

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

IN RE: CEDAR FALLS UTILITIES)
Franchise No. 17613)
Bert Schou and Diane Schou,)
Petitioners,)
vs.)
Iowa Utilities Board,)
Respondent.)
Cedar Falls Utilities,)
Appearing to Intervene)
and Move to Strike)
Petitioner's Petition and)
Impose Sanctions)

APPLICATION BY CEDAR FALLS
UTILITIES TO INTERVENE AND
MOVE TO DISMISS PETITIONERS'
PETITION AND IMPOSE SANCTIONS

COMES NOW Cedar Falls Utilities and states:

1. Cedar Falls Utilities (CFU) is a municipal utility serving the City of Cedar Falls, Iowa.
2. CFU was a party to the proceedings before the agency and was granted Franchise No. 17613 by the Iowa Utilities Board pursuant to and in full accordance with the administrative process mandated by Iowa law and administrative rules and has an interest in this action because it is the holder of the franchise in controversy. CFU has sufficient interest to be allowed to intervene.
3. CFU appears pursuant to Iowa Code §17A.19 and Iowa Rule 1.1602.

DIVISION I: PETITIONER'S PETITION IS UNTIMELY

4. Final agency action was taken on December 7, 2005, when the Iowa Utility Board issued its ORDER DENYING RECONSIDERATION.

5. The first evidence of Petitioners' Petition is a letter from Petitioners putative attorney dated January 11, 2006, indicating that the Petition was mailed to the parties; no representation of a filing date is made.

6. Pursuant to Iowa Code §17A.19(3), "...If a party files an application under §17A.16, subsection 2, for rehearing with the agency, the petition for judicial review must be filed within thirty days after that application has been denied or deemed denied." Petitioners' did file for rehearing, and rehearing was denied on December 7, 2005. Petitioners had until January 6, 2006, within which to file this petition for judicial review. By any definition it was not filed until January 11, 2006, at the earliest.

7. Petitioners' Petition for Judicial Review is patently untimely and should be struck.

DIVISION II: PETITIONERS' PETITION WAS FILED BY A PERSON NOT AUTHORIZED TO PRACTICE LAW IN IOWA WHO HAS FAILED TO TAKE THE JURISDICTIONAL STEPS NECESSARY TO APPLY FOR AND RECEIVE PERMISSION TO DO SO.

8. Petitioners' Petition for Judicial Review is not filed *pro se*; rather, it is filed on behalf of Petitioners by Carol A. Overland (Overland) an attorney licensed to practice law in Minnesota, with Minnesota Lic. 254617; implicit in Overland's representation, and as previously confirmed by CFU, Overland is not licensed to practice law in the State of Iowa. The pleading merely states a "Pro Hac Vice Motion will be filed separately."

9. The Iowa law is as follows:

602.10111 Nonresident attorney -- appointment of local attorney.

1. Any member of the bar of another state, actually engaged in any cause or matter pending in any court of this state, may be permitted by such court to appear in and conduct such cause or matter while retaining the attorney's residence in another state, without being subject to the foregoing provisions of this article; provided that at the time the attorney enters an appearance the attorney files with the clerk of such court the written appointment of some attorney resident and admitted to practice in the state of Iowa, upon whom service may be had in all matters connected with said action, with the same effect as if personally made on such foreign attorney within this state. In case of failure to make such appointment, such attorney shall not be permitted to practice as aforesaid, and all papers filed by the attorney shall be stricken from the files (emphasis added).

See also Conkey v. Hoak Motors, Inc., 637 N.W.2d 170 (Iowa 2001); 7 C.J.S. Attorney and Client §25 (2004).

10. The Iowa Court Rules are in accord, and also provide that the attorney not licensed to practice in Iowa must confirm in writing the attorney's agreement to submit to and comply with all provisions and requirements of the Iowa Code of Professional Responsibility for Lawyers.¹

¹Rule 31.14 Admission pro hac vice before Iowa courts and administrative agencies.

31.14(1) Any attorney admitted to practice in any state and not admitted in Iowa may appear in an action in an Iowa court and may, further, in the discretion of the court in which the action is pending, be permitted to conduct such cause or other matter pending, by satisfying the following conditions: The attorney not admitted in Iowa must promptly file with the clerk of such court the written appearance of a resident attorney admitted to practice in this state upon whom service may be had in all matters connected with said cause or matter with the same effect as if personally made upon the attorney not admitted to practice in Iowa and shall file a verified statement which contains an agreement to submit to and comply with all provisions and requirements of the Iowa Code of Professional Responsibility for Lawyers. If such appearance and agreement are not filed and maintained, the court before which the matter is pending shall notify the attorney not admitted to practice in Iowa and the parties the attorney represents to comply with Iowa Code section 602.10111 and this rule within 20 days of the date of the notice. In the event of failure to comply within such period, the court, on its motion or on motion of the adverse party, may dismiss the action, or strike the pleadings of the noncomplying party from the files, and enter thereafter such judgment as is appropriate.

31.14(2) Any attorney admitted to practice in any state and not admitted in Iowa may represent others in a contested case before an administrative agency of this state, at the discretion of such agency, provided that such attorney promptly files with the agency the written appearance of a resident attorney admitted to practice in Iowa upon whom

11. In these judicial proceedings, Overland has not complied with Iowa Code §602.10111, which allows an attorney not licensed in Iowa to appear only if, "...at the time the attorney enters an appearance the attorney files with the clerk of such court the written appointment of some attorney resident and admitted to practice in the state of Iowa. Overland has merely promised to do so at some unspecified time in the future, see note at the end of Overland's Petition.

12. In these proceedings, Overland has not filed "...a verified statement which contains an agreement to submit to and comply with all provisions and requirements of the Iowa Code of Professional Responsibility for Lawyers. ..." as required by Iowa Rule 31.14(1).

13. Pursuant to Iowa Code §602.10111, "In case of failure to make such appointment, such attorney shall not be permitted to practice as aforesaid, and all papers filed by the attorney shall be stricken from the files."

14. In fairness to Overland and so as to fully appraise the court of the basis for CFU's Motion to Dismiss, CFU is obliged to note that Iowa Rule 31.14(1) appears to provide a *discretionary* alternative, albeit without any apparent statutory authority, to wit:

Any attorney admitted to practice in any state and not admitted in Iowa may appear in an action in an Iowa court and may, further, **in the discretion of the court in which the action is pending**, be permitted to conduct such cause or other matter pending, by satisfying the following conditions: The attorney not admitted in Iowa must promptly file with the clerk of such court the written appearance of a resident attorney admitted to practice in this state upon whom service may be had in all matters connected with said cause or matter with the same effect as if

service may be had in all matters connected with said case with the same effect as if personally made on the attorney not admitted to practice in Iowa and shall file a verified statement which contains an agreement to submit to and comply with all provisions and requirements of the Iowa Code of Professional Responsibility for Lawyers. The terms "agency" and "contested case" as used in this rule are defined in Iowa Code section 17A.2. [Court Order July 2, 1975; June 22, 1976; December 2, 1993; June 5, 1996, effective July 1, 1996; (Prior to July 1, 1996, Court Rule 116); April 1, 1999; November 9, 2001, effective February 15, 2002

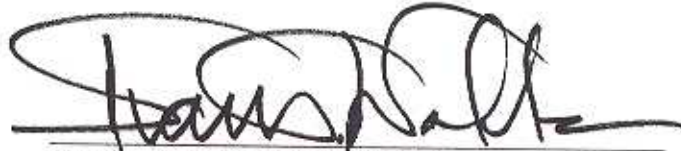
personally made upon the attorney not admitted to practice in Iowa and shall file a verified statement which contains an agreement to submit to and comply with all provisions and requirements of the Iowa Code of Professional Responsibility for Lawyers. If such appearance and agreement are not filed and maintained, the court before which the matter is pending shall notify the attorney not admitted to practice in Iowa and the parties the attorney represents to comply with Iowa Code section 602.10111 and this rule within 20 days of the date of the notice. In the event of failure to comply within such period, the court, on its motion or on motion of the adverse party, may dismiss the action, or strike the pleadings of the noncomplying party from the files, and enter thereafter such judgment as is appropriate. (Emphasis added.)

15. CFU respectfully avers that there is no cause to exercise such discretion in Overland's or Petitioners' favor in this proceeding. As noted before, Petitioners' Petition is untimely. Overland cannot claim to be unacquainted with the provisions governing the practice of non-resident non-Iowa-licensed attorneys before Iowa agencies and courts; as they were pointed out to her in the administrative proceedings.

16. Iowa Rule 1.413(1) provides in relevant part: "... Counsel's signature to every motion, pleading, or other paper shall be deemed a certificate that: counsel has read the motion, pleading, or other paper; that to the best of counsel's knowledge, information, and belief, formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and that it is not interposed for any improper purpose, such as to harass or cause an unnecessary delay or needless increase in the cost of litigation. ... If a motion, pleading, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay the other party or parties the amount of the reasonable expenses incurred because of the filing of the motion, pleading, or other paper, including a reasonable attorney fee. The signature of a party shall impose a similar obligation on such party."

17. Petitioners' Petition is not warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law. It could not have been interposed for any proper purpose. Rather, it is reasonable to believe the present appeal is designed to cause unnecessary delay or needless increase in the cost of litigation. CFU has already incurred substantial attorney fees and costs and other out-of-pocket expenses for expert witnesses, investigation, and other hearing preparations.

WHEREFORE, CFU prays the court grant it permission to intervene, dismiss Petitioners' Petition as an untimely appeal, filed by unlicensed counsel and impose sanctions pursuant to Iowa Rule 1.413(1) sufficient to deter such conduct by Overland.



Ivan T. Webber (PK0005832)
AHLERS & COONEY, P.C.
100 Court Avenue, Suite 600
Des Moines, Iowa 50309
Telephone: (515) 243-7611
Facsimile: (515) 243-2149
E-mail: iwebber@ahlerslaw.com
ATTORNEYS FOR CEDAR FALLS UTILITIES

Original filed.
Copies to:

David Lynch
Deputy General Counsel
Iowa Utilities Board
Iowa Department of Commerce
350 Maple Street
Des Moines, Iowa 50319-0069

John R. Perkins
Consumer Advocate
Iowa Department of Justice
Office of Consumer Advocate
310 Maple Street
Des Moines, IA 50319-0063

Ms. Diane Schou
Mr. Bert Schou
P. O. Box 249
Cedar Falls, IA 50613

Ms. Lorraine Joens
6512 W. Ridgeway Ave.
Cedar Falls, IA 50613

Carol A. Overland
402 Washington St., S.
North field, MN 55057

Jason P. Hoffman, Esq.
J. Scott Braden, P.A.
415 - 2nd Avenue N.W.
Faribault, MN 55057

PROOF OF SERVICE

THE UNDERSIGNED CERTIFIES THAT THE FOREGOING
INSTRUMENT WAS SERVED UPON ALL PARTIES TO THE
ABOVE CAUSE TO EACH OF THE ATTORNEYS OF
RECORD HEREIN AT THEIR RESPECTIVE ADDRESSES
DISCLOSED ON THE PLEADINGS ON

1-20, 2006

BY U.S. MAIL
HAND DELIVERED FAX
 PRIVATE CARRIER
SIGNATURE *Erin Bonde*

GPOINDEX479338.11WP10287023