

09/18/2023

Bowen Greenwood  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

Case Number: PR 23-0535

Pamela D. Bucy  
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Office of Disciplinary Counsel

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. \_\_\_\_\_

\* \* \* \* \*

IN THE MATTER OF ROBERT B. FLEMING,	}	ODC File No. 22-246
An Inactive Attorney,		<b>PETITION FOR RECIPROCAL DISCIPLINE</b>
Respondent.		

Pursuant to Rule 27A of the Rules for Lawyer Disciplinary Enforcement ("RLDE"), the Office of Disciplinary Counsel for the State of Montana ("ODC"), hereby petitions the Court as follows:

1. Robert B. Fleming, hereinafter referred to as Respondent, was admitted to the practice of law in the State of Montana in 1997, at which time he took the oath required for admission, wherein he agreed to abide by the Rules of Professional Conduct, the Disciplinary Rules adopted by the Supreme Court, and the highest

standards of honesty, justice, and morality, including but not limited to, those outlined in parts 3 and 4 of Chapter 61, Title 37, Montana Code Annotated.

2. The Montana Supreme Court has approved and adopted the Montana Rules of Professional Conduct ("MRPC"), governing the ethical conduct of attorneys licensed to practice in the State of Montana, which Rules were in effect at all times mentioned in this Petition.

3. Respondent has been disciplined by the Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona ("Committee"). Pursuant to Rule 27A, RLDE, ODC has obtained a certified copy of the Committee's Order of Admonition and Costs issued on July 26, 2022, *In the Matter of a Member of the State Bar of Arizona, Robert Fleming, Bar No. 004697, Respondent*, No. 21-1125. Said certified copy is attached hereto as Exhibit A and by reference incorporated herein.

4. The Committee reviewed the Arizona State Bar's Report of Investigation and Recommendation and found probable cause existed that Respondent violated the following Rules of the Supreme Court of Arizona: Rule 42, ERs 3.4(a), 3.4(c), 4.3, and 8.4(d); and Rule 54(c). The Committee issued an Order of Admonition and Costs on July 26, 2022, which reprimanded Respondent for his conduct and provided he shall pay the costs and expenses of the proceedings.

1           5.     As set forth in the Order, the discipline and violations were based on  
2 the following facts.

3           A.     A.B.'S Marital Settlement Agreement ("MSA") and subsequent  
4 divorce decree, directed that A.B.'s ex-husband, retain Respondent to prepare  
5 a Special Needs Trust ("SNT") for the couple's disabled adult son. The MSA  
6 and decree stipulated that A.B. and her ex-husband were to be co-trustees.  
7 Respondent prepared the SNT but named only the ex-husband as the sole  
8 trustor, with Respondent's law firm as the sole trustee.  
9

10           B.     Respondent took this action unilaterally and in violation of both  
11 the MSA and divorce decree.  
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13           C.     Although Respondent believed his actions and subsequent  
14 designations were more in line with legal requirements and in the son's best  
15 interests, he did not inform A.B. of his actions, or suggest she consult counsel  
16 to obtain advice.  
17

18           6.     Respondent's conduct as outlined above, and the final adjudication of  
19 the matter in Arizona, meet the requirements under Rule 27, RLDE, for  
20 Respondent's reciprocal discipline in Montana.  
21

22           WHEREFORE, the Office of Disciplinary Counsel prays as follows:

23           1.     That the Court issue an order, to which shall be attached a copy of the  
24 Committee's Order and this Petition, directing Respondent to inform the Court,  
25

1 within thirty (30) days after service thereof, of any claim by the Respondent  
2 predicated upon the grounds set forth in Rule 27D, RLDE (2021);

3 2. Upon the expiration of thirty (30) days from service of the notice, that  
4 the Court impose the identical discipline unless the Respondent demonstrates, or the  
5 Court finds upon the face of the record, that the imposition of the identical discipline  
6 in the State of Montana would be unwarranted;  
7

8 3. For such other and further relief deemed necessary and proper.

9 DATED this 18<sup>th</sup> day of September 2023.  
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11 OFFICE OF DISCIPLINARY COUNSEL

12  
13 By: Pamela D. Bucy  
14 Pamela D. Bucy  
15 Chief Disciplinary Counsel  
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**BEFORE THE ATTORNEY DISCIPLINE  
PROBABLE CAUSE COMMITTEE  
OF THE SUPREME COURT OF ARIZONA**

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

**ROBERT B. FLEMING,  
Bar No. 004697,**

**Respondent.**

**No. 21-1125**

**ORDER OF ADMONITION AND  
COSTS**

The Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona (“Committee”) reviewed this matter on July 21, 2022, pursuant to Rules 50 and 55, Ariz. R. Sup. Ct., for consideration of the State Bar’s Report of Investigation and Recommendation.

By a vote of 7-0-2<sup>1</sup>, the Committee finds probable cause exists that Respondent violated the following Rules of the Supreme Court of Arizona: Rule 42, ERs 3.4(a), 3.4(c), 4.3, and 8.4(d); and Rule 54(c). In a divorce case, a Marital Settlement Agreement (“MSA”) and divorce decree required the ex-husband to hire Respondent to prepare a Special Needs Trust (“SNT”) for the benefit of the divorced couple’s disabled adult son. The SNT and divorce decree stipulated that Complainant (the ex-wife) and the ex-husband were to be co-trustors and co-trustees. Instead, Respondent prepared an SNT with the ex-husband as the sole trustor and Respondent’s law firm as the sole trustee, in violation of the MSA and divorce decree. Although Respondent believed his designations of the trustor and trustee were more in keeping with legal

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<sup>1</sup> Committee Chair Hon Lawrence Winthrop and Vice Chair Daisy Flores did not participate in this matter.



requirements and were in the disabled adult son's best interests, he did not reveal his unilateral actions to Complainant or suggest she consult counsel to obtain advice on Respondent's position.

**IT IS THEREFORE ORDERED** issuing an Order of Admonition for Respondent's conduct pursuant to Rules 55(c)(1)(D) and 60(a)(4), Ariz. R. Sup. Ct.

**IT IS FURTHER ORDERED**, pursuant to Rule 60(b), Ariz. R. Sup. Ct., that Respondent shall pay the costs and expenses of these proceedings, as set forth in the attached Statement of Costs and Expenses, within thirty (30) days from the date of service of this Order.

**PURSUANT** to Rules 60(a)(4) and 70(a)(2), Ariz. R. Sup. Ct., this order will be entered in the Respondent's permanent record at the State Bar and is not confidential. Pursuant to Rule 48(k)(3), Ariz. R. Sup. Ct., it may be considered by the Attorney Discipline Probable Cause Committee, the Presiding Disciplinary Judge, a Hearing Panel, or the Supreme Court in recommending or imposing discipline in a subsequent disciplinary proceeding against Respondent.

#### **NOTICE OF RIGHT**

Parties may not file motions for reconsideration of this Order.

**PURSUANT** to Rule 55(c)(4)(B), Ariz. R. Sup. Ct., within ten (10) days of service of this Order, Respondent has the right to demand that a formal proceeding be instituted and issuance of an Order to Vacate this Order of Admonition, whereupon this Order will be vacated and the matter disposed of in the same manner instituted before the Presiding

Disciplinary Judge. This demand shall be filed with the Attorney Disciplinary Probable Cause Committee of the Supreme Court of Arizona, 1501 W. Washington, Suite 104, Phoenix, AZ 85007-3231 with a copy to the State Bar of Arizona. The demand must comply with Rule ARCAP 8(c).

**DATED** this 26 day of July, 2022.

*Cindy Bailey*

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Hon. Cynthia Bailey, Acting Chair  
Attorney Discipline Probable Cause Committee  
of the Supreme Court

Original filed this 26 day  
of July, 2022, with:

Lawyer Regulation Records Manager  
State Bar of Arizona  
4201 N. 24<sup>th</sup> St., Suite 100  
Phoenix, Arizona 85016-6266

Copy emailed/mailed this 26th day of  
July, 2022, to:

Mark D. Rubin  
Rubin & Bernstein, PLLC  
1004 N. 6th Ave.  
Tucson, Az 85705-7710  
Email: mark@rubinbernsteinlaw.com  
Respondent's Counsel

Angela Bevels  
6573 N. Calle De La Lluvia  
Tucson, AZ 85750  
Email: agbbtl2016@outlook.com  
Complainant

Copy emailed this 26th day  
of July, 2022, to:

Attorney Discipline Probable Cause Committee  
Of the Supreme Court of Arizona  
1501 West Washington Street, Suite 104  
Phoenix, Arizona 85007  
E-mail: [ProbableCauseComm@courts.az.gov](mailto:ProbableCauseComm@courts.az.gov)

Lawyer Regulation Records Manager  
State Bar of Arizona  
4201 N. 24<sup>th</sup> St., Suite 100  
Phoenix, Arizona 85016-6266  
E-mail: [LRO@staff.azbar.org](mailto:LRO@staff.azbar.org)

By: /s/Miriam Robinson



## Statement of Costs and Expenses

In the Matter of a Member of the State Bar of Arizona  
Robert B. Fleming, Bar No. 004697, Respondent

File No. 21-1125

### **Administrative Expenses**

The Supreme Court of Arizona has adopted a schedule of administrative expenses to be assessed in lawyer discipline. If the number of charges/complainants exceeds five, the assessment for the general administrative expenses shall increase by 20% for each additional charge/complainant where a violation is admitted or proven.

Factors considered in the administrative expense are time expended by staff bar counsel, paralegal, secretaries, typists, file clerks and messenger; and normal postage charges, telephone costs, office supplies and all similar factors generally attributed to office overhead. As a matter of course, administrative costs will increase based on the length of time it takes a matter to proceed through the adjudication process.

#### ***General Administrative Expenses for above-numbered proceedings***

**\$ 600.00**

Additional costs incurred by the State Bar of Arizona in the processing of this disciplinary matter, and not included in administrative expenses, are itemized below.

### **Staff Investigator/Miscellaneous Charges**

Total for staff investigator charges \$ 0.00

**TOTAL COSTS AND EXPENSES INCURRED** \$ **600.00**

## AFFIDAVIT

**STATE OF ARIZONA**       )  
  ) ss.  
County of Maricopa       )

I, Hannah Guertin, do under oath depose and say:

I am the Lawyer Regulation Records Administrator for the State Bar of Arizona.

I have reviewed the disciplinary record, for Respondent Robert B. Fleming, Bar No. 004697, State Bar of Arizona discipline file 21-1125.


I affirm the attached document to be a copy of the Order of Admonition and Costs imposed in discipline file 21-1125, which is in the file maintained by the State Bar of Arizona to the best of my knowledge and belief.

IN WITNESS WHEREOF, and under penalty of perjury under the laws of the State of Arizona, I affix my hand September 01, 2023.



Hannah Guertin  
Lawyer Regulation Records Administrator

I, Amy S. Ralston, do hereby certify that on September 01, 2023 personally appeared before me, Hannah Guertin, Lawyer Regulation Records Administrator, known to be the person(s) who executed the foregoing instrument.



Notary Public in and for the State of Arizona.

