

FILED

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U.S. COURT OF
FEDERAL CLAIMS

In the United States Court of Federal Claims

In the Matter of:

Omar W. Rosales

No. 17-11208

FINAL ORDER

On July 11, 2017, the United States District Court for the Western District of Texas (“Texas District Court”) issued an order suspending Mr. Rosales from the practice of law for a period of three years, effective immediately. *See In re Rosales*, No. 16-MC1326, 2017 WL 8180454, at *30 (W.D. Tex. July 11, 2017). The Texas District Court found that Mr. Rosales had acted intentionally and in bad faith by fabricating evidence, which he then filed in a pending civil case and failed to retract; by “knowingly and repeatedly ma[king] false and abusive statements” regarding opposing counsel; by taking out a baseless restraining order against opposing counsel in an attempt to disrupt an upcoming hearing; and by “blatantly disregard[ing] and violat[ing] the [Texas Disciplinary Rules of Professional Conduct] and Local Rules for attorney behavior” by engaging in the identified misconduct. *Id.* at *28.

Pursuant to Rule 83.2(g)(6)(B) of the Rules of the Court of Federal Claims (“RCFC”), this court issued an Order to Show Cause on August 3, 2017, immediately suspending Mr. Rosales from practice before the Court of Federal Claims and directing him to show cause within thirty (30) days why the court should not impose final discipline identical to that imposed by the Texas District Court. On December 21, 2017, the court granted Mr. Rosales’s motion to hold in abeyance imposition of final reciprocal discipline pending disposition of the appeal of his original disciplinary action before the United States Court of Appeals for the Fifth Circuit (“Fifth Circuit”).

On March 27, 2018, the Fifth Circuit issued an order affirming the three-year suspension imposed by the Texas District Court. *See In re Rosales*, 716 Fed. Appx. 364, 365 (5th Cir. 2018). This court thereafter granted Mr. Rosales an opportunity to supplement his original response to the court’s August 3, 2017 Show Cause Order. *See In re Rosales*, No. 17-11208, ECF No. 19 (Ct. Fed. Cl. Apr. 18, 2018). On May 21, 2018, Mr. Rosales filed a supplemental response in which he asserts that the Fifth Circuit “acknowledge[d] a potential conflict-of-interest and violation of ABA Model Rules [by] the Western District [Disciplinary] Panel.” *Id.*, ECF No. 21 at 1. Specifically, Mr. Rosales asserts that

one of the members of the Texas District Court's disciplinary panel had an undisclosed conflict, and that Mr. Rosales was therefore deprived of a disinterested tribunal in violation of his due process rights. *Id.* at 2-3. "Due to this due process violation," Mr. Rosales argues, the Court of Federal Claims should "consider imposing a one-year suspension, or a three-year probated suspension, instead of automatic reciprocal discipline." *Id.* at 1. Mr. Rosales also asks the court to consider his status as a disabled veteran and his "underserved" clients, many of whom are "low-income and indigent Hispanics" who do not have ready access to the Vaccine Injury Compensation Program. *Id.* at 4.

The court finds that Mr. Rosales has failed to show cause why discipline identical to that imposed by the Texas District Court should not be imposed in the Court of Federal Claims. Pursuant to RCFC 83.2(h)(5)(B),

[t]he standing panel will treat an attorney's . . . suspension . . . as conclusive evidence that the misconduct in fact occurred and that the discipline was appropriate unless the standing panel concludes that: (i) the procedure was so lacking in notice or an opportunity to be heard that it constituted a deprivation of due process; (ii) there was such an infirmity of proof establishing the misconduct that this court could not, consistent with its duty, accept as final the conclusion on the matter; (iii) the imposition of the same discipline by this court would result in grave injustice, or (iv) the misconduct established is deemed to warrant substantially different discipline.

Contrary to the assertions in Mr. Rosales's supplemental show cause response, the Fifth Circuit has not determined that any member of the Texas disciplinary panel possessed a potential conflict of interest. *See* 716 Fed. Appx. at 365 n.9 (finding that one claim of conflict had been forfeited and that the other was speculative). Indeed, the Fifth Circuit held that, even if the alleged conflict had existed, the conflict would not have undermined the validity of the suspension because "it was the [Texas District Court], not the panel, who disciplined Rosales." *Id.*

For the reasons identified in the Fifth Circuit's March 27, 2018 Order, the court finds unavailing Mr. Rosales's claim that his due process rights were violated during the pendency of the disciplinary proceedings before the Texas District Court. Mr. Rosales's conflict of interest allegations are speculative at best. Moreover, Mr. Rosales ignores the fact that the Texas District Court, not the disciplinary panel, imposed the disciplinary suspension. The Fifth Circuit ultimately found, and Mr. Rosales does not dispute, that he was given ample opportunity to make his case before the Texas District Court. Accordingly, Mr. Rosales has failed to prove that "the procedure [in Texas] was so lacking in notice

or an opportunity to be heard that it constituted a deprivation of due process,” see RCFC 83.2(h)(5)(B)(i), that imposition of identical reciprocal discipline would result in “grave injustice,” see RCFC 83.2(h)(5)(B)(iii), or that any other subsection of RCFC 83.2(h)(5)(B) applies in this case.

IT IS HEREBY ORDERED that Omar W. Rosales shall be suspended for a period of three years from practice before the United States Court of Federal Claims, effective, *nunc pro tunc*, July 11, 2017, the date of his suspension by the Texas District Court. See RCFC 83.2(g)(7)(B) (“[r]eciprocal . . . suspension is the presumed discipline for an act or omission that results in an attorney’s . . . suspension by another court”). The filing of any petition for reinstatement shall be governed by RCFC 83.2(k)(1).


IT IS FURTHER ORDERED THAT the Clerk of Court shall remove Mr. Rosales as attorney of record in *Galindo v. Secretary of the Department of Health and Human Services*, Case No. 16-vv-0203, the only case filed by Mr. Rosales that has not yet concluded. See Vaccine Rule 14(a)(1) (“[a]n attorney is eligible to practice before the Office of Special Masters if the attorney is a member of the bar of the United States Court of Federal Claims”); Vaccine Rule 14(b) (“with the exception of a pro se litigant appearing under Vaccine Rule 14(a), [a party] must be represented by an attorney (not a firm) admitted to practice before the Court of Federal Claims”); RCFC 83.1(c)(5) (“[a]n attorney of record for a party other than the United States may not withdraw the attorney’s appearance except by leave of the court on motion and after notice is served on the attorney’s client”). Mr. Rosales may not represent clients in the Vaccine Program unless and until he is granted reinstatement to the bar of this Court.


IT IS FURTHER ORDERED that, pursuant to RCFC 83.2(l)(1)(B)(iii), the Clerk of Court shall file a copy of this order in all of the vaccine cases in which Mr. Rosales remains the attorney of record.¹ The Standing Panel finds that this

¹ Mr. Rosales remains the attorney of record in the following cases: *Galindo v. Sec’y, Dept. of Health & Human Servs.*, Case No. 16-vv-203; *Lopez v. Sec’y, Dept. of Health & Human Servs.*, Case No. 17-vv-365; *Villafranca v. Sec’y, Dept. of Health & Human Servs.*, Case No. 17-vv-366; *Palencia v. Sec’y, Dept. of Health & Human Servs.*, Case No. 17-vv-367; *Machuca v. Sec’y, Dept. of Health & Human Servs.*, Case No. 17-vv-368; *Lopez v. Sec’y, Dept. of Health & Human Servs.*, Case No. 17-vv-369; *Gonzalez v. Sec’y, Dept. of Health & Human Servs.*, Case No. 17-vv-370; *Gonzalez-Monterrey v. Sec’y, Dept. of Health & Human Servs.*, Case No. 17-vv-371; *Lopez v. Sec’y, Dept. of Health & Human Servs.*, Case No. 17-vv-372; *Palencia v. Sec’y, Dept. of Health & Human Servs.*, Case No. 17-vv-382; *Pedraza v. Sec’y, Dept. of Health & Human Servs.*, Case No. 17-vv-384; *Covarrubias v. Sec’y, Dept. of Health & Human Servs.*, Case No. 17-vv-374; *Saenz v. Sec’y, Dept. of Health & Human Servs.*, Case No. 17-vv-375; *Pierce v. Sec’y, Dept. of Health & Human Servs.*, Case No. 17-vv-376; *Pool v. Sec’y, Dept. of Health & Human Servs.*, Case No. 17-vv-377; *Villareal v. Sec’y, Dept. of Health & Human Servs.*, Case No. 17-vv-378; *Sanchez v. Sec’y, Dept. of Health & Human Servs.*, Case No. 17-vv-379; *Segura v. Sec’y, Dept. of Health & Human Servs.*, Case No. 17-vv-380; *Orta v. Sec’y, Dept. of Health & Human Servs.*, Case No. 17-vv-381; *Garza v. Sec’y, Dept. of Health & Human Servs.*, Case No. 17-vv-385; *Gomez v. Sec’y, Dept. of Health & Human Servs.*, Case No. 17-vv-386; *Vela v. Sec’y, Dept. of Health & Human Servs.*, Case No. 17-vv-387; *Tolento v. Sec’y,*

disclosure is necessary to protect the administration of justice. *See* RCFC 83.2(1)(1).


MARY ELLEN COSTER WILLIAMS
Senior Judge


VICTOR J. WOLSKI
Senior Judge


NANCY B. FIRESTONE
Senior Judge

Dept. of Health & Human Servs., Case No. 17-vv-388; *Parrea v. Sec'y, Dept. of Health & Human Servs.*, Case No. 17-vv-440; *Hernandez v. Sec'y, Dept. of Health & Human Servs.*, Case No. 17-vv-442; *Ledesma v. Sec'y, Health & Human Servs.*, Case No. 17-vv-443; *Moreno v. Sec'y, Dept. of Health & Human Servs.*, Case No. 17-vv-450; *Villalobos v. Sec'y, Dept. of Health & Human Servs.*, Case No. 17-vv-373; and *Flores v. Sec'y, Dept. of Health & Human Servs.*, Case No. 17-vv-383.