

# **Business Practices, Ethics and Legalities**

Dan Cox



THOMPSON  
COBURN LLP



LAWYER JONES?



# THE HOT POTATO CLIENT RULE

awyer represents Client A, a small client, and not a very lucrative engagement for her firm.

awyer is approached by potential Client B, about a matter that would be very lucrative for her firm, but that would be adverse to Client A.

he lawyer and the firm “drop” client A, and, *the following day*, sue Client A on behalf of new Client B.

That situation is covered by the rather lengthy conflict of interest rule in the Model Code of Professional Responsibility.

The lawyer and the firm were sanctioned by a court for violating the Code's conflict of interest provisions, noting that, obviously, the firm was working on the suit for Client B before they fired Client A (wouldn't have matter if they started working on the suit after the firing of Client A, that fact just made it more offensive)

he widely accepted “Hot Potato” rule is that a lawyer who withdraws – whether otherwise in conformity with the lawyer code or not – from representing a current client for the purpose of proceeding adversely to the client on behalf of another client does not thereby convert the representation into that of a former client.

[A]n attorney may not drop one client like a ‘hot potato’ in order to avoid a conflict with another, more remunerative client.”

That's the rule. Makes sense and seems rather obvious?

So I need a rule of conduct to tell me that isn't right?

Motivation there was clearly money, with no duty of



Chemical and Seed Companies, fertilizer  
companies,  
Ag retailers, grain handlers, etc.



Through those representations, we deal  
with

numerous business ethics violations

## The Case of the Wayward Chemical Dealer (business practices, ethics, legalities)

A case in deep south.

Individual was a chemical dealer. He had his own chemical retail company.

He was selling my client's crop seed without being an authorized dealer.

Here's what he did:

Sold seed to farmers without authorization in a number of ways.

1. A delivery service. This wasn't really a sale.

He ordered seed for growers through a licensed seed dealer, using the *growers' seed agreements* with my client and *the growers paid* that dealer. He took delivery of the seed and delivered it to growers with the chemicals they brought from him, as a “service.”

Makes no money on the transaction.

2. Bought seed from authorized seed retailers using his funds (which included monies growers prepaid him for their chemical accounts).

Took money from his account (using his company checks) and created his own accounts at different seed retailers.

Then he'd tell the seed retailer the name of the grower who was getting the seed he ordered, identifying the grower's seed agreement (but paying for it on his account).

Seed appeared properly reported to the seed company on each grower's seed license agreement.

The seed was delivered to him, he marked up the price, and re-invoiced the grower.

3. Financed seed purchases by growers, with promissory notes and crop liens.

Growers went to him needing seed but having no cash. He “advanced” the money, paying the seed retailer through his account. Growers paid him for the seed, at a marked up price, *and* with his finance charges, after harvest.

Growers may or may not have had a valid seed license.

4. Sold seed he bought from other growers.

Bought retail seed from farmers at a discounted cash price – something less than they paid for seed with farm loan proceeds.

Grower gets immediate cash for other needs (fuel, labor, etc.)

Example: he pays a grower \$400 for a \$600 retail bag of seed, then sells it, at an attractive discount to another farmer, say \$500.

“Within a 60-mile radius, it’s known that I’ll give cash for seed. If a farmer needs some money, I will buy seed from him.”

Kept it on a pallet in his chemical shop and people could see what he had for sale.

5. Bought seed from a retailer claiming it was for a particular grower he knew to have had a valid seed license, but who wasn't getting the seed.

Using his own funds, buys seed (\$600/bag) and sells to another grower, *who likely doesn't have a license*, for \$650/bag.

Might also buy an extra 10 bags for a grower for whom he was getting seed (order 20 bags, when the grower only needs 10).  
The extra 10 bags go on his pallet.

6. Bought seed from seed reps who were looking to sell promotional seed for cash.

Q: How does the rep account for that seed?

A: I don't give a rat's ass.

Who's the bad actor? Both?

His business practices = “Shady”

Ethical business practices?

Legalities?

-Rights violated (PVP, Patent, EPA  
reporting)

uring his deposition, he explained to me: “I know how to make money. If you got a load of chickens, and you want them brokered, I’ll broker them.”

is motivation was money. And he wasn’t constrained by ethics or any professional rules.

he fact is:

That chemical dealer didn't have professional code  
of ethics for his business.

ut the point is:

He had no personal code either.





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our Code defines the professional conduct and ethics  
*that is binding* on the members of this Alliance.

ou have assumed “the obligation of self-discipline  
*above and beyond the requirements of the law.*”

urpose of your Code?

Like ours, “to uphold the honor and maintain the dignity of the profession.”

Principles: “Personal Honor, Integrity and Professional Conduct”

hat all seems pretty straight forward and reasonable?

rticle II, para. 3:

“A Member shall not give professional opinion or make a recommendation without being as thoroughly informed as might reasonably be expected considering the purpose for which the opinion or recommendation is desired; and the degree of completeness of information upon which it is based should be made clear.”

Article III, para. 7:

A Member shall not accept a concealed fee for referring a client to another professional service or product.”

In medical profession, that’s illegal. Not here.

Example: grower claims you convinced him to buy a pesticide that he didn’t really need, was only close to/just at the particular threshold. Are you okay dealing with that claim?

e hired me to sue you/your company for the value of the product he didn't need and for the drift damage to his neighbor's farm from that product.

n discovery, I'm interested in finding out about the annual fishing trip that pesticide company takes you on.

till comfortable?

## Article V. Duty to the Profession

### para. 2)

A Member having positive knowledge of deviation from this Code of Ethics and By-laws by another Member *may* bring such deviation to the attention of the appropriate official of the NAICC.”

Lead your Code