

People v. Thomas Joseph Burke. 20PDJ073. December 28, 2020.

The Presiding Disciplinary Judge approved the parties' conditional admission of misconduct and suspended Thomas Joseph Burke (attorney registration number 33090) for one year and one day, three months to be served and the remainder to be stayed upon the successful completion of a two-year period of probation, with conditions. The suspension takes effect February 1, 2021.

In January 2017, Burke agreed to represent a client to settle the client's federal tax liabilities. The client hired Burke to enter into an offer in compromise ("OIC") with the IRS as to his 2013, 2014, and 2016 federal back taxes. Once the IRS accepted an OIC, Burke was to negotiate a proportionate reduction in the client's state tax liability for the same years. The client paid a retainer. Burke was to provide the client a link and login for a web-based management system for client billing and case management, but the client never received a link or login. Though the client's credit card was billed in increments of \$500.00, Burke never provided invoices, even when the client requested them.

During 2017, Burke responded to the client's communications, but he did not explain to the client either the OIC process or his strategy. Burke and the client received several letters and notices from the IRS and the Colorado Department of Revenue ("CDOR"), including the IRS's notice of a federal tax lien; on Burke's advice, the client ignored the letters. In January 2018, Burke asked for a hearing on the federal tax lien. The client received more letters from the IRS and CDOR, and Burke continued to assure him he was addressing the situation. Burke later withdrew the hearing request on the same day of the hearing. But he never explained to the client the legal significance of the withdrawal. Nor did he draft or submit an OIC on the client's behalf. In summer 2018, the client called Burke many times without receiving a response. Burke finally told the client via email that the IRS was moving forward with settlement, even though Burke never communicated a settlement position to the IRS. Burke also told the client that he had put "to sleep" CDOR's intent to issue garnishment. But not long after, the client received notice that CDOR had garnished his personal checking account. Burke never submitted an OIC on the client's behalf.

The client learned from the IRS that Burke's last contact with the agency was in January 2018 and that his tax account was in collection. The client contacted Burke several times thereafter, but Burke did not respond. Burke's inaction on the case injured the client, whose federal and state tax liability increased substantially during the course of the representation.

Through this conduct, Burke violated Colo. RPC 1.3 (a lawyer shall act with reasonable diligence and promptness when representing a client); RPC 1.4(a)(3) (a lawyer shall keep a client reasonably informed about the status of the matter); Colo. RPC 1.4(a)(4) (a lawyer shall promptly comply with reasonable requests for information); and Colo. RPC 8.4(c) (it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit, or misrepresentation).

The case file is public per C.R.C.P. 251.31.