

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

717 MADISON PLACE, N.W.

WASHINGTON, D.C. 20439

JAN HORBALY  
CLERK

TELEPHONE: 633-6550  
AREA CODE 202

March 11, 2003

Mr. Joseph A. Gentiluomo  
1456 Belmont Avenue  
Schenectady, NY 12308

RE: Judicial Misconduct Complaint No. 74

Dear Mr. Gentiluomo:

Enclosed is a copy of the court's order dismissing the complaint. You may petition for review within 30 days from the date of this letter.

Very truly yours,

A handwritten signature in black ink that reads "Jan Horbaly" followed by a small "pt" or "pt" mark.

Jan Horbaly  
Clerk

Enclosure

# United States Court of Appeals for the Federal Circuit

IN RE COMPLAINT NO. 74

Before MAYER, Chief Judge.

## ORDER

A complaint of judicial misconduct, executed by complainant on February 3, 2003, was received by the court on March 3, 2003.<sup>1</sup> The complaint is directed to three judges who formed the panel that decided complainant's case nine months ago.

The complainant argues that the panel "neglected to abide to established legal precedent and made arbitrary judgments." He alleges that the panel erred regarding obviousness, introduced "new matter" regarding claim construction, made "impermissible factual determinations," and, ultimately, wrongly affirmed the district court's grant of summary judgment when it should have remanded to the trial court because material facts were in dispute. Complainant states that he "presented rebuttal to the Court's arguments in his rehearing petition, but the Court denied the petition."

Sections 351 - 364 of 28 U.S.C.<sup>2</sup> set forth the provisions governing judicial misconduct complaints. A review of § 352(b) reveals that a judicial misconduct complaint is not the proper vehicle for seeking reconsideration of the merits of a decision. A party who is dissatisfied with the decision in his case may file a petition for panel rehearing pursuant to the Federal Rules of Appellate Procedure and the Federal

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<sup>1</sup> Complainant also sent a letter repeating the arguments included in this complaint.

<sup>2</sup> The statutory provisions governing judicial discipline, now found at 28 U.S.C. §§ 351 - 364, were formerly found at 28 U.S.C. § 372(c)(1 - 18).

Circuit Rules. In this case, complainant filed a petition for panel rehearing and it was denied.

Pursuant to § 352(b)(1)(A)(ii), the chief judge may dismiss a judicial misconduct complaint that is “directly related to the merits of a decision or a procedural ruling.” The complaint in this case relates solely to the merits of complainant’s case. Thus, it is appropriate to dismiss this complaint under § 352(b)(1)(A)(ii).

Accordingly,

IT IS ORDERED THAT:

The complaint is dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(ii).

11 March 03  
Date

  
Haldane Robert Mayer  
Chief Judge

The complainant may petition the court for review of this order. Such a petition for review must be received in the Clerk's Office within 30 days of the date of the Clerk's letter transmitting this order.

**FILED**  
U.S. COURT OF APPEALS FOR  
THE FEDERAL CIRCUIT

MAR 11 2003

**JAN HORBALY**  
CLERK