

FILE NO. CX-00-2004

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 AMENDMENT
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 July 27, 2001, 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. The Director alleges:

INTRODUCTION

On June 29, 2001, respondent and the Director entered into a stipulation for discipline following a referee hearing on the Director's October 26, 2000, petition for revocation of probation and further discipline. The referee found that:

1. During the probation, respondent tested positive for THC four times - February 28, 2000, June 28, 2000, July 17, 2000, and August 7, 2000.

2. Respondent did not provide a reasonable explanation for the February 28, 2000, positive test result until May 9, 2000, despite earlier requests that he do so. The Director's Office then accepted respondent's explanation that the February 28, 2000, test result may have been caused by cannabis oil placed in his herbal tea.

3. Respondent denied using marijuana on June 28, 2000. Respondent did not provide a reasonable explanation for the positive test results.

4. Respondent first denied but later admitted that he used marijuana on July 17, 2000.
5. Respondent admitted using marijuana on August 7, 2000.
6. On 11 occasions, respondent provided dilute urine specimens to the testing lab at HCMC. Dilute specimens do not provide assurance that drugs are not present in respondent's system. Dilute specimens can produce false negative reports.

The Court independently reviewed the record and stipulation and issued a July 27, 2001, order publicly reprimanding respondent and placing him on public probation (Exhibit 1).

Among the conditions of respondent's public probation was that respondent abide by the terms of his January 14, 2000, private probation (Exhibit 2). One of the terms of that private probation was that he remain abstinent 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.

FIRST COUNT

1. Respondent has failed to maintain abstinence from THC (marijuana) as required by the terms of his January 14, 2000, private probation and as required by the Court's July 27, 2001, court order.
2. On July 25, 2001, two days before the Court issued its order publicly reprimanding respondent for violating his private probation for failure to remain abstinent from mood altering chemicals, respondent tested positive for marijuana in a random urinalysis test at Hennepin County Medical Center. *See* Exhibit 3.
3. On August 28, 2001, the Director's Office met with respondent and his counsel, Richard Koch, regarding the positive test result.
4. On September 10, 2001, respondent again tested positive for marijuana in a random urinalysis test at Hennepin County Medical Center. *See* Exhibit 4.

5. Respondent's conduct violated the Court's July 27, 2001, order and Rule 8.4(d), Minnesota Rules of Professional Conduct.

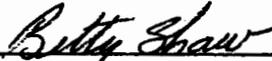
WHEREFORE, the Director respectfully prays for an order of this Court imposing appropriate discipline, awarding costs and disbursements pursuant to the Rules on Lawyers Professional Responsibility, and for such other, further or different relief as may be just and proper.

Dated: October 4, 2001.



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