

2000

# Bonnie Loffredo and Donald A. Westenskow v. Scott W. Holt : Reply Brief

Utah Supreme Court

Follow this and additional works at: [https://digitalcommons.law.byu.edu/byu\\_sc2](https://digitalcommons.law.byu.edu/byu_sc2)



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Supreme Court; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Scott Waterfall.

Loenard E. McGee.

---

## Recommended Citation

Reply Brief, *Loffredo v. Holt*, No. 20000170.00 (Utah Supreme Court, 2000).  
[https://digitalcommons.law.byu.edu/byu\\_sc2/417](https://digitalcommons.law.byu.edu/byu_sc2/417)

This Reply Brief is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at [http://digitalcommons.law.byu.edu/utah\\_court\\_briefs/policies.html](http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html). Please contact the Repository Manager at [hunterlawlibrary@byu.edu](mailto:hunterlawlibrary@byu.edu) with questions or feedback.





**TABLE OF CONTENTS**

TABLE OF CONTENTS . . . . . i

ARGUMENT . . . . . 1

POINT I   The Rules of Professional Conduct Do Not  
          Establish Civil Liability in This Case  
. . . . . 1

POINT II   Interest Should Not Have Been Taxed Against  
          the Appellant  
. . . . . 3

CONCLUSION . . . . . 3

---

IN THE SUPREME COURT OF UTAH

---

BONNIE LOFFREDO and	)	
DONALD A. WESTENSKOW,	)	
	)	
Plaintiff/Appellees,	)	
	)	
vs.	)	
	)	
	)	
SCOTT W. HOLT,	)	Case No. 20000170
	)	
Defendant/Appellant.	)	Priority 15

---

---

**REPLY BRIEF OF APPELLANT**

---

The Appellant, Scott W. Holt, pursuant to Rule 24 of the Utah Rules of Appellate Procedure, submits this Reply to the Brief of Appellee.

**ARGUMENT**

**POINT I**

**THE RULES OF PROFESSIONAL CONDUCT DO  
NOT ESTABLISH CIVIL LIABILITY IN THIS CASE**

Under Point II of the Appellees' Brief, they argue that in order to be enforceable, a contingent fee agreement must be in writing, (Appellees' Brief, pp 9-13) Then, under Point V of their Brief, the Appellees argue that it was proper for the court to tax interest on the Appellant because "an attorney-client relationship is contractual in nature". (Appellees' Brief, p. 19.)

If an attorney-client relationship is contractual in nature, certainly an oral agreement on the nature of the fee payment can be made between the parties. This is especially so where the parties, as in this case, ratify that oral agreement with other writings. The only thing that the Rules of Professional Conduct regulate is attorney actions and subsequent discipline for failing to act within the rules. If Holt and Westenskow in this case agreed that there would be a contingent fee, that is up to them to decide to make such an agreement. If the contingent fee agreement was not in writing, that does not abrogate the agreement - all that such an oversight in not having a written fee agreement creates is perhaps some professional disciplinary consequences for Holt, not a requirement that he disgorge the fees.

It is clear in reading the trial court's memorandum decision in this case that the trial court was basing its ruling against Holt on the existence of the rule in the Rules of Professional Conduct requiring a written contingent fee agreement. Such a reliance on the Rules of Professional Conduct by the trial court was misplaced in this case.

In Point VI, the Appellees argue that the Rules of Professional Conduct does not create any civil liability, but that, absent a written contingent fee agreement, an attorney cannot take a contingent fee. However, an attorney and his client can agree,

orally or otherwise, to a fee. The argument made by Appellees' under Point VI is circular and non-sensical.

**POINT II**

**INTEREST SHOULD NOT HAVE BEEN  
TAXED AGAINST THE APPELLANT**

The Appellees cannot on one hand argue that there was not a valid contract and so the fees must be returned to Westenskow and then, on the other hand, argue that there was a contract and so interest should be taxed against Holt. It is either one or the other. If there was a valid fee agreement - oral or otherwise - then Holt should be able to retain the fees and face whatever disciplinary consequences (if any) that may flow from an alleged breach of the Rules of Professional Conduct in not having a written contingent fee agreement.


Either there was a contract and in such an event, Holt's retention of the fees was lawful and he does not owe anything to Westenskow. Or, on the other hand, there was not a contract, and Holt owes money, but not contractual interest. In either event, interest should not be taxed.

**CONCLUSION**

The trial court based its determination that Holt was not entitled to be paid the amount of the contingent fee on the Rules of Professional Conduct - which is clearly not allowed under the

rules themselves. Interest should not have been taxed because Holt did nothing wrongful.

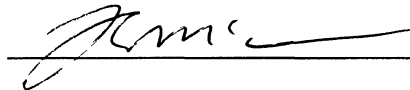
DATED this 6<sup>th</sup> day of December, 2000.

  
\_\_\_\_\_  
LEONARD E. MCGEE  
Attorney for Defendant

CERTIFICATE OF MAILING

I certify that I mailed two true and correct copies of the REPLY BRIEF OF APPELLANT to the following individuals at the address shown, via first-class mail, postage prepaid on this 6<sup>th</sup> day of December, 2000:

R. Scott Waterfall  
Catherine F. LaBatte  
Attorneys at Law  
4605 Harrison Boulevard, Third Floor  
Ogden, Utah 84403

  
\_\_\_\_\_