

Public Law 100-191
100th Congress

An Act

To amend title 28, United States Code, with respect to the appointment of independent counsel.

Dec. 15, 1987
[H.R. 2939]

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

Independent
Counsel
Reauthorization
Act of 1987.
Government
organization and
employees.
Law
enforcement
and crime.
28 USC 1 note.

SECTION 1. SHORT TITLE.

This Act may be cited as the "Independent Counsel Reauthorization Act of 1987".

SEC. 2. AMENDMENTS RELATING TO INDEPENDENT COUNSEL.

Chapter 40 of title 28, United States Code, is amended to read as follows:

"CHAPTER 40—INDEPENDENT COUNSEL

"Sec.

"591. Applicability of provisions of this chapter.

"592. Preliminary investigation and application for appointment of an independent counsel.

"593. Duties of the division of the court.

"594. Authority and duties of an independent counsel.

"595. Congressional oversight.

"596. Removal of an independent counsel; termination of office.

"597. Relationship with Department of Justice.

"598. Severability.

"599. Termination of effect of chapter.

"§ 591. Applicability of provisions of this chapter

28 USC 591.

"(a) PRELIMINARY INVESTIGATION WITH RESPECT TO CERTAIN COVERED PERSONS.—The Attorney General shall conduct a preliminary investigation in accordance with section 592 whenever the Attorney General receives information sufficient to constitute grounds to investigate whether any person described in subsection (b) may have violated any Federal criminal law other than a violation classified as a Class B or C misdemeanor or an infraction.

"(b) PERSONS TO WHOM SUBSECTION (a) APPLIES.—The persons referred to in subsection (a) are—

President of U.S.
Vice President
of U.S.

"(1) the President and Vice President;

"(2) any individual serving in a position listed in section 5312 of title 5;

"(3) any individual working in the Executive Office of the President who is compensated at a rate of pay at or above level II of the Executive Schedule under section 5313 of title 5;

"(4) any Assistant Attorney General and any individual working in the Department of Justice who is compensated at a rate of pay at or above level III of the Executive Schedule under section 5314 of title 5;

"(5) the Director of Central Intelligence, the Deputy Director of Central Intelligence, and the Commissioner of Internal Revenue;

“(6) any individual who leaves any office or position described in any of paragraphs (1) through (5) of this subsection, during the incumbency of the President under whom such individual served in the office or position plus one year after such incumbency, but in no event longer than a period of three years after the individual leaves the office or position;

“(7) any individual who held an office or position described in any of paragraphs (1) through (5) of this subsection during the incumbency of one President and who continued to hold the office or position for not more than 90 days into the term of the next President, during the 1-year period after the individual leaves the office or position; and

“(8) the chairman and treasurer of the principal national campaign committee seeking the election or reelection of the President, and any officer of that committee exercising authority at the national level, during the incumbency of the President.

“(c) **PRELIMINARY INVESTIGATION WITH RESPECT TO PERSONS NOT LISTED IN SUBSECTION (b).**—The Attorney General may conduct a preliminary investigation in accordance with section 592 if—

“(1) the Attorney General receives information sufficient to constitute grounds to investigate whether any person other than a person described in subsection (b) may have violated any Federal criminal law other than a violation classified as a Class B or C misdemeanor or an infraction; and

“(2) the Attorney General determines that an investigation or prosecution of the person, with respect to the information received, by the Attorney General or other officer of the Department of Justice may result in a personal, financial, or political conflict of interest.

“(d) **EXAMINATION OF INFORMATION TO DETERMINE NEED FOR PRELIMINARY INVESTIGATION.**—

“(1) **FACTORS TO BE CONSIDERED.**—In determining under subsection (a) or (c) (or section 592(c)(2)) whether grounds to investigate exist, the Attorney General shall consider only—

“(A) the specificity of the information received; and

“(B) the credibility of the source of the information.

“(2) **TIME PERIOD FOR MAKING DETERMINATION.**—The Attorney General shall determine whether grounds to investigate exist not later than 15 days after the information is first received. If within that 15-day period the Attorney General determines that the information is not specific or is not from a credible source, then the Attorney General shall close the matter. If within that 15-day period the Attorney General determines that the information is specific and from a credible source, the Attorney General shall, upon making that determination, commence a preliminary investigation with respect to that information. If the Attorney General is unable to determine, within that 15-day period, whether the information is specific and from a credible source, the Attorney General shall, at the end of that 15-day period, commence a preliminary investigation with respect to that information.

“(e) **RECUSAL OF ATTORNEY GENERAL.**—

“(1) **WHEN RECUSAL IS REQUIRED.**—If information received under this chapter involves the Attorney General or a person with whom the Attorney General has a current or recent personal or financial relationship, the Attorney General shall

recuse himself or herself by designating the next most senior officer in the Department of Justice whom that information does not involve and who does not have a current or recent personal or financial relationship with such person to perform the duties assigned under this chapter to the Attorney General with respect to that information.

“(2) REQUIREMENTS FOR RECUSAL DETERMINATION.—The Attorney General shall, before personally making any other determination under this chapter with respect to information received under this chapter, determine under paragraph (1) whether to recuse himself or herself with respect to that information. A determination to recuse shall be in writing, shall identify the facts considered by the Attorney General, and shall set forth the reasons for the recusal. The Attorney General shall file this determination with any notification or application submitted to the division of the court under this chapter with respect to the information involved.

“§ 592. Preliminary investigation and application for appointment of an independent counsel

28 USC 592.

“(a) CONDUCT OF PRELIMINARY INVESTIGATION.—

“(1) IN GENERAL.—A preliminary investigation conducted under this chapter shall be of such matters as the Attorney General considers appropriate in order to make a determination, under subsection (b) or (c), on whether further investigation is warranted, with respect to each potential violation, or allegation of a violation, of criminal law. The Attorney General shall make such determination not later than 90 days after the preliminary investigation is commenced, except that, in the case of a preliminary investigation commenced after a congressional request under subsection (g), the Attorney General shall make such determination not later than 90 days after the request is received. The Attorney General shall promptly notify the division of the court specified in section 593(a) of the commencement of such preliminary investigation and the date of such commencement.

“(2) LIMITED AUTHORITY OF ATTORNEY GENERAL.—(A) In conducting preliminary investigations under this chapter, the Attorney General shall have no authority to convene grand juries, plea bargain, grant immunity, or issue subpoenas.

“(B)(i) The Attorney General shall not base a determination under this chapter that information with respect to a violation of criminal law by a person is not specific and from a credible source upon a determination that such person lacked the state of mind required for the violation of criminal law.

“(ii) The Attorney General shall not base a determination under this chapter that there are no reasonable grounds to believe that further investigation is warranted, upon a determination that such person lacked the state of mind required for the violation of criminal law involved, unless there is clear and convincing evidence that the person lacked such state of mind.

“(3) EXTENSION OF TIME FOR PRELIMINARY INVESTIGATION.—The Attorney General may apply to the division of the court for a single extension, for a period of not more than 60 days, of the 90-day period referred to in paragraph (1). The division of the court may, upon a showing of good cause, grant such extension.

“(b) DETERMINATION THAT FURTHER INVESTIGATION NOT WARRANTED.—

“(1) NOTIFICATION OF DIVISION OF THE COURT.—If the Attorney General, upon completion of a preliminary investigation under this chapter, determines that there are no reasonable grounds to believe that further investigation is warranted, the Attorney General shall promptly so notify the division of the court, and the division of the court shall have no power to appoint an independent counsel with respect to the matters involved.

“(2) FORM OF NOTIFICATION.—Such notification shall contain a summary of the information received and a summary of the results of the preliminary investigation.

“(c) DETERMINATION THAT FURTHER INVESTIGATION IS WARRANTED.—

“(1) APPLICATION FOR APPOINTMENT OF INDEPENDENT COUNSEL.—The Attorney General shall apply to the division of the court for the appointment of an independent counsel if—

“(A) the Attorney General, upon completion of a preliminary investigation under this chapter, determines that there are reasonable grounds to believe that further investigation is warranted; or

“(B) the 90-day period referred to in subsection (a)(1), and any extension granted under subsection (a)(3), have elapsed and the Attorney General has not filed a notification with the division of the court under subsection (b)(1).

In determining under this chapter whether reasonable grounds exist to warrant further investigation, the Attorney General shall comply with the written or other established policies of the Department of Justice with respect to the conduct of criminal investigations.

“(2) RECEIPT OF ADDITIONAL INFORMATION.—If, after submitting a notification under subsection (b)(1), the Attorney General receives additional information sufficient to constitute grounds to investigate the matters to which such notification related, the Attorney General shall—

“(A) conduct such additional preliminary investigation as the Attorney General considers appropriate for a period of not more than 90 days after the date on which such additional information is received; and

“(B) otherwise comply with the provisions of this section with respect to such additional preliminary investigation to the same extent as any other preliminary investigation under this section.

“(d) CONTENTS OF APPLICATION.—Any application for the appointment of an independent counsel under this chapter shall contain sufficient information to assist the division of the court in selecting an independent counsel and in defining that independent counsel's prosecutorial jurisdiction so that the independent counsel has adequate authority to fully investigate and prosecute the subject matter and all matters related to that subject matter.

“(e) DISCLOSURE OF INFORMATION.—Except as otherwise provided in this chapter, no officer or employee of the Department of Justice or an office of independent counsel may, without leave of the division of the court, disclose to any individual outside the Department of Justice or such office any notification, application, or any other document, materials, or memorandum supplied to the division of the court under this chapter. Nothing in this chapter shall be

construed as authorizing the withholding of information from the Congress.

“(f) **LIMITATION ON JUDICIAL REVIEW.**—The Attorney General’s determination under this chapter to apply to the division of the court for the appointment of an independent counsel shall not be reviewable in any court.

“(g) **CONGRESSIONAL REQUEST.**—

“(1) **BY JUDICIARY COMMITTEE OR MEMBERS THEREOF.**—The Committee on the Judiciary of either House of the Congress, or a majority of majority party members or a majority of all nonmajority party members of either such committee, may request in writing that the Attorney General apply for the appointment of an independent counsel.

“(2) **REPORT BY ATTORNEY GENERAL PURSUANT TO REQUEST.**—Not later than 30 days after the receipt of a request under paragraph (1), the Attorney General shall submit, to the committee making the request, or to the committee on which the persons making the request serve, a report on whether the Attorney General has begun or will begin a preliminary investigation under this chapter of the matters with respect to which the request is made, in accordance with subsection (a) or (c) of section 591, as the case may be. The report shall set forth the reasons for the Attorney General’s decision regarding such preliminary investigation as it relates to each of the matters with respect to which the congressional request is made. If there is such a preliminary investigation, the report shall include the date on which the preliminary investigation began or will begin.

“(3) **SUBMISSION OF INFORMATION IN RESPONSE TO CONGRESSIONAL REQUEST.**—At the same time as any notification, application, or any other document, material, or memorandum is supplied to the division of the court pursuant to this section with respect to a preliminary investigation of any matter with respect to which a request is made under paragraph (1), such notification, application, or other document, material, or memorandum shall be supplied to the committee making the request, or to the committee on which the persons making the request serve. If no application for the appointment of an independent counsel is made to the division of the court under this section pursuant to such a preliminary investigation, the Attorney General shall submit a report to that committee stating the reasons why such application was not made, addressing each matter with respect to which the congressional request was made.

“(4) **DISCLOSURE OF INFORMATION.**—Any report, notification, application, or other document, material, or memorandum supplied to a committee under this subsection shall not be revealed to any third party, except that the committee may, either on its own initiative or upon the request of the Attorney General, make public such portion or portions of such report, notification, application, document, material, or memorandum as will not in the committee’s judgment prejudice the rights of any individual.

Reports.

“§ 593. Duties of the division of the court

28 USC 593.

“(a) **REFERENCE TO DIVISION OF THE COURT.**—The division of the court to which this chapter refers is the division established under section 49 of this title.

“(b) APPOINTMENT AND JURISDICTION OF INDEPENDENT COUNSEL.—

“(1) AUTHORITY.—Upon receipt of an application under section 592(c), the division of the court shall appoint an appropriate independent counsel and shall define that independent counsel’s prosecutorial jurisdiction.

“(2) QUALIFICATIONS OF INDEPENDENT COUNSEL.—The division of the court shall appoint as independent counsel an individual who has appropriate experience and who will conduct the investigation and any prosecution in a prompt, responsible, and cost-effective manner. The division of the court shall seek to appoint as independent counsel an individual who will serve to the extent necessary to complete the investigation and any prosecution without undue delay. The division of the court may not appoint as an independent counsel any person who holds any office of profit or trust under the United States.

“(3) SCOPE OF PROSECUTORIAL JURISDICTION.—In defining the independent counsel’s prosecutorial jurisdiction, the division of the court shall assure that the independent counsel has adequate authority to fully investigate and prosecute the subject matter with respect to which the Attorney General has requested the appointment of the independent counsel, and all matters related to that subject matter. Such jurisdiction shall also include the authority to investigate and prosecute Federal crimes, other than those classified as Class B or C misdemeanors or infractions, that may arise out of the investigation or prosecution of the matter with respect to which the Attorney General’s request was made, including perjury, obstruction of justice, destruction of evidence, and intimidation of witnesses.

“(4) DISCLOSURE OF IDENTITY AND PROSECUTORIAL JURISDICTION.—An independent counsel’s identity and prosecutorial jurisdiction (including any expansion under subsection (c)) may not be made public except upon the request of the Attorney General or upon a determination of the division of the court that disclosure of the identity and prosecutorial jurisdiction of such independent counsel would be in the best interests of justice. In any event, the identity and prosecutorial jurisdiction of such independent counsel shall be made public when any indictment is returned, or any criminal information is filed, pursuant to the independent counsel’s investigation.

“(c) EXPANSION OF JURISDICTION.—

“(1) IN GENERAL.—The division of the court, upon the request of the Attorney General, may expand the prosecutorial jurisdiction of an independent counsel, and such expansion may be in lieu of the appointment of another independent counsel.

“(2) PROCEDURE FOR REQUEST BY INDEPENDENT COUNSEL.—(A) If the independent counsel discovers or receives information about possible violations of criminal law by persons as provided in section 591, which are not covered by the prosecutorial jurisdiction of the independent counsel, the independent counsel may submit such information to the Attorney General. The Attorney General shall then conduct a preliminary investigation of the information in accordance with the provisions of section 592, except that such preliminary investigation shall not exceed 30 days from the date such information is received. In making the determinations required by section 592, the Attorney General shall give great weight to any recommendations of the independent counsel.

“(B) If the Attorney General determines, after according great weight to the recommendations of the independent counsel, that there are no reasonable grounds to believe that further investigation is warranted, the Attorney General shall promptly so notify the division of the court and the division of the court shall have no power to expand the jurisdiction of the independent counsel or to appoint another independent counsel with respect to the matters involved.

“(C) If—

“(i) the Attorney General determines that there are reasonable grounds to believe that further investigation is warranted; or

“(ii) the 30-day period referred to in subparagraph (A) elapses without a notification to the division of the court that no further investigation is warranted,

the division of the court shall expand the jurisdiction of the appropriate independent counsel to include the matters involved or shall appoint another independent counsel to investigate such matters.

“(d) RETURN FOR FURTHER EXPLANATION.—Upon receipt of a notification under section 592 or subsection (c)(2)(B) of this section from the Attorney General that there are no reasonable grounds to believe that further investigation is warranted with respect to information received under this chapter, the division of the court shall have no authority to overrule this determination but may return the matter to the Attorney General for further explanation of the reasons for such determination.

“(e) VACANCIES.—If a vacancy in office arises by reason of the resignation, death, or removal of an independent counsel, the division of the court shall appoint an independent counsel to complete the work of the independent counsel whose resignation, death, or removal caused the vacancy, except that in the case of a vacancy arising by reason of the removal of an independent counsel, the division of the court may appoint an acting independent counsel to serve until any judicial review of such removal is completed.

“(f) ATTORNEYS’ FEES.—

“(1) AWARD OF FEES.—Upon the request of an individual who is the subject of an investigation conducted by an independent counsel pursuant to this chapter, the division of the court may, if no indictment is brought against such individual pursuant to that investigation, award reimbursement for those reasonable attorneys’ fees incurred by that individual during that investigation which would not have been incurred but for the requirements of this chapter. The division of the court shall notify the Attorney General of any request for attorneys’ fees under this subsection.

“(2) EVALUATION OF FEES.—The division of the court may direct the Attorney General to file a written evaluation of any request for attorneys’ fees under this subsection, analyzing for each expense—

“(A) the sufficiency of the documentation;

“(B) the need or justification for the underlying item; and

“(C) the reasonableness of the amount of money requested.

“(g) DISCLOSURE OF INFORMATION.—The division of the court may, subject to section 594(h)(2), allow the disclosure of any notification,

application, or any other document, material, or memorandum supplied to the division of the court under this chapter.

“(h) **AMICUS CURIAE BRIEFS.**—When presented with significant legal issues, the division of the court may disclose sufficient information about the issues to permit the filing of timely amicus curiae briefs.

28 USC 594.

“§ 594. **Authority and duties of an independent counsel**

“(a) **AUTHORITIES.**—Notwithstanding any other provision of law, an independent counsel appointed under this chapter shall have, with respect to all matters in such independent counsel’s prosecutorial jurisdiction established under this chapter, full power and independent authority to exercise all investigative and prosecutorial functions and powers of the Department of Justice, the Attorney General, and any other officer or employee of the Department of Justice, except that the Attorney General shall exercise direction or control as to those matters that specifically require the Attorney General’s personal action under section 2516 of title 18. Such investigative and prosecutorial functions and powers shall include—

“(1) conducting proceedings before grand juries and other investigations;

“(2) participating in court proceedings and engaging in any litigation, including civil and criminal matters, that such independent counsel considers necessary;

“(3) appealing any decision of a court in any case or proceeding in which such independent counsel participates in an official capacity;

“(4) reviewing all documentary evidence available from any source;

“(5) determining whether to contest the assertion of any testimonial privilege;

“(6) receiving appropriate national security clearances and, if necessary, contesting in court (including, where appropriate, participating in in camera proceedings) any claim of privilege or attempt to withhold evidence on grounds of national security;

“(7) making applications to any Federal court for a grant of immunity to any witness, consistent with applicable statutory requirements, or for warrants, subpoenas, or other court orders, and, for purposes of sections 6003, 6004, and 6005 of title 18, exercising the authority vested in a United States attorney or the Attorney General;

“(8) inspecting, obtaining, or using the original or a copy of any tax return, in accordance with the applicable statutes and regulations, and, for purposes of section 6103 of the Internal Revenue Code of 1986 and the regulations issued thereunder, exercising the powers vested in a United States attorney or the Attorney General;

“(9) initiating and conducting prosecutions in any court of competent jurisdiction, framing and signing indictments, filing informations, and handling all aspects of any case, in the name of the United States; and

“(10) consulting with the United States attorney for the district in which any violation of law with respect to which the independent counsel is appointed was alleged to have occurred.

“(b) **COMPENSATION.**—An independent counsel appointed under this chapter shall receive compensation at the per diem rate equal

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to the annual rate of basic pay payable for level IV of the Executive Schedule under section 5315 of title 5.

“(c) **ADDITIONAL PERSONNEL.**—For the purposes of carrying out the duties of an office of independent counsel, such independent counsel may appoint, fix the compensation, and assign the duties of such employees as such independent counsel considers necessary (including investigators, attorneys, and part-time consultants). The positions of all such employees are exempted from the competitive service. No such employee may be compensated at a rate exceeding the maximum rate of pay payable for GS-18 of the General Schedule under section 5332 of title 5.

Wages.

“(d) **ASSISTANCE OF DEPARTMENT OF JUSTICE.**—

“(1) **IN CARRYING OUT FUNCTIONS.**—An independent counsel may request assistance from the Department of Justice in carrying out the functions of the independent counsel, and the Department of Justice shall provide that assistance, which may include access to any records, files, or other materials relevant to matters within such independent counsel’s prosecutorial jurisdiction, and the use of the resources and personnel necessary to perform such independent counsel’s duties.

“(2) **PAYMENT OF AND REPORTS ON EXPENDITURES OF INDEPENDENT COUNSEL.**—The Department of Justice shall pay all costs relating to the establishment and operation of any office of independent counsel. The Attorney General shall submit to the Congress, not later than 30 days after the end of each fiscal year, a report on amounts paid during that fiscal year for expenses of investigations and prosecutions by independent counsel. Each such report shall include a statement of all payments made for activities of independent counsel but may not reveal the identity or prosecutorial jurisdiction of any independent counsel which has not been disclosed under section 593(b)(4).

“(e) **REFERRAL OF OTHER MATTERS TO AN INDEPENDENT COUNSEL.**—An independent counsel may ask the Attorney General or the division of the court to refer to the independent counsel matters related to the independent counsel’s prosecutorial jurisdiction, and the Attorney General or the division of the court, as the case may be, may refer such matters. If the Attorney General refers a matter to an independent counsel on the Attorney General’s own initiative, the independent counsel may accept such referral if the matter relates to the independent counsel’s prosecutorial jurisdiction. If the Attorney General refers any matter to the independent counsel pursuant to the independent counsel’s request, or if the independent counsel accepts a referral made by the Attorney General on the Attorney General’s own initiative, the independent counsel shall so notify the division of the court.

“(f) **COMPLIANCE WITH POLICIES OF THE DEPARTMENT OF JUSTICE.**—An independent counsel shall, except where not possible, comply with the written or other established policies of the Department of Justice respecting enforcement of the criminal laws.

“(g) **DISMISSAL OF MATTERS.**—The independent counsel shall have full authority to dismiss matters within the independent counsel’s prosecutorial jurisdiction without conducting an investigation or at any subsequent time before prosecution, if to do so would be consistent with the written or other established policies of the Department of Justice with respect to the enforcement of criminal laws.

“(h) **REPORTS BY INDEPENDENT COUNSEL.**—

“(1) **REQUIRED REPORTS.**—An independent counsel shall—

“(A) file with the division of the court, with respect to the 6-month period beginning on the date of his or her appointment, and with respect to each 6-month period thereafter until the office of that independent counsel terminates, a report which identifies and explains major expenses, and summarizes all other expenses, incurred by that office during the 6-month period with respect to which the report is filed, and estimates future expenses of that office; and

“(B) before the termination of the independent counsel's office under section 596(b), file a final report with the division of the court, setting forth fully and completely a description of the work of the independent counsel, including the disposition of all cases brought, and the reasons for not prosecuting any matter within the prosecutorial jurisdiction of such independent counsel.

“(2) **DISCLOSURE OF INFORMATION IN REPORTS.**—The division of the court may release to the Congress, the public, or any appropriate person, such portions of a report made under this subsection as the division of the court considers appropriate. The division of the court shall make such orders as are appropriate to protect the rights of any individual named in such report and to prevent undue interference with any pending prosecution. The division of the court may make any portion of a final report filed under paragraph (1)(B) available to any individual named in such report for the purposes of receiving within a time limit set by the division of the court any comments or factual information that such individual may submit. Such comments and factual information, in whole or in part, may, in the discretion of the division of the court, be included as an appendix to such final report.

“(i) **INDEPENDENCE FROM DEPARTMENT OF JUSTICE.**—Each independent counsel appointed under this chapter, and the persons appointed by that independent counsel under subsection (c), are separate from and independent of the Department of Justice for purposes of sections 202 through 209 of title 18.

“(j) **STANDARDS OF CONDUCT APPLICABLE TO INDEPENDENT COUNSEL, PERSONS SERVING IN THE OFFICE OF AN INDEPENDENT COUNSEL, AND THEIR LAW FIRMS.**—

“(1) **RESTRICTIONS ON EMPLOYMENT WHILE INDEPENDENT COUNSEL AND APPOINTEES ARE SERVING.**—(A) During the period in which an independent counsel is serving under this chapter—

“(i) such independent counsel, and

“(ii) any person associated with a firm with which such independent counsel is associated,

may not represent in any matter any person involved in any investigation or prosecution under this chapter.

“(B) During the period in which any person appointed by an independent counsel under subsection (c) is serving in the office of independent counsel, such person may not represent in any matter any person involved in any investigation or prosecution under this chapter.

“(2) **POST EMPLOYMENT RESTRICTIONS ON INDEPENDENT COUNSEL AND APPOINTEES.**—(A) Each independent counsel and each person appointed by that independent counsel under subsection (c) may not, for 3 years following the termination of the service under this chapter of that independent counsel or appointed

person, as the case may be, represent any person in any matter if that individual was the subject of an investigation or prosecution under this chapter that was conducted by that independent counsel.

“(B) Each independent counsel and each person appointed by that independent counsel under subsection (c) may not, for 1 year following the termination of the service under this chapter of that independent counsel or appointed person, as the case may be, represent any person in any matter involving any investigation or prosecution under this chapter.

“(3) ONE-YEAR BAN ON REPRESENTATION BY MEMBERS OF FIRMS OF INDEPENDENT COUNSEL.—Any person who is associated with a firm with which an independent counsel is associated or becomes associated after termination of the service of that independent counsel under this chapter may not, for 1 year following such termination, represent any person in any matter involving any investigation or prosecution under this chapter.

“(4) DEFINITIONS.—For purposes of this subsection—

“(A) the term ‘firm’ means a law firm whether organized as a partnership or corporation; and

“(B) a person is ‘associated’ with a firm if that person is an officer, director, partner, or other member or employee of that firm.

“(k) CUSTODY OF RECORDS OF AN INDEPENDENT COUNSEL.—

“(1) TRANSFER OF RECORDS.—Upon termination of the office of an independent counsel, that independent counsel shall transfer to the Archivist of the United States all records which have been created or received by that office. Before this transfer, the independent counsel shall clearly identify which of these records are subject to rule 6(e) of the Federal Rules of Criminal Procedure as grand jury materials and which of these records have been classified as national security information. Any records which were compiled by an independent counsel and, upon termination of the independent counsel’s office, were stored with the division of the court or elsewhere before the enactment of the Independent Counsel Reauthorization Act of 1987, shall also be transferred to the Archivist of the United States by the division of the court or the person in possession of such records.

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“(2) MAINTENANCE, USE, AND DISPOSAL OF RECORDS.—Records transferred to the Archivist under this chapter shall be maintained, used, and disposed of in accordance with chapters 21, 29, and 33 of title 44.

“(3) ACCESS TO RECORDS.—

“(A) IN GENERAL.—Subject to paragraph (4), access to the records transferred to the Archivist under this chapter shall be governed by section 552 of title 5.

“(B) ACCESS BY DEPARTMENT OF JUSTICE.—The Archivist shall, upon written application by the Attorney General, disclose any such records to the Department of Justice for purposes of an ongoing law enforcement investigation or court proceeding, except that, in the case of grand jury materials, such records shall be so disclosed only by order of the court of jurisdiction under rule 6(e) of the Federal Rules of Criminal Procedure.

“(C) EXCEPTION.—Notwithstanding any restriction on access imposed by law, the Archivist and persons employed

by the National Archives and Records Administration who are engaged in the performance of normal archival work shall be permitted access to the records transferred to the Archivist under this chapter.

“(4) RECORDS PROVIDED BY CONGRESS.—Records of an investigation conducted by a committee of the House of Representatives or the Senate which are provided to an independent counsel to assist in an investigation or prosecution conducted by that independent counsel—

“(A) shall be maintained as a separate body of records within the records of the independent counsel; and

“(B) shall, after the records have been transferred to the Archivist under this chapter, be made available, except as provided in paragraph (3) (B) and (C), in accordance with the rules governing release of the records of the House of Congress that provided the records to the independent counsel.

Subparagraph (B) shall not apply to those records which have been surrendered pursuant to grand jury or court proceedings.

28 USC 595.

“§ 595. Congressional oversight

“(a) OVERSIGHT OF CONDUCT OF INDEPENDENT COUNSEL.—

“(1) CONGRESSIONAL OVERSIGHT.—The appropriate committees of the Congress shall have oversight jurisdiction with respect to the official conduct of any independent counsel appointed under this chapter, and such independent counsel shall have the duty to cooperate with the exercise of such oversight jurisdiction.

“(2) REPORTS TO CONGRESS.—An independent counsel appointed under this chapter shall submit to the Congress such statements or reports on the activities of such independent counsel as the independent counsel considers appropriate.

“(b) OVERSIGHT OF CONDUCT OF ATTORNEY GENERAL.—Within 15 days after receiving an inquiry about a particular case under this chapter, which is a matter of public knowledge, from a committee of the Congress with jurisdiction over this chapter, the Attorney General shall provide the following information to that committee with respect to that case:

“(1) When the information about the case was received.

“(2) Whether a preliminary investigation is being conducted, and if so, the date it began.

“(3) Whether an application for the appointment of an independent counsel or a notification that further investigation is not warranted has been filed with the division of the court, and if so, the date of such filing.

“(c) INFORMATION RELATING TO IMPEACHMENT.—An independent counsel shall advise the House of Representatives of any substantial and credible information which such independent counsel receives, in carrying out the independent counsel’s responsibilities under this chapter, that may constitute grounds for an impeachment. Nothing in this chapter or section 49 of this title shall prevent the Congress or either House thereof from obtaining information in the course of an impeachment proceeding.

28 USC 596.

“§ 596. Removal of an independent counsel; termination of office

“(a) REMOVAL; REPORT ON REMOVAL.—

“(1) GROUNDS FOR REMOVAL.—An independent counsel appointed under this chapter may be removed from office, other

than by impeachment and conviction, only by the personal action of the Attorney General and only for good cause, physical disability, mental incapacity, or any other condition that substantially impairs the performance of such independent counsel's duties.

"(2) REPORT TO DIVISION OF THE COURT AND CONGRESS.—If an independent counsel is removed from office, the Attorney General shall promptly submit to the division of the court and the Committees on the Judiciary of the Senate and the House of Representatives a report specifying the facts found and the ultimate grounds for such removal. The committees shall make available to the public such report, except that each committee may, if necessary to protect the rights of any individual named in the report or to prevent undue interference with any pending prosecution, postpone or refrain from publishing any or all of the report. The division of the court may release any or all of such report in accordance with section 594(h)(2).

Public
information.

"(3) JUDICIAL REVIEW OF REMOVAL.—An independent counsel removed from office may obtain judicial review of the removal in a civil action commenced in the United States District Court for the District of Columbia. A member of the division of the court may not hear or determine any such civil action or any appeal of a decision in any such civil action. The independent counsel may be reinstated or granted other appropriate relief by order of the court.

District of
Columbia.

"(b) TERMINATION OF OFFICE.—

"(1) TERMINATION BY ACTION OF INDEPENDENT COUNSEL.—An office of independent counsel shall terminate when—

"(A) the independent counsel notifies the Attorney General that the investigation of all matters within the prosecutorial jurisdiction of such independent counsel or accepted by such independent counsel under section 594(e), and any resulting prosecutions, have been completed or so substantially completed that it would be appropriate for the Department of Justice to complete such investigations and prosecutions; and

"(B) the independent counsel files a final report in compliance with section 594(h)(1)(B).

"(2) TERMINATION BY DIVISION OF THE COURT.—The division of the court, either on its own motion or upon the request of the Attorney General, may terminate an office of independent counsel at any time, on the ground that the investigation of all matters within the prosecutorial jurisdiction of such independent counsel or accepted by such independent counsel under section 594(e), and any resulting prosecutions, have been completed or so substantially completed that it would be appropriate for the Department of Justice to complete such investigations and prosecutions. At the time of such termination, the independent counsel shall file the final report required by section 594(h)(1)(B).

Reports.

"(c) AUDITS.—After the termination of the office of an independent counsel, the Comptroller General shall conduct an audit of the expenditures of that office, and shall submit to the appropriate committees of the Congress a report on the audit.

Reports.

28 USC 597.

“§ 597. Relationship with Department of Justice

“(a) SUSPENSION OF OTHER INVESTIGATIONS AND PROCEEDINGS.—Whenever a matter is in the prosecutorial jurisdiction of an independent counsel or has been accepted by an independent counsel under section 594(e), the Department of Justice, the Attorney General, and all other officers and employees of the Department of Justice shall suspend all investigations and proceedings regarding such matter, except to the extent required by section 594(d)(1), and except insofar as such independent counsel agrees in writing that such investigation or proceedings may be continued by the Department of Justice.

“(b) PRESENTATION AS AMICUS CURIAE PERMITTED.—Nothing in this chapter shall prevent the Attorney General or the Solicitor General from making a presentation as amicus curiae to any court as to issues of law raised by any case or proceeding in which an independent counsel participates in an official capacity or any appeal of such a case or proceeding.

28 USC 598.

“§ 598. Severability

“If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the remainder of this chapter and the application of such provision to other persons not similarly situated or to other circumstances shall not be affected by such invalidation.

28 USC 599.

“§ 599. Termination of effect of chapter

“This chapter shall cease to be effective five years after the date of the enactment of the Independent Counsel Reauthorization Act of 1987, except that this chapter shall continue in effect with respect to then pending matters before an independent counsel that in the judgment of such counsel require such continuation until that independent counsel determines such matters have been completed.”

SEC. 3. STATUS OF INDEPENDENT COUNSEL AS A SPECIAL GOVERNMENT EMPLOYEE; FINANCIAL DISCLOSURE REQUIREMENTS.

(a) AMENDMENT TO TITLE 18.—The first sentence of section 202(a) of title 18, United States Code, is amended—

(1) by striking out “or” after “United States commissioner” and inserting in lieu thereof a comma; and

(2) by striking out the period at the end of the sentence and inserting in lieu thereof the following: “, or, regardless of the number of days of appointment, an independent counsel appointed under chapter 40 of title 28 and any person appointed by that independent counsel under section 594(c) of title 28.”

(b) FINANCIAL DISCLOSURE REQUIREMENTS.—

5 USC app.

(1) FILING OF REPORTS.—Section 203(b) of the Ethics in Government Act of 1978 is amended by striking out “and the Vice President” and inserting in lieu thereof “, the Vice President, and independent counsel and persons appointed by independent counsel under chapter 40 of title 28”.

Reports.

(2) LIMITATION ON PUBLIC DISCLOSURE.—(A) Section 203(d) of the Ethics in Government Act of 1978 is amended by inserting before the period at the end thereof the following: “, except that any report filed by an independent counsel whose identity has not been disclosed by the division of the court under chapter 40

of title 28, and any report filed by any person appointed by that independent counsel under such chapter, shall not be made available to the public under this title”.

(B) Section 205(a) of the Ethics in Government Act of 1978 is amended by striking out “Each” in the first sentence and inserting in lieu thereof “Except as provided in section 203(d) of this Act, each”.

5 USC app.

SEC. 4. CLERK OF THE DIVISION OF THE COURT.

Section 49(a) of title 28, United States Code, is amended by adding at the end thereof the following: “The Clerk of the United States Court of Appeals for the District of Columbia Circuit shall serve as the clerk of such division of the court and shall provide such services as are needed by such division of the court.”.

SEC. 5. TECHNICAL AMENDMENTS.

(a) TITLE 28, UNITED STATES CODE.—Section 49(f) of title 28, United States Code, is amended by striking out “a independent” and inserting in lieu thereof “an independent”.

(b) CONTINGENCY FUND.—Section 601(c) of the Ethics in Government Act of 1978 (28 U.S.C. 591 note) is amended by striking out “39 (relating to special prosecutor)” and inserting in lieu thereof “40 (relating to independent counsel)”.

SEC. 6. EFFECTIVE DATE.

28 USC 591 note.

(a) IN GENERAL.—Subject to subsection (b), the amendments made by this Act take effect on the date of the enactment of this Act.

(b) PENDING PROCEEDINGS.—With respect to any proceeding under chapter 39 of title 28, United States Code (before the redesignation of such chapter as chapter 40 by section 144(g) of Public Law 99-554), or under chapter 40 of such title (after such redesignation), which is pending on the date of the enactment of this Act, the following shall apply:

(1) Except as provided in paragraphs (2) and (3), the provisions of chapter 40 of such title as in effect on the day before such date of enactment shall, in lieu of the amendments made by this Act, continue to apply on or after such date to such proceeding until such proceeding is terminated in accordance with such chapter.

(2) The following provisions shall apply to such proceeding on or after such date of enactment:

(A) Section 593(f) of title 28, United States Code, as amended by section 2 of this Act, relating to the award of attorneys’ fees.

(B) Section 594(d)(2) of such title, as added by section 2 of this Act, to the extent that such section 594(d)(2) relates to reports by the Attorney General on expenditures by independent counsel, except that the first such report shall be made only with respect to expenditures on or after the date of the enactment of this Act.

Reports.

(C) Section 594(h)(1)(A) of such title, as added by section 2 of this Act, relating to reports by independent counsel, except that the 6-month periods described in such section 594(h)(1)(A) shall be calculated from the date of the enactment of this Act.

Reports.

(D) Section 594(i) of such title, as added by section 2 of this Act, relating to the independence of the office of independent counsel for certain purposes.

(E) Section 594(k) of such title, as added by section 2 of this Act, relating to custody of records of independent counsel.

(F) Section 596(a)(3) of such title, as amended by section 2 of this Act, relating to judicial review of the removal of an independent counsel from office.

(G) Section 596(c) of such title, as added by section 2 of this Act, relating to audits of expenditures of independent counsel.

(H) The amendments made by section 3 of this Act, relating to the status of independent counsel and their appointees as special government employees and to their financial disclosure requirements.

(3) Section 594(j) of title 28, United States Code, as added by section 2 of this Act, relating to certain standards of conduct shall, 90 days after the date of the enactment of this Act, apply to a pending proceeding described in this subsection.

Approved December 15, 1987.

LEGISLATIVE HISTORY—H.R. 2939 (S. 1293):

HOUSE REPORTS: No. 100-316 (Comm. on the Judiciary).

SENATE REPORTS: No. 100-123 accompanying S. 1293 (Comm. on Governmental Affairs).

CONGRESSIONAL RECORD, Vol. 133 (1987):

Oct. 16, S. 1293 considered in Senate.

Oct. 21, H.R. 2939 considered and passed House.

Nov. 3, considered and passed Senate, amended, in lieu of S. 1293.

Nov. 20, Senate agreed to conference report.

Dec. 2, House agreed to conference report.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 23 (1987):

Dec. 15, Presidential statement.