THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM YORK COUNTY

John D. McLeod, Judge, Administrative Law Court
Case No. 2010AL1100591

S. Phillip Lenski, Judge, Administrative Law Court
Case No. 2012ALJ-11-0495-AP

Karen A. Forman — Appellant,

versus

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

REPLY BRIEF OF APPELLANT

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I

Does the quasi-judicial immunity afforded to guardians *ad litem* in *Fleming v. Asbill*[1] apply to professional disciplinary proceedings?

Karen Forman does not "argue that she is absolutely immune from professional discipline in connection with her work as a GAL."[2] She argues that *Fleming v. Asbill* "provides the remedies to deal with "rogue guardians."[3] She also argues that the executive branch does not have authority to intrude on the judiciary's sole authority to discipline and regulate guardians,[4] which the Respondent concedes.[5]

Respondent argues "Appellant posits that because the court did not mention professional proceedings it its decision, the type of proceeding is irrelevant."[6] In contrast, what the Appellant said was "[t]he type of proceeding is irrelevant. What is important is the Court's reasoning for its affirmative answer affirming common law immunity for guardians."[7] The Appellant asserts that it is the policy that is important, regardless of the type of proceeding.

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[1]*Fleming v. Asbill*, 326 S.C. 49, 483 S.E.2d 751 (1997).

[2]Brief of Respondent, page 7.

[3]Brief of Appellant, page 15.

[4]Brief of Appellant, pages 13-14.

[5]Brief of Respondent, page 22.

[6]Brief of Respondent, page 7.

[7]Brief of Appellant, pages 14-15.

The Respondent seeks a "back-door" circumvention of the Supreme Court's reasoning in *Fleming*, yet its position is undermined by the following quotation from a case cited by Respondent:[8]

> [i]f the policy, which in defamation actions affords an absolute privilege or immunity to statements made in judicial and quasi-judicial proceedings is really to mean anything then we must not permit its circumvention by affording an almost equally unrestricted action under a different label.[9]

The *dicta* cited by Respondent[10] from *Moses v. Parwatikar*, is not nearly as helpful as that court's observation regarding potential problems. "First, psychiatrists will be reluctant to accept court appointments."[11] Appointing licensed social workers as guardians will be much more difficult if the guardians are subject to harassment by disgruntled parents through the Social Work Review Board. The factual situation in *Moses v. Pariwatickar*[12] is closer to the present case than others cited by Respondent in that it involves a court appointed professional and a disgruntled litigant.

Karen Forman does not urge "creating a blanket immunity that shields Appellant from disciplinary action by her very own licensing Board."[13] First, the

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[8]Brief of Respondent, page 12.

[9]*Moses v. McWilliams*, 379 Pa. Super. 150, 165, 549 A.2d 950, 957 (1988), quoting *Hoover v. Van Stone*, 540 F.Supp. 1118, 1124 (D.Del.1982).

[10]Brief of Respondent, page 12.

[11]*Moses v. Parwatikar*, 813 F.2d 891, 892 (8th Cir. 1987).

[12]*Moses v. Parwatikar*, 813 F.2d 891, 892 (8th Cir. 1987).

[13]Brief of Respondent, page 7.

Social Work Review Board does not license guardians *ad litem*. Second, Appellant devotes a section of her brief to the proposition that if the judiciary finds misconduct relating to her guardian work, then the Board may impose reciprocal discipline.[14]

The Appellant absolutely agrees with the Respondent's statement "Thus, while a GAL's misconduct may not be subject to a civil suit due to overriding policy concerns, the misconduct may be probed by the family court."[15] Those same policy concerns apply to the executive branch holding trials and depriving a guardian of the ability to work and earn an income.

Respondent's argument that "A social work disciplinary proceeding is brought by the Board, not by disgruntled parents"[16] is not supported by law, logic, or experience. A similar argument would be that "A criminal case is brought by the State, not disgruntled individuals." If this were true, individuals could not be liable for malicious prosecution or abuse of process. Consider what the "disgruntled parents" did in this case to abuse the process.[17]

Respondent argues "After a two-day hearing, the Board concluded that Appellant violated S.C. Code Ann. §40-63-110(B)(9) in that she violated the principles of professional ethics in S.C. Code Regs. 11 0-20(8),"[18] After that same

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[14]Brief of Appellant, pages 30-31.

[15]Brief of Respondent, page 8.

[16]Brief of Respondent, page 9.

[17]ROA 68 (lines 18-25) through 69 (lines 1-22), Transcript of record, June 28, 2010.

[18]Brief of Respondent, page 10.

two-day hearing, the Board made findings that Ms. Forman was "required by S.C. Code Ann. §63-3-820(D)" to make certain disclosures in her affidavit.[19] The Board's finding was rejected by the administrative law court.[20] This illustrates the folly of the executive branch interpreting and enforcing statutes within the jurisdiction of the judicial branch.

The Respondent cites *Huhta*[21] for the proposition that "It is the Board that is charged with the responsibility of overseeing the medical profession and determining the competency and fitness of an individual to practice medicine within the Commonwealth, and we decline to handicap the Board in performing this important function."[22] A legitimate paraphrase would be that it is the family court that is charged with the responsibility of overseeing the guardians *ad litem* and determining the competency and fitness of an individual to serve as a guardian *ad litem* in South Carolina and the Social Work Review Board is not authorized to handicap the family court in performing this important function. *Huhta* involves only the medical profession and does not attempt the cross-branch disciplinary action the Board seeks here.

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[19]ROA 8, Order dated July 13, 2010, paragraph 5.

[20]ROA 25, Order of the administrative law court dated July 12, 2011, page 13.

[21]*Huhta v, State Bd. of Medicine*, 706 A.2d 1275. 1277 (Pa. Commw. C1. 1998).

[22]Brief of Respondent, page 14.

Commenting on *Fleming*,[23] Respondent states 'The court observed that immunity would not protect GALs for actions beyond the scope of their duties."[24] Two points: First, all of the actions of Ms. Forman were within the scope of her duties as guardian *ad litem*. Second, none of her actions were related to any social work duties. This is best illustrated by comparing statutes relating to the two disciplines. The social work statute requires the social worker to provide mediation and client education.[25] In contrast, the guardian *ad litem* does not have a client as defined by S. C. Code Ann. Section 40-63-20(9) and is prohibited from mediating or attempting to mediate.[26] If the Social Work Review Board has original jurisdiction to enforce its rules against guardians who are social workers, the guardian would violate the social work statute by complying with the guardian statute and would violate the guardian statute by complying with the social work statute.

The Respondent argues that "The court went on to list, non-exhaustively, the following safeguards...."[27] "Non-exhaustively" is Respondent's word, not the Supreme Court's. If the Court were making the point that there are other remedies available to a "disgruntled parent," it seems the Court would include an exhaustive

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[23]*Fleming v. Asbill*, 326 S.C. 49, 56, 483 S.E.2d 751, 755, (1997).

[24]Brief of Respondent, page 11.

[25]S. C. Code Ann. Section 40-63-20(25).

[26]S. C. Code Ann. Section 63-3-810.

[27]Brief of Respondent, page 11.

list or specifically note that their list was illustrative or non-exhaustive. Further, all of the safeguards cited are within the family court arena.[28]

The Respondent's argument that "Ostensibly, yet another safeguard is the GAL's accountability to her licensing board for professional or unethical conduct."[29] The Respondent uses the word "ostensibly" as purposefully as George Smathers in a 1950 Florida Senate race when he accused his opponent Claude Pepper of being a known extrovert, who practiced celibacy before marriage, practiced nepotism with his sister-in-law, matriculated with women in college, whose sister was a thespian, and his brother a known homo sapien. What does ostensibly suggest? The answer is found in an Oregon case.

> It is in Paragraph XI that the instrument inveighed against is described as an 'ostensible creation'. *Funk and Wagnals New Standard Dictionary* defines the word 'ostensible' as meaning 'seeming; professed; pretended: often, tho not always, implying a concealment of or divergence from the real facts.' *Webster's New International Dictionary* states that 'ostensible' is often used as opposed to 'real or actual'. It is synonymous with 'colorable'.*Webster's Dictionary of Synonyms.* 'Colorable' is a word legally defined as 'That which has or gives color; that which is in appearance only, and not in reality, what it purports to be, hence counterfeit, feigned, having the appearance of truth.' 15 C.J.S., p. 237. A 'colorable transaction', such as an ostensible trust, is 'one presenting an appearance which does not correspond with the reality, and, in the sense ordinarily contended for, an appearance intended to conceal or to deceive.' 15 *C.J.S.* p. 238, note 10, citing *Osborn v. Osborn*, 102 Kan. 890, 172 P. 23, 24.[30]

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[28]Brief of Respondent, page 11.

[29]Brief of Respondent, page 11.

[30]*Windle v. Flinn*, 196 Or. 654, 676-77, 251 P.2d 136, 146 (1952).

To argue that the power of the Social Work Board is a separate safeguard, but only ostensibly, undercuts the Respondent's position.

"In the context of this case, the Board's administrative function to protect the public from Appellant's unprofessional or unethical conduct...."[31] In the context of this case, it is offensively presumptuous for the Board to think its ability to protect the public regarding guardians is superior to that of the South Carolina judicial system.

"Appellant also fails to mention that other jurisdictions have taken the position that attorney-GALs are not entitled to judicial immunity."[32] However, the Appellant is in good company. In *Fleming,*[33] the Supreme Court mentions several authorities from other jurisdictions but not for the proposition that Respondent urges. The distinction between *Deatherage,*[34] *Huhta,*[35] *Moses v. Parkwatikar,*[36] and *Coralluzzo*[37] and this case is that Dr. Deatherage, a psychologist; Dr. Huhta, a physician; Dr. Krane, a physician; and Dr. Moses, a psychiatrist; were facing discipline for facts

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[31]Brief of Respondent, page 11.

[32]Brief of Respondent, page 12.

[33]*Fleming v. Asbill*, 326 S.C. 49, 483 S.E.2d 751 (1997).

[34]*Deatherage v. State Examining Board of Psychology*, 134 Wash. 2d 131, 948 P.2d 828 (Wash.1997).

[35]*Huhta v. State Bd. of Med.*, 706 A.2d 1275 (Pa. Commw. Ct. 1998).

[36]*Moses v. Parwatikar*, 813 F.2d 891 (8th Cir. 1987).

[37]*Coralluzzo By & Through Coralluzzo v. Fass*, 450 So. 2d 858 (Fla. 1984).

that could not have occurred had they not been licensed medical professionals. No license, social work or otherwise, is required to be a guardian *ad litem*. There is no relationship between Ms. Forman's social work license issued by the executive branch and her ability to serve as a guardian *ad litem* by appointment of the judicial branch.

The Appellant approves the Respondent's quotation from the Connecticut Supreme Court in *Carruba*:[38]

> Second, there exist sufficient procedural safeguards in the system to protect against improper conduct by an attorney for the minor child. Because the attorney is appointed by the court, she is subject to the court's discretion and may be removed by the court at any time. Additionally, the attorney for the minor child, just as any other attorney, is subject to discipline for violations of the Code of Professional Conduct.[39]

Carruba stands for the proposition that the judicial branch is the appropriate branch for dealing with attorney misconduct. A major distinction in *Carruba* and the present case is that in *Carruba* the defendant was the court-appointed attorney for the child and in this case Ms. Forman was the court-appointed guardian *ad litem* for the children. The duties of an attorney for a child and a guardian *ad litem* for a child are different and distinct, differences and distinctions addressed by *Carruba*.[40] Even so, the judicial branch of government has the expertise and authority to review the actions of both.

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[38]Brief of Respondent, page 12

[39]*Carrubba v. Moskowitz*, 274 Conn. 533, 543, 877 A.2d 773, 781-82 (2005).

[40]*Carrubba v. Moskowitz*, 274 Conn. 533, 539, 877 A.2d 773, 779 (2005).

"There is simply no provision in the Social Work Practice Act that allows Appellant to opt out of her professional ethics and standards of conduct as a licensed social worker simply because she is working as a GAL."[41] Analogously, there is nothing in the Social Work Practices Act that allows the Board to supervise and regulate guardians. Interestingly, neither "guardian" nor "guardian *ad litem*" appear in either S. C. Code Ann. Section 40-63-5, *et seq.* or S.C. Code Ann. Regs. 110-1, *et seq.*

[41]Brief of Respondent, page 14.

II

Does the State Board of Social Work Examiners have subject matter jurisdiction to make findings of fact that a guardian *ad litem* appointed by the family court "failed to perform GAL responsibilities as required under the private GAL statute of S. C. Code Ann. §63-3-830(A)(2)(a-f)" or that she "failed to investigate or investigate fully all relevant documentation and failed to support her conclusions with a detailed report?"

A basic principal of black-letter hornbook law is ignored by the Respondent throughout this argument. " It is well-settled that issues relating to subject matter jurisdiction maybe raised at any time."[42] "The issue of subject matter jurisdiction may be raised at any time including when raised for the first time on appeal to this Court."[43] Professor James F. Dreher was fond of citing *Foster v. Nordman* for the proposition that "Although neither party has questioned the jurisdiction of the Circuit Court, we decline to pass upon the exceptions raised in these two cases as we have determined *ex mero motu* that the Court below had no jurisdiction of the parties to this action."[44]

The Respondent argues that the Appellant confuses the concept of subject matter jurisdiction and scope of authority, citing case law on the definition of subject matter jurisdiction and statutes regarding the statutory authority of the Social Work Review Board. Standing alone, these concepts are accepted and

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[42]*Bardoon Properties, NV v. Eidolon Corp.*, 326 S.C. 166, 168, 485 S.E.2d 371, 372 (1997)

[43]*Tatnall v. Gardner*, 350 S.C. 135, 137, 564 S.E.2d 377, 378 (Ct. App. 2002)

[44]*Foster v. Nordman*, 244 S.C. 485, 489, 137 S.E.2d 600, 601 (1964).

elementary, but the argument is incomplete. The specific and integral question is whether the Social Work Review Board has jurisdiction or authority to interpret the guardian *ad litem* statute, not just whether it has authority generally. The State's argument distracts the reader from the fundamental question of whether statutory jurisdiction or authority granted to one branch extends into the statutory jurisdiction or authority granted to another branch. That is like arguing that my liberty to swing my fist continues even past where your nose begins.[45]

The State incorrectly argues that the Appellant failed to preserve the issue of the Board's statutory authority to making findings of facts. First, to the Board, in her original Motion to Dismiss, dated September 14, 2009, Appellant states:

> The two underlying complaints relate to work undertaken by the Respondent as a guardian *ad litem* appointed by the Family Court. A guardian *ad litem* serves as is an officer of the Court, answerable to the court. The Respondent did not undertake to provide social work services to either of the members of the public who have complained to this Board. The Family Court has the exclusive authority over the qualification of the guardian *ad litems* (sic), the interpretation of the statutes setting forth the duties of guardians, the removal of guardians and the compensation for guardian work. All of the issues raised in the notice refer to actions take by the Respondent as a guardian *ad litem*. The sole authority for evaluating those actions resides with the Family Court.

The motion to dismiss is predicated on the Board not having authority to interpret statutes that specifically grant that authority to a different governing body. This motion was summarily dismissed in an email from James C. Saxon dated September 15, 2009. He simply states, "As for the Respondent's request to have the

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[45]"The right to swing my fist ends where the other man's nose begins." Commonly attributed to Oliver Wendell Holmes, Jr.

case dismissed, that request is denied."[46] Beyond the written motion to dismiss, during the June 28, 2010 hearing, Ms. Dunn states specifically that she is preserving the issue "on the record," as follows:

> I would simply, because of all the motions that were made preliminary (sic), there is really no record of it. So, just for the purposes of preserving the record, not because I am tying to get a new decision on what has already been ruled. But the Respondent had made the motion that there are certain issues that are presented before the Board by charge and complaint that are not within the jurisdiction of this Board to review. It is the Respondent's position that certain matters — and I am going to be very specific with this, such as interpreting a Family Court Statute as to the requirement of an affidavit dealing with all issues of fees for a guardian *ad litem* that were set by the Court and submitted to the Court by Consent Order, as well as any determination of a legal conflict of interest was that was brought before the Family Court. Those are all issues that are solely within the jurisdiction of the Court system to determine, and enforce, and interpret its own Statutes. We are not saying that this Board does not have jurisdiction over the core values of the Social Worker, regardless of what a Social Worker is doing. But when it comes to Board interpreting and enforcing Statutes that are Court Statutes that were before the Court and the Court had an opportunity - or could have had an opportunity, to determine, for this Board to the super-impose its decision, its really beyond the jurisdiction of this Court.[47]

The Respondent ignores the record which includes specific statements preserving issues. The Respondent should cite arguments and testimony for facts rather than the circular effect of relying upon the orders that are currently on appeal. The Respondent's only citations to the record are those which were included on the face of the orders from the administrative law court.

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[46]ROA 252, Email from James Saxon to Christa Bell and Susan Dunn, dated September 15, 2009

[47]ROA 49, Transcript of Hearing June 28, 2010, page 4.

Respondent further claims that Appellant did not preserve the issue of the Board's authority because the administrative law court did not have the opportunity to rule on this,[48] however, one of two issues on appeal to the administrative law court was "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 Worker Examiners Practice Act?"[49]

Next, Respondent claimed that Appellant abandoned the issue of jurisdiction or authority to interpret the guardian *ad litem* statute by failing to cite supporting authority. Where specific authority to interpret a statute is specifically granted to one government body, no specific instruction against another body from doing so is needed. For example, there is no specific statute prohibiting the Social Work Review Board from levying taxes, however, few would agree that the Board has authority to do so. In *Moses v. McWilliams*, the court found a lack of provision for an independent cause of action against the doctor for money damages as well as any indication that the General Assembly intended to create one.[50] The court did not cite authority, but rather relied on the lack of indication of intent of the General Assembly. The Respondent's reliance on arguments that the Appellant made

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[48]Brief of Respondent, page 15.

[49]ROA 15, Order from administrative law court, July 12, 2011, page 4.

[50]*Moses v. McWilliams*, 549 A.2d 950, 379 Pa. Superior Ct. 150, 379 Pa. Super. 150 (1988).

conclusory argument and abandoned the issue is therefore misplaced and inapplicable.

In conclusion, *any* finding of wrong-doing which is predicated on interpretation of statutory authority granted to a government body other than the Board, is in excess of the Board's authority.

III

Even if the Board had authority to find facts relating to Ms. Forman's performance as a guardian *ad litem* in family court, are its findings of fact correct?

The issue on appeal is whether the Board made correct findings of fact. Respondent skirts the issue on appeal and presents a defense of the Board's and the administrative law court's conclusions. Respondent neglects to address Appellant's arguments that the Board and the administrative law court failed to appreciate the context of the facts or the discretionary nature of the Guardian statutes. Respondent simply dismisses this whole line of reasoning because it "runs afoul of the standard of review."[51] Appellant agrees that the standard of review is governed by the Administrative Procedures Act,[52] but disagrees that the "lower court was confined to determining whether the substantial evidence existed which could support the Board's conclusions."[53] The Administrative Procedures Act allows for a reversal or modification of the administrative law court decision if it's findings, conclusions or decisions are:

> (a) in violation of constitutional or statutory provisions;
> (b) in excess of the statutory authority of the agency;
> (c) made upon unlawful procedure;
> (d) affected by other error of law;
> (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
> (f) arbitrary or capricious or characterized by abuse of discretion or

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[51]Brief of Respondent, page 21.

[52]S. C. Code Ann. Section 1-23-310, *et seq.*

[53]Brief of Respondent, page 19.

clearly unwarranted exercise of discretion.[54]

Appellant argued from her first Motion to Dismiss on September 14, 2009, through this document that the Board acted in excess of the statutory authority of the agency.[55]

"To illustrate that the Board relied on reliable, probative, and substantial evidence in reaching those finding, the ALC devoted seven pages of its order recounting the multitude of testimonial and documentary evidence considered by the Board during the two-day hearing."[56] Respondent seems to be arguing that the length of the order adds credibility to the administrative law court's findings in the order that is on appeal. What does it mean that Appellant devoted nine pages in her initial brief to extrapolate on the narrow findings of the Board and to provide a more accurate framework for her actions and decisions? Appellant's argument is that the evidence on which the Board relied was incomplete: it fails to acknowledge the intricacies of the judicial system and the cases of the two disgruntled litigants specifically.

It is difficult to summarize all of the ways in which the Board erred in its understanding of the complexity of these cases. Appellant's initial brief provides a detailed accounting.[57] Appellant maintains that the Board lacks not only

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[54]S.C. Code Ann. §1-23-380(5)(a-f).

[55]S.C. Code Ann. §1-23-380(5)(b).

[56]Brief of Respondent, page 20.

[57]Brief of Appellant, pages 19-26.

jurisdiction and statutory authority, but the qualifications, the education, the training and the experience to interpret and apply the guardian statutes properly. This idea is more fully argued in Issue II.

The fallacy of the Board's findings was not in what Ms. Forman did or did not do; it was the blind interpretation of those actions without consideration of circumstances or context.[58] For example, Appellant maintained that she complied with the guardian *ad litem* statute, and the Board found that statement to be a claim that she did far more than she actually did.[59] Respondent is dogmatic in refusing to understanding what has happened in this case. "Appellant urges this Court to sit as a finder of fact so that she may re-litigate this case to achieve more favorable results."[60] Yes, the Appellant wants her guardian *ad litem* work reviewed, when necessary, by a court with competent jurisdiction and authority.

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[58]Brief of Appellant, page 26.

[59]Brief of Respondent, page 4.

[60]Brief of Respondent, page 21

IV

Does the Board have the jurisdiction or authority prevent the family court from exercising its discretion in appointing a guardian *ad litem* or preventing the family court's appointee from serving as a guardian?

The Respondent concedes that "The family court has absolute discretion to appoint Appellant as a GAL..."[61] Respondent claims that Appellant has mischaracterized the Board's actions as restricting the family court's authority to appoint guardians. Respondent states, "Appellant would be hard-pressed to cite any part of the Board's order that speaks to the family court's appointment power, because such verbiage is wholly absent from the order." The Board did not bar the family court from appointing Appellant to be a guardian *ad litem*. Instead, it provided a scenario where the family court could appoint someone who is subject to sanction for accepting the appointment. This is a distinction without a difference and the Respondent is disingenuous to suggest otherwise. The natural consequence of this scenario is a deprivation of the power of the family court to make its own appointments. Whether the family court cannot appoint or the Appellant cannot accept, the net result is the same.

Respondent finds Appellant's argument that guardian *ad litem* work does not fall within the scope of Licensed Independent Social Work and therefore prohibits the Board from limiting her guardian *ad litem* work without merit. But the Respondent fails to offer rationalization for the incompatible statutory duties of

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[61]Brief of Respondent, page 22.

licenced independent social work and guardianship in a way that would make a reach of power from one governing branch to another somehow acceptable. Respondent begins justification of this position by reiterating that the purpose of a licensing board is to protect the public from its licensees. They cite that she promoted social work "theory, knowledge, methods," S.C. Code Ann. 40-63-20(25) in her guardian *ad litem* practice. There is no claim that she improperly promoted theory, knowledge and or methods or that she lacked an understanding of them. Further, cross-discipline training is common practice in continuing education, as it promotes multi-faceted collaboration and integrates multiple perspectives for understanding and analyzing situations.

How far can the Social Work Board reach to protect the public? Respondent argues that the Board has no limit once you have a license. If instead of being a paid guardian *ad litem*, Appellant were a minister in a church facing the same allegations, would the Board claim authority to prohibit her ministering?

In the original order, the Board stated clearly and simply that their actions were not intended to be punitive, but rather were to protect the public. "The sanctions imposed are designed not to punish the social worker, but to protect the life, health, and welfare of the people at large."[62] This concept was reiterated throughout the orders from the Board and the administrative law court, as well as in the Initial Brief of Respondent:

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[62]Order dated September 19, 2012, page 4, paragraph 5.

1. "The Board's administrative disciplinary process to protect the public against unprofessional or unethical conduct of a licensee..." Order of the administrative law court dated July 12, 2011, page 5.

2. "The Board's statutory provisions recognize the public protection implication..." Order of the administrative law court dated July 12, 2011, page 6.

3. "The sanction imposed is consistent with the purpose of these proceedings and has been made after weighing the public interest and the need for the continuing services of qualified social workers against the countervailing concern that society be protected from professional misconduct and ineptitude; further, that they were made based upon the Respondent's violations of S.C. Code Ann. § 40-63-110(B)(9) and S.C. Code Regs. 110-20(8), and S.C. Code Ann. § 63-3-830(A)(2)." Order dated September 19, 2012, page 4, paragraph 4.

4. "The sanction imposed is consistent with the purpose of these proceedings and has been made after weighing the public interest and the need for continuing services of qualified social workers against the countervailing concern that society be protected from professional misconduct and ineptitude."Order dated July 13, 2010, page 4, paragraph 4.

5. "A social work disciplinary proceeding is brought by the Board, not by disgruntled parents, for the purpose of protecting the public from the unscrupulous act(s) of a licensee." Brief of Respondent, page 9.

6. "The Board's administrative process is to protect the public from the unprofessional and unethical conduct of its licensees." Brief of Respondent, page 9.

7. The purpose of the licensing board "is to protect the public through the regulation of the professional and occupational licensees..." Brief of Respondent, page 10.

8. "In this case, the Board discharged its responsibility of protecting the public by..." Brief of Respondent, page 10.

9. "...the Board's administrative function to protect the public from Appellant's unprofessional or unethical conduct is an additional mechanism..." Brief of Respondent, page 11.

10. "...The purpose of a licensing board is to protect the public by holding licensees accountable..." Brief of Respondent, page 23

11. "Because the work of a paid, private GAL requires independence, the Board, in order to protect the public, ordered that she not work as a GAL." Brief of Respondent, page 23.

Contrary to this pervasive theory, Respondent now states that, "the Board's prohibition against Appellant working as a GAL work [sic] can safely be said to constitute discipline."[63]

The Respondent argues that the Appellant is ignoring that a "higher standard" applies to her because she is a licensee, but again the Respondent has misunderstood the argument. The Appellant's position is that there is no standard for the Board to apply to this work because that work is a function outside of the Board's statutory authority to review.

For the first time, the Respondent offers that "If Appellant wishes to practice as a GAL, she may surrender her license to the Board."[64] Neither the Board in its two orders, nor the administrative law court in its two orders, suggest this solution. This proposed solution is the antithesis of the Board's specific finding that "The sanction imposed is designed not to punish the social worker, but to protect the life, health, and welfare of the people at large."[65] Whether the original sanctions were a simple, raw, exercise of power by the Board or the Respondent now realizes that the

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[63]Brief of Respondent, page 24.

[64]Brief of Respondent, page 24.

[65]ROA 10, Order dated July 13, 2010, paragraph 5.

imposition of sanctions to Appellant's guardian work was without jurisdiction and authority, if the Respondent believes that the purpose of the Board is to protect the people and that Karen Forman is a threat, there is no reasonable justification for releasing Appellant to practice guardian *ad litem* work without a social work license. This suggests that the Board is not, in fact, primarily concerned with protecting the public. Rather, they seem more concerned with protecting their reputation. "Thus, so as to prevent Appellant from adversely affecting the public interest and *reflecting poorly on the social work profession*, the Board ordered that Appellant may not practice as a paid GAL or work in an independent setting..." (emphasis added).[66]

Finally, Respondent misunderstands Appellant's argument about reciprocal sanctions. It is not simply that the judicial branch must act first. Appellant's argument is based on the theory that *only* the judicial branch has the authority to *interpret* the guardian statutes and to *determine* if Appellant did or did not comply with the statutes. As argued more fully in Issue I, the Board lacks the education, training, and experience that the judicial branch has to understand and interpret the guardian statutes. The Respondent, again, fails to acknowledge that this case represents a violation of the separation of powers – an overreach by the executive branch to "protect the public" from a judicial appointee.

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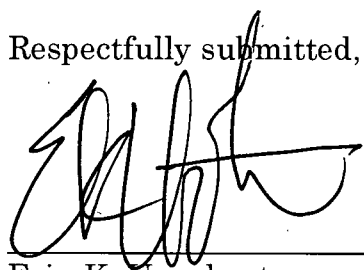
[66]Brief of Respondent, page 10.

CONCLUSION

The cases cited by the Respondent involve situations where a licensee is sanctioned by their licensing board for work that falls within that specific professional discipline. That is a different scenario than Karen Forman faced. The Social Work Board has overstepped its statutory authority and assumed the power to govern a judicial branch appointee. The Respondent fails to address the Board's reach outside the province of the Executive Branch. Not only is this overreach a blatant violation of the principle of separation of powers, it is the fundamental and constitutional question raised by the Appellant.

Karen A. Forman seeks dismissal of the proceeding upon the ground that the Respondent was without jurisdiction. In the alternative, she seeks reversal of the Social Work Board's restriction against her work as a guardian *ad litem*.

Respectfully submitted,



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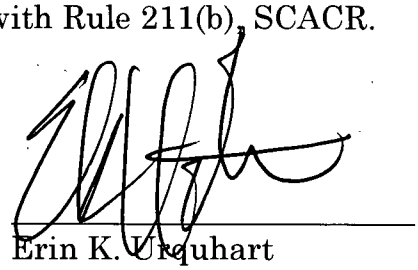
November 19, 2014

CERTIFICATE OF COUNSEL

The final brief of Appellant complies with Rule 211(b), SCACR.



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