

FEB 18 2009

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

No. 08-90040

ORDER

KOZINSKI, Chief Judge:

A misconduct complaint has been filed against a district judge.

Complainant, a prisoner, filed a habeas petition in district court. The subject judge was assigned to the matter.

Complainant alleges that the judge improperly dismissed certain claims and denied his petition without resolving all of his claims. Contrary to complainant's assertion, these charges relate directly to the merits of the judge's rulings and must therefore be dismissed. See 28 U.S.C. § 352(b)(1)(A)(ii); Judicial-Conduct Rule 11(c)(1)(B). A misconduct complaint is not a proper vehicle for challenging the merits of a judge's rulings. See In re Charge of Judicial Misconduct, 685 F.2d 1226, 1227 (9th Cir. Jud. Council 1982).

Complainant also alleges that the judge prevented him from appealing the denial of his petition. But the docket reveals that complainant filed an appeal that is currently pending. This charge must therefore be dismissed as lacking factual

foundation. See 28 U.S.C. § 352(b)(1)(B).

Complainant further alleges that the judge unduly delayed the resolution of his case. Delay is not cognizable “unless the allegation concerns an improper motive in delaying a particular decision or habitual delay in a significant number of unrelated cases.” Judicial-Conduct Rule 3(h)(3)(B). Complainant provides no evidence of improper motive or habitual delay here.

DISMISSED.