

107<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 3892

---

IN THE SENATE OF THE UNITED STATES

JULY 23, 2002

Received; read twice and referred to the Committee on the Judiciary

---

## AN ACT

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,*

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:

**“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.

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

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

1 “(b) IDENTIFYING COMPLAINT BY CHIEF JUDGE.—

2 In the interests of the effective and expeditious adminis-  
3 tration of the business of the courts and on the basis of  
4 information available to the chief judge of the circuit, the  
5 chief judge may, by written order stating reasons therefor,  
6 identify a complaint for purposes of this chapter and  
7 thereby dispense with filing of a written complaint.

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

20 “(d) DEFINITIONS.—In this chapter—

21 “(1) the term ‘judge’ means a circuit judge, dis-  
22 trict judge, bankruptcy judge, or magistrate judge;  
23 and

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

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

5           “(a) EXPEDITIOUS REVIEW; LIMITED INQUIRY.—  
6           The chief judge shall expeditiously review any complaint  
7           received under section 351(a) or identified under section  
8           351(b). In determining what action to take, the chief  
9           judge may conduct a limited inquiry for the purpose of  
10          determining—

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

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

17          For this purpose, the chief judge may request the judge  
18          whose conduct is complained of to file a written response  
19          to the complaint. Such response shall not be made avail-  
20          able to the complainant unless authorized by the judge fil-  
21          ing the response. The chief judge or his or her designee  
22          may also communicate orally or in writing with the com-  
23          plainant, the judge whose conduct is complained of, and  
24          any other person who may have knowledge of the matter,  
25          and may review any transcripts or other relevant docu-

1 ments. The chief judge shall not undertake to make find-  
2 ings of fact about any matter that is reasonably in dispute.

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

7 “(1) dismiss the complaint—

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

10 “(i) not in conformity with section  
11 351(a);

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

14 “(iii) frivolous, lacking sufficient evi-  
15 dence to raise an inference that mis-  
16 conduct has occurred, or containing allega-  
17 tions which are incapable of being estab-  
18 lished through investigation; or

19 “(B) when a limited inquiry conducted  
20 under subsection (a) demonstrates that the alle-  
21 gations in the complaint lack any factual foun-  
22 dation or are conclusively refuted by objective  
23 evidence; or

24 “(2) conclude the proceeding if the chief judge  
25 finds that appropriate corrective action has been

1 taken or that action on the complaint is no longer  
2 necessary because of intervening events.

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

6 “(c) REVIEW OF ORDERS OF CHIEF JUDGE.—A com-  
7 plainant or judge aggrieved by a final order of the chief  
8 judge under this section may petition the judicial council  
9 of the circuit for review thereof. The denial of a petition  
10 for review of the chief judge’s order shall be final and con-  
11 clusive and shall not be judicially reviewable on appeal or  
12 otherwise.

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

19 **“§ 353. Special committees**

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

23 “(1) appoint himself or herself and equal num-  
24 bers of circuit and district judges of the circuit to

1 a special committee to investigate the facts and alle-  
2 gations contained in the complaint;

3 “(2) certify the complaint and any other docu-  
4 ments pertaining thereto to each member of such  
5 committee; and

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

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

20 “(c) INVESTIGATION BY SPECIAL COMMITTEE.—  
21 Each committee appointed under subsection (a) shall con-  
22 duct an investigation as extensive as it considers nec-  
23 essary, and shall expeditiously file a comprehensive written  
24 report thereon with the judicial council of the circuit. Such  
25 report shall present both the findings of the investigation

1 and the committee's recommendations for necessary and  
2 appropriate action by the judicial council of the circuit.

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

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

5 “(1) ACTIONS.—The judicial council of a cir-  
6 cuit, upon receipt of a report filed under section  
7 353(c)—

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

10 “(B) may dismiss the complaint; and

11 “(C) if the complaint is not dismissed,  
12 shall take such action as is appropriate to as-  
13 sure the effective and expeditious administra-  
14 tion of the business of the courts within the cir-  
15 cuit.

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

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

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

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

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

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

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

14          “(ii) requesting that the judge volun-  
15          tarily retire, with the provision that the  
16          length of service requirements under sec-  
17          tion 371 of this title shall not apply.

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

1           “(3) LIMITATIONS ON JUDICIAL COUNCIL RE-  
2           GARDING REMOVALS.—

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

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

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

18          “(b) REFERRAL TO JUDICIAL CONFERENCE.—

19          “(1) IN GENERAL.—In addition to the authority  
20          granted under subsection (a), the judicial council  
21          may, in its discretion, refer any complaint under sec-  
22          tion 351, together with the record of any associated  
23          proceedings and its recommendations for appropriate  
24          action, to the Judicial Conference of the United  
25          States.

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

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

11                   “(B) which, in the interest of justice, is  
12                   not amenable to resolution by the judicial coun-  
13                   cil,

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

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

19           A judicial council acting under authority of this sub-  
20           section shall, unless contrary to the interests of jus-  
21           tice, immediately submit written notice to the com-  
22           plainant and to the judge whose conduct is the sub-  
23           ject of the action taken under this subsection.

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

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

8       “(b) IF IMPEACHMENT WARRANTED.—

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

22           “(2) IN CASE OF FELONY CONVICTION.—If a  
23 judge has been convicted of a felony under State or  
24 Federal law and has exhausted all means of obtain-  
25 ing direct review of the conviction, or the time for  
26 seeking further direct review of the conviction has

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

9 **“§ 356. Subpoena power**

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

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

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

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

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

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

10   **“§ 358. Rules**

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

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

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

22               “(2) the judge whose conduct is the subject of  
23       a complaint under this chapter be afforded an op-  
24       portunity to appear (in person or by counsel) at pro-  
25       ceedings conducted by the investigating panel, to

1 present oral and documentary evidence, to compel  
2 the attendance of witnesses or the production of doc-  
3 uments, to cross-examine witnesses, and to present  
4 argument orally or in writing; and

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

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

17 **“§ 359. Restrictions**

18 “(a) RESTRICTION ON INDIVIDUALS WHO ARE SUB-  
19 JECT OF INVESTIGATION.—No judge whose conduct is the  
20 subject of an investigation under this chapter shall serve  
21 upon a special committee appointed under section 353,  
22 upon a judicial council, upon the Judicial Conference, or  
23 upon the standing committee established under section  
24 331, until all proceedings under this chapter relating to  
25 such investigation have been finally terminated.

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

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

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

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

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

24               “(3) such disclosure is authorized in writing by  
25 the judge who is the subject of the complaint and by

1 the chief judge of the circuit, the Chief Justice, or  
2 the chairman of the standing committee established  
3 under section 331.

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

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

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

Passed the House of Representatives July 22, 2002.

Attest:

JEFF TRANDAHL,

*Clerk.*