

Aviation Law Section – State Bar of Texas

Presented for the Aviation Law Section CLE
Friday, March 1, 2024

Current Hot Topics in Business Aviation Law: The Texas Aviation Law Specialty

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Lawyer Advertising and the TBLS:

- ➔ **Lawyer Advertising in the State of Texas**
- ➔ **Texas Disciplinary Rules of Professional Conduct**
- ➔ **Article VII – Information About Legal Services**
- ➔ **Will directly quote from and highlight selected sections . . .**



Lawyer Advertising and the TBLS:

→ Rule 7.01 – Communications Concerning a Lawyer’s Services

→ Rule 7.01(a):

A lawyer shall not make or sponsor a false or misleading communication about the qualifications or services of a lawyer or law firm. Information about legal services must be truthful and nondeceptive. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading. A statement is misleading if there is a substantial likelihood that it will lead a reasonable person to formulate a specific conclusion about the lawyer or the lawyer’s services for which there is no reasonable factual foundation, or if the statement is substantially likely to create unjustified expectations about the results the lawyer can achieve.



Lawyer Advertising and the TBLS:

→ Rule 7.01 – Communications Concerning a Lawyer’s Services

→ Rule 7.01(b):

This Rule governs all communications about a lawyer’s services, including advertisements and solicitation communications. For purposes of Rules 7.01 to 7.06:

(1) An “advertisement” is a communication substantially motivated by pecuniary gain that is made by or on behalf of a lawyer to members of the public in general, which offers or promotes legal services under circumstances where the lawyer neither knows nor reasonably should know that the recipients need legal services in particular matters.

(2) A “solicitation communication” is a communication substantially motivated by pecuniary gain that is made by or on behalf of a lawyer to a specific person who has not sought the lawyer’s advice or services, which reasonably can be understood as offering to provide legal services that the lawyer knows or reasonably should know the person needs in a particular matter.



Lawyer Advertising and the TBLS:

→ Rule 7.01 – Communications Concerning a Lawyer’s Services

→ Selected Comments to Rule 7.01:

1. **This Rule governs all communications about a lawyer’s services, including firm names, letterhead, and professional designations.** Whatever means are used to make known a lawyer’s services, statements about them must be truthful and not misleading. As subsequent provisions make clear, some rules apply only to “advertisements” or “solicitation communications.” A statement about a lawyer’s services falls within those categories only if it was “substantially motivated by pecuniary gain,” which means that pecuniary gain was a substantial factor in the making of the statement.

“11. **It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.** See Rule 8.04(a)(3); see also Rule 8.04(a)(5) (prohibiting communications stating or implying an ability to improperly influence a government agency or official).



Lawyer Advertising and the TBLS:

→ Rule 7.02 – Advertisements

→ **Rule 7.02(b):**

A lawyer who advertises may communicate that the lawyer does or does not practice in particular fields of law, but shall not include a statement that the lawyer has been certified or designated by an organization as possessing special competence or a statement that the lawyer is a member of an organization the name of which implies that its members possess special competence, except that:

- (1) a lawyer who has been awarded a Certificate of Special Competence by the Texas Board of Legal Specialization in the area so advertised, may state with respect to each such area, “Board Certified, area of specialization -- Texas Board of Legal Specialization”; and
- (2) a lawyer who is a member of an organization the name of which implies that its members possess special competence



Lawyer Advertising and the TBLS:

→ Rule 7.02 – Advertisements

→ Selected Comments to Rule 7.02:

Comment

1. These Rules permit the dissemination of information that is not false or misleading about a lawyer's or law firm's name, address, e-mail address, website, and telephone number; the kinds of services the lawyer will undertake; the basis on which the lawyer's fees are determined, including prices for specific services and payment and credit arrangements; a lawyer's foreign language abilities; names of references and, with their consent, names of clients regularly represented; and other similar information that might invite the attention of those seeking legal assistance).



Lawyer Advertising and the TBLS:

→ Rule 7.02 – Advertisements

→ Selected Comments to Rule 7.02:

Communications about Fields of Practice

2. Lawyers often benefit from associating with other lawyers for the development of practice areas. Thus, practitioners have established associations, organizations, institutes, councils, and practice groups to promote, discuss, and develop areas of the law, and to advance continuing education and skills development. While such activities are generally encouraged, participating lawyers must refrain from creating or using designations, titles, or certifications which are false or misleading. A lawyer shall not advertise that the lawyer is a member of an organization whose name implies that members possess special competence, unless the organization meets the standards of Rule 7.02(b). Merely stating a designated class of membership, such as Associate, Master, Barrister, Diplomat, or Advocate, does not, in itself, imply special competence violative of these Rules.



Lawyer Advertising and the TBLS:

→ Rule 7.02 – Advertisements

→ Selected Comments to Rule 7.02:

Communications about Fields of Practice

3. Paragraph (b) of this Rule permits a lawyer to communicate that the lawyer practices, focuses, or concentrates in particular areas of law. Such communications are subject to the “false and misleading” standard applied by Rule 7.01 to communications concerning a lawyer’s services and must be objectively based on the lawyer’s experience, specialized training, or education in the area of practice.



Lawyer Advertising and the TBLS:

→ Rule 7.02 – Advertisements

→ Selected Comments to Rule 7.02:

Certified Specialist

5. This Rule permits a lawyer to state that the lawyer is certified as a specialist in a field of law if such certification is granted by the Texas Board of Legal Specialization or by an organization that applies standards of experience, knowledge and proficiency to ensure that a lawyer's recognition as a specialist is meaningful and reliable, if the organization is accredited by the Texas Board of Legal Specialization. To ensure that consumers can obtain access to useful information about an organization granting certification, the name of the certifying organization must be included in any communication regarding the certification.



Lawyer Advertising and the TBLS:

- ➔ **Lawyer Advertising in the State of Texas**
- ➔ **Texas Board of Legal Specialization (“TBLS”)**



Lawyer Advertising and the TBLS:

→ TBLS

→ History:

- On July 16, 1974, the Texas Supreme Court issued the Texas Plan for Recognition and Regulation of Specialization in the Law order creating the Texas Board of Legal Specialization Board Certification program.
- The TBLS serves the public interest and advances quality standards within the legal profession by awarding a Certificate of Special Competence to attorneys with demonstrated expertise and knowledge within a specific area of law.
- The Texas Board of Legal Specialization is the nation's largest and most successful legal board certification program. It has more than 7000 Board Certified Texas attorneys, several with multiple certifications, holding a total of more than 8030 Certificates of Special Competence.
- The Board Certification program is administered by a twelve-member board appointed by the President of the State Bar of Texas with the approval of its Board of Directors. The TBLS is subject to oversight by the Supreme Court of Texas and exercises jurisdiction over all matters pertaining to specialization in the practice of law within Texas. The Attorney Rules and Regulations and Standards for Certification outline the program requirements, regulations and guidelines.



Lawyer Advertising and the TBLS:

→ TBLS

- **General Requirements and Process:** The Board Certification process is rigorous and thorough with stringent, ongoing requirements after initial certification. In brief, an applicant must:
 - be an active member in good standing of the State Bar of Texas,
 - have been engaged in the practice of law for a period of at least 5 years on a full-time basis,
 - depending on the specialty area, have a minimum of 3 to 5 years substantial experience in the specialty area,
 - complete 60 hours of TBLS-approved continuing legal education courses in the specialty area within the 3 years preceding application,
 - furnish at least 5 qualified, vetted references,
 - provide extensive, relevant experience information and documentation,
 - meet each of the requirements set forth in TBLS Standards for Attorney Certification (General Requirements and Specific Area Requirements), and
 - pass a comprehensive, daylong, specialty area examination.



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→ **Possibility discussed / worked on by the Aviation Section of the SBOT;**



Shackelford Bowen McKinley & Norton LLP

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- **In response, Mike Slack “joined the team” and worked on amended application.**



The Aviation Law Specialty in Texas:

- Following publication, the application was accepted for submission to the Supreme Court, and “negotiations” with TBLS, based on feedback to comments from published application and multiple interactions with TBLS, began in earnest.
- Over following approx. year and ½, subcommittee of Christa Hinckley, Andrea Palmer, Mike Slack (and myself), with guidance from Leo Figueroa and TBLS staff, went through multiple revisions of the Specific Area Requirements for the new specialty, resulting in:



The Aviation Law Specialty in Texas:

Supreme Court of Texas

Misc. Docket No. 22-9070

Order Amending Texas Plan for Recognition and Regulation of Specialization in the Law and Adopting Standards for Attorney Certification in Aviation Law

ORDERED that:

1. Section XII of the Texas Plan for Recognition and Regulation of Specialization in the Law is amended as follows, effective immediately.
2. The Standards for Attorney Certification in Aviation Law are adopted as follows, effective immediately.
3. The Clerk is directed to:
 - a. file a copy of this Order with the Secretary of State;
 - b. cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;
 - c. send a copy of this Order to each elected member of the Legislature; and
 - d. submit a copy of this Order for publication in the *Texas Register*.

Dated: August 29, 2022.



The Body of Air Law:

→ From the Order for the new Aviation Law Specialty:

SECTION XXII

AVIATION LAW

(Area ID: AV / Year Started: 2022)

- A. **DEFINITION.** Aviation law is the practice of law dealing with issues affecting aircraft and airport operations, aircraft ownership, aircraft navigation and maintenance, air traffic control safety, pilot licensing and certification requirements, spacecraft, and outer space.



The Aviation Law Specialty in Texas:

→ Next Steps Were:

→ Initial Advisory Commission:

- Mr. Jeffrey William Anderson – Anderson & Riddle, L.L.P.
- Mr. Peter Laurence Busher – Law Offices of Peter Busher
- Mr. John B. Chaussee – Southwest Airlines Co.
- Mr. David Thompson Norton – Shackelford Bowen McKinley & Norton, LLP
- Mr. Gregory James Reigel – Shackelford Bowen McKinley & Norton, LLP
- Ms. Katherine A Staton – Jackson Walker L.L.P.



The Aviation Law Specialty in Texas:

→ Next Steps Were:

→ Initial Exam Commission:

- Mr. Viet Loc (Richard) Doan – Federal Aviation Administration
- Ms. Pamela Anne Clark Hicks – Hicks Davis Wynn, P.C.
- Ms. Christa Meyer Hinckley – Fox Rothschild LLP
- Mr. Kent C. Krause – Craddock Davis & Krause LLP
- Ms. Jocelyn Yvon Labove – Houston Airport Systems
- Mr. David Thompson Norton – Shackelford Bowen McKinley & Norton, LLP
- Mr. Michael L. Slack – Slack David Sanger LLP



The Aviation Law Specialty in Texas:

→ Current Status:

→ Current Standards for Certification in Aviation Law:

<https://content.tbls.org/pdf/attstdav.pdf>

→ Initial “class” took first exam in Fall of 2023:

→ 7 of 8 test-takers passed;

→ Initial exam commissioners were “grand-fathered” in, with 4 participating;

→ Currently 11 attorneys in Texas with Aviation specialty certification:

→ Based on initial testing cycle:

→ Exam specifications being fine-tuned (note split between litigation and transactional);

→ Exam database / questions being added to, etc.





“Aviation in itself is not inherently dangerous.
But to an even greater degree than the sea, it is
terribly unforgiving of any carelessness,
incapacity or neglect.”

— Captain A.G. Lamplugh,
British Aviation Insurance Group,
London, circa 1930



Questions?



Shackelford Bowen McKinley & Norton LLP