

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,
Complainant,

CASE NO.: SC08-2042
TFB NO.: 2007-10,554(6E)

v.

OSEI KWASI PREMPEH,
Respondent.

_____ /

REPORT OF REFEREE ACCEPTING CONSENT JUDGMENT

I. Summary of Proceedings: The undersigned was duly appointed as Referee in these proceedings. The parties hereto have agreed to a stipulated resolution, which I recommend that the Court accept.

The following attorneys appeared as counsel for the parties:

For The Florida Bar: Maria L. Torres
For Respondent: Scott K. Tozian

Respondent participated fully in this proceeding.

II. Findings of Fact: The parties stipulated to the following facts: On or about February 6, 2006, Respondent was retained to represent Victor Kasera in an immigration matter. Mr. Kasera was scheduled to appear at an immigration hearing on February 10, 2006 in Bloomington, Minnesota. Respondent filed a notice of appearance and requested an extension. The immigration hearing was rescheduled to February 24, 2006 and required Mr. Kasera's presence at the hearing. Respondent requested a second extension based on a conflicting hearing scheduled for the same date in Bradenton, Florida.

The day before the hearing, Respondent contacted the Bloomington Immigration Court and inquired about the requested extension. Respondent was informed by the Immigration Court that no formal decision had been made, therefore Mr. Kasera

needed to be present during the hearing and Respondent could appear by phone, otherwise the court would rule In Absentia. Respondent failed to advise his client that he was required to be present for the hearing. Neither Respondent nor Mr. Kasera attended the immigration hearing.

On February 24, 2006, the Immigration Court ruled In Absentia, ordered that Mr. Kasera be placed under a deportation order, and provided 30 days for an appeal. Respondent filed a Motion to Reopen and Rescind the In Absentia Order.

On April 25, 2006, the Immigration Court entered a Memorandum and Order denying the Motion to Reopen and Rescind the In Absentia Order. The Order said that the Motion failed to state any valid circumstances or reasons for Mr. Kasera's and Respondent's absence from the hearing. The Order further stated that Respondent was contacted at the time of the hearing on February 24, 2006, was informed that the hearing was going to be held In Absentia, and was asked if he wanted to participate in the hearing telephonically. Respondent refused to participate telephonically, but requested that a copy of the In Absentia order be sent to him.

The Board of Immigration Appeals dismissed Respondent's appeal and affirmed the Immigration Judge's ruling denying the reopening of Mr. Kasera's case.

On or about October 13, 2006, Mr. Kasera was detained by immigration officials pursuant to the deportation order from his home in Tampa, Florida. Immediately after Mr. Kasera was detained by immigration officials and through the next few days, Mrs. Carla Kasera began attempts to contact Respondent. Mrs. Kasera was unsuccessful in her attempts to contact Respondent. For approximately two weeks, Respondent did not respond to Mrs. Kasera's attempts to contact him. After not hearing from Respondent, Mrs. and Mr. Kasera retained other counsel and terminated Respondent's services. Mrs. Kasera informed Respondent that he had been terminated and requested Mr. Kasera's file. Respondent failed to provide Mr. or Mrs. Kasera or their new attorney with the file.

III. Recommendations as to Guilt: I recommend that Respondent's Conditional Guilty Plea be accepted and that he be found guilty of violating **Rule 3-4.3** (Misconduct and Minor Misconduct - The commission by a lawyer of any act that is unlawful or contrary to honesty and justice may constitute a cause for discipline.); **Rule 4-1.3** (Diligence - A lawyer shall act with reasonable diligence

and promptness in representing a client.); **Rule 4-1.4** (Communication - (a) Informing Client of Status of Representation. A lawyer shall: (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in terminology, is required by these rules; (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished; (3) keep the client reasonably informed about the status of the matter. (b) Duty to Explain Matters to Client. A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.); and, **Rule 4-1.16** (d) (Protection of Client's Interest. Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests).

IV. Recommendation as to Disciplinary Measures to Be Applied: Pursuant to the Conditional Guilty Plea for Consent Judgment, I recommend that Respondent receive:

(a) An **Admonishment**; and,

(b) Respondent shall contact staff of the LOMAS program within **30 days** of the Supreme Court issuing its Order to schedule a LOMAS review. In addition, the Respondent shall schedule the initial review within **60 days** of the court order accepting this plea. Respondent shall fully comply with and implement at his sole cost and expense, all recommendations made by LOMAS within **six (6) months** of the recommendation. Respondent shall undergo a final review confirming compliance with, and implementation of, the recommendations of LOMAS. LOMAS may require such additional interviews as it may, in its sole discretion, deem necessary or advisable. LOMAS will provide the Lawyer Regulation Department of The Florida Bar with status reports as to ordered analysis.

V. Personal History and Past Disciplinary Record: After the finding of guilty and prior to recommending discipline to be recommended pursuant to The Rules Regulating the Florida Bar 3-7.6(k)(1), I considered the following personal history and prior disciplinary record of the respondent, to wit:

Age: 54

Date Admitted to Bar: 9/19/2003

List prior discipline: None

- A. Aggravating Factors Include: 9.22
None
- B. Mitigating Factors Include: 9.32
(a) absence of a prior disciplinary record;
(f) inexperience in the practice of law.

VI. Statement of costs and manner in which costs should be taxed: I find the following costs were reasonably incurred by The Florida Bar:

Administrative costs pursuant to Rule 3-7.6(q)(1)(I)	\$1,250.00
The Florida Bar Expenses:	
Investigator Costs	91.72
Bar Counsel Expenses:	29.24
Copy Costs:	19.80
Court Reporting Expenses:	710.50
TOTAL ITEMIZED COSTS:	*\$2,101.26

*Additional Fees apply: \$1,750 for (LOMAS) Law Office Management Assistance Service.

It is apparent that other costs have or may be incurred. It is recommended that all such costs and expenses, together with the foregoing itemized costs, be charged to the respondent and that interest at the statutory rate shall accrue and be payable beginning 30 days after the judgment in this case becomes final unless a waiver is granted by the Board of Governors of The Florida Bar.

Dated this 27th day of February, 2009.

Walter L. Schafer, Jr., Referee

Original Report of Referee to Supreme Court original file:

Copies of this Report of Referee only to:

Maria L. Torres, Assistant Staff Counsel, The Florida Bar, 5521 W. Spruce Street, Suite C-49, Tampa, Florida 33607-5958;

Osei Kwasi Prempeh c/o Scott K. Tozian, Esquire, Smith, Tozian & Hinkle, 109 North Brush Street, Suite 200, Tampa, Florida 33602; and,

Kenneth Lawrence Marvin, Esquire, Staff Counsel, The Florida Bar, 651 E. Jefferson Street, Tallahassee, Florida 32399-2300.