

108TH CONGRESS
1ST SESSION

S. 1712

To re-establish and reform the independent counsel statute.

IN THE SENATE OF THE UNITED STATES

OCTOBER 3, 2003

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

A BILL

To re-establish and reform 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 2003”.

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 inde-
pendent 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) PRELIMINARY INVESTIGATION WITH RESPECT
17 TO OTHER PERSONS.—When the Attorney General deter-
18 mines that an investigation or prosecution of a person by
19 the Department of Justice may result in a personal, finan-
20 cial, or political conflict of interest, the Attorney General
21 may conduct a preliminary investigation of such person
22 in accordance with section 592 if the Attorney General

1 receives information sufficient to constitute grounds to in-
 2 vestigate whether that person may have violated Federal
 3 criminal law other than a violation classified as a Class
 4 B or C misdemeanor or an infraction.

5 “(d) EXAMINATION OF INFORMATION TO DETER-
 6 MINE NEED FOR PRELIMINARY INVESTIGATION.—

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

11 “(A) the specificity of the information re-
 12 ceived; and

13 “(B) the credibility of the source of the in-
 14 formation.

15 “(2) TIME PERIOD FOR MAKING DETERMINA-
 16 TION.—The Attorney General shall determine wheth-
 17 er grounds to investigate exist not later than 30
 18 days after the information is first received. If within
 19 that 30-day period the Attorney General determines
 20 that the information is not specific or is not from a
 21 credible source, then the Attorney General shall
 22 close the matter. If within that 30-day period the
 23 Attorney General determines that the information is
 24 specific and from a credible source, the Attorney
 25 General shall, upon making that determination, com-

1 mence a preliminary investigation with respect to
 2 that information. If the Attorney General is unable
 3 to determine, within that 30-day period, whether the
 4 information is specific and from a credible source,
 5 the Attorney General shall, at the end of that 30-
 6 day period, commence a preliminary investigation
 7 with respect to that information.

8 “(e) RECUSAL OF ATTORNEY GENERAL.—

9 “(1) WHEN RECUSAL IS REQUIRED.—

10 “(A) INVOLVING THE ATTORNEY GEN-
 11 ERAL.—If information received under this chap-
 12 ter involves the Attorney General, the next most
 13 senior official in the Department of Justice who
 14 is not also recused shall perform the duties as-
 15 signed under this chapter to the Attorney Gen-
 16 eral.

17 “(B) PERSONAL OR FINANCIAL RELATION-
 18 SHIP.—If information received under this chap-
 19 ter involves a person with whom the Attorney
 20 General has a personal or financial relationship,
 21 the Attorney General shall recuse himself or
 22 herself by designating the next most senior offi-
 23 cial in the Department of Justice who is not
 24 also recused to perform the duties assigned
 25 under this chapter to the Attorney General.

1 “(2) REQUIREMENTS FOR RECUSAL DETER-
 2 MINATION.—Before personally making any other de-
 3 termination under this chapter with respect to infor-
 4 mation received under this chapter, the Attorney
 5 General shall determine under paragraph (1)(B)
 6 whether recusal is necessary. The Attorney General
 7 shall set forth this determination in writing, identify
 8 the facts considered by the Attorney General, and
 9 set forth the reasons for the recusal. The Attorney
 10 General shall file this determination with any notifi-
 11 cation or application submitted to the division of the
 12 court under this chapter with respect to that infor-
 13 mation.

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

16 “(a) CONDUCT OF PRELIMINARY INVESTIGATION.—

17 “(1) IN GENERAL.—A preliminary investigation
 18 conducted under this chapter shall be of those mat-
 19 ters as the Attorney General considers appropriate
 20 in order to make a determination, under subsection
 21 (b) or (c), with respect to each potential violation, or
 22 allegation of a violation, of criminal law. The Attor-
 23 ney General shall make that determination not later
 24 than 120 days after the preliminary investigation is
 25 commenced, except that, in the case of a preliminary

1 investigation commenced after a congressional re-
 2 quest under subsection (g), the Attorney General
 3 shall make that determination not later than 120
 4 days after the request is received. The Attorney
 5 General shall promptly notify the division of the
 6 court specified in section 593(a) of the commence-
 7 ment of that preliminary investigation and the date
 8 of commencement.

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

11 “(A) IN GENERAL.—In conducting prelimi-
 12 nary investigations under this chapter, the At-
 13 torney General shall have no authority to plea
 14 bargain or grant immunity. The Attorney Gen-
 15 eral shall have the authority to convene grand
 16 juries and issue subpoenas.

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

20 “(i) that information with respect to a
 21 violation of criminal law by a person is not
 22 specific and from a credible source upon a
 23 determination that that person lacked the
 24 state of mind required for the violation of
 25 criminal law; or

1 “(ii) that there are no substantial
2 grounds to believe that further investiga-
3 tion is warranted, upon a determination
4 that that person lacked the state of mind
5 required for the criminal violation involved,
6 unless there is a preponderance of the evi-
7 dence that the person lacked that state of
8 mind.

9 “(3) EXTENSION OF TIME FOR PRELIMINARY
10 INVESTIGATION.—The Attorney General may apply
11 to the division of the court for a single extension, for
12 a period of not more than 90 days, of the 120-day
13 period referred to in paragraph (1). The division of
14 the court may, upon a showing of good cause, grant
15 that extension.

16 “(b) DETERMINATION THAT FURTHER INVESTIGA-
17 TION NOT WARRANTED.—

18 “(1) NOTIFICATION OF DIVISION OF THE
19 COURT.—If the Attorney General, upon completion
20 of a preliminary investigation under this chapter, de-
21 termines that there are no substantial grounds to
22 believe that further investigation is warranted, the
23 Attorney General shall promptly so notify the divi-
24 sion of the court, and the division of the court shall

1 have no power to appoint an independent counsel
 2 with respect to the matters involved.

3 “(2) FORM OF NOTIFICATION.—Notification
 4 under paragraph (1) shall contain a summary of the
 5 information received and a summary of the results
 6 of the preliminary investigation.

7 “(c) DETERMINATION THAT FURTHER INVESTIGA-
 8 TION IS WARRANTED.—

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

13 “(A) the Attorney General, upon comple-
 14 tion of a preliminary investigation under this
 15 chapter, determines that there are substantial
 16 grounds to believe that further investigation is
 17 warranted; or

18 “(B) the 120-day period referred to in sub-
 19 section (a)(1), and any extension granted under
 20 subsection (a)(3), have elapsed and the Attor-
 21 ney General has not filed a notification with the
 22 division of the court under subsection (b)(1).

23 In determining under this chapter whether there are
 24 substantial grounds to believe that further investiga-
 25 tion is warranted, the Attorney General shall comply

1 with the written or other established policies of the
2 Department of Justice with respect to the conduct
3 of criminal investigations.

4 “(2) RECEIPT OF ADDITIONAL INFORMATION.—
5 If, after submitting a notification under subsection
6 (b)(1), the Attorney General receives additional in-
7 formation sufficient to constitute grounds to inves-
8 tigate the matters to which that notification related,
9 the Attorney General shall—

10 “(A) conduct such additional preliminary
11 investigation as the Attorney General considers
12 appropriate for a period of not more than 120
13 days after the date on which that additional in-
14 formation is received; and

15 “(B) otherwise comply with the provisions
16 of this section with respect to that additional
17 preliminary investigation to the same extent as
18 any other preliminary investigation under this
19 section.

20 “(d) CONTENTS OF APPLICATION.—Any application
21 for the appointment of an independent counsel under this
22 chapter shall contain sufficient information to assist the
23 division of the court in selecting an independent counsel
24 and in defining that independent counsel’s prosecutorial
25 jurisdiction so that the independent counsel has adequate

1 authority to fully investigate and prosecute the subject
 2 matter and all matters directly related to that subject mat-
 3 ter.

4 “(e) DISCLOSURE OF INFORMATION.—Except as oth-
 5 erwise provided in this chapter or as is deemed necessary
 6 for law enforcement purposes, no officer or employee of
 7 the Department of Justice or an office of independent
 8 counsel may, without leave of the division of the court,
 9 disclose to any individual outside the Department of Jus-
 10 tice or that office any notification, application, or any
 11 other document, materials, or memorandum supplied to
 12 the division of the court under this chapter. Nothing in
 13 this chapter shall be construed as authorizing the with-
 14 holding of information from the Congress.

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

19 “(g) CONGRESSIONAL REQUEST.—

20 “(1) BY JUDICIARY COMMITTEE OR MEMBERS
 21 THEREOF.—The Committee on the Judiciary of ei-
 22 ther House of the Congress, or a majority of major-
 23 ity party members or a majority of all nonmajority
 24 party members of either such committee, may re-

1 quest in writing that the Attorney General apply for
2 the appointment of an independent counsel.

3 “(2) REPORT BY ATTORNEY GENERAL PURSU-
4 ANT TO REQUEST.—Not later than 30 days after the
5 receipt of a request under paragraph (1), the Attor-
6 ney General shall submit, to the committee making
7 the request, or to the committee on which the per-
8 sons making the request serve, a report on whether
9 the Attorney General has begun or will begin a pre-
10 liminary investigation under this chapter of the mat-
11 ters with respect to which the request is made, in
12 accordance with section 591(a). The report shall set
13 forth the reasons for the Attorney General’s decision
14 regarding the preliminary investigation as it relates
15 to each of the matters with respect to which the con-
16 gressional request is made. If there is such a pre-
17 liminary investigation, the report shall include the
18 date on which the preliminary investigation began or
19 will begin.

20 “(3) SUBMISSION OF INFORMATION IN RE-
21 SPONSE TO CONGRESSIONAL REQUEST.—At the
22 same time as any notification, application, or any
23 other document, material, or memorandum is sup-
24 plied to the division of the court pursuant to this
25 section with respect to a preliminary investigation of

1 any matter with respect to which a request is made
2 under paragraph (1), that notification, application,
3 or other document, material, or memorandum shall
4 be supplied to the committee making the request, or
5 to the committee on which the persons making the
6 request serve. If no application for the appointment
7 of an independent counsel is made to the division of
8 the court under this section pursuant to such a pre-
9 liminary investigation, the Attorney General shall
10 submit a report to that committee stating the rea-
11 sons why the application was not made, addressing
12 each matter with respect to which the congressional
13 request was made.

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

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

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

5 “(b) APPOINTMENT AND JURISDICTION OF INDE-
6 PENDENT COUNSEL.—

7 “(1) AUTHORITY.—Upon receipt of an applica-
8 tion under section 592(c), the division of the court
9 shall appoint an appropriate independent counsel
10 and define the independent counsel’s prosecutorial
11 jurisdiction. The appointment shall be made from a
12 list of candidates comprised of 5 individuals rec-
13 ommended by the chief judge of each Federal circuit
14 and forwarded by January 15 of each year to the
15 division of the court.

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

19 “(A) has appropriate experience, including,
20 to the extent practicable, prosecutorial experi-
21 ence and who has no actual or apparent per-
22 sonal, financial, or political conflict of interest;

23 “(B) will conduct the investigation on a
24 full-time basis and in a prompt, responsible,
25 and cost-effective manner; and

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

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

5 “(A) IN GENERAL.—In defining the inde-
6 pendent counsel’s prosecutorial jurisdiction
7 under this chapter, the division of the court
8 shall assure that the independent counsel has
9 adequate authority to fully investigate and pros-
10 ecute—

11 “(i) the subject matter with respect to
12 which the Attorney General has requested
13 the appointment of the independent coun-
14 sel; and

15 “(ii) all matters that are directly re-
16 lated to the independent counsel’s prosecu-
17 torial jurisdiction and the proper investiga-
18 tion and prosecution of the subject matter
19 of such jurisdiction.

20 “(B) DIRECTLY RELATED.—In this para-
21 graph, the term ‘directly related matters’ in-
22 cludes Federal crimes, other than those classi-
23 fied as Class B or C misdemeanors or infrac-
24 tions, that impede the investigation and pros-
25 ecution, such as perjury, obstruction of justice,

1 destruction of evidence, and intimidation of wit-
2 nesses.

3 “(4) DISCLOSURE OF IDENTITY AND PROSECU-
4 TORIAL JURISDICTION.—An independent counsel’s
5 identity and prosecutorial jurisdiction may not be
6 made public except upon the request of the Attorney
7 General or upon a determination of the division of
8 the court that disclosure of the identity and prosecu-
9 torial jurisdiction of that independent counsel would
10 be in the best interests of justice. In any event, the
11 identity and prosecutorial jurisdiction of the inde-
12 pendent counsel shall be made public when any in-
13 dictment is returned, or any criminal information is
14 filed, pursuant to the independent counsel’s inves-
15 tigation.

16 “(c) RETURN FOR FURTHER EXPLANATION.—Upon
17 receipt of a notification under section 592 from the Attor-
18 ney General that there are no substantial grounds to be-
19 lieve that further investigation is warranted with respect
20 to information received under this chapter, the division of
21 the court shall have no authority to overrule this deter-
22 mination but may return the matter to the Attorney Gen-
23 eral for further explanation of the reasons for that deter-
24 mination.

1 “(d) VACANCIES.—If a vacancy in office arises by
 2 reason of the resignation, death, or removal of an inde-
 3 pendent counsel, the division of the court shall appoint an
 4 independent counsel to complete the work of the inde-
 5 pendent counsel whose resignation, death, or removal
 6 caused the vacancy, except that in the case of a vacancy
 7 arising by reason of the removal of an independent coun-
 8 sel, the division of the court may appoint an acting inde-
 9 pendent counsel to serve until any judicial review of the
 10 removal is completed.

11 “(e) ATTORNEYS’ FEES.—

12 “(1) AWARD OF FEES.—Upon the request of an
 13 individual who is the subject of an investigation con-
 14 ducted by an independent counsel pursuant to this
 15 chapter, the division of the court may, if no indict-
 16 ment is brought against that individual pursuant to
 17 the investigation, award reimbursement for those
 18 reasonable attorneys’ fees incurred by the individual
 19 during the investigation which would not have been
 20 incurred but for the requirements of this chapter.
 21 The division of the court shall notify the inde-
 22 pendent counsel who conducted the investigation and
 23 the Attorney General of any request for attorneys’
 24 fees under this subsection.

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

6 “(A) the sufficiency of the documentation;

7 “(B) the need or justification for the un-
 8 derlying item;

9 “(C) whether the underlying item would
 10 have been incurred but for the requirements of
 11 this chapter; and

12 “(D) the reasonableness of the amount of
 13 money requested.

14 “(f) DISCLOSURE OF INFORMATION.—The division of
 15 the court may, subject to section 594(h)(2), allow the dis-
 16 closure of any notification, application, or any other docu-
 17 ment, material, or memorandum supplied to the division
 18 of the court under this chapter.

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

1 **“§ 594. Authority and duties of an independent coun-**
 2 **sel**

3 “(a) AUTHORITIES.—Notwithstanding any other pro-
 4 vision of law, an independent counsel appointed under this
 5 chapter shall have, with respect to all matters in that inde-
 6 pendent counsel’s prosecutorial jurisdiction established
 7 under this chapter, full power and independent authority
 8 to exercise all investigative and prosecutorial functions
 9 and powers of the Department of Justice, the Attorney
 10 General, and any other officer or employee of the Depart-
 11 ment of Justice, except that the Attorney General shall
 12 exercise direction or control as to those matters that spe-
 13 cifically require the Attorney General’s personal action
 14 under section 2516 of title 18. Such investigative and
 15 prosecutorial functions and powers shall include—

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

18 “(2) participating in court proceedings and en-
 19 gaging in any litigation, including civil and criminal
 20 matters, that the independent counsel considers nec-
 21 essary;

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

25 “(4) reviewing all documentary evidence avail-
 26 able from any source;

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

3 “(6) receiving appropriate national security
4 clearances and, if necessary, contesting in court (in-
5 cluding, where appropriate, participating in in cam-
6 era proceedings) any claim of privilege or attempt to
7 withhold evidence on grounds of national security;

8 “(7) making applications to any Federal court
9 for a grant of immunity to any witness, consistent
10 with applicable statutory requirements, or for war-
11 rants, subpoenas, or other court orders, and, for
12 purposes of sections 6003, 6004, and 6005 of title
13 18, exercising the authority vested in a United
14 States attorney or the Attorney General;

15 “(8) inspecting, obtaining, or using the original
16 or a copy of any tax return, in accordance with the
17 applicable statutes and regulations, and, for pur-
18 poses of section 6103 of the Internal Revenue Code
19 of 1986 and the regulations issued thereunder, exer-
20 cising the powers vested in a United States attorney
21 or the Attorney General;

22 “(9) initiating and conducting prosecutions in
23 any court of competent jurisdiction, framing and
24 signing indictments, filing informations, and han-

1 dling all aspects of any case, in the name of the
 2 United States; and

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

7 “(b) COMPENSATION.—

8 “(1) IN GENERAL.—An independent counsel ap-
 9 pointed under this chapter shall receive compensa-
 10 tion at the annual rate of basic pay payable for level
 11 IV of the Executive Schedule under section 5315 of
 12 title 5.

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

20 “(3) TRAVEL TO PRIMARY OFFICE.—

21 “(A) IN GENERAL.—After 1 year of service
 22 under this chapter, an independent counsel and
 23 persons appointed under subsection (c) shall
 24 not be entitled to the payment of travel, per
 25 diem, or subsistence expenses under subchapter

1 I of chapter 57 of title 5, United States Code,
2 for the purpose of commuting to or from the
3 city in which the primary office of the inde-
4 pendent counsel or person is located. The 1-
5 year period may be extended for successive 6-
6 month periods if the independent counsel and
7 the division of the court certify that the pay-
8 ment is in the public interest to carry out the
9 purposes of this chapter.

10 “(B) RELEVANT FACTORS.—In making
11 any certification under this paragraph with re-
12 spect to travel and subsistence expenses of an
13 independent counsel or person appointed under
14 subsection (c), that employee shall consider,
15 among other relevant factors—

16 “(i) the cost to the Government of re-
17 imbursing those travel and subsistence ex-
18 penses;

19 “(ii) the period of time for which the
20 independent counsel anticipates that the
21 activities of the independent counsel or
22 person, as the case may be, will continue;

23 “(iii) the personal and financial bur-
24 dens on the independent counsel or person,
25 as the case may be, of relocating so that

1 the travel and subsistence expenses would
2 not be incurred; and

3 “(iv) the burdens associated with ap-
4 pointing a new independent counsel, or ap-
5 pointing another person under subsection
6 (c), to replace the individual involved who
7 is unable or unwilling to so relocate.

8 “(c) ADDITIONAL PERSONNEL.—For the purposes of
9 carrying out the duties of an office of independent counsel,
10 an independent counsel may appoint, fix the compensa-
11 tion, and assign the duties of such employees as such inde-
12 pendent counsel considers necessary (including investiga-
13 tors, attorneys, and part-time consultants). The positions
14 of all such employees are exempted from the competitive
15 service. Such employees shall be compensated at levels not
16 to exceed those payable for comparable positions in the
17 Office of United States Attorney for the District of Colum-
18 bia under sections 548 and 550, but in no event shall any
19 such employee be compensated at a rate greater than the
20 rate of basic pay payable for level ES–4 of the Senior Ex-
21 ecutive Service Schedule under section 5382 of title 5, as
22 adjusted for the District of Columbia under section 5304
23 of that title regardless of the locality in which an employee
24 is employed.

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

1 “(1) IN CARRYING OUT FUNCTIONS.—An inde-
2 pendent counsel may request assistance from the
3 Department of Justice in carrying out the functions
4 of the independent counsel, and the Department of
5 Justice shall provide that assistance, which may in-
6 clude access to any records, files, or other materials
7 relevant to matters within that independent coun-
8 sel’s prosecutorial jurisdiction, and the use of the re-
9 sources and personnel necessary to perform that
10 independent counsel’s duties. At the request of an
11 independent counsel, prosecutors, administrative per-
12 sonnel, and other employees of the Department of
13 Justice may be detailed to the staff of the inde-
14 pendent counsel to the extent the number of staff so
15 detailed is reasonably related to the number of staff
16 ordinarily assigned by the Department to conduct an
17 investigation of similar size and complexity.

18 “(2) PAYMENT OF AND REPORTS ON EXPENDI-
19 TURES OF INDEPENDENT COUNSEL.—The Depart-
20 ment of Justice shall pay all costs relating to the es-
21 tablishment and operation of any office of inde-
22 pendent counsel. The Attorney General shall submit
23 to the Congress, not later than 30 days after the
24 end of each fiscal year, a report on amounts paid
25 during that fiscal year for expenses of investigations

1 and prosecutions by independent counsel. Each such
2 report shall include a statement of all payments
3 made for activities of independent counsel but may
4 not reveal the identity or prosecutorial jurisdiction
5 of any independent counsel which has not been dis-
6 closed under section 593(b)(4).

7 “(e) REFERRAL OF DIRECTLY RELATED MATTERS
8 TO AN INDEPENDENT COUNSEL.—An independent coun-
9 sel may ask the Attorney General or the division of the
10 court to refer to the independent counsel only such mat-
11 ters that are directly related to the independent counsel’s
12 prosecutorial jurisdiction, and the Attorney General or the
13 division of the court, as the case may be, may refer such
14 matters. If the Attorney General refers a matter to an
15 independent counsel on the Attorney General’s own initia-
16 tive, the independent counsel may accept that referral only
17 if the matter directly relates to the independent counsel’s
18 prosecutorial jurisdiction. If the Attorney General refers
19 any matter to the independent counsel pursuant to the
20 independent counsel’s request, or if the independent coun-
21 sel accepts a referral made by the Attorney General on
22 the Attorney General’s own initiative, the independent
23 counsel shall so notify the division of the court.

24 “(f) COMPLIANCE WITH POLICIES OF THE DEPART-
25 MENT OF JUSTICE.—

1 “(1) IN GENERAL.—An independent counsel
2 shall comply with the written or other established
3 policies of the Department of Justice respecting en-
4 forcement of the criminal laws except when that pol-
5 icy requires the specific approval of the Attorney
6 General or another Department of Justice official. If
7 a policy requires the approval of the Attorney Gen-
8 eral or other Department of Justice official, an inde-
9 pendent counsel is encouraged to consult with the
10 Attorney General or other official. To identify and
11 understand these policies and policies under sub-
12 section (l)(1)(B), the independent counsel shall con-
13 sult with the Department of Justice.

14 “(2) NATIONAL SECURITY.—An independent
15 counsel shall comply with guidelines and procedures
16 used by the Department in the handling and use of
17 classified material.

18 “(3) RELIEF FROM A VIOLATION OF POLI-
19 CIES.—

20 “(A) IN GENERAL.—A person who is a tar-
21 get, witness, or defendant in, or otherwise di-
22 rectly affected by, an investigation by an inde-
23 pendent counsel and who has reason to believe
24 that the independent counsel is violating a writ-
25 ten policy of the Department of Justice mate-

rial to the independent counsel’s investigation,
 may ask the Attorney General to determine
 whether the independent counsel has violated
 that policy. The Attorney General shall respond
 in writing within 30 days.

“(B) RELIEF.—If the Attorney General
 determines that the independent counsel has
 violated a written policy of the Department of
 Justice material to the investigation by the
 independent counsel pursuant to subparagraph
 (A), the Attorney General may ask the division
 of the court to order the independent counsel to
 comply with that policy, and the division of the
 court may order appropriate relief.

“(g) DISMISSAL OF MATTERS.—The independent
 counsel shall have full authority to dismiss matters within
 the independent counsel’s prosecutorial jurisdiction with-
 out 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—

1 “(A) file with the division of the court,
2 with respect to the 6-month period beginning on
3 the date of his or her appointment, and with re-
4 spect to each 6-month period thereafter until
5 the office of that independent counsel termi-
6 nates, a report which identifies and explains
7 major expenses, and summarizes all other ex-
8 penses, incurred by that office during the 6-
9 month period with respect to which the report
10 is filed, and estimates future expenses of that
11 office; and

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

16 “(i) the jurisdiction of the inde-
17 pendent counsel’s investigation;

18 “(ii) a list of indictments brought by
19 the independent counsel and the disposi-
20 tion of each indictment, including any ver-
21 dicts, pleas, convictions, pardons, and sen-
22 tences; and

23 “(iii) a summary of the expenses of
24 the independent counsel’s office.

1 “(2) DISCLOSURE OF INFORMATION IN RE-
2 PORTS.—The division of the court may release to the
3 Congress, the public, or any appropriate person,
4 those portions of a report made under this sub-
5 section as the division of the court considers appro-
6 priate. The division of the court shall make those or-
7 ders as are appropriate to protect the rights of any
8 individual named in that report and to prevent
9 undue interference with any pending prosecution.
10 The division of the court may make any portion of
11 a final report filed under paragraph (1)(B) available
12 to any individual named in that report for the pur-
13 poses of receiving within a time limit set by the divi-
14 sion of the court any comments or factual informa-
15 tion that the individual may submit. Such comments
16 and factual information, in whole or in part, may, in
17 the discretion of the division of the court, be in-
18 cluded as an appendix to the final report.

19 “(3) PUBLICATION OF REPORTS.—At the re-
20 quest of an independent counsel, the Public Printer
21 shall cause to be printed any report previously re-
22 leased to the public under paragraph (2). The inde-
23 pendent counsel shall certify the number of copies
24 necessary for the public, and the Public Printer shall
25 place the cost of the required number to the debit

1 of the independent counsel. Additional copies shall
 2 be made available to the public through the deposi-
 3 tory library program and Superintendent of Docu-
 4 ments sales program pursuant to sections 1702 and
 5 1903 of title 44.

6 “(i) INDEPENDENCE FROM DEPARTMENT OF JUS-
 7 TICE.—Each independent counsel appointed under this
 8 chapter, and the persons appointed by that independent
 9 counsel under subsection (c), are employees of the Depart-
 10 ment of Justice for purposes of sections 202 through 209
 11 of title 18.

12 “(j) STANDARDS OF CONDUCT APPLICABLE TO
 13 INDEPENDENT COUNSEL, PERSONS SERVING IN THE OF-
 14 FICE OF AN INDEPENDENT COUNSEL, AND THEIR LAW
 15 FIRMS.—

16 “(1) RESTRICTIONS ON EMPLOYMENT WHILE
 17 INDEPENDENT COUNSEL AND APPOINTEES ARE
 18 SERVING.—

19 “(A) INDEPENDENT COUNSEL.—During
 20 the period in which an independent counsel is
 21 serving under this chapter—

22 “(i) that independent counsel shall
 23 have no other paid employment; and

24 “(ii) any person associated with a
 25 firm with which that independent counsel

1 is associated may not represent in any
2 matter any person involved in any inves-
3 tigation or prosecution under this chapter.

4 “(B) OTHER PERSONS.—During the period
5 in which any person appointed by an inde-
6 pendent counsel under subsection (c) is serving
7 in the office of independent counsel, that person
8 may not represent in any matter any person in-
9 volved in any investigation or prosecution under
10 this chapter.

11 “(2) POST EMPLOYMENT RESTRICTIONS ON
12 INDEPENDENT COUNSEL AND APPOINTEES.—Each
13 independent counsel and each person appointed by
14 that independent counsel under subsection (c) may
15 not—

16 “(A) for 3 years following the termination
17 of the service under this chapter of that inde-
18 pendent counsel or appointed person, as the
19 case may be, represent any person in any mat-
20 ter if that individual was the subject of an in-
21 vestigation or prosecution under this chapter
22 that was conducted by that independent coun-
23 sel; or

24 “(B) for 1 year following the termination
25 of the service under this chapter of that inde-

pendent 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 that 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.

“(5) ENFORCEMENT.—The Attorney General and the Director of the Office of Government Ethics have authority to enforce compliance with this subsection. The designated agency ethics official for the

1 Department of Justice shall be the ethics adviser for
2 the independent counsel and employees of the inde-
3 pendent counsel.

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

6 “(1) TRANSFER OF RECORDS.—Upon termi-
7 nation of the office of an independent counsel, that
8 independent counsel shall transfer to the Archivist of
9 the United States all records which have been cre-
10 ated or received by that office. Before this transfer,
11 the independent counsel shall clearly identify which
12 of these records are subject to rule 6(e) of the Fed-
13 eral Rules of Criminal Procedure as grand jury ma-
14 terials and which of these records have been classi-
15 fied as national security information. Any records
16 which were compiled by an independent counsel and,
17 upon termination of the independent counsel’s office,
18 were stored with the division of the court or else-
19 where before the enactment of the Independent
20 Counsel Reauthorization Act of 1987, shall also be
21 transferred to the Archivist of the United States by
22 the division of the court or the person in possession
23 of those records.

24 “(2) MAINTENANCE, USE, AND DISPOSAL OF
25 RECORDS.—Records transferred to the Archivist

1 under this chapter shall be maintained, used, and
2 disposed of in accordance with chapters 21, 29, and
3 33 of title 44.

4 “(3) ACCESS TO RECORDS.—

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

9 “(B) ACCESS BY DEPARTMENT OF JUS-
10 TICE.—The Archivist shall, upon written appli-
11 cation by the Attorney General, disclose any
12 such records to the Department of Justice for
13 purposes of an ongoing law enforcement inves-
14 tigation or court proceeding, except that, in the
15 case of grand jury materials, those records shall
16 be so disclosed only by order of the court of
17 jurisdiction under rule 6(e) of the Federal
18 Rules of Criminal Procedure.

19 “(C) EXCEPTION.—Notwithstanding any
20 restriction on access imposed by law, the Archi-
21 vist and persons employed by the National Ar-
22 chives and Records Administration who are en-
23 gaged in the performance of normal archival
24 work shall be permitted access to the records
25 transferred to the Archivist under this chapter.

1 “(4) RECORDS PROVIDED BY CONGRESS.—
 2 Records of an investigation conducted by a com-
 3 mittee of the House of Representatives or the Senate
 4 which are provided to an independent counsel to as-
 5 sist in an investigation or prosecution conducted by
 6 that independent counsel—

7 “(A) shall be maintained as a separate
 8 body of records within the records of the inde-
 9 pendent counsel; and

10 “(B) shall, after the records have been
 11 transferred to the Archivist under this chapter,
 12 be made available, except as provided in para-
 13 graph (3) (B) and (C), in accordance with the
 14 rules governing release of the records of the
 15 House of Congress that provided the records to
 16 the independent counsel.

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

20 “(1) COST AND ADMINISTRATIVE SUPPORT.—

21 “(1) COST CONTROLS.—

22 “(A) IN GENERAL.—An independent coun-
 23 sel shall—

24 “(i) conduct all activities with due re-
 25 gard for expense;

1 “(ii) authorize only reasonable and
2 lawful expenditures; and

3 “(iii) promptly, upon taking office, as-
4 sign to a specific employee the duty of cer-
5 tifying that expenditures of the inde-
6 pendent counsel are reasonable and made
7 in accordance with law.

8 “(B) LIABILITY FOR INVALID CERTIFI-
9 CATION.—An employee making a certification
10 under subparagraph (A)(iii) shall be liable for
11 an invalid certification to the same extent as a
12 certifying official certifying a voucher is liable
13 under section 3528 of title 31.

14 “(C) DEPARTMENT OF JUSTICE POLI-
15 CIES.—An independent counsel shall comply
16 with the established policies of the Department
17 of Justice respecting expenditures of funds.

18 “(2) BUDGET.—The independent counsel, after
19 consulting with the Attorney General, shall, within
20 90 days of appointment, submit a budget for the
21 first year of the investigation and, on the anniver-
22 sary of the appointment, for each year thereafter to
23 the Attorney General and the General Accounting
24 Office. The General Accounting Office shall review
25 the budget and submit a written appraisal of the

1 budget to the independent counsel and the Commit-
2 tees on Governmental Affairs and Appropriations of
3 the Senate and the Committees on the Judiciary and
4 Appropriations of the House of Representatives.

5 “(3) ADMINISTRATIVE SUPPORT.—The Director
6 of the Administrative Office of the United States
7 Courts shall provide administrative support and
8 guidance to each independent counsel. No officer or
9 employee of the Administrative Office of the United
10 States Courts shall disclose information related to
11 an independent counsel’s expenditures, personnel, or
12 administrative acts or arrangements without the au-
13 thorization of the independent counsel.

14 “(4) OFFICE SPACE.—The Administrator of
15 General Services, in consultation with the Director
16 of the Administrative Office of the United States
17 Courts, shall promptly provide appropriate office
18 space for each independent counsel. The office space
19 shall be within a Federal building unless the Admin-
20 istrator of General Services determines that other
21 arrangements would cost less. Until the office space
22 is provided, the Administrative Office of the United
23 States Courts shall provide newly appointed inde-
24 pendent counsels immediately upon appointment

1 with appropriate, temporary office space, equipment,
2 and supplies.

3 “(m) EXPEDITED JUDICIAL CONSIDERATION AND
4 REVIEW.—It shall be the duty of the courts of the United
5 States to advance on the docket and to expedite to the
6 greatest extent possible the disposition of matters relating
7 to an investigation and prosecution by an independent
8 counsel under this chapter consistent with the purposes
9 of this chapter.

10 **“§ 595. Congressional oversight**

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

13 “(1) CONGRESSIONAL OVERSIGHT.—The appro-
14 priate committees of the Congress shall have over-
15 sight jurisdiction with respect to the official conduct
16 of any independent counsel appointed under this
17 chapter, and the independent counsel shall have the
18 duty to cooperate with the exercise of that oversight
19 jurisdiction.

20 “(2) REPORTS TO CONGRESS.—An independent
21 counsel appointed under this chapter shall submit to
22 the Congress annually a report on the activities of
23 the independent counsel, including a description of
24 the progress of any investigation or prosecution con-
25 ducted by the independent counsel. The report may

1 omit any matter that in the judgment of the inde-
 2 pendent counsel should be kept confidential, but
 3 shall provide information adequate to justify the ex-
 4 penditures that the office of the independent counsel
 5 has made.

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

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

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

17 “(3) Whether an application for the appoint-
 18 ment of an independent counsel or a notification
 19 that further investigation is not warranted has been
 20 filed with the division of the court, and if so, the
 21 date of that filing.

22 **“§ 596. Removal of an independent counsel; termi-**
 23 **nation of office**

24 “(a) REMOVAL; REPORT ON REMOVAL.—

25 “(1) GROUNDS FOR REMOVAL.—

1 “(A) IN GENERAL.—An independent coun-
 2 sel appointed under this chapter may be re-
 3 moved from office, other than by impeachment
 4 and conviction, only by the personal action of
 5 the Attorney General and only for good cause,
 6 physical or mental disability (if not prohibited
 7 by law protecting persons from discrimination
 8 on the basis of such a disability), or any other
 9 condition that impairs the performance of that
 10 independent counsel’s duties.

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

13 “(i) a knowing and material failure to
 14 comply with written Department of Justice
 15 policies relevant to the conduct of a crimi-
 16 nal investigation; and

17 “(ii) an actual personal, financial, or
 18 political conflict of interest.

19 “(2) REPORT TO DIVISION OF THE COURT AND
 20 CONGRESS.—If an independent counsel is removed
 21 from office, the Attorney General shall promptly
 22 submit to the division of the court and the Commit-
 23 tees on the Judiciary of the Senate and the House
 24 of Representatives a report specifying the facts
 25 found and the ultimate grounds for the removal. The

committees shall make available to the public that 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 the report in accordance with section 594(h)(2).

“(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.

“(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

1 the independent counsel or accepted by the
2 independent counsel under section 594(e), and
3 any resulting prosecutions, have been completed
4 or so substantially completed that it would be
5 appropriate for the Department of Justice to
6 complete those investigations and prosecutions;
7 and

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

10 “(2) TERMINATION BY DIVISION OF THE
11 COURT.—The division of the court, either on its own
12 motion or upon the request of the Attorney General,
13 may terminate an office of independent counsel at
14 any time, on the ground that the investigation of all
15 matters within the prosecutorial jurisdiction of the
16 independent counsel or accepted by the independent
17 counsel under section 594(e), and any resulting
18 prosecutions, have been completed or so substan-
19 tially completed that it would be appropriate for the
20 Department of Justice to complete those investiga-
21 tions and prosecutions. At the time of that termi-
22 nation, the independent counsel shall file the final
23 report required by section 594(h)(1)(B). If the At-
24 torney General has not made a request under this
25 paragraph, the division of the court shall determine

1 on its own motion whether termination is appro-
2 priate under this paragraph no later than 2 years
3 after the appointment of an independent counsel.

4 “(3) TERMINATION AFTER 2 YEARS.—

5 “(A) GENERAL RULE.—Except as provided
6 in subparagraph (B), the term of an inde-
7 pendent counsel shall terminate at the expira-
8 tion of 2 years after the date of appointment of
9 the independent counsel and any matters under
10 investigation by the independent counsel shall
11 be transferred to the Attorney General.

12 “(B) EXCEPTIONS.—

13 “(i) GOOD CAUSE.—An independent
14 counsel may petition the division of the
15 court to extend the investigation of the
16 independent counsel for up to 1 year for
17 good cause. The division of the court shall
18 determine whether the grant of such an ex-
19 tension is warranted and determine the
20 length of each extension.

21 “(ii) DILATORY TACTICS.—If the in-
22 vestigation of an independent counsel was
23 delayed by dilatory tactics by persons that
24 could provide evidence that would signifi-
25 cantly assist the investigation, an inde-

pendent counsel may petition the division of the court to extend the investigation of the independent counsel for an additional period of time equal to the amount of time lost by the dilatory tactics. If the division of the court finds that dilatory tactics did delay the investigation, the division of the court shall extend the investigation for a period equal to the delay.

“(c) AUDITS.—

“(1) IN GENERAL.—On or before June 30 of each year, an independent counsel shall prepare a statement of expenditures for the 6 months that ended on the immediately preceding March 31. On or before December 31 of each year, an independent counsel shall prepare a statement of expenditures for the fiscal year that ended on the immediately preceding September 30. An independent counsel whose office is terminated prior to the end of the fiscal year shall prepare a statement of expenditures on or before the date that is 90 days after the date on which the office is terminated.

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

1 “(A) conduct a financial review of a mid-
 2 year statement and a financial audit of a year-
 3 end statement and statement on termination;
 4 and

5 “(B) report the results to the Committee
 6 on the Judiciary, Committee on Governmental
 7 Affairs, and Committee on Appropriations of
 8 the Senate and the Committee on the Judiciary,
 9 Committee on Government Reform, and Com-
 10 mittee on Appropriations of the House of Rep-
 11 resentatives not later than 90 days following
 12 the submission of each statement.

13 **“§ 597. Relationship with Department of Justice**

14 “(a) SUSPENSION OF OTHER INVESTIGATIONS AND
 15 PROCEEDINGS.—Whenever a matter is in the prosecu-
 16 torial jurisdiction of an independent counsel or has been
 17 accepted by an independent counsel under section 594(e),
 18 the Department of Justice, the Attorney General, and all
 19 other officers and employees of the Department of Justice
 20 shall suspend all investigations and proceedings regarding
 21 that matter, except to the extent required by section
 22 594(d)(1), and except insofar as the independent counsel
 23 agrees in writing that the investigation or proceedings may
 24 be continued by the Department of Justice.

1 “(b) PRESENTATION AS AMICUS CURIAE PER-
 2 MITTED.—Nothing in this chapter shall prevent the Attor-
 3 ney General or the Solicitor General from making a pres-
 4 entation as amicus curiae to any court as to issues of law
 5 raised by any case or proceeding in which an independent
 6 counsel participates in an official capacity or any appeal
 7 of such a case or proceeding.

8 **“§ 598. Severability**

9 “If any provision of this chapter or the application
 10 thereof to any person or circumstance is held invalid, the
 11 remainder of this chapter and the application of that pro-
 12 vision to other persons not similarly situated or to other
 13 circumstances shall not be affected by that invalidation.

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

15 “This chapter shall cease to be effective 5 years after
 16 the date of enactment of the Independent Counsel Reform
 17 Act of 2003, except that this chapter shall continue in ef-
 18 fect with respect to then pending matters before an inde-
 19 pendent counsel that in the judgment of that counsel re-
 20 quire the continuation until that independent counsel de-
 21 termines those matters have been completed.”.

22 **SEC. 3. ASSIGNMENT OF JUDGES TO DIVISION TO APPOINT**
 23 **INDEPENDENT COUNSELS.**

24 Section 49 of title 28, United States Code, is amend-
 25 ed to read as follows:

1 **“§ 49. Assignment of judges to division to appoint**
2 **independent counsels**

3 “(a) IN GENERAL.—Beginning with the 3-year period
4 commencing on the date of the enactment of the Inde-
5 pendent Counsel Reform Act of 2003, 3 judges shall be
6 assigned for each successive 3-year period to a division
7 of the United States Court of Appeals for the District of
8 Columbia to be the division of the court for the purpose
9 of appointing independent counsels. The Clerk of the
10 United States Court of Appeals for the District of Colum-
11 bia Circuit shall serve as the clerk of the division of the
12 court and shall provide such services as are needed by the
13 division of the court.

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

18 “(c) DESIGNATION AND ASSIGNMENT.—The Chief
19 Justice of the United States shall designate and assign
20 by a lottery of all circuit court judges, 3 circuit court
21 judges 1 of whom shall be a judge of the United States
22 Court of Appeals for the District of Columbia, to the divi-
23 sion of the court. Not more than 1 judge may be named
24 to the division of the court from a particular court.

25 “(d) VACANCY.—Any vacancy in the division of the
26 court shall be filled only for the remainder of the 3-year

1 period in which that vacancy occurs and in the same man-
2 ner as initial assignments to the division of the court were
3 made.

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

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

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

○