

**FILED**

SEP 29 2004

DISCIPLINARY COMMISSION OF THE  
SUPREME COURT OF ARIZONA

BY [Signature]

**BEFORE THE DISCIPLINARY COMMISSION  
OF THE SUPREME COURT OF ARIZONA**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

IN THE MATTER OF A MEMBER )  
OF THE STATE BAR OF ARIZONA, )  
)  
**DAVID D. RODGERS,** )  
**Bar No. 014623** )  
)  
)  
RESPONDENT. )

No. 03-0770

**DISCIPLINARY COMMISSION  
REPORT**

This matter came before the Disciplinary Commission of the Supreme Court of Arizona on September 11, 2004, pursuant to Rule 58(e), Ariz. R. S. Ct., for consideration of the Hearing Officer's Report filed July 20, 2004, recommending acceptance of the Tender of Admissions and Agreement for Discipline by Consent (Agreement) and Joint Memorandum in Support of Agreement for Discipline by Consent (Joint Memorandum) providing for censure and costs of these disciplinary proceedings.

**Decision**

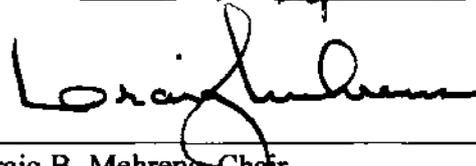
The Commission's standard of review is set forth in Rule 58(b), which states that the Commission reviews questions of law *de novo*. In reviewing findings of fact made by a hearing officer, the Commission applies a clearly erroneous standard. Mixed findings of fact and law are also reviewed *de novo*. *State v Blackmore*, 186 Ariz. 630, 925 P.2d 1347 (1996) citing *State v Winegar*, 147 Ariz. 440, 711 P.2d 579 (1985).

Upon review, the Commission determined that there is insufficient evidence in the record to support a finding of mitigating factor 9.32(c) personal and emotional problems

1 and therefore, does not find this factor.<sup>1</sup> Arizona case law has previously held that  
2 mitigating or aggravating circumstances must be supported by reasonable evidence.  
3 *Matter of Varbel*, 182 Ariz. 451, 455, 897 P.2d 1337, 1341 (1995). The Commission  
4 concluded however, that the absence of this factor does not affect the outcome and censure  
5 is appropriate based on the four remaining factors in mitigation.

6 Therefore, having found no findings of fact clearly erroneous, the nine<sup>2</sup> members of  
7 the Commission unanimously recommend adopting and incorporating by reference the  
8 Hearing Officer's findings of fact, conclusions of law, and recommendation for censure  
9 and costs.

10 RESPECTFULLY SUBMITTED this 29<sup>th</sup> day of September, 2004.

11  
12 

13 Craig B. Mehrens, Chair  
14 Disciplinary Commission

15 Original filed with the Disciplinary Clerk  
16 this 29<sup>th</sup> day of September, 2004, to:

17 Copy of the foregoing mailed  
18 this 29<sup>th</sup> day of September, 2004, to:

19 Jeffrey Messing  
20 Hearing Officer 9X  
21 *Poli & Ball, P.L.C.*  
22 2999 North 44<sup>th</sup> Street, Suite 500  
23 Phoenix, AZ 85018-7252

24 David D. Rodgers  
25 Respondent  
26 555 W. University, #3  
Mesa AZ 85201-0001

<sup>1</sup> See Hearing Office Report, p. 5:3.

<sup>2</sup> Commissioner Funkhouser did not participate in these proceedings. Anne H. Phillips, a hearing officer from Phoenix, participated as an ad hoc member.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

Roberta L. Tepper  
Bar Counsel  
State Bar of Arizona  
111 West Monroe, Suite 1800  
Phoenix, AZ 85003-1742

by: Kel Weigand

/mps