

FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary
Action against DON L. BYE,
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 October 26, 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 October 17, 1963. Respondent currently practices law in Duluth, Minnesota.

INTRODUCTION

On October 26, 2000, respondent and the Director entered into a stipulation for private probation. Between April 1998 and January 2000, respondent pled guilty to four alcohol related driving infractions. While representing a dissolution client, respondent failed to attend a court appearance and on several occasions appeared visibly under the influence of alcohol. As a result, the court ordered him to remove himself from the dissolution matter or associate with competent counsel. This conduct violated Rule 8.4(d), Minnesota Rules of Professional Conduct (MRPC).

Among the conditions of respondent's probation was that he maintain total abstinence from alcohol and other mood altering chemicals. The stipulation further provided 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.

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

Respondent has committed the following unprofessional conduct warranting public discipline:

FIRST COUNT

1. On October 5, 2000, respondent entered the Bethel Work Release Center (BWRC) in Duluth, Minnesota, as a Huber inmate to serve 30 days followed by 150 days of electronic monitoring due to his conviction of a gross misdemeanor driving while intoxicated.

2. On October 5, 2000, the Director's Office, tendered to respondent's counsel, Dan O'Connell, a stipulation for private probation which required, among other things, that respondent maintain total abstinence from alcohol and other mood-altering chemicals and submit, up to four times per month, to random urinalysis (UA). The Lawyers Professional Responsibility Board Chair approved the stipulation on October 26, 2000.

3. On November 7, 2000, the Director wrote to O'Connell reminding respondent of his obligations under the probation with the Director's Office. Respondent was informed of the requirements of the Director's UA testing program and instructed to make arrangements with a testing facility approved by the Director's Office by November 20, 2000. 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, that any failure to call in on the required days would be treated as a positive test result and that any positive test result could be considered grounds for revocation of the probation (Exhibit 2).

4. Respondent did not begin the random UA testing program as set out in the October 26, 2000, stipulation for probation until January 10, 2001.

5. On November 13, 2000, respondent, while incarcerated at BWRC and on Huber work release, produced a positive breathalyzer result. Respondent admitted drinking vodka at his home. Respondent was found in violation of his criminal probation and ordered to serve his electronic monitoring at the BWRC.

6. On December 31, 2000, respondent, while incarcerated at BWRC and returning from a pass, produced another positive breathalyzer test result. Respondent admitted drinking blackberry brandy. Respondent was found in violation of his criminal probation and ordered to serve 30 days in the St. Louis County jail.

7. Respondent was released from BWRC on January 19, 2001, after 107 days and taken into custody by the St. Louis County sheriff to serve his 30-day sentence for violation of his probation. Respondent was incarcerated in the St. Louis County jail from January 19 to February 5, 2001. The Director suspended respondent's random UA testing program while he was incarcerated.

8. On February 7, 2001, respondent was readmitted to BWRC to serve the remainder of his sentence for violation of his probation. Respondent was discharged on February 17, 2001.

9. On February 20, 2001, respondent and respondent's counsel met with a representative of the Director's Office to discuss why respondent's probation should not be revoked due to respondent's failure to remain abstinent from alcohol.

10. On March 26, 2001, respondent appeared for a random UA test at the request of the Director's Office and tested positive for consumption of alcohol (Exhibit 23).

11. On April 1, 2001, respondent was again admitted to BWRC to serve 120 days for a previous driving under the influence conviction. During respondent's incarceration, the Director again suspended respondent's UA program since respondent

was required to produce random specimens as a condition of the BWRC program. Respondent was discharged from BWRC on Tuesday, May 15, 2001, after 45 days.

12. Respondent did not then resume his Monday, Wednesday and Friday call-in program with the Director's Office on Wednesday, May 16, 2001. On May 17, 2001, respondent's counsel called the Director to inform the Director's Office that respondent had a May 16 client meeting in Grand Rapids, Minnesota. Respondent resumed his call-in program on May 18, 2001.

13. Respondent's conduct violated the terms of his stipulation for probation and Rule 8.4(d), MRPC.

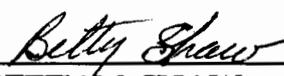
WHEREFORE, the Director respectfully prays for an order of this Court imposing appropriate discipline, awarding costs and disbursements pursuant to the Rules on Lawyers Professional Responsibility, and for such other, further or different relief as may be just and proper.

Dated: July 3, 2001.



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