

12th Annual
Mergers & Acquisitions
Institute

NEGOTIATING ETHICS?

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Wilson Chu and Barrett Howell

present

*Are You
SMARTER
Than a First Year
Associate?*



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Critics Love Us...



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*“This was the first ethics presentation
that I didn’t sleep through.”*

*Senior In-House Lawyer
BigOil, Inc.*



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Today's Lessons

- The Whole Truth
- Client Confusion
- Attorney-Client Privilege
- Conflicts of Interest



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Just the Facts

- CrabApple Energy, Inc. is negotiating a JV with Careless Ocean Drilling, Inc. to develop Algaetane, the super green fuel of the future, which applied topically also cures male pattern baldness
- You know that CrabApple's willing to contribute up to \$100M to Careless JV Corp.'s capital. Wanting to impress CrabApple's CEO with your negotiating skills, can you tell opposing counsel that \$25M is CrabApple's best-and-final offer?



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The Whole Truth...

(Just Puffing?)

- A. Yes, it's just posturing. Everyone knows lawyers always lie anyway.
- B. You have entered a grey area in which your statement could be considered mere "puffery" or alternatively could be a violation of the Texas Disciplinary Rules of Professional Conduct.
- C. You are a bully who needs to play nicer with the other children.



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The Whole Truth...

(Just Puffing?)

Texas Rule 4.01

In the course of representing a client a lawyer shall not knowingly:

- (a) make a false statement of material fact or law to a third person; or
- (b) fail to disclose a material fact to a third person when disclosure is necessary to avoid making the lawyer a party to a criminal act or knowingly assisting a fraudulent act perpetrated by a client.



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"Negotiating Ethics?"