

TITLE 28 - JUDICIARY AND JUDICIAL PROCEDURE**PART II - DEPARTMENT OF JUSTICE****CHAPTER 40 - INDEPENDENT COUNSEL****§ 596. Removal of an independent counsel; termination of office****(a) Removal; Report on Removal.—**

(1) Grounds for removal.— An independent counsel appointed under this chapter may be removed from office, other than by impeachment and conviction, only by the personal action of the Attorney General and only for good cause, physical or mental disability (if not prohibited by law protecting persons from discrimination on the basis of such a disability),¹ or any other condition that substantially impairs the performance of such independent counsel's duties.

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

(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 such independent counsel or accepted by such independent counsel under section 594 (e), and any resulting prosecutions, have been completed or so substantially completed that it would be appropriate for the Department of Justice to complete such investigations and prosecutions; and

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

(2) Termination by division of the court.— The division of the court, either on its own motion or upon the request of the Attorney General, may terminate an office of independent counsel at any time, on the ground that the investigation of all matters within the prosecutorial jurisdiction of such independent counsel or accepted by such independent counsel under section 594 (e), and any resulting prosecutions, have been completed or so substantially completed that it would be appropriate for the Department of Justice to complete such investigations and prosecutions. At the time of such termination, the independent counsel shall file the final report required by section 594 (h)(1)(B). If the Attorney General has not made a request under this paragraph, the division of the court shall determine on its own motion whether termination is appropriate under this paragraph no later than 2 years after the appointment of an independent counsel, at the end of the succeeding 2-year period, and thereafter at the end of each succeeding 1-year period.

(c) Audits.—

(1) 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

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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) The Comptroller General shall—

(A) conduct a financial review of a mid-year statement and a financial audit of a year-end statement and statement on termination; and

(B) report the results to the Committee on the Judiciary, Committee on Governmental Affairs, and Committee on Appropriations of the Senate and the Committee on the Judiciary, Committee on Government Operations, and Committee on Appropriations of the House of Representatives not later than 90 days following the submission of each such statement.

Footnotes

¹ So in original.

(Added Pub. L. 95–521, title VI, § 601(a), Oct. 26, 1978, 92 Stat. 1872; amended Pub. L. 97–409, §§ 2(a)(1), 6 (d), Jan. 3, 1983, 96 Stat. 2039, 2042; Pub. L. 98–620, title IV, § 402(29)(A), Nov. 8, 1984, 98 Stat. 3359; Pub. L. 100–191, § 2, Dec. 15, 1987, 101 Stat. 1304; Pub. L. 103–270, §§ 3(h), (i), 5, June 30, 1994, 108 Stat. 735, 737.)

Amendments

1994—Subsec. (a)(1). Pub. L. 103–270, § 5, substituted “physical or mental disability (if not prohibited by law protecting persons from discrimination on the basis of such a disability),” for “physical disability, mental incapacity”.

Subsec. (b)(2). Pub. L. 103–270, § 3(h), inserted at end “If the Attorney General has not made a request under this paragraph, the division of the court shall determine on its own motion whether termination is appropriate under this paragraph no later than 2 years after the appointment of an independent counsel, at the end of the succeeding 2-year period, and thereafter at the end of each succeeding 1-year period.”

Subsec. (c). Pub. L. 103–270, § 3(i), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: “Audits.—After the termination of the office of an independent counsel, the Comptroller General shall conduct an audit of the expenditures of that office, and shall submit to the appropriate committees of the Congress a report on the audit.”

1987—Pub. L. 100–191 amended section generally, substituting subsections (a) to (c) for former subsections (a) and (b) which related to similar subject matter.

1984—Subsec. (a)(3). Pub. L. 98–620 struck out provision requiring the division of the court to cause such an action to be in every way expedited.

1983—Pub. L. 97–409, § 2(a)(1)(A), substituted “independent counsel” for “special prosecutor” in section catchline.

Subsec. (a)(1). Pub. L. 97–409, §§ 2(a)(1), 6 (d), substituted “independent counsel” for “special prosecutor”, “good cause” for “extraordinary impropriety”, and “independent counsel’s” for “special prosecutor’s”.

Subsecs. (a)(2), (3), (b). Pub. L. 97–409, § 2(a)(1)(A), substituted “independent counsel” for “special prosecutor” wherever appearing.

Change of Name

Committee on Governmental Affairs of Senate changed to Committee on Homeland Security and Governmental Affairs of Senate, effective Jan. 4, 2005, by Senate Resolution No. 445, One Hundred Eighth Congress, Oct. 9, 2004.

Committee on Government Operations of House of Representatives treated as referring to Committee on Government Reform and Oversight of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Government Reform and Oversight of House of Representatives changed to Committee on Government Reform of House of Representatives by House Resolution No. 5, One Hundred Sixth Congress, Jan. 6, 1999. Committee on Government Reform of House of Representatives changed to Committee on Oversight and Government Reform of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007.

Effective Date of 1994 Amendment; Transition Provisions

Amendment by Pub. L. 103–270 applicable with respect to independent counsels appointed before, on, or after June 30, 1994, with transition provisions directing that determinations by the division of the court contained in last sentence

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of subsec. (b)(2) of this section shall, for the office of an independent counsel appointed before June 30, 1994, be required no later than 1 year after June 30, 1994, and at end of each succeeding 1-year period, and transition provisions relating to reporting requirements established or modified by Pub. L. 103-270, see section 7(a), (f), (g) of Pub. L. 103-270, set out as a note under section 591 of this title.

Effective Date of 1987 Amendment

Amendment by Pub. L. 100-191 effective Dec. 15, 1987, and applicable to proceedings initiated and independent counsels appointed on and after Dec. 15, 1987, but with subsecs. (a)(3) and (c) applicable to previously initiated proceedings pending on Dec. 15, 1987, see section 6 of Pub. L. 100-191, set out as a note under section 591 of this title.

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98-620, set out as an Effective Date note under section 1657 of this title.