

ALR 6th

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From the editor

Volumes 59 and 60 of A.L.R.6th address, inter alia, issues concerning the admissibility and necessity of expert evidence as to the standards of practice and negligence in malpractice actions against attorneys. Such issues addressed are conduct related to procedural issues ([59 A.L.R.6th 1](#)) and conduct related to substantive representation and transactional matters ([60 A.L.R.6th](#)). Volumes 59 and 60 also address issues arising under the Uniform Child Custody Jurisdiction and Enforcement Act's exclusive, continuing jurisdiction provision; instances of no significant connection/substantial evidence ([59 A.L.R.6th 161](#)) and other than no significant connection/substantial evidence ([60 A.L.R.6th](#)). Other annotations of note in volumes 59 and 60 address the propriety of the execution of no-knock search warrants ([59 A.L.R.6th 311](#)) and the propriety of incentive awards or incentive agreements in class actions.

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

Highlights

ATTORNEY MALPRACTICE

Admissibility and Necessity of Expert Evidence As to Standards of Practice and Negligence in Malpractice Action Against Attorney—Conduct Related to Procedural Issues

The client has the burden, in an action against an attorney for negligence or violation of duty, of proving the existence of the relation of attorney and client, the acts constituting the alleged negligence, that the negligence was the proximate cause of the injury, and the fact and extent of the injury alleged. The latter element often involves the burden of showing that, but for the negligence of the attorney, the client would have been successful in the prosecution or defense of an action. The degree of care required of an attorney is a question of law to be determined by the court, but the care actually exercised in a given situation is a question of fact to be determined by the jury under proper instructions



by the court. However, although breach of duty is usually a fact issue for the jury, it may be resolved as a matter of law if the circumstances do not permit a reasonable doubt as to whether the defendant's conduct violated the degree of care exacted of him or her. The determination

of causation is a question of law. The issue arises as to the admissibility and necessity of expert evidence as to the standards of practice and negligence in a malpractice action instituted against an attorney, where the disputed conduct concerns procedural issues related to, for example, a failure to timely file complaints, motions, and the like, trial tactics and strategy, attendance at hearings, and joinder and venue issues. This annotation collects and analyzes the state and federal cases in which the courts considered the admissibility or necessity of expert evidence as to standards of practice and negligence in malpractice actions against attorneys, where the conduct under inquiry related to procedural issues. [59 A.L.R.6th 1](#)

CRIMINAL LAW

Propriety of Execution of No-Knock Search Warrant

A no-knock search warrant authorizes law enforcement officers to execute a search warrant without knocking and announcing their presence prior to entering the location and conducting a search. A validly issued no-knock search warrant must be executed reasonably, in accordance with the Fourth Amendment of the United States Constitution. This annotation will collect and discuss all of the cases which have considered the propriety of the execution of no-knock search warrants. [59 A.L.R.6th 311](#)

CUSTODIAL INTERROGATION

What Constitutes “Custodial Interrogation” at School

Miranda warnings are due only when a suspect interrogated by police is in custody. This annotation collects and discusses those cases which have considered what constitutes “custodial interrogation” within the rule of Miranda, requiring that a suspect be informed of federal constitutional rights before custodial interrogation at school. [59 A.L.R.6th 393](#)

UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT

Construction and Application of Uniform Child Custody Jurisdiction and Enforcement Act’s Exclusive, Continuing Jurisdiction Provision—No Significant Connection/Substantial Evidence

In our modern society, parents often live in different states or countries. Many states have passed legislation aimed at determining which of multiple states should enter or modify child custody determinations. Most have adopted some version of the Uniform Child Custody Jurisdiction and Enforcement Act. The UCCJEA was promulgated to replace the Uniform Child Custody Jurisdiction Act (UCCJA). One of its most significant changes is its award of exclusive, continuing jurisdiction to the court that first enters a child custody determination. This exclusivity may be lost however and the court of another state permitted to modify the order of the original decree court. One way that jurisdiction may be lost is when the child no longer has a “significant connection” with the original decree state. Questions have arisen about the proper application of this jurisdictional test. This annotation will collect and discuss all the cases in which a court has applied or construed the portion of a state’s enactment of the UCCJEA provision regarding the relinquishment of exclusive, continuing jurisdiction based on the dissipation of “significant connection” with the state or the unavailability of “substantial evidence” relevant to the custody determination. [59 A.L.R.6th 161](#)

Coming Soon

Listed below are a few of the topics scheduled to be published in 60 A.L.R.6th in December 2010. Some of the annotations listed may be rescheduled.



ATTORNEY MALPRACTICE

Admissibility and Necessity of Expert Evidence As to Standards of Practice and Negligence in Malpractice Action Against Attorney—Conduct Related to Substantive Representation and Transactional Matters

In an action against an attorney for negligence or violation of duty, the client has the burden of proving the existence of the relation of attorney and client, the acts constituting the alleged negligence, that the negligence was the proximate cause of the injury, and the fact and extent of the injury alleged. The latter element often involves the burden of showing that, but for the negligence of the attorney, the client would have been successful in the prosecution or defense of an action. The degree of care required of an attorney is a question of law to be determined by the court, but the care actually exercised in a given situation is a question of fact to be determined by the jury under proper instructions by the

court. However, although breach of duty is usually a fact issue for the jury, it may be resolved as a matter of law if the circumstances do not permit a reasonable doubt as to whether the defendant’s conduct violated the degree of care exacted of him or her. The determination of causation is a

question of law. The issue arises as to the admissibility and necessity of expert evidence as to the standards of practice and negligence in a malpractice action instituted against an attorney, where the disputed conduct relates to substantive representation and transactional matters. This annotation will collect and analyze the state and federal cases in which the courts considered the admissibility or necessity of expert evidence as to standards of practice and negligence in malpractice actions against attorneys, where the conduct under inquiry related to substantive representation and transactional matters. [60 A.L.R.6th](#)

CLASS ACTIONS

Propriety of Incentive Awards or Incentive Agreements in Class Actions

For class actions to be effectively litigated, it is necessary that at least one plaintiff be willing to take on the role of class representative, according to Fed. R. Civ. P. 23 and state court procedural rules. Courts frequently make incentive awards to named plaintiffs at the conclusion of class action litigation, in some cases pursuant to incentive agreements entered into by the named plaintiffs

and class counsel prior to litigation, to compensate the representatives for their costs and service to the class. Many courts have considered the propriety of incentive awards or incentive agreements in class actions. This annotation will collect and discuss all cases which have addressed the propriety of incentive awards or incentive agreements in class actions. **60 A.L.R.6th**

DRUGS AND NARCOTICS

Construction and Application of Federal Uniformed Services Former Spouse Protection Act in State Court Divorce Proceedings

The Federal Controlled Substances Act provides in 21 U.S.C.A. § 903: “No provision of [the Act] shall be construed as indicating an intent on the part of Congress to occupy the field in which that provision operates, including criminal penalties, to the exclusion of any State law on the same subject matter which would otherwise be within the authority of the State, unless there is a positive conflict between that provision ... and that State law so that the two cannot consistently stand together.” This annotation will collect and analyze the cases regarding whether there is preemption of state regulation of controlled substances by the federal Controlled Substances Act. **60 A.L.R.6th**

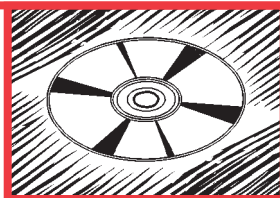
UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT

Construction and Application of Uniform Child Custody Jurisdiction and Enforcement Act’s Exclusive, Continuing Jurisdiction Provision—Other than No Significant Connection/Substantial Evidence

The Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) was created, in part, to address the issue of competing orders and duplicative jurisdiction. One way the Act attempts to do this is by awarding exclusive, continuing jurisdiction to the court that first enters a child custody determination. This exclusivity may be lost under certain circumstances though. One of the circumstances that allows a court of another state to modify the order of the original decree court is a determination that both parents, or a parent and a parent substitute, as well as the child “do not presently reside” in the decree state. Either the original decree court or the prospective modification court can make this determination. This annotation will collect and discuss all the cases in which a court has applied or construed issues under the UCCJEA related to the exercise of exclusive, continuing jurisdiction other than the loss of “significant connection” with the state or the unavailability of “substantial evidence” relevant to the custody determination. **60 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 **59 A.L.R.6th** or scheduled for publication in **60 A.L.R.6th**. Some of the annotations listed may be rescheduled.



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