

pursuant to Appendix C of the Local Rules for the Western District of Texas and 28 U.S.C. § 636(b)(1). The Magistrate Judge denied petitioner’s application to proceed *in forma pauperis*, noting that the petition had a current balance of \$268.69 in his account and receives an average deposit of \$29.17 per month, which is sufficient to pay the \$5.00 filing fee.³ The Magistrate Judge ordered Respondent to provide the Court with all copies of state court records necessary for a determination of the issues raised in Cotton’s petition but denied Petitioner’s motion to the extent he requested that Respondent produce the documents to him.⁴ Cotton filed a “Notice of Appeal on Denial of In Forma Pauperis” in which he asks the District Court to reconsider the Magistrate Judge’s order denying his application to proceed in forma pauperis.⁵ Within the document, Petitioner also objects to the Magistrate Judge’s order denying his motion for the state to produce trial documents and transcripts.

Legal Standard

“A judge of the court may reconsider any pretrial matter . . . where it has been shown that the magistrate judge’s order is clearly erroneous or contrary to law.” 28 U.S.C. § 636(b)(1)(A).

Analysis

The Court construes Cotton’s “appeal” as a motion for the District Court to reconsider the Magistrate Judge’s pretrial orders. Petitioner argues that he has been allowed to proceed *in forma pauperis* in a previous proceeding before this Court. The docket sheet in *Cotton v. Hilbig*, No. SA-95-CV-147-OLG (W.D. Tex. filed Feb. 17, 1995), indicates that Petitioner did not proceed *in forma*

³Order, Feb. 22, 2010 (Docket Entry No. 5).

⁴Order, Feb. 22, 2010 (Docket Entry No. 4).

⁵“Notice of Appeal on Denial of In Forma Pauperis,” Mar. 18, 2010 (Docket Entry No. 7).

pauperis; he paid the \$5.00 filing fee. In any case, Cotton's financial status when he filed his previous action in 1995 is irrelevant. The Magistrate Judge determined that Cotton had \$268.69 in his account and received an average deposit of \$29.17 per month, which is enough to afford the \$5.00 filing fee. The Magistrate Judge's order on Petitioner's application to proceed *in forma pauperis* is neither contrary to law nor clearly erroneous.


Although Plaintiff references the Magistrate Judge's order denying his motion for the state to produce trial documents and transcripts, he does not argue why this order is clearly erroneous or contrary to law. In any case, the Court has reviewed the Magistrate Judge's order and finds that it should be upheld.

Conclusion

Petitioner's motion for the District Court to reconsider the Magistrate Judge's pretrial orders is DENIED.

It is so ORDERED.

SIGNED this 25th day of May, 2010.



XAVIER RODRIGUEZ
UNITED STATES DISTRICT JUDGE