

Sharing the Ethical Responsibility

Rationalizing the decision to break an agreement

BY BRAD YARBROUGH



Let's say you are staffing a right of way project. You know of an agent who would be an ideal fit, but they are already committed to another project. Or, perhaps you are an agent contracted for one project when a broker contacts you about a new assignment. What are the ethical considerations? However infrequent the occurrence, this important question addresses agent stealing by industry recruiters and broker hopping by right of way agents.

Good ethical behavior requires that a person, while acting in their own best interest, not harm others in the wider community. An ethical person or organization has both a “me” and a “we” attitude. But when a broker is mostly concerned about their personal growth, cash flow and future success, they may be tempted to cross ethical lines. This might include offering a job to an agent that is known to have current and/or future project obligations.

However, it does take two to tango. The agent must also determine whether there is a valid agreement already in effect before making a new commitment. Both the broker and the agent have a responsibility to examine the ethics of any given situation.

Considering a few basic questions will make things clearer for both parties. The recruiter needs to ask, “Will making an

offer unduly entice the agent to break an agreement—whether oral or written, implied or defined—with their broker or client?” And the agent needs to address the question, “Would taking the offer break an agreement?”

Where to Draw the Line

So what about the independence of the agent? And what if the new opportunity would allow the agent to work closer to home, increase their earnings or offers other tangible benefits? What if the agent is facing an unexpectedly bad situation on their current assignment? Do these opportunities or situations provide a legitimate reason to make or take an offer to change projects or brokers? Situations like these can pose ethical dilemmas.

I've often wondered how a client company should respond to such a situation. Should they take steps to prevent agent stealing by a broker from whom it obtains services? I am familiar with a situation where a company, using broker-provided staffing services, encouraged agent hopping and facilitated an agent's switch while keeping them on the same project. Aside from what may be an isolated incident, most companies that use staffing brokers have thoughtfully decided to prohibit this kind of activity, while others have decided not to get involved in these situations whatsoever. I personally believe there is a role to be played by companies that use such brokers' services. But the primary responsibility for upholding ethical behavior lies squarely on the broker and the agent themselves.

In these situations, the solution is simple—keep existing agreements. Whether they are verbal or written, agreements state the expectations of the parties to a transaction. When it seems impossible to keep its terms, the parties should reconvene to revise the expectations and modify the agreement.

I encourage agents, brokers and clients to always work cooperatively with one another. Carefully define expectations, make clear agreements, and be committed to their promises. This will assure an ethical outcome, and our industry will be better as a result of such an unwavering effort. ✪



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