

# ALR 6th

## Alert

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### From the

## editor

Volume 25 A.L.R.6th offers the first installments in three different series of related annotations extending into upcoming volumes. Disciplinary action against an attorney on the basis of charging excessive fees is examined, first in the realm of criminal, tort, and real property matters, and in an upcoming annotation considering estate, trust, domestic relations, and family law matters. Eligibility for unemployment benefits of individuals who left employment due to a change in residence is also addressed under particular statutory language in volumes 25 and 26. Lastly, the issue of what constitutes a “custodial interrogation” triggering Miranda requirements is discussed, with particular focus on interrogations taking place in a hospital, and a later annotation dealing with interrogations of juveniles at a police station or sheriff’s office. Of course, a variety of other topics are also considered in these volumes, including, among others, privacy concerns in connection with text transmissions or other electronic documents, residency restrictions imposed on registered sex offenders, the unauthorized practice of law in relation to wills, trusts, and estate planning, factors considered in child custody determinations, government contracts, tobacco litigation, religious displays on public land, traffic enforcement, and the price of gasoline.

*Jill M. Marks, J.D.*

## Highlights



### UNEMPLOYMENT COMPENSATION

#### Voluntary resignation for change of residence

In many jurisdictions, the unemployment compensation statute provides that one who voluntarily leaves employment without good cause, just cause, or cause

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of a necessitous and compelling nature, is not entitled to unemployment benefits, such that, where the claimant has voluntarily resigned because of a change of location of residence, the issue becomes whether or not the motivation for the move was sufficient to constitute good cause within the meaning of the statute.

This annotation collects and analyzes the state and federal cases in which the courts have considered the effect of a voluntary resignation because of a change of location of residence upon the eligibility for unemployment compensation benefits under statutes conditioning benefits upon leaving for “just cause,” cause of a “necessitous and compelling nature,” or “good cause,” other than “good cause attributable to the employer.” [25 A.L.R.6th 101](#)

## SENTENCING AND PUNISHMENT

### Validity of Residency Restrictions Applicable to Registered Sex Offenders

In recent years, a number of state or local statutes imposing residency restrictions on registered sex offenders have been enacted, such as prohibitions against such offenders residing within specified distances of schools, parks, day-care centers, and other areas. These statutes have raised constitutional issues concerning the rights of sex offenders and community safety. This annotation collects and summarizes those cases in which courts have determined the validity of state or local statutes imposing residency restrictions on registered sex offenders. [25 A.L.R.6th 227](#)

## ATTORNEY AND CLIENT

### Unauthorized practice of law—Drafting of Will or Other Estate-Planning Activities

The unauthorized practice of law is prohibited so that a client can be assured that he or she is receiving professional representation from one who has demonstrated ability in the law and whose actions are closely moni-

tored and regulated. Just what is the practice of law in the context of wills, trusts, and estate planning can be an important and difficult issue—despite the fact that legal advice may be critical for the proper transfer of assets according to the client’s desires, the wide availability of legal forms means that a nonattorney can easily help a friend select and complete wills and probate forms. Similarly, trusts and estate planning usually rely heavily on help from banking or financial advisors. This annotation collects and discusses the state and federal cases in which the courts have considered whether and under what circumstances consultations, supervision, executions of documents, or other activities by a non-attorney in connection with wills, trusts, or other estate-planning devices constitutes the unauthorized practice of law. [25 A.L.R.6th 323](#)

## CRIMINAL LAW

### What constitutes “custodial interrogation” of suspect at hospital

Police must read Miranda warnings only to criminal suspects who are subject to “custodial interrogation,” which requires that police have deprived the suspect of his or her freedom of action in a significant way. When a suspect is in the hospital, he or she may already be restrained by a medical condition or treatment. Courts have examined the various factors used to determine whether a suspect interviewed in a hospital setting has been custodially interrogated. This annotation collects and analyzes all cases discussing whether police have engaged in custodial interrogation of hospital patients who were injured or taken ill before or after—but not during—the commission of a crime. [25 A.L.R.6th 379](#)

# Coming Soon

Listed below are a few of the topics scheduled to be published in 26 A.L.R.6th in August 2007. Some of the annotations listed may be rescheduled.



... simply because he or she charged too much. [26 A.L.R.6th](#)

## ANTITRUST AND TRADE REGULATION

### Sale of Gasoline Below Cost

Statutes in many states prohibit merchants from selling gasoline below cost. These statutes were enacted to protect consumers from loss leader selling and to protect small businesses from predatory pricing. Typically, these statutes prohibit sales below the merchant’s own costs unless made outside the regular course of business or in a good faith effort to meet a competitor’s price. This annotation collects and analyzes the cases that have determined issues concerning the validity, construction, and application of below cost statutes as applied to sales of gasoline. [26 A.L.R.6th](#)

## ATTORNEY AND CLIENT

### Excessive Fee as Ground for Disciplinary Action—Estate, Trust, Domestic Relations and Family Law Matters

The issue frequently 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 the context of estate and trust matters, domestic relations matters, and other family law cases. This annotation collects and analyzes the state and federal cases in which the courts—in cases involving matters relating to estate and trust or family law—have considered whether or under what circumstances an attorney can be disciplined

## CHILD CUSTODY

### Factors affecting custody determination—working parents

Among the many factors to be taken into account by the trial court in making the difficult decision as to

which parent should have physical custody of a child, considering the best interests of the child, is the work schedule of the working parent or, increasingly, of both of the working parents. It is clear that, other things being equal, it makes sense to award custody to the parent who is around the home more often, or who can adjust his or her work schedule to accord with the needs of the children and to minimize the use of day care or babysitting. Courts have reached a variety of decisions as to which parent should have custody, based on the varying work schedules of the parents, as this annotation illustrates. **26 A.L.R.6th**

## CRIMINAL LAW

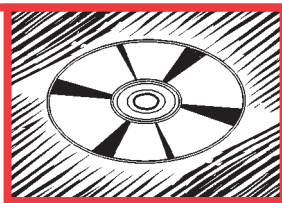
### Custodial interrogation of juvenile triggering Miranda requirement

The due process right of a person to the presence of counsel during a custodial interrogation by law enforcement authorities was established by the United States Supreme Court in the landmark decision of *Miranda*

v. *Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694, 10 A.L.R.3d 974 (1966), which states that the Fifth Amendment privilege against self-incrimination is available outside of criminal court proceedings, and serves to protect persons in all settings in which their freedom of action is curtailed from being compelled to incriminate themselves. Miranda warnings are due only when a suspect interrogated by the police is in custody. The issue thus arises as to what constitutes “custodial interrogation” by a police officer within the rule of *Miranda*, requiring that a juvenile suspect be informed of his or her federal constitutional rights before the custodial interrogation occurs, when the purported interrogation takes place at a police station or sheriff’s office. This annotation collects and analyzes the cases in which the courts have addressed the issue as to what constitutes “custodial interrogation” by a police officer within the rule of *Miranda*, requiring that a juvenile suspect be informed of his or her federal constitutional rights before the custodial interrogation occurs, when the purported interrogation takes place at a police station or sheriff’s office. **26 A.L.R.6th**

# Index

The following is a complete list, arranged alphabetically by topic, of annotations contained in the current volume **25 A.L.R.6th** or scheduled for publication in **26 A.L.R.6th**. Some of the annotations listed may be rescheduled.



Application of *Apprendi v. New Jersey*, 530 U.S. 466, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000) and *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed. 2d 403, 6 A.L.R. Fed. 2d 619 (2004) to State Controlled Substance Proceedings. **26 A.L.R.6th**

## ATTORNEY AND CLIENT

Attorney’s Charging Excessive Fee as Ground for Disciplinary Action—Criminal, Tort, and Real Property Matters. **25 A.L.R.6th 1**

Attorney’s Charging Excessive Fee as Ground for Disciplinary Action—Estate, Trust, Domestic Relations and Family Law Matters. **26 A.L.R.6th**

Drafting of Will or Other Estate-Planning Activities as Illegal or Unauthorized Practice of Law. **25 A.L.R.6th 323**

## AUTOMOBILES AND HIGHWAY TRAFFIC

Automated Traffic Enforcement Systems. **26 A.L.R.6th**

## CONSTITUTIONAL LAW

State Constitutional Challenges to the Display of Religious Symbols on Public Property. **26 A.L.R.6th**

## CRIMINAL LAW

What Constitutes “Custodial Interrogation” at Hospital by Police Officer Within Rule of *Miranda v. Arizona* Requiring That Suspect Be Informed of His or Her Federal Constitutional Rights Before Custodial Interrogation—Suspect Injured or Taken Ill Before or After Commission of Crime. **25 A.L.R.6th 379**

What Constitutes “Custodial Interrogation” of Juvenile by Police Officer Within Rule Of *Miranda v. Arizona* Requiring That Suspect Be Informed Of Federal Constitutional Rights Before Custodial Interrogation—At Police Station or Sheriff’s Office. **26 A.L.R.6th**

## CUSTODY AND SUPPORT OF CHILDREN

Parents’ Work Schedules and Associated Dependent Care Issues as Factors in Child Custody Determinations. **26 A.L.R.6th**

## DAMAGES

Validity, Construction, Application, and Effect of Master Settlement Agreement (MSA) Between Tobacco Companies and Various States, and State Statutes Implementing Agreement; Use and Distribution of MSA Proceeds. **25 A.L.R.6th 435**

## GOVERNMENT CONTRACTS

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## LABOR AND EMPLOYMENT

Eligibility for Unemployment Compensation as Affected by Voluntary Resignation Because of Change of Location of Residence Under Statute Conditioning Benefits Upon Leaving for “Good Cause,” “Just Cause,” or Cause of a “Necessitous and Compelling Nature”. **25 A.L.R.6th 101**

Eligibility for Unemployment Compensation as Affected by Voluntary Resignation Because of Change of Location of Residence Under Statute Conditioning Benefits upon Leaving for “Good Cause Attributable to the Employer”. **26 A.L.R.6th**

## **PRICES AND PRICING**

Validity, Construction, and Application of State Statutory Provisions Prohibiting Sale of Gasoline Below Cost. **26 A.L.R.6th**

## **PRIVILEGED AND CONFIDENTIAL MATTERS**

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## **SENTENCING AND PUNISHMENT**

Validity of Statutes Imposing Residency Restrictions on Registered Sex Offenders. **25 A.L.R.6th**

## **TAXATION**

State Tax Consequences of Election Under § 338 of Internal Revenue Code (26 U.S.C.A. § 338). **26 A.L.R.6th**

## **TELECOMMUNICATIONS**

Expectation of Privacy in Text Transmissions to or from Pager, Cellular Telephone, or Other Wireless Personal Communications Device. **25 A.L.R.6th**

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