

ALR 6th

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From the editor

Alternative Dispute Resolution (ADR) provides a means to resolve disputes outside of the traditional judicial process. As crowded court dockets and the growing costs of litigation distress potential litigants, many states have implemented alternative dispute resolution programs, which can be either permissive or mandatory. The most common forms of ADR are arbitration and mediation, which are each the subject of upcoming annotations in Volumes 31 and 32 of A.L.R.6th. There is a discussion of the consolidation by state courts of arbitration proceedings brought under state law ([31 A.L.R.6th 433](#)) as well as an examination of state mediation confidentiality provisions (32 A.L.R.6th). Additionally, Volumes 31 and 32 feature annotations on a wide variety of topics, including the U.S. Constitution's Suspension Clause ([31 A.L.R.6th 1](#)), the construction and application of state statutes restricting hunting or fishing by nonresidents ([31 A.L.R.6th 523](#)), the exclusion of the public from state criminal trials to protect witnesses (32 A.L.R.6th), and the desire of an accused to testify on just one of several charges as a basis for severance of trials (32 A.L.R.6th).

Brenda M. Williamson, J.D.

Highlights

ARBITRATION AND AWARD

Consolidation of Arbitration Proceedings

State courts are divided as to whether a trial court has the authority to consolidate separate arbitration proceedings. In some jurisdictions, a court's power to consolidate is conferred by statute, whereas courts in other jurisdictions have found that the authority to consolidate is within the discretion of a court if the separate controversies have similar issues of law and fact and none of the parties' rights are prejudiced. Courts in other jurisdictions, however, have concluded that there is no statutory or inherent judicial authority to consolidate arbitration proceedings without the agreement or consent



of the parties. This annotation collects and analyses state cases in which courts have examined whether, and under what circumstances, courts may consolidate separate arbitration proceedings brought under state law. [31 A.L.R.6th 433](#)

FISH AND GAME

Hunting and Fishing Restrictions on Nonresidents

Every state has at least some fishing or hunting opportunities which are so popular that people come from out of state in order to partake in them. Especially in the more sparsely populated states with excellent hunting and

fishing, however, large numbers of out-of-state residents may overwhelm the local population and crowd them out during the season. Moreover, wildlife conservation and management is an expensive proposition for each state, and in the absence of restrictions on nonresidents, it is the state's residents who would bear the financial burden of maintenance of the herds and fish stocks which the nonresidents would enjoy. Accordingly, many states have limited the hunting and fishing rights of nonresidents in various ways, or have charged them significantly more for licenses than a resident is charged, raising various issues with regard to the validity and construction of such statutes. This annotation collects and discusses the state and federal cases in which the courts have considered the validity, construction, and application of state statutes, regulations, or local ordinances prohibiting, limiting, or regulating fishing or hunting within the state by nonresidents, as differentiated from residents. [31 A.L.R.6th 523](#)

WORKERS' COMPENSATION

Additional Workers' Compensation for Violation of Specific Regulatory Requirement for Protection of Workers

Some statutes provide for an increase in workers' compensation benefits when an employee's injury is the result of an employer's intentional safety violation. The

purpose of these statutes is to provide for an increase in workers' compensation benefits when the injury is the result of an employer's intentional safety violation and to promote workplace safety by encouraging workers and employers to follow safety rules and regulations. This annotation collects and summarizes those cases in which courts have determined the validity, construction and application of provisions of a workers' compensation act for additional compensation because of failure to comply with a specific requirement of a statute or regulation by the public for the protection of workers. [31 A.L.R.6th 199](#)

ZONING

Worship in Single-Family Residential Zoning Districts

Constitutional issues frequently arise in relation to the validity construction and application of comprehensive zoning ordinances establishing exclusive single-family residential districts where certain religious uses/places of worship are allowed as permitted uses, totally excluded, or permitted only by some discretionary permit procedure. This annotation collects and discusses the cases that have considered the validity, construction, and application of the exclusion or inclusion of religious uses/places of worship in single-family residential zoning districts. [31 A.L.R.6th 395](#)

Coming Soon

Listed below are a few of the topics scheduled to be published in 32 A.L.R.6th in March 2008. Some of the annotations listed may be rescheduled.



ATTORNEY OR ASSISTANCE OF ATTORNEY

Unauthorized Practice of Law—Bankruptcy Proceedings

Courts often rely upon case law to define what constitutes the "practice of law" and the term, by its very nature, is not defined with precision. The concept includes obvious law-related activities as well as others which inherently require knowledge of the law. Certain situations are unique to bankruptcy cases, such as those which arise when nonattorneys represent others and attend creditor's meetings, negotiate reaffirmation agreements, draft bankruptcy petitions, etc. The unauthorized practice of law in bankruptcy matters can range from situations which arise when nonattorney agents assist their corporations, partnerships, etc., to situations in which nonattorneys aggressively establish their own businesses and designate themselves or their businesses as "independent paralegals," "legal clinics," or other terms which suggest legal expertise and legal services. It should also be noted that the law relating to the unauthorized practice of law in bankruptcy matters may affect certain attorneys who specialize in bankruptcy law or offer bankruptcy-related services. The courts have split on how the issues should be resolved, and more case law is anticipated. This annotation collects and discusses the court opinions which deal specifically with the issue of what constitutes the unauthorized practice of law in bankruptcy matters. [32 A.L.R.6th](#)

ALTERNATIVE DISPUTE RESOLUTION

State Mediation Privilege

There is a strong public policy in favor of using mediation and other alternative dispute resolution mechanisms rather than requiring every case to be tried in a judicial tribunal. Mediation, as opposed to arbitration, seeks to have the parties themselves reach a conclusion, with the mediator, as a facilitator, using techniques to help the parties reach an agreement. The parties are encouraged to raise all points. However, parties will be reluctant to speak freely if what they say can be admitted in a subsequent proceeding, such as if the mediation fails. Accordingly, mediation proceedings are ordinarily kept private and confidential. The precise range of such privilege has been discussed in a number of cases. Courts have reached a wide variety of conclusions as to the application of mediation confidentiality provisions, as this annotation illustrates. [32 A.L.R.6th](#)

MUNICIPAL CORPORATIONS

Municipal Cost Recovery Rule

The “municipal cost recovery rule,” also called the “free public services doctrine” provides that, absent specific statutory authorization or damage to government-owned property, a county cannot recover the costs of carrying out public services from a tortfeasor whose conduct caused the need for the services. Courts have construed and applied the doctrine with varying results. This annotation collects and discusses all of the cases which have construed and applied the municipal cost recovery rule, also called the free public services doctrine. **32 A.L.R.6th**

SEVERANCE OF ACTION

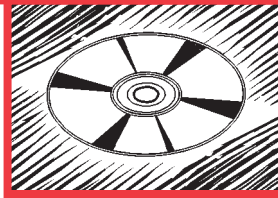
Severance of Charges for Selective Testimony by Defendant

Severance enables a criminal defendant to seek separate trials of two or more counts that are included in a single

indictment. The trial court must weigh the prejudice to the defendant from the joinder of offenses for trial against the judicial economies that result from joinder. A motion for severance will fail unless the defendant can show an inability to obtain a fair trial otherwise. On appeal the defendant must show clear prejudice that the trial court could not prevent. Prejudice may occur when a defendant wishes to testify on one but not another of two joined offenses. The defendant who testifies about one takes the risk that any adverse effects of the testimony will influence jury consideration of the other. Many defendants nevertheless move to sever the charge on which they wish to testify from the charge on which they wish to remain silent. This annotation collects and analyzes the criminal cases in which courts have considered whether a defendant’s desire to testify on just one of multiple charges, while asserting the right against compelled self-incrimination on the other charges, warranted severance of the charges. **32 A.L.R.6th**

Index

The following is a complete list, arranged alphabetically by topic, of annotations contained in the current volume **31 A.L.R.6th** or scheduled for publication in **32 A.L.R.6th**. Some of the annotations listed may be rescheduled.



Application of Class-of-One Theory of Equal Protection to Public Employment. **32 A.L.R.6th**

COURTS

Permissive or Mandatory Nature of Forum Selection Clauses Under State Law. **32 A.L.R.6th**

ALTERNATIVE DISPUTE RESOLUTION

Consolidation by State Court of Arbitration Proceedings Brought Under State Law. **31 A.L.R.6th 433**

Construction and Application of State Mediation Privilege. **32 A.L.R.6th**

ARBITRATION AND AWARD

Consolidation by State Court of Arbitration Proceedings Brought Under State Law. **31 A.L.R.6th 433**

Construction and Application of State Mediation Privilege. **32 A.L.R.6th**

ATTORNEY OR ASSISTANCE OF ATTORNEY

Adequacy of Defense Counsel’s Representation of Criminal Client Regarding Guilty Pleas—Probation, Parole, or Pardon Possibilities. **31 A.L.R.6th 49**

Matters Constituting Unauthorized Practice of Law in Bankruptcy Proceedings. **32 A.L.R.6th**

BANKRUPTCY AND INSOLVENCY

Matters Constituting Unauthorized Practice of Law in Bankruptcy Proceedings. **32 A.L.R.6th**

CONSTITUTIONAL LAW

Construction and Application of Suspension Clause of United States Constitution, U.S. Const. Art. I, § 9, cl. 2. **31 A.L.R.6th 1**

Validity, and Standing to Challenge Validity, of State Statute Prohibiting Flag Desecration and Misuse. **31 A.L.R.6th 333**

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 Hospital Visitor, Not Patient. **31 A.L.R.6th 465**

Adequacy of Defense Counsel’s Representation of Criminal Client Regarding Guilty Pleas—Probation, Parole, or Pardon Possibilities. **31 A.L.R.6th 49**

Validity, Construction, and Application of State Statutes Criminalizing Possession of Body Armor by Felon Convicted of Violent Crime. **31 A.L.R.6th 615**

Desire of Accused to Testify on Just One of Multiple Charges as Basis for Severance of Trials. **32 A.L.R.6th**

What Constitutes “Custodial Interrogation” of Adult 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, Where Defendant Is Escorted or Accompanied by Law Enforcement Personnel, or Is Otherwise at Station or Office Involuntarily. **32 A.L.R.6th**

Determination of Request for Exclusion of Public From State Criminal Trial In Order To Preserve the Safety, Confidentiality or Well Being of a Witness Who Is Not an Undercover Police Officer—Issues of Proof, Consideration of Alternatives, and Scope of Closure. **32 A.L.R.6th**

CUSTODIAL INTERROGATION

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 Hospital Visitor, Not Patient. **31 A.L.R.6th 465**

What Constitutes “Custodial Interrogation” of Adult 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, Where Defendant Is Escorted or Accompanied by Law Enforcement Personnel, or Is Otherwise at Station or Office Involuntarily. **32 A.L.R.6th**

FISH AND GAME

Validity, Construction, and Application of State Statutes Prohibiting, Limiting, or Regulating Fishing or Hunting in State by Nonresidents. **31 A.L.R.6th 523**

FLAGS

Validity, and Standing to Challenge Validity, of State Statute Prohibiting Flag Desecration and Misuse. **31 A.L.R.6th 333**

GUILTY PLEA

Adequacy of Defense Counsel’s Representation of Criminal Client Regarding Guilty Pleas—Probation, Parole, or Pardon Possibilities. **31 A.L.R.6th 49**

HABEAS CORPUS

Construction and Application of Suspension Clause of United States Constitution, U.S. Const. Art. I, § 9, cl. 2. **31 A.L.R.6th 1**

INSURANCE AND INSURANCE COMPANIES

Applicability of Insurance Policies to Alleged Bodily Injury Arising from Use of Cellular Telephones. **32 A.L.R.6th**

MIRANDA WARNINGS

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 Hospital Visitor, Not Patient. **31 A.L.R.6th 465**

What Constitutes “Custodial Interrogation” of Adult 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, Where Defendant Is Escorted or Accompanied by Law Enforcement Personnel, or Is Otherwise at Station or Office Involuntarily. **32 A.L.R.6th**

MUNICIPAL CORPORATIONS

Construction and Application of “Municipal Cost Recovery Rule,” or “Free Public Services Doctrine.” **32 A.L.R.6th**

PLEA BARGAINING

Adequacy of Defense Counsel’s Representation of Criminal Client Regarding Guilty Pleas—Probation, Parole, or Pardon Possibilities. **31 A.L.R.6th 49**

POSTCONVICTION PROCEEDINGS AND REMEDIES

Construction and Application of Suspension Clause of United States Constitution, U.S. Const. Art. I, § 9, cl. 2. **31 A.L.R.6th 1**

PUBLIC OFFICERS AND EMPLOYEES

Application of Class-of-One Theory of Equal Protection to Public Employment. **32 A.L.R.6th**

Construction and Application of “Municipal Cost Recovery Rule,” or “Free Public Services Doctrine.” **32 A.L.R.6th**

RELIGION AND RELIGIOUS SOCIETIES

Validity, Construction, and Application of Exclusion or Inclusion of Religious Uses/Places of Worship in Single-Family Residential Zoning Districts. **31 A.L.R.6th 395**

SEVERANCE OF ACTION

Desire of Accused to Testify on Just One of Multiple Charges as Basis for Severance of Trials. **32 A.L.R.6th**

WEAPONS AND FIREARMS

Validity, Construction, and Application of State Statutes Criminalizing Possession of Body Armor by Felon Convicted of Violent Crime. **31 A.L.R.6th 615**

WITNESSES

Determination of Request for Exclusion of Public from State Criminal Trial in Order to Preserve Safety, Confidentiality, or Well Being of Witness Who Is Not Undercover Police Officer—Issues of Proof, Consideration of Alternatives, and Scope of Closure. **32 A.L.R.6th**

WORKERS’ COMPENSATION

Validity, Construction, and Application of Provisions of Workers’ Compensation Act for Additional Compensation Because of Failure to Comply With Specific Requirement of Statute or Regulation by Public for Protection of Workers. **31 A.L.R.6th 199**

ZONING

Validity, Construction, and Application of Exclusion or Inclusion of Religious Uses/Places of Worship in Single-Family Residential Zoning Districts. **31 A.L.R.6th 395**

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