Examining *Finley* "No-Merit" Letters:

An empirical review of attorney ethics and legal process in Philadelphia LWOP cases

Phillips Black

a nonprofit, public interest law practice

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Phillips Black consists of practitioners collectively dedicated to providing the highest quality of legal representation to incarcerated individuals in the United States sentenced to the severest penalties under law. Phillips Black further contributes to the rule of law by consulting with capital counsel, conducting death penalty clinical training, and developing research on the administration of criminal justice. Founded in 2014, Phillips Black's Philadelphia Office has successfully obtained relief in 11 cases involving wrongful convictions and has successfully advocated for two clients in the commutation process.

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Executive Summary

Finley "no-merit" letters are a feature of Pennsylvania's post-conviction review system. Filed pursuant to *Commonwealth v. Finley*,[1] they are a mechanism under which a lawyer appointed to represent a petitioner in post-conviction proceedings may move to withdraw from the representation by arguing that all their client's claims lack merit in a publicly filed "no-merit" letter.

Though *Finley* letters are routinely filed by post-conviction lawyers in Pennsylvania, even in serious cases where clients are serving severe sentences, little has been done to assess their empirical scope or understand their systemic impact. Those kinds of queries are warranted. Pennsylvania leads the country in sentences of life without the possibility of parole (LWOP). And Philadelphia has sentenced more individuals to die in prison than any county in the country — 84% are Black, and 50% were under the age of 25 at the time of the offense.

Nor have efforts been undertaken to examine the interplay between *Finley* letters and the system of appointed counsel in the Commonwealth. Until 2023, Pennsylvania remained one of only two states nationwide that provided no funding for public defense, leaving it to individual counties to safeguard the Sixth Amendment right to counsel. In Philadelphia, low funding levels enable the public defender's office to represent a mere 20% of individuals who are charged with homicide at trial. The vast majority of defendants facing homicide charges who cannot afford to retain private counsel, therefore, receive court-appointed trial lawyers who collect fees among the lowest in the nation. In post-conviction proceedings in Philadelphia, 100% of individuals who cannot afford counsel are represented by appointed counsel, who also operate under a low fee cap. (See Text Accompanying Chart 2, "*Finley* and Fee Caps." For a more fulsome analysis of Pennsylvania's public defense crisis, see Appendix C.)

In Pennsylvania, these initial post-conviction proceedings represent the *first and only* opportunity for a court to review whether trial counsel provided constitutionally effective advocacy. Importantly, Pennsylvania's Post Conviction Relief Act (PCRA)[2] entitles petitioners to effective assistance of post-conviction counsel to make this showing.[3] The supreme courts of Pennsylvania and the United States have both held that the procedure under *Commonwealth v. Finley* satisfies the requirements of effective assistance of counsel and provides an adequate process for review. That process dictates that, once an attorney has filed a *Finley* letter, the court must then conduct an independent review and may dismiss the PCRA petition if the court agrees with the *Finley*-filer's assessment. The newly pro se petitioner then has twenty days to object and can file an appeal.

Despite the frequency of *Finley* letters in post-conviction cases, no empirical data about *Finley* "no-merit" letters has previously been collected. To begin filling this gap, Phillips Black collected 335 *Finley* "no-merit" letters from across Pennsylvania and analyzed how the procedure functioned in each case. A subset of 100 *Finley* letters filed in Philadelphia homicide cases involving LWOP sentences was more closely reviewed for insight into ethical issues and the quality of legal analysis.

Across the board, we observed some stark divides. We did not find a single *Finley* letter that was authored by a retained attorney, which suggests that the *Finley* procedure is exclusively reserved for cases with poor petitioners who cannot afford to retain counsel. (See Part I, Chart 2.) Among petitioners who received *Finley* letters, Black people were also grossly overrepresented, making up 74.3% of such petitioners (and only 12.4% of the population of Pennsylvania). (Part I, Chart 1.) We also found a remarkably consistent alignment of legal professionals — defense lawyers, prosecutors, and judges — against these poor, primarily Black petitioners. After a defense lawyer filed a *Finley* letter, prosecutors almost never filed *anything*, and judges almost always dismissed the petition. By contrast, petitioners either lodged objections or appealed the dismissal of their petitions in the vast majority of cases. (See Part I, Chart 3.)

In our analysis of Philadelphia LWOP letters, we found **sweeping ethical violations.** More than one-third of *Finley* letters filed in LWOP homicide cases violated either the duty of confidentiality,[4] the attorney-client privilege, or both. And *Finley* letters appeared to systematically disregard the duty of loyalty: 63% disparaged or showed mistrust of clients, 44% blamed clients for legal deficiencies, and 46% demeaned clients' claims and filings. Eschewing loyalty to clients, *Finley* letters could not even plausibly be characterized as neutrally assessing claims asserted by their clients, as the vast majority (84%) of letters argumentatively interpreted the facts or law to damage clients' legal interests. (Part II, Chart 4.)

Deficient legal and factual analysis was endemic to the Philadelphia LWOP letters reviewed. Fully 98% of *Finley* letters contained evidence of careless, wanting, or otherwise questionable legal analysis; 98% failed to adequately engage with facts of record; and every single "no-merit" letter contained evidence that counsel unreasonably neglected to investigate at least one extra-record fact. (See Part II, Chart 5. For a description of how each of the statistics in the preceding two paragraphs were calculated, see Appendix B.)

Our preliminary findings raise a real concern that Philadelphians are sentenced to die in prison without ever receiving competent counsel. They clearly show the necessity for a more fulsome empirical analysis of *Finley* letters in LWOP cases and beyond. Even this preliminary analysis alone, however, demonstrates that *Finley* has formed a culture of attorney betrayal and inadequate lawyering that the legal profession must reform. Additionally, the impact of *Finley* on the sizable population of individuals sentenced to die in prison in Pennsylvania and its interplay with systems for appointment of counsel require further study and analysis.

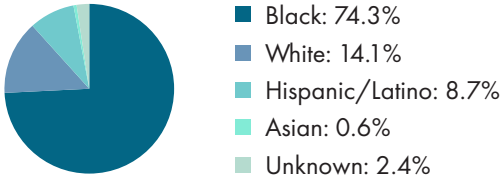
PART I: Overview of Full Data Set

For this preliminary study, we collected 335 *Finley* "no-merit" letters from across Pennsylvania in all types of criminal cases. For our full data set review, we analyzed all 335 cases for information about the real-world implementation of the procedure. (See Charts 1-3.)

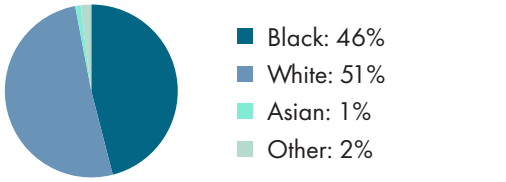
Prior to this study, no repository of *Finley* "no-merit" letters existed. Our primary method of identification and collection involved review of federal dockets in habeas corpus cases where a magistrate judge's report and recommendation or a district judge's memorandum opinion cited *Commonwealth v. Finley*. The vast majority of such cases arose in the Eastern District of Pennsylvania, which includes Philadelphia. Additionally, we targeted letters that had been filed in Philadelphia in cases where the petitioner was serving a sentence of LWOP by requesting paper records of such cases from the Philadelphia Court of Common Pleas. Finally, we collected *Finley* letters directly from Pennsylvania attorneys as well as incarcerated individuals.

Chart 1: Racial Demographics

Racial Make Up of *Finley* Letters



Racial Make Up of PA Prison Population[5]



Racial Make Up of Pennsylvania[6]

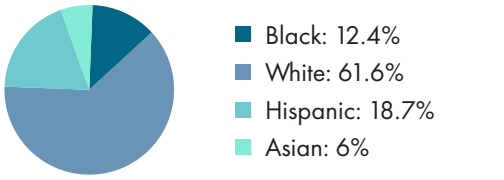


Chart 2: Frequency of Court-Appointed Counsel in *Finley* Letter Cases

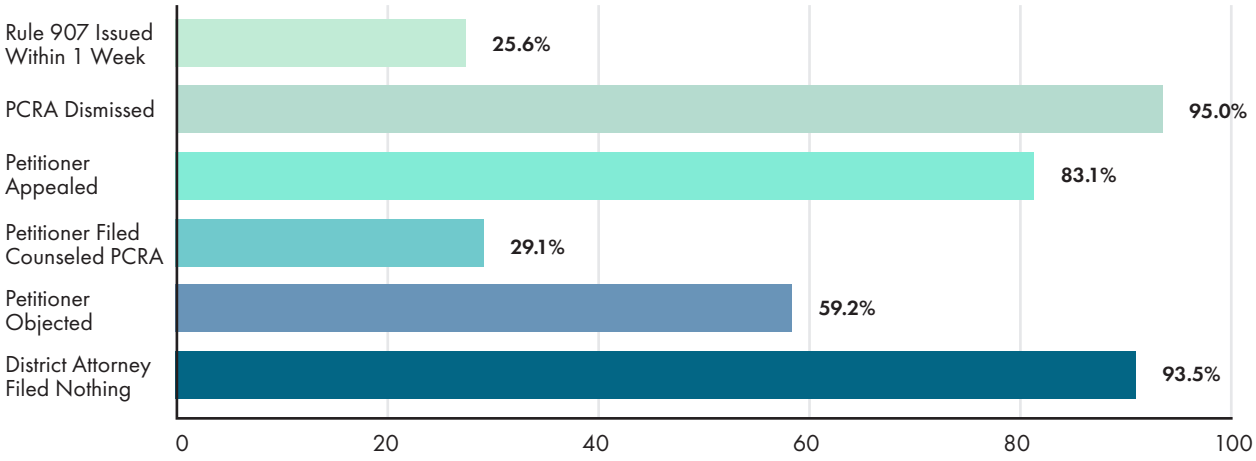


Finley and Fee Caps

In Philadelphia, the maximum fee awardable to an appointed post-conviction lawyer for a homicide case is $6,000, at an hourly rate of $85.[7] This implies that an attorney should spend no more than 70 hours and 35 minutes on all aspects of the post-conviction case, including the appeal — a grossly inadequate amount of time.[8] This unrealistically low fee cap incentivizes attorneys to efficiently withdraw through the "no-merit" letter procedure instead of litigating their clients' claims for insufficient compensation.

To commence post-conviction proceedings, petitioners in Pennsylvania must first file a pro se PCRA petition. If this is the individual's first PCRA petition, then the court is required to appoint a lawyer. If it is a "successor petition," then the court may appoint counsel. Under *Commonwealth v. Finley*, this lawyer may file either an amended PCRA petition or a *Finley* "no-merit" letter. In all 335 cases in our data set, counsel filed a *Finley* "no-merit" letter. Chart 3 illustrates what happened next.

Chart 3: Judicial Review and Process in Finley Letters



Finley requires the PCRA court to undertake an independent review before either accepting or rejecting counsel's "no-merit" letter. In almost all cases (93.5%), the district attorney's office did not file anything to assist the court's assessment. In more than one-quarter of cases (25.6%), within one week of counsel's "no-merit" letter (and sometimes on the same day), the PCRA court issued a so-called Rule 907 Notice, indicating that the court completed its independent review and planned to dismiss the petition without a hearing. Regardless of the timing of the court's Rule 907 Notice, after a *Finley* letter was filed, PCRA courts eventually dismissed the petition in 95.0% of cases. By contrast, 59.2% of petitioners who received a *Finley* letter from their court-appointed lawyer publicly filed objections, and 29.1% of such petitioners subsequently retained a lawyer who filed a PCRA petition in their case.

PART II: Philadelphia LWOP *Finley* Letters

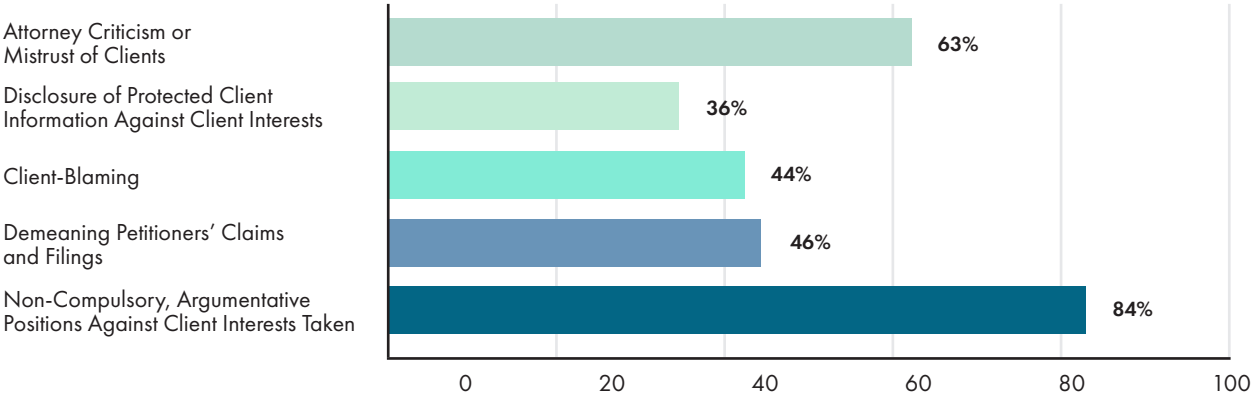
For our substantive level of review, we closely analyzed 100 "no-merit" letter cases from Philadelphia County in which the petitioner was serving a sentence of LWOP. Our substantive review of Philadelphia LWOP cases involved systematically coding each "no-merit" letter for instances of 49 standardized patterns, each of which evidenced either disloyal or deficient lawyering. (For a complete list of the 49 standardized patterns with definitions, see Appendix A.) To ensure accuracy, every pattern-instance was evaluated a second time by a legal professional before it was finalized.

Our substantive review of Philadelphia LWOP *Finley* letters uncovered an extraordinary volume of disloyal and incompetent lawyering. The discussion of these findings that follows is separated into three sections. The first two sections discuss two broad categories of attorney ethical violations, respectively: Violations of the Duty of Loyalty (see Section I, Chart 4) and Violations of the Duty of Competence (see Section II, Chart 5). The final section highlights the individual, standardized patterns that were most prominent, common, or problematic in the Philadelphia LWOP *Finley* letter data set. (See Section III, Charts 6-10.)

Section I: Violations of the Duty of Loyalty

The *Finley* letters in our Philadelphia LWOP data set revealed routine betrayal of clients in myriad ways. They disparaged clients personally, publicly disclosed clients' confidential and privileged information, and actively undermined the strength of clients' legal positions. (See Chart 4.) This behavior calls into question whether the "essential element" of loyalty in attorney-client relationships is protected by the *Finley* letter process.[9]

Chart 4



1. Attorney Criticism or Mistrust of Clients: 63%

Disloyalty was on stark display in *Finley* letters when attorneys criticized their own clients and maligned them as untrustworthy. One attorney wrote this of his client, who was serving LWOP:[10]

> In essence, the Commonwealth could show that the defendant tortured his victim, and did so with an almost fiendish cruelty of such monumental scope that it would well warrant the ultimate punishment, to wit, death.

Later in the *Finley* letter, counsel continued:[11]

> Finally, attached hereto as Exhibit "A" is a letter written by the Chief of the Appeals Unit of the DA's Office to then Prothonotary Lachman of the Supreme Court of Pennsylvania in which the history of Petitioner's actions with prior attorneys is reflected.
>
> It is indeed a sad abuse of a system which has always tried to provide a voice and an opportunity to be heard as to those persons it incarcerates.

In this instance, counsel took on the role of prosecutor, arguing that his client "well warrant[ed]" an even more severe punishment, the death penalty, and ascribing to him "almost fiendish cruelty of . . . monumental scope." Counsel then took the extraordinary step of proffering evidence from the prosecutor to cast his own client as an untrustworthy abuser of judicial process.

Such client-dehumanization starkly demonstrates *Finley*-filers' disloyalty to their clients. One *Finley*-filer wrote:

> This case is, unfortunately, one in a seemingly endless series of such cases. In this case, as in so many others, the dark forces of thirst, greed and addiction collided leaving, in their wake, death and ruination. The thirst for drugs drove [the victim] and his friend into the "Badlands." Greed and addiction drove [Petitioner] into an act which took a life and ruined his own. [Petitioner] had no prior record. He was not beyond redemption. [The victim] had a wife and family and apparently was a hard working man. What ensued on that fatal night was a tragedy for all.[12]

2. Disclosure of Protected Client Information Against Client Interests: 36%

Over one-third of *Finley* letters revealed information that was protected — either by attorney-client privilege or counsel's duty of confidentiality[13] — in a manner that affirmatively damaged clients' cases. Tyrone Martin's counsel filed a *Finley* letter that violated both. The filer violated the privilege by disclosing her client's statement that:

> he was inside his mother's house with Ms. Nelson at the time of the shooting. He stayed late in order to make sure that the children were asleep when Ms. Nelson came to pick him up because June 28 is her birthday and they bring it in with sex.[14]

She then violated confidentiality by repeating the specific contents of a confidential conversation with a witness:

> Present counsel was able to speak with petitioner's mother, Carolyn Martin, on December 17, 2007, about his this [sic] alibi. Ms. Martin thought that petitioner believed she was an alibi witness because she believed that he was present at her surprise 50th birthday party. After discussing the matter, Ms. Martin realized that her surprise party was not on June 27, 2000, but on June 27, 2001. She was certain that Ms. Nelson was not at the party.[15]

In another case, Corey Williams' *Finley*-filer disclosed the contents of a phone call between counsel and an individual who had once been Mr. Williams' potential co-defendant. Counsel used that individual's allegations both to discredit Mr. Williams' claim and to gratuitously implicate Mr. Williams in separate homicides:

> Most pertinent to this issue, however, is the telephone call (caller ID verified) to current counsel on June 23 of this year from Gregory Manning. Manning, in summary, declared that he was never asked to be a witness for Petitioner, that had he been called he would testify that he was not a witness to a crime — much less a homicide — and that he was fully aware of the dates, locations and other facts supporting Petitioner's three separate homicide convictions.[16]

3. Client-Blaming: 44%

Finley-filers frequently blamed clients for deficiencies in clients' pro se petitions, even though their clients did not have formal legal training and faced serious obstacles in filing petitions from prison.

One *Finley*-filer noted pointedly that their client had filed "an unsworn affidavit lacking a notary seal," implicitly criticizing the petitioner's failure to obtain a notarized document while incarcerated, though the PCRA has no such evidentiary requirement.[17] The same *Finley*-filer ridiculed another client's use of the term "affidavit," writing that he had "requested a time extension so that Petitioner could supply 'affidavits' relative to his prosecutorial misconduct issue," while noting, "[s]aid documents are attached, but neither may be properly characterized as an 'affidavit' since they have not been sworn to by the declarant before an authorized officer."[18]

Another attorney blamed his client for failing to develop and investigate his claim without considering the complications of obtaining evidence while incarcerated or communicating through the prison mail system.

> The Petitioner's next claim is that trial counsel was ineffective for not opposing Jamina Washington's testimony to form the basis of the Affidavit of Probable Cause for a search warrant. I'm not really sure what to make of this claim. When I wrote to the Petitioner I asked him to elaborate on this claim and to indicate what remedy could be constructed in a PCRA. I asked the Petitioner to send me the Affidavit of Probable Cause he is referring to, but he has not. I'm not sure that this claim is cognizable in a PCRA.[19]

This *Finley*-filer appears unaware that incarcerated petitioners do not have access to their own court record, transcripts, or even to the discovery at trial, unless provided by counsel. These are the very documents that are necessary to develop a claim of ineffective assistance of counsel. Additionally, the filer's request that his client "indicate what remedy could be constructed in a PCRA" is particularly

Barriers to Litigating from Prison

Incarcerated petitioners face considerable barriers to obtaining statements or affidavits from witnesses. To contact a person they believe has information about their case, they must first determine whether an applicable statute or DOC regulation prohibits them from doing so. They typically have no internet access to assist them in locating the witness. And if they do manage to locate and contact a potential witness, they cannot have a confidential conversation with them. All non-attorney calls and communications are recorded, making people reticent to discuss the details of their legal case by unsecure means. If a petitioner navigates these barriers, and the witness agrees to sign a statement, the petitioner faces the further hurdles of gaining access to a computer or typewriter, drafting a legally salient statement as a layperson, paying to have the document printed, paying for postage, and mailing the statement to the potential witness. An affidavit is a further step which requires that they identify and request the assistance of a prison official who is also a notary to affix their seal to the document. The availability of notaries varies by institution.

problematic: it implies that the filer did not know whether trial counsel could be found ineffective for failing to litigate a Fourth Amendment constitutional violation. He apparently therefore asked his client (an incarcerated lay person) for legal advice.

4. Demean Petitioners' Claims and Filings: 46%

Another way attorneys effectively worked against their clients was by demeaning their legal arguments, criticizing their filings, and leveraging petitioners' errors against them.

One *Finley*-filer, unhappy with his client's legal drafting skills, disparaged the quality of the petition and its use of case law:

> Instantly, petitioner's claim is merely a series of quotes from various cases, both state and federal, setting forth standards of ineffective assistance of counsel. It is entirely bereft of any specific reference to the record or the discovery material and lacks any direct example where counsel failed to bring out inconsistencies or confront the witnesses with matters that contradict their incriminating testimony.[20]

Regarding his client's pro se claim of ineffective assistance of counsel, another *Finley*-filer admonished his client:

> This is not an issue of arguable merit. The defendant raises issues in a vacuum and without particularity. From a reading of the defendant's claim, no one could possibly make out what the defendant is exactly claiming. Certainly, the defendant was afforded his right to counsel, and a bald claim, without stating more, is not enough to make out a claim of ineffective assistance of counsel.[21]

When incarcerated people draft their pro se PCRA petitions from prison, they typically lack trial transcripts. Rather than acknowledging this obstacle, one *Finley*-filer emphasized a slight, insignificant misquote in his client's petition:

> In his final claim, petitioner argues that trial counsel was ineffective for not objecting to a comment made by the prosecutor in his closing speech wherein, according to petitioner, the prosecutor stated, "For God's sake- his name is Killa." Present counsel has carefully reviewed the prosecutor's closing speech and was unable to find the comment about which petitioner complains. Counsel did find that the prosecutor stated, "And for crying out loud, one of them's nickname is 'Killa.'" (N.T. 4/16/13, 312). In any event, neither comment was so prejudicial that it would have resulted in an objection being sustained or the grant of a new trial.[22]

Procedural Bars and *Finley*

Even where a *Finley*-filer denigrates their client's claims, the client is still legally responsible for their counsel's actions and omissions.[23] Jarmaine Trice's case illustrates this point. Mr. Trice's *Finley*-filer emphasized to the court how "difficult" he found it "to isolate the individual instances of alleged errors of trial counsel that g[a]ve rise to this petition," blaming the "convoluted claims section and lack of supporting memorandum" included with Mr. Trice's pro se petition.[24] However, counsel had at his fingertips an egregious Sixth Amendment Confrontation Clause violation that direct appeal counsel had fully briefed, but which had not been ruled on by the Pennsylvania Supreme Court. By filing a *Finley* letter, counsel waived that claim, and with it, Mr. Trice's constitutional entitlement to relief. A decade later, the violation came to the attention of Stanford's Supreme Court Litigation Clinic, who took Mr. Trice's case to the United States Supreme Court. The Court denied relief because of the failure to raise the claim in state court. Noting that the Supreme Court would "almost certainly" have remanded the case, it wrote that Mr. Trice "missed two opportunities to obtain relief" — i.e. on direct appeal and in PCRA.[25] Thus, the Court found that the violation could not be raised in federal court, noting that "it was a predicament . . . of [Mr. Trice's] own creation."[26]

5. Non-Compulsory, Argumentative Positions Against Client Interests Taken: 84%

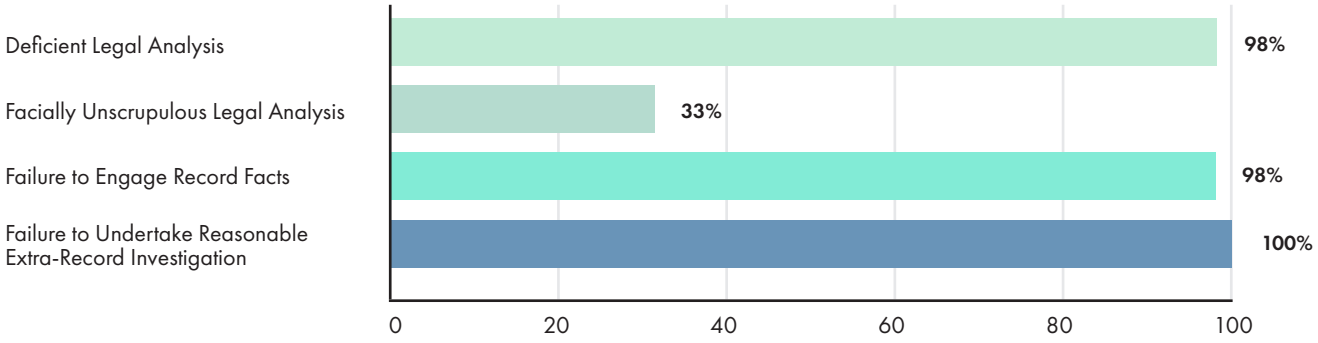
Finley-filers typically advocated against their clients by adopting discretionary, argumentative positions that minimized the weight of their clients' claims. When attorneys had the choice between presenting law and fact to the court in a neutral or favorable way to their client, or in a damaging way, they typically chose the damaging interpretation. For example, one lawyer "respon[ded]" to a claim, which "[p]erhaps" identified a constitutional error, by speculating (without citation) about the testimony of three witnesses:[27]

> **3.** Ineffective assistance of counsel for failing to challenge the identification of Mr. Mickens when individuals were only given individual photos instead of a photo array.
>
> **Counsel's response:**
>
> Perhaps a better identification procedure should have been undertaken. However, the Defendant cannot establish prejudice which would show that trial counsel was ineffective for having failed to move for relief. For instance, Mr. Ebron was familiar with the Defendant. He was so thoroughly familiar that he was able to testify as to a previous incident between the Defendant and the decedent which occurred in February 2012. Sheila Booker was also familiar with the Defendant. John Ward was familiar with the Defendant as his testimony indicated. He testified as to what he saw. Thus, and while photo arrays may have been a better idea, the Defendant was not prejudiced in this case and under these facts.

Section II: Violations of the Duty of Competence

The ABA Model Rules and the Pennsylvania Rules of Professional Conduct require "competent representation" from all attorneys, requiring them to use "the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation."[28] When handling matters of great "complexity and consequence," attorneys must employ a correspondingly high degree of "attention and preparation."[29] However, *Finley*-filers handling high-stakes cases in the LWOP data set routinely fell short of the mark of competence by failing to investigate, analyze, and present legal and factual issues in their clients' cases.

Chart 5



1. Deficient Legal Analysis: 98%

In almost every Philadelphia LWOP case, appointed counsel's *Finley* letter contained demonstrably deficient legal analysis, including frequent failures to cite to governing law at all. And where attorneys did include legal citations in their *Finley* letters, they often cited flatly incorrect or inapplicable law, or neglected to apply the law to the facts of their client's case. Attorneys' diverse analytic deficiencies frequently yielded *Finley* letters that concluded petitioners had no valid claims, though the legal basis for those conclusions remained opaque. Many of these analytic deficiencies are discussed in-depth below, in the text following Chart 10.

2. Facially Unscrupulous Legal Analysis: 33%

One-third of *Finley* letters in the LWOP data set included perfunctory, superficial analysis of a legal issue. Under this heading are letters which extensively cite legal authority, often adverse to petitioners' interests, without any application to the facts of the case. One attorney dismissed his client's petition with the cursory conclusion that his client's arguments "state conclusions of law which although true do not raise any issues that we can raise and sink our teeth into. They do not give any examples of the ineffectiveness or violuations [sic] that he is referring to for us to address."[30] Another *Finley*-filer rejected his client's claims in just a few words each:[31]

C) I was denied effective assistance of counsel-**(boiler plate, Ragan, supra.)**

D) Prosecutorial Misconduct-**(previously litigated, see page Superior Court Opinion)**

E) Insufficient Evidence **-(previously litigated, see page Superior Court Opinion)**

G) Due Process rights were violated-**_(boiler plate, Ragan, supra.)**

(H)Judicial Misconduct**_(boiler plate, Ragan, supra.)**

3. Failure to Engage Record Facts: 98%

Almost all *Finley* letters lacked an adequate analysis of the factual record. Many of the patterns of inadequate factual analysis we observed are discussed in-depth below, in the text following Chart 9. This inadequacy included: neglecting to cite any facts, providing the court with incorrect facts, and referring to facts only in a vague or generalized way. Many attorneys also completely omitted a facts section from their *Finley* letter:

> Your Honor set forth in your opinion a comprehensive synopsis of the facts. Counsel sees no purpose in doing so herein.[32]

4. Failure to Undertake Reasonable Extra-Record Investigation: 100%

Every Philadelphia LWOP *Finley* letter contained evidence that counsel unreasonably neglected to investigate at least one extra-record fact.[33] Many attorneys declined to help petitioners develop their claims or relied on their own uninvestigated factual assumptions to refute a claim. Two patterns of deficient extra-record investigation (namely Failure to investigate and Subjective dismissal of claims) are discussed in the text following Chart 9. (For a complete list, see Appendix B.) One common occurrence, exemplified below, involved *Finley*-filers' reliance on the record to refute a fact that would require extra-record investigation to either verify or refute:

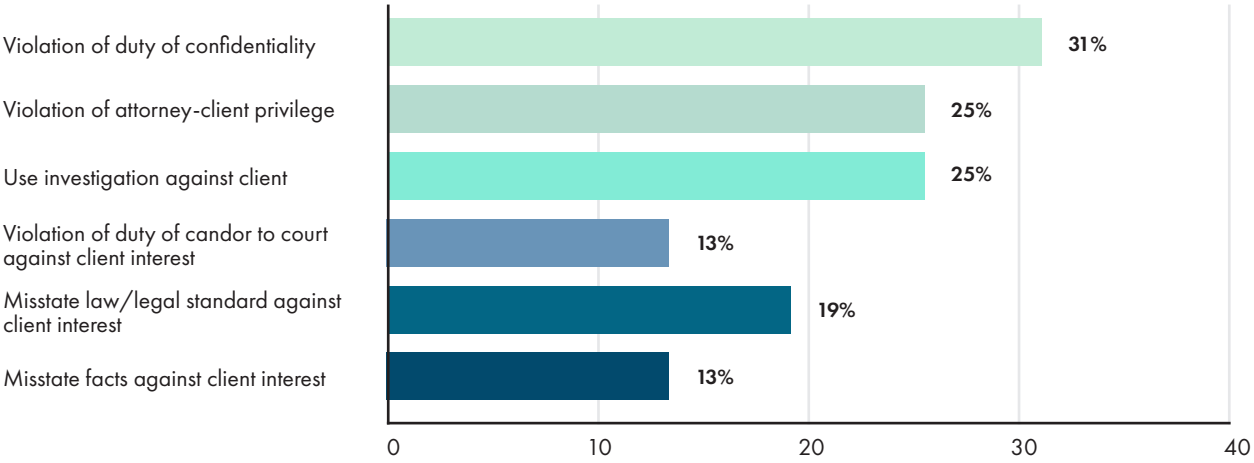
> Moreover, there is no indication anywhere in the record that the juror was asleep "through most of the trial" as the defendant has suggested.[34]

Section III: Individual Patterns Observed in the Data Set

The basic building blocks of our substantive data on Philadelphia LWOP *Finley* letters are 49 individual, standardized patterns. (See Appendix A.) This section highlights five groupings of the most prominent, common, or problematic individual patterns we documented in the Philadelphia LWOP *Finley* letter data set. Those groupings are: Abuse of Attorney Role, Attorney Disapproval and Lack of Communication, Argumentative Lawyering Against Client Interests, Deficient Factual Analysis, and Deficient Legal Analysis.

Group A: Abuse of Attorney Role

Chart 6



1. Violation of duty of confidentiality: 31%

Even when attorneys are *required* to withdraw from a representation under the Model Rules of Professional Conduct, they are prohibited from revealing confidential information "relating to the representation" in their motion to withdraw.[35] By stark contrast, *Finley*-filers routinely disclosed confidential information in their publicly filed *Finley* letters. For example:

> It is clear from interviewing the witnesses that they had all discussed thecase [sic] among themselves and that all had been contacted by Petitioner who no doubt discussed the case with them prior to their contacting undersigned counsel. Despite having obviously discussed the case these potential witnesses provided conflicing accounts. None of the witnesses were able to provide information that was even minimally exculpatory/. [sic][36]

2. Violation of attorney-client privilege: 25%

One-quarter of LWOP letters in the data set disclosed information *Finley*-filers learned directly from their clients. In many instances, counsel straightforwardly recounted what petitioners had told them. For example:

> I wrote to the Petitioner asking for clarification of his allegations. On 3/28/99, Petitioner responded in writing. In his letter, Petitioner specifically asserted that his trial counsel inappropriately convinced him to waive his right to a jury trial and also that the evidence was insufficient to convict him. Petitioner provided no further factual clarification regarding his claim about the obstruction of his rights by any Commonwealth official.[37]

Another lawyer vaguely invoked "the letters and legal pleadings" she received from her client as putative evidence that he had understood the terms of his plea agreement when he pled guilty more than 16 months earlier:

> Finally, the letters and legal pleadings that Mr. Swinson has sent to me indicate that he is currently able to understand his case and the legal issues that are involved with it.[38]

Notably, counsel for Mr. Swinson neither mentioned any in-person interactions with her client, nor explained what about Mr. Swinson's privileged communications constituted evidence of competence, nor discussed her qualifications for determining competency by mail.

3. Use investigation against client: 25%

In one-quarter of *Finley* letters, appointed counsel used information learned through the case investigation to argue against their client's interests. For example, Daniel Lewis' *Finley*-filer refuted Mr. Lewis' claim of judicial misconduct by attaching "[t]he letter that the court reporter sent to the Petitioner denying" judicial misconduct.[39]

4. Violation of duty of candor to court against client interest: 13%

The ABA Model Rules and the Pennsylvania Rules of Professional Conduct prohibit attorneys from making false statements of fact or law to the court.[40] This duty of candor is a formal counterweight to counsel's duty of loyalty to their client.[41] However, 13% of *Finley*-filers appeared to simultaneously violate *both* the duty of candor *and* the duty of loyalty by submitting false statements of fact or law to the court that *disadvantaged* their clients' interests.

5. Misstate law/legal standard against client interest: 19%

Similarly, nearly one-fifth of LWOP *Finley* letters mischaracterized the law in a manner that prejudiced their client's interests. In many cases, this involved invoking a more stringent standard than was legally required, and then arguing that the petitioner failed to meet this artificially inflated standard.

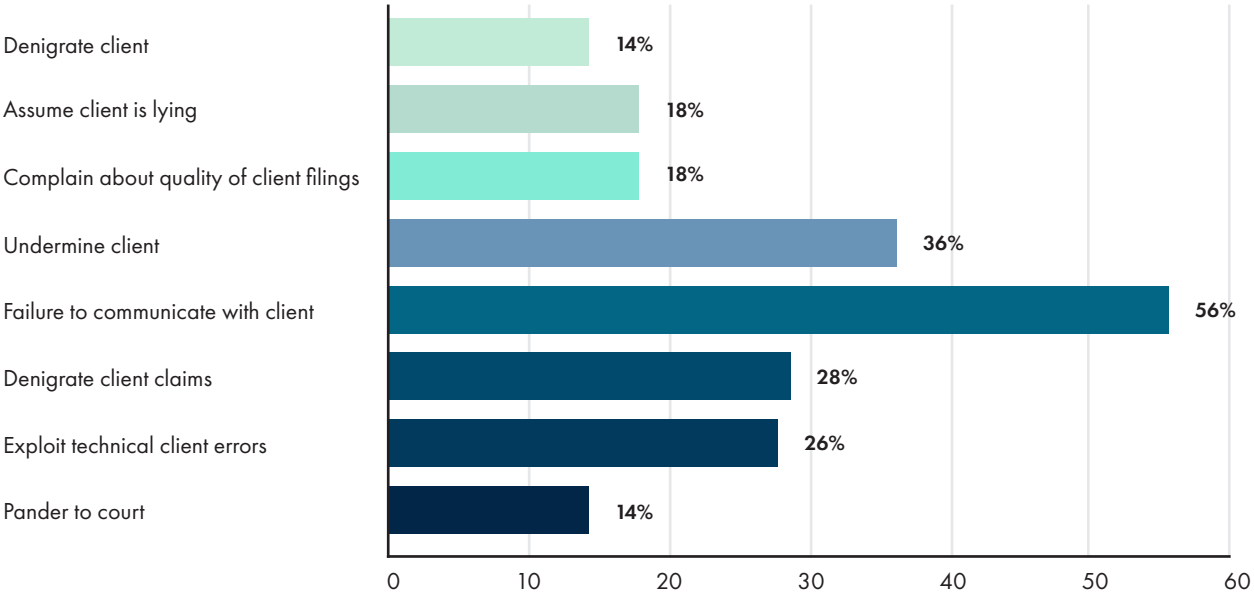
6. Misstate facts against client interest: 13%

Finley-filers sometimes presented flatly incorrect information to the court about the facts or procedural history of their clients' cases. In the letter below, for example, the petitioner pled guilty to first-degree murder and possession of an instrument of crime only—despite his *Finley*-filer's misrepresentation:

> Petitioner was found guilty of murder in the second degree, Robbery, VUFA, Conspiracy and PIC, after he entered a plea of guilty[.][42]

Group B: Attorney Disapproval and Lack of Communication

Chart 7



1. Denigrate client: 14%

Attorneys regularly insulted their clients. This often took the form of criticizing clients' understanding of the law, as in the letter below:

> The Defendent posits that appellate counsel failed to appeal to the Supreme Court. The Defendant perhaps fails to understand that there is no appeal as of right but that the counsel needed to have taken a Petition for Allowance to appeal.[43]

Similarly, another *Finley*-filer wrote that his client "d[id] not understand the subtleties of evidentiary proof or non-proof as the case may be."[44]

2. Assume client is lying: 18%

In nearly one in five *Finley* letters, counsel assumed their client lied to them without proof. In the letter below, the *Finley*-filer dismissed his client's claim by assuming that his client had lied about the effects of his intoxication level at the time of the incident:

> A review of the trial record indicates that although Petitioner had used narcotics at the time of the incident, it was not of such a nature that he would have been overwhelmed with loss of this faculties and sensibilities. Therefore, this issue is without legal merit.[45]

3. Complain about quality of client filings: 18%

Counsel frequently disparaged the quality of their client's pro se petition and/or attachments thereto. These asides were legally irrelevant and demeaned petitioners before the court. Consider the following examples taken from two different letters:

> It is noted that the affidavit is rife with misspellings and appears to have been cobbled together from several documents, then copied.[46]

> Petitioner quotes in his *pro se* petition a confusing, selectively edited portion of cross-examination to support this contention.[47]

4. Undermine client: 36%

Over one-third of letters in the data set contained instances where counsel undermined their own client's position by implying some nefarious omission or action by the client. One such attorney needlessly highlighted a minor error in the pro se petition:[48]

> Lastly, petitioner suggests that the prosecutor committed misconduct in his[1] closing argument in that two shotgun shells were found at the scene, yet the prosecutor argued that the decedent was shot four times. While closing arguments

> [1]The Assistant District Attorney was actually a woman.

5. Failure to communicate with client: 56%

The Rules of Professional Conduct require attorneys to "reasonably consult with the client about the means by which the client's objectives are to be accomplished."[49] Over half of the LWOP *Finley* letters in our data set, however, captured evidence that counsel did not communicate with their client about the case. Frequently, *Finley*-filers revealed their failure to communicate by admitting that they didn't understand their clients' claims while neglecting to clarify them. For example, Darrian Deans' *Finley*-filer simultaneously demeaned his client's pleading while making clear that he never asked Mr. Deans to clarify what he meant by "extrajudicial":

> The Petitioner's fourth claim is that his attorney was ineffective for failing to challenge the Commonwealth's other crimes evidence. The specific contention concerns the "extrajudicial" (whatever that means) statement made by the Petitioner to Jamina.[50]

6. Denigrate client claims: 28%

Finley-filers frequently demeaned their clients' claims instead of assessing them. In the letter below, for instance, the attorney chastised his client for a putative lack of specificity regarding a claim, and he then asserted an argument rebutting that claim:

> Merely alleging that "witnesses must be out there," in the absense of providing names and locations, is not a sufficient basis for post-conviction relief. A post-conviction proceeding is not a "fishing expedition" in which the petitioner casts his reel by filing a *pro se* petition with the hope that exonerating witnesses will magically appear. See Commonwealth v. Roney, 622 Pa. 1, 79 A.3d 595 (2013) (PCRA proceeding not a "fishing expedition").[51]

7. Exploit technical client errors: 26%

Over one-quarter of *Finley* letters contained instances of counsel catching their client in a legal, drafting, or technical error and leveraging the client's error against them. For example, Kahhim Odom's *Finley*-filer leveraged an omission against his client instead of undertaking the requisite review or investigation to supplement the filing:

> Here, petitioner has not outlined what he would have testified to but for counsel's alleged advice. This is fatal to his claim. See Commonwealth v. Alderman, 811 A.2d 592, 596 (Pa. Super. 2002) (denying ineffectiveness claim where defendent failed to explain what testimony he would have given at trial, other than bald assertion that he would have refuted the charges, and thus he failed to show prejudice.)[52]

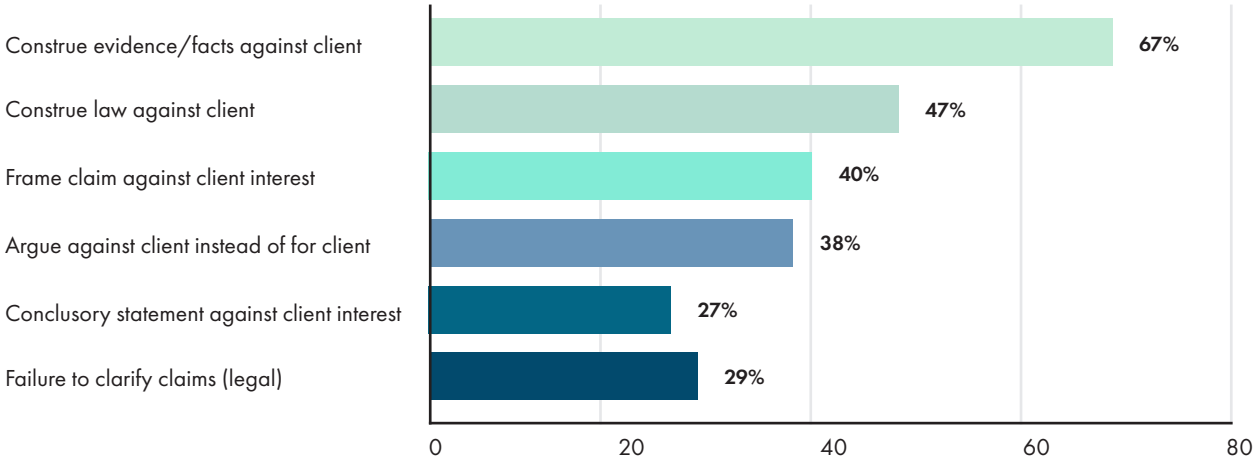
8. Pander to court: 14%

In stark contrast to the denigration of clients that was common across the data set, attorneys were sometimes conspicuously complimentary to the court, lauding the performance of the trial judge. This praise of the court at the expense of the client often supplanted legal analysis. For example, one attorney dismissed the claim that the petitioner should not have been found competent to plead by simply deferring to the trial judge, who reviewed the *Finley* letter:

> The undersigned also well knows that Your Honor would not have permitted the Defendent to proceed with the Plea and Hearing if the Court felt that the Defendant was incompetent and would have ordered a "forthwith" mental evaluation.[53]

Group C: Argumentative Lawyering Against Client Interests

Chart 8



1. Construe evidence/facts against client: 67%

In two-thirds of *Finley* letters, counsel made at least one discretionary, adverse factual inference against their client's interests. The letter below, for instance, described the crime as involving a "cycle of ill will and reprisal" without noting any specific facts supporting that adverse characterization or citing to any law supporting the presumed connection:

> At trial, the Commonwealth presented sufficient evidence to establish the petitioner's intent to kill the victim. The shooting took place after a cycle of ill will and reprisal between the parties' respective groups.[54]

2. Construe law against client: 47%

This pattern captures instances where counsel makes a decision to interpret the law in a manner that is disadvantageous to their client's interests. For example, one *Finley*-filer argued that her client did not have valid claims based on the "evidence adduced at trial and interpreted in the light most favorable to the Commonwealth as the verdict winner."[55] However, reviewing claims "in the light most favorable to the . . . verdict winner" is a standard of review applicable to certain claims brought during direct appeal,[56] not under the PCRA.

A number of *Finley*-filers also misstated the applicable standard for assessing ineffective assistance of counsel claims, even though the PCRA statute specifically enumerates such claims.[57] One *Finley*-filer reported that the prejudice standard required the petitioner to demonstrate a "likel[ihood] that the result would have been different absent the error."[58] Under the correct legal standard, however, petitioners need only demonstrate "reasonable probability" the result would have been different.[59]

3. Frame claim against client interest: 40%

This pattern captures evidence of counsel casting their clients' claims in a disadvantageous manner. Frequently, this involved counsel failing either to confer with their client or to conduct a basic legal analysis in order to reframe improper pro se trial-court-error claims as proper ineffective assistance of counsel claims. Often, such reframing could have rendered claims reviewable under the PCRA.

4. Argue against client instead of for client: 38%

Many *Finley*-filers articulated arguments that were adverse to their clients' interests when an argument advancing their client's interests was readily discernible from the record. In the letter below, the attorney acknowledged that his client had a potentially valid argument. Instead of developing that argument, counsel invented a hypothetical counterargument to refute it:

> You have also raised the claim that Mr. Rudenstein was ineffective because he withdrew the allegation that evidence should have been introduced at trial concerning the make and model of the car you owned at the time of the shooting. In this regard, there was testimony that the car allegedly operated by you on the date in question was a brown "undercover" type car, as opposed to the Lincoln Continental which you owned at the time. However, the Commonwealth likely would have argued at trial that you could have driven virtually any make or model of car on the date in question, and that your ownership of a different car did not render it impossible that you borrowed someone else's car.[60]

5. Conclusory statement against client interest: 27%

This pattern captures when counsel draws a conclusion that is adverse to their client's interests without adequately explaining counsel's reasoning. For example, one *Finley*-filer concluded that several witnesses "all had prior interaction with the Defendant in the neighborhood such that they would be able to identify him from a photospread," but counsel neglected to describe or provide a record citation for this "prior interaction" before authoritatively predicting the outcome of several hypothetical photospreads.[61]

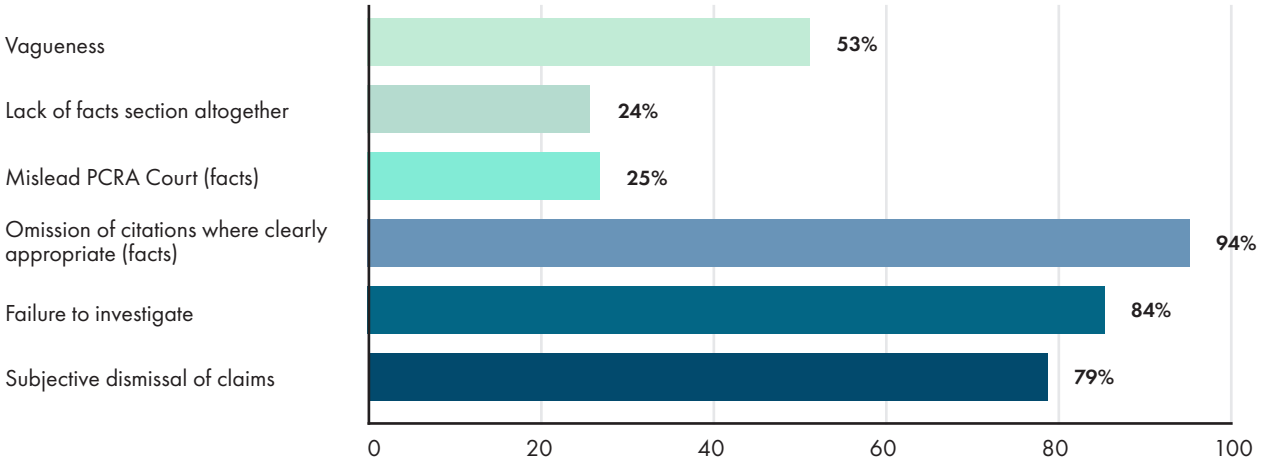
Another lawyer concluded: "accepting for the sake of argument that [there] were inconsistencies in the testimony of the witnesses who testified, the verdicts do not shock the conscience because the consistencies [sic] were minor and did not affect the reliability of the evidence."[62] Counsel's rationale for concluding that the verdicts do not shock the conscience is unclear.

6. Failure to clarify claims (legal): 29%

Frequently, pro se petitioners state the factual basis for their claims, but, because they are not attorneys, they do not cite to the correct law, assert the correct legal standard, or invoke the correct procedural vehicle. In nearly one-third of letters we reviewed, *Finley*-filers declined to reframe petitioners' pro se claims to clarify their legal stakes, instead simply repeating the pro se claim verbatim and then arguing that it had been improperly pled.

Group D: Deficient Factual Analysis

Chart 9



1. Vagueness: 53%

Over half of LWOP *Finley* letters contained such imprecise language as to leave the reader unsure what was being referenced. In one letter, the attorney implied that both of the victims were 13 years old, when in reality one was 22 years old: "The facts . . . established that on January 10, 1998, Shawn and Charity Wilkins, thirteen years old, were shot at 1516 N. Beach Street."[63]

2. Lack of facts section altogether: 24%

Many *Finley*-filers omitted any discussion of the facts of the case at all. In some cases, those same *Finley*-filers also invoked the "overwhelming" evidence of their clients' guilt. For example, one *Finley*-filer, who saw "no purpose" in describing the facts because the judge's prior opinion "set forth . . . a comprehensive synopsis of the facts," also wrote: "[a]s noted throughout this missive, the evidence of petitioner's guilt was overwhelming."[64]

3. Mislead PCRA Court (facts): 25%

One quarter of LWOP *Finley* letters inaccurately represented the facts or procedural history of the case. For instance, various *Finley*-filers: reported an inaccurate case number,[65] misspelled their client's name,[66] and inaccurately reported their client's arrest date.[67]

4. Omission of citations where clearly appropriate (facts): 94%

In the overwhelming majority of *Finley* letters, counsel neglected to cite at least one factual proposition. Typically, multiple factual propositions were uncited, and many letters contained multiple pages of uncited factual assertions. Across the entire data set of 100 letters, *Finley*-filers authored over 150 uncited factual claims, including these examples from Kinoll McCormick's *Finley* letter:

> It is undisputed that the two males that entered the store were Ronald Thomas and the Petitioner. It is all undisputed that while inside the store Mr. Thomas attempted to rob the store at gunpoint and that a struggle ensued with the owner's son, Mr. Ky. Finally, it is undisputed that both Mr. Thomas and the Petitioner fired shots and Mr. Ky was fatally wounded as a result of the shot fired by Petitioner and wounded in the ankle by the shot Mr. Thomas fired during his struggle with Mr. Ky.[68]

5. Failure to investigate: 84%

This pattern captures instances where a *Finley*-filer's lack of investigation could be readily inferred from the face of the letter or from a lack of information that could have been gathered. For example, one attorney admitted that he did not obtain records from his client's trial despite knowing who possessed them:

> Counsel has been unable to obtain a copy of the notes of testimony from petitioner's trial in the time given by the court to file this pleading in that the notes are not with the Quarter Session file and trial counsel released his file to petitioner's family.[69]

In another letter, one *Finley*-filer stated that he "looked very hard for evidence" of an ineffectiveness claim by "read[ing] this transcript more than once":

> I read this transcript more than once. I looked very hard for evidence that Bruno's personal problems affected the outcomes of this trial but found none. So as to the Petitioner's general claim that he was represented by an attorney that was generally unfit to represent him I do not believe that this claim has any merit and to the extent that this is a cognizable claim in this PCRA I believe it should be dismissed.[70]

However, unless counsel fails to object at a critical moment, ineffectiveness claims are almost never apparent on the face of court transcripts. Instead, they typically involve reviewing both discovery and trial counsel's file, as well as interviewing witnesses who did not appear in the transcript.[71]

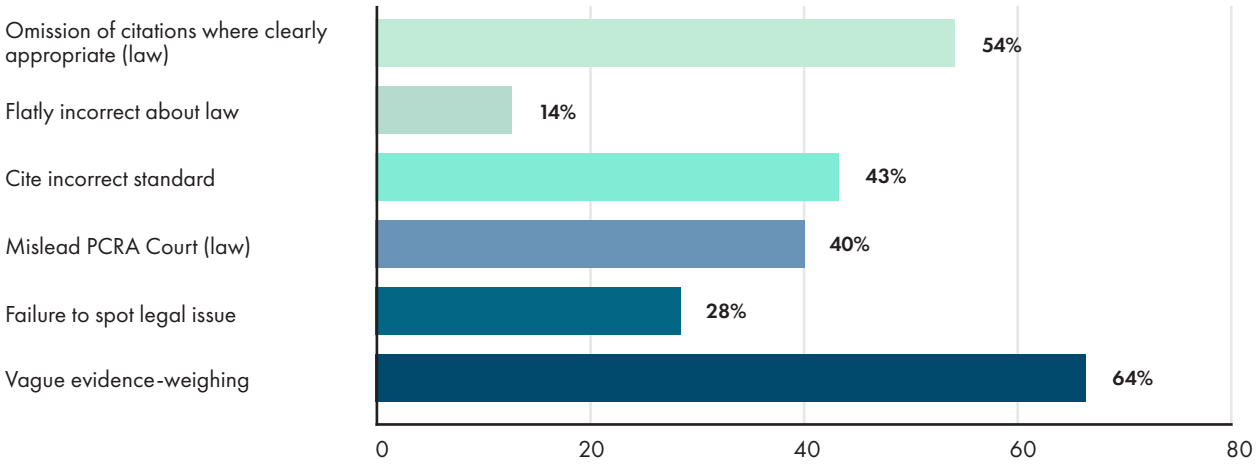
6. Subjective dismissal of claims: 79%

In the vast majority of *Finley* letters, counsel dismissed one or more of their client's legal claims based on a subjective determination of the facts. Acting more as judge than lawyer, the *Finley*-filer who penned the letter excerpted below, for example, invoked "the record" as a whole and unilaterally concluded that the trial court was unbiased:

> After having reviewed the record on this score, I have concluded that the trial court displayed no such bias to the jury, and accordingly find the issue to be without merit.[72]

Group E: Deficient Legal Analysis

Chart 10



1. Omission of citations where clearly appropriate (law): 54%

Over half of LWOP *Finley* letters in the data set contained at least one legal proposition that lacked a citation to authority. One *Finley*-filer, for example, merely cited his own "belief" about the existence of case law, rather than the case law itself:

> Based on this information, it is counsel's belief that there is case law which permits the Commonwealth to cross-examine any potential defense character witness regarding the aforementioned convictions and adjudications.[73]

2. Flatly incorrect about law: 14%

This pattern captures when a *Finley*-filer is demonstrably incorrect about the law—a high bar to meet. This pattern includes instances of lawyers inventing law out of whole cloth, as well as citing to precedent that was no longer good law at the time of filing. For instance, one *Finley*-filer in 2011 cited precedent from 1996 regarding waiver:

> Moreover, ineffective assistance of trial counsel claims that could have been brought on appeal by second counsel are waived and may not be asserted for the first time in a PCRA petition. *Commonwealth v. Robinson*, 682 A.2d 831 (1996).[74]

In 2002, however, the Pennsylvania Supreme Court overruled the requirement "that trial counsel's ineffectiveness be raised at that time when a petitioner obtains new counsel or those claims will be deemed waived."[75] Therefore, the proposition in *Robinson* had not been good law for nearly a decade when the filer cited to it in order to refute her client's claim.

3. Cite incorrect standard: 43%

Finley-filers frequently used either inaccurate or inapplicable legal standards. In fact, multiple attorneys used the incorrect standard for *Finley* letters themselves, citing to the *Anders* "wholly frivolous" standard that governs direct appeals rather than the *Finley* "lacking arguable merit" standard that governs post-conviction cases:

> I can only conclude that this issue is "wholly frivolous" and as such cannot pursue it in an Amended PCRA Petition.[76]

4. Mislead PCRA Court (law): 40%

Finley-filers often inaccurately represented the law and legal precedent. Examples include counsel claiming that a case contained a proposition that the case plainly did not support or implying that intermediate-appellate-court precedent was from the Pennsylvania Supreme Court. In one *Finley* letter, counsel omitted from a citation the name of the deciding court, misleadingly implying that it was a Pennsylvania Supreme Court case.[77] However, it was actually decided by the Pennsylvania Superior Court and was therefore of less precedential value.[78]

5. Failure to spot legal issue: 28%

In over one-quarter of *Finley* letters, counsel missed at least one legal issue that was facially apparent. In some cases, attorneys failed to discuss a legal claim that ultimately formed the basis for a grant of post-conviction relief from subsequent reviewing courts. One *Finley*-filer failed to raise an ineffectiveness claim regarding trial counsel's failure to object to jury instructions. Although a magistrate judge for the Eastern District of Pennsylvania later recognized this issue as one of "arguable merit," the *Finley*-filer's omission ensured that it was waived, preventing the petitioner from raising it in federal court. The federal magistrate judge wrote:

> The federal claim involved the same portion of the trial court's jury charge, but raises a claim of error never presented in the state courts. Accordingly, I am constrained to recommend that it too is procedurally defaulted.
>
> I note that this claim has arguable merit.[79]

6. Vague evidence-weighing: 64%

This pattern captures instances when counsel came to an evidentiary conclusion without clarifying what evidence was being weighed. For example, Raheem Willis' *Finley*-filer concluded that the case "could have easily" resulted in a death sentence without specifying what law or evidence supported that assessment:

> The evidence at trial was overwhelming and counsel's stewardship was effective in that it spared the defendant the death penalty. While a consecutive life sentence is a severe penalty, the case is one, which could have easily placed defendant on death row.[80]

Conclusion

This preliminary study raises serious concerns about the quality of legal process afforded to Philadelphians who cannot afford counsel and are sentenced to die in prison. The Philadelphia LWOP data set illustrates how the *Finley* "no-merit" letter procedure has entrenched routine attorney disloyalty and incompetence, even in extremely high-stakes criminal cases. The full data set raises the uncomfortable prospect that *Finley* has relaxed the legal profession's ethical and legal standards when the lives, liberty, and rights of poor, primarily Black people are at stake. In dissenting from the Supreme Court's opinion upholding *Finley*, Justice Brennan expressed concern that *Finley* letters would disproportionately harm poor petitioners. Though "[t]here is no rational basis for assuming that petitions submitted by indigents for collateral review will be less meritorious[,] . . . [i]t is hard to believe that retained counsel would file a letter that advocates dismissal of a client's case without notice to the client and without conducting a conscientious assessment of the record."[81] Now, forty years later, this preliminary study suggests that Justice Brennan's words of caution were well-founded: post-conviction petitions submitted by poor Pennsylvanians are afforded radically less meaningful legal process than the petitions of those who can afford counsel.

In order to assess the extent of the damage and what can be done to repair it, a comprehensive empirical review of *Finley* "no-merit" letters must be undertaken, including an assessment of how the *Finley* procedure intersects with systems for the appointment of counsel. A robust public conversation is required, and it must include the voices of those who have received *Finley* letters. The legal profession as a whole — defense lawyers, judges, prosecutors, policymakers, researchers, and other legal decision makers — must examine how this unethical legal culture has developed, act to repair the damage, and institute reforms that prevent further systemic ethical lapses. Should the legal profession fail to reform, it risks realizing Justice Brennan's ominous prediction that the "right to effective counsel" would become "a right to a meaningless ritual,"[82] at least for people who are poor.

Notes

1. *Commonwealth v. Finley*, 550 A.2d 213 (Pa. Super. Ct. 1988).
2. 42 Pa. Cons. Stat. § 9541.
3. *Commonwealth v. Bradley*, 261 A.3d 381, 391 (Pa. 2021).
4. Pa. Rules Of Pro. Conduct r. 1.6.
5. *Racial Disparities*, Pa. Dep't of Corr. (2026), https://dashboard.cor.pa.gov/us-pa/narratives/racial-disparities/1.
6. America Counts Staff, *Pennsylvania Population Hit 13 Million in 2020*, U.S. Census Bureau (Aug. 25, 2021), https://www.census.gov/library/stories/state-by-state/pennsylvania.html.
7. Order No. 01 of 2017 ¶ 2(b), *In Re:* First Judicial District of Pennsylvania Court-Appointed Counsel, Investigative and Expert Witness Fee Schedule, First Judicial District of Pennsylvania Administrative Governing Board (June 26, 2017), https://www.courts.phila.gov/pdf/regs/2017/AGB-01-of-2017-4.pdf.
8. *Cf.* Richard Wilson & Robert Spangenberg, *State Post-Conviction Representation of Defendants Sentenced to Death*, 72 Judicature 331, 336 (1989) (documenting median attorney hours required to litigate capital post-conviction cases in trial court only in Virginia, North Carolina, and Florida: 450 hours, 482 hours, and 500 hours, respectively).
9. *See* Model Rules Of Pro. Conduct r. 1.7 cmt. 1 (Am. Bar Ass'n 1983); Pa. Rules Of Pro. Conduct r. 1.7 cmt. 1.
10. Letter from Norris E. Gelman to Hon. James D. McCrudden (July 19, 1991) at 2.
11. *Id.* at 4.
12. Letter from Barnaby C. Wittels to Hon. Eugene H. Clarke, Jr. (Mar. 24, 1998) at 3.
13. *Cf.* ABA Comm. On Ethics & Pro. Resp., Formal Op. 519 (2025) ("The duty of confidentiality is the foundation upon which the client-lawyer relationship exists.").
14. Letter from Barbara A. McDermott to Hon. Pamela P. Dembe (Feb. 3, 2008) at 4.
15. *Id.*
16. Letter from Larry Feinstein to Hon. Jane Cutler Greenspan (July 8, 2005) at 7.
17. Letter from Larry Feinstein to Hon. Sheila Woods-Skipper (Aug. 27, 2008) at 4.
18. Letter from Larry Feinstein to Hon. Jane Cutler Greenspan (July 8, 2005) at 1.
19. Letter from Gary S. Server to Hon. Jeffrey P. Minehart (Apr. 7, 2017) at 4.
20. Letter from James A. Lammendola to Hon. Rose Marie DeFino-Nastasi (Jan. 27, 2017) at 14.
21. Letter from David Rudenstein to Hon. Jane Cutler Greenspan (Feb. 28, 2007) at 13.
22. Letter from Stephen T. O'Hanlon to Hon. M. Teresa Sarmina (Sept. 11, 2016) at 13.
23. *See Shinn v. Ramirez*, 596 U.S. 366, 380 (2022).

24. Letter from Richard W. Hoy to Hon. John J. Poserina (July 6, 2000) at 4.
25. *Greene v. Fisher*, 565 U.S. 34, 41 (2011).
26. *Id.*
27. Letter from David Rudenstein to Hon. Rose Marie Defino-Nastasi (Feb. 22, 2017) at 15.
28. *See* Model Rules Of Pro. Conduct r. 1.1 (Am. Bar Ass'n 1983); Pa. Rules Of Pro. Conduct r. 1.1.
29. *See* Model Rules Of Pro. Conduct r. 1.1 cmt. 5 (Am. Bar Ass'n 1983); Pa. Rules Of Pro. Conduct r. 1.1 cmt. 5.
30. Letter from Richard B. Moore to Hon. Jane Cutler Greenspan (2002) at 3.
31. Letter from Dennis Turner to Hon. Rose DeFino-Nastasi (Oct. 6, 2016) at 4.
32. Letter from Stephen T. O'Hanlon to Hon. Barbara A. McDermott (July 5, 2016) at 2 n.1.
33. *Cf. Commonwealth v. Grant,* 813 A.2d 726, 737 (Pa. 2002) (allocating to post-conviction counsel the "burden of raising any extra-record claims that may exist by interviewing the client, family members, and any other people who may shed light on claims that could have been pursued before or during trial and at sentencing").
34. Letter from Daniel A. Rendine to Hon. Steven R. Geroff (July 21, 2005) at 5.
35. *See* ABA Comm. On Ethics & Pro. Resp., Formal Op. 519 (2025) (quoting Model Rules Of Pro. Conduct r. 1.6(a) (Am. Bar Ass'n 1983)).
36. Letter from Barnaby C. Wittels to Hon. Shelley Robins New (May 17, 2010) at 11.
37. Letter from Gary S. Server to Hon. Robert A. Latrone (June 21, 1999) at 3.
38. Letter from Emily Cherniack to Hon. Teresa Sarmina (July 26, 2007) at 1.
39. Letter from Gary S. Server to Hon. Barbara A. McDermott (Sept. 4, 2016) at 10.
40. *See* Model Rules Of Pro. Conduct r. 3.3(a)(1) (Am. Bar Ass'n 1983); Pa. Rules Of Pro. Conduct r. 3.3.
41. *See* Model Rules Of Pro. Conduct r. 3.3 cmt. 2 (Am. Bar Ass'n 1983) ("A lawyer acting as an advocate in an adjudicative proceeding has an obligation to present the client's case with persuasive force. Performance of that duty while maintaining confidences of the client, however, is qualified by the advocate's duty of candor to the tribunal. Consequently, although a lawyer in an adversary proceeding is not required to present an impartial exposition of the law or to vouch for the evidence submitted in a cause, the lawyer must not allow the tribunal to be misled by false statements of law or fact or evidence that the lawyer knows to be false."); Pa. Rules Of Pro. Conduct r. 3.3 cmt. 2 (same).
42. Letter from Patricia M. Dugan to Hon. Jane Cutler Greenspan (July 10, 2000) at 2.
43. Letter from Lee Mandell to Hon. Barbara A. McDermott (Jan. 3, 2017) at 8.
44. Letter from Stephen T. O'Hanlon to Hon. Barbara A. McDermott (July 5, 2016) at 13–14.
45. Letter from James A. Lammendola to Hon. Steven R. Geroff (Apr. 30, 2009) at 5.
46. Letter from Stephen T. O'Hanlon to Hon. Barbara A. McDermott (July 5, 2016) at 3 n.4.
47. Letter from Marc Antony Arrigo to Hon. Jeffrey P. Minehart (Feb. 27, 2013) at 6.
48. Letter from Barbara A. McDermott to Hon. Gregory Smith (May 20, 2004) at 5 n.1.
49. *See* Model Rules Of Pro. Conduct r. 1.4(a)(2) (Am. Bar Ass'n 1983); Pa. Rules Of Pro. Conduct r. 1.4(a)(2).
50. Letter from Gary S. Server to Hon. Jeffrey P. Minehart (Apr. 7, 2017) at 6.
51. Letter from Janis Smarro to Hon. M. Teresa Sarmina (June 26, 2015) at 6.
52. Letter from Stephen T. O'Hanlon to Hon. M. Teresa Sarmina (Feb. 24, 2017) at 3.
53. Letter from David Rudenstein to Hon. Benjamin Lerner (June 27, 2008) at 12–13.

54. Letter from Elayne C. Bryn to Hon. Benjamin Lerner (Mar. 30, 2012) at 5.
55. Letter from Barbara A. McDermott to Hon. Pamela P. Dembe (Feb. 3, 2008) at 1; see also Letter from Barbara A. McDermott to Hon. Gregory Smith (May 20, 2004) at 1(same); Letter from Barbara A. McDermott to Hon. Steven R. Geroff (Nov. 13, 2002) at 1(same).
56. *See, e.g., Commonwealth v. Stevens,* 670 A.2d 623, 625 (Pa. 1996) ("The test for determining the sufficiency of the evidence is whether, viewing the evidence in the light most favorable to the Commonwealth as verdict winner and drawing all proper inferences favorable to the Commonwealth, the factfinder could reasonably have determined all elements of the crime to have been established beyond a reasonable doubt.").
57. See 42 Pa. Cons. Stat. § 9543(a)(2)(ii).
58. Letter from Patricia M. Hoban to Hon. David N. Savitt (Jan. 30, 2001) at 3 (citing *Commonwealth v. Smith,* 650 A.2d 863 (Pa. 1994)).
59. *Strickland v. Washington,* 466 U.S. 668, 694 (1984).
60. Letter from Jeremy C. Gelb to Anthony Pitts (Mar. 27, 1998) at 3.
61. Letter from Joseph Schultz to Hon. Barbara A. McDermott (June 1, 2017) at 7.
62. Letter from Stephen T. O'Hanlon to Hon. M. Teresa Sarmina (Sept. 11, 2016) at 13.
63. Letter from Barbara A. McDermott to Hon. Ricardo C. Jackson (Apr. 28, 2005) at 1.
64. Letter from Stephen T. O'Hanlon to Hon. Barbara A. McDermott (July 5, 2016) at 2 n.1, 22.
65. Letter from Marc Antony Arrigo to Hon. Jeffrey P. Minehart (Feb. 27, 2013) at 1.
66. Letter from Gary S. Server to Hon. Robert A. Latrone (June 21, 1999) at 1.
67. Letter from Barbara A. McDermott to Hon. Steven R. Geroff (Nov. 13, 2002) at 1.
68. Letter from Barnaby C. Wittels to Hon. Shelley Robins New (May 17, 2010) at 3–4.
69. Letter from Barbara A. McDermott to Hon. Jane C. Greenspan (May 12, 2004) at 1 n.1.
70. Letter from Gary S. Server to Hon. Rose Marie DeFino-Nastasi (June 4, 2016) at 11.
71. *See Commonwealth v. Grant,* 813 A.2d 726, 737 (Pa. 2002) ("[I]neffectiveness claims, by their very nature, often involve claims that are not apparent on the record.").
72. Letter from Teresa Carr Deni to Hon. John J. Poserina, Jr. (Feb. 21, 1995) at 6.
73. Letter from Lee Mandell to Hon. Barbara A. McDermott (Feb. 6, 2017) at 1.
74. Letter from Elayne C. Bryn to Hon. Rose Marie DeFino-Nastasi (Mar. 23, 2011) at 4.
75. *Commonwealth. v. Grant,* 813 A.2d 726, 738 (Pa. 2002).
76. Letter from Steven G. Dubin to Hon. James D. McCrudden (Nov. 21, 1991) at 4.
77. Letter from Larry Feinstein to Hon. Jane Cutler Greenspan (July 8, 2005) at 7.
78. *See Commonwealth. v. Coleman,* 664 A.2d 1381 (Pa. Super. Ct. 1995).
79. *Anderson v. Wilson,* No. 05-4536, 2008 WL 11519728, at *6 & n.5 (E.D. Pa. Mar. 19, 2008).
80. Letter from Thomas L. McGill to Hon. D. Webster Keogh (Jan. 5, 2005) at 4.
81. *Pennsylvania v. Finley,* 481 U.S. 551, 569 (1987) (Brennan, J., dissenting).
82. *Id.*

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