

## "Partnership" Accounting Denied To P.C. Member

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A lawyer who joins and participates as a member of a law firm organized as a professional corporation may not obtain a "partnership" accounting from the other lawyers in the firm. *Weiner v. Hoffinger Friedland Dobrish & Stern, App.Div., 2nd Dept.* (November 10, 2002).

Attorney Stephen L. Weiner became an associate of the law firm headed by Jack S. Hoffinger in 1979. In 1982, he was made a partner. The firm conducted its business in two separate groups - a litigation group and a corporate and real estate group. Although there was no partnership agreement, all the lawyers "conducted themselves as a partnership."

In 1991, the lawyers reorganized themselves as a professional corporation bearing the names of four of the lawyers. The corporate title included the designation "P.C." Attorney Weiner continued to be employed by the professional corporation under the designation "Stephen L. Weiner, P.C."

In 1996, Weiner left for a job in government. Dissatisfied with the fees paid to him for his services to the firm before his departure, Weiner and his P.C. sued the law firm for an accounting which Weiner characterized as a "partnership accounting." In his complaint, Weiner alleged that notwithstanding their status as members of a professional corporation, the lawyers who had originally formed the "Hoffinger partnership" had continued to work as partners. The trial court decided for the defendants after hearing all the evidence at trial. The issue was whether a partnership had continued to exist within the professional corporation. The court found that it had ceased to exist upon formation of the corporation.

The Appellate Court affirmed. The evidence showed that the firm had held itself out as a single entity, operating as a professional corporation. The P.C. was always the entity of record. Retainers were in the name of the P.C. The firm stationary listed only the P.C. The bank account was in its name and all checks were issued by it. There was one malpractice policy, one liability policy, one pension plan, one group health policy, all in the name of the P.C.

It was immaterial that the two separate practice groups continued to work in the same manner as before the organization of the P.C., that profits and expenses were accounted for separately within the two groups, or that the senior partners continued to refer to themselves as partners.

The appellate court said: "...a partnership may not exist where the business is conducted in corporate form, and partners may not be partners between themselves while using the corporate shield to protect themselves against liability" (citing *Weisman v. Awnair Corp. of America*, 3 NY2d 444, at 449-50).