

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	WT Docket No. 07-110
)	
DAVID O. CASTLE)	FCC File No. 0002687468
)	
Application to Renew License for Amateur)	
Radio Service Station WA9KJI)	

MEMORANDUM OPINION AND ORDER

Issued: August 17, 2007

;

Released: August 20, 2007

1. By *Hearing Designation Order*, DA 07-2185, released May 24, 2007 (“*HDO*”), the Deputy Chief, Mobility Division, Wireless Telecommunications Bureau, pursuant to delegated authority, designated this proceeding for hearing. The issues seek to determine whether David O. Castle (“Mr. Castle”), willfully and/or repeatedly violated Section 333 of the Communications Act of 1934, as amended, and Sections 97.101(d), 97.113(b), and 97.113(a)(4) of the Commission’s Rules (Issues (a), (b), and (c)); to determine the effect on Mr. Castle’s qualifications of his use of his amateur license to engage in criminal behavior (Issue (d)); and to determine, in light of the evidence adduced, whether Mr. Castle is qualified to be and remain a Commission licensee, and whether the captioned application should be granted (Issues (e), and (f)). (*HDO* at ¶ 11.) In order to avail himself of the opportunity to be heard, the *HDO*, among other things, required Mr. Castle, in person or by his attorney, to file with the Commission, within 20 calendar days of the mailing to him of the *HDO*, “a written appearance stating that he will appear on the date fixed for hearing and present evidence on the issues specified” in the *HDO*. (*Id.* at ¶ 12.) A summary of the *HDO* was published in the Federal Register on June 13, 2007. 72 Fed. Reg. 32,663-64.

2. To date, no written appearance has been filed by, or on behalf of, Mr. Castle. In addition, a prehearing conference was held on August 13, 2007, in the Commission’s Washington, D. C., offices. No one attended or entered an appearance on behalf of Mr. Castle.

3. However, the Commission did receive a number of communications by or on behalf of Mr. Castle. Specifically, in a letter dated June 8, 2007 (received by the Commission’s Mailroom on June 11, 2007), addressed to the Deputy Chief, Mobility Division, Wireless Telecommunications Bureau, Mr. Castle requested that the contents of the *HDO* be sent to him “in an audible form (cassette or cd)” because he has “limited eye sight.” Mr. Castle also stated: “Travel will not be possible due to my health and finances. Representation by an attorney is not in my budget.” (Judge’s Ex. 1.) On July 13, 2007, pursuant to Mr. Castle’s request, counsel for the Enforcement Bureau (“Bureau”) sent to Mr. Castle a disc containing audio files of all of the documents released in this proceeding as of that date. (Judge’s Ex. 4.)

4. In an undated submission (received by the Commission’s Mailroom on July 9, 2007), which was also addressed to the Deputy Chief, Mobility Division, Mr. Castle presented: “MY REPLY TO FCC FIVE PAGE LER. ON 5-23=-07.” (Judge’s Ex. 2, pp. 1, 20; capitalization, spelling, and punctuation in original.) In pertinent part, Mr. Castle stated: “. . . AND THIS COMING TO WASH[ington for a hearing] IS A JOKE.. [. . .] SO JUDGE STEINBURG JUST TAKE [. . .] MY.LICENSE, IF YOU MUST , WHO WOULD WAST VALUABLE RESOURCES OF OUR JUSTICE SYSTEM .ON SUCH PETTY ,MATTERS AS A PERSON WHO WANTS TO CRUSH ANOTHER JUST CAUSES HE HAS POWER AND MONEY [. . .]” (*Id.* at p. 2; capitalization, spelling, and punctuation in original.)

5. On July 18, 2007, Mr. Castle's daughter, Donna J. Dill ("Ms. Dill"), sent a fax to the Presiding Judge's office. Among other things, Ms. Dill stated that her father "is not able to travel or hire an attorney. . . . He tells me that he has sent his statement and this is all he is able to do as his eye sight is limited and health poor." (Judge's Ex. 3, p. 1.)

6. As noted above, the *HDO* required Mr. Castle to file a written appearance stating that he will appear on the date fixed for hearing and present evidence on the specified issues. He has failed to do so. On the contrary, the submissions he and Ms. Dill have made to the Commission clearly establish that Mr. Castle does *not* intend to appear on the date fixed for hearing and present evidence on the issues specified in the *HDO*. Moreover, even assuming *arguendo* that these documents can somehow be construed as "pleadings," as defined in Section 1.204 of the Commission's Rules, they are procedurally deficient and may not, therefore, be considered. *E.g.*, Section 1.296 of the Rules. For example, the documents have not been properly or officially "filed" in the manner specified in Section 0.401 of the Rules; an original and six copies were not filed in accordance with Section 1.51(a)(1) of the Rules; they were not verified in the manner specified in Section 1.52 of the Rules; they were not served on counsel for the Bureau as required in Sections 1.47(c), 1.211, and 1.296 of the Rules; and Mr. Castle's submissions were not addressed to the Presiding Judge as required by Section 1.209 of the Rules.¹

7. Section 1.221(c) of the Commission's Rules provides, in pertinent part, that where an applicant fails to file a written appearance within the time specified, the application "will be dismissed with prejudice for failure to prosecute." Likewise, the *HDO* in this proceeding states that, if Mr. Castle fails to file a written appearance within the requisite time period, "the Presiding Administrative Law Judge SHALL DISMISS the captioned application with prejudice for failure to prosecute." (*HDO* at ¶ 13; capitalization in original). Under all of the circumstances presented here, Mr. Castle's application must be dismissed with prejudice.

Accordingly, IT IS ORDERED that the application of David O. Castle to Renew License for Amateur Radio Service Station WA9KJI (FCC File No. 0002687468), IS DISMISSED with prejudice.

IT IS FURTHER ORDERED that this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Arthur I. Steinberg
Administrative Law Judge

¹ It is well established that:

[w]here a party elects to act without counsel, it must assume the burden of becoming acquainted with, and conforming to the requirements of, our rules. We cannot excuse the disruption of our administrative processes because a party, who undertakes to act as its own counsel, is unfamiliar with our rules and procedures; and no such disruption will be tolerated.

Silver Beehive Telephone Co., 34 FCC 2d 738, 739-40 (1972); *Classic Vision, Inc.*, 1 FCC Rcd 1109, 1110 n.2 (Rev. Bd. 1986), and cases cited therein.