

ALR 6th

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From the editor

The current and upcoming volume of A.L.R.6th discusses various attorney and client issues. [43 A.L.R.6th 163](#) collects cases dealing with the reciprocal discipline of attorneys that have engaged in criminal misconduct while an annotation in [44 A.L.R.6th](#) will collect and organize cases concerning the reciprocal discipline of attorneys for issues of noncriminal misconduct towards clients not involving client funds. [43 A.L.R.6th 475](#) continues the attorney and client theme with an annotation exploring state cases where the adequacy of defense counsel's representation of a criminal client regarding an entrapment defense is called into question. Information on these and other annotations of varying topics included in this and the next volume of A.L.R.6th are highlighted below. We hope they are beneficial to your research.

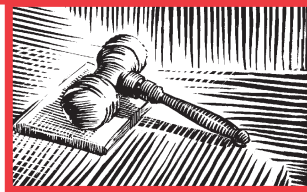
Douglas S. Jurenko, Editor, and Jason B. Binimow, J.D.

Highlights

ASSISTANCE OF COUNSEL

Adequacy of Defense Counsel's Representation of Criminal Client Regarding Entrapment Defense—State Cases

Entrapment has been defined as the inducement of one to commit a crime not contemplated by that person, for the mere purpose of instituting a criminal prosecution against him or her. It has also been defined as the conception and planning of an offense by a law enforcement officer and the procurement of its commission by one who would not have perpetrated it except for the trickery, persuasion, or fraud of the officer. In essence, the defense of entrapment prohibits law enforcement officials from instigating criminal acts by otherwise innocent persons in order to punish them. The defense of entrapment is a judicially created 20th Century American doctrine that probably evolved from the increasing use of informers and undercover agents in the detection of crimes, particularly liquor and narcotics offenses.



In the federal court system, the defense has been recognized and refined in many decisions, and it has been universally accepted by the states through judicial decision or legislation. Entrapment is an affirmative defense that must be raised by the defendant. It is in the nature of a

confession and avoidance. The issue arises in state cases as to the adequacy of defense counsel's representation of a criminal client regarding the entrapment defense. This annotation discusses the state cases that have determined the adequacy, competency, and effectiveness of defense counsel's representation of a criminal defendant concerning matters pertaining to the entrapment defense. [43 A.L.R.6th 475](#)

DISBARMENT OF ATTORNEY

Reciprocal Discipline of Attorneys—Criminal Conduct

Attorneys have a continuing obligation to comply with rules of professional conduct, and advocacy to which

a client and the client's legal position is entitled cannot enable or justify an attorney in violating ethical restraints to which he or she is subject. Hence, an attorney discipline system that is separate from court action is necessary to protect the public, since society has found that the regulation of various professions through licensing is an essential companion to the relief available through civil and criminal litigation. The purpose of suspending or disbarring an attorney is to remove from the profession a person whose misconduct has proved such person unfit to be entrusted with the duties and responsibilities belonging to the office of an attorney, and thus to protect the public and those charged with the administration of justice, rather than to punish the attorney, although disbarment is nonetheless a punishment or penalty imposed on the lawyer and the sanctions imposed may have that incidental effect. The purpose of the attorney disciplinary process is not to punish the offender, but to protect the public. The issue arises as to the propriety of reciprocal attorney discipline for criminal conduct allegedly committed by the attorney. This annotation collects and discusses the cases which have considered the propriety of reciprocal attorney discipline for criminal conduct. [43 A.L.R.6th 163](#)

LIMITED LIABILITY COMPANIES

Construction and Application of Limited Liability Company Acts—Issues Relating to Formation of Limited Liability Company and Addition or Disassociation of Members Thereto

A limited liability company (LLC) is a hybrid business entity that offers its members limited liability as if they were shareholders of a corporation, but treats the entity and its members as a partnership for tax purposes. All 50 states and the District of Columbia have enacted LLC legislation, and many states have adopted or substantially adopted the Uniform Limited Liability Company Act, the Unif. Ltd. Liability Co. Act 2006 §§101 et seq., which applies in the absence of a relevant state law provision. Many federal and state courts have construed and applied LLC acts regarding issues related to the formation of an LLC and the addition or disassociation of LLC members. This annotation collects and discusses

all of the cases which have addressed construction and application of LLC acts with regard to issues involving the formation of an LLC and the addition or disassociation of LLC members. [43 A.L.R.6th 611](#)

SHIPS AND VESSELS

Validity of Search of Cruise Ship Cabin

The overriding function of the Fourth Amendment of the United States Constitution is to protect personal privacy and dignity against unwarranted intrusion by the state. The right of a person to be free from unreasonable governmental intrusion in his or her residence is at the core of the Fourth Amendment and constitutes a fundamental value which law enforcement officers must respect. By protecting persons against unreasonable searches of "their persons and houses," the Fourth Amendment of the Constitution indicates that it is a personal right that must be invoked by an individual, but the extent to which the Fourth Amendment protects people may depend upon where those people are. To an extent, therefore, the Fourth Amendment protection against unwarranted governmental intrusion becomes effective when a person places his or her own person or property within a constitutionally-protected area. Under the "border search" doctrine, which creates an exception to the warrant requirement of the Fourth Amendment, a governmental official at an international border may conduct routine stops and searches without a warrant or probable cause. The border search doctrine also is applicable to stops and searches conducted at the functional equivalent of a border. Moreover, the border search doctrine has been extended to allow governmental officials to conduct warrantless searches and seizures even beyond the border or its functional equivalent upon a reasonable suspicion of criminal activity. Border patrol officers thus may stop vehicles at locations other than the actual border or its functional equivalent only if they are aware of specific articulable facts, together with rational inferences therefrom, that reasonably warrant a suspicion that a crime has been committed. The issue arises as to the validity of searches of cruise ship cabins. This annotation collects and discusses all of the cases which have considered the validity of searches of cruise ship cabins. [43 A.L.R.6th 355](#)

Coming Soon

Listed below are a few of the topics scheduled to be published in 44 A.L.R.6th in May 2009. Some of the annotations listed may be rescheduled.



DISBARMENT OF ATTORNEY

Reciprocal Discipline of Attorneys—Noncriminal Misconduct Towards Clients Not Involving Client Funds

In furtherance of its legitimate interest in regulating the practice of law, the state may, without violating due process, create an integrated bar to provide for the discipline of attorneys. Thus, without invading

any constitutional privilege or right, an attorney's right to practice law may be revoked by a disbarment proceeding, based on conduct rendering the attorney unfit to hold a license to practice or to exercise the duties and responsibilities of an attorney. In addition, these concerns are at their zenith in the case of an attorney who has previously committed an offense serious enough to justify disbarment and is again found to have departed from the rules of professional conduct. An attorney can be deprived of his or her office only for good cause shown in a judicial proceeding conducted in a legal manner. The issue arises as to the propriety of reciprocal attorney discipline for noncriminal misconduct towards clients not concerning client funds. This annotation collects and discusses the cases which have considered the propriety of reciprocal attorney discipline of attorneys for noncriminal misconduct towards clients not concerning client funds. **44 A.L.R.6th**

EMINENT DOMAIN

Validity of Extraterritorial Condemnation by Municipality

Cities and other municipal corporations, counties, and governmental subdivisions of the state may be authorized to acquire land beyond their territorial limits by eminent domain. This annotation collects and discusses all of the cases in which courts have considered the validity of extraterritorial condemnation by a municipality. **44 A.L.R.6th**

ENDANGERED SPECIES

Construction and Application of State Endangered Species Acts

The Federal Endangered Species Act, enacted in 1973, encouraged the states to pass similar legislation, and

all the states complied. These state statutes comprehensively cover the fields of conservation, protection, and restoration of endangered or threatened species of fish and wildlife, empowering local and state agencies, providing a procedure for listing or delisting endangered species, and mandating consideration of the impact on endangered species of development projects. This annotation will collect and discuss the court cases construing and applying state endangered species acts. **44 A.L.R.6th**

MALPRACTICE BY MEDICAL OR HEALTH PROFESSIONS

Physician's Liability for Patient's Addiction to or Overdose from Prescription Drugs

If a doctor prescribes a particular medicine and a specific and limited dosage for the patient in accordance with proper guidelines, after carefully examining the patient, running any necessary tests, and disclosing any risks, it is unlikely that the patient will come to abuse the medication. This is especially true where the physician carefully monitors the patient and is very cautious in not refilling prescriptions unnecessarily. However, where some of these factors are not present, such as the doctor prescribing or refilling prescriptions for dangerous drugs without a full or proper examination or in excess of recommendations, the patient may become addicted to the drugs or may overdose on them. Courts have reached a variety of conclusions as to the liability of physicians for a patient's addiction or overdose from prescription drugs, as this annotation illustrates. **44 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 43 A.L.R.6th or scheduled for publication in 44 A.L.R.6th. Some of the annotations listed may be rescheduled.

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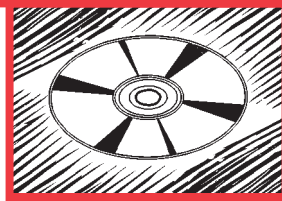
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