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OPINION, U.S. COURT OF APPEALS FOR THE FIFTH CIRCUIT (JANUARY 31, 2024)

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

J. CORY CORDOVA,

Plaintiff,

CHRISTINE M. MIRE,

Appellant,

v.

UNIVERSITY HOSPITAL & CLINICS, INCORPORATED; LAFAYETTE GENERAL MEDICAL CENTER, INCORPORATED; LAFAYETTE GENERAL HEALTH SYSTEM, INCORPORATED,

Defendants-Appellees.

No. 23-30335
Summary Calendar

Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 6:19-CV-1027

Before: HIGGINBOTHAM, STEWART, and SOUTHWICK, Circuit Judges.

LESLIE H. SOUTHWICK, *Circuit Judge*:

This is the third appeal from a sanctions order entered under Federal Rule of Civil Procedure 11(b). The Appellant for this appeal is the Plaintiff's attorney. The district court entered sanctions against the Appellant for presenting frivolous arguments regarding the Defendants' potential liability as the Plaintiff's purported employer. We AFFIRM.

In this court, the Defendants filed a motion for damage, attorney fees, and costs. *See* Fed. R. App. P. 38 That motion is GRANTED, and we REMAND to calculate damage.

FACTUAL AND PROCEDURAL BACKGROUND

We detailed the factual and procedural background of the case the last time it was before us. *See Cordova v. La. State Univ. Agric. & Mech. Coll. Bd. of Supervisors*, No. 22-30548, 2023 WL 2967893, at *1 (5th Cir. Apr. 17, 2023) ("*Cordova II*"). We repeat only some of this history.

This case arose from Dr. J. Cory Cordova's non-renewal from a medical residency program run by Louisiana State University at the Lafayette General Hospital. Following his departure from the program, Cordova filed suit in state court in March 2019 against Louisiana State University, the program director Dr. Karen Curry, the department head Dr. Nicholas Sells, and the director of graduate medical education Kristi Anderson (collectively, "LSU Defendants"). Cordova also sued University Hospital & Clinics, Inc., Lafayette General Medical Center, Inc., and Lafayette General Health System, Inc. (collectively, "Lafayette General Defendants"), who operated the hospital where Cordova

was a resident. Additional defendants included Cordova's former counsel, Christopher Johnston, and the Gachassin Law Firm, who previously represented Cordova in state court.

Cordova alleged that the LSU and Lafayette General Defendants violated his right to due process under the federal and state constitutions by their nonrenewal of his residency, committed a breach of contract, and sabotaged his efforts to apply to other residency programs. He brought his constitutional claims under 42 U.S.C. § 1983. Cordova contended that Johnston and the Gachassin Law Firm were liable under state malpractice law for failing to disclose a purported conflict of interest through their prior representation of the Lafayette General Defendants. Cordova was represented by Appellant, Christine M. Mire, and five attorneys from the Bezou Law Firm when he brought these claims.

In August 2019, the LSU Defendants validly removed the case to federal court pursuant to 28 U.S.C. § 1441 because Cordova's claims raised questions of federal law. The district court dismissed some of the claims without prejudice. The LSU Defendants and Lafayette General Defendants then moved for summary judgment on the remaining claims.

In December 2020, the district court granted those summary judgment motions and amended its prior order to dismiss those claims with prejudice because of Cordova's failure to amend his pleadings. With respect to the Lafayette General Defendants, the district court held Cordova failed to allege any state action or any direct act or omission that would make them liable under Section 1983. The district court

held Cordova's breach of contract claims failed because none of the Lafayette General Defendants were in a contractual relation with him.

The LSU and Lafayette General Defendants next moved for entry of final judgment under Federal Rule of Civil Procedure 54(b). The LSU Defendants also filed a motion for costs and attorney fees. Five days after the district court ruled against him on summary judgment, Cordova moved to remand the case to state court, arguing that the district court's dismissal of his Section 1983 claims meant that his complaint never raised a federal question and thus left the district court without jurisdiction. At this point, the five attorneys from the Bezou Law Firm withdrew as counsel for Cordova, leaving only Mire. The district court referred the parties' motions to a magistrate judge, who recommended the court remand Cordova's only remaining claims, which were for legal malpractice claims against Johnston and the Gachassin Law Firm. The district court adopted the magistrate judge's report and recommendation, remanded the malpractice claims, and certified its rulings as final by judgment dated March 24, 2021. On April 14, 2021, the district court issued an order denying the LSU Defendants' motion for attorney fees but granting costs in the amount of $1,068.60.

On April 27, 2021, Cordova appealed both orders. Because Cordova's notice of appeal of the March 24 order was filed 34 days after its entry, we held that his appeal was untimely and that we lacked jurisdiction to review the district court's dismissal on the merits. *See Cordova v. La. State Univ. Agric. & Mech. Coll. Bd. of Supervisors*, No. 21-30239, 2022 WL 1102480, at *2 (5th Cir. Apr. 13, 2022) ("*Cordova I*"). We also rejected

Cordova's challenge to the district court's order awarding costs to the LSU Defendants because "he [did] not even attempt to press, let alone substantiate, his argument that the district court erred in taxing costs against him." *Id.* at *1. Finally, we denied Cordova's Federal Rule of Civil Procedure 60(b) motion for relief from judgment because he did not file such a motion in district court and failed to raise the issue in briefing before us. *Id.* at *2.

In July 2022, Cordova filed a Rule 60(b) motion to vacate the district court's prior judgments, arguing the Defendants "engaged in fraud and/or misrepresentations" in the court's prior proceedings. Cordova also contended the Lafayette General Defendants conceded that they were Cordova's employers in a new state action Cordova filed after our May 2022 mandate. Cordova further alleged the Bezou Law Firm failed to disclose a purported conflict of interest because counsel for the Lafayette General Defendants was representing the Bezou Law Firm and its attorneys in an unrelated disciplinary proceeding.[1] The Defendants opposed Cordova's motion and filed a motion for sanctions under Rule 11(b)(1)–(3) and 28 U.S.C. § 1927.

In August 2022, the district court denied Cordova's Rule 60(b) motion as untimely, finding Cordova's allegations of misrepresentation or fraud and "new evidence" relating to Cordova's employment status barred by Rule 60(b)'s one-year limitation period. The

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[1] The same conflict of interest claim was first raised in briefing before us in 2021. *See Cordova I*, 2022 WL 1102480, at *2; *Cordova II*, 2023 WL 2967893, at *2. Cordova did not bring the issue to the district court's attention until July 2022.

district court further determined that Cordova's claims regarding the Bezou Law Firm were untimely under Rule 60(b)(6) because they were not brought within a "reasonable time." Nonetheless, the district court also addressed the merits of Cordova's Rule 60(b) motion. The district court explained that even if Cordova could show that the Lafayette General Defendants were his true employers and that they were contracting parties or joint actors with the LSU Defendants, neither showing would change the court's prior rulings. Regardless of who Cordova's employer was, the court held there was no breach of contract or denial of due process in the non-renewal of Cordova's residency. The district court then awarded attorney fees to the LSU Defendants "due to plaintiff's unreasonable attempts at continuing this litigation."

Cordova timely appealed the district court's denial of his Rule 60(b) motion and the award of attorney fees to the LSU Defendants. *Cordova II*, 2023 WL 2967893, at *1. We affirmed and remanded the case for the district court to calculate sanctions under Federal Rule of Appellate Procedure 38. *See id.* at *1–3. We also denied Cordova's motions to disqualify counsel and for sanctions, damage, attorney fees, and costs. *Id.* at *2–3. We issued our mandate in May 2023 and the district court awarded Defendants $50,664.74 in frivolous appeal costs.

In February 2023, while Cordova's appeal was pending, the district court granted the Lafayette General Defendants' Rule 11(b) motion for sanctions but declined to issue sanctions under Section 1927. Similar to its denial of Cordova's Rule 60(b) motion, the district court again rejected Cordova's attempt to relitigate the issue of who his employer was. As it

stated previously, "the court clearly found no merit to the breach of contract claims" even if the Lafayette General Defendants were Cordova's employers. Thus, because the evidence Cordova and Mire persistently attempted to introduce and litigate would not affect the district court's decision on the merits, "the futility of any arguments relating to the Lafayette General [D]efendants' status as employer reflects counsel's bad faith in attempting to make an issue of it." Although the court declined to sanction Mire over her arguments regarding the Bezou Law Firm's potential conflict of interest and the timeliness of Cordova's Rule 60(b) motion, it found her "meritless arguments" on the Lafayette General Defendants' employer status to be "so unfounded as to amount to violations of Rule 11(b)(1)–(3)." The district court therefore sanctioned Mire, but not Cordova, "to deter any more frivolous arguments or filings."

Following the submission of the Lafayette General Defendants' bill of costs, the court awarded $29,100.00 in attorney fees and $529.70 in costs. Mire timely appealed.

DISCUSSION

We review the district court's award of attorney fees and costs for abuse of discretion. *See Loftin v. City of Prentiss*, 33 F.4th 774, 779 (5th Cir. 2022). "A district court abuses its discretion if it (1) relies on clearly erroneous factual findings; (2) relies on erroneous conclusions of law; or (3) misapplies the law to the facts." *Id.* (quoting *Fessler v. Porcelana Corona de Mex., S.A. de C.V.*, 23 F.4th 408, 415 (5th Cir. 2022)). Mire argues that we should apply *de novo* review because the district court's Rule 11 sanctions

violate her First Amendment rights. Because we hold that this case does not implicate First Amendment rights and Mire's arguments to the contrary are frivolous, our decision would be the same even under *de novo* review. Abuse of discretion is therefore all that is necessary.

I. The district court's imposition of sanctions

Rule 11 requires attorneys certify that their papers are not filed "for any improper purpose" and any "claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law." Fed. R. Civ. P. 11(b). In doing so, attorneys certify that they "have conducted a reasonable inquiry and have determined that any papers filed with the court are well grounded in fact, legally tenable, and not interposed for any improper purpose." *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 393 (1990) (quotation marks and citation omitted). An attorney's conduct is judged under an objective standard of reasonableness governed by the "snapshot" rule, which focuses on the "the instant the attorney affixes his signature to the document." *Snow Ingredients, Inc. v. SnoWizard, Inc.*, 833 F.3d 512, 528 (5th Cir. 2016) (quoting *Smith v. Our Lady of the Lake Hosp., Inc.*, 960 F.2d 439, 444 (5th Cir. 1992)). "[T]he central purpose of Rule 11 is to deter baseless filings in district court and thus . . . streamline the administration and procedure of the federal courts." *Cooter & Gell*, 496 U.S. at 393.

Much of Mire's brief attempts to relitigate the issues of Cordova's employment status and a potential conflict of interest. We previously explained why Mire's

arguments cannot succeed in a Rule 60(b) motion to vacate. *See Cordova II*, 2023 WL 2967893, at *1–2. Under the law of the case doctrine, "an issue of law or fact decided on appeal may not be reexamined either by the district court on remand or by the appellate court on a subsequent appeal." *Gene & Gene, LLC v. BioPay, LLC*, 624 F.3d 698, 702 (5th Cir. 2010) (quoting *Fuhrman v. Dretke*, 442 F.3d 893, 896 (5th Cir. 2006)). Mire does not argue that any of the exceptions to this doctrine apply, and she therefore forfeits any argument to the contrary. *See id.* (explaining the exceptions); *Rollins v. Home Depot USA*, 8 F.4th 393, 397 (5th Cir. 2021).

In fact, Mire appears to recognize the merits of the issues she attempts to relitigate are irrelevant to this appeal. She acknowledges the district court did not impose sanctions for pressing arguments relating to a potential conflict of interest or for filing Cordova's Rule 60(b) motion late. Instead, Mire was sanctioned for *continuing* to argue Cordova's actual employer was the Lafayette General Defendants after the district court repeatedly explained why that possibility would not change the outcome of the case. The district court repeatedly stated that even if the Lafayette General Defendants employed Cordova, either solely or as joint actors with the LSU Defendants, or entered into agreements with Cordova directly, Cordova's underlying claims still lacked merit. Sanctions were therefore imposed on Mire for continuing to press arguments that had clearly been rejected.

Mire asserts "this appeal was filed because the district court overlooked the ample and unrefuted evidence . . . that the Lafayette General Defendants do have potential liability as employer for Dr. Cordova in

this case." None of this evidence, however, demonstrates the Lafayette General Defendants' potential liability because the district court found there was nothing for them to be liable for. The time to challenge these conclusions has long passed.

The imposition of sanctions is the only matter properly before us. Mire asserts the district court abused its discretion for three reasons: (1) Mire presented a novel argument regarding the employment relationship between Cordova and the Lafayette General Defendants and therefore sanctioning her would violate the First Amendment; (2) Mire's sanctions impose a "chilling effect" on future attorneys to report attorney misconduct; and (3) the district court was without jurisdiction to impose sanctions or accept "new evidence" as to the employment relationship between Cordova and the Lafayette General Defendants. These arguments are frivolous.

We begin with the First Amendment.[2] Mire argues attorneys have a First Amendment right to make nonfrivolous arguments to the court and her arguments that the Lafayette General Defendants were Cordova's true employer were not frivolous. Instead,

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[2] Mire's First Amendment arguments are likely forfeited because she did not press them below. *Rollins*, 8 F.4th at 397. Mire argues to the contrary by identifying a single paragraph in her memorandum in opposition to sanctions. This paragraph, however, states general propositions about the proper role of an attorney in our judicial system. Although this paragraph may imply certain First Amendment arguments, "to be preserved, an argument must be pressed, and not merely intimated." *Stanford v. Comm'r*, 152 F.3d 450, 462 n.18 (5th Cir. 1998) (citation omitted). Nevertheless, in the interest of finally putting this matter to rest, we address Mire's First Amendment arguments.

the district court described them as "novel." We agree the First Amendment covers novel, nonfrivolous arguments, but many frivolous arguments are also novel.[3] We expect, indeed hope, that a large number of frivolous arguments are new, *i.e.*, have never been made before. We realize a "misapplication of Rule 11 can chill counsel's 'enthusiasm and stifle the creativity of litigants in pursing novel factual or legal theories,' contrary to the intent of its framers." *Snow Ingredients*, 833 F.3d at 529 (quoting *CJC Holdings, Inc. v. Wright & Lato, Inc.*, 989 F.2d 791, 794 (5th Cir. 1993)). Even so, we agree with a prior panel's conclusion that "there is no First Amendment exception to a Rule 11 violation." *Fuller v. Donahoo*, No. 93-1447, 1994 WL 486931, at *3 (5th Cir. Aug. 10, 1994) (unpublished); *King v. Fleming*, 899 F.3d 1140, 1151 n.17 (10th Cir. 2018). This is because, in judicial proceedings, "whatever right to 'free speech' an attorney has is extremely circumscribed. An attorney may not, by speech or other conduct, resist a ruling of the trial court beyond the point necessary to preserve a claim for appeal." *Gentile v. State Bar of Nev.*, 501 U.S. 1030, 1071 (1991). This serves Rule 11's primary purpose of deterring baseless filings and streamlining the administration of justice. *Cooter & Gell*, 496 U.S. at 393.

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[3] *See Anderson v. Williams*, No. 95-10055, 1995 WL 295914, at *1 (5th Cir. Apr. 24, 1995) (unpublished) (presenting the novel yet frivolous argument that printing a name and trademark on postage is a Fourth Amendment violation); *see also Reliance Ins. Co. v. Sweeney Corp.*, 792 F.2d 1137, 1139 (D.C. Cir. 1986) (imposing sanctions for pursuing a "novel" yet unsupported proposition); *Anderson v. Steers, Sullivan, McNamar & Rogers*, 998 F.2d 495, 596 (7th Cir. 1993) (rejecting as frivolous an argument that presented a "novel" question); *In re Burbank*, 790 F. App'x 226, 229 (1st Cir. 2019) (same).

Despite Mire's contentions, the First Amendment is not a bar to the sanctions imposed in this case. Mire was not sanctioned because her novel arguments were frivolous, but because it was frivolous to continue to make the *rejected* novel arguments. As the district court stated, "I ruled on the merits in the initial summary judgment. On the 12(b)(6) I re-addressed them. I addressed them again in my ruling on the Rule 60B motion. I don't change my position on that." The court on three separate occasions ruled that the underlying claims were meritless, regardless of who employed Cordova. Therefore, continuing to argue who was Cordova's actual employer would not change that.

Accordingly, it was unreasonable for Mire to continue to press an issue that the district court had already decided. *See Snow Ingredients*, 833 F.3d at 528. Such conduct is indeed sanctionable "either because [it was] made for an improper purpose *regardless of its merits* or because . . . even [if] made in good faith, [it was] legally indefensible." *Id.* (emphasis added).[4] It was therefore not a subjective belief that Mire's new "statutory employer" theory was frivolous that led to sanctions. Instead, it was the objective view that it was improper for Mire to continue to attempt to relitigate an issue thrice rejected. *See id.*

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[4] The Lafayette General Defendants argue that Mire continues to press the issue of Cordova's employer as a tactic to delay an unfavorable *res judicata* ruling in state court. Mire all but admitted to this in the Rule 60(b) motion by stating "[i]t is the pending exception of *res judicata* in state court that leaves Dr. Cordova with no choice but to file the foregoing motion." Although we do not decide whether Mire's motive was improper, her persistence in litigating an issue that does not change the merits lends credence to the Lafayette General Defendants' claim.

Mire's second argument is that the court's imposition of sanctions "will result in a chilling effect on the duty of lawyers to report judicial/attorney misconduct." We are puzzled as to how this helps Mire's position, as she insists in her reply brief she was *not* sanctioned for raising the issue of a potential conflict of interest. Whether aimed at reporting a potential conflict of interest or at her multiple other claims of professional and criminal misconduct, her argument lacks merit because she was not sanctioned for raising these issues. Because she fails to address the basis for the district court's decision to impose sanctions, we need not entertain this argument further. *See Brinkmann v. Dallas Cnty. Deputy Sheriff Abner*, 813 F.2d 744, 748 (5th Cir. 1987) (refusing to discuss legal issues that do not address the grounds for the district court's decision).

Mire's third argument is that the district court was without jurisdiction when it imposed sanctions because her appeal of the court's Rule 60(b) decision was pending. "As a general rule the effective filing of a notice of appeal transfers jurisdiction from the district court to the court of appeals with respect to all matters involved in the appeal." *Thomas v. Capital Sec. Servs., Inc.*, 812 F.2d 984, 987 (5th Cir. 1987). Nonetheless, an "exception is that . . . the district court retains jurisdiction to entertain and resolve a motion requesting attorney's fees or sanctions. The basis for this exception is that attorney's fees/sanctions are matters collateral to the merits of the action." *Id.* Mire fails to address this longstanding precedent, despite the Lafayette General Defendants raising it in their brief. Mire "is unquestionably obligated to recognize contrary authority." *Johnson v. Lumpkin*, 76 F.4th

1037, 1038 (5th Cir. 2023). The district court had jurisdiction to impose sanctions.

Mire also argues the court improperly accepted new evidence during the sanctions hearing, which "encompassed issues that were pending on appeal that the district court lacked jurisdiction to decide." She contends the district court's use of this evidence to find she acted in bad faith violated due process and the "snapshot rule" that evaluates an attorney's actions at the time they were taken. The new evidence was Cordova's 2017 and 2018 W-2 forms, which purportedly showed that Cordova was not paid by any of the Lafayette General Defendants while a resident. Mire argues it was error to consider this evidence because the Lafayette General Defendants "did not lay the proper foundation to establish" that Mire possessed or knew about these documents at the time she filed the untimely Rule 60(b) motion.

Mire's argument mischaracterizes the scope of the "snapshot" rule and how it relates to the reasonableness of attorneys' conduct. When evaluating the reasonableness of an attorney's factual inquiry under Rule 11, courts assess various factors, including "the time available to the signer for investigation . . . [and] the feasibility of a prefiling investigation." *Smith*, 960 F.2d at 444. Mire has been representing Cordova in this matter since at least 2018. Mire filed the untimely Rule 60(b) motion in July 2022. Thus, at least three or four years had elapsed from the time the W-2s came into existence and could easily have been obtained by Mire and/or Cordova at the time Mire filed the Rule 60(b) motion. Under the "snapshot" rule, Mire had ample time to investigate the identity of Cordova's true employer, including to review relevant documents

such as W-2s and paystubs, before signing the Rule 60(b) motion. *See id.* The Lafayette General Defendants were not required to lay a foundation to establish that Mire possessed or knew about these documents when she filed the Rule 60(b) motion. Instead, it was Mire's *lack of inquiry*, as evidenced by the W-2s and other record evidence, that made her conduct objectively unreasonable.[5] This was well within the district court's discretion to consider.

The district court did not err in its sanction order.

II. The Lafayette General Defendants' Appellate Rule 38 motion

The Lafayette General Defendants have moved for damages under Appellate Rule 38. Rule 38 provides that "[i]f a court of appeals determines that an appeal is frivolous, it may . . . award just damages and single or double costs to the appellee." Fed. R. App. P. 38.

Almost a year ago, we wrote that "Cordova has repeatedly refused to heed the district court's warnings about 'unreasonable attempts at continuing this litigation' with an untimely and also meritless Rule 60(b) motion." *Cordova II*, 2023 WL 2967893, at *3. That appeal was frivolous. *Id.* Despite our warning, frivolous arguments to the district court continued. In its Rule 11 order, the district court again warned that Cordova "may expose himself to liability if he continues to seek

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[5] Even if the district court erred in considering the W-2s specifically, the district court also considered other documentation in Cordova's LSU residency file, on the record since the summary judgment stage, that demonstrate Mire's lack of reasonable inquiry.

justifications to reopen this suit." The district court further warned both Cordova and Mire that although it refrained from sanctioning them under 28 U.S.C. § 1927, "the standard might be met with further abusive litigation tactics." It awarded attorney fees and costs in the hope that this would "deter any more frivolous arguments and filings."

Unfortunately, the Rule 11 sanctions did not deter yet another frivolous appeal.

We GRANT the Lafayette General Defendants' Rule 38 motion. As before, "[w]e believe the district court is in the best position to set an appropriate sanction." *Cordova II*, 2023 WL 2967893, at *3. Therefore, we REMAND for the district court to determine the appropriate sanctions, attorney fees, and costs for this appeal.

AFFIRMED, MOTION GRANTED, and case REMANDED.

JUDGMENT, U.S. COURT OF APPEALS FOR THE FIFTH CIRCUIT (JANUARY 31, 2024)

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

J. CORY CORDOVA,

Plaintiff,

CHRISTINE M. MIRE,

Appellant,

v.

UNIVERSITY HOSPITAL & CLINICS, INCORPORATED; LAFAYETTE GENERAL MEDICAL CENTER, INCORPORATED; LAFAYETTE GENERAL HEALTH SYSTEM, INCORPORATED,

Defendants-Appellees.

No. 23-30335
Summary Calendar

Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 6:19-CV-1027

Before: HIGGINBOTHAM, STEWART, and SOUTHWICK, Circuit Judges.

JUDGMENT

This cause was considered on the record on appeal and the briefs on file.

IT IS ORDERED and ADJUDGED that the judgment of the District Court is AFFIRMED.

We GRANT the Lafayette General Defendants' Rule 38 motion. As before, "[w]e believe the district court is in the best position to set an appropriate sanction." Cordova II, 2023 WL 2967893, at *3. Therefore, we REMAND for the district court to determine the appropriate sanctions, attorney fees, and costs for this appeal.

IT IS FURTHER ORDERED that Appellant pay to Appellees the costs on appeal to be taxed by the Clerk of this Court.

**ORIGINAL PER CURIAM DECISION,
U.S. COURT OF APPEALS FOR
THE FIFTH CIRCUIT
(APRIL 17, 2023)**

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

J. CORY CORDOVA,

Plaintiff-Appellant,

v.

LOUISIANA STATE UNIVERSITY AGRICULTURAL & MECHANICAL COLLEGE BOARD OF SUPERVISORS; KAREN CURRY; NICHOLAS SELLS; KRISTI ANDERSON; UNIVERSITY HOSPITAL & CLINICS, INCORPORATED; LAFAYETTE GENERAL MEDICAL CENTER, INCORPORATED; LAFAYETTE GENERAL HEALTH SYSTEM, INCORPORATED,

Defendants-Appellees.

No. 22-30548

CONSOLIDATED WITH

J CORY CORDOVA,

Plaintiff-Appellant,

v.

LOUISIANA STATE UNIVERSITY AGRICULTURAL & MECHANICAL COLLEGE BOARD OF SUPERVISORS; KAREN CURRY; NICHOLAS SELLS; KRISTI ANDERSON

Defendants-Appellees.

No. 22-30732

Appeals from the United States District Court
for the Western District of Louisiana
USDC No. 6:19-CV-1027

Before: HO, OLDHAM,
and DOUGLAS, Circuit Judges.

PER CURIAM:*

These consolidated appeals arise from an untimely motion for post-judgment relief under Federal Rule of Civil Procedure 60(b). We affirm the district court's denial of that motion, affirm the district court's award of attorney fees to the appellees, and remand the

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* This opinion is not designated for publication. *See* 5th Cir. R. 47.5.

case to the district court to calculate damages under Federal Rule of Appellate Procedure 38.

I.

J. Cory Cordova, a former medical resident in LSU's program at Lafayette General Hospital, was kicked out of his residency program after his first year due to substandard performance. Cordova sued LSU, the program director, the department head, and the director of graduate medical education ("LSU Defendants"), as well as several entities related to Lafayette General Hospital ("Lafayette General Defendants"), and his former lawyer in Louisiana state court.

The LSU Defendants removed to federal court. *See* 28 U.S.C. § 1441. The LSU and the Lafayette General Defendants moved for summary judgment on Cordova's claims against them. After a hearing, the district court granted summary judgment and dismissed those claims with prejudice.

The LSU and the Lafayette General Defendants then moved for the entry of final judgment on the claims against them. *See* Fed. R. Civ. P. 54(b). While these motions were pending, Cordova moved to remand. The district court referred Cordova's remand motion to a magistrate judge, who recommended remanding the remaining state law malpractice claims. The district court adopted the recommendation, remanded the malpractice claims, and entered final judgment on Cordova's claims against the LSU and the Lafayette General Defendants on March 24, 2021.

Cordova untimely appealed on April 27, 2021. So we dismissed his appeal as untimely under Federal Rule of Appellate Procedure 4(a)(1)(A). *See Cordova v.*

La. State Univ. Agri. & Mech. Coll. Bd. of Supervisors, 2022 WL 1102480 (5th Cir. 2022) (per curiam).

Next, on July 8, 2022, Cordova moved to vacate the March 24, 2021, judgment. *See* FED. R. Civ. P. 60(b). The district court denied that motion. Cordova appealed that denial, which we docketed as No. 22-30548. The district court also awarded the LSU Defendants attorney fees ($11.582.50) and costs ($637.54) for defeating the Rule 60(b) motion. Cordova appealed that order, too, and we docketed it as No. 22-30732. On Cordova's suggestion, *see* Blue Br. No. 22-30732, at iii, we consolidated the appeals.

II.

We begin with the district court's denial of Cordova's Rule 60(b) motion. Our review is for abuse of discretion. *Seven Elves, Inc. v. Eskenazi*, 635 F.2d 396, 402 (5th Cir. 1981) ("It is not enough that the granting of relief might have been permissible, or even warranted—denial must have been so unwarranted as to constitute an abuse of discretion.").

Cordova first argues that the district court lacked subject matter jurisdiction because the action belongs in state court not federal court. Under the well-pleaded complaint rule, a defendant can remove a case to federal court where the plaintiff's cause of action arises under federal law. *See* 28 U.S.C. § 1441; *Louisville & Nashville R. Co. v. Mottley*, 211 U.S. 149 (1908); *Am. Well Works Co. v. Layne & Bowler Co.*, 241 U.S. 257 (1916). Here, Cordova repeatedly alleged the defendants violated his Fourteenth Amendment due process rights under the United States Constitution. *See* ROA.235–36 (alleging the defendants "violated Dr. Cordova's due process rights established in the

federal and state constitutions" and quoting the Fourteenth Amendment (emphasis added)). That plainly made the case removable and gave the district court federal jurisdiction.

Cordova next argues the district court violated his due process rights when it prevented his attorney from attending a hearing on the defendants' summary judgment motions because the attorney was exposed to COVID-19. But Cordova forfeited this argument by failing to raise it in his Rule 60(b) motion in the district court. *See Rollins v. Home Depot USA*, 8 F.4th 393, 397 (5th Cir. 2021) ("A party forfeits an argument by failing to raise it in the first instance in the district court—thus raising it for the first time on appeal—or by failing to adequately brief the argument on appeal.").

Cordova next argues that the district court's judgment should be vacated due to an undisclosed conflict of interest between counsel for the Lafayette General Defendants and Cordova's previous counsel. It is unclear where in Rule 60(b) such contentions are cognizable. If they are cognizable under Rule 60(b)(2) or 60(b)(3) as the Defendants contend, Cordova's motion is plainly time-barred. That is because motions under Rule 60(b)(2) or 60(b)(3) must be filed within one year of the district court's final judgment. And here, Cordova waited 471 days to seek Rule 60(b) relief.

Even if his contentions are cognizable under Rule 60(b)(6), we hold under the facts of this case that the motion was untimely. A motion filed under Rule 60(b)(6) must be asserted within "a reasonable time," Fed. R. Civ. P. 60(c)(1), and relief is only available under Rule 60(b)(6) in "extraordinary circumstances,"

Buck v. Davis, 580 U.S. 100, 123 (2017). But Cordova has offered no explanation for why he waited until July 8, 2022, to seek relief from the March 24, 2021, judgment. Indeed, he knew about the purported conflict of interest as early as October 2021, when he raised the point in his untimely blue brief in his first appeal to our court. Yet he did not ask the district court to do anything about it at that point. *See Shepherd v. Int'l Paper Co.*, 372 F.3d 326, 329 (5th Cir. 2004) (a plaintiff can request Rule 60(b) relief while an appeal is pending).

And in any event, Cordova makes no attempt to explain how the purported conflict of interest would warrant reopening the March 24, 2021, judgment. The Louisiana Rules of Professional Conduct define a concurrent conflict of interest as one in which "the representation of one client will be directly adverse to another client" or "there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another." La. R. Prof Cond. R. 1.7. And under Rule 60(b)(6), courts have long recognized that such an undisclosed conflict only amounts to an "extraordinary circumstance" where a plaintiff can show prejudice—that is that he was "adversely affected by the purported conflict." *Gordon v. Norman*, 788 F.2d 1194, 1197–98 (6th Cir. 1986); *see also Marderosian v. Shamshak*, 170 F.R.D. 335, 340–41 (D. Mass. 1997). Here, Cordova fails to point to any evidence that the alleged conflict posed a "significant risk" of "materially limiting" the quality of Cordova's representation in this proceeding.

III.

We next turn to the district court's award of fees and costs in No. 22-30732. We review an award of attorney fees for abuse of discretion. *Loftin v. City of Prentis*, 33 F.4th 774, 779 (5th Cir. 2022). "A district court abuses its discretion if it (1) relies on clearly erroneous factual findings; (2) relies on erroneous conclusions of law; or (3) misapplies the law to the facts." *Ibid.* (quotation omitted).

Cordova argues the district court's award of fees and costs to the LSU Defendants should be reversed because the LSU Defendants failed to request fees and costs through a separately filed motion and thus were not entitled to them under Federal Rule of Civil Procedure 54(d). But again, Cordova forfeited this argument by failing to raise it below. *See Rollins*, 8 F.4th at 397. And even if we could consider the argument, it fails for two independent reasons.

That is first because a "party seeking attorney[ ] fees must make a timely Rule 54(d)(2)(B) motion unless it falls under a Rule 54(d) exception." *United Indus., Inc. v. Simon-Hartley, Ltd.*, 91 F.3d 762, 766 (5th Cir. 1996) (emphasis added). The district court's award of fees and costs here plainly falls under Rule 54(d)(2)(E)'s sanctions exception given that the LSU Defendants requested fees and costs in their Rule 60(b) response as a sanction for having to oppose Cordova's baseless Rule 60(b) motion. *See id.* at 766 n.9. And second, we've long held that "a court may deem a notification" of a request for attorney fees "sufficient if it satisfies the intended purposes of Rule 54(d)(2)" even if it fails to comply with Rule 54(d)(2)'s formal requirements. *Romaguera v. Gegenheimer*, 162 F.3d

893, 895 (5th Cir. 1988) (emphasis added). Here, the district court plainly "deemed" the LSU Defendants' request for fees and costs in their response to Cordova's Rule 60(b) motion as sufficient to "properly notify" Cordova "of their requests for attorney[ ] fees." *Id.* And Cordova admits he had notice and the opportunity to respond (in fact, he actually did respond) to the LSU Defendants' request for fees and costs in his reply in support of the Rule 60(b) motion. *See* Blue Br. 24.

IV.

Finally, we turn to Federal Rule of Appellate Procedure 38. That rule provides that if "a court of appeals determines that an appeal is frivolous, it may, after a separately filed motion . . . award just damages." Fed. R. App. P. 38. "An appeal is frivolous if the result is obvious or the arguments of error are wholly without merit." *Coghlan v. Starkey*, 852 F.2d 806, 811 (5th Cir. 1988).

Here, Cordova has repeatedly refused to heed the district court's warnings about "unreasonable attempts at continuing this litigation" with an untimely and also meritless Rule 60(b) motion. And here again, Cordova has filed another frivolous appeal. Moreover, while this appeal was pending, the district court granted the Lafayette General Defendants' motion for sanctions under Federal Rule of Civil Procedure 11 and set that matter for a hearing on the appropriate damage amount. *See Cordova v. La. State Univ. Health Sci. Ctr.*, No. 6:19-CV-1027, ECF No. 169 (W.D. La. Feb. 27, 2023). We, therefore, grant the appellees' Rule 38 motion and remand for the district court to fix the appropriate sanctions, attorney fees, and costs for this appeal. *See Marston v. Red River*

Levee & Drainage Dist., 632 F.2d 466, 468 (5th Cir. 1980); *see also Henneberger v. Ticom Geomatics, Inc.*, 793 F. App'x 241, 244 (5th Cir. 2019). We believe the district court is in the best position to set an appropriate sanction that both deters vexatiousness and also does not duplicate the other sanctions imposed or to be imposed in this case.

* * *

For the foregoing reasons, the district court's denial of relief under Federal Rule of Civil Procedure 60(b) is AFFIRMED. The district court's award of fees and costs is AFFIRMED. And the case is REMANDED for calculation of damages, attorney fees, and costs under Federal Rule of Appellate Procedure 38. Cordova's motions to disqualify counsel and for sanctions, damages, attorney fees, and costs under 28 U.S.C. § 1927 are DENIED.

ORDER DENYING MOTION TO AMEND JUDGMENT, U.S. COURT OF APPEALS FOR THE FIFTH CIRCUIT (APRIL 13, 2022)

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 21-30239

J CORY CORDOVA,

Plaintiff-Appellant,

v.

LOUISIANA STATE UNIVERSITY AGRICULTURAL AND MECHANICAL COLLEGE BOARD OF SUPERVISORS; KAREN CURRY; NICHOLAS SELLS; KRISTI ANDERSON; UNIVERSITY HOSPITAL AND CLINICS, INCORPORATED; LAFAYETTE GENERAL MEDICAL CENTER, INCORPORATED; LAFAYETTE GENERAL HEALTH SYSTEM, INCORPORATED,

Defendants-Appellees.

Appeals from the United States District Court
for the Western District of Louisiana
USDC No. 6:19-CV-1027

Before: CLEMENT, HO, OLDHAM, Circuit Judges.

PER CURIAM:

IT IS ORDERED that Appellant's motion to amend judgment is DENIED.

MEMORANDUM ORDER DENYING MOTION FOR ATTORNEY'S FEES, U.S. DISTRICT COURT FOR THE WESTERN DISTRICT OF LOUISIANA LAFAYETTE DIVISION (APRIL 14, 2021)

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION

J. CORY CORDOVA

v.

LOUISIANA STATE UNIVERSITY AGRICULTURAL & MECHANICAL COLLEGE BOARD OF SUPERVISORS, ET AL.

Case No. 6:19-CV-01027

Before: James D. CAIN, JR., United States District Judge, Patrick J. HANNA, Magistrate Judge.

MEMORANDUM OPINION

Before the court are a Motion for Attorney Fees and Costs [doc. 87] and Motion to Tax Costs [doc. 100] filed by defendants Karen Curry, Kristi Anderson, and the Louisiana State University Agricultural & Mechanical College Board of Supervisors ("LSU") (collectively, "LSU defendants"). The motions are opposed by plaintiff J. Cory Cordova [docs. 93, 106] and have now been fully briefed.

I. Background

This suit arises from Dr. J. Cory Cordova's non-renewal from the LSU "house officer" (residency) program at Lafayette General Hospital in Lafayette, Louisiana. Cordova was non-renewed from the program after one year, after being placed on probation by program director Dr. Karen Curry. Following his non-renewal, he filed suit against Curry, department head Dr. Nicholas Sells, director of graduate medical education Ms. Kristi Anderson, and LSU, as well as the Lafayette General defendants.[1] He alleged, in relevant part, that Curry, Sells, Anderson, LSU, and the Lafayette General defendants violated his right to due process under the federal and state constitutions, in violation of 42 U.S.C. § 1983, and committed a breach of contract by non-renewing him from the house officer program and then sabotaging his efforts to apply to other programs. Doc. 1, att. 2, pp. 192-93. He also filed state law claims against his former attorney, Christopher C. Johnston and the Gachassin Law Firm, based on allegations of malpractice during his representation.

On Rule 12(b)(6) motions to dismiss filed by the LSU defendants, the court dismissed the breach of contract claims as to the individual defendants and dismissed many of the due process claims. This left only the substantive due process claim against Curry with the issue of qualified immunity deferred until summary judgment along with the breach of contract

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[1] He also named as defendants the attorney and law firm who had represented him through the non-renewal process. alleging that they had operated under an undisclosed conflict of interest. Those claims are still pending.

claim against LSU. Docs. 30, 43. On motions for summary judgment brought by the LSU and Lafayette General defendants, the court dismissed all remaining claims as to both groups of defendants. Does. 76, 77.

Cordova then brought Motions to Remand, asserting that the court never had federal question jurisdiction despite his repeated references to due process claims against the LSU and Lafayette General defendants. Docs. 90, 109. The undersigned accepted the Report and Recommendation of the Magistrate Judge [doc. 125], rejecting plaintiff's argument but agreeing that the court should decline to exercise supplemental jurisdiction over the remaining claims against plaintiff's former attorney and his firm. Doc. 131. Pursuant to requests by the LSU and Lafayette General defendants, the court has certified its rulings on the Motions for Summary Judgment as final under Federal Rule of Civil, Procedure 54(b). It now considers the LSU defendants' Motion for Attorney Fees and Costs [doc. 87] and Motion to Tax Costs [doc. 100].

II. Legal Standard

As one of a few statutory exceptions to the "American Rule," requiring each party to bear its own litigation expenses, 42 U.S.C. § 1988 allows the award of reasonable attorney fees to a prevailing party in a civil rights action brought under 42 U.S.C. § 1983. *Fox v. Vice,* 563 U.S. 826, 832-33 (2011). This award may be made to a defendant when the court finds "that the plaintiff's action was frivolous, unreasonable, or without foundation," *id.* at 833 (internal quotation omitted) or that the plaintiff" continued to litigate after it clearly became so." *Hughes v. Rowe,* 449 U.S. 5, 15 (1980). In determining whether the suit was frivolous,

the court should focus not on the outcome but instead on "whether . . . the case is so lacking in arguable merit as to be groundless or without foundation[.]" *G&H Dev., LLC v. Penwell,* 2016 WL 5396711, at *3 (W.D. La. Sep. 27, 2016) (citing *Jones v. Texas Tech Univ.,* 656 F.2d 1137, 1145 (5th Cir. 1981)). To this end the court can consider factors such as whether the plaintiff established a prima facie case, whether the defendant offered to settle the suit, and whether the court held a full trial—but these factors remain "guideposts" and frivolousness must be judged on a case-by-case basis. *Id.* (citing *Doe v. Silsbee Indep. Sch. Dist.,* 440 F.App'x 421, 425 (5th Cir. 2011) (per curiam)). Generally, the Fifth Circuit regards an award of attorney fees for defendants as appropriate when the plaintiff's claim "lacks a basis in fact or relies on an [indisputably] meritless legal theory" or when the "plaintiff knew or should have known the legal or evidentiary deficiencies of his claim." *Doe,* 440 F.App'x at 425 (internal quotations omitted).

III. Application

Plaintiff spends most of his opposition focused on his subject matter jurisdiction argument, which the court has already rejected and finds frivolous in itself. But this does not mean that the constitutional claims were frivolous. Here, as the court's prior opinions describe, there were inadequate allegations to support some of plaintiff's constitutional claims and records provided in support of the summary judgment motion showed that there was no basis for holding the remaining defendants liable for a due process violation based on their academic judgments or evaluations of plaintiff. But plaintiff did provide grounds for opposing the motion for summary judgment, including

letters of recommendation from providers cited as sources for his negative evaluations, which support a reasonable belief in his theory that the proceedings against him were somehow unfair. Furthermore, plaintiff's opposition to the motions for summary judgment made clear that he had not taken any opportunity to conduct discovery since the court had let some of his claims survive the motion to dismiss. It is therefore difficult to determine that he continued to litigate the claims after discovering their lack of merit. For these reasons, the court declines to make an award of attorney fees under § 1988.

As for the Motion to Tax Costs, the LSU defendants seek taxable costs in the amount of $1,068.80 (or $2,738.36 if the court deems Westlaw research and postage as included under such costs rather than part of an attorney fee award) under Federal Rule of Civil Procedure 54(d). Doc. 100. Plaintiff objects on the grounds that (1) no final judgment has been entered under Federal Rule of Civil Procedure 54(b) and (2) legal research and postage are not taxable as costs. Doc. 106. He also cursorily asserts that an award of costs is discretionary and should not be made in this case. *Id.*

Rule 54(d) provides that, unless a federal statute, rule, or court order provides otherwise, costs should be awarded to the prevailing party following a final judgment. This rule applies to a victory on summary judgment and "contains a strong presumption that the prevailing party will be awarded costs." *Pacheco v. Mineta,* 448 F.3d 783, 793 (5th Cir. 2006). Indeed, the denial of such an award has been described as "in the nature of a penalty." *Id.* at 793 94 (internal quotations omitted). Since plaintiffs response was filed, the court

has certified the judgment as final. Plaintiff provides no specific reason why costs should not be awarded, and the court now determines that the LSU defendants are entitled to the award. The court agrees, however, that there appears to be no support for taxing research costs or postage. *See* 28 U.S.C. § 1920. Accordingly, the motion will be granted in part and denied in part, with costs taxed in the amount of $1,068.80.

IV. Conclusion

For the reasons stated above, the Motion for Attorney Fees [doe. 87] is DENIED and the Motion to Tax Costs [doc. 100] is GRANTED IN PART and DENIED IN PART, with costs awarded under Rule 54(d) in the amount of $1,068.60.

THUS DONE AND SIGNED in Chambers on this 14th day of April, 2021.

/s/ James D. Cain, Jr.
United States District Judge

MEMORANDUM RULING DENYING MOTION TO VACATE AND FOR ATTORNEY'S FEES, U.S. DISTRICT COURT FOR THE WESTERN DISTRICT OF LOUISIANA LAFAYETTE DIVISION (AUGUST 23, 2022)

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION

J. CORY CORDOVA,

v.

LOUISIANA STATE UNIVERSITY AGRICULTURAL & MECHANICAL COLLEGE BOARD OF SUPERVISORS, ET AL.

Case No. 6:19-CV-01027

Before: Hon. James D. CAIN, JR., United States District Judge., Patrick J. HANNA, Magistrate Judge.

MEMORANDUM RULING

Before the court is a Motion to Vacate and for Attorney Fees [doc. 138] filed by plaintiff J. Cory Cordova under Federal Rule of Civil Procedure 60(b), seeking relief from the final judgment of this court dismissing his claims for breach of contract and civil rights violations. Defendants Louisiana State University Agricultural & Mechanical College Board

of Supervisors ("LSU"), Dr. Nicholas Sells, Dr. Karen Curry, and Kristi Anderson (collectively, "LSU defendants") and University Hospital & Clinics Inc., Lafayette General Medical Center, Inc., and Lafayette General Health System, Inc. (collectively, "Lafayette General defendants") oppose the motion. Docs. 140, 142. The LSU defendants also request an award of attorney fees in connection with the motion. Doc. 140.

I.
BACKGROUND

This suit arises from Dr. J. Cory Cordova's non-renewal from the LSU "house officer" (residency) program at Lafayette General Hospital in Lafayette, Louisiana. Cordova was non-renewed from the program following his first year, after being placed on probation by program director Dr. Karen Curry. Following his non-renewal, he filed suit against Curry, department head Dr. Nicholas Sells, director of graduate medical education Ms. Kristi Anderson, and LSU, as well as the Lafayette General defendants, and his former counsel, in the 15th Judicial District Court, Lafayette Parish, Louisiana. He alleged, in relevant part, that Curry, Sells, Anderson, LSU, and the Lafayette General defendants violated his right to due process under the federal and state constitutions, in violation of 42 U.S.C. § 1983, and committed a breach of contract by non-renewing him from the house officer program and then sabotaging his efforts to apply to other programs. Doc. 1, att. 2, pp. 192–93. He also alleged that his former attorney, Christopher C. Johnston, and Johnston's firm were liable under state malpractice law for failing to disclose their prior representation of the Lafayette General defendants. *Id.*

The LSU defendants removed the suit to this court on the basis of federal question jurisdiction, 28 U.S.C. § 1331. Doc. 1. On Rule 12(b)(6) motions to dismiss filed by the LSU defendants, the court dismissed the breach of contract claims as to the individual defendants without prejudice to plaintiff's right to amend and dismissed many of the due process claims, leaving as to the LSU defendants only the breach of contract claim against LSU and the substantive due process claim against Curry, with the issue of qualified immunity deferred until summary judgment. Docs. 29, 41. The claim against Curry was based on her negative evaluations of Cordova during his time in the house officer program. Doc. 76, p. 9. In ruling on the second motion to dismiss, the court had also noted a potential due process violation based on negative information that Curry communicated to other programs but held that plaintiff failed to allege sufficient harm to show a constitutional violation:

> As for the claim relating to disclosure of information to other programs, there is no "constitutional protection for the interest in reputation." *Siegert v. Gilley*, 500 U.S. 226, 234 (1991). While students are generally found to have an interest in continuing their education, it is well-established that applicants do not have a protected interest in admission to a program. *Tobin v. Univ. of Me. Sys.*, 59 F.Supp.2d 87, 90 (D. Me. 1999) (collecting cases). A plaintiff may show significant reputational harm if he alleges that the damage served as a complete bar to continuing his training. *See Cadet v. Bonbon*, 2006 WL 8205989, at *3 (D. Mass. Aug. 1,

> 2006) (citing *Greenhill v. Bailey*, 519 F.2d 5, 7 (8th Cir. 1975)). But all that is alleged here is that the plaintiff's prospects at two other programs were harmed. Accordingly, these allegations may support a tort claim but do not give rise to a substantive due process violation.

Doc. 41, pp. 11–12. The court dismissed this claim without prejudice, however, in order to allow plaintiff an opportunity to amend and show sufficient harm. *Id.*

The remaining LSU defendants then brought a Motion for Summary Judgment, aimed at securing dismissal of Cordova's substantive due process claim against Curry and breach of contract claim against LSU. Doc. 54, att. 2. To this end they asserted that (1) Curry is entitled to qualified immunity for any due process violation; (2) plaintiff has not identified a substantive due process property interest or violation thereof by Curry; and (3) plaintiff's non-renewal did not breach any term of the House Officer Agreement of Appointment or House Officer Manual. *Id.* The Lafayette General defendants also sought summary judgment, asserting that they were not parties to the House Officer Agreement of Appointment and had no authority over or involvement in Cordova's non-renewal. Furthermore, they contended that they could not be held liable for a due process violation because they are not state actors and did not conspire with the LSU defendants to violate plaintiff's rights. In the alternative, the Lafayette General defendants wholly adopted the arguments of the LSU defendants and move for dismissal of all claims against them on those

grounds. Doc. 65, att. 1. Cordova opposed both motions. Docs. 61, 73.

The court heard oral argument on the motions on December 15, 2020. Doc. 92. At the time plaintiff was represented by Christine Mire of Youngsville, Louisiana, as well as five attorneys from the Bezou Law Firm of Covington, Louisiana. Only Ms. Mire appeared at the hearing. *Id.* There she argued that she would be able to uncover evidence to oppose defendants' motions, particularly regarding the substantive due process claim, in discovery but admitted that she had not made any discovery requests since the court's ruling on the second Motion to Dismiss. *Id.* at 32–37. The court then expressed concern that counsel had not conducted any discovery or produced any evidence to support her oppositions to the motion for summary judgment. *Id.* at 42–43, 61–62. Mire repeatedly pushed back, indicating that she had unproduced tape recordings that supported her case and that she did not believe that it was her burden to develop the record at this stage. *Id.* at 42, 61–63. The court emphasized, however, that its duty was only to rule on what was in the record. *Id.* at 76. Finally, it pointed out its chief concern as to the claims against the Lafayette General defendants: the failure to show any privity of contract between those parties and Cordova. *Id.* at 88–89.

Two days after the hearing, the court issued a ruling on the Motions for Summary Judgment and dismissed all claims against the LSU defendants and Lafayette General defendants with prejudice. Docs. 76, 77. In sum, the court found that Curry had shown she was entitled to qualified immunity for any substantive due process violation; that plaintiff failed

to show a breach of contract claim with respect to the LSU defendants' procedures in non-renewing his appointment under the terms of either the House Officer Manual ("HOM") or House Officer Agreement of Appointment ("HOAA"); and that there was no basis for (1) a § 1983 claim against the Lafayette General defendants, based on the same reasons those claims had been dismissed against the LSU defendants, or (2) a breach of contract claim against the Lafayette General defendants, because they were not a party to the HOAA or HOM. Doc. 76. Finally, the court amended its prior judgments on the Motions to Dismiss, under which the breach of contract claims against Curry and Sells and substantive due process claims relating to dissemination of information to other programs had been dismissed without prejudice, in order to dismiss those claims with prejudice based on plaintiff's failure to amend his pleadings and cure the defects identified.

The court allowed the parties additional time to brief the issue of whether the ruling on the Motions for Summary Judgment should be certified as final under Federal Rule of Civil Procedure 54(b). Doc. 77. Plaintiff opposed the motion by brief filed December 28, 2021, arguing that the court's ruling established that it lacked subject matter jurisdiction over the case due to the lack of a constitutional violation and that it should remand the matter to state court rather than entering a final judgment dismissing the LSU and Lafayette General defendants. Doc. 82. Counsel from the Bezou Law Firm then withdrew from representation of plaintiff, leaving only Ms. Mire as plaintiff's counsel. Docs. 95–97.

The LSU defendants next filed a motion for costs and attorney fees. Doc. 87. Plaintiff also filed a Motion

to Remand, arguing that the court's dismissal of his § 1983 claims meant that it lacked subject matter jurisdiction over the suit, and an amended Motion to Remand in which he argued that, despite his claims of due process violations, his original petition never actually raised a federal question under the well-pleaded complaint rule. Docs. 90, 109. The Motions to Remand were referred to the Magistrate Judge, who found no merit to these arguments but recommended that the remaining state law claims (*i.e.*, the malpractice claims against Johnston and the Gachassin Law Firm) be remanded to the state court. Doc. 125. The undersigned adopted this report and recommendation, remanding the remaining claims to the 15th Judicial District Court and certifying its rulings on the Motions for Summary Judgment as final by judgment dated March 24, 2021. Doc. 131. On April 14, 2021, the undersigned issued an order denying the LSU defendants' Motion for Attorney Fees but granting costs in the amount of $1,068.60. Doc. 133.

Plaintiff filed a Notice of Appeal from the court's final judgment [doc. 131] and order on the Motion for Attorney Fees [doc. 133] on April 27, 2021. Doc. 134. On April 13, 2022, the Fifth Circuit issued an opinion finding that the appeal was untimely as to the final judgment on the claims against the Lafayette General and LSU defendants and that he showed no merit as to his appeal of the order taxing him with costs. *Cordova v. La. State Univ. Agricultural & Mech. College Bd. of Supervisors*, 2022 WL 1102480 (5th Cir. Apr. 13, 2022). The court also rejected plaintiff's argument that he was entitled to relief under Federal Rule of 60(b) based on new evidence that had deprived him of due process in the district court, because

plaintiff had not raised the issue with this court or in his briefing before the Fifth Circuit. *Id.*

Meanwhile, in the state court proceedings plaintiff filed a second amended petition asserting malpractice claims against the attorneys of the Bezou Law Firm. Doc. 147, att. 2. After the Fifth Circuit's judgment was entered as mandate, on May 19, 2022, the plaintiff also filed a new suit in the 15th Judicial District Court against the Lafayette General defendants, LSU, and Dr. Karen Curry on June 8, 2022. Doc. 142, att. 6. There plaintiff raised a claim of "breach of confidntiality/bad faith" based on allegations that defendants had continued to disseminate inaccurate and confidential information about him to other residency programs. *Id.* As a result, he alleged that his completion of his residency was delayed for a year while he applied to programs and attempted to clear his reputation. *Id.* He also alleged that Dr. Curry had misrepresented his record at the LSU program to the Mississippi State Board of Medical Licensure in 2021. *Id*. He maintained that these disclosures amounted to breaches of the terms of employment agreements with both defendants and sought declaratory and injunctive relief. *Id.*

The Lafayette General defendants filed exceptions, including one of *res judicata* based on this court's previous rulings, which were set for hearing on August 1, 2022. Doc. 142, att. 7. On July 8, 2022, plaintiff filed a Motion to Vacate in this matter, requesting that the court "clarify its previous rulings in light of the newly filed allegations currently pending before the state court." Doc. 138, att. 1. He also urges the court to vacate its prior judgments under Rule 60(b) based on the same grounds asserted to the Fifth

Circuit—namely, that defense counsel misrepresented facts as to the status of discovery before the hearing on the Motions for Summary Judgment and that lawyers from the Bezou Law Firm had an undisclosed conflict of interest that prejudiced plaintiff's representation because counsel for the Lafayette General defendants was representing counsel from the Bezou Law Firm in an unrelated disciplinary proceeding—as well as the alleged admission of the Lafayette General defendants' employer status in relation to medical residents in an unrelated proceeding. Defendants oppose the motion. Docs. 140, 142.

II.
LAW & APPLICATION

A. Rule 60(b)

Under Federal Rule of Civil Procedure 59, a party may move to alter or amend a judgment within 28 days of judgment and the court may grant such relief for a variety of reasons. Fed. R. Civ. P. 59(e); *Lavespere v. Niagara Mach. & Tool Works, Inc.*, 910 F.2d 167, 173–74 (5th Cir. 1990), abrogated on other grounds by *Little v. Liquid Air Corp.*, 37 F.3d 1069 (5th Cir. 1994). Federal Rule of Civil Procedure 60(b), on the other hand, provides specific grounds for relief from a final order or judgment and is thus "subject to unique limitations that do not affect a Rule 59(e) motion." *Edward H. Bohlin Co., Inc. v. Banning Co., Inc.*, 6 F.3d 350, 356 (5th Cir. 1993). These grounds include (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence; (3) fraud, misrepresentation, or misconduct by an opposing party; (4) voidness of the judgment; (5) satisfaction of

the judgment; and (6) any other reason justifying relief. Fed. R. Civ. P. 60(b). Any motion for relief under 60(b)(1)–(3) must be made within one year of judgment. Fed. R. Civ. P. 60(c)(1). A district court may consider a Rule 60(b) motion filed while a case is on appeal and may grant relief thereunder with leave from the court of appeals. *Shepherd v. Internat'l Paper Co.*, 372 F.3d 326, 329 (5th Cir. 2004). Accordingly, plaintiff is not entitled to any tolling based on the pendency of his appeal and his motion was filed past the one-year time limit for 60(b)(1)–(3). Instead, the request can only be considered under Rule 60(b)(6).

A motion filed under Rule 60(b)(4)–(6) "must be made within a reasonable time."[1] Fed. R. Civ. P. 60(c)(1). This motion was filed on July 8, 2022, over one year after the court's final judgment of March 24, 2021. The court will therefore consider whether the circumstances alleged by plaintiff show grounds for relief under Rule 60(b)(6) before returning to the question of whether this motion is timely.

Relief under Rule 60(b)(6)'s catch-all provision is only available in "extraordinary circumstances." *Buck v. Davis*, ___ U.S. ___, 137 S. Ct. 759, 778 (2017). The grounds for relief are mutually exclusive of those set forth under 60(b)(1)–(5). *Hesling v. CSX Transp., Inc.*, 396 F.3d 632, 643 (5th Cir. 1995). Plaintiff's allegations of misrepresentations by opposing counsel about the status of discovery during the summary judgment hearing and about the Lafayette General defendants' status as employers of medical residents

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[1] This limit applies to motions filed under Rule 60(b)(1)–(3) as well, which must be filed within a reasonable time not to exceed one year. Fed. R. Civ. P. 60(c).

fall under Rule 60(b)(3), providing relief for "fraud . . . misrepresentation, or misconduct by an opposing party." *See, e.g.*, *Garrett v. United States*, 820 F. App'x 275 (5th Cir. 2020) (considering alleged misconduct in the form of statements by opposing counsel under 60(b)(3)); *Harre v. A.H. Robins Co., Inc.*, 750 F.2d 1501, 1505 (11th Cir. 1985), *vacated in other part on reconsideration*, 866 F.2d 1203 (11th Cir. 1989) (fraud committed by third party with complicity of opposing counsel considered under 60(b)(3)). The alleged status of the Lafayette General defendants may also qualify as "new evidence," under Rule 60(b)(2), but is still subject to a one-year limitation period.[2] At any rate, the court does not find that either basis would provide grounds for relief from its rulings on the Motions for Summary Judgment even if timely.

Plaintiff's counsel excerpts but does not attach an email from Lafayette General counsel, which she cites as evidence of a material misrepresentation regarding her client's refusal to be deposed. Doc. 138,

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[2] Plaintiff also asserts that the Louisiana Supreme Court decisions, described infra, count as a change in controlling case law entitling her to relief under Rule 60(b)(6). To this end she points to a concurring opinion by Justice Sotomayor, asserting the potential availability of relief under Rule 60(b)(6) for an intervening change in controlling law combined with development of facts. *Kemp v. United States*, ___ U.S. ___, 142 S. Ct. 1856, 1865 (2022) (citing *Buck v. Davis*, 580 U.S. 100, 126 (2017)). The Fifth Circuit still holds, however, that a change in controlling law alone is not sufficient to warrant relief under Rule 60(b)(6). *Raby v. Davis*, 907 F.3d 880, 884 (5th Cir. 2018). Moreover, there is no showing that the Louisiana Supreme Court's determination that the Lafayette General defendants were private employers counts as any sort of change in the law or, as described below, that it is in any way material to the court's holding on the breach of contract claim.

att. 1, pp. 3–4. She also cites the fact that the parties filed a joint motion in April 2020 to continue the September 2020 trial date due to the inability to complete Cordova's deposition "in the reasonably foreseeable future[.]" Doc. 45. The excerpt and motion only show, however, that the parties had agreed it was not feasible for Dr. Cordova to submit to a deposition in the spring of 2020 due to his status as a healthcare worker. Trial was reset in May 2020 for April 19, 2021, with no further requests for continuance even after the Motions for Summary Judgment were filed in October and November of 2020. *See* docs. 51, 54, 65. Additionally, the discussion at the hearing also pertained to written discovery and the possibility of conducting depositions by Zoom. Doc. 92, pp. 38–39. As shown supra, the court's larger concern was not with the lack of any specific deposition but with plaintiff's failure to produce any evidence at all to contradict the showing made by defendants. Given this context, plaintiff's evidence and reference to email excerpts neither contradict the statements made by Lafayette General counsel nor do they show that any misstatement, if made, would have been material.

As for the status of Lafayette General defendants vis-à-vis medical residents, plaintiff references the cases of *Hayes v. University Health Shreveport*, 332 So.3d 1163 (La. 2022) and *Nelson v. Ochsner Lafayette General*, 332 So.3d 1172 (La. 2022). Those matters involved attempts by hospital employees to block their employers' COVID-19 vaccine mandate under the Louisiana Constitution. The Louisiana Supreme Court ruled in relevant part that (1) a state informed consent statute did not provide an exception to at-will employment and (2) state constitutional prohibitions

against unreasonable searches and seizures applied only to state action, and thus did not provide an exception to employment at-will as applied to a private hospital. *Hayes*, 332 So.3d at 1169–72. There is no showing, however, that any plaintiff was a resident and no stipulation or finding that residents qualified as employees of the respective hospitals. Furthermore, while plaintiff now points to documentary evidence listing Lafayette General as his employer, the court's ruling on the breach of contract claim against the Lafayette General defendants was premised on the fact that there was no evidence that that defendant was a party to the HOAA or the HOM. *See* doc. 76, pp. 20–21. Whether the Lafayette General defendants were party to some other agreement with plaintiff and breached same is immaterial to the claims plaintiff actually brought to this court. Finally, even if the Lafayette General defendants were shown to be party to the HOAA or HOM, plaintiff fails to show how they would have breached such an agreement when the court considered the merits of that claim as to the LSU defendants and found no breach. Likewise, even if some sort of employment relationship also showed that the Lafayette General defendants were joint actors with the LSU defendants for purposes of the § 1983 claims, plaintiff fails to show how the court's finding of no merit to those claims as to the LSU defendants would differ with respect to any other party's handling of plaintiff's non-renewal.

Allegations of misconduct by attorneys of the Bezou Law Firm, however, are outside of the scope of Rule 60(b)(3) and may be considered under Rule 60(b)(6). *See Latshaw v. Trainer Wortham & Co., Inc.*,

452 F.3d 1097, 1102 (emphasizing that Rule 60(b)(3) relief is not available for fraud committed by the moving party's own attorney). Plaintiff alleges that his representation was prejudiced because attorneys Jacques Bezou, Sr. and Jacques Bezou, Jr. ("the Bezous") did not disclose that James H. Gibson, attorney for the Lafayette General defendants, was concurrently representing them in an unrelated proceeding. The Lafayette General defendants contend that these allegations are both untimely, under Rule 60(b)(6)'s "reasonable time" limitation, and that they do not provide the extraordinary grounds necessary for relief under Rule 60(b)(6).

Plaintiff first raised his allegations of a conflict of interest by the Bezous in a motion for relief from judgment filed with the Fifth Circuit on October 14, 2021. *See Cordova v. LSU Agric. & Mech. College Bd. of Supervisors*, No. 21-30239, doc. 44 (5th Cir. 2021). The Fifth Circuit dismissed his appeal and denied the motion on November 8, 2021, noting that it did not have jurisdiction over his claims for relief under Rule 60(b) and that these should have been raised with the district court. *Cordova v. LSU Agric. & Mech. College Bd. of Supervisors*, 2021 WL 5183510 (5th Cir. Nov. 8, 2021). Plaintiff filed a motion to amend judgment on January 13, 2022, based on the Louisiana Supreme Court cases cited *supra*. *Cordova v. LSU Agric. & Mech. College Bd. of Supervisors*, No. 21-30239, doc. 76 (5th Cir. 2021). The panel considered the motion and withdrew and superseded its opinion on April 13, 2022, but made no change as to its disposition of the claims. *Cordova v. LSU Agric. & Mech. College Bd. of Supervisors*, 2022 WL 1102480 (5th Cir. Apr. 13, 2022). The opinion was issued as mandate on May

19, 2022. Doc. 137. Plaintiff then first sought relief under Rule 60(b) in this court on July 8, 2022. Doc. 138.

Timeliness under Rule 60(b)(6) "depends on the particular facts of the case in question." *Fed. Land Bank v. Cupples Bros.*, 889 F.2d 764, 767 (8th Cir. 1989). Courts determining what constitutes a "reasonable" period of time under Rule 60(b) measure the time at which a movant could have filed his Rule 60(b)(6) motion against the time when he did file it. *In re Edwards*, 865 F.3d 197, 208–09 (5th Cir. 2017). While the Fifth Circuit is clear that the motion "may not be used as an end run to effect an appeal outside the specified time limits," it allows that the determination of timeliness is "less than a scientific exercise." *Id.* Instead, courts look to factors such as the reason for delay, possible prejudice to the non-moving party, and the interests of finality. *Thai-Lao Lignite (Thailand) Co., Ltd. v. Gov't of Lao People's Democratic Repub.*, 864 F.3d 172 (2d Cir. 2017).

The Fifth Circuit made clear in its first ruling, on November 8, 2021, that it lacked jurisdiction over claims for relief under Rule 60(b) and that these must be raised with the district court. Even assuming that plaintiff did not learn of the alleged conflict until he filed his motion in the Fifth Circuit in October 2021, and that he was excused in waiting another month while the Fifth Circuit ruled on that motion, plaintiff must still account for the reasonableness of the eight months that followed before he finally sought relief under Rule 60(b) in this court. Due to finality concerns, courts have found that a delay of months can count as unreasonable when the plaintiff has all the facts necessary to bring his motion. *See, e.g.*, *Scott*

v. United States, 2006 WL 1274763 (D.D.C. May 8, 2006) (motion filed after two-month delay was untimely); *Werner v. Evolve Media, LLC*, 2020 WL 789035, at *4 (C.D. Cal. Nov. 10, 2020) (motion filed six months after original judgment and three months after amended judgment was untimely); *Intervention911 v. City of Palm Springs*, 2021 WL 3849696, at *2 (C.D. Cal. Aug. 27, 2021) (motion filed just under twelve months after final judgment was untimely).

Plaintiff has offered no excuse for his delay in bringing the motion, other than that the need became apparent to him when the issue of *res judicata* was raised in his state court proceedings. As noted above, this court was able to consider any request for relief under Rule 60(b) even while the appeal was pending. *Shepherd*, 372 F.3d at 329. Given that the rulings on summary judgment were issued in December 2020 and certified as final in March 2021, that this matter has already been to the Fifth Circuit once on the merits, and that related state court proceedings depend on an answer from this court as to the finality of these judgments, the factors of prejudice to the non-moving parties and the interest of finality certainly weigh in favor of a finding of untimeliness. Accordingly, the court agrees that the request for relief is untimely as it relates to the Bezous' alleged conflict.

Even if the motion were timely as to this claim, however, plaintiff still fails to show any merit. The Louisiana Rules of Professional Conduct define a concurrent conflict of interest as one in which "the representation of one client will be directly adverse to another client" or "there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another

client, a former client or a third person or by a personal interest of the lawyer." La. R. Prof. Cond. R. 1.7. When such a conflict exists, the lawyer may only proceed with representation if (1) the representation is not prohibited by law, (2) the attorney reasonably believes he will be able to render "competent and diligent representation to each affected client," (3) "the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal," and (4) each affected client gives written consent. *Id.* Additionally, even in cases that do not involve actual ethical conflicts, relief under Rule 60(b)(6) may be granted where the "lawyer's failures are so egregious and profound that they amount to the abandonment of the client's case altogether, either through physical disappearance . . . or constructive disappearance." *Harris v. United States*, 367 F.3d 74, 81 (2d Cir. 2004). Still, the existence of an undisclosed conflict will only serve as an "extraordinary circumstance" justifying relief under Rule 60(b)(6) where plaintiff can show prejudice—that is, a likely bearing on the outcome of the case. *Marderosian v. Shamshak*, 170 F.R.D. 335, 340–41 (D. Mass. 1997).

Here plaintiff alleges a conflict based on Lafayette General counsel Gibson's representation of the Bezou attorneys in an unrelated proceeding. Defendants maintain that these facts do not establish a conflict of interest under the Louisiana Rules of Professional Conduct, raising questions as to why the Bezous would reduce their chances at recovery in this case merely because of a professional relationship with opposing counsel. The court is inclined to agree,

noting that plaintiff has produced no evidence to show why this representation should pose a "significant risk" of materially limiting the Bezous' representation of plaintiff. But even if Gibson's representation of the Bezous did represent a conflict of interest, plaintiff has likewise failed to show any likelihood of prejudice. While she did not enroll in this matter until November 2020, current counsel Christine Mire has been involved in this case since its inception. *See* doc. 1, att. 2, p. 15 (signature on petition). She now claims that she was unprepared to practice in federal court or attend oral arguments before the undersigned in December 2020, but she has appeared as counsel of record in cases in this district in prior cases and has been a licensed attorney for over a decade. At oral argument she did not demonstrate any lack of familiarity with the record. To the extent she now attempts to blame the Bezous for failing to conduct discovery or produce evidence to oppose the Motions for Summary Judgment, the court notes that she signed both response briefs and must bear responsibility for their contents. Accordingly, plaintiff fails to show any merit to his request for relief based on the alleged conflict of interest. Finally, to the extent the plaintiff otherwise seeks clarification of the court's prior rulings, those should stand for themselves. The motion for relief under Rule 60(b) will therefore be denied.

B. Request for Attorney Fees

The LSU defendants also request an award of attorney fees in conjunction with their opposition to this motion. As one of a few statutory exceptions to the "American Rule," requiring each party to bear its own litigation expenses, 42 U.S.C. § 1988 allows the award of reasonable attorney fees to a prevailing party in a

civil rights action brought under 42 U.S.C. § 1983. *Fox v. Vice*, 563 U.S. 826, 832–33 (2011). This award may be made to a defendant when the court finds "that the plaintiff's action was frivolous, unreasonable, or without foundation," *id.* at 833 (internal quotation omitted) or that the plaintiff "continued to litigate after it clearly became so." *Hughes v. Rowe*, 449 U.S. 5, 15 (1980). In determining whether the suit was frivolous, the court should focus not on the outcome but instead on "whether . . . the case is so lacking in arguable merit as to be groundless or without foundation[.]" *G&H Dev., LLC v. Penwell*, 2016 WL 5396711, at *3 (W.D. La. Sep. 27, 2016) (citing *Jones v. Texas Tech Univ.*, 656 F.2d 1137, 1145 (5th Cir. 1981)). To this end the court can consider factors such as whether the plaintiff established a prima facie case, whether the defendant offered to settle the suit, and whether the court held a full trial—but these factors remain "guideposts" and frivolousness must be judged on a case-by-case basis. *Id.* (citing *Doe v. Silsbee Indep. Sch. Dist.*, 440 F. App'x 421, 425 (5th Cir. 2011) (per curiam)). Generally, the Fifth Circuit regards an award of attorney fees for defendants as appropriate when the plaintiff's claim "lacks a basis in fact or relies on an [indisputably] meritless legal theory" or when the "plaintiff knew or should have known the legal or evidentiary deficiencies of his claim." *Doe*, 440 F. App'x at 425 (internal quotations omitted).

The court has ruled in favor of the LSU defendants regarding plaintiff's inability to show a constitutional violation or a breach of contract under the HOAA or HOM. Nevertheless, plaintiff continues with attempts to resurrect that theory through both unfounded

allegations of compromised representation and arguments about ancillary issues such as the status of the Lafayette General defendants as private employers. Additionally, plaintiff once again failed to conduct the discovery necessary to carry his burden—he provided no exhibits to support many of his critical allegations.

Plaintiff lost his chance for a review of the merits of the court's summary judgment rulings due to current counsel's failure to file a timely notice of appeal. Despite his apparent interest in perpetuating the matter, he failed to even seek timely review under Rule 60(b) or to attempt to provide evidence in support of many of his claims for relief from judgment. Accordingly, an award of attorney fees is due to the LSU defendants due to plaintiff's unreasonable attempts at continuing this litigation. The court will consider the same for the Lafayette General defendants under the Motion for Sanctions [doc. 147] filed by those parties under Federal Rule of Civil Procedure 11 and 28 U.S.C. § 1927.

III.
CONCLUSION

For the reasons stated above, IT IS ORDERED that the Motion to Vacate and for Attorney Fees [doc. 138] filed by plaintiff be DENIED and the request for attorney fees [doc. 140] by the LSU defendants be GRANTED. The LSU defendants are directed to submit a bill of costs and attorney fees incurred in defending against this motion within 14 days of this order.

THUS DONE AND SIGNED in Chambers this 23rd day of August, 2022.

/s/ James D. Cain, Jr.
United States District Judge

MEMORANDUM ORDER GRANTING MOTION FOR SANCTIONS, U.S. DISTRICT COURT FOR THE WESTERN DISTRICT OF LOUISIANA LAFAYETTE DIVISION (FEBRUARY 27, 2023)

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION

J. CORY CORDOVA,

v.

LOUISIANA STATE UNIVERSITY AGRICULTURAL & MECHANICAL COLLEGE BOARD OF SUPERVISORS, ET AL.

Case No. 6:19-CV-01027

Before: Hon. James D. CAIN, JR., United States District Judge., Patrick J. HANNA, Magistrate Judge.

MEMORANDUM ORDER

Before the court is a Motion for Sanctions [doc. 147] filed against plaintiff J. Cory Cordova and his counsel, Christine M. Mire, by defendants University Hospital & Clinics, Inc.; Lafayette General Medical Center, Inc.; and Lafayette General Health System, Inc. (collectively, "the Lafayette General defendants") under Federal Rule of Civil Procedure 11(b)(1)–(3) and 28 U.S.C. § 1927. Plaintiff opposes the motion. Doc.

151. The matter came before the court for oral argument on February 23, 2023, and the undersigned now issues this ruling.

I. BACKGROUND

A. Filing of Suit and Motions to Dismiss

This suit arises from Dr. J. Cory Cordova's non-renewal from the LSU "house officer" (residency) program at Lafayette General Hospital in Lafayette, Louisiana. Cordova was non-renewed from the program following his first year, after being placed on probation by program director Dr. Karen Curry. Following his non-renewal, he filed suit against Curry, department head Dr. Nicholas Sells, director of graduate medical education Ms. Kristi Anderson, and LSU, as well as the Lafayette General defendants, and his former counsel, in the 15th Judicial District Court, Lafayette Parish, Louisiana. He alleged, in relevant part, that Curry, Sells, Anderson, LSU, and the Lafayette General defendants violated his right to due process under the federal and state constitutions, in violation of 42 U.S.C. § 1983, and committed a breach of contract by non-renewing him from the house officer program and then sabotaging his efforts to apply to other programs. Doc. 1, att. 2, pp. 192–93. He also alleged that his former attorney, Christopher C. Johnston, and Johnston's firm were liable under state malpractice law for failing to disclose their prior representation of the Lafayette General defendants. *Id.*

The LSU defendants removed the suit to this court under federal question jurisdiction, 28 U.S.C. § 1331. Doc. 1. On Rule 12(b)(6) motions to dismiss filed by the LSU defendants, the court dismissed the breach

of contract claims as to the individual defendants without prejudice to plaintiff's right to amend and dismissed many of the due process claims, leaving as to the LSU defendants only the breach of contract claim against LSU and the substantive due process claim against Curry, with the issue of qualified immunity deferred until summary judgment. Docs. 29, 41. The claim against Curry was based on her negative evaluations of Cordova during his time in the house officer program. Doc. 76, p. 9. In ruling on the second motion to dismiss, the court had also noted a potential due process violation based on negative information that Curry communicated to other programs but held that plaintiff failed to allege sufficient harm to show a constitutional violation. Doc. 41, pp. 11–12. The court dismissed this claim without prejudice, however, in order to allow plaintiff an opportunity to amend and show sufficient harm. *Id.*

B. Dismissal of All Claims on Summary Judgment

The remaining LSU defendants then brought a Motion for Summary Judgment, aimed at securing dismissal of Cordova's substantive due process claim against Curry and breach of contract claim against LSU. Doc. 54, att. 2. To this end they asserted that (1) Curry is entitled to qualified immunity for any due process violation; (2) plaintiff had not identified a substantive due process property interest or violation thereof by Curry; and (3) plaintiff's non-renewal did not breach any term of the House Officer Agreement of Appointment or House Officer Manual. *Id.* The Lafayette General defendants also sought summary judgment, asserting that they were not parties to the House Officer Agreement of Appointment and had no

authority over or involvement in Cordova's non-renewal. Furthermore, they contended that they could not be held liable for a due process violation because they are not state actors and did not conspire with the LSU defendants to violate plaintiff's rights. In the alternative, the Lafayette General defendants wholly adopted the arguments of the LSU defendants and move for dismissal of all claims against them on those grounds. Doc. 65, att. 1. Cordova opposed both motions. Docs. 61, 73.

The court heard oral argument on the motions on December 15, 2020. Doc. 92. At the time plaintiff was represented by Christine Mire of Youngsville, Louisiana, as well as five attorneys from the Bezou Law Firm of Covington, Louisiana. Only Ms. Mire appeared at the hearing. *Id.* There she argued that she would be able to uncover evidence to oppose defendants' motions, particularly regarding the substantive due process claim, in discovery but admitted that she had not made any discovery requests since the court's ruling on the second Motion to Dismiss. *Id.* at 32–37. The court then expressed concern that counsel had not conducted any discovery or produced any evidence to support her oppositions to the motion for summary judgment. *Id.* at 42–43, 61–62. Mire repeatedly pushed back, indicating that she had unproduced tape recordings that supported her case and that she did not believe that it was her burden to develop the record at this stage. *Id.* at 42, 61–63. The court emphasized, however, that its duty was only to rule on what was in the record. *Id.* at 76. Finally, it pointed out its chief concern as to the claims against the Lafayette General defendants: the failure

to show any privity of contract between those parties and Cordova. *Id.* at 88–89.

Two days after the hearing, the court issued a ruling on the Motions for Summary Judgment and dismissed all claims against the LSU defendants and Lafayette General defendants with prejudice. Docs. 76, 77. In sum, the court found that Curry had shown she was entitled to qualified immunity for any substantive due process violation; that plaintiff failed to show a breach of contract claim with respect to the LSU defendants' procedures in non-renewing his appointment under the terms of either the House Officer Manual ("HOM") or House Officer Agreement of Appointment ("HOAA"); and that there was no basis for (1) a § 1983 claim against the Lafayette General defendants, based on the same reasons those claims had been dismissed against the LSU defendants, or (2) a breach of contract claim against the Lafayette General defendants, because they were not a party to the HOAA or HOM. Doc. 76. Finally, the court amended its prior judgments on the Motions to Dismiss, under which the breach of contract claims against Curry and Sells and substantive due process claims relating to dissemination of information to other programs had been dismissed without prejudice, to dismiss those claims with prejudice based on plaintiff's failure to amend his pleadings and cure the defects identified.

The court allowed the parties additional time to brief the issue of whether the ruling on the Motions for Summary Judgment should be certified as final under Federal Rule of Civil Procedure 54(b). Doc. 77. Plaintiff opposed the motion by brief filed December 28, 2021, arguing that the court's ruling established that it lacked subject matter jurisdiction over the case

due to the lack of a constitutional violation and that it should remand the matter to state court rather than entering a final judgment dismissing the LSU and Lafayette General defendants. Doc. 82. Counsel from the Bezou Law Firm then withdrew from representation of plaintiff, leaving only Ms. Mire as plaintiff's counsel. Docs. 95–97.

The LSU defendants next filed a motion for costs and attorney fees. Doc. 87. Plaintiff also filed a Motion to Remand, arguing that the court's dismissal of his § 1983 claims meant that it lacked subject matter jurisdiction over the suit, and an amended Motion to Remand in which he argued that, despite his claims of due process violations, his original petition never actually raised a federal question under the well-pleaded complaint rule. Docs. 90, 109. The Motions to Remand were referred to the Magistrate Judge, who found no merit to these arguments but recommended that the remaining state law claims (*i.e.*, the malpractice claims against Johnston and his firm) be remanded to the state court. Doc. 125. The undersigned adopted this report and recommendation, remanding the remaining claims to the 15th Judicial District Court and certifying its rulings on the Motions for Summary Judgment as final by judgment dated March 24, 2021. Doc. 131. On April 14, 2021, the undersigned issued an order denying the LSU defendants' Motion for Attorney Fees but granting costs in the amount of $1,068.60. Doc. 133.

C. Appeal and New Suit

Plaintiff filed a Notice of Appeal from the court's final judgment [doc. 131] and order on the Motion for Attorney Fees [doc. 133] on April 27, 2021. Doc. 134.

On April 13, 2022, the Fifth Circuit issued an opinion finding that the appeal was untimely as to the final judgment on the claims against the Lafayette General and LSU defendants and that he showed no merit as to his appeal of the order taxing him with costs. *Cordova v. La. State Univ. Agricultural & Mech. College Bd. of Supervisors*, 2022 WL 1102480 (5th Cir. Apr. 13, 2022). The court also rejected plaintiff's argument that he was entitled to relief under Federal Rule of Civil Procedure 60(b) based on new evidence that had deprived him of due process in the district court, because plaintiff had not raised the issue with this court or in his briefing before the Fifth Circuit. *Id.*

Meanwhile, in the state court proceedings plaintiff filed a second amended petition asserting malpractice claims against the attorneys of the Bezou Law Firm. Doc. 147, att. 2. After the Fifth Circuit's judgment was entered as mandate, on May 19, 2022, the plaintiff also filed a new suit in the 15th Judicial District Court against the Lafayette General defendants, LSU, and Dr. Karen Curry on June 8, 2022. Doc. 142, att. 6. There plaintiff raised a claim of "breach of confidentiality/bad faith" based on allegations that defendants had continued to disseminate inaccurate and confidential information about him to other residency programs. *Id.* As a result, he alleged that his completion of his residency was delayed for a year while he applied to programs and attempted to clear his reputation. *Id.* He also alleged that Dr. Curry had misrepresented his record at the LSU program to the Mississippi State Board of Medical Licensure in 2021. *Id.* He maintained that these disclosures amounted to breaches of the terms of employment agreements with both defendants and sought declaratory and injunctive

relief. *Id.* The Lafayette General defendants filed exceptions, including one of *res judicata* based on this court's previous rulings, which were set for hearing on August 1, 2022. Doc. 142, att. 7.

D. Motion to Vacate

On July 8, 2022, plaintiff filed a Motion to Vacate in this matter, requesting that the court "clarify its previous rulings in light of the newly filed allegations currently pending before the state court." Doc. 138, att. 1. He also urged the court to vacate its prior judgments under Rule 60(b) based on the same grounds asserted to the Fifth Circuit—namely, that defense counsel misrepresented facts as to the status of discovery before the hearing on the Motions for Summary Judgment and that lawyers from the Bezou Law Firm had an undisclosed conflict of interest that prejudiced plaintiff's representation because counsel for the Lafayette General defendants was representing counsel from the Bezou Law Firm in an unrelated disciplinary proceeding—as well as the alleged admission of the Lafayette General defendants' employer status in relation to medical residents in an unrelated proceeding. Defendants opposed the merits and timeliness of the motion.

On timeliness, the court noted that the plaintiff was not entitled to any sort of tolling while the matter was on appeal since this court retained jurisdiction to consider a motion to vacate. Accordingly, any grounds for relief based on Rule 60(b)(1)–(3) (namely, allegations of misrepresentations by opposing counsel on the status of discovery and the status of the Lafayette General defendants as plaintiff's employer) were untimely since they were filed past

the one-year limitations period. Doc. 149, pp. 8–9. The court then found that the allegation of a conflict of interest by plaintiff's former counsel should be considered under Rule 60(b)(6) and was thus subject to the "reasonable time" limitation, which plaintiff had exceeded by waiting several months since he first raised the issues in the Fifth Circuit to bring the matter to this court. *Id.* at 13–15.

The court also rejected all these grounds on the merits. As to the employer status of the Lafayette General defendants, it held that new case law referenced by plaintiff failed to show that those defendants were the true employers of residents. *See id.* at 11 (citing *Hayes v. University Health Shreveport*, 332 So.3d 1163 (La. 2022) and *Nelson v. Ochsner Lafayette General*, 332 So.3d 1172 (La. 2022)). At any rate, it continued:

> [T]he court's ruling on the breach of contract claim against the Lafayette General defendants was premised on the fact that there was no evidence that that defendant was a party to the HOAA or the HOM. *See* doc. 76, pp. 20–21. Whether the Lafayette General defendants were party to some other agreement with plaintiff and breached same is immaterial to the claims plaintiff actually brought to this court. Finally, even if the Lafayette General defendants were shown to be party to the HOAA or HOM, plaintiff fails to show how they would have breached such an agreement when the court considered the merits of that claim as to the LSU defendants and found no breach. Likewise, even if some sort of employment relationship also

> showed that the Lafayette General defendants were joint actors with the LSU defendants for purposes of the § 1983 claims, plaintiff fails to show how the court's finding of no merit to those claims as to the LSU defendants would differ with respect to any other party's handling of plaintiff's non-renewal.

Id. at 11–12.

As for plaintiff's claims that opposing counsel misled the court about the status of discovery, the court likewise determined that these were unfounded. *Id.* at 10–11. Finally, regarding former counsel's alleged conflict of interest, the court held that plaintiff had failed to prove the existence of a conflict or that he was thereby prejudiced. *Id.* at 15–16. The court denied the Motion to Vacate and granted the LSU defendants' request for attorney fees expended under that motion under 42 U.S.C. § 1988. *Id.* at 16–18.

E. Motion for Sanctions

One month after plaintiff filed the above Motion to Vacate, the Lafayette General defendants filed a Motion for Sanctions against plaintiff and Ms. Mire under Rule 11(b) of the Federal Rules of Civil Procedure and 28 U.S.C. § 1927. Doc. 147. Here they seek an assessment of attorney fees and costs incurred in defending against the Motion to Vacate, on the grounds that it is both factually and legally frivolous. To this end, they assert that (1) plaintiff lacks factual support for his assertion that the Lafayette General defendants were his employer; (2) plaintiff and Ms. Mire have purposefully obscured her degree of involvement in the case; (3) Ms. Mire did not

conduct an objectively reasonable legal inquiry into the motion before filing; and (4) the lack of good faith factual and legal bases in the motion, along with personal attacks on Lafayette General counsel, prove the motives of harassment and needless increase in the cost of litigation. Doc. 147, att. 1. Plaintiff opposes the motion, arguing that it is the Lafayette General defendants who are mischaracterizing matters and that neither he nor his counsel should be penalized for bringing the Motion to Vacate. Doc. 151.

II. LAW & APPLICATION

A. Legal Standards

1. Rule 11 Sanctions

A central purpose of Rule 11 is "to spare innocent parties and overburdened courts from the filing of frivolous lawsuits." *Kurkowski v. Volcker*, 819 F.2d 201, 204 (8th Cir. 1987). Rule 11(b) provides in relevant part that, by presenting a pleading, motion, or other paper to the court, an attorney certifies to the best of his "knowledge, information, and belief, formed after an inquiry reasonable under the circumstances," that:

> (1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;
>
> (2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law; [and]

> (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery[.]

A violation of these provisions by counsel justifies sanctions under Rule 11(c). *Whitehead v. Food Max of Miss., Inc.*, 332 F.3d 796, 802 (5th Cir. 2003). In determining whether an attorney or party has violated Rule 11(b), the court uses an objective standard of reasonableness under the circumstances. *Id.* (citing *Childs v. State Farm Mut. Auto. Ins. Co.*, 29 F.3d 1018, 1024 (5th Cir. 1994)). Accordingly, an attorney's subjective good faith will not protect him from sanctions. *Chapman & Cole v. Itel Container Intern. B.V.*, 865 F.2d 676, 684 (5th Cir. 1989). The imposition of sanctions under this rule is usually a fact-intensive inquiry, and the trial court is accorded substantial deference. *Thomas v. Capital Sec. Svcs.*, 836 F.2d 866, 873 (5th Cir. 1988).

A represented party may also be sanctioned under Rule 11. *Topalian v. Ehrman*, 3 F.3d 931, 934 (5th Cir. 1993). Courts have generally declined to exercise this authority, however. *Rentz v. Dynasty Apparel Indus., Inc.*, 556 F.3d 389, 398 (6th Cir. 2009) (citing 5A Charles Alan Wright & Arthur R. Miller, Fed. Prac. & Proc. § 1336.2 (3d ed. 2004)) ("Imposing a sanction on the client has met with disfavor.") Generally, the represented party against whom sanctions are levied "must be a party who had some direct personal involvement in the management of the litigation and/or the decisions that resulted in the actions which the court finds improper under

Rule 11." *Indep. Fire Ins. Co. v. Lea*, 979 F.2d 377, 379 (5th Cir. 1992).

2. Sanctions under 28 U.S.C. § 1927

The court also has authority to award attorney fees, costs, and expenses "reasonably incurred" because of an attorney who "unreasonably and vexatiously" multiplies the proceedings. 28 U.S.C. § 1927. Underlying this statute "is the recognition that frivolous appeals and arguments waste scarce judicial resources and increase legal fees charged to the parties." *Balduch v. Johns*, 70 F.3d 813, 817 (5th Cir. 1995). An award of sanctions under this statute requires "evidence of bad faith, improper motive, or reckless disregard of the duty owed to the court." *Edwards v. Gen. Motor Corp.*, 153 F.3d 242, 246 (5th Cir. 1998). An attorney acts with reckless disregard of his duty to the court "when he, without reasonable inquiry, advances a baseless claim despite clear evidence undermining his factual contentions." *Morrison v. Walker*, 939 F.3d 633, 638 (5th Cir. 2019). Accordingly, the standard for awarding sanctions under § 1927 is higher than that required under Rule 11. *Bryant v. Mil. Dep't of Miss.*, 597 F.3d 678, 694 (5th Cir. 2010). In other words, sanctions under § 1927 should only be applied "in instances evidencing a serious and standard disregard for the orderly process of justice, lest the legitimate zeal of an attorney in representing a client be dampened." *Lawyers Title Ins. Corp. v. Doubletree Partners, LP*, 739 F.3d 848, 872 (5th Cir. 2014) (cleaned up).

B. Application

The Lafayette General defendants first assert that plaintiff and his counsel violated Rule 11(b) by

ignoring the undisputed facts of this case. Doc. 147, att. 1, pp. 16–21. They also argue that the lack of good faith factual and legal bases in the motion prove the motives of harassment and increase of legal costs. *Id.* at 23–26. Specifically, they maintain that Ms. Mire failed to adequately investigate whether University Hospital & Clinics ("UHC") employed plaintiff before using that allegation as a basis for her motion to vacate. To support that allegation plaintiff pointed to the following evidence from his LSU residency file, which was attached to the LSU defendants' October 2020 motion for summary judgment: (1) Dr. Cordova's Form W-4; (2) his Louisiana Department of Revenue Form L-4; and (3) his Immigration Form I-9. Doc. 138, att. 1, pp. 4–5; *see* doc. 54, att. 5, pp. 52, 53, 41. All these documents displayed "UHC" as his employer. He also cited his Medicare Enrollment Record, which he attached to his state court action. Doc. 138, att. 2, pp. 15–16. This document, however, only appears to verify that UHC is the location where he was practicing.

The Lafayette General defendants urge that this documentation was an insufficient basis on which to raise an issue as to the identity of plaintiff's employer. They first point to the listing of Tonia Latiolais as the contact person on his Medicare Enrollment and I-9 and note that her listed email on the Medicare Enrollment is an address affiliated with LSU. They also assert that her name "appears throughout Plaintiff's LSU Residency File as the Administrative Assistant handling Plaintiff's intake and exit documentation for LSU." Doc. 147, att. 1, p. 17. Additionally, they point to affidavits attached to the prior motions for summary judgment establishing that LSU, and not UHC, employed plaintiff. *See* doc. 65, att. 3 (affidavit

of UHC vice president Katherine Hebert); doc. 65, att. 6 (affidavit of Lafayette General Health System executive vice president Patrick Gandy); doc. 54, att. 4 (affidavit of LSU director of graduate medical education Kristi Anderson, authenticating plaintiff's residency file). Furthermore, as authenticated under Mr. Gandy's affidavit, the Affiliation Agreement between LSU and Lafayette General specifically provided that the residents were "employees of, and under the direction, control and supervision of the University [LSU]. . . . " Doc. 65, att. 7. All these documents have been part of the record, and equally available to plaintiff, since October and November 2020. Additionally, at the hearing the Lafayette General defendants produced plaintiff's W-2 from 2017 and 2018, obtained in discovery in the state court suit and identifying "LSUHSC NEW ORLEANS" as his employer. Doc. 168, att. 1. Accordingly, the Lafayette General defendants maintain that plaintiff's attempt to reopen the issue of who employed him reflects a lack of adequate investigation by plaintiff's counsel as well as bad faith perpetuation of this suit. In response, plaintiff's counsel continues to allege that Lafayette General/UHC was plaintiff's actual employer based on the documents cited above.

As the court already determined, the new caselaw cited by plaintiff did not create an issue as to who his employer was.[1] The documents cited above are also

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[1] The two cases were *Hayes v. University Health Shreveport*, 332 So.3d 1163 (La. 2022) and *Nelson v. Ochsner Lafayette General*, 332 So.3d 1172 (La. 2022). Those matters involved attempts by hospital employees to block their employers' COVID-19 vaccine mandate under the Louisiana Constitution. The Louisiana Supreme Court ruled in relevant part that (1) a state informed consent statute did not provide an exception to at-will employment

insufficient to raise an issue as to who legally employed plaintiff, given the record evidence and affidavits. Indeed, the W-2s produced at the hearing should be enough to put the issue to rest. Ms. Mire objected to the latter evidence under Rule 11's snapshot rule, but the point is that these documents as well as other records like paystubs were in existence at the time she filed her motion and readily obtainable by her/her client.

Moreover, the futility of any arguments relating to the Lafayette General defendants' status as employer reflects counsel's bad faith in attempting to make an issue of it. Ms. Mire asserted at the hearing that substituting Lafayette General defendants for the LSU defendants would have allowed her to proceed with breach of contract and tort claims without overcoming the barrier of qualified immunity against state actors. Yet the court clearly found no merit to the breach of contract claims, where qualified immunity was not even considered. *See* doc. 76. As to the § 1983 claims, plaintiff's evidence did not undermine the showing that it was the LSU defendants/employees who supervised and trained him, who made his ultimate employment decisions, and whose references he now takes issue with. Accordingly, there would be no basis for substituting Lafayette General as defendant for

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and (2) state constitutional prohibitions against unreasonable searches and seizures applied only to state action, and thus did not provide an exception to employment at-will as applied to a private hospital. *Hayes*, 332 So.3d at 1169–72. There is no showing, however, that any plaintiff was a resident and no stipulation or finding that residents qualified as employees of the respective hospitals.

any tort claims even if he could show some sort of employer relationship.

Ms. Mire's arguments regarding a potential conflict of interest and resulting prejudice do not cross the line from zealous advocacy to abusive litigation practices. Likewise, her mistakes regarding the timeliness of that motion do not provide cause to reprimand her at this point. But her meritless arguments and lack of investigation regarding the Lafayette General defendants' potential liability as employers are so unfounded as to amount to violations of Rule 11(b)(1)–(3).[2] The record reflects an unwillingness on behalf of both counsel and client to let this matter rest, even after a final adjudication on the merits and missing the appeal deadline from same. Defendants are entitled to some protection against the expense and annoyance that come with frivolous attempts at reopening this matter. Accordingly, the court must select the appropriate sanction under Rule 11(c).

Rule 11 is designed to "reduce the reluctance of courts to impose sanctions by emphasizing the responsibilities of attorneys and reinforcing those obligations through the imposition of sanctions." *Thomas*, 836 F.2d at 870. The district court likewise

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[2] The client, Dr. Cordova, might also bear some responsibility under Rule 11(b)(3), particularly as it relates to ignoring clear evidence of who his employer was. The court declines to sanction him at this point but warns that he may expose himself to liability if he continues to seek justifications to reopen this suit. The court also finds that the issues raised fall short of sanctionable conduct under 28 U.S.C. § 1927, but again warns both Dr. Cordova and Ms. Mire that the standard might be met with further abusive litigation tactics.

retains broad discretion in fashioning the appropriate sanction once it finds a violation of Rule 11. *Childs*, 29 F.3d at 1027. However, the appropriate sanction should be the one that is least severe while still adequately furthering the purpose of the rule: deterrence. *Id.* (citing *Akin v. Q-L Investments, Inc.*, 959 F.2d 521 (5th Cir. 1992)). If the award is reimbursement of an opponent's expenses, those expenses must be both reasonable and caused by the violation. *Id.* (citing *Thomas*, 836 F.2d at 878–79).

An award of the Lafayette General defendants' attorney fees and costs incurred in connection with the Motion to Vacate appears sufficient to deter any more frivolous arguments or filings. The same award was made to the LSU defendants pursuant to their request under 42 U.S.C. § 1988. The court does not expect that this will amount to a formidably high amount of money but expects that it will be sufficient to warn both plaintiff and his counsel against further ill-considered efforts to perpetuate this suit.

IV. CONCLUSION

For the reasons stated above, IT IS ORDERED that the Motion for Sanctions [doc. 147] be GRANTED. The Lafayette General defendants are directed to submit a bill of costs and attorney fees incurred in their defense against the plaintiff's Motion to Vacate and for Attorney Fees [doc. 138] within 14 days of this order.

THUS DONE AND SIGNED in Chambers on the 27th day of February, 2023.

/s/ James D. Cain, Jr.
United States District Judge

ORDER AWARDING ATTORNEY'S FEES, U.S. DISTRICT COURT FOR THE WESTERN DISTRICT OF LOUISIANA LAFAYETTE DIVISION (APRIL 13, 2023)

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION

J. CORY CORDOVA,

v.

LOUISIANA STATE UNIVERSITY HEALTH SCIENCE CENTER, ET AL.

Case No. 6:19-CV-01027

Before: Hon. James D. CAIN, JR., United States District Judge., Patrick J. HANNA, Magistrate Judge.

ORDER

Before the court is a Bill of Costs [doc. 170] filed by the Lafayette General defendants, in response to the ruling [doc. 169] awarding costs and attorney fees to those defendants in association with plaintiff's Motion to Vacate [doc. 138]. Plaintiff was given a deadline to file any response to the costs and fees claimed by defendants and has not done so. Doc. 171. The court has reviewed the bill and finds the fees and costs claimed to be reasonable and justified but only

as to the hours billed in association with the Motion to Vacate. The court's ruling did not contemplate an award of fees incurred with the Lafayette General defendants' Rule 11 motion. The court will deduct the $18,900 in fees[1] expended in connection with the Rule 11 motion along with the $143.58 in mileage and meals incurred in association with the hearing on the Rule 11 motion. Thus,

IT IS ORDERED that the Lafayette General defendants be awarded $29,100.00 in attorney fees and $592.70 in costs for the reasons set forth in the court's preceding Memorandum Ruling. *See* doc. 169.

THUS DONE AND SIGNED in Chambers this 13th day of April, 2023.

/s/ James D. Cain, Jr.
United States District Judge

[1] 47.25 hours at a rate of $400/hour. *See* doc. 170, att. 1.