

# ALR 6th *Alert*

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## From the **editor**

The current and upcoming volumes of A.L.R.6th, while including concentrations in Constitutional Law and Criminal Law, with four separate articles on subjects within each of those popular areas for experimentation and change in the law, also provide analyses of the “Severin Doctrine” (applicable to government contracts) and the “Master Settlement Agreement” between the tobacco industry and the several states involved in the recent multi-billion-dollar suits for damages caused by tobacco to those states’ citizens. All this proves yet again that no topic is too common or too esoteric for the sweep of the A.L.R. broom, bringing to you an ever-expanding compendium of the law you need to know.

*Russell G. Donaldson, J.D.*

## Highlights

### ARMED SERVICES

#### Evidence or Comment on Service or Lack Thereof

At trial, the defendant, who is accused of assault and battery wishes to introduce evidence of the defendant’s honorable discharge from the Army to show that the defendant’s reputation was such as to render the defendant unlikely to have committed the crime. While evidence of a party’s discharge from the armed services, whether honorable or otherwise, or conduct while in the military service, is generally not admissible in either civil or criminal cases, it often is introduced into the proceedings, sometimes inadvertently or without objection, and the effect of the error must be determined by



the court. The cases collected in this annotation discuss these issues of admissibility, for various purposes, and effect, whether involving relevance, competence, or other grounds. Check the Related Annotations section for an annotation addressing whether a conviction by court-martial is the proper subject of cross-examination for impeachment purposes (7 A.L.R.4th 468). [24 A.L.R.6th 747](#)

### CRIMINAL LAW

#### Antagonistic Defenses—Extent of Antagonism Required for Severance

In state homicide prosecutions involving multiple defendants, a defendant may move for a sepa-

rate trial on the ground that the codefendants' respective defenses are antagonistic. Courts in such cases have differed as to whether or not the existence of antagonistic defenses warrants a severance in order to avoid prejudice to a defendant and, if so, the extent of antagonism necessary to satisfy this rule. This annotation collects and discusses those state homicide cases addressing the following issues of law: (1) the applicable standard for determining whether a defendant facing a joint trial is entitled to a separate trial on the ground, in whole or in part, that the moving defendant's defense is antagonistic to the defense of his or her codefendants; and (2) where applicable, to what degree the defenses must be antagonistic in order to satisfy that severance standard. [24 A.L.R.6th 591](#)

## ELECTIONS AND VOTING

### Local Regulation of PAC Contributions

The United States Supreme Court in *Nixon v. Shrink Missouri Government PAC*, 528 U.S. 377, 120 S. Ct. 897, 145 L. Ed. 2d 886 (2000), held that state regulations imposing limits on the amount of money political action committees (PACs), among others, may contribute in a given period of time are subject, under U.S.C.A. Const. Amend. I, to exacting scrutiny which requires such regulations to be closely drawn to serve the state's interest in preventing corruption or the appearance of corruption. This annotation collects and analyzes cases determining the constitutional validity of state or local regulations governing contributions by or to PACs. [24 A.L.R.6th 179](#)

## WITNESSES

### Expert Testimony by Nurses

A jury, or the court trying a case without a jury, is often confronted with issues which require scientific or specialized knowledge or experience in order to be properly understood, and which are not subject to an intelligent determination simply on the basis of deductions made and inferences drawn from ordinary knowledge, common sense, and practical experience gained in the ordinary affairs of life. On such issues, the testimony of a witness with special knowledge and skill is permitted and required in order to arrive at an intelligent conclusion. Except to the extent that the physical condition of a person is open to ordinary observation by persons of common experience, opinion evidence on these matters is limited to the opinions of experts—that is, in most cases, physicians, although expert testimony by nurses has also been permitted. To qualify a person as an expert on medical or physiological matters, it is necessary and sufficient that the witness possesses learning and knowledge of the subject under inquiry sufficient to qualify him or her to speak with authority on the subject. It is not essential, however, that a person testifying on a question of health or physical condition should be a medical practitioner; since an expert witness is only required to possess medical knowledge, however obtained, not a medical degree, a member of an allied profession, such as nursing, or persons other than medical doctors, may testify in relevant medical connections. This annotation collects and summarizes those cases in which courts have considered the admissibility of expert testimony by nurses. [24 A.L.R.6th 549](#)

# Coming Soon

Listed below are a few of the topics scheduled to be published in 25 A.L.R.6th in July 2007. Some of the annotations listed may be rescheduled.



## ATTORNEY AND CLIENT

### Discipline for Attorney's Excessive Fee—Criminal, Tort, and Real Property Matters

The creation of the relation of attorney and client by contract, express or implied, is essential

to the right of an attorney to recover compensation for services. The issue arises as to whether or under what circumstances an attorney can be disciplined simply because he or she charged an excessive fee, and such

issue is often presented in criminal, tort, and real property matters. This annotation collects and analyzes the state and federal cases in which the courts—in cases involving representation of clients in criminal, tort, and real property matters—have considered whether or under what circumstances an attorney can be disciplined simply because he or she charged too much. [25 A.L.R.6th](#)

## COMPROMISE AND SETTLEMENT

### Master Settlement Agreement (MSA) with Tobacco Industry

On November 23, 1998, 46 states and six non-state jurisdictions executed a Master Settlement Agreement with the country's largest cigarette manufacturers. While this agreement settled those jurisdictions' existing legal actions against the tobacco industry, much litigation has arisen with regard to the agreement and state statutes enacted to implement the agreement. This annotation collects and analyzes all the federal and state cases discussing the validity, construction, application, or effect of the Master Settlement Agreement or statutes enacted by the settling jurisdictions to implement the agreement. The scope of the annotation also extends to questions of the distribution of the proceeds received by the settling jurisdictions under the agreement. **25 A.L.R.6th**

## GOVERNMENT CONTRACTS

### Severin Doctrine

Under the so-called *Severin* doctrine, based on the decision of the Court of Claims in *Severin v. U.S.*, 322 U.S. 733, 64 S. Ct. 1045, 88 L. Ed. 1567 (1944), a contractor with the government, in order to have standing to sue the government for losses actually incurred by one of its subcontractors, must have some obligation to

the subcontractor for the amount in question. The doctrine has been recognized in federal courts but the *Severin* decision is not considered binding on state courts in matters of state law. This annotation shall collect and discuss all of the cases, state and federal, decided under the *Severin* doctrine. **25 A.L.R.6th**

## SEARCH AND SEIZURE

### Wireless Communication Devices—Expectation of Privacy in Text Messages

The Fourth Amendment guarantees “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.” The Supreme Court has uniformly held that the application of the Fourth Amendment depends on whether the person invoking its protection can claim a “justifiable,” “reasonable,” or “legitimate” expectation of privacy that has been invaded by government action. Evolving forms of technology have led to the application of this standard to governmental intrusion into the communication of text messages. This annotation collects and analyzes all the federal and state cases discussing whether a reasonable expectation of privacy exists, for the purpose of the Fourth Amendment or a similar state constitutional provision, in a text message transmitted to or from a pager, cellular telephone, or other wireless personal communications device with text messaging capabilities. **25 A.L.R.6th**

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The following is a complete list, arranged alphabetically by topic, of annotations contained in the current volume 24 A.L.R.6th or scheduled for publication in 25 A.L.R.6th. Some of the annotations listed may be rescheduled.

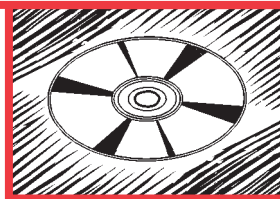
## ATTORNEY AND CLIENT

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