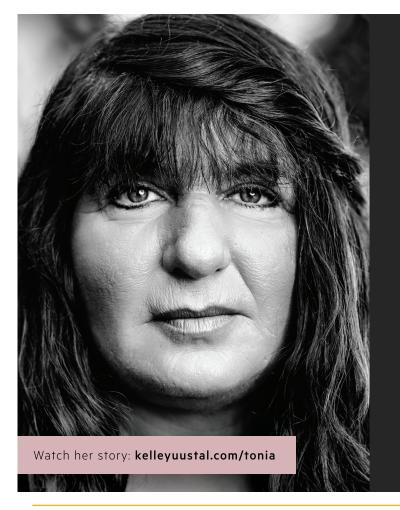
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Broward County Bar Association

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CONTRIBUTING WRITERS

Jamie Finizio Bascombe Judge Michael Davis Maria Fischer Alan B. Grossman James Heaton Fernanda Pedroso Brendan A. Sweeney

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ON THE COVER

The Broward County Bar Association and the BCBA Publicity Committee wishes everyone a wonderful holiday season. The committee members meet monthly and work collaboratively to provide up to date legal content to our readers. If you are interested in joining the Publicity Committee, please let us know by emailing lauren@browardbar.org.

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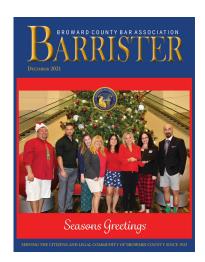














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Jamie Finizio Bascombe, Esq.

Dear Friends, Happy Holidays to all! It is hard to believe that we are already at the end of this calendar year and almost at the start of 2022! Life is moving fast and the BCBA is moving along with it and growing by leaps and bounds. We have had a busy end of the year and are packing in as much activities as possible to serve our members and our community.

Last month we celebrated Veteran's Day and honored our legal military colleagues across the state at our Inaugural patriotic event The Florida Patriot: Honoring Legal Leader Veterans Service to Country & Community, this new program was created by our very own Executive "Director" (like the reference to the "Director" in a James Bond government mission movie). I was honored to kick off and present our circuit's award to a dear friend and respected jurist, Judge Edward H. Merrigan. The event held at the bartision for all in attendance

and via zoom was an inspiration for all in attendance.

On November 19th, we celebrated the ribbon cutting ceremony of the Jack B. Tuter, Jr. Complex Trial Courtroom. I was honored to represent our bar association as a stakeholder in this beautiful large state of the art Courtroom that we will be able to utilize as attorneys for complex case trials and ceremonial events. The naming of the courtroom as the "Jack B Tuter, Jr." Courtroom is well deserved and much appreciated by our Chief Judge. During the ceremony he thanked the BCBA for its support over the years, our assistance during the challenging times of the pandemic and collaborating between the bar and the judiciary toward the goal of efficient justice.

We want our membership to be aware of the Florida Bar Board of Governor's vote that was taken, that shot down the proposal of "The Improvement of the Delivery of Legal Services," a proposal which was not indicative of what would have resulted. Our BCBA volunteer task force headed by well-read leadership, did a valiant job and our circuit's resolution was followed by other circuits around the state, as well. We thank each of you that worked on the committee which reviewed the issues, and our Resolution then took action in helping us to defeat the dangerous proposal that could have had a drastic negative effect on our practice of law.

We continue to produce and run many CLE events and seminars on various topics. Our BCBA section and committee leaders are hard at work to put on seminars to reach every aspect of the practice of law. The spring will be busy with a new BCBA Section on Native American Law, they will be putting on a seminar in February. Our well-known Bench & Bar Convention is also in the works of being planned, keep an eye out for the save the date coming soon. To stay up to date on all the events that we are offering, check our calendar on our website, there is always something interesting brewing from our BCBA.

And rounding out the end of the year, our annual holiday party has become an event to not be missed in South Florida. We are so happy that we are back on this year to celebrate the holidays live with our membership. Our event promises to be fresh and exciting at The Fort Lauderdale Museum of Discovery and Science in downtown Fort Lauderdale. We hope to see you all there on Thursday December 16th from 6-9 p.m. Our BCBA leadership team looks forward to welcoming you in person and celebrating community and relationships together. In the end, we are all connected and build upon each other and the personal relationships that we make will last a lifetime. Some of my best and longest friendships with other lawyer colleagues were formed years ago from a bar event meet up, seminar or committee meeting. I value those lifelong bonds and encourage all members to form those same bonds with our legal community members through our organization. We are all in this together!

We are looking forward to bringing in a new year of success for all our members and supporting each of you in your goals. Each of you is essential to our BCBA team and we thank you for your support of OUR BCBA!

"In your home this holiday season, may your walls know joy, may every room hold laughter, (may your kitchen be filled with good food and wine) and may every window open to great possibility"
-Mary Anne Radmache (but I added in the parenthetical mention of food and wine)

Yours truly, Jamie Finizio Bascombe



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An emphatic "happy holidays" to you and your loved ones! It is indeed the most wonderful time of the year. The final stretch of the year where you get to spend quality time with your loved ones, (hopefully) take a much needed break from work, and listen to Mariah Carey's "All I Want for Christmas is You" as many times as you wish until your family decides to disown you (I will miss you all). However, most importantly, the month of December is a time to reflect and reset for the year to come – and the Young Lawyers Section is here to help!

Earlier this year we launched the YLS Solo and Small law firm Committee.

Co-chaired by YLS members Jaclyn O'Connor and Amanda Decker, this committee acts as a bridge between YLS and the BCBA's Solo and Small law firm section. This committee will focus on mentorship, networking, client referrals, and law firm management and growth for the solo and small firm attorneys in Broward. Get involved early and stay active to get the most reward out of this committee! Any YLS members who work in a law firm with four or fewer attorneys are welcome to join at no cost! Simply come out to the next BCBA Solo and Small section event or email Patricia Hernandez at patricia@browardbar.org.

Starting early 2022, YLS will be hosting a mindfulness and yoga membership series with our friends at the BCBA Health and Wellness section. This six part series will feature once a month in person yoga classes, instruction on improving your mental and physical well-being, and even CLE credit for each session. We are hammering out the logistics and hope to provide additional amazing incentives to join this initiative such as yoga mats, journals, and more! This series is geared toward everyone regardless of ability, knowledge, or limitation. Stay tuned for more information.

Lastly, I hope to see you all at the BCBA holiday party! Please remember that YLS is collecting toys for our Holiday in February event benefiting youth in the foster care system. You can also help by making a financial contribution to YLS, with the donation being directed to our Holiday in February. Because of your contributions, we are able to collect dozens of great toys for this event and ensure that these kids have a blast!

I will leave you with the wise words of one the most influential poets of my generation, who was probably speaking about the community joining together to give back to those less fortunate (or definitely something along those lines) when she said: "I don't want a lot for Christmas, there is just one thing I need. I don't care about the presents, underneath the Christmas tree. I just want you for my own, more than you could ever know. Make my wish come true. All I want for Christmas is you [to join with me in giving back to those in need]."

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SUCCESSFUL GOLF TOURNAMENT RAISES MONEY FOR CHARITY

by Maria Fischer

Thank you to everyone who participated in our 2021 Walter G. "Skip" Campbell, Jr. Memorial Charity Golf Tournament last month! Although it started off with a little rain, over 150 golfers enjoyed a beautiful day at Jacaranda Golf Club. Multiple tables at the holes provided food, beverages, and entertainment, and golfers participated in competitions for the longest drive, straightest drive, the drive closest to the pin, and a putting contest. We then enjoyed a delicious lunch and participated in a silent auction and multiple raffles. The Young Lawyers Section appreciates every golfer and sponsor who helped make this year a great success, with special thanks to our Title Sponsor, Krupnick Campbell Malone Buser Slama Hancock.

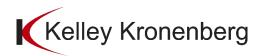
We are proud to announce that your contributions raised \$25,000.00 for Voices for Children of Broward County! Voices for Children is a very deserving not-for-profit that will use this donation to boost its advocacy efforts for children in foster care. By collaborating with the 17th Judicial Circuit Dependency Court Division and the Guardian ad Litem Program, Voices provides advocacy, case management, age-appropriate referrals, and wraparound services to help meet each child's needs. Voices is dedicated to making the foster care experience better for all children in the child welfare system. Last year alone, Voices served over 2800 children and continues to work tirelessly to provide programs to the impacted foster care youth in our community. Each golfer and sponsor can be proud of their contribution to the community!

Planning is already underway for our 2022 tournament, so stay tuned for more information. The Young Lawyers Section looks forward to seeing all of our golfers and sponsors again next fall. To all of our members and supporters, we wish you a very happy holiday season!

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GOING FOURTH

by Alan B. Grossman

MUSINGS BY THE FOURTH DISTRICT COURT OF APPEAL PROPOSALS FOR SETTLEMENT – WHEN IS A CLAIM A CLAIM?

To know whether language is ambiguous it may be helpful to consider the Latin root of the word *ambiguus* that relates to a double path. Thus, one manner of understanding "ambiguous" is to search for two different ways that questioned language can be interpreted.

The Fourth District Court of Appeal recently examined when terms of a Proposal for Settlement¹ (PFS) are ambiguous. In *Ehlert v. Castro*, 4D20-2007, after rejecting the defendants' PFS for \$100,000.00, the trial court entered judgment for the plaintiffs for \$307,049.19.

Based on the PFS, the defendants moved for an award of attorney's fees. The plaintiffs argued that an ambiguity in the PFS rendered it ineffective.

The challenged wording stated that the amount "includes all claims by and between [the parties] which could be included in a Final Judgment." Noting that this personal injury action involved tenant-plaintiffs against the landlord-defendants, the trial court also found that the questioned language included "any claims between the parties in the future," such as unpaid rent.

In disagreeing, Fourth District considered the competing doctrines of the PFS law. On one hand a PFS "fails to satisfy the 'particularity' requirement if an ambiguity within the proposal could reasonably affect the offeree's decision." By contrast, "[C]ourts are discouraged from 'nitpicking' proposals for settlement to search for ambiguity."

The key point in the Court's holding is that "[t]he existence of a different claim at the time the proposal is made appears to be a critical factor in determining whether a PFS which releases 'all claims' between the parties includes other claims." The Court rejected the trial court's reasoning that the existence of the parties' landlord/tenant relationship could result in a future claim for non-payment of rent constitutes the existence of a different claim. To contrast that thinking, the Court examined several cases where two claims were in existence but the language of the PFS was unclear if the settlement applied to both or only one, such as cases involving both a UM claim and a PIP claim.

Support for the holding in *Ehlert* existed in a case where the PFS required a plaintiff to "satisfy all relevant liens," which the Fourth District held was not ambiguous because there was only one lien involved. Not stated in that opinion was the corollary on which the Fourth District relied in *Ehlert* that even though there could be a future lien, but where only one lien then existed to be satisfied, the PFS was not ambiguous.

But here is where caution sets in. In a contrasting case settlement of an insurance claim was deemed as ambiguous noting that the insured-plaintiff had served a bad faith notice to the insurer during the litigation. There, the Court held that because there were two claims, even if one was still in pre-litigation status, ambiguity existed where the PFS stated "all claims."

The lesson here is for parties to ensure that there are no other pending claims, most particularly ripe claims ready for litigation to commence. So parties should be clear as to whether, for instance, a three-day notice demanding rent to a tenant has been served, or a claim of lien and the required documents have been filed and served in a construction dispute. The holding of *Ehlert* teaches litigants that if a pre-litigation claim is ripe, the PFS in a pending case must be super specific in dealing with that early claim to preserve the validity of the PFS.

¹ Section 768.79, Florida Statutes, and Rule 1.442, Fla. R. Civ. P.

Alan Bryce Grossman, Esq., is an AV rated attorney, practicing more than thirty years, concentrating in civil litigation, appeals, and mediation. He can be contacted at 954-651-0615 or GrossmanLawMiami@gmail.com.



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COLLABORATIVE LAW



COLLABORATIVE COURT, LET'S ALL GET ALONG!

by The Honorable Michael Davis

This coming year I will have the honor of presiding over the 17th Judicial Circuit Pro Bono Collaborative Court Project, a program started by Judge Andrea Gunderson, and currently chaired by Judge Dale Cohen.

Collaborative Law is a process that enables divorcing couples to reach agreements and resolve their differences in a respectful and productive way; without protracted and painful litigation.

Collaborative Practice involves a team of specially trained professionals, such as lawyers, therapists and accountants, who work together with the families to help them find solutions that will be in the best interest of the entire family. It's a wonderful alternative to litigation that works to preserve relationships and allow the parties to divorce with dignity.

The professionals involved with the program do so entirely on a pro bono basis, giving of their time, experience and resources in order to help Broward's families in need. It's truly an honor to take the reins of this incredible program and I look forward to working with our professionals and families collaboratively.



Judge Michael Davis is a circuit court judge for the 17th Judicial Circuit. Davis served as a senior assistant attorney general from 2014 until his appointment to the bench in 2016. From 2012 to 2014, he previously worked as a senior child best interest attorney with the Florida Guardian Ad Litem Program.

WHY LITIGATE WHEN YOU CAN COLLABORATE

by Fernanda Pedroso

The Collaborative Process constitutes a paradigm shift in our community, both for the legal profession as well as the public. For too long, family law issues have been generally perceived as always needing to be contentious and requiring families to prepare for litigious war. That perception has at times been perpetuated by a legal community that is operating under routine legal posturing rather than problem solving communications.

Over time, the legal community has recognized that families in turmoil do not need more obstacles thrown their way. The Collaborative Process goes a step forward by providing families with a capable team of professionals who help assist them toward the finish line while informing them from all the relevant perspectives: legal, financial and emotional.

Broward County is doing its part to promote this process with the 17th Judicial Circuit Pro Bono Collaborative Court Project. With the help of Judge Davis and its volunteer co-chairs, the program is offering self-represented litigants the opportunity to benefit from this multifaceted approach to resolving family law cases, while also providing Florida family law attorneys newly trained in the collaborative process the opportunity to engage in this type of practice. Our goal is to expose families and legal professionals to this process for as much of the community to benefit from the positive interactions and outcomes associated with this process. **B**

> Fernanda Pedroso is a collaboratively trained family law attorney representing clients in South Florida. She is a board member of the Collaborative Family Law Professionals of South Florida and co-chair of the 17th Judicial Circuit Pro Bono Collaborative Court Project





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LEGAL HEALTH CORNER CLOSING OUT 2021 AND STARTING 2022

by Brendan A. Sweeney

ITEMS TO CONSIDER DURING THE HOLIDAY SEASON

During the dead heat of August every year without fail I find myself singing the famous Byrds song "Turn! Turn! Turn! (To Everything There Is A Season.)" The reason for this is not heat exhaustion. I know that with a blink of an eye, all of a sudden, it will be the holiday season and a new year. As attorneys we need to be thinking of the end of the 2021 calendar year and the beginning of 2022.

The holiday season is a very important time for attorneys. I was told by one of my mentors that as a young litigator your best chance to ever really get a break and have a vacation without any court hearings or deadlines is during the holidays. While I used to relish the holiday season with the idea of vacationing and unplugging completely, reality has kicked in. Now I take some time off during the holiday season, try to unplug for a couple of days, and work on closing out the year and starting the new year. Below are some of the items that attorneys may want to consider during this holiday season.

Review your contract for legal services. The contract for legal services that you have been using as your form for the past three years needs to be reviewed carefully. Perhaps during the past year, you had some clients try to not pay for your services in full or fail to pay a cost they are responsible for by manipulating a loophole or issue with your contract. My office's contract for legal services is a rather fluid document and gets amended as necessary, depending upon the underlying facts and circumstances. If you aren't sure about some provisions in your contract for legal services, consider hiring an ethics attorney that is familiar with the nuances to review and analyze it. Additionally, consider sharing and comparing your contract for legal services with your colleagues. It is always beneficial to have additional sets of eyes reviewing it.

Review your accounts receivable. I used to work for a rather old school litigation partner. He would regularly bring his associates into his office at the beginning of October and go over accounts receivable closed matters with the associate tasked to the matter. The partner would provide a list of accounts that needed to be settled. His instructions were always the same "Get as much as you can now, I do not care about the discount. They will never pay this next year. Settle this account now, they will not pay you during the holiday season." While some of us may be more sensitive about the discount than others, try to do this at the end of each year. The last thing you want to do is bring an old accounts receivable matter into your cases for the new year. This would seriously have a detrimental impact upon the idea of starting fresh for 2022.

Holiday cards/Metric. I was recently having lunch with a colleague of mine and he was relishing the fact that he had to spend all this money and time on business holiday cards. It was almost like he was bragging about the cost

and the amount of the cards. I have known this attorney for years and bragging isn't anything I ever experienced with him. So I asked "Why are you so happy about spending all this money and why are you telling me specifically that you had to order four hundred cards." The attorney laughed at me and said, "This is how I track how my networking is going. When I started my firm sixteen years ago, I only had to order twenty-five cards. Now because of my efforts and networking, I am increasing the amount of cards that I order every year." While it doesn't have to be holiday cards, make sure you have a metric that you can analyze your marketing and networking activities.

Lunches. With the pandemic the idea of having a business lunch may have changed. However, it is still a good way to catch up with people. I try to make a list of individuals that I want to have lunch with. The list is broken down into three columns: one column is lunches with fellow attorneys that I know or have worked with; the second column is lunches with existing clients; and the third column is for new meetings. I try to also schedule my lunches as convenient for the parties as possible and try to meet at a mutually convenient location.

Be grateful. Willie Nelson said it best: "When I started counting my blessings, my whole life turned around." We as attorneys have a lot of stress in our work lives. Dealing with this stress as well as clients being in difficult situations can easily lead to negative thinking. This year, in particular, we as attorneys need to be grateful. There are a ton of things to be grateful for, ranging from no longer having to be in traffic for hours to show-up for a rather routine uniform motion calendar hearing, to being able to regularly conduct your ZOOM depositions with your pajama pants on. The more grateful you are the more positive your thinking will be.

While this was not meant to be an exhaustive list, it provides some items and areas that attorneys should consider focusing on during the holiday season in order to successfully close out 2021 and start 2022 in the best position possible.

Brendan A. Sweeney, Esq., LL.M., Sweeney Law, P.A. a boutique commercial law firm in Fort Lauderdale, Florida, is an AV Preeminent Martindale Rated Attorney, that has been selected as a Florida Super Lawyer and Florida Legal Elite in 2021, and regularly handles construction, real estate, and business litigation matters throughout Florida.





HAPPY HOLIDAY'S IN THE AGE OF ZOOM!

- BCBA PUBLICITY COMMITTEE

