

1986

Marlin L. Stewart and Candice Stewart v. Aldine J.  
Coffman JR.; Penelope Dalton Coffman, Coffman,  
Coffman and Woods : Brief of Appellant

Utah Court of Appeals

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Tim Dalton Dunn; Hanson, Dunn, Epperson & Smith; Attorneys for Respondent.

Paul W. Mortensen; Attorney for Appellant.

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UTAH COURT OF APPEALS  
BRIEF

UTAH  
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DOCKET NO.

860318

IN THE SUPREME COURT OF THE STATE OF UTAH

MARLIN L. STEWART and  
CANDICE STEWART, Husband  
and Wife,

:

:

860318-CA

Plaintiffs-Appellants, :

Case No. 860167

vs. :

Category No. 13.b.

ALDINE J. COFFMAN, JR.,  
PENELOPE DALTON COFFMAN,  
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)

:

BRIEF OF APPELLANT

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

PAUL W. MORTENSEN  
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Telephone: 363-7611

Attorneys for Respondent

**FILED**  
JUL 16 1986

Clerk, Supreme Court, Utah

### LIST OF PARTIES

At the time of preparation of this brief the parties to this action are the same as those listed in the caption, except that Kenneth A. Okasaki has been voluntarily dismissed from the action. This appeal only directly involves the Plaintiffs and the Defendant Penelope Dalton Coffman who was dismissed from the action over the Plaintiffs' objection.

The Defendants Aldine J. Coffman, Jr. and Coffman, Coffman and Woods, a professional corporation, who are not parties to this appeal, are represented by Tim Dalton Dunn and Anne Swensen who also represent the Defendant-Respondent Penelope Dalton Coffman in this appeal.

The Defendant Anthony M. Thurber, who is not a party to this appeal, is represented by Thomas L. Kay, P.O. Box 45385, Salt Lake City, Utah 84145-0385, (801) 532-1500.

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IN THE SUPREME COURT OF THE STATE OF UTAH

---

MARLIN L. STEWART and  
CANDICE STEWART, Husband  
and Wife,

:

:

Plaintiffs-Appellants,

:

Case No. 860167

vs.

:

ALDINE J. COFFMAN, JR.,  
PENELOPE DALTON COFFMAN,  
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)

:

---

BRIEF OF APPELLANT

---

Statement of Issues Presented on Appeal

The issues presented in this appeal are as follows:

A. Are partners in a law firm who are not actively involved in a case vicariously liable for the professional malpractice of other partners in the law firm?

B. Does the structuring of a law firm partnership as a professional corporation under the Utah Professional Corporation Act, Section 16-11-1 et. seq. of the Utah Code Annotated 1953, as amended, shield a member of the firm from vicarious liability for

the professional malpractice of other members of the firm?

Statement of the Case

This is an appeal of the dismissal of Defendant-Respondent Penelope Dalton Coffman (hereinafter called "Penelope D. Coffman") from a legal malpractice action. The dismissal followed a Rule 12(b) motion to dismiss which was in effect treated as a motion for summary judgment.

Plaintiffs-Appellants (hereinafter called "the Stewarts") brought suit against Penelope D. Coffman, Aldine J. Coffman, Jr., Coffman, Coffman & Woods, P.C., and others alleging inter alia, that the Stewarts lost a major lawsuit because of malpractice on the part of Aldine J. Coffman, Jr. as well as other named attorneys who had represented them. The Stewarts, inter alia, alleged that the Coffman defendants had negligently allowed their counterclaim to be dismissed with prejudice for failure to properly plead and properly and timely amend when granted leave to do so. (R.1-8).

Penelope D. Coffman and Aldine J. Coffman, Jr. were at the time of the alleged malpractice members of the law firm of Coffman and Coffman, a professional corporation. The firm name had subsequently been changed to Coffman, Coffman & Woods, P.C., by the time the involved suit was filed. (R. 1-8, 59-61).

Penelope D. Coffman filed a motion to dismiss the complaint against her for failure to state a cause of action

alleging by memorandum that she had not personally represented the Stewarts. The motion was initially denied by the court on the ground that, aside from unverified allegations in her memorandum, Penelope D. Coffman had not shown that she had no personal involvement in the matters alleged. (R. 30-58). Penelope D. Coffman then filed a motion to reconsider and an affidavit wherein she admitted that she was a member of the professional corporation, but alleged that she had no personal involvement in representing the Stewarts. (R. 59-61; 70-71). The Stewarts possessed no evidence to show that Penelope D. Coffman had ever talked to them or worked on their case and, on such basis only, the Court dismissed Penelope D. Coffman from the lawsuit. (R. 72-74; 135-137). The dismissal was entered against the Stewarts' contentions that under the provisions of the Utah Professional Corporation Act, Section 16-11-1 et.seq. of the Utah Code Annotated 1953, as amended, Penelope D. Coffman and Aldine J. Coffman, Jr. were, in matters of professional liability to clients, partners and, under partnership law, Penelope D. Coffman was jointly and severally liable for the actions of Aldine J. Coffman, Jr. even if she never actively represented the Stewarts. (R. 35-43). The Stewarts thereupon filed this appeal of the dismissal. (R. 138-149). Copies of relevent pleadings and both Memorandum Decisions are included in the Addendum.



### Summary of Argument

Under partnership law, partners of law firms are vicariously liable for the professionally wrongful acts of other partners who represent clients of the law firm. The Utah Professional Corporation Act allows lawyers and law firms the opportunity to incorporate, but, by its provisions, does not alter the traditional standards of professional liability arising out of the practice of law including the doctrine of vicarious liability of law firm members. Therefore, Penelope D. Coffman is vicariously liable for the malpractice of Aldine J. Coffman, Jr. as a de facto partner even though the law firm is structured as a professional corporation. The trial court committed reversible error in dismissing her as a defendant.

### Argument

THE COURT COMMITTED REVERSIBLE ERROR IN DISMISSING PENELOPE D. COFFMAN FROM THE ACTION SINCE SHE IS AND WAS VICARIOUSLY LIABLE FOR THE ACTS OF ALDINE J. COFFMAN, JR.

Aldine J. Coffman, Jr. and Penelope D. Coffman are each members of the Defendant law firm Coffman, Coffman and Woods, a professional corporation. (R. 24-29; 32-34; 59-61). The professional corporation, if it in fact exists, must be incorporated under authority of the Utah Professional Corporation Act, Section 16-11-1 et seq. of the Utah Code Annotated 1953, as amended.

Prior to the adoption of the Professional Corporation Act in 1963, law firms necessarily existed in the form of partnerships subject to the liabilities imposed by partnership law. Petition of Bar Asso. 55 Hawaii 121, 516 P.2d 1267 (1973). Williams v. Burns, 463 F Supp 1278, (D.C. Colo, 1979). Sections 48-1-10, 11 and 12 of the Utah General Partnership Act, which was adopted in 1921, provide that the partnership and all partners as of the date liability arose are jointly and severally liable for the wrongful acts or omissions of any partner acting in the ordinary course of business. These sections read as follows:

48-1-10. Partnership bound by partner's wrongful act. Where by any wrongful act or omission of any partner acting in the ordinary course of the business of the partnership or with the authority of his copartners loss or injury is caused to any person, not being a partner in the partnership, or any penalty is incurred, the partnership is liable therefor to the same extent as the partner so acting or omitting to act.

48-1-11. Partnership bound by partner's breach of trust. The partnership is bound to make good the loss:

(1) Where one partner acting within the scope of his apparent authority receives money or property of a third person and misapplies it; and,

(2) Where the partnership in the course of its business receives money or property of a third person and the money or property so received is misapplied by any partner while it is in the custody of the partnership.

48-1-12. Nature of partner's liability.

All partners are liable:

(1) Jointly and severally for everything chargeable to the partnership under sections 48-1-10 and 48-1-11.

(2) Jointly for all other debts and obligations of the partnership; but any partner may enter into a separate obligation to perform a partnership contract.

Sections 16-11-3 and 10 of the Professional Corporation Act state that although the act allows professionals the use of the corporate form for business purposes, the act is not intended to alter the professional relationship between the professional and his client and specifically is not intended to alter any law of liability applicable to the relationship. These provisions read as follows:

16-11-3. Purpose of act.--This act shall be so construed as to effectuate its general purpose of making available to professional persons the benefits of the corporate form for the business aspects of their practices while preserving the established professional aspects of the personal relationship between the professional person and those he serves.

16-11-10. Laws as to professional relationships not altered.--This act does not alter any law applicable to the relationship between a person rendering professional services and a person receiving such services, including liability arising out of such professional services.

Therefore, the preexisting status of law firm members being vicariously liable for the professional misdeeds of their fellow members remains applicable to members of professional corporations. In Petition of Bar Asso., supra, the Hawaii Supreme Court recognized that the liability of attorneys of incorporated law firms for the malpractice of their associates

should not be limited and that the partnership law of liability should continue to apply. Likewise, in First Bank & Trust Co. v. Zagoria, 250 Ga. 844, 302 SE 2d 674, (1983), 39 ALR 4th 551, on remand, Zagoria v. Du Bose Enterprises, Inc., 167 Ga App 120, 306 SE 2d 433, the Georgia Supreme Court unanimously held that a lawyer who holds himself out as a member of a law firm, whether it is a partnership or a professional corporation, is liable for the professional misconduct of other members of the firm even when the lawyer has had no involvement in the transaction which gave rise to the liability. The court appropriately stated:

The professional nature of the law practice and its obligations to the public interest require that each lawyer be civilly responsible for his professional acts. A lawyer's relationship to his client is a very special one. So also in the relationship between a lawyer and the other members of his or her firm a special one. When a client engages the services of a lawyer the client has the right to expect the fidelity of other members of the firm. It is inappropriate for the lawyer to be able to play hide-and-seek in the shadows and folds of the corporate veil and thus escape the responsibilities of professionalism.

...

We cannot allow a corporate veil to hang from the cornices of professional corporations which engage in the law practice.

Therefore, Penelope D. Coffman is jointly and severally liable for the acts of Aldine J. Coffman, Jr. and the professional corporation even if she was not directly involved in

representing the Plaintiffs. The trial court's dismissal of her from the action must be reversed.

Conclusion

The trial court's dismissal of Penelope Dalton Coffman from the action must be reversed. In the event that the action has been tried before this appeal is heard Penelope Dalton Coffman should be ordered subject to and bound by any judgment entered against Aldine J. Coffman, Jr. and/or the professional corporation.

Respectfully submitted this 14 day of July, 1986.

  
PAUL W. MORTENSEN

## ADDENDUM

### CONTENTS

Complaint

Motion To Dismiss Penelope Dalton Coffman

Defendant Penelope Dalton Coffman's Reply To Plaintiffs'  
Memorandum In Opposition To Her Motion To Dismiss

Ruling On Motion To Dismiss

Affidavit Of Penelope Dalton Coffman

Motion To Reconsider

Ruling On Motion To Reconsider Motion To Dismiss

### NOTE:

A copy of the Plaintiffs' Memorandum in Opposition to Motion to Dismiss Penelope Dalton Coffman (R. 35-43) is not herein included because its relevant content is essentially the same as that set forth in Plaintiffs' Argument herein. Also to avoid repetition, only the defendant's reply memorandum is set forth and the defendant's Memorandum in Support of Motion to Dismiss (R. 32-34) is not included in this addendum.

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Telephone: (801) 259-8173

IN THE SEVENTH JUDICIAL DISTRICT COURT  
IN AND FOR GRAND COUNTY, STATE OF UTAH

---

MARLIN L. STEWART and	:	
CANDICE STEWART, Husband	:	
and Wife,	:	CIVIL NO.
	:	
Plaintiffs,	:	
	:	COMPLAINT
vs.	:	
	:	
ALDINE J. COFFMAN, JR.,	:	
PENELOPE DALTON COFFMAN,	:	
COFFMAN, COFFMAN and WOODS,	:	
a professional corporation	:	
also known as COFFMAN and	:	
COFFMAN, ANTHONY M. THURBER,	:	
and KENNETH A. OKAZAKI,	:	
jointly and severally,	:	
	:	
Defendants.	:	

---

COME NOW the above Plaintiffs and for causes of action  
allege:

Preliminary Allegations

1. The Plaintiffs (both hereinafter called "the  
Stewarts"), are residents of Grand County, State of Utah.

2. The Defendants Aldine J. Coffman, Jr. and Penelope  
Dalton Coffman are and were at relevant times attorneys licensed  
to practice law in the State of Utah, residing in Moab, Grand

County, State of Utah.

3. The Defendants Aldine J. Coffman, Jr. and Penelope Dalton Coffman are members of the Defendant law firm Coffman, Coffman and Woods, a professional corporation also known as Coffman and Coffman, which law firm has its office in Moab, Grand County, State of Utah. The Defendants Aldine J. Coffman, Jr., Penelope Dalton Coffman and Coffman, Coffman and Woods are jointly referred to hereinafter as "Coffman".

4. The Defendant Anthony M. Thurber is and was at relevant times an attorney licensed to practice law in the State of Utah, practicing in Salt Lake City, Utah. Defendant Kenneth A. Okazaki is also an attorney licensed to practice law in the State of Utah, who undertook with Thurber to represent the Stewarts. Said Defendants are both hereinafter called "Thurber".

5. The Defendants are jointly and severally liable for the damages suffered by the Stewarts as herein after set forth.

6. On or/about June 3, 1981, the Stewarts as named defendants were each served with a Complaint and Summons in the matter of Canyon Homesteads, Inc., a Utah Corporation, as trustee for the Ticaboo Townsite Joint Venture, Plaintiffs, vs. Marlin J. Stewart and Candice Stewart, Defendants, in the Sixth Judicial District Court in Garfield County, State of Utah, hereinafter called "The Canyon Homesteads suit."

7. The Canyon Homesteads suit was based upon amounts



that Canyon Homesteads alleged was owing by the Stewarts for rent and other expenses arising from a sublease agreement between Canyon Homesteads as sublessor and the Stewarts as sublessee regarding a grocery store in Ticaboo, Garfield County Utah. The Stewarts possessed a claim against Canyon Homesteads, and against Plateau Resources, Inc. for breach of warranty, negligent misrepresentation and/or intentional misrepresentation which claim exceeded the amount of Canyon Homesteads' claim. Said claim of the Stewarts exceeded three million dollars for compensatory damages and punitive damages. The Stewart's claim was based upon false representations made by Canyon Homesteads officials that the planned town of Ticaboo would absolutely have at least 1,500 residents who would patronize the grocery store. Said untrue representation wrongly induced the Stewarts to enter into the sublease and act to their detriment. The town of Ticaboo thereafter failed to establish a significant population and the Stewarts' grocery store business in Ticaboo and in Moab, Utah therefore failed.

8. In order to defend against the Canyon Homestead suit and to assert their claim for damages the Stewarts retained Coffman who undertook to represent the Stewarts.

9. On November 19, 1981 Coffman filed an answer, and a counterclaim against Canyon Homesteads, Inc. and a "crossclaim" against Plateau Resources, Ltd. who Coffman named as a "Third

Party Defendant."

10. On December 4, 1981 Canyon Homesteads, Inc. and Plateau Resources moved to dismiss the Stewarts' counterclaim and "crossclaim" because of Coffman's failure to plead a cause of action and to otherwise follow appropriate rules of court.

11. On June 25, 1982 the presiding judge granted the motion and dismissed the Stewarts' counterclaim and crossclaim ruling that Coffman had failed to follow the rules of pleading and procedure. The court granted the Stewarts twenty days to file proper pleadings.

12. Coffman thereafter failed to file proper pleadings within the time allowed, failed to take proper steps to protect the Stewarts' right to assert their defenses and counterclaim and "crossclaim" and allowed the court to dismiss the Stewarts claim with prejudice.

13. When the Stewarts learned that Coffman had not protected and was not protecting their rights, they retained Thurber to represent them. Thurber agreed to immediately take the necessary steps to save the Stewarts defenses and claims. However, Thurber in fact took no steps to protect the Stewarts' rights, failed to file an amended counterclaim and "crossclaim" allowed the Defendants' counterclaim and "crossclaim" to be dismissed with prejudice and allowed a summary judgment to be entered uncontested against the Stewarts in the amount of

\$25,740.85 with interest thereon at the rate of 18 percent per annum.

14. The Stewarts were thereafter subjected to writs of execution and compelled to surrender to Canyon Homesteads a note and security agreement valued over \$66,000.00 in order to satisfy the judgment and to also pay attorneys fees and other expenses, necessary to negotiate the settlement.

First Cause of Action

15. The Stewarts hereby incorporate paragraph 1 through 14.

16. Coffman owed the Stewarts the duty to assert their defenses and claims with the reasonable care, skill, diligence and learning expected of the average lawyer. Coffman breached said duty in the following alternative ways, each of which was a proximate cause of the below-alleged damages to the Stewarts:

- a. Coffman was negligent in failing to properly and adequately plead the Stewarts' defenses and claims against Canyon Homesteads, Inc. and Plateau Resources, Inc. and other parties.
- b. Coffman was negligent in failing to timely file amended pleadings when granted leave to so do.
- c. Coffman was negligent in not protecting the Stewarts' rights in the course of his withdrawing as counsel for the Stewarts and in withdrawing

before he had protected the Stewarts rights.

17. As a result of the negligent conduct of Coffman, the Stewarts suffered the following damages which they are entitled to recover from Coffman:

- a. Loss of note and security agreement for over \$66,682.53 plus accruing interest used to satisfy judgment.
- b. \$1,570.93 paid to attorneys and appraiser in order to negotiate settlement of the judgment.
- c. Not less than \$3,000,000.00 for the loss of the value of the Stewarts' claims against Canyon Homesteads, Inc. and Plateau Resources.
- d. \$500,000.00 for emotional suffering resulting from loss of the Stewarts' right to their day in court, resulting from the loss of their claims and resulting from being subjected to writs of execution and being compelled to pay the judgment.
- e. Not less than \$1,000.00 for attorneys fees paid to Coffman.
- f. Other damages to be proven at trial.

Second Cause of Action

18. The Stewarts hereby incorporate paragraphs 1 through

17.

19. The Defendant Thurber owed the Stewarts a duty to assert their defenses and claims with reasonable care, skill, diligence and learning expected of the average lawyer. Thurber breached said duty in the following alternative ways, each of which was a proximate cause of the Stewarts damages as set forth herein.

- a. Thurber was negligent in failing to properly and adequately plead the Stewarts' defenses and claims against Canyon Homesteads, Inc., Plateau Resources, Inc. and other parties.
- b. Thurber was negligent in failing to properly assert and plead a motion to set aside the order dismissing the Stewarts' claim against Canyon Homesteads, Inc. and Plateau Resources.
- c. Thurber was negligent in not responding to the motion for summary judgment and in allowing the summary judgment to be entered against the Stewarts by default.
- d. Thurber was negligent in failing to properly assert and plead a motion to set aside the default summary judgment.
- e. Thurber was negligent in failing to immediately enter his appearance as counsel in the case.

20. As a result of the negligent conduct of Thurber the

Stewarts suffered the damages set forth in paragraph 17 above.

WHEREFORE, the Stewarts are entitled to judgment against the above Defendants jointly and severally in the sum of not less than \$3,569,253.46 as set forth above, for their costs of court and for such other relief as the court may deem just.

DATED this 22 day of November, 1985.

  
PAUL W. MORTENSEN

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IN THE SEVENTH JUDICIAL DISTRICT COURT  
IN AND FOR GRAND COUNTY, STATE OF UTAH

MARLIN L. STEWART and  
CANDICE STEWART, Husband  
and Wife,

Plaintiff,

vs.

ALDINE J. COFFMAN, JR.,  
PENELOPE DALTON COFFMAN,  
COFFMAN, COFFMAN and WOODS,  
a professional corporation,  
aka COFFMAN and COFFMAN,  
ANTHONY M. THURBER, and  
KENNETH A. OKAZAKI,  
jointly and severally,

Defendants.

MOTION TO DISMISS  
PENELOPE DALTON COFFMAN

Civil No.

COMES NOW the defendant Penelope Dalton Coffman and moves  
the Court for an Order dismissing her as a defendant in the  
above-entitled lawsuit on the basis that the plaintiffs'  
Complaint against her fails to state a cause of action upon which  
relief can be granted.

DATED this 26<sup>th</sup> day of December, 1985.

HANSON, ~~DUNN~~, EPPERSON & SMITH

Tim D. Dunn

TIM DALTON DUNN  
Attorney for Plaintiff  
Penelope Dalton Coffman  
175 South West Temple, #650  
Salt Lake City, Utah 84111

MAILED POSTPAID a true and correct copy of the foregoing  
this 26<sup>th</sup> day of December, 1985, to:

Paul W. Mortensen  
Attorney for Plaintiffs  
131 East 100 South  
P.O. Box 339  
Moab, Utah 84532-0339

Christine Anderson





POINT I

**DEFENDANT PENELOPE DALTON COFFMAN HAS  
ENGAGED IN NO CONDUCT GIVING RISE TO  
A CAUSE OF ACTION AGAINST HER**

Although in their Memorandum in Opposition to this Defendant's Motion to Dismiss Plaintiffs' point out that Penelope Dalton Coffman is referred to as "Coffman", along with other defendants, plaintiffs have made no specific allegations of conduct on the part of Penelope Dalton Coffman which has resulted in detriment to the plaintiffs. Plaintiffs have made blanket allegations of negligence but have not specified which acts or omissions were engaged in by which individuals. Defendant Penelope Dalton Coffman did not at any time engage in the representation of the plaintiffs and cannot be personally liable in the absence of specific actions on her part which give rise to a cause of action against her. See supplemental affidavit of Penelope Dalton Coffman.

POINT II

**MEMBERSHIP IN A PROFESSIONAL CORPORATION  
DOES NOT EXPOSE A MEMBER TO LIABILITY FOR  
THE ACTS OF OTHER MEMBERS OF THE CORPORATION**

Defendant Penelope Dalton Coffman has admitted that she is a member of the defendant law firm Coffman, Coffman & Woods, and that the defendant law firm is a professional corporation.

Plaintiffs' rely on language of the Utah General Partnership Act to allege that a member of a professional corporation is jointly and severally liable for the wrongful acts or omissions of any partner acting in the ordinary course of business. Coffman, Coffman & Woods is not a partnership; it is a professional corporation.

Plaintiffs cite language from the Professional Corporation Act allowing professionals the use of the corporation form for business purposes, while not altering the professional relationship between the professional and his client. This defendant points out that the language of the Statute specifically states that the act "does not alter any law applicable to the relationship between a person rendering professional services and a person receiving such services, including liability arising out of such professional services." (emphasis added) There is no mention of a relationship with or liability of other members of a corporation. The emphasis is on liability of a person rendering professional services to a person receiving such services.

Section 16-11-5 of the Professional Corporation Act reads as follows:

The Utah Business Corporation Act shall be applicable to professional corporations, and they shall enjoy the powers and privileges and be subject to the duties, restrictions and liabilities of other corporations, except where inconsistent with this act.

There is no section of the Utah Professional Corporation Act purporting to apply the provisions of the Utah General Partnership Act.

The Utah Business Corporation Act, which is applicable to the Utah Professional Corporation provides that shareholders are under no obligation to the corporation or its creditors other than the obligation to pay the full consideration for shares issued. 16-10-23, Utah Code Annotated, 1953 as amended.

The general law of corporations provide that corporate officers are jointly and severally liable only when two or more join or participate in a wrongful act. Directors are not liable for the wrongful acts of their co-directors if they do no connive with them, nor are the executive officers responsible for the neglect of duty, negligence, or misconduct of each other in their official relations, without proof of joint participation.

18B AM JUR 2d §§1719, 1720.

#### CONCLUSION

Members of a professional corporation are not vicariously liable for the acts or omissions of other members of the corporation without proof of joint participation. Because Penelope Dalton Coffman did not undertake to represent the plaintiffs, the Complaint, as it relates to her as a named defendant, should be dismissed, without prejudice.

DATED this 13 day of January, 1986.

HANSON, DUNN, EPPERSON & SMITH

13/  
TIM DALTON DUNN  
ANNE SWENSEN  
Attorneys for Aldine J. Coffman,  
Penelope Dalton Coffman, and  
Coffman, Coffman & Woods

CERTIFICATE OF MAILING

I hereby certify that I mailed postage prepaid this  
13<sup>th</sup> day of January, 1986, a true and accurate copy of the  
foregoing to:

Paul W. Mortensen, Esq.  
Attorney for Plaintiffs  
131 East 100 South  
P.O. Box 339  
Moab, Utah 84532-0339

*Larry A. [Signature]*

IN THE SEVENTH JUDICIAL DISTRICT COURT FOR GRAND COUNTY,  
STATE OF UTAH

---

MARLIN L. STEWART and CANDICE )  
STEWART, Husband and Wife, )  
 )  
Plaintiffs, )  
 )

RULING ON MOTION  
TO DISMISS

V. )

)  
ALDINE J. COFFMAN, JR., )  
PENELOPE DALTON COFFMAN, )  
COFFMAN, COFFMAN and WOODS, )  
a professional corporation, )  
aka COFFMAN and COFFMAN, )  
ANTHONY M. THURBER, and )  
KENNETH A. OKAZAKI, jointly )  
and severally, )  
Defendants. )

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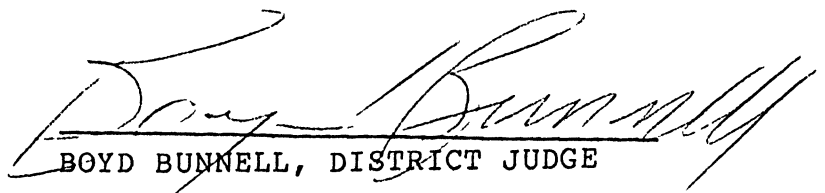
Civil No. 5370

In this case the Defendant, PENELOPE DALTON COFFMAN, has filed a motion to dismiss the case as to her on the ground that this Defendant had no personal involvement in the matters alleged in the Complaint.

The Motion is supported by a memorandum that argues the point, but there are no facts presented from which the Court can find as matter of undisputed fact that this Defendant, contrary to the allegations of the Complaint, had not personal involvement in the matters alleged.

THEREFORE, the Motion to Dismiss as to this Defendant is denied.

DATED this 15 day of January, 1986.

  
BOYD BUNNELL, DISTRICT JUDGE







TIM DALTON DUNN, Bar #0936  
ANNE SWENSEN, Bar #4252  
HANSON, DUNN, EPPERSON & SMITH  
A Professional Corporation  
Attorneys for Defendants  
Aldine J. Coffman, Penelope Dalton Coffman  
& Coffman, Coffman and Woods  
650 Clark Leaming Office Center  
175 South West Temple  
Salt Lake City, Utah 84101  
Telephone : (801) 363-7611

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IN THE SEVENTH JUDICIAL DISTRICT COURT  
IN AND FOR GRAND COUNTY, STATE OF UTAH

---

MARLIN L. STEWART and  
CANDICE STEWART, Husband  
and Wife,

Plaintiffs,

vs.

ALDINE J. COFFMAN, JR.,  
PENELOPE DALTON COFFMAN,  
COFFMAN, COFFMAN AND WOODS,  
a professional corporation,  
a/k/a COFFMAN and COFFMAN,  
ANTHONY M. THURBER, and  
KENNETH A. OKAZAKI,  
jointly and severally,

Defendants.

AFFIDAVIT OF  
PENELOPE DALTON COFFMAN

Civil No.

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STATE OF UTAH )  
: ss  
GRAND COUNTY )

PENELOPE DALTON COFFMAN, being first duly sworn, on oath  
deposes and says:

1. Affiant is an attorney licensed to practice law in the State of Utah.

2. Affiant is a member of the law firm Coffman, Coffman & Woods

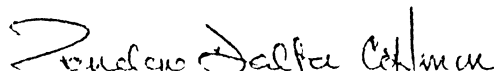
3. The law firm Coffman, Coffman & Woods is a professional corporation.

4. Affiant has not at any time undertaken to represent Marlin L. Stewart or Candice Stewart in any matter.

5. Affiant has not corresponded at any time with the Stewarts, or either of them, with regard to any legal matter.

6. Prior to the filing of this lawsuit, affiant never saw the file, never knew the contents of the file, never discussed with any other member of the lawfirm the contents of the file, and cannot contribute any information through discovery, having no personal knowledge of any of the events leading up to the filing of this lawsuit.

DATED this 16 day of January, 1986.

  
PENELOPE DALTON COFFMAN

Subscribed and Sworn to before me this 16th day of  
January, 1986.

Linda L. Canepa  
NOTARY PUBLIC

Residing at: Moab, Utah

My Commission Expires:

11-18-86

MAILING CERTIFICATE

I hereby certify that I mailed postage prepaid this  
16th day of January, 1986, a true and accurate copy of the  
foregoing to:

Paul W. Mortensen, Esq.  
Attorney for Plaintiffs  
131 East 100 South  
P.O. Box 339  
Moab, Utah 84532-0339

Linda L. Canepa

TIM DALTON DUNN, Bar #0936  
ANNE SWENSEN, Bar #4252  
**HANSON, DUNN, EPPERSON & SMITH**  
A Professional Corporation  
Attorneys for Defendants  
Aldine J. Coffman, Penelope Dalton Coffman  
& Coffman, Coffman and Woods  
650 Clark Leaming Office Center  
175 South West Temple  
Salt Lake City, Utah 84101  
Telephone : (801) 363-7611

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IN THE SEVENTH JUDICIAL DISTRICT COURT  
IN AND FOR GRAND COUNTY, STATE OF UTAH

---

MARLIN L. STEWART and	:	
CANDICE STEWART, Husband	:	
and Wife,	:	
	:	MOTION TO RECONSIDER
Plaintiffs,	:	
vs.	:	Civil No. 5370
ALDINE J. COFFMAN, JR.,	:	
PENELOPE DALTON COFFMAN,	:	
COFFMAN, COFFMAN AND WOODS,	:	
a professional corporation,	:	
a/k/a COFFMAN and COFFMAN,	:	
ANTHONY M. THURBER, and	:	
KENNETH A. OKAZARI,	:	
jointly and severally,	:	
	:	
Defendants.	:	

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DEFENDANT PENELOPE DALTON COFFMAN moves the court to  
reconsider its ruling on her Motion to Dismiss.

The court denied this defendant's Motion to Dismiss on January 15, 1986. That ruling was apparently made prior to the court's receipt of this defendant's Reply Memorandum and supporting Affidavit.

This defendant therefore respectfully requests that the court reconsider its Motion to Dismiss, including the Reply Memorandum and Affidavit currently on file herein.

DATED this 22 day of January, 1986.

HANSON, DUNN, EPPERSON & SMITH

(s)  
ANNE SWENSEN

MAILING CERTIFICATE

I hereby certify that I mailed postage prepaid this 23rd day of January, 1986, a true and accurate copy of the foregoing to:

Paul W. Mortensen, Esq.  
Attorney for Plaintiffs  
131 East 100 South  
P.O. Box 339  
Moab, Utah 84532-0339

Karen Marie Ose

IN THE SEVENTH JUDICIAL DISTRICT COURT FOR GRAND COUNTY,  
STATE OF UTAH

---

MARLIN L. STEWART and	)	
CANDICE STEWART, husband	)	RULING ON MOTION TO
and wife,	)	RECONSIDER MOTION
Plaintiffs,	)	TO DISMISS
vs.	)	
	)	Civil No. 5370
ALDINE J. COFFMAN, JR.,	)	
ET AL.,	)	
Defendants.	)	

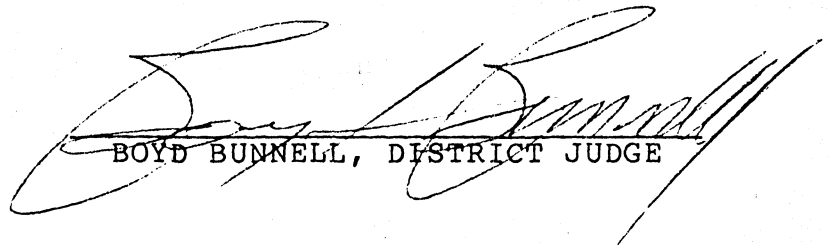
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The defendant, Penelope Dalton Coffman, has previously filed a motion to dismiss the complaint as to her, and the Court ruled on the motion the same day that a reply to the response of the plaintiff resisting the motion was mailed to the Court. Because of the uncertainty of time deliveries of the U.S. Postal Department, the Court will reconsider its prior ruling based upon the matters contained in defendant's reply memorandum.

The undisputed facts show that Coffman, Coffman and Woods was a professional corporation and that although the defendant, Penelope Coffman, is a member of that corporation, she had no personal professional involvement in the matters alleged in plaintiffs' complaint. The Court concludes as a matter of law from those undisputed facts that there is no cause of action against this defendant.

THEREFORE, the motion to dismiss this action as to Penelope Dalton Coffman is granted and the attorney for her is directed to prepare a formal order in accordance with this decision.

DATED this 27 day of January, 1986.

  
BOYD BUNNELL, DISTRICT JUDGE

CERTIFICATE OF SERVICE

Served the foregoing Brief this 14 day of July, 1986,  
by mailing four copies thereof, postage prepaid, to defendant's  
counsel of record, Tim Dalton Dunn and Anne Swensen, 650 Clark  
Leaming Office Center, 175 South West Temple, Salt Lake City,  
Utah 84101.

  
PAUL W. MORTENSEN