IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

OAKSTONE COMMUNITY SCHOOL,	:	
	:	**Case No. 2:11-CV-01109**
Plaintiff,	:	
	:	**JUDGE ALGENON L. MARBLEY**
v.	:	
	:	**Magistrate Judge Abel**
CASSANDRA WILLIAMS, *et al.*,	:	
	:	
Defendants.	:	

OPINION & ORDER

This matter is before the Court on the Court's Opinion and Order (Doc. 66) granting Defendants' Motion for Sanctions (Doc. 40). In its Opinion and Order, the Court awarded Defendants sanctions in the amount of "attorneys' fees incurred in responding to conduct by Plaintiff's counsel found to be sanctionable." (Doc. 66 at 12). The Court thus ordered Defendants to submit briefing "detailing the amount of time they reasonably spent responding to Plaintiff's sanctionable conduct and the relevant billing rates for each of those hours." (*Id.* at 13). Defendants have submitted their briefs (*see* Doc. 71, Doc. 72), and Defendant Cassandra Williams, whose counsel performed a majority of the paralegal work, formatting, and filing in this case, asks the Court to award "sanctions in the amount of $43,215 for work performed in response to sanctionable conduct, and . . . sanctions in the amount of $4,350 for work performed in response to this Court's Order, for a total of $47,565" (Doc. 71 at 2); Defendant Thomas Zraik seeks a sanctions in the amount of $6092.35 (Doc. 72-1 at 3).

For the reasons stated herein, the Court awards **$7,500** in sanctions.

I. BACKGROUND

Defendant Williams is a parent of a former student at Plaintiff Oakstone Community School. In 2010, Williams served a complaint on Oakstone under the Individuals with

Disabilities Education Improvement Act ("IDEA") and O.R.C. § 3323.05, for which she was represented by Defendant Zraik, an Ohio attorney. Williams complained that Oakstone had denied her daughter a "free and appropriate public education." (*Am. Compl.*, Doc. 9, ¶¶ 5-7). After an administrative hearing, her complaint was denied. (*See* Doc. 2-1 at 6-7).

On December 12, 2011, in the wake of this decision, Plaintiff filed a Complaint in this Court against Williams and Zraik, seeking payment of fees it incurred during the administrative hearing process, under 20 U.S.C. § 1415(i)(3). (Doc. 2). The Amended Complaint alleged that the administrative complaint brought by Williams was "frivolous, unreasonable, [] without foundation" and was brought for an "improper purpose." (*Am. Compl.*, ¶¶ 2-4). On February 13, 2013, Defendants moved to dismiss for failure to state a claim (Doc. 10), which the Court granted on September 13, 2012 (Doc. 55).

During the pendency of this case, on May 18, 2012, Defendants moved for Sanctions against Plaintiff's counsel, S. Adele Shank, pursuant to Fed. R. Civ. P. 11 and the Court's inherent power to sanction. (Doc. 40). After dismissal, Defendants also moved for attorneys' fees under Fed. R. Civ. P. 54(d) and 20 U.S.C. § 1415(i)(3)(B)(i)(I). (Doc. 55).

On June 12, 2013, the Court granted Defendant's Motion for Sanctions, but denied the Motion for attorneys' fees. (Doc. 66). In the same Opinion and Order, the Court also denied Plaintiff's Motion for Leave to File Supplemental Memorandum (Doc. 57). In particular, the Court found Plaintiff's counsel's Motion for Leave to File Supplemental Memorandum was filed without good cause and cited an out-of-date legal standard, making it sanctionable under Rule 11. (Doc. 66 at 9). The Court also found that Plaintiff's counsel's repeated filing of unsealed, unredacted education records was objectively unreasonable and sanctionable under 28 U.S.C. § 1927. (*Id.* at 10). Lastly, the Court found that Plaintiff's counsel's repeated assertions of non-

existent First Amendment rights lacked any legal basis, were frivolous, and thus also sanctionable under Rule 11. (*Id.* at 10-11). The Court held that the remainder of Plaintiff's counsel's conduct cited by Defendants, however, was not sanctionable. (*Id.* at 12).

Accordingly, the Court awarded to Defendants "the attorneys' fees incurred in responding to conduct by Plaintiff's counsel found to be sanctionable," which was, in sum, "(1) the Motion for Leave to File a Supplemental Memorandum; (2) each instance of Plaintiff not filing under seal the unredacted educational records of a minor; and (3) asserting the non-existent First Amendment rights of a governmental entity." (*Id.* at 12-13). The Court ordered Defendants "to submit a brief detailing the amount of time they reasonably spent responding to Plaintiff's sanctionable conduct and the relevant billing rates for each of those hours." (*Id.* at 13). The Court concluded that, beyond these briefs, "further briefing is not necessary." (*Id.*).

II. STANDARD OF REVIEW

Under Fed. R. Civ. P. 11(c)(4), a sanction imposed "must be limited to what suffices to deter repetition of the conduct or comparable conduct by others similarly situated." If imposed on motion and if warranted, the sanction may include "an order directing payment to the movant of part or all of the reasonable attorney's fees and other expenses directly resulting from the violation." *Id.* While "the purpose of Rule 11 sanctions is to deter rather than to compensate," Fed. R. Civ. P. 11 Advisory Committee Notes (1993 Amendments), "compensating the victim and deterring the perpetrator of Rule 11 violations are not mutually exclusive." *Rentz v. Dynasty Apparel Indus., Inc.*, 556 F.3d 389, 400 (6th Cir. 2009). The Advisory Committee Notes recognize that deterrence "may be ineffective unless the sanction not only requires the person violating the rule to make a monetary payment, but also directs that some or all of this payment be made to those injured by the violation." Fed. R. Civ. P. 11 Advisory Committee Notes (1993

Amendments). Thus, "it is . . . clear that effective deterrence sometimes requires compensating the victim for attorney fees arising from abusive litigation." *Rentz*, 556 F.3d at 400.

The Court "has substantial discretion to determine the nature of the sanctions it imposes." *Id.* at 402. The Court should consider "the nature of the violation committed, the circumstances in which it was committed, the circumstances (including the financial state) of the individual to be sanctioned, and those sanctioning measures that would suffice to deter that individual from similar violations in the future." *Orlett v. Cincinnati Microwave, Inc.*, 954 F.2d 414, 420 (6th Cir. 1992). Generally, courts should "impose the least severe sanction that is likely to deter." *Jackson v. Law Firm of O'Hara, Ruberg, Osborne & Taylor*, 875 F.2d 1224, 1229 (6th Cir. 1989). But it is equally "clear that [] *de minimis* sanctions . . . [may be] simply inadequate to deter Rule 11 violations." *Rentz*, 556 F.3d at 402. In addition, a party seeking attorney's fees as a Rule 11 sanction "must mitigate damages by acting promptly and avoiding any unnecessary expenses in responding to papers that violate the rule." *Jackson*, 875 F.2d at 1230.

III. ANALYSIS

In this case, the Court has already concluded that multiple actions by Plaintiff's counsel were objectively unreasonable, frivolous, or both, and thus sanctionable under Rule 11 or 28 U.S.C. § 1927. (*See* Doc. 66 at 3-12). The Court need not repeat itself here. All that remains is for the Court to determine the amount of sanctions appropriate to deter repetition of the conduct, which may include compensating the victim for attorney fees arising from abusive litigation.

In response to the Court's Opinion and Order, Defendant Williams submits that her attorneys performed $43,215 of work in response to sanctionable conduct, and also asks for $4,350 for the work performed in response to the Court's Opinion and Order. (Doc. 71 at 2). These amounts were based on contemporaneous records of time spent working on this case, after "adjusting time records down to the lowest entry," and "deleting time for clerical, general office

management, or peripheral case issues." (*Id.* at 1). Williams' attached supporting documentation shows that three attorneys and two paralegals worked on this case, for a total of 210.3 hours spent responding to the sanctionable conduct. (Doc. 71-1 at 1). The documentation also shows that Williams' attorneys and paralegal spent 21.3 hours in response to the Court's Opinion and Order. (Doc. 71-2 at 1).

Defendant Zraik submits that, in general, "the parties sought to minimize the charges in this case by working collaboratively to avoid duplication of effort," and so "all paralegal work, formatting and filing was done by Defendant Williams' counsel." (Doc. 72 at 1). Therefore, in response to conduct found to be sanctionable, Zraik's lone attorney expended 24.5 hours of work, for a total of $6092.35 in fees. (Doc. 72-1 at 3, 4-6).

In considering the amounts requested by Defendants, the Court notes that it previously described Plaintiff's counsel's conduct as "egregious," "particularly troubling," taken in "ignorance," "frivolous," and "call[ing] into question [her] good faith." (Doc. 66 at 9-11). The Court found that "a reasonable investigation of the law" or even a "cursory inquiry" would have alerted Plaintiff's counsel to the fact that her motion for leave to file supplemental memorandum "lacked merit." (*Id.* at 9). The Court also noted that Plaintiff's counsel's refusal to file confidential educational records under seal, in the face of repeated requests by Defendants, and during ongoing negotiations, was "objectively unreasonable . . . particularly for a litigator with the experience of Plaintiff's counsel." (*Id.* at 10).

Given the "nature of the violation committed [and] the circumstances in which it was committed," *Orlett*, 954 F.2d at 420, the Court concludes that serious sanctions are necessary to deter future conduct of such a frivolous, vexatious, and damaging nature. But the Court must also consider "the circumstances (including the financial state) of the individual to be

sanctioned." *Id.* Although the Court explicitly stated that "further briefing [would] not [be] necessary" on this issue (Doc. 66 at 13), nevertheless Plaintiff's counsel filed a 43-page Memorandum in Opposition (Doc. 73), in which she lodged various objections, most of which the Court has already rejected, to Defendants' billing calculations and legal conclusions. With regard to her ability to pay, Plaintiff's counsel argued that the sanctions imposed should be moderated by the fact that she "runs a solo practice," where much of her work comes from court appointments "that are paid well below market rates." (Doc. 73 at 42).

Accordingly, in light of Rule 11's purpose of deterring improper conduct, as well as the necessity of compensating victims of abusive litigation, and after consideration of the nature of the violation committed, the circumstances in which it was committed, and the circumstances of the individual to be sanctioned, the Court in its discretion determines that sanctions in the amount of $7,500 are warranted. Although this is less that the amount sought by Defendants, the Court concludes that this amount is appropriate, taking into consideration the sanctioned party's ability to pay, while still satisfying Rule 11's mandate that the Court "impose the least severe sanction that is likely to deter." *Jackson*, 875 F.2d at 1229.

IV. CONCLUSION

For the foregoing reasons, the Court hereby **SANCTIONS** Plaintiff's counsel in the amount of **$7,500**.

IT IS SO ORDERED.

/s/ Algenon L. Marbley
ALGENON L. MARBLEY
UNITED STATES DISTRICT JUDGE

DATED: July 23, 2014