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# THE STATE OF SOUTH CAROLINA

# IN THE COURT OF APPEALS

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SC Court of Appeals

S. Phillip Lenski, John D. McLeod, Administrative Law Court
2010ALJ-11-0591-AP, 2012ALJ-11-0495-AP

Karen A. Forman, Appellant,

versus

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

RECORD ON APPEAL
Volume 1

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Department of Labor, Licensing and Regulation

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July 23, 2010

KAREN A FORMAN
[redacted]CKNE[redacted]
CHARLESTON, SC 29401

**RE: Public Order**

Dear Ms. Forman:

Enclosed please find your order dated **July 13, 2010.** Upon review of this document, your order states the following conditions:

1) Shall not work as a Guardian *ad Litem*;
2) Prohibited from all independent practice;
3) Shall engage only in supervised practice;
4) Shall submit semi-annual, written reports from supervisor(s) **by January 13, 2011, July 13, 2011, January 13, 2012 and July 13, 2012;**

This information will be updated on the LLR website license look-up.

If there is any further assistance needed, please contact me at (803) 896-4317.

Sincerely,

Kathy Burgess
Administrative Specialist
Office of Licensure and Compliance

/kb

Enclosure(s): Order

**SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING AND REGULATION**
**BEFORE THE STATE BOARD OF SOCIAL WORK EXAMINERS**

In the Matter of:

**Karen A. Forman**
License No. LMSW-4931,
Respondent.

**ORDER**
**(Public)**

Case Nos. 2007-0001 and 2007-0021

This matter came before the Board of Social Work Examiners (the Board) for hearing on June 28, 2010, as a result of the Notice of Hearing the Notice of Charges dated August 17, 2009 which were served on the Respondent and filed by the State with the Board. A quorum of Board members was present. The hearing was held pursuant to S.C. Code Ann. §§ 40-63-90, 110, and 120, S.C. Code Ann. § 40-1-70(6), and the provisions of the Administrative Procedures Act (the APA), S.C. Code Ann. § 1-23-10, *et seq.* (1976, as amended). The State was represented by Georgia Lewis, Assistant General Counsel, and Christa T. Bell, Assistant General Counsel. The Respondent appeared and was represented by Susan K. Dunn, Esquire.

The Respondent was charged with violation of S.C. Code Ann. §§ 40-63-110(B)(9); 63-3-820(D); and S.C. Code Regs. 110-20(3), (7), and (8) (1976, as amended).

## FINDINGS OF FACT

Based upon the preponderance of the evidence on the whole record, the Board finds the facts of the case to be as follows:

1. The Respondent is duly licensed, and was so licensed at all times relevant to the issues in this matter. The Respondent's current licensure is as a LISW-CP; during the period in question, her licensure was as a LMSW.

### Case Number 2007-0001

2. The Respondent is self-employed as a Licensed Master Social Worker (LMSW), and was appointed by the Ninth Judicial Circuit's Family Court to be a paid Guardian *Ad Litem* (GAL) in the case of K (Mother) v. K. (Father) to protect the interests of the minor child.

3. As GAL, the Respondent made recommendations to the court about custody and/or visitation concerning the minor child without interviewing the Mother and other involved parties; the minor child was six (6) years of age at the time.

4. The Respondent did not investigate or 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.

5. Though required by S.C. Code Ann. § 63-3-820(D), the Respondent 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.

**Case Number 2007-0021**

6. Self-employed as a LMSW, the First Judicial Circuit's Family Court appointed the Respondent as a paid GAL in the case of E (Father) v. E (Mother) to protect the interests of minor children, then ages four (4) and seven (7).

7. As GAL, the Respondent 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.

8. The Respondent failed to investigate or investigate fully all relevant documentation, and failed to support her conclusions with a detailed report.

9. Though required by S.C. Code Ann. § 63-3-820(D), the Respondent did not disclose in her affidavit that she was publicly reprimanded for misconduct, but represented herself to the parties as a LMSW in billing and other correspondence without disclosing her license previously was placed in a probationary status.

10. In a matter unrelated to her position as a GAL, the Respondent was sued and entered into a settlement agreement. The firm representing the Father in the matter in question was a partner of the attorney initially representing the Respondent in the unrelated civil matter, and the Respondent did not disclose this potential conflict of interest to the parties or Court, even after the Father's attorney moved to have the Respondent relieved; she contested the motion and did not withdraw as GAL.

## CONCLUSIONS OF LAW

Based upon careful consideration of the facts in this case, the Board finds and concludes as a matter of law that:

1. The Board has jurisdiction in this matter and, upon finding that a licensee has violated any of the provisions of S.C. Code Ann. §§ 40-1-110 or 40-63-110, has the authority to impose sanctions as provided in § 40-1-120, including suspension, restriction, or revocation of a license and may impose a fine of not more than five thousand dollars for each violation.

2. The Respondent violated S.C. Code Ann. § 40-63-110(B)(9) in that she violated the principles of professional ethics or standards of conduct adopted by the Board and promulgated in regulations, as evidenced by her violation of the following:

a. S.C. Code Regs. 110-20(8) in that she committed fraud and represented she performed services she did not perform, as evidenced by the following:

i. Her 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;

ii. Her failure to meet with and observe the child(ren) in question on at least one (1) occasion, or even to speak with them by telephone;

iii. Her visitation of only one (1) of at least four (4) homes;

iv. Her failure to interview each parent, to interview step-parent(s), to interview grandparent(s), to interview school officials, and others with relevant knowledge;

v. Her failure to obtain criminal histories of each party;

vi. Her failure to consider the wishes of the child(ren);

vii. Representing herself as a licensed Social Worker while acting as a GAL, but failing to conduct herself in a professional, ethical, or competent manner.

b. The State failed to prove by a preponderance of the evidence that the Respondent violated S.C. Code Regs. 110-20(3) and the National Association of Social Workers (NASW) Code of Ethics Standard 1.

c. The State failed to prove by a preponderance of the evidence that the Respondent violated S.C. Code Regs. 110-20(7).

3. Under S.C. Code Ann. § 63-3-830(A)(2) (1976, as amended), a GAL's responsibilities and duties include the following:

a. Obtaining and reviewing relevant documents;

b. Meeting with, and observing, the child(ren) on at least one (1) occasion;

c. Visiting in the home setting(s), if deemed appropriate;

d. Interviewing the parents, caregivers, school officials, law enforcement officers, and others with knowledge relevant to the case;

e. Obtaining the criminal history, if any, of each party, when determined necessary; and

f. Consider the child's or children's wishes, if appropriate.

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 the continuing services of qualified social workers against the countervailing concern that society be protected from professional misconduct and ineptitude.

5. The sanction imposed is designed not to punish the social worker, but to protect the life, health, and welfare of the people at large.

**NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED** that:

1. The Respondent may not work as a Guardian *ad Litem* (GAL).

2. The Respondent is prohibited from all independent practice. She may engage only in supervised practice, within a recognized, organized setting such as social, medical, and governmental agencies. She shall 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.

3. This Final Order shall take effect immediately.

**AND IT IS SO ORDERED.**

**BOARD OF SOCIAL WORK EXAMINERS**

**BY:** Lynn Melton, LMSW
**Lynn Melton, LMSW**
**President of the Board**

July 13, 2010

CERTIFICATE OF SERVICE BY MAIL
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), to the following address: Sueanne Bruno, Esq. PO Box 583, Charleston, SC 29402
This 16th day of July 2010
By: Sheilah Jones, Admin Asst.
Printed name, title & signature

CERTIFICATE OF SERVICE BY MAIL
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), to the following address: Karen Forman 32 Pinebarn St, Charleston, SC 29401
This 16th day of July 2010
By: Sheilah Jones, Admin Asst.
Printed name, title & signature

FILED
AUG 26 2010
SC ADMIN. LAW COURT

**STATE OF SOUTH CAROLINA**
**ADMINISTRATIVE LAW COURT**

| | |
|---|---|
| Karen A. Forman<br><br>Appellant,<br>vs.<br><br>South Carolina Department of Labor, Licensing, and Regulation, The State Board of Social Work Examiners,<br><br>Respondent. | Docket No: 10-ALJ-11-0591-AP<br><br>**ORDER GRANTING IN PART APPELLANT'S MOTION TO EXPEDITE AND FOR A STAY OF THE BOARD'S ORDER** |

On August 4, 2010, Appellant filed an appeal from the State Board of Social Work Examiners' Order dated July 13, 2010. Appellant also filed a motion to expedite the appeal and to stay the effect of the Board's order.

It is hereby **ORDERED** that Appellant's motion is **GRANTED IN PART** as follows:

(1) The portion of the Board's Order which states that Appellant "may not work as a Guardian *ad Litem* (GAL)" is hereby stayed, provided that Appellant does not refer to or promote herself as a licensed social worker when acting as a GAL. In all other respects, however, Appellant may work as a private GAL; this includes not only the existing cases where she has been appointed, but also future appointments as a GAL.

(2) The portion of the Order which requires that Appellant "submit to the Board semi-annual, written reports from her supervisor(s) for a period of two (2) years" is hereby stayed with the understanding that Appellant will not be engaging in any supervised social work. In the event Appellant does engage in supervised social work, she shall file the contemplated reports to the Board.

(3) The portion of the Order which prohibits Appellant from independent licensed social work practice is not stayed.

(4) The request to expedite is also granted. Once the Record on Appeal is filed with this court, the parties shall submit a proposed expedited schedule for the court's approval.

**AND IT IS SO ORDERED.**

August 26, 2010
Columbia, SC

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 26 day of August, 2010

By: Anthony R. Goldman
Judicial Law Clerk

**STATE OF SOUTH CAROLINA**
**ADMINISTRATIVE LAW COURT**

| | |
|---|---|
| Karen A. Forman<br><br>Appellant,<br><br>vs.<br><br>South Carolina Department of Labor, Licensing and Regulation, State Board of Social Work Examiners<br><br>Respondent. | Docket Number 10-ALJ-11-0591-AP<br><br>**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. Tedischi, 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

Received 6/21/12
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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 Litems, but a licensing Board maintains its jurisdiction to sanction it's 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 Competancy 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.1 99-200; 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.**

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

Columbia, SC
July 12, 2011

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 K. Jackson
Judicial Law Clerk

RECEIVED: 9-21-2012
Law Office of Thomas F. McDow

**SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING AND REGULATION**
**BEFORE THE STATE BOARD OF SOCIAL WORK EXAMINERS**

| | |
|---|---|
| In the Matter of:<br><br>**Karen A. Forman**<br>License No. LMSW-4931,<br>Respondent.<br><br>Case Nos. 2007-0001 and 2007-0021 | **ORDER ON REMAND FROM THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT**<br>**(Public)** |

This matter came before the Board of Social Work Examiners (Board) for hearing on September 19, 2011 as a result of the July 12, 2011, Order of the South Carolina Administrative Law Court (ALC), the Honorable John D. McLeod, presiding (Docket Number 10-ALJ-11-0591-AP). The hearing was held pursuant to S.C. Code Ann. § 1-23-10, *et seq.* (1976, as amended) and provisions of the Administrative Procedures Act (APA). Georgia L. Lewis, Assistant Agency Counsel, represented the State. The Respondent appeared and was represented by Thomas F. McDow IV, Esquire, and Erin K. Urquhart, Esquire. The ALC's ruling upheld the Board's previous Order, save its finding that the Respondent violated S.C. Code Ann. § 63-3-820(D), and remanded the case for a hearing to determine "whether or not the exclusion of this finding of fact affects the imposed sanctions and if so, reduce according."

The Respondent was charged with violation of S.C. Code Ann. §§ 40-63-110(B)(9); 63-3-820(D); and S.C. Code Regs. 110-20(3), (7), and (8) (1976, as amended).

## FINDINGS OF FACT

Based upon the preponderance of the evidence on the whole record in its previous hearing, the Board found the facts of the case to be as follows:

1. The Respondent is duly licensed, and was so licensed at all times relevant to the issues in this matter. The Respondent's current licensure is as a LISW-CP; during the period in question, her licensure was as a LMSW.

### Case Number 2007-0001

2. The Respondent is self-employed as a Licensed Master Social Worker (LMSW), and was appointed by the Ninth Judicial Circuit's Family Court to be a paid Guardian *Ad Litem* (GAL) in the case of K (Mother) v. K (Father) to protect the interests of the minor child.

3. As GAL, the Respondent made recommendations to the court about custody and/or visitation concerning the minor child without interviewing the Mother and other involved parties; the minor child was six (6) years of age at the time.

4. The Respondent did not investigate or 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.

5. By Order of the ALC, it was held the Respondent did not violate S.C. Code Ann. § 63-3-820(D).

**Case Number 2007-0021**

6. Self-employed as a LMSW, the First Judicial Circuit's Family Court appointed the Respondent as a paid GAL in the case of E (Father) v. E (Mother) to protect the interests of minor children, then ages four (4) and seven (7).

7. As GAL, the Respondent 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.

8. The Respondent failed to investigate or investigate fully all relevant documentation, and failed to support her conclusions with a detailed report.

9. By Order of the ALC, it was held the Respondent did not violate S.C. Code Ann. § 63-3-820(D).

10. In a matter unrelated to her position as a GAL, the Respondent was sued and entered into a settlement agreement. The firm representing the Father in the matter in question was a partner of the attorney initially representing the Respondent in the unrelated civil matter, and the Respondent did not disclose this potential conflict of interest to the parties or Court, even after the Father's attorney moved to have the Respondent relieved; she contested the motion and did not withdraw as GAL.

11. The Board found that the removed violation, S.C. Code Ann. § 63-3-820(D), played little, if any, role in its decision for the sanctions imposed. Of far greater import to the Board were the commissions and omissions found in paragraphs two (2)a and three (3), listed below, of its original Order.

## CONCLUSIONS OF LAW

Based upon careful consideration of the facts in this case, the Board finds and concludes as a matter of law that:

1. The Board has jurisdiction in this matter and, upon finding that a licensee has violated any of the provisions of S.C. Code Ann. §§ 40-1-110 or 40-63-110, has the authority to impose sanctions as provided in § 40-1-120, including suspension, restriction, or revocation of a license and may impose a fine of not more than five thousand dollars for each violation.

2. The Respondent violated S.C. Code Ann. § 40-63-110(B)(9) in that she violated the principles of professional ethics or standards of conduct adopted by the Board and promulgated in regulations, as evidenced by her violation of the following:

a. S.C. Code Regs. 110-20(8) in that she committed fraud and represented she performed services she did not perform, as evidenced by the following:

i. Her 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;

ii. Her failure to meet with and observe the child(ren) in question on at least one (1) occasion, or even to speak with them by telephone;

iii. Her visitation of only one (1) of at least four (4) homes;

iv. Her failure to interview each parent, to interview step-parent(s), to interview grandparent(s), to interview school officials, and others with relevant knowledge;

v. Her failure to obtain criminal histories of each party;

vi. Her failure to consider the wishes of the child(ren);

vii. Representing herself as a licensed Social Worker while acting as a GAL, but failing to conduct herself in a professional, ethical, or competent manner.

b. The State failed to prove by a preponderance of the evidence that the Respondent violated S.C. Code Regs. 110-20(3) and the National Association of Social Workers (NASW) Code of Ethics Standard 1.

c. The State failed to prove by a preponderance of the evidence that the Respondent violated S.C. Code Regs. 110-20(7).

3. Under S.C. Code Ann. § 63-3-830(A)(2) (1976, as amended), a GAL's responsibilities and duties include the following:

a. Obtaining and reviewing relevant documents;

b. Meeting with, and observing, the child(ren) on at least one (1) occasion;

c. Visiting in the home setting(s), if deemed appropriate;

d. Interviewing the parents, caregivers, school officials, law enforcement officers, and others with knowledge relevant to the case;

e. Obtaining the criminal history, if any, of each party, when determined necessary; and

f. Consider the child's or children's wishes, if appropriate.

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 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).

5. The sanctions imposed are designed not to punish the social worker, but to protect the life, health, and welfare of the people at large.

**NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED** that:

1. The Respondent may not work as a Guardian *ad Litem* (GAL).

2. The Respondent is prohibited from all independent practice. She may engage only in supervised practice, within a recognized, organized setting such as social, medical, and governmental agencies. She shall 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.

3. This Final Order is based on the Respondent's violation of S.C. Code Ann. § 40-63-110(B)(9); S.C. Code Regs. 110-20(8), and S.C. Code Ann. § 63-3-830(A)(2).

4. This Final Order shall take effect immediately.

**AND IT IS SO ORDERED.**

**BOARD OF SOCIAL WORK EXAMINERS**

Lynn Melton, LMSW

**Lynn Melton, LMSW**
**President of the Board**

9/19, 2012

**SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING AND REGULATION**
**BEFORE THE STATE BOARD OF NURSING**

In the Matter of:

**Karen A. Forman**
License No. LMSW-4931,

Case Nos. 2007-1 and 2007-21
Respondent

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day caused to be served the within **Order on Remand from the South Carolina Administrative Law Court (Public)** upon the persons hereafter named, by placing the same in an envelope, securely wrapped, in the United States Mail, via first class mail, properly addressed to the said persons hereafter named, at the places and addresses stated below, which are the last known addresses for the same:

Erin K. Urquhart, Esq. and Thomas F. McDow, IV, Esq.
P.O. Box 891
Rock Hill, SC 29731

Karen A, Forman
[redacted]
Charleston, SC 29401

SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING & REGULATION

Jennifer E. Cooper, Administrative Assistant
LLR-Office of Advice Counsel
Post Office Box 11329
Columbia SC 29211 1329

9/19, 2012.

RECEIVED: 11-16-2012
Law Office of Thomas F. McDow

# The South Carolina Court of Appeals

Karen A. Forman, Appellant,

v.

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

Appellate Case No. 2012-213114

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ORDER

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Appellant filed a Motion to Confirm Automatic Stay or Alternatively Petition for Writ of Supersedeas. Respondent filed a return, arguing the motion was procedurally premature because the order resulting from the remand was not presented to the Administrative Law Court. Appellant replied, asking for a ruling on her motion from this court because there was nothing further for the Administrative Law Court to reconsider.

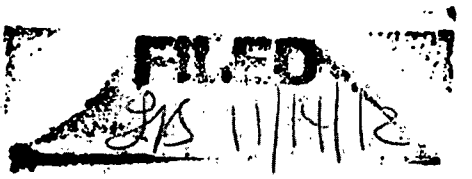
Final actions of the Board of Social Work Examiners are appealable to the Administrative Law Court. S.C. Code Ann. § 40-1-160 (2011). Accordingly, we decline to act on Appellant's motion and transfer this appeal to the Administrative Law Court. *See* Rule 204(a), SCACR ("In the event the notice of appeal is filed in the wrong appellate court, the appellate court in which the matter is filed shall issue an order transferring the case to the appropriate appellate court.").

Joseph M. Anderson AJ
FOR THE COURT

Columbia, South Carolina

cc:

Jane E. Shealy
Erin K Urquhart
Christa Tidwell Bell
Georgia Leventis Lewis



RECEIVED: 1/14/14
Law Office of Thomas F. McDow

**STATE OF SOUTH CAROLINA**
**ADMINISTRATIVE LAW COURT**

| | |
|---|---|
| Karen A. Forman,<br><br>Appellant,<br><br>v.<br><br>South Carolina Department of Labor, Licensing and Regulation, South Carolina Board of Social Work Examiners,<br><br>Respondent. | Docket No. 12-ALJ-11-0495-AP<br><br>**ORDER** |

## Statement of the Case

This matter comes before the Administrative Law Court (ALC or court) pursuant to the appeal of Karen A. Forman (Appellant). The Appellant seeks review of the Order of the South Carolina Department of Labor, Licensing and Regulation (Department) South Carolina Board of Social Work Examiners (Board) dated September 19, 2012 prohibiting the Appellant from working as a Guardian ad Litem (GAL) and prohibiting the Appellant from all Independent Social Work practice. The Order provided that the Appellant could engage in supervised practice within a recognized organized setting such as social, medical and governmental agencies but further ordered that the Appellant submit to the Board semi-annual, written reports from her supervisor(s) for a period of two (2) years from the date of the Order. The Appellant filed her appeal in this court on November 14, 2012.

## Background

This case first came before the court on appeal from an Order of the Board dated July 13, 2010. The 2010 Order found that the Appellant had violated S.C. Code Ann. §§ 40-63-110(B)(9), 63-3-830(A)(2)(a-f), 63-3-820(D) and S.C. Code Regs. § 110-20(8). The 2010 Order prohibited the Appellant from working as a GAL and from all Independent Social Work practice. The 2010 Order further provided that, while the Appellant could engage in supervised practice within a recognized organized setting such as social, medical and governmental agencies, she was required to provide a semi-annual written reports from her supervisor for two years from the

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date of the 2010 Order. In an order dated July 12, 2011, this court affirmed in part, reversed in part, and remanded in part the Board's 2010 Order. The court's 2011 Order affirmed all of the Board's findings of fact and the conclusions of law relating to violations of S.C. Code Ann. §§ 40-63-110(B)(9), 63-3-830(A)(2)(a-f) and S.C. Code Regs. § 110-20(8). It reversed the Board's finding that §63-3-820(D) required the Appellant, in her private GAL affidavit, to disclose that she was previously publicly reprimanded by the Board and that her license was placed in a probationary status. Because the 2011 Order reversed the portion of the Board's 2010 Order finding that the Appellant violated § 63-3-820(D), it remanded the case to the Board for the sole purpose of allowing the Board to reconsider its sanctions. The 2011 Order specified that the Board could not increase the sanctions but was only to consider "whether or not the exclusion of this finding of fact affects the imposed sanctions and if so, reduce accordingly."

The Appellant filed a motion for rehearing which this court denied on November 3, 2011. On December 5, 2011, the Appellant filed a Notice of Appeal with the South Carolina Court of Appeals. The appeal was initially administratively dismissed on January 31, 2012, reinstated on March 15, 2012, and ultimately dismissed on May 30, 2012 by Order declaring the issues were not immediately appealable.

On September 17, 2012, the Board held the rehearing on remand on the narrow issue of whether it should reduce the sanctions against the Appellant in light of the reversal of the finding that the Appellant had violated § 63-3-820(D). The Board was given a copy of the Record on Appeal for its consideration and it heard arguments from both parties. On September 19, 2012, the Board issued an Order on Remand finding that the Appellant's violation of § 63-3-820(D) "played little, if any, role in its decision for the sanctions imposed" and declined to reduce any of the sanctions originally imposed against the Appellant. The Appellant's appeal from the Board's Order on Remand was filed with this court on November 14, 2012. The appeal is before this court on the very narrow matter of the sanctions imposed on the Appellant by the Board in its Order on Remand. The Board's finding of fact in the Order on Remand is not an issue in this appeal.

**Issues on Appeal**

I. Whether the Board of Social Work Examiners abused its discretion by declining to reduce the sanctions against the Appellant upon remand from the South

Carolina Administrative Law Court, reversing the finding that the Appellant violated § 63-3-820(D) by failing to disclose, in her private Guardian ad litem affidavit, that she had been previously publicly reprimanded by the Board and that her license was on probationary status.

II. Whether a conflict of interest issue was a matter legitimately before the Board of Social Work Examiners, and, if not, whether the Board's consideration of the alleged conflict issue in issuing sanctions is a violation of the spirit, if not the specific letter, of the Administrative Law Court Order instructions on remand.

III. Whether the refusal of the Board of Social Work Examiners to accept and consider the Appellant's Brief of Respondent at the hearing on remand was a denial of due process.

IV. Whether the sanctions imposed by the Board of Social Work Examiners exceed the Board's authority and are unduly harsh.

## Standard of Review

The Department is an "agency" under the Administrative Procedures Act (APA). Accordingly, the APA's standard of review governs appeals from decisions of the Department. See S.C. Code Ann. §§ 1-23-380, 1-23-600(D) (Supp. 2009); Gibson, 282 S.C. at 386, 318 S.E.2d at 367; McEachern v. S.C. Employment Sec. Comm'n, 370 S.C. 553, 557, 635 S.E.2d 644, 646-47 (Ct. App. 2006). Section 1-23-380(5) of the South Carolina Code (Supp. 2009) provides the standard used by appellate bodies to review agency decisions. See § 1-23-600(D) (directing administrative law judges to conduct appellate review in the same manner prescribed in § 1-23-380). That section states:

> The court may reverse or modify the decision [of an agency] if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions or decisions are:
>
> (a) in violation of constitutional or statutory provisions;
>
> (b) in excess of the statutory authority of the agency;
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> (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 clearly unwarranted exercise of discretion.

§ 1-23-380(5).

A decision is supported by substantial evidence when the record as a whole allows reasonable minds to reach the same conclusion as the agency. Friends of the Earth v. Pub. Serv. Comm'n of S.C., 387 S.C. 360, 366, 692 S.E.2d 910, 913 (2010). The fact that the record, when considered as a whole, presents the possibility of drawing two inconsistent conclusions from the evidence does not prevent the agency's findings from being supported by substantial evidence. Waters v. S.C. Land Res. Conservation Comm'n, 321 S.C. 219, 226, 467 S.E.2d 913, 917 (1996). In applying the substantial evidence rule, "a reviewing court will not overturn a finding of fact by an administrative agency 'unless there is no reasonable probability that the facts could be as related by a witness upon whose testimony the finding was based.'" Sea Pines Ass'n for Prot. of Wildlife, Inc. v. S.C. Dep't of Natural Res., 345 S.C. 594, 603-04, 550 S.E.2d 287, 292 (2001) (quoting Lark v. Bi-Lo, Inc., 276 S.C. 130, 136, 276 S.E.2d 304, 307 (1981)). When applying the substantial evidence rule, the factual findings of the administrative agency are presumed to be correct. Rodney v. Michelin Tire Co., 320 S.C. 515, 466 S.E.2d 357 (1996). Furthermore, the reviewing court is prohibited from substituting its judgment for that of the agency as to the weight of the evidence on questions of fact. Grant v. S.C. Coastal Council, 319 S.C 348, 461 S.E.2d 388 (1995). Finally, the party challenging an agency action has the burden of proving convincingly that the agency's decision is unsupported by substantial evidence. Waters, 467 S.E.2d at 917.

## Conclusions of Law

I. *The Board of Social Work Examiner's decision not to reduce the sanctions imposed against Appellant in its Order on remand is not an abuse of discretion nor is the Board's decision clearly erroneous in light of the evidence in the Record.*

The Appellant argues that the court's reversal of the Board's finding that the Appellant violated § 63-3-820(D) removes one third of all violations found to have been committed by the Appellant and that the Board must therefore make a corresponding reduction in the sanctions imposed against Appellant. The Appellant restates the facts in the case and make arguments concerning the Board's interpretation of the facts and the supposed misinterpretations' affect on the sanctions. Ultimately, the Appellant argues that the Board abused its discretion by failing to

reduce the sanctions imposed against the Appellant in response to the reversal of the finding that the Appellant violated § 63-3-820(D).

"Abuse of discretion" means that the ruling of the Board was without reasonable factual support, resulting in prejudice to the rights of a party and, therefore, amounting to an error of law. 16 S.C. Jur. Appeal & Error § 124 (citing Bridges v. Wyandotte Worsted Co., 239 S.C. 37, 121 S.E.2d 300 (1961). If a trial court's ruling is based upon factual conclusions, abuse of discretion occurs when the ruling is without evidentiary support. Id (citing Fontaine v. Peitz, 291 S.C. 536, 354 S.E.2d 565 (1987). Under the abuse of discretion standard, the imposition of sanctions will not be disturbed on appeal unless the decision is controlled by an error of law or is based on unsupported factual conclusions. Southeastern Site Prep, LLC v. Atlantic Coast Builders and Contractors, LLC, 394 S.C. 97, 713 S.E.2d 650 (S.C. Ct. App. 2011).

In this case, the Board's findings of fact have already been affirmed and therefore cannot be called into question by the Appellant for the purposes of this appeal. Instead, the Appellant attempts to argue that the Board misinterpreted the facts and therefore erred in failing to reduce the sanctions imposed against the Appellant. However, the imposition of sanctions will not be disturbed on appeal due to abuse of discretion unless the sanctions are based on unsupported factual conclusions. Id. In this case, the Board's findings of fact have been affirmed and it cannot be said that its imposition of sanctions were based on unsupported factual conclusions. Therefore, the Appellant's argument that the Board's failure to reduce the sanctions imposed against the Appellant was an abuse of discretion is without merit.

*II. The issue of "conflict of interest" is not within the scope of this appeal.*

As an issue on appeal, the Appellant argues that, in its Order on Remand, the Board erred in including a negative finding of fact regarding the Department's contention that the Appellant did not disclose a conflict of interest in one of her cases, in which she was acting as a GAL, and did respond appropriately when the conflict came to light. However, the Appellant was not charged with a violation of S.C. Code Ann. § 63-3-860(2) which requires the disclosure "of any interest adverse to any party or attorney which might cause the impartiality of the of the guardian ad litem to be challenged." Regarding the conflict of interest, the Appellant was only charged with violation of S.C. Code Regs. §110-20(3) which applies to the actions of social workers rather than GAL's. The Appellant argues that "[c]onsideration of the alleged conflict issue in

issuing sanctions is a violation of the spirit, if not the specific letter, of the Administrative Law Court Order instruction on remand."

This court's 2011 Order remanded the case to the Board on a very narrow issue. Specifically, this court's 2011 Order states:

> 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 reprimanded 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 finding 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).

On remand, the Board was only to consider what effect, if any, the removal of the violation of § 63-3-820(D) had on the sanctions imposed against the Appellant. The Board's other finding of facts were specifically affirmed. Therefore, on remand the Board did not have the discretion to consider anything outside of the scope of the effect of the removal of the violation of § 63-3-820(D) had on sanctions. The Board did not err by failing to alter a finding of fact regarding a possible conflict of interest in one of the Appellant's cases because such alteration would fall outside of the scope of this court's 2011 Order.

Further, the Board's 2010 Order and its Order on Remand specifically find that "[t]he [Department] failed to prove by a preponderance of the evidence that the Respondent violated S.C. Code Regs. § 110-20(3) and the National Association of Social Workers (NASW) Code of Ethics Standard 1." Any finding of fact regarding a conflict of interest was in connection with the contention that the Appellant violated S.C. Code Regs. § 110-20(3). Because the Board found that the Appellant did not violate S.C. Code Regs. § 110-20(3), the Board could not have based the imposition of sanctions on a violation of that regulation or any finding of fact pertaining to that regulation. Therefore, there is no basis for the Appellant's argument that the Board's consideration of the alleged conflict of interest issue in issuing sanctions is a "violation of the spirit, if not the

specific letter, of the Administrative Law Court Order instructions on remand."

*III. The Board of Social Work Examiners' failure to consider the Appellant's Brief at the remand hearing was not a denial of due process.*

At the hearing on remand, the Appellant attempted to submit a brief to the Board for its consideration. The Department objected to the Appellant's submission of a brief because it had not had the opportunity to review the brief before the hearing. The Board sustained the Department's objection and did not consider the Appellant's brief. The Appellant now argues that the Board's refusal to allow the Appellant to submit her brief at the hearing on remand was a violation of the process she was due, namely, a meaningful opportunity to be heard.

"When the State seeks to revoke a professional license, procedural due process rights must be met." South Carolina Department of Labor, Licensing and Regulation v. Girgis, 332 S.C. 162, 166, 503 S.E.2d 490, 492 (Ct. App. 1998) (quoting Zaman v. South Carolina Bd. of Medical Examiners, 305 S.C. 281, 284, 408 S.E.3d 213, 215 (1991)). "The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." Id (quoting South Carolina Dep't of Soc. Servs. V. Holden, 319 S.C. 72,78, 459 S.E.2d 846,849 (1986). No particular form of procedure is required to satisfy due process. Id. However, the following minimum elements must be present to satisfy due process: (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross examine witnesses.

In this case, the Appellant argues that she was denied an opportunity to be heard in a meaningful manner because the Board refused to admit the Appellant's brief into evidence. She does not contend that any of the minimum elements of due process were not met. However, the Appellant's argument must fail. The Appellant was present at the remand hearing on September 17, 2012. The Appellant was afforded the opportunity to fully set forth her arguments and to respond to any arguments made by the Department. Although the Board did not consider the brief that the Appellant attempted to submit into evidence, the Appellant was free to orally make any arguments that were contained in the

brief. To argue that the Appellant was denied an opportunity for a meaningful hearing because the Board declined to review the written version of the Appellant's arguments is false. The Appellant was afforded the process she was due in the remand hearing before the Board on September 17, 2012.

*IV. The sanctions imposed by the Board of Social Work Examiners are within its statutory authority and are not unduly harsh.*

The Appellant argues that the sanctions imposed by the Board exceed the authority of the Board to impose sanctions pursuant to S.C. Code Ann. § 40-1-120(A). Specifically, the Appellant argues that the Board exceeded its statutory authority by failing to either permanently revoke the Appellant's license or, in the alternative, to place a definite or indefinite time limit on the restrictions imposed on the Appellant's license. Furthermore, the Appellant argues that the sanctions imposed against her are unduly harsh because the Appellant has practiced without a complaint since the first hearing before the Board in 2010.

Section 40-1-120(A) provides the Board with authority to impose sanctions upon the finding that grounds for discipline exist. Once the Board has determined that sanctions are warranted, the Board may:

> (1) issue a public reprimand;
> (2) impose a fine not to exceed five hundred dollars unless otherwise specified by statute or regulation of the board;
> (3) place a licensee on probation or restrict or suspend the individual's license for a definite or indefinite time and prescribe conditions to be met during probation, restriction, or suspension including, but not limited to, satisfactory completion of additional education, of a supervisory period, or of continuing education programs;
> (4) permanently revoke the license.

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).

In this case the Appellant argues that, because the Board's Order on remand does not use the words "permanently" or "revoke", any restrictions placed on the Appellant's license must be

limited to a definite or indefinite time as provided by § 40-1-120(A)(3). The Board placed three restrictions on the Appellant's license: (1) she may not work as a GAL; (2) she may not engage in independent practice; and (3) she may engage in supervised practice within a recognized, organized setting such as social, medical, and governmental agencies provided that her supervisor submits a semi-annual report to the Board for the two years following the Board's order. The only restriction that is in place for a definite period of time is the two year time period in which the Appellant's supervisor must submit reports to the Board. The Board did not place a time limit on the other two sanctions imposed against the Appellant.

Black's Law Dictionary defines "indefinite" as "without fixed boundaries or distinguishing characteristics; not definite, determinate, or precise." Because the Board failed to place specific, definite time limits on two of the sanctions imposed on the Appellant, those sanctions are, by definition, imposed for an indefinite period of time. The Board is specifically authorized to place restrictions on the Appellant's license for an indefinite period of time by Section 40-1-120(A)(3). Therefore, the Board did not exceed its authority by failing to specify a time limit for the restrictions imposed on Appellant's license.

The Appellant also argues that the Board was required to specify conditions that the Appellant must meet while the restrictions on the Appellant's license are in place. Section 40-1-120(A) provides sanctions that the Board *may* impose on a license holder. Because all of Section must be read with the qualifier "may" in mind, Section 40-1-120(A)(3) does not read that the Board may restrict the individual's license for a definite or indefinite period of time and *must* prescribe conditions to be met during restriction. Rather, as an additional penalty, the Board *may* impose conditions that the license holder must meet while the license is restricted. The Board's failure to provide conditions that the Appellant must meet while she is indefinitely restricted form working as a GAL or from engaging in independent practice does not cause the sanctions imposed by the Board to exceed its authority to impose sanctions pursuant to § 40-1-120(A).

Further, the sanctions imposed by the Board are not unduly harsh because 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 court's 2011 Order, remanding the case to the Board for the determination of sanctions in light of the court's reversal of the finding that the Appellant did not violate § 63-3-

820(D), clearly contemplated the Board's decision to sustain the sanctions already imposed against the Appellant as a possible outcome. The 2011 Order specifies that the "Board shall only consider whether or not the exclusion of this finding of fact affects the imposed sanctions and if so, reduce accordingly." The Board was within its statutory authority and within the limits set by this court's 2011 Order when imposing sanctions against the Appellant in its 2012 Order on Remand. The fact that the Board determined that the exclusion of the finding of fact that the Appellant violated § 63-3-820(D) did not warrant a reduction of sanctions does not, in and of itself, make the sanctions imposed against the Appellant unduly harsh.

## Conclusion

On remand, the Board did not abuse its discretion by failing to modify the sanctions imposed against the Appellant. It did not err by failing to remove the finding of fact relating to conflict of interest in its order. It did not violate the process due to the Appellant by failing to allow the Appellant to submit a brief at the remand hearing. Finally, the sanctions imposed by the Board were within the authority granted to the Board pursuant to S.C. Code Ann. § 40-1-120. The Board acted within its scope of authority in disciplining the Appellant for her violation of S.C. Code Ann. §§ 40-63-110(B)(9) and 63-3-830(A)(2)(a-f) and S.C. Code Regs. § 110-20(8). The Board's sanctions were within the Board's authority and were supported by substantial evidence. Therefore,

**IT IS ORDERED** that the Board's order is **AFFIRMED**.

**AND IT IS SO ORDERED.**

January 9, 2014
Columbia, South Carolina

S. Phillip Lenski
Administrative Law Judge

## CERTIFICATE OF SERVICE

I, Leah E. Garland, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).

Leah Garland

Leah E. Garland
Judicial Law Clerk

January 9, 2014
Columbia, South Carolina

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JAN 09 2014
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**SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING AND REGULATION**
**BEFORE THE STATE BOARD OF SOCIAL WORK EXAMINERS**

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| **IN THE MATTER OF:**<br><br>**KAREN A. FORMAN**<br>License No. LMSW.4931<br><br>Respondent.<br><br>OIE # 2007-1<br>OIE # 2007-21 | **NOTICE OF CHARGES** |

**I.**

Respondent is licensed to practice as a Social Worker in South Carolina and was so licensed at all times relevant to this matter.

**II.**

The Board of Social Work Examiners (hereinafter "the Board") has jurisdiction over the Respondent's license and over the subject matter of this action.

**III.**

The Board received an initial complaint from members of the public and investigated the conduct of Respondent.

**IV.**

That upon information and belief, Respondent has engaged in misconduct that violates § 40-63-5, *et seq.* of the 1976 Code of Laws of South Carolina, as amended, known as the South Carolina Social Work Examiners Practice Act, by engaging in the commission of the following act(s):

**OIE # 2007-1**

1. Respondent is self-employed as a Licensed Master Social Worker (LMSW). The Family Court of the Ninth Judicial Circuit appointed Respondent to the case of K (hereinafter "Mother") vs. K (hereinafter "Father") as a paid Guardian *Ad Litem* (GAL) to protect the interests of their minor child.

2. Respondent made recommendations to the court as the GAL regarding custody and/or visitation concerning the minor child without first interviewing all parties involved, including the Mother and the minor child who at the time was six years of age. Respondent also failed to conduct a full investigation of police reports and all other relevant documentation and allegations that may have been relevant to a determination in the matter. Respondent did not support her conclusions regarding the issue of visitation with a detailed report.

3. Upon information and belief, Respondent did not disclose to the Court in her affidavit upon appointment to the case, as required by S.C. Code Ann. § 63-3-820 (D), that her license has been publicly reprimanded for misconduct. Respondent represented herself to the parties in the family court action as a LMSW in billing and other correspondence without disclosing that the Board previously placed Respondent's social worker's license on probation.

4. Respondent did not disclose a potential conflict of interest regarding her dual relationship as a friend of mother's former attorney, Mary Kate Schmutz.

5. Upon information and belief, Respondent billed for services as a GAL that she did not perform while representing herself as a LMSW.

**OIE # 2007-21**

6. Respondent is self-employed as a Licensed Master Social Worker (LMSW). The Family Court of the First Judicial Circuit appointed Respondent to the case of E (hereinafter "Father") vs. E (hereinafter "Mother") as a paid Guardian *Ad Litem* (GAL) to protect the interests of their minor children who at the time were ages 4 and 7.

7. Respondent made recommendations to the court as the GAL regarding custody and/or visitation concerning the minor children without first interviewing all parties involved, including Father's alcohol treatment provider and the minor children. Respondent failed to conduct a full investigation of all relevant documentation. Respondent did not support her conclusions with a detailed report.

8. Upon information and belief, Respondent did not disclose to the Court in her affidavit upon appointment to the case, as required by S.C. Code Ann. § 63-3-820 (D), that her license has been publicly reprimanded for misconduct. Respondent represented herself as a LMSW in billing and correspondence with the parties involved in the family court case without disclosing that the Board placed Respondent's social worker's license on probation.

9. Respondent billed for services as a GAL that she did not perform while representing herself as a LMSW.

10. The Respondent was sued in an unrelated matter related to her conduct as a GAL. Ultimately, the Respondent entered into a settlement agreement in that matter. The attorney with the firm that represented Father in the instant matter was a partner with the attorney who initially represented the Plaintiff in the above referenced civil matter against the Respondent. Respondent did not disclose the conflict of interest to the parties or the court and even after a motion was filed by Father's attorney to have Respondent relieved in the instant matter, she did not withdraw as the GAL and contested the motion to be relieved as the GAL.

V.

As a result of the acts of misconduct alleged above, Respondent has violated S.C. Code Ann. § 40-63-110 (B)(9) of the Rules and Regulations of the Board of Social Work Examiners (1976, as amended), in the following particulars:

1. Respondent has violated the following principles of professional ethics or standards of conduct as adopted by the Board:

   a. S.C. Code Regs. § 110-20(3) (1976, as amended) and National Association of Social Workers Code of Ethics (NASW), Standard 1.06 in that the social worker will inform clients of any possible or apparent conflict of interest and shall terminate service to clients, and professional relationships with them, when such service and relationships are no longer required or in which a conflict of interest does arise, in such a manner which does not endanger the client's life;

   b. S.C. Code Regs. § 110-20(7) (1976, as amended) in that a social worker will give precedence to her professional responsibility over her financial interests;

   c. S.C. Code Regs. § 110-20(8) (1976, as amended) in that a social worker shall not commit fraud and shall not represent that she performed services which she did not perform:

      Pursuant to S.C. Code Ann. § 63-3-830(A)(2) (1976, as amended) a Guardian Ad Litem's responsibilities and duties include:

      a) Obtaining and reviewing relevant documents;
      b) Meeting with and observe the child on at least one occasion;
      c) Visiting the home settings, if deemed appropriate;
      d) Interviewing the 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; and
      f) Considering the wishes of the child, if appropriate.

      The Respondent, by her conduct as alleged above, did not perform her duties as a GAL. She held herself out as a licensed Social Worker while acting as the GAL but did not conduct herself in a professional, ethical, or competent manner as will be further shown at a hearing before the Board in these matters.

**VI.**

**PURSUANT** to S.C. Code Ann. § 40-63-120, the Board has the authority to revoke or suspend your license to practice social work, or to take actions short of a total revocation such as entering into a Consent Agreement with the licensee, requiring additional training, supervision, or restrictions subject to the Board's satisfaction that the licensee has demonstrated adequate professional competence.

**TAKE NOTICE THAT:**

a. You are entitled to an opportunity to be heard with respect to the charges.

b. Hearings are held in accordance with the South Carolina Administrative Procedure Act, as set forth in S.C. Code Ann. §§ 1-23-310 through -400. Your procedural rights are contained therein. You have such rights as: (1) to present evidence; (2) to present argument on all issues; (3) to retain counsel and have counsel to represent you in this matter; (4) and to cross

examine any witnesses presented in the event of a hearing. Additional rights are set out within the said sections of the South Carolina Code.

**SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING AND REGULATION**
**STATE BOARD OF SOCIAL WORK EXAMINERS**

BY: Lynn Melton, LMSW
**LYNN MELTON, LMSW**
**President of the Board**

Aug. 17, 2009

**SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING AND REGULATION**
**BEFORE THE SOUTH CAROLINA BOARD OF SOCIAL WORK EXAMINERS**

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| **In the Matter of:**<br><br>**KAREN A. FORMAN**<br>License No. LMSW.4931<br><br>Respondent<br><br>OIE # 2007-1<br>OIE # 2007-21 | **AFFIDAVIT OF SERVICE** |

PERSONALLY appeared before me Thomas T. Byrd, who, being duly sworn, states:

1. That he is an investigator with the South Carolina Department of Labor, Licensing and Regulation, Office of Investigations and Enforcement.

2. The he hereby certifies that on August 19, 2009, at 1:30 p.m. he served the **Notice of Charges and Notice of Hearing**, in the above-captioned matter by hand delivering to the following individual at:

Ms. Karen A. Forman
[redacted]
Charleston, SC 29401

**SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING AND REGULATION**

Thomas T. Byrd

**Investigator**
**OFFICE OF INVESTIGATIONS & ENFORCEMENT**
**P.O. Box 11329**
**Columbia, SC 29211-1329**
**(803) 896-4397**

**SWORN to and subscribed before me**
**this** 20 **day of** August, **2009.**

(L.S.)
**Notary Public for South Carolina**

**My Commission expires:** 09/29/2019

has something she would like to say.

MS. DUNN: I would simply, because of all the motions that were made preliminary, there is really no record of it. So, just for the purposes of preserving the record, not because I am trying 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 the 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 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 the 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 then super-impose its decision,

A Okay.
Q And what was the reason that you filed the complaint against the Respondent?
A For her unethical and unprofessional behavior as a licensed Master Social Worker, and she was appointed to my case by the Court as a GAL.
Q Okay. Now at any time did you think that you were a client of Ms. Forman?
A No, I did not. My son was supposed to be represented.
Q So, what was your understanding of what the Respondent's role was relative to the issue that you had in Family Court?
A To protect my son's best interest and to make sure that he would be in a safe environment.
Q Now, do you recall when the Respondent was appointed to serve as a Guardian ad Litem in this case?
A November 23rd, I believe it was, 2004.
Q Okay. And previous to her involvement in the case as the guardian, was there a previous guardian that was involved in the case?
A Yes, there was.
Q And who was that?
A Susan Groff.
Q And in a nut shell, as far as your son was

concerned, what was the purpose --- or, your understanding of what the purpose was why a guardian was appointed?

A To look after the best interest of my son and to make sure that he would be safe if he did visit with his father.

Q So, the issue that was before the Court that the guardian was going to assist with was visitation, is that correct?

A Correct.

Q Now, was Ms. Groff, the previous guardian that was appointed on your case, was she a paid Guardian ad Litem?

A Yes, she was.

Q She was not a volunteer?

A No, ma'am.

Q And was Ms. Forman a paid Guardian?

A Yes, she was.

Q Not a volunteer.

A That's correct.

Q And was Ms. Groff also an attorney?

A Yes, she was.

Q And did you understand --- did you learn at some point of the Respondent's involvement in the case that she was a licensed Social Worker?

A Yes, I did.

Q That was not initially, is it?

Q Okay.
A And dated back to his first marriage. And covered the whole time span inbetween.
Q Now, I'm going to take you back in time again. And I apologize if I go back and forth, but I'll probably direct you when I'm going back in time. And if you don't understand a question, if it's vague or confusing, as I sometimes can be, let me know. I'll be glad to rephrase it. But I'm going to go back in time now to when Ms. Groff was serving as the Guardian Ad Litem in the case, okay?
A Okay.
Q And ask you, did she eventually --- did she meet with you?
A Yes, she did.
Q And did you refuse to meet with her at any time?
A No, I did not.
Q Did she actually meet with your son, Cody?
A No, that was to be our following meeting, and her --- her advice to me and to the attorneys was, he was not going after visitation, so there was no reason to pursue it at that time.
Q Okay. All right. So she did make an initial visit with you.
A Yes, she did. It was about a two hour visit.
Q Okay, and did you provide her with information

A Yes, I did.
Q What she did on the case?
A Yes, I did.
Q And the amount that she was charging for those services?
A Correct.
Q And did you receive such a report at any time from Karen Forman?
A No, I did not.
Q Is that an expectation, that you expected to have billing, itemized billing forthcoming, what was being done, and why you were being charge a certain amount?
A Yes, I did.
Q Now, June the 1st, 2006, there is a document --- or, did you receive a document purported to be from the Respondent dated June the 1st, 2006?
A Dated June the 1st; but, I did not receive it until approximately the 15th of June.
Q All right. Now, let me ask you, prior to getting --- and who was this correspondence from?
A Karen Forman. And it was listed as Licensed Master Social Worker. That's when I discovered she was a Licensed Master Social Worker.
Q Now, prior to that time, had she set up any appointments to meet with you or your son, to do a home study

so she can get any information concerning you or your son?
A Never.
Q Did you have any other things in writing from the Respondent?
A No, I did not.
Q Prior to June 1st?
A No, I did not.
Q Now, by the time that you received the June 1st letter, had you learned independently of this June 1st letter that there had been a position taken by the Respondent regarding visitation involving your son?
A Yes, I did. I read about it on my ex-husband's blog site on Yahoo, that Ms. Forman had met with him and that he was going to get his son. And that was May 24th, 2006. After that I received a letter from --- a copy of a letter from Grover Beau Seaton that stated the same findings.
Q Now, just to educate everyone, who is Grover Seaton?
A My ex-husband's attorney.
Q I'm going to show you what is being marked as State's #2, without objection, and ask you, can you identify --- it says Exhibit 16, but #2.
MS. BELL: Why would they put #2 --- it's marked ----
MR. SAXON: It wouldn't hurt to strike it

out.

MS. BELL: Okay, I'm sorry I asked.

MR. SAXON: That's all right. We can strike it out.

MS. BELL: Okay.

COMPLAINANT'S EXHIBIT #2 MARKED AND ENTERED INTO EVIDENCE.

A This was the first time that I just referenced, that I found out that Karen Forman had become involved in the case, and that she had met with my ex-husband and had apparently made a decision as to whether he could visit his son unsupervised.

Q Okay. And you learned of this prior to June 1st, is that correct?

A Correct. This was on on May 24th.

Q And is it your testimony that prior to that time you had not talked with Ms. Forman at all?

A No. She really hadn't been involved in the case because Brian was never here. Susan Groff, jumping backwards, was the same way. Brian would disappear. He would disappear for years at a time. We'd have to hunt him down just to have him to ---

Q And there were some times when he was in the military, too?

A Yes, that only covered about six months.

Q Okay. Now, so he actually --- so, you have indications from what you read on the internet that he had met with the Guardian, correct?

A Correct. And I was not notified of this meeting, "I'm going to meet with him," or anything else.

Q And had your son been with your ex-husband now, but at the time that this e-mail was done, had he been with your son at all, as far as visitation?

A He had only seen him for a few hours and that was demanded by Kate Schmutz that I arrange visitation. He contacted us two days, two or three days before he was to leave for Iraq and said --- well, he wanted to see him for a few hours. And, of course, I said, "Well, what about the Court Order? And just do it." So, my agreement was to meet him at Chucky-Cheese where we would be stamped. There was no worry of mine of him leaving with him because the stamps had to match. So C[redacted] and I had to match, so he couldn't walk out the door with C[redacted].

Q Now, and my big question for you is, did Ms. Forman meet with your husband and your son? In other words, was there a home study done with the two of them together?

A No. No, there was not.

Q To this day has Ms. Forman ever met with your son regarding his ---

A No, she has not.

Q Did you restrict her in any way from seeing your son?

A Not until after --- after recording her. That's when I received the contact letter you have been referencing, dated June 1st. I had already started recording her and asking questions all over, as Ms. Forman was aware. She sent a notice to my attorney first, asking what her client was up to, because I had already notified the resident Judge of this behavior.

Q Okay, and we'll get to that a little bit later. I'm going to show you what's being marked as State's #3, without objection and do you recognize this document?

A This is the one I received on approximately the 14th of June.

COMPLAINANT'S EXHIBIT #3 MARKED AND ENTERED INTO EVIDENCE.

Q Now, can you tell us in the address portion, who this letter is addressed to?

A It's addressed to me.

Q It's not addressed to your son, correct?

A No, it is not.

Q Is that at your address?

A Yes, it is.

Q Okay, and did you receive this --- how did you receive it?

A I received this --- it was sent via fax on the 12th, I believe it was, to Kate Schmutz. The fax's date was at the top. I received the fax from Kate Schmutz and the copy of her letter.

Q Okay. All right. Now, in this letter is, and this is from Ms. Forman, correct?

A Correct.

Q Okay. Now, at the top of the letter, where it has the Respondent's name, does it also have some letters indicating credentials behind there?

A Yes, it does.

Q And what does it have?

A Master Social Worker, Licensed Master Social Worker.

Q Okay. And you indicated that's when you learned that she was actually a licensed Social Worker in this State. Correct?

A Correct.

Q And this is not the only time that you actually saw her credentials associated with any documents, correct?

A Correct.

Q Now, is there an indication in there, regarding her opinion as to what visitation should be?

A Yes. She said that she felt it was in the child's best interest to start visitation with his father in

small and frequent increments, eventually increasing the amount of time C[redacted] will spend with his father. She made a home visit to his apartment, said it met all requirements; which as we just discussed, it did not to safely house a child. And she would welcome the opportunity to meet with C[redacted]. Basically I don't see any of the Court's stipulations.

Q Okay, so there was no indication here that she says that that should be supervised, correct?

A No.

Q That they should be supervised, and, "I'd like to get with you to see who you would approve to supervise this"?

A No.

Q Is there anything that indicates that he would have anything other than unrestricted visits?

A No. This basically said to me, and from what he said and from what Seaton said, and what my attorney told me, that he was free to take C[redacted] because she didn't have any safety issues.

Q Okay. Now, at the same time, you had compiled documents, correct?

A Correct.

Q Police reports?

A Yes. From California, North Charleston, Berkeley County, Dorchester County.

Q Did one of the police reports include, not from

you, but from the ex-wife of your ex-husband?
A Yes.
Q Did one of those include a Petition in Family Court for a Protection Order?
A Yes, it did.
Q Was there indications that she felt unsafe?
A Not only she did, but she was also trying to protect her child.
Q Okay, and this was before you knew your ex-husband. Is that correct?
A Yes.
Q So, in your mind, was there a history of potential violence and safety issues concerning your husband that pre-dated you and your involvement with him?
A Yes.
Q Did you think that was important information for the Guardian, who was supposed to look out for the best interest of your child, to have the information?
A Yes, I did.
Q And did you give that information to somebody who could get that facilitated to Ms. Forman?
A I sent that to my attorney, and along with the other Court papers from the different County Police Reports.
Q Were you happy about this letter?
A No, I was not.

Q Okay, and tell us how did you respond to this letter?

A I was very angry. I scheduled a meeting. Well, actually I scheduled a meeting with Kate Schmutz when I read about it on the internet, and said, "What is going on here?" Because I was highly surprised to read it on the internet. When I received this letter, I was extremely angry. I was frightened for my son and his well-being because I knew what our case was. I also knew Mr. Higuera's previous history, and I was very angry, and very upset, and very frightened.

Q Now at this particular time, you had indicated that when Ms. Groff --- jumping back in time, when she was appointed as the Guardian Ad Litem in your case, that at the time he was not really trying to exercise visitation. Is that correct?

A Correct.

Q But my June the 1st he was trying to exercise visitation, is that correct?

A That I can't answer because he disappeared the day after.

Q Okay. Well, let me ask you, the whole reason that Ms. Forman went and did the visitation was because he was trying to assert that he wanted to see C[redacted], correct?

A That would be my essence.

Q Okay. All right, so now the issue of him really

wanting to see your son, and it now has become an issue; but when Ms. Groff initially was removed, he was not asserting visitation.

A No. No.

Q Okay, and at the time you had given Ms. Groff information pertaining to things you thought were important about your son's safety.

A Correct.

Q And as I understand it --- I'm going to show you some documents that I'm having marked as State's #4. And at this point I'm just asking you, do you know what these documents are?

A Yes, they are, they are police reports.

COMPLAINANT'S EXHIBIT #4 MARKED AND ENTERED INTO EVIDENCE.

Q Now, some of the reports pertain to you and issues that you had with your ex-husband.

A Correct.

Q Now, some of the documents, toward the end of State's #4, pertain to his ex-wife and confirms that she or her future husband had about your ex-husband.

A Correct.

Q So, you don't have any first hand knowledge about those, but those were things that you discovered?

A These are things that I found after I found the

Court papers from California in a locked briefcase. I started wondering if there wasn't more, and I started searching for them. And, yes, I found additional police reports in North Charleston.

Q Now, I see as far as his state of mind, did the receiving of these documents, whether they were true or not, did that cause you concern as to whether or not there may be something that needed to be looked into regarding your son?

A Definitely.

Q And did you communicate this to your attorney and ask that this information be relayed to the Guardian?

A Yes, I did.

MS. DUNN: The Respondent has no objection to the admission of this. But, the relative purpose of these are documents that she found and reviewed, not for the purpose of the truth of the matter as reported.

MS. LEWIS: And I would just further that by saying that I think our sources would take exception. And it goes to her state of mind in that she felt that this was information. So regardless of the truth of what's asserted in there, certainly her state of mind was this was important information that needed to be communicated to the Guardian. So, for that purpose.

MR. SAXON: It appears that the State is submitting that for that purpose, not for the truth of the

Knagenhjelm has actually established that the ones that you have got look about the same and these are ones that were recruited and whatever she gave her attorney.

MS. BELL: Okay.

MS. DUNN: And I alleged that --- she wanted me to ask you --- I have now taken it away from you ---

Q And these are copies of copies that you provided is that correct?

A Right.

Q You clarified that ---

A I actually provided Ms. Schmutz with the originals that came off my printer off the internet.

Q Okay, so in regards to whether or not these documents that we have here that are State's #5, firmly and accurately depict the condition that they were in when you sent them to your attorney. What's the answer?

A No. She received the original color photos --- she received very clear, they depicted --- you could see every picture clearly.

Q Did some of those pictures depict some nudity --- let me just ask you the question ---

A Yes, they did.

Q Did some of the --- did some of the photographs depict partial nudity?

A Yes, they did. On that, of young adults.

Q Male and female?
A Yes.
Q Okay. Was there profanity?
A Yes.
Q Was there a lot of sexual connotations in those?
A Yes, there was.
Q And did you feel that this information was important information that needed to be investigated or further looked into?
A Yes, they did, because those pictures were sent to my son at age seven, via e-mail, where his father invited him to view those photos.
Q Okay. Now, let me ask you, did anybody --- did Ms. Forman call you and say, "Ms. Kay, I need a better quality, the pictures that I have doesn't look too good. Can you send --- can you provide a clearer document to that?"
A No.
Q Did you ever get a phone call like that?
A No.
Q Did you ever get a written request like that?
A No, I did not, no request.
Q After providing this information to your attorney, did Ms. Forman call you to schedule time to visit, meet with your son to do a home study?
A No.

Q Okay. And as far as you know, she never did a home study with C[redacted] with his dad?
A No, she did not because C[redacted] is with me at all times.
Q Okay. And you never received a report that she had met with the two of them together?
A No, I did not.
Q While we're looking for another document, did you at some point see a letter --- you had mentioned Mr. Seaton, who was your ex-husband's attorney at the time. You had Family Court action going on?
A Correct.
Q Did you see the letter that he sent your attorney?
A Yes, I did. That was dated, I believe, the 31st of May. Which, once againm was after I read it on the internet.
Q Okay. I'm going to ask you to take a look at State's #6 and at this time, if you could tell me, if you could review those, and do you recognize any of those before?
A Yes, I did.
Q Okay, and what do you recognize those as?
A This letter is basically directing what Mr. Higuera wanted, and that ---
Q Okay, well, who is this from?

A Correct.
Q Okay. And in January of 2005, then we skip towards May 31st of 2006, regarding the visitation issue, correct?
A Correct.
Q Okay. And my question is, prior to that time, there had been no written letter to you asking you to make your son available, or anything like that?
A No.
Q Okay, did she ever Petition you into Court on a Rule to Show Cause to say, "She is not complying and I need to do my job to this Court"?
A No, she did not.
Q Okay. And, "She is not making her son available and I need to see the child"?
A No, ma'am.
Q So there was nothing like that done?
A No, ma'am.
Q Okay. So from January 12th, 2005, up until May 31st, 2006, as far as you knew of, they are alleging that there were concerns with visitation, that no home study had been done by the Respondent?
A No.
Q Or just before that time?
A No. Not until apparently the May.

Hand them in so the Court Reporter can have them.

COMPLAINANT'S EXHIBIT #6 MARKED AND ENTERED INTO EVIDENCE.

MS. LEWIS: And as usual, we haven't given them out to anybody.

MR. SAXON: Yeah, we don't have those yet.

MS. LEWIS: This is #6. I think we have one for the Court Reporter.

MR. SAXON: It should be two pages.

MS. LEWIS (Continues):

Q Now, I'm going to show you what's being marked as State's #7 and ask you to take a look at that and see if you recognize it.

COMPLAINANT'S EXHIBIT #7 MARKED AND ENTERED INTO EVIDENCE.

A Yes, I do.

Q Okay, and what do you recognize that as?

A This is the letter that I sent to the Resident Judge, after speaking with the Victim's Advocacy to find out if Ms. Forman could take and make any decisions without meeting with me. It was suggested that maybe I could try contacting the Resident Judge. As I said, "The information was passed to me from Kate Schmutz." So, I assumed that she had already spoken with Forman as well, and was told the same thing, and demanded that I paid Ms. Forman Seven Hundred and

Fifty Dollars ($750); and I hadn't received any correspondent, had never met with her. So, I was trying to relay the fact that I had never met with this woman, how could she make this decision?

Q Okay, and were you trying to send information of your concerns to any place that you think ---

A Yes.

Q --- may have a ear to listen to it.

A Yes, I did.

Q Okay. Including the Resident Judge, is that correct?

A Yes, I did.

Q And you indicated you also contacted the Victim's Advocacy?

A I contacted the Victim's Advocacy; I contacted DSS; I contacted the GAL service for Dorchester County, for Berkeley County. I spoke with Carmen with Child Protective Services; I spoke to Annette Young, the politician. And I actually started writing House and Senate Members saying that this needed to change; that if there were no laws governing these people, that there should be because children's safety was at stake.

Q And at any of these times did you have any misconception about whether or not the Respondent, you were her client?

because of the passage of time. My question to you is, do you recall there ever being a discussion when your new attorney came on board, was there a discussion about the Respondent being re-appointed as guardian for that new case?

A No, there was not.

Q Okay, as far as you knew, for the new case that was filed, do you know if there was ever any --- was there a Guardian Ad Litem appointed for that particular --- the filing of the new case?

A No.

Q Now, just in closure here, in your --- based on just your first-hand knowledge of your involvement in this matter, did the Respondent obtain and review all relevant documents?

A No, she did not.

Q All right, did she review any of the relevant --- the documents that you felt were relevant?

A Not that I'm aware of, no.

Q Did you meet with and observe the child on at least one occasion?

A No, she did not.

Q Your child was here in South Carolina?

A Yes, he was.

Q In Charleston?

A Yes --- well, in Ladson.

Q In Ladson, okay. And did she visit the home setting of the place where he ---

A Mr. Higuera, I guess.

Q One time?

A Not ---

Q Without the child?

A Without the child.

Q Okay, did she ever meet with you, with the child?

A No, she did not.

Q Did she interview you?

A No, she did not.

Q Did she obtain criminal history as far as you know?

A No, she did not. She didn't ask me for one.

Q Okay, and did she observe the child with each of the parents?

A No, she did not.

Q Did she send you, when she was appointed in 2004, did she do an introduction letter to you, letting you know who she was?

A I did not receive one, no.

Q Did she ask you to document and substantiate your position?

A No, she did not.

Q In the dispute. Or any information that you may

have supplied?
A No, she did not.
Q And Ms. Groff did, correct?
A Yes, she did.
Q Did she send you contact information as to how to get in touch with her?
A No, she did not.
Q Did Ms. Groff do that?
A Yes, she did.
Q Did she ask for releases to obtain records to investigate the case?
A No, she did not.
Q You were the parental custodian, correct?
A Yes.
Q And she never asked for information pertaining to your son as far as releasing the documents?
A No, she did not.
Q Did she send you itemized monthly or any kind of billing statements, other than this amount is due?
A No, she did not.
Q Did she ask you for any psychological testing or anything regarding your son as far as ---
A No, she did not.
Q --- if he was seeing a counselor or anything of that information to ask to speak with that individual?

A No. She did not.
Q Did she disclose to you that she had been reprimanded by the Social Work Board before?
A No, she did not.
Q And that at the time that she was serving as the Guardian Ad Litem in the case that you're in, that her social work license was on probation?
A No, she did not.
Q Did she ever petition the court, I think it --- is it --- at some point in time did Ms. Groff petition the court to be relieved and as one pro basis saying that she was not paid?
A Yes, she did.
Q Did Ms. Forman ever petition the court, as far as you're aware of, saying, "Well, I haven't been paid and I can't do my job"?
A No. she did not.
Q And you indicated that Ms. Forman did appear at the Final Order Hearing, correct?
A Yes, she did.
Q And what was her purpose as you understand it, for her attending the Final Order Hearing? For the settlement, correct?
A To collect her fees.
Q Thank you. Ms. Kay. I don't think I have any

further questions for you at this time. Please answer any questions that Ms. Dunn may have for you or any of the Board Members may have.

CROSS EXAMINATION BY

MS. DUNN:

Q I'm Susan Dunn. I'm here representing Ms. Forman.

A Right.

Q From the time that you and your husband separated until today, C[redacted] has been completely in your care, correct?

A Yes, correct.

Q C[redacted] has been absolutely safe in your care.

A He has been, yes.

Q There's never been one question raised by anybody as to your fitness to care for the child or whether he was safe in your home.

A No.

Q And that was true in the entire time that Ms. Forman was working on this case. No one raised any issue about the appropriateness of your home or C[redacted]'s safety with you.

A No.

Q Was there any reason for her to investigate that issue?

A Actually yes, because she was supposed to. I

mean, that was her job.

Q That's your understanding.

A Right.

Q And you testified that Ms. Groff was relieved because she hadn't had her fees paid, correct?

A Correct.

Q There was a Court Order that ordered you to pay fees to Ms. Groff.

A Correct.

Q You didn't pay.

A She told me not to bother, she was the only one that could enforce that Order and she had no intention of doing so, because she knew we were --- she had pulled my records. She knew that we were on Medicaid and food stamps due to Mr. Higuera's nonpayment of support.

Q In fact, you didn't want Ms. Groff to be the guardian in the case. You had real questions about her fitness to service your case.

A It was --- no, it was not her fitness. It was an altercation between John Graham Altman and Ms. Groff that made the front page of the newspaper. John Graham Altman was my attorney. Ms. Groff was my son's GAL. I actually --- I had no problem with Ms. Groff, other than that --- this put us in the middle of a very difficult situation.

Q And what was that?

A It was a very heated argument about her lesbian life.

Q And so she was put in a very difficult situation.

A She was, too, and so was John Graham Altman because neither one of them --- neither one of them were speaking to each other, which is why I ended up feeling uncomfortable with this situation. John Graham wouldn't speak to Sue Groff. Sue Groff wouldn't speak to John Graham. It was not a position I wanted to be in the middle of and I talked to Ms. Groff and informed her that it was not something personal, but I did not feel comfortable being in the middle of this altercation between her and my attorney.

Q And so ultimately Ms. Groff got off the case and Mr. Altman got off the case.

A I had reasons for dismissing --- dismissing Mr. Altman.

Q And so --- but by the time Ms. Forman actually got notification of being appointed guardian, you had an attorney on your behalf, who was Kate Schmutz.

A By appointment, no. I believe I was unrepresented when she was assigned to that case. I don't recall having Kate Schmutz at that point.

Q But ultimately you hired Kate Schmutz after ---

A After, yeah. After she was appointed.

Q And you gave Kate Schmutz all of the material

that you referred to the Board as wanting to be --- you wanted somebody to look at this and take it very seriously.

A Yes, I did.

Q And to the best of your knowledge, it took your attorney about six hours to go all the way through that material.

A I don't know how long it took her.

Q But she did go through it, as far as you know.

A As far as I know.

Q You also gave her tapes.

A Yes, I did.

Q And she listened to those tapes.

A I assume she did.

Q And she spoke with you about those tapes.

A Yes, she did.

Q And you knew, in some way or another, that there was a pre-trial in Berkeley County on your case.

A In reference to ---

Q In reference to the status of the case, how it was going forwarded, what needed to be done. There was a pre-trial held in Berkeley County.

A I don't know which one you're referring to. There were numerous cases covering --

Q But you wouldn't dispute the fact that there was at least one pre-trial hearing in Berkeley County?

A Yes.
Q You testified that you took this pile of information, the same pile, the same copies that leads to the same pile that you gave to your attorney and you took them to the Dorchester County Sheriff's Department.
A Yes, I did.
Q And you gave them to Detective Marshall.
A Yes, I did.
Q And to the best of your knowledge, did he look through them all?
A No.
Q So you handed these to the police, did the police pursue any criminal action based upon receiving and reviewing those documents?
A No, they said that it would be up to the Family Court and they refused to do anything about it, although it is criminal to send a child pornographic pictures over the internet.
Q So the police looked at it and took no action?
A Actually he did take action. He contacted, according to him, he contacted Kate Schmutz and Grover Seaton. And was under the impression ---
Q There were no criminal --- no criminal charges were brought?
A No.

A I didn't hear anything from either Kate Schmutz, up until the time that I told Ms. Kate Schmutz she was fired. I didn't hear anything about Ms. Forman viewing the papers or I didn't hear anything from Kate Schmutz that Ms. Forman had viewed the papers. Nobody had contacted me and said, hey, we took a look at this, you know, could you please explain this or your concerns or where did this come from, there was none of them.

Q You left Ms. Schmutz saying you would kill him rather than let him see your child, isn't that what you said?

A No. No. Ms. Schmutz told me --- I told her I would take care of him, and I meant I would hire another attorney, which I did, and take it --- we went back to court. And it is still under supervised visitation now through C[redacted]s therapist. No. No, Ms. Schmutz made a remark to which I replied to it.

Q And what was your reply?

A What was my reply?

Q Yes.

A She said --- when I said I would take care of this, and I will take care of him, and she goes, "If you shoot him, you're going to go to jail." And I said, "If I shoot him, he will be dead." And turned around and walked out of her office. Had I --- have I gone hunting him? No.

Q If after that meeting with Ms. Schmutz, your

Q And did her affidavit support his request to have some access to his son?
A Yes.
Q And from the time that this case began, really until you entered into the new Final Order, that was the decree of the case, that Order of Judge Creech's never really changed. It stayed the Order of the Court until the Final Order that you and your husband agreed upon, correct?
A Correct.
Q You didn't agree to any changes and nobody made a motion to change that Order?
A Not that I'm aware of. But it depends on what you're talking about, because there was an Order appointing Ms. Forman after that Order.
Q But nothing to change the ---
A The visitation --- not the visitation, not the restrictions or ---
Q And you eventually hired Mr. Glenn to represent you.
A I did.
Q And you and your ex-husband and through his attorney, were able to reach an agreement that resolved all issues including a permanent Order as to visitation, correct?
A Correct.
Q And you were satisfied that that Order protected

Q Okay, you didn't request a new guardian.
A Well, that's what I thought I was trying to do through the resident judge, was request that something else be done.
Q During that six months or so time frame, did Ms. Forman attempt to contact you again and did she request, at any time did she request meetings with you or with your son?
A Not until after I had found out and read that she had made the decision.
Q And by decision you mean this letter?
A Right, not only that letter, but the letter from Seaton and the internet pages and from Kate Schmutz, telling me ---
Q And that was all ---
A --- telling me that her decision was made.
Q That was all in the May/June time frame.
A Right. I felt like I was fighting an uphill battle when a decision had already been made.
Q From that time until your Final Hearing though, did she ask to meet with you?
A Only that once and she never ---
Q Did you meet with her?
A No. I did not.
Q Did she ask to meet with your son?
A No, she did not.

Q So at no time did she ever request a meeting with your son?

A No.

Q And when did she actually make a recommendation to the court?

A As far as I am aware, it was not until the final divorce.

Q And was that a written recommendation?

A I have no idea. I don't mean to seem so vague, but answering right off the top of my head. There were so many rulings, and so many court cases, and --- but, no I ---

Q You didn't receive a copy of a report from her?

A No, never.

Q Or with the Final Hearing?

A No.

Q Do you recall whether she made a final recommendation to the court?

A I have no idea whether she did or not.

Q Thank you.

MS. LEWIS: That's all.

MR. SAXON: Any other questions from the Board?

EXAMINATION BY

BOARD MEMBER STEPHENS:

Q In the initial appointment of the Respondent, who

A I practice law with Peggy Infinger, who concentrates her practice in Family Court. I do not. Peggy mentioned one day that she was handling a case for Mr. Evans, Evans versus Evans; and she mentioned that Karen Forman was the Guardian Ad Litem in the case. And I said, "Whoa." I said, "Karen Forman is the guardian in your case?" And she said, "Yeah." I said, "She can't be the guardian in your case." Peggy says, "Why not?" I said, "Oh, let me tell you why not." And I don't mean it a sequence, it might have been a year earlier, it might have been two years earlier, but Ms. Pritchard, who is seated behind you, contacted me about filing an action against Ms. Forman. I told Ms. Pritchard I was interested in the case, but I wanted to do a little investigation, a little due diligence, you know, like lawyers do. You don't just take a case, you look at it. So, Ms. Pritchard furnished me, and I was just talking to her in the hallway, I couldn't remember if it was in person or e-mail. She says e-mail and I think that's right. She sent me a package of material about Ms. Forman. It was some pretty damning information, in my view.

MS. DUNN: Objection, Your Honor, I think that's completely prejudicial and not relevant to anything that's an issue before this court.

MR. SAXON: Let's find out the character of it.

if there is that conflict, the guardian is going to have to yield to the lawyer, because every citizen has a right to be represented by a lawyer of his or her choice.

Q And didn't this child have the right to the continued representation of the person who had been working for him for two solid years, had a lot of information, concerns and relationship with the people that were involved. He might have lost out.

A The child is the one who always has to be protected; and whether a guardian has been in the case for two years or two hours is immaterial in my view. What you want is, you want a guardian that has no axe to grind with either party who is coming into the case, trying to make a judgment. I mean, if you're the guardian, you don't care about the parents. You care about the children. But if you're the guardian --- I mean, let me give you an example. Suppose I called one of these Members of the Board's lawyer two months ago and I said to their lawyer, "That Board Member is terrible. Let me tell you what your Board Member did. Your Board Member did this, and this, and this, and this, this is horrible. You need to get that Board Member off the Board." Now, I've got a huge problem when we come in here and you put me under oath and ask me questions, because I mean, there's a conflict now. So, it would be the same thing with the guardian. It'd be the same thing with me. I'm not

singling her out. I'm not trying to testify that there is a Karen Forman rule. I'm just saying there is a conflict of interest rule that applies to all of us.

Q And the conflict is you can forget it and you can cause the court case to be completely disrupted because you failed to do a conflict check before you met with Ms. Forman, where there is ongoing litigation and a clear role and clear people.

A Well, if I had done a conflict check, I don't think I would have turned up anything.

Q Well, then how is it a conflict?

A It's a conflict because --- because it's like electricity. You know electricity, you put a diode in it in an electrical circuit to keep the electricity flowing one way and not back. The conflict runs in only one direction in this particular case. It doesn't run backwards. Peggy Infinger was not required to get out of the case because I expressed a hostile evaluation of Ms. Forman to her counsel. It doesn't run that way. The conflict runs to the guardian who is making a recommendation to the Family Court. That's how the conflict runs.

Q And if it ---

A Mr. Evans could waive the conflict. He could waive the conflict. His children don't have the right to waive the conflict of a guardian. I mean, if you could ask

a child, you could wait fifteen years and wait for a child to grow up and become an adult and say, "Hey, by the way, back when we decided which parent you're going to live with, what do you think about this?" I mean, you don't have that opportunity.

Q Were you involved in the decision not to, in fact, receive and get a judicial determination of whether there was a conflict in this case?

A Oh, in the Family Court case?

Q Yes.

A No, I did not. I disclosed to my partner that I had had a frank discussion with Ms. Forman's counsel, that I thought that discussion prejudiced her and that it created, at the very least, an appearance of impropriety, so I did not participate any --- I did nothing more than sign the affidavit, which you have.

Q And you're not making any allegation that at the time Ms. Forman was appointed that there was any existing conflict.

A No. I'm saying there was a conflict. I'm not --

Q In 2004, when she was appointed, there was a conflict?

A Oh, no, no, no. I'm sorry. I misunderstood you. You're absolutely correct.

Q This arose complete --- it's nothing she could

have disclosed, there's nothing she could have done about it. There's nothing she could have done to keep this problem from existing.

A Oh, sure there is. Yeah.

Q What?

A She should do what I do when I was challenged. You say, "Listen, you're entitled to have a guardian who doesn't have a dog in the fight, I'll step aside, we'll get us a new guardian." They do it all the time. It happens all the time.

Q And so you just --- I raised this question, she should quit.

A Absolutely. Yes.

Q Regardless of whether she actually had any knowledge, until you brought it up, that you had actually had this conversation.

A Well, if that's true, then you're right and I'm wrong. But that asks me to assume that the conversation I had with her counsel, her counsel did not share with her. And that's a leap I can't make.

Q But you can say honestly to everybody here, you have no personal knowledge of Ms. Forman knows anything about your involvement.

A Oh, no, no personal knowledge at all, no.

MS. DUNN: I have no further questions.

MR. SAXON: Any rebuttal?

MS. LEWIS: I don't any redirect at this time.

MR. SAXON: Does the Board have questions at this time?

MR. GOLDSTEIN: Oh, sorry. I'm heading for the door.

EXAMINATION BY

BOARD MEMBER MORRIS:

Q Okay, if you had done a conflict check in your firm, would it have shown up the fact that Ms. Forman was the guardian of a case in which your partner was involved?

A No, no it would not.

Q With either parties?

A Exactly. We keep a --- right, we keep our files in a card catalog. Now, my secretary can do it by computer. I don't know how to do that yet. I have to go to the cards and go through.

CHAIRPERSON MELTON: Any further questions? One second. I do have one more question.

EXAMINATION BY

CHAIRPERSON MELTON:

Q Early on, you keep mentioning these concerns, can we ask what these concerns were?

A Yes and I was --- I was trying to skirt that

issue because I ---

Q Well, I picked up on that.

A I expressed in very frank unprofessional language to Mr. Freeman that based on the documentation I had in my hand as I spoke to him, that I had strong misgivings about his client's ethics. I don't know how --- I don't know how to get around it. And I expressed that very forcefully and I told him I thought I had a good case and ---

MR. SAXON: I think that's about as far as you're allowed to go.

A Okay.

MS. LEWIS: Could I ask one question on redirect based on ---

MR. SAXON: I'm not through with the Board yet.

MS. LEWIS: Oh, okay. Okay, I'm sorry.

MR. SAXON: Are you finished? Okay, I'm sorry. I'm sorry, you can go ahead.

REDIRECT EXAMINATION BY MS. LEWIS:

Q Mr. Goldstein, are you aware of the outcome with Ms. Pritchard's case?

A I followed it on line, because I was kind of interested. I saw that it got filed and I know it got resolved; and I don't know what the terms of the settlement

are. If I weren't in a hurry, I'd stick around to hear what they were. It may be confidential.

Q So, it was not dismissed? For lack of merit?

A As far as I know, it was settled. I think if you go on line at Charleston County.Org and you follow the links to the cases, I think it says that it's withdrawn by settlement, I think is what it says.

MS. LEWIS: I have no further questions.

RECROSS EXAMINATION BY

MS. DUNN:

Q Mr. Goldstein, you're just kind of guessing about what happened in this case.

A No, you go to Charleston County.Org and you scroll down. And my recollection, I could be wrong. I mean, you can pull it right up there on the laptop and see, I think it says, "Withdrawn, case settled." I think that's what it says. I could be wrong.

Q How about dismissed with prejudice.

A It may say that, but when you settle a case that's what you do, you dismiss it with prejudice. That's how you settle a case.

Q And that case is long over.

A Case is over.

Q Yes.

CHAIRPERSON MELTON: Is there anything else?

MS. LEWIS: We don't have anything else for this witness. Thank you.

MR. GOLDSTEIN: I'm waiting for somebody to give me permission to go. Thank you so much.

CHAIRPERSON MELTON: I'm trying to help you out.

MR. GOLDSTEIN: Thank you for letting me go out of Order, that is very nice. I appreciate it. Thank you.

MS. BELL: And at this time, can we also ask, ask if Ms. Kay could be dismissed as well, if she decides to, if she could be released.

MR. SAXON: Any objections?

MS. DUNN: I have no objections.

MS. LEWIS: At this time we would like to call Mr. Brian Evans.

(BRIAN LEE EVANS, having been duly sworn, testified as follows:)

MR. SAXON: Please state your full name for the record and do you spell Brian with a "I" or "Y"?

MR. EVANS: "I". My name is Brian Lee Evans. E-V-A-N-S.

DIRECT EXAMINATION BY

MS. LEWIS:

Q Mr. Evans, did you file a Complaint with the

State Board of Social Work Examiners against Ms. Karen Forman?

A I did.

Q What was the reason for your Complaint?

A I believe she was unethical and unprofessional.

Q When Ms. Forman was appointed --- I'm sorry --- when was Ms. Forman appointed Guardian Ad Litem?

A That would be, I believe, November of 2004. Yes. November 2004.

Q So it was 2004.

A Yes, ma'am.

Q Were you already divorced at the time she was appointed Guardian Ad Litem?

A I was.

Q What year were you divorced?

A 2002, I believe.

Q Were you represented by counsel?

A I was not.

Q What were the grounds for your divorce?

A My alcoholism.

Q You recall, is it phrased "habitual drunkenness"?

A I believe it was, yes, ma'am.

Q Were you given custody of the children?

A No, ma'am.

Q Were you given visitation rights to the children?

A Yes, ma'am.
Q Do you recall what your visitation rights were at the time of your divorce?
A Every other weekend.
Q Were the children Living in Charleston at the time of the divorce?
A Summerville, South Carolina, yes.
Q How old were they?
A Two and five.
Q This visitation arrangement, were there any problems?
A Well, yes, I wanted more visitation.
Q Do you recall when your wife, your ex-wife, and the children moved?
A Well, I wasn't notified, but I'm going to say it was probably, guessing I'm going to say in 2003.
Q And did your wife remarry? Your ex-wife?
A Yes.
Q Do you recall the year that she remarried?
A Probably that same year.
Q Was your ex-wife and the children living --- where were they living? Was it Las Vegas?
A Yes, Las Vegas, is where they initially moved.
Q Were they living in Las Vegas when Ms. Forman was appointed Guardian Ad Litem?

A Yes.
Q Did you initiate the action, the court action that is, that required Ms. Forman to be appointed Guardian Ad Litem?
A I did.
Q What were the issues involved which required Ms. Forman's appointment?
A Well, my ex-wife moved across the country and therefore I couldn't exercise my visitation; and I explained this to my attorney. And that's why a guardian was hired for my children.
Q Was Ms. Infinger your attorney for the divorce also?
A I was unrepresented during the divorce.
Q So Ms. Infinger got involved in the case when you decided to --- the visitation.
A When she --- when my children were moved across the country, that's when I hired an attorney.
Q Where was your ex-wife and children living during the time Ms. Forman was appointed Guardian Ad Litem?
A Well, that took some time to find, because like I said, she basically got up, I mean, you know, this is all planned, naturally, but she left in the middle of the night, more or less, and of course I went to Dorchester County Police Department and tried to explain to them; it took them

about a week, but they were able to find my son, because he was enrolled in public school out there, so we eventually found him, and that's how I knew where they lived.

Q Mr. Evans, I'm providing you with a copy of the Consent Agreement, which orders the appointment of Ms. Forman as Guardian Ad Litem, can you read the first sentence for me, please.

A I can. "Upon Motion of the Defendant, by and with the consent of the Plaintiff, is Ordered that Karen Forman be appointed Guardian Ad Litem for the minor children, J[redacted] Evans and S[redacted] Evans."

Q Thank you. Mr. Evans, at the time of this appointment and thereafter, did you ever feel that you were the client of Ms. Forman, or who did you feel was Ms. Forman appointed Guardian Ad Litem for?

A Well, I felt I was the --- I felt that she wasn't doing what she was supposed to be hired for, for the children's sake.

Q Well ---

A I didn't feel that she was putting a hundred percent into what she was supposed to be doing; and it seemed like I was getting scrutinized under a magnifying glass.

Q But was it your understanding that her involvement was for the interest of the children?

A Of course.

an affidavit from Ms. Forman attesting to her compliance with the Guardian Ad Litem statutes?

A No, I did not.

Q Did Ms. Forman contact you and ask you to sign a release or provide her with access to individuals that you would like for her to review?

A She did not.

Q Did Ms. Forman ever ask you to put in writing your position regarding the dispute over your children and the complaint you had about your ex-wife?

A She did not.

Q Did Ms. Forman ever meet with and observe the children on at least one occasion while they were visiting you?

A She did not.

Q To your knowledge, did Ms. Forman ever observe the children while they were with your ex-wife?

A She did not.

Q To your knowledge, did she ever visit -- have a home visit with you?

A She did not.

Q To your knowledge, did she ever have a home visit with your ex-wife?

A No.

Q There are some indications in her billing

statement that she talked with you on the phone. Did she ever have an interview with you?

A No, ma'am.

Q Did she ever talk with your children?

A No.

Q Did she ever interview any of your friends or relatives?

A No, ma'am.

Q Did she ever meet with any of your counselors or therapists?

A No. Oh, yes, she did.

Q And who did she meet with?

A She met with my therapist, Doug Fotia.

Q To your knowledge, did she ever have an interview with Mr. Fotia?

A I don't know if it would be an interview. I think it was probably small talk.

Q Did she attempt to get any records from any of your medical providers or therapists to your knowledge?

A Not to my knowledge.

Q Did she interview any caregivers to your knowledge?

A Not to my knowledge.

Q Did she interview any --- to your knowledge, did she interview any school officials or any others with

knowledge relevant to this case?

A No.

Q To your knowledge, did she ever visit the school that your children attended?

A No.

Q To your knowledge, did she ever question you about your employment or income?

A No.

Q All right, who is Doug Fotia?

A Doug Fotia is a therapist in the Charleston area.

Q And when did you start seeing Mr. Fotia?

A I believe that was November of '04, I believe.

Q And why did you start seeing Mr. Fotia?

A Depression, alcoholism.

Q How are you paying for these counseling sessions with Mr. Fotia?

A Through my employer, it's called the EPA program.

Q Do you know what EPA stands for?

A Employment --- you can just get help through various --- It's Employment-something Agency; but EPA, Employee Assistance Program, maybe that's what it is. EAP? What did I say ---

Q EAP

A Oh, okay, EAP.

Q Do you recall how long you received this

counseling from Mr. Fotia?

A I think it was a total of ten sessions. I think it ended in March of 2005.

Q So these counseling sessions with Mr. Fotia did involved problems with your substance abuse or alcoholism.

A Of course.

Q Was there an effort --- was this an effort on your part to get some help for your alcoholism?

A Of course.

Q Do you recall signing a document with Mr. Fotia that allowed him to discuss his sessions with Ms. Forman?

A I don't recall signing the document. But I know I allowed --- could you repeat the question, please?

A Do you recall signing a document with Mr. Fotia that allowed him to discuss his sessions with Ms. Forman. His sessions with you with Ms. Forman.

Q Yes. I did give him permission.

A Do you know if Ms. Forman interviewed Mr. Fotia about your sessions?

A I do not know that.

Q Was Ms. Forman aware of these sessions with Mr. Fotia?

A Yes, she was. In fact, she came to one.

Q Do you recall the date that she actually came to a session?

A No, I don't remember the exact date, but it's got to be in between November ---

Q Did she stay for the entire session?

A I believe it took up the whole session.

Q Was this the first time that you had sought help for your alcohol problems?

A No.

Q Do you recall any other treatment up to this point for your alcohol problems?

A Yes, I do.

Q What were they?

A I've been to Dorchester County Drug and Alcohol Commission on several occasions; been to meetings all my life, basically.

Q Mr. Evans, I'm providing you with a copy of a Guardian Ad Litem report that Ms. Forman provided to the parties on April 3rd, 2006. Is this the report that was provided that you are aware of?

A Yes.

MS. LEWIS: At this time I would like to ask that this report be presented into evidence as the State's Exhibit #10.

MR. SAXON: Any objections?

MS. DUNN: No, carry on.

COMPLAINANT'S EXHIBIT #10 MARKED

AND ENTERED INTO EVIDENCE.

Q Mr. Forman, if you go ---

A Mr. Evans.

Q --- #10, page six within the report. I don't have ---

A Down at the bottom it says six? Okay.

MR. SAXON: If I may, the Board sometimes finds it useful if they have the document before the ---

MS. LEWIS: We're getting ready to pass them around. We're trying to go through it.

MR. SAXON: Well, okay.

MS. LEWIS: This is the late --- I'm sorry. Trying to go too fast.

MR. SAXON: The Members will need them.

MS. LEWIS: This was the file that we kind of changed around a little bit.

MS. BELL: For the record, this is the #10?

MR. SAXON: Yeah. We need one more if you've got it, and I think that's enough.

MS. BELL: That's enough? Okay.

MR. SAXON: No, no, no. We need --- do you have one?

MR. STEPHENS: No.

MR. SAXON: Okay, we do need two. Sorry. You go ahead and keep that, Ms. Brunson. I'm sorry, I

thought everybody else had gotten one.

DIRECT EXAMINATION CONTINUES BY MS. LEWIS:

Q We are going to turn to, it's a little number in the corner, and it's just Guardian Ad Litem with two numbers, but the little number in the corner, we're going to turn to page twenty-one of this Guardian Ad Litem Report. In the little corner there, it'll be number twenty-one, and the number in the middle is number six. And I'm looking at Concern #2, about halfway down. Mr. Evans, Ms. Forman states in here about halfway down that Mr. --- and I quote this, "Mr. Evans has not sought out counseling of any --- has not sought out counseling or any other type of substance abuse program." Is this an accurate statement?

A No.

Q She also states in the Guardian Ad Litem Report, and this is down at the bottom, the very last sentence, it goes to the next page, "Mr. Evans has shown no real interest in getting help for his alcoholism." Is this an accurate statement?

A No, ma'am.

Q She also states that your attempts at counseling have been superficial and unproductive. Is that an accurate statement?

A No, ma'am.

Q Is there any mention, any reference at all to any of the help that you attempted to get for your alcohol problems written in this Guardian Ad Litem Report?

A She does mention Doug Fotia.

Q Do you know if Ms. Forman submitted any other updated Guardian Ad Litem reports?

A No, I do not know that.

Q Ms. Forman asked your attorney for a Guardian Ad Litem fee increase around January 23rd, 2006. This was the year after she had been appointed Guardian Ad Litem. Actually, almost two years. Had she ever met with or observed your children at that time?

A No.

Q Had she ever conducted a home visit with you at that time?

A No.

Q Had she ever, to your knowledge, had she ever met with your ex-wife in her home setting?

A No.

Q Had she ever observed the children independently?

A No.

Q Mr. Goldstein spoke earlier about a Motion by your attorney to have Ms. Forman removed or replaced as Guardian Ad Litem because of conflict of interest. To your knowledge, did Ms. Forman agree to be released because of

in --- until --- held in --- do you know the term?

Q Abeyance?

A Yeah, may be abeyance.

Q Ms. Forman attended a mediation in this case on March 26th, 2007, in which she billed you Three Hundred and Fifty-six Dollars and twenty-five cents ($356.25). Did you consent to her attendance at this mediation?

A No.

Q To your knowledge, do you know if your attorney consented to her attendance at this mediation?

A She did not.

Q In your opinion, did Ms. Forman's presence at this mediation exhibit a biasness toward your ex-wife and her attorney?

A It did.

Q Mr. Evans, there was an affidavit filed on May 17th, 2007, where Ms. Forman opposed your reinstatement for visitation because you refused to cooperate with her investigation. Do you recall not cooperating with Ms. Forman's investigation?

A No.

Q Do you recall Ms. Forman ever asked to be released as Guardian Ad Litem because she did not get your cooperation with her investigation?

A No.

Q Also in this affidavit --- you stated also in this affidavit dated May 17th, 2007, she stated that you placed your children in harm's way. Have you ever been investigated by a State Agency because of harm or neglect of your children?

A No.

Q Did Ms. Forman ever ask you about this issue or report you for any type of child neglect?

A No.

Q In this affidavit, Ms. Forman also states that you had not made a commitment to sobriety. Does she make any --- do you recall if any mention was made about your efforts towards abstinence?

A I'm sorry, can you repeat that last part of that question?

Q In this affidavit, there wasn't ---

A Yes.

MS.LEWIS: I'm just providing him with a copy of this affidavit for his review.

Q Have you ever seen this affidavit before, do you have any recollection?

A Yes, I do have recollection ---

Q All right, within this affidavit, she states that you have not made a commitment to sobriety. Is there any mention in this affidavit about your efforts towards

abstinence?
A No.
Q Did she made any reference to any of your substance abuse programs that you have attended as of May 17th, 2007?
A No.
Q Ms. Forman was involved in your case for over three years. Did she ever meet with and observe your children on at least one occasion?
A No.
Q Did she ever meet with you in your home setting on at least one occasion?
A No.
Q Did she ever meet with your ex-wife in her home setting?
A I believe not.
Q Did she ever meet with anyone at your request that had knowledge relevant to this case?
A No.
Q Did she ask you for a release to get any related medical or counseling reports?
A No.
Q Other than sitting in one session with Mr. Fotia, did she ever ask to meet with any of your substance abuse counselors for an interview?

A No.

MS. LEWIS: At this time, I would like to admit this affidavit, which is dated May 17th, 2007, I'd like to admit as State's Exhibit #11.

MR. SAXON: Any objections?

MS. DUNN: No objections.

COMPLAINANT'S EXHIBIT #11 MARKED AND ENTERED INTO EVIDENCE.

Q Was this visitation issue ever resolved?

A As of today? I mean ---

Q Within ---

A Yes.

Q This action as you brought.

A Yes. Yes.

Q Did you and your ex-wife agree to the visitation terms prior to the Final Order Hearing on December 18th, 2007?

A Did me and my ex-wife agree to the Final Order visitation? Yes.

Q You can answer any questions Ms. Dunn might have, or the Board at this time.

A Okay. Thank you.

CROSS EXAMINATION BY

MS. DUNN:

Q Mr. Evans, I'm Susan Dunn.

I'm not real sure about that, Ms. Dunn.
Q Without having to go into details, would it be fair to say that there were several instances in which you were brought back to court, because of your inability to stay sober?
A I was brought back to court for using alcohol.
Q And in February of 2005, you were ruled back in, again because there were allegations that you were consuming alcohol when the children were in your care, correct?
A In 2005? I don't believe so, but I'm not real sure. I don't want to ---
Q But do you recall an occasion when the court Order became ---
A Yes.
Q --- not only could you not consume alcohol when the children were with you, but you simply couldn't consume alcohol at all.
A That true.
Q Or it would affect your ability to visit with your children.
A Yes.
Q And that's an agreement you voluntarily entered into.
A Yes.
Q And you were asserted to the court you weren't

drinking and it wasn't going to be a problem. Correct.

A Yes, I agreed to that.

Q And wasn't there also a Court Order in which the guardian was told by the Court that she was to request testing on your part, if there were any concerns about your sobriety?

A I believe I do recall that.

Q Okay, so that became part of her job.

A Yes.

Q It felt a little hostile, didn't it?

A It could be perceived that way.

Q And do you recall being asked to go have testing with Dr. Bennett?

A Sure.

Q And you recall at least through part of the time that Ms. Forman was working on this case, you were testing positive for alcohol.

A There was a time when I tested positive, yes.

Q And that was a problem. Correct?

A Yeah, that was a problem.

Q Under the Order, if you were drinking, you didn't get to see your kids at all. Not supervised, not unsupervised.

MS. LEWIS: At this point, we would like to stipulate that there was an alcohol problem. I think that

"Brian, did you ask her to come to this?" And I said, "No." And she said, "Well, I didn't ask her to come to this." And then I never saw her again for the rest of the day.

Q Mr. Evans, you indicated that ultimately you and your ex-wife, with the help of your attorney, were able to settle this case, correct?

A Yes.

Q And you went to Court to have the agreement approved?

A It was in the Final Hearing, I believe.

Q Okay, but you were there.

A Yes.

Q Okay, and if we had a transcript of that Hearing, we're going to know what went on in that Hearing, correct?

A You should.

Q You were there and you were there with Ms. Infinger, who fought very hard for you all through this process.

A She did.

Q And in this process, you agreed to the final amount of Guardian Ad Litem fees that were to be paid, correct?

A I think I kind of had to pay it. I was under the impression I had to pay it or possibly go to jail.

Q But you agreed to the amount of fees to be paid.

that she was advocating for.

A No, there is not.

Q Was there a fee increase motion by Ms. Forman by Ms. --- well, it was almost towards the beginning of the case, I believe. Was there a Motion for a fee increase presented to Ms. Infinger from Ms. Forman? That would be a Guardian Ad Litem fee increase.

A Yes.

Q Did your attorney agree to that fee increase?

A No.

Q There was a lot of focus in this case on Ms. Forman's part with blood test, after blood test, after blood test. Whose interest was she representing in this case? What was she appointed Guardian Ad Litem for?

A She was appointed Guardian Ad Litem to look after the best interest of my children.

Q Did she ever, on any occasion, in three and a half years, meet with and observe your children?

A No.

MS. LEWIS: I have nothing further.

EXAMINATION BY

BOARD MEMBER MORRIS:

Q We've heard testimony this case went on for about three and a half years and Ms. Forman never met with your children? Were they in Las Vegas for the entire time?

'06. I'm not sure. I'm not sure.

Q My real question is, after this report, Exhibit #10, after this report was submitted, was there a Hearing and was there any question raised at the Hearing about the fact that the Guardian had not visited with the children? This is a report and it doesn't indicate that she's visited with the children.

A Right. Right.

Q Was that raised to the Court at a Hearing at any time?

A It was not. No, It was not, I don't believe.

Q Thank you.

EXAMINATION BY

CHAIRPERSON MELTON:

Q You had indicated in your testimony that you have been in treatment most of your life.

A I said meetings. I said meetings, AA meetings.

Q Okay.

A Yes. Post high school, Marine Corps, I probably went in --- Marine Corps I finally went in and started going to meetings.

Q You mean after treatment, you mentioned the outpatient therapy ---

A I've been to a lot of treatments. I mean, you know, I mean, the rug kind of got pulled out from under my

feet when, you know, I became depressed. I visited doctors. I did get on some medication for depression. But yeah, I've been through a lot of treatment because I'm not who I wanted to be as far as --- Dorchester Drug and Alcohol?

Q Thank you.

EXAMINATION BY

BOARD MEMBER STEPHENS:

Q How long were you involved and are you now involved with them?

A I do go to meetings and the last time --- I just graduated from a program, probably less than two months ago. And I do attend meetings regularly; and I use my tools and my support. And I'm doing fairly well.

EXAMINATION BY

CHAIRPERSON MELTON:

Q During the course, time frame of all these documents and you were at, in an outpatient treatment then?

A Yeah, I've been in outpatient treatment, during the time? Can you repeat that question? I'm sorry.

Q During the time frame of ---

A During this?

Q --- visitation and all of this, you were in an outpatient treatment?

A Yes. Yes, I had been.

Q Prior to the Court Order.

MS. DUNN: Was he not a therapist for this - in his own right? We have no objection to his facts testimony at all.

(Off the record)

MS. BELL: I think if I can interject is that we will withdraw our request to have him admitted as the expert witness; we will have him as a lay witness. And we will ask him to render an opinion as a peer in the social work community. So, no problem.

MR. SAXON: Good. Thanks.

MS. LEWIS: Okay, let's see where we are.

DIRECT EXAMINATION CONTINUES BY MS. LEWIS:

Q Okay, Mr. Fotia, have you had the opportunity in your capacity as a social worker to counsel Mr. Brian Evans?

A Yes, I have.

Q How did you become his therapist?

A He sought out counseling from me in November 16th, of 2004, specifically with the stated goal of wanting treatment for alcohol abuse. Well, alcohol treatment relating to his alcohol use. And the assessment or the possible assessment of depression.

Q And how many sessions do you recall having with Mr. Evans?

A Nine.

MR. SAXON: I'm sorry, what was that number?

A Nine.

MR. SAXON: Nine?

A Nine, yes.

MR. SAXON: N-I-N-E?

A Nine, yes.

MR. SAXON: I'm sorry. I thought you were saying N-O-N-E.

A Oh. No, nine. Nine.

Q Okay, and you just indicated that your sessions with Mr. Evans did include treatment and counseling for alcoholism?

A Absolutely.

Q And you can certainly use your notes that you have brought for a point of reference. What did this alcohol treatment counseling involve?

A Education to triggers, education to skills related to how to prevent a relapse. Education to self-awareness as to where Mr. Evans was in terms of his contemplating or being pre-contemplated about changing and trying to address his issues regarding alcohol use. And also some skills and handouts given to him with the aim of relapse prevention towards mindfulness, towards both alcohol abuse and for depression.

Q How would you describe Mr. Evans' efforts as far

as abstaining from alcohol?

A I'd have to --- it's a large answer, but I'd say that he was successful at times in remaining abstinent in alcohol and at other times he was not successful.

Q Did Mr. Evans have relapses?

A He did.

Q Did he have as a goal, was it a goal of his to abstain from alcohol?

A Absolutely.

Q All right, explain to me this process and substance abuse treatment. All right, there is abstaining from alcohol and there is maintaining sobriety. Where are those in the process of substance abuse.

A I think, you know, coming into treatment, Mr. Evans was aware that he had a problem with alcohol. He had already had contemplated that he needed to change something. So he was coming --- I assessed that he was coming into treatment ready for change; and therefore, that meant ready mentally; mentally ready to begin and to begin treatment to abstain from the use of alcohol. To withdraw alcohol from use. It's something you would not want to partake in. There were moments in our treatment, or in his treatment together, our work together, excuse me, where his thinking was very clear that several instances in his life were related to alcohol use. I would say at that moment he already had

several weeks of abstinence under his belt. I would say that he then was not only contemplating and working on being abstinent, but that his mind and his thinking was quite sober. Which I make covering as a professional, I assess that totally differently, the difference between sobriety and abstinence. Somebody can be abstinent and they can be abstinent because somebody has got them chained to a chair. So they are not drinking simply because they can't drink. You know, maybe there is a --- the economy falls apart and there is no more alcohol available. But then sobriety is minimally somebody has abstained from alcohol use; but, their mindset, their attitude, and their life style is beginning to reflect a greater awareness of the need to remain both abstinent and their need to make that abstinence as part of their life style.

Q So at this point, Mr. Evans, when you were counseling Mr. Evans, you would say he was probably at the abstinence stage or the attempted abstinence stage?

A When we began treatment, he was abstinent; and throughout treatment, he maintained abstinence; and he did relapse during that treatment.

Q Was Mr. Evans involved in any other treatment for his --- or were you aware of Mr. Evans' involvement in any other treatment for his alcoholism prior to coming to you?

A He did, and he stated to me in an initial

clinical --- excuse me, an initial intake assessment, that he was involved in the Dorchester Alcohol and Drug Commission's IOP, Intensive Outpatient Program, in the summer prior for three months.

Q That would be 2004, I guess.

A I do believe it was the summer of 2004. Actually, it was the fall, 2004, if I recollect. Actually, no, it was June. He stated June of '03 to October of '03.

Q June of '03 to October --- or is it '04?

A Well, he wrote on the intake, '03. My assessment, I didn't write the date, because it was on the intake.

Q All right. Now, did Ms. Forman have the opportunity to attend a session with you and Mr. Evans?

A Yes, she did.

Q Why did she attend this session?

A Well, when Mr. Evans had told me that there was a tape recording of a phone conversation recorded, and that apparently Ms. Forman, or Mrs. Forman? Ms. Forman had concerns about, I believe. And from my memory and from my notes, that we contacted Ms. Forman; and that he, Brian, did as well, invited to address those issues, because she had very specific concerns about what was in that recording. And so she was invited to one of our sessions. Actually we contacted her on, I have December 6 of '04, that we contacted

her; because at that time Mr. Evans related to me that a conversation had been taped. We expected her to come to the session on December 15th, but she did not actually show until --- she didn't actually come to the session until January the 20th of 2005.

Q So, the purpose of this session was for the tapes?

A The purpose was to review the tapes and to review the concerns that Ms. Forman had about a possible parentification of the children; and also Mr. Evans had as a goal to keep, because he, I think, I believe, from memory, understood her role in terms of being, working with the children, wanted her to know that he was in treatment and wanted her to --- was open to her feedback as to what she was concerned about. And open for me to give my feedback and listen to the tape, both to him and to Ms. Forman.

Q Did she attend any other sessions?

A No.

Q All right. Did you have the opportunity to speak to Ms. Forman on the phone?

A Yes, I did.

Q Did you consider this conversation an interview?

A I don't consider it an interview. As I understand an interview.

Q In your opinion, was Ms. Forman professional in

her treatment and attitude toward Mr. Evans?

A I had concerns that she wasn't, only because of how she presented. She missed one of the first of one session that she was scheduled to come, she just didn't show up for. And Mr. Evans, at least related to me by Mr. Evans, she didn't just not show, but she didn't contact that she was going to not show. And once she did show, she was kind of, I felt from a peer to a peer, I felt that she was anxious and too forthright in sharing.

Q Too forthright?

A Too forthright. Too forthright in being invited into the session. And I felt that her relating to Mr. Evans her concerns about the tapes were already having come to a conclusion about them, and kind of --- very direct. Extremely direct.

Q Do you think she approached Mr. Evans' problems in a valid and impartial manner?

A Well, I had concerns about that. I had concerns --- I'm not sure. I'm not completely positive that she did, only because I related to her my concerns that while I did agree that the children were, perhaps, parentifide by Mr. Evans; and in fact, they were, the way he was speaking to them on the tape. But it also sounded to me like the mother of the children was parentifying the children. So I related that to Ms. Forman over the phone and I think in person as

well.

Q Now, there was a Court Hearing that was scheduled at some point, there was a Court Hearing scheduled for February 28. Were you planning --- had you agreed to appear and testify ---

A I did.

Q --- for a hearing on Mr. Evans' behalf?

A I did.

Q Were you able to testify at this hearing?

A No, I was not able.

Q When you used the term "parentifying", what exactly do you mean by that?

A I mean a child being put into the role of an adult by a caretaker, a child being put into the --- given the responsibility as if they are an adult, when they are not an adult, they are a child. Put in the role, put in the position as to do something, to make a decision, to make a judgment, to think as if they are a parent and not a child.

Q And as a social worker, when you see this, does this cause you some concerns?

A It did cause me concern.

Q Did it cause you to investigate it any further to see if ---

A I didn't feel like it mandated me to report anything. I didn't feel like it was a violation of anything

in terms of the harm or the care of the children directly. But I did, indeed, relate my concurrence with Ms. Forman about the parentification on Mr. Evans' behalf; but I also as well did relate to Ms. Forman and Mr. Evans my concern that it appeared that the mother was parentifying as well.

Q Mr. Evans' last session, you said you had nine sessions ---

A Yeah.

Q --- with Mr. Evans, why did those come to an end?

A Primarily they ended because his employee assistance benefits came to a conclusion and he did not have money to continue.

Q Now, I'm going to refer to the Guardian Ad Litem Report, which I believe is in as Exhibit #10. Do you have a copy of that report?

A No. I've read it, I believe, but I don't have a copy.

Q I apologize for that. All right, the very first page of the report is the cover letter. If you turn to the second page, it states that persons interviewed and she has you listed as a person that she interviewed. Do you recall being interviewed by Ms. Forman?

A I don't consider our contacts have been an interview.

Q In the course of your contacts, what was

discussed in those --- in that contact?

A Well, we discussed her concerns. Her concerns for the children, her concerns for what Mr. Evans was saying to them on the tapes. My concerns about the perentification of the children by both parents, and discussion about his treatment and his progress towards his goal of abstinence from alcohol use.

Q In this Guardian Ad Litem Report by Ms. Forman, under Concern #2, and that will be ---

A Page six?

Q By the way, before I go to that. What do you consider an interview? I apologize for that.

A Well, I would consider an interview where she would be calling me to ask me questions related about myself, about my credentials, about my role in the treatment, where it was set apart and set aside as specific that she was trying to file a report or make a report as to what I was doing with Mr. Evans and my role. Like I would do most of --- that she would do most of the asking the questions and I would do most of the answering.

Q And that's not what happened when you talked with her?

A Well, I remember the first --- I remember, I have written, that the first contact was from me to her; and that was because I knew that Mr. Evans had wanted her to know

about what we were doing together, and his treatment and most of what we talked about; meaning not an interview, but mostly the sharing of information about Mr. Evans' treatment or pursuant to him asking me to help contact her.

Q So you kind of initiated it?

A I believe I did on that date that I said, that I noted.

Q All right. Now, in this Guardian Ad Litem Report. and I don't have what you all have is page six in the middle. I'm not sure what you ---

MR. SAXON: It's twenty-one (21) on the far right. At the bottom.

Q In this Guardian Ad Litem Report, Ms. Forman under Concern #2, she states that, "Mr. Evans has not sought out counseling or any other type of substance abuse program." What is your opinion of this statement?

A I don't think that's accurate.

Q The report also states that Mr. Evans has shown no real interest in getting help for his alcoholism. What is your opinion of this statement?

A That's not accurate.

Q She refers to his attempts at getting help as superficial. What is your opinion of that?

A I don't believe his attempts at getting help was superficial. I think at times there was some --- a moderate

level of denial when he, particularly around the times of his relapses. But to the contrary, he made a very concerted effort at maintaining and trying to attempt abstinence. Was he successful? Not completely.

Q Did you relate that to Ms. Forman?

A I do not recall that.

Q She states in the Guardian Ad Litem Report, "Mr. Evans minimized his alcohol use to his therapist, Doug Fotia, LMSW. He told his therapist that he was abstaining from alcohol, when in fact, he had not." What is your opinion of that statement?

A Well, I think --- the date that's set forth in this, RTSC 2/28/2005, that was one of the relapses. So it is true in the sense that I did not know that the relapse had occurred until after it occurred.

Q Did you ever indicate to Ms. Forman that Mr. Evans minimizes his alcohol use?

A I don't believe --- I do not have that written. I do not believe I said that. I may have.

Q Do you think he told the therapist he was abstaining from alcohol when, in fact, he had not? Do you think this report should have provided any more details with regards to abstinence, relapse, that might have been of interest to the Court?

A As a peer?

Q Yes.
A Yes, I do. I do because --- can I answer that?
Q You certainly can.
A Because I'm not a Guardian Ad Litem and I do not know if the Court was asking for sobriety or abstinence. But if the Court was asking for abstinence, clearly he had been working on abstinence and had maintained abstinence throughout the course of the treatment; not in the nine sessions entirely, but throughout, at times.
Q So if you want to present the whole picture about what Mr. Forman was doing ---
A Mr. Evans.
Q --- I'm sorry. I mean, I'm sorry, Mr. Evans was doing in these counseling sessions with you, should there have been a reference as to any attempt at abstinence, or a reference to relapses and the effort he was making to reach his goal of abstinence.
A Well, I would. I would have written that. Not as a Guardian Ad Litem, because I'm not a Guardian Ad Litem, but I would think that it --- I would think that one would write that, because without writing that, I would think it leaves the question in a person's mind whether or not the person was serious about undergoing treatment for alcohol abuse.
Q Did Mr. Evans give his permission for you to

speak to Ms. Forman about all aspects of his counseling?

A He did, in written form.

Q Did Ms. Forman ever request a copy of Mr. Evans' records from you?

A I do not believe so; and I have no record of that.

Q And your conversations with Ms. Forman, did she ever ask if Mr. Evans allowed you to discuss other sessions, other than the one she attended?

A I have no recollection of that. I really don't. Honestly don't. But I wouldn't release any information to her unless Mr. Evans gave me permission.

Q There is an affidavit that is State's evidence, May 17th, 2007. It's the State's Exhibit #11. Never mind. It's #8 on that affidavit, it says that there is no evidence that Mr. Evans has made a commitment to sobriety. Is there anything in this affidavit that makes a reference to his attempt to abstain from alcohol, that there has been relapses, but that there has been a continued effort towards the goal of abstinence.

A I don't see it.

Q Do you think that this is an accurate statement, accurate representation of what his efforts were, that he had not made a commitment to sobriety, without any other additional information in this affidavit?

A No, I don't think it is. Because at a specific, two very specific points in treatment, not only did he make a commitment to abstinence, but he was very sober minded and reflected the kind of thinking and actions that one would say is indicative of early sobriety.

Q Is there anything in there that makes a point of reference of these efforts, promises of Mr. Evans?

A No.

Q Mr. Fotia, do you have any financial interest in this case?

A No, I do not.

Q Why did you come to this proceeding and testify?

A I was asked.

Q Is your license to practice social work in this state in good standing?

A Yes, it is.

Q Are you being paid to be here today?

A Not that I'm aware of.

Q Thank you very much. You can answer any questions Ms. Dunn might have or Members of the Board at this time.

CROSS EXAMINATION BY

MS. DUNN:

Q Mr. Fotia, I'm Susan Dunn. I'm here representing the Respondent. Thank you for your time being here today.

A Uh huh (affirmative response)
Q And you don't really know anything about Mr. Evans' sobriety from May 29th, 2005.
A Since that time until this report, that's true. That's correct.
Q There's a whole year has gone by. So your comments are evaluating this as if it were being done right when you were treating him.
A Well, which comments are you inferring, or which comments.
Q When you said he wasn't seeking outpatient treatments.
A I didn't say that.
Q You said in answer to their question that it was inaccurate for her to say that.
A Oh, well, that's a different. That's a different statement. I thought you were saying that I said that he was not seeking outpatient treatment.
Q No. No, because you said she was inaccurate in saying it.
A She? Who is she?
Q Ms. Forman, in writing, you said that was an inaccurate statement.
A As taken and as read, that he has not sought out counseling or any other type of substance abuse program. He

has been Court Ordered into a program by the end of April or face time in jail. It seems to me that it's saying that he has not sought out counseling and he did seek it out with me.

Q She refers to you in that same paragraph. He's really not seeking you out.

MS. LEWIS: Objection. Objection.

MR. SAXON: Is there a question there?

Q But you're basing all of your comments about the accuracy of this based upon how it might be different with your experience with Mr. Evans, a full year later.

A You mean the accuracy --- Susan, can I call you Susan?

Q It's all right with me.

A Okay, ma'am, you're talking about the accuracy of this statement, that he has not sought out counseling or any other type of substance abuse program. You're saying I'm basing that on ---

Q On information that you have up until March of 2005.

A Well, that would be correct because I can only relate and I can only give info --- I can only respond to knowing to whether or not he sought out treatment during my period of time.

Q In the treatment that you provided for Mr. Evans. Did you routinely do any kind of alcohol screening on him?

Q Do you recall receiving any documents in the course of Mr. Evans' case that informed you of Ms. Forman's status of a licensed social worker?

A Yes. I believe most of her correspondence that I received from her had her designation as a social worker, as an MSW and a LMSW.

Q Did Ms. Forman provide --- upon her appointment as Guardian Ad Litem in Mr. Evans' case, did Ms. Forman provide an affidavit to the Court and to you attesting to compliance with the Guardian Ad Litem statutory qualifications?

A I have looked through my files and I cannot find an affidavit to that effect in my file; and I do not have any independent recollection that she did.

Q Did she disclose that her social work license was in a probationary status at the time of her appointment as Guardian Ad Litem in the case?

A No.

Q As a paid Guardian Ad Litem appointed in Mr. Evans' case, do you believe that Ms. Forman was required to conduct an independent, balanced, and impartial investigation to determine what was in the best interest of the children?

A Well, I was concerned as we got into the case - and my client expressed this concern - that her focus was more on rehabilitating Brian versus, you know, what might be

best for the children. In her report that she signed in April of '06, she never addressed the father's allegations that the mother was alienating the children from their father, or that the mother was skewering his efforts to have a relationship with them. And there was, in my opinion, certainly evidence that supported those allegations; and she never really investigated that to my knowledge. Specifically, there was an occasion in the summer of 2006, when the children were visiting here in South Carolina with the maternal grandparents, and the father requested visitation, even though it was supervised at that point, and he had requested that he be given some supervised visitation, but the mother refused to allow that. And this was right after he had successfully completed an intensive outpatient program at the Dorchester Drugs and Alcohol Abuse Commission. And I believe the Guardian was aware of this visit; and I believe that that would have been a perfect opportunity for her to meet with the children and the father to further interaction. But that didn't happen. And I do think that she did not really do anything in terms of investigating that part of the case. And I think her billing opt would probably support that.

Q If I can clarify, when you said she did very little to investigate that part of the case, what exactly are you referring to?

A Well, I mean, she never talked --- to my knowledge, she never talked to the children. In fact, there was an Order. And in reviewing the files, I noted that there was an Order back in February of '05 which was addressing to visitation; and it provided that the mother should have the children see their counselor, a Ms. Cortez, if the father did not exercise his summer visitations that year; it's a view to evaluating and implementing whatever counseling should take place between the father and the children. And while I think he may have had visitation that summer, the mother --- I mean, the Guardian never talked to the children's counselor, to my knowledge, and never talked to the children to make any --- to draw any kind of opinion or conclusion as to what effect the father's lack of visitation with the children may have been doing to the children. And Mr. Evans expressed a lot of concerns in his conversations with the children, and what have you, that the children were visibly upset, that they weren't seeing him and, you know, the stepfather may be (inaudible).

Q All right. You made a reference to a summer visit with the maternal grandparents, I believe.

A Yes.

Q Do you know what the year was of that summer visit?

A I believe that was in '06, in 2006.

Q And do you have any recollection that you called this visit to Ms. Forman's attention for purposes of her investigation and possibly observing the children, or if she was even aware that they were going to be here. Are you aware of her knowledge of this visit?

A I looked to see if there was any correspondence and I could not decide. I do know --- I did look back, though, and looked and saw that she had talked with the mother the week before they came out here. And I believe that --- I can't remember now, but I believe there were some discussions between myself and opposing counsel about Ms. Forman meeting with the children when they were going to be out here. But I do not have any correspondence to document that I specifically called her to ask her to interview the children. But she had talked with the mother, I saw in her billing, she had talked with the mother the week before they were coming out here.

Q And there's no documentation in your records indicating she was going to try and visit with the children during that visit. You didn't have anything from Ms. Forman indicating there was going to be an attempt to visit with the children at that time?

A No.

Q Now you made a reference to the Guardian Ad Litem Report and you know, some of the aspects that you thought

were missing from that report with regards to her investigation of the home environment of Ms. Christensen. There is a statement in there that Ms. Forman says that Mr. Evans had not sought out counseling or any other type of substance abuse program and that he has shown no real interest for getting help. Then it's about --- in Concern #2 of the Guardian Ad Litem Report, are you aware of any substance abuse or counseling program that Mr. Evans tried prior to this report?

A I know he had to complete a program prior to actually filing this action, because the divorce decree required that he do that. So I know he did that. And I know he was in counseling with Doug Fotia at the time, I believe at the time of the first hearing we had in this case. If memory serves me, I think Mr. Fotia would have him come to Court to testify, although he never did.

Q Now at the time this Guardian Ad Litem Report was issued and I believe it is, let me see what the date was on it, April of 2006, yeah, April 3rd, 2006. Had Ms. Forman ever met with the children at the time this Guardian Ad Litem Report was written?

A Not to my knowledge.

Q Did she ever have a phone visit with either parent?

A Not to my knowledge, no.

Q Did she ever observe either parent with the children?

A Not to my knowledge, no.

Q What is your opinion about this Guardian Ad Litem Report providing accurate and current information?

A Well, I feel like it did show biasness in that she immediately --- she points out, you know, how she feels like he has a alcohol program and isn't trying, basically; but she omits the fact that since he had started drug therapy with Dr. Bennett, and the date of that report, I looked back at my notes and there were three times out of five when the father actually tested negative; and she doesn't point that out. She only points out her opinion that he's not interested in trying to stop drinking, and the two positive tests that he had were at times when he hadn't seen the children for several months. So, she seems to have this opinion that he's drinking in front of the children; but there is no documentation or evidence with the exception of that private investigator's report, which is clearly not proof that he's ever drank in front of the children.

Q Was there any other Guardian Ad Litem Report, any updated report provided to the Court other than this April 3rd, 2006 report?

A I could not find one in my file.

Q All right. One second, let us --- I don't know if

State's Exhibit #13, but I think they're your Exhibit #4 and #5.

A All right.

Q Ms. Infinger, in looking, and again I'm referring to this State's Exhibit #13, okay? And it's basically both of those letters. And the Board at this time are reviewing the letters as I am asking you questions. First of all, if you will state for the record, what is at the top of each of these letters.

A You're talking about her letterhead?

Q Yes, ma'am.

A It's Karen A. Forman, MSW, LMSW.

Q All right, and would you state the date for both of these letters, for the record?

A The first one was dated January 23, 2006, addressed to myself and Norbert Cummings; and then the second letter has three dates on it, January 23, February 6, February 22, all 2006. That one is just addressed to me.

Q All right, one second. Okay, now in both of these letters, she is asking for you to consent to a Guardian Ad Litem fee increase of Three Thousand Dollars ($3,000), is that correct?

A Correct, it says Three Thousand ($3,000).

Q Now, the date of these letters are January of 2006, and it's approximately a year and a half after she was

conflict of interest objection is raised, by attorney, Guardian Ad Litem or Judge, you normally agree to recuse yourself.

MS. LEWIS: At this time, if I may, I would like to present into evidence State's Exhibit #14. And this is Ms. Infinger's "Motion to be Relieved as Guardian Ad Litem." Do you have any objection to that?

MR. SAXON: No. No.

MS. LEWIS: I'm sorry.

COMPLAINANT'S EXHIBIT #14 MARKED AND ADMITTED INTO EVIDENCE.

Q Did the Judge make a decision on your request to remove Ms. Forman as Guardian Ad Litem?

A No. Well, he did not feel like --- I believe, if memory serves me, the Judge did not grant it at that time. But, I think was found to be limited information. I believe.

Q Are you looking or ---

A I was looking if there was --- I think there was --- What was there ---

MR. SAXON: Is it possible the Judge held it in abeyance?

A I think that, yeah, is that --- I think that is my recollection, that the Judge did not rule on it at that time.

Q All right. Now, I'm going to refer to State's

professional responsibility over her financial interest?

A I'm sorry. Would you ask that again?

Q As a licensed social worker doing paid Guardian Ad Litem work, what is your opinion as to whether Ms. Forman gave precedence to her professional responsibility over her financial interest?

A Well, I expressed the phone work, I felt like she became, the further along we got into the case, she became more an advocate for the mother than she was the children, the children's advocate. I'm not sure I know what you're asking.

Q Well, with regards to the responsibilities in the Guardian Ad Litem Statute, 63-3-830, did --

A Oh, I see what you're saying. Well, no. Because I mean, I don't think she certainly never interviewed --- she never even talked to the children, as far as I know. So I clearly think that she did not do all the things in that respect that were required of her.

Q Did Ms. Forman remove herself from Guardian --- ask to be released from Guardian Ad Litem when there was an indication that her services were no longer required or when there was concern for a conflict of interest?

A No, she opposed it.

Q At this time, Ms. Infinger, I don't have any additional questions. If you will answer any questions Ms.

Dunn may have or the Social Work Board may have for you. Thank you.

CROSS EXAMINATION BY

MS. DUNN:

Q Ms. Infinger, it's Susan Dunn here for Karen Forman.

A Yes.

Q This case involves Rules to Show Cause, as to Rules to Show Cause, as to Rule to Show Cause, did it not?

A There were --- yeah, there were a number of Rules.

Q And they were all either about Mr. Evans having problems with drinking or Mr. Evans' wanting to reinstate visitation because he was getting better about drinking. Was that --- Is that a fair assessment of what the hearings were about?

A I would probably agree with that.

Q Was there any time that Mr. Evans --- during the time that Ms. Forman was serving as the Guardian Ad Litem, was there ever a Motion before the Court which dealt with issues that raised the issues that needed investigation right then of the mother's home in order for the Court to make the temporary determination?

A I don't think it --- you know, orally, well, at least I guess until the middle of the case when Mr. Evans

withdrew his request for custody. So, you know, he was never challenging for environment. His concern was her actions in alienating the children and thwarting his efforts to have a relationship with the children.

Q So, on behalf of Mr. Evans, you never really requested that she go to the children's house. That was not anything you were interested in.

A Oh, but I think she needed to talk with the children and they were coming down here to visit, because her parents lived here. The mother's parents, the maternal grandparents lived here, so I think there were several occasions, when the mother was out here, but she would never bring the children, but could have brought the children. So she came out here on more than one occasion and could have brought the children. And then there was at least that one occasion that I specifically have recollection of when the children were out here and she could have talked to the children.

Q But you have no recollection as to whether anyone communicated with her about when they wanted to be, to make sure she was available during the time the children would be here.

A I can't say whether --- I cannot find any letters in my file notifying her of that. Now, what may have been said between Ms. Forman and the mother and their

Q And apparently this was because the problem was so great that this was the only way to make progress, is that correct?

A Well, I can't say that that was his motivation in agreeing to it. You'll have to ask him that.

Q Ms. Infinger, this case you have absolutely settled, correct?

A We settled it, yes.

Q Okay, and it was never scheduled for a contested hearing on the merits.

A Yeah, they were scheduled for a contested hearing.

Q But you settled it ---

A Before it got to the contested --- because we actually, I think we had to continue it because we didn't have enough time to hear it as a contested case between the time it got continued and the time it got heard, we settled it.

Q Okay, and you don't really dispute the fact that when you made the Motion for the Guardian to be relieved, you really just didn't want your client to have to spend money on a guardian any more, because there was nothing else for her to investigate.

MS. LEWIS: Objection.

A No, I will not agree with that.

Q But your Motion says, "We don't need a guardian anymore."

A Well, that ---

Q What was the alternative?

A Number one, yeah, my client, we did not believe that we needed a Guardian Ad Litem any more; but beyond that, it is the Court's desire to agree with us on that point. My client felt like Ms. Forman had shown a biasness in the case, that she was not impartial, and he wanted another guardian to be appointed in her place.

Q Ms. Infinger, can you articulate any time during the time that Karen Forman worked as the Guardian Ad Litem in this case where she evidenced personal animosity to you or your client?

A I don't know how to answer that, other than to say --- I mean, she never showed me any animosity in the case. But, my concern was that my client believed that she was not impartial. And then when I learned that there was this conflict, I had even more concerns and I felt like her effectiveness as a Guardian was compromised, in my client's eyes.

Q But can you articulate anything that connects Mr. Goldstein's conversation with another attorney about a potential case with anything that Ms. Forman did in connection with this case?

BOARD MEMBER MORRIS:

Q Ms. Infinger, my name is Carolyn Morris. I'm a Member of the Board and I just have one question. Did the Court ever rule on your Motion to Dismiss the guardian?

A I could not find --- I know we had to continue it on one occasion and I cannot find any Order specifically addressing that. So I do not have --- I don't believe so.

MS. MORRIS: Okay. Thank you.

EXAMINATION BY

CHAIRPERSON MELTON:

Q Ms. Infinger, one question that has kept coming up, who is the guardian's client, based on your experience?

A The children.

Q Okay, and in your experience, is it standard procedure to have the home visit?

A Yes. It is standard. Now, you know, situations where you have one parent living out of state and it just depends upon the particular facts of the case as to whether the guardian travels to that state to visit the children.

Q And is it normal or expected to see a rate increase midstream?

A That's a hard one to answer and I think you would just have to --- I don't know that I could say the norm, because each fact --- I mean each case has a different set of facts that ---

Q In your practice, have you ever been requested a rate increase from a guardian during the course of proceedings?

A You mean a fee increase or an hourly rate increase?

Q And/or.

A I've never had a guardian want to increase their hourly rate, but I have --- I would say it's not unusual for a guardian to request a fee increase, depending upon what the initial amount was set at. It just depends upon what the initial amount was, and that can vary. You know, some Judges will set your initial amount as Five Thousand ($5,000), and others will set it at Fifteen Hundred ($1,500). So you know, it just depends on what the initial amount was set at. Does that answer your question.

Q Vaguely.

A Well, I would hate to say that there is more times than not, because I just don't know that I could say that.

Q Okay.

CHAIRPERSON MELTON: Margie?

EXAMINATION BY

BOARD MEMBER HAMMOCK:

Q Again, in your experience, if in fact the child is the client, or the children are the clients, then is it an

expectation that they be interviewed, examined, explored via contact?

A Absolutely. I mean, unless you're talking about an infant or a toddler that can't articulate, you know, and converse with the guardian. But I would say --- I really cannot remember when a child has not been --- guardian has not, you know, met with the child and talked with the child.

Q Thank you.

EXAMINATION BY

CHAIRPERSON MELTON:

Q One last question regarding reporting, do the attorneys get copies throughout this process of reports or do reports only go to the Court?

A I think the Statute requires that, you know, unless the parties have said otherwise, that we receive, unless the guardian filed the report, I may be misspeaking but thirty (30) days prior to the final hearing. Now whether or not there are interim reports by the guardian depends upon whether or not a Judge has requested an interim report.

Q Was one requested in this case?

A An interim report?

Q Yes.

A I don't recall. I don't recall an interim report being requested.

Q Okay. Thank you.

A It was --- I think I would characterize it as a complicated issue, maybe more than strongly contested, but it was complicated, or so it appeared.

Q After Ms. Forman was appointed on November, 2004, did you review any evidence that Ms. Forman provided a written affidavit to the Court and to the parties that she complied with all the Statutory qualifications pursuant to Section 63-3-820D?

A No.

Q Did Ms. Forman disclose that her social work license was on a probationary status?

A No.

Q Is there any evidence that Ms. Forman contacted the prior Guardian Ad Litem?

A I didn't see any.

Q Was there any evidence that Ms. Forman attempted to obtain releases from the parties to assist her in obtaining relevant documents?

A I didn't see any evidence of that.

Q At the time Ms. Forman was appointed in November, 2004, is there any indication that Ms. Forman did any work in this State prior to May 31st, 2006?

A I don't believe so. I'm trying to remember if I saw any billing material with any detail, but I don't believe I did.

Q Well, that's my next question. Was there any billing records provided by Ms. Forman between November 2004 and May 31st, 2006?

A No. No, not that I --- not that it was detailed.

Q Now, there was a Temporary Order issued by the Court on November 10th, 2003; and I believe it was State's Exhibit #1. This is State's Exhibit #1. As I said, this is a Temporary Order issued by the Family Court on November 10th, 2003. Was Mr. Higuera awarded visitation in this Temporary Order?

A If you'll just give me a minute. There is a visitation schedule attached to the Order.

Q On the last page of that Order, is there any indication as to the type of visitation that it is?

A Yes, that it has to be supervised by a person approved in writing by the mother. That there is issues about location, proper environment, and so forth. It also says that father's visitation will be reviewed and modified as appropriate upon completion of an initial investigation by the GAL with recommendations as to needed protections and restrictions. And then there's other requirements that the Court ordered.

Q So in that Temporary Order, it was your understanding that it was a very supervised visitation to be approved by Ms. Knagenhjelm.

A Yes, with some other requirements that the Court put in it. Yes.

Q All right now, there was a letter sent to Ms. Kay on June 1st, 2006. Did you have the opportunity to review this letter?

A Yes.

Q This is State's Exhibit #3. State's Exhibit #3, and this is the June 1st, 2006 letter that Ms. Forman sent to Ms. Knagenhjelm ---

A Yes.

Q --- and you had the opportunity to review this letter?

A Yes.

Q Tell the Board your opinion of Ms. Forman's letter dated June 1st, 2006.

A Well, I have several concerns about the letter. It doesn't reference any --- it lacks a lot of details. It doesn't reference any indication that there's a lot of preparation for this, for the child. It doesn't reference any indication that Ms. Forman has had any contact with the child, who I believe at that time was five or six years old. As to what concerns she has around the child's feelings about the visit. It talks about the home visit she made to Mr. Higuera's apartment and it appears to reference physical safety requirements; but it doesn't make any reference to any

emotional safety issues, which would be a concern. I also am kind of disappointed that the financial arrangements are referenced in the same letter as the visitation arrangement, or as a visitation discussion. I really think that ought to be separate. And not knowing what other kind of contact she's had with Ms. Knagenhjelm, I don't know. I mean I have some concerns based on the testimony today, but just looking at this letter, it's kind of lacking in detail.

Q Well, first of all, in referring the --- I guess the clinical aspect of the letter, and the financial aspect, and the normal course of the Social Work practice is ---.

MS. DUNN: Objection, Your Honor, we've already established this is not a clinical practice of social work, this is a social worker working as guardian. There is not a clinical relationship between Ms. Forman and Ms. Knagenhjelm, or really a clinical relationship between anybody.

MS. LEWIS: Okay.

MS. DUNN: If she wants to ask you to explain the relationship.

MS. LEWIS: I'll rephrase the question, that's fine.

Q In your experience, would the financial aspect of this letter be included in a separate letter?

A I think that would have been more appropriate.

Q The visitation decision, is there any indication in there that it is to be a supervised visitation pursuant to the Temporary Order?

A No. And it doesn't reference the Order, which also causes me some concern. There's no reference to the existing Order.

Q All right, in the file that you reviewed, was there any investigation? Did you see that there was any indication of any investigation pursuant to 63-3-830 of the Guardian Ad Litem Statue, prior to this letter going out to Ms. Knagenhjelm?

A In terms, for example, their having met with the child?

Q Yes, ma'am.

A No, I don't have any information.

Q Any home settings, anything like that?

A I don't have any information about that. I don't know if it occurred or not.

Q Now, in your opinion, would that Temporary Order being issued, which required some sort of initial investigation on her part, before there is a change in the terms of the visitation, would this letter be a violation of that Temporary Order?

A I think it would be up to a Court to determine if it's a violation of an Order. I don't see that it's --- it

doesn't sound like there was an investigation in keeping with what is described in the Order, but it's impossible to know from this letter.

Q Was there any documentation provided with this letter, to your knowledge?

A No. I mean, for example, you might say, "I went to Mr. Higuera'a apartment and he has a separate bedroom available for his son, or there is appropriate furniture, there is a bed, there is a dresser, there is toys Mr. Higuera said he understands his five year old is interested in playing with. There is, I don't know, trucks or there is different kinds of things that he believes his son likes to play with. He has made arrangements with a friend of his, who also has a five year old son, that they could play together at the same time." It seems to me there might be things he'd have in this letter that would offer some encouragement to this custodial parent that this was going to be a fun and safe situation for the child; or that, "By the way, I went ahead and I ran flood checks and/or I made some other contact to get a sense of the safety issues." And there's just a lot of things in here that I might have included that would have let Ms. Knagenhjelm know that there was some depth to this approach or this recommendation.

Q I'm going to let you hold on to that in case in cross exam there is a reference to it again, so we don't have

not sure I understand your question. Would you ask me the question again?

Q Well, she says that there was a lack of communication from the plaintiff, from Ms. Knagenhjelm.

A Right.

Q And then there is a reference that she did get a telephone call.

A Right.

Q From Ms. Knagenhjelm. I guess, let me take it a step further. Is there any indication that she attempted to contact Ms. Knagenhjelm? You might have already answered this. Or, that she returned the phone call.

A Well now, you've already asked me about the returning the phone call, and that's unknown, as to whether she did.

Q Is there any indication in the record that were any phone calls of any kind?

A I didn't see any detailed information about that. But what would ---

Q Go ahead.

A --- but what concerns me is there is nothing that says, "I attempted --- I sent initial letters to both parties saying this is who I am, this is what I'm trying to do. I asked the parties for XYZ information, releases, references to interview, opportunities to see them with their child, and

some opportunity to see the custodial parent with the child, before or even saying to the custodial parent, 'I'm going to want to see you with your son and I haven't --- and I'm going to want to do that before I make any arrangements about visitation.'" Especially since this gentleman, for whatever reason, had been separated from his son for some period of time, some unknown period of time.

Q Did she give any indication that she is making a recommendation for supervised visitation? In this affidavit?

A No, the focus seems to be on the physical environment of the apartment.

Q Now, she also indicated that Ms. Forman had not --- I mean, I'm sorry, that Ms. Knagenhjelm had not paid her retainer, but the defendant's retainer had been exhausted at this time. Were there any indications that there were any itemized billings submitted in this case to the parties by Ms. Forman? Prior to this affidavit to the Court?

A Could you ask me that one more time? I'm sorry.

Q There is a statement #5, and it's the very last statement, "I also requested that the plaintiff pay my retainer fee of three hundred and seventy-five dollars ($375), as the retainer from the defendant was exhausted at this time." Was there any billing information at all that would have indicated what was done in the case.

A Not that I've seen. Not that I've seen.

Q And I'm referring to the billing information that's required under the Guardian Ad Litem phase.

A I haven't seen any.

Q So at this point, was there anything in the record to indicate what Mr. Higuera's retainer amount was used for?

A Not that I've seen.

Q She has indicated in here that, "The plaintiff has never given me any evidence that the plaintiff to be considered ---" I guess it should be that "--- the Respondent, "could be considered dangerous, neglectful or harmful to C[redacted]y." Is there any reference that she asked for this information and Ms. Knagenhjelm refused to provide it to her?

A Not that I've seen. But no, not that I've seen. But again, when she says, "The plaintiff has never agreed to meet with me and discuss her concerns," I think it would be helpful to see something that supports that. Because I mean, it's not unusual to be in a guardian case to have one party be very, very upset, if not both parties; so you have to document what's going on, if for no other reason than to protect yourself and to protect what the work you're trying to do on behalf of the child.

Q Were there any written --- up to this point, was there any requests by Ms. Forman to be removed from --- to be

relieved as Guardian Ad Litem in this case?
A Not that I'm aware of.
Q Or ---
A For nonpayment?
Q For Ms. Knagenhjelm not cooperating in her investigation or for not paying the retainer?
A Not to my knowledge.
Q And do you remember, isn't that right, the prior Guardian Ad Litem asked to be released from this case?
A My recollection is, she asked to be released because of a financial issue.
Q Well, was there any written requests from Ms. Forman to Ms. Knagenhjelm's attorney, Ms. Schmutz, for proof of Ms. Kay's concern for her son's visitation with his father?
A Not to my knowledge.
Q Is there any written response from Ms. Schmutz that there was no proof and that Ms. Kay would have to allow visitation?
A Not that I've seen.
Q Was there any documented evidence obtained by Ms. Forman that Ms. Knagenhjelm was mentally unstable?
A Not that I'm aware of, no.
Q Was there any documented evidence obtained by Ms. Forman in the course of her investigation that would have

given her concern for the child's unsupervised visitation with his father?

A Could you do that one more time, please?

Q Was there any documented evidence, perhaps in Ms. Knagenhjelm's possession, that if obtained by Ms. Forman in the course of her investigation, would have given her concern for Ms. Knagenhjelm's child unsupervised visitation with his father?

A Yes.

Q Was there any documented evidence provided by Ms. Forman that she advocated for the child to start seeing his child in a therapist's office?

A No, there is something in the letter that the father doesn't want to place any undue stress on the child. But there is no reference to say setting up a visit with a therapist. That I'm aware of.

Q Well, is there any indication that the child, that visitation with the father should be in the therapist's office. Was there any indication that Ms. Forman advocated the child to visit with his father in a therapist's office. Was there any documented evidence.

A Not that I've seen.

Q Up to the date of this affidavit.

A No. No.

Q Now, I'll provide for you at this point, because

I don't think this is in the record either, it would be #18, well, you know what, I think it is in --- I think it's in Ms. Knagenhjelm's doing --- that's in the record, isn't it?

MR. SAXON: Yes.

Q I'm sorry, Ms. Sommers. Okay, yeah. That's #18.

MR. SAXON: That has to deal with?

MS. LEWIS: This is Ms. Schmutz's billing record.

MR. SAXON: Right.

MS. LEWIS: What number is that we're looking for?

MR. SAXON: We are looking for the billing fee for the first lady ---

MS. LEWIS: You said that number ---

MR. SAXON: We haven't found the number yet.

MS. LEWIS: This is #8. I'm sorry. I thought you heard me.

MR. SAXON: I just know that I didn't see it.

Q And I have provided to you Exhibit #8 and this is Ms. Schmutz's billing record that she sent to Ms. Knagenhjelm. Is there any indication from Ms. Schmutz's billing record that she reviewed a great deal of information from Ms. Kay?

A Yes. There is.

Q All right, and can you just refer to some of the time spent by Ms. Schmutz in reviewing this information from Ms. Knagenhjelm?

A There's four hours where she read documents, file provided by client. She listened to a tape. She read a whole bunch of e-mails from her client that looks like she spent six hours on that, read more material sent by her client. Read a letter sent by her client. So yes, there's a great deal of time.

Q All right, is there any documented evidence from Ms. Forman to Ms. Schmutz asking if she had any information on Mr. Higuera that --- I mean, yeah, if Ms. Schmutz had any proof that Mr. Higuera may be --- it may be unsafe for Ms. Knagenhjelm's son to visit with Mr. Higuera.

A I want to be sure I answer --- understand your question.

Q It got a little tangled up there. Is there any documented evidence that Ms. Forman requested from Kate Schmutz any proof of Mr. Higuera being violent and unsafe? Is there any documented evidence?

A Is there a letter? No. I mean, there's documentation here that Kate Schmutz and Ms. Forman spoke to each other, but I don't know what they talked about. I don't see a letter in this bundle that is from Ms. Forman to Ms. Schmutz saying, "I understand you have material printed off

from the internet, or that you have e-mails, or that there is tapes of abusive phone messages." I don't have any information about an exchange about that.

Q There was no document in there?

A There is no documentation that I have seen. But it would be unusual, in my experience, that if a lawyer had that documentation and it worked on behalf of her client for her not to share it, it would be odd. I'm not saying it would never happen, but it would be very unusual.

Q And there would definitely be an indication she got it.

A Yes.

Q In this affidavit, is there any indication that Ms. Forman had any information to the extent that Ms. Schmutz billed for her review?

A No. In fact, in #8, on page two of the affidavit, it says, "The plaintiff has never given me any evidence that the plaintiff (sic)," and again she must mean the defendant, "could be dangerous, neglectful and/or harmful to C[redacted]." So, apparently Ms. Forman didn't have that information.

Q Did Ms. Forman ever send a letter to Ms. Knagenhjelm similar to what Ms. Groff did, introducing herself, providing contact information, asking for her to document what problems she felt were involved in this case?

Was there any letter to that effect?

A Not that I've ever seen.

Q According to Section 63-3-830 of the Guardian Ad Litem responsibilities, in your review of this record, did Ms. Forman represent the best interest of this child?

A No.

Q Did she conduct an independent investigation that included obtaining and reviewing relative documents?

A Not to the extent that I've seen, no.

Q Did she meet with and observe the child on at least one occasion?

A No.

Q Did she visit the home setting of Ms. Knagenhjelm?

A Not to my knowledge.

Q Did she interview parent, caregiver, school officials, law enforcement and others with any relevant knowledge?

A Not to my knowledge.

Q Did she obtain any criminal ---

A Not that I'm aware of, no.

Q Did she attempt to obtain the wishes of the child?

A Not that I know of.

Q All right. Let's see, in the Final Order in this

Q #22. Ms. Forman indicates that she advocated for the child to start seeing his father in the therapist's office. Is this an accurate statement?

A I don't have any documentation outside of this statement that supports that.

Q In your opinion in case #2007 --- 1, involving the Complainant, Ms. Kmagenhjelm, did Ms. Forman violate, and this is in reference to Section 110-20(7) of the Social Work Practice Act, and she did not give preference to her professional responsibility over her financial interest? That is in reference to conducting, to doing her responsibilities in accordance with the Guardian Ad Litem Satute.

A I think, if I understand your question properly, what you're getting at is because she wasn't paid, she didn't do her work? And that's the problem --- the problem with all this is that it's hard to tell why she did what she did, and why she omitted, appeared to have omitted certain things; and it's unclear if she omitted them because she wasn't being paid or if she omitted them because she didn't think they were important, or she didn't know what to do, or she didn't think it was necessary. It's just very hard to tell.

Q Well, in the Social Work Practice Act, it's in the Regulations, Section 110-20(7), it advises, "The social worker will give precedence to her professional

question that's not connected.

MS. LEWIS: Is that ---

CHAIRPERSON MELTON: That asked did she represent that she did something that she didn't do, let her answer that question, then answer it. but you can't put them both together and have an answer to it.

MS. LEWIS: Well, I am because in the Notice of Charges ---

MR. SAXON: This separates those.

MS. LEWIS: Well, you know, just a minute here, because she doesn't have a ---

Q Okay, Section 110-20-8 of the Social Work Practice Act provides that a social worker will not represent that she performed services which she did not perform.

A So, that would be a big problem. And I think, perhaps, that the link for me is in Ms. Forman's reply to the investigator's questions, where she says, "I advocated for this child to start seeing his father in a therapist's office." And unfortunately, we don't have any documentation of that. I mean, I think the word fraud is pretty strong; and I think to say that someone has committed fraud, I don't --- The problem here is not knowing what services, is not having a clear idea of what services she performed?

Q Well, did she follow the Guardian Ad Litem Statute?

A And she does not --- she appears to have omitted a number of things; such as, and a giant one for me, is not having seen the child. I mean, that is so fundamental, I can't get my head around that not having happened. But in addition to that not having happened, there appears to be a lot of material, other surrounding witness; references for example, did she talk to any relatives, did she talk to any child care providers, if there were any? I don't know. Did she talk to the pediatrician or have any contact with getting medical information? Did she get any information that one of these parties was highly unstable? I mean, she may have known that that was true, but we don't know how she knew it. Did she know anything about the child's father in terms of whether or not he was here, there, and everywhere? Or, whether he had a stable life. There's just lots of things we don't know whether she did.

Q And in the Order appointing Ms. Forman to Ms. Knagenhjelm's case, the Order is fairly simple and makes a reference to the responsibility she has as a Guardian Ad Litem in this case, and one needed to be gotten. This is just the Order appointing her Guardian Ad Litem. Would there be a violation of this Order that she did not perform the responsibilities according to the Guardian Ad Litem Statue?

A I think that's for a Judge to determine. I would respectfully say that I can't speak to that because Judges

are the ones who have the ability to say whether you violated an Order. I learned that lesson a long time ago.

Q Well, did she perform the responsibilities under the Guardian Ad Litem, as provided for in that Order?

A It appears to me that she did not entirely meet those requirements. No, I don't think she did.

Q Is that ---

CHAIRPERSON MELTON: That the Order appointed her is not in the record yet. If you're going to ask the questions about that Order, I would like that Order submitted into the record. Okay?

MS. LEWIS: That would be best for me.

CHAIRPERSON MELTON: If you're asking specifically, and I think you may be able to know what we're talking about.

MS. SOMMERS: Is there any way I could get a glass of water? Plain old water. Could you get me a glass of water? Somebody? Could I have a glass of water? Tap water, no ice, just plain old water.

MS. LEWIS: At this time I am providing to Ms. Sommers a copy of the Order appointing Ms. Forman as Guardian Ad Litem; and I think there has been an agreement to allow this in as State's Exhibit ---

MR. SAXON: It's #24.

COMPLAINANT'S EXHIBIT #24 MARKED

Q All right. And I quote from this, looks like she stated, "Mr. Evans was suspended from seeing his children unsupervised by the Court, not me. I do not support the Court's decision because Mr. Evans has not gotten any ongoing therapy or rehab for habitual alcohol. He has not been compliant with my investigation. I have followed the Guardian Ad Litem Statute. I have done nothing wrong." Do you recall when Ms. Forman was appointed in Mr. Evans' case?

A I believe she was appointed in 2004.

Q Do you recall if the parties were already divorced?

A Yes.

Q Do you recall what the grounds for the divorce were?

A Habitual drunkenness.

Q Did Mr. Evans have visitation as a result of that?

A Yes, he did.

Q Do you know that ---

A I believe it was every other weekend.

Q In your review of the documents provided to you, what is your opinion as to whether Ms. Forman followed the Guardian Ad Litem Statutes in Mr. Evans' case?

A Well, again, my primary issue with that case is that there is no evidence that she ever saw the children, or

spoke to the children, or had any contact with the children, or had any opportunity or created an opportunity to observe the children. And that, again, is so fundamental that that one is primary towards my concern. I don't have any --- I didn't see any documentation that she reviewed any medical records about the children; or, it's unclear to me that she had any contact with the therapist that the children apparently had, I think, out West. I appreciate that this -- - at least one side of the case apparently had some limitations on their resources; but she could have called and she may have, I don't know. She could have called people out West to say, who I'd say neighbors, or friends, or school teachers, "How are the kids doing? Do they ever say anything about their father? Do they ever say anything about their mother? What's your impressions of what they're doing with the separation from their father?" I didn't see anything that indicated what impressions she had about the mother. Did the mother have --- I mean, the mother and the father at some point chose each other. So what issues did the mother have? I don't doubt that Mr. Evans had and probably is still struggling with issues connected to alcoholism. It's a chronic illness. But what did the mother have going on? If anything? I mean, she may have been terrific, but I haven't seen any documentation about how that was explored. What about the stepfather? What did she know about him? I know

it wasn't a custody case. It was a visitation case. But were there things going on over and above the issue of the alcohol that were --- Were there some issues going on on the mother's side that may have also played into her decisions about the children having access to their father? What contact did Ms. Forman have with the people at the Dorchester Alcohol and Drug Commission about the intensive outpatient experience that Mr. Evans had? What about the home environment that he was able to provide for the children, if they did visit? I don't know what she knew about these things. I don't know if any of the parties in the case had any kind of criminal record, or history with the Department of Social Services. If she couldn't go to Utah, if nobody would fund that, I don't even know if it came up for her to go to Utah; but if she couldn't go, could some state agency out there have accepted a request through channels to do any kind of a study out there, or could somebody have paid for somebody to do a study out there. I don't know if any of that got done.

Q With regards to the Guardian Ad Litem reports that Ms. Forman submitted on April 3rd, 2006, that's Exhibit --- I'm sorry, can I take that back? She stated in her response to the Board that she followed the Guardian Ad Litem Statute in Mr. Evans' case, and that was in her statement to the Board. What's your opinion if she followed the Guardian

Ad Litem Statute?

A Well, I don't know that she did, that's the problem, is we don't know that she did. And I think if you're going to have a statement that says, "I have followed the GAL Statute," you're honor bound to say how I followed it. "I did this. I did that. I tried to do this. I tried to do that. XYZ got in my way and I was not able to overcome that obstacle." But I think you have to say what you did. And it could be that one or another of the parties was obstructing her; but if they were, you've got to say how they were and what you did to get around it, over it, under it, or through it. And we don't have that.

Q With regards to the mediation, did you see anything in there where she got the consent of the parties to attend this mediation, which is required by the Guardian Ad Litem Statute?

A No, I did not. And again, in that regard, what's supposed that she had some kind of an arrangement with the mediator to come and the mediator took the responsibility to get the permission of the parties, and didn't do it. It would be in a guardian's best interest to say, "Wait a minute, I did XYZ, and I thought that this was going to happen and it's ---" some version of, "I did what I was supposed to do, it's not my fault or ---"

Q She billed her attendance at this mediation.

What is your opinion about her billing for this attendance to the mediation?

A Well, it appears that the Statute says you have to have permission, and she didn't have permission. So, apparently she didn't get paid.

Q With regard to the Guardian Ad Litem Report to the parties on April 1st, 2006, this is State's Exhibit #10, can you give the Board your opinion of this Guardian Ad Litem Report and the context in it?

A Well, first of all, one thing that is on - not every document, but almost every document - that she submitted that I've seen, she has her social work credential; her MSW or LMSW are on. And that's present on the cover sheet on this. She lists persons interviewed. For whatever reason, she doesn't list the maternal grandparents by name. I don't know, that just seems a little odd. She might have listed the dates of interviews. And that could be a good way to demonstrate that you were even-handed because you have five interviews with one side and five interviews with the other side. That can be helpful. There is a lot of document review. There is no mention of any interviews with the children. There is no mention of any interviews with references other than the maternal grandparents, presuming they were references. There is no indication that the affidavits that she reviewed, that she then contacted those

people to get behind the affidavits. Sometimes affidavits have material in them that make you want to ask more questions. She may have done that, but this doesn't show that she did. I'm sorry, now I've lost track of your question.

Q I am just wanting your opinion about this report.

A Okay. One thing that's a little confusing to me is I thought that by the time she submitted this report, the mom and the family had moved to Utah. I may be mistaken about that, but this reference is that the mother is still living in Nevada; and I thought by the time of this, they were in another state. There is nothing about --- I would like to see more detail about why the mother relocated. Was it just because she remarried? Was she afraid for her safety and the children's safety? Was the father notified, was he not notified? Well, he testified he wasn't notified, but I don't know if that's true. How much visitation was there? What was the children's response to the visitation? When she observed the children at the visitation, how did they behave? We don't know what she did. She may have done it, but she doesn't show that she did it. Were there any efforts made to contact or get a sense of what the children's lives were like out West? Again, she may have done it, we don't know. I don't know. It's interesting to me, it says on page five of the affidavit, but it says --- well, there is different

numbers at the top, but at the bottom it says page five. She says Brian Evans denied to this GAL that he has a habitual alcohol problem. Well, the divorce states on habitual drunkeness, so that's kind of peculiar. He told her that the mother wilfully alienated the children. We don't know what she did to find out if that was true or not true. That's a big issue in custody and visitation cases, is parental alienation. And that's something that, especially if there's not only geographic distance, emotion distance, you have to look at that. She may have looked at it. We don't know. We don't know what the mother may or may not have done to encourage visitation. Maybe she did all kinds of things to encourage visitation and her ex-husband misbehaved, so it wasn't possible for it to happen. We don't know. And that would be the kind of thing the guardian would find out or attempt to find out. Again, I'm sorry. I keep coming back to it. I don't understand why there is not multiple instances of her saying, "I saw the kids in March. I saw the kids in April, I saw the kids in May, or I had phone conferences with the children." I know they were little, but that there were efforts to get some sense of what was going on with the kids. I believe at one point the children were in Myrtle Beach. Did she go to Myrtle Beach to see them? Did she try to go to Myrtle Beach to see them and nobody would let her come? I don't know. I do echo what Mr. Fotia

said earlier, which is about he wouldn't stop drinking even for his children. He wouldn't remain sober. I have some experience in various directions, a lot of it professional, dealing with people with substance abuse issues and if they are going to get sober, they are going to get sober because it's important to them, not because something good is going to happen. So, I mean, I guess we could have a difference of opinion about that, but I don't think people get sober for their children. I just see a lot of gaps in it. There is just a lot of things in her that are not sufficiently detailed, I think.

Q All right, and of course, I make one reference, I thank you for your information; but, "Mr. Evans has not sought out counseling or any other type of substance abuse programs." Did you find that an inaccurate statement from the information?

A No, and I take Ms. Dunn's point from earlier today that a lot of things could have happened from the time he left Mr. Fotia's counseling practice to the time of this affidavit; but we don't know from the affidavit exactly when he works with Mr. Fotia. I mean, we know from testimony when he worked with Mr. Fotia; but the affidavit doesn't say, "Well, he was in intensive outpatient program from A to B; and then he was with Mr. Fotia from C to D; and then he was arrested three times for D ---" I'm making this up, but

maybe he was arrested three times for DUI in the subsequent year. We don't know. Or, maybe he was sponsoring somebody in AA and never touched a drop. I mean, it's ---

Q And I think the points are well taken, at least in my opinion. But in reference, you made a reference to Ms. Dunn's comment about she was looking at the more recent things; however, apparently it's okay to make a reference to the pleadings, which are dated back 2004, 2004, 2004; it's okay to make a reference to a 2002 police report. You know, all of this other dated information. But we're not going to make a reference to treatment that he might have had in 2004 at the Dorchester County Rehabilitation. So, I want to understand why that information about his treatment is not relevant. But there's other stuff that happened even later than that treatment in Dorchester that is referenced here.

A I mean, I think it's important to be accurate; and I also think it's important not to make characterizations. And of course, the actual affidavit. I think what you do is, if you're going to show that somebody has a pattern of conduct that's a problem, you show what they did, and the Judge can figure it out. You hope the Judge can figure it out. But, to say things about somebody in a prejudicial sort of way or a judging sort of way, I don't think is helpful really for what the Court is trying to do, which is to make a good decision for the children involved.

Q Okay, and I guess as a follow-up to my question, you may have answered this, I just ask for your indulgence. So do you think it is accurate to only present the dated negative things about ---

A No, I'm sorry ---

Q --- Mr. Evans as opposed to presenting some dated positive things without Mr. Evans?

A I think you have to be accurate and submit everything you have, and some of the police reports, you submit the dates. Some of the drug treatment you submit the dates. So you submit all of this and it all goes into the basket; and then the Judge decides whatever the Judge decides based on all of the information. You don't pick and choose.

Q All right, and I'll find my place --- do you have any financial interest in this case?

A No, I mean, I believe I'm going to get reimbursed on some level whatever the standard level is, but no.

Q And why did you come to this proceeding and testify?

A I was asked to come.

Q Did you consult with anyone else in forming your opinion?

A No.

Q Is your license to practice in this State in good standing?

any place where she put that in writing, so I don't --- she may have advocated for that verbally and never wrote it down, but ---

Q But that's a simple --- little difference in what I asked about this.

A I'm sorry.

Q Is there anything that shows that she billed for something that she did not do?

A No.

Q And I appreciate your testimony and going through this very thoroughly, but time and time and time again it appears that what you're saying is, I would have done this differently. I would have preferred to have something more. Is that correct?

A Yes. That's part of it.

Q But that you might have done it different indicates that guardian work requires a lot of judgment calls.

A It does require a lot of judgment calls, but there's also some things that are fundamental and are required in the Statute that do not appear to have been done in this instance.

Q But there is no requirement that you send us the Groff letter. You like the Groff letter better, but there is no requirement that somebody --- that a guardian give, like

A No. No, I did not.

MS. DUNN: I have no further questions.

MR. SAXON: Does the Board have any questions?

MS. LEWIS: I don't have any redirect at this time, I apologize.

MR. SAXON: Board Members?

EXAMINATION BY

BOARD MEMBER MORRIS:

Q I have one question, and this relates to this June 1st, 2006 letter to Ms. Kay from Ms. Forman. My question relates to the letter from Ms. Forman to Ms. Kay, June 1st, 2006.

MS. LEWIS: That's State's #3.

Q Okay, the statement about midway through the first paragraph, "I feel it is in the child's best interest to start visitation with his father." Is it appropriate in your view to make an conclusion about best interests without having first met the child?

A No.

Q Do you consider that unethical?

A Yes, I'm afraid so. I do.

MR. SAXON: I'm sorry, I couldn't hear you.

A I do. Yes, I do. I'm sorry, but I do.

BOARD MEMBER: That's all I have.

EXAMINATION BY

CHAIRPERSON MELTON:

Q You have made several indications about the documentation, mainly that you would have liked to see more documentation. Is that like --- or a requirement, because you've also indicated some of it that's basic.

A I think it's a requirement. I believe it's a requirement. Because especially in an affidavit. I was trained, somewhere, probably in social work, that if you don't document it, it didn't happen.

MR. SAXON: Separate from fact.

A And I certainly don't want to represent that I documented everything I've ever done in social work; because that's not true, but nobody has. But especially with Court issues, if it's not on the piece of paper, it's not --- I mean, I don't want to practice law to my pocket, but you've got to document everything, especially with Court and with affidavits; and I've certainly seen affidavits that were kind of bizarre. But those are people who don't know how to do it. I mean, the ideas that you have a professional working in a professional capacity, you're supposed to show everything you did, and not talk about it, or not give an opinion about it. If the Judge wants your opinion, the Judge will ask you; but to document what you did, or what you tried to do and were prevented from doing, that's essential. So, yes, there is

some judgment and some variation in how one person will do it over another, and there's going to be stylistic differences. But I think there's --- I believe there are certain fundamental things that have to be done, and you have to show that you did them; and if you didn't do them, why you didn't do them. Does that answer your question?

Q Yes, ma'am. Thank you.

EXAMINATION BY

BOARD MEMBER STEPHENS:

Q Can I go a step further on the socialist respective, you used the term requirement, could I ask if you consider standard operating procedure in terms of some of the things that you mentioned, interviewing family members, collecting documentation?

A That's supposed to be what's done. I mean, when I was trained as a guardian, a volunteer guardian in Richland County in 1983, that's what we were taught to do. And then when I went on to do the guardian, when the guardian program --- established the guardian program in Charleston, that's --- I taught our volunteers to do. And I just remember to this day people calling, "Do I have to go through the child?" "Yes, you do. If you don't do anything else. If that's the only thing you do, do that." There is a lot of variation in practice. And one of the reasons that South Carolina has a Guardian Ad Litem Statute now is because there is so much

variation in practice. I suspect there is still a lot of variation in practice. And I hear stories from time to time about it. But there are certain fundamental things that are good practice. Not even best practice, just good practice.

Q Thank you.

A You're welcome.

CHAIRPERSON MELTON: Any other questions from the Board?

(No response)

MS. LEWIS: At this time, the State will rest.

(Off the record)

(KAREN A. FORMAN, having been duly sworn, testified as follows:)

MR. SAXON: State your full name for the record and spell it too.

MS. FORMAN: I'm Karen, middle initial A. Forman, F as in Frank, O-R-MAN, no e.

MS. DUNN: If it please the Board, before the Respondent actually presents any testimony, we would move that some of the charges be dropped. The allegations that she charged for services for services she did not perform. There is no evidence that she charged for any service that she did not perform, in the record. There may be complaints about. I just want her to do that or she shouldn't have did

hospices, and I've done work in an inpatient facility with pediatrics. I've also done adult work with people at MUSC, in their outpatient and inpatient. I've worked with children with cancer at MUSC. I've worked with the heart patients, pediatric heart patients at MUSC. I've done home health care all over the tri-county area, and I've done ---

Q Okay, do you work as a Guardian Ad Litem?

A I do.

Q And how long have you worked as a Guardian Ad Litem?

A I have worked as a guardian for, I want to say I started around 2003, I believe, the end of 2002, the beginning, it was whenever the Statute came into effect, I went to that first training. I do know that.

Q So you came in with the new Statute.

A I did. I've never practiced not under the Statute.

Q And approximately how many Guardian Ad Litem cases have you worked in?

A I've had over a hundred and fifty (150).

Q Were those all private guardian cases?

A Yes. Yes, but I have been asked, specifically by a couple of the Family Court Judges to act on a voluntary basis on some DSS --- a couple of DSS cases, just because they thought that I would specifically be good for these

A Kate Schmutz. That was Ms. Knagenhjelm's attorney. She called me back. She called me, I called her back and she said, "Do you still need the packet?" And I said, "Whatever documents you want me to see, send; however, I have all th Pleadings and the Order. I just need the contact information." And she gave me Ms. Knagenhjelm's phone number.

Q And what did you do then?

A I called Ms. Knagenhjelm and I left a message; and she, it was my cell phone, and she called me back about two, three minutes later; and we had a little discussion. I said, "I'm the Guardian Ad Litem that's been appointed in your case," and I believe we talked a little bit about the fact that the father was going over to Iraq. He was leaving soon, and she kind of laughed and said that it probably was nothing for me, there was nothing going on, if he went to Iraq, everything would be quiet. She expressed concern about --- on that call; she asked what I --- you know, she asked, "Well, I'm having problems with C[redacted]'s school. I'm having problems with the teacher and the administration. I need him to get XY---", some computering that she thought he needed, but that she wanted the school to pick up the cost for her. She said, "But, they're not agreeing because he's not testing as needing it." She said, "Can you do something about that?" And I said, "That's really not what I do as a guardian," you

me, because she's not calling me back." Because I would make periodic phone calls to her when he got back. I had called her a couple of times and left messages.

Q Okay, so you called her after May 2006.

A Correct.

Q Not in May.

A No, because there wasn't --- no.

Q Okay. Do you recall when the visit was with Mr. Higuera?

A On May 24th, 2006, I made the home visit at his apartment in Summerville.

Q And did you have occasion to write a letter to Ms. Knagenhjelm?

A Yes, I did. After all that, I did finally write a letter, just kind of outlining --- well, not really outlining, just saying --- and what I did was, I sent it to her, but I faxed it to both attorneys. And I said, well, at least to Kate Schmutz, I don't recall if I faxed it to Mr. Seaton. I want to say that. I don't recall if I did or didn't, but I believe --- I know I faxed it to Kate Schmutz and I know I mailed it to Kathy Knagenhjelm; and I said that I had been to --- I had been --- he had contacted me, I had gone to the apartment and it appeared to be his apartment, you know, because were allegations in the past that he would fake, being in an apartment that wasn't his, and showed me

the lease, and it was, you know, his pictures of his two sons were everywhere, and it looked like it was lived in, and it was not a fancy apartment. It was definitely not substandard. It was just an apartment.

Q And did you understand that Mr. Seaton, on behalf of Mr. Higuera, was asking that visitation under the Order be established.

A That is correct.

Q And did Ms. Knagenhjelm ever respond to your letter?

A No. What happened was, from what I understand, she was angry, I know that. Actually I didn't know that until I went to the visit; but what Kate Schmutz said, "The best thing I can do is set up a meeting between you, Ms. Knagenhjelm, and myself and we can kind of fit together what she would be comfortable with, how we can get this visitation going and who would supervise," and so forth.

Q Did you ever, to the Court, to the Schmutzs, to Mr. Seaton, to anybody recommend that this man have unsupervised visitation?

A No. No, that was not the intention of that letter. That was not what I was saying. I don't have it in front of me, but it --- I have it right now in front of me. You know ---

Q Before you get --- flip over to the front and

tell me what number you're referring to.

A Oh, I'm sorry. I think it's #3.

Q Sticker number, not the big number.

A #3. I couldn't get her to respond. And part of what I think I was doing here, if I can recall, was to start to get some response. Not to provoke her, by any stretch of the imagination, but to get her to start to participate. She had, during the year when he was in Iraq, she had withdrawn the child from school and C[redacted] was being home schooled. I believe she probably withdrew him, probably a month or so, or maybe even weeks after I spoke to her and he was no longer at the school.

Q So you couldn't go see him at school.

A I usually go to the school when I'm a guardian, because it's a really good place to meet a child, like that they feel pressure when they're in a parents' home, to say certain things. I usually do go to the school and in this case, that was my intention. He was withdrawn from the school. She was, from what I later learned, she was home schooling him and he never went back to school.

Q At any point were you informed that Ms. Knagenhjelm didn't want the father to see the child at all?

A Well, yes. In so many words, yeah. I went to this meeting that her attorney had set up at her office, Kate Schmutz had set up in her office, for me to meet with her

client, which is something that attorneys will do often if there is some mis --- not miscommunication, but miscommunication, and also when a parent feels put upon. Sometimes it helps to meet with the attorney and the client together and kind of explain to them in a non-court setting or, you know, kind of what you're trying to do. In this case, Kate Schmutz had communicated to me that she was trying --- she was explaining to her client that she would need to start initiating some sort of a visitation with supervision. The father was --- although I wasn't part of this, I know the father was objecting to her supervising because he felt it was very tense. So I know that the two attorneys were trying to discuss, I mean, who could be an alternative, and Ms. Knagenhjelm was mentioning two people, like a friend and so forth. But I went to meet her on June 15th at a meeting that Kate Schmutz had set up at Kate Schmutz's office on Broad Street.

Q Did you ever have an opportunity to actually talk with Ms. Knagenhjelm?

A No.

Q What happened?

A What I did was I came into the office, the lobby at the time that I was supposed to be there, and her receptionist said to me, "They are meeting. She came a little early to meet with Ms. Schmutz, and have a seat. They

are going to call you when they're done with their discussion." And I sat down there, right there, in the lobby next to the door. And about five minutes later, Ms. Knagenhjelm banged open the door and she was screaming at the top of her lungs. It was very loud. At the top of her lungs over my --- you know, over his --- something to the effect that, "He is not going to see my son. I will shoot and kill him before he sees this boy." And she was screaming and ran out of the office, very, very upset; and was screaming down Broad Street. I mean, you could hear her. And then Kate Schmutz came out of her office and said, "Can we talk for a few minutes?" So ---

Q Did you ever have an opportunity to receive a packet of information about the father in this case?

A Yes.

Q How did you get it?

A Kate Schmutz sent me what her client gave her, around the beginning, when I went and to this --- when Mr. Higuera contacted me and said, "I'm back. I've rented my apartment. I'm out of the military. I'm establishing my residency here. I want to initiate this Order." That was when Kate Schmutz sent me the same packet that she was given by Ms. Knagenhjelm.

Q Did you look through it?

A Yes.

Q Was it easy to read?
A No. No. As I said before, the pages were much like they were seen here. The pictures were black, kind of black endowed. I could read some of the words and I could make out her --- she had written comments on them, so I could read her comments. But, I did get --- it was about two thousand plus pages, and I did go through them.
Q Did you see any pictures of children in inappropriate pictures, did you see any of that?
A No. I do know that he had had his son and him a picture of them.
Q Okay, which son?
A I'm sorry. C[redacted]. That's right, he has two sons. I had seen C[redacted] in the picture with him. They were both driving a golf club, and he said something to the effect of, "Me and my son playing golf." I didn't see any pornographic pictures of children. I didn't see any violent pictures of that nature. No, nothing that disturbed me. I mean, the words that he used in it were not --- they were not nice; they were nasty, they were vulgar, they were mean. But they were also --- they were words that, you know, you'd be on the internet maybe, if you were an angry guy. There was nothing that made me think that he was going to hurt his child, at all.
Q Did you discuss the packet with Ms. Schmutz?

A Yes, I did. That wasn't the only thing in the packet. I'm sorry. The bulk of it was the internet. He did have --- she had her police report scenario that she reported to the police that she wanted to make a report that he --- she heard he took out a Hundred and Fifty Thousand Dollar ($150,000) life insurance policy on her, and she wanted that in the record. She said in one report something about a red bunny. Something about a red bunny, she said, on one of the pages in there that indicated death. You know, it's one of the police reports. What else did she --- She did have the ex-wife's --- that older police report from when they lived in California; he lived in California, with his older son, his older son's mother, in there. I think that was about what I reviewed.

Q Did you discuss this packet with Ms. Schmutz?

A Yes.

Q Okay, did you also understand that there was a tape of some sort?

A Yes.

Q And did you ask about the tape?

A Yes. Yes.

Q Did you ask if you could hear it?

A Yes.

Q Were you ever given the tape?

A No. She indicated that the tape --- she

indicated that she was not concerned with the tape.

Q That Ms. Schmutz was not concerned with the tape.

A That's right. That she had not heard what she thinks may be of concern.

Q And did you ask Ms. Schmutz to point out to you any of this stuff where ---

A Yes, I actually called her and I said, "What am I supposed to be looking at here?" Around this time I also received that letter from Judge Landis' secretary.

Q Go, finish the other part.

A Okay, I'm sorry. You know, I asked Kate if they had --- if she had seen any evidence of criminal activity, or could she point out any criminal activity, or child abuse, or any indication of neglect or violence? And she said, "No. I can't, because I didn't see any." But I wanted to see if she, her client, or she had specific things in this packet that they wanted me to see. I didn't see it.

Q Did you have an opportunity to discuss that packet with the police, as well?

A Yes.

Q Who did you talk to?

A I spoke to a Detective Marshall, and he called me.

Q And did he indicate that he had been given a ---

MS. LEWIS: I'm going to object to hearsay.

Q Okay, after the letter from Judge Landis and the event in Ms. Schmutz's office, why didn't you ask to get off of this case?

A I'd never ask to get off a case.

Q Why not?

A Because when you're in a case, it's a precedent I set for myself after speaking to a lot attorneys about the Guardian Ad Litem, and some of the frustrations, and so forth; and it's a precedent I set for myself and it's not an easy one for me to follow a lot of times. But when I'm so far into a case, a couple of years in, and somebody does something like what I am --- have to say, or they don't agree with me, it is considered the oldest trick in the book to try to remove the guardian, get a new fresh guardian in there. But what happens really, in reality, is the litigants end up paying so much more money and the litigation gets dragged out even longer for the child. I also just will not --- I don't want to be --- I will not be --- I won't be bullied by that. And what I mean by that is, I won't be --- even though it is uncomfortable for me, and God, it really is, it's very uncomfortable for me a lot of times. I feel that I need to take those kind of blows for the child, you know, in essence.

Q In the Knagenhjelm case, did you bill for anything you didn't do?

A No.

Q Did you prepare a Final Report?
A In Knagenhjelm?
Q Right.
A No.
Q Why not?
A Well, first of all, there was no --- from what I understood, what I was going into was not a Final Hearing. A lot --- sometimes some of my cases have been such that you walk into something - and even a Rule to Show Cause - and the two attorneys will say, "I think we can wind this up today. We can hash it out if you work with us." And I'm always on board with that.
Q Did you get to see the child?
A No.
Q Did you want to see the child?
A Yes.
Q Did you ask to see the child?
A Yes. And what my intention was, I had asked --- I asked in my letter. I said, "I'd welcome the opportunity to meet with you and C[redacted]," in this letter I'm referring to. This is three. She just would not allow that to happen. And really, when he went away that whole year and a half, really it was about a year and a half, I didn't press the issue. I wasn't really sure where this case would end up. The question wasn't whether C[redacted] was comfortable at Mom's.

Q You were not involved?
A I'm not involved yet. And the Court said, "No, this is not grounds for a change of custody; however, you're right, you do need visitation; therefore, you know, because your children are no longer in town, we're going to re-do the visitation and we're going to give you five weeks in the summer, and you can have them on the weekends that are the three day weekends, meaning like President's Day weekend or weekends that fall on a holiday, so you have a longer stretch of time." Any one that he wanted, he could just say, "This is the weekend I'd like to either come out there or bring them here." And he had over the phone access. He could call them whenever he wanted and they could call him . And that's the Order that came down when I was appointed as the Guardian.
Q That was already in place.
A Yes.
Q Okay. So you got appointed that fall after that?
A I got appointed September --- the Order says September 24th, of 2004. So it was sometime between this new Order that Mr. Evans got for the visitation, and then I got appointed.
Q Well, what was the first thing you had to deal with in the Court, after your appointment?
A At the time of my appointment, Mr. Evans was

petitioning again for a change of custody due to a change in circumstances; which means that he wanted to change the Order because something new had occurred. And he said in his change of circumstances, "parental alienation". That in some way the mother was alienating the children from him. That was denied. When I came into the case in October, the mother was literally at the same time as I was getting the Order and getting the pleadings; she was filing for a modification of this visitation. She was filing because she said that the father was --- for a couple of reasons. She said that the father was abusing his open privileges with the children to discuss their religious matters in her home; and also he was sending messages, she said, through the children to her, "How is mommy doing?" You know, I mean, we have transcripts of the phone calls, "How is mommy doing? Tell mommy, 'Hi'". That kind of thing. Also, as part of this motion, the mother said that during the summer visitation, that he had just had, he had exposed the children to alcohol consumption. That exposure occurred before I was appointed the Guardian, so when I went into this hearing --- serve to go --- as the Guardian, I really didn't know what had happened. I kind of was real quiet, and I didn't know; and there was a lot of affidavits both ways. But apparently she'd had a private investigator investigate Mr. Evans during his time when the children were with him.

Q And that happened then. And then alcohol issues became something that were of issue.

A Right. I mean, that happened before I got in, really, to even talk to both of them.

Q And did it just keep being an issue?

A Yes. Yes, it did. Now, when I first got in, he is looking to change custodies, looking to take these children as the custodial parent. So, that was the beginning of my investigation. Of course, I was investigating on the idea that he was saying, "I make a better custodial parent, and this is why, because she's been alienating the children. And I need to take the children because of that. I need to stop this." So the problem was, I couldn't really --- I discussed it with the mother, but she kept saying, "But what about ---" You know, I can't say what she said to me. But I kept getting all these things put in front of me that indicated there was a serious alcohol problem with Mr. Evans.

Q And as you were the Guardian, did you do your best to comply with each one of the duties that were put upon you in this specific case by the Court in the Order?

A Yes. And they got tighter, and tighter, and tighter. And I was given the position of --- I was ordered by the Court, by the Judge, to monitor Mr. Evans, to call --- I think that the wording in the Order is that I had --- the Judge wanted me to call him for alcohol tests and he was to

comply with it within twelve hours.

Q Is that something you asked for?

A No. No.

Q Did you feel as a Guardian you had an obligation to do that ---

A Yes.

Q --- having been given the duty.

A Yes. I mean, Guardians are put in that position sometimes, to have to police and --- but he needed to step up because he was asking for custody of these children. And I needed --- he was representing, from what I understood, to the Court, at least on a couple of those occasions that he had, indeed, stopped drinking and he was not drinking anymore.

Q Did you have an opportunity to prepare a Temporary Guardian Report in this case?

A The report that has been an issue?

Q Yes.

A Okay. That was the report that stemmed from the Judge asking me to write a report that only really dealt with the issues of Mr. Evans' drinking. He wanted to see --- he wanted me to have a report --- present to the Court to address this, and what I felt like he was, Mr. Evans, was doing or not doing to address the problem.

Q At that point in time.

those homes?
A No.
Q Did anybody ask you to?
A No.
Q Did you attempt to see them when they were in South Carolina?
A Yes and no. The conversation that they were saying that I had with Ms. --- she did call me to let me know they were coming in a week to visit her parents and they were going to Myrtle Beach as a family. They had a beach house they rented. I was leaving for my summer vacation in a couple of days for two weeks, to Maine; so I missed that opportunity and I couldn't meet with them. I would have, if I had been in town, but I wasn't. I was on vacation.
Q And did you have any idea that was going to be the last time they were coming back?
A No.
Q Had they had grandparents here?
A Yes, but the grandparents went out there more. From what I understand.
Q But that's not what you could anticipate at that time?
A No.
Q Did this case have occasion to go to a mediation?
A Yes.

Q But let me just ask you to ask me if you don't understand my questions or if you need me to rephrase them, I'll be happy to do so.

A Okay.

Q I'm going to assume that if you answer a question, that you understood my question, fair? Fair enough? If you don't understand a question and need it rephrased, I'll be glad to, but if you answer a question, I'm assuming that you understood my question.

A Okay.

Q Fair?

A Okay.

Q You testified that, of course, and we all know you're a licensed Social Worker. How long have you been a licensed Social Worker?

A I think since 1993, '92 or '93. It was different then, so I'm trying to think of when because you can sit for the exam twice a year, and I'm trying to think of what year it landed on. '93.

Q So it's fair to say that you've been a Social Worker for over fifteen (15) years?

A Yes.

Q Okay, and as you indicate that as of now, you are currently seeing people, and now we're talking about the social work has to be part-time in your office, private

practice, is that correct?

A That's my intention. I have ---

Q Is that what you're doing? I mean, you testified that you're seeing people ---

A I did, yes. I just started literally June 1st.

Q Okay. Is it fair to say that the majority of the work that you currently do for a living is in the Guardian Ad Litem context?

A Yes.

Q And along with that, not just being appointed as Guardian Ad Litem, but I'm assuming when you speak at various functions, that you may get an honorarium or something of that nature, when you're presenting in your capacity as a Social Worker and Guardian Ad Litem principles as well.

A What's an honor --- I'm terribly sorry ---

Q So like some of the broad publications in the CLE's, the continuing education requirement, you speak at those engagements. Are you doing that voluntarily or are you paid for your services?

A I'm doing that vol --- I'm not paid.

Q Okay, all right. And through the Charleston Bar, you were actually referred from bar members to take on guardian appointments, is that correct? I mean, the Court ultimately can prove it, but parties can consent to which guardian they would like.

Q Okay, well, I'm going to ask you to read the second sentence here on Ms. Groff's letter dated January the 22nd, 2004.

A ( You want me to read the second paragraph?

Q The sentence. It's just one sentence.

A "Mr. Higuera also told me that he does not intend to return to Charleston until he is current in his Court ordered payments."

Q Okay. Now, in this letter, she also states that Ms. Kay, at that time, "--- brought me an extremely amount of paperwork for my review." Is that right?

A Yes.

Q Okay, and I think today you testified that you were surprised with a bunch of information from Ms. Schmutz, is that correct? That was provided to her by Ms. Kay.

A That's what I understood to be the case.

Q Concluded from this report?

A Uh huh. (affirmative response)

Q You said you had actually observed --- had read those, correct?

A Yes.

Q So, and had actually given that information to an investigator for review as well, correct?

A No.

Q Okay. I'm going to ask you, in the statement

that you provided to the Board, and I believe that's State's #3?

MR. SAXON: Number twenty-two (22).

MS. BELL: Oh, okay. I'm sorry.

Q Okay, I'm going to ask you, in State's #22, this is your statement, correct?

A Uh huh (affirmative response)

Q And these are your words and you supplied that to Ms. Reese, correct?

A I believe I did.

Q Okay, and in there, you said that there were allegations by the Mom that the Dad was violent and unsafe, correct?

A Correct.

Q "And when I requested proof from her attorney, she told me there was no proof (police reports, records, etc)." Okay, so which statement is correct? What you're testifying to today or what you reported to the Board back when you were first asked to detail your response to these allegations?

A I don't understand what you're asking.

Q Today you said you had the reports and that you reviewed them, and that you assessed them, and didn't think there was much merit to them; but, back on this report, this statement that you gave to Ms. Reese, you indicated that when

requested proof from her attorney, Kate Schmutz, "--- she told me there was no proof (police reports, records, etc.)", and that the mother was going to have to allow visitation. So in this letter and response to LLR to be investigated, when the complaint was first being investigated, you said you didn't have police reports, that you were looking for the proof, and you didn't have records.

A No. No, ma'am, that's not what that meant.

Q Well, tell us what this means.

A I mean, you can interpret it, I suppose.

Q How --- what other way are we supposed to interpret it? You asked for proof by means of police reports and records, do you have them?

A When she sent me the packet of materials and I went through them, and nothing, as I testified, there was nothing that was --- was it distasteful? Yeah.

Q But I'm saying is, here you said you wanted the proof in way of police reports, do you see that?

A I wanted her to point it out to me.

Q You had police reports, correct?

A I had ---

Q From what you're saying today.

A I had the police reports from Ms. Higuera -- or Knagenhjelm, I'm sorry, had filed with the police.

Q Okay. Let me ask you, did the State serve a

subpoena on you?
A Yes.
Q Okay, and when I said the State, I mean LLR?
A Yes.
Q Did they serve a subpoena asking you to produce any and all records that you had pertaining to either one of these cases, correct?
A Correct.
Q Okay, and you did not, at that time, produce the information that you are now saying that you received from Ms. Schmutz. Did you?
A I didn't have it. Anymore.
Q Okay, why didn't you have it? That's not something on your computer, that was something that was given to you.
A Correct.
Q Okay. You didn't have it, where was it?
A I had --- I shredded them, after the case was over.
Q Oh, okay. So not only did you lose certain information, but you destroyed certain information after ou said the case was over. Correct?
A I just destroyed the stack of documents, yes. I mean, I shredded them because they were personal information. I didn't ---

Q Okay. And where is your itemized billing statement that would corroborate it, that you actually got these records and that you reviewed them?

A They were --- actually the ones that --- the one that I presented to the Court at the Final --- the Motion that turned into a Consent, was given to the Court and given to both litigants.

Q And was that an itemized statement ---

A Yes, it was an itemized statement. It was considered evidence, and from what I understand, evidence is destroyed. Now, I did say that I --- I lost a lot of stuff on my computer, and from what I understand, when I handed up to the Court, to the Judge, it is put in the evidence.

Q Now, I understood you to say on Direct Examination that your computer crashed after this case was closed, correct? This case was over with, according to your testimony on Direct Examination, after Ms. Kay came forward and settled.

A Correct.

Q So at the time, you would have had that information because it was ---

A That's ---

Q At the time that you were making the billing statement, as far as the things you had done in this case.

A Yes.

Q Okay. And my question is, where in there do you say that you reviewed these reports that were so important to Ms. Kay, as you reported today?

A Where in the billing?

Q Right, that you reviewed those records.

A I can't tell you that, but I know I did.

Q Okay. And isn't it true that keeping proper documentation of what you've done in a case, especially when there are concerns about somebody's safety and issues of that nature, would that be something to be documented?

A Yes.

Q So, we just have to take your word for it, that that would actually be there, for not just the parties to see, but I think as Ms. Sommers testified, just to cover yourself, and that it's good practice, is that correct? And isn't it good practice to document it?

A Yes, and I did document it.

Q The things that occurred.

A I did.

Q Okay, because in this statement, you're saying that you wanted proof and you didn't have it; and now you're telling us today that you did. But we don't have anything documented at the time when you did it, how much time it took you to do it and where ---

A What I was saying in that statement was when I

got the pile of papers ---

Q And where does it say that when I got the pile of state --- when I got it, when I got the information, I needed more, and it's --- this felt more --- this didn't --- this information that I received did not concern me. I needed additional proof." Where does it say that you needed additional proof?

A I didn't say that.

Q Okay. You said you needed police reports, correct? And records, etc. I mean, am I misconstruing what you wrote there?

A You're not. In some respects you're not.

Q I mean, in any respect ---

A I may not have worded it a hundred percent clearly, to what I was trying to say. What I was trying to say was, I had the same pile, from what I understood, as Kate Schmutz. She told me she --- I said, "Can you point me to what is the most concerning?" She said, "I don't honestly see anything in that." It wasn't just Kate Schmutz, although it's not on here; but I also spoke with the Detective, Marshall, who supposedly had the same pile as me and he basically said ---

MS. BELL: I'm going to object because I didn't ask you that.

A I understand. Okay. Well, he insinuated that

not here in Charleston or Columbia, but in Charleston.
A Yes.
Q Okay, and there is --- it's controverted that he was in South Carolina, correct?
A Yes.
Q Okay. And you had not made a visit to the child, correct?
A Correct.
Q You had made a visit to the Dad and you had not visited with the child to observe the child on one occasion before making that same --- stating your opinion, correct?
A I attempted to; but that's correct.
Q Okay. And when you say you attempted to, you said that you made a phone call to Ms. Kay?
A As far as I cannot say how many I made, but I attempted to reach her. And I believe she testified that she cut off communication with me after that confrontation she had with Kate Schmutz at her office, but that's all.
Q No, I'm talking about before that.
A Oh, I had spoken to her.
Q No, no. Meeting with the child, which is an obligation under the Guardian Ad Litem Statutes, correct?
A I would not say that that's entirely correct.
Q It is not an obligation of yours to meet with the child and observe the child by Statute of the Guardian Ad

Litem Statute?

A It is not an obligation for me to --- I'm sorry. I don't know what you're saying.

Q I'm asking, is it a requirement under the Guardian Ad Litem Statute for you to at least on one occasion, meet with or observe the child.

A You cannot meet or observe a child when the child is not given access to you.

Q Okay. Now, let's discuss that. In your letter on June the 1st, is there any indication there that you give to Ms. Kay that you have been having difficulty with her providing access to her son? For you to fulfill your role as the Guardian?

A But I --- no. No.

Q Okay, and in fact, in very --- in rather present terms where you say --- you said, "Please contact me so we can arrange a day and time we can meet. I look forward --- I would welcome the opportunity to meet with you and C[redacted]."

A Correct.

Q Okay. So is there anywhere in that letter to Ms. Kay where you indicate that you --- of the intention to contact you, "It is important for me to perform my obligations as Guardian to see your son, to do a home visit, to observe your child. And if you have not been cooperative and I may be forced to go to the Court, if you will not

comply with my request that I can perform my duties"?
A It doesn't say that. However, the words --- the letter was not for that purpose. I was trying with this letter to begin again.
Q Okay, and where is the proof that you had started before? I mean, other than your time line that you said you provided to --- that you came up with two weeks ago, where is documentation and proof that you actually tried to do that before then?
A It may exist, but I don't have it. I plan to offer proof.
Q Okay. Now, anywhere in that letter of June 1st, which is State's #3, is there any indication that what you're talking about is supervised visitations?
A Yes.
Q Okay, and where does it say that in that letter?
A The word "supervised" is not used; however ---
Q But my question was, where does it say "supervised visitation"?
A Visitation schedule.
Q Okay. Okay.
A The Order ---
Q Okay, I'm sorry ---
A I'm sorry, I might be misunderstanding you.
Q The visitat --- what?

situation of the child and the family. Correct?
A Correct.
Q But the investigation, your investigation, includes but is not limited to obtaining and reviewing relevant documents, correct?
A Correct.
Q To meeting with and observing the child on at least one occasion, correct?
A Correct.
Q Visiting the home setting to seem appropriate. Correct?
A Correct.
Q Okay, interviewing parents and other individuals that may have knowledge of relevance to the case.
A Correct.
Q And consider the wishes of the child if appropriate, correct?
A Correct.
Q Okay, and I guess my question to you is, prior to --- well, at any time, did you visit the child?
A No.
Q Okay. And it's your testimony now that you had reached out and made overtures and had asked about, you'd done, but you won't get any satisfaction from Ms. Kay. Prior to sending the June 1st letter.

A No.
Q You said she was not making the child available after you had requested prior to June 1st.
A I don't believe I requested at that time. I don't think I'm understanding what you're asking.
Q Okay. I thought that you testified that --- I was asking you, in the June 1st letter, where does it say that because you had indicated you had tried to make arrangements to see the child; and I was asking you where is it in that letter of June 1st that you indicated that you were making the attempts, or that you had made previous attempts to see the child? Because you testified that you had made attempts. So you're saying now that you had not made attempts?
A I had made attempts to reach Ms. Knagenhjelm, if that's what you mean. Yes.
Q Okay. And other than this letter here of June 1st, did you take any other action to perform your responsibility, even if the parent wasn't complying with the request, did you take any action to perform your responsibility to make sure that you complied with the Judge's Order?
A Oh, yes, ma'am. I was not completed --- my investigation was not complete when I went to the motion.
Q Okay, well let me ask you, you mean you wrote the

letter? When you went to the motion, I'm sorry.

A Okay.

Q Your investigation was not complete when?

A When I wrote the letter, this is really --- although I had been in the case for a long time, because it was dormant, held in abeyance, this was really almost the beginning of working with the actual people.

Q Exactly, and let me ask you about that. This is the beginning of when you were beginning to work on the case, correct? Now, you've indicated ---

A No, not correct.

Q That's what you just said.

A No. This was the beginning when I had both adults, both clients and the child in one --- the same town. So that's the part, working with the visitation on a consistent basis.

Q Okay, so let me ask you, the fact that the father was somewhere else, that did not afford your ability at all to see the child and to make attempts to see the child, before coming up with the recommendation of visitation. Fair?

A No.

Q Okay, explain why.

A I'll explain why. Because when the father was in Iraq, I did do investigation by reading the documents that

her attorney had sent me, by ---

Q What? You're referring now to the documents, the six stacks --

A Yes. I did review those and ---

Q When did you review those?

A I received them, and I don't have an exact date. but I received them prior to having that meeting in the office where I never got to actually sit down and meet with Ms. Schmutz and Kathy Knagenhjelm.

Q Okay, in your time line, that I think you testified to that you prepared two weeks ago, you indicate that on June you received a packet of two thousand plus pages via mail in an unmarked envelope; and is that the documents that you are talking about?

A I want to back up a minute. About why I prepared these.

Q Okay.

A I worked on them for a while. I have been working on them and trying to find certain documents, that I could not find. Now, I did it for myself, this time line.

Q All right.

A For me as a guide because I had to put the pieces together again due to my circumstances.

Q So this may not be totally accurate is what you're saying?

A The case?
Q This is not contemporaneous to when you ---
A The dates are accurate. The dates that I have there are accurate. However, when I did not know the exact date, I would put early June, like here I put early June. I did not make this time line for you. I made it for me, so that I could remember.
Q Okay. Even though there had been a request that if you had some notes or something to show what you had done in this case, and time lines, and billing. and all that stuff, that that would be important for us to have prior to the Hearing. And I understand that it ---
A I believe you got it when I was finished with it.
Q Okay, and that was a week ago Friday? I'm sorry. So yesterday was the first time it was seen.
A I don't know that. I don't know. I don't know the answer to that. I believe that some things were brought by hand.
Q Now, help me. Since you went to the courthouse, all right, there are certain days when you certainly can glean that certain things happened, because you have a record of it. Anything that's contained in those Court Hearings that may repre --- other dates, but when you talk about early June, when you received the packet, when you say that you lost information off your computer, how are you able ---

because the Court doesn't have those dates. So, where are you pulling those dates?

A What were you talking about?

Q Well, like June, early June, "I received a packet of two thousand plus pages. June the 1st I sent a ---" I mean, I'm sorry. "January 26th, 2005, I called Ms. Schmutz to go over Ms. Kay's contract information. I left a message for Ms. Kay."

A I believe --- and I believe that what I did was I --- asked her.

Q Asked who?

A Ms. Schmutz.

Q Okay, so early June --- so you would have received the information regarding the police reports and all that information after you wrote the June 1st, 2006 letter?

A No. No.

Q I'm going by your time line.

A I understand that. No. I had that already.

Q Okay, so when you say, "Early June I received a packet," that is incorrect?

A It could be incorrect.

Q I'm asking you, is it ---

A Yes, and this ---

Q It can't both be the case. Either you had it before June 1st, when you wrote the letter, or you had it

afterwards.

A I understand that. And again, this was for me, as my reference. I wasn't certain.

Q Okay. Okay.

A But I do know that I had received and read it.

Q Okay. Well, I guess the reason I asked you that is because June 1st of 2006, you hadn't met with the child, correct?

A Correct.

Q For whatever reason, you had not met with the child, correct?

A Yes. Correct.

Q June 1st of 2006, when you wrote that letter, if we are to believe that you didn't get these records about police reports and some pornographic information on the internet, if you did not have that before June 1st, if you're saying you had that before June 1st and you're still making a recommendation that before interviewing the mother and visiting with the son, you're making that representation ---

A This is not a recommendation ---

Q Okay. Well, your belief.

A My primary --- my primary ---

Q I feel, it isn't --- so your belief that it is in the child's best interest to start visitation with his father.

A In small and frequent increments, eventually increase the amount of time.

Q So, I'm asking you, if you have had records about police reports and about an Order of Protection that was filed concerning the father's potential propensity for violence, potential pornographic material on the internet that he has been alleged to have been involved with, did you have that information before you wrote this letter of June 1st, 2006?

A From what I can recall, yes.

Q And you still --- okay, that's fine. Okay. At any point in time did you ask the Court to rule in Ms. Kay because she was not being compliant with your request to see the child or to make the child available so you could fulfill your responsibilities as the Guardian Ad Litem?

A At any point of time from ---

Q Any time.

A --- before they consented?

Q Any time.

A No.

Q Okay, why not?

A Because I hadn't the opportunity to have both parents together in order for the Order to start being enforced for visitation. She had not denied it up until this point.

Q Let me ask you, before you can say that you believe --- well, let me ask you, as per your judgment of the Guardian. Before you make a statement in a letter to a party, when you're already coming down on the side that you feel it's in the child's best interest to start visitation, do you think you had some obligations to attempt to meet with the child and see the child in some interaction?

A This letter is not that loaded. This letter was my attempt to adhere to the Order.

Q Okay, now when you say, "This letter wasn't that loaded, I think that it's been introduced into evidence Ms. Groff's letter. She was the previous Guardian on the case, correct?

A Correct.

Q Okay. I think that's State's #8. I think it's #25.

MR. SAXON: #25 is the December 18th letter from Ms. Groff.

Q Okay. I'm going to ask you to --- #25, State's #25, this has been moved into evidence already, but it's a letter of December 18th, 2003 from Ms. Groff, and I think we talked a little bit about it yesterday. But would you consider that a loaded letter?

A I think that we are both ---

MS. DUNN: Your Honor, object. I have no

correct?

A That is correct. We had a phone conversation.

Q Okay. You had not sent her --- this is the first letter that you ever sent to ---

A That's not correct.

Q Okay, what letter did you send?

A I sent a letter to her attorney, somewhat like what Susan does, an introductory letter and a request for whatever documents the attorneys want to send me on behalf of their clients, and my contact info; and I always request their clients' contact info. And so what I received back is a packet with a letterhead, their clients, thank you for serving as whatever and their clients' contact info; and then whatever documents they would like me to review.

Q And I'm not asking you what you do --- I'm not asking you what you do generally in cases. I'm asking you specifically in this case. And yesterday I asked you, "Is this the first written notification ---" I specifically asked you, "Is this the first written notification that you sent to Ms. Kay?" And if I recall, your answer was, "Yes, it was." Are you now saying that you sent her another letter prior to this one?

A No. I'm saying that I sent the monthly --- I believe I did testify that she would have received a notice every thirty (30) days from me, just stating the balance,

what she's paid, what she hasn't paid, as I do for everyone.
Q But the letter that you sent her did not ask for any attempts to meet with her or C[redacted], correct?
A Correct.
Q It was in the way of a billing statement, correct?
A Correct.
Q Okay. Let me check, Ms. Forman, and see if I've got it for you ---
A Sure.
Q Number one ---
A I have ten ---
Q Okay.
A Is that what you're looking, the Order ---
Q No, I'm sorry. It's the Temporary Order.
A Is this? No.
MS. LEWIS: Should be State's #1.
Q Okay. This State's #1.
MS. LEWIS: Here it is, right here.
Q Okay. I'm going to preface Ms. Dunn's --- right here and I'm going to show you --- I'm sorry.
MR. SAXON: State's #1.
Q So, I'm showing you what's State's #1 and this is the Temporary Order that was in place in this matter, correct?

A Correct.

Q Okay. And in the Order, and I want to direct your attention to the last two pages of the Order, it talks about a visitation schedule. It lays out --- well, first of all, it definitely lays out that this is supposed to be a supervised visit, correct?

A Correct.

Q And that the visit is not only to be supervised, but it is supposed to be in advance, with the mother, to --- and the mother must approve the person who is doing the supervision and has the access information of how to reach that person, correct?

A I'm just looking --- Correct.

Q And it's okay, I'm sorry. I probably shouldn't be ---

A No, it's okay. I was just reading it.

Q I was trying to put myself ---

A Correct, it gives specific instructions.

Q Okay, so on at that last page of the Order, somewhat midway through it, says, "Visitations must be supervised by a person approved in writing by mother. Father must notify mother of location. Father must exercise visitation and proper ---" and everything, correct?

A Correct.

Q Okay. Now, being that this was your first letter

But my question is, where is it through your process that you document that you went through the process of analyzing that and making the determination that this --- because ultimately you said, your statement, not an attorney's, that there was no safety issue there, that you believed it was best just to know both parents and advocated to seeing the son in a therapist's office. And let's talk about that. Where in your report do you say in a therapist's office?

MS. DUNN: Objection, Your Honor. I really have some problems with the continued reference to reports from what's been determined are in there because there are no reports and no indication anywhere that there was a report done by the Guardian Ad Litem in this letter.

A You had said a couple of sentences ago --- You said that you said something that had to do with their investigation. I think and I believe that I've made it clear that my investigation was not done.

Q Okay. And it was not done and you had not --- that you were recommending that the letter that you sent --- let me ask you, you state on the tape that you never visited the son, saw the son, or observed him in any setting.

A I never saw him.

Q Okay. And you indicate on your statement that you recommended and advocated for the --- I'm sorry, you advocated for the child to start seeing his father in a

therapist's office. And I'm asking you, where did you indicate that you were asking to see in a therapist's office? The fact that --- in June 1st of 2006, you did not make any recommendations.

A I did.

Q In the letter you said ---

A No, ma'am, at the Hearing.

Q Okay, at the Hearing, the Final Hearing, where the case was settled?

A It was supposed to be a Motion; and sometimes when you go to Court, the two attorneys probably had spoken and decided that they would enter a Consent. At that time, I came prepared for a Motion, but they were entering a Consent that I was part of, helping with, that's what I meant by that.

Q And Ms. Forman, State's #23, and this is your Affidavit to the Court. Where in there does it say you recommend that the father see the child in a therapeutic office? You talk about visitation, correct?

A Let me read this. I haven't read this for a while.

Q Fair enough.

A Okay, you can ask the question.

Q My question is, the representation that you provided and the response that you had to this Board in this

matter, is that you indicated that you advocated for this child to start seeing the father in the therapist's office.

A That is correct.

Q Okay, now where in your Affidavit to the Court does it say that you --- I'm not going to say recommend, that you advocate for the child to be seen in the therapist's office.

A This is an affidavit that had to do with their Motion to enforce the visitation order. That was not what that ultimately was. It was a Hearing of Consent. During the hour that we spent out there in the lobby, each attorney going back and forth to their clients. They were arguing whether or not, I don't know what they were --- they were negotiating, I should say, not arguing, negotiating whether or not the child needed to be supervised by mother or someone else. From what I remember, the father was not comfortable with the mother's presence because of the tension between them. Probably a good idea. I suggested that they use a therapist at Oasis Christian Counseling to do verification, reintroduce suggestion that the child perform a comfort level, and then let the therapist decide ultimately when the child was feeling better or gave her own therapeutic opinion that the child spend time along with dad, whether it was ten --- an hour on the playground along or overnight was left to the therapist. I was the one that pushed that. I said, "How

about putting this situation into the hands of a professional, so that we can take the onus off the parents?"

Q Now, in that particular --- and that would have been, you called it a Motion Hearing, it ended up settling at that time, so it ended up being the Final Hearing.

A That is correct.

Q Okay, now at that time, technically you were no longer appointed as the Guardian, procedurally, is that ---

MS. DUNN: Objection, Your Honor. There is no way for her to answer that. I think the Court knows the situation that's been presented. And she can't answer it legally. It's a legal question, of technically when you were appointed. You can ask her what she thought. You can ask her, but she can't ---

Q Okay. When you went to what you thought was a Motion Hearing, there was a new attorney on the case, correct?

A That is correct.

Q Had you ever dealt with him before?

A No.

Q Okay. Did you get Notice for that Hearing?

A Yes.

Q Would it have had a case number on it?

A I don't recall.

Q So at the time of that Hearing, by the Affidavit,

you had this already ready when you went to the Hearing.
A That is correct.
Q Okay, so at that time there had not been the discussion about any visitation in a therapeutic sense, is that correct?
A I don't know what they were discussing.
Q But I mean, you indicated you made a suggestion, you were involved in that process.
A At the courthouse. We negotiated --- they negotiated with their clients back and forth for about an hour.
Q Okay. In Mr. Evans' case, in that case, there were not previous guardians appointed before you, were there? You were the first one in that matter, is that right?
A I don't recall, but I believe so.
Q Okay. And in that case, it was your understanding that the father actually had filed a petition for --- actually custody --- he had indicated on direct examination. Is that right?
A That is correct. Change of custody.
Q Change --- I'm sorry. Change of custody.
A Right.
Q Because of change of custody, correct? That the mother had moved halfway across the country and he is still in South Carolina, and he felt that he was being alienated

all.

Q Okay. Now let me ask you, at any point in time in this case, did you on at least one occasion, visit the children or observe the children?

A No.

Q Now you at some point in time made a Motion for increase the fees, correct?

A I believe I asked each attorney, which I do ask the attorney. I don't do the Motions automatically. They are costly and there is no use in doing it.

Q Your reports to make, in your opinion, you had to file the Motion to be heard, didn't you?

A That is correct. That is correct. From Mr. Evans' attorney.

Q And those were the things that you contemplated that you were going to --- expenses you were going to need money set aside, because expenses would be incurred, correct?

A Yes. Usually, when you're midstream through a case that has gone on for quite some time, and not all of them go on this long, you need to ask, when you know you're getting close, you need to ask for an increase and you need to kind of have some, what could happen in the future. It doesn't mean that I'm asking for the money and I'm going --- as another retainer. I'm asking for my cap --- before the Statute there was absolutely no limitation. I mean,

from one parent to another, where did you make a request to the Court, or to the parties, that you needed to see the children? If you took expenses to the parties to come up with that money, which they didn't, to petition the Court to request that the parties pay, so you could fulfill your obligation.

A My obligation in this case was to ensure that this father was not breaking the Order, so that he ---

Q Was that your responsibility?

A No, one of my responsibilities. I was given the responsibility by the Court to monitor him. This case quickly, in the beginning, quickly diverged into a whole different path.

Q And part of that was because of the route that you took it in.

A That's correct. No. Yes and no.

Q Okay. I mean, you focused on the alcohol issue. We're talking about things not important, but looking at your billing statement, the vast majority, if we went down ---

A The alcohol issue was huge.

Q I'm not saying it wasn't.

A It was huge.

Q But there was the issue for you to visit the children and to do a home study when there has been a request for visiting ---

A Do not always do a home study, especially when it is --- when it's appropriate. It was not appropriate when this man was not able to stay sober enough to make a visit. I couldn't --- I was really stuck between a rock and a hard place, as a Guardian in this case.

Q Okay. Well, let's talk about the things you did do, which you spent a significant amount of time dealing with the alcohol issue, correct?

A I mean, I ---

Q I apologize for that. With Mr. Evans.

A Yes, I did. But it wasn't like ---

Q I understand, that was a fact that you were given. That was the cards that you were dealt with in this case, correct?

A Yes.

Q Okay, now in your affidavit ---

MR. SAXON: While you all are looking for that, the Board has asked that the attorneys be more organized. And perhaps, I'm talking about both parties, regarding the formative questions, whether they be answering a question, the idea of just answer what you're asked and the presentation of documents. This has been an exceedingly long and needlessly long hearing thus far. And the Board would like that all of you do your best --- witnesses and attorneys try to be efficient. And the Board thanks you.

Q I'm showing what's been marked as State's #11 and ask you if you recognize this document. And at this point, I'm just asking if you recognize this, Ms. Forman.

A I'm working, okay, I'm trying to get myself in the time frame. Yes.

Q Okay, and is that the affidavit that you provided in the Evans' case regarding certain facts and your position as Guardian Ad Litem?

A Yes.

Q Okay, and in that document, I'm going to have to share with you for a moment. You indicate there that there is no evidence that Mr. Evans has made a commitment to sobriety, correct? And that's #8, I'm sorry. Did you? I mean, I'm just asking you ---

A Did I say #8? Yes.

Q Okay, so my question is, did you acknowledge anywhere in that affidavit to the Court that he was attending sessions with Mr. Fotia?

A Mr. Fotia's sessions, okay. Mr. Fotia's sessions, I believe is where our session was marked 29th of '05, according to this testimony. This was dated in the year, this was 2007. There was nothing given to me that indicated that he was getting any of the help that he needed.

Q And did you ask for the informa--- you asked to sit in on one of the sessions, correct?

A Mr. Fotia, I sat in way back in --- and it was not focused on alcohol abuse, the session in November of '04.

Q And you did not, in your affidavit, regardless of when the time period it was, you did not put it in your affidavit that you actually attended the session. Right?

A I don't --- I'm not understanding why the relationship between attending sessions and let them just separate sobriety.

Q I'm just asking, in the affidavit, did you acknowledge --- did you show there anything for that?

A No. No.

Q Okay. I'm going to show you your final Guardian Ad Litem Report ---

A I did not have a final report.

Q It's not a final report. I'm going to show you the only report that you made to the Court, correct?

A This was to be ----

Q Which ended up settling, correct?

A The case did end up settling, so a final report was not issued. This was a report that was requested of me by the Court to --- to give a history of what had occurred with Mr. Evans during the time that I was involved.

Q Okay. Now, in there you point out where he has failed, or maybe had made some relapses, or maybe tested positive on some of his alcohol tests, right?

"the Court" meaning the Judge, said that he did not believe that there had been a substantial change because Mr. Evans had appeared before his Court many times and said the same thing. And he had in fact been drinking. But, I did provide an affidavit for the Court and testimony that I wanted the Court to take a consideration of him having supervised visitation that summer, and arranging something so that he could see these children.

Q Okay. And at that time the case was not settled. And did you make a motion to be able to see him with the children together at any time?

A No. I did not. He was --- I had no doubt that Mr. Evans loved his children. And I had no doubt his children loved him.

Q Right. But that is not really --- I am asking ---

A What I am saying is --- and I don't want to go on and on forever. But, the issue here was visitation, and the issue was not supervised versus unsupervised. The issue was should he even be there?

Q And you think that that allowed you to not have to comply with the Statute ---

A It's you --- I was not --- it was not appropriate to me go out there to see him with the children at that time.

Q Did you ask the Court to relieve you of those

obligations that you didn't feel it was necessary for you to be able to have to visit the children to render your role as the Guardian or to do home studies, you could be relieved?

A It very well may be in the Final Order.

Q Where is that documentation?

A In the Final Order, or ---

Q Where you made the request to be relieved from your obligations to do these things that are mandated by Statute?

A I don't usually request.

Q You just don't do it.

A No, ma'am. No, ma'am. The Judge will often do it.

Q But they did not --- where are the documents that you were relieved of having to do those obligations?

A Well, the obligations to go to someone's house and do a home study is when appropriate. It was not appropriate for me to go to Utah.

Q Does it say if it's appropriate, visit the child on at least one occasion?

A The children were in Utah. And when they came here, I was not here. Do I wish that I was here? Yes, I would have seen them. But I wasn't.

MS. BELL: I have nothing further. Thank you.

A Thank you.

Q I am asking you for Orders that indicated that the Judge instructed you to monitor Mr. Evans. That your activities were in response to the Court's specific instructions.

A Then I need also the February Order of ---

Q But that's not the one you need ---

A I need two.

MS. LEWIS: It's on Exhibit #2. We need the February 28th.

A Was not of '05.

Q What year?

A '05.

(Off the record)

MS. LEWIS: It's not in evidence yet.

A Okay. But, if we have it, don't we.

Q We do have it, February 28th.

(Off the record)

Q There has been a lot of testimony about why you were unable to visit the children in the Evans case. At anytime in this case did you talk with the children, perhaps on the telephone?

A No.

Q Did you ever think it might be important to find out what they thought?

A I had listened to a lot of conversations between

them and their dad; but, ---

Q You were trying to tape the conversations.

A Yes. I believe I made a judgment call that I didn't call them and talk with them on the phone because I did not want to cause undue stress, and because their situation --- the situation with Mr. Evans was that it was getting tighter and tighter in terms of his visitation. And how they felt about that was not something that I chose to ask them.

Q And I think this is my last question. Just one more question. Would you explain to me in your opinion what is the primary purpose of the Guardian ad Litem?

A The primary purpose? To serve the best interest of the child. And to adhere to the Court Order.

Q Is it the Guardian's responsibility to enforce the Court's Order?

A Not a hundred percent, but to certain sections of it to make sure that the Court --- it's brought to the Court's attention if it's not being followed correctly.

Q Is the Guardian's responsibility to facilitate the visitation, say that's your primary responsibility?

A To facilitate a visitation?

Q Yes.

A My primary?

Q Yes.

attorneys had arranged that at Chucky Cheese because he was leaving, and he was leaving for quite some time. Now, she and I spoke around that time and she indicated that when he came back, we could start working together. In other words, she did not want to start --- she and I talked about the possibility of the father not coming back, and the father did have a history of not showing up for large chunks of time. It didn't seem appropriate to start working when we didn't know if this was going to be an issue when he came back. I made a judgment call.

Q Okay. One other question. On your Guardian ad litem report, you say to give you a list of people ---

A Is this in ---

Q I don't know what.

A --- Evans case?

Q Yeah, Brian Evans and Annette ---

A Okay.

Q Okay. So, what all did these interviews --- I mean, what was this about? Was did all this entail? Where did you do with the information? Did you have to report this list? You know, put your notes or put this in a report to report to the Court, to give to the Court, or what's the purpose of that?

A The purpose of writing down persons interviewed, and the word "interviewed" is actually contact. Anybody that

I had verbal contact with. I didn't --- it doesn't necessarily mean interview, even if it was for a five minute phone call to some kind of organization. Anyone you have verbal contact with is pertaining to the investigation or the case, in this case thus far because it wasn't the final. Sometimes it can take up pages and pages. You have got to write down.

Q Okay. The persiverity meetings that we are, I am doing a section, and I am talking to you about your contact with --- that kind of thing. I am saying is this a verbal chit chat, almost?

A Right. No, not always chit chat. I mean, for instance I spoke with both the Plaintiff and the Defendant. And I spoke with the therapist. And I had maternal grandparents down ---

Q You had grandparents, and you didn't have a contact them ---

A That was actually --- I will say that that was actually an error on my part. I believe I meant to go back and get their physical address and phone number. And I think I forgot to do that.

Q Did you bill for that?

A For what?

Q For talking to these people?

A No. I actually spoke to them at the courthouse

thinking you were interviewing them, and you were asking them about ---

A The situation.

Q Yeah, the father's, whatever.

A Usually, yes. I guess my question to you is yes, but you don't send specific reports and saying, "I spoke with Doug Fotia, he said don't think it might use what he has told you or given you in your reports; and you would refer to it, but you wouldn't know --- it's really just --- and I am just going by how I was trained, and how different people do it. Because it's not --- people do not approach Guardian reports the same. You can get ten guardians in a room and have ten different layouts for reports. But, that word is just probably something that I took on from a report format that I was trained on.

Q There is no standard --- what we call standard work. Called standard, we are given the ---

A No, but there are standard things that have to be ---

Q --- be done.

A --- in a final report.

Q Okay. One other question. The reports of this. I think this is on the --- C[redacted], a work case. And would you say that you or somebody sent you all of these documents that, I guess, came from the computer. And the State really

sees what this is, but it looks like a whole lot of lunacy to me.

A I was never given anything that indicated to me that the --- I don't recall and I don't believe I was given those exact photographs, no.

Q You were not given this from ---

A I was given a pile of stuff that takes much of stuff from the internet and those police reports. I was given what Kate Schmutz was given by her client, her client saying I ---

Q And where did this come from?

A I do not know.

Q I mean, is this from what Ms. Kay said yesterday, I think this came from her husband's computer or something like that. No?

A I honestly don't know. I think she said that that was something that he had, but we are talking --- I mean, she is probably still --- I mean, I don't know when they are from, where they are from.

(Off the record)

Q Okay. So, did you have access to this? That is what I am getting at.

A Did I see that picture that I am looking at right now?

Q Yeah. Did you know? You did not?

A No. I can definitely tell you that. I also spoke with the detective Marshall, who she also gave the packet to. And from what I understand, and I believe we are going to call him today. We spoke to each other, the detective and I. And we kind of compared what we had. And he said to me ---

MS. LEWIS: I am going to object to hearsay.

A Oh, you are right. I'm sorry. It was indicated that she had other stuff she was not giving him.

Q Okay. But you were not aware of this because ---

A No.

Q Okay. That's that.

CHAIRPERSON MELTON: I don't have other questions. Because my only question was if you saw this, you may --- you still wanted the child to be in the home with the dad, but since you didn't see it, then I won't ask what you were thinking.

MS. DUNN: I want to piggy back on that, to get me straight. Okay.

REDIRECT EXAMINATION BY

MS. DUNN:

Q Because I thought I understood yesterday that that was included in this two thousand pages?

A Two thousand, plus pages.

Q That he gave you.

A That's her testimony. Maybe. But I do not ---

what I am saying is, "I never saw that before yesterday, or today."

Q Is it possible that that was included in that packet?

A I don't know. I honestly don't know.

Q Right.

A I went through it, her attorney went through it even more careful.

Q Right.

A And then she said that the same packet was given to the detective to file charges.

Q And this is why I think I've got it mixed up because I thought I understood you to say yesterday that it was poor quality.

A Oh, yes.

Q And that you acknowledged the packet, it was poor quality, and addressed the bad language.

A That's right.

Q And when is the majority of it is very poor quality.

A It was never.

Q But there seems to be some that may have been a trigger for ---

A Yes.

Q --- a further investigation.

A If I had seen this --- if I had seen this, that would have triggered me. I did not see anything like this. But I didn't just say, "I don't see anything." I did speak to her attorney and asked her what am I supposed --- direct me to where she is most concerned, and I let her attorneys testify to that today. I also spoke with the detective Marshall who was also given a packet. I can't say if it was exactly all the same two thousand plus pages, but he will testify today that he and I spoke ---

MS. LEWIS: Objection, because he will testify.

A Okay. In other words, okay, I was given all this stuff and I went through it, you know ---

Q And you billed for going through it.

A Yes. I did. You know, I read through this upper sheet and I --- but I mean, that's not recent. There isn't anything that I would say is a criminal act here. I saw pictures --- this isn't it. I did remember seeing that, because that's his son. That's his older son, he has another son that was with him. I read the comments and I thought some of them were like really rude, but they weren't really toward the child because they were rude, strange people. Not my culture to call people names and to joke about things like that, but --- She had some of this --- she wrote on some of them to show attention. She was really most concerned about

from what I could see is the fact that he had this --- she was really worried about this picture of the father and C[redacted] standing with --- together with a golf club. And he made some comment about golfing with my buddy. And she said that putting her son's picture on the internet made him available to all the perverts and the predators out there. She was very worried about that. You know, I mean I got stuff like hearings, but you know if I had any question about it I would --- I could call the lawyer that's supposed to be representing, you know, her concerns, and said, "Can you steer me in the right direction here?" And the detective called me.

Q On the June 15th in the attorney's office, where Mrs. Kay stormed out, would you consider that normal behavior?

A No. No.

Q Would that have been a trigger or a red flag to investigate other or more in depth ---

A The mother? Oh, I was attempting to do so. But the son sitting with his parent ---

Q Did she have custody of the child then?

A She had sole custody because a couple reasons. Because the father did not want it, custody; he wanted visitation. Because he was very much back and forth and around. But he was also over in Iraq. And from what I

CHAIRPERSON MELTON:

Q I just want to re-visit the issue of the exhibits that was brought up before.

A Okay.

Q You said did see some of this in the material ---

A I don't ---

Q You identified some of this. Is that correct?

A I saw pages that were like them that she submitted, but I can't say that I saw the exact pages that she submitted yesterday. I can say that I did not see anything that was provocative or that looked like pornography at all. At all.

Q Have you had an opportunity to look at this packet?

A I just am looking right now. I am concerned a little bit about this packet because it looks like she's linking her to some man, Grover Seaton, and --- and my name in, quote, pornography? I didn't see my name in anything that she submitted me, or I would have been kind of --- a little bit concerned about that.

Q It's my understanding that Ms. Kay was attempting to indicate that at this hearing was being circulated and had some concerns, that that was her concern. And there are things in here, I guess, that it brings out concerns, particularly the --- son.

A Certainly.
Q So that is what I was wondering, if you had --- that's why I asked again, if you had actually seen this or seen some of this material in the package that you received from the lawyer?
A I don't recall. But what I do recall is that I saw those pictures that she was concerned about, a couple of those pictures that I guess the father put on ---
Q Those pictures?
A Those pictures of the father and the son driving a golf ball with the comment something indicating "golfing with my buddy". And her commenting on the page that she was concerned that perverts and predators were going to see her son on the face page --- I don't think face book really existed then. I think it was my-space, which I don't know anything about. I do know about face book. She --- there were also pictures that are not here that she had given to her attorney, Mr. Glenn of Mr. --- of other pictures her husband at the time, on a dated page ---
Q Well, I didn't think that --- and these are the ones that you indicated that had been sent to the lawyer. These pictures, assuming you ---
A I never saw --- I know that I never saw a naked --- what looks like sort of a naked woman laying on a bed in a provocative position, which is what I am seeing an outline

of. I don't know --- there is no evidence that say that he was e-mailing naked pictures to his son. You know, I asked Ms. Schmutz, "Where does it indicate that these are going to her son to open up?" She said, "I don't see where that is."

EXAMINATION BY

CHAIRPERSON MELTON:

Q Now, you did indicate that she had expressed concern over the blog. Him putting the picture was on the blog site, or web page, or whatever.

A Right.

Q Did you ever go to the web page yourself to look to see if ---

A Oh, yes, I did. I asked my daughter to go because she had a my-space.

Q Okay.

A And I did. I did. I did that and ---

Q But none of this showed up?

A No, not on my-space, they would never --- there is not nudity.

Q How about the blog spot? Because that is --- it's on ---

A There wasn't really any other indication of where he was going. From what I recall, I had no reason to do that. I didn't have any specific web site like --- well, here, I mean, I don't know if I saw this before or not. But there is

pictures of people. I don't see any nudity. "My trip home, my trip home."

Q But this is the answer made to convince you ---

A No. I don't know.

Q Well, the subject is shredded, that you no longer have ---

A That's correct.

Q Okay.

A I had ---

Q And this was not in there.

A I don't know, but I am saying that if I had come --- and I went --- I sat on my bed and I went through it very, very carefully, very carefully. And I was reading the comments. Was it nice? No. Was it vulgar? At times.

Q One other question, and I want to turn to a different topic, your time line. You had indicated that you were able to redevelop the time line from Day Planner. By any chance was that ever entered, or offered, as documentation?

A I used them sometimes. I could have, I didn't know that that would be something you were --- I didn't know that you would submit your Day Planners, too.

Q Well, you know, different people put different amounts of information on a Day Planner. You look like you were able to develop a ---

A I did that. I did this through --- work with

received have been copies of what you think you now have?
A Correct.
Q Is there any reason why you can't have those original documents?
A I would have given them to my client.
Q Did she give you a list?
A I do not have a list, but I was told from Ms. Kay what she gave me the day the day they came down and did the time and end up just getting a meeting, and I'm sure that she didn't want to give me any.
Q So, you can't give it to us because Mrs. Knagenhjelm won't let you.
A And I didn't --- that that's what Ms. Kay can do when we submit it.

MS. DUNN: I have no further questions. Please answer any questions of Ms. Lewis or the Board.

CROSS EXAMINATION BY

MS. LEWIS:

Q I have a few questions. Ms. Schmutz, this is Gigi Lewis. I have a few questions for you. First of all, you indicated --- well, Ms. Forman in her testimony today was very specific that you provided her with this packet of information. Was it your statement just now that you were not sure, or you did not recall giving her that packet?
A I can't tell. I'm going by my time sheets, and

I can't tell if I did or not.

Q If you would have provided her with that packet would you have presented it to her in an unmarked envelope?

A What do you mean unmarked? Without a name on it? What ---

Q It is indicated that she received a packet of two thousand, plus, pages. And I'm sorry, I am reading from her time line that she presented to the Board yesterday. And she indicated that early June she received a packet of two thousand, plus, pages via mail in an unmarked envelope. Would you have presented a packet of information in that nature to ---

A You know, what my attorney did without her realizing it came from my office?

Q It's indicated here that it was in an unmarked envelope.

A Well, how would it even get to her if it wasn't marked?

Q All right. You indicated in your testimony just now that to your knowledge as of June 1st, 2006, there were no recommendations of unsupervised visitation to the Board, that you could remember. Is that correct?

A That is correct.

Q I issued a subpoena to you and you responded to it through the mail on May 7th, 2010. Is that correct?

gave me like almost a thousand pages at one time, or somewhere in that area.

Q Did you undertake any criminal action in response to reviewing those documents?

A What I saw was no criminal conduct they committed or anything about what I had gotten from her. So, there was no criminal action taken.

Q Did you communicate that to both attorneys?

A Yes, I did.

Q Did you also communicate that to Karen Forman, the Guardian in this case?

A Yes, I did.

Q Are you also aware that there are incident reports that have been filed in connection with Ms. Knagenhjelm in which she is the complainant and Mr. Higuera, her then husband, was the alleged perpetrator?

A Yeah, I saw reports on file, yes.

Q If a box is marked on those documents indicating administratively closed? What does that mean?

A That means that at that particular time there was not enough information to proceed any farther with it, and the case was closed because we don't have probable cause to make any arrest, and it would stay closed until further information becomes available, i.e., if somebody were to come in and confess to something or --- but that's about an

**SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING AND REGULATION**
**BEFORE THE STATE BOARD OF SOCIAL WORK EXAMINERS**

| | | |
|---|---|---|
| In the matter of: | ) | |
| | ) | |
| KAREN A. FORMAN | ) | |
| License No. LMSW .4931 | ) | |
| | ) | Motion to Dismiss |
| OIE #2007-1 | ) | |
| OIE #2007-21 | ) | |
| Respondent. | ) | |
| | ) | |

To: State Board of Social Work Examiners, by and through its attorney, Christa T. Bell:

The Respondent, by and through her undersigned attorney, hereby moves that the notice of charges dated August 17, 2009 be dismissed.

The State Board of Social Work Examiners has authority over licensed social workers in their actions as social workers.

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 guardian ad litems, 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 Respondent, therefore, moves that the notice of charges raised against her by the State Board of Social Work Examiners be dismissed.

Susan K. Dunn
Attorney for the Respondent
P.O. Box 582
Charleston, SC 29402
843-720-1425
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State Bar # 1798

SWE
Cont. rec'd.

**Sheryl Bailey**

**From:** Jamie Saxon
**Sent:** Tuesday, September 15, 2009 3:31 PM
**To:** Christa Bell; 'skingdunn@aol.com'
**Cc:** Phyllis Glenn; Sheryl Bailey
**Subject:** ~~Karen Forman~~
**Importance:** High
**Follow Up Flag:** Follow up
**Flag Status:** Red

I've just this moment received a request from the Respondent's attorney requesting a continuance of the hearing in this matter. It was sent to Christa Bell as the Board's attorney and forwarded to me. (Ms. Dunn, you may wish to note that Ms. Bell is representing the State in this matter, not the Board; the Board has its own attorney for non-discipline matters, and I serve as its attorney for discipline matters.) The State does not opposed the continuance, so it is granted; a new hearing will be scheduled as quickly as possible, and the parties will be notified of its date and time. As for the Respondent's request to have the case dismissed, that request is denied.

Please let me know if you have any questions.

Jamie Saxon

***N.B.:*** Phyllis, I don't have the chair's e-mail address, so please forward this to her. Thanks.

**James C. Saxon**
**Chief Advice Counsel/Hearing Attorney**
**SC Dept. of Labor, Licensing, and Regulation/POL**
**Post Office Box 11329**
**Columbia, SC 29211-1329**
**(803) 896-4369**

FILED
OCT 04 2010
SC ADMIN. LAW COURT

**STATE OF SOUTH CAROLINA**
**ADMINISTRATIVE LAW COURT**

| | |
|---|---|
| Karen A. Forman<br><br>Appellant,<br>vs.<br><br>South Carolina Department of Labor, Licensing, and Regulation, The State Board of Social Work Examiners,<br><br>Respondent. | Docket No: ____-ALJ-_____-_____-_____<br><br>**MOTION TO EXPEDITE AND FOR A STAY OF THE BOARD'S ORDER** |

The Appellant, by and through her undersigned counsel, moves this court to expedite this appeal and for a stay of the effect of the Board of Social Work Examiners' Order dated July 13, 2010.

1. Appellant is a licensed social worker.
2. In addition to being a social worker, Appellant is also frequently appointed as a private Guardian *ad Litem* (GAL) in family court matters involving custody and visitation of minor children. Pursuant to S.C. Code Ann. § 63-3-810, the family court "has absolute discretion in determining who will be appointed" as a GAL.
3. Appellant is currently working as a court-appointed GAL in approximately fifteen (15) open family court cases.
4. The instant appeal involves a Board of Social Work Examiners Order in which Appellant is sanctioned **not** for matters where she was acting as a social worker, but instead for her conduct **while acting as a GAL** in two separate family court matters. In both of these cases, the family court had appointed Appellant as GAL to protect the interests of the children.

5. At the time Appellant served as a GAL in these two matters, Appellant was a licensed masters social worker (LMSW). However, at the time of her hearing, Appellant had earned her license as an independent social worker in clinical practice (LISW-CP).

6. After a hearing held June 28, 2010, the Board found that Appellant had violated S.C. Code Ann. § 40-63-110(B)(9), i.e., she had violated the principles of professional ethics or standards of conduct **for social workers**.

7. The Board ordered that Appellant "may not work as a [GAL]" and further prohibited Appellant from "all independent practice."

8. Appellant contends that the Board is without authority to discipline or sanction her for her conduct as a GAL. Indeed, the South Carolina Supreme Court has held that a private person appointed as a GAL in private custody proceedings is afforded absolute quasi-judicial immunity for acts performed within the scope of the GAL appointment. Without this protection, a GAL would be exposed to "a constant threat of lawsuits from disgruntled parties." Fleming v. Asbill, 326 S.C. 49, 57, 483 S.E.2d 751, 756 (1997).

9. Given that a disgruntled parent could not sue Appellant in court for her acts as a GAL, it necessarily follows that a disgruntled parent cannot complain to the Board of Social Work Examiners for Appellant's handling of a custody/visitation case. Here, the underlying complaints were made by disgruntled parties in the family court cases.

10. Moreover, the Supreme Court has stated that a GAL "functions as a representative of the court, appointed to assist the court in making its determination of custody by advocating for the best interest of the children and providing the court with an objective view." Patel v. Patel, 347 S.C. 281, 287, 555 S.E.2d 386, 389 (2001).

11. Because a GAL is a representative of the court, there was no "social worker-client relationship" in these family court matters investigated by the Board. While the GAL's conduct is subject to judicial oversight, see Patel v. Patel, it is not subject to oversight by the Board of Social Work Examiners.
12. Therefore, the Board acted outside its statutory authority by disciplining Appellant for her actions as a GAL.
13. For these and other reasons, Appellant respectfully requests that the Board's Order on appeal be stayed. Without a stay, the Board's Order that Appellant not work as a GAL will effectively conflict with numerous family court orders appointing Appellant as a GAL in ongoing family court disputes over custody/visitation.
14. Appellant further requests that this matter be expedited so that the legal issues can be decided without undue delay and further prejudice to Appellant's ability to earn a living.

Respectfully submitted,

THE TEDESCHI LAW FIRM, P.A.



Debra S. Tedeschi
1422 Laurel St.
Columbia, SC 29201
(803) 540-3090

Attorney for Appellant

Columbia, South Carolina
Aug. 4, 2010

# THE STATE OF SOUTH CAROLINA

# IN THE COURT OF APPEALS

John D. McLeod, Judge, Administrative Law Court

Case No. 2010AL1100591

Karen A. Forman, Appellant,

versus

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

MOTION TO CONFIRM AUTOMATIC STAY
OR ALTERNATIVELY PETITION FOR
WRIT OF SUPERSEDEAS

The appellant is a licensed social worker seeking review of sanctions from the South Carolina board of Social Work Examiners. It is the appellant's position that the sanctions are stayed under Rule 241, SCACR. Pursuant to Rule 241(b)(11), SCACR, appeals from administrative tribunals as provided in S. C. Code Ann. Section 1-23-380(A)(2) are excepted from the automatic stay by filing a notice of appeal. S. C. Code Ann. Section 1-23-380(A)(2) 1-23-380(2) provides: "Except as otherwise provided in this chapter, the serving and filing of the notice of appeal does not itself stay enforcement of the agency decision. The serving and filing of a notice of appeal by a licensee for review of a fine or penalty or of its license stays only those provisions for which review is sought and matters not affected by the notice of appeal are not stayed."

However, in the event the Rule is otherwise interpreted by the Court, the appellant seeks a writ of supersedeas based on the following:

1. The appellant is a licensed social worker.
2. In addition to being a social worker, Appellant is also frequently appointed as a private guardian *ad litem* in family court matters involving custody and visitation of minor children. Pursuant to S. C. Code Ann. Section 63-3-80, the family court "has absolute discretion in determining who will be appointed as a guardian *ad litem*."
3. Appellant is currently working as a court-appointed guardian *ad litem* in approximately twenty family court cases, four of which are scheduled for trial during the next three months.
4. This appeal involves a Board of Social Work Examiners Order in which Appellant is sanctioned not for matters where she was acting as a social worker, but instead for her conduct while acting as a guardian *ad litem* in family court. The complainants also made complaints to the family court, but those were resolved in the appellant's favor. The appellant has not received any complaints in more than five years.
5. By order of the Board of Social Work Examiners dated July 13, 2010, and reaffirmed after remand from the Administrative Law Court dated September 19, 2012, the appellant was sanctioned for violations of the principles of professional ethics or standards of conduct for social workers. The Board ordered that the appellant "may not work as a [GAL]" and further prohibited appellant from "all independent practice."
6. A Writ of Supersedeas is needed to avoid:
   a. Delay in resolution of the appellant's family court cases.

b. Increased cost of appointing new guardians *ad litem* in the appellant's family court cases to the family court litigants.

c. Emotional strain to the children of the family court litigants who's families await resolution in the family court.

d. Additional administrative work for the family court and the clerk of court handling the motions and orders to have new guardians *ad litem* appointed.

e. Deprivation of the appellant's ability to earn a living prior to a judicial resolution of the issues, a denial of due process of law.

Law Office of Thomas F. McDow

/s/Erin K. Urquhart
Erin K. Urquhart
Attorney for Appellant
514 Oakland Avenue, Second Floor
Post Office Box 891
Rock Hill SC 29731-6891
Telephone 803-327-4151

October 8, 2012

STATE OF SOUTH CAROLINA )
) VERIFICATION
YORK COUNTY )

I have read the motion to confirm automatic stay or alternatively petition for writ of supersedeas and the facts stated therein are true; however, I do not have the education or training to pass judgments on the legal arguments and authorities.

Sworn to and subscribed before me
October 1, 2012

/s/Gregory S. Forman
Notary Public for South Carolina
My commission expires

/s/Karen Forman
Karen Forman

# THE STATE OF SOUTH CAROLINA

# IN THE COURT OF APPEALS

John D. McLeod, Judge, Administrative Law Court

Case No. 2010AL1100591

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

versus

Karen A. Forman Appellant

PROOF OF SERVICE

I certify that I served the motion to confirm automatic stay or alternatively petition for writ of supersedeas on the respondent and the Administrative Law Court by depositing a copy of it in the United States Mail, postage prepaid, on October 8, 2012, addressed as follows:

Christa Tidwell Bell
Georgia D. L. Lewis
Post Office Box 11329
Columbia SC 29221

South Carolina Administrative Law Court
Edgar A. Brown Building
1205 Pendleton Street, Suite 224
Columbia South Carolina 29201

Law Office of Thomas F. McDow

/s/Erin K. Urquhart
By Erin K. Urquhart
Attorney for Appellant
514 Oakland Avenue, Second Floor
Post Office Box 891
Rock Hill SC 29731-6891
Telephone 803-327-4151

October 8, 2012

RECEIVED: 10-26-2012
Law Office of Thomas F. McDow

# THE STATE OF SOUTH CAROLINA

# IN THE COURT OF APPEALS

RECEIVED
OCT 18 2012
SC Court of Appeals

John D. McLeod, Judge, Administrative Law Court

Case No. 2010AL1100591

Karen A. Forman, Appellant,

versus

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

MOTION TO CERTIFY APPEAL TO THE SUPREME COURT

The appellant moves for the South Carolina Court of Appeals to certify this case to the Supreme Court pursuant to Rule 204(b), SCACR, upon the grounds that this appeal involves both "an issue of significant public interest" and "a legal principle of major importance."

Article I, § 8, of the Constitution of the State of South Carolina which provides "In the government of this State, the legislative, executive, and judicial powers of the government shall be forever separate and distinct from each other, and no person or persons exercising the functions of one of said departments shall assume or discharge the duties of any other." Does the imposition of sanctions by the executive branch on an appointee of the judicial branch violate the separation of powers provision of the Constitution?

Karen A. Forman, the appellant, was appointed as guardian *ad litem* in two child visitation cases by the Family Court of the Ninth Judicial Circuit pursuant to the

South Carolina Private guardian *ad litem* statute, S. C. Code Ann. 63-3-810 *et. seq.* She is also a Licensed Master Social Worker. Two disgruntled litigants complained to various agencies and entities including the Family Court and the Board of Social Work Examiners. The Family Court, the sole entity with jurisdiction over guardians, declined to take action. The Board of Social Work Examiners assumed jurisdiction and imposed sanctions. The Administrative Law Court affirmed the Board's jurisdiction and remanded the case to the Board for a review of the sanctions. The Board affirmed its prior sanctions. This appeal followed.

Facts

1. The appellant is a licensed social worker through the State of South Carolina with a Masters degree in social work and has been at all times relevant to the appeal.

2. The appellant has met all requirements S. C. Code Ann. Section 63-3-810 et. seq. and has been appointed as a private guardian *ad litem* in family court since 2003, that being her primary source of income and employment.

3. In response to complaints made regarding her work as a guardian *ad litem*, the South Carolina Department of Labor, Licensing and Regulations's State Board of Social Work Examiners placed sanctions on the appellant, including a total restriction against work as a guardian *ad litem*.

Authorities

4. "In the government of this State, the legislative, executive, and judicial powers of the government shall be forever separate and distinct from each other, and no

person or persons exercising the functions of one of said departments shall assume or discharge the duties of any other."[1]

5. The South Carolina Department of Labor, Licensing, and Regulation exists, under direction of an appointment of the Governor, to regulate certain professions, such as social work.[2]

6. "The right of a person to engage in a lawful profession, trade, or occupation of choice is clearly protected by both the Constitution of the United States and the Constitution of the State of South Carolina. The State cannot abridge this right except as a reasonable exercise of its police powers when it is clearly found that abridgement is necessary for the preservation of the health, safety, and welfare of the public."[3] "No statute or regulation may be imposed under the article upon a profession or occupation except for the exclusive purpose of protecting the public interest when the (1) unregulated practice of the profession or occupation can harm or endanger the health, safety, or welfare of the public..."[4] Guardian *ad litem* work is not an "unregulated" profession or occupation. See the Private Guardians *ad litem* Statute, S. C. Code Ann. 63-3-810 *et. seq.*

7. The family court has exclusive jurisdiction over the appointment of a guardian *ad litem*. The family court "has absolute discretion in determining who will be

---

[1]SC Const. Art. I, Section 8.

[2]S. C. Code Ann Sections 41-3-10 and 40-1-40.

[3]S. C. Code Ann. Section 40-1-10 (A).

[4]S. C. Code Ann. Section 40-1-10 (B)(1).

appointed" as a guardian *ad litem*.[5] Likewise, the Family Court has the exclusive authority to remove a guardian *ad litem*.[6] A guardian *ad litem*, by statute, is only appointed if, in the discretion of the Family Court Judge, the Court will not be fully informed about the facts of the case and there is a substantial dispute necessitating the appointment.[7] Guardians *ad litem* exist for the sole purpose of assisting the Family Court, a purely judicial function.

Conclusion

Jurisdiction between these the executive and judicial branches of state government is both an issue of significant public interest and a legal principle of major importance.

> The principle of the separation of the powers of government is fundamental to the very existence of constitutional government as established in the United States. The principle is one of the chief merits of the American system of written constitutions. The division of governmental powers into executive, legislative, and judicial represents probably the most important principle of government declaring and guaranteeing the liberties of the people, and it is a matter of fundamental necessity, and is essential to the maintenance of a republican form of government. No maxim has been more universally received and cherished as a vital principle of freedom.[8]

It is a violation of the Constitution of South Carolina for the South Carolina Department of Labor, Licensing and Regulation to restrict the practice of a purely judicial function. This is both "an issue of significant public interest" "a legal principle

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[5]S. C. Code Ann. Section 63-3-180(b).

[6]S. C. Code Ann. Section 63-3-870.

[7]S. C. Code Ann. Section 63-3-810(A)(1).

[8]*State ex rel. McLeod v. Yonce*, 274 S.C. 81 (S.C. 1979).

of major importance."[9] Thus, certification to the Supreme Court of South Carolina is appropriate.

Law Office of Thomas F. McDow

/s/Erin K. Urquhart
Erin K. Urquhart
Attorney for Appellant
514 Oakland Avenue, Second Floor
Post Office Box 891
Rock Hill SC 29731-6891
Telephone 803-327-4151

October 15, 2012

[9]Rule 204(b), SCACR.

# THE STATE OF SOUTH CAROLINA

# IN THE COURT OF APPEALS

John D. McLeod, Judge, Administrative Law Court

Case No. 2010AL1100591

RECEIVED
OCT 18 2012
SC Court of Appeals

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

versus

Karen A. Forman Appellant

PROOF OF SERVICE

I certify that I served the motion to certify appeal to the Supreme Court on the respondent and the Administrative Law Court by depositing a copy of it in the United States Mail, postage prepaid, on October 15, 2012, addressed as follows:

Christa Tidwell Bell
Georgia D. L. Lewis
Post Office Box 11329
Columbia SC 29221

South Carolina Administrative Law Court
Edgar A. Brown Building
1205 Pendleton Street, Suite 224
Columbia South Carolina 29201

Law Office of Thomas F. McDow

/s/Erin K. Urquhart
By Erin K. Urquhart
Attorney for Appellant
514 Oakland Avenue, Second Floor
Post Office Box 891
Rock Hill SC 29731-6891
Telephone 803-327-4151

October 15, 2012

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA | ) | IN THE FAMILY COURT FOR THE |
| | ) | NINTH JUDICIAL CIRCUIT |
| COUNTY OF BERKELEY | ) | CASE NUMBER: 2003-DR-08-1488 |
| KATHERINE KNAGENHJELM, | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| -versus- | ) | **TEMPORARY ORDER** |
| | ) | |
| BRIAN HIGUERA, | ) | |
| | ) | |
| Defendant. | ) | |
| | ) | |

Complainant's Exhibit #1

**HEARING DATE:** October 23, 2003
**PRESIDING JUDGE:** Honorable Wayne M. Creech
**PLAINTIFF'S ATTORNEY:** John Graham Altman
**DEFENDANT'S ATTORNEY:** Michael H. Murphy
**COURT REPORTER:** Leah G. Dupree

**THIS MATTER** came to be heard before me pursuant to a properly filed Notice of Motion, Summons and verified Complaint filed on behalf of the Plaintiff herein seeking temporary relief. Present are the Plaintiff, her attorney, John Graham Altman, the Defendant and his attorney, Michael H. Murphy.

The Court examined the pleadings in this action, the Financial Declarations of the parties, together with affidavits submitted by the parties, made inquiries of the parties and further heard statements of the parties' attorneys.

The parties came to an agreement as to possession of the marital home with its furnishings and spousal support. That agreement is as follows:

1. The Plaintiff shall have the temporary use and possession of the marital home together with its furnishings and fixtures. The Defendant shall be responsible for the mortgage payments on the marital home and shall keep the payments current.

CERTIFIED TRUE COPIES OF RECORDS IN THIS COUNTY
Mary P Brown
11/17/03
DATE CLERK OF COURT, FAMILY COURT
BERKELEY COUNTY, SOUTH CAROLINA

2. The Defendant shall pay Four Hundred ($400.00) Dollars per month as temporary spousal support, payable through the Clerk of Court with the five (5%) percent service charge added thereto, commencing November 1, 2003 and continuing on the first of each month until further order of this Court. The November 2003 payment will not be past due if paid on or before November 25, 2003.

As to the remaining issues, the Court makes the following decision:

1. The Mother shall have temporary custody of the minor child, C[redacted] Higuera, subject to the restrictions indicated as applicable to her on the attached visitation schedule.

2. The Father shall have visitation per the attached visitation schedule, subject to any restrictions indicated as applicable to him.

3. The Father shall pay child support in the amount of Five Hundred Sixty Six ($566.00) Dollars per month, per the attached monthly worksheet, payable through the Clerk of Court together with the five (5%) percent service charge, commencing November 1, 2003 and continuing on the first of each month until further order of this Court. The November 2003 payment will not be past due if paid on or before November 25, 2003.

4. The Father will maintain health and dental insurance through his employment covering C[redacted] and the Plaintiff. All uncovered medical and dental expenses in excess of $250.00 per year are to be paid per the income percentages on the child support worksheet.

5. The Court has determined that without a guardian ad litem it will likely not be fully informed as to the facts of the case. There is a substantial dispute as to the issue of custody and visitation and the Court finds it necessary under the facts as alleged to

2

appoint a guardian ad litem (GAL). Suzanne E. Groff is appointed GAL as per the attached order making the appointment.

6. Restraining Orders are as follows:

Neither party will:

a) Harm, harass, threaten, follow, bother or interfere with the other.
b) Enter or attempt to enter the place of residence or employment of the other.
c) Sell, encumber, hide, destroy, waste, or dispose of any property.
d) Incur any debt in the name or on account of the other.
e) Violate any restriction on the attached visitation schedule indicated as applicable to him/her.

7 Debts and Assets as follows:

a) Each party will retain possession of the assets he/she now has.
b) Each party will pay the debts shown on his/her financial declaration.

8. Discovery will be mutual in accordance with the South Carolina Rules of Civil Procedure.

9. The Defendant shall contribute Three Thousand Five Hundred Seventy Five ($3,575.00) Dollars towards the Plaintiff's attorneys fees and costs, payable to John Graham Altman, within One Hundred Twenty (120) days of the date of this Order.

10. All other relief not specifically addressed herein is held in abeyance until further Order of this Court. And it is

**SO ORDERED** this 10 day of November, 2003, in Moncks Corner, South Carolina.

s/Wayne M. Creech

**WAYNE M. CREECH, PRESIDING JUDGE**
**FAMILY COURT, NINTH JUDICIAL ORDER**

# VISITATION SCHEDULE

File # : 03-DR-08-1488 Case : Knaggenhielm v Higuera

1. ☒ WEEKENDS
   - ☐ Every other weekend from Friday at 6pm until Sunday at 6pm.( Begins _____ ).
   - ☒ Every other weekend on Saturday at 9:00 am until 4:00 pm and Sunday from 2:00 pm until 6:00 pm ( begins 11/21/03 ).

2. ☐ SUMMER:
   - ☐ Four ( 4 ) weeks selected by the visiting parent with notice to the custodial parent by certified mail on or before the __1st___ of___May_____. Failure to give notice as required will result in the custodial parent choosing the weeks for visitation, but not in denial of visitation.
     ( begins 2003 )
   - ☐ One-half of the summer vacation as defined by the school district where the child lives.
     ☐ 1st half:
     Beginning at 6pm on the day school dismisses for summer vacation and ending at 6pm of the day of the vacation mid-point. ( _____ to the visiting parent )
     ☐ 2nd half:
     Beginning at 6pm on the day of the vacation mid-point and ending at 6pm on the Friday before school starts.
     ( _____ to the visiting parent )

3. ☐ HOLIDAYS:
   ALL MAJOR HOLIDAYS ARE TO BE ALTERNATED BETWEEN THE PARENTS AS FOLLOWS :
   - a) CHRISTMAS:
     Week one: 6pm the day school dismisses for the holidays in the district where the child(ren) reside until 2pm Christmas Day.
     ( 2004 to the visiting parent )
     Week two: 2pm Christmas day until 6pm the day before school reconvenes.
     ( 2003 to the visiting parent )
   - b) THANKSGIVING:
     6pm Wednesday until 6pm Sunday.
     ( 2003 to the visiting parent )
   - c) SPRING BREAK:
     6pm the day school dismisses until 6pm the day before school reconvenes.
     ( 2004 to the visiting parent )
   - d) MOTHER'S DAY:
     6pm Friday until 6pm Sunday every year with the Mother.
   - e) FATHER'S DAY:
     6pm Friday until 6pm Sunday every year with the Father.
   - f) LABOR DAY:
     6pm Friday until 6pm Monday
     ( 2003 to the visiting parent )

4. ☒ TELEPHONE:
   - ☒ INITIATED BY VISITING PARENT:
     Every Wednesday at 7:00 - 8:00 pm for to exceed 30 minutes at visiting parent's expense.
   - ☐ INITIATED BY THE CHILD(REN):
     As often as the children wish to call ( at the expense of visiting parent ).

5. ☐ OFF-WEEK VISITATION:
   During the week when there is no weekend visitation:
   - ☐ Each Wednesday from School dismissal until 9:00 pm.
   - ☐ 6pm the Thursday preceding the weekend when visiting parent does not have visitation until Friday morning when school begins.

6. ☒ NOTICE:
   - ☒ 48 HOURS:
     Visiting parent must give 48 hours notice of intention ☒ to ☐ not to visit.
   - ☐ 24 HOURS:
     Visiting parent must give 24 hours notice of intention ☐ to ☐ not to visit.
   - ☐ Other:
     Visiting parent must give _____ hours notice of intention ☐ to ☐ not to visit.

7. ☒ RESTRICTIONS:
VISITING PARENT (VP) MUST NOT/ CUSTODIAL PARENT (CP) MUST NOT / NEITHER PARTY (NP) WILL:

NP Expose the child(ren) to violent conduct.
____ Expose the child(ren) to a non-spouse romantic companion overnight or under circumstances that are immoral or illegal ( see SC 16-15-80 ).
NP Expose the child(ren) to any non-spouse romantic companion.
____ Expose the child(ren) to the use or possession of alcohol , drugs, or other intoxicants. ( No use is allowed within 24 hours prior to contact with the child(ren). )
NP Expose the child(ren) to the excessive use of alcohol or other legal intoxicants or any use or possession of illegal drugs.
NP Remove the child(ren) from SC without a court order.
____ Remove the child(ren) from county without a court order.
NP Make or allow disparaging comments about the other parent or his/her family in the presence of the child(ren).
NP Use or allow the use of vulgar, profane, demeaning, violent or threatening language in the presence of the child(ren).
NP Expose the child(ren) to sexually explicit conduct, language, TV, videos, movies books or materials of any kind.
NP Discuss this case with or in the presence of the child(ren).
VP Other.

All visitation must be supervised by a person approved in writing by Mother. Father must notify Mother of the location ( address and Phone# ) where visitation will be exercised. Father must exercise visitation in a proper environment. Father's visitation will be reviewed and modified as appropriate upon completion of an mutual investigation by the GAL with recommendations as to needed protections and restrictions.

8. ☒ RECORDING:

Both parties may record all conversations and conduct at visitation exchange by audio and/or video recorder.

9. ☒ PICK-UP / DELIVERY FOR VISITATION
a) WHO WILL PICK-UP AND DELIVER:
☒ Visiting parent will pick-up and return the child(ren) at visitation
☐ Custodial parent will deliver the child(ren) and pick-up the child(ren) at visitation.
☐ Custodial parent will deliver for visitation and visiting parent will return the child(ren) after visitation.
☐ Parents will meet at pick-up and delivery.

b) LOCATION OF PICK-UP AND DELIVERY:
☒ Home of the custodial parent.
☐ Home of the visiting parent
☐ ½ way at ____

c) COSTS:
☒ Visiting parent will pay all costs.
☐ Custodial parent will pay all costs.
☐ Parents will each pay ½ of all costs.

10. ☐ OTHER:

____

11. ☒ GENERAL INFORMATION:

a) All holiday visitation takes priority over regular weekend visitation.

b) Alternating of weekends begins new after summer visitation and each holiday ( example: the visiting parent would not have Thanksgiving weekend and the weekend after Thanksgiving )

c) Parents may designate a responsible adult to assist them with exchange of the child(ren) for visitation.

d) Parents must keep each other informed at all times as to their current residence address, work address, residence telephone number and work telephone number.

e) Only items marked with an " x " apply in this case. In paragraph 7 above (VP), (CP), and (NP) designate to whom the restrictions apply.

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA | ) | IN THE FAMILY COURT OF THE |
| | ) | FIRST JUDICIAL CIRCUIT |
| COUNTY OF DORCHESTER | ) | CASE NO: 03-DR-18-920 |
| | ) | |
| BRIAN L. EVANS, | ) | |
| Plaintiff, | ) | |
| | ) | **CONSENT ORDER AS TO** |
| vs. | ) | **RULE TO SHOW CAUSE** |
| | ) | |
| ANNETTE L. EVANS, | ) | |
| Defendant. | ) | |
| | ) | |

2005 SEP 20 PM 4:13

| | |
|---|---|
| DATE OF HEARING: | JULY 12, 2005 |
| TRIAL JUDGE: | WILLIAM J. WYLIE, JR. |
| PLAINTIFF'S ATTORNEY: | PEGGY M. INFINGER |
| DEFENDANT'S ATTORNEY: | ROBERT W. POLK |
| GUARDIAN AD LITEM: | KAREN FORMAN |
| COURT REPORTER: | NOT APPLICABLE |

**THIS MATTER** came before the Court for a hearing on the Rule To Show Cause issued against the Plaintiff dated May 18, 2005. Prior to the call of the case, the Court was advised that an agreement had been reached resolving the issues raised by the Rule To Show Cause and the parties were granted permission to submit a Consent Order in lieu of an appearance at the hearing. The parties' agreement is as follows:

ONE: The parties hereto are governed by the Orders in this case issued by the undersigned and the Honorable Nancy C. McLin.

TWO: The parties have agreed as follows:

A) Plaintiff admits he is in wilful contempt of the prior Order(s) in this case regarding the use of alcohol as it pertains to the Order As To Rule Show Cause dated March 18, 2005;

B) Plaintiff admits he is in wilful contempt of the prior Order(s) in this case

regarding payment of attorney fees in the amount of $1285.00 as required by the Temporary Order in this matter dated June 8, 2005;

C) Plaintiff shall pay Defendant's counsel the sum of $1285.00 on or before July 13, 2005, so as to bring himself in compliance with the Temporary Order dated June 8, 2005;

D) Plaintiff shall pay Defendant's counsel the sum of $3519.35 on or before September 15, 2005 representing a portion of the sums owed as a result of the Order As To Rule To Show Cause dated March 18, 2005, and the finding of contempt herein;

E) Plaintiff shall pay Defendant's counsel the total sum of $1200.00, payable in monthly installments of $200.00 each beginning July 30, 2005, and due and payable on the 30th day of each month thereafter, representing the remainder of the sums due under the Order As To Rule To Show Cause dated March 18, 2005, not paid as a result of subparagraph (D) above and partial reimbursement of the attorney fees and costs incurred for the necessity of bringing the Rule To Show Cause dated May 18, 2005. As to this portion of the payments required to be made Plaintiff may seek an extension of time on these payments in the event of a showing of a substantial change of circumstances;

F) Plaintiff is admonished regarding his responsibilities to comply with the Court's Orders in the past and future, particularly with regard to his telephone visitation with the children and the requirements placed upon him to comply with the time restraints placed upon those telephone visitations;

G) Plaintiff shall be permitted to extend his telephone visitation with the parties' children to calls which extend 15 minutes in length. Plaintiff shall avail himself of a timer to help him maintain compliance with the requirements placed upon him for those telephone visitations; and

H) A Bench Warrant for the arrest of Plaintiff shall issue without the necessity of further hearing upon Defendant's counsel providing to the Court an Affidavit that Defendant has not paid the sums as required by the parties' agreement herein and Plaintiff shall remain incarcerated for a period not to exceed one year until such sums have been paid in full. Defendant's counsel shall provide Plaintiff's counsel a copy of the Affidavit at least 48 hours prior to submission of the same to the Court;

THREE: The Court finds that the parties' agreement is fair and reasonable under all the circumstances.

FOUR: The parties' agreement should be approved by the Court and made the Order of the Court.

**NOW, THEREFORE**, based upon the foregoing, it is hereby **ORDERED, ADJUDGED** and **DECREED** as follows:

A) The parties' agreement, as delineated in paragraph TWO herein, is approved by the Court and made the Order of the Court thereby subjecting the offending party to the contempt powers of the Court; and

**IT IS SO ORDERED!**

William J. Wylie, Jr.
Presiding Judge
Family Court, Dorchester County
First Judicial Circuit

August 24, 2005
Summerville, South Carolina

**I CONSENT:**

Peggy M. Infinger, Esq.
Attorney for Plaintiff

**I CONSENT:**

Robert W. Polk, Esq.
Attorney for Defendant

RECEIVED
SEP 16 2005
BY: dlm



RECEIVED
AUG 19 2005
BY: dlm

FOUR: The parties' agreement should be approved by the Court and made the Order of the Court.

**NOW, THEREFORE,** based upon the foregoing, it is hereby **ORDERED, ADJUDGED and DECREED** as follows:

A) The parties' agreement, as delineated in paragraph TWO herein, is approved by the Court and made the Order of the Court thereby subjecting the offending party to the contempt powers of the Court; and

**IT IS SO ORDERED!**

William J. Wylie, Jr.
Presiding Judge
Family Court, Dorchester County
First Judicial Circuit

August _____, 2005
Summerville, South Carolina

**I CONSENT:**

Peggy M. Infinger, Esq.
Attorney for Plaintiff

**I CONSENT:**

Robert W. Polk, Esq.
Attorney for Defendant

Ex #2

| | |
|---|---|
| STATE OF SOUTH CAROLINA ) | IN THE FAMILY COURT FOR |
| ) | THE FIRST JUDICIAL CIRCUIT |
| COUNTY OF DORCHESTER ) | CASE NO.: 03-DR-18-920 |
| ) | |
| BRIAN L. EVANS, ) | |
| ) | |
| PLAINTIFF, ) | |
| ) | ORDER FOR RULE TO SHOW CAUSE |
| VS. ) | HELD ON MARCH 27, 2006 |
| ) | |
| ANNETTE L. EVANS, ) | |
| ) | |
| DEFENDANT. ) | |

FILED AND RECORDED
2006 MAY -9 PM 2:00
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

TRIAL JUDGE: NANCY C. MCLIN
DATE OF HEARING: MARCH 27, 2006
COURT REPORTER: JULIE MURDAUGH
DEFENDANT'S ATTORNEY: NORBERT E. CUMMINGS, JR.
PLAINTIFF'S ATTORNEY: PEGGY M. INFINGER

**PROCEDURAL HISTORY**

This matter comes before the Court on a Rule to Show Cause filed on behalf of the Defendant on February 28, 2006. The Plaintiff was personally served on March 8, 2006. The Defendant is present and represented by her attorney, Norbert E. Cummings, Jr. of the Dorchester County Bar. The Plaintiff is present and represented by his attorney, Peggy M. Infinger. This being a matter for contempt, the Court reviewed the pleadings, exhibits, financial declarations and listened to the testimony presented.

**FINDINGS OF FACT**

Based on the evidence presented, the Court makes the following findings of fact:

1. The Court finds that the Plaintiff admits that he is in violation of the Court Order and is in Contempt of Court.

2. The Court finds that the Plaintiff is sentenced to

CM1

six months in the Dorchester County Detention Center. The Court finds that the Plaintiff can purge himself of said sentence by the Plaintiff complying with the following Order of the Court:

A. The Plaintiff shall complete an alcohol assessment with the Dorchester Alcohol and Drug Abuse Commission within 30 days and follow and successfully complete any and all recommendations of the counselors if any.

B. The Plaintiff shall pay the Defendant's attorney fees in the amount of $1,325.00 within 120 days for the date of this hearing directly to Norbert E. Cummings, Jr. at 100 B. South Main Street, Summerville, South Carolina 29483.

C. The Plaintiff shall the Defendant $750.00 within 30 days of this hearing to reimburse the Defendant for the payment to Dr. Bennett for his fees to be present at Court.

D. The Plaintiff shall pay the Guardian Ad Litem fees in the amount of $350.00 directly to Karen Forman within 30 days of this hearing.

**CONCLUSIONS OF LAW**

The Court concludes as a matter of law that the Court has jurisdiction to hear and determine all issues raised by the pleading and has jurisdiction of the parties.

BASED UPON the findings of the fact and equitable law, it is hereby ORDERED:

A. The Plaintiff is in contempt of Court;

CM.2

B. The Plaintiff shall complete an alcohol assessment with the Dorchester Alcohol and Drug Abuse Commission within 30 days and follow and successfully complete any and all recommendations of the counselors if any.

C. The Plaintiff shall pay the Defendant's attorney fees in the amount of $1,325.00 within 120 days for the date of this hearing directly to Norbert E. Cummings, Jr. at 100 B. South Main Street, Summerville, South Carolina 29483.

D. The Plaintiff shall the Defendant $750.00 within 30 days of this hearing to reimburse the Defendant for the payment to Dr. Bennett for his fees to be present at Court.

E. The Plaintiff shall pay the Guardian Ad Litem fees in the amount of $350.00 directly to Karen Forman within 30 days of this hearing.

IT IS SO ORDERED.

Judge Nancy C. McLin
Family Court for the
First Judicial Circuit

Summerville, South Carolina
This 21 day of April, 2006

**FAILURE TO COMPLY WITH THE TERMS OF THIS ORDER MAY CONSTITUTE CONTEMPT OF COURT AND MAY BE PUNISHABLE BY A FINE, A PUBLIC WORK SENTENCE, OR BY IMPRISONMENT IN A LOCAL CORRECTIONAL FACILITY OR ANY COMBINATION THEREOF, IN THE DISCRETION OF THE COURT, BUT NOT TO EXCEED IMPRISONMENT IN A LOCAL CORRECTIONAL FACILITY FOR ONE YEAR, A FINE OF ONE THOUSAND FIVE HUNDRED ($1,500.00) DOLLARS, A PUBLIC WORK SENTENCE NOT TO EXCEED THREE (300) HUNDRED HOURS, OR ANY COMBINATION THEREOF AS PROVIDED BY S.C. CODE ANN. 20-7-1350 (1976) (AS AMENDED).**

CH-3

STATE OF SOUTH CAROLINA )
) IN THE FAMILY COURT
COUNTY OF DORCHESTER ) FOR THE FIRST JUCICIAL CIRCUIT
CASE NO.:2003-DR-18-920

BRIAN L. EVANS,
Plaintiff,

vs.

ANNETTE L. EVANS,
Defendant.

BENCH WARRANT

TO ALL SHERIFFS, DEPUTY SHERIFFS, CONSTABLES, AND OTHER PEACE OFFICERS OF THE STATE:

This matter is before the Court to an Affidavit submitted by Norbert E. Cummings, Jr., Attorney at Law. The Plaintiff, Brian L. Evans, was found in contempt of Court on March 27, 2006, and by Order issued on April 21, 2006, by the Honorable Nancy C. McLin, he was sentenced to six months in the Dorchester County Detention Center. It was further ordered that the Plaintiff could purge his contempt by complying with the Court Order, which included, but is not limited to, paying Defendant's attorney's fees in the amount of $1,325 within 120 days of the date the hearing. Based upon the affidavit submitted by Norbert E. Cummings, Jr, Attorney at Law, the Court finds that Plaintiff has failed to comply with the Court Order, and has failed to purge his contempt.

IT IS THEREFORE ORDERED that you make a diligent search for the above-named and take him to the Dorchester County Detention Center where he will serve the six month sentence for failure to comply with the Court's Order issued April 21, 2006. Plaintiff may purge the contempt and be released upon proof of full payment of the attorney's fees. If Plaintiff pays the attorney's fees as previously ordered Norbert E. Cummings, Jr., Attorney at Law, shall immediately notify the Clerk of Court and Plaintiff shall be released.

IT IS FURTHER ORDERED that the Clerk of Court shall forward a certified copy of this Bench Warrant to Dorchester County Sheriff's Department and to Attorney Norbert E. Cummings, Jr.

AND IT IS SO ORDERED.

William J. Wylie, Jr., Presiding Judge
Family Court for the First Judicial Circuit

Summerville, South Carolina
August 28, 2006

name EVANS, BRIAN L
address [redacted]
address
city/st SUMMERVILLE SC 2[redacted]
SSN# [redacted]-4475 D[redacted]

874

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|---|---|
| STATE OF SOUTH CAROLINA<br>COUNTY OF DORCHESTER<br>BRIAN L. EVANS,<br>PLAINTIFF,<br>VS.<br>ANNETTE L. EVANS,<br>DEFENDANT. | IN THE FAMILY COURT FOR<br>THE FIRST JUDICIAL CIRCUIT<br>CASE NO.: 03-DR-18-920<br><br>ORDER FOR PLAINTIFF'S<br>MOTION TO REINSTATE VISITATION<br>AND<br>MOTION TO RELIEVE GUARDIAN AD LITEM |

PRESIDING JUDGE: NANCY C. MCLIN
DATE OF HEARING: JANUARY 8, 2007
COURT REPORTER: JULIE MURDAUGH
PLAINTIFF'S ATTORNEY: PEGGY M. INFINGER
DEFENDANT'S ATTORNEY: NORBERT E. CUMMINGS, JR.
GUARDIAN AD LITEM: KAREN FORMAN

**PROCEDURAL HISTORY**

This matter comes before the Court on the Plaintiff's Motion to Reinstate the Plaintiff's Visitation and the Plaintiff's Motion to Relieve the Guardian. The Plaintiff was present with his attorney, Peggy M. Infinger. The Defendant was present with her attorney, Norbert E. Cummings, Jr., of the Dorchester County Bar. The Guardian Ad Litem, Karen Forman, was present. The hearing was timely held.

This being a matter for supplemental temporary relief, the Court reviewed the pleadings, affidavits, exhibits, financial declarations and listened to brief arguments of counsel. The Court informed the attorneys that the Court would take the ~~issues of the case~~ Motion for Supp. Temp. relief under advisement and render a decision. Thereafter, a decision was promptly rendered.

## FINDINGS OF FACT

From a review of the above stated matters I find as follows:

1. That the parties hereinto are the subject matter of this Court and are within the jurisdiction of this Court.

2. The Plaintiff's Motion to Relieve the Guardian Ad Litem is continued at this time without objection and may be rescheduled upon request.

3. The Plaintiff's Motion to Reinstate the Plaintiff's Visitation is denied. In support of the Plaintiff's Motion, the Plaintiff filed a copy of a letter of Archie T. Thompson. This letter was not an original document nor was it in affidavit form. Additionally the Plaintiff filed a lab report indicating a negative "alcohol test" by Robert M. Bennett, dated March 2006. The evidence presented indicated that the Guardian Ad Litem had made multiple requests for drug/alcohol testing but that the Plaintiff did not comply with the Guardian Ad Litem's requested testing.

4. The record in this action indicates that the Plaintiff has been held in contempt of Court on more than one occasion for non-compliance with Court Orders. The case has been pending for approximately three and a half (3 ½ ) years. It appears that the issues are extremely contested. Based on the limited evidence presented the Court cannot determine that it is in the best interest of the minor children to grant the Plaintiff's Motion at this time.

Ch. 2

5. The Court urges these parents to attend mediation.

6. Both parties request for temporary attorney fees and costs is held in abeyance at this time until the final hearing on the merits.

7. This Temporary Order shall be without prejudice and each party may seek further relief at the Final Hearing.

CONCLUSIONS OF LAW

The Court concludes as a matter of law that this Court has jurisdiction to hear and determine all issues in this action and of the parties.

BASED UPON the findings of the fact and equitable law, it is hereby ORDERED;

A. The Motion to Relieve Guardian Ad Litem is continued and may be rescheduled upon request;

B. The Plaintiff's Motion to Reinstate the Plaintiff's Visitation is denied.

C. Both parties request for temporary attorney fees and costs is held in abeyance at this time until the final hearing on the merits.

D. This Temporary Order shall be issued without prejudice and each party may seek further relief at the Final Hearing.

Ch. 3

IT IS SO ORDERED.

JUDGE NANCY C. MCLIN
FAMILY COURT JUDGE
FOR THE FIRST JUDICIAL CIRCUIT

Summerville, South Carolina

19th day of Feb., 2007

**FAILURE TO COMPLY WITH THE TERMS OF THIS ORDER MAY CONSTITUTE CONTEMPT OF COURT AND MAY BE PUNISHABLE BY A FINE, A PUBLIC WORK SENTENCE, OR BY IMPRISONMENT IN A LOCAL CORRECTIONAL FACILITY OR ANY COMBINATION THEREOF, IN THE DISCRETION OF THE COURT, BUT NOT TO EXCEED IMPRISONMENT IN A LOCAL CORRECTIONAL FACILITY FOR ONE YEAR, A FINE OF ONE THOUSAND FIVE HUNDRED ($1,500.00) DOLLARS, A PUBLIC WORK SENTENCE NOT TO EXCEED THREE (300) HUNDRED HOURS, OR ANY COMBINATION THEREOF AS PROVIDED BY S.C. CODE ANN. 20-7-1350 (1976) (AS AMENDED).**

Pl-4

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|---|---|
| STATE OF SOUTH CAROLINA<br><br>COUNTY OF DORCHESTER<br><br>BRIAN L. EVANS,<br><br>Plaintiff,<br><br>versus<br><br>ANNETTE L. EVANS<br><br>Defendant. | IN THE FAMILY COURT OF THE<br>FIRST JUDICIAL CIRCUIT<br>CASE NO: **03-DR-18-0920**<br><br>**ORDER** |

2007 JUL -2 PM 1:06

Date of Hearing: June 19, 2007
Presiding Judge: William J. Wylie, Jr.
Plaintiff's Attorney: Peggy M. Infinger
Defendant's Attorney: Norbert Cummings
Guardian ad Litem: Karen Forman
Court Reporter: Bonnie Britt

This matter is before this Court on a Motion for Summer Visitation filed by the Plaintiff, Brian L. Evans, in which he seeks summer visitation with the parties' two minor children, Ja[redacted] Evans, age 10, and S[redacted] Evans, age 7. The Defendant has filed a Motion to Dismiss, or in the alternative, to continue the hearing to allow the Defendant to be physically present.

Based upon the pleadings, representations of counsel for both parties and the Guardian ad Litem, I hereby make the following findings of fact and conclusions of law:

1. The Defendant's Motion for Continuance is denied. The Defendant has been ably represented by counsel at this non-testimonial hearing and her travel restrictions did not prevent her from submitting Affidavits.
2. Plaintiff has a long history of alcohol abuse, and his visitation was suspended because of his continued alcohol consumption. He has previously been held in contempt for violating restraining orders intended to protect the parties' minor children.
3. Plaintiff has maintained weekly telephone contact with the children, even though he has not been allowed to visit. The Guardian ad Litem believes it is

in the children's best interest to have physical contact with their father, and is in favor of supervised visitation.

4. As at the previous temporary hearing, Plaintiff asserts that he no longer drinks, has maintained sobriety for a number of months and should be allowed visitation. He offers the affidavit of Dr. Robert Bennett as evidence of his abstinence. Defendant asserts her belief that he is still drinking, and that here has been no substantial change of circumstances that would warrant additional temporary relief. The Court agrees that there has not been a substantial change, but does not believe that analysis prevents consideration of Plaintiff's request to lift the suspension of his visitation. The Plaintiff claims he has stopped drinking, and that would constitute a change of circumstances. He has claimed that before, but has been caught drinking. The Guardian ad Litem has requested alcohol tests, which Plaintiff has yet to provide within 12 hours of the request. Nevertheless, the Court agrees with the Guardian ad Litem that the children should be allowed to see their father for their benefit, if not for his own.
5. Plaintiff, Brian L. Evans, may have daytime only, supervised visitation from 9:00 am to 6:00 p.m. near the Defendant's home and supervised by her or her adult designee. Defendant shall pay ½ of the airfare for such trips. The visitation may be exercised for no more that seven consecutive days within any four-week period, and may not interfere with the children's school. Plaintiff shall give five days notice of his intent to exercise this visitation.
6. Alternatively, Plaintiff, Brian L. Evans may, at his expense, fly the children to Summerville, South Carolina, where they may stay with Defendant's parents who will be able to provide supervised, daytime visits on such days and for such duration as acceptable to them. The children must be accompanied on the flights by a maternal grandparent or other adult acceptable to Defendant.
7. Any visitation exercised pursuant to this order may be terminated at any time by the Guardian ad Litem if she has reason to believe the visitation is not being conducted in a manner conducive to the best interests of the children, or that Plaintiff is not complying with any of the restrictions placed upon his conduct.

All provisions of the previous orders not inconsistent with his order shall remain in effect.

8. All other issues, including fees and costs are reserved for the trial on the merits.

NOW THEREFORE, it is

**ORDERED** that the Defendant's Motion to Dismiss, or in the alternative for a Continuance, is denied;

**ORDERED** that the Plaintiff, Brian L. Evans, be granted visitation during the day from 9:00 am to 6:00 pm near the Defendant's home supervised by her or her adult designee. Defendant shall pay ½ of the airfare for such trips. The visitation may be exercised for no more that seven consecutive days within any four-week period, and may not interfere with the children's school. Plaintiff shall give five days notice of his intent to exercise this visitation;

**ORDERED** that the Plaintiff, Brian L. Evans may, alternatively, at his expense, fly the children to Summerville, South Carolina, where they may stay with Defendant's parents who will be able to provide supervised, daytime visits on such days and for such duration as acceptable to them. The children must be accompanied on the flights by a maternal grandparent or other adult acceptable to Defendant;

**ORDERED** that any visitation exercised pursuant to this order may be terminated at any time by the Guardian ad Litem if she has reason to believe the visitation is not being conducted in a manner conducive to the best interests of the children, or that Plaintiff is not complying with any of the restrictions placed upon his conduct;

**ORDERED** that all provisions of the prior orders in this action not modified herein remain in full force and effect; and

**ORDERED** that all other issues, including fees and costs, be reserved for the trial on the merits; and

**IT IS SO ORDERED!**

William J. Wylie, Jr., Family Court
First Judicial Circuit

2nd day of July, 2007

Ex #6

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| STATE OF SOUTH CAROLINA ) | IN THE FAMILY COURT FOR THE |
| ) | FIRST JUDICIAL CIRCUIT |
| COUNTY OF DORCHESTER ) | Case No. 03-DR-18-920 |
| ) | |
| BRIAN L. EVANS, ) | |
| Plaintiff, ) | |
| ) | |
| vs. ) | **TEMPORARY ORDER** |
| ) | |
| ANNETTE L. EVANS, ) | |
| Defendant. ) | |
| ) | |

FILED
CLERK OF COURT, FAMILY COURT
DORCHESTER COUNTY, SOUTH CAROLINA

| | |
|---|---|
| DATE OF HEARING: | MAY 26, 2005 |
| TRIAL JUDGE: | WILLIAM J. WYLIE, JR. |
| PLAINTIFF'S ATTORNEY: | PEGGY M. INFINGER |
| DEFENDANT'S ATTORNEY: | ROBERT W. POLK |
| GUARDIAN AD LITEM: | KAREN FORMAN |
| COURT REPORTER: | DEBORAH S. THOMAS |

**THIS MATTER** came before the Court for a hearing on Defendants' Motion to suspend Plaintiff's visitation. Present at the hearing were the Defendant's counsel, Plaintiff, his attorney and the Guardian ad Litem. Defendant's counsel waived Defendant's presence at the hearing. The Court considered the Affidavits submitted by the parties together with the argument of counsel and the statements of the Guardian ad Litem. Based thereon, the Court finds it appropriate to issue the following Order, *pendente lite*:

ONE: The parties hereto and the subject matter hereof are subject to the continuing jurisdiction of the Court and venue is proper.

TWO: Defendant's Motion to suspend Plaintiff's visitation should be granted with the exception of his telephone visitation. It is clear from the history of this case, all the way back to the parties' divorce, that Plaintiff's consumption of

alcohol has been a recurring problem. Various intermediate steps, including completion of alcohol abuse education courses and counseling, which were taken to ameliorate the problem short of suspension of Plaintiff's visitation rights, have failed to dissuade him from use of alcohol. The most recent Order in this case (issued as a result of a Rule to Show Cause because of, *inter alia*, Plaintiff's alcohol related problems, clearly states that Plaintiff was to refrain from consuming any quantity of alcohol. He admittedly has consumed alcohol ~~and, just as clearly, attempted to deceive the testing procedure instituted in the last Order in this case to ensure and test for his sobriety, by diluting his urine. The blood enzyme test taken of Plaintiff clearly indicates that his liver has already begun to deteriorate as a result of heavy alcohol use. Plainly, Plaintiff cannot be trusted to maintain sobriety in or out of the children's~~ presence.

THREE: Defendant should be reimbursed the attorney fees and costs incurred by her for the necessity of bringing her Motion in the requested amount of $1285.00, which amount the Court finds to be reasonable under all the factors enumerated in Glasscock. Plaintiff should pay that amount on or before June 28, 2005, to Defendant's attorney at his offices at 1 Carriage Lane, Bldg. C, Suite 200, Charleston, South Carolina 29407.

**NOW, THEREFORE**, based upon the foregoing, it is hereby **ORDERED, ADJUDGED** and **DECREED** as follows:

A) Defendant's Motion to suspend Plaintiff's visitation is granted with the

exception of Plaintiff's telephone visitation;

B) Plaintiff shall pay Defendant, as and for reimbursement of the attorney fees and costs incurred by Defendant for her Motion, the sum of $1285.00, through Defendant's counsel, at his office at 1 Carriage Lane, Bldg. C, Suite 200, Charleston, SC 29407, on or before June 28, 2005; and

**IT IS SO ORDERED!**

S/ William J. Wylie Jr.
William J. Wylie, Jr.
Presiding Judge
Family Court, Dorchester County
First Judicial Circuit

June 8, 2005
Summerville, South Carolina

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| STATE OF SOUTH CAROLINA<br><br>COUNTY OF DORCHESTER<br><br>BRIAN L. EVANS,<br><br>PLAINTIFF,<br><br>VS.<br><br>ANNETTE L. EVANS,<br><br>DEFENDANT. | IN THE FAMILY COURT FOR<br>THE FIRST JUDICIAL CIRCUIT<br>CASE NO.: 03-DR-18-920<br><br>FINAL ORDER |

2008 FEB 11 PM 3:27
CLERK OF COURT
DORCHESTER COUNTY

PRESIDING JUDGE: WILLIAM J. WYLIE, JR.
DATE OF HEARING: DECEMBER 18, 2007
COURT REPORTER: JULIE MURDAUGH
PLAINTIFF'S ATTORNEY: PEGGY M. INFINGER
DEFENDANT'S ATTORNEY: NORBERT E. CUMMINGS, JR.

**PROCEDURAL HISTORY**

This matter comes before the Court for a Final Hearing. The Defendant was present with her attorney, Norbert E. Cummings, Jr., of the Dorchester County Bar. The Plaintiff was present with his attorney, Peggy M. Infinger.

Prior to the start of the hearing the parties announced to the Court that they have reached an agreement as to all issues save that of the issues of the sentencing for the violation of the previous Court Order would be deferred to the Final Hearing and the issue of the Plaintiff being restrained from the use of alcohol. The Plaintiff is requesting that the restraining order be removed and the Defendant is requesting that the restraining order remain in effect.

1

The parties' agreement is as follows:

**CUSTODY**

1. The Defendant will continue to have sole custody of the minor children.

**VISITATION**

2. The Plaintiff's visitation is going to be suspended at this time, with the exception of his telephone visitation, which he will continue to have pursuant to the prior order and that is every Sunday and Tuesday at 7:30 PM Eastern Standard Time for a time period not to exceed 10 minutes. It shall be the Plaintiff's responsibility to end each call within the allotted time period. The Plaintiff shall not use his telephone visitation to attempt to communicate with the Defendant in any manner, directly or through the children. In the event the parties need to communicate they will do so via e-mail except in the case of emergencies. All telephone calls maybe recorded by the Plaintiff and the Defendant and she may remain in the room during those telephone visitations. In the event the Defendant believes that the conversation is detrimental to the children she may terminate the conversation.

3. The Plaintiff's visitation will be reinstated only upon the Plaintiff's application to the Court for

reinstatement after his successful completion of his rehabilitation.

**REHABILITATION**

4. The Plaintiff's successful completion of his rehabilitation will be defined as follows:

a. The Plaintiff will successfully complete a 28 day or one month treatment plan; whichever is the established time for the inpatient facility as required for the Plaintiff to enroll for his inpatient treatment that specializes with alcohol and drug abuse.

b. The Plaintiff will then successfully complete two (2) months of out patient treatment and will follow all recommendations and prescriptions by counselors and doctors at the facility.

c. The Plaintiff is not required to disclose or provide records or notes regarding the Plaintiff speaking to the counselor(s) about his private issues to the Defendant. The Plaintiff is required to provide any progress reports, his attendance, the results of any test that he is required to submit to and all recommendations of the treatment facility/facilities and counselor(s) in regard to his progress. The authorization would also include any notes or records that show his lack of progress, non-cooperation and evidence of his having



consumed alcohol or the drinking any alcohol and that would be the records that would be contemplated to be disclosed to the Defendant. The disclosure is to include compliance with alcohol and successful completion, whether or not he is attending in good faith and complying in good faith.

d. The Plaintiff agrees to ensure the releases on his treatment plan, both in-patient and out-patient are HIPPA qualified to allow the Defendant to receive the information as stated in this paragraph.

**CHILD SUPPORT**

5. The Plaintiff will pay child support at the monthly rate of $522.00 per month through the Dorchester County Family Court payable at every two weeks in the amount of $241.00 plus the applicable surcharge. The Plaintiff has a current arrearage of $3,110.50 that will be paid at the monthly rate of $45.67 per month until such time said arrearages are paid in full at which time the Plaintiff's child support will return to the $241.00 every two weeks plus surcharges.

**INSURANCE**

6. The Defendant will continue to be responsible for the first $250 of uncovered medical expenses per child per year, after which the parties will divide any uncovered in proportion to their incomes with the

Plaintiff being responsible for 46 percent and the Defendant being responsible for 54 percent. The non-covered expenses shall consist of orthodontic, ophthalmological, medical, and dental expenses. The Defendant will send the Plaintiff the bills in a timely manner as these bills occur after the first $250.00 is met per child.

**RESTRAINING ORDERS**

7. The parties agree to be mutually restrained from harassing, molesting or interfering with the other at their place of residence, places of employment and other public places.

8. The parties agree to be restrained from the following: speaking ill of the other parent in the presence of the minor children, allowing others to speak ill of the other parent in the presence of the minor children, interfering with the other parent's relationship with the minor children, allowing others to interfere with the other parents relationship with the minor children, exposing the minor children to any overnight paramours, exposing the minor children to overnight guests of the opposite sex in which either party are romantically involved with, consuming any illegal drugs or alcohol during custody and visitation, discussing this litigation with the minor children,



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exposing the minor children to any illegal or immoral conduct, including profanity, exposing the minor children to any violent conduct, and disparaging the other parent's religion to the children.

9. The Plaintiff agrees to be restrained and enjoined from keeping any alcoholic beverages when the children are present or allowing any one to consume alcoholic beverages in his presence when the children are present at such time the Plaintiff's visitation is reinstated.

**ATTORNEY FEES**

10. The Plaintiff agrees to pay one half of the Defendant's attorney fees. The Plaintiff's half is $7,918.75. The Plaintiff agrees to pay $7,918.75 directly to the Defendant within 18 months from the date of the signing of the Final Order.

**GUARDIAN AD LITEM**

11. The Plaintiff agrees to pay the Guardian Ad Litem $378.00 as his share of her fees to be paid at the monthly rate of $50.00 per month until it is paid in full beginning the first day of the month after the Final Order is signed. The Plaintiff agrees that this will not be dischargeable in the event the Plaintiff files bankruptcy.

12. Under the existing Rule to Show Cause Order for the hearing of October 30, 2007 the Plaintiff agreed to pay the

Defendant the fees associated with the Rule at the rate of $200.00 a month beginning November 30, 2007 and continue each month thereafter until the full amount is paid in full. The parties have agreed that the payment of $200.00 will be reduced to $150.00 per month beginning the 30th day of the month following the signing of the Final Order until the Guardian Ad Litem fees are paid in full at which time the Plaintiff's payment will be increased to $200.00 per month until the Plaintiff reimburses the Defendant the full sum of $5,327.27 for the fees associated with the Rule to Show Cause of October 30, 2007. The Plaintiff's payment of $200.00 owed for November are due and owed and are not forgiven.

13. The payment of $150.00 by the Plaintiff to the Defendant shall be done by automatic wage allotment of every two weeks at the rate of $69.25 every two weeks. Upon the payment in full to the Guardian ad Litem the Plaintiff's automatic wage allotment payment to the Defendant will increase from $69.25 every two weeks to $92.30 every two weeks.

**FINDINGS OF FACT**

1. The Plaintiff is a citizen and resident of Dorchester County, South Carolina and has been for greater than one year.

2. The Defendant is a citizen and resident of the State of Utah.

3. The parties were formerly husband and wife having been

divorced in case number 01-DR-18-1283 by way of Final Order of Divorce and to Adopt Separation Agreement.

4. The parties have two children born of that marriage, namely, Ja[redacted] Evans, born [redacted] and S[redacted] Evans, born [redacted].

5. The Court heard arguments as to the issue of the Restraining Order against the Plaintiff from consuming alcohol as to whether it needs to be maintained. The Court finds that the Plaintiff is an alcoholic with a very serious problem. The Court finds that the restraint has been very useful as it has proven exactly how serious the Plaintiff's problem is. The Court finds that the restraint serves a different purpose at this point. The Court is concerned with the safety of the children. The purpose of this is not to give the Plaintiff permission to drink when he does not have the children with him; the prohibition against the visitation is adequate and serves that new purpose.

6. The Court finds that the Plaintiff's prohibition against consuming alcohol is not necessary.

7. The Court finds that everything else remains in effect to protect the children.

8. The Court imposes the following sentence as to the issue of the prior contempt sanction:

This is a matter of criminal contempt that shall be imposed by way of a six (6) month sentence for criminal contempt in the Dorchester County Detention Center. The sentence shall be

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suspended upon the Plaintiff's entry into the inpatient treatment that is part of the visitation that the Plaintiff already agreed to in this Order and the Plaintiff successfully participating in whatever outpatient or follow up treatment or therapy or meetings is recommended for a period of twenty four (24) months following the Plaintiff's release from the inpatient treatment. This shall not to be tied to the same time frame. The Court is not allowing the Plaintiff to have the contempt charge suspended without successful participation in rehabilitation for a period of twenty four (24) months in order to avoid the six months in the county jail.

The Court finds that if the Plaintiff fails, for whatever reason, or is unsuccessfully discharged from the treatment and does not maintain the outpatient treatment, and by successful completion, the Court means that the Plaintiff will follow the requirements of the program. The Court finds that successful completion does not imply that the Plaintiff may consume alcohol and attend any required meetings. The Plaintiff must be successfully participating in the programs according to the programs definition of success, whatever that may be. If the Plaintiff participates for a period of twenty four (24) months, he will have complied and will have successfully compieted thus suspending the six months that is ordered for contempt.

In the event that the Plaintiff fails the treatment plan as outlined above, upon written proof that the Plaintiff has been

terminated from the program for unsuccessful completion, a bench warrant shall be issued for the Plaintiff's arrest and he will be required to serve the six (6) month sentence. The Court finds that in the event that the Plaintiff is terminated or does not successfully complete treatment, the criminal contempt will not be eligible for purging at that point and the Plaintiff will not have any option to be released before the full conclusion of the six (6) month sentence in the county jail.

9. After careful consideration of the provisions, I conclude the parties Agreement is Fair, Just, and Equitable and appropriate under the circumstances now existing. Further I find that the parties freely, voluntarily and knowingly entered into this agreement.

10. The Court finds, after questioning the parties under oath, that the parties hereto have entered into this agreement as set forth in the preceding paragraphs of this Order, which agreement was placed on the record and assented to by both parties, fully and finally settling all issues of the litigation, including child custody, child support, visitation, and all other issues and aspects of the case. The Plaintiff and Defendant testified that they were not under the influence of any alcohol, drugs, or medications, nor had they consumed any within the recent past, that would effect their respective abilities to enter into this agreement, that they were not under the influence of any stress, coercion, duress, or undue influence, and the parties agree that

the agreement is fair, just and equitable to both parties, appropriate under the circumstances, and in the best interests of their minor children. The parties testified that they are completely satisfied with the services of their respective attorneys and have asked the Court to approve the agreement, and make it the Final Order of this Court.

11. The Court finds that the agreement is rendered an Order of this Court to be enforceable as any other Family Court Order.

CONCLUSIONS OF LAW

The Court concludes as a matter of law that this Court has jurisdiction to hear and determine all issues in this action and of the parties.

BASED UPON the findings of the fact and equitable law, it is hereby ORDERED;

A. The agreement of the parties contained in the foregoing paragraphs is hereby approved and made the Final Order of this Court, to be enforceable as any other Family Court Order.

B. The Plaintiff's prohibition against consuming alcohol is not necessary.

C. Criminal contempt is going to be imposed upon the Plaintiff by way of a six (6) month sentence of criminal contempt in the Dorchester County Detention Center that will be suspended upon the Plaintiff's entry into the inpatient treatment that is part of the visitation that the Plaintiff already agreed to in this Order, the Plaintiff successfully participating in what ever

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outpatient or follow up treatment or therapy or meetings is recommended for a period of 24 months following the Plaintiff's release from the inpatient treatment. This is not going to be tied to the same time frame. The Court is not going to let the Plaintiff have the contempt suspended just by being tough for a period of three months and going right back to it. This means that the Plaintiff is going to have a two year period where he has to be successful where the Plaintiff has to be successfully participating in the rehabilitation in order to avoid the six months in the county jail.

D. If the Plaintiff fails for what ever reason and he is unsuccessfully discharged from the treatment, he does not keep up with the outpatient, and by successful the Court means that the Plaintiff will follow the requirements of the program. This doesn't mean that he can be drinking and just going to the meetings, that is not going to take care of this. The Plaintiff has to be successfully participating in the programs according to the programs definition of success, what ever that may be. If the Plaintiff does this for a period of 24 months, then he will have complied and he will have successfully completed them suspending the six months that is ordered for contempt.

E. If the Plaintiff fails, then upon written proof that the Plaintiff has been terminated from the program for unsuccessful completing it, then upon the written notification a bench warrant will be issued for the Plaintiff's arrest and he will have to serve

the six months sentence. That will be criminal contempt there will not be any purging at that point, there will not be any way to get out of it early. It will be a six month sentence in the county jail.

**IT IS SO ORDERED.**

JUDGE WILLIAM J. WYLIE, JR.
FAMILY COURT JUDGE
FOR THE FIRST JUDICIAL CIRCUIT

Summerville, South Carolina
12 day of January, 2008

**FAILURE TO COMPLY WITH THE TERMS OF THIS ORDER MAY CONSTITUTE CONTEMPT OF COURT AND MAY BE PUNISHABLE BY A FINE, A PUBLIC WORK SENTENCE, OR BY IMPRISONMENT IN A LOCAL CORRECTIONAL FACILITY OR ANY COMBINATION THEREOF, IN THE DISCRETION OF THE COURT, BUT NOT TO EXCEED IMPRISONMENT IN A LOCAL CORRECTIONAL FACILITY FOR ONE YEAR, A FINE OF ONE THOUSAND FIVE HUNDRED ($1,500.00) DOLLARS, A PUBLIC WORK SENTENCE NOT TO EXCEED THREE (300) HUNDRED HOURS, OR ANY COMBINATION THEREOF AS PROVIDED BY S.C. CODE ANN. 20-7-1350 (1976) (AS AMENDED).**

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

IN THE FAMILY COURT OF THE
NINTH JUDICIAL CIRCUIT

KATHERINE M. HIGUERA,

Plaintiff,

v.

BRIAN KEITH HIGUERA,

Defendant.

CASE NO.: 2006-DR-08-1461

**AMENDED FINAL ORDER AND DECREE OF DIVORCE**

| | |
|---|---|
| **Presiding Judge:** | F.P. Segars-Andrews |
| **Date/Time of Hearing:** | January 11, 2007 at 10:30 am |
| **Plaintiff's Attorney:** | Jessie J. Glenn |
| **Defendant's Attorney:** | Grover Beau Seaton |
| **Court Reporter:** | Leah Dupree |

This matter was before me at the Plaintiff's request for a Motion of Temporary Relief. The Plaintiff filed her Complaint on September 15, 2006 and appeared with her attorney as noted above. The Defendant appeared with his attorney as noted above. At the call of the hearing the parties announced to the court that they had an agreement on a final basis. Both parties were present with there respective attorney.

The final agreement of the parties was published by the attorney for the Plaintiff as follows:

1. Plaintiff has sole custody of the minor child, C[redacted] Higuera, with supervised visitation to the Defendant by his present counselor until counselor concludes that supervised visitation shall be lifted. Upon lifting of supervised visitation, standard visitation will take effect with liberal telephone visitation at a reasonable time. Neither party shall expose the minor child to any paramour until the counselor decides that it is appropriate, nor shall there be any form of corporal punishment to the child;

2. Defendant shall not take the minor child around his brother at any period of time;

3. Plaintiff shall be entitled to the use of her maiden name of Katherine M. Knagenhjelm;

4. There shall be no alcohol or drug use in the presence of minor child;

5. The Defendant shall continue to pay child support through the Berkeley County Clerk of Court at the same amount that he has been paying in the past which is $461.00 plus any court costs that apply, in addition to any amount that is owed for arrears;

6. Defendant shall not post any pictures or information about the Plaintiff or post any pictures or information about C[redacted] Higuera, the minor child on the internet and any information or pictures of the Plaintiff and minor child shall be removed immediately;

7. The parties are entitled to a divorce based on living separate and apart for a time period that is greater than one year;

8. Defendant is to provide medical and dental insurance for the minor child so long as his employment offers insurance through his employment;

9. The Defendant will sign any authorizations needed for the Plaintiff to have access to the insurance information for the minor child;

10. Defendant is allowed to make medical decisions regarding minor child only if it is an emergency;

11. Both parties have the right to review tax returns every two years to determine child support;

12. Plaintiff and Defendant will refrain from having overnight paramours, girlfriends, boyfriends and lovers around the minor child;

13. Both parties will continuously provide a separate suitable room for minor child;

14. While the minor child is with the Defendant, the Defendant will have minor child with him at all times. If the minor child is not with the Defendant during his visitation then there must be a suitable person to care for minor child. Plaintiff will not disagree to suitable person caring

year. The Plaintiff further testified that she desired to return to using her maiden name of Katherine Mildred Knagenhjelm, and was not changing her name to avoid any creditors or criminal prosecution, never been denied a passport, had never been investigated by the Department of Social Services or any agency of that nature.

The Plaintiff presented Karen Abercrombie as her corroborating witness who testified that she and the Plaintiff have been friends for several years, and that she would know if the Plaintiff and Defendant reconciled in the past year, and to her knowledge they have not. This witness further testified that she was not misleading the court to help the parties obtain a divorce.

***Agreement of Parties***

The court questioned both parties regarding the agreement as published, and both parties testified that the agreement was fair and equitable, in the parties best interest, understood the agreement was final and non-modifiable unless it pertains to matters effecting the minor child, and were satisfied with the services of their respective attorney. Both parties further testified that they understood that they could have had a final hearing to have the court resolve the matter for them, and testified that they wanted the court to make the agreement as a final order and move forward for a divorce based on living separate and apart for a period greater than one year. The Plaintiff further testified that she would take the child to the counselor on the days that the counselor requested to meet with the child to visit with the Defendant.

***Findings of Fact***

1. I find Jurisdiction and Venue is proper before this Honorable Court;

2. I find that the parties are entitled to a divorce based on living separate and apart for a time period that is greater than one year and the

above agreement as published shall be subject to the contempt powers of this court;

3. I find that there has been no cohabitation between the Plaintiff and Defendant for a time period greater than one year;

4. I find the witnesses testimony credible;

5. I find reconciliation is not possible;

6. I find that the agreement is fair and equitable and in the best interest of the parties;

7. I find that the agreement as published shall be adopted as a final order and shall be subject to the contempt powers of the court; and

8. I find that the Plaintiff desires to change her name as a result of this divorce.

***Conclusions of Law***

1. I Conclude that the Plaintiff is entitled to a divorce based on living separate and apart for a time period that is greater than one year;

2. I Conclude that the agreement of the parties is both fair and equitable and in the parties best interest and shall become a part of this Final Order subject to the contempt powers of the court;

3. I further Conclude that Venue and Jurisdiction is proper before this Honorable Court; and

4. I further conclude that the Plaintiff shall be entitled to return to to using her maiden name of Katherine Mildred Knagenhjelm.

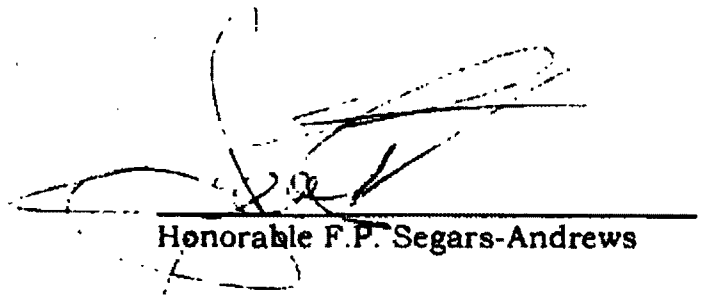
***Findings as a Matter of Law***

I find as a matter of law that the Plaintiff is entitled to a divorce a vinculo matrimonii on the grounds of living separate and apart from the other for a time period greater than one year, the agreement as published above is fair and equitable and shall made an order of this court and shall be subject to the contempt powers of this court, and the Plaintiff is entitled to use of her maiden name Katherine Mildred Knagenhjelm.

**ORDERED, ADJUDGED and DECREED** that the Plaintiff is granted a divorce a vinculo matrimonii on the grounds of living separate and apart

for a time period greater than one year, the above published agreement shall become subject to the contempt powers of this honorable court and the Plaintiff is entitled to use of her maiden name Katherine Mildred Knagenhjelm.

**AND IT IS SO ORDERED!**



Honorable F.P. Segars-Andrews

Dorchester, South Carolina
January 12, 2007

**NOTICE CONTEMPT POWERS OF COURT ORDERS OF THE FAMILYCOURTS OF SOUTH CAROLINA ARE ENFORCEABLE THROUGH THE INHERENT CONTEMPT POWERS VESTED WITH THE COURT. CONTEMPT POWERS OF A FAMILY COURT INCLUDE PUNISHABLE BY INCARCERATION FOR UP TO ONE YEAR AND/OR A $1,500.00 FINE AND/OR COMMITMENT UPON THE PUBLIC WORKS FOR A PERIOD OF UP TO THREE HUNDRED (300) HOURS.**

State ex:

# EXHIBIT

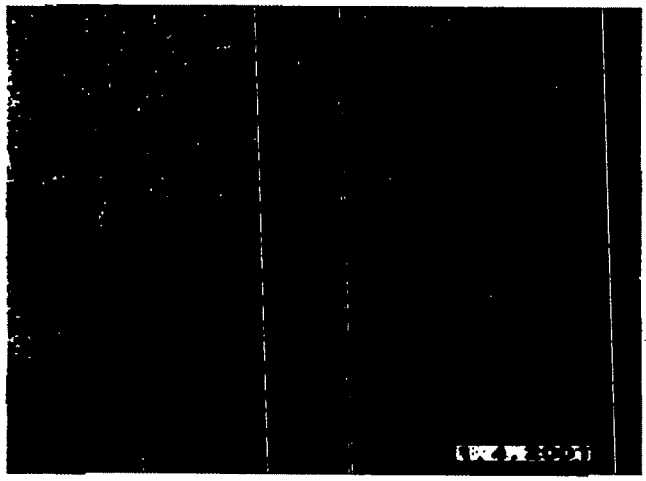
Complainant's Exhibit

2 #2

~~16~~

FRIENDS and ONLY friends can read or comment on my blog site so that a certain Psychotic woman that can kiss my deriere can no longer stalk me... Reply

# Entry for May 24, 2006



***Well I talked to the Guardian ad litem today about my visitation with my youngest son... I look forward to court tomorrow. I can not wait to see him.. I look forward to the day when my oldest son and youngest son meet..***

Wednesday May 24, 2006 - 04:48pm (PDT)

Next Post: Entry for May 24, 2006
Previous Post: Entry for May 22, 2006

**Comments** *(4 total)* Post a Comment



I wish you well with that Brian...I am sure that will be a good day for all of you...hugs...Jeannie

Wednesday May 24, 2006 - 05:06pm (PDT)



Stake's

# EXHIBIT

~~12~~ 3

Complainant's Exhibit

#3

Karen A. Forman MSW, LMSW

[redacted]
Charleston, South Carolina
29401

(843) 853-1666 office
(843) 224-8010 cell
FAX 577-0541

June 1, 2006

Katherine Knagenhjelm
[redacted]
Ladson, SC 29456

Dear Ms. Knagenhjelm,

I am writing this letter to inform you that C[redacted]'s father, Brian Higuera, is currently back from the middle east and has established a home in Summerville. He has contacted me to attempt to arrange some sort of a visitation schedule with his son. Mr. Higuera understands that C[redacted] does not know him and he does not want to place any undue stress on his son. I feel it is in the child's best interest to start visitation with his father in small and frequent increments eventually increasing the amount of time C[redacted] will spend with his father. I made a home visit to Mr. Higuera's apartment in Summerville and it meets all requirements to safely house a child. I would welcome the opportunity to meet with you and C[redacted].

Please contact me to arrange a day/ time we can meet. My numbers are liste above.

I also need to collect the GAL retainer of $375. ASAP. This is part of the Court Order. I look forward to hearing from you soon.

Thank you, and

Sincerely,

Karen A. Forman
Guardian ad Litem
Cc: Attorneys: Kate Schmutz and Grover Seaton IV

State's

# EXHIBIT

~~5~~ 4

Complainant's Exhibit #4

AGENCY I.D. SC0080000

# INCIDENT REPORT

CASE NUMBER: 2004-05015302

NCIC: INQ | ENTD

## EVENT

| INCIDENT TYPE | Incident Code | COMPLETED | FORCED ENTRY | PREMISE TYPE | UNITS ENTERED |
|---|---|---|---|---|---|
| 1 ALL OTHER OFFENSES/ HARASSMENT | 90Z | ■ YES ☐ NO | ☐ YES ■ NO | RESIDENCE | NA |
| 2 TELEPHONE CALLS/ OBSCENE/ HARASSING | 753 | ■ YES ☐ NO | ☐ YES ■ NO | RESIDENCE | NA |
| 3 | | ☐ YES ☐ NO | ☐ YES ☐ NO | | |

TYPE VICTIM: ■ Individual ☐ Business ☐ Financial Inst ☐ Government ☐ Relig. Orgn. ☐ Soc./Publ. ☐ Other ☐ Unknown ☐ Police Off.

RECD MAY 18 2004

INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER): LADSON

ZIP CODE: 29456

WEAPON TYPE: NA

| INCIDENT DATE | 24 HR CLOCK | TO | DATE | 24 HR CLOCK |
|---|---|---|---|---|
| 5/5/04 | 0931 | (R) | 5/17/04 | 1830 |

| DISP DATE | DISP TIME | TIME ARRIVED | DEPART TIME | LOCATION NO |
|---|---|---|---|---|
| 5/17/04 | 1900 | 1901 | 1902 | 2/233 |

COMPLAINANT'S NAME (LAST, FIRST, MIDDLE): SEE VICTIM

RELATIONSHIP TO SUBJECT: 1: 2: 3:

J S O U — RESIDENT | RACE | SEX | AGE | STATE | DAYTIME PHONE | EVENING PHONE

ADDRESS | CITY | STATE | ZIP CODE | LOCATION NO.

## VICTIM NO 1

VICTIM'S NAME (LAST, FIRST, MIDDLE): KNAGENHJELM, KATHERINE

RELATIONSHIP TO SUBJECT: 1: SE 2: 3:

S O U — RESIDENT | RACE: W | SEX: F | AGE: 40 | STATE: N | DAYTIME PHONE: 372-4187 | EVENING PHONE

| HEIGHT | WEIGHT | HAIR | EYES | FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC. |
|---|---|---|---|---|
| 505 | 103 | BLN | BLU | |

ADDRESS: [redacted] | CITY: LADSON | STATE: SC | ZIP CODE: 29456 | LOCATION NO: 2/233

VISIBLE INJURY (WHAT ?) ☐ YES NO ■ EXPLAIN: | COMPLAINT OF ANY NON-VISIBLE INJURIES ☐ YES NO ■

VICTIM(S) ?: VISIBLE ALCOHOL ☐ YES NO ■ UNK ☐ | DRUGS ☐ YES ■ NO UNK ☐ TYPE

THIS MAN VEH ☐ ONE MAN VEH ☐ OFFICER/LEGAL AGENT ☐ OTHER ☐ | ALONE ☐ | ASSISTED ☐ | - J - This Jurisdiction, S - State, O - Out of State, U - Unknown

## SUSPECT NO. 1

■ SUSPECT ☐ PRIMARY ☐ WANTED ☐ WARRANT ☐ ARREST ☐ JAIL

NAME (LAST, FIRST, MIDDLE): HIGVERA, BRIAN K | RACE: W | SEX: M | AGE: 35 | STH: N | DATE OF BIRTH: [redacted] | HEIGHT: 507 | WEIGHT: 189 | HAIR: BLD | EYES: BLU

FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.

ADDRESS: [redacted] | CITY: NORTH CHARLESTON | STATE: SC | ZIP CODE: 29418 | LOCATION NO: S

SUBJECT (NO ?) USING ALCOHOL ☐ YES ☐ NO ■ UNK | DRUGS ☐ YES ☐ NO ■ UNK TYPE

ARRESTED NEAR OFFENSE SCENE ☐ YES ☐ NO | TOTAL # ARRESTED | DATE/TIME OF OFFENSE | DATE/TIME OF ARREST

## NARRATIVE

VICTIM CALLED TO REPORT THAT, BETWEEN DATES ABOVE THE SUBJECT
HAS BEEN HARASSING HER BY TELEPHONE, AND RIDING BY HER RESIDENCE.
ALSO HE HAS TO CALL ON WEDNESDAY'S TO SET UP HIS VISITATION
WITH HIS 6 YEAR OLD SON. VICTIM STATED THAT THE SUBJECT
WONT STOP HARASSING HER AND SHE IS TIRED OF HIM. ADVISED OCA#

Investigative Supplement Attached | JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY: NA | JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY

## PROPERTY/EVIDENCE

| TYPE (GROUP) | | | | | | Total |
|---|---|---|---|---|---|---|
| STOLEN | | | | | | |
| DAMAGED | | | | | | |
| BURNED | | | | | | |
| RECOVERED | | | | | | |
| SEIZED | | | | | | |

SUBJECT IDENTIFIED ■ YES NO ☐ | SUBJECT LOCATED ☐ YES ■ NO | ☐ ACTIVE ■ ADM CLOSED ☐ UNFOUNDED | ☐ ARRESTED UNDER 18 ☐ ARRESTED 18 AND OVER | ☐ EX-C, EX UNDER 18 ☐ EX-CLEAR 18 AND OVER

CLEARANCE: 1 ☐ OFFENDER DEATH 2 ☐ NO PROSECUTION 3 ☐ EXTRADITION DENIED 4 ☐ VICTIM DECLINES COOPERATION 5 ☐ JUVENILE NO CUSTODY

| REPORTING OFFICER(S) | DATE | UNIT NUMBER | APPROVING OFFICER | DATE | UNIT NUMBER |
|---|---|---|---|---|---|
| THOMAS, ROSINA | 05/17/2004 | 2390 | LT BLANCHARD | 5/18/04 | 8021 |

FOLLOW-UP INVESTIGATION: YES ☐ NO ☐ CPS CER

# AGENCY I.D. SUPPLEMENTAL INCIDENT REPORT

SCO0080000

CASE NUMBER: 2004-05015302

NCIC: NO. ENTD.

☐ ORIGINAL REPORT ■ SUPPLEMENTAL REPORT ☐ ADDITIONAL VICTIMS ☐ ADDITIONAL STOLEN PROPERTY PAGE 1 OF 1 PAGES

☐ MODIFIED ORIGINAL ☐ CASE STATUS CHANGE ☐ ADDITIONAL OFFENDERS ☐ ADDITIONAL RECOVERED PROPERTY

## VICT./SUBJ. I. D. OVERFLOW

☐ COMPLAINANT ☐ VICTIM ☐ SUSPECT ☐ RUNAWAY ☐ WANTED ☐ WARRANT ☐ ARREST ☐ JAIL ☐ SUMMONS

NAME (LAST FIRST MIDDLE) | VICTIM RELATIONSHIP TO SUBJECT 01 02 03 | RESIDENT J S O U | RACE | SEX | AGE | DOB | ETH

HEIGHT | WEIGHT | HAIR | EYES | FACIAL HAIR SCARS TATOOS | CLOTHING PHYSICAL PECULIARITIES, ETC

ADDRESS | CITY | STATE | ZIP CODE | LOCATION NO | DAY PHONE | EVENING PHONE

☐ VICTIM NO ____ VISIBLE INJURY ☐ NO ☐ YES EXPLAIN | COMPLAINT OF NON VISIBLE INJURIES ☐ NO ☐ YES | VICTIM USING ALCOHOL ☐ NO ☐ YES ☐ UNK DRUGS ☐ NO ☐ YES TYPE ☐ UNK | ☐ TWO-MAN VEHICLE ☐ DETECTIVE/SPLASH ☐ ONE MAN VEHICLE ☐ OTHER | ☐ ALONE ☐ ASSISTED

REC'D MAY 28 2004

☐ SUBJECT NO ____ USING ALCOHOL ☐ NO ☐ YES ☐ UNK USING DRUGS ☐ NO ☐ YES TYPE

## VICT./SUBJ. I. D. OVERFLOW

☐ COMPLAINANT ☐ VICTIM NO ____ ☐ SUBJECT # ____ ☐ RUNAWAY ☐ WANTED ☐ WARRANT ☐ ARREST ☐ JAIL ☐ SUMMONS

NAME (LAST FIRST MIDDLE) | VICTIM RELATIONSHIP TO SUBJECT 01 02 03 | J S O U | RACE | SEX | AGE | DOB | ETH

HEIGHT | WEIGHT | HAIR | EYES | FACIAL HAIR SCARS TATOOS GLASSES CLOTHING PHYSICAL PECULIARITIES, ETC

ADDRESS | CITY | STATE | ZIP CODE | LOCATION NO | DAY PHONE | EVENING PHONE

☐ VICTIM NO ____ VISIBLE INJURY ☐ NO ☐ YES EXPLAIN | COMPLAINT OF NON VISIBLE INJURIES ☐ NO ☐ YES | VICTIM USING ALCOHOL ☐ NO ☐ YES ☐ UNK DRUGS ☐ NO ☐ YES ☐ UNK | ☐ TWO-MAN VEHICLE ☐ DETECTIVE/SPLASH ☐ ONE-MAN VEHICLE ☐ OTHER | ☐ ALONE ☐ ASSISTED

☐ SUBJECT NO ____ USING ALCOHOL ☐ NO ☐ YES ☐ UNK USING DRUGS ☐ NO ☐ YES — TYPE ☐ UNK

## NARRATIVE

REFERENCE TO HARASSMENT

VICTIM KATHERINE KNAGEHJELVN CALLED TO REPORT THAT SHE

RECEIVED TWO MORE PHONE CALLS FROM HER HUSBAND ON 05/26/04

AT 0902 AND 2018. VICTIM ALSO STATED THAT HER HUSBAND HAD THE

ADT SERVICE CANCELED HE CALLED ATD STATING THAT NO ONE WAS

LIVING IN THE HOME.

JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY | JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY

## VEH./GUN/ETC. 1

STATUS: ☐ STOLEN ☐ RECOVERED ☐ FOUND ☐ TOWED ☐ SUSPECT ☐ VICTIM

TYPE: ☐ VEHICLE ☐ GUN ☐ BOAT ☐ LICENSE PLATE ☐ SECURITIES/BONDS/STOCKS ☐ ARTICLE

VIN AND/OR LICENSE NO | BOAT HULL NO AND/OR REG NO

SERIAL AND/OR OWNER APPLIED NO. | STATE

YEAR OF REGISTRATION | YEAR OF EXPIRATION | YEAR | MAKE | TYPE

MODEL | STYLE | COLOR | BRAND NAME | CALIBER

M.C NO | DENOMINATION | ISSUER | SECURITIES DATE

MISCELLANEOUS

## PROPERTY ES

| TYPE (GROUP) | | | | | | TOTAL VALUE |
|---|---|---|---|---|---|---|
| STOLEN | | | | | | |
| DAMAGED | | | | | | |
| BURNED | | | | | | |
| RECOVERED | | | | | | |
| SEIZED | | | | | | |

## ADMINISTRATIVE

SUBJECT IDENTIFIED ■ YES ☐ NO | SUBJECT LOCATED ■ YES ☐ NO | ☐ ACTIVE ■ ADM CLOSED ☐ UNFOUNDED | ☐ ARRESTED UNDER 18 ☐ ARRESTED 18 AND OVER | ☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR 18 AND OVER

REASON FOR EXCEPTIONAL CLEARANCE 1 ☐ OFFENDER DEATH 2 ☐ NO PROSECUTION 3 ☐ EXTRADITION DENIED 4 ☐ VICTIM DECLINES COOPERATION 5 ☐ JUVENILE - NO CUSTODY

| REPORTING OFFICER(S) | DATE | UNIT NUMBER | APPROVING OFFICER | DATE | UNIT NUMBER |
|---|---|---|---|---|---|
| MINDLER, J | 05/27/04 | 2293 | LT. BLANCHARD | 5/28/04 | 21 |
| | | | FOLLOW-UP INVESTIGATION ☐ YES ☐ NO OFFICER | | 85 |

AGENCY I.D. SCO0080000

# SUPPLEMENTAL INCIDENT REPORT

CASE NUMBER: 2004-05015302

NCIC: INIT. / ENTD.

☐ ORIGINAL REPORT ■ SUPPLEMENTAL REPORT ☐ ADDITIONAL VICTIMS ☐ ADDITIONAL STOLEN PROPERTY

☐ MODIFIES ORIGINAL ☐ CASE STATUS CHANGE ☐ ADDITIONAL OFFENDERS ☐ ADDITIONAL RECOVERED PROPERTY

PAGE 1 OF 1 PAGES

## VICT./SUBJ. I. D. OVERFLOW

☐ COMPLAINANT ☐ VICTIM ☐ SUSPECT ☐ RUNAWAY ☐ WANTED ☐ WARRANT ☐ ARREST ☐ JAIL ☐ SUMMONS

NAME (LAST FIRST MIDDLE) | VICTIM RELATIONSHIP TO SUBJECT #1 #2 #3 | RESIDENT J E O U | RACE | SEX | AGE | DOB | ETH

HEIGHT | WEIGHT | HAIR | EYES | FACIAL HAIR SCARS TATOOS | CLOTHING, PHYSICAL PECULIARITIES ETC.

ADDRESS | CITY | STATE | ZIP CODE | LOCATION NO. | DAY PHONE | EVENING PHONE

☐ VICTIM NO ____ VISIBLE INJURY ☐ NO ☐ YES EXPLAIN | COMPLAINT OF NON VISIBLE INJURIES ☐ NO ☐ YES | VICTIM USING ALCOHOL ☐ NO ☐ YES ☐ UNK DRUGS ☐ NO ☐ YES TYPE ☐ UNK | ☐ TWO-MAN VEHICLE ☐ DETECTIVE/SPLASH ☐ ONE-MAN VEHICLE ☐ OTHER | ☐ ALONE ☐ ASSISTED

☐ SUBJECT NO ____ USING ALCOHOL ☐ NO ☐ YES ☐ UNK USING DRUGS ☐ NO ☐ YES TYPE ☐ UNK

## VICT./SUBJ. I. D. OVERFLOW

☐ COMPLAINANT ☐ VICTIM NO ____ ☐ SUBJECT # ____ ☐ RUNAWAY ☐ WANTED ☐ WARRANT ☐ ARREST ☐ JAIL ☐ SUMMONS

NAME (LAST FIRST MIDDLE) | VICTIM RELATIONSHIP TO SUBJECT #1 #2 #3 | J E O U | RACE | SEX | AGE | DOB | ETH

RECD JUN 09 2004

HEIGHT | WEIGHT | HAIR | EYES | FACIAL HAIR SCARS, TATOOS, CLOTHING, PHYSICAL PECULIARITIES, ETC

ADDRESS | CITY | STATE | ZIP CODE | LOCATION NO | DAY PHONE | EVENING PHONE

☐ VICTIM NO ____ VISIBLE INJURY ☐ NO ☐ YES EXPLAIN | COMPLAINT OF NON VISIBLE INJURIES ☐ NO ☐ YES | VICTIM USING ALCOHOL ☐ NO ☐ YES ☐ UNK DRUGS ☐ NO ☐ YES ☐ UNK | ☐ TWO-MAN VEHICLE ☐ DETECTIVE/SPLASH ☐ ONE-MAN VEHICLE ☐ OTHER | ☐ ALONE ☐ ASSISTED

☐ SUBJECT NO ____ USING ALCOHOL ☐ NO ☐ YES ☐ UNK USING DRUGS ☐ NO ☐ YES — TYPE ☐ UNK

## NARRATIVE

REFERENCE TO TELEPHONE CALLS/OBSCENE/ HARASSING

MS KNAGENHIELM CALLED TO REPORT THAT SHE RECEIVED ANOTHER TELEPHONE CALL FROM HER HUSBAND, BRIAN HIGUERA FROM THE HILL FINKELA DETENTION CENTER ON 06/03/04 AT 2132 FROM 843 761-6267.

JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY | JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY

## VEH./GUN/ ETC 1

STATUS: ☐ STOLEN ☐ RECOVERED ☐ FOUND ☐ TOWED ☐ SUSPECT ☐ VICTIM

TYPE: ☐ VEHICLE ☐ GUN ☐ BOAT ☐ LICENSE PLATE ☐ SECURITIES/BONDS STOCKS ☐ ARTICLE

VIN AND/OR LICENSE NO | BOAT HULL NO AND/OR REG NO

SERIAL AND/OR OWNER APPLIED NO | STATE

YEAR OF REGISTRATION | YEAR OF EXPIRATION | YEAR | MAKE | TYPE

MODEL | STYLE | COLOR | BRAND NAME | CALIBER

NIC NO | DENOMINATION | ISSUER | SECURITIES DATE

MISCELLANEOUS

## PROPERTY ES

| TYPE (GROUP) | | | | | | TOTAL VALUE |
|---|---|---|---|---|---|---|
| STOLEN | | | | | | |
| DAMAGED | | | | | | |
| BURNED | | | | | | |
| RECOVERED | | | | | | |
| SEIZED | | | | | | |

SUBJECT IDENTIFIED ■ YES ☐ NO | SUBJECT LOCATED ■ YES ☐ N O | ☐ ACTIVE ■ ADM CLOSED ☐ UNFOUNDED | ☐ ARRESTED UNDER 18 ☐ ARRESTED 18 AND OVER | ☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR 18 AND OVER

REASON FOR EXCEPTIONAL CLEARANCE 1 ☐ OFFENDER DEATH 2 ☐ DC PROSECUTION 3 ☐ EXTRADITION DENIED 4 ☐ VICTIM DECLINES COOPERATION 5 ☐ JUVENILE NO CUSTODY

## ADMINISTRATIVE

| REPORTING OFFICER(S) | DATE | UNIT NUMBER | APPROVING OFFICER | DATE | UNIT NUMBER |
|---|---|---|---|---|---|
| MINDLER, J | 06/08/04 | 2293 | LT. BLANCHARD | 6/9/04 | 21 |

FOLLOW-UP INVESTIGATION ☐ YES ☐ NO OFFICER

STATE OF SOUTH CAROLINA )
COUNTY OF CHARLESTON ) 9th JUDICIAL CIRCUIT 95 DEC -6 P 2:24

IN THE FAMILY COURT

Shannon H Hunter
Petitioner

vs.

Brian A Hunter
Respondent

PETITION FOR ORDER OF PROTECTION
(For Use in Family Court)

FILE NO. 95-DR-10-1685

The Petitioner alleges:

1. The Petitioner lives at 6270-H Rolling Farm Rd (Street Address) which is in N. Charleston County, S.C. (State).

2. The Respondent lives at [redacted] (Street Address) which is in Charleston County, SC (State).

3. The Petitioner last lived with the Respondent at 6270-H Rolling Farm Rd (Street Address) which is in N. Chas. (City), Charleston (County), SC (State).

4. Petitioner and Respondent (are) (were formerly) married to one another. They (have) have no minor children. No other judge is considering, or has entered, any order about these children except (if "none" so state): Divorce in Calif. pending in San Diego CH.

5. On Oct. ___, 1995 at ___:___ o'clock, __.M., at _____ (Street Address) which is in _____ (City) _____ (County) _____ (State), Petitioner suffered abuse when the Respondent: Beaten me up on November 17, 1995. Since that time he has threatened me many times and keeps the door open. It seems that if I do anything right I will continue to receive abuse. I have a restraining & physical intense. (State details of abuse and other facts and circumstances upon which relief is sought above. Attach additional sheets if necessary. I'm afraid he will kill me. I'm afraid for my life. He has hurt me and I'm afraid the next time he may not stop.

6. Petitioner requests: (Check one or more)

✓ a. That the Respondent be temporarily enjoined from doing, threatening to do or molesting the Petitioner.

✓ b. That the Respondent be temporarily enjoined from communicating or attempting to communicate with Petitioner in any way, and from entering or attempting to enter Petitioner's residence, place of employment or other location as the Court may order.

___ c. Temporary custody of the following minor child(ren).

| Name | Date of Birth | Address |
|---|---|---|
| | | |
| | | |
| | | |
| | | |

SCCA/425a (9/88)

AGENCY I.D. SC0100800

# NORTH CHARLESTON POLICE DEPARTMENT
## INCIDENT REPORT

O.D.

CASE NUMBER: 9603192S

NCIC NO. / ENTD.

**EVENT**

| INCIDENT TYPE | COMPLETED | FORCED ENTRY | PREMISE TYPE | UNITS ENTERED | TYPE VICTIM |
|---|---|---|---|---|---|
| 1. Threat | X YES ☐ NO | ☐ YES X NO | Residence | 0 | |
| 2. | ☐ YES ☐ NO | ☐ YES ☐ NO | | | |
| 3. | ☐ YES ☐ NO | ☐ YES ☐ NO | | | |

INCIDENT LOCATION (BUSINESS NAME, APARTMENT AND BUILDING, STREET NAME AND NUMBER): 4718 Mimosa Dr. (Residence) — N Chas — ZIP CODE: 29405 — WEAPON TYPE:

| INCIDENT DATE | TIME OCCURRED | TO | DATE | TIME DISCOVERED | REPORT DATE | REPORT TIME | DISPATCH DATE | DISPATCH TIME | LOCATION NO. |
|---|---|---|---|---|---|---|---|---|---|
| 11-1-96 | 10:00 | | 11-1-96 | 10:00 | 12-4-96 | 10:46 | 10:46 | 11:16 | 3 |

COMPLAINANT'S NAME (LAST, FIRST, MIDDLE): see victim — RELATIONSHIP TO SUBJECT — RESIDENT — RACE — SEX — AGE — ETH. — DAYTIME PHONE — EVENING PHONE

ADDRESS: see victim — CITY — STATE — ZIP CODE — LOCATION NO.

**VICTIM NO. 1**

VICTIM'S NAME (LAST, FIRST, MIDDLE): Cheney - Thomas R — RELATIONSHIP TO SUBJECT — RESIDENT — RACE: W — SEX: M — AGE: 29 — ETH.: N — DAYTIME PHONE: 2404721 — EVENING PHONE

| HEIGHT | WEIGHT | HAIR | EYES | RACIAL HAIR, BEARD, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC. |
|---|---|---|---|---|
| 6'4 | 260 | Brn | Grn | |

ADDRESS: [redacted] — CITY: Goose Creek — STATE: SC — ZIP CODE: 29445 — LOCATION NO.: 5

VISIBLE INJURY (VICT. 1) ☐ YES NO X EXPLAIN — COMPLAINT OF ANY NON-VISIBLE INJURIES ☐ YES NO X

VICTIM (VICT. 1) USING: ALCOHOL ☐ YES NO ☐ WHO X DRUGS ☐ YES NO ☐ WHO X TYPE:

TWO-WAY VCR ☐ ONE-WAY VCR ☐ DETENTION AREA ☐ OTHER ☐ — ALONE ☐ ASSISTED ☐ — *J — Title Jurisdiction, S — State, O — Out of State, U — Unknown

**SUBJECT NO. 1**

SUBJECT: X — ☐ RUNAWAY ☐ WANTED ☐ TRESPASS ☐ ARREST ☐ JAIL ☐ SUMMONS

SUBJECT'S NAME (LAST, FIRST, MIDDLE): Heguera - Brian Keith — RACE: W — SEX: M — AGE: 28 — ETH.: N — DATE OF BIRTH: [redacted] — HEIGHT: 5'8 — WEIGHT: 165 — HAIR: Bld — EYES: Blu

RACIAL HAIR, BEARD, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.: beard

ADDRESS: [redacted] — CITY: N Chas — STATE: S.C. — ZIP CODE: 29405 — LOCATION NO.: 5

SUBJECT (SUBJ. 1) USING: ALCOHOL ☐ YES NO ☐ WHO X — ARRESTED FOR AN OFFENSE LISTED UNDER O.C.G.A. 16-11-131 ☐ YES NO ☐ — DATE/TIME OF OFFENSE — DATE/TIME OF ARREST

DRUGS ☐ YES NO ☐ WHO ☐ TYPE: — TOTAL # ARRESTED

**NARRATIVE**

Via Phone; Between the above times, on the above date, Victim stated he and above subject's ex-wife were at incident location when subject told Victim if he ever heard that victim disciplined subject's son (juvenille) Victim was going to pay. Victim stated he is not afraid of subject, but the whole time subject was talking to him subject had his fists clinched tightly as if he wanted to hit Victim. Victim wanted a report on record so if subject does try to approach or attack him in the future, he may have to defend himself (Victim).

JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY — JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY

**PROPERTY DT.**

| TYPE (GROUP) | | | | | | | TOTAL VALUE |
|---|---|---|---|---|---|---|---|
| STOLEN | | | | | | | |
| DAMAGED | | | | | | | |
| EMBZD | | | | | | | |
| RECOVERED | | | | | | | |
| USED | | | | | | | |

**ADMINISTRATIVE**

SUBJECT IDENTIFIED X YES ☐ NO — SUBJECT LOCATED ☐ YES X NO — X ACTIVE ☐ ARR. CLOSED ☐ EXPUNGED — ☐ APPREHENDED UNDER 18 ☐ APPREHENDED 18 AND OVER — ☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR 18 AND OVER

REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION 3. ☐ EXTRADITION DENIED 4. ☐ VICTIM DECLINED COOPERATION 5. ☐ JUVENILE - NO CUSTODY

| REPORTING OFFICER | DATE | UNIT NUMBER | APPROVING OFFICER | DATE | UNIT NUMBER |
|---|---|---|---|---|---|
| [signature] | 12-4-96 | 803 | [signature] | 12/14/96 | 21 |

FOLLOW-UP INVESTIGATION ☐ YES NO ☐ — FOLLOW-UP OFFICER

# NORTH CHARLESTON POLICE DEPARTMENT
## SUPPLEMENTAL INCIDENT REPORT

NCPD-002

AGENCY I.D. SC0100800

CASE NUMBER: 9603.1925

PAGE 1 of 1

VICTIM/INJ. LD. OVERFLOW

VICTIM 1: Higuera, Brian Keith — AGE 9 — RACE W — SEX M — AGE 26 — D.O.B. 3/4/68 — SSN N
5'8" 165 Bld Blu
ADDRESS: [redacted] CITY: N. Charleston STATE: SC ZIP CODE: 29405 LOCATION NO.: 3 DAY PHONE: unk EVENING PHONE: unk

VICTIM 2: Abney, Thomas R — AGE 9 — RACE W — SEX M — AGE 29 — D.O.B. 11/10/67 — SSN N
6'4" 240 Br Gr
ADDRESS: [redacted] CITY: Goose Creek STATE: SC ZIP CODE: 29445 LOCATION NO.: 0 DAY PHONE: 572-8969 EVENING PHONE: 847-2665

NARRATIVE

This is a supplement to the assault report. On 1/20/97 at approx 1445 hours the Comp was at Brittlebank Park and Legare Waggoner was speaking to Shandra Higuera, a light-skinned female, when the suspect who is separated from Shandra, came up and shouted at the Comp. The suspect told his estranged wife that if the Comp wouldn't come outside he would beat on him til he called an ambulance. On 1/20/97 the suspect told Shandra that he would be dead and that he was going to find the Comp and take care of him.

VEH. / GUN / ETC. 1

STATUS: ☐ STOLEN ☐ RECOVERED ☐ FOUND ☐ TOWED ☐ IMPOUND ☐ WITH
TYPE: ☐ VEHICLE ☐ GUN ☐ BOAT ☐ LICENSE PLATE ☐ SECURITY/BOOKING, OTHER ☐ ARTICLE

VEH. MAKER LICENSE NO. | STATE | VEH. MAKER OWNER APPLIED NO. | STATE | YEAR OF REGISTRATION | YEAR OF EXPIRATION | YEAR | MAKE | TYPE | MODEL | STYLE | COLOR | BRAND NAME | CALIBER | SER. NO. | DENOMINATION | SERIES | RECOVERED DATE | MISCELLANEOUS

PROPERTY DESC.

| TYPE PROPERTY | | | | | | | TOTAL VALUE |
|---|---|---|---|---|---|---|---|
| COLOR | | | | | | | |
| MARKS | | | | | | | |
| MAKE | | | | | | | |
| MODEL | | | | | | | |
| SERIAL | | | | | | | |

ADMINISTRATIVE

VICTIM NOTIFIED ☐ YES ☐ NO | VICTIM LOCATED ☐ YES ☐ NO | ☐ ARREST ☐ ARR. WARRANT ☐ WARRANT | ☐ APPREHENDED OUTSIDE NCPD JURISDICTION ☐ APPREHENDED AND BOOKED | ☐ EXCEPTIONALLY CLEARED ☐ EXCEPTIONALLY CLEARED AND BOOKED

REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEAD 2. ☐ NO PROSECUTION 3. ☐ EXTRADITION DENIED 4. ☐ VICTIM REFUSES COOPERATION 5. ☐ JUVENILE - NO CHARGE

| REPORTING OFFICER | DATE | TIME | APPROVING OFFICER | DATE | TIME |
|---|---|---|---|---|---|
| Sgt. D. Salter | 1/20/97 | 21 | [signature] | 1/21/97 | 21 |

FOLLOW-UP INVESTIGATION ☐ YES ☐ NO

State's

# EXHIBIT

~~3~~ #5

Complainant's Exhibit

#5

| < | May 2006 | | | | | > |
|---|---|---|---|---|---|---|
| Su | Mo | Tu | We | Th | Fr | Sa |
| | 1 | 2 | 3 | 4 | 5 | 6 |
| 7 | 8 | 9 | 10 | 11 | 12 | 13 |
| 14 | 15 | 16 | 17 | 18 | 19 | 20 |
| 21 | 22 | 23 | 24 | 25 | 26 | 27 |
| 28 | 29 | 30 | 31 | | | |

26

Hi . !!! thanks to a dear friend my fax is now up and running... show me what you got!! 843-486-8654 :) I know...lol. I need to get a life.. :) Reply

# Entry for May 24, 2006



*Well I talked to the Guardian ad litem today about my visitation with my youngest son... I look forward to court tomorrow. I can not wait to see him. I look forward to the day when my oldest son and youngest son meet.*

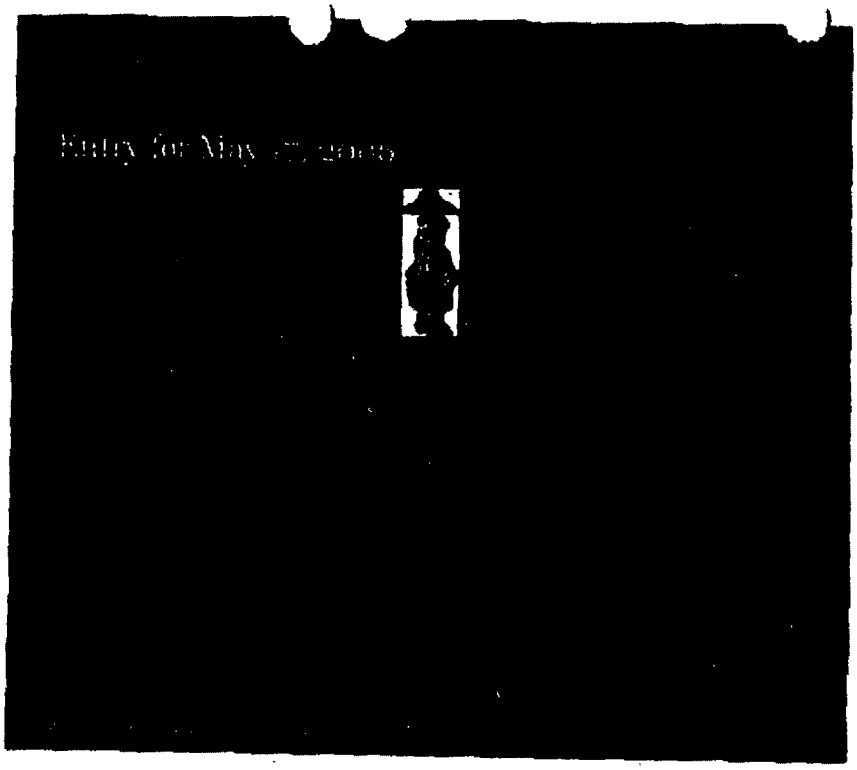
Wednesday May 24, 2006 - 04:48pm (PDT)

Previous Post: Entry for May 22, 2006

**Comments** *(3 total)*

[redacted]

# Entry for May 17, 2006



Clinton leaving comments on Myspace - Friend Camden's site

1:31 AM 3/8/09

" Come to the room you gotta see this "

Mar 8 2009 1 33 AM

haha :]
what are you doing?
gee, im loving that picture.
its amazing
lol.
my amazing photography.
:]



- Clint

Mar 8 2009 1:31 AM

come to the room
you gotta see this
xD

- View All
- Add Comment

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Close
Americas

- Brazil
- Canada
- Canada (Français)
- Latin America (Español)
- Mexico
- United States (English)
- United States (Latino)

Asia Pacific

- Australia
- India
- Japan



# Camden!

www.myspace.com/camden15

- Send Message
- Add to Friends
- Add Comment

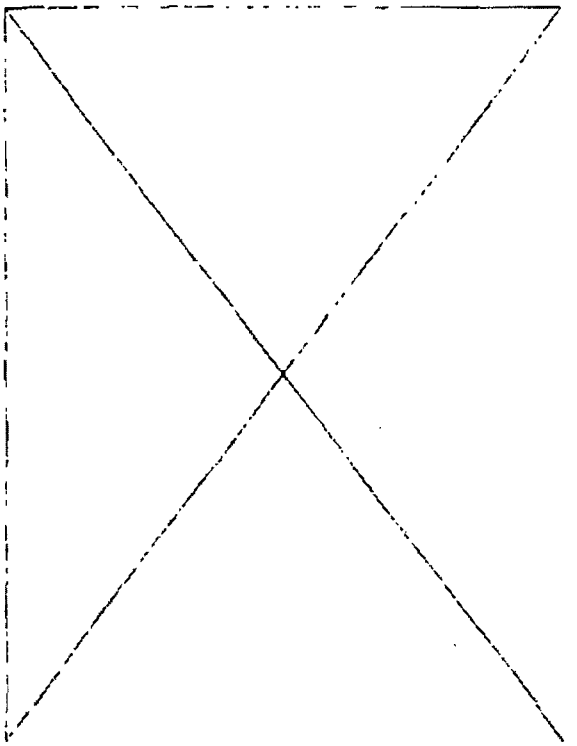
=]**Mood: happy**
*View My:*

- Photos
- Videos
- Playlists
- **18 / Male**
- **South Carolina, US**
- **Last Login: 3/9/2009**
-





**Music Player**



## Interests

- **General**

  Xbox, Nintendo, Sega, YouTube, Halo, Pwning n00bz at Halo, Call of Duty, Guitar Hero, Charlie the Unicorn, FPS Doug, Erick's dog Lucky

## Details

- **Status:** Single
- **Here for:** Friends
- **Orientation:** Straight

- **Body type:** 5' 11" / More to love!
- **Ethnicity:** Black / African descent
- **Religion:** Other
- **Zodiac Sign:** Pisces
- **Children:** Someday
- **Smoke / Drink:** No / No
- ***Income:*** **$250,000 and Higher**

## Truth Box

- View App
- Report App

## Blurbs

**About me:**

**Who I'd like to *meet:***

## Friend Space (Top 8)

Camden! has 476 friends

- View:
- All
- Online
- New

1. ohf 
2. Clint 



3 «KELLy!



4. Frank



5. Tomoki



6. Maureen



7 Happy Hemibear ]WANTS F



8 Play N Trade Charleston

## Comments

Displaying 10 of 2922 comments

- View All
- Add Comment



- Happy Hemibear ]WANTS F

  Mar 9 2009 5:55 PM

Brian Higuera 40yrs.

About me section

"I Am At times A ....
..... mean S.O.B.

"I Love hanging out with my stepdaughter AND Baking cakes for her AND her Best Friend Stacie Alyse Rodriguez

* He was Not married - Girlfriend has 2 minor daughters

Where Are I:



## Brian

40 / Male
Charleston, SOUTH CAROLINA US
Last Login: 4/6/2009

### LATEST BLOG ENTRIES

May 23, 2007 1:40 PM

Apr 23, 2007 7:38 AM

Mar 3, 2007 7:47 AM

Feb 1, 2007 5:57 PM

Jan 21, 2007 11:52 PM

### BLURBS

About me:

I am an Navy Hospital, Shipboard and Naval E.D.S. I am also a Loyal Friend to those that treat me with the respect that I offer them. I am now ENGAGED to a Main Amazon woman that has chained me down as a hunter after try they and explained me to his own PET . lol. I love hanging out with my stepdaughter and baking cakes for her and her best friend Dusty Ryan Rodriguez

What I'd like to check:

I was born and now I have kept! Just the one my LITTLE FRIEND!!!

### INTERESTS

General:

I love to ride my bike and go to the beach. I read alot as well as do many do that are HAPPILY ENGAGED. lol. I enjoy going to the gym but often find myself escaping there than exercising. )

What's your favorite...

| | |
|---|---|
| Beverage (non-alc) ? | sugar free red bull |
| Beverage (alc) ? | jack and coke |
| Color ? | blue |
| Food ? | mexican |
| Style of clothing ? | jeans/ shirt 50's |
| Meal of the day ? | lunch |
| Feature on yourself ? | eyes |
| Quality in a guy/girl ? | honesty |
| Person ? | the whoever can make me/Lets the life we lead |
| Song ? | there are so many both country and classic rock |
| Musical Artist/Band ? | again too many... I love music |
| Sport ? | football |
| Movie ? | The Notebook |
| TV Show ? | The OC |
| Radio Station ? | 107.3 fm country |
| Type of Chocolate ? | white chocolate |
| Eye Color ? | blue |
| Do you/Have you ever... | |
| Have any pets ? | yes/ had a dog named buddy |
| Smoke ? | no |
| Drink ? | yes |
| Have any piercings ? | yes / my left ear...lol |
| Have any tattoos ? | yes / both arms |
| Cheat on a boyfriend/girlfriend | no |
| Had sex ? | oh gosh ..lol |
| Gone streaking ? | yes |
| Gone skinny dipping ? | yes |
| Been to Europe ? | yes and the middle east/Does australia count? |
| Been to an Island ? | Diego Garcia in the British Isles |
| Had affairs ? | yes |
| Stolen any items ? | nope |
| Been stabbed/shot ? | I've been cut |
| Slept until after 12:00 ? | yep |
| Stayed up all night ? | many times |
| Danced like a whore ? | oh nuh.. lol. |
| Hooked up with 2 people in one weekend ? | It was the 80's |
| Turned down a date ? | not that I can recall |
| Eat pies with chocolate chips ? | ewwww.. |
| Kiss someone of the same sex ? | nope |
| Cheat on someone you love ? | nope |
| Run away from home ? | yep |
| Lie to your parents ? | what can I say it was the 80's |
| Lie to your boyfriend/girlfriend ? | nope |

### FRIEND SPACE (TOP 8)

Brian has 21 friends









### COMMENTS

Displaying 25 of 238 comments

View All  Add Comment



Mar 18 2008 3:37 PM

Hey good looking! How are ya?



Sink Properties for "Karen" in Seatons Site

File Edit View History Bookmarks Tools Help

http://www.mylife.com/beau-seaton-goose-creek-sc-[illegible].html

"BEAU SEATON" sc

Link Properties

Address: http://www.mylife.com/kaleman?32%a

Will open in: Same window

## About Beau

Profile URL: www.mylife.com/beauseaton[illegible]

Member Since: April 2008

Is Beau Married or dating

Add to Contacts

Send an Email

Leave a Comment

View Full Profile

Beau Seaton's Friends (34) ...s All





Blog Posts (0)

Didn't find a match?

Not the You're Looking For?

Sign up now!

We'll keep searching and notify you of new matches — FREE. You'll also be able to see if anyone is searching for you.

First Name:

Last Name:

E-Mail:

Gender: Male Female

What's on Beau's mind?

Done

Start | Beau Seaton - Goose ... | Element Properties | System Informatio... | 9:45 PM

**Beau Seaton** 46-year-old Male

Join for FREE

About Beau

Basic Information

Profile URL:
Member Since: April 2008

Is Beau married or dating

Beau Seaton's Friends (34)

Blog Posts (0)

What's on Beau's mind?

Connect with Beau

Add to Contacts

Send an Email

Leave a Comment

View Full Profile

Didn't find a match?

Not the You're Looking For?
Sign up now!

*First Name:

*Last Name

*Email:

*Gender: Male Female

*Birthday: Year Day Month

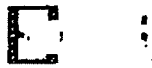
*ZIP/Postal Code

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General Media Permissions Security

**Beau Sexton - Goose Creek, SC | MyLife™:**

| | |
|---|---|
| Address | http://www.mylife.com/beau-sexton-goose-creek-sc/[illegible].html |
| Type | text/html |
| Render Mode | Standards compliance mode |
| Encoding | ISO-8859-1 |
| Size | 37.82 KB (38,721 bytes) |
| Referring URL | http://govmortgages.com/index.php |
| Modified | Monday, April 20, 2009 8:29:12 PM |

Meta Tags:

| Name | Content |
|---|---|
| Title | Beau Sexton - Goose Creek, SC \| MyLife™ |
| keywords | Beau Sexton, Beau Sexton Goose Creek SC, Beau Sexton ... reunion, |
| description | See what Beau Sexton of Goose Creek, SC is up to at MyLife™. Find Everyone from Your Past |
| revisit-after | 7 days |
| robots | noodp,no...dir,noarchive |

ROA 335

Security Information for this page

**This web site does not supply identity information.**

**Connection Not Encrypted**

More

Start Beau Sexton - Goose ... Page Info - http://w... System Informatio... 8:29 PM

General Media Permissions Security

**Karen Forman - Charleston, SC | MyLife™**

| | |
|---|---|
| Address | http://www.mylife.com/karen-forman-charleston-sc/[illegible].html |
| Type | text/html |
| Render Mode | Standards compliance mode |
| Encoding | ISO-8859-1 |
| Size | [illegible] KB (35,535 bytes) |
| Referring URL | http://www.mylife.com/beau-easton-goose-creek-sc/[illegible].html |
| Modified | Monday, April [illegible], 2009 5:[illegible]:42 PM |

- Meta (5 tags)

| Name | Content |
|---|---|
| Title | Karen Forman - Charleston, SC \| MyLife™ |
| keywords | Karen Forman, Karen Forman Charleston SC, Karen Forman, , people search, reunite, reconnect, find friends, co-workers, colleagues. |
| description | Whether Karen Forman from Charleston is a lost friend, former co-worker, or family member, start reconnecting today with MyLife™ |
| revisit-after | 7 days |
| robots | noodp,noydir noarchive |

Security information for this page

**This web site does not supply identity information.**

**Connection Not Encrypted**

More



Start | Karen Forman - Charle... | Page Info - http://w... | System Informatio... | 9:28 PM

**Karen Forman**

Join for FREE

About Karen

Basic information

Connect with Karen

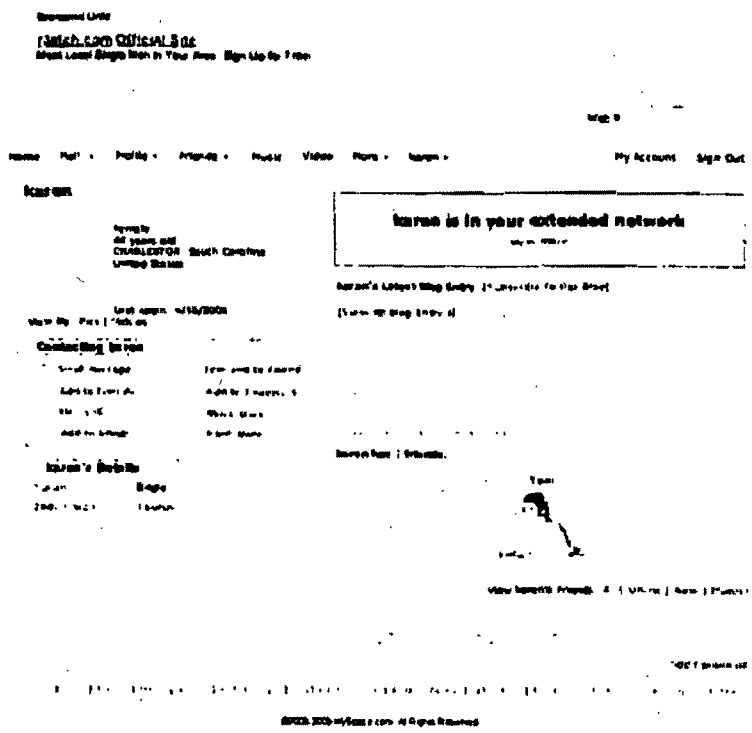
Add to Contacts

Send an E-mail

View Full Profile

Didn't find a match?

12 More Results Found for



karen is in your extended network

Displaying 11-20 of 25 results for BEATON in South Carolina















Age

City, State, Zip, or Country
SOUTH CAROLINA

Distance

Only show users who have photos

Show names and photos only

People You May Know

Here are some people we think you may know based on common friends.

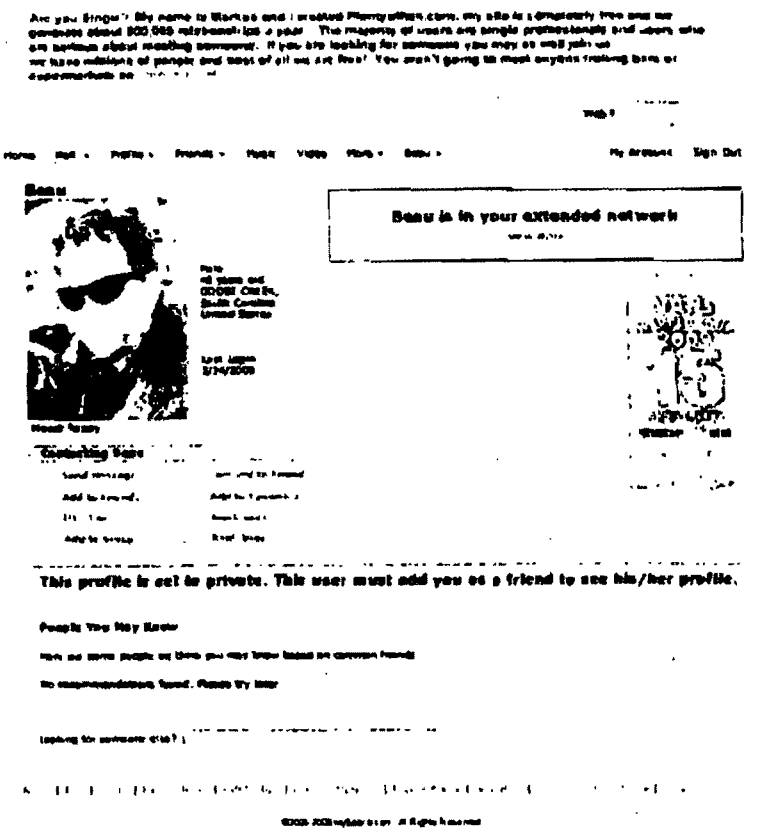
No recommendations found. Please try later.

Find More Friends Check your

or let us find them on my space



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This profile is set to private. This user must add you as a friend to see his/her profile.

People You May Know

**scoobydoobydoo2**

**From:** "Brian H." <sodapoptrkr@yahoo.com>
**To:** <scoobydoobydoo2@bellsouth.net>
**Sent:** Thursday, November 03, 2005 10:59 AM
**Subject:** iraq photos

Check out my photos YAHOO! Photos

PhotoMail Uploads



**sodapoptrkr has invited you to view a photo album on Yahoo! Photos**

Hello guys, I'm setting up a 360 yahoo blog thingie majiggie these are some of the photos I have

**View PhotoMail Uploads**

Get digital pictures of your own? Upload them to Yahoo! Photos - then share them with friends and even get 35mm-quality prints. Find out more.

Order Prints of sodapoptrkr's photos for yourself - your first 10 are FREE! Just click "Order Prints" while viewing photos to get started.

If you can't see the button above, copy and paste this web address into your browser's web address bar: http://pg.photos.yahoo.com/ph/sodapoptrkr/album?.dir=/4e20&.src=ph&.tok=ph7rN4DBOX5Lmy9

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No virus found in this incoming message.
Checked by AVG Free Edition.
Version: 7.1.361 / Virus Database: 267.12.6/151 - Release Date: 10/28/05

12/7/2006

[ ] **Created by**

**Order Prints** **Print-at-Home**

30 Photos:










We've been putting the finishing touches on a big upgrade to Yahoo! Photos and it's rolling out now. Your account will be upgraded automatically - so check back soon. In the meantime, take a look at what

Thanks for using Yahoo! Photos



30 Photos:

**Order Prints** **Print-at-Home**

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EZPrints, one of Yahoo! Photos' service providers, collects information on this site in order to fulfill your request for photo services, consistent with the Yahoo! Privacy Policy. To learn about how Yahoo! uses your information please read the

50

Welcome, **sc_beachy_keen**
[ , ]

[ ]

**Order Prints** **Print-at-Home**

13 of 30:



We've been putting the finishing touches on a big upgrade to Yahoo! Photos and it's rolling out now. Your account will be upgraded automatically - so check back soon. In the meantime, take a look at what

Thanks fo
using Yahoo! Photos

Uploaded 5-Feb-2006, Full size: 1194x797 pixels

13 of 30:

Order prints for pick up at your neighborhood Target store in as little as 1 hour.

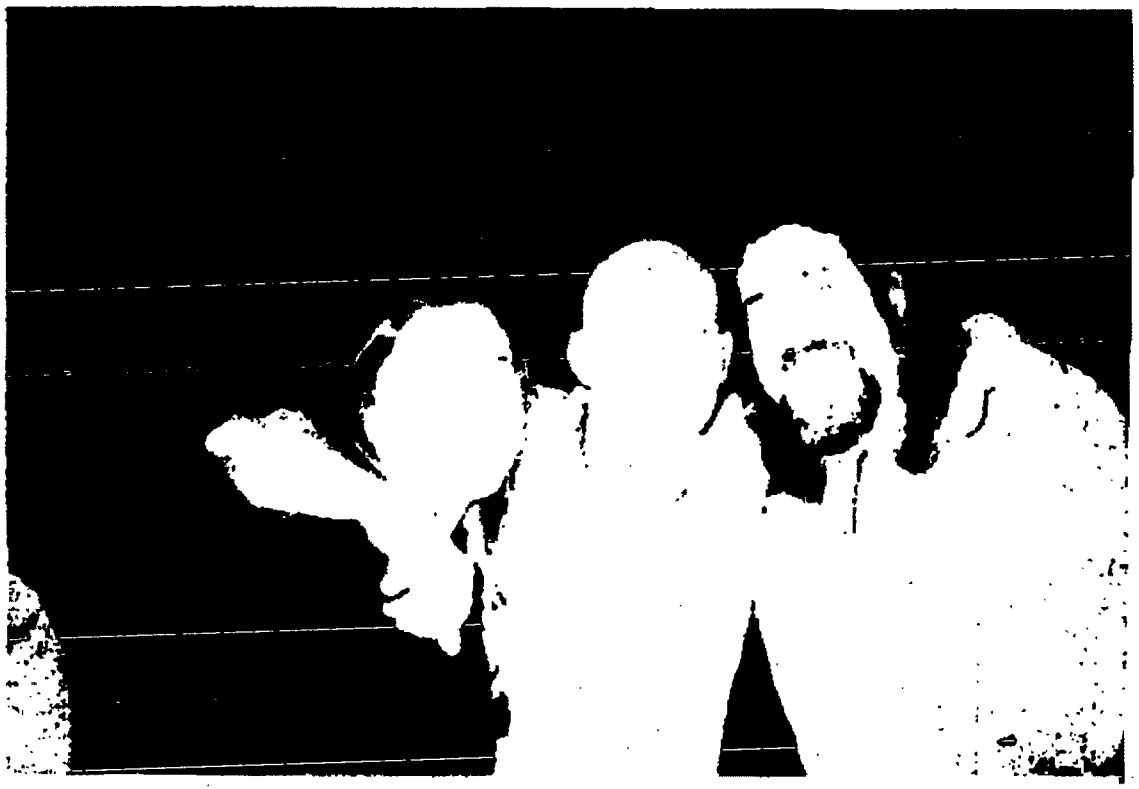
TARGE

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[ ]

**Order Prints** **Print-at-Home**

17 of 30: |



We've been putting the finishing touches on a big upgrade to Yahoo! Photos and it's rolling out now. Your account will be upgraded automatically - so check back soon. In the meantime, take a look at what

Thanks for using Yahoo! Photos

Uploaded 5-Feb-2006, Full size: 1170x797 pixels

53

17 of 30: |

ROA 347

Order prints for pick up at your neighborhood Target store in as little as 1 hour.

TARGET



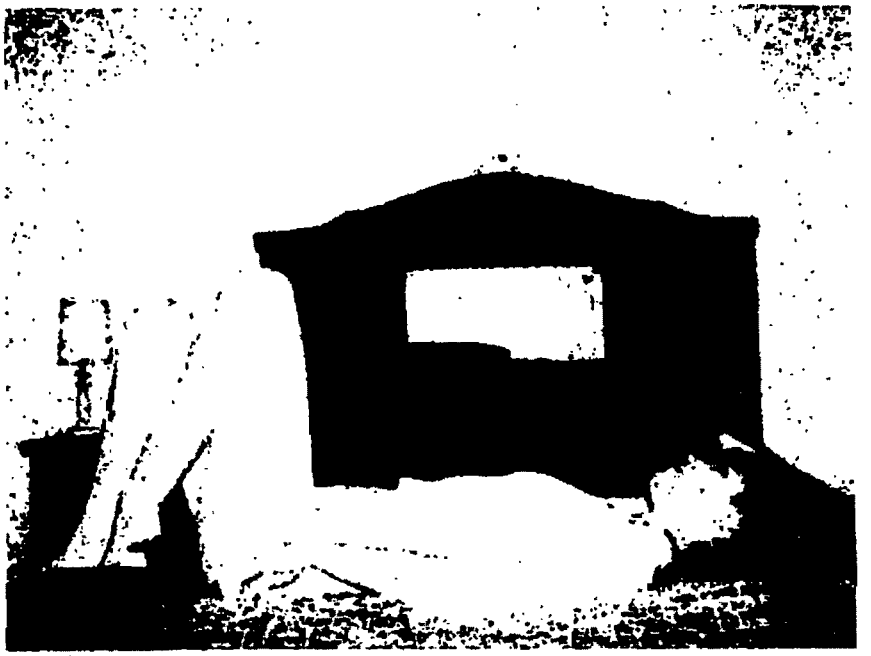
We've been putting the finishing touches on a big upgrade to Yahoo! Photos and it's rolling out now. Your account will be upgraded automatically - so check back soon. In the meantime, take a look at what

Thanks for using Yahoo! Photos

Order Prints | Print-at-Home



View Slideshow



## 100_4448

Uploaded 3-Jun-2006, Full size: 800x600 pixels

2 of 9: < Prev. | Next >


- Prints (4x6, 5x7, 8x10)
- Poster-size prints
- Photo gifts
- Photo greeting cards
- Real U.S. Stamps
- Photo Books
- Photo Calendars



Show Dad your love by creating a photo gift from your own pics. See shipping dates.

Order prints to pick up at your local Target in as little as 1 hour - take $2 off any $10 order Show me how

TARGET



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Design and order official U.S. stamps using your photos. Create now

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100_44541 [Back to Album]

Order Prints | Print-at-Home

5 of 9: < Prev | Next >

View Slideshow



## 100_44541

Uploaded 3-Jun-2006, Full size: 301x800 pixels

5 of 9: < Prev. | Next >


- Prints (4x6, 5x7, 8x10)
- Poster-size prints
- Photo gifts
- Photo greeting cards
- Real U.S. Stamps
- Photo Books
- Photo Calendars



Show Dad your love by creating a photo gift from your own pics. See shipping dates.

Order prints to pick up at your local Target in as little as 1 hour - take $2 off any $10 order Show me how

TARGET



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- Refinance

**Summer Travel**
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- Mexico Cruises
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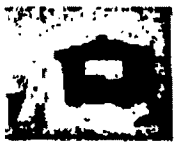
steve's place [Back to ... Photos] **Created by** sodapopkid

**Order Prints** | **Print-at-Home**

9 Photos: Check all | Clear all

View Slideshow


246464565_11


100_4448


100_4594


100_44521


100_44541


100_4445


100_44441


Lynn


Lynn1

9 Photos: Check all | Clear all

**Order Prints** | **Print-at-Home**


- Prints (4x6, 5x7, 8x10)
- Poster size prints
- Photo gifts
- Photo greeting cards
- Real U.S. Stamps
- Photo Books
- Photo Calendars



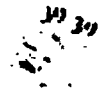
Show Dad your love by creating a photo gift from your own pics. See shipping dates.

Order prints to pick up at your local Target in as little as 1 hour - take $2 off any $10 order Show me how

TARGET



Create lasting keepsakes with elegant hardcover photo books. Choose layouts, covers, more. Create a book



Design and order official U.S. stamps using your photos. Create now

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steve's place [redacted] Created by [redacted]

Order Prints | Print-at-Home

9 Photos: Check all | Clear all

View Slideshow

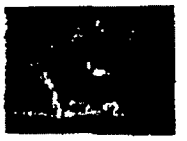

246464565_n


100_4448


100_4594


100_4452


100_4454


100_4445


100_4444


Lynn


Lynn1

9 Photos: Check all | Clear all

Order Prints | Print-at-Home

- Prints (4x6, 5x7, 8x10)
- Poster size prints
- Photo gifts
- Photo greeting cards
- Real U.S. Stamps
- Photo Books
- Photo Calendars



Show Dad your love by creating a photo gift from your own pics. See shipping dates.

Order prints to pick up at your local Target in as little as 1 hour - take $2 off any $10 order
Show me how

TARGET



Create lasting keepsakes with elegant hardcover photo books. Choose layouts, covers, more. Create a book



Design and order official U.S. stamps using your photos.
Create one

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Entertainment
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Iraq Photos
00007



Iraq Photos
00008



Iraq Photos
00009



Iraq Photos
00010



Iraq Photos
00006



Iraq Photos
00011



Iraq Photos
00012



Iraq Photos
00013



personal 010



personal 011



personal 014



- Steph...
- Offline

Brian you are so funny!!! I need to plan a roadtrip and come see this kissing bandit! Oh and I have met you in person and I think you are very attractive and so do all of these other women, so that should tell you something!!! Tell Clint I said hello and I'm so glad you guys are having such a great relationship! Good Luck with your new change of career and school, I'm sure you will do fine! Talk to you later!!!

Friday July 21, 2006 - 10:08am (EDT)



- brian
- Offline IM

Well well well....lol. So that is what it will take to get ya to come visit??? Atleast I don't have to take my clothes off at the bar...lol. that's a good thing. :) I'll tell Clint you said hey sweetheart and thanks for the well wishes..I'm gonna need them. I just lost my safety net in the trucking industry.... Now I amd scared sh**less.. i've been driving trucks for over 13 years.. Now I'm on unfamiliar territory.... SOMEONE HOLD ME!!!!! PLEASE??? lol..

Friday July 21, 2006 - 12:55pm (PDT)

## Compose a comment for this post

**Comment:**

Yahoo! My Yahoo! Mail Make Y! your home page Search: Web Search

YAHOO! PHOTOS Welcome, sc_beachy_keen [Sign Out, My Account]

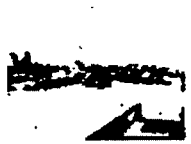
My Photos - View Can - Help

63

## Rearrange Photos

**After rearranging your photos, click "Done"**

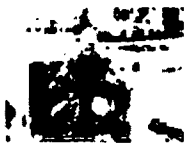
Done Start Over Cancel


Iraq Photos 00007


Iraq Photos 00008


Iraq Photos 00011


Iraq Photos 00012


my trip home 08-2006 00014


my trip home 08-2006 00002


my trip home 08-2006 00004


my trip home 08-2006 00005

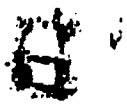

my trip home 08-2006 00009


my trip home 08-2006 00013


my trip home 08-2006 00008


my trip home 08-2006 00012


002


Captured 2005-10-06 00006


Captured 2005-10-06 00008


Captured 2005-10-06 00009





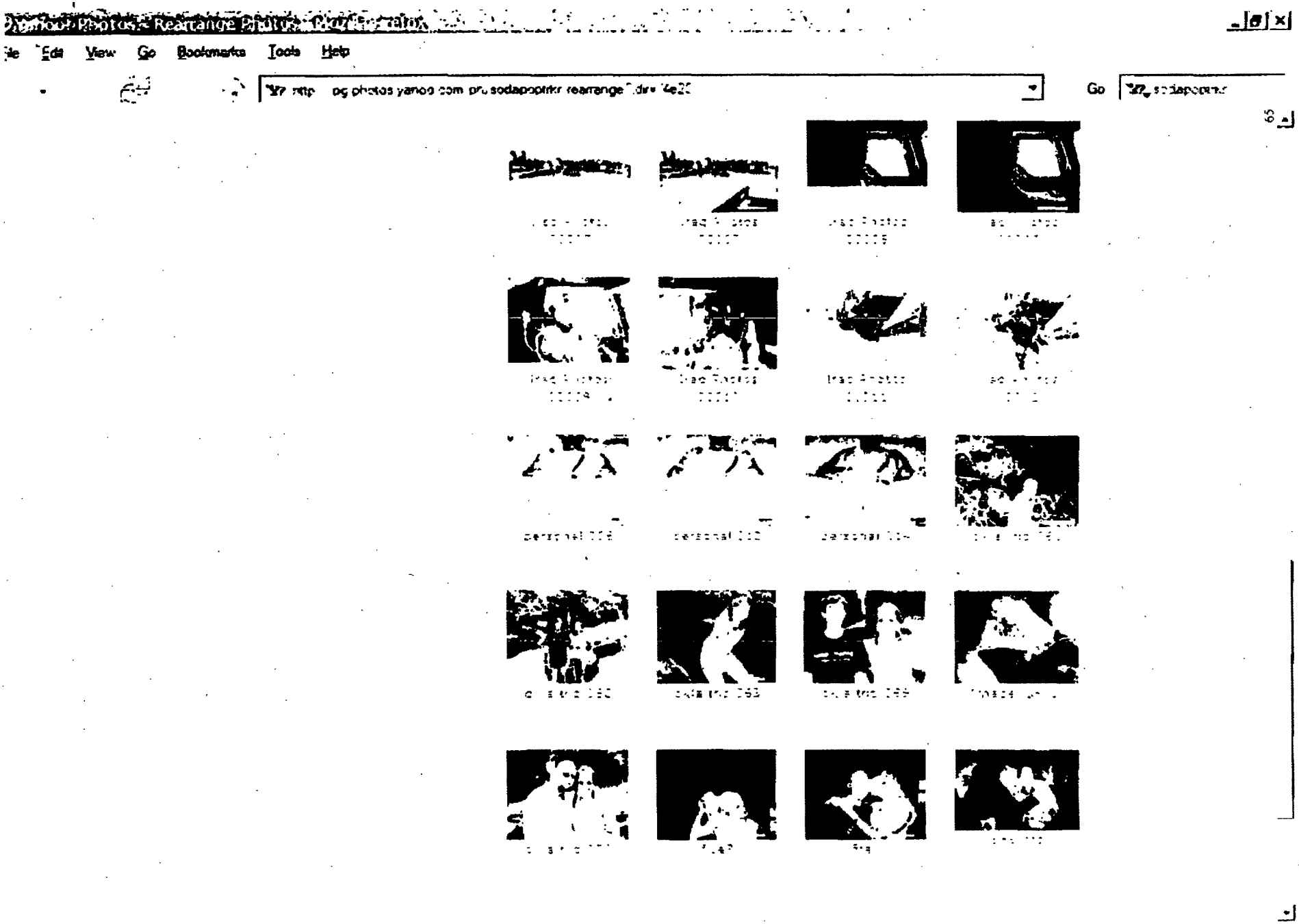


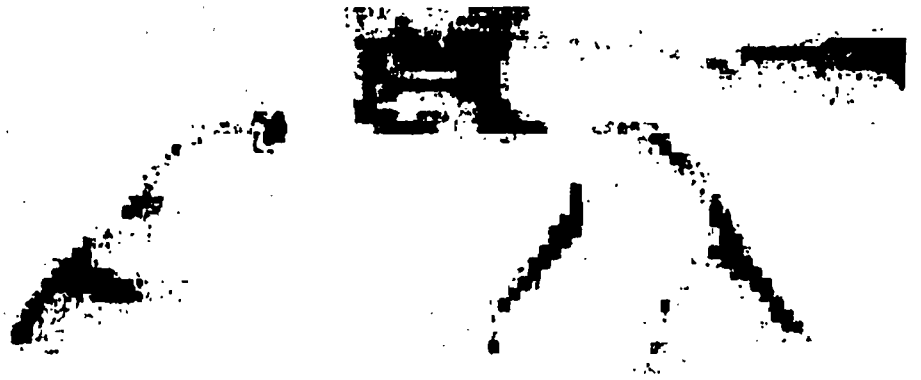




ROA

ROA 358


Yahoo! Photos - Rearrange Photos
File Edit View Go Bookmarks Tools Help
Done
Start
Yahoo! Photos - Re...
AM




1.7.2001

Clinton was with Shannon in Missouri over Easter. "Was glad to be back in Missouri."

NOW:
"Had an awesome weekend too bad it was ruined By coming home"

Web

Local Music Video More Clint Log In Sign Up

I Was Embarrassed of My Skin So I Found a Way
To Get Rid Of My Stretch Marks For Under $6!





## Clint

had an awesome weekend, too bad it was ruined by coming home Mood: bummed 17 hours ago

View My

16 / Male
Charleston, South Carolina, US
Last Login 4/19/2009



This profile is set to private. This user must add you as a friend to see his/her profile



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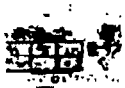
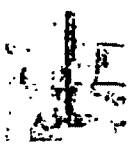
Trying to change time on Computer

* Unfortunately - that puts Aidan Cheney 9 yrs old online at 2:50 AM instead of the 10:50 PM which was BAD enough.



Listing 1-13 of 13



| Name | Comment |
|---|---|
|  | **Mar 31, 2009 3:31 PM**<br>no<br>that is NOT what i mean<br>I spelt it like that on purpose to be funny<br>sheesh |
|  <br>Aidan C | **Mar 7, 2009 10:50 PM**<br>*This comment was sent by your friend via the [redacted] app.To block this app and all communications from it, click*<br>.....<br>Hey Shannon, I just bought you as my PET! |
|  <br>Shan Huerter | hi<br>**Oct 25, 2008 11:48 PM**<br>Hope you enjoy your Sunday. It is going to be a beautiful day! : ) See you on Monday! |
|  | **Oct 25, 2008 9:12 AM**<br>I wish I could help! |
|  | **Sep 27, 2008 10:29 PM**<br>What happened to you? I hope all is well!! Bless/pgs!<br>SuziQ |
|  | **Sep 16, 2008 4:27 PM**<br>*This comment was sent by your friend via the [redacted] app.To block this app and all communications from it, click [redacted]*<br>..... |
|  | |

File Edit View History Bookmarks Tools Help

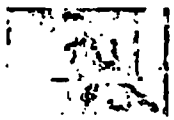
http://profile.myspace.com/index.cfm?fuseaction=user.viewprofile&friendid=51117535

View Shannon s Friends: All | Online | New

## Shannon's Friends Comments

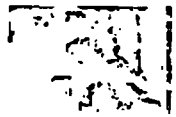
Displaying 14 of 14 comments ( View All Add Comment )

**Clint** — **Apr 14 2009 2:14 AM**



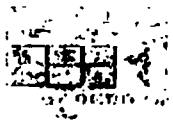
not fair to do it here
laptop and hers are all i got without school

**Clint** — **Mar 31 2009 7:31 PM**



no
that is NOT what i mean.
I spell it like that on purpose to be funny
sheesh

**Aidan** — **Mar 8 2009 2:50 AM**



*This comment was sent by your friend via the* **Own Your Friends!** *app. To block this app and all communications from it, click* **Here**

---

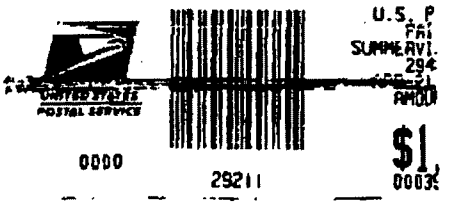
**Hey Shannon, I just bought you as my PET. Click here to find out how much I think you're WORTH!**



Transferring data from cache.c8.music.c1.myspacecdn.com

Start MySpace.com - Shan... 10:45 AM

Hodson SC 29456




SCYR
Attn: Larry Atkins
PO Box 11329
Columbia SC 29211

29211131329 B099

State's

# EXHIBIT

~~H~~ 6

Complainant's Exhibit

#6

**Seaton Law Firm, LLC**
Attorneys at Law

Grover C. Seaton, III
• Founding Member - S.C. Association of Criminal Defense Lawyers
• Founding Member - National College for D.U.I. Defense

Grover "Beau" Seaton, IV

Writer's Direct E-Mail Address: Beauseaton@scbar.org

Post Office Box 28
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Meggett Corner, SC 29451

Telephone (843) 781-8388
Charleston (843) 722-1345
Facsimile (843) 781-4454
General E-Mail: seaton@seatonlawfirm.net

January 12, 2005

VIA FACSIMILE ONLY
Mary Kate Schmutz, Esquire
24 Broad Street
Charleston, SC 29401

***Knagenhelm v. Higuera***

Dear Kate:

You may or may not be aware that Mr. Higuera is a member of the National Guard and in being sent to Iraq to drive a tanker truck. A more dangerous job I cannot imagine. Mr. Higuera has not been able to see his son his March 8th. He deeperately wants to see him in case he does not come back from Iraq. Please let me know if we can set up some visitation immediately. Also, in an effort to try and resolve this case once and for all, we are offering the following settlement:

1. Custody to mother;
2. Standard visitation to father;
3. Child support to continue per the order with wage withholding directly to mother;
4. All assets and debts have been divided;
5. Alimony to continue per the order for 1 more year;
6. Each pays own attorney fees;
7. Divorce on grounds of one year separation.

I feel certain that I can get us in front of a Judge before Mr Higuera is sent to Iraq in February. Please let me know something as soon as possible.

Very truly yours,

Grover "Beau" Seaton, IV
*Attorney at Law*

GCSIV/ab
cc: Karen Forman, GAL
Brian Higuera

# Seaton Law Firm, LLC

Attorneys at Law

Grover C. Seaton, III
* Founding Member - S.C. Association of Criminal Defense Lawyers
* Founding Member - National College for D.U.I. Defense

Grover "Beau" Seaton, IV

Writer's Direct E-Mail Address: Beauseaton@scbar.org

Post Office Box 38
186 Carolina Avenue
Moncks Corner, SC 29461

Telephone (843) 761-6365
Charleston (843) 722-1345
Facsimile (843) 761-4459
General E-Mail: seaton3@homespressway.net


May 31, 2006

VIA FACSIMILE ONLY
Mary Kate Schmutz, Esquire
24 Broad Street
Charleston, SC 29401

***Knegenhelm v. Higuera***

Dear Kate:

As you are aware, Mr. Higuera is back from Iraq and anxious to see his son. It is my understanding through the GAL that she does not have any safety issues with the visitation. I understand your client may be concerned about the length of time since the son has spent any significant time with his father, but that is a different issue. I am proposing a graduated visitation schedule i.e. the son spend a few hours on Saturday and then a few hours on Sunday followed by all day Saturday and then all day Sunday and then if all is going well, then a regular Friday at 5 until Sunday at 5. If we can agree on the visitation then we should be down to just the issue of alimony to be tried. Please let me know what your client is willing to do. I don't want to file a temporary motion but I think this young man is entitled to some time with his father.

Very truly yours,

Grover "Beau" Seaton, IV
*Attorney at Law*

GCSIV/sb
cc: Karen Forman, GAL
Brian Higuera

Resident Judge
P.O. Box 219
Moncks Corner SC 29461-0219

June 7, 2006

To Whom It May Concern,

I am writing in complaint of Guardian Karen Forman's actions in the case of "protection" for my son C[redacted] Higuera.
I have never even recieved a statement from Ms. Forman stating her information, criminal status, nothing but an insistence to pay the half retainer to her "asap." Our court order, page 5 allowed for either party to pay half or if needed the Whole retainer.
Since Brian K. Higuera (ssn[redacted]-2548) in being Ruled In for non-payment, our ability to do so, has once again become nonexistent. (Bench Warrant issued 6/7/06)
She has apparently met with Mr. Brian Higuera, and "decided there is no safety issue for full unrestricted visitation." I first found out about this "decision" via BRIAN HIGUERA'S YAHOO.360 BLOG SITE (re: enclosed). Then I received the letter from Grover Seaton dated 5/31/06 (letter enclosed.)

This is an abuse situation and Ms. Forman had NO RIGHT to make any such decisions without even speaking to me or anyone else involved. I request that something be done immediately. I am attempting to have DSS and Dorchester County Sherriffs Department do something about new issues concerning the safety of my son that have resulted due to Mr. Brian Higuera's *current* actions, as well. This "decision" making practice of Ms. Forman's is TOTALLY UNACCEPTABLE to say the least and I have never heard of a Guardian doing such, if this is in fact what she has done! I, to this day, have not received any call-back from her, (as to the messages I left her.) I have no intention of accepting her "safety decisions" made in ignorance of the facts when my son is involved. I will protect my son!

Complainant's Exhibit
#7

I can be reached at 843-871-0903
[redacted]
Ladson SC 29456

Sincerely,
Katherine M. Knagenhjelm

Katherine M. Knagenhjelm

#5: Mr Brian has been back For 2 months (RE: Seaton Letter)
He has been busy "vacationing" across the US | there was NO URGENCY or being ANXIOUS on BRIAN'S part. (Vacationing RE: B. Ker Week, Oklahoma, Alabama, Colorado, TN)

# EXHIBIT

Complainant's Exhibit #8

~~18~~ 8

**Knagenhjelm v Higuera**
**Case No.: 2003-DR-08-1488**

| DATE | SERVICE | TIME | AMOUNT |
|---|---|---|---|
| 1/4/05 | met with client | 1.00 | $ 200.00 |
| 1/10/05 | read documents/file provided by client | 4.00 | $ 800.00 |
| 1/12/05 | read ltr from B. Seaton forwarded to client<br>TC with B. Seaton | .25 | $ 50.00 |
| 1/18/05 | TC with B. Seaton<br>TC with client | .25 | $ 50.00 |
| 1/20/05 | TC with client<br>drafted ltr | .25 | $ 50.00 |
| 1/25/05 | met with client | 1.00 | $ 200.00 |
| 1/26/05 | listened to tape | .50 | $ 100.00 |
| 1/26/05 | TC with K. Foreman<br>gave her client's number | .25 | $ N/C |
| 1/31/05 | TC with client | .25 | $ 50.00 |
| 4/29/05 | read fax from client<br>TC with client<br>Drafted ltr | .25 | $ 50.00 |
| 5/25/05 | Pretrial | 2.25 | $ 450.00 |
| 4/30/06 | read all emails sent by client | 6.00 | $1,200.00 |
| 5/3/06 | pretrial notice to client | | N/C |
| 5/8/06 | filed Notice of Appearance | | N/C |
| 5/30/06 | reviewed Order Appt Gal<br>ltr to client | .50 | $ 100.00 |
| 5/31/06 | reviewed ltr from B. Seaton<br>forwarded to client | .25 | $ 50.00 |

| | | | |
|---|---|---|---|
| 6/1/06 | read materials sent by client | 1.00 | $ 200.00 |
| 6/5/06 | read ltr sent by client<br>TC with client | .50 | $ 100.00 |
| 6/12/06 | read ltr from K. Foreman with copies of client's ltr to Judge | .25 | $ 50.00 |
| 6/13/06 | read ltr and enclosures from K. Foreman | .25 | $ 50.00 |
| 6/14/06 | TC with Lt. Marshall | .25 | $ 50.00 |
| 6/15/06 | met with client<br>met with K. Foreman<br>drafted Motion to be Relieved | .75 | $ 150.00 |
| | | **19.50** | **$3,950.00** |

| | |
|---|---|
| TOTAL FOR KATE SCHMUTZ | $3,950.00 |
| TOTAL RETAINER | <$3,000.00> |
| **TOTAL DUE** | **$ 950.00** |

*Your check is welcome! If your check is returned for non-sufficient funds, you expressly authorize your account to be electronically debited or bank drafted for the amount of the check plus any applicable fees. The use of a check for payment is your acknowledgment and acceptance of this policy and its terms and conditions.*

Kate Schmutz
24 Broad Street
Charleston SC 29401

June 25, 2006

Kate,

While under my employ, you have had conversations with Karen Forman and "Beau Seaton" from 6/13/06 to present. I need a complete detailed accounting, in writing of what these conversations,with Karen and Beau,entailed SPECIFICALLY, and any other with other individuals, you have spoken with on 6/15/06 until present, concerning myself and my case for which you were MY representation for, in custody matters and ect. These are to be sent to me immediately.

Also, the are descrepancies in what you were TOLD to do and your actions reflected in the billing statement. I am breaking that down. After I receive the letter stating the above refrenced conversations, believe me, you will be released with pleasure.

Sincerely,

Katherine M. Knagenhjelm

SCHMUTZ & SCHMUTZ, P.A.
24 BROAD STREET
CHARLESTON, SC 29401

J. STEPHEN SCHMUTZ
KATE SCHMUTZ

TELEPHONE: (843) 577-5830
FAX (843) 577-9204

June 27, 2006

Kathy Knagenhjelm
[redacted]
Ladson, SC 29456

Re: Knagenhjelm v Higuera

Dear Kathy:

I received your letter of June 25, 2006. At this time, I have no intention of attempting to put into writing the contents of every conversation I have had with anyone concerning your case.

Sincerely,

Kate Schmutz

KS/tjc

Kate Schmutz
24 Broad Street
Charleston SC 29401

June 25, 2006

Kate,

While under my employ, you have had conversations with Karen Forman and "Beau Seaton" from 6/13/06 to present. I need a complete detailed accounting, in writing of what these conversations,with Karen and Beau,entailed SPECIFICALLY, and any other with other individuals, you have spoken with on 6/15/06 until present, concerning myself and my case for which you were MY representation for, in custody matters and ect. These are to be sent to me immediately.

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Singerely,

Katherine M. Knagenhjelm

SCHMUTZ & SCHMUTZ, P.A.
24 BROAD STREET
CHARLESTON, SC 29401

J. STEPHEN SCHMUTZ
KATE SCHMUTZ

TELEPHONE: (843) 577-5530
FAX (843) 577-6204

June 27, 2006

Kathy Knagenhjelm
[redacted]
Ladson, SC 29456

Re: Knagenhjelm v Higuera

Dear Kathy:

I received your letter of June 25, 2006. At this time, I have no intention of attempting to put into writing the contents of every conversation I have had with anyone concerning your case.

Sincerely,

Kate Schmutz

KS/tjc

Kate Schmutz
24 Broad Street
Charleston SC 29401

June 25, 2006

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Also, the are descrepancies in what you were TOLD to do and your actions reflected in the billing statement. I am breaking that down. After I receive the letter stating the above refrenced conversations, believe me, you will be released with pleasure.

Sincerely,

Katherine M. Knagenhjelm

Katherine M. Knagenhjelm

SCHMUTZ & SCHMUTZ, P.A.
24 BROAD STREET
CHARLESTON, SC 29401

J. STEPHEN SCHMUTZ
KATE SCHMUTZ

TELEPHONE: (843) 577-5550
FAX (843) 577-5204

June 27, 2006

Kathy Knagenhjelm
[redacted]
Ladson, SC 29456

Re: Knagenhjelm v Higuera

Dear Kathy:

I received your letter of June 25, 2006. At this time, I have no intention of attempting to put into writing the contents of every conversation I have had with anyone concerning your case.

Sincerely,

Kate Schmutz

KS/tjc

State

# EXHIBIT

~~7~~ #9

Complainant's Exhibit #9

**Item A**


Karen A. Forman MSW, LMSW

[redacted]

Charleston, South Carolina
29401

(843) 853-1666 office
(843) 224-8010 cell
FAX 577-0541


January 23, 2006

Evans vs. Evans

Re: Guardian ad Litem Expenditures

Brian Evans.....$343.75 past due
$159.38 new charges

TOTAL.....$503.13

Annette Christenson.....$159.38 new charges

TOTAL.....$159.38

Thank you.

Karen A. Forman LMSW
Guardian ad Litem

# Item A

**Time sheet for Karen Forman**
**CASE**: Evans vs. Evans
**Hourly Rate: 75**
**Maximum Fee: 2500.**
**Retainer: 500. Per side**

| Date | Activity | Time Spent (hours) | Charge |
|---|---|---|---|
| 10/11/04 | met with both attorneys at respective offices. | 1.5 hours time and travel | 112.50 |
| 10/11/04 10/12/04 | read all documents submitted | 2 hours | 150. |
| 10/14/04 | calls/ to both attorneys | 30 minutes | 37.50 |
| 10/14/04 | Court/ Dorchester County time and travel | 2 hours | 150. |
| 12/1/04 | call/ returned BE | 15 minutes | 18.75 |
| 12/2/04 | call/ from Annette Christianson | 15 min | 18.75 |
| 12/3/04 | Court Order/ read and reviewed | 15 min | 18.75 |
| 12/4/04 | RP office/ review documents (originals) | 1 hr. | 75 |
| 12/4/04 | calls/ to Att. PI, Att. RP call/ to AC | 30 min. | 37.50 |
| 12/6/04 | calls/ from RP, call/ to PI call/ to Doug Sotia LISW therapist lft message | 1 hour | 75. |
| 12/7/04 | fax/ consent review and sign/ fax back | 15 minutes | 18.75 |
| 1/5/05 | call/ from Att. RP office re: emails/ concerns | 15 minutes | 18.75 |
| 1/6/05 | reviewed printed emails from/to both parties | 30 minutes | 37.50 |
| 1/7/05 | call/ to BE left message | ---------- | ---------- |
| 1/11/05 | call/ to BE discussed appt time/ date | ---------- | ---------- |
| 1/12/05 | call/ from Att. RP office | 15 minutes | 18.75 |

# Item A

| Date | Activity | Time Spent (hours) | Charge |
|---|---|---|---|
| 1/12/05 | call/ from Att. Pl | 15 minutes | 18.75 |
| 1/21/05 | office visit/ D. Fotia and BE | time and travel 2.5 | |
| 1/25/05 | call/ returned AC | 15 | 18.75 |
| 2/16/05 | read emails/ documents<br>call/ to AC | 45 minutes | 56.25 |
| 2/19/05 | email/ BE | 15 minutes | 18.75 |
| 2/23/05 | calls/ both attorneys | 30 minutes | 37.50 |
| 2/25/05 | calls/ both attorneys<br>call/ from AC | 1 hour | 75. |
| 2/27/05 | tape/ listened<br>RTSC prep.<br>Meeting/ AC | 1 hour | 75. |
| 2/28/05 | RTSC time and travel | 4 hours | 300. |
| 3/2/05 | calls/ from AC<br>Att. RP office<br>email/ BE | 45 minutes | 56.25 |
| 3/15/05 | call/ to Dfotia lft. Message | ---------- | ---------- |
| 3/18/05 | call/ to Dfotia lft. Message | ---------- | |
| 3/21/05 | call/ to BE<br>request ETOH test within 12 hours (10am) | 15 minutes | 18.75 |
| 3/22/05 | call/ to LC Drug Screen<br>status of ETOH test<br>took every test but ETOH | 15 minutes | 18.75 |
| 3/22/05 | call/ returned from Doug Fotia | 30 minutes | 37.50 |
| 3/24/05 | recv'd test results<br>call/ to Att. PI/ left message | 15 minutes | 18.75 |
| 4/4/05 | call/ to BE<br>page/ to BE<br>call/ to Att PI | 15 minutes | 18.75 |
| 4/7/05 | call/ to BE test again. | ---------- | ---------- |

| Date | Activity | Time Spent (hours) | Charge |
|---|---|---|---|
| 4/11/05 | email/ from AC<br>email/ to BE | 15 minutes | 18.75 |
| 4/12/05 | email/ from BE<br>email/ response BE<br>call/ returned Robert Bennett<br>call/ to both attorneys<br>call/ to AC<br>fax/ to Att. PI | 1 hour | 75. |
| 4/14/05 | call/ to Att. PI<br>call/ to BE<br>left message and request for Dr Bennett ETOH Blood draw | 15 minutes | 18.75 |
| 4/15/05 | Calls/ to both attorneys<br>call/ to BE blood draw left a message<br>call/ to Dr. Bennett<br>call/ from AC | 1 hour | 75. |
| 4/18/05 | call/ to Dr. RB did Mr. Evans call? NO.<br>Call/ to Att. PI<br>call/ to Att. RP | 30 minutes | 37.50 |
| 4/20/05 | calls/ to : Dr. RB, both attorneys, AC, BE<br>left voice message BE,<br>email/to BE | 45 minutes | 56.25 |
| 4/29/05 | results CDT test/ Dr. Bennett<br>fax/ to both attorneys | 30 minutes | 37.50 |
| 5/4/05 | call/ to Dr. Bennett<br>calls/ to both attorneys | 30 minutes | 37.50 |
| 5/9/05 | call/ to Att PI | 15 minutes | 18.75 |
| 5/9/05 | sent invoices to/ both parties | ---------- | ---------- |
| 5/18/05 | call/ from Att. RP<br>re: motion<br>call/ to Dr. Bennett re: affidavit | 15 minutes | 18.75 |
| 5/26/05 | Court/ Motion | 1.5 hours | 112.50 |
| 6/12/05 | call/ returned AC re: visitation<br>RTSC settled | 15 minutes | 18.75 |

# Item A

| Date | Activity | Time Spent (hours) | Charge |
|---|---|---|---|
| 7/18/05 | sent expenditure sheet to Att. PI | ---------- | ---------- |
| 9/19/05 X | emailed BE again re: fees | 5 minutes | 6.25 |
| 9/23/05 | call/ from AC | 15 minutes | 18.75 |
| 9/26/05 | fax/ to Att PI RTSC and Motion<br>email/ letter to BE | 10 minutes | 12.50 |
| 10/18/05 X | October exp. Statements sent | 15 minutes | 18.75 |
| 12/1/05 | call/ from att. NC office | 10 minutes | 12.50 |
| 1/10/06 | faxes/ both attorneys | 10 minutes | 12.50 |
| 1/19/06 | call/ returned/ NC office | 10 minutes | 12.50 |
| 1/20/06 | Court/ Dorchester County<br>time and travel | 3.5 | 262.50 |
| 1/23/06 X | letter of consent/ fo GAL fee increase<br>sent/ to both attorneys | 15 minutes | 18.75 |

**Expense Statement for Karen Forman**
**CASE:** Evans
**Hourly Rate:**75.
**Retainer Fee: 1000. Total**
**Max. Fee**: 2500.

| Date | Expense Type | Expense Amount | Balanee of Retainer |
|---|---|---|---|
| 10/11/04 | retainer fees/ both sides | 1000. | 1000. |
| 10/11/04<br>10/12/04 | | 112.50<br>150. | 737.50 |
| 10/14/04 | | 150.<br>18.75 | 568.75 |
| 12/1/04 | | 18.75 | 550. |
| 12/2/04 | | 18.75 | 531.25 |
| 12/3/04 | | 18.75 | 512.50 |
| 12/4/04 | | 75.<br>37.50 | 400. |
| 12/6/04 | | 75. | 325. |
| 12/7/04 | | 18.75 | 306.25 |
| 1/5/05 | | 18.75 | 287.50 |
| 1/6/05 | | 37.50 | 250. |
| 1/12/05 | | 37.50 | 212.50 |
| 1/21/05 | | 187.50 | 25.00 |
| 1/25/05 | | 18.75 | 6.25 |
| 2/16/05 | | 56.25 | -----50. |
| 2/19/05 | | 18.75 | -----68.75 |
| 2/23/05 | | 37.50 | -----106.25 |
| 2/25/05 | | 75. | -----181.25 |
| 2/27/05 | | 75. | -----256.25 |
| 2/28/05 | | 300. | -----556.25 |

| Date | Expense Type | Expense Amount | Balance of Retainer |
|---|---|---|---|
| 3/2/05 | | 56.25 | -----612.50 |
| 3/21/05 | | 18.75 | -----631.25 |
| 3/22/05 | | 56.25 | -----687.50 |
| RTSC | BE ordered to pay fee of:$487.50 Due 5/28/05 | | ------200.00 |
| 3/24/05 | | 18.75 | ------218.75 |
| 4/4/05 | | 18.75 | ------237.50 |
| 4/11/05 | | 18.75 | ------256.25 |
| 4/12/05 | | 75.00 | ------331.25 |
| 4/14/05 | | 18.75 | ------350.00 |
| 4/15/05 | | 75.00 | ------425. |
| 4/18/05 | | 37.50 | ------462.50 |
| 4/20/05 | | 56.25 | ------518.75 |
| 4/29/05 | | 37.50 | ------556.25 |
| 5/4/05 | | 37.50 | ------593.75 |
| 5/9/05 | | 18.75 | ------612.50 |
| 5/22/05 | payment AC $306.25 | | ------306.25 |
| 5/26/05 | payment for Court fees BE $400 | not included in exp. Sheet b/c court ordered | ---------- |
| 10/10/05 | payment for court fees $87.50 | Not included in exp. Sheet b/c court ordered | ---------- |
| 6/12/05 | | 18.75 | -----325.00 |
| 9/19/05 | | 6.25 | -----331.25 |
| 9/23/05 | | 18.75 | ----350.00 |
| 9/26/05 | | 12.50 | -----362.50 |
| 10/18/05 | | 18.75 | —381.25 |

# Item A

| Date | Expense Type | Expense Amount | Balance of Retainer |
|---|---|---|---|
| 11/1/05 | payment AC $37.50 | | —343.75(still owed BE) |
| 12/1/05 | | 12.50 | ---12.50 |
| 1/10/06 | | 12.50 | ---25.00 |
| 1/19/06 | | 12.50 | ---37.50 |
| 1/20/06 | | 262.50 | —300. |
| 1/23/06 | | 18.75 | —318.75 |
| | | | |

Karen A. Forman MSW, LMSW

[redacted]

Charleston, South Carolina
29401

(843) 853-1666 office
(843) 224-8010 cell

May 3, 2006
June 1, 2006

Brian Evans
[redacted]
Summerville, SC 29485

Guardian Ad Litem Fees

Past Due: $878.13
Current charges: $140.63

**TOTAL Charges: $1,018.76**

Thank you.

Karen A. Forman LMSW

Karen A. Forman MSW, LMSW

[redacted]

Charleston, South Carolina
29401

(843) 853-1666 office
(843) 224-8010 cell

May 3, 2006
June 1, 2006
June 29, 2006

Brian Evans
[redacted]
Summerville, SC 29483
Guardian Ad Litem Fees

Past Due: $878.13
Current charges: $140.63

**TOTAL Charges: $1,018.76**

Thank you.

Karen A. Forman LMSW

Karen A. Forman MSW, LMSW

[redacted]
Charleston, South Carolina
29401

(843) 853-1666 office
(843) 224-8010 cell
FAX 577-0541

April 3, 2006

Evans vs. Evans

RE: GAL REPORT

TO: Peggy Infinger 554-4291
Nrb Cummings 851-0062

emailed to client 4/3/06

Complainant's Exhibit #10

Thank you, and

Sincerely,

Karen A. Forman
Guardian ad Litem

| | | |
|---|---|---|
| **STATE OF SOUTH CAROLINA** | ) | **IN THE FAMILY COURT** |
| | ) | **FOR THE FIRST JUDICIAL CIRCUIT** |
| **COUNTY OF DORCHESTER** | ) | |
| | ) | **CASE NO:03-DR-18-920** |
| **Brian Evans,** | ) | |
| | ) | |
| **Plaintiff(s),** | ) | |
| | ) | **Guardian ad Litem Report** |
| **v.** | ) | |
| | ) | |
| **Annette Christensen,** | ) | |
| | ) | |
| **Defendant(s).** | ) | |
| | ) | |

**Persons Interviewed:**

Brian Evans (Plaintiff)
[redacted]
Summerville, SC 29483
(843) 875-0206 H
(816) 261-4615 Cell

Annette Christensen (Defendant)
[redacted]
Las Vegas, Nevada 89134
1-702-810-9421

Maternal Grandparents

Doug Potts LISW
(therapist for Plaintiff)
9326 A medical Plaza Drive
N. Charleston, SC 29406
(843) 377-1600

Robert Bennett
toxicologist
PO Box 32391
Charleston, SC 29417
(843) 571-7488

**Documents Reviewed:**

**Pleadings**
RTSC (dated March 14, 2006)
Order RTSC (2/28/05)
RTSC (December 14, 2004)
Temporary Consent Order (December 29 2004)
Temporary Order (March 23, 2004)
Temporary Order (October 14, 2004)
Temporary Order (October 29, 2003)
Motion (October 11, 2004)
Motion (January 19, 2004)

Correspondence/ Attorneys

**Affidavits Plaintiff:**

Brian Evans (Plaintiff)
[redacted]
Summerville, SC 29483
(843) 875-0206 H
(816) 261-4615 Cell

Theresa Newberry (address unknown)

Carrie Williams
[redacted]
Moncks Corner, SC 29461
(843) 899-1740

David Tretera
[redacted]
Goose creek, SC 2944

Gerould Weaver
[redacted]
Goose Creek, SC 29445

Pamela Schooler
[redacted]
Summerville, SC 29485

Raymond D'Arcy

[redacted]
Cleveland, Ohio 44110
(216) 401-2234
Eleanor Rigby
[redacted]
Summerville, SC 29483

Kevin Patrick
No address/ no phone #

Mary Thornton
[redacted]
Summerville, SC 29483

Janice Marie Evans
no address/ no phone #

Ann Marie Blizzard
no address/ no phone #

Gary Wallace
[redacted]
N. Chas, SC 29420

Rev. Michael Lowry, Sr.
Northwoods Assembly, Inc
8717 Rivers Ave
N. Chas, SC 29406
(843) 797-2885

**Affidavits Defendant:**

Annette Christensen
(Defendant)
[redacted]
#3-385
Las Vegas, Nevada 89134
1-702-810-9421

Karen Leavitt (teacher)
Dean La Mar Allen Elementary School
8680 West Hammer Lane
Las Vegas, Nevada 89149
(702) 799-4586

Grades for Jacob Evans

Police Report
Dorchester County
RE: Phone Harassment
9/29/2002

Police Report
Town of S'Ville
RE: Drug Paraphernalia and Civil Disturbance
Intoxication
10/28/2002

Police Report
Town of S'ville
RE: Violation of Court order
11/4/2002

Police Report
Dorchester Sheriff
RE: Violation of Court order
5/19/2003

Todd Christensen MD
1930 Village Center Circle
#3-385
Las Vegas, Nevada 89134
1-702-810-9421

Ray Winchester
no address/ no #

Cathy Morris
Private Investigator
PI Report April 22, 2005

Toxicology Reports:

Dr. Robert Bernett
PO Box 32391
Chas, SC 29417
(843) 571-7488

Discovery and Interrogatories

Various Emails

**INTRODUCTION/ CASE HISTORY:**

Annette Evans was granted a divorce by the Honorable Court of Dorchester County on June 7, 2002. The wife was granted a divorce under the basis of Habitual Drunkenness. The mother/ wife was awarded full and sole custody of the two children: J[redacted]) and S[redacted]). The father/ husband was given visitation of every other Saturday and also every other Sunday. He was to complete an alcohol and substance abuse program and provide written proof of completion. He enrolled at the program at MUSC in July of 2003 after mother requested certificate of completion.

Mother re-married to a Dr. Todd Christensen and re-located to Nevada with the children in and around August 2003. The father did file a change of circ. Petition in after this move to change custody. The petition was denied but a new Order for father's visitation was established. The children traveled to South Carolina for visitation with father the summer of 2004. The mother was concerned about the father's drinking as the children allegedly reported back to her about some behaviors that may have indicated the father being intoxicated. A PI report of this time does indicate that father was drinking. Also, witness testimony indicates that they allegedly saw father buying beer.

This Guardian ad Litem was appointed (September 24, 2004) when the mother filed a petition to limit visitation.

Plaintiff:

Brian Evans denied to this GAL that he has a habitual alcohol problem. He voiced concerns that the mother has been willfully alienating his children from their father. He feels her move to Nevada with the two children was the last attempt to erase him from their lives. Mr. Evans denies that he used alcohol during the summer when he had his children. He admits to purchasing alcohol for his roommate.

The issue at hand is visitation for the Plaintiff Father. Currently, Mr. Evan's has supervised visitation with the children due to an Order of the Court and the Hon. Judge Wiley.(2/28/2005). Mr. Evans was also held in contempt of Court on March 27, 2006 for using alcohol. This is a violation of the Court Order from 2/28/2005.

The Plaintiff is seeking unsupervised visitation.

The Defendant is seeking supervised visitation.

**Guardian ad Item Concerns:**

**1. Concern #1: Excessive Alcohol Consumption.**

It is evident from the past toxicology reports that Mr. Evans does not refrain from alcohol. He has been held in contempt by the Court two times for using alcohol.
The Defendant, Ms. Annette Christensen, obtained a divorce from Mr. Evans on June 7, 2002 on the grounds of habitual drunkenness

**2. Concern #2: He refuses to admit there is a problem with his alcohol consumption.**
Mr. Evans minimized his alcohol use to his therapist, Doug Fotia, LMSW. He told his therapist that he was abstaining from alcohol when, in fact, he had not (RTSC 2/28/2005).
Mr. Evans has not sought-out counseling or any other type of substance abuse program. He has been Court Ordered into a program by the end of April or he faces time in jail.
Mr. Evans has lost all unsupervised visitation with his children, yet, he continues to drink. He cannot remain sober even for his children. This is very telling.

**3. Concern #3: Boundary Issues.**
When first working with Mr. Evans and his therapist Doug Fotia, there were concerns regarding some of the subject matter he was freely discussing with the children over the phone. This Guardian and Mr. Fotia worked with Mr. Evans to help him remember his boundaries with the children and discuss appropriate subjects with the children. He would often question them on religious affiliation, their mother, what the did with his gifts, whether they received his mail, etc. The older child, J[redacted], was often put "on the spot" by his father and it made the child anxious. Also, father would often question both children on their feelings toward him.
These sort of phone problems are clearly demonstrated in the transcribed phone tapes.
The phone conversations are currently getting a lot better in terms of father's subject matter and staying within appropriate boundaries with the children.
Mr. Evans was found to be in contempt of Court on March 27, 2002 when he willfully broke the Order by trying to repeatedly contact and harass Ms. Christensen. Again, an issue of Mr. Evans not respecting personal boundaries and not respecting the Court Order's boundaries.

**Conclusion:**

I have been the Guardian ad Litem in this case since September 2004. In the (almost) two years since opening this investigation, Mr. Evans has shown no real interest in getting help

for his alcoholism. His superficial attempts at getting help have been unproductive due to his untruthful self- reporting. I feel it is very telling when a parent cannot get the help they need in order to restore their visitation rights with their children. It is in my opinion that Mr. Evans is not safe to be alone with the children. He is an alcoholic. He lies about sobriety. He has attempted to deceive the toxicologist, Dr. Bennett, by flushing his system. He continues to drink. Although he has been "forced" into rehabilitation by the Hon. Judge McLin, this hardly qualifies as him admitting he has a problem.

This father needs to do whatever he can and whatever it takes to become sober. He is not just cheating himself out of a healthy and productive life. He is cheating his children out of having their father.

**This Report has been respectfully Submitted by:**

**Karen A. Forman LMSW**
**Guardian ad Litem**
[redacted]
**Charleston, SC 29401**
**(843)224-8010**

Shadle

# EXHIBIT

~~18~~ 11

Complainant's Exhibit

#11

# Item D

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA | ) | IN THE FAMILY COURT<br>OF THE FIRST JUDICIAL CIRCUIT |
| COUNTY OF DORCHESTER | ) | CASE NO: 2003-DR-18-920 |
| Brian L. Evans, | ) | |
| Plaintiff(s), | ) | AFFIDAVIT OF KAREN A. FORMAN<br>Guardian ad Litem |
| v. | ) | |
| Annette L. Evans | ) | |
| Defendant(s). | ) | |

The affiant, after being duly sworn, deposes and says as follows:

1. I am the Court Ordered Guardian ad Litem in the above referenced case.

2. It is my understanding that there is a Motion filed by Attorney Peggy Infinger scheduled for May 21, 2007. I was never served by Ms. Infinger for this Motion.

3. I found out about this Motion on May 14th, 2007 when Attorney Norbert Cummings faxed a copy of his Return to Motion to my office.

4. It continues to be my position that the Plaintiff, Brian Evans, has a serious alcohol problem. It is also my position that he has exposed his children (in the past) to his alcohol abuse and placed them in "harms way".

5. It is also my position that the Plaintiff, Brian Evans, has lied in the past about his alcohol consumption. He has ignored my requests for alcohol forensic tests

6. I did request another test on May 14, 2007 be submitted by Brian Evans through Dr. Robert Bennett. I requested that the test be no later than 12 noon on May 15th, 2007. It is my understanding that Plaintiff did not meet with Dr. Bennett until 8:30pm that night.

7. It is my position that Mr. Evans continues to evade my requests and ignore the time constraints

imposed for clinical reasons. I do not see how I can safely monitor the children in South Carolina when the Plaintiff refuses to cooperate with my investigation.

8. There is no evidence that Mr. Evans has made a commitment to sobriety.

9. It is my position that the Plaintiff not have unsupervised visitation with these minor children at this time.

FURTHER AFFIANT SAYETH NOT!

Karen D Forman

KAREN FORMAN,

Guardian ad Litem

Sworn and Subscribed before me

this 17th Day of May, 2007

NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 1/7/2013

# Karen A. Forman MSW, LMSW

[redacted]
Charleston, South Carolina
29401

(843) 853-1666 office
(843) 224-8010 cell
FAX 577-0541



RECEIVED
JAN 24 2006
Belk, Cobb, Infinger and Goldstein, P.A.

ENTERED

Complainant's Exhibit
#13


January 23, 2006

Ms. Peggy McMillan Infinger
Belk, Cobb, Infinger & Goldstein PA
P.O. Box 71121
Charleston SC 29415

Mr. Norbert E. Cummings, Jr.
Cummings Law Firm
100 South Main Street, Suite B
P.O. Box 1318
Summerville SC 29484-1318

I am requesting an increase in the maximum fees for this case Evans vs. Evans set at $2500. I am requesting an additional $3000. in order to cover the time needed to write a report, attend depositions, and attend the Final Merits hearing.

Please answer my request by letter, fax, or email (kaforman@aol.com). A consent for the increase will prevent any additional costs to the litigants that will occur if I am to file a Motion.

Thank you, and

Sincerely,

Karen A. Forman
Guardian ad Litem

Karen A. Forman MSW, LMSW

[redacted]

Charleston, South Carolina
29401

(843) 853-1666 office
(843) 224-8010 cell
FAX 577-0541

January 23, 2006
February 6, 2006
February 22, 2006

Ms. Peggy McMillan Infinger
Belk, Cobb, Infinger & Goldstein PA
P O. Box 71121
Charleston SC 29415

Dear Peggy:

This is my second request.

I am requesting an increase in the maximum fees for this case Evans vs. Evans set at $2500. I am requesting an additional $3000. in order to cover the time needed to write a report, attend depositions, and attend the Final Merits hearing.

Please answer my request by letter, fax, or email (kaforman@aol.com). A consent for the increase will prevent any additional costs to the litigants that will occur if I am to file a Motion.

Thank you, and

Sincerely,

Karen A. Forman
Guardian ad Litem

12

Cc:
Mr. Norbert E. Cummings, Jr.
Cummings Law Firm
100 South Main Street, Suite B
P.O. Box 1318
Summerville SC 29484-1318 Cc:

Item E

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA | ) | IN THE FAMILY COURT OF THE FIRST JUDICIAL CIRCUIT |
| COUNTY OF DORCHESTER | ) | CASE NO: 2003-DR-18-820 |
| BRIAN L. EVANS, Plaintiff, | ) | |
| versus | ) | MOTION TO RELIEVE GUARDIAN *AD LITEM* |
| ANNETTE L. EVANS, Defendant. | ) | |

2006 OCT 23 PM 12:26

**PLEASE TAKE NOTICE** that Peggy M. Infinger, Esquire of the firm Belk, Cobb, Infinger & Goldstein, P.A., attorney for the Plaintiff, Brian Evans, will move before the Presiding Judge, Family Court for Dorchester County, Summerville, South Carolina, on the 13th day of November, 2006 at 11:00 A.m. for an Order relieving the Guardian *ad Litem* of any further duties on the following grounds:

(1) the Plaintiff has withdrawn his prayer for custody of the parties' minor children, leaving the Plaintiff's visitation rights as the only issue involving the children's welfare;

(2) the court can determine an appropriate visitation schedule without the services of a guardian *ad litem;*

In the alternative, the Plaintiff moves for an Order appointing a substitute guardian *ad litem* on the grounds that a conflict of interest has arisen between the guardian *ad litem* and the attorneys for the Plaintiff since her appointment, as more fully set forth in the affidavit attached hereto in support of this Motion.

Peggy M. Infinger
BELK, COBB, INFINGER & GOLDSTEIN, P.A.
Post Office Box 71121
Charleston, SC 29415-1121
(843) 554-4291

Charleston, South Carolina
October 20, 2006

Complainant's Exhibit #44

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(3) a statement affirming that the guardian ad litem is not nor has ever been on the Department of Social Services Central Registry of Child Abuse and Neglect pursuant to Subarticle 13, Article 3, Chapter 7.

(E) The court may appoint an attorney for a lay guardian ad litem. A party or the guardian ad litem may petition the court by motion for the appointment of an attorney for the guardian ad litem. This appointment may be by consent order. The order appointing the attorney must set forth the reasons for the appointment and must establish a method for compensating the attorney.

**SECTION 63-3-830.** Responsibilities.

(A) The responsibilities and duties of a guardian ad litem include, but are not limited to:

(1) representing the best interest of the child;

(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, except that a guardian ad litem must not be compensated for reviewing documents related solely to financial matters not relevant to the suitability of the parents as to custody, visitation, or child support. The guardian ad litem shall have access to the child's school records and medical records. The guardian ad litem may petition the family court for the medical records of the parties;

(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; and

(f) considering the wishes of the child, if appropriate;

(3) advocating for the child's best interest by making specific and clear suggestions, when necessary, for evaluation, services, and treatment for the child and the child's family. Evaluations or other services suggested by the guardian ad litem must not be ordered by the court, except upon proper approval by the court or by consent of the parties;

(4) attending all court hearings related to custody and visitation issues, except when attendance is excused by the court or the absence is stipulated by both parties. A guardian must not be compensated for attending a hearing related solely to a financial matter if the matter is not relevant to the suitability of the parents as to custody, visitation, or child support. The guardian must provide accurate, current information directly to the court, and that information must be relevant to matters pending before the court;

(5) maintaining a complete file, including notes. A guardian's notes are his work product and are not subject to subpoena; and

(6) presenting to the court and all parties clear and comprehensive written reports including, but not limited to, a final written report regarding the child's best interest. The final written report may contain conclusions based upon the facts contained in the report. The final written report must be submitted to the court and all parties no later than twenty days prior to the merits hearing, unless that time period is modified by the court, but in no event later than ten days prior to the merits hearing. The ten-day requirement for the submission of the final written report may only be waived by mutual consent of both parties. The final written report must not include a recommendation concerning which party should be awarded custody, nor may the guardian ad litem make a recommendation as to the issue of custody at the merits hearing unless requested by the court for reasons specifically set forth on the record. The guardian ad litem is subject to cross-examination on the facts and conclusions contained in the final written report. The final written report must include the names, addresses, and telephone numbers of those interviewed during the investigation.

(B) A guardian ad litem may submit briefs, memoranda, affidavits, or other documents on behalf of the child. A guardian ad litem may also submit affidavits at the temporary hearing. Any report or recommendation of a guardian ad litem must be submitted in a manner consistent with the South Carolina Rules of Evidence and other state law.

**SECTION 63-3-840.** Mediation prohibition.

A guardian ad litem must not mediate, attempt to mediate, or act as a mediator in a case to which he has been appointed. However, nothing in this section shall prohibit a guardian ad litem from participating in a mediation or a settlement conference with the consent of the parties.

**SECTION 63-3-850.** Compensation.

(A) At the time of appointment of a guardian ad litem, the family court judge must set forth the method and rate of compensation for the guardian ad litem, including an initial authorization of a fee based on the facts of the case. If the guardian ad litem determines that it is necessary to exceed the fee initially authorized by the judge, the guardian must provide notice to both parties and obtain the judge's written authorization or the consent of both parties to charge more than the initially authorized fee.

(B) A guardian appointed by the court is entitled to reasonable compensation, subject to the review and approval of the court. In determining the reasonableness of the fees and costs, the court must take into account:

(1) the complexity of the issues before the court;

(2) the contentiousness of the litigation;

(3) the time expended by the guardian;

(4) the expenses reasonably incurred by the guardian;

(5) the financial ability of each party to pay fees and costs; and

(6) any other factors the court considers necessary.

(C) The guardian ad litem must submit an itemized billing statement of hours, expenses, costs, and fees to the parties and their attorneys pursuant to a schedule as directed by the court.

(D) At any time during the action, a party may petition the court to review the reasonableness of the fees and costs submitted by the guardian ad litem or the attorney for the guardian ad litem.

**SECTION 63-3-860.** Disclosure.

A guardian ad litem appointed by the family court in a custody or visitation action must, upon notice of the appointment, provide written disclosure to each party:

(1) of the nature, duration, and extent of any relationship the guardian ad litem or any member of the guardian's immediate family residing in the guardian's household has with any party;

(2) of any interest adverse to any party or attorney which might cause the impartiality of the guardian ad litem to be challenged;

(3) any membership or participation in any organization related to child abuse, domestic violence, or drug and alcohol abuse.

**SECTION 63-3-870.** Removal.

A guardian ad litem may be removed from a case at the discretion of the court.

# Social Work Ethics Apply Outside Clinical Practice

By Donna Deangelis, LICSW, ACSW
ASWB Executive Director



I have been thinking about ethics; in particular, social work ethics. This is not surprising—social work ethics are a current theme, especially in social work regulation. This is also not surprising because last year I was asked to join the editorial board for the new online *Journal of Social Work Values and Ethics*. I have been discussing ethical issues with members of that board and with a valued friend, advisor and mentor, Dr. Sunny Andrews, who recently called to have a discussion about social work ethics and values before writing a keynote address he was asked to deliver at the Nebraska NASW Chapter meeting. My gratitude, as always, to Dr. Andrews for further stimulating my thinking and inspiring the subject of this column. (The text of Sunny Andrews' speech is included in this issue of *Association News*, beginning on page 8).

There is an increasing number of complaints against social workers that are found to be valid because of proven unethical behavior. As a result, regulatory boards are focusing on ethics education as a stipulation of the sanctions imposed, and more regulatory boards are requiring a specific number of continuing education hours in social work ethics for licensure renewal. To meet the need for ethics courses, over the past two years the ASWB Approved Continuing Education Committee (ACE) developed a model ethics course curriculum that will be available from ASWB this summer. The ACE program will also begin approving ethics courses later this year.

All of this has me wondering exactly what social work ethics are, and exactly what they apply to. I think many social workers automatically think of the ethics that apply to clinical social work practice with individuals, couples, families and groups. This would include confidentiality, privacy and its exceptions, record keeping, appropriate boundaries, fair billing policies, competent assessment and intervention, respect, self-determination, etc.

It is true that social workers can get into trouble in these areas. But social work ethics apply much more broadly than to direct clinical practice only. Any position of authority and responsibility carries with it the professional expectation of ethical practice. Social work administrators use social work ethics in employment practices, personnel policies, budgeting, resource management, financial integrity, and respect in relationships with staff, volunteers and other organizations, just to mention a few. We all know of situations of sexual harassment, favoritism, cronyism, exploitation of staff, and financial malfeasance; however, there are few complaints to regulatory boards against social work administrators when they commit these kinds of ethical violations. Instead, they are assisted out of the job. In some jurisdictions social workers who are administrators are not even required to be licensed.

In conducting social work research we automatically think of informed consent and all the checks and balances that institutions place on this in addition to social work ethics. What we don't think about is whether or not the research methodology is sound, the results are reported objectively and accurately, or indeed, if the research has been conducted at all. There have been situations where new intervention methods are recommended based on research reported in a published article or book. When these methods are used in practice and found not to work—in fact, are found to harm clients—it has been uncovered that the published work was based on substandard research or the results made up without any research ever being conducted by the author.

Social workers practicing community organization and public policy may encounter all manner of opportunities for their own personal advancement or

continued on page 9

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Complainant's Exhibit
#17

## 2003 SOUTH CAROLINA PASS/FAIL RATES

| EXAM CATEGORY GROUP TYPE | TOTAL # OF CANDIDATES | PASS RATE NUMBER | PASS RATE PERCENTAGE |
|---|---|---|---|
| BASIC | | | |
| 1ST TIME | 37 | 25 | 67.6 |
| REPEAT | 15 | 2 | 13.3 |
| TOTAL | 52 | 27 | 51.9 |
| INTERMEDIATE | | | |
| 1ST TIME | 177 | 121 | 68.4 |
| REPEAT | 52 | 14 | 26.9 |
| TOTAL | 229 | 135 | 59.0 |
| ADVANCED | | | |
| 1ST TIME | 2 | 2 | 100.0 |
| REPEAT | 0 | 0 | 0.0 |
| TOTAL | 2 | 2 | 100.0 |
| CLINICAL | | | |
| 1ST TIME | 60 | 41 | 68.3 |
| REPEAT | 10 | 2 | 20.0 |
| TOTAL | 70 | 43 | 61.4 |
| TOTAL | 353 | 207 | 58.6 |

## 2003 NATIONAL PASS/FAIL RATES

| EXAM CATEGORY GROUP TYPE | TOTAL # OF CANDIDATES | PASS RATE NUMBER | PASS RATE PERCENTAGE |
|---|---|---|---|
| BASIC | | | |
| 1ST TIME | 3799 | 3110 | 81.9 |
| REPEAT | 725 | 241 | 33.2 |
| TOTAL | 4524 | 3351 | 74.1 |
| INTERMEDIATE | | | |
| 1ST TIME | 7254 | 5532 | 76.3 |
| REPEAT | 2339 | 673 | 28.8 |
| TOTAL | 9593 | 6205 | 64.7 |
| ADVANCED | | | |
| 1ST TIME | 154 | 95 | 61.7 |
| REPEAT | 33 | 6 | 18.2 |
| TOTAL | 187 | 101 | 54.0 |
| CLINICAL | | | |
| 1ST TIME | 6218 | 4482 | 72.1 |
| REPEAT | 2460 | 816 | 33.2 |
| TOTAL | 8678 | 5298 | 61.1 |
| TOTAL | 23,154 | 15,068 | 65.1 |

## Social Work Ethics Apply Outside Clinical Practice continued from page 6

financial gain. In these practice settings where clients are not as clearly defined, boundary issues, confidentiality, respect, etc., may be more easily violated.

Social workers who are educators have the responsibility of interacting with students and colleagues in accordance with social work ethics and values. University systems are no more bound to social work values and ethics than are other organizational and institutional policies or laws. Social workers who educate are social workers first, educators second, and should be required to uphold the standards of the profession, rather than exempting themselves.

Social justice for all people—non-discrimination, cultural sensitivity, equal opportunities, the dignity and worth of each human being, a standard of living adequate to meet basic human needs for food, shelter, clothing, health care, self-esteem—are basic values of social work. But do all social workers share these values and work toward making changes in society for the better? Obviously not.

It may seem that I am painting a dark picture of my profession. Actually, I am painting a realistic one. I used to think that people who were attracted to social work were people who already shared the basic values of the profession. I have learned that social workers are people who share the same characteristics in approximately the same proportions as the rest of the general population. We have the same addictions, the same health and mental health challenges, even the same criminal bent, as everyone else. We are not special, we are human.

Ethics and values are qualities learned early in life from parents, family members, caretakers and teachers. They become part of who a person is. Can ethics and values be taught later in life? Yes, they can be taught. But can they be learned? Yes and no. Values and ethics can be learned, but knowing and doing are two different things, as is shown by social workers who can pass the social work licensing examinations and yet commit ethical violations in practice that result in complaints to regulatory boards.

This is why it is ASWB's position—one with which I agree totally, professionally and personally—that all social workers should be legally regulated and accountable for their practice to a regulatory board. BSW and MSW practitioners in all settings, agencies, organizations, universities, independent practice or private practice, social work administrators, educators, researchers, community organizers, policy analysts, political activists, all have opportunities to use their positions of power and responsibility for harm as well as good. The only way to enforce standards of social work ethics and values is to regulate them by codifying these ethics and values and other standards of social work practice into regulatory law. There should be no exemptions from these expectations. All social workers should be held accountable.



ROA 409

Children's Law Office
U.S.C. School of Law
Carolina Plaza, 12th Floor
Columbia, SC 29208
(803) 777-1646

Complainant's Exhibit
#8

INFORMATION PACKET

CHILDREN'S LAW OFFICE

# Overview of Guardians ad Litem for Children in Family Court

April 2003

The Children's Law Office, USC School of Law, has prepared this information packet to assist the professionals and parties involved in family court proceedings. It is designed to provide an overview of the different types of guardians *ad litem* appointed for children in family court proceedings in South Carolina. South Carolina statutes[1], court rules, and case law governing the qualifications, roles, and duties of guardians *ad litem* are referenced when applicable.

For updates or additional information, call (803) 777-1646 or go to the Children's Law Office website at http://childlaw.law.sc.edu.

## INTRODUCTION

The court must appoint all guardians *ad litem*, although the initial selection process may vary. The order of appointment authorizes the guardian *ad litem* to obtain information, to meet with the children involved, to file motions and seek relief, and make recommendations or suggestions to the court.

It is the court's responsibility to assure that guardians *ad litem* are capable and discharge their duties competently. In *Shainwald v. Shainwald*, 302 S.C. 453, 395 S.E.2d 441 (Ct.App. 1990), the South Carolina Court of Appeals held that:

> *The trial judge's duty to assure the child's best interests are protected requires as a minimum that (1) he select a competent person to serve as guardian ad litem; (2) he select a person with no adverse interests to the minor; and (3) the person so selected is adequately instructed on the proper performance of his duties.*

[1] Statutes are identified by section, i.e. S.C. Code Ann. §20-7-123 is identified as §20-7-123. All statutory references are to Supplement 2002.

Guardians *ad litem* are subject to cross-examination about their conclusions or recommendations and the methods used to develop them, as well as any reports they may submit to the court. Upon good cause, other parties to a proceeding may file a motion to have a guardian *ad litem* dismissed. Further accountability measures vary by type of guardian and are discussed below.

RESOURCES FOR GUARDIANS *AD LITEM*

The South Carolina Bar has published *Guidelines for Guardians ad Litem*. (To obtain a copy, contact the Children's Law Office or the S.C. Bar. The guidelines can also be found online at http://childlaw.law.sc.edu.)

A set of forms for use in abuse/neglect and private custody cases is available from the Children's Law Office. These forms are useful to a guardian *ad litem* in developing a file and provide guidance in conducting an assessment.

# TYPES OF GUARDIANS *AD LITEM*

There are three types of guardians *ad litem* for children serving in South Carolina's family courts. These include volunteers, attorneys, and private or lay guardians *ad litem*. Provided below is a description of each of the three types, along with an explanation of the selection process for each:

1. VOLUNTEER GUARDIANS *AD LITEM*

Volunteer guardians *ad litem* are individuals who volunteer to serve in abuse and neglect and termination of parental rights (TPR) cases under the supervision of either the South Carolina Guardian *ad Litem* Program or Richland County CASA (Court Appointed Special Advocates).

- The South Carolina Program, which is administered by the Office of the Governor and has staff in every judicial circuit and most counties, was developed in 1984 as one of the first state-supported programs in the nation. It has been operational in 45 counties in all 16 circuits since 1988/89. Operation of the state program is mandated by statute, which defines specific duties of volunteer guardians *ad litem*, establishes confidentiality requirements, provides qualified immunity, and sets forth those persons who may not be appointed. (§20-7-121 *et.seq.*)
- The Richland County Program, which is independent of the state program, operates as a department within Richland County government. This program was established in 1983 through the efforts of the Junior League and later moved under the auspices of Richland County. A public/non-profit partnership, the program is funded through a combination of county funds, grants, and donations. Although Richland County CASA is not governed by the statute as previously described, the program fully complies with it, and volunteers function in a similar manner to those in the rest of the state.

SELECTION of volunteers is handled by circuit or county coordinators in the volunteer program. Volunteers are accepted into the program following a process involving a criminal records check, a SC DSS central registry check, character references, and a personal interview. Persons who have been convicted of certain offenses are prohibited from being appointed. §20-7-123. Program staff assign accepted volunteers who have completed their training requirements to particular cases based on availability, experience, and other relevant factors.

2. ATTORNEYS

Attorneys who have graduated from law school and passed the South Carolina Bar exam are eligible to be appointed as guardians *ad litem* in most family court cases.

In private actions involving custody or visitation, attorneys acting as private guardians *ad litem* must meet the additional training requirements mandated by statute (completion of a minimum of six hours of family law continuing legal education credit in the areas of custody and visitation), unless waived by the court.

SELECTION of attorneys to serve as guardians *ad litem* depends on the type of case:

- Attorneys may choose to be appointed in private cases, such as custody disputes, and the selection process is the same as it is for private/lay guardians *ad litem*. (See below.)
- Attorneys are also appointed to serve as guardians *ad litem* or as legal counsel for indigent persons in some family court matters, such as for parents and children in child protection cases. Active members of the South Carolina Bar are required to serve in this capacity in accordance with Rule 608, SCACR.

3. PRIVATE GUARDIANS *AD LITEM*

Private guardians *ad litem* are individuals who seek appointments as guardians *ad litem* in private custody or visitation matters for pay. A private guardian may be an attorney or a layperson, but must be at least twenty-five years of age and have a high school diploma or its equivalent. §20-7-1547. Private guardians *ad litem* who are not attorneys are commonly known as lay guardians *ad litem*.

The South Carolina Private Guardian Ad Litem Reform Act (§20-7-1545 through §20-7-1557) took effect January 15, 2003 and governs private guardians *ad litem* appointed in custody cases on or after the effective date.

SELECTION of private guardians *ad litem* is controlled by §20-7-1545 as follows:

- The court may appoint a private guardian *ad litem only* when it determines that, without a guardian *ad litem*, the court will likely not be fully informed about the facts of the case and there is a substantial dispute which makes the appointment necessary, or both parties consent to the appointment of a guardian *ad litem* who is approved by the court. §20-7-1545 (A).
- The court has absolute discretion in determining who will be appointed as a guardian *ad litem* in each case. A guardian *ad litem* must be appointed to a case by a court order. §20-7-1545 (B).

*Types of Guardians ad Litem, con't.*

| | ***TRAINING REQUIREMENTS*** | **ACCOUNTABILITY** |
|---|---|---|
| ***VOLUNTEER GUARDIANS AD LITEM*** | • An initial 30-hour, pre-service training session addresses a variety of topics including child development, child maltreatment, permanency needs of children, and the legal system.<br>• Volunteers are also expected to participate in ongoing continuing education | • Provided through the volunteer program.<br>• Concerns about inappropriate conduct in Richland County may be reported to Richland County CASA at 748-5024.<br>• In other areas of the state, concerns may be reported to the county office of the S.C. Guardian ad Litem Program or to the state office at (803) 734-1695. |
| **ATTORNEYS** | • An attorney acting as a private guardian in a private custody case must annually complete a minimum of six hours of family law continuing legal education credit in the areas of custody and visitation; however, this requirement may be waived by the court.<br>• In other cases, training specific to the function of guardian *ad litem* is not required. | • Limited to that provided by the appointing court in most situations.<br>• Complaints related to actions outside of the scope of a GAL (e.g. giving legal advice) can be made in writing to the Commission on Lawyers' Conduct, P.O. Box 11330, Columbia, SC 29211. Correspondence should include the lawyer's full name, the specific complaint about what the lawyer did or did not do, and any supporting documents that would help the investigation. |
| **PRIVATE / LAY GUARDIANS *AD LITEM*** | • For initial qualification, a lay guardian must (1) complete the following training: a minimum of nine hours in the areas of custody and visitation and three hours related to substantive law and procedure in family court. The courses must be approved by the Supreme Court Commission on CLE & Specialization; and (2) observe three contested custody merits hearings and maintain a certificate, on a form approved by Court Administration, showing that observation of these hearings has been completed.<br>• Lay guardians *ad litem* must also complete annually six hours of continuing education courses in the areas of custody and visitation. | • Limited to that provided by the appointing court.<br>• Actions such as examining or cross-examining witnesses in court and preparing legal pleadings, if performed by a non-attorney, might be considered the unauthorized practice of law which could be reported and possibly prosecuted.<br>• These type of complaints may be made to any of the following: (1) local solicitor; (2) Office of the Attorney General, Unauthorized Practice of Law Division, P.O. Box 11549, Columbia, SC 29211; or (3) S.C. Bar, Unauthorized Practice of Law Committee, P.O. Box 608, Columbia, S.C. 29202.<br>• Complaints against private guardians *ad litem* that maintain a professional license issued by the state of South Carolina, such as a licensed social worker, professional counselor, or psychologist, may also be reported through the appropriate board of the S.C. Department of Labor, Licensing, and Regulation (LLR). Complaint forms can be obtained by calling LLR at (803) 896-4300 and asking for the applicable board. |

| LIABILITY | FEES |
|---|---|
| • After participating in the training program, a person appointed to serve as GAL, who serves without compensation, is not liable for any civil damages for any personal injury as a result of any act or omission by the person in the discharge of the responsibilities of a GAL if the person acts in good faith and is not guilty of gross negligence. §20-2-127. | • None<br>• Volunteers serve without compensation or reimbursement for expenses. |
| • No liability as long as the attorney is acting within the scope of the duties of a GAL.<br>• The Supreme Court of South Carolina has found that guardians *ad litem* have common law immunity in private custody cases. *Fleming v. Asbill*, 326 S.C.49, 483 S.E.2d 751 (1997).<br>• A recent case has affirmed that immunity does not protect an attorney who is acting outside of the scope of the duties of a guardian *ad litem*. *Falk v. Sadler*, 533 S.E. 2d 359 (Ct.App. 2000). The court of appeals also stated in *Falk* that a recommendation by a GAL even when against one party is not the basis for a cause of action against the GAL.<br>• The *Asbill* decision does not specifically address the potential liability of attorneys appointed as guardians *ad litem* in abuse and neglect cases. However, the reasoning in the decision does not appear to exclude them. | • An attorney appointed as GAL in an abuse and neglect proceeding may be paid up to $50 in accordance with Rule 41(a) SCRFC (subject to availability of funds). A larger fee may be awarded if the court determines it justified by extraordinary circumstances. 41(b).<br>• If the attorney is acting as a private guardian in a private custody case, the fees are determined as they would be for a lay guardian under the same circumstances. (See below) |
| • Appears to be eliminated by the Supreme Court of South Carolina's finding that guardians *ad litem* have common law immunity in private custody cases, as long as they are acting within the scope of their duties. *Fleming v. Asbill*, 326 S.C. 49, 483 S.E.2d 751 (1997). | • Reasonable compensation is determined by the court who must consider the complexity of the issues, the contentiousness of the litigation, time spent and reasonable expenses incurred by the guardian, each party's financial ability, and any other relevant factors.<br>• At the time of appointment, the judge must set forth the method and rate of compensation for the GAL, including an initial authorization of a fee based on the facts of the case. If the GAL finds it necessary to exceed the authorized fee, the GAL must notify both parties and obtain the judge's written authorization or both parties' consent to charge more.<br>• The GAL must submit an itemized billing statement as scheduled by the court. §20-7-1553. |

# THE ROLE OF THE GUARDIAN AD LITEM IN VARIOUS FAMILY COURT CASES

While the overarching purpose is always to represent the child's best interests, the specific focus of the guardian may vary according to the type of proceeding. In all matters, the guardian *ad litem* is expected to function independently, with no allegiance to any party other than the child.

## ABUSE & NEGLECT CASES

A guardian *ad litem* for the child in child protection cases is required by §20-7-110(1). A volunteer is usually appointed in this capacity, and family courts are encouraged to support the volunteer guardian *ad litem* program rather than appointing lawyers unnecessarily. Rule 608 G(3), SCRACR.

The role of a volunteer guardian *ad litem* is an active one, as mandated by law. The powers and duties of volunteers in abuse cases are specified by statute as follows:

- The responsibilities and duties of a guardian *ad litem* are outlined in §20-7-122, which requires the guardian to:
  (1) represent the child's best interests;
  (2) advocate for the child's welfare and rights;
  (3) conduct an independent assessment of the facts, the child's needs, and the available resources within the family and community to meet those needs;
  (4) maintain accurate, written case records;
  (5) provide the family court with a written report, which should include evaluation and assessment of the relevant issues and recommendations for the case plan, the child's wishes, if appropriate, and subsequent disposition of the case;
  (6) monitor compliance with the court orders and make the motions necessary to enforce the orders or seek judicial review; and
  (7) protect and promote the child's best interests until formally relieved.
- The guardian *ad litem* is charged in general with the duty of representation of the child's best interests. The obligation of the guardian *ad litem* to the court is a continuing one and continues until formally relieved by the court. § 20-7-124 (A).
- The guardian *ad litem* is authorized by §20-7-124 (B) to:
  (1) conduct an independent assessment of the facts;
  (2) meet with and observe the child involved;
  (3) interview persons involved in the case;
  (4) participate on any multidisciplinary evaluation team for the case on which the guardian *ad litem* has been appointed;
  (5) make recommendations to the court concerning the child's welfare; and
  (6) make motions necessary to enforce the orders of the court, seek judicial review, or petition the court for relief on behalf of the child.
- The guardian *ad litem* is authorized through counsel to introduce, examine, and cross-examine witnesses in any proceeding involving the child and participate in the proceedings to any degree necessary to represent the child adequately. §20-7-124 (C).

Volunteers are expected by program policy to visit the child monthly while monitoring a case and ensure that the court's orders are being implemented.

When a volunteer is not available, or where there is a conflict, attorneys may be appointed as guardian *ad litem* pursuant to Rule 608, SCACR. Attorneys do not have specific requirements under statutes or court rules. However, the South Carolina Supreme Court has approved a form that family court judges can opt to use to appoint a guardian *ad litem* and attorney, which details specific duties. If this form order is used, or if the court directs other specific functions, the attorney would be obligated to perform those. (Copies of this form order can be obtained by calling the Children's Law Office or visiting its website.)

## TERMINATION OF PARENTAL RIGHTS CASES

A guardian *ad litem* must be appointed for the child in a termination of parental rights action. §20-7-1570(B). The guardian *ad litem* may be either a volunteers or an attorney.

If a guardian *ad litem* who is not an attorney finds that appointment of counsel is necessary to protect the rights and interests of the child, an attorney must be appointed. If the guardian *ad litem* is an attorney, the judge must determine on a case-by-case basis whether counsel is required for the guardian *ad litem*. However, counsel must be appointed for a guardian *ad litem* who is not an attorney in any case that is contested. § 20-7-1570 (B).

When a termination action is filed subsequent to a removal action, appointment of a different guardian is not required by statute. The guardian *ad litem* from the previous removal action may be re-appointed in the termination of parental rights case, although the court can entertain a motion for appointment of a new guardian *ad litem*. In addition to making recommendations to the court, the guardian *ad litem* may bring an action for termination of parental rights. *Joiner v. Rivas*, 342 S.C. 102; 536 S.E.2d 372 (2000).

Although neither statute nor case law details the role of the guardian *ad litem* in termination cases, advocating for the best interests of the child is always the primary function. Family court judges generally expect the guardian *ad litem* to recommend for or against termination from the child's perspective. Although the plaintiff (usually DSS) must prove a ground for termination as well as demonstrate best interests, the guardian *ad litem* focuses on whether termination would be best for the child. If the guardian opposes termination, an alternate permanent plan should be recommended.

## PRIVATE CUSTODY / VISITATION DISPUTES

In an action between private parties, in which custody or visitation of a minor child is at issue, the court may appoint a guardian *ad litem* only when it determines that there is a substantial dispute necessitating a guardian *ad litem* and that the appointment is necessary to ensure that the court is fully informed of all the relevant facts, or when both parties consent. §20-7-1545 (A).

The responsibilities and duties of a guardian *ad litem* in a private custody matter are outlined in §20-7-1549 (A) which requires that the guardian:

(1) represent the child's best interest;
(2) conduct an independent investigation to include:
   a. obtaining and reviewing relevant documents,
   b. meeting with and observing the child on at least one occasion,
   c. visiting the homes if appropriate,
   d. interviewing relevant parties,

e. obtaining relevant criminal histories, and
f. considering the wishes of the child, if appropriate;

(3) advocate for the child's best interest by making specific and clear suggestions, when necessary, for evaluation, services, and treatment
(4) attend all court hearings unless excused.
(5) maintain a complete file, including notes. (A guardian's notes are his work product and are not subject to subpoena); and
(6) present to the court and all parties clear and comprehensive written reports including, but not limited to, a final written report regarding the child's best interest.

- The final written report may contain conclusions based upon the facts contained in the report. The final written report must be submitted to the court and all parties no later than twenty days prior to the merits hearing, unless that time period is modified by the court, but in no event later than ten days prior to the merits hearing. The ten-day requirement for the submission of the final written report may only be waived by mutual consent of both parties. The final written report must not include a recommendation concerning which party should be awarded custody, nor may the guardian *ad litem* make a recommendation as to the issue of custody at the merits hearing unless requested by the court for reasons specifically set forth on the record. The guardian *ad litem* is subject to cross-examination on the facts and conclusions contained in the final written report. The final written report must include the names, addresses, and telephone numbers of those interviewed during the investigation.

A guardian *ad litem* may submit briefs, memoranda, affidavits, or other documents on behalf of the child. A guardian *ad litem* may also submit affidavits at the temporary hearing. Any report or recommendation of a guardian *ad litem* must be submitted in a manner consistent with the South Carolina Rules of Evidence and other state law. 20-7-1549 (B).

A guardian *ad litem* appointed by the court in a custody or visitation action must provide written disclosure to each party of any relationship the guardian has with any party, of any adverse interest to any party and of any membership or participation in any organization related to child abuse, domestic violence, or drug and alcohol abuse. §20-7-1555.

Once appointed, a guardian *ad litem* must provide an affidavit to the court and parties attesting to compliance with the statutory qualifications. The affidavit must include, but is not limited to, statements affirming the guardian has completed the training requirements, has not been convicted of certain crimes, and has never been on the DSS Central Registry of Child Abuse and Neglect. §20-7-1547(D).

*Roles of Guardians ad Litem, con't.*

The court may appoint an attorney for a lay guardian *ad litem*. A party or the guardian *ad litem* may petition the court by motion for the appointment of an attorney. This appointment may be by consent order. The order appointing the attorney must set forth the reasons for the appointment and must establish a method for compensating the attorney. §20-7-1547 (E).

A guardian *ad litem* must not mediate, attempt to mediate, or act as a mediator in a case to which he has been appointed, but is not precluded from participating in mediation or a settlement conference with the consent of the parties. §20-7-1551.

## ADOPTIONS

A guardian *ad litem must* be appointed to represent the interests of the adoptee in an agency, private, relative, or stepparent adoption. The guardian *ad litem* in adoption cases is usually an attorney, whose appointment is sought by the adoptive parents.

The guardian *ad litem* may accept service of the pleadings for children 14 or younger. §20-7-1732. (In adoption actions, certified adoption investigators are also required to complete background investigations prior to the final adoption hearing.)

The guardian *ad litem* is expected to submit a recommendation at the final hearing as to whether adoption is in the best interest of the child.

## NAME CHANGES

A parent who desires to change the name of his/her minor child may petition, in writing, the family court in the appropriate circuit. Appointment of a guardian *ad litem* for the child is *required.* §15-49-10 (B).

The guardian *ad litem* will be expected to make a recommendation to the court as to whether the proposed name change would be in the child's best interest.

The guardian *ad litem* in name change cases is usually an attorney.

## ABORTION CONSENT

Through a procedure called judicial bypass, a minor may petition the family or circuit court for an order granting her the right to obtain an abortion without parental consent. In these circumstances, a guardian *ad litem must* be appointed for the minor, pursuant to §44-41-32 (3). In these cases, the guardian *ad litem* is usually an attorney. The minor's preferences are taken into consideration in this appointment.

The guardian *ad litem* is expected to make a determination as to whether an abortion would be in the minor's best interest.

The court may grant the minor the right to consent to an abortion on her own behalf upon finding that the abortion would be in her best interest, or that she is mature and well-informed enough to make the decision on her own. §44-41-32 (5).

*Roles of Guardians ad Litem, con't.*

## ACTIONS RELATED TO PATERNITY

Actions to establish paternity may be brought by the child, the mother, a caretaker, a purported father, or an authorized agency. In any action that may have the effect of making a child illegitimate, a guardian *ad litem must* be appointed for the child. Statute prohibits the child's mother, or presumed or putative father from serving in this capacity. §20-7-952 (E).

## Type of GAL in Each Type of Case

| | VOLUNTEER GAL | ATTORNEY GAL | PRIVATE GAL |
|---|---|---|---|
| **Abuse & Neglect Cases** | X | X | |
| **TPR** | X | X | |
| **Adoption*** | | X | |
| **Private Custody or Visitation Actions** | | X | X |
| **Name Change*** | | X | |
| **Judicial By-pass for Abortion Consent** | | X | |

*Guardians *ad litem* in adoption and name change actions are sometimes non-attorneys who serve for minimal or no fee.

### CONTROLLING STATUTES

Abuse & Neglect Cases: §20-7-110, §20-7-121 through §20-7-129

Private Custody Cases: §20-7-1545 through §20-7-1557

Termination of Parental Rights Hearings: §20-7-1570 (B)

Adoption: §20-7-1732

Name Change: §15-49-10(B)

Abortion Consent / Judicial By-pass: §44-41-32

Paternity Actions: §20-7-952 (E)

*The Children's Law Office extends grateful appreciation to the following persons who provided information for this information packet:*

*Tracey Dial, Attorney General's Office*
*Angie Rhode, S.C. Bar - Unauthorized Practice of Law Committee*
*Betsy Chapman, Public Relations Director, SC Guardian ad Litem Program*
*Kelly Davis, Director, Richland County CASA*
*James E. Knight, Public Information, SC Department of Labor, Licensing & Regulation*
*Pam Robinson, Director of Pro Bono Program, USC School of Law*

*We also acknowledge members of the Children's Committee of the S.C. Bar, whose prior work formed the basis for much of this document.*

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Complainant's Exhibit #19

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**From:** Natalie Bluestein [mailto:natalie@bluesteinanddouglas.com]
**Sent:** Friday, February 05, 2010 11:04 AM
**To:** jcampbell@bjblawfirm.com; erin@shahidlawoffice.com; shahidlo@Bellsouth.net; 'A. Elliott Barrow, Jr.,Esq.'; 'Alan Toporek'; 'Alex Cash'; 'Alex Varner'; 'Alvin C. Biggs'; 'Amanda Bethea Keaveny'; 'Angela Mulholland '; 'Ann Stirling'; 'Anne Frances Bleecker'; 'Anthony P. LaMantia, III'; 'Assistant'; 'Beatrice Whitten'; 'Bernard F. Mack'; 'Beverly K. Ballinger'; 'Bill Barr'; 'Bobbie Smith'; 'Carolyn Berlin'; 'Cezar McKnight'; 'Chris Skipper'; 'Cindy Floyd'; 'Colleen Condon'; Connie Ellington; 'Conrad Falkiewicz'; 'D. Dusty Rhoades'; 'D. Keith Bolus'; 'Dan M. David'; 'Dana Wine'; 'Dave McKeown'; 'David DeVane'; 'David McCann'; 'Dean Murphy'; 'Deborah Kay Lewis'; 'Deborah Wright'; 'Debra E. Stokes'; 'Demal Mattson'; 'Denise Harris'; 'Denise Swope'; 'Diane Current'; 'Donald Budman'; 'Donna Dodds'; 'Douglas Barker'; 'Ed Hawkins'; 'Edward Kronsberg'; 'Elizabeth J. Hills'; 'Elizabeth Stringer'; 'Ellen Howard'; 'Elonda C. Fair'; 'Emily G. Johnston'; 'Fleet Freeman'; 'Frampton Durban'; 'G. Simms McDowell'; 'G. Waring Parker'; 'Georgia Ann Shobe'; Glenn Lister; 'Graham Sturgis'; 'Graves H. Wilson, Jr.'; 'Greg D. Keith'; 'Greg DeLuca'; 'Greg Forman'; 'Guy Vitetta'; Harry Shaw; 'Helen Wheeler'; 'Henry Schlein'; Hon Jack A Landis; Hon. F. P. Segars-Andrews; Hon. Jocelyn B. Cate; Hon. Judy Bridges McMahon; Hon. Paul W. Garfinkel; Hon. Wayne M. Creech; 'Jane Douglas'; 'Jeffrey Sabel'; 'Jennifer@DeyLawFirm'; 'Jenny E. Abbott'; 'Jessica Lynn Anderson'; 'Jon A. Mersereau'; 'Joseph Cerato'; 'Joseph Mendelsohn'; 'Juan Tolley'; Julianne Stokes; 'Kevin Patterson'; 'Lindsay Blanks'; Lisa Beauford; Liz McFadden; Lon Shull; 'Lori Stoney'; 'Lynn Murphy'; 'M. Brooks Derrick'; 'M. Tommy Bolus'; Mark O. Andrews; Merrilyn Johnson; 'Norbert Cummings'; Rick Stringer; 'Sandye Teague Hayes'; 'Shannon E. McGilberry'; Sherry Moore; Valerie; Anthony O'Neill; Barbara A. Strowd; Beau Seaton; Bill Barr; Chris Lizzi; Heather Shaw; Jason Bybee; Kelly Jones Leventis; Kevin Patterson; Kevin Selbert; Leigh Hunter; 'Michele Patrao Forsythe'; ParalegalManley Law Firm; Patricia DeTreville; Paul Schwartz; Paul Tinkler; Peggy Infinger; Pete DeLuca; Robert L. Papa; Robert Michael Ethridge; Robert N. Rosen; Robert Polk; Ron Ernst; Sabrina Grogan; Sally Dey; sally@king-gilreathlaw.com; Sarah Sullivan; Stephen G. Dey; Stephen L. Fowler; steve ruemelin; Stuart A. Feldman; Susan Dunn; Susan T. Kinard; Teresa Harrison; Teri Leinbach; Terri Vincent; Terri Vincent; Theresa Bulford; Tiffany Copeland; Tricia Wilson; Veronica Small; Walter S. Ameika; Wendi Freeman; William J. Clifford; 'A. Brianna Wilder Murray'; 'Alice Anne Richter'; 'Angela Gross'; 'Betty J. Branton'; 'Beverly Turner'; Courtney Kerce; 'D. Allen Badger'; 'Daniel Prenner'; 'Elizabeth Rast'; 'Elizabeth Schwartz Corn'; 'Ellen Babb'; 'Emily Porter'; 'Ernie Mixon'; 'Ittriss J. Jenkins'; 'J. Scott Falls'; 'Jack Cordray'; 'Jay Cone'; 'Jennifer Smith'; 'John A. Jackson'; 'John Robinson'; 'Josh Stokes'; 'Julio Rossington'; 'Kerry Koon'; 'Kim'; 'Leah DuPree'; 'Leah Lynch'; 'Lesley Ann Sasser'; 'Matt Yelverton'; 'Paul Bradley'; 'Rebecca'; 'Sam Scroggie'; 'Sean F. Keefer'; 'Spiro Ferderigos'; 'Stan W. Jaskiewicz, Jr.'; Taylor; 'Tracy Clark'; 'Vernee Hancock'; 'Walter Kaufmann'
**Subject:** Updates and Announcements

Dear Everyone:

As you can see, there are LOTS of attachments, and I will explain them as this "Updates" goes along:

**FINAL GAL, Lay GAL, and MEDIATOR LISTS**

A number of members wrote in to let me know that they had disappeared from the lists between the first version and the second. After comparing lists with my law clerk, it turns out that the software is the culprit. FYI, if anyone is now using Microsoft Excel 2007, it does not automatically "shift down" when you add new data to cells, as the 2003 version did. We didn't know that, so when my law clerk moved people around to alphabetize, the new data was pasted over the old names. That has now been corrected, everyone's updated or newly provided information has been added, and I think these are the FINAL, DEFINITIVE lists (thank goodness)!

## ONLINE FAMILY COURT FORM ALERT

Betty Branton, who keeps all of us straight in Berkeley County, called to let us know that there is a change in the "Directions for Child Support" form on the Court Administration website. It was changed in December, when many of the old forms were updated, and a number of new forms were added, so please make a note that the NEW form needs to be sent to the Courts in cases where child support is applicable. Thanks, Betty!

## MEMBER UPDATES

Member Lesley Ann Sasser has opened her office at 39 Broad Street, Suite 206, Charleston, SC 29401. Her phone number is (843) 608-3653, and her e-mail address is lasasser@lasasserlaw.com . Lesley Ann will be practicing primarily in the areas of Family Law, probate, and criminal defense. She has taken the recent GAL qualification CLE and is accepting referrals for cases and appointments in Guardian cases. Congratulations, Lesley Ann!

Member Jill HaLevi has relocated her office. As of February 1, 2010, Mediation and Legal Services, LLC is now located at 102-C Broad Street, Charleston, SC 29401. The number is (843) 819-0557, and the fax is (843) 753-9604. Jill's e-mail address is jill@charlestonmediator.com . Jill is accepting referrals in criminal defense and domestic cases, and she is also available for mediation and GAL appointments. Congratulations on the new office, Jill!

Member Karen Forman, whom many of us know as a lay GAL and mediator, has recently received the highest score on the LISW-AC exam that the examiner had ever seen (148 out of a possible 150)! The exam only has a 28% pass rate, and one must have at least 10 years' experience as a LMSW, plus 2 years of clinical supervision, before even qualifying to take it. Once the paperwork has been completed, Karen will be licensed to accept third party insurance for counseling services. Karen will handle family, couples, and individual counseling, although she would like for her eventual focus to be on adolescent and teenage clients. In the meantime, Karen remains available for GAL appointments and mediation, and can be reached at (843) 224-8010. Great work, Karen!!

Also, many newer members may not be aware that Karen's husband, Member Greg Forman, does an AMAZING job on appeals! There are a number of attorneys who handle appeals, but I can say from experience that Greg does a great job for less money than I thought possible. Of course, I'm sure clients with unlimited appellate budgets are welcome, but Greg can provide a terrific appeal for those on more limited budgets, as well. He can be reached at (843) 720-3749 or at gregforman@aol.com for further information.

## COUNSELING/SUPERVISED VISITATION SERVICES

Helen Wheeler e-mailed to let me know that two people in her office, Mike Baker and Nikesha Jacobs, are both available for supervising visitation in Family Court cases. Mike is 2/3 finished with

training to become a Licensed Professional Counselor, and just took the exam for Certified Addictions Counselor. Nikesha has completed her Licensed Professional Counselor training, has a master's degree in Criminal Justice and a master's degree in Counseling, and works with the Department of Probation and Parole. Each is available for evening and weekend supervision, and they charge $30.00 per hour, although the amount can be negotiated in specific cases. Both are willing to supervise at a specific site, and they can both supervise at Helen and Tom Wheeler's office, if a neutral environment is needed. For further info, e-mail either of them at ctrforfamilies@bellsouth.net .

Member George Gatgounis sent me the attached resume for Carol Peyton Weber, who is a Licensed Professional Counselor who previously resided in Connecticut, where she is also licensed in several different areas. She recently relocated to Charleston, and is available for counseling in a variety of areas. Her contact information is provided in her resume.

**SAD NEWS**

Member Deborah Lewis e-mailed me about the death of a young local attorney recently. Jamie Porter, whose office was in Mt. Pleasant, passed away on January 16, 2010. Debbie said that she had not know him well, but she found him to be pleasant, and she had looked forward to having cases with him in the future. She asked that everyone keep his family in their thoughts and prayers. Thanks, Debbie!

**JUDICIAL BUDGET WOES**

Chief Justice Toal's budget presentation to the Legislature is available online. Within the past 19 months, the judicial budgets have been cut 40.75% statewide, and there is a projected shortfall for 2010-2011 of over $7 million. A number of changes are being considered to further cut costs, and it's worth taking a look. go to www.sccourts.org for further information and breakdowns.

**EMPLOYMENT SOUGHT**

I've attached resumes from some promising paralegals, Henry Eden, Stephanie Deaton, and Elizabeth Tobul, all of whom are available for immediate positions.

Also, Member Pete DeLuca is losing his long-time paralegal, Jo, to the call of retirement! Jo, how could you do this to all of us, much less Pete? If anyone knows of an excellent, experienced paralegal seeking a position (in addition to the attached resumes), please send the resumes Pete's way! His e-mail address is pete@delucamaucher.com . Jo will be tough to replace, but I'm sure our members can send some great potential candidates.

That's all of the most recent news, but please continue to e-mail and call with updates, announcements, news, tips for practice, and anything else you may think would be useful for the membership. Remember, the more everyone knows about correct rules, procedures, and updates, the easier it is to complete cases!

Natalie Parker Bluestein
Attorney At Law

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2/26/2010

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# *Family Court Mediator List 09/04/09*

| The following people are qualified to serve as mediators for Family Court cases as of September, 2009: (DSS Mediators*) | | |
|---|---|---|
| Walter Ameika<br>110 North Main St.<br>Summerville, SC 29483<br>(843)285-7100<br>Fax: (843)285-7199<br>ameikalaw@aol.com | Melissa Brown<br>145 King St, Ste 405<br>Charleston, SC 29401<br>(843)722-8900<br>Fax: (843)722-8922<br>Melissa@melissa-brown.com | Patricia Detreville*<br>714 St Andrews Blvd<br>Charleston, SC 29417<br>(843)571-0537<br>Fax: (843)769-0225<br>pdetreville@dctrevillelaw.com |
| Mark Andrews*<br>755 Johnnie Dodds Blvd<br>Mt. Pleasant, SC 29464<br>(843)881-8886<br>Fax: (843)881-5899<br>mark@mandrewsmediation.com | Colleen Condon*<br>3 Gamecock Ave. Ste 301<br>Charleston, SC 29407<br>843)225-7288<br>Fax: (843)225-7289<br>colleen@colleencondonlaw.com | David DeVane<br>110 N. Main St.<br>Summerville, SC 29483<br>(843)797-3771<br>Fax: (843)797-1213 |
| Ellen Babb*<br>935 Misty Lake Dr.<br>Charleston, SC 29412<br>(843)406-7737<br>Fax: (843)406-7738<br>Ellen@babblawfirm.com | Dianne Current*<br>P.O. Box 1016<br>Charleston, SC 29402<br>(843)577-7557<br>Fax: (843)577-0811<br>dcurrent@cravercurrent.com | Ron Ernst*<br>P.O. Box 13018<br>Charleston, SC 29422-3018<br>(843)762-4500<br>Fax: (843)762-3490<br>ron.ernst@comcast.net |
| D. Allen Badger*<br>2129 Dorchester Rd.<br>Charleston, SC 29405<br>(843)554-8881<br>Fax: (843)554-6126<br>badgerlaw@hotmail.com | Dan David*<br>757 St Andrews Blvd.<br>Charleston, SC 29407<br>(843)571-1893<br>Fax: (843)571-5062<br>Dan@charlestonlegal.com | Conrad Falkiewicz<br>6 Carriage Lane, #A<br>Charleston, SC 29407<br>(843)571-4611<br>Fax: (843)571-4602<br>conradF2@cs.com |
| Anne Frances Bleeker*<br>82 Church Street<br>Charleston, SC 29402<br>(843)722-2900<br>Fax: (843)722-2997<br>afbleecker@bleekerlawfirm.com | Peter DeLuca<br>P.O. Box 9<br>Goose Creek, SC 29445<br>(843)572-1771<br>Fax: (843)572-1285<br>pete@delucamaucher.com | Stuart Feldman<br>9 Wesley Dr<br>Charleston, SC 29407<br>(843)763-5043<br>Fax: (843)763-5047<br>stuart.feldman@knology.net |
| Natalie Bluestein*<br>1 Carriage Lane, Bldg. D<br>Charleston, SC 29407<br>(843)769-0331<br>Fax: (843)769-7079<br>Natalie@BluesteinandDouglas.com | Gregory DeLuca*<br>P.O. Box 9,102 Marilyn St.<br>Goose Creek, SC 29445<br>(843)572-1711<br>Fax: (843)572-1285<br>greg@delucamaucher.com | Sally King-Gilreath<br>1040 eWall St.<br>Mt. Pleasant, SC 29464<br>(843)884-3357<br>sally@king-gilreathlaw.com |

# *Family Court Mediator List 09/04/09*

| | | |
|---|---|---|
| Kathleen Ferri<br>P.O. Box 31776<br>Charleston, SC 29417-1776<br>(843)557-9775<br>Fax: (843)225-6770 | Jill HaLevi<br>102-A Broad Street<br>Charleston, SC 29401<br>(843)819-0557<br>Fax: (803)753-9604<br>jill@charlestonmediator.com | Shannon Jones*<br>755 Johnnie Dodds Blvd<br>Mt. Pleasant, SC 29464<br>(843)881-8886<br>sjones@andrewsandshull.com |
| Cindy M. Floyd*<br>1327 Ashley River Rd.<br>Bldg C, Ste100<br>Charleston, SC<br>(843)820-5356<br>Fax: (843)576-0150<br>cmfloydlaw@aol.com | Cotton Harness III<br>505 Belle Hall Pkwy, Ste101<br>Mt. Pleasant, SC 29464<br>(843)856-2627<br>Fax: (843)856-2664<br>Cotton@AustinRogersPA.com | Sean Keefer*<br>1643 B Savannah Hwy<br>Charleston, SC 29407<br>(843)364-3341<br>Fax: (843)225-7635<br>scmediation@yahoo.com |
| Gregory Forman*<br>171 Church Street Ste 160<br>Charleston, SC 29401<br>(843)720-3749<br>Fax: (843)577-0460<br>Gregforman@aol.com | Denise Harris*<br>P.O. Box 31937<br>Charleston, SC 29417<br>(843)573-4800<br>Fax: (843)556-0504<br>Deniseharris123@comcast.net | Michèle Patrão Forsythe<br>Query Sautter Gliserman & Price, LLC<br>147 Wappoo Creek Drive, Ste. 202<br>Charleston, SC 29412<br>(843)795-9500<br>Fax: (843)762-1500 |
| Karen Forman* (non-attorney)<br>32 Pickney Street<br>Charleston, SC 29401<br>Ph: (843) 853-1666<br>Fax: (843) 577-0541<br>KAForman@aol.com<br>Cell: (843) 224-8010 | C. Leigh Hunter*<br>170 Church St., Ste 160<br>Charleston, SC 29401<br>(843)720-3726<br>Fax: (843)577-0460<br>leigh@leighhunterlaw.com | Christopher Lizzi<br>2170 Ashley Phosphate Rd., Ste 402<br>320 E Old Trolley Rd.<br>North Charleston, SC 29406<br>(843)797-0222<br>Fax: (843)797-0202<br>lizzilaw@aol.com |
| Jessie Glenn*<br>7091 Rivers Ave., Ste A<br>North Charleston, SC 29406<br>(843)818-2161<br>Fax: (843)818-2161<br>Jessie@glennlawfirm.net | Peggy Infinger<br>2344 Cosgrove Ave.<br>Charleston, SC 29415-1121<br>(843)554-4291<br>Fax: (843)554-5566<br>pinfinger@.cobblaw.net | Ben Mack*<br>110 North Main Street<br>Summerville, SC 29483<br>(843)285-7100<br>Fax: (843)285-7199<br>bmacklaw@aol.com |
| Suzanne Groff*<br>P.O. Box 12510<br>Charleston, SC 29422<br>(843)406-7733<br>Fax: (843)406-0205<br>suzannegroff@grofflaw.com | Emily Johnston*<br>1051 Chuck Dawley Blvd.<br>Mt. Pleasant, SC 29464<br>(843)881-6866<br>Fax: (843)881-0317<br>ejj@johnstonlawfirm.com | Timothy Madden<br>104 S. Main St.<br>Greenville, SC 29601<br>(864)250-2279<br>Fax: (864)250-2328<br>tim.madden@nelsonmullins.com |

# *Family Court Mediator List 09/04/09*

| | | |
|---|---|---|
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| George Morris<br>116 Church St., Ste 1<br>Charleston, SC 29401<br>(843)722-3218<br>Fax: (843)577-3331<br>gjmorrisatty@comcast.net | Mary Louise Ramsdale*<br>1470 Ben Sawyer Blvd. Ste 2<br>Mt. Pleasant, SC 29464<br>(843)849-8744<br>ml@ramsdalelaw.com | Tom Stoney<br>516 Central Ave<br>Summerville, SC 29483-3710<br>(843)873-5576<br>Fax: (843)873-5576<br>tpstoney2@bellsouth.net |

# *Family Court Mediator List 09/04/09*

| | | |
|---|---|---|
| Elizabeth Stringer-Nettles<br>753 Folly<br>Charleston, SC 29412<br>(843)795-1331<br>Fax: (843)762-0144<br>Elizabeth@stringerlaw.us | Everett H. Wilcox, Jr.<br>19 Isle of Hope<br>Mt. Pleasant, SC 29464<br>(843) 813-1609(M)<br>Fax: (843)884-0014(H)<br>EHWILCOX@GMAIL.COM | Wendi Freeman<br>1040 eWall Street<br>Mt. Pleasant, SC 29464<br>(843) 849-1990<br>Fax: (843)849-1903<br>wendi@wendifreemanlaw.com |
| Denise Swope<br>1535 Sam Rittenburg Blvd. Ste. E<br>Charleston, SC 29407<br>(843)852-4925<br>Fax: (843)852-4929<br>swopelawfirm@knology.net | Dana Wine<br>1040 eWall St<br>Mt. Pleasant, SC 29464<br>(843)737-6161<br>Fax: (843)278-9197<br>dana@winelawfirm.com | Hon. Jane Fender (retired)<br>PO Box 2325<br>Beaufort, SC 29901<br>(843) 524-7820<br>Fax:(843)524-0072<br>judgejane@charter.net |
| Paul Tinkler*<br>154 King St., 3rd Fl.<br>Charleston, SC 29401<br>(843)853-5203<br>Fax: (843)853-4206<br>paultinkler@tinklerlaw.com | Deborah Wright<br>P.O. Box 1042<br>Charleston, SC 29402<br>(843)577-2776<br>Fax: (843)577-6212<br>Deborah@dwrightlawfirm.com | William J. Clifford<br>2175 Ashley Phosphate Rd., Ste. G<br>Charleston, SC 29406-4181<br>(843) 764-0100<br>Fax: (843)553-9241<br>wjc@cliffordcharleston.com |
| Nancy Vavra (Lodge)*<br>171 Church St, Ste 330<br>Charleston, SC 29401<br>(843)735-5567<br>Fax: (843)735-5568<br>vavralaw@comcast.net | J. Mitchell Lanier, P.A.<br>215 Carolina Avenue<br>P.O. Box 1346<br>Moncks Corner, SC 29461<br>(843)-761-8164<br>Fax: (843)899-2296<br>Lanierlaw2@homesc.com | |
| Guy Vitetta<br>171 Church St., Ste 160<br>Charleston, SC 29401<br>(843)302-2050<br>Fax: (843)577-0460<br>guy@guyvitta.com | Dr. George J. Gatgounis, Esq.<br>1495 Remount Road<br>North Charleston, SC 29406<br>(843) 364-8555<br>Fax: (843) 308-0339<br>newhopeforharvard@comcast.net | |
| Helen Wheeler, Med, LPC<br>27 Gamecock Ave. Ste 202<br>Charleston, SC 29407<br>(843)224-1782<br>Fax: (843)753-0134<br>ctrforfamilies@bellsouth.net | Stephen Futeral*<br>1004 Anna Knapp Blvd., Ste.3<br>Mt. Pleasant, SC 29464<br>(843)284-5500<br>Fax: (843)284-5501<br>sfuteral@charlestonlaw.net | |

Complainant's Exhibit
#20

# THE IMPORTANCE OF

# CULTURAL COMPETENCY

# IN THE GUARDIAN AD LITEM INVESTIGATION

Karen A. Forman MSW, LMSW
Guardian ad Litem

Both voluntary immigration from other regions as well as the results of the Atlantic slave trade, brought a mix of people to the Americas, including Europeans, Africans, and, to a lesser extent until the 20th century, Asians. Thus began the process of diversifying the population of the Western Hemisphere. While the majority of the U.S. population were white immigrants from northern and western Europe and their descendants, they maintained most of the power, social and economic, of the nation.

In the U.S. context, immigration from the 1840s onward diversified the ethnic composition of the nation. During the early part of the 1900s, southern and eastern European immigrants and their descendants became a larger percentage of the population, but as recent immigrants concentrated in urban areas were also very often poor and lacking in basic healthy living and working conditions. Descendants of African slaves and immigrants faced a much more difficult challenge due to their skin color and discrimination enforced by legal systems, such as the Jim Crow laws in the United States. Since the 1960s, African Americans as well as other minority groups such as Mexican Americans have gained greater social and economic status and power.

Nonetheless, the dominant models of education and social services retained models developed by northern and western European intellectuals, even such well-meaning and important reformers as Jane Addams and Jacob Riis. After the Civil Rights movement of the 1950s and 1960s, though, social workers, activists, and even some healthcare providers began to examine their practices to see if they were as effective in African American, Latino, and even Asian American communities in the U.S. The arrival of more than half a million Southeast Asian refugees, from 1975 to 1992, for example, tested the ability of medical and social workers to continue effective practice among speakers of other languages and among those coming from very different understandings of everything from mental health, laws, law enforcement, education, gender roles, religion, spirituality, economics and many other factors in the life-space of a human being.

*** refer to pages (7-9) for diagrams/information on migration in the United States and state specific percentage of population growth from minorities.**

**Cultural Competence** refers to an ability to interact effectively with people of different cultures. **Cultural Competence** comprises four components: (1.)Awareness of one's own cultural world view, (b.)Attitude towards cultural differences (3).Knowledge of different cultural practices and world views (4.)cross-cultural skills.

Developing **Cultural Competence** results in an ability to understand, communicate with, and effectively interact with people across cultures.

The United States is constantly undergoing major demographic changes. The 1990-2000 population growth in the United States was the largest in American history with an increase in people of color from 20-25 percent. The complexities associated with an ever increasing country of cultural diversity affects the systems and agencies put in-place to deliver services to the population. The judicial system, particularly that of the Family Court, has been put in the position of providing services to a broad-range of clients.

The Family Court appointed Guardian ad Litem is placed in a unique situation. Guardians are in the position of conducting an investigation on the child's (ren's) family system to assist the Family Court in primarily placing the minor(s) with one parent or the other. This investigation strives to delineate the parental and environmental situation that is in the child's(ren's) best interest. As a Masters trained Social Worker acting in the capacity of a Guardian ad Litem there is a traditional assessment approach I use when representing the child (ren) in a custody dispute. Traditionally, the Social Work profession has emphasized the dual concept that all people are part of two systems: 1. The larger societal system, and, 2. Their immediate environments. Social Workers are trained to use the person-in-environment framework in their assessment of a family system to include varying degrees of important **cultural factors** that have meaning for the family/client.

Cultural knowledge, cultural awareness, and cultural sensitivity all convey the idea of improving your understanding and/or cross-cultural capacity, as illustrated in the following definitions:

**Culture**: the integrated pattern of human behavior that includes thoughts, style of communication, actions, customs, beliefs, values, and institutions of radical, ethnic, religious, or social group. **Culture comes in many shapes and sizes. It includes areas such as politics, history, faith, mentality, behavior, and life-style. Culture** is often referred to as the totality of

ways being passed on from generation to generation. It is the way that people of diverse backgrounds experience the world around them.

**Cultural Knowledge**: Familiarization with selected cultural characteristics, history, values, belief systems, and behaviors of the members of another ethnic group. (Adams, 1995).

**Cultural Awareness**: developing sensitivity and understanding of another ethnic group. This usually involves internal changes in terms of attitudes and values. Awareness and sensitivity also refer to the qualities of openness and flexibility that people develop in relation to others. Cultural awareness must be supplemented with cultural knowledge. (Adams, 1995)

**Cultural Sensitivity**: Knowing that cultural differences as well as similarities exist, without assigning values, i.e. better or worse, right or wrong, to those cultural differences. (NIH 1997).

**refer to pages (10-13) **Cultural Sensitivity Model.**

Developing **Cultural Competence** results in an ability to understand, communicate with, and effectively interact with people across cultures. It is an open-ended process by which individuals and systems respond respectfully and effectively to people of all cultures, languages, classes, races, ethnic backgrounds, religions, and other diversity factors in a manner that recognizes, affirms, and values the worth of individuals, families, and communities. It is the END result of achieving cultural knowledge, sensitivity, and awareness.

**Consider the Following**:
* **Cultural Competence** is a set of congruent behaviors, attitudes and policies that come together as a system, agency or among professionals, and enable that system, agency or those professionals in agency to work effectively is cross-cultural situations.
* **Cultural Competence** requires that organizations have a defined set of values and principles, and demonstrate behaviors, attitudes, and policies that enable them to work effectively cross-culturally.
**Cultural Competence** is a developmental process that occurs over an extended period of time. Both individuals and organizations are at various levels of awareness, knowledge, and skills along the cultural competence continuum.

The healthcare professions were the first to promote the idea of being culturally competent in service delivery. In the healthcare professions, the level of cultural competence directly effects the clinical outcomes of the services delivered to the patients. Cultural Incompetence in the medical setting can in fact result in fatal outcomes. The issue of cultural competency has also been embraced by the larger business community. As a result of cultural

incompetence, the business community was observing an increase in employee law suites related to management's lack of knowledge and awareness of certain cultural factors.

**Can you measure Cultural Competency? There are four solutions identified as markers for developing cultural competence. (Martin and Vaughn, DTUI Magazine 2007).**

**1. Awareness: a consciousness of one's personal reactions to people who are different.**
**2. Attitude: exploring your reactions and feelings of personal cultural biases and beliefs in general.**
**3. Knowledge: are our beliefs about certain cultural groups consistent with our behavior? "Know thyself".**
**4. Skills: practice cultural competence. Communication and also non-verbal communication are the fundamental tools of bow people interact. How are you perceived?**

Gallegos (1982) provided one of the first conceptualizations of cultural (ethnic) competence as.."a set of procedures and activities to be used in acquiring culturally relevant insights into the problems of minority clients and the means of applying such insights to the development of intervention strategies that are culturally appropriate for these clients." For the role of the Guardian ad Litem, this may include knowing the right questions to ask, observing the home life, observing the parent-child interactions, and researching customs and beliefs of a given minority. In certain cases, a Guardian must be comfortable with discussing personal topics ,such as,: sexuality and sexual orientation, sexual behaviors, personal hygiene, cleanliness of home, prescription drug use, mental functioning and many, many other issues.

Social Workers clearly have an ethical responsibility to be culturally competent (NASW Code of Ethics, 2001). Culture and ethnicity may influence how individuals cope with problems and interact with each other. Social Workers are trained to be tolerant and respectful in the area of diversity. What is acceptable in one culture may be not be in another culture. Social Workers struggle with ethical dilemmas arising from value conflicts. Social Workers must also consider and adhere to the United Nations Declaration of Human Rights as not all human behavior will be tolerated. Cultural Competency is not a static process. Guardians need to be prepared to research, learn, and become knowledgeable about a certain group, family, or individual's cultural beliefs and values. Self-awareness is the first step in appreciating the importance of multi-cultural identities in the lives of people.

The Guardian ad Litem needs to examine their own cultural backgrounds and identities to increase their awareness of personal assumptions, values, and biases. **Remember: Know Thyself!** It is fundamental to the Guardian ad litem investigation to understand your own cultural beliefs and values Examine your biases and what may "push your buttons". Cultural Competence includes knowing and acknowledging how fears, ignorance, and the "isms" (racism, sexism, ethnocentrism, heterosexism, ageism, classism) influence your beliefs, feelings, and attitudes toward certain populations of people.

**Conclusion:**

As a Social Worker and a Guardian ad Litem I would like to see Cultural Competence training in the Family Court System. Cultural Competence is an ethical standard for Social Work practice. It is my belief that both Guardian ad Litem programs (DSS and Private) would have better outcomes for the children and families involved if Cultural Competence training became a standard for Guardian ad Litem entering the system. Guardian ad Litem need a wide range of skills to work successfully with people of varying populations. Guardians need to have self-awareness of how their personal values may influence the way they view a family. Guardians must be aware of the topics and/or life-style choices that "push their buttons" and render them biased and unable to provide an even and balanced investigation. If necessary, Guardians become social scientists and research a certain culture of the family they are investigating.

# TOP 10: COUNTRIES OF IMMIGRATION TO THE UNITED STATES

| Country | Average #Immigrate Per year | 2000 | 2004 Estimation | 2010 Estimation | %2010 |
|---|---|---|---|---|---|
| Mexico | 175,900 | 7,841,000 | 8,544,600 | 9,600,000 | 23.7% |
| China | 50,900 | 1,391,000 | 1,594,600 | 1,900,000 | 4.7% |
| Philippines | 47,800 | 1,222,000 | 1,413,200 | 1,700,000 | 4.2% |
| India | 59.300 | 1,007,000 | 1,244,200 | 1,610,000 | 4.0% |
| Vietnam | 33,700 | 863,000 | 997,800 | 1,200,000 | 3.0% |
| Cuba | 14,800 | 952,000 | 1,011,200 | 1,100,000 | 2.7% |
| El Salvador | 33,500 | 765,000 | 899,000 | 1,100,000 | 2.7% |
| Dominican Republic | 24,900 | 692,000 | 791,600 | 941,000 | 2.3% |
| Canada | 24,200 | 678,000 | 774,800 | 920,000 | 2.3% |
| Korea | 17,900 | 701,000 | 772,600 | 880,000 | 2.2% |

***Historical Data from 2000 U.S. Census and 2004 Yearbook of Immigrant Statistics,

**Percentage change in Foreign Born Population 1990 to 2000**

**STATE PERCENTAGES**

North Carolina 273.7% South Carolina 132.1% Mississippi 95.8%
Wisconsin 59.4% Vermont 32.5%
Georgia 233.4% Minnesota 130.4% Washington 90.7% New Jersey
52.7% Connecticut 32.4%
Nevada 202.0% Idaho 121.7% Texas 90.2% Alaska 49.8% New
Hampshire 31.5%
Arkansas 196.3% Kansas 114.4% New Mexico 85.8% Michigan
47.3% Ohio 30.7%
Utah 170.8% Iowa 110.3% Virginia 82.9% Wyoming 46.5% Hawaii
30.4%
Tennessee 169.0% Oregon 108.0% Missouri 80.8% Pennsylvania
37.6% North Dakota 29.0%
Nebraska 164.7% Alabama 101.6% South Dakota 74.6% California
37.2% Rhode Island 25.4%
Colorado 159.7% Delaware 101.6% Maryland 65.3% New York
35.6% West Virginia 23.4%
Arizona 135.9% Oklahoma 101.2% Florida 60.6% Massachusetts
34.7% Montana 19.0%
Kentucky 135.3% Indiana 97.9% Illinois 60.6% Louisiana 32.6%
Maine 1.1%

*Source: U.S. Census 1990 and 2000

Average change in U.S. from 1990 to 2000 was a 57.4% increase in foreign population

**Census: South Carolina and the Immigrant Population**

**2000-2007**

The immigrant population exceeds 4 percent. Immigrants make up more than 4 percent of South Carolina's population, according to census figures, and Latinos and Asians have a significant effect on the state's economy

The Immigration Policy Center, which is based in Washington, D.C., reports that immigrants are a vital part of the state's economic health.

South Carolina had 190,014 immigrants in 2007, the latest year for which figures are available. The percentage of the foreign born population rose to 4.3 percent in 2007 from 2.9 percent in 2000, according to the U.S. Census Bureau. For example, there were 3,531 Hispanics in Anderson County in 2007, and they made up 2 percent of the population, according to the bureau.

In 2008, the purchasing power of South Carolina's Latino population totaled $3.3 billion, and the buying power of the Asian population was $1.9 billion, according to the Selig Center for Economic Growth. The center is part of the University of Georgia.

## Definition of Cultural Sensitivity

Cultural Sensitivity means being aware that cultural differences and similarities exist and have an effect on values, learning, and behavior.

Stafford, Bowman, Eking, Hanna, & Lopoes (1997)

## Components of Cultural Sensitivity

*valuing and recognizing the importance of one's own culture.

*valuing diversity.

*realizing that cultural diversity will effect an individual's communication and participation in education in various ways.

*a willingness to adapt one's communication and behaviors to be compatible with another's cultural norms.

*a willingness to learn about the traditions and characteristics of other cultures.

## Interacting and Communicating in Culturally Sensitive Ways

*the primary source of communication should come from the professional

*relationships with families are strengthened when you use a strength focused approach.

*it is important to indicate a willingness to listen

*active listening: listen fully, without interupting, clarify, acknowledge, reflect, or expand and build on what is being said.

*effective communication is enhanced when empathy is conveyed. Put yourself in the other's shoes....

*avoid interactions that may be perceived as demeaning. Be age appropriate in use of language and voice intonation.

*be persistent in maintaining open communication.

*fact: there are basic differences in the ways people of different cultures communicate.

*within cultures individuals differ in communication styles.

*be nonjudgmental

*take an active interest in the culture and norms of others.

*openness, caring, and mutual respect of the dignity of individuals are essential to effective communication.

# SC BAR

## Event Calendar

Complainant's Exhibit #21

## Live Seminar: Guardian ad Litem (GAL)

**Date:** January 29, 2010

**Time:** 8:30a.m. - 4:45p.m.

For more information and to register for the live seminar, please click **here**

For more information and to register for the live webcast, please click here

**Seminar Agenda**

**8:30 a.m. Registration**

**8:50 a.m. Welcome and Opening Remarks**

**9:00 a.m. Problematic Child Abuse Disclosures**

*Dr. Don Elsey*

LowCountry Children's Center

**9:30 a.m. What I Think I am Supposed to be Doing When I am the Guardian *ad Litem***

*Mary J. "MJ" Goodwin, Esquire*

MJ Goodwin, LLC

**10:15 a.m. Another View of What I Think I am Supposed to be Doing When I am the Guardian *ad Litem***

*John D. "Jay" Elliott, Esquire*

Attorney at Law

**11:00 a.m. Mid-morning break**

**11:15 a.m. Good Guardians/Bad Guardians: What I Saw From the Bench**

*The Honorable Barry W. Knobel*

Knobel Mediation Services, LLC

**11:45 a.m. Cultural Competence in the Guardian *ad Litem's* Role: A Social Worker's View**

*Karen Forman, LMSW*

**12:15 p.m. Lunch (on your own)**

**1:30 p.m. An Iconoclastic View of the Guardian *ad Litem's* Role**

*Gregory S. Forman, Esquire*

Attorney at Law

**2:15 p.m. A Family Court Judge's View of What Guardian *ad Litems* are Doing Right and Wrong**

*The Honorable George M. McFaddin, Jr.*

Family Court, Third Judicial Circuit

**2:45 p.m. An Appellate Judge's View of What Guardian *ad Litems* are Doing Right and Wrong**

*The Honorable H. Bruce Williams*

South Carolina Court of Appeals

**3:30 p.m. Mid-afternoon break**

**3:45 p.m. Q&A Panel Discussion**

*Gregory S. Forman, Esquire - Moderator*

**4:45 p.m. Adjourn**

**About the Seminar**

Over eight years after *Patel v. Patel*, 347 S.C. 281, 555 S.E.2d 386 (2001) and six years after the passage of the private guardian *ad litem* statute, there is still much to learn about how guardians are to fulfill their role and what information they should include on their reports. Because the mandate to "represent the best interests of the child" is so broad, guardians often have little guidance on what they should be doing and how they should do it.

In order to undertake the role of a guardian *ad litem* for children in a private custody case, it helps for the guardian to have an underlying philosophy of what he or she is setting out to do, if only to structure the work and to keep the guardian's role from expanding without limit. This program covers the statutorily required topics for the annual continuing education of guardians, and presents multiple viewpoints on the guardian *ad litem's* role, including views from attorney and social worker guardians, a child abuse examiner, a retired family court judge and an active family court and appellate judge. It concludes with a Q&A/panel discussion on various issues common to guardians in custody cases. The goal is to assist guardians in thinking about how to undertake their role and to provide pointers from experienced guardians and judges.

**Mandatory MCLE Credit Hours**

*6.0 MCLE credit hours. 6.0 GAL Certification credit.*

## **Event Type:** Seminars

**South Carolina Bar**
950 Taylor Street
Columbia, South Carolina 29201
803.799.6653 Phone
803.799.4118 Fax
scbar-info@scbar.org

Complainant's Exhibit

#22

**Karen A. Forman**
[redacted]
**Charleston, SC 29401**
**(843)224-8010**

TO: Investigator Ann Reese

Response to Complaint of B.E:

I have been a Guardian ad Litem in this case since 2003. This case is a relocation case in that the mother and her children live in Utah. The father, B.E, lives in SC. Mother has sole custody of these children because she was divorced from B.E on the grounds of habitual drunkenness. Mr. E has been suspended from seeing his children unsupervised by the Court; NOT me. I do support the Court's decision because Mr. E has not remained sober nor has he gotten any ongoing therapy/rehab. for the habitual alcohol abuse. He has also not been compliant with my investigation and has several times in the past tried to cheat on his alcohol tests by a Court appointed pathologist. B.E

It has not been me that has kept B.E from seeing his children. It is B.E that has kept himself from seeing his children. I have followed the GAL statute. I have done nothing wrong in this case. I have advocated for these children to see their father in a supervised setting.

Response to Complaint of K.K:

This case was a visitation case only. The father, B.H, was requesting that he have visitation with his son G. The mother, K.K, was not allowing any visitation to occur because she said the father was violent and unsafe. When I requested proof from her attorney, Kate Schmutz, she told me there was no proof (police reports, records, etc...) and that the mother was going to have to allow visitation. When I arranged a meeting with the complainant and her attorney (Ms. Schmutz) she stormed out of the attorney's office shouting "I will kill B first before I allow G to see him..." I believe K.K is mentally unstable. I believe she believes the father is evil and dangerous but I never was shown anything to substantiate her story. I believe it is always in a child's best interest to know their parents (both parents) and I advocated for this child to start seeing his father in a therapist's office. The court left it to the therapist to decide when G and his father were free to visit outside of a therapeutic setting. I think K.K is angry at me because she has no one left to target her anger toward.

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA | ) | IN THE FAMILY COURT |
| | ) | FOR THE NINTH JUDICIAL CIRCUIT |
| COUNTY OF BERKELEY | ) | |
| | ) | CASE NO: 2003-DR-08-1488 |
| Katherine Knagenhjelm, | ) | |
| | ) | |
| Plaintiff(s), | ) | |
| | ) | Affidavit of Guardian ad Litem |
| v. | ) | |
| | ) | Complainant's Exhibit |
| Brian Higuera, | ) | |
| | ) | #23 |
| Defendant(s). | ) | |
| | ) | |

The affiant, as being duly sworn, deposes and says as follows:

1. I am the Court appointed Guardian ad Litem in the above captioned case.

2. I was appointed by this Honorable Court on November 23, 2004 by the Honorable Judge Jack A. Landis. (Exhibit #1).

3. I have investigated this case to the best of my abilities considering the lack of communication from the Plaintiff, Ms. Knagenhjelm.

4. Mr. Higuera has been serving in the Military overseas for much of this case. He did contact me in May 2006 informing me he was living in Summerville and wanted a home inspection. I did a home visit to Defendant's apartment on May 24, 2006. The apartment was appropriate for a child and there were no concerns about Mr. Higuera's home environment. He stated that he very much wanted to see his son; C[redacted]

5. I drafted a letter to the Plaintiff requesting that visitation between this father and his son begin as soon as possible. I stated that the father understood that C[redacted] may not know him very well, therefore, a gradual schedule was acceptable. I sent a copy of this letter to both attorneys of record. (Exhibit #2) I also requested that the Plaintiff pay my retainer fee of $375. as the retainer

from the Defendant was exhausted at this time. The Plaintiff left a very angry message on my office machine that she was not paying my fee and C[redacted] was not seeing his father.

6. Kate Schmutz, Plaintiff's attorney, called me requesting a meeting with her and Ms. Knagenhjelm at her office on June 15, 2006. As I was coming through the office door, the Plaintiff came running out of Ms. Schmutz's office. The Plaintiff appeared to be very angry. She was screaming that she would kill the Defendant, Brian Higuera, before he ever got visitation with C[redacted].

7. The Plaintiff's behavior that day at her attorney's office was so hostile; I called the Defendant's attorney to notify Mr. Higuera to be cautious. I was that worried.

8. The Plaintiff has never given me any evidence that the Plaintiff could be dangerous, neglectful, and/ or harmful to C[redacted]. The Plaintiff has never agreed to meet with me and discuss her concerns. The Plaintiff has refused this father visitation with their son.

9. I am requesting this Honorable Court Order the Plaintiff to be cooperative with my investigation and Order the Plaintiff to pay the retainer fee.

**FURTHER AFFIANT SAYETH NOT!**

**KAREN A. FORMAN**

Guardian ad Litem

Sworn and Subscribed before me

this 9th Day of January, 2007

NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: 1/17/201_

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA<br>COUNTY OF BERKELEY | ) | IN THE FAMILY COURT OF THE NINTH JUDICIAL CIRCUIT<br>CASE NO.: 2003-DR-08-1488 |
| KATHERINE KNAGENHJELM,<br>Plaintiff,<br>-VS-<br>BRIAN HIGUERA,<br>Defendant. | ) | **ORDER APPOINTING GUARDIAN AD LITEM** |

IT IS ORDERED that Karen Forman is appointed to serve as the Guardian Ad Litem to protect the interests of the minor child(ren). To wit: C[redacted] Austin Higuera, born [redacted]

IT IS FURTHER ORDERED that the Guardian Ad Litem shall:

1. Be allowed private access to the child by the caretakers of the child, whether caretakers are individual, authorized agencies or health care providers;

2. Upon proof of appointment as Guardian Ad Litem and upon request, have access to information in possession of medical and dental authorities, psychologists, social workers, counselors, schools, law enforcement personnel, and any private or public service providers about the child for whom they are Guardian Ad Litem;

3. Be given notice of all hearings and proceedings involving this case, multi disciplinary teams, interagency staffings, and any other hearings or meetings when the child's interest might be affected, or any meetings or hearings the Guardian Ad Litem may request; and

4. Perform the functions listed in S.C. Ann. §20-7-1549, et seq., including but not limited to the following:

   a. Representing the best interests of the child;

   b. Conducting an independent, balanced, and impartial investigation to determine the facts relevant to the situation of the child and

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CERTIFIED TRUE COPY OF RECORD IN THIS COUNTY
Mary P. Brown
DATE CLERK OF COURT, FAMILY COURT SOUTH CAROLINA

Complainant's Exhibit
#24

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family. The investigation must include, but is not limited to:

1. obtaining and reviewing relevant documents, except that the Guardian ad Litem must not be compensated for reviewing documents related solely to financial matters not relevant to the suitability of the parents as to custody, visitation, or child support;

2. meeting with and observing the child on at least one occasion;

3. visiting the home settings if deemed appropriate;

4. interviewing the parents, caregivers, school officials, law enforcement, and others with knowledge relevant to the case;

5. obtaining the criminal history of each party when determined necessary; and

6. considering the wishes of the child, if appropriate.

c. advocating for the child's best interest by making specific and clear suggestions, when necessary, for evaluation, services, and treatment for the child and the child's family.

d. attending all court hearings related to custody and visitation issues, except when attendance is excused by the court or the absence is stipulated by both parties. The Guardian Ad Litem is not required to attend a hearing related solely to a financial matter if the matter is not relevant to the suitability of the parties as to custody, visitation, or child support. The Guardian Ad Litem must provide accurate, current information directly to the Court, and that information must be relevant to matter pending before the Court.

e. maintaining a complete file, including notes.

f. Presenting to the court and all parties clear and comprehensive written report including, but not limited to, a final written report regarding the child's best interest. The final written report may contain conclusions based upon the facts contained in the report. The final written report must be submitted to the court and all parties no later than twenty days prior to the merits hearing, unless that time period is modified by the court, but in no event later that ten days prior to the merits hearing. The ten-day

requirement for the submission of the final written report may only be waived by mutual consent of all parties. The final written report must not include a recommendation concerning which party should be awarded custody; nor may the Guardian ad Litem make a recommendation as to the issue of custody at the merits hearing unless requested by the court for reasons specifically set forth on the record. The Guardian ad Litem is subject to cross-examination on the facts and conclusions contained in the final written report. The final written report must include the names, addresses, and telephone numbers of those interviewed during the investigation. It is further

9. Perform such other duties as directed by the Court.

IT IS FURTHER ORDERED that this appointment shall continue to be in effect until formal discharge by the Court.

IT IS FURTHER ORDERED that upon receipt of this Order, the Guardian Ad Litem shall make all filings and disclosures to the Court and the parties pursuant to S.C. Code Ann § §20-7-1457(D) and 20-7-1555 (Supp.2002).

IT IS FURTHER ORDERED that the parties shall execute all releases necessary for the Guardian Ad Litem to obtain records to investigate this case, or obtain and provide such records at the request of the Guardian Ad Litem.

IT IS FURTHER ORDERED that the Guardian Ad Litem is to be given access to all of the (child or children's) and parties financial, medical, psychological, and intellectual testing records. The Guardian Ad Litem is entitled to obtain copies of all relevant documents.

IT IS FURTHER ORDERED that the Guardian Ad Litem is authorized to have access to records prepared or related to any medical and psychiatric treatment of the (child or children's) and parties and to discus the (child or children's) and parties'

medical and psychological treatment with any appropriate medical or health care professionals. This access is authorized by this Order, as provided by 45 CFR 164.512(e)(I)(I), the health Insurance Portability and Accountability Act (HIPAA), which authorizes covered entities to disclose protected health information in the course of any judicial or administrative proceeding when responding to an Order of the Court.

IT IS FURTHER ORDERED that the Guardian Ad Litem is specifically authorized by this Order to utilize the information obtained pursuant to this Order to prepare and/or include in any report or testimony concerning the Guardian Ad Litem's investigation required by this Order.

IT IS FURTHER ORDERED that the Guardian Ad Litem shall not retain an attorney without prior approval of the Court, after notice to all parties and a hearing.

IT IS FURTHER ORDERED that the parties shall deposit with the Guardian Ad Litem the sum of $750.00 as a deposit toward the fees authorized in this matter, within ten days of the date of this Order. The Guardian Ad Litem may charge a reasonable fee not to exceed $3,500.00 for performing the tasks assigned herein. The Guardian Ad Litem shall submit itemized periodic bills to the parties and their attorneys on a monthly basis, including hours, expenses, costs and fees. The Guardian Ad Litem's hourly rate is $75.00. If the Guardian Ad Litem determines that it is necessary to exceed the fee authorized above, the Guardian Ad Litem must provide notice to both parties and obtain the Judge's written authorization or the consent of both parties to charge more than $3,500.00.

IT IS FURTHER ORDERED that the Plaintiff shall pay 50% of the initial retainer



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and subsequent fees, and the Defendant shall pay 50% of the initial retainer and subsequent fees. These payments shall be without prejudice to either party to request reallocation of the fees at the final hearing in this matter. Both parties shall remain current with the periodic bills to be submitted by the Guardian Ad Litem.

IT IS FURTHER ORDERED that either party may pay the GAL the entire $750.00 at anytime so the GAL may begin her investigation.

**AND IT IS SO ORDERED!**

JACK A. LANDIS
Presiding Judge

Signed this 23rd day of July, 2004
at Moncks Corner, SC

x 75

Complainant's Exhibit

#25


**SUZANNE E. GROFF**
ATTORNEY AND MEDIATOR

Street Address
1058 Sea Eagle Watch
Charleston, South Carolina 29412

Telephone: (843) 406-7733

Mailing Address
Post Office Box 12510
Charleston, South Carolina 29422

Facsimile: (843) 406-0205


December 18, 2003

Mr. John Graham Altman, Esquire
1292 Yeamans Hall Plaza
Hanahan, SC 29406

Mr. Michael H. Murphy, III, Esquire
Steinburg Law Firm, LLP
P. O. Box 1028
Goose Creek, SC 29445

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RE: Knagenhjelm v. Higuera, Potential Conflicts

Dear Attorneys Altman and Murphy:

I am in receipt of the Order of Appointment in the above matter. Pursuant to S.C. Code Ann. 20-7-1547(D) and 20-7-1555 (Supp.2002), enclosed please find a copy of my affidavit setting forth the disclosures required by the statutes. By copy of this letter, I am filing the original with the Clerk of Court.

Please forward me all documents (pleadings, affidavits, etc.) you feel are relevant to the issues of custody, visitation and support in this matter for my review. Please remember that the South Carolina Private Guardian *ad litem* Reform Act prohibits me from billing for the review of any documents not related to these issues. Please be advised that should you or your clients supply me with any documents, I will assume they are relevant to these issues and will review them accordingly.

Please supply me with a list of witnesses that you wish for me to contact. Please supply the name and address of each witness, both daytime and evening telephone numbers, and a very brief description of how each witness knows either your client and/or the children.

Neither party has paid the Court ordered retainer. Ms. Knagenhjelm has been in touch several times to explain that Mr. Higuera was not making payments to her as ordered by the




E-mail: *suzanne.groff@scbar.org*


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Jun 14 2010 8:09AM ATTORNEY SUZANNE GROFF 843-406-0205 p.3

Court and that she is, therefore, unable to pay at this time. Mr. Hihuera explained some of him financial difficulties to my assistant. Because the child appears to be sufficiently protected under the Temporary Order already in effect, I do not plan to take any action in this case until I receive the required retainer from both parties.

I would then like to meet with each of your clients as soon as possible. Please have each contact me to schedule an initial appointment. I understand that Mr. Higuera will be in town from December 30 to January 5. I can make myself available during that time to meet with him alone and even, perhaps, supervise a visitation so that I could see father and child interact. I will not be willing to schedule those appointments, however, until both retainers are paid. If possible, I would like to receive any initial document packets from your offices prior to these interviews.

I enclose a General Authorization to Release Information Form for your respective clients to sign. Please have them execute the documents and return them to me.

In the interest of a thorough and complete investigation, I have decided to request SLED checks for all of my existing Guardian ad Litem cases. There is a $25.00 fee for each Criminal Records Check, which you will need to pay by check to Suzanne E. Groff and enclose in the return envelope to me. I will then send them your full name, date of birth, and Social Security Number.

Enclosed you will also find the South Carolina Department of Social Services (DSS) *Consent to Release Information* form. Please read the entire form, fill out only the portion containing Name through Addresses, and then sign and date on the allotted lines for Signature of Applicant. Please also have your signature witnessed (does not need to be a notary) and dated.

Enclosed please also find the SCDPS Request for Driver Information form. Please fill out Part 2 by Name, DL No. and DOB and then sign and date on the Signature line. Please return to my office in the enclosed envelope and I will complete the form and forward that to the South Carolina Department of Public Safety.

Enclosed please find the self-addressed stamped envelope for your prompt return of all requested documents. If you would please keep the white, pink, and yellow copies of the Consent form intact and fold and place them in this envelope, I will fill out the remaining portions necessary and then forward it to DSS. Please also use this envelope for your check regarding the above mentioned SLED check and the General/Medical Authorization forms.

Finally, please advise your clients that payment for my services shall be due as set forth in the Order of Appointment.

I look forward to working with you both in this matter. Please call me if you have any questions or concerns as this matter proceeds.





Jun 14 2010 8:08AM ATTORNEY SUZANNE GROFF 843-406-0205 p.4
ROA 456

With kindest regards, I am

Sincerely,

Suzanne B. Groff

cc. Ms. Katherine Knagenhjelm
Mr. Brian Higuera



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Jun 14 2010 8:09AM ATTORNEY SUZANNE GROFF 843-406-0205 p.5

ROA 457

SUZANNE E. GROFF
ATTORNEY AND MEDIATOR

Street Address
1058 Sea Eagle Watch
Charleston, South Carolina 29412

Telephone: (843) 406-7733

Mailing Address
Post Office Box 12510
Charleston, South Carolina 29422

Facsimile: (843) 406-0205

January 22, 2004

Mr. John Graham Altman, Esquire
1292 Yeamans Hall Plaza
Hanahan, SC 29406

Mr. Michael H. Murphy, III, Esquire
Steinburg Law Firm, LLP
P. O. Box 1028
Goose Creek, SC 29445

RE: Knagenhjelm v. Higuera

Dear Attorneys Altman and Murphy:

I have met with both of your clients in my office. Mr. Higuera was candid with me in stating that he knew he was not paying the Court ordered amounts to Ms. Knagenhjelm, but stated that he would be catching up starting in January. He told me that he came to my office on a trip to Charleston which he did not tell his wife about because he knew she would be trying to collect the money due from him.

Mr. Higuera also told me that he does not intend to return to Charleston until he is current in his Court ordered payments.

Ms. Knagenhjelm brought me an extraordinary amount of paperwork for my review. I have not yet done so and I do not plan to take further action until I receive the remainder of the Court ordered retainer. I feel that this is a reasonable position for me to take as Mr. Higuera neither has nor is requesting visitation. Therefore, because the child is safe, I feel that it is reasonable to wait for payment. If there is an emergency at any time, please contact me and I will take whatever steps are necessary and then deal with the issue of payment.

I have explained to both parties that Mr. Higuera's telephone privileges are not linked to his bring financially current. Mr. Higuera stated that he attempted to call but Ms. Knagenhjelm refused to answer the phone at the beginning and he has, therefore, now abandoned the attempt. I have asked for copies of his cell phone bills which would show his attempted calls. Ms.

E-mail. *suzanne groff@scbar org*

Knagenhjelm states that she has not refused calls. She says he has not tried to call.

I would encourage Mr. Higuera to call and I would encourage Ms. Knagenhjelm to make the child available for phone visitation in accordance with the existing Court Order.

Please keep me posted if circumstance change. Please call me if you have any questions or concerns as this matter proceeds.

I also enclose my Statement for Service Rendered.

With kindest regards, I am

Sincerely,

Suzanne E. Groff

cc. Ms. Katherine Knagenhjelm
Mr. Brian Higuera

January 21, 2004

Mr. Brian Higuera
Post Office Box 1916
Summerville, SC 29484

Ms. Katherine Knagenhjelm
[redacted]
Ladson, SC 29456

**STATEMENT OF SERVICES RENDERED**

| DATE | DESCRIPTION | TIME | AMOUNT |
|---|---|---|---|
| 12/18/03 | Correspondence to counsel. | .25 | $25.00 |
| 01/02/04 | Meeting with Mr. Higuera. | 1.50 | $150.00 |
| 01/09/04 | Meeting with Ms. Knagenhjelm. | 2.25 | $225.00 |
| | TOTAL: | 4.0 hours | $400.00 |

**Brian Higuera:** **BALANCE DUE (½ of this bill):** **$200.00**

**Katherine Knagenhjelm:** **BALANCE DUE (½ of this bill):** **$200.00**

Because Ms. Knagenhjelm is unable to pay her portion of the retainer due to Mr. Higuera's failure to comply with his Court imposed financial obligations, I have paid myself the entire $375 retainer to reduce this $400 bill.

**SUZANNE E. GROFF**
ATTORNEY AND MEDIATOR

Street Address
1058 Sea Eagle Watch
Charleston, South Carolina 29412

Telephone: (843) 406-7733

Mailing Address
Post Office Box 12510
Charleston, South Carolina 29422

Facsimile: (843) 406-0205

March 29, 2004

Mr. Brian Higuera
Post Office Box 1916
Summerville, SC 29484

Katherine Knagenhjelm
[redacted]
Ladson, SC 29456

Dear Ms. Knagenhjelm and Mr. Higuera:

Enclosed please find a Statement of Services Rendered through March 9, 2004.

The retainer amount of $375.00 owed by Ms. Knagenhjelm is currently outstanding. Prompt payment of this amount is expected.

Sincerely,

Sue Groff

Suzanne E. Groff

enclosure

E-mail: *suzanne.groff@scbar.org*

March 29, 2004

Mr. Brian Higuera
Post Office Box 1916
Summerville, SC 29484

Ms. Katherine Knagenhjelm
[redacted]
Ladson, SC 29456

**STATEMENT OF SERVICES RENDERED**

| DATE | DESCRIPTION | TIME | AMOUNT |
|---|---|---|---|
| 01/28/04 | Telephone conference with Brian Higuera. | .25 | $25.00 |
| 02/20/04 | Telephone conference with Brian Higuera. | .25 | $25.00 |
| 02/25/04 | Telephone conference with John Graham Altman's office. | .25 | $25.00 |
| 03/09/04 | Telephone conference with Katherine Knagenhjelm. | .50 | $50.00 |
| | TOTAL: | 1.25 hours | $125.00 |

**SUZANNE E. GROFF**
ATTORNEY AND MEDIATOR

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1058 Sea Eagle Watch
Charleston, South Carolina 29412

Telephone: (843) 406-7733

Mailing Address
Post Office Box 12510
Charleston, South Carolina 29422

Facsimile: (843) 406-0205

April 8, 2004

Mr. John Graham Altman, Esquire
1292 Yeamans Hall Plaza
Hanahan, SC 29406

Mr. Michael H. Murphy, III, Esquire
Steinburg Law Firm, LLP
P. O. Box 1028
Goose Creek, SC 29445

RE: Knagenhjelm v. Higuera

Dear Attorneys Altman and Murphy:

I understand that there is a Rule to Show Cause scheduled for April 21. As I expect this hearing will not deal with issues other than financial issues, I do not plan to attend. If either of you feel that my presence is necessary, please advise.

Ms. Knagenhjelm advises that she is still not in a position to pay my retainer as Mr. Higuera is so far behind in his financial obligations. I am not proceeding to enforce that portion of the Order for that reason. She also advises that the parties have cooperated with at least one visitation without incident. Therefore, I am not taking an active role until these financial issues are resolved.

If either of you know of an issue regarding the child which needs my attention, please advise.

Sincerely,

Suzanne E. Groff

cc. Ms. Katherine Knagenhjelm
Mr. Brian Higuera

E-mail: *suzanne.groff@scbar.org*

R#2

RESPONDENT'S EXHIBIT

#2

# Time Line
# Case: Knagenhjelm

**Events prior to Forman involvement:**

November 4, 1997 Knagenhjelm married to Higuera.
[redacted] Higuera born.
May 17, 2003 Knagenhjelm and Higuera separate
August 15, 2003: Knagenhjelm filed by her attorney John Graham Altman
October 23, 2003 Temporary Order granting visitation
November 4, 2003 Order appointing Sue Groff as GAL
September 21, 2004 John Graham Altman Motion to be relieved
October 20, 2004 Sue Groff Relieved and her fees Ordered.

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**November 23, 2004 Order appointing Forman as new GAL**

**December 2004** sent letter/to both attorneys requesting information on case/ client contact info. and for their clients to call me to schedule an appointment.

**January, 2005** recv'd a packet of documents from Seaton office and Higuera's contact info by mail.

**January 12, 2005** recv'd call from Higuera. He relates he is going to Iraq in a few weeks and wants to see his son before he leaves. I make a call to both attorneys requesting they work something out with their clients as I have not begun my investigation due to recent rec'd. of document and no contact from Knagenhjelm .

**January 25, 2005** Rec'v a copy of a letter from Seaton to Schmutz requesting a visit before Higuera deploys and also outlines a settlement that includes gradual visitation with initial supervision provided by the child's comfort.

**January 26, 2005** Call to Schmutz. She gave me Knagenhjelm's contact info. I left a message for Knagenhjelm.

**Several days later** I spoke to Knagenhjelm sometime in late January/ early February 2005. She was relieved Higuera was in Iraq. She complained about C[redacted]'s school and said she was withdraw him because she did not trust teachers and administration.

**This case remains dormant while Higuera is in Iraq.**

**August 23, 2005** I rec'd. a call from Higuera. He is on leave and would like to meet with me regarding his son. He is staying at friend's house in Summerville at Westcott Subdivision. I make the meeting with him and he discusses the possibility of future visitation with his son once he is

"home" for good. He paid me $375. 00 retainer.

**May 25, 2005** Pre Trial in Berkeley County. Both attorneys and I are present. Higuera still in Iraq. This case was held in abeyance. It was not dismissed. Both attorneys reported that once Higuera returned from Iraq that a home study was to be done on his residence. No issues raise as to the fitness of the mother's home. All agree that nothing to be done until Higuera returns.

**May 2006**: Higuera contacts me. His job in Iraq is over. He has rented an apartment in Summerville. Upon advise from his attorney, he is requesting a home visit.

**May 2006:** Call both attorneys report the request. Ask Schmutz to have her client contact me.

**May 2006 :** Leave several messages for Knagenhjelm

**May 24, 2006**: Home visit of Higuera's house.

**June 1, 2006** Sent letter a letter to Knagenhjelm with copies to both attorneys that Higuera's home inspection was good. Can we schedule some sort of visitation in increments with father and C[redacted]?

**Early June** I received packet of 2000+ pages via mail in an unmarked envelope. Reveiwed the documents and called Schmutz to ask if she had seen them. Asked her if they include any evidence of criminal activity or of child abuse and neglect. She reported that she had reviewed documents carefully and there was no such proof included.. Also reported listening to a tape of a telephone conversation between Higuera and Knagenhjelm which her client has brought to her to show that her husband was violent. She said the tape was not proof of violence. I asked if I should listen to the tape. She reported that it would be a waste of time.

**June 12, 2006** Recv'd a faxed letter from Judge Landis' secretary that was sent to him ex-parte from Knagenhjelm Disparaging me. I faxed this letter and asked what was going on.

**June 15, 2006** Meeting scheduled at Schmutz' office to discuss case with Knagenhjelm Arrived and sat in waiting room while Knagenhjelm was meeting with her attorney before they were to meet with me. Knagenhjelm stormed out of the office screaming homicidal statements directed toward Higuera.

**June 15, 2006** I met with Schmutz after Knagenhjelm left. Schmutz informed me that she was calling Seaton about death threat toward Higuera from Knagenhjelm. I reported that I felt I should also report the incident to Seaton and I did. Schmutz informed me she was going to draft a Motion to be Relieved.

**Mid June 2006** Spoke with Detective Marshall from Dorchester County Sheriff. Discussed huge packet from Knagenhjelm. He saw nothing criminal in these papers.

**Mid-July 2006** : Recv'd a call from Attorney Al Biggs. Knagenhjelm had just retained him. Briefly discussed case. A few days later recv'd yet another call from Al Biggs. He had given Knagenhjelm back her full retainer and said he would not interested in representing her.

**Late in 2006** Received notice from Seaton that Jessie Glenn was representing Knagenhjelm and that they were close to an agreement and a hearing had been set for January 11, 2007 which he was sure would be a final order.

**January 11, 2007 Berkeley County for Consent.** Appeared at the final hearing. Details of the agreement were negotiated as we wait to be called for our hearing. Provided copies of my final bill. Submitted that bill to the court. No one questioned my presence at the hearing. Knagenhjelm entered into the consent order which made a specific finding as to my fees. She agree to pay the original retainer fee of $375. My total fees for this case were $915.00 total. After both parties each paid the $375.00, $750.00 would be paid toward my fee. Higuera agreed to pay the $165.00 in fees that exceeded the original retainer.




# JOINT EXHIBIT 1

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA | ) | IN THE FAMILY COURT OF THE |
| | ) | FIRST JUDICIAL CIRCUIT |
| COUNTY OF DORCHESTER | ) | CASE NO: 03-DR-18-920 |
| | ) | |
| BRIAN L. EVANS, | ) | |
| Plaintiff, | ) | |
| | ) | **CONSENT ORDER AS TO** |
| vs. | ) | **RULE TO SHOW CAUSE** |
| | ) | |
| ANNETTE L. EVANS, | ) | |
| Defendant. | ) | |
| | ) | |

2005 SEP 29 PM 4:13

| | |
|---|---|
| DATE OF HEARING: | JULY 13, 2005 |
| TRIAL JUDGE: | WILLIAM J. WYLIE, JR. |
| PLAINTIFF'S ATTORNEY: | PEGGY M. INFINGER |
| DEFENDANT'S ATTORNEY: | ROBERT W. POLK |
| GUARDIAN AD LITEM: | KAREN FORMAN |
| COURT REPORTER: | NOT APPLICABLE |

**THIS MATTER** came before the Court for a hearing on the Rule To Show Cause issued against the Plaintiff dated May 18, 2005. Prior to the call of the case, the Court was advised that an agreement had been reached resolving the issues raised by the Rule To Show Cause and the parties were granted permission to submit a Consent Order in lieu of an appearance at the hearing. The parties' agreement is as follows:

ONE: The parties hereto are governed by the Orders in this case issued by the undersigned and the Honorable Nancy C. McLin.

TWO. The parties have agreed as follows:

A) Plaintiff admits he is in wilful contempt of the prior Order(s) in this case regarding the use of alcohol as it pertains to the Order As To Rule Show Cause dated March 18, 2005;

B) Plaintiff admits he is in wilful contempt of the prior Order(s) in this case

regarding payment of attorney fees in the amount of $1285.00 as required by the Temporary Order in this matter dated June 8, 2005;

C) Plaintiff shall pay Defendant's counsel the sum of $1285.00 on or before July 13, 2005, so as to bring himself in compliance with the Temporary Order dated June 8, 2005;

D) Plaintiff shall pay Defendant's counsel the sum of $3519.35 on or before September 15, 2005 representing a portion of the sums owed as a result of the Order As To Rule To Show Cause dated March 18, 2005, and the finding of contempt herein;

E) Plaintiff shall pay Defendant's counsel the total sum of $1200.00, payable in monthly installments of $200.00 each beginning July 30, 2005, and due and payable on the 30th day of each month thereafter, representing the remainder of the sums due under the Order As To Rule To Show Cause dated March 18, 2005, not paid as a result of subparagraph (D) above and partial reimbursement of the attorney fees and costs incurred for the necessity of bringing the Rule To Show Cause dated May 18, 2005. As to this portion of the payments required to be made Plaintiff may seek an extension of time on these payments in the event of a showing of a substantial change of circumstances;

F) Plaintiff is admonished regarding his responsibilities to comply with the Court's Orders in the past and future, particularly with regard to his telephone visitation with the children and the requirements placed upon him to comply with the time restraints placed upon those telephone visitations;

G) Plaintiff shall be permitted to extend his telephone visitation with the parties' children to calls which extend 15 minutes in length. Plaintiff shall avail himself of a timer to help him maintain compliance with the requirements placed upon him for those telephone visitations; and

H) A Bench Warrant for the arrest of Plaintiff shall issue without the necessity of further hearing upon Defendant's counsel providing to the Court an Affidavit that Defendant has not paid the sums as required by the parties' agreement herein and Plaintiff shall remain incarcerated for a period not to exceed one year until such sums have been paid in full. Defendant's counsel shall provide Plaintiff's counsel a copy of the Affidavit at least 48 hours prior to submission of the same to the Court;

THREE: The Court finds that the parties' agreement is fair and reasonable under all the circumstances.

FOUR The parties' agreement should be approved by the Court and made the Order of the Court.

NOW, THEREFORE, based upon the foregoing, it is hereby **ORDERED, ADJUDGED** and **DECREED** as follows:

A) The parties' agreement, as delineated in paragraph TWO herein, is approved by the Court and made the Order of the Court thereby subjecting the offending party to the contempt powers of the Court; and

**IT IS SO ORDERED!**

William J. Wylie, Jr
Presiding Judge
Family Court, Dorchester County
First Judicial Circuit

August 24, 2005
Summerville, South Carolina

**I CONSENT:**

Peggy M. Infinger, Esq.
Attorney for Plaintiff

**I CONSENT:**

Robert W. Polk, Esq.
Attorney for Defendant

RECEIVED
SEP 16 2005
BY: dlm



RECEIVED
AUG 19 2005
BY: dlm

FOUR. The parties' agreement should be approved by the Court and made the Order of the Court.

NOW, THEREFORE, based upon the foregoing, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

A) The parties' agreement, as delineated in paragraph TWO herein, is approved by the Court and made the Order of the Court thereby subjecting the offending party to the contempt powers of the Court; and

**IT IS SO ORDERED!**

William J. Wylie, Jr.
Presiding Judge
Family Court, Dorchester County
First Judicial Circuit

August _____, 2005
Summerville, South Carolina

I CONSENT:

Peggy M. Infinger, Esq.
Attorney for Plaintiff

I CONSENT:

Robert W. Polk, Esq.
Attorney for Defendant




# JOINT EXHIBIT 2

Ex. #2

| | |
|---|---|
| STATE OF SOUTH CAROLINA<br>COUNTY OF DORCHESTER<br><br>BRIAN L. EVANS,<br><br>PLAINTIFF,<br><br>VS.<br><br>ANNETTE L. EVANS,<br><br>DEFENDANT. | IN THE FAMILY COURT FOR<br>THE FIRST JUDICIAL CIRCUIT<br>CASE NO.: 03-DR-18-920<br><br>ORDER FOR RULE TO SHOW CAUSE<br>HELD ON MARCH 27, 2006 |

2006 MAY -9 PM 2:08
RECORDED
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

TRIAL JUDGE: NANCY C. MCLIN
DATE OF HEARING: MARCH 27, 2006
COURT REPORTER: JULIE MURDAUGH
DEFENDANT'S ATTORNEY: NORBERT E. CUMMINGS, JR.
PLAINTIFF'S ATTORNEY: PEGGY M. INFINGER

**PROCEDURAL HISTORY**

This matter comes before the Court on a Rule to Show Cause filed on behalf of the Defendant on February 28, 2006. The Plaintiff was personally served on March 8, 2006. The Defendant is present and represented by her attorney, Norbert E. Cummings, Jr. of the Dorchester County Bar. The Plaintiff is present and represented by his attorney, Peggy M. Infinger. This being a matter for contempt, the Court reviewed the pleadings, exhibits, financial declarations and listened to the testimony presented.

**FINDINGS OF FACT**

Based on the evidence presented, the Court makes the following findings of fact:

1. The Court finds that the Plaintiff admits that he is in violation of the Court Order and is in Contempt of Court.

2. The Court finds that the Plaintiff is sentenced to

six months in the Dorchester County Detention Center. The Court finds that the Plaintiff can purge himself of said sentence by the Plaintiff complying with the following Order of the Court:

A. The Plaintiff shall complete an alcohol assessment with the Dorchester Alcohol and Drug Abuse Commission within 30 days and follow and successfully complete any and all recommendations of the counselors if any.

B. The Plaintiff shall pay the Defendant's attorney fees in the amount of $1,325.00 within 120 days for the date of this hearing directly to Norbert E. Cummings, Jr. at 100 E. South Main Street, Summerville, South Carolina 29483.

C. The Plaintiff shall the Defendant $750.00 within 30 days of this hearing to reimburse the Defendant for the payment to Dr. Bennett for his fees to be present at Court.

D. The Plaintiff shall pay the Guardian Ad Litem fees in the amount of $350.00 directly to Karen Forman within 30 days of this hearing.

**CONCLUSIONS OF LAW**

The Court concludes as a matter of law that the Court has jurisdiction to hear and determine all issues raised by the pleading and has jurisdiction of the parties.

BASED UPON the findings of the fact and equitable law, it is hereby ORDERED:

A. The Plaintiff is in contempt of Court;

CH.2

B. The Plaintiff shall complete an alcohol assessment with the Dorchester Alcohol and Drug Abuse Commission within 30 days and follow and successfully complete any and all recommendations of the counselors if any.

C. The Plaintiff shall pay the Defendant's attorney fees in the amount of $1,325.00 within 120 days for the date of this hearing directly to Norbert E. Cummings, Jr. at 100 E. South Main Street, Summerville, South Carolina 29483.

D. The Plaintiff shall the Defendant $750.00 within 30 days of this hearing to reimburse the Defendant for the payment to Dr. Bennett for his fees to be present at Court.

E. The Plaintiff shall pay the Guardian Ad Litem fees in the amount of $350.00 directly to Karen Forman within 30 days of this hearing.

IT IS SO ORDERED.

Judge Nancy C. McLin
Family Court for the
First Judicial Circuit

Summerville, South Carolina
This 21 day of April, 2006

**FAILURE TO COMPLY WITH THE TERMS OF THIS ORDER MAY CONSTITUTE CONTEMPT OF COURT AND MAY BE PUNISHABLE BY A FINE, A PUBLIC WORK SENTENCE, OR BY IMPRISONMENT IN A LOCAL CORRECTIONAL FACILITY OR ANY COMBINATION THEREOF, IN THE DISCRETION OF THE COURT, BUT NOT TO EXCEED IMPRISONMENT IN A LOCAL CORRECTIONAL FACILITY FOR ONE YEAR, A FINE OF ONE THOUSAND FIVE HUNDRED ($1,500.00) DOLLARS, A PUBLIC WORK SENTENCE NOT TO EXCEED THREE (300) HUNDRED HOURS, OR ANY COMBINATION THEREOF AS PROVIDED BY S.C. CODE ANN. 20-7-1350 (1976) (AS AMENDED).**

Ch 3




# JOINT EXHIBIT 4

| | |
|---|---|
| STATE OF SOUTH CAROLINA<br><br>COUNTY OF DORCHESTER<br><br>BRIAN L. EVANS,<br><br>PLAINTIFF,<br><br>VS.<br><br>ANNETTE L. EVANS,<br><br>DEFENDANT. | IN THE FAMILY COURT FOR<br>THE FIRST JUDICIAL CIRCUIT<br>CASE NO.: 03-DR-18-920<br><br>ORDER FOR PLAINTIFF'S<br>MOTION TO REINSTATE VISITATION<br>AND<br>MOTION TO RELIEVE GUARDIAN AD LITEM |

PRESIDING JUDGE: NANCY C. MOLIN
DATE OF HEARING: JANUARY 8, 2007
COURT REPORTER: JULIE MURDAUGH
PLAINTIFF'S ATTORNEY: PEGGY M. INFINGER
DEFENDANT'S ATTORNEY: NORBERT E. CUMMINGS, JR.
GUARDIAN AD LITEM: KAREN FORMAN

**PROCEDURAL HISTORY**

This matter comes before the Court on the Plaintiff's Motion to Reinstate the Plaintiff's Visitation and the Plaintiff's Motion to Relieve the Guardian. The Plaintiff was present with his attorney, Peggy M. Infinger. The Defendant was present with her attorney, Norbert E. Cummings, Jr., of the Dorchester County Bar. The Guardian Ad Litem, Karen Forman, was present. The hearing was timely held.

This being a matter for supplemental temporary relief, the Court reviewed the pleadings, affidavits, exhibits, financial declarations and listened to brief arguments of counsel. The Court informed the attorneys that the Court would take the ~~issues of the case~~ Motion for Supp. Temp. Relief under advisement and render a decision. Thereafter, a decision was promptly rendered.

## FINDINGS OF FACT

From a review of the above stated matters I find as follows:

1. That the parties hereinto are the subject matter of this Court and are within the jurisdiction of this Court.

2. The Plaintiff's Motion to Relieve the Guardian Ad Litem is continued at this time without objection and may be rescheduled upon request.

3. The Plaintiff's Motion to Reinstate the Plaintiff's Visitation is denied. In support of the Plaintiff's Motion, the Plaintiff filed a copy of a letter of Archie T. Thompson. This letter was not an original document nor was it in affidavit form. Additionally the Plaintiff filed a lab report indicating a negative "alcohol test" by Robert M. Bennett, dated March 2006. The evidence presented indicated that the Guardian Ad Litem had made multiple requests for drug/alcohol testing but that the Plaintiff did not comply with the Guardian Ad Litem's requested testing.

4. The record in this action indicates that the Plaintiff has been held in contempt of Court on more than one occasion for non-compliance with Court Orders. The case has been pending for approximately three and a half (3 ½ ) years. It appears that the issues are extremely contested. Based on the limited evidence presented the Court cannot determine that it is in the best interest of the minor children to grant the Plaintiff's Motion at this time.

Cl. 2



ROA 478

5. The Court urges these parents to attend mediation.

6. Both parties request for temporary attorney fees and costs is held in abeyance at this time until the final hearing on the merits.

7. This Temporary Order shall be without prejudice and each party may seek further relief at the Final Hearing.

CONCLUSIONS OF LAW

The Court concludes as a matter of law that this Court has jurisdiction to hear and determine all issues in this action and of the parties.

BASED UPON the findings of the fact and equitable law, it is hereby ORDERED;

A. The Motion to Relieve Guardian Ad Litem is continued and may be rescheduled upon request;

B. The Plaintiff's Motion to Reinstate the Plaintiff's Visitation is denied.

C. Both parties request for temporary attorney fees and costs is held in abeyance at this time until the final hearing on the merits.

D. This Temporary Order shall be issued without prejudice and each party may seek further relief at the Final Hearing.

Pl. 3

IT IS SO ORDERED.

JUDGE NANCY C. MCLEAN
FAMILY COURT JUDGE
FOR THE FIRST JUDICIAL CIRCUIT

Summerville, South Carolina

19th day of Feb., 2007

**FAILURE TO COMPLY WITH THE TERMS OF THIS ORDER MAY CONSTITUTE CONTEMPT OF COURT AND MAY BE PUNISHABLE BY A FINE, A PUBLIC WORK SENTENCE, OR BY IMPRISONMENT IN A LOCAL CORRECTIONAL FACILITY OR ANY COMBINATION THEREOF, IN THE DISCRETION OF THE COURT, BUT NOT TO EXCEED IMPRISONMENT IN A LOCAL CORRECTIONAL FACILITY FOR ONE YEAR, A FINE OF ONE THOUSAND FIVE HUNDRED ($1,500.00) DOLLARS, A PUBLIC WORK SENTENCE NOT TO EXCEED THREE (300) HUNDRED HOURS, OR ANY COMBINATION THEREOF AS PROVIDED BY S.C. CODE ANN. 20-7-1350 (1976) (AS AMENDED).**

Pltf-4




# JOINT EXHIBIT 5

| | |
|---|---|
| STATE OF SOUTH CAROLINA<br>COUNTY OF DORCHESTER<br>BRIAN L. EVANS,<br>Plaintiff,<br>versus<br>ANNETTE L. EVANS<br>Defendant. | IN THE FAMILY COURT OF THE FIRST JUDICIAL CIRCUIT<br>CASE NO: **03-DR-18-0920**<br><br>**ORDER** |

2007 JUL -2 PM 1:06

| | |
|---|---|
| Date of Hearing: | June 19, 2007 |
| Presiding Judge: | William J. Wylie, Jr. |
| Plaintiff's Attorney: | Peggy M. Infinger |
| Defendant's Attorney: | Norbert Cummings |
| Guardian ad Litem: | Karen Forman |
| Court Reporter: | Bonnie Britt |

This matter is before this Court on a Motion for Summer Visitation filed by the Plaintiff, Brian L. Evans, in which he seeks summer visitation with the parties' two minor children, J[redacted] Evans, age 10, and S[redacted] Evans, age 7. The Defendant has filed a Motion to Dismiss, or in the alternative, to continue the hearing to allow the Defendant to be physically present.

Based upon the pleadings, representations of counsel for both parties and the Guardian ad Litem, I hereby make the following findings of fact and conclusions of law:

1. The Defendant's Motion for Continuance is denied. The Defendant has been ably represented by counsel at this non-testimonial hearing and her travel restrictions did not prevent her from submitting Affidavits.
2. Plaintiff has a long history of alcohol abuse, and his visitation was suspended because of his continued alcohol consumption. He has previously been held in contempt for violating restraining orders intended to protect the parties' minor children.
3. Plaintiff has maintained weekly telephone contact with the children, even though he has not been allowed to visit. The Guardian ad Litem believes it is

in the children's best interest to have physical contact with their father, and is in favor of supervised visitation.

4. As at the previous temporary hearing, Plaintiff asserts that he no longer drinks, has maintained sobriety for a number of months and should be allowed visitation. He offers the affidavit of Dr. Robert Bennett as evidence of his abstinence. Defendant asserts her belief that he is still drinking, and that here has been no substantial change of circumstances that would warrant additional temporary relief. The Court agrees that there has not been a substantial change, but does not believe that analysis prevents consideration of Plaintiff's request to lift the suspension of his visitation. The Plaintiff claims he has stopped drinking, and that would constitute a change of circumstances. He has claimed that before, but has been caught drinking. The Guardian ad Litem has requested alcohol tests, which Plaintiff has yet to provide within 12 hours of the request. Nevertheless, the Court agrees with the Guardian ad Litem that the children should be allowed to see their father for their benefit, if not for his own.
5. Plaintiff, Brian L. Evans, may have daytime only, supervised visitation from 9:00 am to 6:00 p.m. near the Defendant's home and supervised by her or her adult designee. Defendant shall pay ½ of the airfare for such trips. The visitation may be exercised for no more that seven consecutive days within any four-week period, and may not interfere with the children's school. Plaintiff shall give five days notice of his intent to exercise this visitation.
6. Alternatively, Plaintiff, Brian L. Evans may, at his expense, fly the children to Summerville, South Carolina, where they may stay with Defendant's parents who will be able to provide supervised, daytime visits on such days and for such duration as acceptable to them. The children must be accompanied on the flights by a maternal grandparent or other adult acceptable to Defendant.
7. Any visitation exercised pursuant to this order may be terminated at any time by the Guardian ad Litem if she has reason to believe the visitation is not being conducted in a manner conducive to the best interests of the children, or that Plaintiff is not complying with any of the restrictions placed upon his conduct.

All provisions of the previous orders not inconsistent with his order shall remain in effect.

8. All other issues, including fees and costs are reserved for the trial on the merits.

NOW THEREFORE, it is

**ORDERED** that the Defendant's Motion to Dismiss, or in the alternative for a Continuance, is denied;

**ORDERED** that the Plaintiff, Brian L. Evans, be granted visitation during the day from 9:00 am to 6:00 pm near the Defendant's home supervised by her or her adult designee. Defendant shall pay ½ of the airfare for such trips. The visitation may be exercised for no more that seven consecutive days within any four-week period, and may not interfere with the children's school. Plaintiff shall give five days notice of his intent to exercise this visitation;

**ORDERED** that the Plaintiff, Brian L. Evans may, alternatively, at his expense, fly the children to Summerville, South Carolina, where they may stay with Defendant's parents who will be able to provide supervised, daytime visits on such days and for such duration as acceptable to them. The children must be accompanied on the flights by a maternal grandparent or other adult acceptable to Defendant;

**ORDERED** that any visitation exercised pursuant to this order may be terminated at any time by the Guardian ad Litem if she has reason to believe the visitation is not being conducted in a manner conducive to the best interests of the children, or that Plaintiff is not complying with any of the restrictions placed upon his conduct;

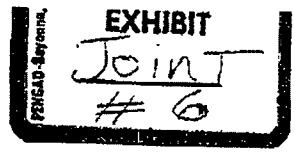
**ORDERED** that all provisions of the prior orders in this action not modified herein remain in full force and effect; and

**ORDERED** that all other issues, including fees and costs, be reserved for the trial on the merits; and

**IT IS SO ORDERED!**

William J. Wylie, Jr., Family Court
First Judicial Circuit

22nd day of July, 2007




# JOINT EXHIBIT 6

Ex #6

| | |
|---|---|
| STATE OF SOUTH CAROLINA<br><br>COUNTY OF DORCHESTER<br><br>BRIAN L. EVANS.<br>Plaintiff,<br><br>vs.<br><br>ANNETTE L EVANS,<br>Defendant. | IN THE FAMILY COURT FOR THE<br>FIRST JUDICIAL CIRCUIT<br>Case No. 03-DR-18-920<br><br>**TEMPORARY ORDER** |

FILED
CLERK OF COURT, FAMILY COURT
DORCHESTER COUNTY, SOUTH CAROLINA
6

I HEREBY CERTIFIED THAT COPIES OF RECORD IN THIS COURT

| | |
|---|---|
| DATE OF HEARING: | MAY 26, 2005 |
| TRIAL JUDGE: | WILLIAM J. WYLIE, JR |
| PLAINTIFF'S ATTORNEY: | PEGGY M. INFINGER |
| DEFENDANT'S ATTORNEY: | ROBERT W. POLK |
| GUARDIAN AD LITEM: | KAREN FORMAN |
| COURT REPORTER: | DEBORAH S THOMAS |

**THIS MATTER** came before the Court for a hearing on Defendants' Motion to suspend Plaintiff's visitation. Present at the hearing were the Defendant's counsel, Plaintiff, his attorney and the Guardian ad Litem Defendant's counsel waived Defendant's presence at the hearing. The Court considered the Affidavits submitted by the parties together with the argument of counsel and the statements of the Guardian ad Litem. Based thereon, the Court finds it appropriate to issue the following Order, *pendente lite*:

ONE: The parties hereto and the subject matter hereof are subject to the continuing jurisdiction of the Court and venue is proper.

TWO: Defendant's Motion to suspend Plaintiff's visitation should be granted with the exception of his telephone visitation. It is clear from the history of this case, all the way back to the parties' divorce, that Plaintiff's consumption of

alcohol has been a recurring problem. Various intermediate steps, including completion of alcohol abuse education courses and counseling, which were taken to ameliorate the problem short of suspension of Plaintiff's visitation rights, have failed to dissuade him from use of alcohol. The most recent Order in this case (issued as a result of a Rule to Show Cause because of, *inter alia*, Plaintiff's alcohol related problems, clearly states that Plaintiff was to refrain from consuming any quantity of alcohol. He admittedly has consumed alcohol ~~and, just as clearly, attempted to deceive the testing procedure instituted in the last Order in this case to ensure and test for his sobriety, by diluting his urine. The blood enzyme test taken of Plaintiff clearly indicates that his liver has already begun to deteriorate as a result of heavy alcohol use. Plainly, Plaintiff cannot be trusted to maintain sobriety in or out of the children's presence~~.

THREE: Defendant should be reimbursed the attorney fees and costs incurred by her for the necessity of bringing her Motion in the requested amount of $1285.00, which amount the Court finds to be reasonable under all the factors enumerated in Glasscock. Plaintiff should pay that amount on or before June 28, 2005, to Defendant's attorney at his offices at 1 Carriage Lane, Bldg. C, Suite 200, Charleston, South Carolina 29407.

**NOW, THEREFORE**, based upon the foregoing, it is hereby **ORDERED, ADJUDGED** and **DECREED** as follows:

A) Defendant's Motion to suspend Plaintiff's visitation is granted with the

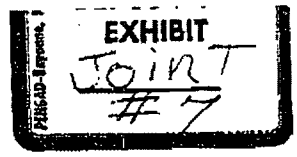
exception of Plaintiff's telephone visitation;

B) Plaintiff shall pay Defendant, as and for reimbursement of the attorney fees and costs incurred by Defendant for her Motion, the sum of $1285.00, through Defendant's counsel, at his office at 1 Carriage Lane, Bldg. C, Suite 200, Charleston, SC 29407, on or before June 28, 2005; and

**IT IS SO ORDERED!**

S/ William J. Wylie Jr.
William J. Wylie, Jr.
Presiding Judge
Family Court, Dorchester County
First Judicial Circuit

June 8, 2005
Summerville, South Carolina




# JOINT EXHIBIT 7

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

BRIAN L. EVANS,

PLAINTIFF,

VS.

ANNETTE L. EVANS,

DEFENDANT.

IN THE FAMILY COURT FOR
THE FIRST JUDICIAL CIRCUIT
CASE NO.: 03-DR-18-920

FINAL ORDER

2008 FEB 11 PM 3:27

PRESIDING JUDGE: WILLIAM J. WYLIE, JR.
DATE OF HEARING: DECEMBER 18, 2007
COURT REPORTER: JULIE MURDAUGH
PLAINTIFF'S ATTORNEY: PEGGY M. INFINGER
DEFENDANT'S ATTORNEY: NORBERT E. CUMMINGS, JR.

**PROCEDURAL HISTORY**

This matter comes before the Court for a Final Hearing. The Defendant was present with her attorney, Norbert E. Cummings, Jr., of the Dorchester County Bar. The Plaintiff was present with his attorney, Peggy M. Infinger.

Prior to the start of the hearing the parties announced to the Court that they have reached an agreement as to all issues save that of the issues of the sentencing for the violation of the previous Court Order would be deferred to the Final Hearing and the issue of the Plaintiff being restrained from the use of alcohol. The Plaintiff is requesting that the restraining order be removed and the Defendant is requesting that the restraining order remain in effect.

The parties' agreement is as follows:

**CUSTODY**

1. The Defendant will continue to have sole custody of the minor children.

**VISITATION**

2. The Plaintiff's visitation is going to be suspended at this time, with the exception of his telephone visitation, which he will continue to have pursuant to the prior order and that is every Sunday and Tuesday at 7:30 PM Eastern Standard Time for a time period not to exceed 10 minutes. It shall be the Plaintiff's responsibility to end each call within the allotted time period. The Plaintiff shall not use his telephone visitation to attempt to communicate with the Defendant in any manner, directly or through the children. In the event the parties need to communicate they will do so via e-mail except in the case of emergencies. All telephone calls maybe recorded by the Plaintiff and the Defendant and she may remain in the room during those telephone visitations. In the event the Defendant believes that the conversation is detrimental to the children she may terminate the conversation.

3. The Plaintiff's visitation will be reinstated only upon the Plaintiff's application to the Court for

reinstatement after his successful completion of his rehabilitation.

**REHABILITATION**

4. The Plaintiff's successful completion of his rehabilitation will be defined as follows:

a. The Plaintiff will successfully complete a 28 day or one month treatment plan; whichever is the established time for the inpatient facility as required for the Plaintiff to enroll for his inpatient treatment that specializes with alcohol and drug abuse.

b. The Plaintiff will then successfully complete two (2) months of out patient treatment and will follow all recommendations and prescriptions by counselors and doctors at the facility.

c. The Plaintiff is not required to disclose or provide records or notes regarding the Plaintiff speaking to the counselor(s) about his private issues to the Defendant. The Plaintiff is required to provide any progress reports, his attendance, the results of any test that he is required to submit to and all recommendations of the treatment facility/facilities and counselor(s) in regard to his progress. The authorization would also include any notes or records that show his lack of progress, non-cooperation and evidence of his having

consumed alcohol or the drinking any alcohol and that would be the records that would be contemplated to be disclosed to the Defendant. The disclosure is to include compliance with alcohol and successful completion, whether or not he is attending in good faith and complying in good faith.

c. The Plaintiff agrees to ensure the releases on his treatment plan, both in-patient and out-patient are HIPPA qualified to allow the Defendant to receive the information as stated in this paragraph.

**CHILD SUPPORT**

5. The Plaintiff will pay child support at the monthly rate of $522.00 per month through the Dorchester County Family Court payable at every two weeks in the amount of $241.00 plus the applicable surcharge. The Plaintiff has a current arrearage of $3,110.50 that will be paid at the monthly rate of $45.61 per month until such time said arrearages are paid in full at which time the Plaintiff's child support will return to the $241.00 every two weeks plus surcharges.

**INSURANCE**

6. The Defendant will continue to be responsible for the first $250 of uncovered medical expenses per child per year, after which the parties will divide any uncovered in proportion to their incomes with the

Plaintiff being responsible for 46 percent and the Defendant being responsible for 54 percent. The non-covered expenses shall consist of orthodontic, ophthalmological, medical, and dental expenses. The Defendant will send the Plaintiff the bills in a timely manner as these bills occur after the first $250.00 is met per child.

**RESTRAINING ORDERS**

7. The parties agree to be mutually restrained from harassing, molesting or interfering with the other at their place of residence, places of employment and other public places.

8. The parties agree to be restrained from the following: speaking ill of the other parent in the presence of the minor children, allowing others to speak ill of the other parent in the presence of the minor children, interfering with the other parent's relationship with the minor children, allowing others to interfere with the other parents relationship with the minor children, exposing the minor children to any overnight paramours, exposing the minor children to overnight guests of the opposite sex in which either party are romantically involved with, consuming any illegal drugs or alcohol during custody and visitation, discussing this litigation with the minor children,

exposing the minor children to any illegal or immoral conduct, including profanity, exposing the minor children to any violent conduct, and disparaging the other parent's religion to the children.

9. The Plaintiff agrees to be restrained and enjoined from keeping any alcoholic beverages when the children are present or allowing any one to consume alcoholic beverages in his presence when the children are present at such time the Plaintiff's visitation is reinstated.

**ATTORNEY FEES**

10. The Plaintiff agrees to pay one half of the Defendant's attorney fees. The Plaintiff's half is $7,918.75. The Plaintiff agrees to pay $7,918.75 directly to the Defendant within 18 months from the date of the signing of the Final Order.

**GUARDIAN AD LITEM**

11. The Plaintiff agrees to pay the Guardian Ad Litem $178.00 as his share of her fees to be paid at the monthly rate of $50.00 per month until it is paid in full beginning the first day of the month after the Final Order is signed. The Plaintiff agrees that this will not be dischargeable in the event the Plaintiff files bankruptcy.

12. Under the existing Rule to Show Cause Order for the hearing of October 30, 2007 the Plaintiff agreed to pay the

Defendant the fees associated with the Rule at the rate of $200.00 a month beginning November 30, 2007 and continue each month thereafter until the full amount is paid in full. The parties have agreed that the payment of $200.00 will be reduced to $150.00 per month beginning the 30th day of the month following the signing of the Final Order until the Guardian Ad Litem fees are paid in full at which time the Plaintiff's payment will be increased to $200.00 per month until the Plaintiff reimburses the Defendant the full sum of $5,327.27 for the fees associated with the Rule to Show Cause of October 30, 2007. The Plaintiff's payment of $200.00 owed for November are due and owed and are not forgiven.

13. The payment of $150.00 by the Plaintiff to the Defendant shall be done by automatic wage allotment of every two weeks at the rate of $69.25 every two weeks. Upon the payment in full to the Guardian ad Litem the Plaintiff's automatic wage allotment payment to the Defendant will increase from $69.25 every two weeks to $92.30 every two weeks.

**FINDINGS OF FACT**

1. The Plaintiff is a citizen and resident of Dorchester County, South Carolina and has been for greater than one year.

2. The Defendant is a citizen and resident of the State of Utah.

3. The parties were formerly husband and wife having been

divorced in case number 01-DR-18-1283 by way of Final Order of Divorce and to Accept Separation Agreement.

4. The parties have two children born of that marriage, namely, J[redacted] Evans, born [redacted] and Sa[redacted] Evans, born [redacted].

5. The Court heard arguments as to the issue of the Restraining Order against the Plaintiff from consuming alcohol as to whether it needs to be maintained. The Court finds that the Plaintiff is an alcoholic with a very serious problem. The Court finds that the restraint has been very useful as it has proven exactly how serious the Plaintiff's problem is. The Court finds that the restraint serves a different purpose at this point. The Court is concerned with the safety of the children. The purpose of this is not to give the Plaintiff permission to drink when he does not have the children with him; the prohibition against the visitation is adequate and serves that new purpose.

6. The Court finds that the Plaintiff's prohibition against consuming alcohol is not necessary.

7. The Court finds that everything else remains in effect to protect the children.

8. The Court imposes the following sentence as to the issue of the prior contempt sanction:

This is a matter of criminal contempt that shall be imposed by way of a six (6) month sentence for criminal contempt in the Dorchester County Detention Center. The sentence shall be

suspended upon the Plaintiff's entry into the inpatient treatment that is part of the visitation that the Plaintiff already agreed to in this Order and the Plaintiff successfully participating in whatever outpatient or follow up treatment or therapy or meetings is recommended for a period of twenty four (24) months following the Plaintiff's release from the inpatient treatment. This shall not to be tied to the same time frame. The Court is not allowing the Plaintiff to have the contempt charge suspended without successful participation in rehabilitation for a period of twenty four (24) months in order to avoid the six months in the county jail.

The Court finds that if the Plaintiff fails, for whatever reason, or is unsuccessfully discharged from the treatment and does not maintain the outpatient treatment, and by successful completion, the Court means that the Plaintiff will follow the requirements of the program. The Court finds that successful completion does not imply that the Plaintiff may consume alcohol and attend any required meetings. The Plaintiff must be successfully participating in the programs according to the programs definition of success, whatever that may be. If the Plaintiff participates for a period of twenty four (24) months, he will have complied and will have successfully completed thus suspending the six months that is ordered for contempt.

In the event that the Plaintiff fails the treatment plan as outlined above, upon written proof that the Plaintiff has been



ROA 498

terminated from the program for unsuccessful completion, a bench warrant shall be issued for the Plaintiff's arrest and he will be required to serve the six (6) month sentence. The Court finds that in the event that the Plaintiff is terminated or does not successfully complete treatment, the criminal contempt will not be eligible for purging at that point and the Plaintiff will not have any option to be released before the full conclusion of the six (6) month sentence in the county jail.

9. After careful consideration of the provisions, I conclude the parties Agreement is Fair, Just, and Equitable and appropriate under the circumstances now existing. Further I find that the parties freely, voluntarily and knowingly entered into this agreement.

10. The Court finds, after questioning the parties under oath, that the parties hereto have entered into this agreement as set forth in the preceding paragraphs of this Order, which agreement was placed on the record and assented to by both parties, fully and finally settling all issues of the litigation, including child custody, child support, visitation, and all other issues and aspects of the case. The Plaintiff and Defendant testified that they were not under the influence of any alcohol, drugs, or medications, nor had they consumed any within the recent past, that would effect their respective abilities to enter into this agreement, that they were not under the influence of any stress, coercion, duress, or undue influence, and the parties agree that

the agreement is fair, just and equitable to both parties, appropriate under the circumstances, and in the best interests of their minor children. The parties testified that they are completely satisfied with the services of their respective attorneys and have asked the Court to approve the agreement, and make it the Final Order of this Court.

11. The Court finds that the agreement is rendered an Order of this Court to be enforceable as any other Family Court Order.

CONCLUSIONS OF LAW

The Court concludes as a matter of law that this Court has jurisdiction to hear and determine all issues in this action and of the parties.

BASED UPON the findings of the fact and equitable law, it is hereby ORDERED:

A. The agreement of the parties contained in the foregoing paragraphs is hereby approved and made the Final Order of this Court, to be enforceable as any other Family Court Order.

B. The Plaintiff's prohibition against consuming alcohol is not necessary.

C. Criminal contempt is going to be imposed upon the Plaintiff by way of a six (6) month sentence of criminal contempt in the Dorchester County Detention Center that will be suspended upon the Plaintiff's entry into the inpatient treatment that is part of the visitation that the Plaintiff already agreed to in this Order, the Plaintiff successfully participating in what ever it