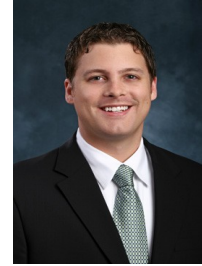


## **In The Race for Full Compensation, Don't Disregard the Ethical Rules**

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Times are tough and the drive to attract and retain clients is keen. But, does a difficult economy justify desperate measures that run afoul of our ethical requirements? The answer is a resounding “No.”

In The Florida Bar v. Barrett, the Florida Bar disbarred an attorney for splitting fees with a minister who solicited potential clients on the attorney’s behalf while the patients were recovering.<sup>1</sup> Could this happen in an eminent domain case? In answering this question, eminent domain practitioners should consider whether our practice area lends itself to situations of this type.

In eminent domain cases, the condemning authority is required to make the owner of the property a written offer which is supported by an appraisal of the property *prior* to the condemning authority filing an eminent domain proceeding.<sup>2</sup> At the time of written offer, land owners often are unaware that their property is going to be taken and normally do not have legal representation. However, the scope of public projects is well known to those who keep their finger on the pulse of local, county, and state government. In an attempt to procure a right to a statutory attorney’s fee, some attorneys may see this as an opportunity to preempt the condemning authority’s offer by directly contacting landowners.<sup>3</sup> Florida Bar approved advertisements may be sent to landowners. However the Rules Regulating the Florida Bar (“the Rules”) expressly prohibit *direct* client solicitation.<sup>4</sup>

While the public is likely unaware that the Florida Constitution gives them a right to “full” compensation and that the offer from the condemning authority may not be “full”, this does not give an attorney the right to willfully violate the Rules.<sup>5</sup> Rule 4-7.4(a) expressly prohibits a lawyer *or their agents* from soliciting clients in person, by telephone, and by any other communications not meeting the strict requirements for written communications in part (b) of 4-7.4.<sup>6</sup> The reason for the rule is simple: “The situation is fraught with the possibility for undue influence, intimidation, and overreaching.”<sup>7</sup> Potential clients feel pressured into representation without the opportunity to fully evaluate their options.

<sup>1</sup> Florida Bar v. Barrett, 897 So.2d 1269,1275 (Fla.2005)

<sup>2</sup> §73.015(1), Fla.Stat.

<sup>3</sup> §73.092(1)(a), An attorney has a right to a fee for the “...benefits achieved for the client.”

<sup>4</sup> Florida Bar Rule 4-7.4

<sup>5</sup> FLA.CONST. Sec.6; Robert Kirby, 19 GEO. J. LEGAL ETHICS 757, 757-759 (2006); Ohralik v. Ohio State Bar Ass’n, 436 U.S. 447, 462 (1978) (holding that the protection of the public from direct attorney solicitation is legitimate and important state interest).

<sup>6</sup> Florida Bar guide on advertising:

[http://www.floridabar.org/TFB/TFBResources.nsf/Attachments/3AC2BAA33CF257D885256B29004BDEE8/\\$FILE/Handbook%202010%20\(indexed\).pdf?OpenElement](http://www.floridabar.org/TFB/TFBResources.nsf/Attachments/3AC2BAA33CF257D885256B29004BDEE8/$FILE/Handbook%202010%20(indexed).pdf?OpenElement)

<sup>7</sup> Comment , Rule 4-7.4.

The Rules are clear and preclude attorneys and/or their agents (i.e. office staff, consultants, etc.) from directly contacting potential clients. Complying with the Rules puts us all on equal playing ground and strikes the proper balance between informing the public of their rights to full compensation and the potential for overreaching. Further, failing to comply with the Rules is an ethical violation and lessens our profession.