

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

DEBORAH SANT ROBINSON,

Plaintiff,

v.

No. 18cv665 WJ/LF

STATE OF NEW MEXICO et al.,

Defendants.

MEMORANDUM OPINION AND ORDER OF DISMISSAL

THIS MATTER comes before the Court on Plaintiff’s Notice of Removal, Doc. 1, filed July 11, 2018.

Plaintiff removed five cases to this Court pursuant to 28 U.S.C. §§ 1441 (Removal of civil actions), 1446 (Procedure for removal of civil actions), and 1608 (Service upon a foreign state). The Court dismisses this case because removal of the five cases was improper for the following reasons.

The first and second cases, No. D-132-CV-2015-00075 and No. A1-CA-2015-00029,¹ refer to a state court action which was initiated in 2015, dismissed and appealed in 2016, with dismissal of the appeal in 2017. The statutes governing removal provide for removal of civil actions brought in state court “by the defendant, or the defendants” in the state court case and require that the “notice of removal . . . be filed within 30 days after the receipt by the defendant . . . of a copy of the initial pleading . . . or within 30 days after the service of summons upon the defendant . . . if such initial pleading . . . is not required to be served on the defendant.” 28 U.S.C. §§ 1441, 1446. Plaintiff was not a defendant in the state court case; she was the plaintiff. Furthermore, the Notice of Removal was not filed within the 30-day limit.

¹ State court records show the appellate case number is A-1-CA-35436

The third case, No. 1:15-cv-0839-KG/LF,² is a case in this Court and, therefore, is not a removable state-court action.

The fourth case, BNC# (SSA) 18D-187-IC-85172, is a proceeding before the Social Security Administration and is not removable pursuant to 28 U.S.C. § 1441 because it is not a civil action brought in a state court.

The fifth case, No. 18-GA-10509, appears to refer to a proceeding before the New Mexico Fair Hearings Bureau. *See* Notice of Removal at 2 (referring to “New Mexico Hearings Bureau General Assistance case Number (18-GA-10509)”).

The Administrative Law Judges of the Fair Hearings Bureau conduct hearings for the public assistance programs administered by the Human Services Department. The bureau schedules hundreds of hearings each year for more than 17 different categories of public assistance benefits. Hearing decision recommendations are submitted to HSD division directors who issue the final decision in accordance with federal and state regulations.

http://www.hsd.state.nm.us/Fair_Hearings_Bureau.aspx. The fifth case, No. 18-GA-10509, is not removable pursuant to 28 U.S.C. § 1441 because it is not a civil action brought in a state court. *See Oregon Bur. of Labor and Industries v. U.S. West Communications, Inc.*, 288 F.3d 414, 419 (9th Cir. 2002) (holding that “28 U.S.C. § 1441(a) does not authorize removal of proceedings from an administrative agency, regardless of how court-like the proceedings may be. The statute authorizes removal only if the action is pending in a state court”).

IT IS ORDERED that this case is **DISMISSED without prejudice**.



WILLIAM P. JOHNSON
CHIEF UNITED STATES DISTRICT JUDGE

² Plaintiff commenced an action in state court in 2015 which defendants removed to this Court. The Court remanded the action to state court in 2016. Plaintiff’s appeal of the Court’s Order denying her motion to reopen the case was dismissed in 2016.