

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

JCP No. 08-18-90043

In re Complaint of John Doe¹

This is a judicial complaint filed by a pro se civil plaintiff against the United States district judge who presided over the litigant's race discrimination and retaliation case. The district judge granted the defendants' motion for summary judgment. However, it noted that the defendants' motion for summary judgment failed to address a particular defendant's counterclaim. The plaintiff never answered the counterclaim within the required period. The district judge concluded that the plaintiff was in default on that defendant's counterclaim and directed the court clerk to enter a default on the docket. The district judge also stated, "I will consider any motions pursuant to Rule 55(b) or (c) as the result of the entry of default. If no action is taken on or before March 23, 2018, I will dismiss the counterclaim for lack of prosecution." (Bold omitted.)

Following entry of the district court's order, the court clerk made a default entry on the docket, stating, "IT IS ORDERED AND ADJUDGED that the default of said Counter Claim Defendant be and hereby is accordingly entered." Thereafter, the counter claimant took action, filing its notice of dismissal of the counterclaim without prejudice. The notice provided that the counter claimant was "dismiss[ing] without prejudice its counter claim against Plaintiff." After the filing of this notice,

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.

the district judge entered judgment on February 28, 2018, stating, “Plaintiff take[s] nothing and this action is dismissed.”

The judicial complaint alleges that the district judge “needs to be investigated” for terminating the case “a month early” on February 28, 2018, after stating in the summary-judgment order that “[i]f no action is taken on or before March 23, 2018, I will dismiss the counterclaim for lack of prosecution.” (Bold omitted.)

The judicial complaint’s allegations against the district judge 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* 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.”). Accordingly, the allegations must be dismissed.

The complaint is dismissed.

August 30th, 2018



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