

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

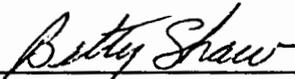
Rules on Lawyers Professional Responsibility, and for such other, further or different relief as may be just and proper.

Dated: October 25, 2000.



EDWARD J. CLEARY
DIRECTOR OF THE OFFICE OF LAWYERS
PROFESSIONAL RESPONSIBILITY
Attorney No. 17267
25 Constitution Avenue, Suite 105
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and



BETTY M. SHAW
SENIOR ASSISTANT DIRECTOR
Attorney No. 130904

RECEIVED

JAN 12 2000

LAWYERS PROF. RESP. OFFICE

STATE OF MINNESOTA

LAWYERS PROFESSIONAL
RESPONSIBILITY BOARD

In Re Probation of
JAMES M. BURSETH,
an Attorney at Law of the
State of Minnesota.

STIPULATION FOR
PROBATION PURSUANT
TO RULE 8(d)(3), RLPR

This stipulation is entered into by Edward J. Cleary, Director of the Office of Lawyers Professional Responsibility, hereinafter Director, and James M. Burseth, the above-named attorney, hereinafter respondent.

WHEREAS, the parties desire to present this stipulation to the Lawyers Professional Responsibility Board (LPRB) Chair, hereinafter Chair, for consideration pursuant to Rule 8(d)(3), Rules on Lawyers Professional Responsibility (RLPR),

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED AS FOLLOWS:

1. Respondent was admitted to practice law in Minnesota on September 16, 1974. Respondent has paid through January 1, 2000, the registration fee required by the Minnesota Supreme Court, hereinafter the Court. Respondent is currently employed as an Assistant Hennepin County Public Defender in Minneapolis, Minnesota.

2. The Director alleges and respondent unconditionally admits for purposes of these and any future disciplinary proceedings the following allegations of unprofessional conduct:

a. On January 24, 1997, respondent was arrested in St. Louis Park for domestic assault and damage to property. Alcohol was involved in the incident. Respondent was criminally charged and later placed on probation.

Exhibit 1

Respondent was also required to enter a chemical dependency treatment program as a term of his probation.

b. On May 25, 1998, respondent was cited for DWI and speeding in Mille Lacs County, Minnesota. His blood alcohol content was .14. Respondent was convicted of that offense. As a result of the conviction, respondent's driver's license was revoked.

c. On August 31, 1998, respondent was cited for driving after his license had been revoked. The prosecution of that matter was suspended until December 7, 1999, upon the condition that respondent not commit a driving license violation and that respondent paid certain costs.

d. On November 22, 1998, respondent was issued a citation in St. Louis Park for violation of a restricted drivers license to which he plead guilty.

e. On January 24, 1999, respondent was charged with a gross misdemeanor DWI in Orono, Minnesota. Respondent's blood alcohol level was .19. Respondent pled guilty, his driver's license was canceled as inimical to public safety, and his license plates were impounded. Respondent served 45 days at the workhouse and is on a two year probation for the offense. His probation is schedule to end on April 5, 2001. In addition, respondent was required to undergo outpatient chemical dependency treatment.

f. Respondent also has two prior drinking and driving offenses, which occurred on April 18, 1996, and January 19, 1997. Those offenses were reduced to Careless Driving.

g. Respondent has undergone several courses of chemical dependency treatment including treatments in 1980 at Twin Town and in 1995 at Health Partners. He also underwent a relapse program at Fairview

Southdale from February 1998 through December 1998. Respondent had two incidents of drinking and driving during that time.

3. Respondent's repeated criminal misdemeanor violations violated Rule 8.4(b), Minnesota Rules of Professional Conduct.

4. Respondent has been advised by the undersigned counsel concerning this stipulation and these proceedings generally.

5. Upon approval by the Chair, pursuant to Rule 8(d)(3), RLPR, respondent shall be on unsupervised private probation for two years, under the following conditions:

a. Respondent shall cooperate fully with the Director's Office in its efforts to monitor compliance with this probation and promptly respond to the Director's correspondence by the due date. Respondent shall cooperate with the Director's investigation of any allegations of unprofessional conduct which may come to the Director's attention. Upon the Director's request, respondent shall provide authorization for release of information and documentation to verify compliance with the terms of this probation.

b. Respondent shall abide by the Minnesota Rules of Professional Conduct.

c. 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.

d. Respondent shall, at his own expense, no more than four times per month, submit to random urinalysis for drug screening at a facility approved by the Director and shall direct the drug screening facility to provide the results of all urinalysis testing to the Director's Office. If, after

three months, all such tests have been negative, then the frequency of the random tests may be reduced. Respondent shall cooperate with the phone-in program established by the Director for the random tests.

e. Respondent shall attend weekly meetings of Alcoholics Anonymous or another out-patient alcohol treatment program acceptable to the Director. Respondent shall, by the tenth day of each month, without a specific reminder or request, submit to the Director an attendance verification on a form provided by the Director, which provides the name, address and telephone number of the person personally verifying the attendance.

6. If at any time during the period of probation, after giving respondent an opportunity to be heard by the Director, the Director concludes that respondent has violated the conditions of the probation, failed to cooperate with the random testing or engaged in further misconduct, the Director may file a petition for disciplinary action against respondent in the Minnesota Supreme Court without the necessity of submitting the matter to a Panel or Panel Chair. Respondent waives the right to such consideration by the Panel or Panel Chair.

7. The complainant(s), if any, and the district ethics committee, if any, that has considered this matter, will be notified and provided with a copy of this stipulation pursuant to Rule 8(d)(3), RLPR.

If respondent complies with all the conditions of the probation as set forth above, the probation will be terminated. Pursuant to Rule 8(d)(3), RLPR, the Director will maintain a permanent disciplinary record of this stipulation and probation file.

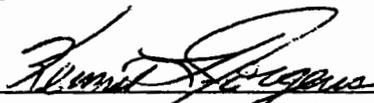
IN WITNESS WHEREOF, the parties executed this stipulation on the dates indicated below.

Dated: December 20, 1999

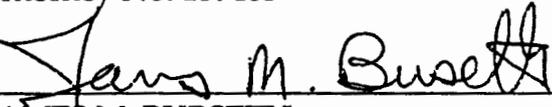

EDWARD J. CLEARY
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and

Dated: December 22, 1999


KENNETH L. JORGENSEN
FIRST ASSISTANT DIRECTOR
Attorney No. 159463

Dated: 1-5-2000, 1999

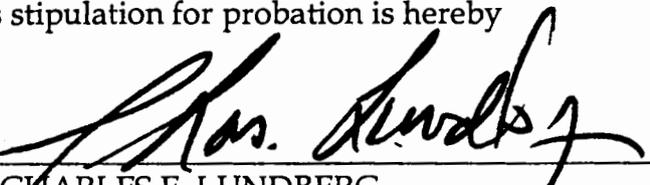

JAMES M. BURSETH
RESPONDENT
Attorney No. 1350X

Dated: 1-7-2000, 1999


Richard F. Koch
ATTORNEY FOR RESPONDENT
Attorney No. 5723X
Lake Calhoun Professional Building
3109 Hennepin Avenue South
Minneapolis, MN 55408

Pursuant to Rule 8(d)(3), RLPR, this stipulation for probation is hereby approved.

Dated: 1-14-00


CHARLES E. LUNDBERG
CHAIR, LAWYERS PROFESSIONAL
RESPONSIBILITY BOARD