THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM THE ADMINISTRATIVE LAW COURT

John D. McLeod, Administrative Law Judge
Case No. 2010-ALJ-11-0591-AP

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

Opinion No. 5453 S.C. Ct. App. Filed November 9, 2016

Case No. 2017-000672

Karen A. Forman, Petitioner,

v.

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

RETURN TO PETITION FOR WRIT OF CERTIORARI

Prentiss Counts Shealey
Megan Joan Flannery
S.C. Department of Labor, Licensing and Regulation
P.O. Box 11329
Columbia, SC 29211-1329
(803) 896-4852
(803) 896-2374
Attorneys for Respondents

Thomas F. McDow
Erin K. Urquhart
McDow & Urquhart, LLC
514 Oakland Avenue, Second Floor
Post Office Box 891
Rock Hill, SC 29731-6891
Attorneys for Petitioner

TABLE OF CONTENTS

QUESTIONS PRESENTED

1. Does this case meet the standards for this Court's review?

2. Did the Court of Appeals properly address Petitioner's separation of power argument in its opinion, in conformance with Rule 220(b), SCACR?

3. Did the Court of Appeals correctly apply the standard of review governing appeals of administrative agency decisions when making its decision?

4. Did the Court of Appeals properly find that this Court's *Fleming* decision should not be extended to provide quasi-judicial immunity to guardians *ad litem* in professional disciplinary settings?

COUNTER-STATEMENT OF THE CASE

Karen A. Forman ("Petitioner" or "Forman") is licensed by the State Board of Social Work Examiners ("the Board") in South Carolina. She was initially licensed as a Licensed Master Social Worker and was so licensed during the incidents that resulted in the complaints.[1] The Board received two initial complaints from members of the public regarding Petitioner's conduct while serving as a Guardian *ad litem* ("GAL") in two family court private custody actions. Following the investigation of the two complaints, the Board served Forman with a Notice of Charges on August 19, 2009. (R. 44–47). A hearing regarding the allegations found in the Notice of Charges took place before the Board on June 28 and 29, 2010.

At the conclusion of the two-day hearing, the Board found, relevant to this appeal, that Petitioner's conduct violated S.C. Code Ann. § 40-63-110(B)(9) by violating the Board's principles of professional ethics, which is codified at S.C. Code Ann. Regs. 110-20. (R. 7–10). Specifically, the Board ruled that Petitioner committed fraud and represented that she performed services that she did not in fact perform, in violation of S.C. Code Ann. Regs. 110-20(8). (*Id.*)

[1] At the time action was taken by the Board, Petitioner had become licensed as a Licensed Independent Social Worker-Clinical Practice.

In finding that she committed fraud and misrepresented what services she performed as a GAL, the Board found that Petitioner failed to comply with S.C. Code Ann. § 63-3-830(A)(2), which provides a list of requirements that each GAL must complete. As a result, the Board prohibited Petitioner from all independent practice, ordered her to no longer work as a GAL, and required her to only engage in supervised practice within a recognized, organized setting. (R. 10)

Petitioner appealed the Board's decision to the Administrative Law Court ("ALC") on August 4, 2010, at which time she also filed a motion to stay enforcement and expedite the appeal. (R. 253–55). The ALC granted the motion in part, expediting the appeal and allowing her to continue working as a GAL. (R. 11–12). On July 12, 2011, the ALC issued its Order, which reversed some findings and remanded the case back to the Board to determine whether the change affected the imposed sanctions. (R. 13–25).

On September 17, 2012, the Board held the rehearing on remand, at which time they declined to reduce the sanctions and issued an order on September 19, 2012, reinstating the originally-imposed sanctions against Petitioner. (R. 26–30). Petitioner appealed again to the ALC in November of 2012. On January 9, 2014, the ALC issued its order affirming the Board's rehearing decision. (R. 33–43).

Petitioner appealed the ALC's January 2014 decision to the Court of Appeals on February 12, 2014. After the briefs were filed, the Court of Appeals heard oral arguments on November 10, 2015. On November 9, 2016, the Court of Appeals issued its decision affirming the ALC's January 2014 Order. (R. 655–664).

This appeal follows.

ARGUMENT

I. This case is inappropriate for review by this Court, as it does not involve any of the factors favoring review by writ of certiorari.

Rule 242, SCACR, provides that the issuance of a writ of certiorari is within the sound judicial discretion of this Court and is granted only for special and important reasons. Rule 242(b), SCACR, provides five specific considerations that offer guidance on when this Court will deem a case to be important and special enough to grant certiorari. Respondents respectfully contend that this case meets none of the five considerations as provided in Rule 242(b), SCACR. Contrary to Petitioner's assertion, this case presents no novel question of law. There was no dissent in the decision of the Court of Appeals. The Court of Appeals' decision in this matter is not in conflict with a prior decision of this Court, despite Petitioner's attempt to characterize it as such. Further, there are no substantial constitutional issues directly involved. Finally, this case involves no federal question.

A. No novel question of law exists in this case to warrant granting certiorari.

Petitioner provides that "[t]he Supreme Court has issued no opinion stating who may discipline a guardian ad litem" and, as such, she alleges that this presents a novel question of law. Petition for Writ of Certiorari at 5, *Forman*, 419 S.C. 64, 796 S.E.2d 138 (2016) (No. 2017-000672). Regardless of whether that issue has been addressed by this Court yet or not, this was not an issue presented before the Court of Appeals and is not an issue presently before this Court. In the instant case, the Board has disciplined its own licensee — a social worker who also engaged in GAL work.

The South Carolina General Assembly created the Board to protect the public through the licensing, regulating, and disciplining of licensees. *See* S.C. Code Ann. §§ 40-1-40, 40-1-70, 40-63-90, and 40-63-110. Here, Petitioner, a licensed social worker, is being disciplined by the

Board for actions that occurred while she engaged in GAL work. As this Court has made clear, and as the Court of Appeals reiterated in its opinion, this Court "has recognized a professional may be disciplined for actions the professional took while not engaged in the practice of his or her profession." *Forman v. S.C. Dep't of Labor, Licensing & Regulation,* 419 S.C. 64, 76, 796 S.E.2d 138, 144 (Ct. App. 2016), *reh'g denied* (Feb. 21, 2017). *See S.C. Real Estate Comm'n v. Boineau*, 267 S.C. 574, 579, 230 S.E.2d 440, 442 (1976) ("Even as members of the bar are subject to disciplinary procedures for conduct not strictly related to the practice of law, realtors may have their licenses revoked for conduct not strictly related to a transaction in which they are acting as broker.") *See also* S.C. Code Ann. § 40-1-115 (providing that a board has jurisdiction "over the actions committed or omitted by current and former licensees during the entire period of licensure.") As such, no novel question of law exists in the present case.

B. The Court of Appeals' decision is not in conflict with a prior decision of the South Carolina Supreme Court.

In her petition, Petitioner again argues that the courts, in this particular instance the Court of Appeals, has inappropriately limited the application of a particular court decision, *Fleming v. Asbill*, 326 S.C. 49, 483 S.E.2d 751 (1997), under the guise that the Court of Appeals' opinion "conflicts with the spirit, if not the absolute letter, of a prior decision of the Supreme Court of South Carolina." Petition for Writ of Certiorari at 5 (No. 2017-000672). Petitioner's argument that the *Forman* decision is in conflict with *Fleming* is without merit. As the Court of Appeals explained in its opinion, the *Fleming* court held that

> [P]rivate persons appointed as guardians ad litem in *private custody proceedings* are afforded immunity for acts performed within the scope of their appointment. Because one of the guardian's roles is to act as a representative of the court, and because this role can only be fulfilled if the guardian is not exposed to a *constant threat of lawsuits* from disgruntled parties, a finding of quasi-judicial immunity is necessary. Such a grant of

> immunity is crucial in order for guardians to properly discharge their duties. The immunity to which guardians ad litem are entitled is an absolute quasi-judicial immunity.
>
> *Forman*, 419 S.C. at 70, 796 S.E.2d at 141, citing *Fleming* at 57, 483 S.E.2d at 755–56 (emphasis added).

With respect to this Court's *Fleming* opinion, it is clear that the Court expressly limited the application of quasi-judicial immunity by providing that GALs in *private custody proceedings* are afforded immunity from *civil suits from disgruntled litigants*. The Court of Appeals simply did not extend this Court's ruling in *Fleming* and as such, the opinions are congruent, not conflicting. Just like when courts interpret statutes and regulations, Supreme Court opinions should be read so that no word or provision is arbitrarily deemed unnecessary or unimportant. *See Matter of Decker*, 322 S.C. 215, 219, 471 S.E.2d 462, 463 (1995) ("A statute should be so construed that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous. . . .").

This Court chooses its words wisely. As such, the limiting phrases of "private custody proceedings" and "constant threat of lawsuits" have been given appropriate weight and understanding by the Court of Appeals in reaching its decision — a decision that is not in conflict with this Court's *Fleming* decision.

C. No substantial constitutional issues exist in this case to warrant granting certiorari.

The Court of Appeals' decision is in accordance with the separation of powers principle that governs our form of government. The Board did not encroach on the family court's absolute jurisdiction to appoint GALs when the Board followed its governing statutes and restricted Petitioner's practice by prohibiting her from all independent practice and ordering her to no longer work as a GAL. *See also Fairway Ford, Inc. v. Cty. of Greenville*, 324 S.C. 84, 86, 476

S.E.2d 490, 491 (1996) (illustrating Court's "firm policy" of declining to reach constitutional issues when it those issues are not necessary to resolve a case).

This argument is addressed more fully in Section II, pages 6–7 of this Return.

II. The Board's decision did not violate the separation of powers principle when it disciplined Petitioner, a licensed social worker, who was engaged in GAL work.

Petitioner alleges that the Court of Appeals "misapprehends or overlooks both its authority and duty of judicial oversight" by "ignoring its authority to reverse or modify decisions" in violation of constitutional or statutory provisions. Petition for Writ of Certiorari at 8–9 (No. 2017-000672). To the contrary, the Court of Appeals directly addressed Petitioner's separation of powers argument in Section III of its opinion titled "Jurisdiction." *See Forman*, 419 S.C. at 74–77, 796 S.E.2d at 143–45.

In a similar fashion to how the Court of Appeals addressed the substantial evidence test in section II of its opinion entitled "Findings of Facts," the Court of Appeals' introductory paragraph for Section III begins with a succinct summary of Petitioner's argument and the Court's stance on the same. *Id.* at 74, 796 S.E.2d at 143. In the fourth paragraph of the same section, the Court of Appeals provides the following analysis on this issue:

> Forman argues the Board lacks jurisdiction or authority to prevent the family court from exercising its discretion in appointing a GAL or to prevent a family court appointee from serving as a GAL. The Board has authority 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 as defined in this chapter." S.C. Code Ann. § 40-63-110 (2011). Here, the Board disciplined Forman and restricted her to supervised practice. It prohibited her from GAL work and independent practice. The family court, of course, "has absolute discretion in determining who will be appointed as a guardian ad litem in each case." S.C. Code Ann. § 63-3-810 (2010). However, the decision whether to accept such an appointment lies in Forman, who either may comply with the Board's restrictions or face the consequences of noncompliance.

Id. at 74–75, 796 S.E.2d at 144.

While not specifically using the phrase "separation of powers," the Court of Appeals directly reviewed and analyzed Petitioner's separation of powers argument. In doing so, it properly understood and maintained the separation of powers principle central to our form of government. The Board appropriately disciplined Petitioner after finding her guilty of misconduct and restricted her practice pursuant to the statutory authority granted to the Board. *See* S.C. Code Ann. § 40-63-110(A). While exercising its authority, the Board did not encroach on the family court's absolute discretion on appointing GALs. *See* S.C. Code Ann. § 63-3-810. By virtue of having the privilege of having a social worker's license, Petitioner necessarily falls within the jurisdiction of the Board. In doing so, she remains accountable for her actions while licensed. When Petitioner engaged in GAL work, she added an additional layer of responsibility and oversight from the family court, but did not divest herself of her responsibilities of being a social worker. *See* S.C. Code Ann. § 40-1-115 ("A board has jurisdiction over the actions committed or omitted by current and former licensees during the entire period of licensure. The board has jurisdiction to act on any matter which arises during the practice authorization period.")

In sum, the Court of Appeals not only analyzed Petitioner's separation of powers argument, it committed no error when it found that the Board's decision did not violate the separation of powers principle engrained in our form of government.

III. The Court of Appeals correctly applied the appropriate standard of review in reaching its decision.

A quick reading of the Court of Appeals' opinion makes clear that the Court of Appeals correctly applied the standard of review for appeals of administrative agency decisions, despite Petitioner's assertion to the contrary.

Forman argues that the Court of Appeals only focused briefly on the substantial evidence test by providing the following without explanation: "Forman argues the Board's findings of fact are not correct. We disagree." Petition for Writ of Certiorari at 8 (No. 2017-000672). However, this is simply not the case.

In an appeal from an ALC decision, the Administrative Procedures Act provides the appropriate standard of review. S.C. Code Ann. § 1-23-610(B) (Supp. 2012) (identifying the six tests this Court applies when analyzing an ALC decision). While Forman may again disagree with the Board's findings — although she admits on appeal that the Board's findings "may be true in a narrow, strict sense" — she ignores the applicable standard of review on questions of fact on appeal. *Forman*, 419 S.C. at 74, 796 S.E.2d at 143.

"In determining whether the ALJ's decision was supported by substantial evidence, this Court need only find, looking at the entire record on appeal, evidence from which reasonable minds could reach the same conclusion that the ALJ reached." *Hill v. S.C. Dep't of Health & Envtl. Control*, 389 S.C. 1, 9–10, 698 S.E.2d 612, 617 (2010). "The substantial evidence rule, prescribed in the statute, means that we 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.'" *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 136, 276 S.E.2d 304, 307 (1981) (internal citations omitted). Under the Administrative Procedures Act, the Court may not substitute its judgment for that of the Board on questions of fact, but may reverse the Board's decision if the decision is clearly erroneous in view of the substantial evidence. *See Osman v. S.C. Dep't of Labor, Licensing & Regulation*, 382 S.C. 244, 249, 676 S.E.2d 672, 675 (2009). "Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Midlands Util., Inc. v. S.C. Dep't of Health*

& Envtl. Control, 298 S.C. 66, 69, 378 S.E.2d 256, 258 (1989). "[T]he possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence." *Palmetto Alliance, Inc. v. S.C. Pub. Serv. Comm'n*, 282 S.C. 430, 432, 319 S.E.2d 695, 696 (1984). Furthermore, the factual findings of an administrative agency are presumed to be correct and will be set aside only if unsupported by substantial evidence. *Kearse v. State Health and Human Servs. Fin. Comm'n*, 318 S.C. 198, 200, 456 S.E.2d 892, 893 (1995).

An appellant — here Petitioner — has the burden of convincingly proving that the Board's decision is unsupported by substantial evidence. *Waters v. S.C. Land Res. Conservation Comm'n*, 321 S.C. 219, 226, 467 S.E.2d 913, 917 (1996). Accordingly, while she may disagree with the Board's decision, Petitioner has not met the requisite burden of showing the Board's decision was unsupported by substantial evidence. The Court of Appeals followed the appropriate standard of review when it found that substantial evidence existed in the record to support the Board's finding that Forman committed fraud and represented that she performed services when she had not. *See Forman*, 419 S.C. at 74, 796 S.E.2d at 143.

Other than Section II, Findings of Fact of the Court of Appeals' opinion, the Court of Appeals devoted the entirety of the law/analysis section to addressing whether an error of law occurred in the earlier proceedings. *See Forman*, 419 S.C. at 70–77, 796 S.E.2d at 141–45. With respect to errors of law, "[a] reviewing court may reverse the decision of the ALC where it is in violation of a statutory provision or it is affected by an error of law." *Alltel Commc'ns, Inc. v. S.C. Dep't of Revenue*, 399 S.C. 313, 316, 731 S.E.2d 869, 870–71 (2012). As detailed below, even a cursory reading of the Court of Appeals' opinion in this matter makes clear that not only were these error-of-law tests applied, the tests were applied correctly.

A. The Board's decision was not in violation of statutory or constitutional provisions.

As this is the same argument as Petitioner's separation of powers argument, Respondents have addressed this argument in Section II, pages 6–7 of this Return.

B. The Board's decision was within the statutory authority of the agency.

Pursuant to S.C. Code Ann. § 40-63-110(A), the Board "may revoke, suspend, publicly reprimand, or otherwise restrict the practice or discipline a licensee when it is established that the licensee is guilty of misconduct as defined in this chapter." The Board found Petitioner guilty of misconduct at the conclusion of the two-day hearing. S.C. Code Ann. § 40-63-110(B) provides the various ways the Board may find a licensee has engaged in misconduct. Specifically, the Board found that Petitioner engaged in misconduct, in violation of S.C. Code Ann. § 40-63-110(B)(9), by violating "the principles of professional ethics or standards of conduct as adopted by the board and promulgated in regulations." Following, the Board, through the appropriate promulgation of regulations pursuant to the Administrative Procedures Act, has identified the principles of professional ethics that govern the practice of social work in this state. *See* S.C. Code Ann. Regs. 110-20. All social workers licensed by the Board in South Carolina, including Petitioner, are bound by these principles of ethics. The Board, in its Order, found that Petitioner did not abide by the principles of professional ethics by committing fraud and representing that she performed services that she did not perform, in violation of S.C. Code Ann. Regs. 110-20(8). To determine whether Petitioner complied with S.C. Code Ann. Regs. 110-20(8) in her work as a GAL, the Board necessarily had to determine if she had performed the services that every GAL must perform during his or her investigation. *See* S.C. Code Ann. § 63-3-830(A)(2) ("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 . . .") (emphasis added).

At the hearing, the Board found that Petitioner made recommendations to the family court in two separate custody cases without having complied with the mandatory minimum investigation requirements required of all GALs, as specified in S.C. Code Ann. § 63-3-830-(A)(2)(a)–(f). The Board found that Petitioner's investigations were deficient in the following ways:

1. She failed to obtain and review relevant documents;
2. She failed to meet with and observe the child(ren) in question on at least one occasion, or even speak with them by telephone;
3. She only visited one of at least four homes;
4. She failed to interview all relevant parties, including parents, stepparents, school officials, and other individuals with relevant knowledge;
5. She failed to obtain criminal histories of each party; and
6. She failed to consider the wishes of the child(ren).

Petitioner cannot "opt out" of the principles of professional ethics governing social work simply by working as a GAL. Rather, Petitioner, as a licensed social worker, is bound by both the regulations governing the practice of social work as well as those laws governing GAL investigations. Here, as explained above, the Board followed its statutory authority in finding that Forman engaged in misconduct.

C. The Board's decision was made upon lawful procedure.

To this point, Petitioner again makes the same argument that she made in the Separation of Powers argument of her Petition. As a result, Respondents have already addressed this argument in Section II, pages 6–7 of this Return.

D. The Board's decision was not affected by error of law.

In her Petition, Petitioner simply states that the Board "misinterpreted and misapplied the Private Guardian *ad Litem* statute," and that the Board did not have the background of *Patel v. Patel*, 347 S.C. 281, 555 S.E.2d 386 (2001), the history of the GAL statute, or the practical application of the statute. Petition for Writ of Certiorari at 9 (No. 2017-000672). As an initial matter, Petitioner's "argument" on this issue should be deemed abandoned, as she did not make any substantive argument as to how the Board lacked understanding of the *Patel* case or the background of the GAL statutes referenced. *See Eaddy v. Smurfit-Stone Container Corp.*, 355 S.C. 154, 164, 584 S.E.2d 390, 396 (Ct. App. 2003) ("Short, conclusory statements made without supporting authority are deemed abandoned on appeal and therefore not preserved for our review.")

Even if this Court finds this argument not to be abandoned, Petitioner's argument is without merit. In *Patel v. Patel*, this Court reviewed the historical development of the GAL's role in South Carolina and set forth some base line standards for what a GAL shall do when making a recommendation to the family court. *Patel*, 347 S.C. at 288–89, 555 S.E.2d at 390 (2001) (identifying several minimum requirements of what a GAL must do in this context, including but not limited to reviewing relevant documents and interviewing parents and caregivers with relevant knowledge). Following the instruction of this Court in *Patel*, in 2002 the General Assembly codified these minimum requirements by enacting new legislation, S.C.

Code Ann. §§ 20-7-1545 through -1557 (2002). *See also Nasser-Moghaddassi v. Moghaddassi*, 364 S.C. 182, 193, 612 S.E.2d 707, 713 (Ct. App. 2005) ("In essence, the statute codifies the *Patel* standards.")

These are the very same statutes that the Court of Appeals dissected in this case, as S.C. Code Ann. §§20-7-1545 through 1557 were recodified in 2008 as S.C. Code Ann. § 63-3-810 *et seq.* (2008). Following, it is difficult to ascertain how the Board's decision is affected by an error of law when they it correctly applied the statutes that directly stemmed from *Patel*.

E. The Board's decision was proper based on the record as a whole.

Petitioner argues that the time had not yet expired for her to conduct a "full investigation" and that it was premature for the Board to find she did not comply with the mandatory GAL investigation requirements. Petition for Writ of Certiorari at 10 (No. 2017-000672).

Here, the Board found that Petitioner twice made recommendations to the family court before complying with the bare minimum requirements as outlined by statute. *See* S.C. Code Ann. § 63-3-830(A)(2) (providing that an "investigation must include" doing all of the items listed in (a) through (f)). The mandatory requirements of the GAL investigation statute are in place to ensure that the family court is cognizant of the relevant facts when making decisions based on a GAL's recommendation. Relegating the completion of these requirements until after a GAL makes recommendations to the family court does not help the family court make an informed decision on these important matters.

F. The Board's decision was not characterized by an abuse of discretion.

In her Petition, Forman argues that because the Board "arbitrarily" found that Forman promoted herself with her credentials, that finding somehow amounts to an abuse of discretion. Petition for Writ of Certiorari at 10 (No. 2017-000672). Here, the definition of what amounts to

an abuse of discretion is helpful. *See Ex parte Capital U-Drive-It, Inc.*, 369 S.C. 1, 5, 630 S.E.2d 464, 467 (2006) ("An abuse of discretion occurs when the judge's ruling is based upon an error of law, such as application of the wrong legal principle; or, when based upon factual conclusions, the ruling is without evidentiary support; or, when the judge is vested with discretion, but the ruling reveals no discretion was exercised; or when the ruling does not fall within the range of permissible decisions applicable in a particular case.")

In her work as a GAL, Petitioner promoted herself with her social work credentials. Petitioner does not dispute that she wrote articles and conducted continuing legal education presentations in which she discussed the application of social work theory, knowledge, methods and principles to GAL work. The Board's finding on this issue cannot be properly understood as an error of law, and the Board did not abuse its discretion in finding that Forman promoted herself with her credentials.

IV. This Court has no reason to extend quasi-judicial immunity afforded by this Court in *Fleming* to GALs in the context of private tort actions to professional disciplinary proceedings.

This case involves a professional licensing disciplinary proceeding, not a civil action. Despite Petitioner's attempt to expand the holding of *Fleming v. Asbill,* 326 S.C. 49, 483 S.E.2d 751 (1997) to also provide immunity for GALs that may be subject to discipline from a professional licensing board, the Court of Appeals properly found that there was no basis, whether rooted in statute, case law, or public policy, to expand quasi-judicial immunity to professional disciplinary proceedings.

Forman argues that the Court of Appeals weighing two competing public policy concerns and finding in favor of Respondents' policy concern of protecting the public through

professional discipline somehow violates the separation of powers. Petition for Writ of Certiorari at 11 (No. 2017-000672). A court appropriately weighing competing public policies does not violate the separation of powers. While cognizant that GALs should be granted immunity in narrow, limited circumstances, the Court of Appeals was also concerned with ensuring that the Board be able to protect the public, as statutorily mandated, by regulating and disciplining its licensees. Following, the Court of Appeals appropriately weighed both public policies advanced by the parties and found that protecting the public was the more overriding concern.

Additionally, like this Court did in reaching its decision in *Fleming*, the Court of Appeals in *Forman* also looked to other courts for guidance on an issue before it. In *Forman*, the Court of Appeals cited a number of cases that explained why the policy reasons for granting immunity in civil suits is not applicable in the context of professional disciplinary proceedings. *See, e.g. Deatherage v. State of Wash., Examining Bd. of Psychology*, 134 Wash.2d 131, 140, 948 P.2d 828, 831 (Wash. 1997) ("[T]he reason for immunity is that the court wants to preserve and enhance the judicial process. However, eliminating any threat of punishment (except criminal charges) extends absolute immunity beyond its historical reach."); *Curd v. Ky. State Bd. of Licensure for Prof'l Engineers & Land Surveyors*, 433 S.W.3d 291, 299 (Ky. 2014) ("Extending absolute immunity to protect expert witnesses from the possibility of administrative discipline for their testimony stretches the concept beyond the point of recognition.")

In contrast to the substantial case law supporting the Court of Appeals' decision in *Forman*, Petitioner fails to cite any cases extending quasi-judicial immunity to professional disciplinary proceedings. Instead of citing to cases supporting her argument, Petitioner attempts to distinguish the Court of Appeals' supporting authority into two categories: the cases when the

judicial branch has authority to discipline and the cases when the executive branch retains authority to discipline. Forman provides that she "is not arguing she is afforded judicial immunity in disciplinary proceedings simply because she has a role in a judiciary proceeding," but she then contradicts herself in the next sentence by arguing that "[w]here her role in that judicial proceeding is by appointment from the judicial system, discipline is imposed by the judicial branch." Petition for Writ of Certiorari at 12 (No. 2017-000672).

First, the cases Forman cites to support her argument that an individual's discipline is within the exclusive jurisdiction of the judicial branch when an individual's role in a judicial proceeding is by appointment all deal with attorneys acting as GALs or attorneys facing discipline. *See, e.g. Carrubba v. Moskowitz*, 274 Conn. 533, 543 877 A.2d 773, 782 (2005) ("the attorney for the minor child, just as any other attorney, is subject to discipline for violations of the Code of Professional Conduct"); *McKay v. Owens*, 130 Idaho 148, 937 P.2d 1222 (1997); and *State ex rel. Bird v. Weinstock*, 864 S.W.2d 376 (Mo. Ct. App. 1993).

In most states, including South Carolina, the authority to discipline attorneys is within the judicial branch's exclusive jurisdiction. *See, e.g, In re Hursey*, 395 S.C. 527, 532, 719 S.E.2d 670, 673 (2011) ("The authority to discipline attorneys rests entirely with this Court."); *In re Crews*, 159 S.W.3d 355, 358 (Mo. 2005) (Missouri Supreme Court has inherent authority to regulate practice of law); *Idaho State Bar v. Everard*, 142 Idaho 109, 112, 124 P.3d 985, 988 (2005) (Idaho Supreme Court has ultimate authority regarding attorney misconduct). Accordingly, it only follows that attorneys will be disciplined by the judicial branches of their states for any misconduct in their practice as GALs (or otherwise), as it is the judicial branch that licenses and disciplines attorneys.

In supposed contrast, Forman then argues that when a professional's role in a judicial proceeding "stems from her professional expertise, such as testifying as an expert, discipline is imposed by the executive branch." Petition for Writ of Certiorari at 12 (No. 2017-000672). Importantly, the cases Petitioner cites for this proposition all involve non-attorneys, such as social workers or psychologists, who are licensed and regulated by the executive branch, not the judicial branch. *See, e.g., Budwin v. Am. Psychological Ass'n*, 24 Cal.App.4th 875, 29 Cal.Rptr.2d 453 (1994); *Seibel v. Kemble*, 63 Haw. 516, 631 P.2d 173, 177 n.8, 180 (1981); *Huhta v. State Bd. of Med.*, 706 A.2d 1275, 1277 (Pa. Commw. Ct. 1998). Like Petitioner in the present case, the licensees in these cases were or could be disciplined by their respective licensing boards for misconduct that occurred while working in the court system.

Second, this line of reasoning ignores the General Assembly's mandate to the Board to protect the public from licensees that are found to be in violation of its practice act. S.C. Code Ann. § 40-1-40(A) ("The purpose of the . . . South Carolina Department of Labor, Licensing and Regulation is to protect the public," by and through its licensing boards, "through the regulation of professional and occupational licensees." As defined in S.C. Code Ann. § 40-1-20(3), each board is "charged by law with the responsibility of licensing or otherwise regulating an occupation or profession within the State."

Finally, Petitioner argues that the Court of Appeals "seeks to fit a guardian-*ad-litem* shaped peg in a social-work-shaped hole" because a GAL, in supposed contrast to an independent social worker, is required to "represent the best interests of the child" per statute. Petition for Writ of Certiorari at 13 (No. 2017-000672). Petitioner's argument is without merit. In support of her argument, Petitioner only provides the first sentence of the definition of

independent social work-clinical practice while ignoring the rest of the definition. *See* S.C. Code Ann. § 40-63-20(25).

Respondents agree with the Court of Appeals that "advocacy" is included in the definition of independent social work-clinical practice. *Forman*, 419 S.C. at 75, 796 S.E.2d at 144. *See also* S.C. Code Ann. § 40-63-20(25) (". . . The practice of independent clinical social work includes case management, information and referral, mediation, client education, supervision of employees, consultation, research, advocacy, outcome evaluation, and expert testimony. The practice of Independent Social Work–Clinical Practice may include private practice."). Advocating for the best interest of a child as a GAL does not fall outside the scope of independent social work-clinical practice; rather, it is included in the statutory definition. Further, case law cited by the Court of Appeals supports its decision that a GAL engages in advocacy. *See Townsend v. Townsend*, 323 S.C. 309, 316, 474 S.E.2d 424, 428 (1996) (providing that generally a GAL serves as a hybrid role and performs two functions: ascertaining the best interests of the ward and "advocating to the family court the ward's best interest.")

Professional discipline is an additional safeguard in place to ensure that GALs are accountable for misconduct. The Court of Appeals' refusal to extend *Fleming* ensures that the public remains protected by the Board.

CONCLUSION

For the aforementioned reasons, Respondents would respectfully request this Court to deny the Petition for Writ of Certiorari, as the Court of Appeals' decision was supported by substantial evidence and devoid of any errors of law.

(signature on following page)

Respectfully submitted,

Prentiss Counts Shealey, Bar #74070
Megan Joan Flannery, Bar #76209
Assistant Disciplinary Counsel
S.C. Department of Labor, Licensing and Regulation
P.O. Box 11329
Columbia, SC 29211-1329
(803) 896-4852
(803) 896-2374
Prentiss.shealey@llr.sc.gov
Megan.flannery@llr.sc.gov
Attorneys for Respondents

Columbia, South Carolina
April 17, 2017

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM THE ADMINISTRATIVE LAW COURT

John D. McLeod, Administrative Law Judge
Case No. 2010-ALJ-11-0591-AP

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

Opinion No. 5453 S.C. Ct. App. Filed November 9, 2016

Case No. 2017-000672

Karen A. Forman, Petitioner,

v.

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

CERTIFICATE OF SERVICE

I hereby certify that I am a paralegal for Respondents in the above-captioned matter and that on the 17th day of April, 2017, in Columbia, South Carolina, I served a copy of **Respondents' Return to Writ of Certiorari** onto Petitioner's counsel in this matter by mailing the same to the address as follows:

Thomas F. McDow
Erin K. Urquhart
McDow & Urquhart, LLC
514 Oakland Avenue, Second Floor
Post Office Box 891
Rock Hill, SC 29731-6891
Attorneys for Petitioner

Additionally, I certify that I simultaneously mailed the original and six copies to the Clerk of the Supreme Court per Rule 242(f), SCACR.

SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING AND REGULATION

Kim Long

Kim Long, Paralegal
LLR, Office of Disciplinary Counsel

Columbia, South Carolina
April 17, 2017