

**FILED**

SEP 21 2004

HEARING OFFICER OF THE  
SUPREME COURT OF ARIZONA  
BY *William*

**BEFORE A HEARING OFFICER  
OF THE SUPREME COURT OF ARIZONA**

IN THE MATTER OF A MEMBER ) No. 01-1792  
OF THE STATE BAR OF ARIZONA, )  
)  
PAUL NALABANDIAN, )  
Bar No. 019920 )  
)  
RESPONDENT. )

**HEARING OFFICER'S REPORT**

**PROCEDURAL HISTORY**

The State Bar filed a Complaint on May 28, 2004. Respondent filed an Answer on June 28, 2004. The parties filed a Tender of Admissions and Agreement for Discipline by Consent and a Joint Memorandum in Support of Agreement for Discipline by Consent on September 9, 2004. No hearing has been held.

**FINDINGS OF FACT**

At all times relevant, Respondent was an attorney licensed to practice law in the State of Arizona, having been admitted to practice in Arizona on May 20, 1999.

**COUNT ONE (File No. 01-1792)**

1. On or about August 18, 2001, in the early morning hours, Respondent was involved in a fatal hit and run automobile accident in Tempe, Arizona.

1           2.     In the accident, a female student at Arizona State University was hit  
2 and killed by a Mustang automobile while crossing the street near her sorority.

3  
4           3.     Mark Aaron Torre was the driver of the Mustang. Respondent was a  
5 passenger in the vehicle.

6           4.     Mr. Torre did not stop the vehicle at the scene of the accident, but  
7 drove a few miles away and left the vehicle parked on a residential street.

8  
9           5.     Mr. Torre and Respondent then walked for over four hours to reach  
10 Respondent's home.

11           6.     Respondent heard the sirens as he and Mr. Torre walked away. He  
12 knew that Mr. Torre's car had hit a person.

13  
14           7.     After reaching Respondent's home, Respondent drove Mr. Torre to  
15 Mr. Torre's parents' home.

16           8.     At approximately 2 p.m. that afternoon, Respondent met Mr. Torre  
17 at the law office of O. Joseph Chornenky, who Mr. Torre retained. Mr.  
18 Chornenky told Respondent that he had not violated any criminal laws, and  
19 recommended another attorney to represent Respondent. As Respondent left, Mr.  
20 Chornenky was phoning the Tempe Police Department to arrange for Mr. Torre  
21 to surrender to the authorities.  
22

23  
24           9.     Respondent was admittedly intoxicated at the time of the accident.  
25

1           10. Mr. Torre alleged that he was not intoxicated, although he admitted  
2 to having had some alcohol during the course of the evening prior to the accident.

3  
4           11. Mr. Torre turned himself in to the police on Monday, August 20,  
5 2001, without making a statement. He was released on his own recognizance  
6 while the investigation continued.

7           12. An acquaintance of Respondent's and Mr. Torre's, Kelly Singer,  
8 informed the police that Respondent was with Mr. Torre on Friday night and may  
9 have been the passenger in the vehicle at the time of the accident. Respondent  
10 was directed by search warrant to appear at the Tempe Police Department on  
11 August 24, 2001, concerning the automobile accident.  
12

13  
14           13. Respondent appeared for fingerprinting but would not speak to the  
15 police about the accident without receiving an order of immunity.

16           14. Respondent later testified before the Grand Jury, on or about  
17 September 6, 2001, in return for a grant of immunity.  
18

19           15. On or about October 10, 2001, Mr. Torre was indicted, stemming  
20 from the fatal hit and run accident on August 18, 2001, for second-degree murder  
21 and leaving the scene of a fatal injury accident, both felonies.  
22

23           16. Respondent wrote to the State Bar on November 15, 2001, reporting  
24 the automobile accident that occurred on August 18, 2001, that resulted in the  
25 fatality of the young woman. Respondent stated that he did not report the

1 accident initially “over concerns that to do so would infringe upon [his]  
2 constitutional rights.”

3  
4 17. The State Bar sent Respondent an initial screening letter on  
5 December 7, 2001. By letter dated December 18, 2001, Respondent asked for  
6 certain clarification before he could fully respond. Specifically, he asked which  
7 ethical rules the State Bar was alleging he may have violated; what ethical rule  
8 imposes a timing obligation on reporting the accident to law enforcement or the  
9 State Bar; and how the ethical rules could “nullify” his constitutional rights.  
10 Respondent also requested that the State Bar provide citation to case law and/or  
11 ethical opinions in its analysis.  
12

13  
14 18. As criminal proceedings against Mr. Torre were ongoing, the State  
15 Bar did not question Respondent further at that time.

16  
17 19. Mr. Torre was tried before a jury in Maricopa County Superior Court  
18 and found guilty of negligent homicide and leaving the scene of a fatal injury  
19 accident, both Class 4 felonies. On or about December 13, 2002, Mr. Torre was  
20 sentenced to a total of 9 ½ years imprisonment for the guilty verdict.

21  
22 20. Mr. Torre appealed. The Arizona Court of Appeals affirmed Mr.  
23 Torre's convictions and sentences on or about December 26, 2003. The State Bar  
24 filed a formal complaint against Mr. Torre on December 17, 2003. In the course  
25 of pursuing the formal complaint against Mr. Torre, the State Bar obtained the

1 entire court record of the trial, including the transcript of both Mr. Torre's and  
2 Respondent's testimony.

3  
4 21. After receiving the court records, Bar Counsel wrote to Respondent  
5 on February 18, 2004, asking him to provide a detailed response that addressed  
6 each potential ethical rule violation referred to in the letter he received in  
7 December 2001. Bar Counsel provided answers to the questions Respondent  
8 raised in his letter dated December 18, 2001.

9  
10 22. A Probable Cause Order was entered on April 26, 2004 for  
11 violations of Rule 42, Ariz. R. S. Ct., including but not limited to ERs 8.1(b),  
12 8.3(a), 8.4(a) (c) and (d) and Rule 53(f), Ariz. R. S. Ct.

13  
14 23. By leaving the scene of a fatal accident and assisting the driver of the  
15 vehicle to leave the scene of a fatal accident, as well as by failing to report the  
16 accident immediately or as soon as possible thereafter, Respondent prejudiced the  
17 administration of justice and thereby violated ER 8.4(d), Rule 42, Ariz. R. S. Ct.

18  
19 **CONDITIONAL ADMISSIONS**

20 Respondent conditionally admits, for purposes of this agreement only, his  
21 conduct as described above violated Rule 42, Ariz. R. S. Ct., specifically, ER  
22 8.4(d).

23 The State Bar conditionally agrees, for purposes of this agreement only,  
24 to dismiss the alleged violations of ERs 8.1(b), 8.3(a), 8.4(a) and (c), and Rule  
25 53(f), Ariz. R. S. Ct.



1 potentially serious injury to a party, or causes serious or potentially  
2 serious adverse effect on the legal proceeding.

3 **6.12**

4 Suspension is generally appropriate when a lawyer knows that false  
5 statements or documents are being submitted to the court or that  
6 material information is improperly being withheld, and takes no  
7 remedial action, and causes injury or potential injury to a party to the  
8 legal proceeding, or causes an adverse or potentially adverse effect  
9 on the legal proceeding.

10 **6.13**

11 Reprimand [censure in Arizona] is generally appropriate when a  
12 lawyer is negligent either in determining whether statements or  
13 documents are false or in taking remedial action when material  
14 information is being withheld, and causes injury or potential injury  
15 to a party to the legal proceeding, or causes an adverse or potentially  
16 adverse effect on the legal proceeding.

17 Absent aggravating or mitigating circumstances, upon application of the  
18 factors set out in 3.0, the following sanctions are generally appropriate in cases  
19 involving failure to expedite litigation or bring a meritorious claim, or failure to  
20 obey any obligation under the rules of a tribunal except for an open refusal based  
21 on an assertion that no valid obligation exists:

22 **6.21**

23 Disbarment is generally appropriate when a lawyer knowingly  
24 violates a court order or rule with the intent to obtain a benefit for  
25 the lawyer or another, and causes serious injury or potentially serious  
injury to a party, or causes serious or potentially serious interference  
with a legal proceeding.

**6.22**

Suspension is appropriate when a lawyer knowingly violates a court  
order or rule, and there is injury or potential injury to a client or a

1 party, or interference or potential interference with a legal  
2 proceeding.

3 6.23

4 Reprimand [censure in Arizona] is generally appropriate when a  
5 lawyer negligently fails to comply with a court order or rule, and  
6 causes injury or potential injury to a client or a party, or interference  
7 or potential interference with a legal proceeding.

8 Respondent conditionally admits that he left the scene of a fatal accident  
9 with the driver of the vehicle, Mr. Torre, who was also a lawyer, walked for  
10 over four hours to reach Respondent's home, and failed to call the police or  
11 other authorities regarding the accident. Respondent admits that because he and  
12 Mr. Torre left the scene of the accident and walked for four hours, the State was  
13 unable to determine conclusively whether or not Mr. Torre, the driver, was  
14 intoxicated at the time of the accident.  
15

16 Based on the foregoing, the presumptive sanction for the admitted conduct  
17 under Standards 6.12 and 6.22 falls between a censure and some term of  
18 suspension. After determining the presumptive sanction, it is appropriate to  
19 evaluate aggravating and mitigating factors enumerated in the Standards that  
20 would justify an increase or decrease in the presumptive sanction. See *In re*  
21 *Scholl*, 200 Ariz. 222, 225-26, 25 P.3d 710, 713-14 (2001); *In re Savoy*, 181 Ariz.  
22 368, 371, 891 P.2d 236, 239 (1995).  
23  
24  
25



1 determining appropriate sanction); (l) remorse: Shortly after the accident,  
2 Respondent wrote to the victim's father, apologizing and expressing extreme  
3 sorrow and regret for what had happened to his daughter. Respondent also later  
4 spoke to the father in person and expressed similar feelings. In addition, in his  
5 disclosure statement and in conversations with Bar Counsel, Respondent has now  
6 explained the events that occurred prior and subsequent to the collision and the  
7 victim's death and has expressed sincere remorse and regret for his conduct; and,  
8  
9 (j) delay in disciplinary proceedings: The original screening letter was sent to  
10 Respondent on December 7, 2001. Although Respondent requested clarification,  
11 he was not provided with a response to his questions until February 18, 2004. For  
12 approximately a year after the original screening letter, Respondent would inquire  
13 as to the status of the matter through phone calls and e-mails to the State Bar.  
14  
15

16 Respondent was hesitant to look for a new legal job with the discipline  
17 matter outstanding, and consequently delayed seeking new employment.  
18 Respondent also delayed applying for admission to the District of Columbia Bar  
19 after his move to the Washington D.C. area, because he did not want to do so  
20 while the disciplinary matter was open in Arizona. In sum, Respondent did not  
21 practice law for more than eighteen months following the accident.<sup>2</sup> His  
22  
23  
24

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25 <sup>2</sup> Respondent was admitted to the D.C. Bar in November, 2003, and is currently employed as temporary attorney for various firms.

1 employment prospects were adversely affected by the accident and surrounding  
2 circumstances themselves, but the State Bar agrees that the delay in the  
3 disciplinary process was prejudicial to Respondent.  
4

5 The Hearing Officer agrees with the parties that the mitigating factors  
6 present in this case justify a decrease in the presumptive sanction in this case. As  
7 the presumptive sanction lies between censure and suspension, the Hearing  
8 Officer agrees with the parties that the mitigating factors tip the balance in favor  
9 of censure.  
10

#### 11 PROPORTIONALITY REVIEW

12 To have an effective system of professional sanctions, there must be  
13 internal consistency, and it is appropriate to examine sanctions imposed in cases  
14 that are factually similar. *Peasley, supra*, ¶¶ 33, 61. However, the discipline in  
15 each case must be tailored to the individual case, as neither perfection nor  
16 absolute uniformity can be achieved. *Id.* at ¶ 61 (citing *In re Alcorn*, 202 Ariz.  
17 62, 76, 41 P.3d 600, 614 (2002); *In re Wines*, 135 Ariz. 203, 207, 660 P.2d 454,  
18 458 (1983)).  
19  
20

21 There are no factually similar Arizona cases. Generally, cases involving  
22 violations of ER 8.4(d) involve attorneys prejudicing the administration of  
23 justice while acting as an attorney. *See, e.g., In re Holman*, (Disc. Comm. No.  
24 5-1697, 1987) (Attorney censured for violating ER 8.4(d) by offering not to  
25

1 report opposing party to IRS in exchange for favorable settlement terms.); *In re*  
2 *Cramer* (Disc. Comm. No. 5-1316, 1987) (Attorney received informal  
3 reprimand for violating ER 8.4(d) by making loud, vulgar and inappropriate  
4 comments in courtroom in the presence of court personnel, other attorneys and  
5 their clients and the public in general). The facts of this case do not involve  
6 Respondent's conduct as a lawyer and are quite unique. A review of other  
7 states' case law also failed to reveal any cases factually similar to the present  
8 matter.  
9  
10

11           Respondent was not charged with any crime and it is not clear whether a  
12 non-lawyer would have had a duty to call the police under these circumstances.  
13 Nonetheless, the *ABA Standards* recognize that lawyers are officers of the  
14 court and as such, are subject to standards not applicable to the public at large.  
15 The public expects lawyers to abide by the legal rules of substance and  
16 procedure that affect the administration of justice. *Standards*, p. 40. In the  
17 instant case, Respondent conditionally admits that by leaving the scene of a  
18 fatal accident and assisting the driver of the vehicle to leave the scene of a fatal  
19 accident while failing to report the accident immediately or as soon as possible  
20 thereafter, Respondent prejudiced the administration of justice and thereby  
21 violated ER 8.4(d), Rule 42, Ariz. R. S. Ct.  
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23  
24  
25

1 Although Respondent's conduct does not warrant disbarment or a term of  
2 suspension it does demand recognition of wrongdoing. This agreement provides  
3 for a sanction that meets the goals of the disciplinary system. The terms of this  
4 agreement serve to protect the public, instill confidence in the public, deter other  
5 lawyers from similar conduct and maintain the integrity of the bar.  
6

### 7 RECOMMENDATION

8  
9 The purpose of lawyer discipline is not to punish the lawyer, but to protect  
10 the public and deter future misconduct. *In re Fioramonti*, 176 Ariz. 182, 187, 859  
11 P.2d 1315, 1320 (1993). It is also the objective of lawyer discipline to protect the  
12 public, the profession and the administration of justice. *In re Neville*, 147 Ariz.  
13 106, 708 P.2d 1297 (1985). Yet another purpose is to instill public confidence in  
14 the bar's integrity. *Matter of Horwitz*, 180 Ariz. 20, 29, 881 P.2d 352, 361  
15 (1994).  
16

17 In imposing discipline, it is appropriate to consider the facts of the case, the  
18 American Bar Association's *Standards for Imposing Lawyer Sanctions*  
19 (*"Standards"*) and the proportionality of discipline imposed in analogous cases.  
20 *Matter of Bowen*, 178 Ariz. 283, 286, 872 P.2d 1235, 1238 (1994).  
21

22 Upon consideration of the facts, application of the *Standards*, including  
23 aggravating and mitigating factors, and a proportionally analysis, this Hearing  
24 Officer recommends acceptance of the Tender of Admissions and Agreement for  
25

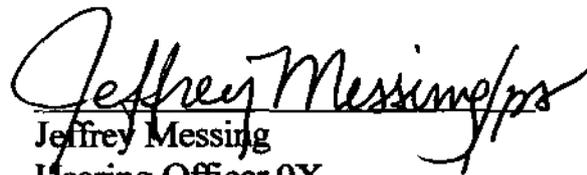
1 Discipline by Consent and the Joint Memorandum in Support of Agreement for

2 Discipline by Consent providing for the following:

3 1. Respondent shall receive a censure.

4  
5 2. Respondent shall pay the costs and expenses incurred in this  
6 disciplinary proceeding.

7 DATED this 21<sup>st</sup> day of September, 2004.

8  
9   
10 Jeffrey Messing  
11 Hearing Officer 9X

12 Original filed with the Disciplinary Clerk  
13 this 21<sup>st</sup> day of September, 2004.

14 Copy of the foregoing was mailed  
15 this 21<sup>st</sup> day of September, 2004, to:

16 Paul Nalabandian  
17 Respondent  
18 901 North Nelson Street, No. 704  
19 Arlington, VA 22203-0001

20 Denise M. Quinterri  
21 Bar Counsel  
22 State Bar of Arizona  
23 111 West Monroe, Suite 1800  
24 Phoenix, AZ 85003-1742

25 by: Patti Williams