

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

DARRELL HARPER §
v. § CIVIL ACTION NO. 6:14cv688
STATE BAR OF TEXAS §

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

The Plaintiff Darrell Harper, proceeding *pro se*, filed this lawsuit complaining of alleged violations of his constitutional rights. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges. The sole named defendant is the State Bar of Texas.

Harper contends that the State of Texas has a history of discrimination and that the State Bar failed to punish prosecuting attorney Jason Knutson for trying Harper on a charge of terroristic threats, which Harper says should have been prosecuted in federal rather than state court. He conceded that he has been sanctioned by the Fifth Circuit but says that these sanctions “should have been stricken from the record as a crime of extortion toward plaintiff.” Harper asked for \$100,000,000.00 in damages.

After review of the pleadings, the Magistrate Judge issued a Report recommending that he lawsuit be dismissed. The Magistrate Judge observed that the State Bar of Texas is an agency of the State of Texas and thus has immunity from lawsuits for damages under the Eleventh Amendment absent a waiver of sovereign immunity, which Harper has not shown.

The Magistrate Judge also noted that Harper has been sanctioned on two prior occasions by the Fifth Circuit Court of Appeals, under the terms of which sanctions Harper is barred from filing

any pleadings in the Fifth Circuit or the courts subject to its jurisdiction until those sanctions are satisfied, which he has not done. The Magistrate Judge therefore recommended that the lawsuit be dismissed as frivolous and as barred by the sanctions imposed by the Fifth Circuit.

In his objections, Harper asserts that “no state is a person” and so the State Bar does not have immunity under the Eleventh Amendment. He says that he did not consent to the jurisdiction of the Magistrate Judge and that the sanctions imposed on him by the Fifth Circuit violate the Canons of Conduct for United States Judges.

Harper’s objections are without merit. As an agency of the State of Texas, the State Bar has Eleventh Amendment immunity. Green v. State Bar of Texas, 27 F.3d 1083, 1087-88 (5th Cir. 1994). The case was referred to the Magistrate Judge for pre-trial matters and no consent is required for such a referral. Newsome v. EEOC, 301 F.3d 227, 230 (5th Cir. 2002). Harper’s contentions that the sanctions imposed on him for his lengthy history of frivolous filings violate the Canon of Judicial Conduct is patently meritless. *See* Hardwick v. Brinson, 523 F.2d 798, 800 (5th Cir. 1975) (no one, rich or poor, is entitled to abuse the judicial process).

The Court has conducted a careful *de novo* review of the pleadings in this case, including the Report of the Magistrate Judge and the Plaintiff’s objections thereto. Upon such *de novo* review, the Court has concluded that the Report of the Magistrate Judge is correct and that the Plaintiff’s objections are without merit. It is accordingly

ORDERED that the Plaintiff’s objections are overruled and the Report of the Magistrate Judge (docket no. 2) is **ADOPTED** as the opinion of the District Court. It is further

ORDERED that the that the above-styled civil action be and hereby is **DISMISSED WITH PREJUDICE** as frivolous and barred by the sanctions imposed by the Fifth Circuit Court of Appeals. It is further

ORDERED that the Clerk shall send a copy of this opinion to the Administrator of the Three Strikes List for the Eastern District of Texas. Finally, it is

ORDERED that any and all motions which may be pending in this action are hereby
DENIED.

SIGNED this 24th day of September, 2014.


MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE