

12<sup>th</sup> Annual  
Mergers & Acquisitions  
Institute

NEGOTIATING ETHICS?

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October 20, 2016



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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First appeared as part of the conference materials for the  
12<sup>th</sup> Annual Mergers and Acquisitions Institute session  
"Negotiating Ethics?"