

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 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”.

○