

**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)	
Radio Service Station W6WBJ)	

MEMORANDUM OPINION AND ORDER

Adopted: April 20, 2018

Released: April 26, 2018

By the Commission: Commissioner O’Rielly issuing a statement.

I. INTRODUCTION

1. This Memorandum Opinion and Order denies an interlocutory appeal by William F. Crowell (Crowell).¹ Crowell seeks review of a decision by Chief Administrative Law Judge Richard L. Sippel (ALJ) that denied his Petition to Disqualify the ALJ.² We find that Crowell did not make the requisite showing of bias necessary to warrant the ALJ’s disqualification from this proceeding and therefore deny his appeal.

II. BACKGROUND

2. Crowell is the licensee of Amateur Radio Service Station W6WBJ. He filed the above-captioned application for renewal of license for the Station on February 28, 2007.³ On February 12, 2008, the Mobility Division of the Wireless Telecommunications Bureau initiated a hearing before the ALJ to determine whether the application for renewal should be granted.⁴

3. Pursuant to Section 309(e) of the Communications Act of 1934, as amended (the Act), the Commission is required to designate an application for evidentiary hearing if there is a substantial and material question of fact as to whether grant of a license application would serve the public interest, convenience, and necessity.⁵ The Mobility Division’s Hearing Designation Order specified six issues to be determined at the hearing: (a) whether Crowell violated Section 333 of the Act⁶ and Section 97.101(d) of the Commission’s rules⁷ by intentionally interfering with and/or otherwise interrupting radio

¹ Licensee’s Appeal to the Commission from the ALJ’s Denial of Motion to Disqualify Him Pursuant to 47 C.F.R., Chapter I, Subchapter A, Part 1, Subpart B § 1.245 [47 C.F.R., Chapter I, Subchapter A, Part 1, Subpart B, § 1.301], WT Docket No. 08-20 (filed April 10, 2017) (Crowell AFR).

² See *infra* note [18] (Crowell’s petition) and note [20] (ALJ’s denial).

³ FCC File No. 0002928684.

⁴ *William F. Crowell, Application to Renew License for Amateur Radio Service Station W6WBJ*, Hearing Designation Order, 23 FCC Rcd 1865 (WTB 2008) (*Hearing Designation Order*). The hearing was initially before ALJ Steinberg. On January 8, 2009, upon his retirement, the case was reassigned to Chief ALJ Sippel.

⁵ 47 U.S.C. § 309(e).

⁶ 47 U.S.C. § 333.

⁷ 47 CFR § 97.101(d).

communications; (b) whether Crowell violated Section 97.113(b) of the rules⁸ by transmitting one-way communications on amateur frequencies; (c) whether Crowell violated Section 97.113(a)(4) of the rules⁹ by transmitting indecent language; (d) whether Crowell violated Section 97.113(a)(4) of the rules¹⁰ by transmitting music; (e) whether Crowell is qualified to be and remain a Commission licensee; and (f) whether Crowell should be granted the captioned application for renewal filed on February 28, 2007.¹¹

4. On July 29, 2010, while discovery was ongoing, the ALJ denied as moot Crowell's motion to modify filing deadlines.¹² In the Order denying that motion, the ALJ warned Crowell that "due to the offensive nature of contents of [Crowell's] Motion," his conduct might be considered an abuse of process bearing on his character.¹³ The ALJ ordered Crowell to show cause "as to why there should be no abuse of process issue added."¹⁴

5. On August 30, 2010, Crowell filed his Reply to the Order to Show Cause and Petition to Disqualify ALJ.¹⁵ The ALJ ordered Crowell to make each of these filings separately because the petition to disqualify was not responsive to the Show Cause Order.¹⁶ On September 21, Crowell filed his response to the Show Cause Order.¹⁷ On October 7, Crowell filed his petition to disqualify the ALJ.¹⁸

6. In his October 7 petition, Crowell asserted, *inter alia*, that the ALJ had displayed personal animus toward him, incorrectly construed and/or applied the law, and was "immoral" and "devious" because he did not permit Crowell to brief an issue upon Crowell's request.¹⁹ The ALJ denied Crowell's petition to disqualify.²⁰ Finding that Crowell "ha[d] not made one fact-specific allegation, nor any legal argument based in fact to support his broad, conclusory charges," the ALJ found that Crowell "failed to state any reason why the Presiding Judge should not continue to preside in the preparation, discovery, and trial of the captioned Commission proceeding."²¹ Crowell appealed the ALJ's refusal to

⁸ 47 CFR § 97.113(b).

⁹ 47 CFR § 97.113(a)(4).

¹⁰ *Id.*

¹¹ *Hearing Designation Order*, 23 FCC Rcd at 1865, para. 1. Since this hearing was commenced, the Enforcement Bureau issued a Forfeiture Order against Crowell for "intentionally causing interference to other amateur radio operators and transmitting prohibited communications, including music." *William F. Crowell*, Forfeiture Order, 31 FCC Rcd 8700, 8700, para. 1 (EB 2016). The hearing has been stayed pending the expected litigation of that Order. *William F. Crowell*, Order, WT Docket No. 08-20, FCC 17M-21 (rel. Apr. 10, 2017).

¹² *William F. Crowell*, Order, WT Docket No. 08-20, FCC 10M-04 (rel. July 29, 2010).

¹³ *Id.* at 1, 7-8.

¹⁴ *Id.* at 9.

¹⁵ Applicant's Reply to Order to Show Cause and Petition to Disqualify ALJ, WT Docket No. 08-20 (filed August 30, 2010).

¹⁶ *William F. Crowell*, Order, WT Docket No. 08-20, FCC 10M-07 (rel. Sept. 15, 2010).

¹⁷ Applicant's Response to Order to Show Cause [FCC 10M-04, released July 29, 2010], WT Docket No. 08-20 (filed September 21, 2010).

¹⁸ Applicant's Petition to Disqualify ALJ [47 C.F.R., Part 1, Subpart B, § 1.245], WT Docket No. 08-20 (filed October 7, 2010).

¹⁹ *Id.* at 7-8, 10-11, 15-16. Crowell listed a total of 17 ways in which the ALJ allegedly acted "Immorally, Deceitfully and Prejudicially."

²⁰ *William F. Crowell*, Memorandum Opinion and Order, WT Docket No. 08-20, FCC 17M-13 (rel. Mar. 28, 2017).

²¹ *Id.* at 10.

disqualify himself.²² On April 7, 2017, pursuant to Section 1.245(b)(4) of the Commission's Rules,²³ the ALJ certified his appeal to the Commission.²⁴

III. DISCUSSION

7. Under the Commission's Rules, "[a]ny party may request the presiding officer to withdraw on grounds of personal bias or other disqualification."²⁵ The Commission has held that "[i]n order to justify a request to disqualify the Presiding Judge from an adjudicatory proceeding, a party must demonstrate personal bias or prejudice impairing the Presiding Judge's ability to act in an impartial manner."²⁶ We operate under a "strong presumption that the ALJ has acted in a fair and impartial manner,"²⁷ and the burden, which past rulings have described as "a heavy one," is on the party alleging bias.²⁸

8. The Commission has held that "[o]rdinarily, '[t]he alleged bias and prejudice to be disqualifying must stem from an extrajudicial source and result in an opinion on the merits on some basis other than what the judge learned from his participation in the case.'"²⁹ However, because "it is not always possible to establish an extra-judicial source of bias," Commission precedent has held that "the comments and rulings of the trier of fact may be relevant to the existence of prejudice."³⁰ While an ALJ's rulings may be relevant to establishing bias, "the *substance* of an ALJ's interlocutory rulings are not a basis for disqualification because they are subject to review."³¹ And whenever a party claims bias based on matters arising during the proceeding, the relevant inquiry is whether the ALJ displayed a "deep-seated favoritism or antagonism that would make fair judgment impossible."³²

9. We have examined Crowell's claims of bias in accordance with our precedent, a task made more difficult because Crowell provides virtually no detailed factual support or references to the record for his allegations. We understand Crowell to make three general claims to support his charge of bias.³³ First, Crowell claims that the ALJ has displayed personal animus toward him. Second, Crowell alleges that the ALJ misconstrued and/or misapplied the law in his consideration of this case. Third, Crowell asserts that the ALJ made unjustified rulings, including one barring Crowell from briefing an issue during discovery. As stated, because Crowell has not alleged that the ALJ has relied on knowledge acquired outside of this proceeding, the pertinent standard is whether the ALJ has displayed "favoritism

²² Crowell AFR.

²³ 47 CFR § 1.245(b)(4).

²⁴ *William F. Crowell*, Order, WT Docket No. 08-20 FCC 17M-24 (rel. May 16, 2017). On April 7, 2017, ALJ Sippel found that Crowell's appeal was not timely, but "as a contingency" stated he would forward the appeal to the Commission. *William F. Crowell*, Order, WT Docket No. 08-20, FCC 17M-18 (rel. Apr. 7, 2017), at 1. Because we decide this appeal on other grounds, we need not address the timeliness of Crowell's appeal.

²⁵ 47 CFR § 1.245(b).

²⁶ *Family B'casting, Inc.*, 17 FCC Rcd 19332, 19333, para. 7 (2002).

²⁷ *Catalina Radio*, 5 FCC Rcd 3710, 3710, para. 7 (1990).

²⁸ *Family B'casting, Inc.*, 17 FCC Rcd at 19333, para. 7.

²⁹ *Applications of WWOR-TV, Inc. for Renewal of License of Station WWOR(TV), Secaucus, New Jersey*, 4 FCC Rcd 6155, 6155, para. 4 (1989) (*WWOR-TV, Inc.*) (quoting *United States v. Grinnell Corp.*, 384 U.S. 563, 583 (1966)).

³⁰ *KAYE B'casting, Inc.*, 35 FCC 2d 548, 548, para. 3 (1972); accord. *Liteky v. United States*, 510 U.S. 540, 551 (1994) (while an "'extrajudicial source' ... is the only *common* basis, [it is] not the exclusive one, since it is not the *exclusive* reason a predisposition can be wrongful or inappropriate").

³¹ *WWOR-TV, Inc.*, 4 FCC Rcd at 6155, para. 4 (emphasis added).

³² *Family B'casting, Inc.*, 17 FCC Rcd at 19334, para. 8 (quoting *Liteky*, 510 U.S. at 555).

³³ Crowell AFR at 3-5.

or antagonism that would make fair judgment impossible.”³⁴ As explained below, we find that the ALJ has not displayed such favoritism or antagonism.

10. Crowell asserts that the ALJ has displayed personal animus toward him because the ALJ “becomes very angry and yells at me during conference hearings.”³⁵ Crowell identifies a single specific occasion in which the ALJ allegedly “got really mad and yelled at me during a conference hearing because I exposed how the Commission was violating its own rule [footnote omitted] that documents are deemed filed upon receipt by sending its mail to an outlying facility for irradiation before opening it.”³⁶ The ALJ admits that he “may have become a bit testy while maintaining order” during the conference call, but denies that he became very angry or yelled.³⁷ Crowell’s allegations fall short of the standard required for disqualification. Rather they land within the principle that “expressions of impatience, dissatisfaction, annoyance, and even anger, that are within the bounds of what imperfect men and women . . . sometimes display” do not warrant disqualification.³⁸ Crowell’s claim describes no more than the type of ordinary impatience that well might arise during the course of a hotly-contested hearing.³⁹

11. Crowell’s claim that disqualification is warranted because the ALJ misconstrued and/or misapplied the law is similarly misplaced. Crowell outlines two areas where he alleges that the ALJ made erroneous rulings on a matter of law, namely that the ALJ (a) refused to apply the *Red Lion*⁴⁰ and *Sable Communications*⁴¹ Supreme Court cases to the amateur radio service;⁴² and (b) applied the Commission’s Character Policy Statement⁴³ to amateur radio operators.⁴⁴ A mere disagreement on a point of law does not constitute a basis for disqualification. The process by which legal errors are resolved is the appeals process; “judicial rulings alone almost never constitute a valid basis for a bias or partiality motion.”⁴⁵ To

³⁴ *Family B’casting, Inc.*, 17 FCC Rcd at 19334, para. 8 (quoting *Liteky*, 510 U.S. at 555).

³⁵ Crowell AFR at 3.

³⁶ *Id.* at 4. Crowell provides no support for his allegation that the ALJ has been free to “falsely disparage, defame and deprecate me.” *Id.* at 3. Crowell also does not explain what he means by accusing the ALJ of likening Crowell to a child molester or computer hacker. *Id.* at 5.

³⁷ *William F. Crowell*, Order, WT Docket No. 08-20, FCC 17M-24 (rel. May 16, 2017), at 4.

³⁸ *Liteky*, 510 U.S. at 555-56.

³⁹ Harsh remarks support a bias challenge only “if they reveal such a high degree of favoritism or antagonism as to make fair judgment impossible.” *Liteky*, 510 U.S. at 555 (citing *Berger v. United States*, 255 U.S. 22, 28 (1921) (finding bias where judge, in espionage case against German-American defendants, said that German-Americans’ “hearts are reeking with disloyalty”)); see also *In re Marshall*, 721 F. 3d 1032, 1043 (7th Cir. 2013) (judge’s description of Defendant as having “extremely dirty hands” did not require disqualification because it was “the product of [the judge’s] frustration with [Defendant’s] behavior throughout the litigation”); *Chianelli v. EPA*, 8 F. App’x 971, 978, 981 (Fed. Cir. 2001) (ALJ’s description of Plaintiff as a “pure troublemaker,” while “clearly inappropriate,” did not require recusal). Crowell’s allegations do not meet the standard established by this precedent.

⁴⁰ *Red Lion B’casting v. FCC*, 395 U.S. 367 (1969).

⁴¹ *Sable Comm’n’s of California, Inc. v. FCC*, 492 U.S. 115 (1989).

⁴² Crowell AFR at 4.

⁴³ *Policy Regarding Character Qualifications in B’cast Licensing*, 102 FCC 2d 1179 (1986) (*Character Policy Statement*).

⁴⁴ Crowell AFR at 5.

⁴⁵ *Liteky*, 510 U.S. at 555; see also *Belue v. Leventhal*, 640 F. 3d 567, 575 (4th Cir. 2011) (“Dissatisfaction with a judge’s views on the merits of a case may present ample grounds for appeal, but rarely—if ever—presents a basis for recusal”); *James A. Kay*, 12 FCC Rcd 15662 (1997) (fact that ALJ’s findings were vacated in Remand Order did not show disqualifying bias).

justify disqualification, a party must show that the ruling displays evidence of “favoritism or antagonism.”⁴⁶ Nothing in Crowell’s appeal gives us reason to believe the ALJ’s legal conclusions were driven by “favoritism or antagonism.”⁴⁷

12. Crowell’s last argument, that ALJ Sippel showed bias in his rulings, also fails. Crowell argues that the ALJ “refused [his] request to brief [an] issue in order to prove that some of [his] motions had been denied due to supposed late filing . . . when they were timely filed, and then he wrote a conference summary which failed to state that [Crowell] raised the issue.”⁴⁸ The ALJ responds that this was a “routine event of case management” and that he “summariz[ed] his recollection of the subjects discussed at the conference.”⁴⁹ He further states that “[t]o encumber the record with details of each and every matter that Crowell contrives would waste an endless amount of time and resources.”⁵⁰ Crowell gives us no reason to believe that this matter involves anything other than a routine procedural ruling that does not justify disqualification. The Supreme Court has held that a “judge’s ordinary efforts at courtroom administration . . . remain immune” from bias challenges.⁵¹ Crowell describes just the sort of courtroom administration in which we expect an ALJ to engage.⁵² Crowell is free to raise challenges to the denial of his motions on appeal, after a final order disposing of the case has been issued.⁵³ Similarly, we find no merit to Crowell’s allegation that the ALJ displayed bias by “accus[ing] me of contempt,” a reference to the ALJ’s Show Cause Order.⁵⁴ Crowell is also free to challenge the Show Cause Order at the appropriate time.

IV. ORDERING CLAUSES

13. IT IS ORDERED that the Licensee’s Appeal to the Commission from the ALJ’s Denial

⁴⁶ *Family B’casting, Inc.*, 17 FCC Rcd at 19334, para. 8 (quoting *Liteky*, 510 U.S. at 555).

⁴⁷ In fact, Crowell admits that the ALJ’s position on *Red Lion* and *Sable Communications* is consistent with FCC precedent. Crowell AFR at 4, citing *David Hildebrand*, 2 FCC Rcd 2708 (1987). And he offers only a conclusory claim that the Character Policy Statement should not apply to amateur radio operators. Whether the Commission agrees with the ALJ’s interpretation is not at issue in this appeal, but Crowell gives us no reason to believe that these conclusions evince favoritism or antagonism. See *Applications of Webster-Fuller Comm’s Associates*, 4 FCC Rcd 4952, 4953, para. 7 (1989) (“Without considering whether we agree with each of the ALJ’s rulings, he has set forth reasons supporting his orders that do not in any way evidence bias.”).

⁴⁸ Crowell AFR at 4.

⁴⁹ *William F. Crowell*, Order, WT Docket No. 08-20, FCC 17M-24 (rel. May 16, 2017), at 4.

⁵⁰ *Id.* at 5.

⁵¹ *Liteky*, 510 U.S. at 556 (finding that “the questions [the judge] put to certain witnesses . . . and his post-trial refusal to allow petitioners to appeal *in forma pauperis*” did not amount to bias requiring disqualification). See also *United States v. Nickl*, 427 F. 3d 1286, 1298-99 (10th Cir. 2005) (“the court’s refusal to grant defense counsel’s requests for a continuance to brief [certain] issues and for an additional jury instruction . . . are merely adverse rulings, and do not in themselves support a bias charge”).

⁵² See *Family B’casting*, 17 FCC Rcd at 19334-35, para. 11 (“The Commission accords its administrative law judges discretion in regulating the course of evidentiary hearings.”); *Herring B’casting, Inc.*, 26 FCC Rcd 8971, 8984-85, paras. 41-42 (2011) (adverse procedural ruling “[e]ll far short of meeting . . . [the] ‘heavy burden’ of ‘demonstrat[ing] personal bias or prejudice impairing the Presiding Judge’s ability to act in an impartial manner’”); *Center for Study and Application of Black Economic Development*, 7 FCC Rcd 3101, 3104, para. 9 (Rev. Bd. 1992) (ALJ’s efforts to “focus” a pre-hearing conference were consistent with discretion to direct course of proceeding).

⁵³ See *Catalina Radio*, 5 FCC Rcd at 3710, para. 5 (“[A]dverse interlocutory rulings by the ALJ may, pursuant to 47 C.F.R. § 1.276, be appealed after the release of the initial decision, and any error of fact or law may be corrected on review.”); *WWOR-TV, Inc.*, 4 FCC Rcd at 6155, para. 4 (“the substance of an ALJ’s interlocutory rulings are not a basis for disqualification because they are subject to review”).

⁵⁴ Crowell AFR at 3. See also *id.* (“He tries to bully me by . . . threats of contempt (abuse of process).”)

of Motion to Disqualify Him Pursuant to 47 C.F.R., Chapter I, Subchapter A, Part 1, Subpart B § 1.245 [47 C.F.R., Chapter I, Subchapter A, Part 1, Subpart B, § 1.301], WT Docket No. 08-20 (filed April 10, 2017, by William Crowell) is DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

**STATEMENT OF
COMMISSIONER MICHAEL O'RIELLY**

Re: *Patrick Sullivan and Lake Broadcasting, Inc. For Commission Consent to the Assignment of License of FM Translator Station W238CE, Montgomery, Alabama, MB Docket No. 14-82; William F. Crowell, Application to Renew License for Amateur Radio Service Station W6WBJ, WT Docket No. 08-20*

While I approve these items confirming that the requisite showing of bias necessary to disqualify an ALJ was not met, and therefore the appeal must be denied, I feel it is important to make a few observations.

While the bias burden may not have been met because it rightfully remains high, I am concerned that the ALJ took unnecessary actions in these situations. For example, denying a motion to dismiss in order to pursue a case on the character of someone who decided to withdraw his application to be a Commission licensee appears to me to be a questionable use of resources.

The Sullivan item also describes a “lengthy prehearing process” of over three years. Three years! This is an absurd amount of time needed to resolve such a matter and reinforces to me the need to fully weigh the costs and benefits of the ALJ process.

On a larger scale, complaints about the ALJ process are not isolated incidents but paint a picture of questionable decisions coupled with an elevated level of inefficiency. It seems to me that too often the Commission has had to reverse the decisions of the ALJ or address one ALJ decision or another. To its credit, the media bureau has begun to use paper hearings to completely avoid this bureaucratic mess. This reality only reaffirms my call to consider eliminating the ALJ process altogether.