

# Gather And Organize Evidence To Support Your Case

Part five of a six-part series on airport tenant relations and aviation legal matters

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In the first three articles of this series, we discussed some of the more common grant assurances that are disputed. Our fourth article took a different direction, namely how to begin preparing for litigation or settlement discussions in advance of commencing litigation. The place to start is ensuring that your own house is in order, hence the tag line “People who live in glass houses ...”

Since our last article discussed ensuring that your own house is in order — your defensive strategy — this article will help you plan your offensive strategy. How do you go about determining whether the competitive harm that you are suffering is actionable? You

start by gathering and organizing the evidence against those who are causing you harm.

## What Are Your Complaints; How Do They Stack Up Against The Rules?

You probably started out annoyed. Or perhaps frustrated. Maybe even angry at the wrongdoer, whether that be the airport sponsor, the entity who manages the airport on

behalf of the sponsor, or a competing FBO, new entrant, or other service organization. It gets under your skin, and it doesn't go away. But does it amount to a grant assurance violation such that the airport's federal funding is in jeopardy? Let's find out.

## Have You Read The Rules?

Sounds simple, right? Most folks think that they know the rules. Or maybe they've read one of the rules at some point in the past. Now is the time to be diligent and read everything that you can get your hands on about the subject.

Ask yourself whether you've looked at all applicable guidance material. Have you reviewed the

appropriate statutes? Regulations? FAA Handbooks and Orders? Advisory Circulars? Grant assurances? Part 16 case decisions?

Google is an amazing and powerful tool for these purposes. Keep an organized notebook of what you find, whether electronic or in hard copy. Segregate the rules that you think are most applicable and that you believe are being violated. Read them again — carefully. This will narrow your focus, and provide discipline to your decision-making process.

## Don't Ignore State And Local Rules

While you may be more familiar with FAA rules, having spent much of



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as at the county or state level?

Be sure that you know all the rules governing your airport and those who run it. There may also be generalized state laws and procedures that address when government entities act contrary to their own rules. While potentially applicable, this last set is more general in nature, will be more difficult to find, and is best left to your lawyers to vet once you're past the aviation specific analysis.

### Make A Chart And Gather Evidence

Make a chart of the rules (and all subparts) that you think may have been broken. Then post each piece of evidence that you currently have against the applicable rule or rules (evidence of harm is often applicable to more than one rule). Your chart will quickly display the holes in your case (literally) and where you need to gather more supporting evidence.

As part of this process, request all publicly available records as early as possible. Then send out follow-up requests periodically as circumstances dictate so that you obtain all evidence created since your last request. In addition to your becoming prepared, these activities will keep the airport and any opposing private parties mindful that their activities are being scrutinized.

What should you request? Applicable leases, relevant correspondence, emails, meeting agendas and minutes, memoranda reporting on meetings, voice mails, text messages, briefing papers, PowerPoint presentations, spreadsheets, charts, and any other records, electronic or printed, which relate in any way to your issue.

Take photos where applicable, but be sure to make notes on who took each photo including where, when, and on what device. Just as with other evidence, post each applicable photo against each of the rules that you think are being broken. An example of where photos help involves a corporate self-fueling operation that seeks to expand beyond its limitations and sell fuel to the general

public without meeting the minimum standards requirements for an FBO. Photos of the shiny new fuel truck with logo on the ramp, price advertisements — and if you're lucky — photos of the shiny, newly painted fuel truck fueling an aircraft on its ramp that is not one of its own will substantially assist your cause. The old phrase that a picture is worth a thousand words remains true to this day.

Also keep copies of applicable news media that contain useful statements and admissions (whether written or in video or audio form), and don't forget to continuously monitor and save what is posted (and changed) on applicable websites and social media sites.

This includes not only the website(s) of the offending entity, but also of its employees and any other witnesses you identify.

Social media sites are ripe with casual but potentially explosive comments by individuals discussing their glee over promotions, "fun" at the expense of someone else (you or your company), and other useful tidbits which can support your claim of wrongdoing.

Remember that websites are more easily updated with each passing day, and unlawful statements may be posted one day and taken down the next.

Preserve that evidence and don't miss the opportunity.

### Organize, Organize, Organize

As you develop a chart or spreadsheet outlining each of the rules, their subparts, and each piece of evidence that you have in support, a good picture will develop of whether you have a viable claim. You'll see holes where you have little or no required evidence to support your claim. You'll also be

“Perhaps even more important to your bottom line is that it will save you money by being more efficient with your and your lawyer's time.”

your professional life working in and around aviation, don't ignore state and local rules. Remember that rules such as airport minimum standards are typically codified within the body of regulations guiding the conduct of the airport sponsor, whether that airport sponsor is an authority, a local municipality, a county, or a state.

Be sure that you have the most up-to-date version of the minimum standards. Also be sure to read the airport rules and regulations beyond just the minimum standards to ensure that nothing else strikes you as improper when matching conduct against those rules. Are there any applicable statutes or regulations at a higher level within your state, such

forced to confront and test the evidence that you have.

Being intellectually honest with yourself, and being your own devil's

advocate, will go a long way toward understanding whether you have a claim which is worth your time and hard earned money to pursue. While the process described in this article is time consuming and at times frustrating and annoying, it's a necessary part of good decision making. Perhaps even more important to your bottom line is that it will save you money by being more efficient with your and your lawyer's time.

While lawyers and paralegals often perform the tasks proscribed above, there's no reason why this extensive legwork cannot be completed up front by you (the FBO) using your own employees.

Stay tuned for the next article in this series, where we'll describe what to do when your hard work demonstrates that the evidence actually matches up with the rules and establishes a violation.

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## PRESERVING EVIDENCE

What steps should be taken to preserve evidence?

Here is a recap of part 4 in the series, Preserving Your Own Evidence. They include:

- (1) preserving all relevant records (both paper and electronic);
- (2) implementing procedures for the preservation of evidence, commonly referred to as instituting a "Litigation Hold";
- (3) suspending your routine document retention policy and preserving all documents;
- (4) collecting relevant records so that they may be searched by counsel; and
- (5) notifying all employees and agents likely to have relevant evidence of the issuance of a litigation hold, the suspension of routine document retention policies, the request that relevant materials be gathered, and that those materials be provided to a designated person within the company or to counsel.

How do you properly implement a litigation hold?

You need to identify:

- (1) how your organization stores materials and information;
- (2) identify the source of materials that are most likely to be relevant and identify the individuals who are most likely to have possession of relevant materials and information;
- (3) identify the "key players" within the organization that may have relevant information; and
- (4) identify organizations and individuals over whom the organization exercises control such that the duty to preserve would be extended to them as well.

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