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

STELLA MORRISON,	§	
	§	
v.	§	NO. 1:13-CV-00327-KFG
	§	
LAYNE WALKER, et al.	§	
	§	

ORDER GRANTING IN PART MOTIONS FOR ATTORNEYS' FEES

Two motions are pending before the court: Defendant Layne Walker's "Motion for Attorneys' Fees and Expenses" (Doc. No. 110) and "Motion to Reopen and Supplement Motion for Attorneys' Fees and Expenses." Doc. No. 160. The pending motions argue that Plaintiff Stella Morrison and her attorney, John S. Morgan, are jointly liable for the full amount of fees incurred by Walker in defending this suit because the claims asserted against Walker were frivolous. The motions will be granted in part and denied in part. Though one of Morrison's claims was certainly frivolous and without factual foundation, the court will not impose any of Walker's costs on Morrison. However, because Morgan unreasonably and vexatiously multiplied the proceedings with an improper motive, and in reckless violation of a duty he owed to the court, some of Walker's costs will be imposed on Morgan.

I. Background

The present matter has an extensive history of litigation, stretching back almost five years. On May 22, 2013, Morrison, a local attorney in Jefferson County, Texas, filed a complaint against three defendants: Walker, Jefferson County, and the State of Texas. Doc. No. 1. The parties consented to proceed before United States Magistrate Judge Zack Hawthorn. Doc. No. 27. Morrison asserted multiple violations of her First Amendment rights to free speech and freedom of association, her Fourteenth Amendment rights to due process and equal

protection, claims under 42 U.S.C. §§ 1981 and 1983, and several state law torts. *See generally id.* Her state law claims included an allegation that Walker had Morrison falsely prosecuted for perjury ("false perjury claim"). *See id.* ¶¶ 10, 19, 22. Morrison alleged that these violations all occurred while Walker served as the presiding judge for the 252nd Judicial District Court of Jefferson County, Texas, a position he held at all times relevant to the lawsuit until his resignation in 2014. *Id.* ¶ 6. Morrison argued that judicial immunity did not apply to Walker because "[n]one of Judge Layne Walker's vindictive actions pled in this Complaint are based upon him actually adjudicating a case in his court." *Id.* ¶ 28. Morrison further alleged that the impetus for Walker's alleged misconduct was a grudge Walker held against Morrison and her husband for her husband's decision to run against Walker in the 2006 judicial election. Doc. No. 74, at 2.

Walker's motion to dismiss all of the claims in the Original Complaint was granted. *See* Doc. No. 32. Aside from the false perjury claim, all of the federal and state claims were dismissed with prejudice because they were barred by judicial immunity or precluded by Tex. Civ. Prac. & Rem. Code § 101.106, and amending those claims would be futile. *Id.* at 16. For the false perjury claim, Judge Hawthorn determined that the initial pleading of the false perjury claim did not immediately appear "patently frivolous or [that] an amendment could not cure [the] defects. Therefore, Morrison is directed to replead [the false perjury claim] . . . with the requisite particularity as required by Rule 12(b)(6)." *Id.* A footnote instructed Morrison to answer a series of seven questions about the factual bases of the false perjury claim if she filed an amended complaint, including: "1. When did Walker fabricate perjury charges?" and "4. Did the perjury charges concern activity in [Walker's] court?" *Id.* at 16 n.5.

Morrison sought leave on three separate occasions to file substitute versions of her complaint (*see* Doc. Nos. 36, 46, 73), and Judge Hawthorn granted Morrison leave each time. Morrison's final version of her complaint included claims against Walker, former Jefferson County District Attorney Tom Maness, Jefferson County Sherriff's Deputy Anthony Barker, and Jefferson County. *See* Doc. No. 74. In response with Judge Hawthorn's footnote instruction (*see* Doc. No. 32, at 16 n.5), Morrison answered at least some of the seven questions to support her false perjury claim with slightly more robust factual allegations. *See* Doc. No. 74, ¶¶ 13–14. Specifically, Morrison claimed the events underlying the false perjury charge occurred circa 2010 in connection with a case in Judge Gist's court, not Judge Walker's court. *Id.* These factual contentions ultimately turned out to be false.

Walker filed a motion to dismiss the complaint (Doc. No. 78), and Morrison filed a response. Doc. No. 85. Walker's reply to Morrison's response introduced an uncertified transcript showing that the events underlying the false perjury claim occurred in 2006 in a case before Walker, styled, *State of Texas v. Peter Tran*, No. 96185m in the 252nd Judicial District Court of Jefferson County, Texas, on April 19, 2006. *See* Doc. No. 90, at 8–9; Doc. No. 90-3 (*Peter Tran* transcript). Morrison's sur-reply argued there was "no way of verifying whether this is a true and correct copy of the [*Peter Tran*] transcript, or whether this was the underlying proceeding at issue." Doc. No. 92, at 5. Morrison's counsel included the following in a sur-reply footnote:

> Due to age and health issues, Morrison could not recall the specific, underlying proceeding that lead [sic] to the criminal allegations. Morrison related the underlying proceeding occurred before Judge Gist. The undersigned shall show Morrison this excerpted transcript and determine if it refreshes Morrison's memory on the issue. If in fact the underlying proceeding occurred before Walker, the Undersigned shall inform the Court.

Id. at 5 n.1. Morrison's counsel did not timely inform the court.

On August 21, 2015, Judge Hawthorn ordered Morrison to file a more definite statement for the facts underlying her false perjury claim, and also ordered Walker to file a certified version of the *Peter Tran* transcript. Doc. No. 102. One week later, Walker filed the certified transcript (Doc. No. 103), and Morrison motioned to dismiss her false perjury claim because she admitted the claim arose from the *Peter Tran* case in Walker's court, entitling Walker to judicial immunity. Doc. Nos. 104, 105.

Judge Hawthorn granted the motion dismissing the false perjury charge (Doc. No. 106), and he also granted the motions to dismiss filed by the other Defendants. Doc. No. 107. On November 2, 2015, observing no Defendants or claims remained, Judge Hawthorn entered final judgment. Doc. No. 108.

Walker then filed his original motion for attorney's fees to be paid by Morrison under 42 U.S.C. § 1988 and by Morgan under 28 U.S.C. § 1927. Doc. No. 110. An evidentiary hearing was set for May 12, 2016, to consider Walker's motion. Doc. No. 119. Morrison subsequently requested two separate continuances of the evidentiary hearing, both of which were granted by Judge Hawthorn, and the hearing on Walker's motion for attorney's fees was set for July 21, 2016. Doc. No. 124. The hearing before Judge Hawthorn never took place because he eventually recused himself. Doc. No. 136. The case was then reassigned to the undersigned. *Id.*

Soon thereafter, Morrison filed a Rule 60(b) motion for relief from Judge Hawthorn's final judgment (Doc. No. 139), and the Court of Appeals for the Fifth Circuit issued an order remanding Morrison's appeal of this case to this court pending disposition of her Rule 60(b) motion. Doc. No. 144. The Rule 60(b) motion was denied (Doc. No. 145), Morrison filed an appeal (Doc. No. 152), and the Fifth Circuit affirmed denial of the motion. Doc. No. 157. On September 27, 2017, the Fifth Circuit remanded the case to this court "to consider whether to

award Walker attorney's fees." Doc. No. 156. On October 19, 2017, Walker filed the pending motion to reopen and supplement his request for attorneys' fees. Doc. No. 160. The parties have fully briefed the issues (*see* Doc. Nos. 160, 165, 166, 171, 175, 176, 180, 181), and a hearing was held before the undersigned on May 17, 2018. *See* Doc. No. 178.

II. Analysis for Plaintiff Stella Morrison

A. 42 U.S.C. § 1988 standard for Morrison to pay attorneys' fees

Section 1988 gives the court discretion to award attorney's fees to a "prevailing party" in a civil rights case. 42 U.S.C. § 1988; *Fox v. Vice*, 563 U.S. 826, 832–33 (2011). If the prevailing party is a defendant, fees may be appropriate if the plaintiff's action was "frivolous, unreasonable, or without foundation." *Id.* (citing *Christiansburg Garment Co. v. EEOC*, 434 U.S. 412, 421 (1978)); *see, e.g.*, *DeLeon v. City of Haltom City*, 113 F. App'x 577, 578 (5th Cir. 2004) (affirming award of attorney's fees where the defendant was "unequivocally protected from liability by absolute judicial immunity"). A defendant is not entitled to any fees arising from non-frivolous claims, "but the presence of reasonable allegations in a suit does not immunize the plaintiff against paying for the fees that his frivolous claims imposed." *Id.* at 834. Additionally, attorneys' fees can be awarded for the entire course of litigation, including appeals. *Alizadeh v. Safeway Stores, Inc.*, 910 F.2d 234, 237–38 (5th Cir. 1990); *see also Johnson v. State of Miss.*, 606 F.2d 635, 638 (attorneys' fees can be awarded even for time spent litigating the request for attorneys' fees).

B. Morrison's non-frivolous claims

1. Constitutional and civil rights claims in Original Complaint

Morrison brought constitutional and civil rights claims against Walker for various conduct, including: filing grievances against Morrison, having Morrison removed from the

hallway outside Walker's chambers, general unprofessional treatment toward Morrison that hindered her ability to practice law, and holding Morrison in contempt of court. *See* Doc. No. 1; Doc. No. 74. Though Judge Hawthorn granted Walker's motion to dismiss all of these claims because Walker enjoyed judicial immunity, Judge Hawthorn did not indicate that all of the claims were wholly frivolous, unreasonable, or without foundation. *See generally* Doc. No. 32. Morrison urged the court to reject Walker's judicial immunity defense by following *Harper v. Merckle*, 638 F.2d 848 (5th Cir. 1981) because Walker allegedly "us[ed] his authority as a judge 'as an offensive weapon to vindicate personal objectives.'" Doc. No. 1, ¶ 28. The *Harper* court clarified that its holding was "exceedingly narrow and is tailored to this, the rarest of factual settings." *Id.* at 859. The Fifth Circuit subsequently labeled *Harper* "virtually without precedential value" because it is so limited to a rare factual setting, though *Harper* has not been explicitly overruled. *Adams v. McIlhany*, 764 F.2d 294, 298 n.4 (5th Cir. 1985). Though Judge Hawthorn distinguished Morrison's claims from *Harper*'s rare factual setting, Morrison's reliance on *Harper* was not wholly frivolous, unreasonable, or without foundation for all of her constitutional and civil rights claims. Accordingly, Morrison's constitutional and civil rights claims in her Original Complaint do not warrant attorneys' fees under the standard of 42 U.S.C. § 1988.

2. State tort law claims in Original Complaint

Morrison also included state tort law claims of negligence, gross negligence, negligence *per se*, tortious interference with business relationships, defamation, defamation *per se*, and intentional infliction of emotional distress against Walker. *See* Doc. No. 1; Doc. No. 74. Judge Hawthorn accepted Walker's argument that these claims were barred by Tex. Civ. Prac. & Rem. Code § 101.106(f) because Walker was a government employee acting in his individual capacity

within the scope of his employment. *See* Doc. No. 32, at 14. Morrison argued that Walker acted outside the scope of his employment. *See* Doc. No. 22, at 28–30. Despite Morrison's argument ultimately being rejected, the court holds Morrison's argument was not wholly frivolous, unreasonable, or without foundation. Accordingly, these state law tort claims do not warrant attorneys' fees under the standard of 42 U.S.C. § 1988.

B. Morrison's false perjury claim was frivolous, but the court will not require Morrison to pay attorneys' fees

Aside from the false perjury claim, the court has explained that Morrison's constitutional, civil rights, and state law claims against Walker in the Original Complaint were not frivolous, but these claims were all dismissed with prejudice. *See* Doc. No. 32, at 15–16. Though Morrison may have attempted to replead some or all of these claims, Judge Hawthorn specifically noted that "the *only* live claim against Walker" in the Amended Complaint was the false perjury claim. Doc. No. 59, at 2.

Morrison's false perjury claim was eventually shown to be frivolous, unreasonable, and without foundation when the *Peter Tran* transcript revealed that the underlying events for the false perjury claim occurred in Walker's courtroom, affording Walker judicial immunity. Approximately four months before Morrison filed this lawsuit, she exhibited a detailed knowledge of the facts and location of the *Peter Tran* case in a grievance response she filed with the State Bar of Texas. Doc. No. 160, at PDF 129–132. At the hearing on May 17, 2018, Morrison "very clearly" remembered the facts surrounding the *Peter Tran* case. Doc. No. 183, at 17:10–17. Thus, it was only during the pendency of this lawsuit that Morrison either forgot the true facts or she allowed Morgan to file pleadings containing false contentions. Morgan claims that he perceived Morrison had memory deficits in 2013, and she "was sketchy on the details" underlying the false perjury allegation. Doc. No. 183, at 56:11–20. Morgan also claims that

Morrison told him that the case underlying the false perjury claim was in Judge Gist's court, not Walker's court. Doc. No. 92, at 5 n.1.

It is well established that Morrison knew the true facts about the *Peter Tran* case before filing this lawsuit in 2013 and at the hearing in 2018. It is not clear how four different complaints were filed in Morrison's name with false factual contentions about the location of the *Peter Tran* case during the pendency of the suit. Several scenarios are possible,[1] but the most likely scenario based on the evidence, record, and credible testimony of the witnesses at the hearing is the following: Morrison retained her memory of the *Peter Tran* case during the pendency of this lawsuit, Morgan did not adequately interview his client about the facts, Morgan jumped to improper and false conclusions to try to make the case against Walker stronger, and Morrison allowed Morgan to plead false contentions (either by her own ignorance or malice). There is not enough evidence to determine if Morrison knowingly allowed Morgan to plead false contentions, or if she was

Regardless of the state of Morrison's memory at the time she filed this case, there is little evidence that she knowingly filed the false perjury claim with particular false factual contentions in order to defeat Walker's judicial immunity. Based on Morrison's other claims against Walker and her testimony at the hearing, it is evident that Morrison believes she was truly wronged by Walker in some way, and she believes that Walker broke the law with his conduct toward her. Not all of Morrison's claims in this lawsuit were wholly meritless. Though the false perjury

[1] Other possible scenarios include: (1) Morrison had an unlikely-but-actual memory deficit while the case was pending, she innocently misremembered the *Peter Tran* case being before Judge Gist, she never revealed any facts to Morgan suggesting that the case was before Walker, and Morrison thought the pleadings were true; (2) Morrison purposefully concealed the truth from Morgan, she did not correct Morgan when he assumed that the case was not in Walker's court, and she allowed Morgan to file the complaints with false contentions; and (3) Morrison told Morgan the true story of the *Peter Tran* case, Morgan purposefully pleaded false contentions anyway, and Morrison allowed Morgan to do so. Though each of these scenarios are possible, the court does not find enough credible evidence to support any of these scenarios.

claim was meritless, the court will not exercise its discretion to impose any of Walker's costs on Morrison under 42 U.S.C. § 1988.

III. Analysis for Attorney John Morgan

A. 28 U.S.C. § 1927 standard for Morgan to pay attorneys' fees

Section 1927 provides: "Any attorney . . . who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct." 28 U.S.C. § 1927; *see Edwards v. General Motors Corp.*, 153 F.3d 242, 246 (5th Cir. 1998) (clarifying the sanctioned attorney's actions must be both unreasonable *and* vexatious). In the Fifth Circuit, an unreasonable and vexatious multiplication of the proceedings requires "evidence of bad faith, improper motive, or reckless disregard of the duty owed to the court." *Procter & Gamble Co. v. Amway Corp.*, 280 F.3d 519, 525 (5th Cir. 2002). Section 1927 only authorizes shifting fees that are associated with the persistent prosecution of a meritless claim. *Procter & Gamble*, 280 F.3d at 525 (citing *Browning v. Kramer*, 931 F.2d 340, 345 (5th Cir. 1991)). Section 1927 is to be construed in favor of the sanctioned party. *Id.* at 526 (citing *FDIC v. Conner*, 20 F.3d 1376, 1384 (5th Cir. 1994). Imposing sanctions under § 1927 requires clear and convincing evidence that sanctions are justified. *Lawyers Title Ins. Corp. v. Doubletree Partners, L.P.*, 739 F.3d 848, 872 (5th Cir. 2014). Shifting the entire cost of defense requires proving "that *every facet* of the litigation was patently meritless, and counsel must have lacked a reason to file the suit and must wrongfully have persisted in its prosecution through discovery, pre-trial motions, and trial." *Procter & Gamble*, 280 F.3d at 526 (internal citation omitted) (emphasis in original).

To make an award under § 1927, the court must "(1) identify sanctionable conduct and distinguish it from the reasons for deciding the case on the merits, (2) link the sanctionable

conduct to the size of the sanctions, and (3) differentiate between sanctions awarded under different statutes." *Lawyers Title Ins.*, 739 F.3d at 872 (citation omitted) (internal quotation marks omitted).

B. FED. R. CIV. P. 11(b) standard for representations to the court

Walker has not moved for sanctions to be imposed against Morgan under Rule 11, but Rule 11(b) creates a duty Morgan owed to the court. Under Rule 11(b), attorneys have a duty to make reasonable inquiries under the circumstances before making representations to the court:

> By presenting to the court a pleading, written motion, or other paper—whether by signing, filing, submitting, or later advocating it—an attorney or unrepresented party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:
>
> (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;
>
> (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; and
>
> (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.

FED. R. CIV. P. 11(b). Rule 11 is designed to "reduce the reluctance of courts to impose sanctions" by emphasizing and enforcing the duties of attorneys through the imposition of sanctions. *Jenkins v. Methodist Hosps. of Dallas, Inc.*, 478 F.3d 255, 263 (5th Cir. 2007) (citing *Thomas v. Capital Sec. Servs., Inc.*, 836 F.2d 866, 870 (5th Cir. 1988)). "A Rule 11 signature does not swear to the truth of facts in a submission to the court, but only to the belief that they have or will have, after investigation, evidentiary support." *McAlpine v. Porsche Cars N. Am. Inc.*, 428 F. App'x 261, 264 (5th Cir. 2010). Pleadings cannot be based on pure speculation, and "Rule 11 requires that any factual statements be supported by evidence known to the pleader, or, when specifically so identified, will likely have evidentiary support after discovery. There has to

be more underlying a complaint than a hope that events happened in a certain way." *Floyd v. City of Kenner, La.*, 351 F. App'x 890, 898 (5th Cir. 2009) (citing FED. R. CIV. P. 11(b)(3)) (internal quotation marks omitted). "The task for the district court under Rule 11 and § 1927 is only to decide whether an attorney has failed to conduct a reasonable inquiry into the law and the facts and comply with 'an objective standard of reasonableness under the circumstances.'" *Trinity Gas Corp. v. City Bank & Tr. Co. of Natchitoches*, 54 F. App'x 591 (5th Cir. 2002) (quoting *F.D.I.C. v. Calhoun*, 34 F.3d 1291, 1296 (5th Cir. 1994)).

C. Pleading the false perjury claim in the Original Complaint violated Morgan's Rule 11(b) duty

Morgan's articulation of judicial immunity in the Original Complaint illustrates that he understood at the time how broad and effective of a defense judicial immunity can be, and he was very careful to point out how the pleaded facts could defeat a judicial immunity defense. *See generally* Doc. No. 1. It is also very clear that Morgan understands the importance of the *site* of judicial conduct in judicial immunity inquiries under the *Ballard* factors (especially if the site is a defendant judge's courtroom). *See e.g.*, Doc. No. 183, at 116:22–117:7. Despite Morgan's in-depth knowledge of judicial immunity and his need to plead facts carefully, the Original Complaint all-too-conveniently does not specify which court Morrison was in for the false perjury allegation. Instead, the Original Complaint broadly pleads that "[n]one of Judge Layne Walker's vindictive actions pled in this Complaint are based upon him actually adjudicating a case in his court" (Doc. No. 1, ¶ 28), and "[t]here was not and is no pending proceeding lawfully assigned to the 252nd Judicial District Court that forms the basis of any of these unlawful actions." *Id.* ¶ 31. These two statements from the Original Complaint are now known to be false because the *Peter Tran* case was before Walker, and the false perjury claim arose from activity in the *Peter Tran* case inside Walker's courtroom. Because the false perjury

claim was based on a false factual contention about the location of the underlying events, the false perjury cause of action was wholly *meritless* and frivolous throughout the duration of the lawsuit.[2]

Before filing the Original Complaint, Morgan had a duty under Rule 11(b)(3) to perform a reasonable inquiry under the circumstances to determine that the factual contentions in the Original Complaint had evidentiary support, or in the alternative, Morgan could "specifically so identif[y]" that the factual contentions "will likely have evidentiary support after a reasonable opportunity for further investigation or discovery." FED. R. CIV. P. 11(b)(3). The Original Complaint makes the false factual contention that all of Morrison's causes of action lacked any connection with cases before Walker (Doc. No. 1, ¶¶ 28, 31), but the Original Complaint does not specifically identify any evidentiary support for this contention or how this contention would eventually have evidentiary support after reasonable discovery or further investigation. Because of the failure to specifically identify evidentiary support or identify future evidentiary support expected, Morgan violated his duty under Rule 11(b) when he filed the Original Complaint. However, Morgan's violation of Rule 11(b) when he filed the Original Complaint does not, in itself, result in sanctions because Walker has not moved for sanctions under Rule 11, and violating Rule 11 does not automatically merit sanctions under § 1927.

Even if it may be permissible for the court to sanction Morgan under Rule 11 based on his inclusion of a false contention in the Original Complaint, the court exercises its discretion and declines to impose a Rule 11 sanction. Additionally, no sanction under § 1927 is appropriate for filing the Original Complaint because § 1927 requires an unreasonable and vexatious *multiplication* of the proceedings. Filing the Original Complaint itself did not multiply the

[2] Not all of Morrison's causes of action were wholly meritless or frivolous, but the false perjury claim certainly was.

proceedings enough at that point to qualify as sanctionable conduct under § 1927—Morgan's conduct constituting unreasonable and vexatious multiplication of the proceedings came when filing subsequent amended complaints.

D. Sanctions are justified, but will not be imposed for filing January 2014 Amended Complaint

Aside from the false perjury claim, Judge Hawthorn dismissed *with prejudice* all of Morrison's claims against Walker in the Original Complaint. *See* Doc. No. 32, at 16. The false perjury claim was dismissed without prejudice, and Morrison was permitted to amend that claim because it was not immediately apparent that the claim was patently frivolous or that an amendment could not cure its defects. *Id.* Judge Hawthorn's order instructed Morrison to answer seven specific questions about the facts underlying the false perjury claim if she chose to amend her complaint. *See id.*

Morrison filed an amended complaint, and she was later granted leave to file two other substitute versions of the amended complaint. Each of the three versions of Morrison's amended complaint are confusingly titled "First Amended Complaint." For clarity in the ensuing analysis, each complaint will now be distinguished by the month and year in which it was filed as part of its title, and the word "First" will be omitted from all of the amended complaints:

1. May 2013 Original Complaint (Doc. No. 1);
2. January 2014 Amended Complaint (Doc. No. 36-2);
3. May 2014 Amended Complaint (Doc. No. 46-2);
4. December 2014 Amended Complaint (Doc. No. 74).

Each of the four versions of the complaint included the false perjury claim against Walker, and each complaint pleaded that the events underlying the false perjury claim did not occur in Walker's courtroom or in connection with a case before Walker. *See* Doc. No. 1, ¶¶ 28, 31; Doc. No. 36-2, ¶ 18; Doc. No. 46-2, ¶ 13; Doc. No. 74, ¶ 13.

1. False perjury claim in January 2014 Amended Complaint was meritless and violated Rule 11(b) duty

As explained above, Morgan violated his duty under Rule 11(b) when he filed the May 2013 Original Complaint because of his failure to specifically identify evidentiary support or identify evidentiary support he expected after further investigation/discovery concerning the false perjury claim. Morgan also violated the same duty under Rule 11(b) when he filed the January 2014 Amended Complaint. The January 2014 Amended Complaint affirmatively pleaded that the "false criminal charges did not center upon a case either pending or that had been adjudicated in Walker's former court. To the contrary, the charges were based upon a case pending in Drug Court, presided over by Judge Gist." Doc. No. 36-2, ¶ 19. Of course, this was a false assertion because the *Peter Tran* case was before Walker.

The January 2014 Amended Complaint again demonstrated Morgan's in-depth understanding of judicial immunity law and how he carefully pleaded each factor for judicial immunity analysis. *See id.* Morgan was also on notice from Judge Hawthorn's order that any amended complaint must answer a set of specific questions about the false perjury claim, including "4. Did the perjury charges concern activity in [Walker's] court?" Doc. No. 32, 16 n.5. Despite Morgan's knowledge of judicial immunity law, the requirements on Morgan from Rule 11(b), and clear instructions from Judge Hawthorn to answer a list of specific questions, the January 2014 Amended Complaint erroneously pleaded that the case underlying the false perjury claim was in Judge Gist's court.

Morgan had a duty under Rule 11(b)(3) to perform a reasonable inquiry under the circumstances to determine that the factual contentions in the January 2014 Amended Complaint had evidentiary support or to specifically identify the factual contentions that would "likely have evidentiary support after a reasonable opportunity for further investigation or discovery." FED.

R. CIV. P. 11(b)(3). Morgan first failed this duty in the May 2013 Original Complaint, and he failed it again in the January 2014 Amended Complaint. The failure in the January 2014 Amended Complaint is even more egregious than the prior failure because the amended complaint affirmatively pleaded that the events took place *in Judge Gist's court specifically*. The May 2013 Original Complaint was ambiguous about the court and location (which is bad enough in itself), but the January 2014 Amended Complaint crossed the line by making a false factual contention. Morgan failed to perform a reasonable inquiry under the circumstances because there is no credible evidence that the facts underlying the false perjury allegation ever had a connection to any case before Judge Gist. The January 2014 Amended Complaint also gives no indication how such a factual contention would ultimately have evidentiary support after a reasonable opportunity for further investigation or discovery. Accordingly, Morgan failed the duty he owed under Rule 11(b) when he filed the January 2014 Amended Complaint. However, the court is not imposing Rule 11 sanctions on Morgan. Instead, the Rule 11 violation is helpful for the § 1927 analysis.

2. Section 1927 sanctions are justified for January 2014 Amended Complaint

In order to sanction Morgan under § 1927, he must have multiplied the proceedings unreasonably and vexatiously, with "evidence of bad faith, improper motive, or reckless disregard of the duty owed to the court." *Procter & Gamble*, 280 F.3d at 525. By including the meritless false perjury claim in the May 2013 Original Complaint *and* the January 2014 Amended Complaint, Morgan persistently prosecuted a meritless claim. The multiplication of the proceedings in this manner was *unreasonable* because the claim lacked any factual merit, Morgan never offered any credible evidence to support the claim, Morgan was on notice from Judge Hawthorn's order to plead accurate and specific facts about the false perjury claim, and

Morgan could have discovered the accurate information about the *Peter Tran* case with reasonable efforts. *See infra* § III.E (discussing ways Morgan could have discovered the true facts). Morgan's conduct was also *vexatious* because of Morgan's improper motives in pursuing a case against Walker. Morgan's motives deserve further inquiry.

When questioned at the hearing by opposing counsel, Mark Sparks, Morgan effectively admitted to having improper motives, and there is clear and convincing evidence of Morgan's improper motives. *See* Doc. No. 183, at 64:8–15 (Morgan admits that he was "angry" with Judge Walker in 2013 for how he had previously overseen a custody matter of Morgan's children, though Morgan claims to harbor no more animus because he has "learned the importance of forgiveness."); *id.* at 107:15–21 (In his closing statement, Sparks misspoke and said Morgan had been "clouded with his anger" against Judge Hawthorn, and Morgan corrected him to "Judge Walker, not [Judge Hawthorn.]"); *id.* at 116:4–5 (Morgan: "So the anger and hostility, in 2018 is gone from my perspective."); *id.* at 53:24–54:7 (Morgan admits to filing at least three separate lawsuits against Walker); *id.* at 90:11–92:17 (While the lawsuit was still pending, Morgan admitted that he had attended a small public rally against Walker, and Morgan contributed $250 to the rally); *id.* at 111:2–4 (Morgan did not object when the undersigned verbally agreed with Mr. Sparks that it is "undisputed" that both Morrison and Morgan "have animosity toward Judge Walker."); *id.* at 75:2–10 (Sparks: "[D]id your animus towards the lawyers in this case or Judge Walker ever cause you to put something in a complaint that had a motive that wasn't pure to harass or annoy or embarrass?" Morgan: "Like yourself, your first Motions to Dismiss were stricken, because they were full of just personal attacks, I did put some personal attacks and comments that I should not have, and I withdrew the complaint and substituted another one. That's correct."). Additionally, Judge Hawthorn previously pointed out

that the behavior of the attorneys in this case was driven by "personal animus."[3] Based on all of the evidence above from the hearing, as well as the record and other testimony, Morgan's improper motives for filing the case satisfy the *vexatious* requirement of § 1927 analysis.

In addition to his improper motive satisfying the *vexatious* requirement of § 1927, Morgan's conduct also satisfies that requirement by his "reckless disregard of the duty owed to the court." *Procter & Gamble*, 280 F.3d at 525. As discussed above, the January 2014 Amended Complaint violated Morgan's Rule 11(b) duty to perform a reasonable inquiry under the circumstances. Judge Hawthorn had specifically put Morgan on notice that he needed to plead the false perjury claim with "requisite particularity" and answer seven specific questions. Doc. No. 32, at 16; *id.* at 16 n.5. Though Morgan was on notice, he recklessly disregarded his duty under Rule 11(b) anyway. Morgan's failure to make reasonable efforts to discover the true facts underlying the false perjury claim recklessly disregarded the duty he owed to the court.

3. Sanctions will not be imposed for January 2014 Amended Complaint

Morgan multiplied the proceedings by persistently prosecuting the meritless false perjury claim in the May 2013 Original Complaint and January 2014 Amended Complaint. This conduct was unreasonable and vexatious given that the false perjury claim was wholly without factual foundation (i.e. meritless), no evidence supported the facts as pleaded, Judge Hawthorn had put Morgan on notice to plead carefully in answering the list of seven questions, Morgan operated out of an impure motive against Walker, and Morgan recklessly disregarded the duty he owed to

[3] "It is abundantly clear that this litigation is about much more than Morrison attempting to vindicate the alleged violation of her civil rights. Instead, it appears this lawsuit is also being used as a vehicle for the attorneys to attempt to settle old scores and perhaps create new ones between themselves and the litigants. This is not the forum to do it. What is particularly disheartening is counsel for Morrison and Walker's behavior in this case is inconsistent with their otherwise laudable conduct in prior litigation before the undersigned and the court in general. *The only conclusion to be drawn is that their behavior here is being driven by emotional investment and personal animus*, not by skilled and logical advocacy based upon the relevant law and facts. If counsels' extrinsic issues are going to cloud their professional judgment, the undersigned urges them to strongly consider either adding an attorney or withdrawing in favor of attorney who is objective and can zealously represent their client within the bounds of ethical conduct." Doc. No. 72, at 7 (emphasis added).

the court under Rule 11(b). All of the conclusions above are supported by clear and convincing evidence from the record, evidence, and the credible portions of testimony from the witnesses at the hearing. Thus, there is clear and convincing evidence that sanctions under § 1927 are justified for Morgan's behavior on (and after) January 31, 2014, when he filed the January 2014 Amended Complaint. Doc. No. 36-2. Certainly by January 31, 2014 (if not long beforehand), Morgan should have voluntarily dismissed Walker from the lawsuit because he no longer had factual support to allege any claims with merit against Walker, but instead Morgan chose to multiply the case by filing the January 2014 Amended Complaint containing the meritless false perjury claim.

Though imposing § 1927 sanctions on Morgan would be totally justified for filing the January 2014 Amended Complaint to prolong the meritless case against Walker, the court—exercising discretion and choosing to dispense mercy graciously—will not impose sanctions on Morgan for filing the January 2014 Amended Complaint. Section 1927 is to be construed in favor of the sanctioned party, and the court retains discretion whether or not to impose sanctions. *Procter & Gamble*, 280 F.3d at 526. Given the harsh nature of the § 1927 sanction, and the extent of the court's discretion, the court finds a measure of mercy appropriate. However, as explained below, the court will impose § 1927 sanctions on Morgan for identical conduct he repeated a few months later.

E. Sanctions for May 2014 Amended Complaint

The May 2014 Amended Complaint repeated the same grave mistakes as the January 2014 Amended Complaint: again, Morgan baselessly represented that the false perjury claim resulted from conduct in Judge Gist's court, and Morgan failed to comply with his Rule 11(b) duty to support or clarify that contention. *See* Doc. No. 46-2, ¶ 13. Morgan's failure to comply

with Rule 11(b) in the May 2014 Amended Complaint is even more egregious than his failures for the first two versions of the complaint because he had more time to research the underlying facts of the allegations but apparently chose not to do so in earnest. As explained above, § 1927 sanctions are justified for Morgan's filing of the January 2014 Amended Complaint, though the court decides in its discretion not impose those sanctions. No such lenity will be given for Morgan's subsequent filing of the May 2014 Amended Complaint.

As of May 20, 2014, the date when the May 2014 Amended Complaint was filed (Doc. No. 46-2), the case had been pending for about one year.[4] A reasonable lawyer would have used this year to further research the claims to bolster or dismiss those that lacked merit. This is especially true for an attorney in Morgan's position for three reasons: (1) Morgan claimed, under oath, that his client "was sketchy on the details" underlying the false perjury allegation (Doc. No. 183, at 56:11–20); (2) Morgan claims he had already determined "even in 2013 . . . [Morrison] had some memory deficits" (*id.* at 64:22–23, 70:4–5); and (3) Judge Hawthorn had specifically ordered Morgan to answer a list of seven questions in any amended pleadings concerning the false perjury claim. Doc. No. 32, at 16 n.5.

It would not have been very difficult for Morgan to find the accurate information about the *Peter Tran* case because this information was obtainable from at least three sources: First, Morgan filed an affidavit with each complaint specifically referencing the *Peter Tran* case being in Walker's court. The affidavit also included another clue (information about Morrison substituting for another attorney) that might have led Morgan to realize this was the underlying case for the false perjury allegation.[5] Second, Morgan was aware of the grievance documents

[4] 363 days, to be precise.

[5] Morgan attached an affidavit to each complaint from Bailiff Rodney Williams referencing the *Peter Tran* case being before Walker, and it also included the fact that Morrison had recently substituted for another attorney in *Peter Tran*. *See, e.g.*, Doc. No. 1, Ex. 1. This latter fact about substitution could have been a clue based on

Walker filed against Morrison with the Texas State Bar, and Morrison's responses to one of those grievances described the *Peter Tran* case in great detail.[6] Morgan should have read Morrison's grievance responses before filing the case, and at the very least he should have read them during the intervening year between filing the case and filing the May 2014 Amended Complaint. Third, Morrison showed no memory deficits at the hearing concerning the events of the *Peter Tran* case, and Morgan should have obtained the necessary information *from Morrison herself* by diligently asked her relevant questions. Morrison's memory as a source merits further discussion.

Four months before the lawsuit was filed, Morrison clearly remembered the events of the *Peter Tran* case in Walker's court, as evidenced by her detailed descriptions of the case in her grievance responses. *See* Doc. No. 160, at PDF 96–98, 129–132.[7] At the hearing, Morrison testified that she still remembers "very clearly" the *Peter Tran* case and the facts underlying the false perjury charge from Walker's courtroom. Doc. No. 183, at 17:10–17. Based on her own memory, and not based on a refreshed recollection from grievance documents, Morrison recalled the location of the *Peter Tran* case being in Walker's court at the hearing. *Id.* at 26:15–27:4. Morrison still remembers a remarkable number of very specific details surrounding the *Peter*

Morrison's memory of substituting for another attorney, even if Morgan did not know the name "Peter Tran" correlated with the case underlying the false perjury claim.

[6] The May 2013 Original Complaint (and all other complaints) referenced grievance documents Walker filed against Morrison with the Texas State Bar to have her law license revoked. *See e.g.*, Doc. No. 1, ¶ 9. The May 2013 Original Complaint even quotes a particular grievance document Walker filed. *See id.* (paragraph 9 quotes from a grievance document that is available at Doc. No. 160, at PDF 82). Morrison filed two responses to the grievance which thoroughly describe the *Peter Tran* case and its location in Walker's court. *See* Doc. No. 160, at PDF 96–98; 129–132 (Morrison's second response to Walker's grievance even names Peter Tran). When asked directly, Morgan did not recall seeing Morrison's grievance responses before filing the lawsuit. Doc. No. 183, at 61:1–7. Even if Morgan did not read the grievance responses before filing the lawsuit, it is more than reasonable to expect that Morgan would attempt to locate Morrison's responses to the grievance given that Morgan based this lawsuit, in part, on the grievance documents filed by Walker. Morgan could have used the year between filing the lawsuit and filing the May 2014 Amended Complaint to find and review *all* grievance documents and responses upon which each complaint relied, but he failed to do so.

[7] Though the grievance responses are erroneously dated as 2012, the accurate date is likely 2013 based on the date of other grievance documents in the chain. Even if 2012 is the correct year, this does not change the analysis in any substantive way.

Tran case and the events of that day.[8] Morrison showed no substantive memory deficits concerning the details of the *Peter Tran* case at the hearing, and she did not offer any credible reason why her memory of the *Peter Tran* case would have been impaired at the time she filed the instant case. Accordingly, one source Morgan could have used to research the real facts underlying the false perjury claim was Morrison herself. The court does not find Morgan's defense credible that he *adequately* interviewed his client multiple times. *See generally* Doc. No. 183, at 56:6–57:22 (Morgan describes interviews with Morrison before filing the lawsuit); *id.* at 86:1–87:17 (Morgan describes interviewing Morrison after Judge Hawthorn allowed her to replead the false perjury claim and answer the seven questions). Simply put, Morgan could have simply asked Morrison better questions about her false perjury claim, and she had more than enough knowledge about the *Peter Tran* case to answer with the truth.

A reasonable lawyer who believes his client is sketchy on the details and has memory deficits would independently research and verify her allegations as much as possible before filing a lawsuit. A reasonable lawyer would not affirmatively plead that events did not take place in a defendant judge's courtroom unless there was evidence (or evidence expected after a reasonable opportunity for further investigation or discovery) that this statement was true. A reasonable lawyer basing part of the complaint on a set of grievance documents filed by a defendant with the state bar would read those grievance documents and the responses before filing the lawsuit. If a federal judge directs a party to answer seven specific questions when repleading a dismissed claim, then a reasonable lawyer would expend all reasonable effort to

[8] Morrison remembers specific details about the *Peter Tran* case, including: the day of the week she began representing Tran (Doc. No. 183, at 43:22, 44:2–3); the conduct of Tran's former attorney (*id.* at 43:24–44:2); the accurate location of Walker's court being across the street and separate from Judge Gist's court (*id.* at 44:9–10); how she initially left her briefcase in Judge Gist's court (*id.* at 47:8); how she was wearing three-inch heels (*id.* at 47:9); the conduct by other attorneys in Walker's court at the time (*id.* at 44:13–16); a phone call she overheard between Walker and Judge Gist (*id.* at 44:22–25); and the details surrounding the "Motion for Probation" she filed in Walker's court for Peter Tran that inadvertently included false information. *Id.* at 47:11–48:6.

find factual support for the answers to those questions. Morgan failed, repeatedly, to live up to the standard of an objectively reasonable lawyer under the circumstances. *See Trinity Gas*, 54 F. App'x 591 ("The task for the district court under Rule 11 and § 1927 is only to decide whether an attorney has failed to conduct a reasonable inquiry into the law and the facts and comply with 'an objective standard of reasonableness under the circumstances.'").

Morgan multiplied the proceedings by persistently prosecuting a meritless claim in the January 2014 Amended Complaint and May 2014 Amended Complaint. This conduct was unreasonable and vexatious, as explained above. There is clear and convincing evidence that sanctions under § 1927 are justified for Morgan's behavior on (and after) May 20, 2014, when he filed the May 2014 Amended Complaint. Doc. No. 46-2. Morgan should have voluntarily dismissed Walker from the lawsuit long before May 20, 2014, because Morgan no longer had factual support to make any claims with merit against Walker. Instead, Morgan filed an amended complaint with a meritless false perjury claim on that date. By clear and convincing evidence, this court holds that § 1927 sanctions are wholly justified against Morgan beginning with the date May 20, 2014.

F. Sanctionable conduct continues after May 20, 2014

Morgan should have dismissed Walker from this lawsuit before filing any amended complaints because there were no claims left with factual legitimacy. Instead, Morgan unreasonably and vexatiously multiplied the proceedings. Above, the court explained that § 1927 sanctions will be imposed, starting on May 20, 2014. After that date, Morgan's unreasonable and vexatious multiplication of the proceedings continued.

1. Two more attempts to amend the complaint

On November 21, 2014, Morgan motioned for leave to file *another* amended complaint that included only meritless claims against Walker (Doc. No. 68), but Judge Hawthorn struck the motion for failure to comply with the meet-and-confer requirements of the Local Rules. Doc. No. 72, at 7. One week later, leave was granted for Morgan to file *another* amended complaint, and Morgan filed the December 2014 Amended Complaint on December 9, 2014. Doc. No. 74. This was the final complaint in the lawsuit, and again it included only meritless claims against Walker.

2. *Peter Tran* transcript revealed, but case continues

Walker filed a motion to dismiss the December 2014 Amended Complaint under Rules 12(b)(1) and 12(b)(6). Doc. No. 78. Morrison's response again relied on the falsehood that the case underlying the false perjury claim was before Judge Gist. *See generally* Doc. No. 85. On February 6, 2015, Walker's reply revealed evidence (an uncertified transcript) that the *Peter Tran* case was before Walker. *See* Doc. No. 90, at 7; Doc. No. 90-3 (*Peter Tran* transcript). Morgan did not concede the fact, despite his false factual contention being fully exposed by the transcript. Instead, Morgan filed a sur-reply arguing that he was unable to "verify[] whether this is a true and correct copy of the transcript, or whether this was the underlying proceeding at issue," and he *again* repeated the allegation from the operative complaint that the case underlying the false perjury claim was actually in Judge Gist's court. Doc. No. 92, at 4–5. Morgan's continual insistence that the underlying case was in Judge Gist's court—especially in light of the transcript's revelation—further multiplied the proceedings unreasonably and vexatiously.

In a footnote of the sur-reply, Morrison also made the following representation to the court on February 13, 2015: "The undersigned shall show Morrison this excerpted transcript and determine if it refreshes Morrison's memory on this issue. If in fact the underlying proceeding occurred before Walker, the undersigned shall inform the Court." Doc. No. 92, at 5 n.1. More than six months passed, and Morgan did not inform the court of anything regarding the transcript or other facts underlying the false perjury claim. After such a long passage of time, Judge Hawthorn eventually entered an order requiring Morrison to file a more definite statement and for Walker to re-file the *Peter Tran* transcript with a court reporter's certificate. Doc. No. 102. On August 28, 2015, Walker filed the certified transcript, Morrison then admitted the *Peter Tran* transcript was the actual proceeding underlying the false perjury claim, and Morrison dismissed the false perjury claim against Walker. *See* Doc. Nos. 103–105. Blaming his error on unintentional "forgetfulness," Morgan "sincerely apologize[d]" for his failure to timely show Morrison the transcript and dismiss the claim against Walker. Doc. No. 104, at 5. The gap of more than six months between the initial revelation of the transcript and Morgan filing the motion to dismiss Walker from the case unreasonably and vexatiously multiplied the proceedings. In fact, this was likely Morgan's most egregious violation of § 1927 because the transcript so plainly revealed the meritless nature of the false perjury claim.

As explained in detail above, the court has decided to impose § 1927 sanctions on Morgan beginning on May 20, 2014 (though sanctions would be justified even before that date). As Morgan's conduct *after* May 20, 2014 illustrates, his unreasonable and vexatious multiplication of the proceedings continued at least until he filed the motion to dismiss Walker from the case on August 28, 2015.

G. No sanctions for conduct after August 28, 2015

After Morgan filed the motion to dismiss Walker from the case on August 28, 2015, the court granted the motion (Doc. No. 106), entered final judgment (Doc. No. 108), Morrison filed two general appeals (Doc. Nos. 112, 152), and the parties filed and briefed their pending motions related to attorneys' fees. Doc. Nos. 110, 160. Though there is clear and convincing evidence that Morgan unreasonably and vexatiously multiplied the proceedings from at least May 20, 2014 until August 28, 2015, evidence is lacking that he did so *after* August 28, 2015. Accordingly, the court will not impose § 1927 sanctions for Morgan's conduct after August 28, 2015.

H. Extent of § 1927 sanctions

To make an award under § 1927, the court must "(1) identify sanctionable conduct and distinguish it from the reasons for deciding the case on the merits, (2) link the sanctionable conduct to the size of the sanctions, and (3) differentiate between sanctions awarded under different statutes." *Lawyers Title Ins.*, 739 F.3d at 872 (citation omitted) (internal quotation marks omitted). Morgan's sanctionable conduct was his unreasonable and vexatious multiplication of the proceedings by including the false perjury claim in each amended complaint. Morgan did so with an improper motive *and* in reckless disregard of the duty owed to the court under Rule 11(b). The size of the sanctions against Morgan will be all of Walker's attorneys' fees between May 20, 2014 and August 28, 2015. In its discretion, the court excludes sanctionable conduct prior to May 20, 2014, and it excludes any conduct after August 28, 2015. The court will also exclude the ambiguous expenses Walker sought in his attachment to the

original motion for attorneys' fees.[9] To be clear, Rule 11(b) is helpful for establishing Morgan's duty he recklessly disregarded for purposes of § 1927 analysis, but no Rule 11 sanctions are being imposed. Sanctions are only being imposed on Morgan under § 1927.

To calculate Walker's attorneys' fees, the court will use the lodestar method to multiply the number of hours reasonably expended by an appropriate hourly rate in the community for such work. *See e.g. Tollett v. City of Kemah*, 285 F.3d 357, 367 (5th Cir. 2002) (citation omitted) (describing lodestar method). The court will also consider enhancing or decreasing the lodestar amount based on the relative weights of the factors in *Johnson v. Georgia Highway Exp., Inc.*, 488 F.2d 714, 717–19 (5th Cir. 1974) abrogated on other grounds by *Blanchard v. Bergeron*, 489 U.S. 87 (1989). Though Morgan argues that many of the attorneys' time entries are inflated (Doc. No. 180, at 17–18), his argument does not appear to have merit. After review, the time entries by Walker's attorneys appear to be within the realm of reasonable law practice.

Walker's attorneys negotiated a rate of $200/hour with Walker's insurer for representation in this case. This is strong evidence of an appropriate hourly rate in the community for such work. After all, the "reasonable rate" of $200/hour was "sufficient to induce [capable attorneys] to undertake the representation of" Walker in this case, and awarding more than $200/hour might be an unfair windfall for Walker's attorneys. *Perdue v. Kenny A. ex rel. Winn*, 559 U.S. 542, 542 (2010). Though perhaps sticker-prices for such legal work may have been higher in 2014 and 2015 (*see* Doc. No. 110-2, Ex. B, *How Does Your Billing Stack Up?*), the negotiated rate between a respected local law firm like Provost Umphrey and Walker's insurer is a better approximation of what clients likely end up paying after typical negotiations. Even if a higher rate may also be reasonable, the court could decrease such an amount based on

[9] Walker attached a fairly ambiguous list of expenses to his motion, primarily consisting of non-specific LexisNexis charges. Doc. No. 110-1, Ex. 4. Because of the ambiguous nature of these charges, the court will exercise its discretion and not include them in the sanctions amount against Morgan.

three *Johnson* factors: (1) the legal issues in the instant case were not particularly novel or difficult; (2) the attorneys were not generally expending so many hours on the instant case to be precluded from other work; and (3) the negotiated fee with Walker's insurer impacts the court's view of a "customary fee." Accordingly, the court holds that the $200/hour rate Walker's counsel negotiated with Walker's insurer represents an appropriate hourly rate in the instant case. For the same reasons, the $75/hour rate for paralegal work is also reasonable.

From May 20, 2014 until August 28, 2015, Walker's attorneys report the following billable hours in their affidavits:

Joe Fisher (attorney):	56.90 hours	x	$200/hour	=	$11,380.00
Mark Sparks (attorney):	84.80 hours	x	$200/hour	=	$16,960.00
Cheryl Portier (paralegal):	16.70 hours	x	$75/hour	=	$ 1,252.50
			TOTAL	**=**	**$29,592.50**

Doc. Nos. 110-1, 175, 176.[10] Though it may be within the court's discretion to reduce this amount, the court will not do so. The court has already used its discretion in Morgan's favor three times: (1) by not imposing § 1927 sanctions on Morgan's conduct prior to May 20, 2014, though sanctions are justified; (2) by not including any of the "expenses" claimed by Walkers' counsel (Doc. No. 110-1, Ex. 4); and (3) by setting the reasonable rate for Walker's attorneys at only $200/hour. The court declines to further decrease the amount of sanctions beyond the discretion already exercised in Morgan's favor.

[10] Morgan objects that Walker's attorneys did not properly "segregate" their attorneys' fees for time relating to the false perjury claim and other time expended. Doc. No. 180, at 11–12; *id.* at 17. Perhaps this objection may have some merit if the court was imposing attorneys' fees on Morgan for other time periods during the case, but the time period from May 20, 2014 through August 28, 2015 needs no segregation. Morgan should have dismissed Walker from the case long before May 20, 2014. The only claim pending against Walker by that time was the false perjury claim. Thus, any attorneys' fees Walker incurred between May 20, 2014 and August 28, 2015 were fees Walker should have been able to avoid altogether, and Morgan should have to pay those fees because of his sanctionable multiplication of the proceedings.

IV. Orders

It is, therefore, **ORDERED** that Walker's "Motion for Attorneys' Fees and Expenses" (Doc. No. 110) is **GRANTED in part** and **DENIED in part**.

It is further **ORDERED** that Walker's "Motion to Reopen and Supplement Motion for Attorneys' Fees and Expenses" (Doc. No. 160) is **GRANTED in part** and **DENIED in part**.

It is further **ORDERED** that Plaintiff Stella Morrison will **NOT** be required to pay any of Defendant Layne Walker's costs under 42 U.S.C. § 1988 or any other statute.

It is further **ORDERED** that John S. Morgan is hereby **SANCTIONED** under 28 U.S.C. § 1927 for unreasonably and vexatiously multiplying the proceedings. **Morgan must personally satisfy $29,592.50 of Defendant Walker's costs** in defending this lawsuit.

SIGNED this the 22nd day of August, 2018.

KEITH F. GIBLIN
UNITED STATES MAGISTRATE JUDGE