

ALR 6th

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From the editor

Annotations in this and the upcoming volume of A.L.R.6th examine various issues of constitutional rights. [45 A.L.R.6th 1](#) collects cases where a party has claimed that the use of a taser constituted a violation of his or her constitutional rights, and [45 A.L.R.6th 337](#) addresses what constitutes a “custodial interrogation” by a police officer requiring that a suspect on hotel property be informed of his or her federal constitutional rights before that custodial interrogation. An annotation in 46 A.L.R.6th collects the case law where the validity of restrictions to ones rights to freedom of speech and assembly guaranteed under the First Amendment that were imposed during national political conventions was questioned. Also to watch for in the next volume will be our annual Supreme Court Review, detailing the Supreme Court cases of 2008-2009 and where they are discussed in A.L.R.

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

Highlights

ATTORNEY AND CLIENT

Reciprocal Discipline of Attorneys— Commingling or Other Mishandling of Client Funds

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. When an attorney is subject to disciplinary measures, the following factors should be considered in determining the severity of the sanctions, though the list is nonexclusive: the nature of the misconduct involved; the need to deter similar misconduct; preservation of the dignity of the legal profession; and protection of the public. 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 the attorney’s act of commingling or other mishandling of a client’s funds. This annotation collects and discusses the cases that have considered the propriety of reciprocal attorney discipline of attorneys for the attorney’s act of commingling or other mishandling of a client’s funds. Note the related annotations of Reciprocal Discipline of Attorneys—Noncriminal Misconduct Towards Clients Not Involving Client Funds, [44 A.L.R.6th 75](#), and Reciprocal Discipline of Attorneys—Criminal Conduct, [43 A.L.R.6th 163](#). [45 A.L.R.6th 175](#)

CRUELTY

Propriety, Measure, and Elements of Restitution to Which Victim is Entitled Under State Criminal Statute—Cruelty to, Killing, or Abandonment of, Animals

In certain jurisdictions, animal abuse laws contain provisions authorizing awards of restitution to organizations or persons providing care and treatment to abused or abandoned animals. This annotation collects and discusses all of the cases that have considered restitution under various state statutes due to animal cruelty or animal abandonment, as well as killing an animal, including the authority of the court to award restitution under a particular or general statute, restitution for particular costs and expenses, elements factored in the determination of the restitution award, and the reasonableness of the award. [45 A.L.R.6th 435](#)

CUSTODIAL INTERROGATION

What Constitutes “Custodial Interrogation” by Police Officer Within Rule of Miranda v. Arizona Requiring that Suspect Be Informed of Federal Constitutional Rights Before Custodial Interrogation—Upon Hotel Property

The duty of police to inform a suspect of his or her rights under the privilege against self-incrimination and the corresponding right of the suspect to be informed, attaches when “custodial interrogation” begins. This annotation collects and discusses all of those cases in which the courts have considered whether a defendant was subject to custodial interrogation upon hotel property for the

purposes of *Miranda v. Arizona*, requiring that the defendant be informed of his or her federal constitutional rights. [45 A.L.R.6th 337](#)

POLICE AND LAW ENFORCEMENT OFFICERS

When Does Use of Taser Constitute Violation of Constitutional Rights

A police officer is often constrained by circumstances to use an appropriate degree of force on a suspect in order to enforce orders and commands, and in order to protect the general public, other officers and emergency personnel, and the suspect himself. A wide variety of methods of force are available and are used by most police departments. These options range from holding, pushing, or lightly striking a suspect, to the use of pepper or chemical sprays and the like, and to hitting with batons, and they culminate with the deadly force of firearms. An increasingly popular option in the mid-range of force is the use of stun guns, known as “tasers.” The electric discharge of a taser is extremely painful and overrides the body’s nervous system, usually causing a suspect to fall down or otherwise cease resistance long enough for the officers to handcuff the suspect or otherwise regain control. Moreover, since the discharge can be from a short distance away from a suspect, there is less of a need to get close to employ direct physical force, thus preventing more serious injuries both to the suspect and to the officers. However, police are frequently accused of misusing or overusing tasers where much less force was all that was necessary, or of using it on sick or otherwise sensitive individuals. The courts have reached a variety of conclusions as to the constitutionality of particular incidents involving the use of tasers, as this annotation illustrates. [45 A.L.R.6th 1](#)

Coming Soon

Listed below are a few of the topics scheduled to be published in [46 A.L.R.6th](#) in August 2009. Some of the annotations listed may be rescheduled.



DEMONSTRATIONS AND DEMONSTRATORS

Validity of Restrictions Imposed During National Political Conventions Impinging Upon Rights to Freedom of Speech and Assembly under First Amendment

One of the severest clashes between security needs and the rights of demonstrators to air contrary opinions occurs every four years at the major party national political conventions. Presidents, candidates, governmental officials of all levels, and other leaders and celebrities must all be guarded carefully throughout the convention, often in a venue located in the midst of a bustling city. The method most frequently used to ensure the safety of the convention includes closing off various roads and areas to all but authorized delegates and the media. However, this policy runs headlong into the facts that due to the potential of influencing a party’s choice of candidate or at

least its platform, as well as the heavy media concentration surrounding all convention activities, numerous people want to come to the convention to demonstrate their opinions on all the issues of the day. This annotation will collect and discuss the state and federal cases in which the courts have considered whether limitations placed by officials on the rights of individuals or groups to protest, demonstrate, or parade during national political conventions violated the rights to Freedom of Speech and Assembly under the First Amendment. [46 A.L.R.6th](#)

EXEMPTIONS AND EXCLUSIONS

Construction and Application of Exemption for Firearms Under State Law

Federal law enumerates property that a debtor in a bankruptcy proceeding may claim as exempt from the bankruptcy estate, but a state may choose to opt out of the exemption plan set forth in the federal bankruptcy statute (11 U.S.C.A. § 522(b)). While the Bankruptcy Code defines the types of property that an individual debtor in bankruptcy may exempt and affords the debtor the choice of the exemptions listed in the Bankruptcy Code itself or the exemptions available under other federal law or under applicable state or local law, this is subject to an applicable state law that specifically does not authorize the use of the federal exemptions. Thus, states are given

the option to enact their own exemption schemes and forbid a debtor's election of the Bankruptcy Code exemptions. A state thus has, by its ability to opt out, a "veto" power over the federal bankruptcy exemptions. If a state has "opted out" of the federal exemption scheme, debtors who file in that state must claim exemptions pursuant to that state's laws, for while federal law controls exemptions generally and exemption procedures, state law governs specific property that may be exempted and the value of those exemptions. Debtors in an opt-out state are also entitled to exemptions under a federal law other than the Bankruptcy Code, such as the federal Consumer Credit Protection Act. Under state law, exemptions for firearms may be allowed in a variety of ways. While some states specifically exempt firearms, some states do not explicitly exempt firearms, but instead have broad exemption provisions that could be interpreted to include firearms, such as under the broad term of "household goods." The issue arises as to whether a debtor's "firearms" are exempted from bankruptcy estates pursuant to state law specific firearms exemptions, generalized property exemptions, "household goods" exemptions, "personal property" exemptions, or similar exemption provisions. This annotation will collect and discuss all cases analyzing whether a debtor's "firearms" are exempted from bankruptcy estates pursuant to state law specific firearms exemptions, generalized property exemptions, "household goods" exemptions, "personal property" exemptions, or similar exemption provisions. **46 A.L.R.6th**

PUNITIVE DAMAGES

Right of Principal to Recover Punitive Damages for Agent's or Broker's Breach of Duty

A broker may be held liable for punitive damages in certain cases, as where their conduct is deemed to constitute fraud, malice, or oppression toward the principal. This annotation will collect and summarize those cases in which the courts have considered the right of a principal to recover punitive damages for an agent's or broker's breach of duty. **46 A.L.R.6th**

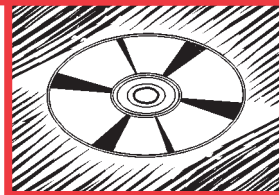
LIMITED LIABILITY COMPANIES

Construction and Application of Limited Liability Company Acts—Issues Relating to Liability of Limited Liability Company for Acts of Its Members, Managers, Officers, and Agents

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. Many federal and state courts have construed and applied state LLC acts regarding issues related to the liability of an LLC for the acts of its members, managers, officers, and agents. This annotation will collect and discuss all of the cases that have addressed the construction and application of state LLC acts with regard to issues involving the liability of an LLC for the acts of its members, managers, officers, and agents. **46 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 45 A.L.R.6th or scheduled for publication in 46 A.L.R.6th. Some of the annotations listed may be rescheduled.



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