

**BEFORE THE LAWYER DISCIPLINARY BOARD  
STATE OF WEST VIRGINIA**

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**In Re:** Benjamin R. Freeman, a member of  
The West Virginia State Bar

**I.D. Nos.:** 22-05-312  
22-01-355  
23-01-091  
23-06-199  
23-06-308  
23-06-431  
24-06-034

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**STATEMENT OF CHARGES**

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**To:** Benjamin R. Freeman, Esquire  
Post Office Box 234  
Hurricane, West Virginia 25526

**YOU ARE HEREBY** notified that a Hearing Panel Subcommittee of the Lawyer Disciplinary Board will hold a hearing pursuant to Rules 3.3 through 3.16 of the Rules of Lawyer Disciplinary Procedure, regarding the following charges against you:

1. Benjamin R. Freeman (hereinafter "Respondent") is a lawyer practicing in Hurricane, which is located in Putnam County, West Virginia. Respondent, having passed the bar exam, was admitted to The West Virginia State Bar on October 10, 2001. As such, Respondent is subject to the disciplinary jurisdiction of the Supreme Court of Appeals of West Virginia and its properly constituted Lawyer Disciplinary Board.

**COUNT I**  
**I.D. No. 22-05-312**  
**Complaint of Marcus L. Young**

2. On or about June 7, 2022, The Honorable Tera L. Salango, Kanawha County Circuit Court Judge, appointed Respondent to represent Complainant Marcus L. Young (hereinafter “Mr. Young”) in post-conviction *habeas corpus* proceedings and file an amended petition for *habeas corpus* relief on Mr. Young’s behalf.
3. Pursuant to the Order Appointing Counsel and Setting Briefing Schedule entered by the Court on June 7, 2022, Respondent was ordered to file an amended petition for post-conviction *habeas corpus* relief no later than 120 days following entry of the order. Further, Respondent was directed to meet with Mr. Young and submit to the Court, with the amended petition, a completed *Losh* List. The Court directed the Circuit Clerk to send a certified copy of this order to all parties, including Respondent and Mr. Young.
4. On or about August 19, 2022, Mr. Young filed an ethics complaint against Respondent with the Office of Lawyer Disciplinary Counsel (hereinafter “ODC”). Mr. Young alleged that Respondent had failed to meet him or otherwise communicate with him in the two months since his appointment.
5. By letter dated August 30, 2022, the ODC sent Respondent a copy of the complaint and directed him to file a verified response within 20 days. This letter was sent to Post Office Box 234, Hurricane, West Virginia.

6. Respondent failed to file a response.
7. By letter dated October 7, 2022, the ODC sent Respondent a second letter to the same address, by first class and certified mail, directing him to file a verified response to the complaint by October 17, 2022.
8. The letter sent by certified mail was returned to the ODC marked “Return to Sender Unclaimed Unable to Forward” on November 15, 2022. The letters sent by first class mail were not returned.
9. By letter received by the ODC on November 7, 2022, Respondent provided a verified response to the complaint.
10. In his response, Respondent stated that there was initially some confusion as to whether he was appointed to represent Mr. Young. Respondent stated that since then, he has been working on Mr. Young’s amended petition. Respondent stated that he has been working with the Court to obtain documents and transcripts needed to complete the amended petition and to schedule a hearing date to present the petition on Mr. Young’s behalf. Respondent stated that the Court indicated to him that the timeframe to file the amended petition was “somewhat flexible.”
11. Respondent attributed his delay in communicating with Mr. Young to his demanding schedule and initial uncertainty regarding which jail facility housed Mr. Young. Additionally, Respondent stated that he had been dealing with a hand injury for two months beginning in September 2022, and COVID-19 related

family issues in July and August 2022. Respondent said that he communicated with Mr. Young's family and would strive to maintain better communication with Mr. Young moving forward.

12. By letter received by the ODC on January 11, 2023, Mr. Young stated that he has called Respondent multiple times and wrote Respondent multiple letters, but that Respondent does not answer his phone calls or respond to his letters. Mr. Young further stated that Respondent has yet to meet with him to discuss his case.
13. By letter dated January 11, 2023, the ODC sent Respondent a copy of Mr. Young's letter and directed him to file a response within 20 days.
14. By letter received by the ODC on February 9, 2023, Respondent stated that he attempted to contact Mr. Young by mail, but that he was unsure if Mr. Young received his letters. Respondent said that he may have missed Mr. Young's phone calls as he is often not in his office due to his demanding court schedule.
15. Respondent stated that he has been working on Mr. Young's amended petition, and that gathering documents took an extensive amount of time. Respondent said that he had yet to locate certain transcripts from the underlying criminal matter, but that the Court has been flexible and understanding regarding this issue. Respondent said that he is in the process of securing a hearing date, and that he will meet with Mr. Young before filing his amended petition.
16. By letter dated March 21, 2023, the ODC requested that Respondent provide

additional information within 20 days, including a timeline for filing the amended petition and a copy of all correspondence he sent to Mr. Young. The ODC also asked Respondent if he had met with Mr. Young or otherwise communicated with him, and if he had filed any motions to extend the filing deadline. This letter was sent to Post Office Box 234, Hurricane, West Virginia.

17. Respondent failed to respond to this letter.
18. By letter dated April 20, 2023, the ODC sent Respondent a second letter to the same address, by first class and certified mail, directing him to provide a response by May 1, 2023.
19. Respondent failed to respond to this letter.
20. The letter sent by certified mail was returned to the ODC marked "Return to Sender Unclaimed Unable to Forward" on May 19, 2023. The letters sent by first class mail were not returned.
21. Respondent was personally served with an investigative subpoena *duces tecum* on August 2, 2023, which directed him to appear at the ODC on August 30, 2023, to testify in the taking of a sworn statement, and to produce and permit inspection of and copying of any and all documents within his control regarding Mr. Young's complaint.
22. At his sworn statement on August 30, 2023, Respondent stated that he receives mail at Post Office Box 234 in Hurricane, West Virginia.

23. Respondent described issues related to the unreliability of mail delivery to his post office box. Respondent stated that since the COVID-19 pandemic began, he experienced issues, on and off, wherein he would not receive mail for a few days and then receive a lot of mail all at once and sometimes not at all. Respondent believed that his mail issues were now resolved and stated that he checks his post office box approximately two to three times per week on a typical week.
24. Respondent stated that he did not recall receiving the letter from the ODC dated March 21, 2023, stating that, although he was receiving mail at Post Office Box 234, he was having “major mail issues” at this time. Respondent also said that he could have missed this letter due to the high volume of mail he receives.
25. Respondent stated that he did not recall receiving the letter from the ODC dated April 20, 2023. Respondent also said that he did not recall receiving a slip notifying him of the certified letter.
26. Respondent acknowledged that he had not met with Mr. Young in person. When asked if he had communicated with Mr. Young by phone, Respondent said that he believed he had spoken to him “a couple times” in 2022, and that he did not recall receiving a “mountain of calls” from Mr. Young. Respondent stated that he thought he had sent Mr. Young one or two letters. Respondent said that he received “a couple” letters from Mr. Young and agreed that it was fair to say that he did not respond to these letters. Respondent said he did not file any motions to

formally extend the 120-day filing deadline, but that the Court has indicated that it is flexible regarding this deadline. Respondent stated that he has been unable to locate the trial transcript, but that he has been working with the Court's law clerk to locate it.

27. By letter dated August 31, 2023, the ODC requested, in part, that Respondent provide the following information within 20 days: (1) a copy of Mr. Young's client file; (2) copies of letters and other correspondence sent to and received from Mr. Young; and (3) time records for his work performed in this matter.
28. On or about October 26, 2023, the ODC received Mr. Young's client file from Respondent which contained: (1) a draft amended petition and *Losh* List; (2) records from the underlying criminal matter; and (3) a time sheet reflecting 14.4 hours of work in Mr. Young's case, including two visits with Mr. Young at Mount Olive Correctional Complex (hereinafter "MOCC").
29. On or about October 25, 2023, the ODC received a call detail report from John M. Frisby, Investigator for the West Virginia Division of Corrections and Rehabilitation (hereinafter "WVDOCR"), which showed that between June 7, 2022, and October 24, 2023, Mr. Young attempted to call Respondent 31 times. None of these calls were accepted by Respondent.
30. The ODC obtained a copy of the docket sheet and corresponding documents from the underlying matter, Case No. 22-P-185. There are three docket entries

following the June 7, 2022, Order Appointing Counsel and Setting Briefing Schedule. On or about August 3, 2022, Mr. Young wrote a letter to the Court regarding his communication issues with Respondent. On or about August 17, 2023, the Court wrote a letter to Respondent, stating:

On June 7, 2022, I entered an Order appointing you as Counsel to represent the petitioner in this matter and file an amended Petition for Writ of Habeas Corpus within a specified time period. Please let me know within Fourteen (14) days if you cannot represent Mr. Young and file a motion to withdraw as counsel.

On or about January 26, 2024, the Court entered an Order setting a hearing on February 15, 2024, to determine the status of Mr. Young's amended petition and to set a deadline for its filing, noting that no amended petition had been filed. To date, nothing else has been filed in the underlying matter.

31. By letter dated January 12, 2024, the ODC asked Mr. Young if his communication with Respondent had improved since August 30, 2023, and if Respondent had provided him with a timeline of when he planned to file his amended petition.
32. By letter received by the ODC on January 18, 2024, Mr. Young confirmed that Respondent met with him at MOCC but stated that their interaction was very brief. Respondent stated that he does not want Respondent to file his amended petition until Respondent meets with him again to discuss the substantive issues that Mr. Young believes should be addressed in his amended petition. By letter dated January 18, 2024, the ODC sent Respondent a copy of Mr. Young's letter and



directed him to contact Mr. Young to discuss this matter.

33. On or about January 23, 2024, the ODC received updated information from Mr. Frisby that, according to WVDOCR records, as of January 22, 2024, Mr. Young had not made any further attempts to contact Respondent by phone.
34. On or about January 24, 2024, the ODC received Respondent's Itemized Statement of Legal Services from Public Defender Services which stated that Respondent performed 14.4 hours of work in Mr. Young's case, including: (1) an initial review of Mr. Young's case on June 17, 2022; (2) a meeting with the Court's law clerk to obtain documents on July 15, 2022; (3) additional investigation, research, and document review on July 2, 2023, July 3, 2023, and August 25, 2023; (4) drafting the amended petition on August 26, 2023, and September 8, 2023; (5) a one hour meeting with Mr. Young on September 16, 2023, and an approximately 30 minute meeting with Mr. Young on September 30, 2023; and (6) drafting the amended petition and appendix and preparing for filing on October 1, 2023, and October 5, 2023.
35. Because he failed to act with reasonable diligence and promptness in his representation of Mr. Young in the underlying matter, Respondent violated Rule 1.3 of the Rules of Professional Conduct, which provides:

**Rule 1.3. Diligence.**

A lawyer shall act with reasonable diligence and promptness in representing a client.

36. Because he failed to keep Mr. Young informed as to the status of his case and failed to respond to Mr. Young's attempts to communicate with him, Respondent violated Rules 1.4(a)(3) and 1.4(a)(4) of the Rules of Professional Conduct, which provide:

**Rule 1.4. Communication.**

(a) A lawyer shall:

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- (3) keep the client reasonably informed about the status of the matter;
- (4) promptly comply with reasonable requests for information[.]

37. Because he failed to comply with his obligations pursuant to the June 7, 2022, Order Appointing Counsel and Setting Briefing Schedule, Respondent violated Rules 3.4(c) and 8.4(d) of the Rules of Professional Conduct, which provide:

**Rule 3.4. Fairness to opposing party and counsel.**

A lawyer shall not:

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- (c) knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists.

**Rule 8.4. Misconduct.**

It is professional misconduct for a lawyer to:

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- (d) engage in conduct that is prejudicial to the administration of justice.

38. Because he failed to comply with the ODC's lawful request for information, Respondent violated Rule 8.1(b) of the Rules of Professional Conduct, which provides:

**Rule 8.1. Bar Admission and Disciplinary Matters.**

An applicant for admission to the bar, or a lawyer in connection with a bar admission or in connection with a disciplinary matter, shall not:

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(b) [...] knowingly fail to respond to a lawful demand for information from [...] disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by Rule 1.6.

**COUNT II**

**I.D. No. 22-01-355**

**Complaint of the Office of Lawyer Disciplinary Counsel**

39. This complaint was opened by the ODC on September 21, 2022, after receiving a referral from Thomas McQuain, Staff Attorney, for the Supreme Court of Appeals of West Virginia. The referral included a copy of Rule to Show Cause Orders regarding Respondent's failure to timely perfect appeals on behalf of his clients in two unrelated abuse and neglect appeals: *In re* K.H., No. 22-0408, and *In re* B.S., M.S., and H.S., No. 22-0413.
40. Regarding *In re* K.H., Respondent was court appointed to represent M.H. in abuse and neglect proceedings in the Circuit Court of Putnum County, Case No. 20-JA-71.
41. On May 24, 2022, Respondent, on behalf of his client, M.H., filed an untimely notice of appeal from an April 4, 2022, order of the Circuit Court of Putnum County, along with a motion to file the notice of appeal out-of-time.
42. By scheduling order entered on June 9, 2022, the motion was granted and the

- deadline to perfect the appeal was extended to July 15, 2022. Respondent did not perfect the appeal by July 15, 2022.
43. On August 15, 2022, a Notice of Intent to Sanction was entered directing Respondent to perfect the appeal on or before August 30, 2022, or he would be subject to sanctions in accordance with Rule 11(e) of the Rules of Appellate Procedure. Respondent did not perfect the appeal by August 30, 2022.
  44. On September 15, 2022, the Court issued a Rule to Show Cause directing Respondent to appear before the Court on November 1, 2022, to show cause as to why he should not be held in contempt for failure to perfect the appeal, unless sooner mooted by perfecting the appeal with the filing of petitioner's brief and appendix.
  45. Regarding *In re* B.S., M.S., and H.S., Respondent was court appointed to represent M.S. in abuse and neglect proceedings in the Circuit Court of Kanawha County, Case Nos. 21-JA-691, 21-JA-692, and 21-JA-693.
  46. On May 25, 2022, Respondent, on behalf of his client, M.S., filed an untimely notice of appeal from an April 15, 2022, order of the Circuit Court of Kanawha County, along with a motion to file the notice of appeal out-of-time.
  47. By scheduling order entered on June 24, 2022, the motion was granted and the deadline to perfect the appeal was extended to July 28, 2022. Respondent did not perfect the appeal by July 28, 2022.

48. On August 16, 2022, a Notice of Intent to Sanction was entered directing Respondent to perfect the appeal on or before August 30, 2022, or he would be subject to sanctions in accordance with Rule 11(e) of the Rules of Appellate Procedure. Respondent did not perfect the appeal by August 30, 2022.
49. On September 15, 2022, the Court issued a Rule to Show Cause directing Respondent to appear before the Court on November 1, 2022, to show cause as to why he should not be held in contempt for failure to perfect the appeal, unless sooner mooted by perfecting the appeal with the filing of petitioner's brief and appendix.
50. By letter dated September 26, 2022, the ODC provided Respondent with a copy of the Rule to Show Cause Orders and directed him to provide a verified response thereto within 20 days. This letter was sent to Post Office Box 234, Hurricane, West Virginia.
51. Respondent failed to file a response.
52. By letter dated October 26, 2022, the ODC sent Respondent a second letter to the same address, by first class and certified mail, directing him to file a verified response to this matter by November 9, 2022.
53. The letter sent by certified mail was returned to the ODC marked "Return to Sender Unclaimed Unable to Forward" on December 18, 2022. The letters sent by first class mail were not returned.

54. By letter received by the ODC on November 7, 2022, Respondent provided a verified response.
55. In his response, Respondent stated that he was delayed in perfecting these appeals due to a hand injury which made typing difficult for a two-month period beginning in September 2022. Respondent stated that he was further delayed due to his demanding schedule which included multiple appeals and *habeas corpus* petitions, and family issues related to COVID-19 in July and August 2022.
56. Respondent submitted a copy of the Responses to Notice to Show Cause he filed on October 27, 2022, wherein he stated that the appeals were perfected. Respondent set forth that he was delayed due to the considerable time it took to gather court orders and other documents and the time it took to investigate, research, and draft the appeals. Respondent set forth that he was also delayed due to his demanding schedule, a hand injury, and family health issues. Respondent stated that he would “strive to maintain adherence to guidelines in the future.”
57. In *In re* K.H., Respondent filed the brief and appendix on or about October 7, 2022. The Rule to Show Cause was dismissed as moot on or about October 20, 2022.
58. In *In re* B.S., M.S., and H.S., Respondent filed the brief and appendix on or about October 7, 2022. The Rule to Show Cause was dismissed as moot on or about October 20, 2022.

59. Because he failed to act with reasonable diligence and promptness in timely perfecting an appeal behalf of his client, Respondent violated Rule 1.3 of the Rules of Professional Conduct, as set forth above.
60. Because he failed to make reasonable efforts to expedite the appeal consistent with his client's interests, Respondent violated Rule 3.2 of the Rules of Professional Conduct, which provides:

**Rule 3.2. Expediting litigation.**

A lawyer shall make reasonable efforts to expedite litigation consistent with the interest of the client.

61. Because he failed to comply with his obligations pursuant to orders, notices, and rules issued by the Supreme Court of Appeals of West Virginia, Respondent violated Rule 3.4(c) of the Rules of Professional Conduct, as set forth above.
62. Because he failed to properly expedite his client's appeal and failed to comply with the orders of the Supreme Court of Appeals of West Virginia to perfect the same, Respondent violated Rule 8.4(d) of the Rules of Professional Conduct as set forth above.

**COUNT III**  
**I.D. No. 23-01-091**  
**Complaint of Marjorie L. Allison**

63. Complainant Marjorie L. Allison (hereinafter "Ms. Allison") filed the above-referenced complaint against Respondent on March 13, 2023.
64. On or about August 19, 2021, Ms. Allison hired Respondent to petition the Family

Court of Putnam County to obtain visitation of her great niece. That same day, Ms. Allison paid Respondent a retainer of \$2,200.00, by personal check, for his representation in this matter.

65. Ms. Allison stated that she provided Respondent with the opposing party's address, however, after several months, Respondent was unable to locate the opposing party to effectuate service. Thereafter, Ms. Allison stated that several more months passed, and nothing happened in her case, so she requested that Respondent refund her money. Ms. Allison stated that Respondent agreed to refund her money but failed to do so.
66. By letter dated March 16, 2023, the ODC sent Respondent a letter directing him to file a verified response to the complaint within 20 days. This letter was sent to Post Office Box 234, Hurricane, West Virginia.
67. Respondent failed to file a response.
68. By letter dated April 18, 2023, the ODC sent Respondent a second letter to the same address, by first class and certified mail, directing him to file a verified response to the complaint by May 2, 2023.
69. Respondent failed to file a response.
70. The letter sent by certified mail was returned to the ODC marked "Return to Sender Unable to Forward" on May 23, 2023. The letters sent by first class mail were not returned.



71. Respondent was personally served with an investigative subpoena *duces tecum* on August 2, 2023, which directed him to appear at the ODC on August 30, 2023, to testify in the taking of a sworn statement, and to produce and permit inspection of and copying of any and all documents within his control regarding Ms. Allison's complaint.
72. At his sworn statement on August 30, 2023, Respondent stated that he receives mail at Post Office Box 234 in Hurricane, West Virginia.
73. Respondent stated that he received the letter from the ODC dated March 16, 2023, but that he did not realize that he received it until he went back through his mail after receiving the subpoena to provide a sworn statement. Respondent stated that he could not recall, but that after looking back through his mail, he thought he also received the April 18, 2023, letter.
74. Respondent stated that he met with Ms. Allison several times and spent several hours investigating her case and researching the issues. Respondent stated that he encountered issues finding the opposing party in order to effectuate service, so there was "no point" in filing the petition. Respondent said that he discussed these issues with Ms. Allison on multiple occasions.
75. Respondent stated that after going "back and forth" with Ms. Allison he agreed to send her a refund check, even though he performed work in her case and earned the retainer, because he did not want a bad client review. Respondent stated that he

thought he previously sent Ms. Allison a check in the amount of \$2,200.00, but he found no record of it being cashed, so he planned to send Ms. Allison another check.

76. Respondent stated that a written fee agreement was executed at the onset of his representation of Ms. Allison which set forth that his rate of fee was \$200.00 per hour. Respondent agreed that the \$2,200.00 paid by Ms. Allison was an advance fee for legal services to be rendered in the future. Respondent said that it was his assumption that investigation, research, and filing would cost approximately that, and that he typically does not charge people more than the initial retainer, stating that he was “essentially doing [this case] on a flat fee.”
77. When asked if he maintained a client trust account, Respondent said yes, and stated that he maintains a client trust account at City National Bank. Respondent stated that he also maintains an office operating account at City National Bank.
78. When asked if the \$2,200.00 check from Ms. Allison was deposited into his client trust account, Respondent stated that it was and that when he felt that he had done roughly ten hours of work, he transferred the funds to his general account.
79. By letter dated August 31, 2023, the ODC requested, in part, that Respondent provide the following information within 20 days: (1) a copy of Ms. Allison’s client file; (2) copies of emails and other correspondence sent to and received from Ms. Allison regarding her request for a refund; (3) a copy of the written fee

agreement; and (4) time records for his work performed in this matter.

80. On October 26, 2023, the ODC received Ms. Allison's client file from Respondent which contained: (1) an undated letter from Respondent to Ms. Allison wherein he states that he is enclosing a refund check and that he believed that a check had been mailed to her previously; (2) a time sheet reflecting 8.7 hours of work in Ms. Allison's case; (3) an unsigned fee agreement; (4) a draft petition for visitation; and (5) emails between Respondent and Ms. Allison.
81. The unsigned fee agreement provided by Respondent set forth that Ms. Allison hired Respondent to "institute and pursue a matter in family court regarding visitation," and that Ms. Allison would pay a \$2,200.00 retainer which would be billed by Respondent at a rate of \$250.00 per hour.
82. According to the emails provided by Respondent, Ms. Allison requested a refund on December 12, 2022. Respondent emailed Ms. Allison later that day stating: "I'm sorry we were not able to achieve an exact location for service. We will refund the bulk of your retainer. Please confirm your mailing address."
83. On December 20, 2023, Ms. Allison advised the ODC, by phone, that she had not received a refund check from Respondent.
84. By letter dated December 20, 2023, the ODC advised Respondent that Ms. Allison said that she did not receive the refund check and directed Respondent to look into this matter and provide a written response within 20 days. To date, Respondent

has failed to respond to this letter.

85. On or about January 16, 2024, the ODC received records pursuant to an investigative subpoena *duces tecum* issued by the Supreme Court of Appeals of West Virginia to City National Bank at the request of the ODC for records from any and all business, operating, trust, or IOLTA accounts maintained by Respondent and/or Freeman Law Offices from August 1, 2021, through present day.
86. A review of Respondent's client trust account, account number 9011378875, which is labeled "IOLTA Account," revealed that Respondent did not deposit Ms. Allison's retainer into his client trust account. According to bank records, this account has been closed since on or about December 31, 2021.
87. A review of Respondent's operating account, account number 9011378867, which is labeled "Freeman Law Offices," revealed that Respondent deposited Ms. Allison's retainer into his operating account, an account which contained Respondent's personal funds and was used by Respondent for personal use.
88. Upon information and belief, according to Ms. Allison, after their initial meeting, Respondent advised her that he would file the petition right away. Ms. Allison said that she offered to provide Respondent with an address for the opposing party at that time, but Respondent told her that he would be able to obtain it. Thereafter, Respondent advised Ms. Allison that he was having trouble finding an address for

the opposing party to be served. Ms. Allison said that she provided Respondent with an address. Respondent advised Ms. Allison by email on December 7, 2021, that he would get the petition filed and sent out for service. Respondent advised Ms. Allison by email on March 22, 2022, that he was going to have to refile her petition because it was never served, and that he would contact the sheriff to straighten out any problems. Respondent advised Ms. Allison by email on August 17, 2022, that he would re-evaluate whether he could get the opposing party served and would contact her soon thereafter.

89. Ms. Allison provided additional email correspondence and text messages of her communication with Respondent, including a text message from Respondent on or about August 18, 2021, wherein Respondent confirmed that his hourly rate was \$200.00 per hour.
90. Because he failed to keep Ms. Allison reasonably informed about the status of her case, Respondent has violated Rule 1.4(a)(3) of the Rules of Professional Conduct, as set forth above.
91. Because he failed to keep the funds provided to him in advance by Ms. Allison in a separate account designated as “client’s trust account,” and instead deposited client funds into his operating account before those fees were earned or the expenses were incurred, Respondent has violated Rules 1.15(a) and 1.15(c) of the Rules of Professional Conduct, as set forth below:

**Rule 1.15. Safekeeping Property.**

(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account designated as a "client's trust account..."

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(c) A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred.

92. Because he accepted a fee for legal services and wrongfully commingled, misappropriated, and converted funds belonging to his client to his own use, Respondent has violated Rule 8.4(c) and 8.4(d) of the Rules of Professional Conduct, as set forth below:

**Rule 8.4. Misconduct.**

It is professional misconduct for a lawyer to:

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(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) engage in conduct that is prejudicial to the administration of justice;

93. Because he stated at his sworn statement that he deposited the \$2,200.00 check from Ms. Allison into his client trust account and that he transferred the funds into his general account once earned, when the bank records show that this check was deposited into his operating account, Respondent has violated Rules 8.4(c) and 8.4(d), as set forth above, and Rule 8.1(a) of the Rules of Professional Conduct, as set forth below:

**Rule 8.1. Bar Admission and Disciplinary Matters.**

An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not:

(a) knowingly make a false statement of material fact;

94. Because he failed to comply with the ODC's lawful request for information by failing to provide a verified response, Respondent violated Rule 8.1(b) of the Rules of Professional Conduct, as set forth above.

**COUNT IV**

**I.D. No. 23-06-199**

**Complaint of Office of Lawyer Disciplinary Counsel**

95. This complaint was opened by the ODC on May 15, 2023, after receiving a referral from Emily Stern, Term Law Clerk, for the Supreme Court of Appeals of West Virginia. The referral included a copy of a Rule to Show Cause Order regarding Respondent's failure to timely perfect an appeal on behalf of his client in an abuse and neglect appeal: *In re* A.B. and J.S., No. 23-140.
96. Respondent was court appointed to represent A.S. in abuse and neglect proceedings in the Circuit Court of Kanawha County, Case Nos. 21-JA-625 and 21-JA-626.
97. On March 10, 2023, Respondent, on behalf of his client, A.S., filed a notice of appeal from a February 28, 2023, order of the Circuit Court of Kanawha County. Respondent requested that transcripts be produced for purposes of appeal, but he did not submit an appellate transcript request form.
98. By scheduling order entered on March 10, 2023, the Court directed Respondent to

submit a signed and complete appellate transcript request form on or before March 24, 2023, and set the deadline to perfect the appeal as May 1, 2023. Respondent did not submit an appellate transcript request form, nor did he perfect the appeal by May 1, 2023.

99. On May 2, 2023, the guardian *ad litem*, Sharon K. Childers, filed a motion to dismiss the appeal. Respondent did not file a response to the motion.
100. On May 12, 2023, the Court issued a Rule to Show Cause directing Respondent to appear before the Court on September 6, 2023, to show cause as to why he should not be held in contempt for his failure to perfect the appeal, unless sooner mooted by perfecting the appeal with the filing of a petitioner's brief and appendix.
101. By letter dated May 17, 2023, the ODC provided Respondent with a copy of the Rule to Show Cause Order and directed him to provide a verified response thereto within 20 days. This letter was sent to Post Office Box 234, Hurricane, West Virginia.
102. Respondent failed to file a response.
103. By letter dated June 16, 2023, the ODC sent Respondent a second letter to the same address, by first class and certified mail, directing him to provide a verified response to this matter by June 26, 2023.
104. Respondent failed to file a response.
105. The letter sent by certified mail was not delivered to Respondent according to USPS Tracking. The letters sent by first class mail were not returned to the ODC.



106. Respondent was personally served with an investigative subpoena *duces tecum* on August 2, 2023, which directed him to appear at the ODC on August 30, 2023, to testify in the taking of a sworn statement, and to produce and permit inspection of and copying of any and all documents within his control regarding this matter.
107. At his sworn statement on August 30, 2023, Respondent stated that he receives mail at Post Office Box 234 in Hurricane, West Virginia.
108. Respondent stated that he did not recall receiving the May 17, 2023, and June 16, 2023, letters from the ODC.
109. Respondent stated that he believed he perfected this appeal on or about April 21, 2023, and that he did not realize this appeal had not been perfected until he checked File & ServeXpress after being served with the subpoena to provide a sworn statement regarding this matter.
110. Respondent stated that he was unsure why the Court said that he needed to produce a transcript request form, because he obtained the transcripts from the underlying proceedings from the court reporter.
111. Respondent stated that he did not recall receiving the Court's May 12, 2023, Rule to Show Cause Order, stating that he did not see this Order until it was shown to him on August 30, 2023, by Lawyer Disciplinary Counsel at his sworn statement.
112. Respondent filed a petitioner's brief and appendix on or about September 5, 2023. The Rule to Show Cause was dismissed as moot thereafter.
113. By letter dated August 31, 2023, the ODC requested that Respondent provide

additional information within 20 days, including time records for his work performed in this matter.

114. On October 26, 2023, the ODC received the requested information from Respondent. The Itemized Statement of Legal Services provided by Respondent, which was submitted to Public Defender Services, stated that Respondent completed the brief and appendix for this matter on April 21, 2023.
115. Because he failed to act with reasonable diligence and promptness in timely perfecting an appeal on behalf of his client, Respondent violated Rule 1.3 of the Rules of Professional Conduct, as set forth above.
116. Because he failed to make reasonable efforts to expedite the appeal consistent with his client's interests, Respondent violated Rule 3.2 of the Rules of Professional Conduct, as set forth above.
117. Because he failed to comply with his obligations pursuant to orders, notices, and rules issued by the Supreme Court of Appeals of West Virginia, Respondent violated Rule 3.4(c) of the Rules of Professional Conduct, as set forth above.
118. Because he failed to properly expedite his client's appeal and failed to comply with the orders of the Supreme Court of Appeals of West Virginia to perfect the same, Respondent violated Rule 8.4(d) of the Rules of Professional Conduct, as set forth above.
119. Because he failed to comply with the ODC's lawful request for information by failing to provide a verified response, Respondent violated Rule 8.1(b) of the

Rules of Professional Conduct, as set forth above.

**COUNT V**  
**I.D. No. 23-06-308**  
**Complaint of Garland L. Murray**

120. On or about April 26, 2023, The Honorable Louis H. Bloom, Kanawha County Circuit Court Judge, appointed Respondent to represent Complainant Garland L. Murray (hereinafter “Mr. Murray”) in post-conviction *habeas corpus* proceedings and file an amended petition for *habeas corpus* relief on Mr. Murray’s behalf.
121. Pursuant to the Scheduling Order and Order Appointing Counsel entered by the Court on April 26, 2023, Respondent was ordered to consult with Mr. Murray to determine appropriate grounds for potential *habeas corpus* relief. Further, the Court ordered that the amended petition for writ of *habeas corpus*, if applicable, be filed on or before August 4, 2023. The Court directed the Circuit Clerk to send a copy of this order to all parties, including Respondent and Mr. Murray.
122. On or about July 21, 2023, Mr. Murray filed an ethics complaint against Respondent with the ODC. Mr. Murray alleged that, despite multiple attempts to contact Respondent, Respondent has not communicated with him since his appointment in April 2023.
123. By letter dated July 24, 2023, the ODC sent Respondent a copy of the complaint and directed him to file a verified response within 20 days. This letter was sent to Post Office Box 234, Hurricane, West Virginia.
124. Respondent failed to file a response.

125. By letter dated August 25, 2023, the ODC sent Respondent a second letter to the same address, by first class and certified mail, directing him to file a verified response to the complaint by September 8, 2023.
126. The letter sent by certified mail was returned to the ODC marked "Return to Sender Unclaimed Unable to Forward" on September 25, 2023. The letters sent by first class mail were not returned.
127. By letter received by the ODC on September 13, 2023, Respondent provided a verified response to the complaint.
128. In his response, Respondent stated that he has spoken to Mr. Murray several times by phone, and that Mr. Murray has relayed several messages to him through Mr. Murray's wife, to which Respondent has responded. Respondent further stated that he has had several discussions with Mr. Murry regarding the substance of the amended petition and other matters, that he has filed motions to extend the filing deadline, and that he planned to meet with Mr. Murray that week.
129. By letter received by the ODC on September 13, 2023, Mr. Murray stated that Respondent has postponed his case twice, failed to file motions on his behalf, and failed to answer phone calls, emails, and messages.
130. By letter dated September 19, 2023, the ODC provided Respondent with a copy of Mr. Murray's letter and directed him to provide a verified response thereto within 20 days.
131. By letter received by the ODC on October 16, 2023, Respondent stated that he has

met with Mr. Murray three times at MOCC, and that he continues to consult with Mr. Murray regarding substantive issues. Respondent stated that he and Mr. Murray “continue to disagree” regarding which matters are not relevant to his amended petition which has caused additional delays in filing said petition.

132. On or about October 25, 2023, the ODC received a call detail report from John M. Frisby, Investigator for the WVDOCR, which showed that between June 7, 2022, and October 24, 2023, Mr. Murray called Respondent three times. The calls were not accepted by Respondent.
133. The ODC obtained a copy of the docket sheet and documents from the underlying matter, Case No. 23-P-59, including the following:
  - a. On or about July 27, 2023, Mr. Murray filed a letter with the Court addressing, in part, concerns regarding Respondent’s lack of communication.
  - b. On or about August 14, 2023, Respondent filed a Motion for Extension to File Petitioner’s Amended *Habeas Corpus* Petition setting forth that the issues required additional time to investigate, research, and draft said petition.
  - c. On or about August 18, 2023, the Court entered an Order Granting Motion for Time Extension to File Amended *Habeas Corpus* Petition and ordered that the amended petition for writ of *habeas corpus* be filed on or before September 11, 2023, and that the parties appear at a final omnibus

evidentiary hearing before the Court on December 8, 2023, at 10:30 a.m.

- d. On or about September 12, 2023, Respondent filed a second Motion for Extension to File Petitioner's Amended *Habeas Corpus* Petition setting forth that he was working to obtain necessary documents and would not be able to coordinate a meeting with Mr. Murray until the week of September 11, 2023.
- e. On or about September 19, 2023, the Court entered an Order Granting Motion for Time Extension to File Amended *Habeas Corpus* Petition and Rescheduling Hearing and ordered that the amended petition for writ of *habeas corpus* be filed on or before October 1, 2023, and that the parties appear at a final omnibus evidentiary hearing before the Court on December 20, 2023, at 10:30 a.m.
- f. On or about September 25, 2023, Respondent filed Motions Regarding Investigations into Underlying Claims Related to Petition for *Habeas Corpus* Relief.
- g. On or about September 27, 2023, the Court entered an Order Denying Petitioner's Motions.
- h. On or about November 29, 2023, the Court lodged three letters from Mr. Murray. In a letter dated November 5, 2023, Mr. Murray advised the Court of a lack of communication from Respondent and stated that he had not heard from Respondent and was unsure if Respondent filed his *habeas*

*corpus* petition without consulting him. In a letter dated November 21, 2023, Mr. Murray advised the Court that Respondent came to MOCC with “a start” of a brief and then never came back. Mr. Murray was unsure about the scheduling order and requested that Respondent be removed from his case. In a letter dated November 22, 2023, Mr. Murray advised that he did not want to proceed with Respondent as his attorney and would represent himself in this matter. Respondent was advised by Melissa Ketter, Administrative Assistant for Judge Stephanie Abraham, that these letters and Mr. Murray’s concerns would be addressed at the hearing scheduled for December 20, 2023.

- i. On or about November 30, 2023, the Court lodged another letter from Mr. Murray, dated November 27, 2023, wherein Mr. Murray requested that the Court remove Respondent from his case.
- j. On or about December 5, 2023, the Court entered an Order for Mr. Murray to be transported from MOCC to the Circuit Court of Kanawha County for the December 20, 2023, hearing.
- k. On or about December 5, 2023, the Court lodged another letter from Mr. Murray, dated November 27, 2023, wherein Mr. Murray requested that the Court remove Respondent from his case and appoint another attorney.
- l. On or about December 21, 2023, the Court entered an Order which set forth that this matter was before the Court for an omnibus evidentiary hearing on

December 20, 2023. The Order stated that Respondent failed to appear at this hearing. The Order noted that Respondent failed to abide by the Court's Scheduling Order as well as the deadlines set forth in the Order Granting Petitioner's Motion for Time Extension to File Amended Petition. The Court noted that Mr. Murray had sent several letters to the Court requesting that Respondent be removed as counsel and that a new attorney be appointed to represent him. The Court removed Respondent and appointed a new attorney to represent Mr. Murray.

134. On or about January 23, 2024, the ODC received updated information from Mr. Frisby that, according to WVDOCR records, as of January 22, 2024, Mr. Murray had not made any further attempts to contact Respondent by phone.
135. On or about January 24, 2024, the ODC received Respondent's Itemized Statement of Legal Services from Public Defender Services which stated that Respondent performed 45.8 hours of work in Mr. Murray's case, which included several entries regarding communication with Mr. Murray, including four meetings with Mr. Murray at MOCC, on September 16, 2023, September 30, 2023, October 6, 2023, and October 21, 2023, and a video conference with Mr. Murray on October 17, 2023. Respondent set forth that he finished drafting the amended petition and appendix on October 22, 2023.
136. Because he failed to act with reasonable diligence and promptness in his representation of Mr. Murray in the underlying matter, Respondent violated Rule



1.3 of the Rules of Professional Conduct, as set forth above.

137. Because he failed to meet his obligations pursuant to orders issued by the Circuit Court of Kanawha County, Respondent violated Rules 3.4(c) and 8.4(d) of the Rules of Professional Conduct, as set forth above.

**COUNT VI**  
**I.D. No. 23-06-431**  
**Complaint of Office of Lawyer Disciplinary Counsel**

138. This complaint was opened by the ODC on October 24, 2023, after receiving a referral from Emily Stern, Staff Attorney for the Supreme Court of Appeals of West Virginia. The referral included a copy of a Rule to Show Cause Order regarding Respondent's failure to timely perfect an appeal on behalf of his client in an abuse and neglect appeal: *In re* L.T., L.T., and J.T. No. 23-516.
139. Respondent was court appointed to represent M.T. in abuse and neglect proceedings in Circuit Court of Kanawha County, Case Nos. 22-JA-288, 22-JA-289, and 22-JA-290.
140. On August 22, 2023, Respondent, on behalf of his client, M.T., filed a notice of appeal from a July 31, 2023, order of the Circuit Court of Kanawha County.
141. By scheduling order entered on August 31, 2023, the Court directed Respondent to submit a Certificate of Service certifying that copies of the notice of appeal and attachments were served on all parties to the case and to the clerk of the circuit court, on or before September 7, 2023, and set the deadline to perfect the appeal as October 2, 2023. Respondent did not submit a Certificate of Service on or before

September 7, 2023.

142. On September 12, 2023, a Notice of Intent to Sanction was entered ordering Respondent to submit a Certificate of Service on or before September 22, 2023, or he would be subject to sanctions. Respondent failed to submit a Certificate of Service on or before September 22, 2023.
143. Respondent failed to perfect the appeal on or before October 2, 2023.
144. On October 20, 2023, the Court issued a Rule to Show Cause directing Respondent to appear before the Court on January 9, 2024, to show cause as to why he should not be held in contempt for his failure to file a Certificate of Service and perfect the appeal, unless sooner mooted by filing the Certificate of Service as directed by the Court and perfecting the appeal with the filing of a petitioner's brief and appendix.
145. By letter dated November 14, 2023, the ODC provided Respondent with a copy of the Rule to Show Cause Order and directed him to provide a verified response thereto within 20 days. This letter was sent to Post Office Box 234, Hurricane, West Virginia.
146. Respondent failed to file a response.
147. By letter dated December 7, 2023, the ODC sent Respondent a second letter to the same address, by first class and certified mail, and directed him to provide a verified response to this matter by December 24, 2023.
148. Respondent failed to file a response.

149. The letter sent by certified mail was returned to the ODC marked “Return to Sender Unable to Forward” on January 6, 2024. The letters sent by first class mail were not returned.
150. To date, Respondent has failed to file a response in this matter.
151. Because he failed to act with reasonable diligence and promptness in timely perfecting an appeal on behalf of his client, Respondent violated Rule 1.3 of the Rules of Professional Conduct, as set forth above.
152. Because he failed to make reasonable efforts to expedite the appeal consistent with his client’s interests, Respondent violated Rule 3.2 of the Rules of Professional Conduct, as set forth above.
153. Because he failed to meet his obligations pursuant to orders, notices, and rules issued by the Supreme Court of Appeals of West Virginia, Respondent violated Rule 3.4(c) of the Rules of Professional Conduct, as set forth above.
154. Because he failed to properly expedite his client’s appeal and failed to comply with the orders of the Supreme Court of Appeals of West Virginia to perfect the same, Respondent violated Rule 8.4(d) of the Rules of Professional Conduct, as set forth above.
155. Because he failed to comply with the ODC’s lawful request for information by failing to provide a verified response, Respondent violated Rule 8.1(b) of the Rules of Professional Conduct, as set forth above.

**COUNT VII**  
**I.D. No. 24-06-034**  
**Complaint of Office of Lawyer Disciplinary Counsel**

156. This complaint was opened by the ODC on January 18, 2024, after receiving a referral from Emily Stern, Staff Attorney for the Supreme Court of Appeals of West Virginia. The referral included a copy of the Rule to Show Cause Order regarding Respondent's failure to timely perfect an appeal on behalf of his client in an abuse and neglect appeal: *In re* A.B. No. 23-400.
157. Respondent was court appointed to represent T.B. for purposes of appeal by the Circuit Court of Kanawha County on September 25, 2023.
158. By amended scheduling order entered on October 4, 2023, the Court extended the deadline to perfect the appeal to October 18, 2023. Respondent failed to perfect the appeal on or before October 18, 2023.
159. On November 3, 2023, a Notice of Intent to Sanction was entered directing Respondent to perfect the appeal on or before November 9, 2023, or be subject to sanctions.
160. On November 9, 2023, Respondent filed a motion for extension of time. By order entered on November 13, 2023, the Court granted the motion and extended the deadline to perfect the appeal to November 27, 2023.
161. Respondent failed to perfect the appeal on or before November 27, 2023.
162. On December 20, 2023, the respondent, West Virginia Department of Health and Human Resources, by Andrew T. Waight, Assistant Attorney General, filed a


motion to dismiss the appeal for petitioner's failure to timely perfect the appeal.

163. On January 18, 2024, the Court issued a Rule to Show Cause against Respondent directing him to appear before the Court on February 20, 2024, to show cause as to why he should not be held in contempt for his failure to perfect the appeal, unless sooner mooted by perfecting the appeal with the filing of a petitioner's brief and appendix.
164. Because he failed to act with reasonable diligence and promptness in timely perfecting an appeal on behalf of his client, Respondent violated Rule 1.3 of the Rules of Professional Conduct, as set forth above.
165. Because he failed to make reasonable efforts to expedite the appeal consistent with his client's interests, Respondent violated Rule 3.2 of the Rules of Professional Conduct, as set forth above.
166. Because he failed to meet his obligations pursuant to orders, notices, and rules issued by the Supreme Court of Appeals of West Virginia, Respondent violated Rule 3.4(c) of the Rules of Professional Conduct, as set forth above.
167. Because he failed to properly expedite his client's appeal and failed to comply with the orders of the Supreme Court of Appeals of West Virginia to perfect the same, Respondent violated Rule 8.4(d) of the Rules of Professional Conduct, as set forth above.

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Pursuant to Rule 2.9(d) of the Rules of Lawyer Disciplinary Procedure, the Investigative Panel has found that probable cause exists to formally charge you with a violation of the Rules of Professional Conduct and has issued this Statement of Charges. As provided by Rules 2.10 through 2.13 of the Rules of Lawyer Disciplinary Procedure, you have the right to file a verified written response to the foregoing charges within 30 days of service of this Statement of Charges by the Supreme Court of Appeals of West Virginia. Failure to file a response shall be deemed an admission of the factual allegations contained herein.

**STATEMENT OF CHARGES ORDERED** on the 10<sup>th</sup> day of February, 2024,  
and **ISSUED** this 10 day of February, 2024.

  
**Letitia Neese Chafin, Chairperson**  
Investigative Panel  
Lawyer Disciplinary Board

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**CERTIFICATE OF SERVICE**

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This is to certify that I, Lauren M. Hall, Lawyer Disciplinary Counsel for the Office of Lawyer Disciplinary Counsel, have this day, the 7<sup>th</sup> day of March, 2024 served a true copy of the foregoing **"STATEMENT OF CHARGES"** upon Respondent Benjamin R. Freeman, through first class mail, and electronically through File and Serve Xpress to the following address:

Benjamin R. Freeman, Esquire  
Post Office Box 234  
Hurricane, West Virginia 25526  
[bfreeman@freemanlawwv.com](mailto:bfreeman@freemanlawwv.com)

And upon the Hearing Panel Subcommittee by First Class United States Mail and electronically at the following addresses:

Charles R. Steele, Esquire  
347 Washington Avenue  
Clarksburg, West Virginia 26301  
[crs@steelemcmunn.com](mailto:crs@steelemcmunn.com)

Nicole A. Cofer, Esquire  
Magistrate Court Services Division  
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Lauren M. Hall