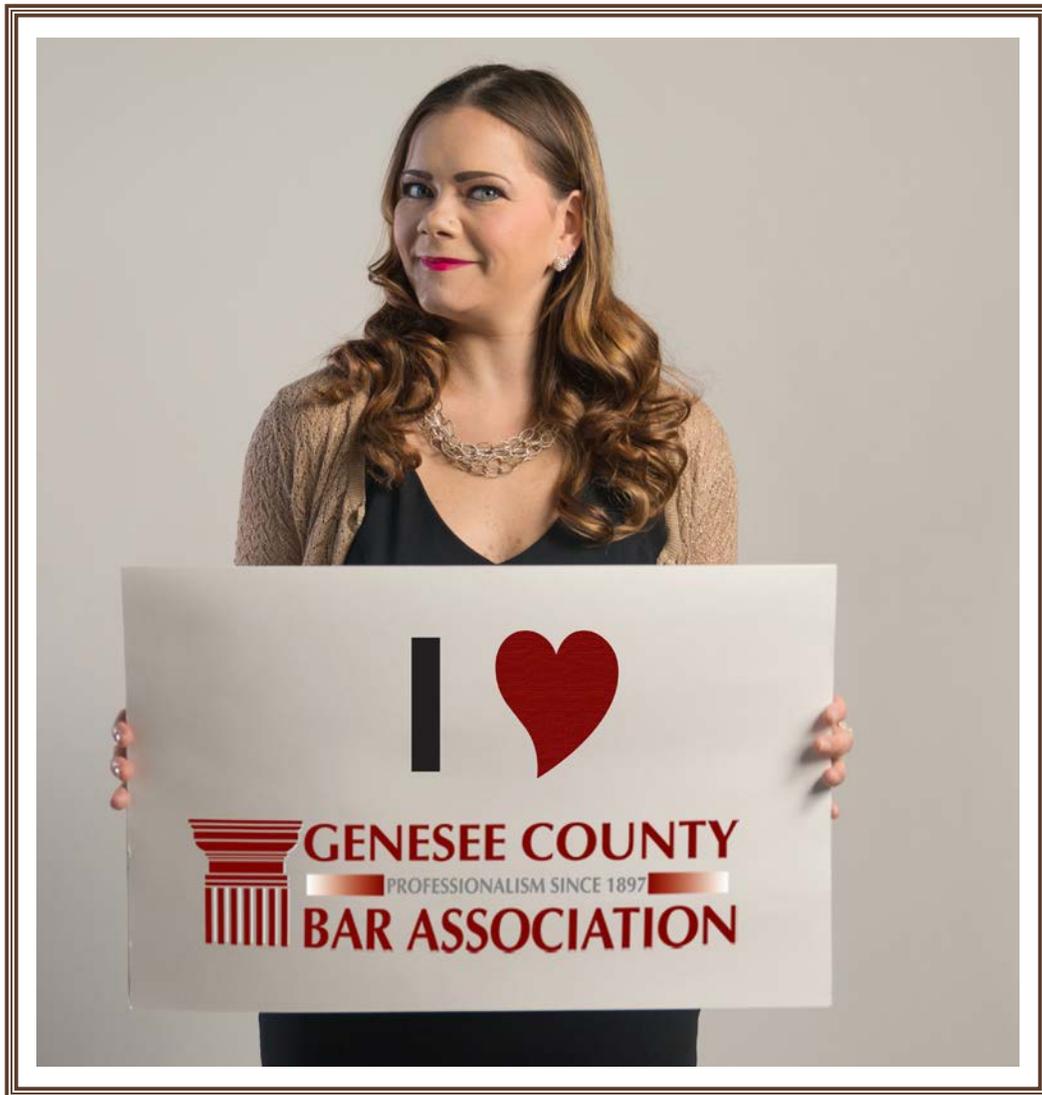


July/August 2018

# BARBEAT

Genesee County Bar Association



Ten Years Later

District Courts are Fifty Years Old

Are Your Fee Agreements Up to Par?

How to Hijack Your Mediation

Our Senior Attorney Luncheon Report

Judge Marable Swears In Former Student of the Month Charis Lee as a New Attorney

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# Ten Years Later

By Jessica J. Hammon, President

It's that time again! A new president is inducted, and through our first few speeches and articles we express our ideas of how to serve our members, recruit new ones, and promote the GCBA in the greater community. Traditionally we focus on how to engage the younger generation of attorneys. That is a fantastic goal and I plan to do this by using social media sites such as Facebook and live videos which can both draw in new members and engage our current ones.



Technology is here and integrated into our daily lives. Keeping old traditions while bringing in new ones is essential to the growth of any organization. The more we can use it, the better. If you've been to any of the GCBA's educational events you know that we present

some of the best content and speakers around. Let's use technology to take these events to a broader range of people. Out-of-county attorneys and non-legal sectors of the community could certainly benefit from what we are presenting. By reaching a wider audience we can enhance our reputation as the go-to organization for legal guidance in Genesee County.

I also want to involve us more in the community. By hosting events such as a blood drive for the American Red Cross, volunteering at soup kitchens, and continuing our Christmas Dinner and Barristers' Ball, I hope to make our charitable side more noticeable. An attorney's reputation in the community is essential for client recruitment

and retention, and an attorney's reputation as a giving person can only enhance their standing. More importantly, being involved in charitable ventures is good for one's heart and soul, thereby helping us care for ourselves. And speaking of self-care, don't be surprised if you see more activities and outings – having fun and being active is good for our bodies and minds!

I shared a story when I was passed the Spoon of Power explaining why I became involved in the bar association. It's simple. Someone took an interest in me, and it planted a seed.

While waiting for my bar results I got an invitation to lunch from Ramona "Mona" Sain, then the Executive Director of the bar association. I had no clue what the bar association was, what it did, and or why it should matter to me. Mona sat me down, and in true Mona style said, "Listen. You need to join the GCBA. You'll meet people that you are going to need to know throughout your career. You'll find people that will help you when you need help, and you'll make friends with people who know what it's like to be a new attorney out on her own." And it wasn't just the things that Mona said that made me want to join. It was the fact that SHE was saying it to ME. I thought, "Well, if Mona Sain thinks I'm important enough to take to lunch and she thinks it's important for me to



Jessica J. Hammon



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join the GCBA, then I'm going to do it!" Had Mona not reached out to me and showed an interest, I likely would not be writing this article.

As active and concerned members of the GCBA, you are in a position to enhance our membership. This is not a job for one president or one board. We need your help if we want to continue the laudable goals of our great organization. If each of us approached a new attorney, or even a not-so-new attorney who isn't a member, and took an interest in them, let them know that we care about them in the way that we want them to care about the GCBA, then I guarantee we will have new members by this time next year. We need to show them the benefit of being a member – not

tell them, show them. There will be many opportunities this year for us to do so.



Ten years ago I became a member of the GCBA. Being a part of this organization has opened so many doors for me and introduced me to so many wonderful people whom I would otherwise not have known. I am honored to serve as your President and look forward to working together to promote the GCBA.

## District Courts are Fifty Years Old

By Hon. Vikki Bayeh Haley

The 67th Judicial District Court-Third Division ("Mt. Morris Court") located at 11820 N. Saginaw St., Mt. Morris, MI 48458 celebrated its 50th anniversary on June 28, 2018 from 3:00 pm to 5:00 pm at the Mt. Morris Courthouse. The celebration also honored Judge Larry Stecco who served as judge of the court from 1997 through 2014. The celebration was open to the public. The Mt. Morris Court joined district courts across Michigan that are marking the 50th anniversary of the creation of district courts in Michigan. As required by the 1963 Constitution, legislation took effect on June 17, 1968, creating district courts and abolishing justices of the peace and circuit court commissioners.

District court is known as the people's court because millions of citizens interact with this court each year. The Mt. Morris Court has nearly 15,000 new cases filed each year. Our court has been serving Michigan citizens well for the last 50 years by being fair, accessible, and efficient. Our team at the Mt. Morris Court is very proud of our service to people of Mt. Morris Township, Mt. Morris City and Genesee Twp. and look forward to providing even great service in the years ahead.



Hon. Vikki Bayeh Haley



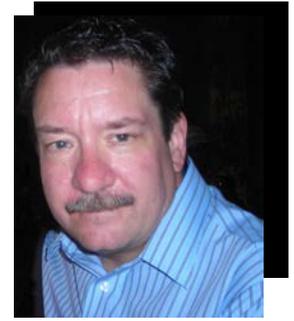
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# Are Your Fee Agreements Up to Par?

By John Streby



John Streby

Contract law affords lawyers, at the time of retention, a narrow window of opportunity to define the terms in a way that will work to their advantage if relations with the client ever deteriorate or the client refuses to pay.

Every lawyer should have a set of printed fee agreements that are neither excessively long, nor overly short. Further, the client should be instructed to read the fee agreement before signing it. While failure to read before signing has no legal significance, it is still a talking point that some judges will not ignore.

I recommend that every attorney assess his or her fee agreements in terms of whether it does or doesn't contain these terms:

- Identify the client, the name of the case, the case number (if known) and the court where it is pending or will be filed, **and limits the representation to that court, case and client** - State that the attorney is not responsible for appealing any adverse ruling;
- The hourly rate of compensation;
- The frequency of billings;
- If the client is small, non-public corporation, that the person signing the agreement is signing **both** as a corporate representative **and** in his or her personal capacity;
- If the client is a more substantial entity, does he reflect the authority by the individual to bind the corporation, and how such authority was obtained;
- Admonish clients that they **will** be charged for telephone calls, e-mails, text messages and similar forms of communication; it is useful to remind clients that e-mail is a far more efficient method than phone calls or letters;
- Timing of payments and a statement that "time is of the essence";
- Whether paralegal time is to be charged, and at what rate;
- **Importantly**, state that the attorney has **no obligation** to advance costs, which must be advanced by the client; it is useful to advise clients that such items as fees for facilitators, expert witnesses, guardians ad litem, deposition costs and similar items can quickly reach well into the four figures;
- A **duty** on the client to review billings and raise any disputes promptly;
- An obligation to pay reasonable attorney fees in the event that suit must be started against the client for non-payment;
- State that the client file will be shredded not less than six years after the work is concluded, without further notice to the client, and obligate the client to request the file, if at all, within that time frame;
- Provide for 7% simple interest on any fees owed for more than 30 days;
- Finally, recognize that the attorney holds a charging lien on the monetary recovery in the case in which the services were rendered.

The law on attorney liens is not simple, and I urge readers to download the excellent article by David Skidmore, "Legal and Ethical Issues Raised by an Attorney Acquiring a Lien or Mortgage Against Client's Real Property," accessible online. I also recommend the "Fee Collection by Quick-Reference Guide," published by the State Bar of Michigan and also available online. As these authorities reflect, an attorney's charging lien arises automatically by law when the obligation accrues but the client refuses to pay, but curiously cannot be created by contract. Accordingly, the following language would be appropriate in any fee agreement:

Under the common law of the State of Michigan, the attorney holds a lien upon any monetary recovery generated in the proceeding described above. The client hereby recognizes such lien and agrees not to thwart, impede, or frustrate its enforcement, other than by the means set forth below. Specifically, if the client states, in writing, the basis of any disagreement, the attorney shall take formal steps within 30 days to obtain a judicial resolution of the dispute. The written statement described above does not relieve the client from separately answering, in writing, any lawsuit or motion initiated by the attorney. Until such dispute is resolved, the funds in question shall remain in the attorney's trust account.

Unfortunately, the convergence of a dismal economy, relentless competition and a declining client base have made it more difficult than it was a few short years ago to get the pay we deserve. These recommendations won't bring more clients into your waiting room, but they will reduce the frustration of fee disputes that originate with misunderstanding. Our time and effort, along with the stress that it brings, shouldn't be given away.

# How to Hijack Your Mediation

By Alan F. Himelhoch

While good faith mediations produce remarkable results, some participants are only out to submarine the process. Here's a short outline of the textbook way to go about that sabotage.

1. **Attorney Takeover** - Unfortunately, some attorneys decide that they need to control the mediation process. I have seen attorneys order their clients not to respond to questions, or not to say anything without their permission, *even to the mediator in a private caucus room!* Attorneys have even told me when I (the mediator) can talk and given lists of prohibited subjects.
2. **Take an All or Nothing Approach** - As a little boy visiting Tijuana, my father told me that if I didn't want to haggle, to give a ridiculously low offer like \$2 on a \$30 price tag. Some parties start negotiations with a ridiculously high demand (more than they requested in the Complaint) or with a very lowball offer (circling zero like a vulture) and refuse to move at all during the course of the mediation. At the very least, those "efforts" waste everyone's time and money, including their own.
3. **Fly the "White Elephant" Without Proofs** - How often does someone in settlement negotiations plead poverty? A popular move is to turn out your pockets indicating that your side has no money (white elephant ears). Of course, that is only legitimate when the proposed debtor provides detailed financial statements, tax returns, and/or a sworn bankruptcy application, none of which will willingly be provided.
4. **The Infamous "My Plane Leaves At . . ."** - Despite what may have been agreed by the parties, one

participant will often schedule a plane flight or a meeting to impose a time constraint. That way, if they don't believe the discussion is productive, they have an excuse to cut things short. Have you ever noticed that if you are making good progress and/or are in the throes of putting together the final document, that the frequent flyer always finds a way to get a later flight or to leave the next morning?

5. **Send Another Attorney with Minimal or No Knowledge of the File** - Goodbye client control or this allows the "new player" to be a "bad cop," hoping the bruiser approach will net a good settlement. If it doesn't work, the failed mediation may soften everyone else up for the return of the "good cop."
6. **Be the South End of a Northbound Donkey** - The goal here is to get some skin from the other party and everyone else at the mediation (including the poor receptionist starting when they first march in the door). You know the behavior, just a miserable cur? Everyone is graced with their presence until they decide that the process is useless and leave, a self-made prophecy.

These techniques play out in multiple mediations. I hope this weakens more bad apples than those enabled with a new game plan. Such is life.

*Alan F. Himelhoch is a longtime mediator and business litigator with Winegarten, Haley, Lindholm, Tucker & Himelhoch, PLC.*



Alan F. Himelhoch

## Our Senior Attorney Luncheon Report

By Richard Ruhala, Coordinator

At our last luncheon meeting on June 14, Rick McNally spoke to us about how some insurance companies are modifying their auto drivers' policies to limit liability for "family members." He advised us to check our policies to see if such modifications have been made by our own auto insurance carriers.

It was announced that there will not be monthly luncheon meetings for July or August, with the next meeting now scheduled for September 13<sup>th</sup> at 12 noon at Logan's Restaurant.

It was noted that the February issue of our *Michigan State Bar Journal* listed the following attorneys in our area who have completed 50 years of membership with the State Bar of Michigan:

*Richard P. Banas Carl Bekofske Tom M. Donnellan Arthalu Lancaster Thomas R. McCombs James A. Ruhala William C. Shedd*

The State Bar of Michigan, at its annual convention in Grand Rapids on September 28, will present the Bar's 50 year pins to the above-named recipients. All of our members are invited to attend this luncheon and to congratulate these honorees. Also, we wish to thank Don Rockwell for serving as our State Bar President over this past year. In the meanwhile, enjoy our Michigan Summer.



Richard Ruhala

## *Judge Marable Swears In Former Student of the Month Charis Lee as a New Attorney*



Charis Lee

Flint 67th District Judge Herman Marable, Jr. conducted a swearing-in and admission to the bar ceremony for a "Judge Marable Student of the Month in 2005." Charis Lee, a native of Flint, passed the July 2017 Texas Bar Examination. The ceremony was held March 23, 2018 in Judge Marable's Courtroom with family, friends and legal community members in attendance.

Lee is a senior labor relations representative at Lockheed Martin Aeronautics Company in Marietta, Georgia. Prior to her current position, she worked as a human resources professional while also serving honorably for 8 years in the Army National Guard as a Human Resource Specialist and Public Affairs Specialist. While serving our country, Lee graduated from college and law school.

Lee is a 2017 Cum Laude graduate of the Thurgood Marshall School of Law at Texas Southern University in Houston. She graduated from James Madison College at Michigan State University in 2014 with a B.A. in International Relations. She is a 2007 graduate of Carman-Ainsworth High School where she played varsity basketball and softball. During those years she was a volunteer with the Girl Scouts as well as the Greater Flint Youth Leadership Council.

She has credited her participation in the Judge Marable Student of the Month program as a major inspiration that led her to become an attorney. Ms. Lee had the opportunity to job shadow Judge Marable and participate in a campus visit to Michigan State University over a decade ago as a Student of the Month.

"The swearing-in of Charis Lee as an attorney to me represents the completion of a circle. I am very excited and proud to help her begin her career as a lawyer in the very spot where it all began for her, said Judge Marable. Attorney Lee thanked her supporters during the ceremony. She indicated that her goal is to return to Flint and become a community leader. During the ceremony Lee was also presented with a letter recognizing her achievement by the Association of Black Judges of Michigan.

The Judge Marable Student of the Month/Year program was established in 2004 by Judge Marable and his Citizens Advisory Committee to encourage Genesee County high school students to focus on academic achievement and career goals. Each month during the school year a 10th grade student is recognized. At the end of the school year, one of the monthly awardees is selected as Judge Marable Student of the Year and receives a \$500.00 prize.

Tenth grade students who are Genesee County residents, or who attend public, charter, private, or home schools located in the county are eligible to apply for the Judge Marable Student of the Month/Year Award.

Further information and applications for the Judge Marable Student of the Month/Year Award are available from the [www.judgemarable.net](http://www.judgemarable.net) website or by calling 810-597-7795.

## *Congratulations*



Congratulations to those sworn in at the GCBA Admission Ceremony on May 31, 2018. Pictured: Hon. Geoffrey L. Neithercut, Xuemeng Fitch, Stefan L. Yambao, Immediate Past President Hon. Mark W. Latchana, and Timothy H. Knecht, Centennial Inns of Court President.



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**<https://www.facebook.com/pages/Genesee-County-Bar-Association/142757561178>**

# Making the Most of a Marathon Negotiation

By Marc D. Morse



Marc D. Morse

Negotiations have lasted for months and a deal is close. However, the necessary fortitude to continue holding session after session is diminishing and a deadline is looming. The parties agree to one final session, a session that will last until a deal is reached, no matter how long it takes.

Attorneys must be prepared to encounter this scenario during any negotiation. A marathon negotiation session is no easy task, and taking on such an endeavor must be made worth the cost. Below are several tips for maximizing the effectiveness of any marathon negotiation session.

- 1. The Right Team:** Build a team capable of contributing ideas and making decisions. Hours of negotiating will dull even the sharpest mind. Your team must be able to rely on each another. Always have a team member capable of making decisions. No one wants to reach a standstill in negotiations at 2 a.m. because the decision maker is at home sleeping.
- 2. Remain Professional:** As the clock continues its unrelenting march, tensions will escalate. Marathon sessions are not for minor discrepancies; they are to find common ground on the most divisive issues. When frustrations mount, professionalism becomes invaluable. Remember that everyone is sacrificing sleep and time in an effort to reach an agreement. A dedication to professionalism will make negotiations much more productive and result in a better deal for all parties.
- 3. Know When to Quit:** After hour upon hour of negotiations, no one wants to admit an agreement cannot be reached. However, your aim should always be to reach an agreement that aligns with your client's interests. If the parties reach a point where they can no longer function effectively, negotiations should end. Never reach a deal simply to say that a deal was reached.
- 4. Stay Hydrated:** Marathon negotiations can continue through the night and into the next morning. Whether you prefer coffee, soda, or energy drinks, it is always important to stay hydrated during a marathon.



**From the GCBA Board:**  
Congratulations to Charlie Forrest on your retirement!  
We wish you all the BEST life has to offer.

# Chapter 13 Bankruptcy Series

By Sherri L. Belknap



Sherri L. Belknap

Last year, the Genesee County Bar Association completed a survey to determine the best way to serve our members with educational programs. After receiving the responses, the GCBA Bankruptcy Committee planned the Chapter 13 Bankruptcy Series, a lunchtime discussion, instead of the normal full day seminar.

On March 2, 2018, Roxane Kaye and Rachel Hawrylo presented "Divorce during Bankruptcy in Chapter 13." The program discussed the intersection of divorce and bankruptcy. Thanks to the generosity of the Genesee County Bar Foundation lunch was provided for those who attended. Roxane and Rachel discussed different scenarios when a married couple decide to divorce during, before, or after bankruptcy.

On April 13, 2018, Melissa Caouette from the Chapter 13 Trustee's Office presented updates as well as a discussion on Student Loans in bankruptcy. She answered many questions from those in attendance. The discussion and materials provided on student loans was educational. It was another well attended lunch seminar.

On May 4, 2018, Chadd O'Brien of Elga Credit Union and Karen Rowse-Oberle of Butler, Butler & Rowse-Oberle presented "Creditor Objections to Chapter 13." During the luncheon, we learned some of the creditors' pet peeves with debtors' Chapter 13 Plans. Further, they discussed things that they look for when objecting to plans.

On June 19, 2018, the Honorable Daniel S. Opperman presented his views in bankruptcy. Judge Opperman introduced his shared law clerk who is assisting with the Bay City/Flint courts. Further, he answered questions from those in attendance.

The Chapter 13 Plan Series was successful and fits within the GCBA strategic plan by providing accessible educational opportunities. The Chapter 13 Plan Series brought members and non-members together and allowed them to network over lunch. We look forward to planning additional lunch time series.



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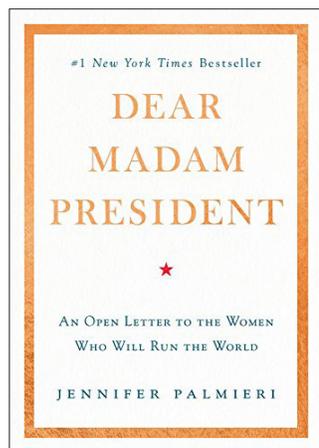
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# Book Review: Dear Madam President

By Roberta J.F.Wray



Roberta J.F. Wray



By Jennifer Palmieri  
Grand Central Publishing  
March 2018

The sub-title tells the story: “An Open Letter to the Women Who Will Run the World.” This small book by Jennifer Palmieri is a guide for future leaders that has been hailed as essential reading for our young women (and men).

Palmieri was director of communications for the Hillary Clinton campaign, as well as having worked in the Obama administration. Her reflections on the campaign form the background for the book.

In the introduction is the foundation: The notion that “it doesn’t matter whether you are a man or a woman, so long as you can do the job” (p. 4) is false. The models for leadership from time immemorial have been male and “Our founding documents, our theories of leadership and governing, were all written by men, for men.” (p. 5) It’s time, Palmieri says, that we “reimagine leadership roles for women and men both.”(p. 5)

The titles (and subtitles) of her chapters are the guidelines she urges:

1. **Introduction: Dear Madam President;** Chart your own path.
2. **The Day After;** When the unimaginable happens, imagine what else may be possible.
3. **Brace Yourself: Move Forward, Draw Fire;** Nothing draws fire like a woman moving forward.

4. **In the Room;** Speak up—your voice is needed.
5. **Nod Less, Cry More;** It’s your world and you can cry if you want to.
6. **Keep Your Head (and Your Heart) During a Storm;** You need both to steer the ship to safety.
7. **Embrace Your Battle Scars;** Show us what you have been through. It tells us what we can survive.
8. **Her Story;** Don’t search for your role in his story — Write your own.
9. **Undefeated;** Even when you lose, refuse to be defeated.
10. **Bound Together;** We are bound together. Now we need to unite.

The closing paragraphs hold the challenge:

Don’t wait for permission or an invitation or expect to find your place in someone else’s story. . . . Don’t let anyone, man or woman, decide if you matter. . . . The generations of women before us, who made countless, mostly anonymous, sacrifices in the struggle for equality, paved the way for real change. In spite of the long odds against them, they went after the impossible. It is up to us . . . to finish the job. (p. 174)

In less than 175 well-spaced pages are lessons learned over a lifetime of trying to make a difference in what has been a “man’s world.”

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Law School: Western Michigan University,  
Thomas M. Cooley Law School

***Attorney: Stephanie A. Witucki***

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