

IN RE ESTATE OF RILEY:
PROTECTING BENEFICIARIES' RIGHTS IN A
PROBATE ESTATE

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In In re Estate of Riley, the Arizona Court of Appeals held that state probate law requires a compromise agreement that affects the distribution of an estate to be executed by all beneficiaries and interested persons. This Case Note discusses the court's decision and rationale, and explores its implications for probate law in Arizona, including increasing costs, opportunities for abuse, and contraventions of the law's intent. It also proposes legislative solutions that may accommodate the Riley court's interest in protecting beneficiaries' rights in an estate while mitigating some of the implications of the decision.

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INTRODUCTION

In 2006, Joseph Riley (“Joseph”) and Mary Benge (“Mary”) resigned as co-personal representatives of Mary Riley’s estate after their siblings, also beneficiaries of the estate, filed a petition for their removal.¹ Joseph and Mary prepared an accounting of the estate for the court that showed that Joseph stole more than \$200,000 from the estate.² Ultimately Joseph pleaded guilty to theft and was ordered to spend 52 consecutive weekends in jail.³

Nine of the estate’s thirteen beneficiaries also filed a civil suit. The litigation implicated Arizona Revised Statutes section 14-3952, and prompted the Arizona Court of Appeals to clarify the statute’s requirements. The Arizona State Legislature adopted section 14-3952 in 1974, which defines the procedure for securing court approval of a compromise. This Case Note first analyzes the court of appeals’ decision *In re Estate of Riley*, which addressed for the first time whether section 14-3952 requires that a compromise agreement that affects the distribution of an estate be executed by all estate beneficiaries and interested persons.⁴ Looking to the plain meaning of the statute, the court held that in order to protect the rights of beneficiaries and interested persons in the estate’s distribution, all beneficiaries and interested persons must execute an agreement.⁵ This Case Note explores the implications of the *Riley* decision—including increasing costs, opportunities for abuse, and contraventions of the law’s intent—and suggests legislative action that may accommodate the court’s interest in protecting beneficiaries’ rights in an estate while mitigating some of the implications of the decision.

1. *In re Estate of Riley*, 266 P.3d 1078, 1079–80 (Ariz. Ct. App. 2011).

2. Appellants R.J. Riley, Regina M. Riley, F. Martin Riley, Neysa Kalil, Nora J. Simons, Cecelia Riley, Jude S. Riley, Loretta Lacorte, and Julia Riley's Opening Brief and Appendix at 7, *In re Estate of Riley*, 266 P.3d 1078 (No. 2 CA-CV 2010-0149) [hereinafter Opening Brief].

3. Kim Smith, *Lawyer Gets Probation, Weekend Jail in Theft*, ARIZ. DAILY STAR (Mar. 27, 2012, 12:00 AM), http://www.azstarnet.com/news/local/crime/lawyer-gets-probation-weekend-jail-in-theft/article_8e932088-1aa0-505f-bcd5-6a65b30f686d.html.

4. *In re Estate of Riley*, 266 P.3d at 1083.

5. *Id.*

I. *IN RE ESTATE OF RILEY*

In December 2011, the Arizona Court of Appeals held that in order to effectuate a settlement affecting the interests of the beneficiaries of a probate estate, section 14-3952 requires that all beneficiaries and interested persons of a probate estate sign the settlement that affects their interests.⁶ Mary and Joseph were appointed co-personal representatives of their mother's estate and were also beneficiaries of the estate.⁷ In 2006, they filed a proposal for the estate's distribution, but R.J. Riley, their brother and another beneficiary, filed a petition for their removal, alleging that Mary and Joseph breached their fiduciary duty and improperly administered the estate.⁸ R.J. then moved to appoint John Barkley ("Barkley") as the new personal representative. Mary and Joseph resigned as co-personal representatives and the court granted the motion to appoint Barkley.⁹ The probate court then required Mary and Joseph to file an accounting of the estate's assets.¹⁰ Barkley objected to the accounting that Mary and Joseph provided and expressed concern over inaccuracies and a lack of supporting documentation. He then requested a bench trial on the objection, and the court granted the request.¹¹

But before the trial Barkley, Mary, and Joseph reached an agreement that, in part, called for Joseph to disclaim his rights as a beneficiary.¹² In addition, the agreement stipulated that the estate would release all claims against Mary and Joseph for any acts and omissions committed before, during, or after they served as co-personal representatives of the estate.¹³ The agreement also included language that required the compromise to be presented to the court and approved pursuant to sections 14-3951 and 14-3952.¹⁴ After Barkley filed a petition for approval of the compromise, nine of the estate's thirteen beneficiaries ("objectors") objected to the petition.¹⁵ The probate court held an evidentiary hearing and approved the compromise.¹⁶ When the probate court denied the objectors' motion to reconsider, and in the alternative for a new trial, the objectors appealed.¹⁷

Before the Arizona Court of Appeals, the objectors filed an initial brief arguing that a personal representative must present facts concerning the liability

6. *Id.* at 1081.

7. *Id.* at 1079.

8. *Id.*

9. *Id.* at 1079–80.

10. *Id.* at 1080.

11. *Id.*

12. Answering Brief of John D. Barkley Successor Personal Representative at 7, *In re Estate of Riley*, 266 P.3d 1078 (No. 2 CA-CV 2010-0149) [hereinafter Answering Brief]. Barkley also made a separate agreement with Kathryn Riley, which the court upheld because the objecting beneficiaries previously stipulated to the compromise. *In re Estate of Riley*, 266 P.3d at 1079.

13. Answering Brief, *supra* note 12, at 7–8.

14. *In re Estate of Riley*, 266 P.3d at 1080.

15. *Id.*

16. *Id.*

17. *Id.*

and damage aspects of the estate's case.¹⁸ The objectors argued that the probate court failed to properly evaluate the evidence, or lack thereof.¹⁹ In response, Barkley argued that the settlement complied with section 14-3952 because the statute requires approval by the probate court if "(1) the contest or controversy is in good faith; and (2) the agreement is just and reasonable."²⁰ Because both requirements were satisfied at the probate court level, Barkley contended, the lower court correctly approved the settlement.²¹

However, the court of appeals did not address the parties' arguments. Instead, it *sua sponte* raised the question of whether the compromise was "void for failing to be executed by all the necessary parties under § 14-3952(1)" and ordered the parties to submit supplemental briefings.²² Section 14-3952 outlines the procedure for court approval of a compromise. Subsection (1) requires that the "terms of the compromise shall be set forth in an agreement in writing which shall be executed by all competent persons . . . having beneficial interests or having claims which will or may be affected by the compromise."²³ Only then can an "interested person," including a personal representative, submit the agreement for court approval.²⁴ Once all interested persons are notified of the compromise, the court must approve the agreement if it finds that "the contest or controversy is in good faith and that the effect of the agreement . . . is just and reasonable."²⁵

Barkley made three arguments in his supplemental brief. First, Barkley argued that section 14-3952 only requires the signatures of the parties to the proposed settlement, and not execution by all the beneficiaries of the estate.²⁶ In its analysis, the court relied on *In re Estate of Sullivan*, a Minnesota Court of Appeals decision that analyzed its own state's statute with language also based on UPC sections 3-1101 and 3-1102.²⁷ Similar to the *Sullivan* court, the Arizona Court of Appeals found that the statute's plain language requires the signatures of two classes of persons: "those with a beneficial interest and those with claims that will or may be affected by the proposed compromise."²⁸ Indeed, the statute's language requires an agreement in writing "executed by all competent persons . . . having

18. Opening Brief, *supra* note 2, at 38.

19. *Id.* at 40–41, 44–45, 50–51.

20. Answering Brief, *supra* note 12, at 28.

21. *Id.* at 30.

22. *In re Estate of Riley*, 266 P.3d at 1080. The court noted that Barkley did not argue that the objectors waived their right to challenge the compromise by not raising the challenge below. *Id.*

23. ARIZ. REV. STAT. ANN. § 14-3952(2) (2012). Section 14-3942, along with its counterpart, section 14-3951, are based on Uniform Probate Code ("UPC") sections 3-1101 and 3-1102, and the court looked to comments in the UPC to inform its decision in *Riley*. See, e.g., *In re Estate of Riley*, 266 P.3d at 1082.

24. ARIZ. REV. STAT. ANN. § 14-3952(2) (2012).

25. *Id.* § 14-3952(3).

26. Supplemental Brief of John Barkley, Successor Personal Representative at 2–4, *In re Estate of Riley*, 266 P.3d 1078 (No. 2 CA-CV 2010-0149) [hereinafter Supplemental Brief].

27. *In re Estate of Riley*, 266 P.3d at 1081.

28. *Id.* at 1081 (citing *In re Estate of Sullivan*, 724 N.W.2d 532, 535 (Minn. Ct. App. 2006)).

beneficial interests *or* having claims . . . affected by the compromise.”²⁹ Although Barkley conceded that the heirs had a beneficial interest in the estate, he argued that *Sullivan* was distinguishable because the compromise at issue in *Sullivan* affected the estate’s distribution scheme; whereas in this case, the agreement did not do so. The court rejected Barkley’s argument, finding that the compromise in *Riley* would also affect the distribution of the estate—requiring the beneficiaries and interested persons to execute the agreement serves to protect the estate’s distribution.³⁰

Next, Barkley argued that all beneficiaries are not interested parties in every agreement, and therefore, the section 14-3952(1) signature requirement varies depending on the nature of the conflict.³¹ According to Barkley, the first category of “interested persons” includes anyone with a beneficial interest when the dispute is about distribution or is a settlement that will affect the claims of others.³² The other category of “interested persons” arises only in causes of action that deal with the administration of the estate and includes only those who have a direct interest in the controversy.³³ Underpinning Barkley’s argument is language in section 14-1201(28),³⁴ which states that the definition of an interested person “may vary from time to time and must be determined according to the particular purposes of, and matter involved in, any proceeding.”³⁵ Barkley’s rationale was that requiring a signature in every instance under section 14-3952(1) would render the notice and approval requirements in section 14-3952(3) superfluous.³⁶

The court, however, rejected Barkley’s interpretation, relying on section 14-1201(28).³⁷ It found that section 14-3952(1) requires signatures from individuals who have “beneficial interests or having claims which will or may be affected by the compromise.”³⁸ On the other hand, subsection (3) requires notice to all “interested persons or their representatives.”³⁹ Therefore, everyone required to sign under subsection (1) also must receive notice under subsection (3). However, not all people entitled to notice under subsection (3) are required to sign.⁴⁰

Barkley further argued that because the beneficiaries had the opportunity to file separate claims, they did not fall into the category of those having “claims which will or may be affected by the compromise,” and therefore were not

29. ARIZ. REV. STAT. ANN. § 14-3952(1) (2012) (emphasis added).

30. *In re Estate of Riley*, 266 P.3d at 1081.

31. Supplemental Brief, *supra* note 26, at 4.

32. *Id.*

33. *In re Estate of Riley*, 266 P.3d at 1081–82.

34. ARIZ. REV. STAT. ANN. § 14-1201(28) (2012). Both the court of appeals and Barkley mistakenly refer to section 14-1201(26) in defining “interested person.” In fact, “interested person” is defined section 14-1201(28). See *In re Estate of Riley*, 266 P.3d at 1081–82; Supplemental Brief, *supra* note 26, at 3.

35. Supplemental Brief, *supra* note 26, at 3 (citation omitted).

36. *Id.* at 8–9.

37. *In re Estate of Riley*, 266 P.3d at 1081; see also *supra* note 34.

38. *In re Estate of Riley*, 266 P.3d at 1080 (citing ARIZ. REV. STAT. ANN. § 14-3952(1) (2011)).

39. *Id.* at 1081 (citing ARIZ. REV. STAT. ANN. § 14-3952(3) (2011)).

40. *Id.* at 1082.

“interested persons.”⁴¹ The court disagreed based on *Sullivan*’s requirement that both classes of persons—those with a beneficial interest and those with claims that may be affected by the compromise—execute the agreement: “[T]he signature requirement applies independently to those with ‘beneficial interests’ in the estate, whether or not their claims will be ‘affected by the compromise.’”⁴² Furthermore, the court found that even if the signature requirement only applied to those affected by the compromise, the beneficiaries in *Riley* were still affected because the agreement altered the distribution of the estate.⁴³

Lastly, Barkley argued that requiring signatures from all beneficiaries would “contravene the role of the personal representative and the purpose of [the] statutes.”⁴⁴ This is because a personal representative’s duty is to “settle and distribute an estate in the most expeditious, efficient manner possible in the best interest of the estate.”⁴⁵ But, the court was unwilling to characterize the compromise as a “mere assertion of the personal representative’s power to settle debts and obligations of the estate.”⁴⁶ The purpose of section 14-3952, according to the court, is not only to encourage settlements, but also to preserve estate beneficiaries’ ultimate authority to make compromises regarding the estate’s structure.⁴⁷ However, the court limited its holding to only apply in cases where the proposed agreement alters the estate’s distribution scheme.⁴⁸ In such a case, the court held that all beneficiaries must approve the agreement.⁴⁹

The court ultimately relied on the plain language of section 14-3952, and held that when an agreement alters the distribution of an estate, all beneficiaries *and* all persons with claims that may or will be affected by the agreement must sign the compromise.⁵⁰ Otherwise, as in this case, the agreement fails to comply with the law and is void.⁵¹

II. IMPLICATIONS FOR THE ESTATE

Since its adoption in 1974, section 14-3952 had only been interpreted in two published decisions, and neither addressed the actions necessary when a compromise affects the distribution of an estate.⁵² Before the decision,

41. *Id.* (citing ARIZ. REV. STAT. ANN. § 14-3952(1) (2011)).

42. *Id.* (citing *In re Estate of Sullivan*, 724 N.W.2d 532, 535 (Minn. Ct. App. 2006)).

43. *Id.*

44. Supplemental Brief, *supra* note 26, at 10.

45. *Id.* (citing ARIZ. REV. STAT. ANN. § 14-3703(A)).

46. *In re Estate of Riley*, 266 P.3d at 1082.

47. *Id.* (citation omitted).

48. *Id.* at 1083.

49. *Id.*

50. *Id.*

51. *Id.* at 1080, 1080 n.2 (citing *Clark v. Tinnin*, 304 P.2d 947, 950 (Ariz. 1956)).

52. *See Wilmot v. Wilmot*, 58 P.3d 507, 515–16 (Ariz. 2002) (holding that if a settlement will affect the claims of others, all affected beneficiaries must consent); *In re Estate of Ward*, 23 P.3d 108, 113 (Ariz. Ct. App. 2001) (holding that good faith in a “Family Settlement Agreement” is required under sections 14-3951 and 14-3952 of the Arizona Revised Statutes).

practitioners and courts looked to the statute when beneficiaries wanted to alter the distribution scheme outlined by a testator. By rejecting Barkley's arguments, the court changed that understanding and strengthened the statute's signature and consent requirements. As a result, the decision has important implications for the estate, personal representatives, beneficiaries, and interested persons. This Section also discusses legislative alternatives to correct the potential effects of *Riley*.

A. The Role of the Personal Representative

Arizona law grants a personal representative the authority, among other powers, to settle and distribute an estate and sue on behalf of an estate.⁵³ In addition, a personal representative may “[e]ffect a fair and reasonable compromise with any debtor or obligor”⁵⁴ and “[p]rosecute or defend claims . . . for the protection of the estate.”⁵⁵ The personal representative's power, in conjunction with section 14-3952, is somewhat limited by *Riley*, but not contravened, as Barkley argued. The consequences of requiring additional signatures, however, do present new implications.

Because the more stringent signature requirement does not allow a personal representative to effect a compromise that changes the distribution scheme without all beneficiaries' and interested persons' signatures, fulfilling his duties becomes more complex. The circumstances in *Riley* illustrate the difficulty that a personal representative now faces in securing all the required signatures. If the beneficiaries and interested persons live in far or obscure places, not only will the personal representative have difficulty reaching them, but he may also incur additional expenses in attempting to do so. Ironically, while the statute and *Riley* intend to preserve the estate's distribution scheme, these additional costs impact the distribution of the estate. There is an exception in section 14-3952(1) that excuses the signature requirement: “Execution is not required by any person whose identity cannot be ascertained or whose whereabouts is unknown and cannot reasonably be ascertained.”⁵⁶ Even still, the additional expense of making reasonable efforts to locate and identify beneficiaries and interested persons affects the estate's distribution.

In addition, a personal representative's role as a mediator changes. *Riley*'s broad signature requirement means that a personal representative must now mediate the interests not only of the estate and any parties to a suit, but also the various interests of each of the beneficiaries and interested persons. It is much easier to effect an agreement between two people than it is among twenty. This adds to the time and expense that it takes to settle a dispute and makes it more likely that a disagreement will be litigated than settled out of court. This result frustrates section 14-3952's intent to encourage settlements.

The signature requirement in *Riley* also seeks to maintain the distribution according to the testator's intent.⁵⁷ In order to balance protecting the estate and the

53. ARIZ. REV. STAT. ANN. § 14-3703(A), (C) (2012).

54. *Id.* § 14-3715(17).

55. *Id.* § 14-3715(22).

56. *Id.* § 14-3952(1).

57. *In re Estate of Riley*, 266 P.3d 1078, 1082 (Ariz. Ct. App. 2011).

implications that *Riley* presents, the Arizona State Legislature may choose to amend section 14-3952. One way by which the legislature can limit the estate's exposure to additional costs is to include caps on time and spending in proportion to the size of the estate. This would limit the amount of time and effort that a personal representative would have to spend in locating beneficiaries and interested persons and securing their signatures. Instituting a cap would therefore bring the signature requirement back in line with the intent of the statute and protect the estate's distribution.

The legislature could also provide an opportunity for beneficiaries and interested persons to waive the notice and signature requirements on a prospective basis. The waiver could be limited in scope and purpose so that a beneficiary or interested person agrees to waive the notice and signature requirement only for specific disputes or agreements. For instance, a beneficiary could waive the notice and signature requirements only for disputes among beneficiaries, but not for disputes between beneficiaries and the personal representative. Providing for a waiver enables the personal representative to efficiently and expeditiously administer, settle, and distribute the estate in line with the purpose of the statute.⁵⁸

B. Actions of Beneficiaries and Interested Persons

Riley's broad signature requirement creates incentives for beneficiaries and interested persons that may also affect the estate. By requiring the personal representative to obtain all signatures from beneficiaries and interested persons, any one person can hold the entire estate hostage by refusing to agree to the compromise.⁵⁹ A person could have many motives for obstructing a settlement. For example, an individual may be motivated by the prospect of increased financial gain, or even personal retribution. Indeed, it is not uncommon that beneficiaries are family members, and that those family members have personal conflicts. Familial conflicts may prompt a beneficiary to refuse to execute an agreement simply to terrorize others in the estate. Such situations increase transaction costs and time spent negotiating the settlement among beneficiaries and interested persons. Once more, the broad signature requirement in *Riley* may impose additional costs for the estate and impede the statute's objective of encouraging settlements.

Complicating matters further, beneficiaries and interested persons may end up soliciting, selling, or trading their approval of a settlement. Worse still, some beneficiaries or interested persons may try to bribe or bully others into accepting or rejecting an agreement. The implications of such scenarios go beyond simply frustrating the intent of section 14-3952, and could lead to dangerous or illegal behavior. Of course, illegal behavior is always a concern, but by creating a situation in which beneficiaries can exploit their power in an estate, the risk may increase.

To prevent objectionable behavior among beneficiaries and interested persons, the legislature may need to revise the language in section 14-3952.

58. See ARIZ. REV. STAT. ANN. § 14-3703(A) (2012).

59. Supplemental Brief, *supra* note 26, at 13.

Specifically, lawmakers may consider creating an exception in which the consent of the majority of beneficiaries and interested persons is sufficient to carry out an agreement. For instance, the legislature may allow an estate to execute a settlement without all signatures as required in *Riley* and instead only require two-thirds or three-fourths consent. By doing so, the legislature can maintain *Riley*'s protection of the estate's interest in settlement matters, but also provide flexibility to discourage misbehavior among beneficiaries and interested persons. But, the legislature should not pursue any sort of time-lapse provision that would result in waiving the signature requirement after a set term because doing so would only encourage the parties to be entrenched in their positions until the end of the period.

Another way to provide flexibility for the estate is to adopt a similar modification provision in the Arizona Probate Code as is found in the Arizona Trust Code. Arizona Revised Statutes section 14-10411(C) allows a court to approve a trust modification even if all beneficiaries do not consent, so long as the court is satisfied that, "[i]f all of the beneficiaries had consented, the trust could have been modified or terminated" and that "[t]he interests of a beneficiary who does not consent will be adequately protected."⁶⁰ The Arizona State Legislature adopted the Arizona Trust Code—which is based in large part on the Uniform Trust Code—in 2008, and is a more modern approach to addressing beneficiaries' interests. By including a similar modification provision in the Arizona Probate Code, the Arizona Legislature could simultaneously modernize the statute and eliminate some of the negative implications associated with the *Riley* requirements.

The legislature may wait to pursue any legislative action until the Arizona Supreme Court addresses the issues presented in the case. In 2010, Arizona Supreme Court Chief Justice Rebecca Berch launched the Committee on Improving Judicial Oversight and Processing of Probate Matters ("Committee"), which aimed to investigate, among other issues, ways to contain and control the costs of probate.⁶¹ The Committee found that disputes are often time-consuming and costly for an estate and recommended ways by which Arizona law can achieve the public policy goal of containing costs in probate matters.⁶² Therefore, the Arizona Supreme Court may overturn or depublish *Riley*, as it appears to conflict with the Committee's public policy findings and recommendations. If that is the case, the legislature may not need to address the implications of the *Riley* decision.

CONCLUSION

In re Estate of Riley addressed the role of the personal representative of an estate and efforts that the personal representative must make when negotiating a compromise among beneficiaries and interested persons that affects the distribution of an estate. The Arizona Court of Appeals upended the role that

60. ARIZ. REV. STAT. ANN. § 14-10411(C)(1)–(2) (2012).

61. COMM. ON IMPROVING JUDICIAL OVERSIGHT AND PROCESSING OF PROBATE COURT MATTERS, ARIZ. SUPREME COURT, INTERIM REPORT TO THE ARIZONA JUDICIAL COUNCIL 6 (2010), available at http://www.azcourts.gov/LinkClick.aspx?fileticket=P_d1HKTuT0k%3d&tabid=3411.

62. *Id.* at 38–52.

personal representatives played in effecting compromises. Before *Riley*, a personal representative only needed the consent of parties to the dispute and could wholly represent the estate. Now, in addition to the parties' consent, any compromise that may or will affect an estate's distribution must also be executed by all beneficiaries and interested persons.

Although the court's decision seeks to protect an estate's distribution, its practical impact may actually distort distribution and frustrate the intent of section 14-3952. *Riley* adds additional financial and administrative burdens on personal representatives and the estate, and may encourage misbehavior among beneficiaries and interested persons. The Arizona Legislature may amend the statute to address the imbalances between protecting the distributions of an estate and the implications that *Riley* generates.