PICKREL SCHAEFFER AND EBELING

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FOCUS

ISSUE ONE | 2023

FIRM NEWS

LEGAL NEWS

FIRM NEWS

JEFF SENNEY ADDRESSES CENTERVILLE BNI GROUP

Jeff Senney addressed his Centerville BNI Group sharing life stories, family, and a little business.

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PICKREL, SCHAEFFER AND EBELING ATTORNEYS RANKED AMONG THE BEST IN OHIO BY SUPER LAWYERS®

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Matt Stokely | mstokely@pselaw.com
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2023 Ohio Super Lawyers have recognized Mike Sandner (Business Litigation) and Matt Stokely (Employment & Labor) for their outstanding efforts in their areas of practice.

Super Lawyers is a rating service of outstanding lawyers from more than 70 practice areas who have attained a high degree of peer recognition and professional achievement. The selection process is patented, multi-phased, and includes independent research, peer nominations, and peer evaluations. Super Lawyers magazine is published in all 50 states and reaches more than 13 million readers.

For more information, visit superlawyers.com.

PICKREL, SCHAEFFER & EBELING WELCOMES MARCELLA MCHENRY

Pickrel, Schaeffer & Ebeling Co., LPA is proud to announce that Marcella McHenry recently joined the firm as an Associate attorney. Marcella will be a member of our Business Department, where she will concentrate her practice on Corporate Law, Real Estate Transactions, and Business Law.

Marcella completed her undergraduate degree at Ursuline College, where she was also a Division II Cross Country and Track Athlete. She obtained her Juris Doctorate from the University of Dayton School of Law in 2022. As a law student at the University of Dayton, Marcella was Comment Editor and Staff Writer for the University of Dayton Law Review, as well as Vice President of the Intellectual Property Club and Teaching Assistant for Professional Responsibility. Marcella also holds the highest grades (CALIs) in Civil Procedure and Professional Responsibility.

Before joining PSE as an attorney, Marcella spent a semester at PSE working as an extern for school credit. She clerked for a real estate solo practitioner throughout law school. Before learning she passed the bar, she also worked at a general practice law firm near Columbus. Marcella has experience working for clients in a variety of matters and enjoys the challenges of solving problems and meeting objectives.

Marcella practices in our Downtown Dayton Office in the Stratacache Tower (formerly Kettering Tower). Pickrel, Schaeffer & Ebeling was established in 1915 and has served clients for over 100 years.

For more information about PSE, please visit www.pselaw.com.

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2023 DISTRICT HIGH SCHOOL MOCK TRIAL COMPETITION

Pickrel, Schaeffer & Ebeling attorneys Matt Hauer, Brooke Schleben and Kristina Curry, reports,

"PSE has a long history of supporting the OCLRE High School Mock Trial Competition. This year's event provided yet another opportunity to be impressed by the extraordinary preparedness and commitment of these trial teams and their advisors. We also appreciate the opportunity to spend time with the Judges, as well as some of our colleagues in the legal community. Congratulations to the teams who will advance to the Regional Competition!".

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PSE HONORS ATTORNEY MOSES J. JONES

As Black History Month concludes, PSE honors Attorney Moses J. Jones, the first African-American attorney to practice in Dayton. He was admitted to practice law in 1898. Recognizable by his vested suit and gold chain, Mr. Jones was an inspiration and model for the legal community. He was regarded as Dayton's foremost African American criminal attorney drawing his clientele and representation from many states. Mr. Jones had an exemplary reputation for his fair and honest practice. Upon his passing, Mr. Jones was active in civic affairs and bequest a large amount of money that started the African American Community Fund, now held at The Dayton Foundation. Thank you, Mr. Jones, for creating your pathway in Dayton and inspiring all attorneys!

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PAUL ZIMMER HONORED BY THE OHIO STATE BAR ASSOCIATION

Paul Zimmer was honored by the Ohio State Bar Association for 50 years of practice.

Katie Wahl, Paul Zimmer, Mike Sandner

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"CONGRATULATIONS PAUL!
FOR THIS IMPRESSIVE ACCOMPLISHMENT."

LEGAL NEWS

CHANGE ON THE HORIZON FOR SCHOOL DISTRICT'S ABILITY TO CHALLENGE PROPERTY VALUES?

Anyone who has filed a complaint with the Board of Revision to contest the value of their property or who has acquired property at a price over the County appraised value has likely encountered counsel for their local school district at their Board of Revision hearing. Indeed, School boards often contract with law firms that focus on property valuation matters to actively review property values within a given district and to take action to ensure appropriate valuations are imposed.

This activity led to the introduction of House Bill 126 last year, which sought to limit or at least regulate a School District's ability to challenge a property tax value by requiring the School District first to pass a resolution to proceed with the challenge and notify affected property owners. The Bill passed the House and moved on to the Senate, where a significant amendment was added to the Senate version of the Bill; Substitute House Bill 126 now prohibits a School District from initiating a challenge against a property in its District and also prohibits a Board of Education from appealing a decision rendered by the Board of Revision to the Board of Tax Appeals.

A School District can still file a counter complaint to a property owner-initiated challenge, but the proposed Bill would essentially take a sword away from School Districts and leave them simply with a shield; the ability to file a counterclaim to a property owner-initiated complaint.

The Bill returns to the House for approval of the amended version or Committee referral to reconcile the changes. Should the Amended Bill pass, it would represent a significant change in how cases can be brought before the Board of Revision by Local School Districts.

Pickrel, Schaeffer, and Ebeling Co., L.P.A. will follow this legislation to see how the House responds. If you have questions or want to discuss this, don't hesitate to get in touch with Mike Sandner.

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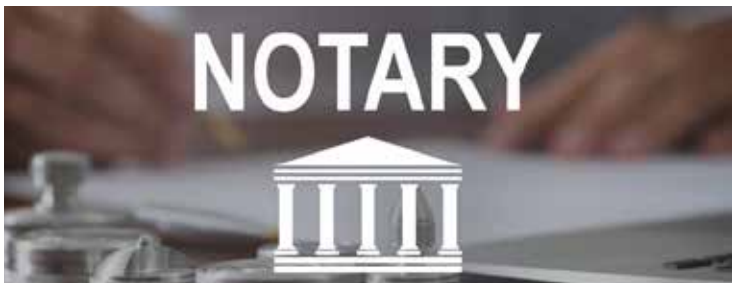
HOW IMPORTANT IS CORRECT NOTARIZATION ON LEGAL DOCUMENTATION?



Simply put, a notary mistake or improper notary certificate can cause legal issues with the enforceability of the document. For real estate documents, an improper notarization has the potential of causing the document to be rejected for recording by the County Recorder.

Because of recent changes to Ohio laws regarding notarial acts in 2019, with more changes to take effect in April of 2023, it is more important than ever to have a notary who is knowledgeable of notary laws and requirements.

There are specific requirements if a document is signed by an Agent, POA, Trustee, or Officer.

The notary certificate portion of the notarization must be appropriately drafted depending on whether an oath or acknowledgment is required.

The above is only a summary of the notarial act requirements and procedures. As you can see, notary duties are significant in seeing that a document will not be rejected or considered invalid.

PSE has attorneys and paralegals up-to-date on all notary requirements to ensure your legal documents are correctly prepared and executed. Contributor to article: Leona Patho.

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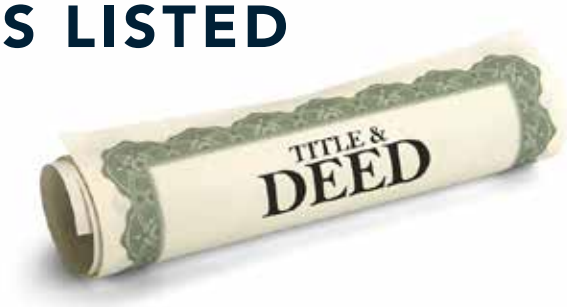
HOW THE PROPERTY TITLE IS LISTED ON YOUR DEED MATTERS



AT PICKREL, SCHAEFFER & EBELING, WE RECEIVE MANY CALLS REGARDING DEEDS. THEY RANGE FROM:

- The legal description is incorrect
- Release of dower
- How the title to the property is listed on the deed

Of the items above, the most common is how the title is listed on a deed; unfortunately, it is generally not discovered until after the person named on the deed has passed. At this point, fixing the problem may require opening a probate estate. Contrary to popular belief, a deed titled "John and Jane Doe, husband and wife" does not mean if John dies first, his interest passes to Jane. It means that John and Jane hold the property as "tenants in common" such that if John dies before Jane, his interest stays in his name until transferred (typically through probate) to his heirs. Even a deed title to "John and Jane Doe as joint tenants" does not mean one party's interest automatically transfers to the other joint tenant upon the death of the first. Older deeds may title property to the husband and wife as "tenancy by the entireties." Depending on the date of the deed, this type of ownership may also be a tenant in common ownership.

Finding out you do not own a full interest in your property is not something you want to learn for the first time just before closing on the sale or refinancing of the property.

Check your deed now to ensure it is what you intended. Also, check your parent's deeds so you do not have to deal with an unexpected situation after it's too late. In some situations, the parties may want or need to take corrective action.

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SEVERANCE AGREEMENTS:

NATIONAL LABOR RELATIONS BOARD REINSTATES PROHIBITION ON CERTAIN WAIVERS, CONFIDENTIALITY, AND NON-DISPARAGEMENT CLAUSES

On February 21, in McLaren Macomb and Local 40 RN Staff Council, Office, and Professional Employees, International Union (OPEIU), AFL–CIO, The National Labor Relations Board ("NLRB") overturned its prior decisions in 2020 to announce its current stance on severance agreement clauses that prohibit employees from making disparaging statements about their former employer in exchange for severance pay and other post-employment benefits. The Board also indicated that employers could not insert clauses in severance agreements that prohibit employees from discussing the terms of these agreements with other employees.

Section 7 of the National Labor Relations Act (the "Act") is a federal law that protects employees' rights to join or form unions and to engage in concerted protected activities to improve their working conditions.

The main issue presented to the Board was whether the employer violated the Act by offering a severance agreement to a bargaining unit that it had permanently furloughed. The agreement prohibited the employees from making any statement that could harm or disparage the "image" of the employer and also prohibited the employees from disclosing the terms of the agreement to anyone. Significant penalties were imposed for any employee who violated these terms. The Board ruled that these provisions violated the Act by preventing the employees from exercising their rights without regard to the facts and circumstances surrounding the employer's decision to place the employees on furlough.

McLaren stands in sharp contrast to the Board's prior decisions in 2020, Baylor University Medical Center and IGT d/b/a International Game Technology, which held that in addition to analyzing the severance agreement language itself, the Board must take into consideration other factors. In both cases, the Board noted that the complaint did not allege that the employees had been unlawfully discharged for conduct protected by the Act. The complaint also did not allege that the offers of severance pay were made under circumstances that would tend to infringe on the separating employees' exercise of their Section 7 rights or those of coworkers.

Accordingly, the Board found that the mere offer of the agreements containing these provisions was lawful in both cases. The Board dismissed similar cases outright in Metro Networks, 336 NLRB 63 (2001), and Shamrock Foods Co., 366 NLRB No. 117 (2018), citing no allegation that the employees had been discharged in violation of the Act.

Under McLaren, however, the Board has indicated that it is no longer required to consider whether the separation occurred in retaliation of an employee's exercise of Section 7 rights. Merely offering a severance agreement containing provisions for confidentiality or non-disparagement in exchange for severance benefits to which the employee would not otherwise be entitled is now a violation of Section 7, regardless of whether the employee alleges that the termination itself was unlawful.

Employers should examine their current severance agreements to determine whether they contain any of these clauses, especially in a unionized environment, and seek additional guidance in this rapidly evolving area.

The labor and employment attorneys at Pickrel, Schaeffer & Ebeling are here to assist you with severance agreements or any other related legal matters.

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PROTECT YOUR BRAND WITH A REGISTERED TRADEMARK

In today's ever-growing world of e-commerce, having a distinct and nationally protected name associated with your e-accounts is a must. Once an e-account becomes profitable, unscrupulous people build on that profitability by creating look-alike sites and stealing your businesses. Negative reviews of these "look-alike" businesses can be misinterpreted as negative reviews of your company.

One of the best ways to protect your brand name is to obtain a federally registered trademark. While the process of getting a trademark can take up to a year to complete, a pending trademark application is public record and puts the world on notice of your use of the mark upon filing. If you are interested in getting trademarks for your business.

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PROTECTING YOUR INTERESTS FOLLOWING A PERSONAL INJURY ACCIDENT

TAKE CARE OF YOURSELF.

If you are feeling pain symptoms following the accident, get medical attention as soon as possible. If symptoms don't arise until later, get medical attention right away. Consistency in documenting your injuries, treatment, and recovery is extremely important in presenting an effective claim. Even if you haven't seen them, make sure that your family physician is informed of your involvement in the accident and that the providers with whom you are treating do so as well.

SEEK LEGAL COUNSEL SOONER RATHER THAN LATER.

Beware of unsolicited mailings or phone calls. While it is important to seek legal representation sooner than later, do not do so without fully investigating your potential attorney. Word-of-mouth recommendations from a trusted source have, in our experience, produced the best results. While you may believe in your ability to represent yourself, unless you have the knowledge and training to deal with the insurance company representing the at-fault party, more likely than not, you will not be satisfied with the results.

LET YOUR ATTORNEY DO THE TALKING FOR YOU.

Never speak directly with the insurance company representative. That is your attorney's job. If the insurance company contacts you, expect that everything you say could be recorded. The insurance company representative will want a recorded statement and other information from you concerning the cause of the accident, the nature, and extent of your injuries, treatment, bills, and medical history. Allow your attorney to guide you through this process, and do not do it alone.

AVOID SOCIAL MEDIA.

Resist the urge to post photos of your damaged vehicle or injuries on any social media platform. Once you publish information concerning your accident on the internet, it is very difficult to remove it. While you might feel fine following the collision and want to share that with your friends, if your injuries are more involved than you initially thought, having to explain away a potentially damaging social media post could harm your claim.

KEEP THE LINES OF COMMUNICATION OPEN.

A good personal injury attorney will always be willing to talk with you about your claim. Keeping the lines of communication open and regularly updating your attorney as you progress toward recovery will help clarify your claim and maximize your results.

If you, a friend, or a family member, need legal assistance following a personal injury accident, we can help you. Experienced legal counsel is vital to maximizing your claim.

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FTC EXPANDS POWER TO PROPOSE BAR ON EMPLOYEE NON-COMPETES

Earlier this month, the Federal Trade Commission ("FTC"), in a sweeping and controversial move, issued a Proposed Rule ("Proposal") that would bar and require the recission of almost all employment non-compete agreements. The Proposal is subject to a 60-day comment period, after which the FTC can prepare and announce the final rule. Any final rule will likely face significant hurdles before implementation, such as whether it exceeds the FTC's rulemaking authority or conflicts with existing case law allowing non-competes.

SUMMARY OF PROPOSAL

The Proposal would broadly prohibit employers from (i) entering into or attempting to enter into a non-compete agreement with a worker; (ii) maintaining a non-compete agreement with a worker; or (iii) representing to a worker that they are subject to a non-compete without a good faith basis to believe that the worker is subject to an enforceable non-compete. The Proposal would apply the ban on the maintenance or enforcement of non-compete agreements to employees, independent contractors, and any other worker category, whether paid or unpaid. The Proposal explains that it would prohibit a de facto non-compete clause, defined as a contractual provision prohibiting a worker from seeking or accepting employment with another employer. It provides two examples: (i) a non-disclosure agreement written in such a way that effectively precludes a worker from working in the same field after ending employment with an employer; and (ii) a contractual term that requires a worker to pay the employer for training cost if the worker's employment is terminated within a specified period. The lone exception to the Proposal applies to individuals selling a business entity, ownership interest in a business entity, or all of a business entity's operating assets where the individual restricted by a non-compete was a substantial owner, member, or partner in the business entity as they agreed to the non-compete.

The Proposal would require employers that maintain non-competes with their workers to rescind those agreements no later than the compliance date (180 days after the final rule is published in the Federal Register). That process would require employers to provide current and former workers with individualized paper or digital communication within 45 days of rescinding the non-compete clause.

CURRENT NON-COMPETE LAWS

State law has historically been the authority governing the enforceability of non-compete clauses. A non-compete clause is a contractual term between an employer and a worker that purports to prevent the worker from accepting employment with a competitor or operating a competing business after the worker's employment with the employer. A typical non-compete clause limits the worker from performing particular categories of work for a competitor in specified geographic areas for a fixed time period after a worker's employment ends. Breaches of those agreements can give rise to claims for monetary damages and injunctive relief by the employer. As a general rule, courts subject non-competition restrictions to more exacting scrutiny than other contractual terms because they are considered a restraint of trade and out of concern that they are the product of unequal bargaining power. A few states, like California, Oklahoma, and North Dakota, completely bar non-compete clauses in employment agreements, while others place various limitations on them.

Most states, including Ohio, generally enforce them so long as they are reasonable in time, scope, and geography and protect an employer's legitimate business interests.

REASONS CITED FOR PROPOSAL

Two FTC Commissioners released a statement supporting the Proposal. They stated that non-compete clauses reduce competition in labor markets, suppressing earnings and opportunity even for workers who are not directly subject to a non-compete.

In their view, when workers subject to non-compete clauses are blocked from switching to jobs in which they would be better paid and more productive, unconstrained workers in that market are simultaneously denied the opportunity to replace them. This decline in job mobility means fewer job offers and an overall drop in wages. Firms have less incentive to compete for workers by offering higher pay, better benefits, greater say over scheduling or more favorable conditions. Further, the Commissioners contend that evidence indicates that non-compete clauses reduce innovation and competition in product and service markets. A third FTC Commissioner dissented and described the Proposal as a "radical departure from hundreds of years of legal precedent," undertaken with little enforcement experience on non-competes.

EMPLOYER ACTIONS

Employers are not required to take any action at this time. Numerous employers and other groups will undoubtedly submit comments to the FTC before a final rule is developed and published in the Federal Register. The FTC also indicated it could be open to considering other alternatives raised during the comment process. Meanwhile, employers should take steps to identify and review existing policies, procedures, and agreements that may be impacted if the Proposal becomes final and to explore the development of policies and agreements that protect confidential and proprietary information and other legitimate business interests without acting as a de facto non-compete agreement.

If you have questions or want additional information concerning non-compete agreements, please don't hesitate to contact us.

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LEGAL NEWS

STAY SAFE...DON'T DRINK & DRIVE!

In Ohio, a first-offense OVI is typically a misdemeanor of the first degree under Ohio Revised Code § 4511.19. It occurs if someone operates any vehicle under the influence of alcohol, a controlled substance, or a combination of alcohol and controlled substances. Their blood alcohol concentration (BAC) was over the legal limit of .08%. (The minimum impairment levels are much lower if you have a Commercial Driver's License.) If convicted, the penalties contain mandatory minimum sentences of 3 consecutive days in jail up to 180 days. The Court may allow first-time offenders to enroll in a 3-day intervention program in lieu of jail time. The mandatory minimum fine for a first-time offense is $375 plus court costs. The maximum fine is $1,075. There is a mandatory minimum driver's license suspension of 6 months, but the Court can suspend up to 3 years.

In addition to the penalties the Court will impose, if, during the traffic stop, the offender refuses, fails the breath test, or failed field sobriety tests, the Ohio BMV will also impose an Administrative License Suspension. The ALS contains a mandatory minimum period of time where no driving privileges are allowed.

This doesn't paint a very nice picture, does it? The best way to avoid the negative ramifications of an OVI is to not put yourself in a compromising position in the first place. Arrange for a ride service or a designated driver if you intend to imbibe.

If you or a friend end up facing an OVI charge, we have the experience at Pickrel Schaeffer and Ebeling to successfully navigate the Court process with you.

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