

William F. Crowell

Attorney at Law

February 3, 2009

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FCC Mail Room

Marlene H. Dortch, Secretary
Federal Communications Commission
445 - 12th Street S.W.
Washington, D.C. 20554

Re: Application of William F. Crowell to renew Amateur Service license W6WBJ
WT Docket No. 08-20; FCC file no. 0002928684

Dear Secretary Dortch:

I am the applicant-licensee in the above-entitled case.

Enclosed you will please find the original and six (6) copies of my Motion to Censure, Suspend or Disbar Attorneys therein.

Please file and docket this document and direct it to ALJ Sippel in the manner that you deem appropriate. Thank you for your cooperation.

Yours very truly,



WILLIAM F. CROWELL

WFC:wfc
encls.

cc: Kris A. Monteith, Chief, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 7-C723, Washington, D.C. 20554

Rebecca A. Hirselj, Ass't. Chief, Investigations & Hearings Div., Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 4-A236 Washington, D.C. 20554

Federal Communications Commission, Enforcement Bureau, Investigations and Hearings Division, ATTN: Judy Lancaster, 445 12th Street, S.W., Room 4-C330 Washington, D.C. 20554

1110 Pleasant Valley Road, Diamond Springs, California 95619
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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	WT Docket No. 08-20
)	
WILLIAM F. CROWELL)	FCC File No. 0002928684
)	
Application to Renew License for)	
Amateur Service Station W6WBJ)	

To: Marlene H. Dortch, Secretary
Federal Communications Commission

Attn: Richard L. Sippel,
Administrative Law Judge

**APPLICANT'S MOTION TO CENSURE, SUSPEND
OR DISBAR ATTORNEYS
[47 C.F.R., Chapter I, Part 1, Subpart A, §§1.23 and 1.24]**

Applicant WILLIAM F. CROWELL hereby moves the Court to censure, suspend or disbar KRIS A. MONTEITH, REBECCA A. HIRSELJ and JUDY LANCASTER from practice before the Division of Administrative Law Judges on the following grounds:

1. KRIS A. MONTEITH ("MONTEITH") is the Chief of the Commission's Enforcement Bureau. On or about December 29, 2007 MONTEITH was suspend-

ed from practice by the Virginia State Bar Association and, to Applicant's knowledge and belief, has never been reinstated as a member thereof. Applicant is informed and believes that MONTEITH is not a member of the bar of any other state.

Rule 1.23 of the Commission's Rules of Practice and Procedure provides as follows:

TITLE 47--TELECOMMUNICATION
CHAPTER I--FEDERAL COMMUNICATIONS COMMISSION
PART 1_PRACTICE AND PROCEDURE--Table of Contents
Subpart A_General Rules of Practice and Procedure

Sec. 1.23 Persons who may be admitted to practice.

(a) Any person who is a member in good standing of the bar of the Supreme Court of the United States or of the highest court of any state, territory or the District of Columbia, and who is not under any final order of any authority having power to suspend or disbar an attorney in the practice of law within any state, territory or the District of Columbia that suspends, enjoins, restrains, disbars, or otherwise restricts him or her in the practice of law, may represent others before the Commission.

(b) When such member of the bar acting in a representative capacity appears in person or signs a paper in practice before the Commission, his personal appearance or signature shall constitute a representation to the Commission that, under the provisions of this chapter and the law, he is authorized and qualified to represent the particular party in whose behalf he acts. Further proof of authority to act in a representative capacity may be required.

Applicant believes that MONTEITH has appeared in a representative capacity on behalf of the Enforcement Bureau herein, and/or has signed various papers filed on behalf of the Enforcement Bureau herein. MONTEITH has thereby represented to the Division of Administrative Law Judges that she is authorized to represent the Enforcement Bureau herein. Applicant is informed and believes that such representations are false, and that MONTEITH is under a final order of the State Bar of the State of Virginia suspending her from the practice of law.

2. REBECCA A. HIRSELJ ("HIRSELJ") is a Counsel for the Enforce-

ment Bureau herein. Applicant is informed and believes that HIRSELJ is a member of the State Bar of the State of Maryland. Rule 3.3 of the Rules of Professional Conduct of the State of Maryland provides, in pertinent part, as follows:

Rule 3.3: Candor Toward the Tribunal

(a) A lawyer shall not knowingly:

(1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer.

3. JUDY LANCASTER ("LANCASTER") is also a Counsel for the Enforcement Bureau herein. Applicant is informed and believes that LANCASTER is a member of the State Bar of the State of Arkansas. Rule 3.3 of the Rules of Professional Conduct of the State of Arkansas provides, in pertinent part, as follows:

Rule 3.3: Candor Toward the Tribunal

(a) A lawyer shall not knowingly:

(1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer.

4. MONTEITH, HIRSELJ and LANCASTER have repeatedly and deliberately made false statements of fact and law to the Presiding Officers herein, as follows:

a. They have repeatedly stated in their filings on behalf of the Enforcement Bureau herein that it is the Commission's policy to "police the internet" to find conduct by licensees thereon that demonstrates their so-called "bad character"; i.e., internet activity showing that such licensees have a proclivity to disobey the Rules of the Commission. Said statements were and are false, as follows:

Laura A. Smith, Esquire is the Enforcement Bureau's newly-appointed Special Counsel for Amateur Radio Enforcement ("SCARE"), succeeding RILEY

HOLLINGSWORTH, who was forced to retire from said position in disgrace. On or about January 31, 2009 Ms. Smith wrote an email to Mark C. Morgan, licensee of amateur radio station KB9RQZ, in which she set forth the Commissions *true* policy on the issue (emphasis supplied):

----- Original Message ----- From: "Laura Smith" <Laura.Smith@fcc.gov>

To: <kb9rqz@hughes.net>

Sent: Saturday, January 31, 2009 8:22 AM

Subject: RE: ve7kfm.com is enagging Blackmail in your "honor"

Good morning Mark. What folks do with their web sites is their own business. The FCC does not regulate internet content. Likewise, what you post on your own blog is your own business. My job is rather simple: to deal with enforcement of the communications act -- not to participate in private feuds.

As I will not comment on my communications with you to other folks, I also cannot comment on communications with other licensees to you -- that would not be proper. (Unless both are parties to a complaint, but I did not get the impression that your email was a complaint relating to a specific licensee -- is my assumption incorrect?)

In any event, it is Saturday -- which means I should be off taking care of my family rather than responding to emails. Have an enjoyable weekend.

Laura

Laura L. Smith, Esq. | 1270 Fairfield Road, Gettysburg, PA 17325 | 717-338-2577 (phone) | 717-338-2574 (fax)

b. MONTEITH, HIRSELJ and LANCASTER have repeatedly made false statements of law to the Presiding Officers herein. Namely, they have falsely represented to the Division of ALJs that the Commission's so-called "character rule" is as follows:

"In discussing the requirement that an applicant for an FCC license be of good character, courts have stated that "a person's 'character' is usually thought to embrace all his qualities and deficiencies regarding traits of personality, behavior, integrity, temperament, consideration, sportsmanship, altruism, etc. which distinguish him as a human being from his fellow men...His disposition toward criminal acts is only one of the qualities which constitute his character. The statute subjects an applicant's 'character' to scrutiny by the Commission; in the absence of a legislative directive to the narrow interpretation advanced by plaintiffs, courts must

give to words their commonly understood definitions...Inquiry into an applicant's character, as commonly understood, would certainly be material. An inquiry which concerned itself only with convictions of felony or of crimes involving moral turpitude would be grossly inadequate. It might indeed be quite inadvisable from the public viewpoint to entrust the operation of a radio station to a person unworthy of belief and evidencing disregard for regulatory laws, even though he had never been convicted of a felony."

[Citing Mester v. U.S., 70 F.Supp 118 (D.C. Cir., 1947); see, for example, Enforcement Bureau's Motion to Compel Responses to Its First Request for Production of Documents, at pp. 2-4.]

5. In making the foregoing representations of law to the Presiding Officers herein, MONTEITH, HIRSELJ and LANCASTER deliberately intended to mislead the Division of ALJs concerning the present law concerning the Commission's "character rule"; namely, they intentionally failed to point out that the Commission overruled the policy set forth in Mester v. U.S. in 1947 because it was unconstitutionally overbroad and would allow the Commission go on a "witch hunt".

In this regard, MONTEITH, HIRSELJ and LANCASTER deliberately failed to inform the Presiding Officers herein that the Commission's present "character rule" was modified by the Commission's Policy Regarding Character Qualifications in Broadcast Licensing, 102 FCC 2d 1179 (1986), *recon. granted in part, denied in part*, 1 FCC Rcd. 421 (1986) so as to be the *complete opposite* of the rule stated in Mester. Therein, the Commission explained that it would henceforth concern itself only with

'misconduct which demonstrates the proclivity of an applicant or licensee to deal truthfully with the Commission and to comply with our rules and practices.' 102 FCC 2d at 1190-91. **We therein generally indicated that the Commission would consider *only adjudicated* (a) fraudulent representations to governmental units, (b) criminal misconduct involving false statements or dishonesty, and (c) broadcast-related violations of**

anti-trust or other laws dealing with competition.” 102 FCC 2d, 1195-1197; 1200-1203; emphasis supplied.

Then in 1990 the Commission added the *conviction of other felonies* as misconduct disqualifying an applicant from obtaining a license from the Commission. In the Matter of Policy Regarding Character Qualification in Broadcast Licensing, 5 FCC Rcd. 3252 (May 10, 1990 Policy Statement and Order), stating regarding pending proceedings relating to non-FCC misconduct:

7. We continue to believe that it is appropriate to refrain from making licensing decisions based on mere allegations of relevant non-FCC misconduct, *even where those allegations have resulted in an indictment* or are otherwise in the process of being adjudicated by another agency or court.

Such has been the Commission’s consistent rulings ever since its 1986 and 1990 “Resatements” of the “character rule”. See, for example, Verizon Communications, et al., in which Commission took the opportunity to re-state its existing rule concerning *only* “certain forms of adjudicated, non-FCC related misconduct that includes: (1) felony convictions; (2) fraudulent misrepresentations to governmental units; and (3) violations of antitrust or other laws protecting competition.” Id. at 20 FCC Rcd. 18526; and Harold D. Pick, DA 07-179 (January 23, 2007 Order of Reconsideration from the Deputy Chief, Mobility Division, Wireless Telecommunications Bureau), which reiterates that a felony conviction or fraudulent dealings with a government agency are required to trigger the application of the “character rule”.

6. Rule 1.24 of the Commission’s Rules of Practice and Procedure provides as follows:

TITLE 47--TELECOMMUNICATION
CHAPTER I--FEDERAL COMMUNICATIONS COMMISSION
PART 1_PRACTICE AND PROCEDURE--Table of Contents
Subpart A_General Rules of Practice and Procedure
Sec. 1.24 Censure, suspension, or disbarment of attorneys.
(a) The Commission may censure, suspend, or disbar any person who has

practiced, is practicing or holding himself out as entitled to practice before it if it finds that such person:

- (1) Does not possess the qualifications required by Sec. 1.23;
- (2) Has failed to conform to standards of ethical conduct required of practitioners at the bar of any court of which he is a member;
- (3) Is lacking in character or professional integrity; and/or
- (4) Displays toward the Commission or any of its hearing officers conduct which, if displayed toward any court of the United States or any of its Territories or the District of Columbia, would be cause for censure, suspension, or disbarment.

(b) Except as provided in paragraph (c) of this section, before any member of the bar of the Commission shall be censured, suspended, or disbarred, charges shall be preferred by the Commission against such practitioner, and he or she shall be afforded an opportunity to be heard thereon.

As stated above, MONTEITH, HIRSELJ and LANCASTER have clearly violated Rule 1.24 herein. MONTEITH violated said Rule by holding herself out as entitled to practice law before the Division of ALJs while suspended from the practice of law by the State of Virginia. MONTEITH, HIRSELJ and LANCASTER have violated Rule 1.24 by deliberately making false representations of law and fact to the Presiding Officers herein, in violation of the Rules of Professional Conduct of the states in which they are, or were, admitted to the bar.

Applicant therefore respectfully requests, pursuant to Rule 1.24, that the Presiding Officer herein prefer charges against MONTEITH, HIRSELJ and LANCASTER and hold a hearing herein in which they are given the opportunity to be heard.

Dated: February 3, 2009.

Respectfully submitted,



William F. Crowell, Licensee/Applicant

PROOF OF SERVICE BY MAIL
[47 C.F.R. Part I, Subpart A, §1.47]

I am a citizen of the United States and a resident of El Dorado County, California. I am the Applicant-licensee herein. I am over the age of 18 years. My address is: 1110 Pleasant Valley Road, Diamond Springs, California 95619-9221.

On February 3, 2009 I served the foregoing Applicant's Motion to Suspend, Censure or Disbar Attorneys on all interested parties herein by placing true copies thereof, each enclosed in a sealed envelope with postage thereon fully prepaid, in a United States mail box at Diamond Springs, California, addressed as follows:

Marlene S. Dortch, Secretary, Federal Communications Commission
445 - 12th Street S.W., Washington, D.C. 20554
(original and 6 copies)

Kris Monteith, Chief, Enforcement Bureau, Federal Communications Commission
445 - 12th Street, SW, Room 7-C723, Washington, D.C. 20554

Rebecca A. Hirselj, Esq., Ass't. Chief, Investigations & Hearings Division,
Enforcement Bureau, F.C.C.
445 - 12th Street, S.W., Room 4-A236, Washington, D.C. 20554 (Bureau Counsel)

Federal Communications Commission, Enforcement Bureau,
Investigations & Hearings Division
ATTN Judy A. Lancaster, Esq., 445- 12th Street, S.W., Room 4-C330,
Washington, D.C. 20554 (Bureau Counsel)

I further declare that, on the same date, and pursuant to the April 2, 2008 Order of former Presiding Officer Arthur Steinberg at the Pre-Hearing Conference of said date, I emailed copies of the foregoing document to said parties and to ALJ Sippel at their respective email addresses, in lieu of FAXing same.

I declare under penalty of perjury that the foregoing is true and correct, and that this proof of service was executed on February 3, 2009 at Diamond Springs, California.



William F. Crowell