

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

In the Matter of)	
)	
The Beasley Broadcast Group, Inc.)	EB-04-IH-0661
)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: June 1, 2007

Released: June 1, 2007

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Memorandum Opinion and Order* we deny a formal complaint against The Beasley Broadcast Group, Inc. (“Beasley”) filed by John B. Thompson (“the Complainant”) alleging improper conduct against him based upon his filing of complaints against radio broadcast stations licensed to Beasley’s subsidiaries.¹

II. BACKGROUND

2. Beasley is the ultimate parent of WQAM License Limited Partnership, licensee of Station WQAM(AM), Miami, Florida and WRXK License Limited Partnership, licensee of Station WRXK-FM, Bonita Springs, Florida (collectively, “the Beasley Stations”). The Complainant filed a number of complaints against the Beasley Stations alleging violations of the federal restrictions regarding the broadcast of indecent and profane material.² The Complainant also filed a formal complaint alleging that Beasley and its counsel have engaged in threats, abuse and intimidation against him in retaliation for filing these complaints and that he had proof to substantiate these allegations.³ The Complainant did not request a specific sanction in his complaint, but subsequently requested that the Commission initiate revocation proceedings against all of Beasley’s broadcast licenses and withhold action on all Beasley’s pending “applications, petitions and requests.”⁴

¹ See Letter from John B. Thompson, Attorney at Law, to Michael K. Powell, Chairman, Federal Communications Commission, dated November 27, 2004 (“*Complaint*”).

² See 18 U.S.C. § 1464, 47 C.F.R. § 73.3999. We have not addressed the Complainant’s indecency complaints here, but will consider them separately.

³ *Complaint* at 6-7.

⁴ See Letter from John B. Thompson, Attorney at Law, to Michael K. Powell, Chairman, Federal Communications Commission, dated December 14, 2004.

3. Based upon the complaint, we issued a letter of inquiry to the Complainant directing that he produce all documents that provide the basis for or otherwise support his allegations of improper threats, intimidation and harassment.⁵ The Complainant filed a response to our letter of inquiry on January 5, 2005.⁶ In addition, the Complainant thereafter filed, via e-mail, numerous addenda to his response as well as numerous additional e-mails concerning his complaint.⁷ On January 22, 2007, the Complainant submitted a statement, accompanied by a declaration under penalty of perjury, summarizing the ongoing harassment, intimidation and targeting that he has alleged is a result of his complaints against Beasley.⁸ The Complainant supplemented the January 22, 2007 filing on February 1, 2007.⁹ Although the Complainant claims to have mailed to the Commission original signed declarations in support of the January 22 and February 1, 2007 filings, we have not received these signed declarations.¹⁰

4. The Complainant contends that Beasley has violated 18 U.S.C. § 1464 and Section 73.3999 of the Commission's rules by broadcasting indecent material over Station WQAM(AM) and is attempting to shield its illegal activity by impermissibly targeting him instead of addressing his indecency complaints on the merits. Specifically, the Complainant alleges that: (1) on-air personalities at Station WQAM(AM) and others have made threats against him and against one of his clients; (2) Beasley has engaged in improper conduct in a Commission proceeding in which a *Notice of Apparent Liability* was issued against Beasley for airing indecent material on Station WQAM(AM); (3) Beasley's agent and attorney, Norman Kent, has filed lawsuits and a contempt of court proceeding against him at the direction of

⁵ See Letter from William D. Freedman, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, to John B. Thompson, Esquire, dated December 15, 2004 ("*Thompson LOP*").

⁶ See Letter from John B. Thompson, Attorney at Law, to William D. Freedman, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, dated January 5, 2005 (Revised Subsequent Version) ("*Thompson Response*").

⁷ The Addenda filed are: Letters from John B. Thompson, Attorney at Law, to William D. Freedman, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, dated January 6, 7, 10, 11, 12, 13, 20 and 30, 2005. Letters from John B. Thompson, Attorney at Law to Michael K. Powell, Chairman, Federal Communications Commission, dated January 10, February 7, 8, and 19, 2005; Letters from John B. Thompson, Attorney at Law, to Commissioners Kathleen Q. Abernathy, Michael J. Copps, Kevin J. Martin and Jonathan S. Adelstein, dated March 11, 15, 18, 23, and 30, 2005; Letters from John B. Thompson, Attorney at Law, to Chairman Kevin J. Martin, dated April 27, July 13, and 20, 2005. There were two Addenda pleadings filed January 10, 2005, one at 4:13 p.m. and one at 6:48 p.m.

⁸ See Letter from John B. Thompson, Attorney at Law, to Chairman Kevin J. Martin, Federal Communications Commission, dated January 22, 2007 ("*Thompson Supplement to LOI Response*").

⁹ See Letter from John B. Thompson, Attorney at Law, to Kevin J. Martin, Chairman, Federal Communications Commission, dated February 1, 2007 (Re: Addendum to Sworn Statement As to Ongoing, Illegal Harassment of Jack Thompson by Beasley and Its Lawyers).

¹⁰ Nor have we received a signed declaration under penalty of perjury that the Complainant references in a letter filed with the Commission on February 5, 2007. Letter from John B. Thompson, Attorney at Law, to Kevin J. Martin, Chairman, Federal Communications Commission, dated February 5, 2007 (Re: Sworn Response to Beasley Attorney Norm Kent's February 2, 2007 Letter to the Commission Regarding the Ongoing, Illegal Harassment of Jack Thompson and Its Lawyers). This letter was submitted via E-mail and does not indicate that the original was being submitted via U.S. mail.

Beasley in order to harass, target and intimidate him; and (4) Beasley and its counsel have improperly filed complaints against him with the Florida Bar.

5. Beasley filed a reply to the Complainant's initial response on January 28, 2005,¹¹ and supplemented this reply on March 11, 2005,¹² December 16, 2005,¹³ and April 14, 2006.¹⁴ In addition, on February 12, 2007, Beasley filed a further reply to the Complainant's filings.¹⁵ Beasley denies the Complainant's allegations and further alleges that the Complainant has not provided any proof to support them. Indeed, Beasley maintains that the Complainant's own submission demonstrates that Beasley has taken reasonable and transparent actions to protect itself against the Complainant's allegedly inappropriate and abusive conduct without contesting or interfering with his right to file any complaint with the Commission. In this regard, Beasley also asserts that the Complainant's conduct includes repetitive defamatory communications, interference with its business relationships and other inappropriate and abusive tactics.¹⁶ Beasley maintains that, as a consequence of these actions, it is the Complainant who has abused the Commission's processes and that it is he who should be sanctioned for such misconduct.¹⁷ Beasley also asserts that the Complainant has made material misrepresentations that the Florida Bar has dismissed complaints filed against him by Beasley and its counsel and submits a complaint, filed by the Florida Bar against the Complainant, to demonstrate that these complaints have not been dismissed and that the bar is pursuing disciplinary action against the Complainant.¹⁸

III. DISCUSSION

6. **The Complainant's Harassment and Intimidation Complaint.** In order to find that a licensee impermissibly intimidated or harassed a complainant, there must be evidence of threats of reprisals or some other unnecessary and abusive conduct reasonably calculated to dissuade a complainant from continued involvement in a proceeding.¹⁹ Under Commission

¹¹ See Letter from Steven A. Lerman, Esquire, Dennis P. Corbett, Esquire and David S. Keir, Esquire, Counsel for The Beasley Broadcast Group, Inc., to Melanie A. Godschall, Investigations and Hearings Division, Enforcement Bureau, dated January 28, 2005 ("*Reply to Thompson Complaint*").

¹² See Letter from Steven A. Lerman, Esquire, Dennis P. Corbett, Esquire, and David S. Keir, Esquire, Counsel for The Beasley Broadcast Group, Inc., to Melanie A. Godschall, Investigations and Hearings Division, Enforcement Bureau, dated March 11, 2005 ("*Supplemental Reply to Thompson Complaint*").

¹³ See Letter from Steven A. Lerman, Esquire, Dennis P. Corbett, Esquire, and David S. Keir, Esquire, Counsel for The Beasley Broadcast Group, Inc., to Melanie A. Godschall, Investigations and Hearings Division, Enforcement Bureau, dated December 16, 2005 ("*Second Supplemental Reply to Thompson Complaint*").

¹⁴ See Letter from Steven A. Lerman, Esquire, Dennis P. Corbett, Esquire, and David S. Keir, Esquire, Counsel for The Beasley Broadcast Group, Inc., to Melanie A. Godschall, Investigations and Hearings Division, Enforcement Bureau, dated April 14, 2006 ("*Third Supplemental Reply to Thompson Complaint*").

¹⁵ See Letter from Steven A. Lerman, Esquire, Dennis P. Corbett, Esquire, and David S. Keir, Esquire, Counsel for The Beasley Broadcast Group, Inc., to Melanie Godschall, Investigations and Hearings Division, Enforcement Bureau, dated February 12, 2007 ("*Further Reply*").

¹⁶ See *Supplemental Reply to Thompson Complaint*.

¹⁷ We defer action on Beasley's abuse of process complaint.

¹⁸ See *Further Reply* at 4-6 and Attachment 3.

¹⁹ See *Clear Channel Broadcasting Licenses, Inc.*, Notice of Apparent Liability, 19 FCC Rcd 1768, 1777, ¶15 (2004) (forfeiture paid).

precedent, a complainant has the burden of presenting evidence to corroborate a claim of harassment and intimidation.²⁰ At various times during the pendency of this investigation, the Complainant has informed the Commission that he expects to submit documentation from civil suits he has filed or will file and that this documentation will support his allegations. One such instance was on July 26, 2006, when the Complainant asserted that he was about to engage in discovery in connection with a civil lawsuit that would prove his allegations, and asked that the Commission withhold action and keep its investigation open pending his submission of that documentation.²¹ No such documentation was ultimately filed, although the Complainant did make additional submissions to the Commission. As discussed in more detail herein, we find that in light of the Complainant's failure to substantiate his allegations, there is no basis on which to conclude that Beasley has engaged in improper threats, harassment or abuse of the Complainant.

7. In addition, the Complainant's allegations concerning the lawsuits and bar complaints filed against him cannot be viewed in isolation from his own conduct toward Beasley and its counsel. The Complainant has regularly issued press releases²² and contacted state and federal officials and other entities with which Beasley does business²³ characterizing Beasley as a "criminal enterprise"²⁴ under various criminal statutes, including the Racketeer Influenced Corrupt Organizations Act ("RICO") and characterizing Beasley and its principals as "criminals."²⁵ We are unaware of, and the Complainant has not submitted any information

²⁰ *Id.*

²¹ See Letter from John B. Thompson, Attorney at Law, to Kevin J. Martin, Chairman, Federal Communications Commission, dated July 26, 2006.

²² See, e.g., "Immediate News Release 4/6/05 - Howard Stern to Face Criminal Prosecution?" ("Miami attorney Jack Thompson, who knocked Howard Stern off all Clear Channel radio stations in February 2004 and also secured \$500,000 in FCC fines against the Stern show, has been calling upon the FCC for a year to refer all findings of indecency to the Justice Department for criminal prosecution. It appears that Howard Stern himself now knows that that is a possibility. Thompson intends to bring a writ of mandamus action to compel such criminal referrals to Justice if they are not forthcoming. One set of potential criminal defendants would be corporate officials at Beasley Broadcast Group, Inc. of Naples, Florida, for its continued airing of *Stern* despite FCC decency fines in 2000 and numerous pending investigations."); "Immediate News Release 6/03/05 - GOP Bush Insider Caught in Web of Porn and Perjury (referring to "GOP donor Beasley Broadcast Group" and its counsel Tew Cardenas).

²³ See Letter from John B. Thompson, Esquire, to Al Lawn, Legal Counsel, Talk America, dated September 21, 2004 Re: Criminal Activity by Beasley Broadcasting ("Beasley Broadcasting is indeed engaged in certain criminal activity. They are violating 18 U.S.C. 1464"), copied via E-mail to William D. Freedman, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, December 14, 2004.

²⁴ See, e.g., E-mail from Jack Thompson, Esquire to Kevin Martin, Chairman, Federal Communications Commission, dated May 5, 2005, subject "This is how you stop a criminal enterprise at a radio station." Letter from John B. Thompson, Esquire, to The Honorable Jeb Bush, Governor, State of Florida, dated May 4, 2005 (characterizing Beasley as a "criminal enterprise that has distributed pornography to children in multiple counties in Florida), copied via E-mail to Kevin Martin, Chairman, Federal Communications Commission, May 4, 2005.

²⁵ See, e.g., Letter from John B. Thompson, Esquire, to The Honorable Jeb Bush, dated March 24, 2005 ("There is plenty of evidence to prove the distribution of pornography by [Beasley] to children and [its law firm's] facilitation of that criminal activity"), copied via E-mail to Michael Copps, Commissioner, Federal Communications Commission, March 24, 2005; Letter from John B. Thompson, Esquire, to The Honorable Jeb Bush, dated March 31, 2005 ("Attached hereto is my letter of March 24, 2005 asking that you direct the Statewide Prosecutor to investigate the multi-county criminal activity of Beasley Broadcast Group, Inc. of Naples, Florida. This criminal activity includes the distribution of indecent material to minors and extortion of those opposed to it."); Letter from (continued....)

demonstrating that Beasley or its principals have been convicted of any felony or other crime cognizable under the Commission's Character Policy.²⁶ Moreover, as discussed below, there is no evidence that Beasley has acted improperly with regard to any of the lawsuits cited by the Complainant. These lawsuits were filed by Beasley's counsel, and do not involve Beasley or matters within the Commission's regulatory jurisdiction. Under these circumstances, there are legitimate reasons other than impermissible retaliation for the lawsuits and bar complaints referenced by the Complainant.

8. Allegations Concerning Threats During Broadcasts of the "Scott Ferrall Show" and Improper Conduct Associated with the WQAM NAL Proceeding. In September 2003, the Commission received complaints alleging that indecent material was aired on Station WQAM(AM) during the "Scott Ferrall Show." One of the complaints, which was filed by another listener, and not by the Complainant, concerned a September 9, 2003 broadcast in which the on-air host, Mr. Ferrall, received an angry phone call from an unidentified listener and then threatened to have the caller incarcerated, after which the caller would be raped and sodomized, and Mr. Ferrall would perform other sexual acts on his wife and also engage in violence against his family.²⁷ The Complainant filed a different complaint about the September 10, 2003, broadcast of the "Scott Ferrall Show," and claimed that, among other things, the broadcast included the following material: "[m]olested in the ass as children...hot candles in the ass."²⁸ This indecency complaint does not mention any threats by Mr. Ferrall, and the Complainant did not file a contemporaneous complaint about the threats in the September 9, 2003 broadcast or about any other threat against him by Mr. Ferrall. In various communications sent to the Commission, however, the Complainant has since suggested that the threats in the September 9, 2003 broadcast were made against him and his family.²⁹ The Complainant, however, does not so

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John B. Thompson, Esquire, to The Honorable Don Hunter, Collier County Sheriff, re: Criminal Activity in Collier County by Naples, Florida Corporation Beasley Broadcast Group, Inc. and its Corporate Officers and Directors, copied via E-mail to Commissioners Kevin Martin, Michael Copps, Kathleen Abernathy and Jonathan Adelstein, September 8, 2005 ("[I]t is my legal opinion that Beasley has been engaged and is still engaged, in violation of state criminal laws, specifically but not exhaustively in racketeering, extortion, assault, distributing sexual material to minors, obstruction of justice and perjury."). *See also*, nn. 23 and 24, *supra*.

²⁶ *Policy Regarding Character Qualifications in Broadcast Licensing*, Report, Order and Policy Statement, 102 FCC 2d 1179, 1196-98 ¶ 37 (1986), *recon. denied*, 1 FCC Rcd 421 (1986), *appeal dismissed sub nom. National Association for Better Broadcasting v. FCC*, No. 86-1179 (D.C. Cir. Jun. 11, 1987) ("Character Policy Statement"). *See also Policy Regarding Character Qualifications in Broadcast Licensing, Amendment of Part 1, the Rules of Practice and Procedure, Relating to Written Responses to Commission Inquiries and the Making of Misrepresentation to the Commission by Applicants, Permittees, and Licensees, and the Reporting of Information Regarding Character Qualifications*, Policy Statement and Order, 5 FCC Rcd 3252, ¶ 5 (1990), *recon. on other grounds*, 6 FCC Rcd 3448 (1991), *modified on other grounds*, 7 FCC Rcd 6564 (1992) ("1990 Modifications of Character Policy Statement").

²⁷ The complaint includes allegations that Mr. Ferrall stated that he would "stuff his package into the caller's wife's mouth," that he would "do her daily," and get his girlfriend to do her. In addition, the complaint stated that Mr. Ferrall said he would assault the caller's wife and kill his children. *See* Complaint filed against Station WQAM(AM), September 9, 2003. As the Complainant acknowledges, he did not file this complaint.

²⁸ Letter from John B. Thompson, Attorney at Law, to Maureen Del Luca, Chief, Investigations & Hearings Division, Federal Communications Commission, dated September 15, 2003.

²⁹ *See* Letter from John B. Thompson, Attorney at Law, to The Honorable Marcos D. Jimenez, United States Attorney, Southern District of Florida, dated November 25, 2004, at 2, and copied on the Commission.

claim in his response and supplement to his response to the letter of inquiry in this proceeding.³⁰ The record also includes other statements by the Complainant acknowledging that the threats on September 9, 2003 were directed against someone else, and not him or his family.³¹

9. The Complainant points to the Commission's *Notice of Apparent Liability* ("NAL"), issued to WQAM for its apparent violation of 18 U.S.C. 1464 and Section 73.3999 of the Commission's rules for broadcasting indecent material over Station WQAM(AM) on September 9 and 10, 2003³² and argues that the *NAL* corroborates his claims of improper threats made at the direction of Beasley and its counsel. We disagree. As discussed above, the Complainant acknowledges that the threats were made against someone else, and not him or his family.

10. The Complainant also alleges that Beasley and its Washington, D.C. counsel have targeted him for harm in retaliation for his complaints to the Commission through improper conduct in the WQAM *NAL* proceeding.³³ Specifically, the Complainant alleges that Beasley lied in its response to the *NAL* by asserting that the Complainant alone was responsible for the indecency complaints about the material aired on September 9 and 10, 2003 and then "launch[ed] an outrageous *ad hominem* false assault upon me and my reputation."³⁴

11. Our letter of inquiry to WQAM concerning the September 9 and 10 broadcasts of the "Scott Ferrall Show" enclosed redacted copies of the complaints to omit identifying information concerning the complainants. Thus, it was not clear to Beasley at the time that both complaints had not originated with him.³⁵ Beasley's response to the *NAL* notes this uncertainty, and for convenience, references a "Complainant" throughout.³⁶ The Commission, by contrast, had copies of the original, unredacted complaints and knew the identity of each of the complainants in the *NAL* proceeding. Thus, Beasley had no motive to make misrepresentations

³⁰ See *Thompson Response* at 3-4; *Thompson Supplement to LOI Response* at 4.

³¹ See, e.g., Letter from John B. Thompson, Attorney at Law, to Mr. Bruce Taylor, Senior Counsel, Criminal Division, United States Department of Justice, dated May 11, 2005 at 2, copied via E-mail to Kevin J. Martin, Chairman, Federal Communications Commission, May 11, 2005; Letter from John B. Thompson, Attorney at Law, to The Chief Justice and Justices of the Supreme Court of Florida, The President, Florida Bar, All Governors of the Florida Bar, dated June 2, 2005 at 2, copied via E-mail to Kevin J. Martin, Chairman, Federal Communications Commission, June 2, 2005; Letter from John B. Thompson, Attorney at Law to George Beasley and Caroline Beasley, Beasley Broadcast Group, dated August 10, 2006, copied via E-mail to Kevin J. Martin, Chairman, Federal Communications Commission, August 10, 2006.

³² See *WQAM License Limited Partnership*, Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 22997, 23001 ¶9 (2004) (response pending).

³³ See *Thompson Supplement to LOI Response* at 5-6.

³⁴ See *id.* at 6.

³⁵ See Letter from John B. Thompson, Attorney at Law, to Michael K. Powell, Chairman, Federal Communications Commission, dated November 24, 2004 ("I appreciate more than you may know the Commission's proposed fines, reported yesterday against Beasley Broadcasting for the airing of indecent material on its WQAM-AM. As you know, I was the complainant."); *Complaint* at 3 ("Of all the citizen complaints filed with the FCC, only mine resulted last week in a Forfeiture Order.").

³⁶ See Response to Notice of Apparent Liability for Forfeiture, filed by Steven A. Lerman, Esquire, Dennis P. Corbett, Esquire, and David S. Keir, Esquire, counsel for Beasley Broadcast Group, Inc., dated January 10, 2005 ("*NAL Response*") at 2, n.3.

to persuade the Commission that the Complainant alone was responsible for the September 9 and 10, 2003 complaints about the “Scott Ferrall Show.”³⁷ For all of these reasons, we find no basis on which to conclude that Beasley made misrepresentations to the Commission.

12. In addition, we find no basis on which to conclude that Beasley and its counsel acted impermissibly by raising the issue of the Complainant’s credibility in the *NAL* proceeding. The *NAL* found that Beasley had broadcast indecent programming on September 10, 2003 based upon an excerpt from that broadcast submitted by the Complainant. The Complainant provided the excerpt based upon material that he claims was aired during the broadcast. This was consistent with the Commission’s policy to accept indecency complaints based upon the complainant’s submission of a significant excerpt of the broadcast. No recording or transcript of the broadcast was submitted with the complaint, and Beasley did not have a recording of the broadcast. Under these circumstances, Beasley presented arguments in response to the *NAL* that the Complainant’s conduct in other proceedings demonstrates that he is not credible. Contrary to the Complainant’s assertions, Beasley’s arguments are not impermissible and do not constitute abusive conduct calculated to intimidate him. Moreover, the Complainant’s assertion that Beasley’s *NAL* response contains only attacks against him and no other substantive arguments is incorrect.³⁸

13. The Complainant also states that Mr. Ferrall threatened to have him beaten during a broadcast on Station WQAM(AM) on October 2, 2003.³⁹ The Complainant did not file a contemporaneous complaint about this threat. After we sent our letter of inquiry to the Complainant in this proceeding, however, he alleged for the first time that during the October 2, 2003 broadcast on WQAM(AM), Mr. Ferrall made additional threats that were directed at him. First, the Complainant alleges that Mr. Ferrall used the phrase “homo nation” and then said “How’d you like that one, Jack?”⁴⁰ This comment, however, does not constitute a threat, and even if it did, the Complainant presents no evidence to demonstrate that the substance of this comment was directed to him or that it relates to indecency complaints that he filed with the Commission. The Complainant claims that during this same broadcast, Mr. Ferrall also said “I’m stuffing my package down your throat,” “if that guy came to my gig at Gate G we could have one of my listeners kill him.”⁴¹ The excerpts provided by the Complainant, however, do not mention him by name and the Complainant does not submit any corroborating evidence that these threats were actually broadcast or directed at him. Thus, there is insufficient evidence to

³⁷ In fact, even after Beasley had filed its response to the WQAM *NAL*, the Complainant continued to assert that he filed both complaints at issue in the WQAM *NAL*. E-mail to Michael Powell, Chairman, Federal Communications Commission, dated January 14, 2005 at 6:50 a.m., attaching a letter to The Honorable Conrad Burns, Chairman, Subcommittee on Communications, Senate Commerce Committee, dated January 14, 2005, at 2 (“I was the FCC complainant in those two actions as well.”).

³⁸ See *Thompson Supplement to LOI Response* at 6, 16-17. See *NAL Response* at 15-69.

³⁹ See *Thompson Response* at 3-4.

⁴⁰ *Id.* at 3, referencing an October 2, 2003 broadcast.

⁴¹ *Id.* at 3-4. Other comments that the Complainant alleges were made by Mr. Ferrall during this broadcast, namely, “I told him that his wife was a f—ing whore,” calling him a “tea-totaling fag,” and a “house whore” do not constitute threats. Again, these excerpts do not suggest that Mr. Ferrall mentioned the Complainant by name.

support a finding either that Mr. Ferrall made these threats or that they were directed toward Complainant in retaliation for filing indecency complaints.⁴²

14. **Allegations that Beasley's Counsel Has Filed Retaliatory Lawsuits Against the Complainant.** The Complainant alleges that Beasley's local counsel, Norman Kent, has filed civil lawsuits against him at the direction of Beasley as a consequence of his indecency complaints. Specifically, the Complainant states that Mr. Kent sent him a letter, dated August 24, 2004, threatening to initiate complaints to the Florida Bar and lawsuits as a consequence of the Complainant's complaints to the Commission about broadcasts of the "Howard Stern Show."⁴³ The record includes a copy of the letter that the Complainant received from Mr. Kent, on behalf of Beasley, which also concerns the Complainant's allegations, made in the Complainant's written communications to the Department of Justice and others, that Beasley and its General Counsel are engaged in criminal activity and are facilitating a criminal enterprise based upon the broadcast of the "Howard Stern Show" over Station WQAM(AM).⁴⁴ Although Mr. Kent's letter states that such untruthful allegations of criminal conduct may result in a libel or slander suit, it also specifically states that this matter is separate and distinct from any complaints about Station WQAM(AM)'s programming and that Beasley respects the Complainant's right to file such complaints.⁴⁵ The Complainant has submitted the complaint and amended complaint in the lawsuit that Mr. Kent, in his individual capacity, subsequently filed in November 2004, but these documents do not substantiate his claim that Mr. Kent's lawsuit was filed at the direction of Beasley in order to harass and intimidate him.⁴⁶ Among other things, the complaint in Mr. Kent's lawsuit alleges that in widely disseminated written communications, the Complainant characterized him as a "license-suspended drug and porn lawyer;" a "drug lawyer who has been suspended from the practice of law," when in fact, Mr. Kent was apparently at the

⁴² See *Clear Channel Broadcasting Licenses, Inc.*, 19 FCC Rcd at 1777 ¶ 15. The Complainant also alleges that "there is more that Beasley did to me because of the Ferrall episode, such as the on-air statement by his board operator that they sent me pornography to my e-mail address which in fact I got instantly and as another layer of harassment." See *Thompson Supplement to LOI Response* at 6. There is no documentation in the record to support this allegation, and even if there were there is nothing to suggest that Beasley was aware of or directed that this e-mail be sent or that it was in response to the Complainant's indecency filings.

⁴³ See *Thompson Response* at 4, Exhibit B; *Thompson Supplement to LOI Response* at 8.

⁴⁴ See *Thompson Response*, Exhibit B.

⁴⁵ See *id.*

⁴⁶ See *Norman Elliot Kent v. John Bruce Thompson*, Case No. 04-18643, Circuit Court of the 17th Judicial Circuit, Broward County, Florida. See *Thompson Response*, Exhibits G and H, which contain incomplete copies of the complaint and amended complaint filed by Mr. Kent. The Complainant apparently has entered into an agreement with Mr. Kent settling this matter without admitting liability. See, e.g., *Thompson Supplement to LOI Response*, at 9; Letter from John B. Thompson, Attorney at Law, to Kevin J. Martin, Chairman, Federal Communications Commission, dated February 5, 2007 at 2; Letter from Norman Elliot Kent, Esquire, to Melanie Godschall, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, dated June 14, 2006. The fact that Beasley's in-house counsel attended a meeting in which settlement of this lawsuit was discussed does not support the Complainant's assertion that Beasley acted improperly or directed the prosecution of this civil suit.

time a member of the Florida Bar in good standing; and accused Mr. Kent of other criminal misconduct, including extortion and tax evasion.⁴⁷

15. The Complainant also alleges that Beasley and Kent made material misrepresentations by stating that Beasley did not know about the November 2004 lawsuit until after it was filed and that Beasley impermissibly removed information concerning its prior knowledge of this lawsuit from the public inspection file for Station WQAM(AM).⁴⁸ The Complainant alleges that he found in Station WQAM(AM)'s public file ineffectively redacted e-mail correspondence sent between Mr. Kent and Beasley's in-house counsel prior to the lawsuit's filing that apprised Beasley of Mr. Kent's decision to file a defamation suit against the Complainant. However, Mr. Kent's representations concerning whether or not Beasley knew of this lawsuit were made to the Complainant and his counsel and not to the Commission.⁴⁹ Moreover, Mr. Kent claims that this was only an "informal e-mail" advising Beasley that he was contemplating the litigation, in order to inform Beasley that if he initiated the suit, it could generate a conflict that might affect his ability to represent Beasley.⁵⁰ This e-mail was a redacted, privileged communication not required to be placed in WQAM(AM)'s public inspection file but apparently was placed there by mistake.⁵¹ Under these circumstances, there is no merit to the Complainant's argument that it was improperly removed from the public file.⁵² Although Section 73.3526(e)(10) of the Commission's rules requires retention of documents having a substantial bearing on a Commission investigation or complaint, this rule provision is

⁴⁷ See *Norman Elliot Kent v. John Bruce Thompson*, Case No. 04-18643, Circuit Court of the 17th Judicial Circuit, Broward County, Florida.

⁴⁸ See *Thompson Supplement to LOI Response* at 10-11. See also, Letter from John B. Thompson, Attorney at Law, to William D. Freedman, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, dated January 20, 2005 (Intimidation Investigation: Beasley's Lawyer Caught in a Lie about a Material Fact). E-mail from Jack Thompson to Michael Powell, Chairman, Federal Communications Commission, dated February 7, 2005, 1:31 p.m., Subject: More Evidence of Beasley's Ongoing Use of Mr. Kent to Intimidate a Citizen Complainant ("Mr. Kent then filed a \$20 million lawsuit against me and wrote to me and my lawyer that 'Beasley did not even know about the lawsuit until after it was filed.'"); Letter from John B. Thompson, Attorney at Law, to Kevin J. Martin, Chairman, Federal Communications Commission, dated September 20, 2006 (alleging that Beasley improperly removed and destroyed material required to be in WQAM(AM)'s public file), Letter from John B. Thompson, Attorney at Law, to Kevin J. Martin, Chairman, Federal Communications Commission, dated February 5, 2007 at 2.

⁴⁹ See, e.g., Letter from John B. Thompson, Attorney at Law, to the Federal Communications Commission, the Florida Bar, The Securities and Exchange Commission, and others, including print and media outlets, including all major broadcast networks, dated January 25, 2006 (indicating that Mr. Kent sent an e-mail to the Complainant and his counsel stating that Beasley did not know about his lawsuit until after it was filed). In addition, Mr. Kent does not represent Beasley in this complaint proceeding. Even if he did, we also note that an attorney's misconduct will not result in a finding of licensee misconduct where there is no evidence to demonstrate that the licensee authorized its counsel to engage in the misconduct or otherwise approved the misconduct. See, e.g. *Vodafone AirTouch PLC*, Memorandum Opinion and Order, 20 FCC Rcd 6439, 6446 n. 47 (2005).

⁵⁰ See Letter from Norman Elliot Kent to Melanie Godschall, Enforcement Bureau, Federal Communications Commission, dated February 1, 2005.

⁵¹ See 47 C.F.R. § 73.3526.

⁵² See *Thompson Supplement to LOI Response* at 10-11; See, e.g., Letter from John B. Thompson, Attorney at Law, to Kevin J. Martin, Chairman, Federal Communications Commission, dated September 20, 2006. The Complainant also alleges that removal of the privileged e-mail correspondence from the public file violates federal criminal obstruction of justice statutes. *Thompson Supplement to LOI Response* at 11.

not applicable to the e-mail correspondence between Beasley and Mr. Kent. As discussed above, the record does not substantiate the Complainant's allegations that Mr. Kent's lawsuit was filed at the direction of Beasley in order to threaten or intimidate him. Under these circumstances, the e-mail communication about Mr. Kent's lawsuit, filed on his own behalf, is not a document having a substantial bearing on the complaint or the investigation at issue here.⁵³

16. Thus, even if it is true that Beasley was aware of Mr. Kent's intention to sue the Complainant in November 2004, prior to the filing of the lawsuit, the record as a whole does not support a finding that Beasley acted improperly with regard to matters raised in Mr. Kent's August 24, 2004 correspondence or with regard to the November 2004 lawsuit that Mr. Kent filed against the Complainant. Therefore, there is insufficient evidence that this lawsuit was conducted by or on behalf of Beasley to dissuade Complainant to continue involvement in the complaint proceedings.

17. The Complainant also alleges that Mr. Kent has filed another lawsuit, and "is suing me, in his Beasley-related lawsuit for suggesting he consumes drugs illegally"⁵⁴ and that this lawsuit seeks money damages against him for letters that he sent to the Florida Bar to defend himself against bar complaints filed by Beasley.⁵⁵ This lawsuit was apparently filed sometime between February and May, 2006, and although the Complainant claims that the complaint in this lawsuit links it to Beasley, there is no evidence in the record to substantiate this claim or the Complainant's assertion that it is "a proxy harassment device for Beasley."⁵⁶ In this regard, the fact that the complaint in this 2006 lawsuit may include one or more of the Complainant's communications to the Commission, without more, is insufficient to demonstrate improper or abusive conduct against the Complainant.⁵⁷

18. In fact, there is no evidence that Beasley has pursued any defamation action or other lawsuit against the Complainant. In addition, the record does not include documentation to substantiate the Complainant's allegations that the lawsuits, filed by Mr. Kent in his individual capacity, were brought on behalf of, or at the direction of, Beasley. Indeed, the Complainant's response to our letter of inquiry specifically requested that the Commission withhold a decision on his allegations at least until discovery had been concluded in Kent's first lawsuit, in "anticipation of [evidence] finding that "Beasley was in on the intimidation up to its eyeballs."⁵⁸ The Complainant made additional filings with similar requests that action be withheld in

⁵³ See 47 C.F.R. § 73.3526(e)(10). See, e.g., Letter from John B. Thompson, Attorney at Law, to Kevin J. Martin, Chairman, Federal Communications Commission, dated September 20, 2006.

⁵⁴ *Thompson Supplement to LOI Response* at 9. The record does not include the complaint in the 2006 lawsuit, although the Complainant suggests that the Commission should request a copy of the complaint from Mr. Kent. See Letter from John B. Thompson, Attorney at Law, to Kevin J. Martin, Chairman, Federal Communications Commission, dated February 5, 2007 at 3.

⁵⁵ See Letter from John B. Thompson, Attorney at Law, to Kevin J. Martin, Chairman, Federal Communications Commission, dated February 5, 2007 at 3.

⁵⁶ *Thompson Supplement to LOI Response* at 10. See also, *id* at 13-14.

⁵⁷ See *id.* at 14. See also Letter from John B. Thompson, Attorney at Law, to Kevin J. Martin, Chairman, Federal Communications Commission, dated February 5, 2007 at 3.

⁵⁸ See *Thompson Response* at 2, 9.

anticipation that he would make filings to substantiate his claims.⁵⁹ The Complainant has never submitted any evidence sufficient to substantiate his claims. On the other hand, the record contains Mr. Kent's statements that these civil suits were filed in his individual capacity and not on behalf of or at the direction of Beasley.⁶⁰

19. **Allegations that Beasley and its Counsel Have Improperly Filed Complaints Against The Complainant with the Florida Bar.** The Complainant alleges that Mr. Kent and attorneys at the law firm Tew Cardenas, LLP ("Tew Cardenas"), who also represent Beasley, have filed complaints against him with the Florida Bar on behalf of Beasley as part of a pattern of harassment and intimidation.⁶¹ The Complainant, however, has failed to provide the requisite evidence or documentation to support these allegations.

20. The Complainant alleges that Mr. Kent filed bar complaints on behalf of Beasley in an effort to persuade him to drop his complaints to the Commission.⁶² The Complainant submitted a copy of one of the bar complaints with his response to our letter of inquiry. This bar complaint specifically states that it is not related to the Complainant's pending indecency complaints, and acknowledges that the Complainant has the right to protest WQAM(AM)'s programming by communicating with the Commission about Station WQAM(AM)'s programming and states that Beasley is not in any way asking, seeking or attempting to inhibit the Complainant's rights to file complaints with the Commission.⁶³ Rather, the bar complaint states that it was submitted as a result of the Complainant's dissemination of allegedly false and misleading information and misrepresentations that Beasley is involved in criminal activity, including extortion and racketeering, and that its General Counsel is facilitating a criminal

⁵⁹ See E-mail from Jack Thompson to Michael Powell, Chairman, Federal Communications Commission, dated February 7, 2005, 1:31 p.m., Subject: More Evidence of Beasley's Ongoing Use of Mr. Kent to Intimidate a Citizen Complainant ("Please do not close this investigation of the ongoing orchestration of intimidation until we depose the various Beasley officers and directors. We intend to get to the bottom of this and to the bottom of Mr. Kent's bong."); Letter from John B. Thompson, Attorney at Law, to Chairman Michael K. Powell, dated February 28, 2005 (requesting that investigation of Beasley's intimidation be kept open until such time as depositions of Beasley officers and directors are taken). See also, Letter from John B. Thompson, Attorney at Law, to Lawrence A. Kellogg, Stuart I. Grossman, and Al Cardenas, Tew Cardenas, dated February 3, 2005 (indicating that the officers and directors of Beasley had been served with subpoenas for depositions in *Kent v. Thompson* and stating if there are motions to quash the subpoenas he will sue Beasley and that either way, he will file additional information with the Commission, "which cannot plausibly conclude its investigation of Beasley's on-air and off-air threats against [him] [...] until [he] find[s] out what the board knew and when it knew it. If we find in *Kent v. Thompson* that the board was in on all this extortionate fun with both feet, then that is very bad news indeed for Beasley at the FCC.") copied via E-mail to Michael K. Powell, Chairman, Federal Communications Commission, February 3, 2005.

⁶⁰ See Letter from Norman Elliot Kent to Melanie Godschall, Enforcement Bureau, Federal Communications Commission, dated February 1, 2005; Letter from Norman Elliot Kent to Melanie Godschall, Enforcement Bureau, Federal Communications Commission, dated June 14, 2006; Letter from Norman Elliot Kent to Melanie Godschall, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, dated July 6, 2006.

⁶¹ See *Thompson Response* at 5-6; *Thompson Supplement to LOI Response* at 8, 11-13.

⁶² See *Thompson Response* at 5; *Thompson Supplement to LOI Response* at 8.

⁶³ See *Thompson Response*, Exhibit C.

enterprise, which are alleged violations of the Florida Bar's Rules of Professional Conduct.⁶⁴ In addition, this bar complaint alleges that the Complainant's direct contact with Beasley officers and directors was improper and violated the Florida Rules of Professional Conduct with respect to communication with individuals represented by counsel.⁶⁵ The Complainant also alleges that Mr. Kent has filed other retaliatory complaints against him with the Florida Bar, but has not submitted sufficient details concerning these complaints or evidence to corroborate his allegation that these complaints were filed as a consequence of the pending indecency complaints that he has filed against Beasley.⁶⁶

21. In addition, the Complainant alleges that attorneys at Tew Cardenas have filed complaints with the Florida Bar, including a complaint that he improperly disclosed the contents of the redacted document that he found in the WQAM(AM) public file and a complaint that he has falsely stated that Beasley is connected to the porn industry.⁶⁷ In support of his assertion that these bar complaints were improperly brought against him, the Complainant submits an affidavit executed by a Beasley principal affirming that there is true, correct and complete information in bar complaints filed by Mr. Kent and Tew Cardenas.⁶⁸ In addition, the Complainant has submitted a letter sent to the Florida Bar by Tew Cardenas stating that the affidavit relates to bar complaints filed on behalf of Beasley.⁶⁹ The Complainant argues that this documentation is sufficient to demonstrate that the bar complaints were filed on behalf of Beasley and constitute impermissible harassment. The Complainant further asserts that Beasley and its counsel committed perjury by submitting affidavits to the Florida Bar that the Complainant had lied by suggesting that there is a link between Beasley and the porn industry.⁷⁰ The fact that bar complaints were filed on behalf of Beasley is not sufficient to demonstrate any impermissible conduct by Beasley or its counsel. Moreover, there is no evidence to suggest that Beasley or its counsel's comments to the Florida Bar concerning the Complainant's characterization of Beasley constituted perjury. The record as a whole does not demonstrate that Beasley has filed bar complaints improperly in order to harass and intimidate the Complainant and thus dissuade him from filing indecency complaints with the Commission.

22. The Complainant asserts in a filing submitted on January 22, 2007, that he has received "written assurance from The Florida Bar that ALL of Kent's Bar complaints are going to be dismissed" and that the bar's outside investigator has found no basis for the Tew Cardenas

⁶⁴ See *id.* The bar complaint cites the following Florida Rules of Professional Conduct: 4-4.1 (Truthfulness In Statements to Others), and 4-8.4 (Misconduct).

⁶⁵ See *id.* The bar complaint cites the following Florida Rule of Professional Conduct: 4-4.2 (Communication With Person Represented by Counsel).

⁶⁶ See *Thompson Supplement to LOI response* at 8.

⁶⁷ See *Thompson Supplement to LOI Response* at 11-12.

⁶⁸ See Letter from John B. Thompson, Attorney at Law, to Kevin J. Martin, Chairman, Federal Communications Commission, dated July 13, 2005 (attaching the affidavit of Caroline Beasley, Vice President and Chief Financial Officer of Beasley Broadcast Group) filed with the Florida Bar on July 12, 2005.

⁶⁹ See Letter from John B. Thompson, Attorney at Law, to Kevin J. Martin, Chairman, Federal Communications Commission, dated July 20, 2005.

⁷⁰ See *Thompson Supplement to LOI Response* at 13. See also, Letter from John B. Thompson, Attorney at Law, to Kevin J. Martin, Chairman, Federal Communications Commission, dated December 15, 2006 at 2.

bar complaints, which have been dismissed.⁷¹ The Complainant also argues that the dismissal of the bar complaint concerning his statements that Beasley is linked to the porn industry is probative of an improper motive on Beasley's part to harass and intimidate him.

23. Beasley, however, has submitted the Florida Bar's Complaint that was filed against the Complainant in the Florida Supreme Court on January 18, 2007.⁷² Beasley further argues that on the same day that Complainant made representations to the Commission concerning the dismissal of the bar complaints filed by Beasley and its counsel, he also filed suit against the Florida Bar and would not have done so if the bar complaints had been dismissed.⁷³ Under these circumstances, Beasley argues that the Complainant made deliberate misrepresentations to the Commission concerning the status of the Florida disciplinary proceedings against him.⁷⁴

24. The Florida Bar Complaint as filed on January 18, 2007, included counts relating to bar complaints in which the Complainant alleges that Beasley and its counsel have committed perjury and which relate to the Complainant's statements that Beasley has engaged in criminal conduct and has links to the porn industry.⁷⁵ Consequently, contrary to the Complainant's representations otherwise, it appears that the Complainant initially misstated that the complaints filed by Beasley and its counsel had been dismissed, and in fact, the Complainant's subsequent filings appear to acknowledge that these complaints had not been dismissed at the time he represented that they had been.⁷⁶ Nevertheless, it appears that subsequent to the Complainant's January 22, 2007 filing, one of the bar complaints was voluntarily dismissed. The Complainant

⁷¹ *Thompson Supplement to LOI Response* at 8, 12-13. The Complainant however, also states with respect to the Tew Cardenas complaints that [a]ll that remains of them is the assertion that I overreacted to the filing of the Tew Cardenas/Beasley Bar complaints themselves by asserting that they were baseless." *Id.* at 13.

⁷² *See Further Reply* at Attachment 3, *The Florida Bar v. John Bruce Thompson*, Case No. SC07-80, filed January 18, 2007. ("Florida Bar Complaint"). *See also* Letter from Norman Elliot Kent, Esquire, to Melanie Godschall, Enforcement Bureau, Federal Communications Commission, dated February 2, 2007, attaching the Florida Bar Complaint. In accordance with the Florida Bar's disciplinary procedures, a grievance committee has found probable cause to believe that certain violations of the Florida rules regulating attorney conduct have occurred and that discipline appears to be warranted, and the Florida Bar has filed a complaint with the Supreme Court of Florida. *See* <http://www.floridabar.org/TFB/TFBConsumer.nsf>, last visited on February 5, 2007. The Complaint, as originally filed, included two counts relating to complaints concerning the Complainant's conduct toward Beasley and its counsel. Florida Bar Complaint at 25-35, Counts IV and V.

⁷³ *See Further Reply* at 4-5 and Attachment 2, *Jack Thompson v. The Florida Bar and The Alabama State Bar*, Case No. 48-2007-CA-000728-0 (Circuit Court of the Ninth Judicial Circuit, Orange County, Florida) filed January 22, 2007.

⁷⁴ *See id.* at 5.

⁷⁵ *See* Florida Bar Complaint at 27, Count V, referencing Florida Bar File No. 2005-71,125 (11F), in which the Complainant alleges perjury on the part of Beasley and its counsel. *See* n.72 *supra*.

⁷⁶ In addition, the Complainant has filed a mandamus action against the Florida Bar, *inter alia*, for failing to dismiss the bar complaints. The mandamus action is separate from the lawsuit that the Complainant filed against the Florida Bar and referenced by Beasley. *See* Letter from John B. Thompson, Attorney at Law, to the Chief Justice and Justices of the Supreme Court of Florida, dated February 5, 2007, copied via E-mail to Kevin J. Martin, Chairman, Federal Communication Commission, at 4:51 p.m.; E-mail from Jack Thompson to Kevin J. Martin, Chairman, Federal Communications Commission, dated February 6, 2007, Subject: "Filing with the Florida Supreme Court" attaching in the body "ADDITIONAL GROUNDS FOR GRANTING PETITION FOR MANDAMUS."

states that on February 20, 2007, he received a letter from the Florida Bar indicating that a “voluntary dismissal with prejudice” of Mr. Kent’s complaint had been filed in the disciplinary proceeding against him.⁷⁷ In addition, Mr. Kent has provided the Commission with a copy of a letter that he sent to the Florida Bar on February 12, 2007, authorizing the Bar to delete from the Florida Bar Complaint matters related to complaints that he had filed on his own behalf.⁷⁸ The Complainant has not submitted documentation concerning the dismissal of this complaint to support his assertion that this dismissal constitutes a finding by the Florida Bar that this bar complaint was without merit.⁷⁹ In any event, the Florida Bar Complaint includes an additional count related to the bar complaints filed by Tew Cardenas on behalf of Beasley and there is no indication that these have been dismissed.⁸⁰ Moreover, the record as a whole does not support a finding that the bar complaints filed by Beasley or its counsel constitute unnecessary or abusive conduct calculated to dissuade the Complainant from pursuing indecency complaints against Station WQAM(AM). Finally, although we are concerned that the Complainant may have made inaccurate statements concerning the status of the bar complaints in his January 22, 2007 filing, we find that there is insufficient evidence in the record, in light of the timing of the filing of the Florida Bar Complaint, on January 18, 2007, to find that the Complainant deliberately misled the Commission.

25. **The Complainant’s Other Allegations Concerning Threats, Including Threats of Physical Violence.** The Complainant also alleges that in addition to the threats against him by Scott Ferrall discussed above, threats against him have been made by other Station WQAM(AM) on-air program hosts and others against both him and one of his clients and that Beasley is responsible for, orchestrated and encouraged such threats. There is no credible evidence to corroborate these allegations.

26. Excerpts submitted by the Complainant with respect to other alleged threats made by Station WQAM(AM) on-air host Hank Goldberg do not mention him by name and the Complainant has not submitted corroborating evidence that they were actually broadcast.⁸¹ Moreover, even assuming that these excerpts provide an accurate account of statements actually made by Mr. Goldberg, there is no evidence that these comments were uttered because the

⁷⁷ See Letter from John B. Thompson, Attorney at Law, to Kevin J. Martin, Chairman, Federal Communications Commission, dated February 20, 2007 at 2.

⁷⁸ See Letter from Norman Elliot Kent, Esquire, to Melanie Godschall, Federal Communications Commission, dated March 1, 2007, and attaching Mr. Kent’s letter, dated February 12, 2007, to Kenneth Marvin Director of Lawyer Regulation, The Florida Bar.

⁷⁹ See Letter from John B. Thompson, Attorney at Law, to Kevin J. Martin, Chairman, Federal Communications Commission, dated February 20, 2007 at 2. The Complainant states that this dismissal is proof that Florida Bar has made a finding that Mr. Kent’s complaint was impermissibly filed in retaliation for his indecency complaints against Beasley and offers to provide the letter concerning the voluntary dismissal upon the Commission’s request. As set forth above, it is not up to the Commission to substantiate the complainant’s allegations.

⁸⁰ See Florida Bar Complaint at 27-35, Count V.

⁸¹ The Complainant claims that on May 10, 2005, Hank Goldberg, a WQAM(AM) on-air host, stated that “IRS finks sometimes mess with the wrong person, and when they do, they wind up with no knee caps.” The Complainant also claims that subsequent to these remarks, a regular caller to the show stated that “problems such as the one posed by me are dealt with properly ‘in the hood’.” Letter from John B. Thompson, Attorney at Law, to Kevin J. Martin, Chairman, Federal Communications Commission, dated May 10, 2005.

Complainant had filed indecency complaints against the station.⁸² The Complainant himself states that the remarks were made after he reported Mr. Goldberg to the Internal Revenue Service for alleged tax evasion.⁸³ These alleged remarks, even if they were broadcast, appear to have been “off the cuff” comments more appropriately characterized as a display of bad temper rather than a calculated effort to harass or intimidate.⁸⁴

27. The Complainant also claims that “Joey Boots,” a “regular on the “Howard Stern Show” left a message on his answering machine expressing the wish that his “entire family die of cancer.”⁸⁵ There is no documentation in the record to substantiate that this threat was made, and utterly no support for a finding that the alleged threat was made at the behest of Beasley or its counsel. Indeed, the Complainant does not specifically claim that Beasley or its counsel were responsible for this threat,

28. The Complainant further alleges that on March 11, 2005, Station WQAM(AM) on-air host Neil Rogers violated a “December 2003 Agreement” between Rogers and the Complainant that Rogers would not “refer to him on the air, given his long history of targeting me for harm on his show.”⁸⁶ Beasley is not a party to the 2003 Agreement, and although the Complainant submitted a copy of that agreement, he did not submit any evidence that it had been approved by a court.⁸⁷ The record also contains the Complainant’s statements disavowing the 2003 Agreement because it never received judicial approval.⁸⁸ In any event, it is impossible to determine from the Complainant’s submissions the exact nature of Mr. Rogers’ on-air comments because the record does not include an excerpt or summary of the broadcast, and thus whether they were threats of reprisal or other unnecessary and abusive conduct.⁸⁹ The comments appear to have been made after the Complainant’s appearance on “60 Minutes” and may have included the comment “[a] nemesis of my lawyer (referring to Mr. Kent) was on national television last

⁸² See *Clear Channel Broadcasting Licenses, Inc.*, 19 FCC Rcd at 1777 ¶ 15.

⁸³ See, e.g., Letter from John B. Thompson, Attorney at Law, to Kevin J. Martin, Chairman, Federal Communications Commission, dated May 10, 2005.

⁸⁴ See *Eagle Radio, Inc.*, 13 FCC Rcd 13869, 13871 ¶ 6 (Mass Med. Bur. 1998) (subsequent history omitted).

⁸⁵ See Letter from John B. Thompson, Attorney at Law, to Steve Lerman, Leventhal, Senter and Lerman, PLLC dated November 29, 2005, copied via E-mail to Kevin J. Martin, Chairman, Federal Communications Commission, November 29, 2005. (The subject line of the E-mail is “Letter to Viacom/Infinity’s Attorney Steve Lerman” and the letter asks for information as to the whereabouts of “Joey Boots.”).

⁸⁶ *Thompson Supplement to LOI Response* at 14. Earlier correspondence from the Complainant to the Commission stated that this broadcast occurred on March 14, 2005. Letter from John B. Thompson to Commissioners Kathleen Q. Abernathy, Michael J. Copps, Kevin J. Martin, and Jonathan S. Adelstein, dated March 23, 2005 at 2-4.

⁸⁷ See Letter from John B. Thompson to Commissioners Kathleen Q. Abernathy, Michael J. Copps, Kevin J. Martin, and Jonathan S. Adelstein, dated March 23, 2005, Attachment.

⁸⁸ Mr. Kent has submitted a letter he received from the Complainant in which the Complainant states that the 2003 Agreement is unenforceable and has not been approved by a court. See Letter from Norman Elliot Kent, Esquire to William Freedman, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, dated March 25, 2005, Attachment at Exhibits H1 and H2.

⁸⁹ See *Thompson Supplement to LOI Response* at 14. See, e.g., Letter from John B. Thompson to Commissioners Kathleen Q. Abernathy, Michael J. Copps, Kevin J. Martin, and Jonathan S. Adelstein, dated March 23, 2005 at 2-4.

night” without mentioning the Complainant by name.⁹⁰ The Complainant contends that he and his attorney warned Beasley and its counsel, in writing, that Rogers “was building to a meltdown on the air in which he was apparently going to go after me,” and that Beasley’s failure to prevent Rogers from violating the December 2003 Agreement was calculated to generate even more harassment of him.⁹¹ The Complainant’s own submissions, however, suggest that Beasley may have deleted any on-air references that Rogers made about him.⁹² In any event, the record does not support a finding that the comments were related to indecency complaints. Thus, there is insufficient evidence in the record on which to conclude that Rogers’ comments were threats or that Beasley acted improperly.

29. The Complainant nevertheless alleges that Mr. Kent has brought an action against him in a Florida court, seeking to have him jailed on contempt charges for violating the agreement between him and Mr. Rogers.⁹³ The record indicates that Mr. Rogers sought to enforce a 1989 settlement agreement among himself, the Complainant and other parties unrelated to Beasley.⁹⁴ The Complainant concedes that the 1989 settlement agreement has nothing to do with Beasley or Station WQAM(AM), but nevertheless argues that the contempt action constitutes harassment and intimidation because “Beasley’s designated hitter [is] trying to have me thrown in jail for violating an agreement which I did not violate and which excludes [a contempt] remedy even if I did!”⁹⁵

⁹⁰ See *id.*; Letter from Norman Elliot Kent to William Freedman, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, dated March 25, 2005 at 3.

⁹¹ *Thompson Supplement to LOI Response* at 14.

⁹² See Letter from John B. Thompson to Commissioners Kathleen Q. Abernathy, Michael J. Copps, Kevin J. Martin, and Jonathan S. Adelstein, dated March 23, 2005 at 2-4.

⁹³ See *Thompson Supplement to LOI Response* at 14, which alleges that the contempt action is based upon “a 1989 Agreement with his [Mr. Kent’s] client in which I promise not to try to harm Rogers in any fashion with efforts against Cox Communications.” Elsewhere in the record the Complainant claims that Mr. Rogers’ contempt action relates to the December 2003 Agreement. See, e.g., Letter from John B. Thompson, Attorney at Law to Commissioners Kathleen Q. Abernathy, Michael J. Copps, Kevin J. Martin, Jonathan S. Adelstein, dated March 15, 2005 (“Beasley employee, Neil Rogers, has now asked a Florida court of law to have me held in contempt as a consequence of his [Mr. Rogers’] repeated violations of a December 12, 2003 Agreement not to mention me on the air[. . .] I informed you of this additional harassment yesterday.”). See also, Letter from John B. Thompson, Attorney at Law to Commissioners Kathleen Q. Abernathy, Michael J. Copps, Kevin J. Martin, Jonathan S. Adelstein, dated March 14, 2005 (“In light of the fact that Beasley’s mid-day host has augmented, remarkably, the harassment today of me on WQAM-AM, I hereby renew my earlier written request late last year that the FCC revoke Beasley’s WQAM license as soon as possible.”).

⁹⁴ See Letter from Norman Elliot Kent, Esquire to John B. Thompson, dated March 16, 2005 and copied on the Commission. See Letter from Norman Elliot Kent, Esquire to William Freedman, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, dated March 25, 2005 attaching a Motion For a Rule to Show Cause Why Defendant John Thompson Should not be Held in Contempt of Court for Violation of a Judicial Order. The record does not include additional information concerning the outcome of this Motion, although the Complainant suggests that the matter may have been settled and then re-opened. See Letter from John B. Thompson, Attorney at Law, to Arlene Kalish Sankel, Chief Branch Discipline Counsel, The Florida Bar, dated May 24, 2005, copied via E-mail to Kevin J. Martin, Chairman, Federal Communications Commission, May 24, 2005.

⁹⁵ See *Thompson Supplement to LOI Response* at 14.

30. The 1989 settlement agreement apparently resolved civil lawsuits between the Complainant and Mr. Rogers and between the Complainant and another individual that arose during a time when Mr. Rogers was the on-air host for another station, and not WQAM(AM). Beasley was not a party to the 1989 agreement, and it is specific to another Commission licensee and its radio stations.⁹⁶ The Complainant apparently received consideration for agreeing to settle the matter, and the settlement included, among other things, the Complainant's agreement not to file complaints, including indecency complaints, against the licensee that was a party to the 1989 settlement agreement.⁹⁷ Thus, although the Complainant suggests that the purpose of the 1989 settlement agreement is to stop him from filing indecency complaints with the Commission regarding Neil Rogers, the 1989 settlement agreement does not involve Beasley or its stations and does not appear to prohibit the Complainant from filing indecency or other complaints against Beasley or any of its stations. It is not clear from the record whether Beasley knew about Mr. Rogers's action to enforce the 1989 settlement agreement before it was filed and there is no evidence that Beasley had any involvement in Rogers's suit to enforce it.⁹⁸

31. We note that the Complainant states that he has filed an action in federal court for a declaratory judgment that the 1989 settlement agreement is void and contrary to public policy. The Complainant apparently voluntarily entered into the 1989 settlement agreement and received consideration for doing so, but now apparently seeks to have the agreement set aside because it would prevent him from petitioning the government for redress of his grievances.⁹⁹ Although we generally would have concerns about a private contractual agreement which includes terms prohibiting the filing of complaints about matters within the Commission's regulatory jurisdiction, we need not reach this issue here because Beasley was not a party to the 1989 settlement agreement and is not bound by it. Moreover, we decline to find that Tew Cardenas' participation in the Complainant's federal declaratory judgment action by entering an appearance or attending hearings in that matter demonstrates any improper action to intimidate or harass the Complainant.¹⁰⁰ Mr. Rogers is now an on-air personality for Beasley's Station WQAM(AM), and Beasley would appear to have a legitimate interest in litigation that involves Mr. Rogers. The participation of Beasley's counsel in this matter, standing alone, does not amount to credible evidence substantiating the Complainant's allegations of misconduct. Based upon the record as a whole, there is insufficient evidence to support a finding that Beasley or its counsel engaged in intimidation or abuse based on Mr. Rogers' on-air comments or the action to enforce the 1989 settlement agreement.

32. The Complainant also alleges that Beasley and its counsel are now harassing one of his clients, who is a former employee of Tew Cardenas. Specifically, the Complainant states

⁹⁶ See Letter from Norman Elliot Kent, Esquire to William Freedman, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, dated March 25, 2005 attaching a copy of the 1989 settlement agreement.

⁹⁷ See *id.*

⁹⁸ See Letter from Norman Elliot Kent, Esquire to William Freedman, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, dated March 25, 2005 at 3, stating that Rogers has filed a motion to enforce the 1989 agreement without the "assistance, authorization, permission, solicitation or request of anyone from Beasley Broadcasting, who is in no way a party to that 15 year litigation."

⁹⁹ See *Thompson Supplement to LOI Response* at 14-15.

¹⁰⁰ See *id.* at 15.

that this former employee was wrongfully fired and that an attorney at Tew Cardenas has harassed her as a result of her decision to engage the Complainant as counsel in her wrongful termination action, citing his involvement in the Beasley matters.¹⁰¹ In addition, the Complainant has submitted his client's statement, including a declaration under penalty of perjury, that "Tew Cardenas is harassing [her] to retaliate against [the Complainant] to directly serve the interest of Beasley Broadcast Group as it deals with its FCC-related problems."¹⁰² The client further states that she has learned that Tew Cardenas claims that the Complainant is representing her to pursue a vendetta against the firm and disavows this claim.¹⁰³ In addition, the client states that "Tew Cardenas and Beasley are together pursuing their own vendetta against [the Complainant] because of his efforts to stop the illegal airing of indecent material on Beasley's WQAM-AM."¹⁰⁴

33. We find that the Complainant's allegations and the submission of his client's declaration are insufficient to demonstrate any improper conduct on the part of Beasley or its counsel with respect to matters within the Commission's regulatory jurisdiction. The Complainant's client appears to be pursuing a wrongful termination action against Tew Cardenas and this matter is completely unrelated to Beasley or indecency complaints filed against it. The client does not provide any basis for her assertion that Tew Cardenas is threatening her in an effort to dissuade the Complainant's continued participation in these complaint proceedings.

34. **Conclusion.** As set forth above, we find that the Complainant has failed to present evidence sufficient to demonstrate that Beasley has engaged in intimidation or abuse. The Complainant's allegations are therefore without merit.

IV. ORDERING CLAUSES

35. **ACCORDINGLY, IT IS ORDERED**, pursuant to authority delegated in Section 0.311 of the Commission's rules,¹⁰⁵ that the Formal Complaint against The Beasley Broadcast Group, Inc. filed by John B. Thompson, EB-04-IH-0661, **IS HEREBY DENIED**.

36. **IT IS FURTHER ORDERED**, that a copy of this *Memorandum Opinion and Order* shall be sent by Certified Mail to John B. Thompson, Esquire and to The Beasley Broadcast Group, Inc., with a courtesy copy by regular mail to its counsel, Steven A. Lerman, Esquire, Dennis P. Corbett, Esquire, and Philip G. Bonomo, Esquire, Leventhal Senter & Lerman PLLC, 2000 K Street, N.W., Suite 600, Washington, D.C. 20006-1809, and to Norman Elliot Kent, Esquire, Law Offices of Kent and Cormican, P.A., 800 East Broward Boulevard, Fort Lauderdale, Florida 33301.

¹⁰¹ See Letter from John B. Thompson, Attorney at Law, to Kevin J. Martin, Chairman, Federal Communications Commission, dated February 1, 2007 (Re: Addendum to *Sworn* Statement As to the On-going, Illegal Harassment of Jack Thompson by Beasley and Its Lawyers). The Complainant includes a declaration under penalty of perjury but has submitted this letter via E-mail and did not indicate that he has filed a signed declaration via U.S. mail.

¹⁰² E-mail from Jack Thompson to Kevin Martin, Chairman, Federal Communications Commission, dated February 1, 2006 at 11:46 a.m., attaching Letter from Jo Edda Rosskamp to Kevin J. Martin, Chairman, Federal Communications Commission, dated February 1, 2007. The Commission received this letter via E-mail, and has not received the signed declaration via U.S. mail.

¹⁰³ See *id.*

¹⁰⁴ *Id.*

¹⁰⁵ See 47 C.F.R. § 0.311.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith
Chief, Enforcement Bureau