

106TH CONGRESS
1ST SESSION

S. 1297

To make improvements in the independent counsel statute.

IN THE SENATE OF THE UNITED STATES

JUNE 29, 1999

Mr. SPECTER (for himself, Mr. LIEBERMAN, Ms. COLLINS, and Mr. LEVIN)
introduced the following bill; which was read twice and referred to the
Committee on Governmental Affairs

A BILL

To make improvements in the independent counsel statute.

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 “Independent Counsel
5 Reform Act of 1999”.

6 **SEC. 2. INDEPENDENT COUNSEL STATUTE.**

7 Chapter 40 of title 28, United States Code, is amend-
8 ed to read as follows:

9 **“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.

1 **“§ 591. Applicability of provisions of this chapter**

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

10 “(b) PERSONS TO WHOM SUBSECTION (a) AP-
11 PLIES.—The persons referred to in subsection (a) are—

12 “(1) the President and Vice President;

13 “(2) any individual serving in a position listed
14 in section 5312 of title 5; and

15 “(3) the Chief of Staff to the President.

16 “(c) EXAMINATION OF INFORMATION TO DETER-
17 MINE NEED FOR PRELIMINARY INVESTIGATION.—

18 “(1) FACTORS TO BE CONSIDERED.—In deter-
19 mining under subsection (a) or section 592(c)(2)
20 whether grounds to investigate exist, the Attorney
21 General shall consider only—

1 “(A) the specificity of the information re-
2 ceived; and

3 “(B) the credibility of the source of the in-
4 formation.

5 “(2) TIME PERIOD FOR MAKING DETERMINA-
6 TION.—The Attorney General shall determine wheth-
7 er grounds to investigate exist not later than 30
8 days after the information is first received. If within
9 that 30-day period the Attorney General determines
10 that the information is not specific or is not from a
11 credible source, then the Attorney General shall
12 close the matter. If within that 30-day period the
13 Attorney General determines that the information is
14 specific and from a credible source, the Attorney
15 General shall, upon making that determination, com-
16 mence a preliminary investigation with respect to
17 that information. If the Attorney General is unable
18 to determine, within that 30-day period, whether the
19 information is specific and from a credible source,
20 the Attorney General shall, at the end of that 30-
21 day period, commence a preliminary investigation
22 with respect to that information.

23 “(d) RECUSAL OF ATTORNEY GENERAL.—

24 “(1) WHEN RECUSAL IS REQUIRED.—

1 “(A) INVOLVING THE ATTORNEY GEN-
2 ERAL.—If information received under this chap-
3 ter involves the Attorney General, the next most
4 senior official in the Department of Justice who
5 is not also recused shall perform the duties as-
6 signed under this chapter to the Attorney Gen-
7 eral.

8 “(B) PERSONAL OR FINANCIAL RELATION-
9 SHIP.—If information received under this chap-
10 ter involves a person with whom the Attorney
11 General has a personal or financial relationship,
12 the Attorney General shall recuse himself or
13 herself by designating the next most senior offi-
14 cial in the Department of Justice who is not
15 also recused to perform the duties assigned
16 under this chapter to the Attorney General.

17 “(2) REQUIREMENTS FOR RECUSAL DETER-
18 MINATION.—Before personally making any other de-
19 termination under this chapter with respect to infor-
20 mation received under this chapter, the Attorney
21 General shall determine under paragraph (1)(B)
22 whether recusal is necessary. The Attorney General
23 shall set forth this determination in writing, identify
24 the facts considered by the Attorney General, and
25 set forth the reasons for the recusal. The Attorney

1 General shall file this determination with any notifi-
2 cation or application submitted to the division of the
3 court under this chapter with respect to that infor-
4 mation.

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

7 “(a) CONDUCT OF PRELIMINARY INVESTIGATION.—

8 “(1) IN GENERAL.—A preliminary investigation
9 conducted under this chapter shall be of those mat-
10 ters as the Attorney General considers appropriate
11 in order to make a determination, under subsection
12 (b) or (c), with respect to each potential violation, or
13 allegation of a violation, of criminal law. The Attor-
14 ney General shall make that determination not later
15 than 120 days after the preliminary investigation is
16 commenced, except that, in the case of a preliminary
17 investigation commenced after a congressional re-
18 quest under subsection (g), the Attorney General
19 shall make that determination not later than 120
20 days after the request is received. The Attorney
21 General shall promptly notify the division of the
22 court specified in section 593(a) of the commence-
23 ment of that preliminary investigation and the date
24 of commencement.

1 “(2) LIMITED AUTHORITY OF ATTORNEY GEN-
2 ERAL.—

3 “(A) IN GENERAL.—In conducting prelimi-
4 nary investigations under this chapter, the At-
5 torney General shall have no authority to plea
6 bargain or grant immunity. The Attorney Gen-
7 eral shall have the authority to convene grand
8 juries and issue subpoenas.

9 “(B) NOT TO BE BASIS OF DETERMINA-
10 TIONS.—The Attorney General shall not base a
11 determination under this chapter—

12 “(i) that information with respect to a
13 violation of criminal law by a person is not
14 specific and from a credible source upon a
15 determination that that person lacked the
16 state of mind required for the violation of
17 criminal law; or

18 “(ii) that there are no substantial
19 grounds to believe that further investiga-
20 tion is warranted, upon a determination
21 that that person lacked the state of mind
22 required for the criminal violation involved,
23 unless there is a preponderance of the evi-
24 dence that the person lacked that state of
25 mind.

1 “(3) EXTENSION OF TIME FOR PRELIMINARY
 2 INVESTIGATION.—The Attorney General may apply
 3 to the division of the court for a single extension, for
 4 a period of not more than 90 days, of the 120-day
 5 period referred to in paragraph (1). The division of
 6 the court may, upon a showing of good cause, grant
 7 that extension.

8 “(b) DETERMINATION THAT FURTHER INVESTIGA-
 9 TION NOT WARRANTED.—

10 “(1) NOTIFICATION OF DIVISION OF THE
 11 COURT.—If the Attorney General, upon completion
 12 of a preliminary investigation under this chapter, de-
 13 termines that there are no substantial grounds to
 14 believe that further investigation is warranted, the
 15 Attorney General shall promptly so notify the divi-
 16 sion of the court, and the division of the court shall
 17 have no power to appoint an independent counsel
 18 with respect to the matters involved.

19 “(2) FORM OF NOTIFICATION.—Notification
 20 under paragraph (1) shall contain a summary of the
 21 information received and a summary of the results
 22 of the preliminary investigation.

23 “(c) DETERMINATION THAT FURTHER INVESTIGA-
 24 TION IS WARRANTED.—

1 “(1) APPLICATION FOR APPOINTMENT OF INDE-
 2 PENDENT COUNSEL.—The Attorney General shall
 3 apply to the division of the court for the appoint-
 4 ment of an independent counsel if—

5 “(A) the Attorney General, upon comple-
 6 tion of a preliminary investigation under this
 7 chapter, determines that there are substantial
 8 grounds to believe that further investigation is
 9 warranted; or

10 “(B) the 120-day period referred to in sub-
 11 section (a)(1), and any extension granted under
 12 subsection (a)(3), have elapsed and the Attor-
 13 ney General has not filed a notification with the
 14 division of the court under subsection (b)(1).

15 In determining under this chapter whether there are
 16 substantial grounds to believe that further investiga-
 17 tion is warranted, the Attorney General shall comply
 18 with the written or other established policies of the
 19 Department of Justice with respect to the conduct
 20 of criminal investigations.

21 “(2) RECEIPT OF ADDITIONAL INFORMATION.—
 22 If, after submitting a notification under subsection
 23 (b)(1), the Attorney General receives additional in-
 24 formation sufficient to constitute grounds to inves-

1 tigate the matters to which that notification related,
2 the Attorney General shall—

3 “(A) conduct such additional preliminary
4 investigation as the Attorney General considers
5 appropriate for a period of not more than 120
6 days after the date on which that additional in-
7 formation is received; and

8 “(B) otherwise comply with the provisions
9 of this section with respect to that additional
10 preliminary investigation to the same extent as
11 any other preliminary investigation under this
12 section.

13 “(d) CONTENTS OF APPLICATION.—Any application
14 for the appointment of an independent counsel under this
15 chapter shall contain sufficient information to assist the
16 division of the court in selecting an independent counsel
17 and in defining that independent counsel’s prosecutorial
18 jurisdiction so that the independent counsel has adequate
19 authority to fully investigate and prosecute the subject
20 matter and all matters directly related to that subject mat-
21 ter.

22 “(e) DISCLOSURE OF INFORMATION.—Except as oth-
23 erwise provided in this chapter or as is deemed necessary
24 for law enforcement purposes, no officer or employee of
25 the Department of Justice or an office of independent

1 counsel may, without leave of the division of the court,
 2 disclose to any individual outside the Department of Jus-
 3 tice or that office any notification, application, or any
 4 other document, materials, or memorandum supplied to
 5 the division of the court under this chapter. Nothing in
 6 this chapter shall be construed as authorizing the with-
 7 holding of information from the Congress.

8 “(f) LIMITATION ON JUDICIAL REVIEW.—The Attor-
 9 ney General’s determination under this chapter to apply
 10 to the division of the court for the appointment of an inde-
 11 pendent counsel shall not be reviewable in any court.

12 “(g) CONGRESSIONAL REQUEST.—

13 “(1) BY JUDICIARY COMMITTEE OR MEMBERS
 14 THEREOF.—The Committee on the Judiciary of ei-
 15 ther House of the Congress, or a majority of major-
 16 ity party members or a majority of all nonmajority
 17 party members of either such committee, may re-
 18 quest in writing that the Attorney General apply for
 19 the appointment of an independent counsel.

20 “(2) REPORT BY ATTORNEY GENERAL PURSU-
 21 ANT TO REQUEST.—Not later than 30 days after the
 22 receipt of a request under paragraph (1), the Attor-
 23 ney General shall submit, to the committee making
 24 the request, or to the committee on which the per-
 25 sons making the request serve, a report on whether

1 the Attorney General has begun or will begin a pre-
2 liminary investigation under this chapter of the mat-
3 ters with respect to which the request is made, in
4 accordance with section 591(a). The report shall set
5 forth the reasons for the Attorney General's decision
6 regarding the preliminary investigation as it relates
7 to each of the matters with respect to which the con-
8 gressional request is made. If there is such a pre-
9 liminary investigation, the report shall include the
10 date on which the preliminary investigation began or
11 will begin.

12 “(3) SUBMISSION OF INFORMATION IN RE-
13 SPONSE TO CONGRESSIONAL REQUEST.—At the
14 same time as any notification, application, or any
15 other document, material, or memorandum is sup-
16 plied to the division of the court pursuant to this
17 section with respect to a preliminary investigation of
18 any matter with respect to which a request is made
19 under paragraph (1), that notification, application,
20 or other document, material, or memorandum shall
21 be supplied to the committee making the request, or
22 to the committee on which the persons making the
23 request serve. If no application for the appointment
24 of an independent counsel is made to the division of
25 the court under this section pursuant to such a pre-

1 liminary investigation, the Attorney General shall
 2 submit a report to that committee stating the rea-
 3 sons why the application was not made, addressing
 4 each matter with respect to which the congressional
 5 request was made.

6 “(4) DISCLOSURE OF INFORMATION.—Any re-
 7 port, notification, application, or other document,
 8 material, or memorandum supplied to a committee
 9 under this subsection shall not be revealed to any
 10 third party, except that the committee may, either
 11 on its own initiative or upon the request of the At-
 12 torney General, make public such portion or portions
 13 of that report, notification, application, document,
 14 material, or memorandum as will not in the commit-
 15 tee’s judgment prejudice the rights of any individual.

16 **“§ 593. Duties of the division of the court**

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

20 “(b) APPOINTMENT AND JURISDICTION OF INDE-
 21 PENDENT COUNSEL.—

22 “(1) AUTHORITY.—Upon receipt of an applica-
 23 tion under section 592(c), the division of the court
 24 shall appoint an appropriate independent counsel
 25 and define the independent counsel’s prosecutorial

1 jurisdiction. The appointment shall be made from a
 2 list of candidates comprised of 5 individuals rec-
 3 ommended by the chief judge of each Federal circuit
 4 and forwarded by January 15 of each year to the
 5 division of the court.

6 “(2) QUALIFICATIONS OF INDEPENDENT COUN-
 7 SEL.—The division of the court shall appoint as
 8 independent counsel an individual who—

9 “(A) has appropriate experience, including,
 10 to the extent practicable, prosecutorial experi-
 11 ence and who has no actual or apparent per-
 12 sonal, financial, or political conflict of interest;

13 “(B) will conduct the investigation on a
 14 full-time basis and in a prompt, responsible,
 15 and cost-effective manner; and

16 “(C) does not hold any office of profit or
 17 trust under the United States.

18 “(3) SCOPE OF PROSECUTORIAL JURISDIC-
 19 TION.—

20 “(A) IN GENERAL.—In defining the inde-
 21 pendent counsel’s prosecutorial jurisdiction
 22 under this chapter, the division of the court
 23 shall assure that the independent counsel has
 24 adequate authority to fully investigate and
 25 prosecute—

1 “(i) the subject matter with respect to
2 which the Attorney General has requested
3 the appointment of the independent coun-
4 sel; and

5 “(ii) all matters that are directly re-
6 lated to the independent counsel’s prosecu-
7 torial jurisdiction and the proper investiga-
8 tion and prosecution of the subject matter
9 of such jurisdiction.

10 “(B) DIRECTLY RELATED.—In this para-
11 graph, the term ‘directly related matters’ in-
12 cludes Federal crimes, other than those classi-
13 fied as Class B or C misdemeanors or infrac-
14 tions, that impede the investigation and pros-
15 ecution, such as perjury, obstruction of justice,
16 destruction of evidence, and intimidation of wit-
17 nesses.

18 “(4) DISCLOSURE OF IDENTITY AND PROSECU-
19 TORIAL JURISDICTION.—An independent counsel’s
20 identity and prosecutorial jurisdiction may not be
21 made public except upon the request of the Attorney
22 General or upon a determination of the division of
23 the court that disclosure of the identity and prosecu-
24 torial jurisdiction of that independent counsel would
25 be in the best interests of justice. In any event, the

1 identity and prosecutorial jurisdiction of the inde-
2 pendent counsel shall be made public when any in-
3 dictment is returned, or any criminal information is
4 filed, pursuant to the independent counsel's inves-
5 tigation.

6 “(c) RETURN FOR FURTHER EXPLANATION.—Upon
7 receipt of a notification under section 592 from the Attor-
8 ney General that there are no substantial grounds to be-
9 lieve that further investigation is warranted with respect
10 to information received under this chapter, the division of
11 the court shall have no authority to overrule this deter-
12 mination but may return the matter to the Attorney Gen-
13 eral for further explanation of the reasons for that deter-
14 mination.

15 “(d) VACANCIES.—If a vacancy in office arises by
16 reason of the resignation, death, or removal of an inde-
17 pendent counsel, the division of the court shall appoint an
18 independent counsel to complete the work of the inde-
19 pendent counsel whose resignation, death, or removal
20 caused the vacancy, except that in the case of a vacancy
21 arising by reason of the removal of an independent coun-
22 sel, the division of the court may appoint an acting inde-
23 pendent counsel to serve until any judicial review of the
24 removal is completed.

25 “(e) ATTORNEYS’ FEES.—

1 “(1) AWARD OF FEES.—Upon the request of an
2 individual who is the subject of an investigation con-
3 ducted by an independent counsel pursuant to this
4 chapter, the division of the court may, if no indict-
5 ment is brought against that individual pursuant to
6 the investigation, award reimbursement for those
7 reasonable attorneys’ fees incurred by the individual
8 during the investigation which would not have been
9 incurred but for the requirements of this chapter.
10 The division of the court shall notify the inde-
11 pendent counsel who conducted the investigation and
12 the Attorney General of any request for attorneys’
13 fees under this subsection.

14 “(2) EVALUATION OF FEES.—The division of
15 the court shall direct the independent counsel and
16 the Attorney General to file a written evaluation of
17 any request for attorneys’ fees under this subsection,
18 addressing—

19 “(A) the sufficiency of the documentation;

20 “(B) the need or justification for the un-
21 derlying item;

22 “(C) whether the underlying item would
23 have been incurred but for the requirements of
24 this chapter; and

1 “(D) the reasonableness of the amount of
2 money requested.

3 “(f) DISCLOSURE OF INFORMATION.—The division of
4 the court may, subject to section 594(h)(2), allow the dis-
5 closure of any notification, application, or any other docu-
6 ment, material, or memorandum supplied to the division
7 of the court under this chapter.

8 “(g) AMICUS CURIAE BRIEFS.—When presented with
9 significant legal issues, the division of the court may dis-
10 close sufficient information about the issues to permit the
11 filing of timely amicus curiae briefs.

12 **“§ 594. Authority and duties of an independent coun-
13 sel**

14 “(a) AUTHORITIES.—Notwithstanding any other pro-
15 vision of law, an independent counsel appointed under this
16 chapter shall have, with respect to all matters in that inde-
17 pendent counsel’s prosecutorial jurisdiction established
18 under this chapter, full power and independent authority
19 to exercise all investigative and prosecutorial functions
20 and powers of the Department of Justice, the Attorney
21 General, and any other officer or employee of the Depart-
22 ment of Justice, except that the Attorney General shall
23 exercise direction or control as to those matters that spe-
24 cifically require the Attorney General’s personal action

1 under section 2516 of title 18. Such investigative and
2 prosecutorial functions and powers shall include—

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

5 “(2) participating in court proceedings and en-
6 gaging in any litigation, including civil and criminal
7 matters, that the independent counsel considers nec-
8 essary;

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

12 “(4) reviewing all documentary evidence avail-
13 able from any source;

14 “(5) determining whether to contest the asser-
15 tion of any testimonial privilege;

16 “(6) receiving appropriate national security
17 clearances and, if necessary, contesting in court (in-
18 cluding, where appropriate, participating in in cam-
19 era proceedings) any claim of privilege or attempt to
20 withhold evidence on grounds of national security;

21 “(7) making applications to any Federal court
22 for a grant of immunity to any witness, consistent
23 with applicable statutory requirements, or for war-
24 rants, subpoenas, or other court orders, and, for
25 purposes of sections 6003, 6004, and 6005 of title

1 18, exercising the authority vested in a United
2 States attorney or the Attorney General;

3 “(8) inspecting, obtaining, or using the original
4 or a copy of any tax return, in accordance with the
5 applicable statutes and regulations, and, for pur-
6 poses of section 6103 of the Internal Revenue Code
7 of 1986 and the regulations issued thereunder, exer-
8 cising the powers vested in a United States attorney
9 or the Attorney General;

10 “(9) initiating and conducting prosecutions in
11 any court of competent jurisdiction, framing and
12 signing indictments, filing informations, and han-
13 dling all aspects of any case, in the name of the
14 United States; and

15 “(10) consulting with the United States attor-
16 ney for the district in which any violation of law
17 with respect to which the independent counsel is ap-
18 pointed was alleged to have occurred.

19 “(b) COMPENSATION.—

20 “(1) IN GENERAL.—An independent counsel ap-
21 pointed under this chapter shall receive compensa-
22 tion at the annual rate of basic pay payable for level
23 IV of the Executive Schedule under section 5315 of
24 title 5.

1 “(2) TRAVEL EXPENSES.—Except as provided
 2 in paragraph (3), an independent counsel and per-
 3 sons appointed under subsection (c) shall be entitled
 4 to the payment of travel expenses as provided by
 5 subchapter I of chapter 57 of title 5, United States
 6 Code, including travel, per diem, and subsistence ex-
 7 penses in accordance with section 5703 of title 5.

8 “(3) TRAVEL TO PRIMARY OFFICE.—

9 “(A) IN GENERAL.—After 1 year of service
 10 under this chapter, an independent counsel and
 11 persons appointed under subsection (c) shall
 12 not be entitled to the payment of travel, per
 13 diem, or subsistence expenses under subchapter
 14 I of chapter 57 of title 5, United States Code,
 15 for the purpose of commuting to or from the
 16 city in which the primary office of the inde-
 17 pendent counsel or person is located. The 1-
 18 year period may be extended for successive 6-
 19 month periods if the independent counsel and
 20 the division of the court certify that the pay-
 21 ment is in the public interest to carry out the
 22 purposes of this chapter.

23 “(B) RELEVANT FACTORS.—In making
 24 any certification under this paragraph with re-
 25 spect to travel and subsistence expenses of an

1 independent counsel or person appointed under
2 subsection (c), that employee shall consider,
3 among other relevant factors—

4 “(i) the cost to the Government of re-
5 imbursing those travel and subsistence ex-
6 penses;

7 “(ii) the period of time for which the
8 independent counsel anticipates that the
9 activities of the independent counsel or
10 person, as the case may be, will continue;

11 “(iii) the personal and financial bur-
12 dens on the independent counsel or person,
13 as the case may be, of relocating so that
14 the travel and subsistence expenses would
15 not be incurred; and

16 “(iv) the burdens associated with ap-
17 pointing a new independent counsel, or ap-
18 pointing another person under subsection
19 (c), to replace the individual involved who
20 is unable or unwilling to so relocate.

21 “(c) ADDITIONAL PERSONNEL.—For the purposes of
22 carrying out the duties of an office of independent counsel,
23 an independent counsel may appoint, fix the compensa-
24 tion, and assign the duties of such employees as such inde-
25 pendent counsel considers necessary (including investiga-

1 tors, attorneys, and part-time consultants). The positions
2 of all such employees are exempted from the competitive
3 service. Such employees shall be compensated at levels not
4 to exceed those payable for comparable positions in the
5 Office of United States Attorney for the District of Colum-
6 bia under sections 548 and 550, but in no event shall any
7 such employee be compensated at a rate greater than the
8 rate of basic pay payable for level ES-4 of the Senior Ex-
9 ecutive Service Schedule under section 5382 of title 5, as
10 adjusted for the District of Columbia under section 5304
11 of that title regardless of the locality in which an employee
12 is employed.

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

14 “(1) IN CARRYING OUT FUNCTIONS.—An inde-
15 pendent counsel may request assistance from the
16 Department of Justice in carrying out the functions
17 of the independent counsel, and the Department of
18 Justice shall provide that assistance, which may in-
19 clude access to any records, files, or other materials
20 relevant to matters within that independent coun-
21 sel’s prosecutorial jurisdiction, and the use of the re-
22 sources and personnel necessary to perform that
23 independent counsel’s duties. At the request of an
24 independent counsel, prosecutors, administrative per-
25 sonnel, and other employees of the Department of

1 Justice may be detailed to the staff of the inde-
2 pendent counsel to the extent the number of staff so
3 detailed is reasonably related to the number of staff
4 ordinarily assigned by the Department to conduct an
5 investigation of similar size and complexity.

6 “(2) PAYMENT OF AND REPORTS ON EXPENDI-
7 TURES OF INDEPENDENT COUNSEL.—The Depart-
8 ment of Justice shall pay all costs relating to the es-
9 tablishment and operation of any office of inde-
10 pendent counsel. The Attorney General shall submit
11 to the Congress, not later than 30 days after the
12 end of each fiscal year, a report on amounts paid
13 during that fiscal year for expenses of investigations
14 and prosecutions by independent counsel. Each such
15 report shall include a statement of all payments
16 made for activities of independent counsel but may
17 not reveal the identity or prosecutorial jurisdiction of
18 any independent counsel which has not been dis-
19 closed under section 593(b)(4).

20 “(e) REFERRAL OF DIRECTLY RELATED MATTERS
21 TO AN INDEPENDENT COUNSEL.—An independent coun-
22 sel may ask the Attorney General or the division of the
23 court to refer to the independent counsel only such mat-
24 ters that are directly related to the independent counsel’s
25 prosecutorial jurisdiction, and the Attorney General or the

1 division of the court, as the case may be, may refer such
 2 matters. If the Attorney General refers a matter to an
 3 independent counsel on the Attorney General's own initia-
 4 tive, the independent counsel may accept that referral only
 5 if the matter directly relates to the independent counsel's
 6 prosecutorial jurisdiction. If the Attorney General refers
 7 any matter to the independent counsel pursuant to the
 8 independent counsel's request, or if the independent coun-
 9 sel accepts a referral made by the Attorney General on
 10 the Attorney General's own initiative, the independent
 11 counsel shall so notify the division of the court.

12 “(f) COMPLIANCE WITH POLICIES OF THE DEPART-
 13 MENT OF JUSTICE.—

14 “(1) IN GENERAL.—An independent counsel
 15 shall comply with the written or other established
 16 policies of the Department of Justice respecting en-
 17 forcement of the criminal laws except when that pol-
 18 icy requires the specific approval of the Attorney
 19 General or another Department of Justice official. If
 20 a policy requires the approval of the Attorney Gen-
 21 eral or other Department of Justice official, an inde-
 22 pendent counsel is encouraged to consult with the
 23 Attorney General or other official. To identify and
 24 understand these policies and policies under sub-

1 section (1)(1)(B), the independent counsel shall con-
2 sult with the Department of Justice.

3 “(2) NATIONAL SECURITY.—An independent
4 counsel shall comply with guidelines and procedures
5 used by the Department in the handling and use of
6 classified material.

7 “(3) RELIEF FROM A VIOLATION OF POLI-
8 CIES.—

9 “(A) IN GENERAL.—A person who is a tar-
10 get, witness, or defendant in, or otherwise di-
11 rectly affected by, an investigation by an inde-
12 pendent counsel and who has reason to believe
13 that the independent counsel is violating a writ-
14 ten policy of the Department of Justice mate-
15 rial to the independent counsel’s investigation,
16 may ask the Attorney General to determine
17 whether the independent counsel has violated
18 that policy. The Attorney General shall respond
19 in writing within 30 days.

20 “(B) RELIEF.—If the Attorney General
21 determines that the independent counsel has
22 violated a written policy of the Department of
23 Justice material to the investigation by the
24 independent counsel pursuant to subparagraph
25 (A), the Attorney General may ask the division

1 of the court to order the independent counsel to
2 comply with that policy, and the division of the
3 court may order appropriate relief.

4 “(g) DISMISSAL OF MATTERS.—The independent
5 counsel shall have full authority to dismiss matters within
6 the independent counsel’s prosecutorial jurisdiction with-
7 out conducting an investigation or at any subsequent time
8 before prosecution, if to do so would be consistent with
9 the written or other established policies of the Department
10 of Justice with respect to the enforcement of criminal
11 laws.

12 “(h) REPORTS BY INDEPENDENT COUNSEL.—

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

15 “(A) file with the division of the court,
16 with respect to the 6-month period beginning on
17 the date of his or her appointment, and with re-
18 spect to each 6-month period thereafter until
19 the office of that independent counsel termi-
20 nates, a report which identifies and explains
21 major expenses, and summarizes all other ex-
22 penses, incurred by that office during the 6-
23 month period with respect to which the report
24 is filed, and estimates future expenses of that
25 office; and

1 “(B) before the termination of the inde-
2 pendent counsel’s office under section 596(b),
3 file a final report with the division of the court,
4 setting forth only the following:

5 “(i) the jurisdiction of the inde-
6 pendent counsel’s investigation;

7 “(ii) a list of indictments brought by
8 the independent counsel and the disposi-
9 tion of each indictment, including any ver-
10 dicts, pleas, convictions, pardons, and sen-
11 tences; and

12 “(iii) a summary of the expenses of
13 the independent counsel’s office.

14 “(2) DISCLOSURE OF INFORMATION IN RE-
15 PORTS.—The division of the court may release to the
16 Congress, the public, or any appropriate person,
17 those portions of a report made under this sub-
18 section as the division of the court considers appro-
19 priate. The division of the court shall make those or-
20 ders as are appropriate to protect the rights of any
21 individual named in that report and to prevent
22 undue interference with any pending prosecution.
23 The division of the court may make any portion of
24 a final report filed under paragraph (1)(B) available
25 to any individual named in that report for the pur-

1 poses of receiving within a time limit set by the divi-
2 sion of the court any comments or factual informa-
3 tion that the individual may submit. Such comments
4 and factual information, in whole or in part, may, in
5 the discretion of the division of the court, be in-
6 cluded as an appendix to the final report.

7 “(3) PUBLICATION OF REPORTS.—At the re-
8 quest of an independent counsel, the Public Printer
9 shall cause to be printed any report previously re-
10 leased to the public under paragraph (2). The inde-
11 pendent counsel shall certify the number of copies
12 necessary for the public, and the Public Printer shall
13 place the cost of the required number to the debit
14 of the independent counsel. Additional copies shall
15 be made available to the public through the deposi-
16 tory library program and Superintendent of Docu-
17 ments sales program pursuant to sections 1702 and
18 1903 of title 44.

19 “(i) INDEPENDENCE FROM DEPARTMENT OF JUS-
20 TICE.—Each independent counsel appointed under this
21 chapter, and the persons appointed by that independent
22 counsel under subsection (c), are employees of the Depart-
23 ment of Justice for purposes of sections 202 through 209
24 of title 18.

1 “(j) STANDARDS OF CONDUCT APPLICABLE TO
 2 INDEPENDENT COUNSEL, PERSONS SERVING IN THE OF-
 3 FICE OF AN INDEPENDENT COUNSEL, AND THEIR LAW
 4 FIRMS.—

5 “(1) RESTRICTIONS ON EMPLOYMENT WHILE
 6 INDEPENDENT COUNSEL AND APPOINTEES ARE
 7 SERVING.—

8 “(A) INDEPENDENT COUNSEL.—During
 9 the period in which an independent counsel is
 10 serving under this chapter—

11 “(i) that independent counsel shall
 12 have no other paid employment; and

13 “(ii) any person associated with a
 14 firm with which that independent counsel
 15 is associated may not represent in any
 16 matter any person involved in any inves-
 17 tigation or prosecution under this chapter.

18 “(B) OTHER PERSONS.—During the period
 19 in which any person appointed by an inde-
 20 pendent counsel under subsection (c) is serving
 21 in the office of independent counsel, that person
 22 may not represent in any matter any person in-
 23 volved in any investigation or prosecution under
 24 this chapter.

1 “(2) POST EMPLOYMENT RESTRICTIONS ON
 2 INDEPENDENT COUNSEL AND APPOINTEES.—Each
 3 independent counsel and each person appointed by
 4 that independent counsel under subsection (c) may
 5 not—

6 “(A) for 3 years following the termination
 7 of the service under this chapter of that inde-
 8 pendent counsel or appointed person, as the
 9 case may be, represent any person in any mat-
 10 ter if that individual was the subject of an in-
 11 vestigation or prosecution under this chapter
 12 that was conducted by that independent coun-
 13 sel; or

14 “(B) for 1 year following the termination
 15 of the service under this chapter of that inde-
 16 pendent counsel or appointed person, as the
 17 case may be, represent any person in any mat-
 18 ter involving any investigation or prosecution
 19 under this chapter.

20 “(3) ONE-YEAR BAN ON REPRESENTATION BY
 21 MEMBERS OF FIRMS OF INDEPENDENT COUNSEL.—
 22 Any person who is associated with a firm with which
 23 an independent counsel is associated or becomes as-
 24 sociated after termination of the service of that inde-
 25 pendent counsel under this chapter may not, for 1

1 year following that termination, represent any per-
 2 son in any matter involving any investigation or
 3 prosecution under this chapter.

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

6 “(A) the term ‘firm’ means a law firm
 7 whether organized as a partnership or corpora-
 8 tion; and

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

12 “(5) ENFORCEMENT.—The Attorney General
 13 and the Director of the Office of Government Ethics
 14 have authority to enforce compliance with this sub-
 15 section. The designated agency ethics official for the
 16 Department of Justice shall be the ethics adviser for
 17 the independent counsel and employees of the inde-
 18 pendent counsel.

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

21 “(1) TRANSFER OF RECORDS.—Upon termi-
 22 nation of the office of an independent counsel, that
 23 independent counsel shall transfer to the Archivist of
 24 the United States all records which have been cre-
 25 ated or received by that office. Before this transfer,

1 the independent counsel shall clearly identify which
2 of these records are subject to rule 6(e) of the Fed-
3 eral Rules of Criminal Procedure as grand jury ma-
4 terials and which of these records have been classi-
5 fied as national security information. Any records
6 which were compiled by an independent counsel and,
7 upon termination of the independent counsel's office,
8 were stored with the division of the court or else-
9 where before the enactment of the Independent
10 Counsel Reauthorization Act of 1987, shall also be
11 transferred to the Archivist of the United States by
12 the division of the court or the person in possession
13 of those records.

14 “(2) MAINTENANCE, USE, AND DISPOSAL OF
15 RECORDS.—Records transferred to the Archivist
16 under this chapter shall be maintained, used, and
17 disposed of in accordance with chapters 21, 29, and
18 33 of title 44.

19 “(3) ACCESS TO RECORDS.—

20 “(A) IN GENERAL.—Subject to paragraph
21 (4), access to the records transferred to the Ar-
22 chivist under this chapter shall be governed by
23 section 552 of title 5.

24 “(B) ACCESS BY DEPARTMENT OF JUS-
25 TICE.—The Archivist shall, upon written appli-

1 cation by the Attorney General, disclose any
2 such records to the Department of Justice for
3 purposes of an ongoing law enforcement inves-
4 tigation or court proceeding, except that, in the
5 case of grand jury materials, those records shall
6 be so disclosed only by order of the court of
7 jurisdiction under rule 6(e) of the Federal
8 Rules of Criminal Procedure.

9 “(C) EXCEPTION.—Notwithstanding any
10 restriction on access imposed by law, the Archi-
11 vist and persons employed by the National Ar-
12 chives and Records Administration who are en-
13 gaged in the performance of normal archival
14 work shall be permitted access to the records
15 transferred to the Archivist under this chapter.

16 “(4) RECORDS PROVIDED BY CONGRESS.—
17 Records of an investigation conducted by a com-
18 mittee of the House of Representatives or the Senate
19 which are provided to an independent counsel to as-
20 sist in an investigation or prosecution conducted by
21 that independent counsel—

22 “(A) shall be maintained as a separate
23 body of records within the records of the inde-
24 pendent counsel; and

1 “(B) shall, after the records have been
 2 transferred to the Archivist under this chapter,
 3 be made available, except as provided in para-
 4 graph (3) (B) and (C), in accordance with the
 5 rules governing release of the records of the
 6 House of Congress that provided the records to
 7 the independent counsel.

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

11 “(1) COST AND ADMINISTRATIVE SUPPORT.—

12 “(1) COST CONTROLS.—

13 “(A) IN GENERAL.—An independent coun-
 14 sel shall—

15 “(i) conduct all activities with due re-
 16 gard for expense;

17 “(ii) authorize only reasonable and
 18 lawful expenditures; and

19 “(iii) promptly, upon taking office, as-
 20 sign to a specific employee the duty of cer-
 21 tifying that expenditures of the inde-
 22 pendent counsel are reasonable and made
 23 in accordance with law.

24 “(B) LIABILITY FOR INVALID CERTIFI-
 25 CATION.—An employee making a certification

1 under subparagraph (A)(iii) shall be liable for
2 an invalid certification to the same extent as a
3 certifying official certifying a voucher is liable
4 under section 3528 of title 31.

5 “(C) DEPARTMENT OF JUSTICE POLI-
6 CIES.—An independent counsel shall comply
7 with the established policies of the Department
8 of Justice respecting expenditures of funds.

9 “(2) BUDGET.—The independent counsel, after
10 consulting with the Attorney General, shall, within
11 90 days of appointment, submit a budget for the
12 first year of the investigation and, on the anniver-
13 sary of the appointment, for each year thereafter to
14 the Attorney General and the General Accounting
15 Office. The General Accounting Office shall review
16 the budget and submit a written appraisal of the
17 budget to the independent counsel and the Commit-
18 tees on Governmental Affairs and Appropriations of
19 the Senate and the Committees on the Judiciary and
20 Appropriations of the House of Representatives.

21 “(3) ADMINISTRATIVE SUPPORT.—The Director
22 of the Administrative Office of the United States
23 Courts shall provide administrative support and
24 guidance to each independent counsel. No officer or
25 employee of the Administrative Office of the United

1 States Courts shall disclose information related to
2 an independent counsel's expenditures, personnel, or
3 administrative acts or arrangements without the au-
4 thorization of the independent counsel.

5 “(4) OFFICE SPACE.—The Administrator of
6 General Services, in consultation with the Director
7 of the Administrative Office of the United States
8 Courts, shall promptly provide appropriate office
9 space for each independent counsel. The office space
10 shall be within a Federal building unless the Admin-
11 istrator of General Services determines that other
12 arrangements would cost less. Until the office space
13 is provided, the Administrative Office of the United
14 States Courts shall provide newly appointed inde-
15 pendent counsels immediately upon appointment
16 with appropriate, temporary office space, equipment,
17 and supplies.

18 “(m) EXPEDITED JUDICIAL CONSIDERATION AND
19 REVIEW.—It shall be the duty of the courts of the United
20 States to advance on the docket and to expedite to the
21 greatest extent possible the disposition of matters relating
22 to an investigation and prosecution by an independent
23 counsel under this chapter consistent with the purposes
24 of this chapter.

1 **“§ 595. Congressional oversight**

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

4 “(1) CONGRESSIONAL OVERSIGHT.—The appro-
5 priate committees of the Congress shall have over-
6 sight jurisdiction with respect to the official conduct
7 of any independent counsel appointed under this
8 chapter, and the independent counsel shall have the
9 duty to cooperate with the exercise of that oversight
10 jurisdiction.

11 “(2) REPORTS TO CONGRESS.—An independent
12 counsel appointed under this chapter shall submit to
13 the Congress annually a report on the activities of
14 the independent counsel, including a description of
15 the progress of any investigation or prosecution con-
16 ducted by the independent counsel. The report may
17 omit any matter that in the judgment of the inde-
18 pendent counsel should be kept confidential, but
19 shall provide information adequate to justify the ex-
20 penditures that the office of the independent counsel
21 has made.

22 “(b) OVERSIGHT OF CONDUCT OF ATTORNEY GEN-
23 ERAL.—Within 15 days after receiving an inquiry about
24 a particular case under this chapter, which is a matter
25 of public knowledge, from a committee of the Congress
26 with jurisdiction over this chapter, the Attorney General

1 shall provide the following information to that committee
2 with respect to the case:

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

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

7 “(3) Whether an application for the appoint-
8 ment of an independent counsel or a notification
9 that further investigation is not warranted has been
10 filed with the division of the court, and if so, the
11 date of that filing.

12 **“§ 596. Removal of an independent counsel; termi-**
13 **nation of office**

14 “(a) REMOVAL; REPORT ON REMOVAL.—

15 “(1) GROUNDS FOR REMOVAL.—

16 “(A) IN GENERAL.—An independent coun-
17 sel appointed under this chapter may be re-
18 moved from office, other than by impeachment
19 and conviction, only by the personal action of
20 the Attorney General and only for good cause,
21 physical or mental disability (if not prohibited
22 by law protecting persons from discrimination
23 on the basis of such a disability), or any other
24 condition that impairs the performance of that
25 independent counsel’s duties.

1 “(B) GOOD CAUSE.—In this paragraph,
2 the term ‘good cause’ includes—

3 “(i) a knowing and material failure to
4 comply with written Department of Justice
5 policies relevant to the conduct of a crimi-
6 nal investigation; and

7 “(ii) an actual personal, financial, or
8 political conflict of interest.

9 “(2) REPORT TO DIVISION OF THE COURT AND
10 CONGRESS.—If an independent counsel is removed
11 from office, the Attorney General shall promptly
12 submit to the division of the court and the Commit-
13 tees on the Judiciary of the Senate and the House
14 of Representatives a report specifying the facts
15 found and the ultimate grounds for the removal. The
16 committees shall make available to the public that
17 report, except that each committee may, if necessary
18 to protect the rights of any individual named in the
19 report or to prevent undue interference with any
20 pending prosecution, postpone or refrain from pub-
21 lishing any or all of the report. The division of the
22 court may release any or all of the report in accord-
23 ance with section 594(h)(2).

24 “(3) JUDICIAL REVIEW OF REMOVAL.—An inde-
25 pendent counsel removed from office may obtain ju-

1 dicial review of the removal in a civil action com-
 2 menced in the United States District Court for the
 3 District of Columbia. A member of the division of
 4 the court may not hear or determine any such civil
 5 action or any appeal of a decision in any such civil
 6 action. The independent counsel may be reinstated
 7 or granted other appropriate relief by order of the
 8 court.

9 “(b) TERMINATION OF OFFICE.—

10 “(1) TERMINATION BY ACTION OF INDE-
 11 PENDENT COUNSEL.—An office of independent
 12 counsel shall terminate when—

13 “(A) the independent counsel notifies the
 14 Attorney General that the investigation of all
 15 matters within the prosecutorial jurisdiction of
 16 the independent counsel or accepted by the
 17 independent counsel under section 594(e), and
 18 any resulting prosecutions, have been completed
 19 or so substantially completed that it would be
 20 appropriate for the Department of Justice to
 21 complete those investigations and prosecutions;
 22 and

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

1 “(2) TERMINATION BY DIVISION OF THE
2 COURT.—The division of the court, either on its own
3 motion or upon the request of the Attorney General,
4 may terminate an office of independent counsel at
5 any time, on the ground that the investigation of all
6 matters within the prosecutorial jurisdiction of the
7 independent counsel or accepted by the independent
8 counsel under section 594(e), and any resulting
9 prosecutions, have been completed or so substan-
10 tially completed that it would be appropriate for the
11 Department of Justice to complete those investiga-
12 tions and prosecutions. At the time of that termi-
13 nation, the independent counsel shall file the final
14 report required by section 594(h)(1)(B). If the At-
15 torney General has not made a request under this
16 paragraph, the division of the court shall determine
17 on its own motion whether termination is appro-
18 priate under this paragraph no later than 2 years
19 after the appointment of an independent counsel.

20 “(3) TERMINATION AFTER 2 YEARS.—

21 “(A) GENERAL RULE.—Except as provided
22 in subparagraph (B), the term of an inde-
23 pendent counsel shall terminate at the expira-
24 tion of 2 years after the date of appointment of
25 the independent counsel and any matters under

1 investigation by the independent counsel shall
2 be transferred to the Attorney General.

3 “(B) EXCEPTIONS.—

4 “(i) GOOD CAUSE.—An independent
5 counsel may petition the division of the
6 court to extend the investigation of the
7 independent counsel for up to 1 year for
8 good cause. The division of the court shall
9 determine whether the grant of such an ex-
10 tension is warranted and determine the
11 length of each extension.

12 “(ii) DILATORY TACTICS.—If the in-
13 vestigation of an independent counsel was
14 delayed by dilatory tactics by persons that
15 could provide evidence that would signifi-
16 cantly assist the investigation, an inde-
17 pendent counsel may petition the division
18 of the court to extend the investigation of
19 the independent counsel for an additional
20 period of time equal to the amount of time
21 lost by the dilatory tactics. If the division
22 of the court finds that dilatory tactics did
23 delay the investigation, the division of the
24 court shall extend the investigation for a
25 period equal to the delay.

1 “(c) AUDITS.—

2 “(1) IN GENERAL.—On or before June 30 of
 3 each year, an independent counsel shall prepare a
 4 statement of expenditures for the 6 months that
 5 ended on the immediately preceding March 31. On
 6 or before December 31 of each year, an independent
 7 counsel shall prepare a statement of expenditures for
 8 the fiscal year that ended on the immediately pre-
 9 ceding September 30. An independent counsel whose
 10 office is terminated prior to the end of the fiscal
 11 year shall prepare a statement of expenditures on or
 12 before the date that is 90 days after the date on
 13 which the office is terminated.

14 “(2) COMPTROLLER GENERAL REVIEW.—The
 15 Comptroller General shall—

16 “(A) conduct a financial review of a mid-
 17 year statement and a financial audit of a year-
 18 end statement and statement on termination;
 19 and

20 “(B) report the results to the Committee
 21 on the Judiciary, Committee on Governmental
 22 Affairs, and Committee on Appropriations of
 23 the Senate and the Committee on the Judiciary,
 24 Committee on Government Reform, and Com-
 25 mittee on Appropriations of the House of Rep-

1 representatives not later than 90 days following
2 the submission of each statement.

3 **“§ 597. Relationship with department of justice**

4 “(a) SUSPENSION OF OTHER INVESTIGATIONS AND
5 PROCEEDINGS.—Whenever a matter is in the prosecu-
6 torial jurisdiction of an independent counsel or has been
7 accepted by an independent counsel under section 594(e),
8 the Department of Justice, the Attorney General, and all
9 other officers and employees of the Department of Justice
10 shall suspend all investigations and proceedings regarding
11 that matter, except to the extent required by section
12 594(d)(1), and except insofar as the independent counsel
13 agrees in writing that the investigation or proceedings may
14 be continued by the Department of Justice.

15 “(b) PRESENTATION AS AMICUS CURIAE PER-
16 MITTED.—Nothing in this chapter shall prevent the Attor-
17 ney General or the Solicitor General from making a pres-
18 entation as amicus curiae to any court as to issues of law
19 raised by any case or proceeding in which an independent
20 counsel participates in an official capacity or any appeal
21 of such a case or proceeding.

22 **“§ 598. Severability**

23 “‘If any provision of this chapter or the application
24 thereof to any person or circumstance is held invalid, the
25 remainder of this chapter and the application of that pro-

1 vision to other persons not similarly situated or to other
 2 circumstances shall not be affected by that invalidation.

3 **“§ 599. Termination of effect of chapter**

4 “‘This chapter shall cease to be effective 5 years after
 5 the date of enactment of the Independent Counsel Reform
 6 Act of 1999, except that this chapter shall continue in ef-
 7 fect with respect to then pending matters before an inde-
 8 pendent counsel that in the judgment of that counsel re-
 9 quire the continuation until that independent counsel de-
 10 termines those matters have been completed.’”.

11 **SEC. 3. ASSIGNMENT OF JUDGES TO DIVISION TO APPOINT**
 12 **INDEPENDENT COUNSELS.**

13 Section 49 of title 28, United States Code, is amend-
 14 ed to reads as follows:

15 **“§ 49. Assignment of judges to division to appoint**
 16 **independent counsels**

17 “(a) IN GENERAL.—Beginning with the 3-year period
 18 commencing on the date of the enactment of the Inde-
 19 pendent Counsel Reform Act of 1999, 3 judges shall be
 20 assigned for each successive 3-year period to a division
 21 of the United States Court of Appeals for the District of
 22 Columbia to be the division of the court for the purpose
 23 of appointing independent counsels. The Clerk of the
 24 United States Court of Appeals for the District of Colum-
 25 bia Circuit shall serve as the clerk of the division of the

1 court and shall provide such services as are needed by the
2 division of the court.

3 “(b) OTHER JUDICIAL ASSIGNMENTS.—Except as
4 provided in subsection (e), assignment to the division of
5 the court shall not be a bar to other judicial assignments
6 during the term of the division of the court.

7 “(c) DESIGNATION AND ASSIGNMENT.—The Chief
8 Justice of the United States shall designate and assign
9 by a lottery of all circuit court judges, 3 circuit court
10 judges 1 of whom shall be a judge of the United States
11 Court of Appeals for the District of Columbia, to the divi-
12 sion of the court. Not more than 1 judge may be named
13 to the division of the court from a particular court.

14 “(d) VACANCY.—Any vacancy in the division of the
15 court shall be filled only for the remainder of the 3-year
16 period in which that vacancy occurs and in the same man-
17 ner as initial assignments to the division of the court were
18 made.

19 “(e) RECUSAL.—Except as otherwise provided in
20 chapter 40 of this title, no member of the division of the
21 court who participated in a function conferred on the divi-
22 sion of the court under chapter 40 of this title involving
23 an independent counsel shall be eligible to participate in
24 any judicial proceeding concerning a matter that—

1 “(1) involves that independent counsel while the
2 independent counsel is serving in that office; or

3 “(2) involves the exercise of the independent
4 counsel’s official duties, regardless of whether the
5 independent counsel is still serving in that office.”.

○