



**BOARD OF PROFESSIONAL RESPONSIBILITY
OF THE
SUPREME COURT OF TENNESSEE**

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RELEASE OF INFORMATION
RE: BRIAN PHILLIP MANOOKIAN, BPR #026455
CONTACT: WILLIAM C. MOODY
BOARD OF PROFESSIONAL RESPONSIBILITY
615-361-7500

November 21, 2018

DAVIDSON COUNTY LAWYER REMAINS ON TEMPORARY SUSPENSION

On November 21, 2018, the Tennessee Supreme Court entered an Order denying the request of Brian Phillip Manookian for dissolution of temporary suspension. Mr. Manookian was temporarily suspended from the practice of law on September 21, 2018, upon a finding that he poses a threat of substantial harm to the public.

On September 28, 2018, Mr. Manookian filed a Verified Petition for Dissolution or Amendment of Order of Temporary Suspension. A hearing was held on October 11 and 19, 2018, before a panel of the Board of Professional Responsibility. On November 7, 2018, the panel entered its Report and Recommendation recommending that the Verified Petition for Dissolution or Amendment of Order of Temporary Suspension be denied. On November 21, 2018, the Supreme Court entered an order adopting the panel's Report and Recommendation.

Following the temporary suspension on September 21, 2018, the Tennessee Supreme Court entered an Order on October 17, 2018, staying the requirement that Mr. Manookian cease representing existing clients pending further orders of the Court. Upon entry of the November 21, 2018 Order, the stay is lifted and Mr. Manookian must cease representation of existing clients within ten (10) days of this Order. Mr. Manookian shall not use any indicia of lawyer, legal assistant, or law clerk nor maintain a presence where the practice of law is conducted. Mr. Manookian must notify all clients being represented in pending matters, as well as co-counsel and opposing counsel of the Supreme Court's Order suspending his law license. Mr. Manookian is required to deliver to all clients any papers or property to which they are entitled.

This suspension remains in effect until dissolution or modification by the Supreme Court. Mr. Manookian may for good cause request dissolution or modification of the suspension by petition to the Supreme Court.

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

FILED
11/21/2018
Clerk of the
Appellate Courts

IN RE: BRIAN PHILLIP MANOOKIAN, BPR #026455
An Attorney Licensed to Practice Law in Tennessee
(Davidson County)

No. M2018-01711-SC-BAR-BP
BOPR No. 2018-2914-5-WM-12.3

**ORDER DENYING VERIFIED PETITION FOR DISSOLUTION OR
AMENDMENT OF ORDER OF TEMPORARY SUSPENSION**

On September 21, 2018, this Court entered an Order of Temporary Suspension pursuant to Tenn. Sup. Ct. R. 9, § 12.3, suspending the law license of Brian Phillip Manookian for posing a threat of substantial harm to the public. On September 28, 2018, Mr. Manookian filed a Verified Petition for Dissolution or Amendment of Order of Temporary Suspension. On October 2, 2018, Mr. Manookian filed his Petition-Motion for Instant Ruling Regarding the Procedural Defects of the Tennessee Board of Professional Responsibility's Petition for Temporary Suspension. On October 4, 2018, the Board filed a Response to Petition for Dissolution. On October 5, 2018, Mr. Manookian filed his Reply to Petitioner's Response to Respondent's Petition for Dissolution or Amendment of Order of Temporary Suspension. On October 5, 2018, the Board filed its Response to Petition-Motion for Instant Ruling and Hearing and the Declaration of Phillip North. On October 16, 2018, Mr. Manookian filed his Amended and Restated Petition-Motion, and Memorandum of Law in Support thereof, for Instant Ruling Pursuant to Tennessee Rule of Appellate Procedure 22(b) and the Declaration of John P. Konvalinka. On October 17, 2018, this Court entered its Order directing the Board to file a supplemental declaration under penalty of perjury and staying the thirty-day requirement imposed pursuant to Tenn. Sup. Ct. R. 9, § 12.3(c). On October 23, 2018, the Board filed its Response to Amended and Restated Petition-Motion for Instant Ruling and the Supplemental Declaration of Phillip North. On October 31, 2018, Mr. Manookian filed his Reply to the Board of Professional Responsibility's Response to Amended and Restated Petition-Motion for Instant Ruling. On November 1, 2018, this Court entered an Order denying Mr. Manookian's Amended Motion for Instant Ruling and the Board's request to lift the stay entered on October 17, 2018. On October 11 and 19, 2018, a hearing was held before a three-member panel of the Board of Professional Responsibility. On November 7, 2018, the Panel entered its Report and Recommendation finding Mr. Manookian failed to establish good cause to dissolve the temporary suspension. A copy of the Report and Recommendation is attached hereto and incorporated herein by reference.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED BY THE COURT THAT:

1. The Report and Recommendation of the panel is approved as the Court's Order, and the Verified Petition for Dissolution or Amendment of Order of Temporary Suspension filed on September 21, 2018, is denied.

2. Mr. Manookian shall remain temporarily suspended from the practice of law as provided in Tenn. Sup. Ct. R. 9, § 12.3.

3. The stay of the thirty-day requirement imposed pursuant to Tenn. Sup. Ct. R. 9, § 12.3(c), contained in this Court's Order of October 17, 2018, is dissolved and, effective ten days after entry of this Order, Mr. Manookian shall cease representing existing clients.

4. Mr. Manookian shall comply with Tenn. Sup. Ct. R. 9 in all respects and particularly as provided in Tenn. Sup. Ct. R. 9, § 28.

5. Pursuant to Tenn. Sup. Ct. R. 9, § 28.1, this Order shall be effective upon entry.

6. Taxing of costs pursuant to Tenn. Sup. Ct. R. 9, § 31.3(d), is reserved pending submission of a Panel Judgment on the Board's Application for Assessment of Costs.

7. The Board of Professional Responsibility shall cause notice of this discipline to be published as required by Tenn. Sup. Ct. R. 9, § 28.11.

PER CURIAM

FILED
11/21/2018
2018 NOV - 7 PM 3:38
Clerk of the
Appellate Courts

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

BOARD OF PROFESSIONAL
RESPONSIBILITY

IN RE: BRIAN PHILLIP MANOOKIAN]
BPR #026455]
An Attorney Licensed to]
Practice Law in Tennessee]
(Davidson County)]

M2018-01711-SC-BAR-BP... EXEC SECY
BOPR No. 2018-2914-5-WM-12.3

REPORT AND RECOMMENDATION

This matter came to be heard on October 11 and October 19, 2018 before a panel designated by the Board of Professional Responsibility to hear the Petition of Brian Phillip Manookian for dissolution or amendment of an Order of Temporary Suspension. The panel members were Dana Dye, John Kitch, and Joe Looney.

Procedural History

Disciplinary Counsel for the Board of Professional Responsibility filed a Petition for Temporary Suspension of Mr. Manookian's license to practice law on September 19, 2018 with ten (10) attached exhibits. Based on the Petition and attachments, the Supreme Court entered an Order temporarily suspending Mr. Manookian from the practice of law on September 21, 2018. Mr. Manookian's Petition for dissolution or amendment of the Order of Temporary Suspension was filed on September 28, 2018 and a Response was filed by the Board on October 4, 2018. Mr. Manookian filed a Reply to the Response on October 5, 2018 and on October 16, 2018 filed an Amended Petition for Dissolution. On October 17, 2018, the Supreme Court entered an Order requiring the Board to file a supplemental declaration under penalty of perjury in compliance with Supreme Court Rule 9, Section 12.3(a) and stayed the thirty-day requirement imposed upon Mr. Manookian pursuant to Rule 9, Section 12.3 (c) as it pertains to existing clients, pending further orders of the Court.



Supreme Court Rule 9, Section 12.3(d)

The procedure for hearing a Petition for dissolution or amendment is set out in Section 12.3 (d) of Rule 9.

*(d) The attorney **may for good cause request dissolution or amendment of any such order of temporary suspension** by filing in the Nashville office of the Clerk of the Supreme Court and serving on Disciplinary Counsel a Petition for Dissolution or Amendment. Such petition for dissolution shall be set for immediate hearing before the Board or a panel. The Board or panel shall hear such petition forthwith and file its report and recommendation to the Supreme Court with the utmost speed consistent with due process. There shall be no petition for rehearing. Upon receipt of the foregoing report, the Court may modify its order if appropriate or continue such provision of the order as may be appropriate until final disposition of all pending disciplinary charges against said attorney. (emphasis added)*

The parameters of the panel's authority are contained in subsection (d). In his original Petition for Dissolution or Amendment, Mr. Manookian raised a number of procedural issues and sought to present proof that the Order of Temporary Suspension was improvidently granted and should be set aside. Respectfully, the panel has no authority to go behind the Order of Temporary Suspension either to determine whether the granting of the Order violated procedural due process or to re-examine whether Mr. Manookian posed a "threat of substantial harm to the public" at the time the Order was granted. These are issues entirely within the purview of the Supreme Court. The role of this panel is not to second-guess the Court's determination.

Rather, the panel's role is limited to assessing whether Mr. Manookian has shown good cause for dissolution or amendment of the Order of Temporary Suspension. Thus, the burden of proof is on Mr. Manookian to demonstrate that he does not now pose a threat of substantial harm to the public and to show good cause why the Panel should recommend that the Order be dissolved or

modified. At a Section 12.3(d) hearing, the burden is not on the Board to prove that the Order should stand.

Proof Elicited at the Hearings

On October 11, 2018, the panel heard sworn testimony from Brian Manookian, Davidson County Circuit Judge Hamilton Gayden, and Phillip North. Fourteen (14) exhibits were admitted into the hearing record.

Mr. Manookian testified that he was licensed to practice law in Tennessee in 2007. He is half of a two-attorney firm which employs two paralegals. His cases are primarily plaintiff medical malpractice and most are taken on a contingency fee basis. (TR Vol. 1: 38-40) Mr. Manookian has had disciplinary complaints in the past which were dismissed and currently has two active Petitions for Discipline pending. (TR Vol. 1: 41, 80-81)

Addressing the allegations contained in the Petition for Temporary Suspension, with regard to the Chase case referenced in the Board's Petition (Exhibit 1 to the Petition), Mr. Manookian maintains that he did nothing wrong, that prior BPR complaints related to the case were dismissed, and that he will be appealing the final order in that case which was entered in September after affidavits for attorneys' fees were submitted. (TR Vol. 1: 47-48) He disputes that Judge Binkley's findings regarding "a knowing, willful, and intentional course of conduct to deceive and defraud this Court...and to gain personal advantage" should be considered in determining whether he poses a threat of substantial harm to the public. (TR Vol.1: 93-94)

With regard to his zealous pursuit of a Motion for Default in the Shao case on the day that his opposing counsel died (Exhibit 2 to the Petition), Mr.

Manookian disputes and dismisses out of hand the reprimand of the trial Judge, pointing out that another trial judge in a separate case involving the same attorney had declined to reprimand him for the same conduct, i.e. actively seeking a default judgment on the day of opposing counsel's death. (TR Vol. 1: 111, 127)

Mr. Manookian testified that he had no problems with anger or with anger management. He admitted that there were times when he had lost his temper but he felt that such losses of temper were justified by the circumstances. (TR Vol. 1:55) With regard to his email to opposing counsel, C.J. Gideon, (Exhibit 3 to the Petition), Mr. Manookian testified that he was only trying to be supportive of Mr. Gideon's daughter in her new job. He testified that he did not recall the substance of the trial judge's ruling in imposing sanctions related to the email communication other than "I do recall him calling me a gangster." (TR Vol. 1: 66) [In fact, the trial court went to some pains to explain the threat and intimidation implicit in revealing to an opposing attorney unsolicited detailed personal information about the attorney's family members.] Upon cross-examination, Mr. Manookian admitted that parts of the email might be inappropriate but contended that the email as a whole could not reasonably be considered threatening. (TR Vol. 1: 81-82) The email communication is as follows:

Clarence,

I hear [Mr. Gideon's daughter] is working at [name of company]. What a fantastic opportunity; particularly given her history of academic failure and alcohol and substance abuse.

I happen to have some very close friends at (name of company).

I will make it a point to see what I can do regarding her prospects there.

I am reminded that it is good for us to keep apprised of each other's lives and the things we can do to influence them.

It is unclear why, if Mr. Manookian's communication was intended as a gesture of good will, he would begin by referencing the daughter's alleged "history of academic failure and alcohol and substance abuse." However, Mr. Manookian produced a copy of an email to his partner (Hearing Exhibit 13) in support of his claim that he was simply trying to be of assistance to the Gideon family.

Similarly, Mr. Manookian testified that his email to opposing counsel, Phillip North, (Exhibit 4 to the Petition) was simply an effort to get Mr. North to respond to Mr. Manookian's prior email. The communication to Mr. North, which Mr. Manookian copied to nineteen (19) other individuals (TR Vol. 1:60), is as follows:

Phillip,

I see that my email and attachments are being repeatedly opened at the IP address associated with the consumer Comcast cable account for 109 Menees Lane, Madison, Tennessee.

That address is the residential property where you have consistently lived with your parents (other than for a brief period of time from 1984-1986 where you rented unit 602 at the Capitol Towers on Gay Street) until the North Family Trust essentially gifted you the property for \$10.00. Upon investigation, this gifted piece of property in North Nashville, given to you for \$10 by your parents, represents the sole piece of real property you own at 68 years of age.

Further confirming that you have read my email, records additionally reflect that Mona Dale Cornwell North—the woman for whom you left your wife and two minor daughters (Nicki and Neely)—has registered a Jeep Grand Cherokee (VIN 1C4RJFLG4JC274818, TN License Plate E66307) at the same address your parents gave you and where my email is being viewed.

Please simply reply and confirm your brother Steve North's voice.

Mr. Manookian testified that he was simply trying to get Mr. North to respond to a prior email. He testified that he is able to identify the location from which an email is viewed and that he regularly uses a people-find computer software program which provides detailed public information about an individual such as the information he included in his email to Mr. North. (TR Vol. 1: 51-52, 62-63) He testified that he and Mr. North have a very contentious relationship and that Mr. North had filed scurrilous personal information about him in the Shao case. (TR Vol. 1: 73) He stated that he did not intend for the communication to be threatening and could not see how a reasonable person could construe it as threatening. He did acknowledge that parts of the email were inappropriate and that it probably should not have been sent. (TR Vol. 1:84-85) In support of his claim that the email was not construed as threatening, Mr. Manookian testified that he and Mr. North had appeared for depositions and been in court together since the allegedly offending email. (TR Vol. 1: 72) He asserted that he posed no physical threat to Phillip North.

With regard to the court sanctions imposed against him in the Diamond Consortium case (Exhibit 5 to the Petition), Mr. Manookian testified that the case had settled favorably to his client and that the BPR Petition for Discipline related to his conduct in that case had been pending for more than a year. (TR Vol. 1: 79) He further testified that his prior counsel had withdrawn and that he had been given sixty (60) days within which to hire new counsel. He objected to the trial judge's characterization of his conduct as fraudulent, in bad faith, and "an abuse of the judicial process" and took the position that such ruling was irrelevant to the matters at hand.

Mr. Manookian testified that the 2013 case of Semanichik & Nashville Armory v. Manookian (Exhibits 6 and 7 to the Petition) was simply a falling out between business partners and emphasized that the BPR complaint that arose

out of the case had been dismissed. He testified that he had not opposed the permanent injunction entered against him and that he had not violated the injunction. He considered the injunction to be irrelevant to whether he posed a substantial threat of harm to the public. (TR Vol. 1:69-70)

With regard to the 2012 finding of the divorce court that he had physically assaulted his wife (Exhibit 8 to the Petition), Mr. Manookian denied both that an assault had occurred and denied that it was relevant to these proceedings. He produced as evidence an expunction order (Hearing Exhibit 7) with regard to a companion criminal domestic assault charge that was dismissed. (TR Vol. 1: 43)

Mr. Manookian testified that his 2004 altercation with David Binkley, a college friend, (Exhibit 9 to the Petition) was simply a fight, that he and Mr. Binkley were now friends, and that, in fact, he had represented Mr. Binkley since the 2004 incident. (TR Vol. 1: 42) He disputed the relevance of the fight to these proceedings.

Mr. Manookian admitted that he had been sanctioned by the federal district court in the Diamond case, by Judge Brothers in the Shao case, and by Judge Binkley in the King case. He acknowledged that Judge Ashe had suspended him from practicing in the Davidson County Circuit Court for a period of sixty (60) days. He pointed out that no court had sanctioned him more than once.

Throughout his testimony, Mr. Manookian's position was that he had done no wrong. His good cause for dissolution of the Supreme Court's Order of Suspension is that the Order never should have been granted.

The Honorable Hamilton Gayden testified telephonically. Judge Gayden confirmed that he had served as a Davidson County trial Judge for forty-four (44) years. (TR Vol. 1:97) He testified that he had known of Mr. Manookian for 7-8 years but had only known him well for approximately three (3) years. Judge Gayden testified that Mr. Manookian is intelligent and a good lawyer, sometimes a little overly aggressive but not offensively so. In Judge Gayden's opinion, Mr. Manookian was an asset to the bar and posed no threat to the public. (TR Vol. 1: 98) On cross-examination, Judge Gayden testified that he recuses himself from Mr. Manookian's cases because Mr. Manookian is representing his daughter in a custody matter in Texas. (TR Vol. 1:100)

Also testifying was Phillip North, who confirmed that he had been admitted to the bar in 1975 and was in private practice in Davidson County. (TR Vol. 1: 108) Mr. North testified that he had several cases in which the Manookian law firm was involved. Both he and Mr. Manookian are involved in the Shao case, representing opposing clients. Mr. North testified that he perceived Mr. Manookian's 8/4/18 email as a threat, particularly in light of Judge Brothers' prior admonition to Mr. Manookian after the C.J. Gleason 8/19/17 email, of which Mr. North was aware. (TR Vol. 1: 109) Mr. North testified that he was concerned both for himself and for his family. (TR Vol. 1: 117) In response to the email, Mr. North hired a security company to upgrade his home security system, gave photographs of Mr. Manookian to the security guards at the building where he works, alerted his neighbors and family members, encouraged his wife to take a gun safety course and get a permit to carry a gun, and took a refresher gun course on his own. (TR Vol. 1:120-121) He also cancelled social events so that his wife would not be at home by herself. (TR Vol. 1:134) On cross-examination, Mr. North admitted that he had only recently filed a police report regarding the email and admitted that he had been present for two depositions involving Mr. Manookian since receipt of the email. He explained that both depositions were

in secure facilities with other people present and that Mr. Manookian's behavior during the depositions had been "okay." (TR Vol. 1:132-133)

Mr. North acknowledged that his and Mr. Manookian's relationship had been contentious for a while. He testified that he had filed multiple Motions for sanctions against Mr. Manookian in the Shao case (including a Motion for sanctions based on the 8/4/18 email) to address what North described as Mr. Manookian's downward-spiraling conduct. (TR Vol. 1:111-116)

Judge Brothers has recused himself from hearing Motions in the Shao case involving Mr. Manookian based on Mr. Manookian's Motion for recusal. The pending Motions were, therefore, heard by Judge Ashe, whose Order was entered on 9/28/18 (Hearing Exhibit 23). The Order details the litigation history of the Shao case and quotes Judge Brothers' prior reprimands with regard to Mr. Manookian's conduct. Judge Ashe's Order suspended Mr. Manookian from the practice of law in Davidson County Circuit Courts for sixty (60) days, required him to pay the attorneys' fees and expenses of Mr. North and Mr. Gideon, and further required him to complete a three (3) hour ethics course focusing on civility and professionalism. Noting that Mr. Manookian had failed to respond to prior reprimands and explicit orders from the Court, Judge Ashe concluded:

His [Mr. Manookian's] actions not only damage his reputation as a professional, but also blemish the legal profession and the integrity of the Court. It is this Court's hope Mr. Manookian will rethink his tactics and consider the great honor, and corresponding responsibility, attached to a law degree.

Report and Recommendations

As referenced earlier, Mr. Manookian raises numerous due process issues including the following:

- A. His law license was suspended without notice and a hearing.
- B. His Petition for Dissolution or Amendment of the Order of Temporary Suspension was not heard immediately but was heard nine (9) full business days after his Petition was filed.
- C. The Board's failure to support its original Petition for Temporary Suspension by sworn affidavit is fatal and cannot be cured by the Court's 10/17/18 Order, requiring the Petition to be summarily dismissed.
- D. The agreement of BPR counsel to extend the deadline for Mr. Manookian's response to a pending Petition for Discipline essentially estops the Board from taking any disciplinary action against him during the extension.
- E. The Supreme Court's consideration of the orders and findings of the various trial courts amounts to impermissible "judicial notice" of such findings.
- F. The Board of Professional Responsibility's dismissal of certain complaints against Mr. Manookian in the past acts as an estoppel to prevent the Board from including such past conduct as part of its complaint that Mr. Manookian poses a substantial risk of harm to the public.
- G. The Board has presented no proof that Mr. Manookian poses a physical threat to any individual.

The panel does not find that it has authority under Rule 12.3 (d) to rule on either the due process claims of Mr. Manookian nor does its purview extend to ruling on the merits of the pending Petitions for Discipline against Mr. Manookian.

The panel must determine whether Mr. Manookian has shown good cause why the Order of Temporary Suspension should be dissolved or amended. The panel finds that Mr. Manookian has not shown good cause. Beyond a general

denial of all wrong-doing, Mr Manookian has not addressed his conduct in any substantive way.

It is Mr. Manookian's position that speech alone, even rude and insulting speech, cannot present a substantial threat of harm to the public. This position is wrong, particularly with regard to an attorney's speech. Mr. Manookian's words, however, go beyond being merely rude and insulting and cross the line into threatening and intimidating. The practice of law, by its nature, involves conflict and contention. That is why the Rules of Professional Conduct for practitioners of the law require that an attorney's conduct be circumscribed within the boundaries of civility, decorum, and respect for both the process and the person. Keeping within the boundaries of professional conduct is critical for the proper functioning of the judicial system.

Mr. Manookian has had these boundaries pointed out to him repeatedly by multiple trial court judges to no avail. The importance of the trial court orders that were exhibited to the Petition for Temporary Suspension and were entered into the hearing record is that they clearly establish that Mr. Manookian was on notice as to what is and is not acceptable conduct. The efforts of the trial courts have ranged from constructive criticism to injunctions and costly sanctions, but none have deterred Mr. Manookian's behavior.

The argument that Mr. Manookian's emails to Mr. Glendon and to Mr. North were not designed to be threatening to the families of the recipients nor intimidating to the recipients themselves is simply not believable. There is no other reason for the defamatory, insulting and creepily personal information about the attorneys' family members to be included in professional communication between colleagues. An attorney often accepts a degree of

hostility in contentious litigation but he or she should not have to accept that spouses or children will be subject to insult and threat.

Mr. Manookian has not acknowledged that there is anything wrong with his conduct. Consequently, he has taken no steps to assure the panel that the conduct will not be repeated. He did not indicate that he intends to take any steps to address what he considers to be minimally inappropriate behavior—admittedly rude and insulting but, according to Mr. Manookian, not threatening to the public or to the judicial system which serves the public.

Absent any showing of acknowledgment, contrition, responsibility, or remediation, the recommendation of the hearing panel is that the Order of Temporary Suspension not be dissolved or amended.

Respectfully submitted this 7th day of Nov., 2018.


DANA DYE, Chairman


JOHN D. KITCH, Panel Member


JOE M. LOONEY, Panel Member