

1 BEFORE THE LAND USE BOARD OF APPEALS
2 OF THE STATE OF OREGON
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4 STOP TIGARD OSWEGO PROJECT, LLC,
5 NORMAN KING, PETE BEDARD,
6 MICHAEL MONICAL, CAROL ELSWORTH,
7 MARK ELSWORTH, SHANNON VROMAN,
8 JENNE HENDERSON, LAMONT KING,
9 THOMAS J. SIEBEN, GWEN L. SIEBEN,
10 SCOTT GERBER, JAN GERBER, JACK NORBY,
11 THOM HOLDER, GARY HITESMAN,
12 REBECCA WALTERS and DARRYL WALTERS,
13 *Petitioners,*

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15 vs.

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17 CITY OF WEST LINN,
18 *Respondent,*

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20 and

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22 CITY OF LAKE OSWEGO AND LAKE OSWEGO -
23 TIGARD WATER PARTNERSHIP and CITY OF TIGARD,
24 *Intervenors-Respondents.*

25
26 LUBA Nos. 2013-021 and 2013-022

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28 WILLIAM J. MORE, CARL L. EDWARDS, LINA S. EDWARDS,
29 CURT SOMMER and ROBERT STOWELL,
30 *Petitioners,*

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32 vs.

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34 CITY OF WEST LINN,
35 *Respondent,*

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37 and

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39 CITY OF LAKE OSWEGO AND LAKE OSWEGO -
40 TIGARD WATER PARTNERSHIP and CITY OF TIGARD,
41 *Intervenors-Respondents.*

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43 LUBA No. 2013-023
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1 ORDER ON MOTION TO APPEAR *PRO HAC VICE*

2 Petitioners move to admit Leonard L. Levenson, an attorney licensed to practice in
3 Louisiana, to represent them *pro hac vice* in this appeal. Petitioners state that their two
4 Oregon-licensed attorneys will remain as attorneys of record and will continue to have
5 significant involvement in the appeal.

6 Respondent and intervenors-respondents (together, respondents) oppose the motion,
7 on three grounds. First, respondents argue LUBA’s rules at OAR 661-010-0075(6) provides
8 that “[i]n no event may a party be represented by someone other than an active member of the
9 Oregon State Bar.” According to respondents, LUBA’s rule essentially precludes granting a
10 motion to appear *pro hac vice*, because such an appearance is necessarily by someone who is
11 not a member of the Oregon State Bar.

12 Petitioners reply, and we agree, that OAR 661-010-0075(6) was not intended to
13 prohibit an appearance *pro hac vice*. As discussed below, the Oregon Supreme Court has
14 approved Uniform Trial Court Rule (UTCRC) 3.170, which governs requests to appear *pro hac*
15 *vice* before courts and administrative agencies. The rule applies to all judicial and
16 administrative proceedings, presumably including LUBA’s proceedings. UTCRC 3.170(5). If
17 Mr. Levinson complies with the requirements of the rule, and the court or administrative
18 body grants the motion, he has essentially been temporarily admitted to the limited practice of
19 law in Oregon before that body for the authorized matter. In our view, such a person either is
20 an “active member of the Oregon State Bar” for purposes of OAR 661-010-0075(6) or may
21 appear in the authorized matter pursuant to UTCRC 3.170, notwithstanding OAR 661-010-
22 0075(6).

23 Second, respondents note that Mr. Levenson is currently subject to a disciplinary
24 proceeding in the State of Louisiana, the records of which have been sealed by court order
25 and have not been provided to LUBA. Respondents argue that absent further information
26 indicating that Mr. Levenson is fit to practice before LUBA, the motion should be denied.

1 Petitioners reply that the Supreme Court of the State of Louisiana has issued a
2 certificate confirming that Mr. Levenson is a member in good standing of the Louisiana State
3 Bar, and that he has not (to date) been disciplined by any court, tribunal or bar association.
4 Petitioners state that if LUBA so orders they will provide documents from the pending
5 disciplinary proceeding, subject to an appropriate protective order.

6 UTCR 3.170(1)(b) requires an attorney seeking admittance *pro hac vice* to (1) certify
7 that the attorney is not subject to pending disciplinary proceedings in any other jurisdiction or
8 (2) provide “a description of the nature and status of any pending disciplinary proceedings.”¹
9 Mr. Levenson is subject to pending disciplinary proceedings, but petitioners have not
10 provided the description required by UTCR 3.170(1)(b) to LUBA. Under UTCR 3.170(2)(b),
11 in seeking admission to practice before an administrative body, the movant must apply to the
12 administrative body, and demonstrate to the administrative body that the requirements of the
13 rule are met. Petitioners have not demonstrated to LUBA that the requirements of UTCR
14 3.170(1)(b) are met.

15 As noted, petitioners offer to provide the sealed documents and, presumably, provide
16 the explanation required by UTCR 3.170(1)(b), if LUBA so orders. Under UTCR 3.170(3),
17 the administrative body shall grant the application if the application satisfies the requirements
18 of the rule, unless the administrative body determines for good cause shown that granting the

¹ UTCR 3.170(1) provides, in relevant part:

“An attorney authorized to practice law before the highest court of record in any state or country (“out-of-state attorney”) may appear on behalf of a party in any action, suit, or proceeding pending in this state before a court or administrative body even though that attorney is not licensed to practice law in this state, if the attorney satisfies all of the following requirements:

“(a) Shows that the attorney is an attorney in good standing in another state or country.

“(b) Certifies that the attorney is not subject to pending disciplinary proceedings in any other jurisdiction or provides a description of the nature and status of any pending disciplinary proceedings.”

1 application would not be in the best interest of the body or the parties.² LUBA’s statutory
2 mandate is to conduct an expedited proceeding, consistent with sound principles of judicial
3 review. ORS 197.805. In our view, allowing petitioners to correct the present failure to
4 satisfy the requirements of the rule, by submitting documents from the sealed disciplinary
5 proceeding under a protective order, would present a significant potential for delay of this
6 review proceeding. To date, LUBA has already invested a considerable amount of time to
7 resolve this disputed motion. If petitioners belatedly submit the sealed documents, LUBA
8 would have to consider whether it can grant the requested protective order. In doing so,
9 LUBA will likely be required to determine whether respondents are entitled to view the
10 sealed documents, and to respond to those documents. Ultimately, after several rounds of
11 additional pleadings are filed, LUBA would have to determine whether the requirements of
12 the rule have been met, and resolve what will almost certainly be a dispute regarding whether
13 granting the motion is or is not in the best interest of LUBA and the parties. It is not clear to
14 us what standard LUBA would apply in reviewing the sealed documents, and resolving
15 whether the admission would be in the “best interest” of LUBA and the parties does not
16 promise to be an easy or quick resolution. Any additional time spent in resolving the
17 probable disputes regarding whether the “best interest” standard is met would likely result in
18 further delay. Accordingly, LUBA declines petitioners’ offer to allow them to belatedly
19 attempt to satisfy the requirements of the rule by submitting the sealed documents.

20 The motion to appear *pro hac vice* is denied for failure to satisfy the requirements of
21 UTCR 3.170(1)(b).

² UTCR 3.170(3) provides:

“The court or administrative body shall grant the application by order if the application satisfies the requirements of this rule, unless the court or administrative body determines for good cause shown that granting the application would not be in the best interest of the court or administrative body or the parties. At any time and upon good cause shown, the court or administrative body may revoke the out-of-state attorney’s permission to appear in the matter.”

1 Dated this 5th day of June, 2013.

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Tod A. Bassham
Board Member