

BEFORE THE PRESIDING DISCIPLINARY JUDGE

IN THE MATTER OF A MEMBER OF
THE STATE BAR OF ARIZONA,

GALE A. DEAN,
Bar No. 004774

Respondent.

PDJ-2017-9098

JUDGMENT OF DISBARMENT

[State Bar File No. 15-2608]

FILED OCTOBER 31, 2017

Pursuant to Rule 57, Ariz. R. Sup. Ct., Respondent filed with the disciplinary clerk a consent to disbarment dated October 26, 2017, and filed on October 30, 2017. The consent being compliant with Rule 57 and the Presiding Disciplinary Judge having considered it,

Now therefore,

IT IS ORDERED accepting the consent to disbarment and disbarring **Gale A. Dean, Bar No. 004774**, from the State Bar of Arizona effective immediately. His name is stricken from the roll of lawyers and he is no longer entitled to the rights and privileges of a lawyer, but will remain subject to the jurisdiction of the court.

IT IS FURTHER ORDERED Gale A. Dean shall immediately comply with the requirements relating to notification of clients and others, and provide and/or file all notices and affidavits required by Rule 72, Ariz. R. Sup. Ct.

IT IS FURTHER ORDERED under Rule 57(a)(5)(C), no further disciplinary action shall be taken regarding the matters that are the subject of the charges upon which the consent to disbarment and this judgment of disbarment are based.

DATED this 31st day of October, 2017.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

Copies of the foregoing e-mailed this 31st day of October, 2017, and mailed November 1, 2017, to:

Counsel for State Bar
Hunter F. Perlmeter
State Bar of Arizona
4201 N. 24th Street, Suite 100
Phoenix, AZ 85016-6266
Email: lro@staff.azbar.org

Respondent
Gale A. Dean
1210 N. Stone Ave.
Tucson, AZ 85705-7336
Email: gadpclaw@aol.com

Respondent's Counsel
J. Scott Rhodes
Jennings Strouss & Salmon PLC
One East Washington Street, Suite 1900
Phoenix, AZ 85004-2554
Email: srhodes@jsslaw.com

by: AMcQueen

OCT 30 2017

FILED

BEFORE THE PRESIDING DISCIPLINARY JUDGE

IN THE MATTER OF A CURRENT
MEMBER OF THE STATE BAR OF
ARIZONA,

GALE A. DEAN,
Bar No. 004774

Respondent.

PDJ 2017-9098

CONSENT TO DISBARMENT

[State Bar File 15-2608]

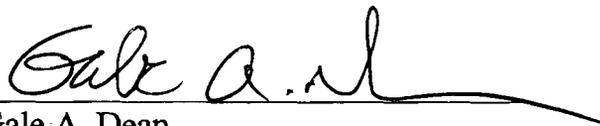
I, GALE A. DEAN, residing at 1491 North Camino Villa Los Arcos, Tucson, Arizona 85715, voluntarily consent to disbarment as a member of the State Bar of Arizona and consent to the removal of my name from the roster of those permitted to practice before this court, and from the roster of the State Bar of Arizona.

I acknowledge that a formal complaint has been filed against me. I have read the complaint, and the charges there made against me. I further acknowledge that I do not desire to contest or defend against the charges, but wish to consent to disbarment. I have been advised of and have had an opportunity to exercise my right to be represented in this matter by a lawyer. I consent to disbarment freely and voluntarily and not under coercion or intimidation. I am aware of the rules of the Supreme Court with respect to discipline, disability, resignation and reinstatement, and I understand that any future application by me for admission or

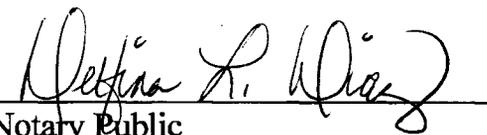
reinstatement as a member of the State Bar of Arizona will be treated as an application by a member who has been disbarred for professional misconduct, as set forth in the complaint filed against me. The misconduct of which I am accused is described in the complaint bearing the number referenced above, a copy of which is attached hereto as Exhibit "A."

A proposed form of judgment of disbarment is attached hereto as Exhibit "B."

DONE AT Tucson, Arizona, on October 26th, 2017.

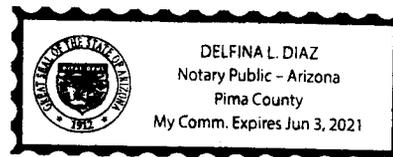

Gale A. Dean
Respondent

SUBSCRIBED AND SWORN TO before me this 26th day of October, 2017,
by Gale A. Dean, who satisfactorily proved his identity to me.


Notary Public

My Commission expires:

JUNE 3, 2021



Original filed with the Disciplinary Clerk
of the Office of the Presiding Disciplinary
Judge of the Supreme Court of Arizona
this 30th day of October, 2017.

Copy of the foregoing e-mailed and mailed
this 30th day of October, 2017, to:

Hunter F. Perlmeter, Esq.
Staff Bar Counsel
State Bar of Arizona
4201 North 24th Street, Suite 100
Phoenix, Arizona 85016-6266
Email: LRO@staff.azbar.org

Copy of the foregoing mailed this
30th day of October, 2017, to:

Lawyer Regulation Records Manager
State Bar of Arizona
4201 North 24th Street, Suite 100
Phoenix, Arizona 85016-6266

By: Mary Liska

EXHIBIT A

OFFICE OF THE
PRESIDING DISCIPLINARY JUDGE
SUPREME COURT OF ARIZONA

AUG 3 2017

FILED
BY AM

Hunter F. Perlmeter, Bar No. 024755
Staff Bar Counsel
State Bar of Arizona
4201 N. 24th Street, Suite 100
Phoenix, Arizona 85016-6266
Telephone (602) 340-7278
Email: LRO@staff.azbar.org

BEFORE THE PRESIDING DISCIPLINARY JUDGE

IN THE MATTER OF A
CURRENT MEMBER OF
THE STATE BAR OF ARIZONA,

GALE A. DEAN,
Bar No. 004774,

Respondent.

PDJ 2017-9098

COMPLAINT

[State Bar No. 15-2608]

Complaint is made against Respondent as follows:

GENERAL ALLEGATIONS

1. At all times relevant, Respondent was a lawyer licensed to practice law in the state of Arizona having been first admitted to practice in Arizona on December 7, 1976.

COUNT ONE (File no. 15-2608/Wineberry)

2. In November 2011, Dr. James Wineberry discovered that Respondent was settling personal injury cases, but failing to timely pay medical liens.

3. When Dr. Wineberry confronted Respondent, Respondent informed Dr. Wineberry that the delay in payment was due to IRS tax problems he was experiencing which did not leave him with sufficient funds to pay the liens.

4. As of November 18, 2011, Respondent owed Dr. Wineberry a total of \$10,955.00 on behalf of five clients.

5. On November 18, 2011, Dr. Wineberry demanded in writing that Respondent make payment in full.

6. Dr. Wineberry and Respondent met concerning Respondent's failure to pay and Respondent agreed to pay the balance due by the end of January 2012. Respondent, however, failed to comply with the agreement.

7. On February 1, 2012, Dr. Wineberry issued a second demand letter to Respondent requesting payment. In the letter Dr. Wineberry stated of his prior meeting with Respondent:

You had a lot of excuses for your mishandling of funds,
and you made a lot of promises that day, but what it

boiled down to was a promise to have me completely reimbursed by January of 2012. My letter indicated that I was ready to complain to the AZ Bar formally, but based on your assurances, I held off. To date you have only reimbursed me \$1750.00, leaving a balance of \$9205.00, and this is unacceptable to me.

8. Respondent paid Dr. Wineberry in full on February 3, 2012, but not all of the funds Respondent used originated from the trust account.

9. From June to August 2014 Dr. Wineberry treated Respondent's daughter for injuries sustained in a motor vehicle accident after Respondent assured Dr. Wineberry that he had medical insurance that would cover the treatment.

10. After Dr. Wineberry treated Respondent's daughter, however, the insurance company declined coverage

11. Dr. Wineberry later treated Respondent's client (Gooding) and her three minor children. Respondent received settlement recoveries for the children on October 22, 2014 and recovery for the mother on September 16, 2015. Dr. Wineberry agreed to reduce his liens to \$4,500.00 for the mother and \$2,380.00 for the children.

12. On or about September 25, 2015, Dr. Wineberry received a check from Respondent for \$4,500.00. Respondent wrote in the memo portion of the check, and the accompanying letter dated September 22, 2015, that the check constituted "full payment for the lien owed by [client Gooding and her minor children]."

13. This language was contrary to the agreement between Dr. Wineberry and Respondent and was an attempt by Respondent to avoid paying the additional \$2,380.00 due to Dr. Wineberry.

14. During the State Bar of Arizona (SBA's) investigation, the Trust Account Examiner (Examiner) requested copies of mandatory trust account records for the period of January 1, 2011 to May 31, 2016 ("period of review"). Respondent failed to provide a complete response stating that many of the items requested were unavailable and that his accountant had lost several requested items. Respondent failed to provide the following:

- a. Copies of the front and back of all cancelled checks.
- b. Copies of all individual client ledgers.
- c. Copies of the administrative funds/bank charges ledger.

- d. Copies of the general ledger/checkbook register
- e. Copies of duplicate deposit records
- f. Copies of monthly three-way reconciliations.

15. Given Respondent's failure to maintain copies of the mandatory trust account records, Respondent was asked to produce copies of all fee agreements and settlement statements for clients who held or should have held funds on deposit in the trust account during the period of review. Respondent failed to provide a complete response.

16. Respondent had approximately 225 clients during the period of review. Respondent, however, only provided fee agreements and client ledgers for approximately 162 clients and partial records for an additional 17 clients.

17. Respondent maintained a trust account deficit throughout the period of review with a deficit of approximately <\$52,000.00> on at least one occasion and a deficit exceeding <\$100,000.00> at the end of the period of review.

18. The funds Respondent owed to Dr. Wineberry included \$1,545.00 for client S. B. and \$2,780.00 for client F. R., a total of \$4,325.00. Both matters settled in January 2010.

19. Respondent, however, did not begin to issue payments to Dr. Wineberry until approximately the middle of 2011. Accordingly, at all times prior to distribution, \$4,325.00 should have been held in the trust account, but the balance on January 1, 2011, was only \$2,181.11. Therefore the account had a deficit of no less than <\$2,143.89> at the start of the period of review.

20. In response to the Bar's request for an explanation concerning these deficits Respondent simply stated "in respect to your [question], we are not able to fully respond to your inquiry at this time."

21. Between January 2011 and June 2014, Respondent disbursed a total of \$57,520.43 on behalf of clients when there were no funds held in the trust account for the respective clients. This resulted in a deficit of approximately <\$55,339.32>.

22. The Examiner identified approximately 80 clients for whom Respondent should have held funds in trust. In analyzing Respondent's conduct, the Examiner used these 80 clients as a "test group."

23. The Examiner reconstructed the test group's balances for the period of February 2, 2011 to May 31, 2016, a total of 1945 days. The test group analysis revealed that Respondent's trust account balance fell below the amount that should

have been held on deposit on approximately 984 days. The average deficit amount reflected was <\$24,732.60>. The highest shortage identified was evident on February 28, 2014. On that day \$60,417.52 should have been held on deposit on behalf of 21 clients. The actual trust account balance was \$8,450.78, a shortage of <\$51,966.74>.

24. The Examiner calculated that approximately \$284,916.94 should have been held in the trust account at the end of the period of review, but the trust account balance was \$100,932.11, a shortage of <\$183,984.83>.

25. Respondent also endangered third-party funds by disbursing lien amounts directly to clients rather than lien holders.

26. Additionally, Respondent's failed to maintain documentation reflecting accounting consistent with the actual activity he transacted. Respondent post-dated checks on several occasions.

27. Respondent also deposited personal/earned funds of \$114,764.12 into his trust account during the period of review.

28. Respondent's also made at least five deposits and two disbursements related to client loans during the period of review. He did so because he repeatedly loaned money to clients in anticipation of future litigation proceeds.

Rule Violations

29. Rule 42, ER 1.8(e) Ariz. R. Sup. Ct. Provided financial assistance to a client in connection with pending or contemplated litigation, for purposes other than to (1) advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter; or (2) to pay court costs and expenses of litigation on behalf of an indigent client.

30. Rule 42, ER 1.15(a), Ariz. R. Sup. Ct. Failed to safe keep client property. Converted client funds. Commingled personal funds. Misappropriated client funds. Failed to keep and preserve complete records of such account funds and other property. Failed to preserve complete records of such account funds and other property for a period of five years after termination of the representation.

31. Rule 42, ER 1.15(b)(1), Ariz. R. Sup. Ct. Failed to deposit lawyer's own funds in a client trust account only in an amount reasonably estimated to be necessary to pay service or other charges or fees imposed by the financial institution that are related to the operation of the trust account.

32. Rule 42, ER 1.15(d), Ariz. R. Sup. Ct. Upon receiving of funds or other property in which a client/third person has an interest, failed to promptly notify the client/third person. Except as stated in this Rule or otherwise permitted

by law or by agreement between the client/third person, failed to promptly deliver to the client/third person any funds or other property that the client/third person is entitled to receive. Upon request by the client/third person, failed to promptly render a full accounting regarding such property.

33. Rule 42, ER 1.15(e), Ariz. R. Sup. Ct. In the course of a representation, possessed property in which two or more persons (one of whom may be the lawyer) claim interests, but failed to keep the property separate. Failed to promptly distribute any portions of the property as to which there are no competing claims. Any other property shall be kept separate until one of the following occurs: (1) The parties reach an agreement on the distribution of the property; (2) A court order resolves the competing claims; or (3) Distribution is allowed under section (f).

34. Rule 42, ER 8.4(c), Ariz. R. Sup. Ct. Engaged in conduct involving dishonesty, fraud, deceit or misrepresentation.

35. Rule 43(a)(4), Ariz. R. Sup. Ct. Failed to withdraw the portion of funds belonging to the lawyer or law firm when due and legally available from the financial institution, or within a reasonable time thereafter, and the right of the lawyer or law firm to receive it was not disputed by the client/third person.

36. Rule 43(b)(1)(A), Ariz. R. Sup. Ct. Failed to exercise due professional care in the performance of the lawyer's duties.

37. Rule 43(b)(1)(B), Ariz. R. Sup. Ct. Failed to properly train employees and others assisting the attorney in the performance of his duties. Failed to properly supervise employees and others assisting the attorney in performance of his duties.

38. Rule 43(b)(1)(C), Ariz. R. Sup. Ct. Failed to maintain adequate internal controls under the circumstances to safeguard funds or other property held in trust.

39. Rule 43(b)(2)(A), Ariz. R. Sup. Ct. Failed to maintain on a current basis, complete records of the handling, maintenance, and disposition of all funds, securities, and other property belonging in whole or in part to a client/third person in connection with a representation. These records shall include the records required by ER 1.15 and cover the entire time from receipt to the time of final disposition by the lawyer of all such funds, securities, and other property. Failed to preserve these records for a period of 5 years after termination of the representation.

40. Rule 43(b)(2)(B), Ariz. R. Sup. Ct. Failed to maintain or cause to be maintained an account ledger or the equivalent for each client, person, or entity for which funds have been received in trust, showing: (i) the date, amount, and payor of each receipt of funds; (ii) the date, amount, and payee of each disbursement; and (iii) any unexpended balance.

41. Rule 43(b)(2)(C), Ariz. R. Sup. Ct. Failed to make or cause to be made a monthly three-way reconciliation of the client ledgers, trust account general ledger or register, and the trust account bank statement.

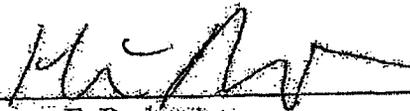
42. Rule 43(b)(2)(D), Ariz. R. Sup. Ct. Failed to retain, in accordance with this rule, cancelled pre-numbered checks (unless recorded on microfilm or stored electronically by a bank or other financial institution that maintains such records for the length of time required by this rule), other evidence of disbursements, duplicate deposit slips or the equivalent (which shall be sufficiently detailed to identify each item), client ledgers, trust account general ledger or register, and reports to clients.

43. Rule 43(b)(5), Ariz. R. Sup. Ct. Disbursed funds without using a pre-numbered check or by electronic transfer and did not maintain a record of such

disbursements in accordance with the requirements of this rule. Failed to identify all instruments of disbursement as a disbursement from the trust account.

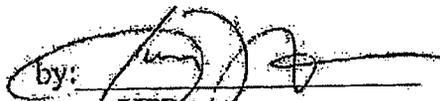
DATED this 3rd day of August, 2017.

STATE BAR OF ARIZONA



Hunter F. Perlmeier
Staff Bar Counsel

Original filed with the Disciplinary Clerk of the Office of the Presiding Disciplinary Judge of the Supreme Court of Arizona this 3rd day of August, 2017.

by: 

HRP:trb

EXHIBIT B

BEFORE THE PRESIDING DISCIPLINARY JUDGE

IN THE MATTER OF A CURRENT
MEMBER OF THE STATE BAR OF
ARIZONA,

GALE A. DEAN,
Bar No. 004774

Respondent.

PDJ 2017-9098

JUDGMENT OF DISBARMENT

State Bar No. 15-2608

Pursuant to Rule 57, Ariz. R. Sup. Ct., the undersigned Presiding Disciplinary Judge of the Supreme Court of Arizona has considered Respondent's Consent to Disbarment dated October __, 2017, and filed herein. Accordingly:

IT IS HEREBY ORDERED accepting the consent to disbarment. Respondent, GALE A. DEAN, is hereby disbarred from the State Bar of Arizona and his name is hereby stricken from the roll of lawyers **effective** _____.

Respondent is no longer entitled to the rights and privileges of a lawyer but remains subject to the jurisdiction of the court, and he shall immediately comply with the requirements relating to notification of clients and others.

IT IS FURTHER ORDERED that no further disciplinary action shall be taken in reference to the matters that are the subject of the complaint upon which the consent to disbarment and this judgment of disbarment are based.

DATED this _____ day of _____, 2017.

The Honorable William J. O'Neil
Presiding Disciplinary Judge

Original filed with the Disciplinary Clerk
of the Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona
this _____ day of _____, 2017.

Copies of the foregoing mailed/mailed
this _____ day of _____, 2017, to:

J. Scott Rhodes
Jennings Strouss & Salmon PLC
One East Washington Street Suite 1900
Phoenix, AZ 85004-2554
Email: srhodes@jsslaw.com
Respondent's Counsel

Copy of the foregoing mailed/mailed
this _____ day of _____, 2017, to:

Hunter F. Perlmeter, Esq.
Staff Bar Counsel
State Bar of Arizona
4201 North 24th Street, Suite 100
Phoenix, Arizona 85016-6266
Email: LRO@staff.azbar.org

Lawyer Regulation Records Manager
State Bar of Arizona
4201 North 24th Street, Suite 100
Phoenix, Arizona 85016-6266

By: _____