

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 17-50667

United States Court of Appeals
Fifth Circuit

FILED

March 27, 2018

Lyle W. Cayce
Clerk

In re: DISCIPLINARY COMPLAINT

OMAR W. ROSALES,

Respondent - Appellant

Appeal from the United States District Court
for the Western District of Texas
USDC No. 5:16-MC-1326

Before WIENER, GRAVES, and HO, Circuit Judges.

PER CURIAM:*

This disciplinary order is a companion to the order in which attorney Omar Rosales was sanctioned for the same misconduct.¹ Here he appeals an order suspending him from practice in the United States District Court for the Western District of Texas for three years. The district court determined that Rosales had acted in bad faith, fabricated evidence, and violated several local attorney rules for the Western District and numerous Texas Disciplinary Rules of Professional Conduct.

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

¹ See *Deutsch v. Phil's Icehouse, Inc.*, No. 17-50218.

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We review a district court's disciplinary actions for constitutional violations and abuse of discretion.² A district court may disbar attorneys only on the strength of clear and convincing evidence.³ “[A lawyer facing disciplinary proceedings] ha[s] the burden throughout these proceedings of showing good cause why he should not be disbarred.”⁴ But “[d]isbarment or suspension proceedings are adversarial and quasi-criminal in nature. As such, an attorney is entitled to procedural due process which includes notice and an opportunity to be heard in disbarment or suspension proceedings.”⁵ Before disciplining an attorney, a district court must make a specific finding that he or she has acted in bad faith.⁶

In his appeal of the instant disciplinary order, Rosales revisits many of the baseless arguments he made in appealing the sanctions order, while also making new ones. Those arguments often mischaracterize the record and provide no legitimate reason why the district court's factual findings or legal conclusions were error. Also as with his appeal of the sanctions order, he does not challenge any of the court's factual findings, including those about his own bad faith.

Instead, Rosales contends that he was deprived of due process. But the district court's disciplinary committee conducted a lengthy investigation, in which Rosales was allowed to participate, before recommending complete disbarment.⁷ Rosales received notice of referral of the matter to the committee

² See *In re Smith*, 275 F.3d 42 (5th Cir. 2001) (unpublished) (citing *Selling v. Radford*, 243 U.S. 46, 51 (1917); *In re Dawson*, 609 F.2d 1139, 1142 (5th Cir. 1980)).

³ *Dailey v. Vought Aircraft Co.*, 141 F.3d 224, 229 (5th Cir. 1998).

⁴ *Theard v. United States*, 228 F.2d 617, 618 (5th Cir. 1956).

⁵ *Dailey*, 141 F.3d at 229 (citations omitted).

⁶ *Matter of Thalheim*, 853 F.2d 383, 389 (5th Cir. 1988) (citation omitted).

⁷ Rather than disbaring Rosales, the court suspended him for three years.

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and responded in writing,⁸ received notice of the committee's investigation and the hearing date, failed to attend the hearing, filed written objections to the committee's initial and final reports, and had the opportunity to argue the matter before the district judge. In sum, Rosales was given ample opportunities to be heard; he simply chose not to fully avail himself of that opportunity.⁹

There was clear and convincing evidence supporting the district court's suspension of Rosales. The order imposing sanctions was exhaustive and specifically found bad faith based on facts that Rosales has not challenged. For example, Rosales fabricated evidence, presented it to the district court, and continued to lie about it when challenged. Suspending Rosales was not an abuse of discretion.

AFFIRMED.

⁸ Rosales has maintained throughout the disciplinary proceeding that any sanction under that proceeding would be invalid if we reversed the district court's sanctions order, which contained the referral. Given that we affirm the sanctions award in a separate order, this argument is moot. Even if it were not, this is incorrect for the reasons given by the district court: the disciplinary proceedings are independent of the sanctions order.

⁹ Rosales claims that two of the panel members had conflicts of interest. First, one panel member's law firm had previously litigated against Rosales. Because Rosales did not raise this argument until now, it is forfeited. *See United States v. Jones*, 565 U.S. 400, 413 (2012). The second purported conflict is that the panel chair sometimes receives mediation referrals from the judges involved in the underlying litigation. Rosales raised this issue at the eleventh hour, but the chair nevertheless decided to recuse himself. Rosales apparently contends this was not enough, claiming that the chair had already "steered" the panel to disbar Rosales. This is pure speculation, and disregards the fact that it was the court, not the panel, who disciplined Rosales.