

ALR Federal

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From the editor

The attorney-client relationship, always a fertile ground for litigation, is spotlighted in the current and upcoming volumes of ALR Federal. Particularly featured is the question of who is going to pay for the attorney's services, with no less than three annotations on fee shifting provisions under federal statutes, including the Copyright Act, the Freedom of Information Act, and the Independent Counsel Act, which provides for the allowance of attorney's fees to an individual who is exonerated after an investigation by a federally appointed independent counsel. In addition, the attorney-client relationship is implicated in an annotation on the federal exception to the attorney work product privilege for matters involving communications for the purpose of crime or fraud, which is highlighted immediately below this brief commentary.

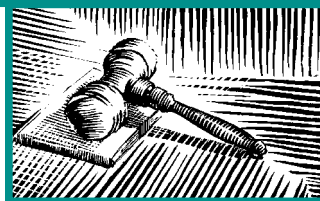
Russell G. Donaldson, J.D.

Highlights

ATTORNEY AND CLIENT

Work Product Privilege, Crime-Fraud Exception

The work product privilege, codified in Rule 26(b)(3) of the Federal Rules of Civil Procedure, provides that when a court orders discovery of "documents and tangible things . . . prepared in anticipation of litigation," the court is required to "protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney . . . concerning the litigation." But where the relationship between client and counsel has been abused, as where such consultations are conducted for the purpose of furthering an unlawful act, the crime-fraud exception applies to vitiate any protection from discovery that work product would otherwise enjoy. The application of the crime-fraud exception to the work product privilege has been discussed in



many federal courts in many different contexts. Unlike the attorney-client privilege, work product protection belongs to both the client and the attorney, either one of whom may assert it. This annotation collects and discusses

federal court decisions that have considered the applicability of the crime-fraud exception to the work product privilege. [178 ALR Fed 87](#)

PENSIONS AND RETIREMENT SYSTEMS

ERISA Fiduciary—Entity Other than Individual

Determining who is a fiduciary under the Employee Retirement Income Security Act (ERISA), has important consequence with respect to who can sue and be sued. ERISA does not preclude a plan sponsor from acting in the dual roles of sponsor and plan fiduciary. Therefore, under § 3(21)(A)(i) and (iii) of the ERISA (29 U.S.C.A. § 1002(21)(A)(i), (iii)), an

employer or labor union may qualify as an ERISA plan fiduciary “to the extent that” it exercises authority, control, or responsibility with respect to the plan or its assets. This article examines when an employer, labor union, affiliated entity or person, or pension or welfare plan is a fiduciary under the ERISA. The detailed article outline arranges the article in a coherent pattern, with the topic being developed from the general to the more particular. Check the article summary for a concise, easy-to-read overview of this sometimes complex topic. Additional articles dealing with other aspects of ERISA can be found in the “Related annotations” section of the annotation. [178 ALR Fed 129](#)

DEBT COLLECTION

Net Worth—FDCPA

In 1977, Congress enacted the Fair Debt Collection Practices Act (FDCPA), Pub. L. No. 95-109, 91 Stat. 874 (1977), 15 U.S.C.A. §§ 1692-1692o, to eliminate abusive debt collection practices by debt collectors, to ensure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent state action to protect consumers against debt collection abuses. According to the civil liability provision of the FDCPA, 15 U.S.C.A. § 1692k, any debt collector who fails to comply with any provision of the FDCPA with respect to any person is liable for any actual damage, and in the case of any action by an individual, such additional damages as the court may allow within specified criteria, with other criteria

being set for class action recoveries. One of these criteria is the net worth of the defendant debt collector. Congress, however, has not indicated in the FDCPA what constitutes the “net worth” of a debt collector for purposes of civil liability when a class action is brought under 15 U.S.C.A. § 1692k(a)(2)(B). This annotations deals with cases that have addressed what constitutes “net worth” for purposes of the Fair Debt Collection Practice Act, 15 U.S.C.A. § 1692k(a)(2)(B). Check the Related Annotations section for other annotations discussing the Fair Debt Collection Practice Act ([150 A.L.R. Fed. 101](#), [159 A.L.R. Fed. 121](#)). [178 ALR Fed 367](#)

TRIAL

Judge’s Negative Remarks to Counsel

Defendants frequently raise, as an issue on appeal, the question whether, by remarks or acts, a federal trial judge has criticized, rebuked, or punished the defense counsel in a criminal case in such a way as to prejudice the defendant and thereby necessitate reversal of the defendant’s conviction and a new trial. Courts have given a variety of reasons for reversing convictions, ranging from the denial of the defendant’s right to a fair trial, to the jury having been prejudiced, to the defense counsel having been made ineffective. This annotation collects and discusses federal criminal cases addressing the question whether and in what ways federal trial judges have prejudiced a defendant by remarks or acts criticizing, rebuking, or punishing the defense counsel. [178 ALR Fed 381](#)

Coming Soon

ESCAPE OR FLIGHT

Fugitive Disentitlement Doctrine

The fugitive disentitlement doctrine is an equitable doctrine that denies access to the courts to fugitives from justice who seek to challenge their convictions or to pursue other legal issues that arise out of criminal prosecutions against them. A product of federal case law, it permits a federal appellate court to dismiss the appeal of a criminal defendant who is a fugitive while an appeal is pending. The equitable nature of the fugitive disentitlement doctrine means that appellate courts have discretion to apply it or to refrain from applying it as they see fit. Therefore, when a criminal defendant becomes a fugitive from justice, an appellate court may either dismiss the defendant’s appeal or hear it and render a decision



on the merits. A federal district court can apply the fugitive disentitlement doctrine in a habeas corpus action, dismissing the action when the petitioner is a fugitive or, in some circumstances, a former fugitive. This annotation collects and discusses all of

the criminal cases in which the federal courts have applied the fugitive disentitlement doctrine. [179 ALR Fed](#)

TELECOMMUNICATIONS

Satellite Home Viewer Improvement Act

Television programming is sold and delivered to consumers via broadcast television, cable and, increasingly, direct broadcast satellite service. Many satellite carriers did not routinely provide

their customers with local television stations unless they either secured permission from broadcasters or secured copyright licenses to retransmit the works of copyright holders. This left satellite television subscribers in a situation where they could use the satellite dish to receive programs on premium stations such as Home Box Office (HBO) or Showtime, but not for their local news, local independent programming, or local public programming. They were forced to switch back to cable or antennas to tune in local stations. In an attempt to address this situation and regulate competition, Congress passed the Satellite Home Viewer Improvement Act (the Act), 17 U.S.C.A. §§ 119, 122; 47 U.S.C.A. § 338. The Act creates a compulsory statutory license for satellite carriers to transmit copyrighted network programming to “persons resid[ing] in unserved households” (17 U.S.C.A. § 119) for private home viewing. The Act’s provisions have been challenged several times. This annotation collects and analyzes cases dealing with various challenges to the validity, construction, or operation of the Satellite Home Viewer Improvement Act. **179 ALR Fed**

IMMIGRATION AND NATURALIZATION

Corroboration of Testimony Regarding Persecution

As our world grows daily, more intolerant and militant, both in political and religious matters, the need for political and religious asylum in a relatively tolerant land with laws to protect diversity of opinion and constitutionally guaranteed freedoms of speech, press, religion, and association grows apace. Consequently, this annotation on the necessity and sufficiency of evidence corroborating an alien’s testimony, in proceedings before the Immigration and Naturalization Service for asylum in, or withholding of removal from, the United States is particularly timely at this time. Some jurisdictions

under the federal court system require such corroborative evidence as a matter of course, while others consider it unnecessary where the testimony of the applicant is credible in and of itself. This annotation acknowledges the existing differences in opinion on this matter, and tracks which jurisdictions apply which standard of the need for corroboration, analyzing the cases for the rationale underlying each view and, where such corroboration is deemed necessary, noting its sufficiency or insufficiency in particular instances. **179 ALR Fed**

ENVIRONMENTAL PROTECTION

Airborne Hunting Act

The Airborne Hunting Act, 16 U.S.C.A. § 742j-1, was enacted by Congress in 1971 primarily in response to public outcry over a 1969 film depicting the slaughter of wolves shot from an aircraft. The Act prohibits the use of aircrafts for harassing wildlife, or for shooting for the purpose of capturing or killing wildlife. The proscribed aerial harassment of wildlife has been administratively defined by regulations. State and federal officials, and those issued a state or government permit, are exempt from the proscriptions of the Act. A provision of the Act provides for the forfeiture of wildlife obtained and equipment used in violation of the Act. The law relating to forfeiture of vessels used in violation of the customs laws applies to forfeitures under the Act. The Act empowers the Secretary of the Interior to enforce its provisions and to promulgate regulations deemed necessary to carry out such enforcement. Case law has adjudicated the constitutionality of the Act, the construction of terminology utilized in the Act, and the applicability of the Act to particular circumstances. This annotation collects and analyzes all federal decisions discussing the validity, construction, and application of the Airborne Hunting Act. **179 ALR Fed**

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The following is a complete list, arranged alphabetically by topic, of annotations contained in the current Volume 178 or scheduled for publication in Volume 179 of ALR Federal. Some of the annotations listed may be rescheduled.



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Also included with this volume is the May 2002 Update to the ALR Federal Quick Index.
This pamphlet should be placed next to the bound volume.
The March 2002 Pamphlet should be recycled or discarded.

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