

1986

Marlin L. Stewart and Candice Stewart v. Aldine J. Coffman Jr., Penelope Dalton Coffman, Coffman, Coffman and Woods : Petition for Rehearing

Utah Court of Appeals

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BRIEF

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IN THE COURT OF APPEALS OF THE STATE OF UTAH

MARLIN L. STEWART and CANDICE STEWART, husband and wife,	:	
	:	
Plaintiffs-Appellants,	:	Case No. 860318-CA
	:	(originally No. 860167
vs.	:	in Supreme Court)
	:	
ALDINE J. COFFMAN, JR.,	:	Category No. 14.b.
<u>PENELOPE DALTON COFFMAN,</u>	:	
COFFMAN, COFFMAN and WOODS, a	:	
professional corporation also	:	
known as COFFMAN and COFFMAN,	:	
ANTHONY M. THURBER, and	:	
KENNETH A. OKAZAKI, jointly	:	
and severally,	:	
	:	
Defendants.	:	
	:	
(PENELOPE DALTON COFFMAN,	:	
Defendant-Respondent)	:	

PETITION FOR REHEARING

ON APPEAL FROM THE SEVENTH JUDICIAL DISTRICT COURT OF
GRAND COUNTY, STATE OF UTAH
HONORABLE BOYD BUNNELL
DISTRICT JUDGE

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JAN 21 1988

By M. Shea
Court
of Appeals

IN THE COURT OF APPEALS OF THE STATE OF UTAH

MARLIN L. STEWART and CANDICE STEWART, husband and wife,	:	
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ALDINE J. COFFMAN, JR.,	:	Category No. 14.b.
<u>PENELOPE DALTON COFFMAN,</u>	:	
<u>COFFMAN, COFFMAN and Woods,</u> a	:	
professional corporation also	:	
known as COFFMAN and COFFMAN,	:	
ANTHONY M. THURBER, and	:	
KENNE'TH A. OKAZAKI, jointly	:	
and severally,	:	
	:	
Defendants.	:	
	:	
(PENELOPE DALTON COFFMAN,	:	
Defendant-Respondent)	:	

PETITION FOR REHEARING

The above Plaintiffs, pursuant to Rule 35 of the Rules of the Utah Court of Appeals hereby respectfully petition the above Court for a rehearing.

1. Points overlooked or misapprehended. The Plaintiffs respectfully submit that the Court's opinion dated January 12, 1988, has overlooked or misapprehended the following points:

A. The Court's decision fails to consider and address the high professional duties owed by lawyers to their clients

which makes the practice of law different from other businesses.

B. The Court's decision fails to address the legislative history of the Utah Professional Corporation Act (UPCA).

C. The Court's decision fails to address contrary decisions by the Supreme Courts of Hawaii and Georgia: Petition of Bar Asso., 55 Hawaii 121, 516 P.2d 1267 (1973); First Bank & Trust Co. v. Zagoria, 250 Ga. 844, 302 SE 2d 674 (1983), 39 ALR 4th 551.

D. The Court's decision fails to address the fact that the regulation of the practice of law is under the Utah Constitution the province of the Utah Supreme Court [In Re Disciplinary Action of McCune, Utah, 717 P.2d 701, 104-5 (1986)], and, therefore, any action by the legislature in attempting to regulate such practice is unconstitutional if not expressly allowed by the Utah Supreme Court.

E. The Court's decision fails to address and distinguish professional aspects from business aspects of the practice of law, only the latter being covered by the UPCA.

F. The Court's decision fails to address the fact that the relationship between members of a law firm and client's of other members of the firm is a professional aspect of the

practice of law and, therefore, not covered by the UPCA.

G. The Court's decision fails to address Rule 1.8(h) of the Rules of Professional Conduct which provides that a lawyer shall not make an agreement prospectively limiting the lawyer's liability to a client.

H. The Court's decision fails to address Section 68-3-12 of the Utah Code Annotated which provides that in statutory construction, the word "person" includes "individuals, bodies politic and corporate, partnerships, association, and companies", such fact bearing upon the construction of the UPCA.

I. The Court's decision fails to address the important public policy issues inherent in its ruling.

2. Such argument as the petitioner desires. The Petitioners believe that the above points have been fully briefed and argued by the parties and the two amicus curiae herein. Petitioners accordingly make no further argument herein but respectfully refer the Court to Petitioners' briefs and the brief of the Utah Trial Lawyers Association on file.

3. Certification that petition for rehearing is made in good faith and not for delay. Plaintiffs, by their counsel of record, hereby certify that this petition is made in good faith and not for purposes of delaying this matter. Plaintiffs respectfully intend to seek a writ of certiorari for review by

the Utah Supreme Court if the petition for rehearing is unsuccessful and believe that exhausting the remedy of rehearing is prudent before requesting review by the Utah Supreme Court.

Respectfully submitted this 20 day of January, 1988.



PAUL W. MORTENSEN
ATTORNEY FOR PLAINTIFFS-APPELLANTS

stewapp.reh

CERTIFICATE OF SERVICE

Served the foregoing Petition for Rehearing this 20 day of January, 1988, by mailing four copies thereof, postage prepaid, to the following:

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