

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

JCP No. 08-17-90098

In re Complaint of John Doe¹

This is a judicial complaint filed by a pro se civil litigant against the United States magistrate judge who is presiding over the litigant's civil case.

The judicial complaint alleges that the complainant did not voluntarily consent to the magistrate judge's exercise of jurisdiction. *See* 28 U.S.C. § 636(c); Fed. R. Civ. P. 73.¹ It also alleges that the magistrate judge has erroneously (1) denied service by e-mail, (2) refused to address alleged "perjured answers" of the defendants, (3) refused to act in a timely manner, and (4) refused to order all of the complainant's discovery demands.

The judicial complaint's allegations are "directly related to the merits of a decision or procedural ruling" and therefore must be dismissed. 28 U.S.C. § 352(b)(1)(A)(ii); *accord* Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States (J.C.U.S.) Rule 11(c)(1)(B); *see also* J.C.U.S. Rule 3(h)(3)(A) ("An allegation that calls into question the correctness of a judge's ruling . . . without more, is merits-related."). As to the magistrate judge's

¹Under Rule 4(f)(1) of the Rules Governing Complaints of Judicial Misconduct and Disability of the Eighth Circuit, the names of the complainant and the judicial officer complained against are to remain confidential, except in special circumstances not here present.

¹The record shows that the complainant initially consented to the magistrate judge's exercise of jurisdiction. After all parties consented to the magistrate judge's exercise of jurisdiction, the complainant submitted another consent/reassignment form in which he requested reassignment to a district judge.

alleged delay in rendering a decision or ruling, such allegation must be dismissed because it is not conduct prejudicial to the effective and expeditious administration of the business of the courts within the meaning of 28 U.S.C. § 351(a), the judicial complaint statute. Rather, this type of alleged delay is excluded as merits-related. *See* J.C.U.S. 3(h)(3)(B).

The complaint is dismissed.

December 26th, 2017

A handwritten signature in blue ink, reading "Lavenski R. Smith", is written over a horizontal line.

Lavenski R. Smith, Chief Judge
United States Court of Appeals
for the Eighth Circuit