

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Karen A. Forman

Appellant,

vs.

South Carolina Department of
Labor, Licensing and Regulation,
State Board of Social Work Examiners

Respondent.

Docket Number 10-ALJ-11-0591-AP

ORDER

FILED

JUL 12 2011

SC ADMIN. LAW COURT

STATEMENT OF THE CASE

This matter is before the Administrative Law Court pursuant to the appeal of Karen A. Forman (hereinafter "Appellant") from an Order of the South Carolina Department of Labor, Licensing and Regulation, State Board of Social Work Examiners (hereinafter "the Board") dated July 13, 2010 prohibiting Appellant from working as a Guardian ad Litem (hereinafter "GAL") and prohibiting Appellant from all Independent Social Work practice. The Board ordered that Appellant could engage in supervised practice within a recognized organized setting such as social, medical and governmental agencies. The Board also ordered Appellant to submit to the Board semi-annual, written reports from her supervisor(s) for a period of two (2) years from the date of this Final Order. Appellant is represented by Debra S. Tedeschi, Esquire, and Respondent is represented by Georgia L. Lewis and Christa T. Bell, Esquires. Upon review of this matter, the Board's Order is affirmed in part, reversed in part, and remanded to the Board for a reconsideration of Appellant's sanctions.

BACKGROUND

The Board received two initial complaints from members of the public regarding Appellant, a licensed Master Social Worker. After an investigation of these initial complaints, Appellant was served Notice of Charges and Notice of Hearing by the Board on August 19, 2009. The Board brought disciplinary proceedings against the Appellant

alleging that Appellant failed to meet Social Work professional ethics and standards of conduct in her paid private GAL work in two family court cases.

At the time of Appellant's appointment in these two family court cases, she was a Licensed Master Social Worker (LMSW). At the time of the Board hearing, Appellant was a Licensed Independent Social Worker-Clinical Practice (LISW-CP). Each of these license designations has its own education, testing requirements and practice designation. See S.C. Code Ann. §§ 40-63-20, 40-63-230, and 40-63-240. The private GAL statutes in S.C. Code Ann. § 63-3-810 *et. seq.* were in effect at the time Appellant began her GAL work in these two (2) family court cases and the Appellant was trained on the requirements in these private GAL statutes.

On September 14, 2009, Appellant moved for the charges against her to be dismissed on the grounds that the Board lacked jurisdiction. This request for dismissal was denied via email on September 15, 2009. A two-day hearing before the Board was held on June 28-29, 2010, and Appellant's second request to dismiss the charges based on lack of jurisdiction was denied by the Board. The Board issued its Order sanctioning Appellant on July 13, 2010.

During the Board's investigation of the two (2) initial complaints against the Appellant's Social Work license, Appellant submitted statements to the Board's Investigator about the paid private GAL work she did in the two (2) family court cases. The Board concluded that as a licensed Social Worker, the Appellant violated S.C. Code Ann. § 40-63-110(B)(9) in that she violated the principle of professional ethics or standards of conduct in S.C. Code Regs. 110-20(8) by committing fraud and representing that she performed services in these two (2) family court cases that she did not perform. The Board provided that this was evidenced by Appellant's failure to obtain and review relevant documents, including but not limited to school documents, healthcare and mental healthcare documents, treatment documents, and consent forms from the parties regarding release of information; failure to meet with and observe the child(ren) in question on least one (1) occasion, or even to speak with them by telephone; only visited one(1) of at least four (4) homes; failure to interview each parent, to interview step-parents(s), to interview grandparent(s), to interview school officials, and others with relevant knowledge; failure to obtain criminal histories of each party; failure to consider

the wishes of the child(ren) and representing herself as a licensed Social Worker while acting as a GAL, but failing to conduct herself in a professional, ethical, or competent manner. The Board also concluded that Appellant failed to perform GAL responsibilities as required under the private GAL statute of S.C. Code Ann. § 63-3-830 (A)(2)(a-f).¹

In Case Number 2007-0001, based upon the preponderance of evidence, the Board's found that, as a paid private GAL, Appellant made recommendations to the court about custody and/or visitation concerning the minor child without interviewing the mother and other involved parties; Appellant did not investigate fully police reports and all other relevant documentation and allegations necessary for a determination in the matter and did not provide a detailed report supporting her conclusions regarding visitation; and pursuant to S.C. Code Ann. § 63-3-820(D), Appellant did not disclose in her affidavit that she was publicly reprimanded for misconduct, but represented herself to the parties as an LMSW in billing and other correspondence without disclosing her license previously was placed in a probationary status..

In Case Number 2007-0021, based upon the preponderance of evidence, the Board found that, as the paid private GAL, Appellant made recommendations to the court in her affidavit without interviewing the Father's alcohol treatment provider, without interviewing the children, and without interviewing all parties; Appellant failed to investigate or investigate fully all relevant documentation and failed to support her conclusions with a detailed report; and, pursuant to S.C. Code Ann. § 63-3-820(D), Appellant did not disclose in her affidavit that she was publicly reprimanded for misconduct, but represented herself to the parties as an LMSW in billing and other

¹ The applicable portions of § 63-3-830 (A)(2)(a-f) are as follows: The responsibilities and duties of a Guardian ad Litem include, but are not limited to:

- (2) Conducting an independent, balanced, and impartial investigation to determine the facts relevant to the situation of the child and the family. An investigation must include, but is not limited to:
 - (a) Obtaining and reviewing relevant documents...
 - (b) meeting with and observing the child on at least one occasion;
 - (c) visiting the home settings if deemed appropriate;
 - (d) interviewing parents, caregivers, school officials, law enforcement, and others with knowledge relevant to the case;
 - (e) obtaining the criminal history of each party when determined necessary;
 - (f) Consider the wishes of the child, if appropriate...

correspondence without disclosing her license previously was placed in a probationary status.

Appellant filed a Notice of Appeal with the Administrative Law Court (hereinafter “the ALC”) on August 4, 2010. Appellant also filed a motion with the ALC to stay enforcement of the Board’s Order and to expedite the appeal. The ALC granted this motion in part, allowing Appellant to continue to perform GAL work and expediting the appeal. The Record on Appeal was served on Appellant on September 16, 2010.

ISSUES ON APPEAL

1. Whether the Board of Social Work Examiners properly exercised jurisdiction when it disciplined a licensed Social Worker for conduct occurring when she was actively licensed under the Social Work Examiners Practice Act?
2. Whether the Board of Social Work Examiners properly exercised its discretion when it reached findings of facts and conclusions of law supported by reliable, probative and substantial evidence on the record?

STANDARD OF REVIEW

The South Carolina Administrative Law Court has appellate jurisdiction over final decisions issued in contested cases before the professional and occupational licensing boards with the South Carolina Department of Labor, Licensing and Regulation, including the South Carolina Board of Social Work Examiners (hereinafter “the Board”). S.C. Code Ann. § 1-23-600(D) (Supp. 2010).

An Administrative Law Judge may not reverse or modify an agency's decision unless substantial rights of Appellant have been prejudiced because the administrative findings are either clearly erroneous, in view of reliable, probative, and substantial evidence on the record as a whole, are arbitrary or capricious, are made upon unlawful procedure, or are affected by other error of law. S.C. Code Ann. § 1-23-380(5) (Supp. 2010); Lark v. Bi-Lo, Inc., 276 S.C. 130, 276 S.E.2d 304 (1981); South Carolina Dept. of Labor, Licensing and Regulation v. Girgis, 332 S.C. 162, 503 S.E.2d 490 (Ct. App. 1998); and Marietta Garage, Inc. v. South Carolina Dept. of Public Safety, 337 S.C. 133, 522 S.E.2d 605 (Ct. App. 1999).

An administrative agency’s factual findings are presumed to be correct and can be set aside only if the findings are not supported by substantial evidence. Kearse v. State

Health and Human Services Finance Commission, 318 S.C. 198, 200, 456 S.E.2d 892, 893 (1995). The South Carolina Supreme Court has defined “substantial evidence” as “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” Midlands Utility, Inc. v. S.C. Department of Health and Environmental Control, 298 S.C. 66, 69, 378 S.E.2d 256, 258 (1989). The possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency’s finding from being supported by substantial evidence. Grant v. South Carolina Coastal Council, 319 S.C. 348, 461 S.E.2d 388 (1995).

Appellant bears the burden to show convincingly that the Board’s order is without evidentiary support or is arbitrary or capricious as a matter of law. Hamm v. Public Service Commission of South Carolina, 310 S.C. 13, 425 S.E.2d 28 (1992), Waters v. South Carolina Land Resources Conservation Comm’n, 312 S.C. 219, 467 S.E.2d 842 (1994).

DISCUSSION

1. Whether the Board of Social Work Examiners properly exercised jurisdiction when it disciplined a licensed Social Worker for conduct occurring when she was actively was licensed under the Social Work Examiners Practice Act?

It is undisputed in this matter that Appellant, in the course of her work as a Guardian ad Litem (hereinafter GAL) in these two (2) family court cases, was at all times a Licensed Master Social Worker (LMSW). This case was a professional disciplinary licensing proceeding not a civil action. As such, Appellant is not entitled to quasi judicial immunity as provided for in Fleming v Asbill, 326 S.C. 49, 483 S.E.2d 751 (1997).

Appellant’s argument that she was not practicing as a social worker and the authority of the Board is premised on finding misconduct related to the practice of social work is without merit. The South Carolina Family Court has jurisdiction of court appointed paid private Guardian ad Litem, but a licensing Board maintains its jurisdiction to sanction its licensee for misconduct as a paid GAL, even if the misconduct was not addressed by the family court. The Board’s administrative disciplinary process to protect the public against unprofessional or unethical conduct of its licensee is an additional mechanism in place to prevent abuse, neglect and irresponsibility of a licensed Social Worker including work performed by the licensed

Social Worker outside the Social Work practice. S.C. Code Ann. §§ 40-63-110, 40-1-10(A), 40-1-110 (f), 40-1-115, 40-1-120, and 40-63-150. Furthermore, contrary to Appellant's argument that Appellant's GAL "services" were not actually within the ambit of social work practice, the responsibilities of a paid private GAL clearly fall within the definition of "Practice of Independent Social Work-Clinical Practice" under § 40-63-20(25). And, Appellant's present license can be restricted under § 40-63-110(A) if she is guilty of misconduct as defined in § 40-63-110(B)

The Board's statutory provisions recognize the public protection implication for a Board to have the ability to discipline a licensee for behavior in activities not strictly related to the licensed practice. As a licensed Social Worker, Appellant is always bound by the principals of professional ethics and standards of conduct adopted by the Board and promulgated in regulations. There is no provision in the Social Work practice act which allows Appellant to opt out of her professional ethics and standards of conduct as a licensed Social Worker because she does work outside the Social Work practice.² The Record includes an article from Executive Director of the Association of Social Work Boards to illustrate the awareness of the application of Social Work ethics outside the clinical practice. The evidence in the record also clearly established Appellant produced and disseminated documents to the parties and attorneys in both of these family court cases which infused and promoted her Social Work licensure credentials in her GAL work. Furthermore, Appellant promoted the value of her Social Work licensure credentials and training with her GAL investigations by lecturing and producing an article to members of the South Carolina Bar Association.³

Appellant was at all times, a licensed Social Worker performing paid private GAL work. As such, Appellant is accountable to the Board even for work outside her Social Work practice. Appellant infused her Social Work credentials with her GAL work and

² The Respondent introduced evidence of a GAL training document promulgated by the Children's Law Center which provided that complaints against private GALs that maintained a professional license issued by the state of South Carolina may be reported through the appropriate Board of the South Carolina Department of Labor, Licensing and Regulation. This statement may be true but the Children's Law Center does not have the authority to determine whether the Appellant could be sanctioned as a Social Worker for acts done as a GAL.

³ The article was entitled The Importance of Cultural Competency in the Guardian Ad Litem Investigation. Cultural competency is a social work concept and the Respondent's expert pointed out that the Appellant indicated "in a variety of ways throughout the article" the value of this social work concept in GAL investigation

promoted her licensure credentials and the importance of the application of her social work concepts in her GAL cases. Furthermore, the actions taken as a GAL clearly fall within the LISW designation presently held by the Appellant. The Board properly exercised jurisdiction to discipline Appellant who was at all times a licensed Social Worker even for work Appellant did outside her Social Work practice.

2. Whether the Board of Social Work Examiners properly exercised its discretion when it reached findings of fact and conclusions of law supported by reliable, probative and substantial evidence on the record?

An exercise of discretion by an administrative agency will not be disturbed unless there is an abuse of discretion evidenced by a showing that the action of the agency was arbitrary or unlawful. An administrative sanction cannot be said to be unduly harsh if it is within the Board's authority to impose. South Carolina Bd. Of Examiners in Optometry v. Cohen, 256 S.C. 13, 180 S.E.2d 650 (1971). This tribunal is not permitted to substitute its judgment for that of the Board, unless the Board's action was influenced or controlled by some erroneous view of the law, was without substantial evidence to support, or amounted to a manifest abuse of discretion. State v. White, 218 S.C. 130, 61 S.E.2d 754 (1950). The Board is authorized to revoke, suspend, publicly reprimand, or otherwise restrict the practice or discipline a licensee when it is established that the licensee is guilty of misconduct. S.C. Code Ann. §§ 40-63-110 (A) and (B). Furthermore, the Board's discretion does not have to be exercised identically in every case. Deese v. South Carolina State Board of Dentistry, 286 S.C. 185, 332 S.E.2d 539 (Ct App. 1985).

The Appellant was a licensed Social Worker performing paid private GAL work in the family court. There is reliable, probative and substantial evidence to support the Board's order that the Appellant violated S.C. Code Ann. § 40-63-110 (B) (9) and S.C. Code Rags 110-20(8) when she represented in her written statement to the Board Investigator that she performed services in two (2) family court cases that she did not perform (R. p. 773; Complainant's Exhibit number 22). Specifically, the Board concluded that the Respondent did not perform the private GAL responsibilities as required by S.C. Code Ann. § 63-3-830 (A) (2) (a-f). The plain language of this GAL statute (see footnote 1) provide for several responsibilities and duties that were required in Appellant's GAL investigations and Appellant's discretion was to do more not less.

The eventual outcome of these family court cases did not dictate the Appellant's statutory responsibilities and duties prior to the final hearing.

In her investigative statement to the Board, Appellant wrote that she followed the GAL statute. (R. p. 773; Complainant Exhibit Number 22). She testified that she started private GAL work around 2003 at the same time that the private GAL statute came into effect. (R. p. 334). She testified that she attended training for the private GAL statutes and she always practiced with these GAL statutes in effect. (R. p. 334).

In case number 2007-0001, Appellant was the second GAL appointed on November 23, 2004, in this visitation contested family court case. She never asked to be removed as GAL for nonpayment of fees or lack of cooperation by the parties. (R. p. 73; R. p. 89, lines 14-17; R. pp. 285-286; R. p. 361; R. pp. 442-443). Nineteen months after her appointment as GAL in this case, the only GAL responsibility Appellant did pursuant to the § 63-3-830(A)(2)(a-f) was one home visit on March 24, 2006 with the noncustodial parent who was only allowed supervised visitation by a person approved by the custodial parent, Ms. K. (pursuant to a Temporary Court Order issued on November 10, 2003). (R. pp. 274-275; R. pp. 345-348; R. p.623; Complainant Exhibit Number 1). Appellant did not provide any documentation regarding this home visit with Mr. H. (R. p. 279). She followed up this home visit with a letter to Ms. K. dated June 1, 2006 which recommended that it was in the child's best interest to start visitation with the his father. (R. pp. 55-64; R. p. 631; Complainant Exhibit Number 3) and with an affidavit to the family court dated January 9, 2007, with a similar recommendation of visitation with the noncustodial parent (R. p. 774; Complainant Exhibit Number 23). With regards to the private GAL responsibilities in § 63-3-830(A)(2)(a-f), Appellant did not conduct an independent, balanced and impartial investigation to determine the facts relevant to the situation of the child and the family. (R. p. 258; pp. 296-298). She did not obtain and review all relevant information (R. pp. 86-89; p. 103; p. 274, pp. 283-286; pp. 289-290). She did not meet with and observe with the child on at least one occasion (R. pp. 86-89; p. 112; p. 362; R. pp. 430-432; R. pp. 435-438). She did not visit the home setting of the custodial parent or interview the custodial parent or others with knowledge relevant to the case. (R. pp. 86-91). She did not obtain the criminal history of each party (R. pp.86-89). She did not consider the wishes of the child. (R. pp. 86-89; p. 112; pp. 276-277). Jania

Sommers', the State's expert testified that she considered it unethical for Appellant to give her opinion for visitation with the noncustodial parent without having first met the child. (R. p. 326).

In case number 2007-0021, Appellant was appointed GAL in this contested case on September 24, 2004, for the contested issue of visitation modification. The parties were divorced in 2002 on the grounds of habitual drunkenness. The final divorce order gave Mr. Evans unsupervised visitation every other weekend. When his ex-wife moved out of state, he initiated a custody request and then changed it to visitation modification which was contested. (R. pp. 143-144). It was never contested that Mr. Evans was an alcoholic; however, Appellant admitted that she focused most of her time with this issue. (R. pp. 463-464). In an Order dated February 19, 2007, the Judge urged the parties to mediation because the case had been pending for three and one half years and there was limited evidence to determine what was in the best interest of the minor children. (R. pp. 867-871, Joint Exhibit Number 4). At the time of this Order, the Appellant was the GAL for over two years.

Appellant did not perform the GAL responsibilities and duties in § 63-3-830(A)(2)(a-f). She testified that she did not meet with and observe the children on at least one occasion; that she did not visit the home setting of either parent and it was unclear from her testimony to what extent she interviewed parents, caregivers, school officials, law enforcement, and other with knowledge relevant to the case. (R. p. 460; R. p. 478; R. pp. 477-478; R. p. 464; R. pp. 482-483; and R. pp. 486-487). Mr. Evans' testified that the Appellant did not interview or meet with him; she did not ask him to sign a release or provide her with access to individuals or to relevant documents for her investigation; she did not ask him to put in writing his position regarding the dispute over his children; she did not meet with and observe the children on at least one occasion while they were visiting him or his ex-wife; she did not do a home visit with him or his ex-wife; she did not talk with the children to attempt to consider their wishes and she did not interview anyone with relevant knowledge to the case. (R. pp. 147-149; R. p. 121; R. 158-159; R. p. 171). Mr. Evans testified that Appellant was aware of his sessions with Mr. Fortia, a clinical social worker, because she attended one session (R. pp. 150-151), but he did not know if she actually interviewed Mr. Fortia (R. p. 148). He testified that he

signed a document from Mr. Fortia, which allowed Mr. Fortia to discuss his sessions with Appellant.(R. p. 150). He testified that he never refused to cooperate with the Appellant investigation and he did not recall the Appellant asking to be released as GAL for lack of his cooperation. (R. p.156).

Mr. Fortia testified that the Appellant was invited to attend a session to review a telephone recording of Mr. Evans and his children. He testified that he spoke to Appellant on the phone, but he did not consider their conversation an interview (R. pp. 186-187; R. pp. 191-192). Mr. Fortia also testified that he did not believe Appellant approached Mr. Evans' problems in a balanced and impartial manner. (R. pp.188-190). He confirmed that he received permission from Mr. Evans to speak to Appellant about all aspects of his counseling, but Appellant never interview him or requested a copy of Mr. Evans' records. (R. pp. 194-195).

Mr. Evans' attorney, Peggy Infinger, testified of her concern with Appellant's lack of conducting an independent, balanced and impartial investigation to determine what was in the best interest of the children and her concern that Appellant never met or talked to the children or the children's counselor (R. pp. 211-216; R. p. 232; R. p. 234; R. p. 246; R. p. 248). Ms. Infinger testified that there was a show of bias in Appellant's GAL report (R. p. 216; R. p. 239) and at the time of the GAL report, Appellant had never met with the children, their counselor, the parents or observed either parent with the children (R. pp. 215-216). She testified that she filed a motion to relieve Appellant from GAL, but the Judge did not rule on it (R. p. 224).

Ms. Sommers, the State's Expert testified at length as to the lack of Appellant following the responsibilities and duties of the GAL statute. (R. pp. 302-305). Ms. Sommers testified that Appellant specifically stated in her response to the Board that she followed the GAL statutes and the documentation and record keeping (or lack thereof) indicated that she did not. (R. p. 305; R. p. 313; R. pp. 327-329). Ms. Sommers also criticized the contents and information in the Appellant's GAL report. (R. 306-311) and testified of the importance of the GAL presenting accurate statements and not picking and choosing what information to present to the Court. (R. p. 311).

In reviewing the entire Record, there are inconsistencies with Appellant's statement to the Board Investigator (R. p. 773; Claimant's Exhibit 22) and the presented

testimony. In case 2007-0001, Appellant indicated in her investigative statement to the Board that she did not receive any proof of Mr. H.'s violence from Attorney, Kate Schmutz and that she was never shown anything to substantiate Ms. K's story [that the father was evil and dangerous]. Appellant also wrote in an affidavit prepared for the Court that Ms. K. had not provided any evidence that Mr. H. could be dangerous, neglectful and/or harmful. (R. p. 775; Claimant's Exhibit 23). In fact, Ms. K gave a great deal of documentation relating her concerns of Mr. H. to the prior GAL and to her Attorney, Kate Schmutz (R. pp. 92-93; R. pp. 632-685). Ms. K. testified that she asked Ms. Schmutz to give the documents to Appellant, but Ms. K. never had any dialogue or written request from Appellant to provide information about Mr. H. or proof of his character. (R. pp. 67-70). The State's Expert confirmed this lack of dialogue or written request in her testimony. (R. pp. 285-291).

Contrary to her investigative statement to the Board, the Appellant testified that reviewed documents that she received from Attorney Schmutz. (R. pp. 349-352; R. pp. 399-405) then she later testified that a packet of two thousand plus pages came via the mail in an unmarked envelope (R. pp. 438-441; R. pp. 489-494; R. pp. 501-504; R. p.836 in Respondent's Exhibit 2). Appellant further contradicted herself when she testified that some of the documents presented to her at the hearing were not part of what she reviewed (R. pp. 489-491), but she then acknowledge that she had previously testified that she was given the documents that were poor quality and the language was rude, but she did not see anything that would trigger further investigation (R. p. 350; pp. 491-494). The Appellant also gave conflicting testimony of the date that she received the documents and she was not unclear if she reviewed the information prior to her letter to Ms. K. dated June 1, 2006. (R. p. 349 lines 13-23; R. pp. 399-405; R. pp. 437-442). To further complicate a determination of what documents she received from Attorney Schmutz or in the unmarked envelope, Appellant testified that she shredded the documents after the case concluded. (R.pp.401-402). Attorney Schmutz testified that she did not recall if she gave Appellant any documents, (R.pp.520-521), and that she would not have sent it in an unmarked envelope. (R. p. 521).

In her investigative statement to the Board, Appellant also stated that she advocated for the child to start seeing Mr. H. in a therapist office. In Appellant's only

contact with Ms. K. about the visitation issue in a letter dated June 1, 2006 (R. p. 631, Complainant Exhibit Number 3) and in an affidavit for the Family Court dated January 9, 2007 (R. pp. 774-776; Complainant's Exhibit 23), Appellant made reference to the minor child's visitation with Mr. H., but there was no mention of supervised visitation. Appellant's recommendation in both instances was in direct conflict with the existing Family Court Order dated November 10, 2003 which Appellant acknowledged required supervised visitation of the child by a person approved by Ms. K. (R. pp. 623-627; R. pp. 446-447). Appellant testified that she advocated for supervised visitation at the final order hearing with Ms. K's new attorney who Appellant had not spoken with prior to the hearing. (R. pp. 445). Appellant acknowledged that she was not aware that she was attending a final order hearing and prior to this final order hearing, she did not make any supervised or therapeutic visitation recommendations. (R. pp. 452-456). The State's Expert, Jania Sommers confirmed that she did not review any documentation that indicated Appellant advocated for supervised visitation prior to the final order hearing. (R. p. 287; R. p. 294).

For case number 2007-0021, there were also inconsistencies with testimony presented at the hearing and in Appellant's written statement to the Board, in Appellant's affidavit dated May 17, 2007 and in Appellant's Guardian ad Litem (GAL) report dated April 3, 2006. The Appellant wrote in her investigative statement to the Board, that Mr. Evans had not received any ongoing therapy/rehabilitation for his habitual alcohol abuse. (R. p. 773). In her GAL report, dated April 3, 2006, Appellant wrote that Mr. Evans denied his habitual alcohol problem; that he minimized his alcohol use; and that he had not sought out counseling or any other type of substance abuse program. (R. pp. 711-718). In an affidavit to the Court, dated May 17, 2007, Appellant wrote there was no evidence that Mr. Evans made a commitment to sobriety. (R. pp. 720-721).

Appellant testified at the hearing that she did not ask or attempt to request releases for this information. (R. pp. 465-466). The Record contains substantial testimony that refutes Appellant's continuous assertions that Mr. Evans did not receive any ongoing therapy/rehabilitation for his habitual alcohol abuse from Mr. Evans, Douglas Fortia, an LISW-CP, who counseled Mr. Evans for his alcohol abuse beginning on November 16, 2004 and the State's Expert, Jania Sommers. (R. pp. 149-154; R. pp. 157-158; R. pp.

173-174; R. pp. 182-186; R. pp. 192-196; R. pp. 173-174; R. pp. 199-200; R. pp. 274-278). Also, Mr. Evans and Mr. Fortia testified that Appellant did not attempt to get releases which would have allowed her access to therapy/rehabilitation records or speak with any person about Mr. Evans alcohol treatment. (R. pp. 147-148; R. pp. 193-196).

The Board's finding of fact and conclusions of law were not clearly erroneous or an abuse of discretion based on the substantial evidence in the Record and the plain language of S.C. Code Ann. § 63-3-830(A)(2)(a-f). As such, this portion of the Board's findings of fact and conclusions of law are affirmed.

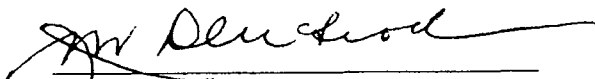
However, the Board's finding of fact that S.C. Code Ann. § 63-3-820(D) required the Appellant to disclose in her required private GAL affidavit that she was previously publicly reprimand by the Board and her license was placed in a probationary status is erroneous. The plain language of this statute does not require disclosure of her public reprimand for misconduct in the required GAL affidavit. As such, this portion of the Board's findings of fact is reversed.

It is not clear, from the Board's Order, what effect, if any, this specific finding of a violation of S.C. Code Ann. § 63-3-820(D) had on the Board's sanctions. As such, this case is remanded to the Board for reconsideration of its sanctions excluding the Board's finding of a violation of S.C. Code Ann. § 63-3-820(D). The Board shall not increase the previously imposed sanctions. The Board shall only consider whether or not the exclusion of this finding of fact affects the imposed sanctions and if so, reduce accordingly.

THEREFORE, for the foregoing reasons, the Board's order issued July 13, 2010 is affirmed in part, reversed in part and remanded to the Board for reconsideration of the sanctions in accordance with the terms of this order.

AND IT IS SO ORDERED.

Columbia, SC
July 12, 2011



John D. McLeod, Judge
S.C. Administrative Law Court

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or in the Interagency Mail Service addressed to the party(ies) or their attorney(s).

This 12 day of July, 2011
By: Anthony R. Gillman
Judicial Law Clerk