

Hinderks' *The Legal Intelligencer* Column Discusses Questions of Negotiation Ethics

In the News

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[Mark Hinderks](#), Stinson LLP's former managing partner and current chair of the firm's Legal Ethics & Professional Responsibility practice group, published a column in Law.com's *The Legal Intelligencer*. The column features Hinderks' insight concerning attorneys making false or misleading statements to facilitate a deal in litigation matters.

"These questions of negotiation ethics implicate ABA Model Rule of Professional Conduct 4.1(a), which prohibits a lawyer from knowingly making a "false statement of material fact" to a third person, and from failing to disclose a material fact when necessary to avoid assisting a crime or fraud," Hinderks writes.

Hinderks explains how the rule can be implied or pragmatically recognized as an expectation by all concerned in negotiations that no reliance should be placed on limited types of statements. However, he cautions attorneys to "be careful not to extend this too far," as this rule does not authorize false statements of fact. Instead, the rule recognizes that statements of intention about price or value should not be taken as facts, but "as puffery in furtherance of a deal."

He concludes, "It is prudent either to not speak about your authority and to obfuscate if asked about it (e.g., to speak only in terms of what you are willing to offer rather than the amount for which you have authority), or to not obtain greater authority from a client than you want to disclose until it is needed."

Hinderks leads the firm's Legal Ethics & Professional Responsibility practice. He is the author of *Dear Ethics Lawyer*, a twice-monthly newsletter with questions and answers concerning legal ethics, and a co-founder and presenter of "Ethics for Good," a twice-annual stage show which uses humor, skits and real-world scenarios to teach legal ethics to lawyers. Hinderks has presented more than 125 programs on legal ethics over the past 30 years, has authored many articles and handbook chapters on legal ethics, and has been deeply involved in professional organizations with legal ethics and professional responsibility as their

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