

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

**APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas**

The Honorable Mikell R. Scarborough, Master in Equity

**Case No. 2014-CP-10-05407
2017-CP-10-04031**

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OCT 12 2018

SC Court of Appeals

Churchill Park, Respondent

v.

Alan G. Nix, Norma J. Nix and the Estate of Norma J. Nix, Defendants,

Of which Alan G. Nix is the Appellant

Appellate Case Number 2018-000056 / 2018-000174

**APPELLANT'S RESPONSE TO NEWMAN / SCHREIBER MOTION TO WITHDRAW
AS COUNSEL**

Appellant submits this response to Respondent's Counsel's Motion to Withdraw dated 27 September 2018.

In response to Respondent's attorney's statements in number one of their motion to withdraw, Appellant would argue that in the absence of Respondent's attorneys producing sufficient documentation to prove their assertion that their representation ended at the time a final order was entered, that it is highly unlikely a typical representation agreement would conclude upon the entry of a final order. Appellant would further argue that if this statement is true, that Respondent's attorneys could have and should have filed the motion to be relieved

sometime during the period 10 Nov 2017 (the day after the final order they are apparently referring to was filed with the Charleston County Clerk of Court, as opposed to the Richland County Clerk of Court as required by the Order of Reference) and 8 January 2018, the day Appellant filed the Notice of Appeal. Furthermore, Ms. Newman inquired on 29 November 2017 at the conclusion of a hearing in these same cases if I were planning on filing an appeal and I responded that there was a high likelihood. Consequently, if the Respondent's attorney's statement is accurate, they certainly had sufficient time to ask to be relieved prior to the Notice of Appel being filed.

In response to Respondent's attorney's statements in number two, given Ms. Newman did not file an appeal nor timely join the Appellant's appeal, the Court of Appeals has correctly listed Ms. Newman as attorney for the Respondent. Ms. Newman apparently willfully chose to not join Appellant on behalf of her clients Norma J. Nix and the Estate of Norma J. Nix even though she was clearly aware of numerous procedural and evidentiary issues related to the cases. As to Respondent's attorney's statements about "*requiring Counsel to expend additional time and cost on this matter*", Appellant would clarify that while Ms. Newman did attend the motion hearing on 29 November 2017, Ms. Newman very minimally participated in the hearing. Likewise, while Ms. Schreiber attended the motion hearing on 30 May 2018, she did not participate and appeared to be very minimally prepared. Furthermore, neither Ms. Newman, Ms. Schreiber nor any other Charleston Legal Access representative attended the hearings of 27 August 2018 or 4 September 2018. Consequently, Ms. Schreiber's assertion of expending additional time and cost on this matter, when taken in context of their actual performance since at least mid September 2017, appears to be more than slightly disingenuous and strictly limited to their ongoing and purely self-interested agenda of being relieved as counsel, rather than actually representing their clients.

In response to the footnote on page two of the motion, neither Ms. Newman nor Charleston Legal Access notified Appellant about Ms. Newman's serious medical condition prior to mid July 2018 and has yet to clarify when this serious medical condition began affecting Ms. Newman's ability to properly represent her clients. Appellant is not aware if Charleston Legal Access notified any other party to these cases of Ms. Newman's apparently significant medical issue prior to mid July 2018,. If Ms. Newman's health issue is as serious as portrayed, it would have been proper for Ms. Newman or her law firm to have provided a much more timely

notification to the other parties involved in these cases. It is unclear from Ms. Schreiber's motion if she and Charleston Legal Access are contending that Ms. Newman's medical issues are the principal reason they believe they should be relieved as serving as Counsel. Clearly, given Ms. Newman's performance between mid-September 2017 and whenever she apparently became medically incapable of working, and Ms. Schreiber's performance between 30 May 2018 and the present, are largely the same, Appellant would argue that Ms. Newman's apparent medical issues have had little effect on Charleston Legal Access's ability to provide adequate representation to their clients.

In conclusion, Appellant would like to ensure the Court clearly understands that it is quite apparent the Respondent's attorneys are, and have been, much more focused on being relieved / withdrawing from the cases than actually representing their client with something that vaguely appears to be adequate, much less vigorous, representation of their clients. Additionally, given the Respondent's attorney's conduct since at least mid-September 2017, their assertion that their representation ended with the entry of the final order is highly questionable under normal circumstances, and even more so given the significant issues with these cases. Appellant is in the process of requesting a clarification from Ethan as to when and what he said and meant to verify Ms. Schreiber's stated understanding and assertion. Once obtained, if Ms. Schreiber's statements are accurate, Appellant will determine the most appropriate follow on action, including potentially removing objection to Ms. Newman's and Ms. Schreiber's request to be relieved.

Appellant also wants to raise to the Court's attention that previous rulings by the South Carolina Supreme Court in relationship to the tolling of the statute of limitations as related to legal malpractice actions provide a solid basis for the Court to avoid interfering with a client / attorney relationship during legal proceedings without a serious underlying rationale. The ruling have been intended to ensure the parties (attorneys and their clients) relationship is not adversely affected during an appeal as to ensure all possible opportunities for the attorney to properly represent their client during an appeal are encouraged. Clearly, it seems prudent to allow Ms. Newman, Ms. Schreiber and Charleston Legal Access the opportunity to attempt to rectify as many of their issues as possible going forward. In the event Ms. Newman, Ms. Schreiber and Charleston Legal Access do not or chose not to sufficiently improve their representation of their clients in these cases, and given Appellant has a fifty percent interest in their client's interest in

these cases, other matters will likely require Respondent's attorneys to disqualify themselves. Consequently, it does not appear necessary nor proper for the Court to interfere in the attorney / client relationship at this critical juncture in time as it is clear that the issues involved in this situation will resolve themselves one way or the other in the not so distant future

WHEREFORE, Appellant respectfully requests that this Court deny the Respondent's attorney's Motion to Withdraw as Counsel until such time as all outstanding motions in the lower court and all appeals related to this matter are complete or other matters require the Respondent's attorneys to disqualify themselves.

Dated: October 7, 2018

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Alan Nix", is written over a horizontal line.

Alan G. Nix
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Mount Pleasant, SC 29466
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Of which Alan G. Nix is the Appellant

Appellate Case Number 2018-000056 / 000174

PROOF OF SERVICE

The undersigned certifies that a copy of the Appellant's Motion for Leave to Make 60(b) Motion has been served upon the individuals listed below by mailing a copy of the same, postage prepaid, in the United States Mail, addressed as shown below, this 8th day of October 2018 to:

Plaintiff Attorneys:
Stephanie Trotter, Esq.
McCabe, Trotter & Beverly, P.C.
P.O. Box 212609
Columbia, SC 29221

Todd M. Musheff, Esq.
Law Offices of Todd M. Musheff
1121 Park West Blvd., Ste. B 148.
Mount Pleasant, SC 29466

Judge Scarborough
Master in Equity, Charleston County
100 Broad St., Ste. 266
Charleston, SC 29401

Ethan Nix
211 Posey Hill Rd.
Liberty, SC 29657

Defendant Attorney:
Sally Newman, Esq.
Charleston Legal Access
1630 Meeting Street
Charleston, SC 29405
Norma J. Nix (2014-CP-10-05407) and
The Estate of Norma J. Nix (2017-CP-10-04031)

Sarah Schreiber
Charleston Legal Access
1630 Meeting Street
Charleston, SC 29405

Dated: October 8, 2018

Respectfully submitted,

By:



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7 October 2018

Alan Nix
1401 Densmore Circle
Mount Pleasant, SC 29466

Hon. Jenny Abbott Kitchings
P.O. Box 11629
Columbia, SC 29211

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RE: Appellant response to Newman's and Schreiber's Motion to be Relieved
South Carolina Appellate Case No. 2018-000056 / 2018-000174
Churchill Park v Nix et al / Case No. 2014-CP-10-05407 and 2017-CP-10-04031

Ms. Abbott Kitchings,
Please find enclosed Appellant's response to the Motion to be Relieved as Counsel dated 27 September 2018. Also enclose is the Proof of Service of the response and a copy of the documents for your office to clock stamp and return in the self-addressed envelope.

Thank you very much for your Office's assistance and please let me know if you have any questions that I may be able to assist you with.

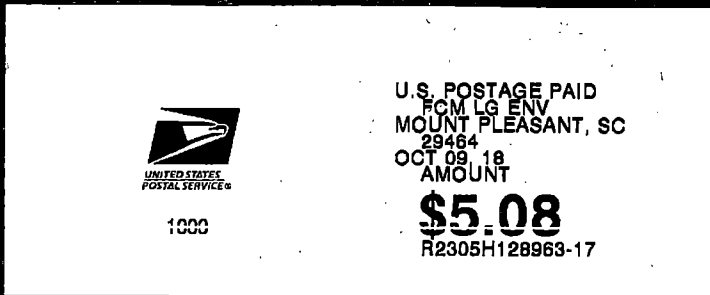
Best regards,



Alan Nix

cc.
Sally Newman
Sarah Schreiber
Todd Musheff
Judge Scarborough
Ethan Nix
Stephanie Trotter

NW
1401 Barnstable Circle
Mt. Pleasant, SC 29466



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HONORABLE JENNY ABBOTT KITCHENS
CLERK OF COURT, SC COURT OF APPEALS
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