

BEFORE THE COMMISSION ON PRACTICE OF  
THE SUPREME COURT OF THE STATE OF MONTANA

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IN THE MATTER OF,

ROBERT B. FLEMING

An Attorney at Law,

Respondent.

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) Supreme Court Cause No. PR 23-0535

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ODC File No. 22-246

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**PUBLIC ADMONITION**

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This Public Admonition is administered pursuant to Montana Rules for Lawyer Disciplinary Enforcement 9A(5) and the Order of the Montana Supreme Court filed November 22, 2023, imposing reciprocal discipline on attorney Robert B. Fleming.

You were admitted to the practice of law in Montana in 1997. At that time, you took the oath required for admission in which you agreed to abide by the Montana Rules of Professional Conduct and the Disciplinary Rules adopted by the Montana Supreme Court, as well as the highest standards of honesty, justice, and morality, including but not limited to, those set forth in parts 3 and 4 of Chapter 61, Title 37, Montana Code Annotated.

You have been disciplined by the Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona ("the Committee"). Pursuant to Rule 27A, MRLDE, the Office of Disciplinary Counsel ("the ODC") 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. That certified copy was attached to the ODC's *Petition* seeking to impose reciprocal discipline.

Following receipt of the *Petition*, the Montana Supreme Court issued an order providing you with an opportunity to respond. You failed to do so.

In reaching its decision, the Committee reviewed the Arizona State Bar's *Report of Investigation and Recommendation* and found probable cause existed that you 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 you for your conduct and directed that you pay the costs and expenses of the proceedings.

As set forth in the *Order of Admonition and Costs*, the violations and subsequent discipline were based on the following facts:

1. A.B.'S Marital Settlement Agreement ("MSA") and subsequent divorce decree directed that A.B.'s ex-husband retain you to prepare a Special Needs Trust ("SNT") for the couple's disabled adult son. The MSA and decree

stipulated that A.B. and her ex-husband were to be co-trustees.

You prepared the SNT, but named only the ex-husband as the sole trustor, and your law firm as the sole trustee.

2. You took that action unilaterally and in violation of both the MSA and the divorce decree.

3. Although you believed your actions and subsequent designations were more in line with legal requirements and in the son's best interests, you did not inform A.B. of your actions, or suggest she consult counsel to obtain advice.

The Montana Supreme Court and this Commission find that your conduct that resulted in the imposition of discipline in Arizona meets the requirements under Rule 27, MRLDE, for reciprocal discipline in Montana.

Your conduct constitutes a violation of corresponding ethical rules in Montana that are not acceptable. Your misconduct harmed your client and the profession. For your misconduct, you are hereby publicly admonished.

Dated this 28<sup>th</sup> day of November, 2023.

THE MONTANA SUPREME COURT  
COMMISSION ON PRACTICE



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Ward "Mick" Taleff, Chair

## **CERTIFICATE OF SERVICE**

I, Shelly Smith, hereby certify that I have served true and accurate copies of the foregoing Other  
- Other to the following on 11-28-2023:

Pamela D. Bucy (Attorney)  
P.O. Box 1099  
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Representing: Office of Disciplinary Counsel  
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Mark D. Rubin (Attorney)  
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Electronically Signed By: Shelly Smith  
Dated: 11-28-2023