

**THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT**

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

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

Opinion No. 5453, Filed November 9, 2016

**RECEIVED**

MAY 02 2017

S.C. SUPREME COURT

Karen A. Forman,

Petitioner,

versus

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

**REPLY TO RETURN TO PETITION FOR CERTIORARI**

Thomas F. McDow (SC Bar # 3791)  
Erin K. Urquhart (SC Bar # 75345)  
McDow & Urquhart, LLC  
Attorneys for Petitioner  
514 Oakland Avenue, Second Floor  
Post Office Box 891  
Rock Hill SC 29731-6891  
Telephone 803-327-4151

Other counsel of record are:

Prentiss Counts Shealey  
Megan Joan Flannery  
Attorneys for Respondent  
110 Centerview Drive  
Post Office Box 11329  
Columbia SC 29211  
Telephone 803-896-4852

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This Reply to Return to Petition for Certiorari does not address the merits of the case. Rather, it addresses Rule 242(b), SCACR, and whether or not the South Carolina Supreme Court should grant certiorari to review the case. This case reflects the genius of Rule 242, SCACR, which educates the appellate bar on what cases the Court considers for a grant of certiorari without infringing on the Court's absolute discretion in selecting cases for review. The Petitioner asserts that this case raises a novel question of law and a substantial constitutional issue.

Where both parties believe that Fleming<sup>1</sup> supports their position (the logic and public policy concerns for the Petitioner and the specific case holding for the Respondents) there is confusion among practitioners and no clear answer on the question of law. No existing case is on point. Therefore, the question of law is novel. The bench and bar require and deserve instruction on this question, which is a constitutional one – whether or not an administrative board has authority to discipline a judicial appointee under the guardian ad litem statute. How the Court of Appeals addressed the violation of the constitutional requirement for Separation of Powers without mentioning Separation of Powers is unclear.

Also unclear is how the Court of Appeals applied the standard of review pursuant to statute<sup>2</sup> but ignored five of six tests. Are we to understand that analysis of only one clause of one subpart is acceptable review?

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<sup>1</sup>Fleming v. Asbill, 326 S.C. 49, 57, 483 S.E.2d 751, 755–56 (1997).

<sup>2</sup>S.C. Code Ann. § 1-23-610(B).

This case is not about protecting the public from a social worker, this case is about protecting the checks and balances provided by three distinct branches of government. The separation of powers is necessary for a stable government and democracy as a whole. "Again, there is no liberty, if the power of judging be not separated from the legislative and executive powers....Were it joined to the executive power, the judge might behave with all the violence of an oppressor."<sup>3</sup>

McDow & Urquhart, LLC

By 

Erin K. Urquhart

Attorney for Petitioner

514 Oakland Avenue, Second Floor

Post Office Box 891

Rock Hill SC 29731-6891

Telephone 803-327-4151

SC Bar # 75345

April 27, 2017

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<sup>3</sup>Charles de Secondat, Baron de Montesquieu, *The Spirit of the Laws*, (1748).

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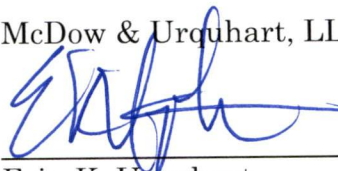
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I certify that I served the reply to return to petition for certiorari by depositing  
copies of it in the United States Mail, postage prepaid, on April 27, 2017, addressed  
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Prentiss Counts Shealey  
110 Centerview Drive  
Post Office Box 11329  
Columbia SC 29211-1329

Megan Joan Flannery  
110 Centerview Drive  
Post Office Box 11329  
Columbia SC 29211-1329

McDow & Urquhart, LLC



Erin K. Urquhart  
Attorney for Petitioner  
514 Oakland Avenue, Second Floor  
Post Office Box 891  
Rock Hill SC 29731-6891  
SC Bar # 75345

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Columbia SC 29211-1330

