

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.

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

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 proc-
7 essing 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 op-
17 portunity 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 vestigating 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(c) 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(c) 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(c)(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(c)(11)” and inserting “358”; and

18 (B) in subparagraph (C), by striking
19 “372(c)(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”.

○