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**E-76-10 Firm name: Use of “and Company”**

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An inquiry has been made to the State Bar Association Ethics Committee as to whether a professional corporation might add the words “and Company” in its corporate designation so that the firm name would appear as “Smith, Jones and Co., S.C.” It was stated that there are several shareholders in the firm and such a designation would more fairly reflect the shareholder status of persons whose name would not appear in the corporate name.

The applicable disciplinary rule is DR 2-101(B) of the Bar Association Code of Professional Responsibility which states:

A lawyer in private practice shall not practice under a trade name, (or) a name that is misleading as to the identity of the lawyer or lawyers practicing under such name, or a firm name containing names other than those of one or more of the lawyers in the firm, except that the name of a professional corporation or professional association may contain “P.C.” or “P.A.” or under symbols indicating the nature of the organization, and if otherwise lawful a firm may use as, or continue to include in, its name, the name or names of one or more deceased or retired members of the firm or a predecessor firm in a continuing line of succession. . . .

The applicable Wisconsin Statutes on service corporations is contained in § 180.99 of the Wisconsin Statutes and we find therein:

(4) Corporate Name. The corporation may bear the last name of one or more persons formerly or currently associated with it. A corporation organized under this section may also adopt a name which does not include the surname of any present or former shareholder; provided, that if it does so, it must record such name and names of its shareholders with the register of deeds of the county in which it is located, or has its principal office. The corporate name shall end with the word, “Chartered,” or “Limited,” or the abbreviation “LTD,” or the words “Service Corporation,” or the abbreviation “S.C.”

We find that the general business corporation statute that is applicable is § 180.07 which states:

“Corporate Name. The corporate name (1) shall contain the word ‘Corporation,’ ‘Incorporated,’ or ‘Limited’ or an abbreviation of one of such words; . . .”

We find, then, a distinction in the Wisconsin Statutes in the method of designating a professional corporation from the manner of designating a business corporation, but neither include the word “Company” as one word which might be used to designate corporate status. *Black’s Law Dictionary* says it denotes a society or association of persons . . . usually for some commercial or industrial purpose. It is a generic and comprehensive word, which may include individuals, partnerships, and corporations.

The Disciplinary Rule above quoted has not been interpreted in any Ethics Opinion of the American Bar Association. Historically, Canon 33 was the forerunner to DR 2-102(B) and it provided, in part:

“In the selection and use of a firm name, no false, misleading, assumed trade name should be used, . . . (and) care should be taken not to violate any law, custom or rule of court locally applicable. . . .”

Two Ethics Opinions interpreting this Canon are directly in point and forbid the use of the designation in question. In Opinion No. 587 of the Committee on Professional Ethics of the Association of the Bar of the City of New York (October 14, 1941) the committee held that:

“Any use of the words ‘and Company’ or ‘& Co.’ as a part of the name of a law firm would make the name so substantially both an assumed and a trade name as to violate Canon 33, . . . (would) violate local custom, . . . (and) would tend to lower the dignity of the profession. . . .”

Similarly, in Informal Opinion 377 of the Committee on Professional Ethics of the American Bar Association (unpublished), the committee boldly stated that “a law firm name may not end with ‘and Co.’” Informal Opinion 377 was cited with approval in Informal Opinion 402 of the American Bar Association (1931), where the committee opined that use of the phrase “and Associates” in a firm name also violated Canon 33.

All of this interpretation predated the Service Corporation Act and occurred in a period of time when the concept of the professional corporation as a formal legal practice was unacceptable. However, the service corporation concept has gained increased popularity, and a trend in the opinions sanctioning use of the term “and Associates” and perhaps “and Company” in firm names is discernible. In Formal Opinion 303 of the ABA (November 27, 1961), the committee gave limited approval to the practice of law in corporate form, provided “restric-

tions on liability as to other lawyers in the organization must be made apparent to the client.” Formal Opinions 310 (June 20, 1963), and 318 (July 3, 1967) overruled Informal Opinion 402 by allowing use of the term “Associates” following the name of one or more members of a professional corporation or association as to a method of indicating the limited responsibility of the members of such an organization. In Informal Opinion 745 of the ABA (July 20, 1969), the committee approved the use of the phrases “Corporation,” “Incorporated,” “Corp.,” or “Inc.” in a corporate law firm where local law so required.

No previous ethics opinion expressly approved or disapproved the use of the phrase “and Company,” or “& Co.” in the firm name since the adoption of DR 2-102(B). The foregoing opinions do, however, reflect a trend toward approval; yet this committee believes the “& Co.” is so allied with business or industrial purposes that the term is not well suited to describe a law firm, would constitute a very substantial departure from local custom and would tend to lower the dignity of the profession. Further, a strict interpretation of DR 2-102(B) finds no room for granting such license.

The committee therefore disapproves of the use of the term “& Co.” in the corporate name of a law firm.