

UT Law School M&A Institute Ethics Program

---

**ETHICAL ISSUES IN M&A  
TRANSACTIONS**

---

David I. Albin  
Finn Dixon & Herling LLP  
Stamford, Connecticut

Nathaniel L.  
Doliner Carlton  
Fields Tampa,  
Florida

Robert R. Kibby  
Munsch Hardt Kopf & Harr, P.C.  
Dallas, Texas

---

**SLIDES**

---

University of Texas Law School Mergers and Acquisitions Institute

Friday, October 6, 2023

{8016135; 1; 0000-014}

1

# Negotiations

1

2

1

## Puffery

### **PREAMBLE: A LAWYER'S RESPONSIBILITIES**

As a representative of clients, a lawyer performs various functions. As advisor, a lawyer provides a client with an informed understanding of the client's legal rights and obligations and explains their practical implications. As advocate, a lawyer zealously asserts the client's position under the rules of the adversary system. As negotiator, a lawyer seeks a result advantageous to the client but consistent with requirements of honest dealings with others. As an evaluator, a lawyer acts by examining a client's legal affairs and reporting about them to the client or to others.

2

3

## Puffery (cont.)

- Scenario:
  - Buyer and Seller are negotiating the consideration to be paid by Buyer for the equity of Seller.
  - The Seller executives are certain Buyer is willing to increase its offer, and requests that Nat give Buyer a little push toward a higher offer in order to speed up the negotiating process.

3

4

## Puffery (cont.)

- Rule 4.1 Truthfulness in Statements to Others

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 assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6.

4

5

## Puffery (cont.)

- Rule 8.4 Misconduct

It is professional misconduct for a lawyer to:

- (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
- (c) **engage in conduct involving dishonesty, fraud, deceit or misrepresentation; [or]**
- (d) engage in conduct that is prejudicial to the administration of justice...

5

6

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: Ethical Issues in M&A Transactions

Also available as part of the eCourse

[Hooked on CLE: January 2024](#)

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