

ALR 6th

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From the editor

Criminal law continues to be a fertile source of A.L.R. topics. The current volume of A.L.R.6th introduces the first in a major series of annotations on the presentencing withdrawal of a criminal plea of *Nolo Contendere* or *Non Vult Contendere* in state court. Volume 9 includes an introductory annotation discussing the general principles and procedural considerations governing such pleas, as well as the effect of such pleas on the actual sentences to be meted out, and also contains the first of a series of “substantive” annotations addressing specific instances of “Nolo” pleas, involving cases in which there is alleged a misunderstanding or lack of knowledge as to the nature of the charge involved, and the necessity of a factual basis for the plea itself. It is anticipated that the upcoming Volume 10, A.L.R.6th will include an annotation on the necessary awareness of the collateral consequences of a “Nolo” plea, and issues involving the competency of a particular defendant to enter such plea.

Russell G. Donaldson, J.D.

Highlights

CHILD SUPPORT

Remarriage of Divorced Parents to Each Other

In cases involving the remarriage and redivorce of parents, there are two questions that tend to arise regarding child support arrearages: (1) the enforceability of arrearages accrued under the original divorce decree prior to the second marriage; and (2) whether child support orders included in an initial divorce remain in force such that child support continues to accrue during the marriage and after a later separation or divorce, giving the custodial parent the right to collect arrearages accrued after later separation or divorce. This annotation collects and discusses the cases that have considered the effect on child support duties and

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arrearages of remarriage of parents to each other. [9 A.L.R.6th 437](#)

CRIMINAL LAW

Nolo Contendere Plea— Presentence Withdrawal

Where a defendant pleads no contest to a criminal charge, a motion to withdraw the plea is a primary means by which a defendant can challenge the plea colloquy or the voluntariness of the plea, although many other types of errors can also be raised on such a motion. Many times a defendant is simply dissatisfied with the choice he or she has made in entering the plea, and sometimes there is an attempt to manipulate the system. Since the standard for withdrawing a no contest plea prior to sentencing

is generally less stringent than after sentencing, a defendant's success in bringing such a motion may depend in part on when it is brought. Nevertheless, there are many factors which a court might consider in deciding whether to grant a presentence motion to withdraw a no contest plea. This annotation collects and discusses the cases which have considered general principles, the effect of withdrawal, and procedural matters concerning presentence withdrawal of a plea of *nolo contendere* or *non vult contendere* under state law. [9 A.L.R.6th 633](#)

INSURANCE

Notice of Claim—Extended Reporting Endorsements

The timeliness of notice to an insurer of a claim against its insured is a question permeating a multitude of insurance disputes, and the resolution of the question depends, of course, on both the policy requirements and the factual situation. In cases involving extended reporting period endorsements, the problem involves yet one more layer of controversy. This annotation collects and discusses the cases that have considered the effect and application of extended reporting endorsements. [9 A.L.R.6th 467](#)

SENTENCING

Choice of Remedies Where State Prosecutor Has Breached Plea Bargain

A criminal defendant has a constitutional right to the enforcement of a plea bargain; if it is induced by broken promises, a plea cannot stand. Any ambiguities in a plea agreement are resolved for the defendant and against the government, in accordance with the general contract rule that, where the drafting party has an overwhelmingly superior bargaining position, the contract is construed strictly against the drafter. In other words, when a plea rests in any significant degree on the promise or agreement of a prosecutor, so that the promise can be said to be part of the inducement or consideration for the plea, that promise must be fulfilled in order to maintain the integrity of the plea. In determining whether the terms of a plea agreement have been violated, the court must decide whether the government's conduct is consistent with the parties' reasonable understanding of the agreement. The issue arises as to a criminal defendant's choice of remedies where a state prosecutor has breached a plea bargain agreement. This annotation collects and discusses the state cases considering a defendant's appropriate remedy where it has been contended or determined that a state prosecutor has breached or violated a provision of a plea bargain agreement. [9 A.L.R.6th 541](#)

Coming Soon

Listed below are a few of the topics scheduled to be published in 10 A.L.R.6th in January 2006. Some of the annotations listed may be rescheduled.



shareholders to bring an individual action against those shareholders, in addition to maintaining a derivative action on behalf of the corporation. The various nuances of a direct action by a shareholder in a closely-held corporation is the subject of this annotation. [10 A.L.R.6th](#)

CLOSELY HELD CORPORATIONS

Shareholder's Action in Own Name

It has been a fundamental principal of corporate law that when a third party causes harm to a corporation, if the corporation does not bring an action for compensation, a shareholder may not bring a direct action to seek such recovery, but must rather bring a derivative action on behalf of the corporation. However, in the context of a closely-held corporation, adherence to this rule may have inequitable results. It would be unrealistic to expect the interests of plaintiff minority shareholders, who prevail in a derivative action, to be protected by defendant majority shareholders, who have allegedly converted, appropriated, and wasted corporate assets. For this reason, a number of jurisdictions have begun to allow minority shareholders in a closely-held corporation alleging wrongful conduct against the majority

LANDLORD AND TENANT

Refusal to Rent to Unmarried Couple

When an unmarried couple seeks to rent housing from a landlord, who on religious grounds refuses to rent to such couples, two legal rights are in direct conflict: the couple's right to freedom from discrimination, and the landlord's right to the free exercise of religion. Where the transaction is subject to an enactment forbidding marital status discrimination in housing transactions, the landlord may seek an exemption from the enactment on the basis of his or her free exercise right, and the courts that have considered the propriety of such an exemption have been far from uniform in their analysis or results in attempting to resolve this conflict. This annotation collects and analyzes the state and federal cases discussing whether a landlord's refusal to rent property to an unmarried couple, where such refusal would otherwise violate a law forbidding housing

discrimination on the basis of marital status, is nonetheless protected by the landlord's right to the free exercise of religion. [10 A.L.R.6th](#)

PARENT AND CHILD

Adoption and Safe Families Act

The Adoption and Safe Families Act of 1997 (P.L. 105-89) (ASFA) was enacted to promote the adoption of children who have been placed in foster care, to ensure that the health and safety of children in foster is the paramount concern, and to encourage permanent living arrangements for children in foster care as early as possible. In order to receive federal funds, states are required by the ASFA to implement plans which, among other things, limit the obligation to provide reasonable efforts to reunify parents with children in foster care, require the holding of a permanency hearing within 12 months after a child enters foster care to determine the child's permanent living arrangement, and require the state to file or join a petition to terminate parental rights, subject to certain exceptions, when a child has been in foster care for 15 of the most recent 22 months or when a parent has committed certain serious crimes. This annotation collects and analyzes the state cases in

which the ASFA and implementing state statutes have been construed or applied. [10 A.L.R.6th](#)

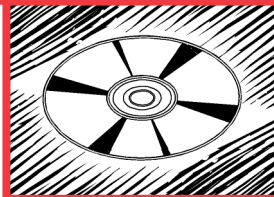
TELECOMMUNICATIONS

Anti-Spam Legislation

"Spam" is unsolicited commercial bulk electronic mail, and is akin to "junk mail" sent through the postal mail. The transmission of spam is a practice widely condemned in the Internet community, as the presence of mass amounts of unwanted and frequently offensive e-mail greatly interferes with the user's ability to sort out which e-mail messages are "legitimate" and desired. At first, state legislatures attempted to remedy this problem through a variety of creative but idiosyncratic enactments. However, in response to a perceived need for a national standard, Congress responded with legislation (the "Can-Spam Act of 2003"), which prohibits certain spamming practices, while preempting most state of the state legislation, other than those regulating deceptive practices. Courts have reached a variety of conclusions in considering the construction and application of federal and state anti-spam legislation, as this annotation illustrates. [10 A.L.R.6th](#)

Index

The following is a complete list, arranged alphabetically by topic, of annotations contained in the current volume [9 A.L.R.6th](#) or scheduled for publication in [10 A.L.R.6th](#). Some of the annotations listed may be rescheduled.



ADOPTION OF CHILDREN

Construction and Application by State Courts of the Federal Adoption and Safe Families Act and its Implementing State Statutes. [10 A.L.R.6th](#)

ARBITRATION

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