

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

In the matter of:  
BRADLEY DOUGLAS WEIN

VSB DOCKET NUMBERS: 07-032-0903  
08-032-073809  
07-032-1855

**ORDER OF SUSPENSION**

These matters came to be heard before the Virginia State Bar Disciplinary Board (the "Board") on September 23 and 24, 2010, upon the following Certifications from the Third District Committee of the Virginia State Bar:

1. The Certification dated and sent to Respondent on November 30, 2009, VSB Docket No: 07-032-0903 (referred to herein as the "Catlett matter");
2. The Certification dated and sent to Respondent on April 2, 2010, VSB Docket No: 08-032-073809 (the "Mountford matter"); and
3. The Certification dated and sent to Respondent on October 20, 2009 VSB Docket No: 07-032-1855 (the "Woodruff matter").

The hearing was held before the duly convened panel of the Board comprised of Attorney members Martha JP McQuade, 2<sup>nd</sup> Vice Chair and presiding (the "Chair"); Tyler E. Williams, III; Sandra L. Havrilak; and Raighne C. Delaney; and Lay Member Stephen A. Wannall. The Respondent Bradley Douglas Wein ("Respondent" or "Wein") was present and represented by Christopher J. Collins ("Respondents's Counsel"); Harry M. Hirsch appeared as Counsel for the Virginia State Bar in the Catlett matter and the Mountford matter; and Renu M. Brennan appeared as Counsel for the Virginia State Bar in the Woodruff matter. The proceedings were recorded and reported on September 23, 2010 by Jennifer L. Hairfield, a certified court reporter with Chandler & Halasz, P.O. Box 9349, Richmond, Virginia 23227, 804-730-1222; and on September 24, 2010 by Valarie L.S. May, a registered professional court reporter, also with Chandler & Halasz.. Both were duly sworn by the Chair.

The Chair opened the hearing by polling the Board members to ascertain whether any of them had any personal or financial interest or bias which would affect, or could reasonably be perceived to affect, their ability to hear the case fairly, and all, including the Chair, answered in the negative. The Chair explained the hearing process and Counsel agreed as to the presentation of evidence in these matters.

In the Catlett matter, in accordance with the pretrial conference ruling and as confirmed at the hearing, the Bar's Exhibits A 1-16 and Respondent's Exhibits A 1-5, 7-10 were admitted into

evidence, without objection. Respondent's Exhibit A-6 was withdrawn and Exhibit A-7 was admitted over the Bar's objection.

In the Mountford matter, in accordance with the pretrial conference and as confirmed at this hearing, the Bar's Exhibits B 1-40 and the Respondent's Exhibits B 1, 2, 4, 6, 7, 8, and 9 were admitted into evidence without objection; Respondent's Exhibit B 3, 5, 10 and 11 were withdrawn as duplicative.

In the Woodruff matter, in accordance with the pretrial conference and as confirmed at the hearing, the Bar's Exhibits C 1-27 were admitted into evidence without objection. The Respondent's Exhibit C-1 was not ruled on at the pretrial, nor received into evidence at the hearing; all other exhibits offered by the Respondent, specifically C 2-6, were either withdrawn or not admitted.

Bar Counsel called the following witnesses in the Catlett matter, each of whom testified on September 23, 2010: Kathy Catlett; Donald Lantagne; Cam Moffatt; and, Eddie Whitlock. Respondent also testified in his case.

In the Mountford matter, Bar Counsel called the following witnesses, each of whom testified on September 23, 2010: Frank T. Mountford, Cam Moffatt, and Amy Hatcher. Respondent called Brenda Wein.

In the Woodruff matter. Bar Counsel called the following witnesses, each of whom testified on September 24, 2010: Charles Butler Barrett; Brent Woodruff; William E. Woodruff, Jr; and, Marjorie Woodruff. The Respondent testified in his case.

## I. FINDINGS OF FACT

1. At all relevant times Respondent has been an attorney duly licensed to practice law in the Commonwealth of Virginia and his address of record with the Bar is 3900 Westerre Parkway, Suite 300, Richmond, Virginia 23233. (VSB Exhibit A-3) According to Respondent, he has been practicing law for nineteen (19) years.

2. The Respondent was properly served with notice of these proceeding in accordance with Part 6, § IV ¶ 13-18 (C) of the Rules of Professional Conduct. (VSB Exhibit A-1; B-1; C-1)

### A. The Catlett Matter (VSB Docket No. 07-032-0903)

1. At all times relevant hereto, Respondent Bradley Douglas Wein [Wein], has been an attorney licensed to practice law in the Commonwealth of Virginia.

2. Wein represented Complainant Kathy Catlett [Catlett] in the appeal of a domestic relations case to the Virginia Court of Appeals [Court]. Wein utilized the services of Lantagne

Legal Printing in the process of preparing and filing pleadings with the Court. Lantagne Legal Printing submitted invoices to Wein for the services rendered as follows:

(a) Invoice number 40171, dated March 2, 2004, for, *inter alia*, copies of a brief of appellant and copies of a joint appendix; the initial amount billed was \$5,251.49; the final version of this invoice reflected additional entries for “finance charges on overdue balance,” and a payment by Wein of \$250.00 on December 3, 2004; the final total amount due on said invoice was \$6,165.91. (VSB Exhibit A-15)

(b) Invoice number 40306, dated March 26, 2004, for, *inter alia*, copies of a brief of appellee; the final version of this invoice reflected an additional entry for “finance charges on overdue balance;” the final total amount due on said invoice was \$174.16. (VSB Exhibit A-15)

(c) Invoice number 40379, dated April 12, 2004, for, *inter alia*, copies of a reply brief of appellant; the final version of this invoice reflected an additional entry for “finance charges on overdue balance;” the final total amount due on said invoice was \$152.09. (VSB Exhibit A-15)

(d) The final total amount due as billed on all three of said invoices was \$6,492.16, including finance charges, but not including any future collection costs.

3. Catlett testified that Wein told her that she had to pay the Lantagne bill before they finalized the printing and filed the case in the Court of Appeals. On or about April 6, 2004, she delivered to Wein’s law office a memo addressed to Wein and a check, both dated April 6, 2004. Since no one was at the office, Catlett slipped the memo and check under the door of Wein’s law office. The check was number 8631, in the amount of \$5,300.00, payable to Wein, on a Chase Manhattan Bank USA, N.A. account [Catlett check]. A notation on the Catlett check was the following, “Lantagne Legal Printing, Inv # 40170, \$5,251.49.” (VSB Exhibit A-6)

4. Catlett’s memo referred, *inter alia*, to an attachment as follows: “A check in the amount of \$5,300.00 for the Lantagne Legal Printing bill (the bill was for \$5,251.49).” (VSB Exhibit A-6)

5. Wein presented bills for legal services and expenses to Catlett with regard to his representation. Said bills, *inter alia*, included entries for each of the three Lantagne Legal Printing invoices and the payment of \$5,300.00 on April 6, 2004. (VSB Exhibit A-7)

6. Lantagne Legal Printing and its employees sought payment of the invoices from Wein. By letter dated October 12, 2004, addressed to Ms. May Ferafim at Lantagne Legal Printing, Wein stated, *inter alia*, the following:

My client has unfortunately ignored my billings. This leaves me in the position of paying on the above bill. I need to speak with you about making payment arrangements. (VSB Exhibit A-8)

7. The above language falsely implied that Catlett had not paid any funds to Wein for the payment of the invoices. Wein admitted that this representation was not accurate.

8. According to Donald Lantagne, Wein made only one payment on the invoices, the \$250.00 payment on or about December 3, 2004. Subsequently, the invoices were sent to an attorney for collection in May of 2005. Suit was filed with a return date of October 13, 2005, when Wein appeared to contest the matter and a trial date was set.

9. On October 15, 2005, Wein filed a Chapter 7 personal bankruptcy, case number 05-42568-DOT. In Schedule F, Creditors Holding Unsecured Nonpriority Claims, Wein listed Lantagne Legal Printing with a claim amount of \$6,492.16. (VSB Exhibit A-9)

10. On October 31, 2005 the collection attorney, Edward Whitlock [Whitlock] wrote Catlett about the outstanding debt. (VSB-Exhibit A-10) According to Catlett, upon receiving the letter from the collection attorney she called Wein. Wein told her she had paid him for the printing costs, there had been some mistake and the printer was at fault and he would take care of the matter.

11. On November 3, 2005, an employee of Whitlock, Ms. Edwards, spoke with Wein. Wein advised her he had sent Lantagne Legal Printing a check for \$5,200.00 which was never cashed and he wanted to replace the check. This representation was also false. Wein asked for a reduction of the amount owed.

12. By letter dated November 4, 2005, Wein wrote to Whitlock indicating, *inter alia*, that Catlett had no liability on the Lantagne Legal Printing account that "payment had been previously made but did not post." Wein stated he enclosed his check for \$5,272.35 as payment in full on the Lantagne Legal Printing account. (VSB Exhibit A-12) The invoices actually totaled \$6,492.16, not including collection costs; however, Whitlock testified that Lantagne Legal Printing wrote off the difference.

13. Mr. Lantagne testified that upon Wein's statement that he previously sent a check to Lantagne Legal Printing he investigated if one was ever received. Mr. Lantagne stated that he never received a check or letter from Wein regarding a payment before Wein actually sent the money to Whitlock. That was the payment made by Wein in the amount of \$5,272.35 by check number 1476, dated November 5, 2005, on a Wachovia Bank, N.A. account captioned, "Bradley D. Wein, and P.C." (VSB Exhibit A-13)

14. During the Bar's investigation of this matter, a subpoena *duces tecum* was duly served upon Wein regarding his representation of Catlett, in which he was required to produce, *inter alia*, all trust account records. No trust account records were produced. (VSB Exhibit A-16)

15. Also, during the investigation of this matter, Wein was interviewed by Investigator Cam Moffatt [Moffatt]. Wein told Moffatt he believed the Catlett check would have

been deposited into his operating account. He also told Moffett, that his secretary deposited the money into his operating account.

16. According to Wein's Amended Response, dated October 6, 2006, "All receipts from Mrs. Catlett were deposited in Mr. Wein's operating account earned, because Mrs. Catlett ran an open balance with Mr. Wein."

17. Upon receipt of the Catlett check, Wein applied the funds to his then outstanding total running bill including fees and costs. Wein did not deposit the Catlett check into a trust account. Wein did not pay the funds of the Catlett check to Lantagne Legal Printing, except for \$250.00, until on or about November 5, 2005.

18. Wein testified that the check was deposited into his operating account by his secretary Beth Christopher. He did not recall seeing the check or memo from Catlett. He admitted that it was wrong and the money should have gone into a trust account.

19. From April 6, 2004, until on or about November 5, 2005, when the remaining debt based upon the three invoices was finally paid, the funds of the Catlett check should have been held in a trust account, less an appropriate adjustment for the \$250.00 payment by Wein.

20. Wein also testified that he did not know there was a problem until he was contacted by Whitlock. Wein stated he thought the Lantagne bill was paid because his secretary told him payment was made. He acknowledged his mistake and admitted the payment was not made.

21. Wein also testified that during this time he was in the middle of a contested and expensive divorce himself and he filed bankruptcy.

22. Wein admitted to sending the letter to Lantagne Printing (VSB Exhibit A-8) and that it was in error; and, even though he told Whitlock's assistant that he sent a check that did not post that, too, was in error.

23. While Wein stated he accepted responsibility for his actions, he still blamed his secretary for depositing the money in the operating account, not showing him the memo from Catlett, and sending the note to Lantagne, claiming he paid the bill, when in fact he did not.

**B. The Mountford Matter (VSB Docket No. 08-032-073809)**

1. At all times relevant hereto the Respondent, Bradley Douglas Wein [Wein] has been an attorney licensed to practice law in the Commonwealth of Virginia.

2. On or about December 18, 2006, Wein was court-appointed to represent Lankford in the Juvenile and Domestic Relations District Court of Chesterfield County [court] on two charges: malicious wounding, case number JA045016-03-00, and destruction of property, case

number JA045016-04-00. The appointment order recited the next hearing date in the Lankford matters of February 6, 2007, at 10:00 a.m. (VSB Exhibit B-4)

3. On December 28, 2006, a Motion for Bond was filed by David Hicks, Esq., [Hicks] who informed the court in a cover letter that his firm had been retained by Lankford. A hearing on bond was set for December 29, 2006 and on that date Lankford was released on bond. No order of substitution of counsel was entered. (VSB Exhibit B-6)

4. On February 6, 2007, Whitney Tymas, Esq. [Tymas] of Hicks Tymas, LLC appeared in court on behalf of Lankford, moved for a continuance, and the cases were continued to April 16, 2007. On April 16, 2007, the cases were again continued to May 23, 2007. On May 23, 2007, Hicks appeared with Lankford and she was found not guilty. (VSB Exhibit B-5)

5. During the Bar's investigation of this matter, Wein was interviewed by Investigator Cam Moffatt [Moffatt]. According to Moffatt, Wein indicated to Moffatt that when he was appointed to represent Lankford he was out of state visiting his ill father and between his appointment and the February 6, 2007, court date he spent a lot of time out of town with his father. Wein stated when he returned to Richmond in January, he looked at the statutes relating to the charges, read case law online and prepared a bond motion for filing on February 6, 2007, if needed. Wein said he went to court early on February 6, 2007, intending to speak with Lankford prior to the cases being called. However, when he got to court he learned that another attorney had been retained. When the cases were called another attorney appeared, and sought and obtained a continuance. Wein stated that during the hearing, he was in the courtroom with his assistant but he did not make an appearance. Wein did not speak to Lankford or her family.

6. Wein submitted to the court a List of Allowances [voucher] number 003952896 which he signed June 6, 2007, for his representation of Lankford [Lankford voucher]. (VSB Exhibit B-8)

7. Such a voucher is the means by which a court-appointed attorney certifies to the court the time and expenses per case which he or she claims for the purpose of obtaining the authorization of the court and approval of payment for his services as a court-appointed attorney. The certification which the attorney signs states the following:

I certify that the above claim for fees and/or expenses is true and accurate and that no compensation for the time or services set forth has previously been received.

8. In the Lankford voucher, Wein certified to the court that the trial/service date was February 6, 2007. Regarding the destruction of property charge, he claimed one hour of court time and one hour of out of court time for a total amount claimed of \$120.00. As to the malicious wounding charge, Wein claimed two hours of in court time and two hours of out of court time for a total amount claimed of \$448.00. For both charges, Wein claimed a total of \$568.00. The court authorized \$240.00 the maximum amount permitted to Wein in the Lankford matters.

9. Subsequently, Lankford received notice of the assessment of costs associated with the malicious wounding and destruction of property charges including the \$240.00 which the court had approved for payment to Wein. Lankford wrote the court by letter dated August 22, 2007, indicating she had never had any contact with Wein and neither she nor her family were aware of any services having been performed for Lankford in the case; and, that her family had retained the firm of Hicks instead. Lankford stated she was writing the court because she was being charged lawyer's fees by a lawyer that she had never used. (VSB Exhibit B-9)

10. Frank Mountford, Clerk of the Juvenile and Domestic Relations District Court of Chesterfield County [Mountford], testified that he contacted Lankford after receiving her letter. Mountford learned that Lankford's family attempted to contact Wein by telephone unsuccessfully and then retained Hicks; that Wein did contact her family after Hicks had been retained; and, was told his services were no longer needed.

11. Mountford received from Tymas a letter dated August 24, 2007, in which Tymas indicated her office represented Lankford at all court appearances during the pendency of the Lankford charges and she appeared with Lankford in court on February 6, 2007. Tymas further stated that no other counsel appeared with Lankford at that time. (VSB Exhibit B-11)

12. Because Lankford contested Wein's court-appointed attorney's fees, Mountford repeatedly sought from Wein an affidavit of time supporting the representations made in his Lankford voucher. Mountford wrote Wein by letter dated December 3, 2007, indicating the prior efforts to get Wein to submit an affidavit and asking Wein to provide an affidavit to the court. (VSB Exhibit B-12)

13. On December 17, 2007, Mountford received an undated sworn affidavit from Wein certifying the time he expended on the Lankford charges in case numbers JA-045016-03-00 and -04-00 was correct. The affidavit did not specifically refer to the representations made by Wein in the Lankford voucher. (VSB Exhibit B-13)

14. By letter to Wein dated January 30, 2008, Chief Judge Bonnie C. Davis of the Juvenile and Domestic Relations District Court of Chesterfield County informed Wein she was advised that the Lankford voucher had come into question. She stated, *inter alia*, "The overriding appearance is that you were reimbursed for expenses that were not justifiable. The purpose of this letter is to notify you of the judges' decision to remove you from the court's list of available court appointed counsel until this matter can be resolved." (VSB Exhibit B-14)

15. According to Moffatt, she asked Wein how he accounted for the time he included in the Lankford voucher. In response, Wein said his out of court time included preparation of a bond motion, letter to the court, some research and travel time. Wein stated he drove 72 miles round trip for the February 6, 2007 hearing date which he estimated took him at least two hours. Wein did not keep a time sheet in the Lankford representation. Moffatt also testified that she also drove the trip as described by Wein and the miles were about the same.

16. The bar issued a subpoena *duces tecum* to Wein for his file in the Lankford representation. In response, Wein produced a copy of the Lankford voucher, the appointment order, a copy of the front page of an arrest warrant for the malicious wounding charge, a copy of the statute applicable to each charge, and a one line unsigned motion for bond with unsigned cover letter dated February 6, 2007. (VSB Exhibits B-15,16)

17. According to Wein's calendar for February 6, 2007, he had two other clients whose cases were set for that date in the court: Cullum at 10:00 a.m., and Williams at 11:00 a.m.

18. On December 28, 2006, the court appointed Wein to represent Cullum in an assault and battery charge in case number JA 047087-01-00. The appointment order recites that the next hearing date and time in the matter was February 6, 2007, at 10:00 a.m. (VSB Exhibit B-18)

19. According to the warrant of arrest, on February 6, 2007, Cullum appeared along with the Commonwealth's Attorney, but without defense counsel. Cullum waived the right to be represented by a lawyer in the criminal case, and a *nolle prosequi* was ordered in the case on the motion of the Commonwealth. (VSB B-18, 19)

20. Wein submitted a List of Allowances, number 003952799, which Wein certified by his signature on February 6, 2007, and in which he indicated a trial/service date of February 6, 2007, in the Cullum case and thirty minutes of out of court time for a total amount claimed of \$120.00. (VSB Exhibit B-21)

21. Amy Hatcher was the clerk in the courtroom on February 6, 2007. She testified that she would recognize Wein on sight. She did not recall seeing Wein or his assistant in court on that date or advising Wein that his client had retained counsel and he would not be needed. The court file in the Cullum case includes a February 7, 2006 handwritten note by Hatcher stating she called Wein and told his secretary that Cullum had waived an attorney, the case ended with a *nolle prosequi* and Wein needed to send the court his voucher. (VSB Exhibit B-22)

22. Wein submitted a second List of Allowances, number 003952798, in the same Cullum case, number JA 047087-01-00, which voucher Wein certified by his signature on April 18, 2007. In the voucher Wein indicated a trial/service date of February 6, 2007 and in court time of one hour, for a total amount claimed of \$120.00. (VSB B-23)

23. By letter to Wein dated April 24, 2007, from Court Room Deputy Clerk Tammy Williams, the second Cullum voucher was enclosed and Wein was informed that he had already filed the first voucher in the case. (VSB Exhibit B-24) On April 25, 2007, Judge Bonnie C. Davis authorized \$120.00 allowed to Wein in the Cullum case.

24. On September 27, 2006, the court appointed Wein to represent BJW. Wein represented Williams at hearing and sentencing was set for January 30, 2007. According to a January 30, 2007, e-mail in the court's file from a member of the staff, Wein called the court that

morning indicating he was sick and would not appear that day in the Williams case and the matter was continued to February 6, 2007. (VSB Exhibit B-25)

25. According to a February 5, 2007, e-mail in the court's file in the Williams case from a member of the staff, Wein was sick with the flu and may not be able to make it for his case the next day at 11:00 a.m. regarding BJW; he would be calling the next morning to let the court know whether he would in fact be coming in or not. (VSB Exhibit 26)

26. In a February 6, 2007, e-mail in the court's file from Cheryl Anderson to Tammy Williams and another, she stated the following:

Bradley Wein is sick with the flu and will not be able to appear in court today, he has three cases: Lankford –BCD, Cullum –BCD and BJW –EAR. He apologizes and said if there is any way the cases could be carried over until Thursday or Friday, he should be able to appear. (VSB Exhibit B-27)

27. According to Mountford, the disposition order in the BJW case for February 6, 2007, indicated the case was continued on the motion of the defense with the notation, "Lawyer out sick." He also testified that Wein did not submit a voucher for February 6, 2007, in the DJW case.

28. Wein was required by the court to provide time and/or mileage records to support vouchers submitted regarding other court-appointments including Hermsen, Nichols, Jenkins and RWD.

29. Wein represented Hermsen in eight cases. Wein submitted to the court three vouchers, numbers 004724011, 004724012 and 004724013, each of which he certified by his signature on November 16, 2007, for the eight cases. In the vouchers, Wein indicated October 16, 2007, as the trial/service date in each case. Wein claimed in seven cases \$445.00 for both in court and out of court time and total expenses of \$38.98, for a total claimed in each of the seven cases of \$483.98. In the eighth case, Wein claimed \$445.00 for both in court and out of court time, total expenses of \$50.73, for a total claimed in the eighth case of \$495.73. (VSB Exhibit B-28)

30. By letter dated December 21, 2007, to Wein, Judge Edward A. Robbins, Jr. advised that approval of the Hermsen claim would require Wein to provide the Clerk with his time and mileage records by January 17, 2008. (VSB Exhibit B-29)

31. By letter dated January 17, 2008, Wein submitted to Mountford his time sheet for the Hermsen representation which showed, *inter alia*, total mileage of 639.6 miles. In his cover letter, Wein asked that his mileage be adjusted. (VSB Exhibit B-30)

32. By letter dated January 24, 2008, Judge Robbins wrote to Wein upon receipt of the Hermsen claim and Wein's time sheet. The court denied Wein's request for mileage reimbursement. (VSB Exhibit 31)

33. The court also noted in its January 24, 2008, letter that although Wein had claimed 87.6 miles in each of seven of the Hermsen cases and 114 miles in the eighth case, the court noted the distance from Wein's office to the courthouse was less than 20 miles and a round trip was less than 40 miles. The court noted there was an 88 mile discrepancy between the total mileage claimed (727.2) and the total mileage shown on the time sheet (639.6) and there was a discrepancy of 47 miles between the amount claimed and the actual distance in each of five trips to the courthouse.

34. In its January 24, 2008 letter, the court stated, *inter alia*, the following:

The Court has significant reservations concerning the accuracy of the claimed hours set forth on both the voucher and timesheet. You are cautioned to be diligent and mindful of your obligation to maintain accurate time and expense records in each case. The Court will closely scrutinize your future claims for the foreseeable future...

35. The Court approved Wein's claim in the amount of \$960.00 which was the maximum allowable total fee in the Hermsen cases based upon its determination that Wein had actual time in the cases which exceeded eleven hours.

36. On January 11, 2008, Wein certified by his signature voucher number 4881877 in which he claimed mileage, time and expenses regarding representation of Nichols. Judge Robbins wrote to Wein by letter dated January 17, 2008, indicating that Wein needed to submit to the Clerk his mileage records for the Nichols matter. (VSB Exhibit B-32)

37. On December 7, 2007, Wein certified by his signature voucher number 004724018 in which he claimed mileage and time regarding representation of Jenkins. (VSB Exhibit B-34)

38. By letter dated January 24, 2008, from Judge Robbins to Wein, the court indicated that Wein needed to provide the Clerk with his time and mileage records in the Jenkins cases by February 14, 2008. (VSB Exhibit B-35)

39. Wein submitted a letter dated January 31, 2008, addressed to Judge Robbins, which was stamped received by the court on January 31, 2008. The letter references the Hermsen, Nichols and Jenkins cases. In the letter, Wein took issue with the court's comments concerning the Hermsen cases. (VSB Exhibit 36)

40. Judge Robbins responded to Wein's January 31, 2008, letter indicating the court did not resolve the issue of the reasonableness of the total hours claimed by Wein but authorized

the maximum amount allowable for legal services provided. The court also noted the records provided regarding expenses were “inconsistent without explanation and requested payment for driving distances greater than the shortest travel distance.” (VSB Exhibit B-37)

41. On January 31, 2008, Wein certified by his signature on voucher number 4881799 regarding representation of RWD. Wein submitted a voucher for services rendered on January 1, 2008 (VSB Exhibit B-38). By letter dated February 22, 2008, Mountford wrote Wein indicating that approval of the claim would require Wein’s submission of his time and mileage records for the RWD case by March 14, 2008. (VSB Exhibit 39)

42. According to Brenda Wein, Wein’s current wife and legal assistant at the time, on February 6, 2007, Wein was very sick. However, Wein went to court and she accompanied him. According to Mrs. Wein by the time the third case was called Wein was too sick to stay. They left the court and called the clerk to say he was too sick to stay. Mrs. Wein also testified that Mountford told them that Wein may submit mileage on his vouchers.

C. The Woodruff Matter (VSB Docket No. 07-032-1855)

1. At all times relevant hereto, Wein has been an attorney licensed to practice law in the Commonwealth of Virginia.

2. Wein represented the late Mary B. Woodruff in the legal malpractice case of *Mary Woodruff v. Richard E. Railey and Railey and Railey, P.C.*, initially filed in the Circuit Court for the City of Richmond, and transferred as Case No. CL97-275, to the Circuit Court for the County of Southampton.

3. In the Motion for Judgment, prepared, signed, and filed by Wein, at Paragraph 16 he alleged as follows:

“That the plaintiff’s treating physician, Dr. Kenneth P. Brooks, noted that the plaintiff was suffering from a delusional disorder or depression which developed after, and was causally related to, her work injury. A copy of Dr. Brooks’ letter is attached hereto as plaintiff’s Exhibit 3, and is incorporated herein by reference.”

4. Plaintiff’s Exhibit 3 provides as follows:

“She injured her wrist while working as a trimmer at Perdue Farms, Inc. She apparently had this surgery and recovered initially but than (*sic*) began developing related psychiatric complications. She would spend much of her time preoccupied by pain and “disability” in her wrist. She would think and talk about her hand for prolonged periods of time. She was unable to do her housework at home. She would sit looking at her hand, moving her fingers, saying that they “felt dead.” She developed a marked

sleep and appetite disturbance and severe dysfunction of her abilities to perform both at home and at work. She has had three hospitalizations at Tucker Pavilion between October of 1989 and February of 1990. On this last stay, she received a course of electroconvulsive therapy with dramatic improvement.” (VSB Exhibit C-3)

5. According to Woodruff and the pleadings, Mrs. Woodruff suffered from depression, and she underwent shock therapy. Wein advised the Bar’s investigator that he was unaware that Mrs. Woodruff had undergone shock treatment or that she was severely depressed despite the fact that he attached a letter attesting to that fact in the Motion for Judgment he prepared on Mrs. Woodruff’s behalf. (VSB Exhibit C-27)

6. *Mary Woodruff v. Richard E. Railey and Railey and Railey, P.C.*, Case No. CL97-275, was settled and dismissed with prejudice June 6, 2002. According to Wein and Mr. William E. Woodruff, Jr. [Woodruff], Wein not only maintained contact with the Woodruffs after the settlement; he was their friend and confidant. Additionally, Woodruff believed he was his lawyer.

7. According to Woodruff, he suffered from a right frontal lobe brain injury when he was a child. He also testified that both he and his wife were on disability and limited means to live.

8. On September 1, 2003, after the dismissal of *Mary Woodruff v. Richard E. Railey and Railey and Railey, P.C.*, Case No. CL97-275, Wein borrowed \$25,954.69 from the Woodruffs. At the time of the loan, the Woodruffs were on disability and had limited resources. (VSB Exhibit C-6) Wein testified that the Woodruffs never presented to him as having a difficult time financially.

9. The parties dispute the genesis of the loan. Woodruff testified that Wein inquired as to the interest rate provided by the institution which held Mrs. Woodruff’s settlement funds. Woodruff stated that when his wife received her settlement they put the money in a certificate of deposit at BB&T Bank. Woodruff testified that Wein told them that he could get a better interest rate for them if they gave him the money to invest at Wachovia Bank.

10. Woodruff also testified that he did not ask questions of Wein, that he was their lawyer and friend. He trusted Wein. Woodruff testified that he never gave Wein a loan; Wein never told him it was a loan; and, Wein never discussed any conflict of interest, regarding the transaction.

11. Wein denied Woodruff’s testimony and stated that after the malpractice case with Mary Woodruff was over he did not perform any services for the Woodruffs. According to Wein, the Woodruffs knew he was having marital difficulties and was in need of money and that they wanted to help him and graciously offered to lend him the money.

12. Wein prepared the promissory note pursuant to which he borrowed \$25,954.69 from the Woodruffs. The promissory note states that "For Value Received, Bradley D. Wein, P.C. acknowledges receiving from William and Mary Woodruff the sum of \$25,954.69, and promises to pay William and Mary Woodruff interest thereon in the amount of 4.75% per annum for a period of five years (\$1,232.80 per year), interest payable quarterly in the amount of \$308.20 beginning September 1, 2003 and to return the principal or renew the loan on June 1, 2008." The promissory note was not dated. (VSB Exhibit C-6) Apparently, Wein did not consider this transaction to be practicing law.

13. Wein admitted that he prepared the promissory note; that he made his law firm the borrower; and, the note was signed at his law office. Wein admitted that he never told the Woodruffs to consult independent counsel before entering into the transaction with him. Wein also testified that he was going to use the money to expand his law practice.

14. At or about the same time Wein borrowed the Woodruffs' money, Wein, as counsel for the Woodruffs, prepared a trust entitled the Woodruff Family Trust. According to Woodruff, he talked to Wein about creating a trust to protect his real property from creditors, due to mounting hospital bills. According to Wein, he created the Woodruff Family Trust to hold the Woodruffs' real estate, although he was unable to state why Woodruff wanted the trust. Wein has no writing which memorializes the Woodruff Family Trust.

15. At or about the same time that Wein created the Woodruff Family Trust, and at or about the same time Wein received the \$25,954.69 from the Woodruffs, Wein prepared two Deeds of Gift pursuant to which the Woodruffs conveyed title to their real estate and residential property to Wein as trustee of the Woodruff Family Trust.

16. The Deeds of Gift are dated August 15, 2003, and were recorded September 5, 2003. (VSB Exhibit C-8,9)

17. Through the Deeds of Gift, Wein transferred title of the Woodruffs' property to himself as trustee of the Woodruff Family Trust.

18. Although Wein testified that he resigned as Trustee shortly after creating the trust, he failed to produce any documents to support that position.

19. On October 15, 2005, Wein filed a Chapter 7 Bankruptcy Petition. (VSB Exhibits C-10, 11). Wein had made few, if any, interest payments to the Woodruffs pursuant to the terms of the promissory note, and he still owed them the principal.

20. According to Woodruff, even though they were still in contact with Wein, Wein did not advise the Woodruffs that he filed for bankruptcy protection.

21. Wein's bankruptcy schedules only listed a debt of \$10,000.00 to Buck Woodruff. Wein also listed an incorrect address for Woodruff in his bankruptcy schedules, and incorrectly spelled Woodruff as "Wudruff." (VSB Exhibit C-11)

22. As a result of Wein's failure to provide the Woodruffs' correct address or otherwise notify them of the bankruptcy proceedings, the Woodruffs never received notice of the bankruptcy proceedings. Woodruff confirmed that at no time did he know of the bankruptcy and Wein never told him about it. Wein admitted that he reviewed the bankruptcy pleadings before they were filed and never corrected them.

23. On January 29, 2006, Mrs. Woodruff passed away.

24. On February 7, 2006, unbeknownst to Woodruff, Wein's debts were discharged, including the debt listed to the Woodruffs in the alleged amount of \$10,000.00. At no time did Wein ever provide an accounting, bank statement or other document reflecting the loan payments or any investment of funds to the Woodruffs. The record is unclear regarding what money, if any, Wein repaid on the promissory note. The Board did not find Wein's testimony to be credible on this issue.

25. According to Marjorie Woodruff, Woodruff's current wife, in April 2006 they went to Wein's office to get an accounting of the money and to find out what was going on regarding the money. Even though Woodruff consented to his wife being present, Wein refused to meet with her present. Mrs. Woodruff did not believe Wein gave her husband any money; and, knows Wein did not give him an accounting.

26. Subsequently in the Fall of 2006, Woodruff and his wife went to see Wein again. Wein inquired if he was alone and when he told him his wife was with him Wein refused to meet with them. At this time, the property tax bills were not being paid; Woodruff had hospital bills to be paid; and, when he tried to refinance his property he was told he could not do so because of the Deed of Gift and the property being held in trust. Throughout this time, Wein would not respond to Woodruff's request for information. In November 2006, Woodruff sent a certified package to Wein requesting information. The package was returned unclaimed.

27. In December 2006, Woodruff filed a bar complaint against Wein.

28. Woodruff subsequently hired C. Butler Barrett, Esq. [Barrett] to assist him with this matter. Barrett requested from Wein a copy of the Woodruff Family Trust and/or any documents relating to the Trust. (VSB Exhibit C-13) Barrett never received any documents from Wein.

29. On November 27, 2007, the Bar subpoenaed Wein to produce the Woodruff Family Trust and documentation related thereto, as well as all records relating to the Woodruffs' loan, including the creation and repayment of the loan. (VSB Exhibit C-19)

30. Wein did not produce any documents, either relating to the Woodruff Family Trust or the loan, or otherwise in response to the Bar's subpoena requesting trust documents. Rather, in a December 19, 2007 letter, Wein's counsel stated that Wein advised he had no documents responsive to the Bar's demand. Counsel further stated as follows: "Regarding the

loan from William and Mary Woodruff, Mr. Wein advises that Mr. and Mrs. Woodruff were listed as creditors in his bankruptcy petition and that the remaining balance due on the note was discharged.” (VSB Exhibit C-20) Wein testified that he told the Woodruffs about the bankruptcy.

31. In March 2008, in his interview with the Bar’s investigator, Wein stated for the first time that he had previously provided the trust documents to Mr. Woodruff and that he did not retain a copy. Woodruff asserts he was never provided a copy of any trust documents. Wein’s testimony on this topic was inconsistent. He first stated that he gave a copy to Woodruff; then he remembered scanning it into his computer and giving a copy to Woodruff. He stated his computer crashed but that he did keep hard copies. However, he also testified that he and Woodruff took client records to the dump, including the Woodruff Family Trust and threw them away with Woodruff’s consent. He claimed to have destroyed the only copy of the trust that existed, even though he was the sole trustee.

32. Wein never repaid the Woodruffs the sums owed them.

33. Wein blames his bankruptcy lawyer for telling him to discharge the loan even though his P.C. was the borrower; for providing the wrong spelling on the Woodruff name; and, providing their wrong address in the bankruptcy case.

34. After the filing of the bar complaint, Wein finally executed deeds prepared and sent to him by Barrett conveying the properties back to Woodruff.

## II. MISCONDUCT

A. In the Catlett matter (VSB Docket No. 07-032-0903), the Certification charged Wein with violations of the following Rules of Professional Conduct:

### RULE 1.15 Safekeeping Property

- (a) All funds received or held by a lawyer or law firm on behalf of a client, other than reimbursement of advances for costs and expenses, shall be deposited in one or more identifiable escrow accounts maintained at a financial institution in the state in which the law office is situated and no funds belonging to the lawyer or law firm shall be deposited therein except as follows:
- (1) funds reasonably sufficient to pay service or other charges or fees imposed by the financial institution may be deposited therein; or
  - (2) funds belonging in part to a client and in part presently or potentially to the lawyer or law firm must be deposited therein, and the portion belonging to the lawyer or law firm must be withdrawn promptly after it is due unless the right of the lawyer or law firm to receive it is disputed by the client, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved.

- (b) When in the course of representation a lawyer is in possession of property in which both the lawyer and another person claim interests, the property shall be kept separate by the lawyer until there is an accounting and severance of their interests. If a dispute arises concerning their respective interests, the portion in dispute shall be kept separate by the lawyer until the dispute is resolved.
- (c) A lawyer shall:
  - (1) promptly notify a client of the receipt of the client's funds, securities, or other properties;
  - (2) identify and label securities and properties of a client promptly upon receipt and place them in a safe deposit box or other place of safekeeping as soon as practicable;
  - (3) maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accounts to the client regarding them; and
  - (4) promptly pay or deliver to the client or another as requested by such person the funds, securities, or other properties in the possession of the lawyer which such person is entitled to receive.

**RULE 5.3 Responsibilities Regarding Nonlawyer Assistants**

With respect to a nonlawyer employed or retained by or associated with a lawyer:

- (a) a partner or a lawyer who individually or together with other lawyers possesses managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;
- (b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and
- (c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:
  - (1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or
  - (2) the lawyer is a partner or has managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and

knows or should have known of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

- (b) commit a criminal or deliberately wrongful act that reflects adversely on the lawyer's honesty, trustworthiness or fitness to practice law;
- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation which reflects adversely on the lawyers fitness to practice law;

B. In the Mountford matter (VSB Docket No. 08-032-073809), the Certification

charged the Respondent with violations of the following Rules of Professional Conduct:

RULE 3.3 Candor Toward The Tribunal

- (a) A lawyer shall not knowingly:
  - (1) make a false statement of fact or law to a tribunal;
  - (4) offer evidence that the lawyer knows to be false. If a lawyer has offered material evidence and comes to know of its falsity, the lawyer shall take reasonable remedial measures.

RULE 4.1 Truthfulness In Statements To Others

In the course of representing a client a lawyer shall not knowingly:

- (a) make a false statement of fact or law; or
- (b) fail to disclose a fact when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client.

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

- (b) commit a criminal or deliberately wrongful act that reflects adversely on the lawyer's honesty, trustworthiness or fitness to practice law;
- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation which reflects adversely on the lawyers fitness to practice law;

C. In the Woodruff matter (VSB Docket No. 07-032-1855), the Certification charged the Respondent with violations of the following Rules of Professional Conduct:

RULE 1.3 Diligence

- (c) A lawyer shall not intentionally prejudice or damage a client during the course of the professional relationship, except as required or permitted under Rule 1.6 and Rule 3.3.

RULE 1.7 Conflict of Interest: General Rule

- (a) Except as provided in paragraph 9(b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:
  - (2) there is significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

RULE 1.8 Conflict of Interest: Prohibited Transactions

- (a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:
  - (1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner which can be reasonably understood by the client;
  - (2) the client is given a reasonable opportunity to seek the advice of independent counsel in the transaction; and
  - (3) the client consents in writing thereto.

RULE 1.14 Client with Impairment

- (a) When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment, or some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.

RULE 1.16 Declining or Terminating Representation

- (a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

- (1) the representation will result in violation of the Rules of Professional Conduct or other law;

#### Rule 8.4 Misconduct

It is professional misconduct for a lawyer to:

- (a) violate or attempt to violate the rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- (b) commit a criminal or deliberately wrongful act that reflects adversely on the lawyer's honesty, trustworthiness or fitness to practice law;
- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation which reflects adversely on the lawyer's fitness to practice law;

### III. DISPOSITION

After considering the Exhibits admitted into evidence on behalf of the Bar and the Respondent, the testimony of witnesses presented on behalf of the Bar and upon evidence presented by Respondent in the form of his own testimony, and the argument of Counsel, the Board recessed to deliberate. After due deliberation the Board reconvened and stated its unanimous findings as follows:

In the Catlett matter (VSB Docket No. 07-032-0903): for all of the reasons stated above, the Board finds by clear and convincing evidence violations of Rules 1.15(a); 1.15(b); 1.15(c)(3); 1.15(c)(4); 5.3(a); 5.3(b); 5.3(c)(1); 5.3(c)(2); 8.4((b), and 8.4(c). The Board found the Bar failed to prove by clear and convincing evidence violations of Rules 1.15(c)(1); 1.15(c)(2) and dismissed those charges of misconduct.

In the Mountford matter (VSB Docket No.08-032-073809), the Board finds that the Bar failed to prove by clear and convincing evidence violations of Rules 3.3(a)(1); 3.3(a)(4); 4.1(a); 4.1(b); 8.4(b); 8.4(c) and dismissed the case.

In the Woodruff matter (VSB Docket No. 07-032-1855) on July 30, 2010 Bar counsel dismissed the alleged violation of Rule 1.14(a). Regarding the remaining violations, the Board finds that the Bar proved by clear and convincing evidence violations of Rules 1.3(c); 1.8(a); 1.7(a)(2), 1.16 (a) and 8.4(a)(b) and (c).

The Board received evidence of aggravation and mitigation from the Bar and Respondent, including the Respondent's prior disciplinary record. Wein had one prior disciplinary finding against him, that is in July 2007 Wein had a public admonition without terms for violating Rule 1.15(c)(3) concerning the safekeeping of client's property.

In mitigation, Wein testified that he was 49 years old and had a family that was relying on him to support, including 6 children and his wife. That his personal life was in turmoil and he was running a solo law practice. That at the time of these charges, he was going through a contentious divorce and had serious economic problems. Additionally, his father was very sick and living in Arizona and that he was the one responsible to care for his father. Wein admitted that he should have handled the Catlett matter differently. Regarding the Woodruffs, Wein testified that he never intended to hurt them, but acknowledged that he did indeed do so. He also stated that he was sorry for his actions.

After the argument of counsel, the Board recessed to deliberate what sanction to impose upon its findings of misconduct. In the Catlett matter the Board was particularly concerned about the Respondent's repeated misrepresentations to his client and third parties and his passing the blame on to his secretary. After due deliberation, the Board reconvened and the Chair announced the sanction to be imposed; that Respondent's license to practice law in the Commonwealth of Virginia be suspended for 6 months.

In the Woodruff matter the Board had a myriad of concerns regarding the misconduct violations. First, the Board did not find Respondent's testimony to be credible and was dismayed by his apparent failure to tell the truth. Second, he once again blamed others for his wrongdoing. Finally, and most importantly, Respondent violated his trust to people who were his clients and friends. He took advantage of them as their lawyer and friend; and, failed to tell them about discharging their debt in bankruptcy. He engaged in conduct involving dishonesty, fraud, deceit and misrepresentation and committed a deliberately wrongful act that reflects adversely on his honesty, trustworthiness and fitness to practice law. Accordingly, Respondent's license to practice law in the Commonwealth of Virginia be suspended for 4 years effective September 24, 2010.

It is therefore ORDERED that the license of the Respondent, Bradley Douglas Wein, to practice law in the Commonwealth of Virginia be and the same hereby is suspended for a period of six months in the Catlett matter (VSB: 07-032-0903) and 4 years in the Woodruff matter (VSB: 07-032-1855), effective September 24, 2010 to run concurrently.

It is further ORDERED that the Mountford matter (VSB: 08-032-073809) is dismissed.

It is further ORDERED that, as directed in the Board's September 24, 2010 Summary Order in this matter, Respondent must comply with the requirements of Part Six, § IV, ¶ 13-29 of the Rules of the Supreme Court of Virginia. The Respondent shall forthwith give notice by certified mail, return receipt requested, of the suspension of Respondent's license to practice law in the Commonwealth of Virginia, to all clients for whom Respondent is currently handling matters and to all opposing attorneys and presiding judges in pending litigation. The Respondent shall also make appropriate arrangements for the disposition of matters then in Respondent's care in conformity with the wishes of Respondent's client. Respondent shall give such notice within fourteen (14) days of the effective date of this order, and make such arrangements as are required herein within forty-five (45) days of the effective date of the suspension. The Respondent shall also furnish proof to the Bar within sixty (60) days of the effective

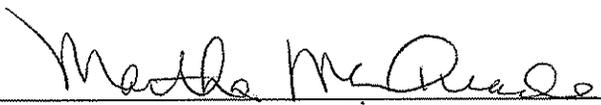
day of this order that such notices have been timely given and such arrangements made for the disposition of matters.

It is further ORDERED that if the Respondent is not handling any client matters on the effective date of this order, Respondent shall submit an affidavit to that effect to the Clerk of the Disciplinary System at the Virginia State Bar. All issues concerning the adequacy of the notice and arrangements required by Paragraph 13-29 shall be determined by the Virginia State Bar Disciplinary Board, unless the Respondent makes a timely request for hearing before a three-judge court.

It is further ORDERED that pursuant to Part Six, § IV, ¶ 13-9E of the Rules of the Supreme Court of Virginia, the Clerk of the Disciplinary System shall assess all costs against the Respondent.

It is further ORDERED that the Clerk of the Disciplinary System shall mail an attested copy of this Order to Respondent at his address of record with the Virginia State Bar, being Bradley D. Wein, Suite 300, 3900 Westerre Parkway, Richmond, VA 23233 by certified mail, return receipt requested, and by regular mail to Christopher J. Collins, Respondent's counsel, 304 East Main Street, Richmond, Virginia 23219 and to Harry M. Hirsch, Deputy Bar Counsel, and Renu M. Brennan, Assistant Bar Counsel, Virginia State Bar, Suite 1500, 707 East Main Street, Richmond VA 23219.

ENTERED this 8<sup>th</sup> day of December, 2010.

  
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MARTHA JP McQUADE, 2<sup>nd</sup> Vice Chair, Presiding  
Virginia State Bar Disciplinary Board