107TH CONGRESS
2D SESSION

H. R. 3892

AN ACT

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

AUTHENTICATED
U.S. GOVERNMENT
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AN ACT

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

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 docu-

ments. 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''.

Passed the House of Representatives July 22, 2002.

Attest:

Clerk.