

FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action
against JAMES M. BURSETH,
a Minnesota Attorney,
Registration No. 1350X.

**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 pursuant to Rule 12(a), Rules on Lawyers Professional Responsibility, and pursuant to this Court's December 2, 2003, order in the matter.

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

By December 2, 2003, order, this Court indefinitely suspended respondent effective January 1, 2004, with reinstatement conditioned upon a showing of six consecutive valid (non-dilute) random urinalysis tests. By order dated February 26, 2004, respondent was reinstated to the practice of law subject to certain conditions including:

- a. [Respondent] shall continue on public probation until the completion of six consecutive months of valid (non-dilute) random urinalysis test results. If [respondent] has another confirmed positive test for alcohol or other mood-altering chemicals, except for those allowed under paragraph (d) of this order, or fails to call in as required pursuant to

paragraph (e), petitioner shall be automatically suspended from the practice of law until such time that he can provide six consecutive (non-dilute) random urinalysis tests, at which time he may petition for reinstatement pursuant to Rule 18(e), Rules on Lawyers Professional Responsibility.

* * *

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

e. [Respondent] shall, at his own expense, submit to random urinalysis for drug screening at least four times per month at the Hennepin County Medical Center or other such facility to provide the results of all urinalysis testing to the Director's Office. If after three months, all such tests have been both negative and not suggestive of a dilute specimen, then the frequency of the random tests may be reduced. [Respondent] shall cooperate with the phone-in program established by the Director's Office for the random tests. Any failure to phone-in without advance permission to deviate from the phone-in program established by the Director's Office shall be considered the same as a positive test.

A complete copy of the Court's February 26, 2004, order is attached as Exhibit 1.

Respondent has committed the following unprofessional conduct warranting revocation of probation and further public discipline:

FIRST COUNT

Violation of Reinstatement Order

Non-Compliance with Phone-In Program

1. As required by paragraph (e) of the Court's February 26, 2004, reinstatement order, respondent failed to call in to the Director's Office on Friday, April 9, 2004, as required by the phone-in program established by the Director's Office for random urinalysis testing. On April 16, 2004, respondent wrote to the Director's Office denying that he had failed to call in and asserting that he had spoken either to Lynda or Patricia (Exhibit 2).

2. Respondent did not speak with either Lynda or Patricia or any other person in the Director's Office on April 9, 2004.

Failure to Maintain Abstinence and Misrepresentations

3. As required by paragraph (d) of the Court's February 22, 2004, reinstatement order, petitioner has not maintained total abstinence from alcohol.

4. On May 7, 2004, respondent was assigned by the Hennepin County Public Defender's Office to staff the calendar in Hennepin County District Court. Court is scheduled to begin at 9:00 a.m., but respondent did not arrive until approximately 9:45 a.m.

5. When respondent arrived in court, Assistant County Attorney Kerry W. Meyer on several occasions during the morning recognized the smell of consumed alcohol coming from respondent.

6. In the courtroom on the morning of May 7, 2004, Brenda Wood of the Hennepin County probation office also recognized the smell of consumed alcohol coming from respondent as did Jeanette Boerner, another Assistant Hennepin County Public Defender, and Leslie Pender of Operation De Novo.

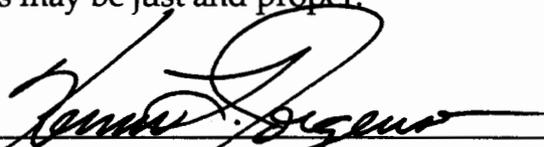
7. On May 13, 2004, First Assistant Public Defender James Kamin spoke to respondent about a report he had received from the Hennepin County Attorney's Office regarding the May 7 incident. At the May 13 meeting with Kamin, respondent falsely stated to Kamin that he had not been drinking and did not smell of alcohol that day.

8. After initially denying to the Director's Office that he had alcohol on his breath or alcohol in his system on May 7 (Exhibit 3), respondent admitted that he had in fact consumed alcohol.

9. Respondent's conduct violated the Supreme Court's February 26, 2004, order and Rules 3.4(c), 8.1(a)(1) and (2) and 8.4(c) and (d), Minnesota Rules of Professional Conduct.

WHEREFORE, the Director respectfully prays for an order of this Court revoking respondent's probation, suspending respondent's license to practice law, 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: August 4, 2004.



KENNETH L. JORGENSEN
DIRECTOR OF THE OFFICE OF LAWYERS
PROFESSIONAL RESPONSIBILITY
Attorney No. 159463
1500 Landmark Towers
345 St. Peter Street
St. Paul, MN 55102-1218
(651) 296-3952

and



BETTY M. SHAW
SENIOR ASSISTANT DIRECTOR
Attorney No. 130904

RECEIVED

FEB 27 2004

**OFFICE OF LAWYERS
PROF. RESP.**

STATE OF MINNESOTA

IN SUPREME COURT

CX-00-2004

**OFFICE OF
APPELLATE COURTS**

FEB 26 2004

FILED

**In re Petition for Disciplinary Action against
James M. Burseth, a Minnesota Attorney,
Registration No. 1350X.**

ORDER

On December 2, 2003, this court indefinitely suspended petitioner James M. Burseth from the practice of law effective January 1, 2004. The order provided that petitioner could petition for reinstatement by affidavit upon a showing that he had submitted to six valid (non-dilute) random urinalysis tests.

Petitioner has filed an affidavit for reinstatement in which he presents evidence of six valid (non-dilute) random urinalysis tests. The Director has submitted an affidavit stating that, to the best of the Director's knowledge, petitioner has complied with all conditions for reinstatement and that the Director has no objection to reinstatement subject to probation.

Based upon all the files, records and proceedings herein,

IT IS HEREBY ORDERED that petitioner James M. Burseth is reinstated to the practice of law in the State of Minnesota effective immediately and is placed on probation which shall continue until the later of two years from the date of this order or the

completion of six months of consecutive valid (non-dilute) random urinalysis tests, subject to the following conditions:

a. Petitioner shall continue on public probation until the completion of six consecutive months of valid (non-dilute) random urinalysis test results. If petitioner has another confirmed positive test for alcohol or other mood-altering chemicals, except for those allowed under paragraph (d) of this order, or fails to call in as required pursuant to paragraph (e), petitioner shall be automatically suspended from the practice of law until such time that he can provide six consecutive (non-dilute) random urinalysis tests, at which time he may petition for reinstatement pursuant to Rule 18(e) Rules on Lawyers Professional Responsibility (RLPR).

b. Petitioner 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. Petitioner 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 petitioner shall provide authorization for release of information and documentation to verify compliance with the terms of this probation.

c. Petitioner shall abide by the Minnesota Rules of Professional Conduct.

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

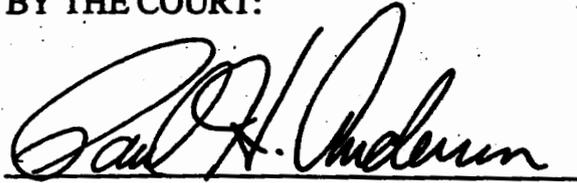
e. Petitioner shall, at his own expense, submit to random urinalysis for drug screening at least four times per month at the Hennepin County Medical Center or other such facility to provide the results of all urinalysis testing to the Director's Office. If after three months, all such tests have been both negative and not suggestive of a dilute specimen, then the frequency of the random tests may be reduced. Petitioner shall cooperate with the phone-in program established by the Director's Office for the random tests. Any failure to phone-in without advance permission to deviate from the phone-in program established by the Director's Office shall be considered the same as a positive test.

f. Petitioner shall participate in a relapse prevention program or other appropriate counseling approved by the Director's Office.

g. Petitioner shall attend at least two meetings per week of Alcoholics Anonymous, LCL, or another approved abstinence support program acceptable to the Director. Petitioner 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.

Dated: *February 26, 2004*

BY THE COURT:

A handwritten signature in cursive script, reading "Paul H. Anderson", written over a horizontal line.

Paul H. Anderson
Associate Justice

OFFICE OF THE PUBLIC DEFENDER
HENNEPIN COUNTY - FOURTH JUDICIAL DISTRICT
317 SECOND AVENUE SOUTH, SUITE 200
MINNEAPOLIS, MN 55401-2700

RECEIVED

APR 22 2004

OFFICE OF LAWYERS
PROF. RESP.

MAIN OFFICE NUMBER:
(612) 348-7530

LEONARDO CASTRO
CHIEF PUBLIC DEFENDER

FAX NUMBERS:
(612) 348-6179/(612) 348-2025

April 16, 2004

Ms. Betty Shaw
Office of Lawyers Professional Responsibility
1500 Landmark Towers
345 St. Peter Street
St. Paul, Minnesota 55102-1218

Dear Ms. Shaw,

Your assertion that I did not call on Friday, April 9, 2004 is incorrect. I called from my office between 1:30 and 2:30 PM. I distinctly remember it for I was trying to leave early. I talked with the telephone receptionist briefly. Please ask them.

I then recall talking to someone other than Valerie. It was either Linda or Patricia.

I find it curious that this false accusation of not calling happens on days other than when I talk to Valerie.

You might also ask Valerie to relate our conversation that following Monday. I told her I distinctly remember the call and that it was "no" which she affirmed it was. How could I have known that it was no if I had not called?

I remain committed to exact compliance with my probation. I did call that day. My weekday schedule is very basic. I call you Monday, Wednesday and Friday and I go to AA on Tuesday and Thursday, at noon. It's simple to remember something each day.

Very Truly Yours,

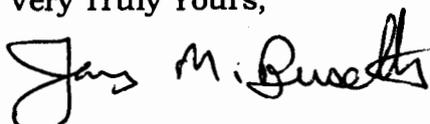

James M. Burseth

EXHIBIT 2

OFFICE OF THE PUBLIC DEFENDER
HENNEPIN COUNTY - FOURTH JUDICIAL DISTRICT
317 SECOND AVENUE SOUTH, SUITE 200
MINNEAPOLIS, MN 55401-2700

RECEIVED

JUN 15 2004

OFFICE OF LAWYERS
PROF. RESP.

MAIN OFFICE NUMBER:
(612) 348-7530

LEONARDO CASTRO
CHIEF PUBLIC DEFENDER

FAX NUMBERS:
(612) 348-6179/(612) 348-2025

June 11, 2004

Mr. Kenneth L. Jorgenson
Office of Lawyer's Professional Responsibility
1500 Landmark Square
345 St. Peter Street
St. Paul, Minnesota 55102

Re: Letter of Mr. Cahill dated 5/20/04

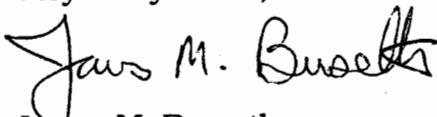
Dear Mr. Jorgenson,

I just today received your notice and would ask, as I have requested Ms. Shaw, to direct correspondence to the above so it can be date stamped.

On May 7, 2004 I did not have any alcohol in my system. I arrived at courtroom C-1059 at about 9:30 AM. I had some close contact with Ms. Meyer sometime between 10 and 10:30 AM up to about noon. I deny having alcohol on my breath. At about noon I had close personal contact with my direct supervisor, Elizabeth Hughes, by chance in the skyway. We had a brief close conversation because she was with other people and wanted to keep the conversation private. I was late that day to court and the Judge had called. I urge you to contact her about her observations of my condition. It is the same address, phone number is 612-348-6702.

As your files will indicate, later that same afternoon I performed a routinely scheduled random UA with negative results for alcohol. I have been told that alcohol in urine takes about 24 hours to dissipate completely. You may wish to contact Ms. Julie Kloss, toxicologist at HCMC about this, where you have directed me to take UA's.

Very Truly Yours,



James M. Burseth

JMB/mja

EXHIBIT 3