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PHOTO: CHAPEL OF THE IMMACULATE CONCEPTION - UNIVERSITY OF DAYTON



JOSEPH CINQUE' AWARD BANQUET 2024

PSE was honored to be a sponsor at this year's University of Dayton School of Law Black Students Association's Joseph Cinque' Award Banquet. This year's theme was "**Sankofa: Activating Community for Success.**" This year's honoree was Judge Angelina N. Jackson, Montgomery County Court of Common Pleas. **Scholarship winners were Lionel Mbatl and Elizabeth Dobbins.**



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PSE ATTORNEYS MIKE SANDNER, ALAN SCHAEFFER, AND MATT STOKELY WERE SELECTED FOR THE 2024 OHIO SUPER LAWYERS® LIST



A **Super Lawyers' selection** is an honor reserved for those attorneys who exhibit excellence in practice. This accolade provides third-party validation of your firm.

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THE HONORABLE KEVIN R. BARNES – REMARKABLE SERVICE



33 YEARS, 7 MONTHS, AND 22 DAYS OF REMARKABLE SERVICE...

AND STILL COUNTING

During Black History Month, we are encouraged to reflect on the giants of history, such as Martin Luther King and Thurgood Marshall, who profoundly shaped the world and served as inspiration for many. It is equally crucial to acknowledge **the ripple effect of their inspiration** and celebrate the individuals presently making significant strides in their own right. With three decades in the military alongside his legal career, Dayton's own Administrative Law Judge of the United States Social Security Administration, **Kevin R. Barnes**, is such an individual who has exemplified commitment to service and dedication.

Born and raised in Dayton, Judge Barnes followed in the footsteps of one of his inspirations, Thurgood Marshall, by attending Howard University, where

he ultimately graduated with a Bachelor of Arts degree. It was at Howard where Judge Barnes began his military service, "I found the ROTC scholarship and applied for it. I remember when I got that letter and was walking down the street. I opened it up and discovered I was chosen as a four-year scholarship recipient." Upon completing his undergraduate education, Judge Barnes attended the University of Cincinnati College of Law, where he obtained his Juris Doctorate degree. While the scholarship is what drew Judge Barnes into the service, his "passion and commitment for public service is what kept him" and led him to expand his military knowledge and expertise by obtaining a Master of Strategic Studies at the United States War College.

**"[INDIVIDUAL WHO IS]
A JUDGE, BUT [DOES]
NOT JUDGE."**

Throughout his career, Judge Barnes has been motivated to succeed, but he understands that **failure is necessary to achieve success**. With this mindset, Judge Barnes was able to jumpstart his legal career in the private sector; however, within a few years, he made the jump to the public sphere as an Assistant Prosecutor for the City of Dayton. Alongside his civilian legal career, he simultaneously held positions as a Judge Advocate General in the U.S. Army Reserves. Judge Barnes gained significant experience in numerous assignments, including command of two Legal Operations Detachments, and held the position of Colonel in the Army. For "33 years, 7 months, and 22 days," Judge Barnes continued his two-track career, jettisoning the country at least one weekend a month until his recent retirement from the Army in December 2023.

When Judge Barnes eventually found his way to the bench, **he described his judicial philosophy as an "individual who is a judge, but does not judge."** Before serving in his current role as an Administrative Law Judge, he served 15 years as a Magistrate Judge with the Montgomery County Juvenile Court. Throughout his time on the bench, Judge Barnes has strived to conduct himself with fairness, empathy and **"make people feel like... we're all human."** After his tenure in the Juvenile Division, Judge Barnes secured his current position as a Social Security Administrative Law Judge in 2016.

When asked, "What's next?" for the judge whose legal career finally converged to a single track, Judge Barnes, once again, responded with the service of others. Outside of his passions for writing, traveling, and spending quality time with his family, he is now looking to his next opportunity in how he can serve the community.

Pickrel, Schaeffer & Ebeling proudly highlights Judge Kevin R. Barnes as **a shining example of excellence, resilience, and service**, embodying the values Black History Month seeks to honor and celebrate.

PSE IS A PROUD SPONSOR OF THE DAYTON CHAMBER OF COMMERCE BREAKFAST BRIEFINGS



PSE is a proud sponsor of the **Dayton Chamber of Commerce Breakfast Briefings**. Mike Sandner delivered welcome remarks to one of the largest briefing audiences this year.

Larry Connor of The Connor Group spoke about the Greater Dayton School. Ohio's first private non-religious elementary school exclusively dedicated to under-resourced students. According to its founders, the innovative educational model will cater to the whole child and set the bar for a national model that provides students access to all the resources they need to succeed. Visit <https://greaterdaytonschool.org/> to learn more.

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DEZTANY JOHNSON JOINS PSE

Pickrel, Schaeffer & Ebeling Co., LPA **proudly announces that Deztany Johnson recently joined the firm as an associate attorney**. Deztany will be a member of our Litigation and Business Departments.

Deztany completed her undergraduate degree at Miami University in 2015 in Philosophy and Political Science. She obtained her Juris Doctorate from the University of Dayton College of Law in 2022. As a UD law student, Deztany was the Black Law Student Association president, Chief Justice UDSL Moot Court, teaching assistant to Professor Ebony Davenport, Judge Epley, and received the Brother Raymond Fitz Student for Justice Award recipient.

Before joining PSE as an attorney, she practiced civil litigation for the past year, concentrating on insurance defense, medical malpractice, and personal injury.

Deztany is vice chair for the Dayton Bar Association's (DBA) New Lawyer Division and a member of their Leadership & Development Class of 2023.



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DAYTON BAR 50-YEAR HONOREE, PAUL ZIMMER



Paul spent his legal career at PSE and retired as a Shareholder in June 2020. Paul's 50-year career centered around Business Law and Merger and Acquisition work. Please join us in **thanking** Paul for his service and **congratulating** him on his distinguished career.



Left to right: Jim Weprin, Dave Montgomery, **Paul Zimmer**, Mike Bly, Mike Sandner, Katie Wahl, Kaylee Price, Deztany Johnson, Jacob Frizado

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LEGAL NEWS



THE IMPORTANCE OF COMMUNITY INVOLVEMENT ON GOOD DAY DAYTON.



Watch Video Here!

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L E G A L I Z E

OHIO LEGALIZES RECREATIONAL MARIJUANA. WHAT DOES THIS MEAN FOR EMPLOYERS?

On November 7, 2023, Ohio became the 24th state to legalize recreational marijuana. The new law takes effect in 30 days. Ohio has had a medical marijuana statute permitting the possession and use of marijuana for a set list of eligible medical conditions since September 2016. Under the new provision for non-medical marijuana, individuals will be **permitted to possess up to 2.5 ounces or 15 grams of extract. Individuals will be permitted to cultivate marijuana at home, where not otherwise restricted by a landlord or other circumstances, and keep up to 6 plants for 1 person or up to 12 plants in households with at least 2 adults. The state plans to tax retail sales of recreational marijuana at 10%.**

Employers with drug-free or zero-tolerance drug policies that include marijuana or THC **will be able to continue enforcing these policies without regard to the new law.** Employers will not be required to permit or accommodate an employee's use of either medical or recreational marijuana. They may hire, retain, discipline, or discharge any employee that violates the employer's policies. Employees or former employees will not be able to maintain legal action against employers that take adverse action against the employee under their existing drug use policies. In addition, the law will not affect the Bureau of Workers' Compensation rate structure in terms of discounts given to employers for maintaining drug-free workplace policies.

Terminations in violation of an employer's drug-free workplace or other drug-related policies will be considered **"with just cause"** for unemployment compensation benefit eligibility.

It is expected that licenses for recreational marijuana retailers will be issued sometime in 2024. However, employers should anticipate that employees will need clarification well in advance.

Employers should **review their existing policies and revise where needed** to include "recreational" marijuana use along with medical use. New policy changes should be communicated to employees promptly, preferably within 30 days, to avoid mishaps or misunderstandings about the new law.

If your business needs assistance with a medical/recreational policy, or if you have questions regarding this area of employment law, **don't hesitate to contact the attorneys of Pickrel Schaeffer & Ebeling.** We are here to help you navigate these new circumstances in the most effective way possible.

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NAVIGATING THE HIDDEN COSTS OF A DUI CITATION IN OHIO THE ROLE OF AN EXPERIENCED ATTORNEY

Receiving a citation for driving while impaired (OWI, also known as DUI) in Ohio **can have severe consequences that extend far beyond the initial fines and penalties.** While the immediate repercussions of an OWI charge are apparent, there are hidden costs that will impact various aspects of your life. An experienced OWI attorney is crucial in mitigating these hidden costs and guiding you through the legal complexities.

FINANCIAL IMPACT:

The financial burden of an OWI citation in Ohio is not limited to the fines imposed by the court. Additional costs may include court fees, probation fees, and the expense of mandatory alcohol education programs. Insurance premiums are likely to skyrocket, and you may need to invest in an ignition interlock device, which requires installation and monthly maintenance fees. An experienced

attorney can work to reduce fines and explore options for minimizing financial strain.

EMPLOYMENT CONSEQUENCES:

An OWI conviction can have serious implications for your current job or future employment opportunities. Many employers conduct background checks, and an OWI on your record may lead to job loss or difficulty securing new employment. Professionals who rely on a clean driving record, such as commercial drivers, may face even more significant challenges, including the loss of his or her CDL.

LICENSE SUSPENSION AND REINSTATEMENT:

In Ohio, an OWI conviction often results in a driver's license suspension. Losing the ability to drive can significantly hinder daily life, affecting your ability to work, attend school, and fulfill family responsibilities. An experienced attorney can explore options for license reinstatement, such as limited driving privileges or participation in rehabilitation programs.

IMPACT ON PERSONAL AND PROFESSIONAL RELATIONSHIPS:

The stigma associated with an OWI conviction can strain personal relationships and damage your professional reputation. Friends, family, and colleagues may view

you differently, and the social consequences can be emotionally challenging. A skilled OWI attorney can help navigate the legal process with discretion and work towards minimizing the impact on your personal and professional life.

LONG-TERM CONSEQUENCES:

An OWI conviction can have long-term consequences, affecting your ability to travel, secure housing, or obtain professional licenses. Moreover, specific industries may have strict policies regarding employees with OWI convictions. An experienced attorney can help you understand the potential long-term consequences and develop a legal strategy to mitigate these effects.

While the immediate consequences of an OWI conviction in Ohio are evident, the hidden costs can be substantial and impact various facets of your life. Consulting with an experienced OWI attorney is crucial in navigating the legal complexities, minimizing financial burdens, and strategically addressing the hidden costs associated with an OWI charge.

At Pickrel Schaeffer and Ebeling, **we know your legal rights** and have the skill and knowledge to help you minimize the hidden costs of receiving an OWI citation.

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WORST CASE SCENARIO – TOD

Byline: **Jacob Frizado** & **Katie Hicks**

A man in Ohio passes away, owning real estate in Montgomery County. **He had assured his daughter, an only child, that he had made and signed a TOD** – Transfer on Death Designation – putting the house into her name at his passing.

The daughter goes through the motions of selling the property. The market is hot, and her Real Estate Agent quickly finds a buyer. They settle on a closing date. Soon, however, the daughter is contacted by the bank that holds dad's mortgage with a *foreclosure* date. There is to be a sheriff's sale of the house.

How did this happen? It turns out that dad had never bothered to have his signature on that "DIY" TOD notarized—a technical requirement in the State of Ohio. Therefore, The TOD is invalid; the daughter never actually inherited the home through the TOD, and the Real Estate Agent never bothered to check who held the title! When she takes the TOD to the county to be recorded, they point out the missing Notary stamp and turn her away. With the foreclosure and the closing dates both on the horizon and within days of each other, the daughter desperately contacts an attorney.

What can be done? Well, lots of things, but nothing as cheap or easy as a properly executed Estate Plan. The family now faces hiring an attorney and opening a Probate Estate to retrieve the funds left over after the sheriff's sale occurs.

How can you avoid this? If you want to guarantee your family doesn't meet with undue difficulty after your passing, you really need to seek the advice of an Estate Planning Attorney – to create OR double-check your Estate Plan – and provide your loved ones with true peace of mind.



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THE IMPORTANCE OF ESTATE PLANNING ON GOOD DAY DAYTON



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CORPORATE TRANSPARENCY ACT UPDATE

The Corporate Transparency Act ("CTA") took effect on January 1, 2024. Under this federal law, entities registered to do business in the United States are **required to file Beneficial Ownership Information ("BOI") Reports** with FinCEN, a part of the Treasury Department. These BOI Reports identify each individual who owns more than twenty-five percent of the ownership interest in the company, as well as each individual who can exert substantial control over the company. Newly registered or formed companies must file their initial BOI Report within 90 days of their registration, while companies registered on or before December 31, 2023, are required to file their initial BOI Report by December 31, 2024. **Companies and owners who fail to file required reports under the CTA face substantial penalties, including monetary fines.**

On Friday, March 1, 2024, a court in the Northern District of Alabama ruled the CTA to be unconstitutional (*National Small Business United v. Yellen*, No. 5:22-cv-01448 (N.D. Ala.)) and entered an injunction against FinCEN enforcing the CTA against the plaintiffs in that particular case, which include all members of the National Small Business Association (a small business advocacy organization). Several other cases that make similar arguments are pending in federal court, including one in the Northern District of Ohio.



At this time, unless your company was a member of the National Small Business Association on March 1, 2024, your company must still comply with the CTA. Newly formed entities must file their initial Report no later than 90 days after registration with the Secretary of State or similar government agency. Pre-existing companies can delay their filings until later this year.

PS&E attorneys are monitoring the various pending federal cases and FinCEN's announcements regarding their enforcement of the CTA.

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NEW RULE FOR INDEPENDENT CONTRACTOR CLASSIFICATION

- The Department of Labor has issued new guidelines for employers to determine whether a worker is an independent contractor vs. an employee.
- The new Rule requires employers to consider six factors when determining.
- The Rule is currently facing challenges and would result in many more workers being classified as employees, subjecting them to the provisions under the Fair Labor Standards Act for minimum wage, overtime compensation, and other protections.
- Misclassifying employees as independent contractors can potentially result in severe penalties to employers.

On January 10, 2024, the U.S. Department of Labor (DOL) issued a final rule regarding employee or independent contractor classification under the Fair Labor Standards Act (FLSA), which is **set to take effect on March 11, 2024**. Workers classified as employees receive certain protections under the FLSA, including minimum wage, overtime compensation, and other benefits, while independent contractors generally do not. The DOL has stated that the new Rule will increase the number of workers who fall under the protections of the FLSA as employees. This necessarily translates into increased costs for employers, who may pass

them along to their customers and workforce in various ways.

In addition to these costs, other issues may arise in the context of employer liability for the acts and omissions of employees and other types of liability associated with employee versus independent contractor status. In addition to the costs of these benefits to employers, certain workers may appreciate the benefits associated with making their schedules and choosing when, where, and how they will perform work. **Employers and workers benefit from certainty and consistency** regarding the classification of workers. Unfortunately, the new Rule may prove to have a chilling effect on employers who work with independent contractors out of fear that they may be held liable for employment taxes, workers' compensation insurance, and other costs in the event that the worker is held to be an employee and not an independent contractor.

The 2024 independent contractor rule makes several changes to the 2021 rule, making it much more likely that a worker would be classified as an employee, not an independent contractor. For example, whereas the 2021 rule focused on a five-factor test, including two "core factors," including **a)** the nature and degree of control over the work and **b)** the workers' opportunity for profit or loss, the new 2024 rule mandates that employers must consider six individual "non-exhaustive"

factors. The Factors are described as all having equal weight in a **"totality of the circumstances"** analysis of whether a worker is to be classified as an employee or an independent contractor. However, as the Rule clarifies, other non-enumerated factors may be considered.

THE SIX FACTORS INCLUDE:

1. opportunity for profit or loss depending on managerial skill;
2. investments by the worker and the potential employer;
3. degree of permanence of the work relationship;
4. nature and degree of control;
5. extent to which the work performed is an integral part of the potential employer's business and
6. skill and initiative.

However, the new Rule set to take effect in less than two months already faces many legal challenges. On January 16, 2024, a group of freelancers filed suit in the Northern District of Georgia seeking a preliminary injunction of the Rule and a declaratory judgment setting the Rule aside. This is in addition to ongoing litigation in the Fifth Circuit challenging the Rule's compliance with the Administrative Procedures Act and public statements from members of Congress who have vowed to repeal the Rule. It is likely that the new Rule will continue to face challenges and may even be placed on hold. For now, however, employers doing business with

Independent Contractor

NEW RULE FOR INDEPENDENT CONTRACTOR CLASSIFICATION CONT...

independent contractors should assess whether these workers might meet the new test for independent contractor status. **Employers should also consult with an attorney when it may be unclear whether they have correctly classified their employees.**

The main opposition to the new Rule rests with allegations that the new Rule proposes a set of factors as a test for independent contractor status that would allow DOL and other enforcement entities to classify almost any worker as an employee and not as an independent contractor. In support of these challenges, lawmakers cite the history of a similarly enacted provision in California, which still faces legal challenges. California's Assembly Bill 5 (A.B. 5), enacted in 2019, originally proposed a similarly narrow definition of an independent contractor. The law was amended almost immediately to accommodate "gig" workers as independent contractors—delivery drivers, personal transportation workers, etc. Issues remain as to the Rule's impact on the trucking industry, where some drivers have operated as independent contractors for many decades. The matter is still being litigated, as a three-judge panel of the federal Ninth Circuit Court reversed the dismissal by the lower District Court in December of 2023 on grounds of Equal Protection and preliminary injunction standards. Plaintiffs have argued that the exemptions provided to some sectors of the economy but not others violate the California law's stated purpose.

In the case of the DOL Rule, there is a long history of controversy in the DOL's attempt to enact a new rule in 2021, which was struck down. In 2020, the DOL issued a rule outlining the factors to be analyzed for employers to determine whether a worker should be classified as an employee or an independent contractor, which was to take effect in 2021 (the "2021 Rule"). However, in March 2021, the DOL published an additional rule delaying the effective date of the 2021 rule, and in May 2021, the DOL published another rule withdrawing the 2021 independent contractor rule. These actions were subsequently challenged, and a Federal District Court issued a decision vacating both the delay and the withdrawal rules issued by the DOL. The District Court ordered the original Rule to take effect on March 8, 2021, as the effective date. In response, the DOL published a new rule to replace the 2021 rule, which is set to take effect in March 2024.

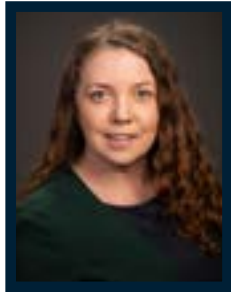
This non-exhaustive factor approach emphasizes that where a worker is dependent upon an individual employer for continued work, it is likely that the worker does not meet the test to be classified as an independent contractor. Until the Courts or Congress address the many challenges to the new Rule, the situation remains fluid until March 2024. We will be publishing any updates as necessary. If you have questions regarding whether your workers should be classified as independent contractors or employees, the attorneys at PS&E are here to help.

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The Only Law Firm You'll Ever Need®

LEGAL NEWS

OHIO MINIMUM WAGE TO INCREASE IN 2024

Ohio's minimum wage **increased on January 1, 2024**, to \$10.45 per hour for non-tipped employees and \$5.25 per hour for tipped employees. The minimum wage will apply to employees of businesses with annual gross receipts of more than \$385,000 per year.

The 2023 minimum wage is \$10.10 per hour for non-tipped employees and \$5.05 per hour for tipped employees. The 2023 Ohio minimum wage applies to employees of businesses with annual gross receipts of more than \$372,000.

The Constitutional Amendment (II-34a) passed by Ohio voters in November 2006 states Ohio's **minimum wage shall increase by the inflation rate on January 1 each**

year. The state minimum wage is tied to the Consumer Price Index (CPI-W) for urban wage earners and clerical workers over the 12 months before September. The CPI-W index increased 3.7 % over the 12 months from September 1, 2022, to August 31, 2023.

For employees at smaller companies with annual gross receipts of \$385,000 or less per year after January 1, 2024, and for 14- and 15-year-olds, the state's minimum wage is \$7.25 per hour. For these employees, the state wage is tied to the federal minimum wage of \$7.25 per hour, which requires an act of Congress and the President's signature to change.

Employers can access the 2024 Minimum Wage poster for display



in their places of business by visiting **the Ohio Department of Commerce's Division of Industrial Compliance's Bureau of Wage and Hour website** at <https://com.ohio.gov/divisions-and-programs/industrial-compliance/wage-and-hour/guides-and-resources/minimum-wage-posters>.

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