

# ALJ Declines to Rubber Stamp EB Position on License Revocation

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According to the internet, rubber stamps can be traced back to 100 AD, when people in China carved text into wood (rubber as we know it in the 21<sup>st</sup> century wasn't around until the 1800s) and then dipped the carved wood into ink in order to print text on paper. The accuracy of this history aside, the term "rubber stamping" today means "to approve automatically without proper consideration." A recent decision by Administrative Law Judge Jane Hinckley Halprin is quite the opposite. As she did in 2022, Judge Halprin has refused to rubber stamp the position taken by the Federal Communications Commission's (FCC or Commission) Enforcement Bureau that felony convictions render an individual unqualified to remain a Commission licensee. Rather, Judge Halprin has taken an objective look at the mitigating factors established by FCC policy and reached the opposite conclusion.

Judge Halprin's decision, released on September 14, 2023, involved Joseph Armstrong, principal of Arm & Rage, LLC, the licensee of AM radio station WJBE in Powell, Tennessee. In 2016, Mr. Armstrong was convicted of making a false statement on his income tax return. As required by the FCC's rules, Arm & Rage reported the conviction to the Commission, albeit belatedly. In 2022, the Media Bureau initiated an administrative law hearing to determine, among other things, "the effects, if any, of Joseph Armstrong's felony conviction on his qualifications and thus the qualifications of Arm & Rage, LLC to be a Commission licensee."

Under the dictates of the Communications Act, the hearing was conducted on paper before Judge Halprin with the Enforcement Bureau bearing the burden of proof. In its affirmative case, the Enforcement Bureau argued that Mr. Armstrong's felony conviction

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## Practice Areas

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Telecom, Media & Technology

was rooted in criminally dishonest conduct such that he, and by extension Arm & Rage, did not possess the requisite character to hold an FCC license. Arm & Rage countered that Mr. Armstrong's felony conviction was a singular transgression that should not serve to disqualify it from holding a license.

Both parties structured their arguments around eight "mitigating factors" specified in the Commission's character qualifications policy, namely: willfulness, frequency, currentness, seriousness, participation of station management, record of FCC compliance, efforts made to remedy the wrong, and rehabilitation. Considering those arguments, Judge Halprin found that the Enforcement Bureau had not satisfied its burden to prove that Mr. Armstrong's felony conviction rendered him, and by extension Arm & Rage, unfit to be a Commission licensee. Judge Halprin found that, while Mr. Armstrong's conduct was willful, it wasn't probative of his qualifications to hold a broadcast license, including because it occurred a long time ago and was just a single transgression. As Judge Halprin explained:

The federal crime of violating section 7206(1) of the Internal Revenue Code, ... , is a serious felony of the type that could be considered indicative of an individual's propensity to deal with the Commission in a less than forthright manner. The evidence and arguments presented in this case, however, [demonstrate] that Mr. Armstrong's crime, while willful, was an isolated occurrence that does not suggest a likelihood of future violations. Although the crime is not so old as to be disregarded, enough time has elapsed to show that Mr. Armstrong has remediated his wrong by completely satisfying his criminal sentence and by employing a new tax preparer. It also appears that Mr. Armstrong has been rehabilitated in light of his significant support from the Knoxville community and the lack of additional adjudicated criminal behavior since his conviction. Finally, although the licensee has committed [certain FCC record keeping violations], the station has an overall positive record of public service and the evidence suggests a sincere commitment to its listeners. As a result, ... Mr. Armstrong's felony conviction does not warrant revocation of Arm & Rage's license for WJBE.

In 2022, Judge Halprin similarly found that the Enforcement Bureau had failed to meet its burden to disqualify a licensee (in that instance, former Alabama Speaker of the House and Auburn Networks owner Michael Hubbard) for past felony convictions. There, Mr. Hubbard was convicted of six felony counts under a state ethics statute. Examining the mitigating factors, Judge Halprin determined that, although serious, Mr. Hubbard's crimes did not disqualify him as an FCC licensee. Judge Halprin reasoned:

The goal of the Commission's character qualifications policy 'is not to pass moral judgment on applicants but, instead, to determine whether the public interest will be served.' The misdeeds of a public servant may indeed be relevant in gauging that person's ability to serve the public interest as an FCC licensee, but in this particular case and under these particular circumstances, the evidence presented does not satisfy the burden of proof. Accordingly, the licenses of Auburn Network will not be revoked.