

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT

IN RE: JOHN M. BURNETT - Respondent Attorney

Arkansas Bar ID #95082

CPC Docket No. 2000-150

FINDINGS & CONSENT ORDER OF DISCIPLINE

The formal charges of misconduct upon which this Consent Order is premised, involving respondent attorney John M. Burnett of Eureka Springs, Carroll County, Arkansas, arose from information brought to the attention of the Committee on Professional Conduct by affidavits from Rosa Seslar and her daughter Maureen Long, both of Tulsa, Oklahoma, and from her son, Thomas Seslar, Jr. of Texas.

Rosa Seslar's son Thomas Seslar pled guilty to felony drug charges in Carroll County in November 1998, and was sentenced to a term of imprisonment in the Arkansas Department of Correction. He understood his Arkansas sentence was to run concurrent with his existing federal prison sentence and that his incarceration on both sentences would end at the same time. As part of his plea, he agreed to pay a fine of \$15,000 and make a contribution to the Carroll County Sheriff's Drug Fund of \$15,000, for a total payment of \$30,000. He expected the \$30,000 in funds to be applied from some \$44,800 in seized assets of his being held by the court clerk.

Rosa Seslar claims to have hired Burnett in September 1999 to recover antique firearms owned by her late husband that were in the possession of the Carroll County Sheriff's office as a result of Tom Seslar's criminal problems. She paid Burnett \$2,500 for this and to get him to help Tom Seslar in his attempt to withdraw his 1998 guilty plea.

In October 1999, Tom Seslar filed bankruptcy in Texas, while in federal prison there. Mr. Burnett got involved in this matter through contact with the Texas attorney employed by the Seslar family, and clearly rendered some legal services to Tom Seslar.

In January 2000, as Tom Seslar's federal sentence came to an end, a detainer against him from Arkansas was discovered. The detainer would compel Seslar to serve several more years in an Arkansas prison, as a result of his sentence from the November 1998 guilty plea in Carroll County. Tom Seslar provided information that he did not learn until about this time that the \$30,000 he agreed to pay or forfeit as part of his 1998 guilty plea never got paid because the funds had been released in 1995 to his ex-wife, with the consent of Carroll County, as part of his divorce. Attempting to use this as grounds to withdraw his guilty plea, during the first half of 2000 he continuously urged Burnett to work out a deal with the Carroll County prosecutor that would allow him to get his sentence modified or to withdraw his guilty plea so he would not have to go to an Arkansas prison.

Problems on all sides arose, with Burnett apparently terminating his representation of Tom Seslar on June 29, 2000, and Rosa Seslar demanding return of her \$30,000 from Burnett by letter on July 6, 2000. The parties thereafter strongly dispute the nature of the anticipated use of the \$30,000.

Rosa Seslar has described herself as eighty and terminally ill. Communicating through her daughter Maureen Long, she has requested this consent proposal be approved, so she can enjoy the certain and prompt return and benefit of her \$32,500. Mr. Burnett has deposited the \$32,500 in the hands of the Supreme Court Clerk, as an escrow agent, and the Seslar family has deposited their signed release in favor of Mr. Burnett with the Clerk. Upon approval of this consent proposal by the Committee, the Committee's order shall cause the delivery of the \$32,500 to Rosa Seslar and the delivery of the release to Burnett.

Following Respondent Attorney's receipt of the formal complaint, the attorney entered into discussion with the Executive Director which has resulted in an agreement to discipline by consent pursuant to Section 8.C.1(c) of the Arkansas Supreme Court Procedures Regulating Professional Conduct of Attorneys at Law (1998). Upon consideration of the formal complaint and attached exhibits, admissions made by the respondent attorney, the terms of the written consent, the approval vote of the Committee on Professional Conduct, and the Arkansas Model Rules of Professional Conduct, the Committee on Professional Conduct finds:

1. That Mr. Burnett's conduct violated Model Rule 1.4(a) when he failed to keep Rosa Seslar reasonably informed about the status of his handling of the return of her late husband's firearms and failed to keep Rosa and Tom Seslar reasonably informed of his efforts on behalf of Tom Seslar to get his Arkansas sentence modified or to assist Seslar in withdrawing his guilty plea. Model Rule 1.4(a) requires that a lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.
2. That Mr. Burnett's conduct violated Model Rule 1.4(b) when he failed to adequately explain the matter - setting aside Tom's state court guilty plea or modifying his state sentence - to Rosa Seslar and Tom Seslar, when it appears sentence modification might have been time-barred. Model Rule 1.4(b) requires that a lawyer explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.
3. That Mr. Burnett's conduct violated Model Rule 1.5(b) when, not having previously represented Rosa Seslar or Tom Seslar, he failed to clearly state the nature of the legal fee arrangement in his correspondence, resulting in Rosa Seslar understanding she was transferring \$30,000 to Mr. Burnett for one purpose - to fund Tom Seslar's guilty plea obligations, and Burnett understanding the funds were for another purpose - his legal fees. Burnett was hired in September 1999, and the transfer of funds occurred March 14, 2000, after Burnett wrote Rosa Seslar on March 10, 2000, attempting to explain the use to which he would put her \$30,000. Mrs. Seslar demanded the return of her funds in July 2000, and he now conditionally offers to do that in full, without any deduction for legal work he clearly did perform for Tom Seslar. Model Rule 1.5(b) requires that when the lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation.

WHEREFORE, in accordance with the consent to discipline presented by Mr. Burnett and the Executive Director, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct that respondent John M. Burnett, Arkansas Bar No. 95082, be, and hereby is, CAUTIONED for his conduct in this matter.

IT IS FURTHER ORDERED that the \$32,500 in funds in escrow be delivered to Rosa Seslar, and the release signed by Rosa Seslar and members of her family be delivered to John M. Burnett.

ARKANSAS SUPREME COURT COMMITTEE

ON PROFESSIONAL CONDUCT

By \_\_\_\_\_

Bart F. Virden, Chairperson

Date \_\_\_\_\_