K&L GATES



ETHICAL OBLIGATIONS DURING NEGOTIATIONS

Jamie Lavergne Bryan
February 2023

© Copyright 2018 by K&L Gates LLP. All rights reserved.

ETHICS

- What are they?
- How do we approach ethical reasoning?

K&L GATES

NEGOTIATING

Bargaining (give and take) process between two or more parties (each with its own aims, needs, and viewpoints) seeking to discover a common ground and reach an agreement to settle a matter of mutual concern or resolve a conflict.

3

K&L GATES

NEGOTIATIONS: THE ETHICAL DILEMMA

How do you accomplish your aims, meet your needs and ensure your viewpoint prevails while acting with the highest level of ethical integrity?

Model Rule 1.1: Must provide competent representation.

Model Rule 1.3 This duty "requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.



4

K&L GATES

DOES GAINING AN ADVANTAGE REQUIRE DECEIT?

Scholarly studies reveal that:

- "Commercial negotiations appear to require a talent for deception;" and
- When someone asks, "What is your bottom line, few negotiators tell the truth;
  - They dodge the question;
  - They change the subject; or
  - They lie."

5

K&L GATES

DOES GAINING AN ADVANTAGE REQUIRE DECEIT?

- To gain a concession on what really matters, even the most cooperative bargainers:
  - inject straw issues;
  - exaggerate the importance of minor problems; and
  - communicate they are firm on positions, when they are, in fact, flexible – **in short, they bluff about their intentions.**

6

UT LAW CLE THE UNIVERSITY OF TEXAS TEXASLAW

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)

Title search: Ethical Obligations in Negotiations

First appeared as part of the conference materials for the
18th Annual Renewable Energy Law Institute session
"Ethical Obligations in Negotiations"