RESEARCH TOOLS IN AIRPORT LAW

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A LAWYER’S ETHICAL OBLIGATION TO CONDUCT RESEARCH

Model Rule 1.1: Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.
1. “In determining whether a lawyer employs the requisite knowledge and skill in a particular matter, relevant factors include… the preparation and study the lawyer is able to give the matter.”

2. “A lawyer need not necessarily have special training or prior experience to handle legal problems of a type with which the lawyer is unfamiliar…. Perhaps the most fundamental legal skill consists of determining what kind of legal problems a situation may involve, a skill that necessarily transcends any particular specialized knowledge. A lawyer can provide adequate representation in a wholly novel field through necessary study.”

8. “To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice.”
CAN I REALLY GET IN TROUBLE?

- **People v. Barber**, 799 P.2d 936 (Colo. 1990)
  - “Schmit asked the respondent if there was any statute of limitations problem, and it was at this point, two years and seven months after Marilyn Schmit’s injury, that the respondent took his first look at the statute of limitations.”

- **In re Fisher**, 202 P.3d 1186 (Colo. 2009)
  - Attorney “did not research the process necessary to secure [client’s] rights in [husband’s] OPM benefits or take any steps toward securing those rights.”
  - “Fisher never contacted the OPM, did not review the attorney’s handbook published by the OPM, did not consult the OPM website, and did not consult with experts in the field of federal benefits.”
**BUT I DID THE RESEARCH!**

- **People v. Maynard, 238 P.3d 672 (Colo. 2009)**
  - “Although Respondent is an experienced litigator, she had never filed a RICO suit before and had a research folder that contained reported cases on the RICO statute, she did not update the cases before filing the RICO suit and clearly did not even review the cases she had already collected in her research folder.”
  - “Notwithstanding her possession of a key opinion and its clear warnings, Respondent ignored it and proceeded to file the RICO case in violation of almost every pleading standard revealed by her research.”
AIRPORT LEGAL RESEARCH & RULE 1.1

Source: https://youtu.be/dHTVrlt6gcI
AIRPORT LEGAL RESEARCH & RULE 1.1

- Non-traditional sources
- Highly technical
- Constantly changing
AIRPORT LAW RESEARCH METHODS AND SOURCES
WHAT KIND OF LAW DO YOU PRACTICE?

Contract Law
Admin Law
Real Estate Law
Muni. Law
Banko. Law
Fed. Aviation Law
START WITH THE STATUTE, RIGHT?

- Well, maybe...
...BUT ALSO CONSIDER OTHER SOURCES

- Regulations
- FAA Orders
- FAA Guidance (“Advisory” Circulars)
- Agency Decisions (Formal and Informal)
- Agency Opinions
- Case Law
- Secondary Sources
SOURCES OF LAW

- Air Commerce Act of 1926
- Civil Aeronautics Act of 1938
- Surplus Property Act of 1944
- Federal Airport Act of 1946
- Federal Aviation Act of 1958
- Airport and Airway Development Act of 1970
- Airline Deregulation Act of 1978
- Aviation Safety and Noise Abatement Act of 1979 (ASNA)
- Airport Airway and Improvement Act of 1982 (AAIA)
- Airport Noise and Capacity Act of 1990 (ANCA)
- Aviation and Transportation Security Act of 2001 (ATSA)
- FAA reauthorization statutes
- Recodification of Title 49 (1996)
Title 14 - Federal Aviation Regulations (FAR)

- Part 13 – Investigative and Enforcement Procedures
- Part 16 – Federally-Assisted Airport Enforcement Proceedings
- Part 77 – Safe, Efficient Use, and Preservation of the Navigable Airspace
- Part 91 – General Operating and Flight Rules
- Part 139 – Certification of Airports
- Part 150 – Airport Noise Compatibility Planning
- Part 161 – Notice and Approval of Airport Noise and Access Restrictions
SOURCES OF LAW

EXAMPLE ORDERS:
- Airport Improvement Program Handbook (Order 5100.38D)
- Airport Compliance Manual (Order 5190.6B)
- Environmental Impacts, Policies and Procedures (Order 1050.1F)
- Passenger Facility Charge (Order 5500.1)

EXAMPLE POLICIES:
Policy and Procedures Concerning the Use of Airport Revenue
Policy Regarding the Establishment of Rates and Charges
EXAMPLES:

Airport Design (A/C 150/5300-13A)
Architectural, Engineering, and Planning Consultant Services for Airport Grant Projects (A/C 150/5100-14E)
Minimum Standards for Commercial Aeronautical Activities (A/C 150/5190-7)

The “150” Series addresses “Airport” issues
HOW DO I FIND WHAT I NEED?

- The lawyerly answer is, as always:

  IT DEPENDS.
SINGLE ISSUE EXAMPLE

- An FBO at your airport has filed a complaint with FAA under 14 C.F.R. Part 16, alleging that the sponsor is in violation of Grant Assurance 24, Fee and Rental Structure.

- What now?
GOOGLE IS YOUR FRIEND*

Grant Assurances (Obligations) – Airports
https://www.faa.gov/airports/airport-improvement-program/aip/ ▼
Feb 2, 2016 - When airport owners or sponsors, planning agencies, or other organizations accept funds from FAA administered airport financial assistance programs, they must agree to certain obligations (or assurances). … AIP Grant Assurances. … See also Notice of Modification of Airport Improvement …

Airport Sponsor Assurances - Federal Aviation Administration
https://www.faa.gov/airports/aip/grant_assurances/…/airport-sponsor-assurances-aip.p… ▼
Upon acceptance of this grant offer by the sponsor, these assurances are … 49 CFR Part 24 – Uniform Relocation Assistance and Real Property Acquisition.
You've visited this page 3 times. Last visit: 2/3/17
THE AIRPORT COMPLIANCE MANUAL
(FAA ORDER 5190.6B)

- The Bible for Grant Assurances

- Check the Table of Contents to find references to specific Grant Assurances, obligations, and topics:

**Part V: Financial Responsibilities**

- Chapter 15 - Permitted and Prohibited Uses of Airport Revenue (PDF)
- Chapter 16 - Resolution of Unlawful Revenue Diversion (PDF)
- Chapter 17 - Self-sustainability (PDF)
- Chapter 18 - Airport Rates and Charges (PDF)
- Chapter 19 - Airport Financial Reports (PDF)
MORE TARGETED RESEARCH

- Use a variety of tools to make sure you cover all of your bases.

- Lexis, Westlaw, TRB/ACRP, and FAA Part 16 Database
DEMONSTRATION — GRANT ASSURANCE 24 & FBOs
OTHER FAA MATERIALS AND REPOSITORIES

- Advisory Circulars: [https://www.faa.gov/airports/resources/advisory_circulars/](https://www.faa.gov/airports/resources/advisory_circulars/)
- FAA SOPs: [https://www.faa.gov/airports/resources/sops/](https://www.faa.gov/airports/resources/sops/)
SECONDARY SOURCES

- Airport Law Digests
- Transportation Research Board, Airports Cooperative Research Program
WHO IS ACRP?

- Airport Cooperative Research Program of the Transportation Research Board
- FAA is our Sponsor
WHAT DOES ACRP DO?

- Applied Research Program
- Driven by and for the Airport Industry
WHAT IS PRODUCED BY ACRP?

- Guidebooks
- Reports
- Legal Research Digests
- Synthesis
- Models and tools
- Searchable databases
- Web-only Documents
- All available to download for FREE
WHAT IS OUR PROCESS?

- Project Panel is formed
  - Develops scope of work
  - Selects proposal
  - Provides oversight and guidance
WHAT IS THE LEGAL STUDIES PROGRAM?

- Provide legal research on topics of interest to the airport legal community, focusing on legal issues and problems having national significance to the airport industry.
LEGAL STUDIES PANEL

- Chair Dave Bannard – Foley & Lardner
- Rod Borden, Elaine Roberts – Columbus Regional Airport Authority
- Jay Hinkel – City of Wichita, Kansas
- Marco Kunz – Salt Lake City Department of Airports
- Clive Otis – Post Polak, Goodsell and Strauchler
- Dan Reimer – Denver International Airport
- Elizabeth Smithers – Charlotte Douglass International Airport

- Daphne Fuller – FAA Liaison
- Tom Devine – ACI-NA Liaison
RECENT LEGAL RESEARCH DIGESTS

- LRD 30: Contract Risk Management for Airport Agreements
- LRD 31: Preemption of Worker-Retention and Labor-Peace Agreements at Airports
UPCOMING PUBLICATIONS

11-01/8-03 Evolving Law on Airport Implications by Unmanned Aerial Systems Operations

- Tim Ravich

- LRD will (1) summarize current UAS development, uses, and applications, (2) describe applicable fed, state, and local laws, regs and policies, (3) identifies legal issues and (4) identify current airport practices.

- Expected Publication October 2017
11-01/8-02 Legal Risks of Operating a Public Use Airport

- Jodi Howick

- LRD will be guidance that addresses the full scope of legal risks and responsibilities associated with operating a public use airport as it relates to airport owner or operator liability for aircraft accidents.

- Expected Publication November 2017
11-01/8-01 Legal Issues Related to the Implementation and Operation of Safety Management Systems for Airports

- Peter Kirsch, Kaplan Kirsch & Rockwell

- The research is building on LRD 19 and other ACRP publications and will identify legal issues that have resulted from the implementation or operation of SMS programs.

- Expected completion June 2018
CURRENT TOPICS

11-01/8-04 Legal Consideration in the Funding and Development of Multi-Modal Facilities

- Tim Karaskiewicz
- LRD will identify current practices, case studies, FAA decisions/guidance, and legal principles that should provide information for airport operators
- Expected completion December 2017
CURRENT TOPICS

11-01/9-01 Airport Public Health Preparedness & Response: Legal Rights, Powers & Duties

- University of Arizona
- LRD will outline best practices for airport lawyers and managers that outline the legal rights, powers, and duties of an airport in addressing the spread of communicable diseases through air travel.
- Expected completion February 2018
11-01/9-02 Legal Issues Relating to Airports Promoting Competition

- Eric Smith, Kaplan Kirsch & Rockwell

- Guidance for regarding the legally permissible means and methods of encouraging and accommodating competition at U.S. airports among air carriers and fixed-base operators

- Expected completion February 2018
11-01/9-03 Permitted Airport Involvement in Economic Development

- William Estes, Esq.
- The digest will include a review of federal laws, case law, and FAA Order, policies, and guidance on the permitted extent of airport involvement in community economic development.
- Expected completion April 2018
UPCOMING TOPICS

- 10-01 Update to Compilation of DOT and FAA Airport Legal Determinations and Opinion Letters Through December 2012 (Part 16)
- 10-02 Legal Issues Relating to Large Scale Airport Construction Projects
- 10-03 Legal Issues for Airport Commercial Contracts
- 10-04 Updated Survey of Laws and Regulations applicable to Airport Commercial Ground Transportation- Update to LRD 3
UPCOMING TOPICS — JUST SELECTED

- 11-01 Permissible Uses of Airport Revenue and Property
- 11-02 Accommodation of Federal Agencies – Rights and Obligations of Host Airports
- 11-03 Analysis of Laws, Regulations and Case Laws Regarding Airport Customer Facility Charges
GETTING INVOLVED

- Submit a problem statement
- Volunteer to participate on panel
  - Volunteer to serve as topic expert for the legal topics
- Prepare a proposal
- Use our results
- Respond to inquiries from our contractors
<table>
<thead>
<tr>
<th>Topic Ideas Solicited</th>
<th>August-September</th>
</tr>
</thead>
<tbody>
<tr>
<td>Problem Statements Reviewed</td>
<td>September</td>
</tr>
<tr>
<td>Legal Panel Selects</td>
<td>September/October</td>
</tr>
<tr>
<td>RFPs Posted</td>
<td>All year long</td>
</tr>
<tr>
<td>Proposals Submitted</td>
<td>Approx. 45 days after RFP</td>
</tr>
</tbody>
</table>
DEMONSTRATION – SAFETY MANAGEMENT SYSTEMS
Questions?

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