



Fed.R.Civ.P. 11(c)(2); *Matrix IV, Inc. v. Am. Nat'l Bank & Trust Co. of Chicago*, 649 F.3d 539, 552 (7th Cir. 2011). This practice creates a safe harbor that allows a party to avoid sanctions by amending or retracting a challenged filing. See Fed.R.Civ.P. 11 Advisory Committee's notes (1993 amendments); *see also N. Illinois Telecom, Inc. v. PNC Bank, N.A.*, 850 F.3d 880, 888 (7th Cir. 2017); *Golden v. Helen Sigman & Assocs., Ltd.*, 611 F.3d 356, 363 (7th Cir.2010). If that is not clear enough, the Advisory Committee's notes to the 1993 Amendments leave no doubt: "Given the 'safe harbor' provisions ... a party cannot delay serving its Rule 11 motion until conclusion of the case." *See also Olson v. Reynolds*, 484 F. App'x 61, 64 (7th Cir. 2012); *cf. Matrix IV, Inc. v. Am. Nat. Bank & Tr. Co. of Chicago*, 649 F.3d 539, 553 (7th Cir. 2011)("outer parameters' for filing motions for sanctions is [sic] 90 days."). This motion comes far too late.

Second – and not surprisingly, the defendants give no indication that they complied with Rule 11's safe-harbor requirement by serving plaintiff with notice of their Rule 11 motion 21 days before filing it with the court. Fed.R.Civ.P. 11(c)(2). Of course there isn't; seven months after a case is dismissed there is no "challenged paper . . . [to be] withdrawn or appropriately corrected." But, nevertheless, what the Seventh Circuit has said in a similar circumstance come to mind: "we cannot help but note the irony inherent in a party's procedurally improper request that the court sanction an opposing party for failing to comply with other procedural rules." *Kennedy v. Schneider Elec.*, 893 F.3d 414, 421 (7th Cir. 2018).

Finally, the defendants' basis for sanctions – that plaintiff's FMLA claims were false – is nothing more than an attorney's assertion in a motion. That's neither proof nor evidence. *Mitze v. Colvin*, 782 F.3d 879, 882 (7th Cir. 2015); *Malik v. Holder*, 546 F. App'x 590, 593 (7th Cir. 2013). The withdrawal of a claim doesn't necessarily mean it was false. And, again, the very rule the

defendants are moving under allows for withdrawal of a claim without consequence of sanctions. Fed.R.Civ.P. 11(c)(2). Moreover, at no time in the two months following the filing of the amended complaint did the defendants file a motion for summary for summary judgment, or even a challenge to federal jurisdiction. [Dkt. # 29, Par. 7 (conceding supplemental jurisdiction)]. Again, the case was dismissed in March and it is now October. The time to attack allegations and mount a defense has long passed.

Accordingly, the defendants' motion for sanctions [Dkt. #44] is denied.

ENTERED:

  
UNITED STATES MAGISTRATE JUDGE

DATE: 10/3/18