

May/June 2020

# BARBEAT

Genesee County Bar Association



Photo credit: Shelley R. Spivack

Tina Said... "MyTime is Up"

Recent Cases Seeking Protection of Rights of Immigrants in Michigan

FFCRA Expands FMLA and Provides Emergency Paid Sick Leave

Unemployment in the Time of Pandemic

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# Tina Said... “MyTime is Up”

By Sherri L. Belknap, President



Sherri L. Belknap

**T**hank you for the opportunity to serve as your President. I am honored to have represented the Genesee County Bar Association on the Board of Directors as well as through the ranks of the Executive Committee. I love being a part of a great organization that is made up of amazing individuals who support one another through all of life's moments.

During my speech at last year's Annual Meeting, I stated that I would try not to burn down the building. I was successful! On Friday, March 13, 2020, Tina said that I should have also mentioned that I would not flood the building. (She holds me to such high standards.) Unfortunately, that is what happened. Tina was called into the office after our upstairs tenant found water in the foyer and throughout the second floor. Our office, also, sustained water damage. Tina immediately began to work on remediating the problems with Servepro to clean out the water while Eileen corralled all the toilet paper, paper towels, and Kleenex. (Smart lady considering the Great Toilet Paper Shortage of 2020.) Our office is dried out, but repairs will be necessary.

Repairs could not be completed immediately due to Governor Gretchen Whitmer's Executive Order which required everyone to shelter in place in order to avoid further spread of COVID-19. It may have stopped our construction repairs and closed our office, but it did not stop our office from working. Tina, Eileen, and Star worked diligently to keep members updated on the many court

notices and maintain incoming calls for Lawyer Referral. I know that I already wrote an article about these ladies, but I am extremely proud of them for their dedication to our Association and the work that they do. Thank you, ladies!

The team that I work with on the Executive Committee are exceptional professionals who brought forth thoughtful discussions and ideas that will shape our Association for the future. I am proud of the work that we did this year. The Association is in good hands with Mike Tesner, William Brickley, Nancy Chinonis, and the Board of Directors.

In July 2012, Jessica Hammon started on the Board of Directors as the Young Lawyer's Delegate. Unfortunately, her time on the Board is coming to an end. But do not be upset; Jessica will continue to serve our community. She was appointed to the 67<sup>th</sup> District Court bench in Burton. Congratulations Jessica!

Lastly, thank you to all the Committee Chairpersons for their hard work. I am proud of the work that you do for the Committees. I could not have asked for better people to help me lead this year. Thank you.

Even though my time is coming to an end as President, I hope to still be an active member of the Association. Once my term ends, I will be able to focus more on the 125<sup>th</sup>

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Anniversary book which I am really excited about researching, as well as talking to members about their experiences. I already started pulling some old minutes from the basement

archives. Tina, Eileen, and Star cannot get rid of me yet. But Tina said....my time is up.

## Recent Cases Seeking Protection of Rights of Immigrants in Michigan

By Gregory T. Gibbs

Although Michigan ranks 16<sup>th</sup> in the nation in states with unauthorized immigrants, Michigan has the second highest rate of arrests of immigrants by ICE agents. See <https://trac.syr.edu/immigration/reports/555/> As a result, Michigan detention centers are overloaded and their occupants are awaiting hearings for over six months. Many have been deported without hearings. Many of these individuals lived in the USA for most of their lives before being detained as a result of the current administration's aggressive deportation measures. Many of those detained face the risk of death from COVID-19 because, as federal detainees, they do not receive the benefit of state orders relaxing the bond requirements for pretrial detainees. This article discusses some of the strategies that civil rights groups have implemented in order to preserve and protect their rights.

*Hamama v. Adducci*, 284 F Supp 3d 997 (ED MI 2018) was a class action filed by the ACLU to stop deportations of hundreds of Iraqis who had been living in the United States for decades, but were previously ordered deported, either for technical immigration violations or for past convictions. They remained in the USA because, as a matter of policy, the United States had not deported people to Iraq due to dangerous country conditions and the Iraqi government's refusal to issue travel documents until a deal was cut by the current administration allowing for their deportation.

The ACLU suit sought to stop the deportations on the grounds they would face persecution, torture or even death if deported, either because they are members of minority religions or because they are Western-affiliated. The statutory grounds asserted were based on U.S. obligations under the Refugee Act and the Convention Against Torture ("CAT"), the Immigration and Nationality Act (the "immigration statute" or the "INA") prohibiting the U.S. government from removing noncitizens to a country where they are more likely than not to face persecution or torture. The constitutional challenge alleged the Due Process Clause gave Petitioners the right to counsel to challenge their removal, and a fair proceeding, before they are removed from the country. Judge Mark Goldsmith granted a nationwide preliminary injunction barring deportation of Iraqis while they accessed the immigration court system, giving them time to file motions to reopen

their immigration cases based on the changed country conditions or legal developments in the decades since their cases were decided.

*Hamama v. Adducci*, *supra* However, when ICE did not release the Iraqis, Judge Goldsmith granted a second injunction ordering them to provide the Iraqis with bond hearings, which allowed around 150 class members to return home while their cases pended. *Hamama v. Adducci*, 349 F Supp 3d 665 (ED MI 2018) The Sixth Circuit Court of Appeals reversed the lower court, a petition for an *en banc* hearing was denied, and the injunctions were dissolved. However, hundreds of Iraqis were able to secure hearings, and many won their immigration cases while the appeals took place. Nevertheless, many Iraqis were deported and at least one, Jimmy Al Dauod who lived in the USA since he was a child, died in Iraq. The ACLU has appealed to the U.S. Supreme Court.

The COVID-19 virus has presented a different set of issues threatening the health of detained immigrants while they await their hearings. In early April 2020, the American Civil Liberties Union of Michigan, along with national affiliates and volunteer attorneys, filed petitions seeking writs of *habeas corpus* against the U.S. Immigration and Customs Enforcement (ICE) in federal court on behalf of immigrants detained by ICE in crowded jail facilities in Calhoun, Monroe and St. Clair Counties at the height of the deadly COVID-19 pandemic. The legal organizations sought the immediate release of people who are in civil detention and who, due to age and/or significant medical conditions, are at high risk for serious illness or death in the event of COVID-19 infection, claiming the only known way to protect against serious illness or death caused by the virus is social distancing coupled with strict hygiene, both of which were virtually impossible in a detention setting. US District Court Judge Judith Levy issued two opinions granting the relief requested on behalf of three inmates on the grounds that their detentions were unconstitutional under the 5<sup>th</sup> and 8<sup>th</sup> Amendments to the US Constitution. *Malam, et al v Adducci, et al*, Case No 20-10829 (D ED MI, 2020). Until the virus is contained I am sure we can expect additional petitions of this nature.



Gregory T. Gibbs

# FFCRA Expands FMLA and Provides Emergency Paid Sick Leave

By Linda Graham



Linda Graham

As the coronavirus (COVID-19) was spreading across the world causing illness, death, government-issued stay-in-place orders, school closings, shuttered businesses and laid off workers, the federal government enacted the Families First Coronavirus Response Act (FFCRA), which temporarily (April 1 – December 31, 2020) expands the Family Medical Leave Act (FMLA) and requires certain employers to provide emergency paid sick leave to employees affected by the coronavirus pandemic. The FFCRA applies to some public employers and private employers with less than 500 employees. The Act contains a limited exemption for small businesses (less than 50 employees). Certain health care workers and emergency responders are excluded under the Act.

Generally, the FFCRA states that covered employers will receive dollar-for-dollar tax credits for providing the following paid leave:

## **Emergency Paid Sick Leave Act (EPSLA)** (all employees, regardless of seniority)

- Up to 80 hours of paid sick leave at the employee's regular rate of pay where the employee is unable to work because the employee is quarantined (pursuant to federal, state or local government order or advice of a health care provider) or experiencing coronavirus symptoms and seeking a medical diagnosis; or

- Up to 80 hours of paid sick leave at two-thirds of the employee's regular rate of pay where the employee is unable to work due to need to care for an individual subject to quarantine or to care for a child whose school or child care closed or is unavailable, or the employee is experiencing substantially similar symptoms as specified by certain governmental agencies.

## **Emergency Family Medical Leave Expansion Act (EFMLEA)** (employees with 30 days on payroll)

- Up to an additional ten weeks of paid family and medical leave at two-thirds of the employee's regular rate of pay where an employee is unable to work due to need to care for a child whose school or child care closed or is unavailable due to COVID-19.

The FFCRA contains other provisions, such as: requiring covered employers to post a notice explaining the requirements of the Act and prohibiting employers from discriminating or retaliating against employees for exercising their rights or filing a complaint under the Act.

More information regarding the requirements of the FFCRA, can be found here: <https://tinyurl.com/corona-pd-leave> and <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>.



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# Unemployment in the Time of Pandemic

By Alec Gibbs

Michigan continues to be among the hardest hit by the COVID-19 pandemic: Governor Gretchen Whitmer issued a state of emergency on March 10, 2020. Since then there have been over 47,000 cases and just over 4,600 deaths. In order to reduce the number of COVID-19 cases and give time for health care facilities to absorb new cases without being overwhelmed, Michigan, in coordination with other federal, state and local authorities, has significantly slowed the economy.

As a result, over one million unemployment claims have been processed by the Michigan Unemployment Insurance Agency. Eligibility has been expanded to serve as a social safety net during the pandemic, one that is supplemented by additional federal funding and subject to a series of executive orders issued by the governor that relax requirements that would ordinarily apply to unemployment claims.

Michigan Executive Order No 2020-57 expands eligibility and cost-sharing requirements for unemployment benefits for a specific time period. This includes expanding medically necessary unemployment to encompass individuals who enter self-isolation or quarantine because they are immunocompromised, display COVID-19 symptoms, or have had contact with someone confirmed to have COVID-19 (including caretakers). It also relaxes the time to file a new claim, increases the number of eligible weeks from 20 to 26 and suspends all in-person registration and work search requirements. Because of the federal CARES Act, the weekly benefit has been increased by \$600, and unemployment coverage has been expanded to those who are classified as self-employed, independent contractors, those with limited work history, and others not traditionally eligible for unemployment benefits who are unable to work as a direct result of COVID-19.

The order clearly states that the employer must not be charged for unemployment benefits if their employees become unemployed because of an executive order requiring the closure or limitation of employer operations. Additionally, the state's work share program has been expanded. Rather than being laid off, eligible employees work a reduced number of hours and receive a portion of weekly unemployment benefits based on a percentage of the reduced hours of work and pay. Additionally, employer accounts must not be charged for COVID-19 related lay offs and absences.

Detailed information on COVID-19 changes to the unemployment program is available online, particularly at the UIA website. (<http://michigan.gov/leo>—Labor and Economic Opportunity) For attorneys, however, many of the more difficult questions will be handled as employers and claimants address new inquiries and determinations related to the COVID-19 crisis. Generally, claimants and employers will receive

notification that unemployment has made a monetary determination (finding that the claimant is eligible or ineligible for a certain amount), and there may also be an inquiry as to non-monetary eligibility that results in a "non-monetary determination" that may find a claimant disqualified by, for example, refusing work. While the protest and appeal timelines are relatively strict, there are usually two bites at the apple at the UIA: the initial claim and then a protest of any decision. From there, the interested parties have the option of appealing the "re-determination" on eligibility by requesting a telephone hearing before an administrative law judge at the Michigan Office of Administrative Hearings and Rules. An appeal can then be taken to the Unemployment Insurance Appeals Commission or Circuit Court. Different review standards apply at each level, and depending on the issues presented either party may have the burden of persuasion.

When a client approaches me with an unemployment question, I first have them walk me through whatever correspondence they have received from the UIA. An easy way of checking this is to have the client log in to their UIA account and send the PDF versions directly to you. This will give you a better grasp of the issues and immediately give you a sense of any impending or passed deadlines.

In addition to the new legislation and executive orders, attorneys consulting clients should take advantage of resources maintained by the University of Michigan's Workers Rights Clinic, which assists claimants throughout the unemployment process. Resources include the Michigan UI Case Digest (available at <https://miuidigest.org/>), an updated digest of Michigan unemployment decisions, including unpublished circuit court and Michigan Unemployment Insurance Appeals Commission decisions that are not readily accessible through Lexis or online. The clinic and its resources were previously run by Steve Gray, a Flint native who is now in charge of the UIA.



Alec Gibbs

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# SCOTUS dealing with COVID19

By Roberta J.F. Wray

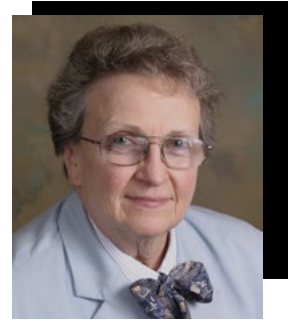
Since the announcement in mid-March that argument sessions would be postponed, long lines of court watchers outside the Supreme Court of the United States are a thing of the past, at least temporarily. In the time of pandemic, with social distancing the rule, a new way of doing business is in operation. The last time the court postponed arguments was during the fall of 1918 during the Spanish flu epidemic.

The Court heard argument of its final ten cases via telephone conference calls, providing audio, live-streamed via C-Span. The first case was described in a Washington Post article from April 29 as “an otherwise nondescript trademark dispute.” Its historic nature came from the fact it was argued from the dining room of one of the attorneys, the conference room of the solicitor general’s office, by two women, and the world was able to listen in live.

The Justices themselves were not together and questioned attorneys in order of seniority rather than in the free-for-

all style of the usual setting. The changes forced by the pandemic have been the subject of years of lobbying to the stubbornly tradition bound court. Many high state courts, including Michigan, and several federal courts, have recently provided access to live audio or video arguments or at least same day access.

Even before the pandemic, lower federal courts have experimented with live audio and even video with no reported adverse impacts. As one Supreme Court blogger noted, the experiment might solve a criticism that the Court should be more transparent, but once that is done, “it may be hard to put the genie back in the bottle and go back to the old system in which audio is not available until later in the week.” Amy Howe, Courtroom access: faced with a pandemic, the Supreme Court pivots, SCOTUSblog (Apr. 16, 2020, 2:58 PM).



Roberta J.F. Wray

## Congratulations to Jessica Hammon, Newly-Appointed Judge

By Shelley Spivack

Immediate GCBA Past President Jessica Hammon was recently appointed to the 67<sup>th</sup> District Court bench by Governor Gretchen Whitmer. In this interview with *Bar Beat*, Judge Hammon discusses the importance of her work with GCBA, the transition from private practice to the judiciary, and how yoga has influenced her life and her practice.

### When did you become active in GCBA and what positions have you held?

I became active in the GCBA as soon as I was sworn in as an attorney in 2008. I give a lot of thanks to the then-executive director Ramona Sain for getting me involved and making sure I knew the importance of such a great organization. My first official position was as the Young Lawyer’s Chair. Then I moved to the general board and served there for many years before being elected Secretary and eventually President. I have been the chair of the Family Law Committee, co-chair of the Golf Committee, and still serve as the Chair of the Community Action Committee, a group I am proud to have founded. I



Hon. Jessica Hammon

plan to continue working on the CAC and hope to help continue the Barristers’ Ball that helps raise funds for the GCBA general fund and a different chosen charity each year.

### What motivated you to become active with GCBA?

As I said above, Ramona Sain, the then-Executive Director took Heather Burnash and me to lunch and made sure we knew how important the GCBA would be to help us become the best attorneys we could be. She could not have been more correct -- the GCBA has shaped me into an attorney who values this community and every person in it.

### What are the most valuable lessons you learned in your leadership role with GCBA?

I have learned that even though we are all connected by our jobs and our titles, it is we, as people, who keep this organization going. The caring and dedication of the staff and



the board, as well as the general membership, inspires me every day.

### **How do you think your experience as a Bar leader will help you as you transition to the position of 67th District Court Judge?**

Being a member of the bar leadership has not only helped me develop my leadership skills, but it also has helped me understand where we as attorneys and judges are coming from personally. We all have an important and sometimes stressful place in our society and having a community in which to discuss these things is invaluable, especially for new attorneys.

### **Why did you decide to seek the judicial appointment?**

I have always wanted to serve my community in this way. Since I was a kid I have wanted to be an attorney and a judge. I am incredibly grateful to the Governor for this opportunity.

### **What will you miss about private practice?**

There are many things I am going to miss about private practice. The attorneys I practiced with are good, passionate people, and I will miss the camaraderie we had even while sometimes at odds. I will also miss the clients. Being able to advocate and help someone is underrated in our profession, and I hope those still practicing will remember to value themselves even in those cases that make you doubt yourself.

### **How will your experience as a yoga teacher influence you in your work as a judge?**

Yoga is a practice that, in addition to the physical benefits, helps you to calm and focus your mind. I also believe it helps you to set yourself aside for a bit and try to understand the world and the people around you. Working as a yoga teacher with the girls at the Genesee Valley Regional Center, through our "Youth Arts: Unlocked" program, gave me an increased ability to see who those girls really are, and not only what society sees them as.



**Hon. Jessica Hammon**  
**NEW 67<sup>th</sup> District Court Judge**

AND

**Hon. Mark Latchana**  
**NEW 7<sup>th</sup> Circuit Court Judge**

## *Law is the Family Business: Local Attorney Families*

By William J. Brickley

*The GCBA has a rich history of members who come from a family of lawyers. Many of our attorney families accomplish as much as the "big name" attorneys, but they do not receive the same public recognition. In each edition we will highlight a couple of our local attorney families who work hard to serve the Genesee County community.*

### **The Doerr Family**

**Peter Doerr's** journey into law was not the original plan. After receiving an Electrical Engineering degree from Michigan State Peter attended the University of Illinois for a Master of Engineering. He soon discovered that the law students at school were much more interesting, as well as their subject matter. After obtaining his master's he then enrolled at the University of San Diego Law School graduating in 1978. He returned home to Genesee County and spent three demanding years with Andrew Transue, leaving and eventually

creating his own practice in Mt. Morris centered on Municipal, Estate Planning and Landlord Tenant issues. Of his three sons, **Joe and Mike** have followed in dad's footsteps. Joe attended the University of Michigan for undergraduate work and went to Wayne State University for his legal degree. He was quickly snapped up by Dykema and has since left to concentrate on a business litigation practice in Oakland County. Son Mike, after



*Continued on the next page*

also graduating from U of M, completed law school at the University of Georgia. He proudly joined his father's practice in Mt. Morris for five years until the Intellectual Property bug bit him. He is now a partner practicing IP law with Harness, Dickey, and Pierce.

### The Parker Family

**James Parker** was the first to go into the law. He was admitted to the Bar in 1894 and a signer of the constitution of the GCBA. His practice spanned 43 years, 12 of which were on the Genesee County Circuit Court as a Judge. James' son, **Hugh Parker**, was an attorney until his early death at the age of 33. James' grandson, **Alan "Duke" Parker**, graduated Detroit College of law in 1953 and quickly established his role as a leading attorney in Genesee County in real estate, and many other areas of law, until he retired at age 70. Duke's son **Patric** went to the University of Michigan, both for undergraduate and law school, graduating in 1979. He joined his father's practice and was honored to work with him for close to 20 years. Patric's practice has evolved over the years and includes business law, commercial real estate and work for the Serra Automotive Group. He is married to **Sue Ellen Parker**, also a DCL grad and former clerk to Judge Robert Ransom. Her practice is primarily family law. **Charles Boike** is Patric's step-son and attended Cooley Law school. His practice has centered on the defense of civil litigation,

presently working with Progressive Insurance Company as an in-house attorney.

### The Davison Family

The legal heritage for this renowned family dates to the 1830's. Surviving member **Ed Davison** recalls that Great, Great Grandfather **William Fenton** was trained as a lawyer and relocated to what was once Dibbleville, now Fenton, to start a new life. Ed's maternal grandfather, **John Benson**, arose in the ranks of preeminent attorneys in Minneapolis, growing a small firm into a nationwide practice. One of Benson's honors was to argue in the United States Supreme Court, and he had the privilege of being sworn in by Justice Oliver Wendell Holmes. Closer to home Ed's uncle, **Matthew Davison**, after attending Yale and the University of Michigan Law School, partnered with Harry Gault to establish one of Flint's most well-respected law firms. Matt was a litigation lawyer, primarily defending civil law suits, but also practiced probate law. After Ed's success at Yale he entered Wayne State University Law School, graduating in 1976, and had the chance to work with grandfather John Benson in Minneapolis. He chose to stay home and worked with Uncle Matt, learning and perfecting the trade of defending civil litigation. Ed has recently semi-retired, handling a few remaining cases and spending most of his time planning his next assault on various forms of waterfowl.

## An Unexpected Journey

By Shelley Spivack

On February 28<sup>th</sup> as I hung up my black robe for the last time and walked out of the courthouse, adventure awaited. In three days I would be starting my "retirement ride"-- a seven week coast-to-coast cycling trip. On the beach in San Diego, as I dipped my rear tire in the Pacific, I envisioned myself 3000 miles later, on the sandy shores of St. Augustine, dipping my front tire in the Atlantic.

Unfortunately, a tiny new virus interrupted my journey. After 12 glorious days of cycling, crossing California mountain tops and Arizona deserts, my trip came to a screeching halt in Tombstone, Arizona. While our tour operator had tried to keep the trip going, travel restrictions and the reality of the dangers posed by COVID 19 made continuing the journey an impossibility.

Arriving back in Flint on March 25<sup>th</sup> I decided to continue my "retirement ride"; however, instead of crossing the country, I would cross Genesee and surrounding counties by bike and by foot. Social distance cycling and hiking soon became my new norm.

Getting out each day, no matter what the weather, has proven to be both a challenge and a delight. I am seeing with "new eyes" the places and sites I have long overlooked during my 40 years in mid-Michigan. As of April 19<sup>th</sup> I have cycled 738 and hiked 78 miles since arriving home. Here are some highlights of my unexpected journey.



Shelley Spivack

**The Genesee Valley and Flint River Trails.** Starting at the Genesee Valley Mall and ending at Richfield Park, this series of trails allows both cyclists and walkers to travel 40 miles (roundtrip) on a traffic free paved pathway. (Note: several locations in Flint are on city streets). While I have ridden this trail innumerable times, it was never with the eyes of a tourist in my own town. After passing the Mall's now empty parking lots, the Genesee Valley trail heads towards Kettering and into downtown Flint. There you can follow the Flint River Trail to the Genesee Recreation Area and then on to Richfield Park. Traveling along this route allows you to see Genesee County at its best and at its worst. While Stepping Stone Falls is a feast for the eyes, the Flint Water Tower and shuttered factories remind us of the tragedies that have befallen Flint. The newest section of the trail, from Genesee Road to Richfield Park, delights both cyclists and walkers with its rolling landscape and the sights and sounds of nature as it meanders towards spring.

**Flushing River Trail and Flushing County Park.** Whether on a bike or on two feet, the trail from Bueches to Flushing Park never disappoints. Straddling the Flint River, the 1.5-mile trail attracts both young and old, as well as many canine visitors. A one-mile loop around the park has been providing local residents with a well-needed respite from sheltering at home.

**Dauner Martin Nature Sanctuary.** This 155-acre nature preserve located in the city of Fenton offers 4.5 miles

of trails for walking or trail running. Pine groves interwoven with stands of hardwoods allow you to sense the serene and forget the pandemic and the hardships it has wrought, if only for an hour or two.

**Holly State Recreation Area, Seven Lakes State Park, Metamora Hadley State Recreation Area.**

Hiking in these three state parks, all within 40 minutes of downtown Flint, makes you grateful you live in Michigan, even during these difficult times. Water and the change of seasons are things we take for granted, but they have a profound effect on our senses. As winter changes into spring, a hike in one of these parks, even on a wet and snowy day in April, exercises both our bodies and our brains. An 11-mile hike in Holly's 8,000 rolling acres proved to be just as challenging and rewarding as one of the 60+ mile rides I had done a few weeks earlier. Instead of deserts and cacti, water and newly budding wildflowers were in display. Smaller in size, but equally tranquil and serene, Metamora and Seven Lakes proved to be ideal places to hike during this week's cool and cloudy days. As the mist from the lakes enveloped the trails, the sense of gloom such weather can bring quickly disappeared.

While I hope to finish my cross-country ride, for now I am grateful to be safely at home re-discovering the gems we have close by.

Additional photos of rides and hikes can be found at: <https://www.flickr.com/photos/shoshannarobin/albums>





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