



Notes From The Washington Counsel

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WHO IS PILOT IN COMMAND?

■ ■ When you fly with an instructor or a flight examiner, do you know who is pilot in command of the aircraft? This is not an idle question. For one thing, the regulations assign authority to, and impose responsibilities on, the pilot in command. For another, liability for an accident can hinge on who was pilot in command at the time of the accident. And most important, at least to me, safety requires that a crew know in advance who is pilot in command. Things can happen very fast in an aircraft, and a dangerous situation can be aggravated by two persons believing they are pilot in command.

This same question can come up in situations other than a flight with an instructor or a flight examiner. Who is commander during a demonstration ride with an aircraft salesman? Who is commander when you're sharing the flying chores with the owner of an aircraft on a cross-country trip?

The FARs are of little help. FAR 1.1 defines "pilot in command" as "the pilot responsible for the operation and safety of an aircraft during flight time." We are still left with the question—where there is more than one pilot on board, who is the pilot responsible for the aircraft's operation and safety? Elsewhere in the FARs there are hints and inferences to help answer the question, but nowhere is it answered clearly and fully.

The answer can be simple or difficult depending on whether it is given before or after a flight. If command status is arranged in advance, the answer is simple, and self-evident. The pilot in command is the one who it is agreed in advance is to be the commander. Many times this decision is obvious from the circumstances; sometimes it is evidenced by an entry on a VFR or IFR flight plan. Where there is any possibility of doubt, it is best accomplished by a simple statement as to who will be pilot in command.

In one instance, command status is arranged in advance by the regulations.

This came about because FAA was concerned about the status of its inspectors and other authorized flight examiners during flight tests. In 1964, it amended the regulations to make clear that a flight examiner is presumed *not* to be pilot in command while conducting a flight test unless he acts in that capacity by prior arrangement. So, unless a flight examiner asks you to consider him to be pilot in command, and you agree, you are pilot in command during a flight test.

Where command status has been arranged in advance, it can be shifted from one pilot to another at any time, even during flight. But in order to successfully shift the authority, the holder of the authority must intend to pass it to the recipient and, at that time, the recipient must intend to accept and exercise the authority.

Where command status has not been arranged in advance, we can encounter difficulty. It happens quite frequently that, in the situations we described earlier, pilots do not take the trouble to determine in advance who is to be pilot in command. And the question seldom comes up after a flight unless there has been a mishap which requires that a determination be made. Then, various factors such as seating position and control manipulation must be considered in trying to determine who was actually exercising the authority.

Let's start off by dispelling some myths you may have heard expressed in hangar-flying sessions. It is *not necessarily* true that the person manipulating the controls is pilot in command. It is *not necessarily* true that the person in the left seat is pilot in command. Nor is it necessarily true that the pilot with the appropriate ratings or the required recent experience is the pilot in command. These are only factors which may be considered along with all other available evidence to determine who was actually exercising authority. And that's the controlling circumstance—who was actually exercising the authority of the

pilot in command.

The result reached in one case is interesting. There the court held that a check pilot was commander even though the pilot being checked was a commercial pilot with an instructor rating. In this case a commercial pilot went to an airport to rent an aircraft. Before permitting him to fly it solo, the FBO required that he take a checkride with one of the FBO's instructors. During the checkride, the plane crashed, killing both occupants. The court considered the question as to who was pilot in command in order to assess liability. The court stated that "the evidence in the instant case is clear and uncontroverted that on a checkout flight, even of a commercial pilot, the pilot being checked out assumes a trainee status and the flight instructor is the pilot in command." This is persuasive authority that if you fly with a check pilot, he is pilot in command, unless the two of you agree otherwise.

This case raises some interesting questions. Suppose you're flying with an instructor, and it is not agreed in advance who is to be pilot in command? This case suggests that the instructor is commander. And this probably makes sense if the other pilot is a student taking primary training. But, suppose the other pilot is a private or commercial pilot taking instrument instruction in his own aircraft? I think a good argument can be made on either side of that question. That's why it's a good idea to make the determination in advance.

Another case illustrates the confusion in this area of the law. This is an FAA enforcement case in which the Civil Aeronautics Board seems to say that two pilots of the same aircraft can be pilot in command at the same time. The case involved an airline flight, but the same problem could arise in a general aviation flight. The two pilots were charged with careless and reckless flying, and flying into known icing conditions. The designated pilot in command was in the right seat. The pilot in the left seat was doing the actual flying and made the decision to proceed into adverse weather. Both pilots were found guilty, one as "designated" pilot in command, and the other on the basis that he "assumed" the pilot-in-command responsibilities. In my judgment, this decision is wrong. I don't believe the command responsibility can be split. It can be shifted as we have already noted, but should not be split.

For many reasons, some of which have been suggested here, it is a good idea to arrange in advance who is to be pilot in command of an aircraft which carries more than one pilot. □