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MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS**JUDICIAL COUNCIL  
OF THE NINTH CIRCUIT****IN RE COMPLAINT OF  
JUDICIAL MISCONDUCT**

No. 22-90058

**ORDER****MURGUIA**, Chief Judge:

Complainant, a pro se prisoner, has filed a complaint of judicial misconduct against a district judge. Review of this complaint is governed by the Rules for Judicial Conduct and Judicial-Disability Proceedings (“Judicial-Conduct Rules”), the federal statutes addressing judicial conduct and disability, 28 U.S.C. § 351 et seq., and relevant prior decisions of the Ninth Circuit Judicial Council. In accordance with these authorities, the names of complainant and the subject judge shall not be disclosed in this order. See Judicial-Conduct Rule 11(g)(2).

The Judicial Conduct and Disability Act provides a remedy if a federal judge “has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts.” 28 U.S.C. § 351(a). A chief judge may dismiss a complaint if, following review, he or she finds it is not cognizable under the statute, is directly related to the merits of a decision or procedural ruling, or is frivolous or lacks sufficient evidence to raise an inference of misconduct. See 28

U.S.C. § 352(b)(1)(A)(i)-(iii). Judicial misconduct proceedings are not a substitute for the normal appellate review process, and may not be used to seek reversal of a judge's decision, to obtain a new trial, or to request reassignment to a different judge.

This misconduct complaint arises out of complainant's civil complaint against a state correctional facility. Complainant alleges that the district judge prevented him from petitioning the court. In support of that allegation, complainant argues that the district judge instructed complainant to refile his habeas petition as a Section 1983 case. When complainant filed his Section 1983 case, the district judge dismissed it and instructed him to file a habeas petition. This allegation is refuted by the record. There is no evidence of the district judge instructing complainant to refile his habeas petition as a Section 1983 case. In his dismissal of the Section 1983 complaint, the district judge simply stated that to the extent complainant was challenging the validity of his sentence, such claims must be pursued in a habeas petition. Furthermore, nothing in the record indicates that complainant filed the habeas petition before the Section 1983 case. Therefore, the allegation that the district judge prevented complainant from filing his petition is refuted by the record and dismissed as unfounded. See 28 U.S.C. § 352(b)(1)(A)(iii) (listing reasons the chief judge may decide to dismiss the

complaint, including claims that lack sufficient evidence to raise an inference that misconduct occurred); Judicial-Conduct Rule 11(c)(1)(D).

**DISMISSED.**