

FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary
Action against JAMES M. BURSETH,
an Attorney at Law of the
State of Minnesota.

**PETITION FOR REVOCATION
OF PROBATION AND FOR FURTHER
DISCIPLINARY ACTION**

TO THE SUPREME COURT OF THE STATE OF MINNESOTA:

The Director of the Office of Lawyers Professional Responsibility, hereinafter Director, files this petition upon the parties' agreement contained in the attached January 14, 2000, stipulation for probation (Exhibit 1) pursuant to Rules 10(a) and 12(a), Rules on Lawyers Professional Responsibility. The Director alleges:

The above-named attorney, hereinafter respondent, was admitted to practice law in Minnesota on September 16, 1974. Respondent currently practices law in Minneapolis, Minnesota.

INTRODUCTION

On January 14, 2000, respondent and the Director entered into a stipulation for private probation. Respondent's probation was based upon an admission that respondent's repeated alcohol related criminal misdemeanor violations violated Rule 8.4(b), Minnesota Rules of Professional Conduct (MRPC).

Among the conditions of respondent's probation was that respondent would abide by the Minnesota Rules of Professional Conduct and commit no further unprofessional conduct, and that if, after giving respondent an opportunity to be heard, the Director concluded that respondent had not complied with the conditions of the

probation, then the Director could file this petition without the necessity of Panel proceedings.

Also among the conditions of respondent's probation was the following:

Respondent shall maintain total abstinence from alcohol and other mood-altering chemicals, except that respondent may use prescription drugs in accordance with the directions of a prescribing physician who is fully advised of respondent's chemical dependency before issuing the prescription.

The Director, after giving respondent an opportunity to be heard, has concluded that respondent has not complied with the conditions of the probation.

Respondent has committed the following unprofessional conduct warranting public discipline:

FIRST COUNT

1. Under the terms of his January 14, 2000, probation, respondent is required, among other things, to maintain total abstinence from alcohol and other mood-altering chemicals and submit, up to four times per month, to random urinalysis (UA).

2. On January 21, 2000, the Director wrote to respondent's counsel, Richard F. Koch, setting out respondent's obligations under his probation. Respondent was instructed to call the Director's Office every Monday, Wednesday and Friday to determine if he needed to appear for UA. Respondent was informed that he needed to call ahead of time to make arrangements if he had a conflict and that any failure to call in on the required days would be treated as a positive test result.

3. Respondent began his random UA on February 25, 2000. On February 28, 2000, respondent appeared for a previously scheduled random UA. Respondent tested positive for THC or cannabis.

4. On May 5 and May 8, 2000, respondent appeared for a previously scheduled random UA. Respondent's test results were suggestive of dilute specimens.

5. On May 11, 2000, respondent requested that he be released from his obligation to call the Director on Friday, May 12, 2000, since he was going to be on vacation and out of town. The Director excused respondent, but informed him verbally on May 11 and in writing on May 18, 2000, that future requests for waiver of his call-in responsibilities must be made well in advance to preserve the randomness of the UA schedule.

6. By way of letter dated May 18, 2000, the Director also confirmed that respondent was excused from his call-in responsibilities for the period of June 14 through June 16, 2000, pursuant to his prior verbal request. The Director subsequently scheduled respondent to appear for random UA on June 12, 2000.

7. On May 19, 2000, the Director's Office informed respondent that he needed to submit to random UA. Respondent informed the Director's Office that he was ill and would not appear for testing.

8. On May 23, 2000, the Director wrote to respondent again stating that it is the Director's policy that when a probationer fails to appear for a scheduled random UA, that date is considered as a positive test result. Respondent was informed that if he should again fail to call in or fail to appear for a scheduled random UA, the Director would recommend revocation of his probation.

9. On June 9, 2000, respondent wrote two letters to the Director: 1) to explain his May 5 and May 8, 2000, dilute specimens by stating that he was drinking a lot of water due to the illness that resulted in his failure to appear for random UA on May 19, 2000; and 2) to remind the Director that he would be on vacation June 10 through June 17, 2000.

10. On June 21, 2000, the Director notified respondent that he was required to submit to four random UA per month through August 2000 and requested that he appear for a meeting at the Director's Office on June 29, 2000.

11. On June 28, 2000, respondent appeared for a previously scheduled random UA. Respondent tested positive for THC or cannabis.

12. On June 29, 2000, respondent failed to appear to meet with the Director.

13. The Director then wrote to respondent scheduling a second meeting for July 11, 2000. After rescheduling that meeting, respondent appeared with his counsel on July 10, 2000, to meet with the Director.

14. On July 11, 2000, the Director informed respondent that he was required to submit to random UA four times per month until he produced twelve consecutive negative test results, that advance notice of any vacations was required to preserve the integrity of the random schedule, that any missed tests would be considered as positive test results, and that any future positive UA results would result in extension or revocation of respondent's probation.

15. During the July 11, 2000, meeting, respondent stated that his positive June 28, 2000, UA was due to "second hand" inhalation of a friend's marijuana smoke. The Director informed respondent that any positive UA results were unacceptable.

16. On July 17, 2000, respondent appeared for a previously scheduled random UA. Respondent tested positive for THC or cannabis.

17. On July 26, 2000, respondent appeared for a previously scheduled random UA. Respondent's test result was suggestive of a dilute specimen.

18. On August 7, 2000, respondent appeared for a previously scheduled random UA. Respondent tested positive for THC or cannabis.

19. On October 11, 2000, respondent appeared for a previously scheduled random UA. Respondent's test result was suggestive of a dilute specimen.

20. Respondent's conduct violated Rule 8.4(d), MRPC.

WHEREFORE, the Director respectfully prays for an order of this Court imposing appropriate discipline, awarding costs and disbursements pursuant to the

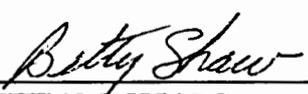
Rules on Lawyers Professional Responsibility, and for such other, further or different relief as may be just and proper.

Dated: October 25, 2000.



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