 20 nated paragraph by striking “section 372(c)” each place  
 21 it appears and inserting “chapter 16”.

22 (c) JUDICIAL COUNCILS.—Section 332 of title 28,  
 23 United States Code, is amended—

24 (1) in subsection (d)(2)—

1 (A) by striking “section 372(c) of this  
2 title” and inserting “chapter 16 of this title”;  
3 and

4 (B) by striking “372(e)(4)” and inserting  
5 “353”; and

6 (2) by striking the second subsection designated  
7 as subsection (h).

8 (d) RECALL OF BANKRUPTCY JUDGES AND MAG-  
9 ISTRATE JUDGES.—Section 375(d) of title 28, United  
10 States Code, is amended by striking “section 372(c)” and  
11 inserting “chapter 16”.

12 (e) DIRECTOR OF THE ADMINISTRATIVE OFFICE OF  
13 THE UNITED STATES COURTS.—Section 604 of title 28,  
14 United States Code, is amended—

15 (1) in subsection (a)(20)—

16 (A) in subparagraph (B), by striking  
17 “372(e)(11)” and inserting “358”; and

18 (B) in subparagraph (C), by striking  
19 “372(e)(15)” and inserting “360(b)”; and

20 (2) in subsection (h)—

21 (A) in paragraph (1), by striking “section  
22 372” each place it appears and inserting “chap-  
23 ter 16”; and

24 (B) in paragraph (2), by striking “section  
25 372(c)” and inserting “chapter 16”.

1 (f) COURT OF APPEALS FOR VETERANS CLAIMS.—  
2 Section 7253(g) of title 38, United States Code, is  
3 amended—

4 (1) in paragraph (1)—

5 (A) by striking “section 372(c)” and in-  
6 serting “chapter 16”; and

7 (B) by striking “such section” and insert-  
8 ing “such chapter”;

9 (2) in paragraph (2)—

10 (A) in the first sentence, by striking  
11 “paragraphs (7) through (15) of section  
12 372(c)” and inserting “sections 354(b) through  
13 360”; and

14 (B) in the second sentence, by striking  
15 “paragraph (7) or (8) of section 372(c)” and  
16 inserting “section 354(b) or 355”; and

17 (3) in paragraph (3)(B), by striking  
18 “372(c)(16)” and inserting “361”.

Chairman SENSENBRENNER. Again, the Chair encourages everybody to be brief and recognizes the gentleman from North Carolina.

Mr. COBLE. Mr. Chairman, I move to strike the last word and I—

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. COBLE. And I can do this within the 5-minute limit.

H.R. 3892 constitutes a noncontroversial fine-tuning of an existing statute, the Judicial Conduct and Disability Act of 1980, which permits individuals to file complaints against Federal judges for inappropriate behavior. Mr. Berman and I have introduced the bill, Mr. Chairman, and there appears to be no controversy, and I move its favorable consideration.

[The prepared statement of Mr. Coble follows:]

PREPARED STATEMENT OF THE HONORABLE HOWARD COBLE, A REPRESENTATIVE IN  
CONGRESS FROM THE STATE OF NORTH CAROLINA

Mr. Chairman, I move to strike the last word.

H.R. 3892 constitutes a noncontroversial fine-tuning of an existing statute, the “Judicial Conduct and Disability Act of 1980,” which permits individuals to file complaints against federal judges for inappropriate behavior.

The Subcommittee on Courts, the Internet, and Intellectual Property conducted an oversight hearing on the operations of federal judicial misconduct statutes last November 29. The witnesses at the hearing were united in their general praise for the Third Branch. Their respect for the federal judiciary is, I am confident, also shared by each Committee member. Still, no federal entity is immune from periodic evaluation, and that is why the Subcommittee Ranking Member, Mr. Berman, and I have introduced H.R. 3892.

The legislation before us will reorganize the 1980 Act by re-codifying it as a new chapter of title 28 of the U.S. Code. The bill will also clarify the responsibilities of a circuit chief judge in making initial evaluations of a complaint.

The changes set forth in the “Judicial Improvements Act of 2002” are largely based on procedures that the judges themselves have developed through the years. The construct for the bill, based as it is on self-regulation, indicates that Congress and the American people retain great confidence in the ability of federal judges to identify and correct misconduct among their own colleagues.

Mr. Chairman, that concludes my explanation of H.R. 3892, and I yield back the balance of my time.

Chairman SENSENBRENNER. Without objection, all Members’ statements may appear in the record at this point.

[The prepared statement of Mr. Conyers follows:]

PREPARED STATEMENT OF THE HONORABLE JOHN CONYERS, JR., A REPRESENTATIVE  
IN CONGRESS FROM THE STATE OF MICHIGAN

I rise in support of this legislation. H.R. 3892 makes several changes that will improve vastly the operation of the Federal judicial discipline statutes.

A preliminary change is to raise the profile of the law pertaining to complaints filed against judges. By giving these provisions their own section—as opposed to an obscure subsection as in current law—it will be easier for persons with complaints to find and understand the review process.

The legislation also allows the chief judge of the relevant court to conduct a “limited inquiry” of a complaint to determine (1) whether a formal investigation should proceed, and (2) whether the facts alleged are plainly untrue or incapable of being established through an investigation. This provision will preserve the resources of the judiciary so that it is not required to investigate every complaint but can focus on those most deserving its attention. At the same time, a complainant can appeal the final order from a limited inquiry to the court’s judicial council.

Third, current law says that, when a judge is convicted of a felony, the Judicial Conference may transmit to Congress a determination that impeachment may be warranted. It is unclear, however, whether both Federal and state felonies are covered; this legislation makes it explicit that felonies in both jurisdictions are grounds for a referral.

Finally, the bill amends to law to prohibit judges later convicted of felonies from handling cases unless and until the judicial council or relevant court determines otherwise.

I urge the members to vote "Yes" on this non-controversial bill.

[The prepared statement of Mr. Berman follows:]

PREPARED STATEMENT OF THE HONORABLE HOWARD L. BERMAN, A REPRESENTATIVE  
IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. Chairman,

Thank you for calling this markup on the Judicial Improvements Act of 2002. This Act makes slight modifications to existing federal judicial misconduct statutes, and I am pleased to be a co-sponsor.

At our November hearing on the federal judicial misconduct statutes, several suggestions were made by Professor Arthur Hellman and Mr. Michael Remington to improve the methods and procedures for filing and evaluating a complaint against a federal judge. This legislation is the outcome of those suggestions. In particular, this legislation re-organizes the misconduct statutes into a more convenient, separate chapter; it gives a chief judge increased flexibility to perform a limited investigation of a complaint and dismiss it upon finding clearly obviating facts; and it specifies how petitions for review should be evaluated.

I have shown this proposed legislation to several judges with jurisdiction over my California district, and I have received only positive responses. The judges believe this legislation will make it easier for a complainant to have a fair and expeditious review of his or her complaint. They also believe it will make it easier for the judicial branch to process each complaint efficiently.

I urge my colleagues to support this bill, and I yield back the balance of my time.

Are there amendments to the bill? If there are no amendments to the bill, the question occurs on the amendment in the nature of a substitute. Those in favor will say aye? Opposed, no?

The ayes appear to have it. The ayes have it, and the amendment in the nature of a substitute is agreed to.

The question now occurs on the motion to report the bill H.R. 3892 favorably as amended by the amendment in the nature of a substitute. The Chair notes the presence of a reporting quorum. All those in favor will say aye? Opposed, no?

The ayes appear to have it. The ayes have it, and the motion to report favorably is adopted.

Without objection, the Chairman is authorized to move to go to conference pursuant to House rules. Without objection, the staff is directed to make any technical and conforming changes, and all Members will be given two days, as provided by House rules, in which to submit additional dissenting, supplemental, or minority views.

And now the Subcommittee—or the Committee is recessed pursuant to the call of the Chair.

[Whereupon, at 12:07 p.m., the Committee was adjourned.]