

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
1:17-cv-329-FDW**

MITCHELL JOSEPH MARTIN,)
)
 Plaintiff,)
)
 vs.)
)
 CHAD MURRAY, et al.,)
)
 Defendants.)
 _____)

ORDER

THIS MATTER is before the Court *sua sponte* regarding the filing of Defendant Ruppe's Motion to Dismiss Plaintiff's Complaint and Amended Complaint, (Doc. No. 30).

In accordance with Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975), the Court advises Plaintiff, who is proceeding *pro se*, that he has a right to respond to Defendant Ruppe's Motion.¹ The Court also advises Plaintiff that failure to respond may result in Defendant Ruppe being granted the relief Defendant seeks.

IT IS, THEREFORE, ORDERED that:

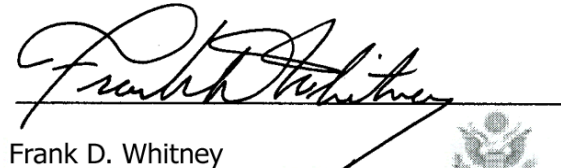
1. Plaintiff shall respond to Defendant Ruppe's Motion to Dismiss Plaintiff's Complaint and Amended Complaint, (Doc. No. 30), within **14 days** of entry of this Order. Failure to file a timely response will likely lead to the granting of relief

¹ The Fourth Circuit did not hold in Roseboro that such notice is required for motions to dismiss. Rather, the Fourth Circuit's discussion in Roseboro regarding notice was directed to summary judgment motions. See Roseboro v. Garrison, 528 F.2d 309, 310 (4th Cir. 1975) ("We agree with the plaintiff, however, that there is another side to the coin which requires that the plaintiff be advised of his right to file counter-affidavits or other responsive material and alerted to the fact that his failure to so respond might result in the entry of summary judgment against him."); see also Norman v. Taylor, 25 F.3d 1259, 1261 (4th Cir. 1994) ("In Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975), this circuit held that pro se plaintiffs must be advised that their failure to file responsive material when a defendant moves for summary judgment may well result in entry of summary judgment against them."). Nevertheless, courts routinely issue Roseboro notices for motions to dismiss, and the Court does so here.

Defendant Ruppe seeks.

2. The Clerk of Court is directed to send a copy of this Order to the *pro se* Plaintiff by certified U.S. mail.

Signed: August 14, 2018


Frank D. Whitney
Chief United States District Judge

