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NOV 23 2007

BEFORE A HEARING OFFICER

OF THE SUPREME COURT OF ARIZONA

HEARING OFFICER FOR THE
SUPREME COURT OF ARIZONA
BY *[Signature]*

Case No 06-1193

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

**JOSEPH H. RILEY, Jr.,
Bar No. 006257**

Respondent.

HEARING OFFICER'S REPORT

Assigned to Hearing Officer:
8J, David M. Waterman

PROCEDURAL HISTORY

The formal complaint in this matter was filed on May 3, 2007. Hearing on the complaint was set for August 29 through 31, 2007. Prior to the hearing the State Bar of Arizona and Respondent entered into a settlement and filed the Tender of Admissions and Agreement for Discipline by Consent on file herein. The hearing was held, with Respondent present, to confirm that there was a factual basis for the agreed upon discipline and to determine whether the penalty is appropriate. The Hearing Officer heard the statements of Counsel and the testimony of Respondent under questioning by both counsel and the Hearing Officer. The Hearing Officer accepts the settlement described in the Tender of Admissions and Agreement for Discipline by Consent.

SANCTIONS

1. Respondent will receive a two-year suspension for violations of Rule 42, Ariz.R.Sup.Ct., specifically ERs 8.4(c) and 8.4(d)

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2. Respondent will receive one year of probation upon reinstatement with specific terms of probation to be addressed during formal reinstatement proceedings.
3. Respondent agrees to pay any additional restitution owed to the estate of Mary A Riley, which estate is being probated in case number P26266, in a sum to be determined by the probate court.
4. In addition, Respondent will pay all costs and expenses incurred by the State Bar in this disciplinary proceeding, as provided in the State Bar's statement of costs and expenses, attached hereto as Exhibit "A".
5. In the event that Respondent fails to comply with the foregoing terms of probation, and information thereof is received by the SBA, bar counsel shall file a Notice of Non-Compliance with the imposing entity, pursuant to Rule 60(a)(5), Ariz.R.Sup.Ct. The imposing entity may refer the matter to a hearing officer to conduct a hearing at the earliest practicable time, but in no event later than thirty days after receipt of notice, to determine whether a term of probation has been breached, and, if so, to recommend an appropriate action and response. If there is an allegation that Respondent failed to comply with any of the foregoing terms, burden of proof shall be on the State Bar to prove non-compliance by clear and convincing evidence

FINDINGS OF FACT

1. At all times relevant, Respondent was a lawyer licensed to practice law in the state of Arizona, having been admitted to practice in Arizona on May 10, 1980.
2. On or about February 1996, Respondent was appointed co-personal representative of the Estate of Mary A. Riley (“the Estate”). Respondent is the son of Ms Riley and has twelve siblings. These siblings, together with Respondent, are the beneficiaries of the Estate.
3. On or about October 2005, one of the other Estate beneficiaries requested of Respondent that all or some of the Estate’s assets be distributed to the beneficiary
4. Respondent then prepared an accounting of the Estate assets, in which he disclosed that he had personally taken funds in the amount of \$156,632.00 from the Estate.
5. Respondent had not obtained authorization from the probate court nor did he inform or obtain consent from the other Estate beneficiaries to take the funds
6. A review of the preliminary accounting in the probate of the Estate reflects that Respondent in fact took at least this sum. The issue of the exact amount will be resolved in the probate of the Estate, now pending in Pima County Superior Court, case number P-26266.
7. Respondent expressed and feels remorse for his actions.

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8. Respondent has no prior disciplinary history.
9. Respondent cooperated fully with the investigation by the State Bar, and testified candidly at the hearing before the undersigned hearing officer.
10. Respondent, until the events leading to this disciplinary action, exhibited exemplary character, particularly as evidenced by his *pro bono* service to those unable to afford legal representation and his many years of service through and on behalf of the Volunteer Lawyers Program of the State Bar of Arizona
11. Respondent's actions were, as concluded herein, prejudicial to the administration of justice, but it is noted that the duties violated were not those owed to a client, but, rather, occurred during his appointment as personal representative of the Estate of his deceased mother.
12. Respondent, when making unauthorized withdrawals of funds from the Estate for which he was personal representative, reasonably believed that at the closing of the Estate he would stand to inherit at least the amount that he had withdrawn.
13. In light of all the evidence, including but not limited to Respondent's testimony, it appears that Respondent always intended to account to the Estate and its other beneficiaries for all sums he withdrew.
14. Respondent fully acknowledges, however, that regardless of his intent, his actions constituted violations of his duties to the Estate and the Court, and were ethical violations as set forth herein.

1 injury caused by the misconduct and the existence of aggravating and mitigating factors.

2 See *Peasley*, 208 Ariz. at 35, 90 P.3d at 772, *Standard* 3.0.

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4 The parties agree that the most serious misconduct in this case is Respondent's
5 taking for his own personal use the amount of at least \$156,632.00 from the estate of his
6 deceased mother, for which he had been appointed as co-personal representative.
7 Respondent took the money in increments over a period of time, beginning in 1997
8 through 2004. Respondent paid the money back in March 2005.

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10 The most important Standard in this circumstance is *Standard* 5.1, Failure to
11 Maintain Personal Integrity, which states in pertinent part:

12 Absent aggravating or mitigating circumstances, upon application of the factors
13 set out in Standard 3.0, the following Sanctions are generally appropriate in cases
14 involving commission of a criminal act that reflects adversely on the lawyer's honesty,
15 involving dishonesty, fraud, deceit, or misrepresentation:

16 5.11 Disbarment is generally appropriate when:

- 17 (a) a lawyer engages in serious criminal conduct a necessary
18 element of which includes intentional interference with the
19 administration of justice, false swearing, misrepresentation,
20 fraud, extortion, misappropriation, or theft; or the sale,
21 distribution or importation of controlled substances; or the
22 intentional killing of another; or an attempt or conspiracy or
23 solicitation of another to commit any of these offenses; or
24 (b) a lawyer engages in any other intentional conduct involving
25 dishonesty, fraud, deceit, or misrepresentation that seriously
26 adversely reflects on the lawyer's fitness to practice.

27 5.12 Suspension is generally appropriate when a lawyer knowingly
28 engages in criminal conduct which does not contain elements listed in
Standard 5.11 and that seriously adversely reflects on the lawyer's fitness
to practice.

1 Based upon the conditional admissions in this matter, the presumptive
2 sanction with regard to the most serious admissions of misconduct under *Standard 5.1* is
3 suspension.
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5 To have an effective system of professional sanctions, there must be internal
6 consistency, and it is appropriate to examine sanctions imposed in cases that are factually
7 similar *See Peasley*, 208 Ariz. at 35, 90 P.3d at 778 (citing *In re Alcorn*, 202 Ariz. 62, 76,
8 41 P.3d 600, 614 (2002); *In re Wines* 135 Ariz 203, 207, 660 P.2d 454, 458 (1983)) The
9 cases set forth below demonstrate that suspension is an appropriate sanction in this matter.
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11 In the case of *In re Rose*, SB-03-0003-D (2003), Rose was appointed as trustee for
12 her brother's trust funds. During a three-year period, Rose misappropriated funds totaling
13 \$103,000. Rose pleaded guilty to the class three felony of theft and made full restitution
14 Respondent was given a three year suspension and one year probation with MAP.
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16 In the case of *In re Lacy*, SB-06-0129-D (2006), the Disciplinary Commission
17 recommended a six-month suspension and costs of the disciplinary proceedings, having
18 found that Lacy violated ERs 8.4(c) and (d). Lacy converted money entrusted to his care
19 as an officer of the Flagstaff Chapter of the Inn of Court on two separate occasions Lacy
20 returned the money with interest one and a half years later, after another officer of the Inn
21 of Court contacted Lacy regarding the missing funds. The Commission adopted the
22 Hearing Officer's findings and recommendations and pursuant to A.R.S. § 13-802(2), as it
23 existed at the time of Lacy's misconduct, defined the offense of theft as "...converting for
24 an unauthorized term or use services or property of another entrusted to the defendant or
25 placed in the defendant's possession for a limited authorized term of use." The record
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1 clearly supported that Lacy converted the H Karl Magnum Inn of Court funds for his own
2 use.

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4 *In re Rose* is the most instructive case. Respondent took an amount similar, if
5 somewhat larger, than that taken by Rose. Here, Respondent believed he would ultimately
6 inherit an amount greater than he actually took. Respondent also did admit and account for
7 the funds upon being confronted by the Estate beneficiary rather than cover it up.
8 Additionally, it should be noted that Respondent has not been convicted of any crime
9 unlike the respondent in *In re Rose*. Restitution has also been made. The substantive
10 penalty of suspension for two years, followed by one year of probation, is appropriate
11 under the circumstances.
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14 MITIGATING AND AGGRAVATING CIRCUMSTANCES

15 The mitigating circumstances are

- 16 1. Lack of prior disciplinary history.
- 17 2. Remorse.
- 18 3. Character and reputation.
- 19 4. Cooperation with the State Bar in its investigation

20 The aggravating circumstance is:

- 21 1. Substantial experience in the practice of law.

1 CONCLUSION

2 Based on the forgoing factual findings and analysis of applicable law, both
3 with regard to the infractions admitted by Respondent and proved by the evidence and to
4 the proportionality of the sanctions, the Hearing Officer finds that the sanctions agreed
5 to by they parties, as set forth in their Tender of Admissions and Agreement for
6 Discipline, reflect a fair, just and appropriate resolution of the this matter and accepts it,
7 as set forth herein.
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11 DATED this 23rd day of November, 2007

12
13 David Waterman /cs
14 David Waterman, Hearing Officer 8J

15 Original filed with the Disciplinary Clerk
16 this 23rd day of November, 2007.

17
18 COPY of the foregoing mailed
19 this 23rd day of November, 2007, to:

20 James L. Burke
21 Bar Counsel
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By: CSOB