

# FINN DIXON & HERLING LLP

UT 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

University of Texas Mergers and  
Acquisitions Institute  
Friday, October 7, 2022



ATTORNEYS AT LAW

1

1

## Negotiations

2



2

# 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.

# 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.

## Puffery (cont.)

### ■ Rule 4.1 Truthfulness in Statements to Others

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

- make a false statement of material fact or law to a third person; or
- 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.

## Puffery (cont.)

### ■ Rule 8.4 Misconduct

It is professional misconduct for a lawyer to:

- 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;
- commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
- **engage in conduct involving dishonesty, fraud, deceit or misrepresentation;**  
**[or]**
- engage in conduct that is prejudicial to the administration of justice...

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: Deal Ethics (REPLAY)

First appeared as part of the conference materials for the  
2023 First Friday Ethics (June 2023) session  
"Deal Ethics (REPLAY)"