APPENDIX A:
INDIVIDUAL SUBSTANTIVE *FINLEY* PATTERNS

Appendix A lists the 49 discrete patterns tracked by our substantive review of 100 Philadelphia LWOP Finley *letters. The percentage of letters containing evidence of each pattern appears next to the pattern name, along with the definition reviewers used to identify and audit instances of each pattern. Patterns are listed alphabetically and divided into two categories: Patterns Evidencing Violations of the Duty of Loyalty and Patterns Evidencing Violations of the Duty of Competence.*

PATTERNS EVIDENCING VIOLATIONS OF THE DUTY OF LOYALTY

Argue against client instead of for client (38%): counsel articulates an argument that is adverse to their client's interests when an argument advancing their client's interests is readily discernible from the record

Assume client is lying (18%): counsel presumes that their client has lied to them without proof

Blame client for former lawyer's mistakes (14%): PCRA counsel characterizes the alleged mistakes of trial or direct appeal counsel as mistakes for which petitioner is responsible

Blame client for matters outside their control (18%): counsel characterizes petitioner as responsible for matters that arguably are not within petitioner's control

Blame client for PCRA attorney failure to investigate (29%): counsel unfairly shifts the duty to investigate to the incarcerated petitioner

Complain about client (9%): counsel airs grievances about their client in *Finley* letter

Complain about quality of client filings (18%): counsel takes issue with the quality of their client's pro se petition and/or attachments thereto

Concession of merit (12%): counsel appears to recognize the arguable merit of client's claim in *Finley* letter

Conclusory statement against client interest (27%): counsel comes to a conclusion that is adverse to their client's interests without explaining counsel's reasoning

Construe evidence/facts against client (67%): counsel makes non-compulsory factual inference(s) against client's interests

Construe law against client (47%): counsel describes the law in a manner that is disadvantageous to their client's interests

Denigrate client (14%): counsel insults their client explicitly or implicitly

Denigrate client claims (28%): counsel attacks the validity (as opposed to the merits) of their client's claims

Dismiss ineffective assistance of counsel (IAC) claim by appealing to attorney reputation (10%): counsel invokes the reputation or skill of trial or direct appeal counsel to undermine an IAC claim against them

Exploit technical client errors (26%): counsel catches their client in a legal, drafting, or technical error and leverages the client's error against them

Failure to clarify claims (legal) (29%): counsel declines to revise petitioner's pro se claim to clarify its legal stakes

Failure to communicate with petitioner (56%): letter contains evidence that counsel failed to comply with Model Rule of Professional Conduct 1.4 regarding communication, especially subsection (a)(2) ("A lawyer shall . . . reasonably consult with the client about the means by which the client's objectives are to be accomplished[.]")[1]

Framing claim against client interest (40%): counsel poisons the well by casting client's claim in disadvantageous manner

Misstate facts against client interest (13%): counsel is demonstrably incorrect about the facts or procedural history in a manner that is prejudicial to their client's interests

Misstate law/legal standard against client interest (19%): counsel is incorrect about the law in a manner that is prejudicial to their client's interests

Pander to court (14%): counsel lauds the performance of the trial judge in *Finley* letter

Undermine client (36%): counsel implies some nefarious omission or action by their own client

Unnecessarily cite adverse law (10%): counsel cites to legal authority that is adverse to their client's interests but which would not be required to be disclosed as "directly adverse to the position of the client" pursuant to Model Rule of Professional Conduct 3.3(a)(2)[2]

Use investigation against client (25%): counsel uses information learned through investigation to argue against client's interests (note that this is typically also a violation of the duty of confidentiality)

Violation of attorney-client privilege (25%): disclosure of confidential communications between attorney and client made in furtherance of the representation

[1] *See* MODEL RULES OF PRO. CONDUCT r. 1.4 (AM. BAR ASS'N 1983).
[2] *See id*. at r. 3.3(a)(2).

Violation of duty of candor to court against client interest (13%): counsel fails to comply with Model Rule of Professional Conduct 3.3 regarding candor towards the tribunal by mischaracterizing facts or law in a manner that is disadvantageous to their client's interests[3]

Violation of duty of confidentiality (31%): counsel violates counsel's duty regarding nondisclosure of confidential information contained in Model Rule of Professional Conduct 1.6[4]

PATTERNS EVIDENCING VIOLATIONS OF THE DUTY OF COMPETENCE

Affirmative evidence of no investigation (5%): lack of investigation can be inferred based on positive evidence

Cite incorrect standard (43%): counsel uses either an inaccurate or inapplicable legal standard

Conclusory statements (39%): counsel comes to a conclusion without offering evidence for that conclusion

Excessive legal quotations/citations lacking analysis (17%): counsel includes a high volume of legal authority that is not applied to the facts of the case at bar

Extremely perfunctory analysis (18%): discussion of a legal issue is extremely terse, especially where it dismisses multiple legal claims at once

Failure to apply law (49%): counsel neglects to apply the relevant legal standard

Failure to clarify claims (investigation) (69%): counsel neglects to seek out information that could help make out a claim, especially by failing to consult with counsel's own client

Failure to investigate (84%): lack of investigation can be inferred from a lack of information that could be gathered through investigation

Failure to spot legal issue (28%): counsel misses a legal issue that is facially apparent

Flatly incorrect about law (14%): counsel is demonstrably wrong about the law

Lack of facts section altogether (24%): counsel omits a discussion of the facts altogether

Mislead PCRA Court (facts) (25%): counsel inaccurately represents the facts (including procedural history)

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[3] *See id.* at r. 3.3(a)(1) & (3).
[4] *See id.* at r. 1.6(a).

Mislead PCRA Court (law) (40%): counsel inaccurately represents the law

Omission of citations where clearly appropriate (facts) (94%): counsel neglects to cite at least one factual proposition

Omission of citations where clearly appropriate (law) (54%): counsel neglects to cite at least one legal proposition

Pre-judge uselessness of investigation without investigating (22%): counsel concludes that investigation would be fruitless without performing the investigation required to reach that conclusion

Reliance on generalizations (17%): counsel invokes general practice instead of instant facts

Reliance on record to refute extra-record claims (61%): counsel uses only the direct appeal record to argue that a claim lacks merit, even though the relevant claim would require extra-record evidence to substantiate

Subjective dismissal of claims (79%): counsel dismisses a legal claim based on a subjective determination of the import of facts (note that the focus of this pattern is the *subjective weight counsel places on facts* regardless of whether counsel has cited a legal standard)

Subjective evidence-weighing (56%): counsel weighs evidence untethered from an objective legal standard (note that the focus of this pattern is on the *lack of a legal standard*)

Vague evidence-weighing (64%): counsel is unclear about what evidence is being weighed

Vagueness (53%): counsel is so imprecise as to leave the reader unsure what is being referenced