

**BEFORE THE WEST VIRGINIA SUPREME COURT OF APPEALS**

**IN RE: Benjamin Freeman, a licensed  
Member of the WV State Bar**

**DOCKET NO. 24-129**  
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**RESPONDENT'S BRIEF**

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## **I. TABLE OF AUTHORITIES**

### **CASES:**

1. *Roark v. Lawyer Disciplinary Board*, 207 W. Va. 181, 495 S.E.2d 552 (1997), p. 5
2. *Committee on Legal Ethics v. McCorkle*, 192 W. Va. 286, 452 S.E.2d 377 (1994), p. 5
3. *Lawyer Disciplinary Bd. v. Taylor*, 192 W.Va. 139, 451 S.E. 2d 440(1994), p. 13
4. *Lawyer Disciplinary Bd. v. Blyler*, 237 W.Va. 325, 787 S.E. 2d 596 (2016), p. 13
5. *Lawyer Disciplinary Bd. v. Scott*, 213 W.Va. 209, 579 S.E. 2d 550 (2003), p. 14

### **STATUTES:**

1. Rule 19, W. Va. Rules of Appellate Procedure, p. 5
2. Rule 3.15 of the WV Rules of Lawyer Disciplinary Procedure, p. 15

### **OTHER WORKS CITED:**

1. *Annotated ABA Standards for Imposing Lawyer Sanctions* (2015), p. 13

## **II. ASSIGNMENTS OF ERROR**

The Office of Disciplinary Counsel and Hearing Pannel erred in recommending that Respondent be suspended or annulled for his conduct and actions.

### **III. STATEMENT OF THE CASE**

The West Virginia Office of Disciplinary Counsel (“ODC”) and Hearing Pannel has recommended that Respondent be suspended or annulled for his actions and conduct.

The Respondent does not substantially dispute their factual recitation of the bare facts of the case; however, the Respondent has filed documents disputing said sanctions and files this document with the explanations and reasons listed in the body of this filing.

### **IV. SUMMARY OF ARGUMENT**

The Hearing Pannel erred in its recommendation that the Respondent should be suspended for 18 months and the ODC’s recommendations are in error and too harsh given said conduct.

The Respondent has corrected his errant actions and conduct and has addressed the issues which led to the filing of this action.

### **V. STATEMENT REGARDING ORAL ARGUMENT AND DECISION**

The Petitioner believes oral argument is necessary under Rule 19 of the West Virginia Rules of Appellate Procedure, unless the Court determines that issues can be addressed in a different manner. If the Court determines that oral argument is necessary, this case is appropriate for a Rule 19 argument and disposition by memorandum decision.

### **VI. STANDARD OF REVIEW**

In lawyer disciplinary matters, a *de novo* standard of review applies to questions of law, questions of application of the law to the facts, and questions of appropriate sanction to be imposed. *Roark v. Lawyer Disciplinary Board*, 207 W. Va. 181,495 S.E.2d 552 (1997); *Committee on Legal Ethics v. McCorkle*, 192 W. Va. 286,452 S.E.2d 377 (1994). The Supreme Court of Appeals gives respectful consideration to the Lawyer Disciplinary Board's recommendations as to questions of

law and the appropriate sanction, while ultimately exercising its own independent judgment. McCorkle, 192 W. Va. at 290,452 S.E.2d at 381.

## **VII. ARGUMENT**

### **THE ODC'S AND THE HEARING PANNELS RECOMMENDATIONS THAT THE RESPONDENT BE SUSPENDED OR ANNULLED IS A SCANCTION NOT WARRANTED IN THIS MATTER**

1. I acknowledge that I did fail to timely file four appellate matters as specified. An unusually heavy caseload combined with a lack of staff and strained time demands and resources due to limitations from the Covid shutdown period contributed to these delays.
2. Slowly coming out of this, my schedule has eased, and I am better able to manage my caseload.
3. Along with the above, time demand difficulties, disagreements with clients, and difficulties obtaining documents, files, transcripts, etc. contributed to delays with habeas corpus petitions. I do not currently accept any habeas corpus cases.
4. The complaint regarding Ms. Allison's case was such a rare anomaly in my practice that no other such situation has occurred since I opened my practice, or before that.
5. Despite such delays and disagreements, I believe that all parties have had their cases filed and heard and/or adjudicated, proceeded on with new counsel to address matters of legal disagreement, and/or been made whole.
6. The explosion in the numbers of abuse and neglect, and other court-appointed matters, overwhelmed my practice. I saw case-load numbers not before seen. Additionally, there appear to be fewer numbers of attorneys willing to accept these cases.
7. Fortunately, my schedule has lightened the past two years, and I have gotten back on track and have kept up with clients, cases, and appeals.

## **COUNT I**

**ID No. 22-05-312**

### **Complaint of Marcus Young**

1. I attempted to contact Mr. Young by mail. I am unaware whether he actually received said letters.
2. Again, I was not at my office very often due to my demanding court schedule and if he attempted to contact me by phone, I would not have been available on numerous occasions. Also, his calls may or may not have been diverted by a spam-call blocker (since removed); I am still without an assistant.
3. I continued to work on Mr. Young's habeas corpus petition; gathering documents took an extensive amount of time, including locating certain transcripts; the Circuit Court has been flexible and understanding regarding this issue.
4. Mr. Young's incarceration status was not likely to have been affected by said delays.
5. My schedule was very demanding lately, and I had multiple appeals and multiple habeas corpus petitions that I had been working on completing.
6. Mr. Young's habeas petition was delayed further by issues related to the Losh list required to be filed in habeas cases.
7. I visited Mr. Young at MOCC on several occasions.
8. Although Mr. Young was not satisfied with his petition, I believed his wishes would have resulted in filing an improper and insufficient petition that would not conform with the law.
9. Despite such disagreement, the Court directed me to file Mr. Young amended habeas corpus petition as it was, insufficient or not.
10. Having filed said petition, the Court held a hearing in the matter.

11. Acknowledging the disagreement, the Court consulted counsel and appointed Mr. Young substitute counsel to give him a fresh start with a new attorney.

## **COUNT II**

**ID No. 22-01-355**

### **Complaint of ODC Regarding Appeal 22-0408**

1. I reiterate that my schedule was extremely demanding with an increase in appointed abuse and neglect cases, criminal cases, and appeals during the past 3-4 years.
2. Compiling documents, including orders, transcripts, etc., was very time consuming and resulted in delays in completing petitions.
3. Clients often are difficult to communicate with regarding the appeal finding.
4. I experienced an unusual number of cases to appeal in the 2022 and 2023.
5. The number of appeals has dropped since this time.
6. In September 2024, I filed a timely appeal in case 24-456
7. My total number of cases has drastically decreased in late 2024.
8. This appeal was considered by the Court, and it affirmed the Circuit Court's decision.

## **COUNT III**

**ID No. 24-01-091**

### **Complaint of Marjorie Allison**

1. I completed a petition related to her case.
2. I could not find a proper service address to serve the proposed respondent in the matter.
3. I related these issues to Ms. Allison, and we communicated several times about it.
4. After some time, the attorney-client relationship broke down.
5. Although I had completed a substantial amount of work in her case, I agreed to refund her



fees paid to me in the matter as a matter of business good will.

6. I attempted to re-pay her on a prior occasion(s), but she did not cash a check from me.
7. I typically charge far less than other attorneys in the area for private criminal and family law matters, so I considered her initial payment to be a maximum fee. I rarely to never charge my private pay clients more than an initial payment.
8. For most clients I charge them after I have done most or all of the legal work on their cases.
9. I do not engage in cases in which I “hold” money for clients.
10. As such, I was unaware that my IOLTA account had been closed because there was no money in the account or recent activity, and I had not had clients for whom I had unpaid/unused retainers in 2+ years.
11. I fully intended to refund Ms. Allison her payment to me without taking any money for work already completed.
12. Never before has a client made such a complaint against me in 20+ years of practicing law.
13. Regarding depositing her initial check, I was mistaken about the sequence of events given my memory of events 2 years prior. At no time did I ever intend to misrepresent this to the ODC.
14. At no time did I ever intend to misrepresent myself to Ms. Allison or cheat her in any way.
15. I rarely take a retainer in any case and have adjusted my procedures to bill clients after the work is completed and/or on a flat-fee basis.
16. Currently, I hold no retainers to my best investigation.
17. Ms. Allison has been refunded her total payment to me, despite the amount of work actually performed on her case.
18. Ultimately, I believed things to have ended amicably between Ms. Allison and myself at

this point.

#### **COUNT IV**

**ID No. 23-06-199**

##### **Complaint of ODC Regarding Appeal 23-140**

1. I reiterate that my schedule was extremely demanding with an increase in appointed abuse and neglect cases, criminal cases, and appeals during the past 3-4 years.
2. Compiling documents, including orders, transcripts, etc., was very time consuming and resulted in delays in completing petitions.
3. Clients often are difficult to communicate with regarding the appeal finding.
4. I experienced an unusual number of cases to appeal in the 2022 and 2023.
5. The number of appeals has dropped since this time.
6. In September 2024, I filed a timely appeal in case 24-456
7. My total number of cases has drastically decreased in late 2024.
8. This appeal was considered by the Court, and it affirmed the Circuit Court's decision.

#### **COUNT V**

**ID No. 23-06-308**

##### **Complaint of Garland Murray**

1. I spoke to Mr. Murray several times on the phone.
2. I relayed several messages to/from Mr. Murray, regarding non-attorney/client matters, through his partner, as authorized by Mr. Murray.
3. He relayed several messages through his spouse to which I responded.
4. I have filed Motions to extend deadlines to file an amended petition.
5. I had some delay with Mount Olive Correctional Center in scheduling an in-person meeting

with Mr. Murray, but has several meetings with him at Mount Olive CC.

6. I worked numerous hours on Mr. Murray's amended petition, and we had several discussions regarding what's to be filed and what is not a proper subject(s) for a habeas corpus petition.
7. Mr. Murray and I continued to disagree about which matters are irrelevant to his Petition for Writ of Habeas Corpus, which caused additional delays in filing his Amended Petition.
8. Related to these disagreements, I had difficulty communicating the meaning and nature of the Losh List to be filed in habeas corpus cases, especially what exactly would still be relevant to his current petition given the fact that a prior petition for writ of habeas corpus had been denied.
9. I assisted Mr. Murray with related matters, including investigating the failure to perfect his prior appeal and prior filed habeas corpus petitions (I was not his counsel for these matters).
10. I filed additional motions on Mr. Murray's behalf regarding his Petition for Writ of Habeas Corpus communicating the difficulties which I encountered with the matter.
11. Mr. Murray's amended petition for writ of habeas corpus was ripe for filing and for having the Court consider the matter, with the limitations and difficulties described above.
12. Given such difficulties, substitution of counsel was best for Mr. Murray in this matter.

## **COUNT VI**

**ID No. 23-06-431**

### **Complaint of ODC Regarding Appeal 23-516**

1. I reiterate that my schedule was extremely demanding with an increase in appointed abuse and neglect cases, criminal cases, and appeals during the past 3-4 years.
2. Compiling documents, including orders, transcripts, etc., was very time consuming and

resulted in delays in completing petitions.

3. Clients often are difficult to communicate with regarding the appeal finding.
4. I experienced an unusual number of cases to appeal in the 2022 and 2023.
5. The number of appeals has dropped since this time.
6. In September 2024, I filed a timely appeal in case 24-456
7. My total number of cases has drastically decreased in late 2024.
8. Upon belief, all filings have been completed in this case and the matter decided by the Court upon the merits.

## **COUNT VII**

**ID No. 24-06-034**

### **Complaint of ODC Regarding Appeal 23-400**

1. I was appointed as substitute counsel for the appealing respondent parent in the above case after the proceedings in Circuit Court.
2. Initially, I was unaware that I had been appointed because I did not receive the Circuit Court's Order timely
3. Upon contacting prior counsel, I was informed that she did not have a file in the case to give me and that she did not have contact information for the client; I was only able to piece together the case through part of the Court record and speaking to other attorneys on the case. However, I still proceeded to attempt to obtain certain other transcripts and documents in this matter.
4. I worked to complete an appeal brief as best as I possibly could given the said difficulties but was never able to contact the client or complete a full and proper document.
5. There was a prior hearing before the Supreme Court at which I explained the situation.

6. I have found great difficulties being appointed to abuse and neglect cases after the Circuit Court case has ended and while its lingering between Courts. Documents and files are not as readily available from various sources as they need to be.
7. I moved to be relieved as counsel given the above-listed difficulties and the Court granted the said motion.
8. The appeal eventually was filed by other counsel, but the Circuit Court's decision was affirmed.

### **FURTHER DISCUSSION**

1. The purpose of attorney disciplinary proceedings is not designed solely to punish the attorney, but to protect the public, to reassure the public as to the reliability and integrity of attorneys, and to safeguard the administration of justice. *Lawyer Disciplinary Bd. v. Taylor*, 192 W.Va. 139, 451 S.E. 2d 440(1994).
2. A lawyer owes an ethical duty to clients including the duty of candor, loyalty, diligence, and competence. *Lawyer Disciplinary Bd. v. Blyler*, 237 W.Va. 325, 787 S.E. 2d 596 (2016).
3. As defined by the *Annotated ABA Standards for Imposing Lawyer Sanctions* (2015), "Injury" is harm to a client, the public, the legal system, or the profession which results from a lawyer's misconduct. Further, potential injury is harm to the same which, but for some intervening factor or event, would probably have resulted from the lawyer's misconduct.
4. Clear and convincing evidence may exist to show that the Respondent has violated the West Virginia Rules of Professional Conduct.
5. The Respondent has worked to remedy all violations of the West Virginia Rules of

Professional Conduct by completing all the filings in the above-listed appeals, securing from the Circuit Court substitute counsel for Mr. Garland and Mr. Murray, and by seeking an amicable resolution with Ms. Allison, including by refunding all funds paid regarding her matter.

6. Respondent made reasonable and/or remedial attempts regarding his ethical duties to said clients, and Respondent ultimately worked to ensure that their cases were preserved or remedied, however untimely.
7. Any “injury” to these clients, as defined above was the result of Respondent’s overloaded schedule, lack of staff, difficulties obtaining documents or other relevant case-related information, communication issues, and/or disagreements with clients regarding legal strategy or filings.
8. Any “potential injury” to these clients has been remedied and will not likely result in ultimate harm.
9. Any “injury” or “potential injury” to these clients was not the result of malice, willful misconduct, or other ill intent, but rather by mistake, unintentional neglect, or lack of time and manpower resources.
10. Mitigating factors exist in this matter that justify a reduction in the degree of discipline to be imposed, if any. See, *Lawyer Disciplinary Bd. v. Scott*, 213 W.Va. 209, 579 S.E. 2d 550 (2003). Specifically:
  - a. Respondent has an absence of a prior disciplinary record.
  - b. Other sanctions have been imposed upon the Respondent, namely the Court limiting the number and type of cases that he may handle.
  - c. Respondent has expressed great remorse regarding these matters and has done what

he can within his ability to remedy each matter.

11. Given that the Respondent has practiced law in West Virginia since 2001, and has been in private practice since 2016, these matters appear to be a contained series of events which are not likely to be repeated.

### **SANCTIONS**

1. Pursuant to 3.15 of the Rules of Lawyer Disciplinary Procedure, any further sanctions imposed upon the Respondent, if any, should reflect the conduct involved, steps to remedy said conduct and/or harm to clients, and other mitigating factors.
2. Should any other such sanctioning be imposed, the Respondent should be placed on probation and/or be admonished or reprimanded by the Court.
3. Any harsher sanctions, including suspension or annulment, are not warranted and should not be imposed upon the Respondent in this matter.
4. There is no restitution owed in this case.

### **VIII. CONCLUSION**

The Respondent has acknowledged the deficiencies regarding his conduct and actions in the above-listed matters. During this period the Respondent experienced a workload that saw a deluge of cases and clients and limited by increasingly limited time and financial resources. The Respondent believes that a lighter caseload and a reorganization of his resources has led to numerous successful outcomes for his clients, with no substantial issues, since this matter was filed. Given that he has had a lack of complaints and/or disciplinary actions since illustrates that a repeat of this conduct and these actions is unlikely to be repeated in the future, and that any sanction imposed upon him should fall short of suspension or annulment.

Benjamin Freeman,  
Respondent,

A handwritten signature in blue ink, appearing to read "Benjamin Freeman", with a long horizontal stroke extending to the right.

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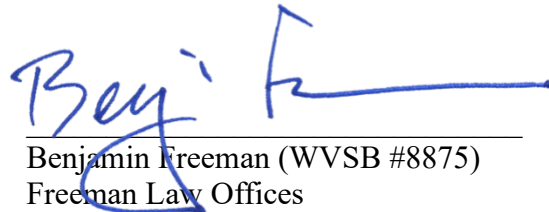
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**IN RE: Benjamin Freeman, a licensed  
Member of the WV State Bar**

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**CERTIFICATE OF SERVICE**

I, Benjamin Freeman, certify that I have served a copy of the foregoing Responses to Statement of Charges to the Office of Disciplinary Counsel by electronic filing on July 17, 2025.



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