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June 26, 2014

Mark Neary, Clerk
Supreme Court of New Jersey
P.O. Box 970
Trenton, New Jersey 08625-0962

Re: **In the Matter of Edward Seth Cooper**
Docket No. DRB 14-089
District Docket No. XIV-2013-0157E

Dear Mr. Neary:

The Disciplinary Review Board reviewed the motion for discipline by consent (reprimand or such lesser discipline as the Board deems warranted), filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-10(b). Following a review of the record, the Board determined to grant the motion. In the Board's view, a reprimand is the appropriate measure of discipline for respondent's misconduct.

Specifically, in 2004, respondent represented William Woytowicz in a divorce action. Under the terms of the final judgment of divorce, upon the sale of a liquor license that Woytowicz owned, his wife, Joanne Murphy, was to receive one-half of the sale proceeds.

In December 2010, six years after the divorce, Woytowicz retained respondent to represent him in the sale of the liquor license to an unrelated entity, for \$75,000. Having forgotten, in the intervening years, that the divorce agreement provided that his client's former wife, Murphy, was entitled to a one-

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half share of the sale proceeds, respondent disbursed most of the net proceeds, \$54,500.67, to Woytowicz. Respondent also took a \$3,750 legal fee for the representation, leaving the sum of \$2,394.53 in his trust account for that matter.

In June 2011, after Murphy learned of the sale, she wrote to respondent, reiterating her entitlement to a one-half interest in the asset and promising legal action, if she did not receive it. In reply, respondent claimed a set-off on his client's behalf. Respondent admitted to ethics authorities that the set-off was not called for in the divorce agreement.

A year after the sale, in June 2012, respondent released the remaining \$2,394.53 to his client, leaving a zero balance on account of the transaction.

The Board found that, because respondent had forgotten about the terms of the divorce, his release of the \$54,500.67 to his client was not unethical. Respondent, however, released the remaining \$2,394.53 to Woytowicz, in June 2012, only one year after Murphy had reminded him of her entitlement to half of the proceeds. By releasing the funds to his client when he was aware of the terms of the divorce judgment, respondent violated RPC 3.4(c). He also violated RPC 1.15(a) and (b) by disbursing the remaining \$2,394.53 to his client, knowing that Murphy was entitled to a share.

Conduct analogous to respondent's has resulted in reprimands. See, e.g., In re Vellekamp, 171 N.J. 74 (2002) (attorney, under pressure from her supervising attorney, made misrepresentations to matrimonial clients on the clients' bills and counseled and assisted a matrimonial client to cash a bearer bond to pay the supervisor's legal bill, in violation of a court order directing that the bond remain untouched until the resolution of the client's divorce case) and In re Milstead, 162 N.J. 96 (1999) (attorney disbursed escrow funds to his client, in violation of a consent order). But see In re Spizz, 140 N.J. 38 (1995) (admonition for attorney who, against a court order, released to the client funds escrowed for a former attorney's fees and misrepresented to the court and to the former attorney that the funds remained in escrow; the admonition was premised on the attorney's reasonable belief that he could lawfully release the escrow funds).

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In mitigation, the Board considered that respondent has no prior discipline since his 1989 admission to the bar, thereby demonstrating that his conduct was out of character. Also, respondent readily acknowledged his wrongdoing by entering into a stipulation with the OAE.

Enclosed are the following documents:

1. Notice of motion for discipline by consent, dated March 27, 2014.
2. Stipulation of discipline by consent, dated March 26, 2014.
3. Affidavit of consent, dated March 25, 2014.
4. Ethics history, dated June 26, 2014.

Very truly yours,



Ellen A. Brodsky
Chief Counsel

EAB/paa
encls.

c: Bonnie C. Frost, Chair (via e-mail)
Disciplinary Review Board (w/o encls.)
Charles Centinaro, Director
Office of Attorney Ethics (w/o encls.)
Michael J. Sweeney, First Assistant Ethics Counsel
Office of Attorney Ethics (w/o encls.)
Rubin M. Sinnis, Respondent's Counsel (w/o encls.)