Problem #34 - Departing the Firm

Ann has been an associate with ABC for five years and has been in the corporate section of the 15 member firm. She has three clients that she exclusively serves, and she works with approximately ten other clients. She now plans to leave and open a new firm with two other lawyers.

1) Preparations for departure: Can she rent an office, open a bank account, and order stationery without telling ABC of her plans to leave? See generally American Bar Association Formal Opinion 99-414. See Morgan, pages 562-573.

2) Notice to clients:

   a) Can she notify clients before her departure?

   b) Can she notify clients after her departure?

   c) Which clients?

   d) In what fashion?

   e) With what information?

   f) Can she enclose a form for them to sign and switch law firms?

3) Documents:

   a) Can she take documents [or copies] that she has prepared with her?

   b) Documents (or copies) prepared by other members of the firm?

   c) The files of her clients? See Annotation to Rule 1.16.

   d) See McKinnon v. Hamm, (Washington County Circuit Court, Civ 93-463)

4) Clients: What duty does she have to her present clients? See Rule 1.16(d).

5) Fees:

a) Her three clients have paid an annual general retainer. Can she claim any of that?

b) If she has been handling a personal injury case on a contingency basis, does she have a claim on that case or the eventual fee?

c) What risks do her clients face if they switch firms? See the Annotation to Rule 1.16.

6) Wrongful conduct:

See Sexton P.A. v. Milligan, 329 Ark. 285, 948 S.W.2d 388 (1997), page 219 of Brill.

7) Former Clients: Will she be permitted to oppose clients of ABC when she leaves? Rule 1.9(b).

8) Other issues:

a) What obligation does ABC have when mail or phone calls come to Ann after she has left the firm?

b) Suppose the client is upset with all the lawyers? Rule 1.16.

c) May a law firm include a contractual provision to prevent an associate from leaving and taking clients? See Rule 5.6(a). See pages 569-573 of Morgan.

d) Does Ann forfeit her annual bonus or her retirement package when she leaves?

e) If she goes to another law firm, can she tell them about her current clients? Remember because of Rules 1.9 and 1.10, the new firm does not wish to hire a tainted lawyer on a lateral move.

9) What other legal principles should be considered?

property
breach of contract
fiduciary relationships
unfair competition
trade secret
tortious interference with business relationships

2009/9