

ALR 6th

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From the editor

Volume 46 and the upcoming volume 47 contain a mixed bag of articles addressing topics such as liability of corporations for climate change and weather conditions ([46 A.L.R.6th 345](#)); disciplining an attorney for abuse of misuse of computer technology, including Internet and email activities ([46 A.L.R.6th 365](#)); and necessity of expert testimony to establish malpractice or breach of professional standard of care by an architect ([47 A.L.R.6th](#)). The details of these and other annotations are highlighted below. Also of note in the current volume is the 2008 to 2009 A.L.R. United States Supreme Court Review, [46 A.L.R.6th 495](#), which notes the issues that were addressed, via opinions, or grants or denials of certiorari, by the United States Supreme Court in its 2008 to 2009 term, that are within the scope of and further analyzed by American Law Reports annotations.

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

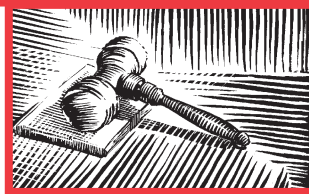
Highlights

ATTORNEYS

Disciplining Attorney for Abuse or Misuse of Computer Technology, Including Internet and Email Activities

A lawyer's requirement to adhere to the proper standards of professional responsibility necessarily extends to actions involving computers, e-mail, the Internet, and all modern high-tech devices. Nevertheless, many attorneys have violated various ethical guidelines and disciplinary rules in this area, sometimes because of a mere lack of familiarity with computer hardware or software, but most often because they thought that, due to the solitary nature of computer work, their deliberate activities were secret and would not be discovered. Courts have reached varying conclusions as to appropriate discipline for an attorney's misconduct in connection with computers and the Internet, as this annotation illustrates. [46 A.L.R.6th 365](#)

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BANKS AND BANKING

Regulation of Pre-Paid Stored-Value "Gift Cards"

The clear designation of power to a state official or agency with the expressed purpose to regulate specific aspects of banking activities by banks within the state, with guidelines for the official or agency to follow, is a constitutional exercise of the power of the state. The power of the sovereign authority to provide for the creation of offices and the appointment of officials designed to regulate and supervise the banking business within the jurisdiction of such sovereign authority is well recognized, and an instance of this is the appointment of bank examiners for state or national banks. The National Bank Act (NBA) authorizes national banks to issue, market, and service credit cards. A national bank issuing a credit card to a consumer does not engage in a lending of its credit prohibited in certain circumstances under the NBA, but, rather, carries on the business of banking by

loaning its money that had been deposited by its customers. A national bank's enumerated and incidental powers under the National Bank Act (NBA) include the issuance of stored-value gift cards with expiration dates and administrative fees. Stored value cards, known in the industry as "prepaid" products, are the most recent big success in the payments industry. Consumers, merchants, bankers as well as the media, legislatures and regulators have taken notice. The most familiar prepaid card products are transportation and telephone cards, and gift cards. Among the more recent additions to prepaid card products is the payroll card. Use of both gift cards and payroll cards has been expanding rapidly. Gift cards essentially are "gift certificates" with magnetic strips. They may be issued for use at one merchant, such as those issued by national retailers of books, coffee, and groceries, or for use at a wider variety of merchants, such as cards carrying the Visa and MasterCard logos. Payroll cards can substitute for traditional checks as a method of paying one-time or recurring wages in many industries. The issue arises as to the regulation of prepaid, stored-value gift cards. This annotation collects and discusses all of the cases addressing the regulation of pre-paid, stored-value gift cards. [46 A.L.R.6th 437](#)

ENVIRONMENTAL LAW

Liability of Corporations for Climate Change and Weather Conditions

Global warming, also known as "climate change," poses potential threats of grave danger to the environment, including injuries and deaths from heat, diminished water supplies, severe firestorms and hurricanes, and rising seas. Although this would seem to be an area in which proper response would entail national and international scientific and political agreements and cooperation and not judicial decisions, various legal solutions have been attempted to remedy this problem, usually by requiring governments or individuals to lessen their emission of various harmful gases, especially carbon dioxide. One approach taken in a number of lawsuits is to accuse various large manufacturing corporations of liability for global warming due to allowing large emissions of gases from their factories or other production facilities over long periods of time. Courts have considered the question of corporate liability for global warming, as this annotation illustrates. [46 A.L.R.6th 345](#)

SENTENCE AND PUNISHMENT

Defendant's Right to Credit for Time Spent in Halfway House, Rehabilitation Center, or Similar Restrictive Environment as Condition of Pretrial Release

Traditionally, it has been held that in the absence of a pertinent statute to the contrary, a defendant does not have a fundamental right to credit for time spent in custody prior to trial or sentence. However, certain authorities recognize a defendant's right to that credit, where the custody was due to the defendant's financial inability to make bail, and a denial of credit would therefore be considered discriminatory. Also, a number of courts have recognized the right to credit, where the defendant was given the maximum sentence that could be imposed for the offense, and there is authority holding that regardless of the maximum sentence and of the actual sentence imposed, the credit must be given for pretrial custody, where the custody was due to indigency. In some jurisdictions, a trial court has the discretionary authority to decide whether a defendant should be given credit for time spent in custody prior to trial or sentence. While decisions denying credit have been upheld as not being an abuse of discretion, the denial of credit constitutes an abuse of discretion where the pre-sentence confinement, when added to the sentence imposed, exceeded the statutory maximum that could be imposed for the particular offense. Various statutes provide a credit for the time spent in custody prior to trial or sentence. A defendant in a state case may be entitled to the benefit of credit for time in pretrial or pre-sentence custody in a rehabilitation facility. However, a court may have the discretion to deny a defendant credit toward the sentence for pretrial time served on home detention. The issue arises as to a defendant's right to receive credit on a sentence for the time the defendant spent in a halfway house, rehabilitation center, or other private treatment program, where the defendant's participation in the program was a condition imposed by the court for the defendant's release from jail prior to trial. This annotation collects the state and federal cases which have considered the right of a defendant to receive credit on a sentence for the time the defendant spent in a halfway house, rehabilitation center, or other private treatment program, where the defendant's participation in the program was a condition imposed by the court for the defendant's release from jail prior to trial. [46 A.L.R.6th 63](#)

Coming Soon

Listed below are a few of the topics scheduled to be published in 47 A.L.R.6th in September 2009. Some of the annotations listed may be rescheduled.



ARCHITECTS

Necessity and Admissibility of Expert Testimony to Establish Malpractice or Breach of Professional Standard of Care by Architect

It is generally recognized that expert testimony is necessary to establish malpractice or breach of the professional standard of care by an architect where the issues

involved are beyond the ordinary competency of lay jurors. This annotation will collect those cases in which courts have determined the necessity and admissibility of expert testimony to establish malpractice or breach of the professional standard of care by an architect. **47 A.L.R.6th**

SEARCH AND SEIZURE

Construction and Application of “Automatic Companion Rule” or Person’s “Mere Proximity” to Arrestee to Determine Propriety of Search of Person for Weapons or Firearms

The “automatic companion rule” holds that all companions of an arrestee, capable of accomplishing a harmful assault on the officer, are constitutionally subjected to the cursory pat-down reasonably necessary to give assurance that they are unarmed. This annotation will collect and discuss those cases which have construed or applied the “automatic companion” rule, or which consider a person’s “mere proximity” to the arrestee to determine the propriety of a search of such person for weapons or firearms to protect the safety of the officers involved. **47 A.L.R.6th**

UNIFORM COMMERCIAL CODE

Creation and Perfection of Security Interests in Insurance Proceeds under Article 9 of Uniform Commercial Code

Article 9 of the Uniform Commercial Code (UCC) enables a creditor to obtain a security interest in the personal property or fixtures of a debtor, including goods, documents, instruments, payment intangibles, chattel paper or accounts. Under UCC Article 9, upon disposition of the perfected collateral the security interest generally continues in any identifiable proceeds, such as insurance proceeds, even if the security agreement or financing statement does not explicitly mention proceeds. However, not all insurance proceeds are securable interests under UCC Article 9. This annotation

will collect and discuss cases that have considered the creation and perfection of security interests in insurance proceeds under Article 9 of the Uniform Commercial Code. **47 A.L.R.6th**

ZONING

Right to Intervene in Court Review of Zoning Proceeding

Intervention is concerned with something more than standing to sue; it is concerned with protecting an interest which, practically speaking, can be protected only through intervention in the current proceeding. Where the question is not simply one of standing, but of the right to intervene, the interest must be more refined, more direct, and more substantial. Nevertheless, standing remains a strong threshold requirement where third parties seek to intervene in lawsuits. To have standing in a matter involving review of a zoning or planning decision, the person asserting standing must show a substantial, direct, and immediate interest in the outcome on the matter. Those not directly affected by an appeal have no standing to sue. While the application of standing principles, especially in zoning matters, should not be heavy-handed, permitting everyone to seek review could work against the welfare of the community by proliferating litigation and by unduly delaying final dispositions. To have standing to challenge a zoning ordinance, the challengers must have suffered an injury in fact, the injury must be fairly traceable to the challenged conduct and not the result of the independent action of some third party, and it must be likely that the injury will be redressed by a favorable decision. Similarly, to have standing to seek judicial review of a board of zoning appeals’ decision, that decision must infringe upon a legal right of the petitioner that will be enlarged or diminished by the result of the appeal, and the petitioner’s resulting injury must be pecuniary in nature. The issue arises as to the right of a party to intervene in a court review of a zoning proceeding. This annotation will collect and discuss all of the cases which have considered the right of a party to intervene in a court review of a zoning proceeding. **47 A.L.R.6th**

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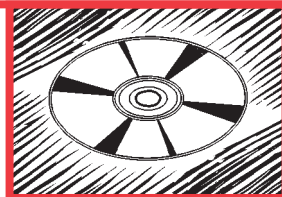
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