

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF FLORIDA  
PANAMA CITY DIVISION

RICHARD T. SMITH,  
Plaintiff,

vs.

5:09cv313/SPM/MD

MICHAEL J. ASTRUE,  
COMMISSIONER OF SOCIAL SECURITY  
Defendants.

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**REPORT AND RECOMMENDATION**

This case is before the court on plaintiff's motion for extension of time to file an amended complaint and request to transfer this cause from the Northern District of Florida to the Middle District of Florida, rule 7.1 N.D.Fla.Loc.R. 7.1. (Doc. 12). Plaintiff indicates in his motion that the Middle District of Florida, Orlando Division is the proper venue for this case, as plaintiff has no connection with the Northern District other than the fact that plaintiff was incarcerated within this division when he commenced this action.

Title 28 U.S.C. § 1404 provides: “[f]or the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought.” 28 U.S.C. § 1404(a). The decision to transfer an action pursuant to § 1404(a) is left to the “sound discretion of the district court and [is] reviewable only for an abuse of that discretion.” *Roofing & Sheet Metal Services v. La Quinta Motor Inns*, 689 F.2d 982, 985 (11<sup>th</sup> Cir. 1982). Such transfers may be made *sua sponte* by the district court. *Mills v. Beech Aircraft Corp.*, 886 F.2d 758, 761 (5<sup>th</sup> Cir. 1989); *Robinson v. Madison*, 752 F.Supp. 842, 846 (N.D. Ill. 1990) (“A court’s authority to transfer cases

under § 1404(a) does not depend upon the motion, stipulation or consent of the parties to the litigation.”); *Empire Gas Corp. v. True Value Gas of Florida, Inc.*, 702 F. Supp. 783, 784 (W.D. Mo. 1989); accord *Roofing & Sheetting*, 689 F.2d at 991 n.14. Based on plaintiff’s representation, it appears that transfer is warranted. In light of the pending transfer, an extension of time to file an amended complaint is warranted.

Accordingly, it is respectfully RECOMMENDED that this case be TRANSFERRED to the United States District Court for the Middle District of Florida, Orlando Division, and that plaintiff’s motion for extension of time be GRANTED, and plaintiff be directed to file his amended complaint after the transfer to that court.

At Pensacola, Florida this 19<sup>th</sup> day of November, 2009.

/s/ *Miles Davis*

MILES DAVIS  
UNITED STATES MAGISTRATE JUDGE

#### NOTICE TO THE PARTIES

Any objections to these proposed findings and recommendations must be filed within ten days after being served a copy hereof. Any different deadline that may appear on the electronic docket is for the court’s internal use only, and does not control. A copy of any objections shall be served upon any other parties. Failure to object may limit the scope of appellate review of factual findings. See 28 U.S.C. § 636; *United States v. Roberts*, 858 F.2d 698, 701 (11<sup>th</sup> Cir. 1988).