

ALR 6th

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From the editor

The new year is here, and the A.L.R.6th editorial staff's commitment to bring you expertly researched and organized annotations to help you more efficiently find the caselaw you need continues. In this and the upcoming volume, you will find a wide array of topics, such as Legal Malpractice in Connection with Attorney's Withdrawal as Counsel in Criminal—Business-Related Cases ([41 A.L.R.6th 1](#)) and in Tort, Civil Rights, Family Law, Probate and Unspecified Cases ([42 A.L.R.6th](#)); Automobile Liability Insurance Policy Exclusion as Applied to Loss or Injury Resulting from Insured's Flight from Police ([41 A.L.R.6th 527](#)); and Defamation by Television—Actual Malice ([42 A.L.R.6th](#)). You can find more information on these and other valuable annotations below.

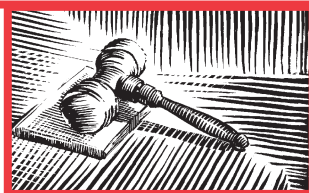
Douglas S. Jurenko, Editor, and Jason B. Binimow, J.D.

Highlights

ATTORNEY OR ASSISTANCE OF ATTORNEY

Legal Malpractice In Connection With Attorney's Withdrawal As Counsel—Criminal and Business-Related Cases

An attorney not only is an employee of his or her client but also is an officer of the court, and this dual relation imposes a dual obligation: to the client who refuses to pay a fee, the attorney must give specific and reasonable notice so that the client may have adequate time to secure other counsel and so that the client may be heard if he or she disputes the charge of nonpayment, and to the court, which cannot cope with the ever-increasing volume of litigation unless lawyers are as concerned as is a conscientious judge to utilize completely the time of the term, the lawyer owes the duty to perfect his or her withdrawal in time to prevent the necessity of a continuance of the case. An attorney generally may withdraw as counsel of record upon a showing of good and sufficient cause, and reasonable notice to the client. Upon termination of representation, a lawyer must take steps to the



extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that

has not been earned or incurred. A lawyer may withdraw from representing a client if, inter alia, withdrawal can be accomplished without material adverse effect on the interests of the client; the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent; or the client has used the lawyer's services to perpetrate a crime or fraud. The issue arises as to whether and under what circumstances an attorney may be held liable to his or her client for malpractice or negligence because of his or her withdrawal from obligations as counsel, where the underlying subject matter from which the attorney withdrew was in the criminal or business-related context. This annotation collects and analyzes the cases in which the courts have determined whether and under what circumstances an attorney may be held liable to his or

her client for malpractice or negligence because of his or her withdrawal from obligations as counsel, where the underlying subject matter from which the attorney withdrew was in the criminal or business-related context. [41 A.L.R.6th 1](#)

AUTOMOBILE INSURANCE

Insured's Flight from Police

As the purpose of automobile liability insurance is to provide protection against liability arising out of vehicular accidents, insurers have sought to avoid liability for coverage of injuries and damages caused by intentional and criminal behavior. Efforts to exclude coverage for such behavior are often bolstered by judicial and legislative policies against allowing individuals to insure themselves against the consequences of their own intentional misconduct. Automobile liability carriers have sought to exclude coverage for liabilities arising out of motorists' attempts to evade police pursuit and apprehension, which in some cases has created tension between the policy against allowing one to insure against one's own misconduct, and policies aimed at protecting innocent parties. While some insurance policies may contain specific exclusions for liabilities arising out of an insured's flight from police pursuit, other more general exclusions may commonly apply. This annotation collects and analyzes the cases in which courts have determined whether an exclusion contained in an automobile liability policy barred coverage for liabilities incurred in the course of a motorist's flight from police pursuit. As the purpose of automobile liability insurance is to provide protection against liability arising out of vehicular accidents, insurers have sought to avoid liability for coverage of injuries and damages caused by intentional and criminal behavior. Efforts to exclude coverage for such behavior are often bolstered by judicial and legislative policies against allowing individuals to insure themselves against the consequences of their own intentional misconduct. Automobile liability carriers have sought to exclude coverage for liabilities arising out of motorists' attempts to evade police pursuit and apprehension, which in some cases has created tension between the policy against

allowing one to insure against one's own misconduct, and policies aimed at protecting innocent parties. While some insurance policies may contain specific exclusions for liabilities arising out of an insured's flight from police pursuit, other more general exclusions may commonly apply. This annotation collects and analyzes the cases in which courts have determined whether an exclusion contained in an automobile liability policy barred coverage for liabilities incurred in the course of a motorist's flight from police pursuit. [41 A.L.R.6th 527](#)

DRUGSTORES AND DRUGGISTS

Contraceptives—Refusal to Fill Prescription

Across the country, some pharmacists have refused to fill patients' valid birth control prescriptions. These pharmacists maintain that filling such prescriptions would violate their religious and moral beliefs. This has raised a debate over whether a pharmacist's right to refuse to participate in an activity that he or she finds immoral holds precedence over a woman's right to legally acquire birth control as prescribed by her doctor. This annotation collects and discusses the state and federal civil and criminal cases considering the propriety of a pharmacy's and pharmacist's refusal to fill prescriptions for contraceptives on the basis of religious beliefs, including cases decided under a relevant statutory and administrative framework. [41 A.L.R.6th 555](#)

TELECOMMUNICATIONS

State regulation of VoIP

Voice over Internet Protocol ("VoIP") is a means of communicating via the internet which can emulate conventional telephone communication. "Nomadic" VoIP services are those that can be accessed via internet from any geographical location. This annotation collects and discusses state and federal court cases in which the courts have considered the validity of state taxation (including imposition of required Universal Service Fee ("USF") contributions) or regulation of providers of Voice over Internet Protocol ("VoIP") telecommunications services. [41 A.L.R.6th 375](#)

Coming Soon

Listed below are a few of the topics scheduled to be published in 42 A.L.R.6th in March 2009. Some of the annotations listed may be rescheduled.



Attorney or Assistance of Attorney

Legal Malpractice In Connection With Attorney's Withdrawal As Counsel—Tort, Civil Rights, Family Law, Probate and Unspecified Cases

A lawyer generally may withdraw as counsel of record upon a showing of good and sufficient cause, and reasonable

notice to the client. Upon termination of representation, a lawyer must take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled, and refunding any advance payment of fee or expense that has not been earned or incurred. A lawyer may withdraw from representing a client if, *inter alia*, withdrawal can be accomplished without material adverse effect on the interests of the client, the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent, or the client has used the lawyer's services to perpetrate a crime or fraud. The issue arises as to whether and under what circumstances an attorney may be held liable to his or her client for malpractice or negligence because of his

or her withdrawal from obligations as counsel, where the underlying subject matter from which the attorney withdrew was in the tort, civil rights, family law, and probate context, and where the nature of the underlying litigation was unspecified in the reported case. This annotation collects and analyzes the cases in which the courts have determined whether and under what circumstances an attorney may be held liable to his or her client for malpractice or negligence because of his or her withdrawal from obligations as counsel, where the underlying subject matter from which the attorney withdrew was in the tort, civil rights, family law, and probate context, and where the nature of the underlying litigation was unspecified in the reported case. **42 A.L.R.6th**

IMPEACHMENT OF WITNESSES

Propriety of Using Otherwise Inadmissible Statement

A confession obtained in violation of Miranda which otherwise satisfies legal standards of trustworthiness may be used to impeach a defendant. This annotation collects and discusses those state cases in which courts have determined the propriety of using an otherwise inadmissible statement, taken in violation of the Miranda rule, to impeach a criminal defendant's credibility. **42 A.L.R.6th**

MEDICAL EXPERIMENTS OR TESTS

Experiments on Humans

The very concept of nontherapeutic, nonconsensual human medical research and experimentation is one which shocks the conscience. Nazi medical atrocities of this kind horrified the world when they were given

prominence at the post World War II Nuremberg trials. On the other hand, it is clear that in order for medical science to advance, in most instances drugs, therapies, or particular lines of scientific research must be tried on humans after they were tried on animals. However, getting patients to agree to serve as "guinea pigs," with full knowledge of the possibility of serious and permanent injury, is not easy. Accordingly, and presumably exonerating themselves on the grounds that "the ends justify the means," medical and scientific researchers in a number of instances have performed experiments on people without their informed consent. Courts have reached a variety of conclusions based on a wide spectrum of possible bases for liability for nonconsensual human medical experimentation, as this annotation illustrates. **42 A.L.R.6th**

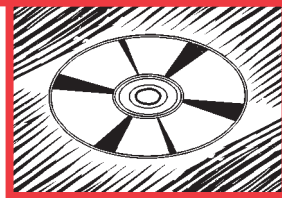
TELEVISION

Defamation by Television—Actual Malice

Under certain circumstances, defamation may be proven for purposes of the First Amendment (U.S. Const. Amend. I) by actual malice or constitutional malice, terms of art meaning knowledge of falsity or reckless disregard of truth or falsity. Television broadcasting may affect publication of a defamatory imputation, and many courts have addressed whether actual malice was established in cases alleging defamation by television, based on the facts and circumstances of each case. This annotation collects and discusses all of the cases which have considered whether actual malice was established in a defamation action brought against a television defendant. Note the related annotation of Defamation by Radio—Actual Malice, **40 A.L.R.6th 231**. **42 A.L.R.6th**

Index

The following is a complete list, arranged alphabetically by topic, of annotations contained in the current volume **41 A.L.R.6th** or scheduled for publication in **42 A.L.R.6th**. Some of the annotations listed may be rescheduled.



AMUSEMENTS AND EXHIBITIONS

Liability Arising From Postponement or Cancellation of Concert, **42 A.L.R.6th**

ASBESTOS

Retroactive Application of State Statutes Concerning Asbestos Liability, **41 A.L.R.6th 445**

ATTORNEY AND CLIENT

Legal Malpractice in Connection with Attorney's Withdrawal as Counsel—Criminal and Business-Related Cases, **41 A.L.R.6th 1**

Legal Malpractice In Connection With Attorney's Withdrawal As Counsel—Tort, Civil Rights, Family Law, Probate and Unspecified Cases, **42 A.L.R.6th**

BIRTH CONTROL

Propriety of Pharmacy and Pharmacist's Refusal to Fill Prescription for Contraceptives, **41 A.L.R.6th 555**

COMPUTERS

Validity of State and Local Taxation and Regulation of Voice over Internet Protocol (VoIP) Service, **41 A.L.R.6th 375**

CONFESSIONS AND ADMISSIONS

Propriety of Using Otherwise Inadmissible Statement, Taken in Violation of Miranda Rule, to Impeach Criminal Defendant's Credibility—State Cases, **42 A.L.R.6th**

CONSTITUTIONAL LAW

Application of Stigma-Plus Due Process Claims to Education Context, **41 A.L.R.6th 391**

CRIMINAL LAW

Court's Duty to Advise Sex Offender as to Sex Offender Registration Consequences or Other Restrictions Arising from Plea of Guilty, or to Determine that Offender Is Advised Thereof, **41 A.L.R.6th 141**

Propriety of Use of Multiple Juries at Joint Trial of Multiple Defendants in State Criminal Prosecution, **41 A.L.R.6th 295**

DAMAGES

Retroactive Application of State Statutes Concerning Asbestos Liability, **41 A.L.R.6th 445**

EXPERIMENTS AND TESTS

Recovery for Nonconsensual Human Medical Experimentation, **42 A.L.R.6th**

IMPEACHMENT OF WITNESSES

Propriety of Using Otherwise Inadmissible Statement, Taken in Violation of Miranda Rule, to Impeach Criminal Defendant's Credibility—State Cases, **42 A.L.R.6th**

INFORMED CONSENT

Recovery for Nonconsensual Human Medical Experimentation, **42 A.L.R.6th**

INSURANCE AND INSURANCE COMPANIES

Automobile Liability Insurance Policy Exclusion as Applied to Loss or Injury Resulting from Insured's Flight from Police, **41 A.L.R.6th 527**

INTOXICATING LIQUORS

Interplay Between 21st Amendment and Sherman Act Concerning State Regulation of Intoxicating Liquors, **41 A.L.R.6th 77**

JURY AND JURY TRIAL

Propriety of Use of Multiple Juries at Joint Trial of Multiple Defendants in State Criminal Prosecution, **41 A.L.R.6th 295**

LABOR AND EMPLOYMENT

Injury to Employee As Arising Out Of or In Course of Employment for Purposes of State Workers' Compensation Statute—Effect of Employer-Provided Living Quarters, Room and Board, or the Like, **42 A.L.R.6th**

LIBEL AND SLANDER

Defamation by Television—Actual Malice, **42 A.L.R.6th**

MALPRACTICE BY ATTORNEY

Legal Malpractice In Connection With Attorney's Withdrawal As Counsel—Tort, Civil Rights, Family Law, Probate and Unspecified Cases, **42 A.L.R.6th**

MEDICAL RESEARCH

Recovery for Nonconsensual Human Medical Experimentation, **42 A.L.R.6th**

REGISTRATION

Court's Duty to Advise Sex Offender as to Sex Offender Registration Consequences or Other Restrictions Arising from Plea of Guilty, or to Determine that Offender Is Advised Thereof, **41 A.L.R.6th 141**

RELIGION AND RELIGIOUS SOCIETIES

Propriety of Pharmacy and Pharmacist's Refusal to Fill Prescription for Contraceptives, **41 A.L.R.6th 555**

TELECOMMUNICATIONS

Validity of State and Local Taxation and Regulation of Voice over Internet Protocol (VoIP) Service, **41 A.L.R.6th 375**

TELEVISION

Defamation by Television—Actual Malice, **42 A.L.R.6th**

TWENTY-FIRST AMENDMENT

Interplay Between 21st Amendment and Sherman Act Concerning State Regulation of Intoxicating Liquors, **41 A.L.R.6th 77**

WORKERS' COMPENSATION

Right to Compensation Under State Workers' Compensation Statute for Injuries Sustained During or as Result of Horseplay, Joking, Fooling, or the Like, **41 A.L.R.6th 207**

Injury to Employee As Arising Out Of or In Course of Employment for Purposes of State Workers' Compensation Statute—Effect of Employer-Provided Living Quarters, Room and Board, or the Like, **42 A.L.R.6th**

Construction and Application of Exclusive Remedy Rule Under State Workers' Compensation Statutes With Respect to Liability for Injury or Death of Employee as Passenger in Employer-Provided Vehicle—Requisites for, and Factors Affecting Applicability and Who May Invoke Rule, **42 A.L.R.6th**

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