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The
DISCIPLINARY BOARD
of the Supreme Court of Pennsylvania

July 2020 Newsletter



Unified Judicial System of Pennsylvania Coronavirus Information

The Pennsylvania Judiciary has provided [updates](#) regarding local court operations and proceedings. The Court continues to monitor developments regarding the spread of the coronavirus (COVID-19) and its impact on court operations.

[By Order of the Supreme Court of Pennsylvania, the general statewide judicial emergency declared and maintained in previous Court Orders of March 16, March 18, March 24, April 1 and April 28 ceased as of June 1, 2020. Any previous Orders in this line shall expire according to their own terms.](#)

The Court communicates regularly with the Governor's Office and the state Department of Health for guidance on measures to continue protecting the health and safety of court users and court employees.

Contact your local court for more information or [visit their website](#). Learn more about [filing emergency PFAs](#) during this pandemic. You can also learn more about mitigating the spread of the virus at Health.pa.gov.

From the Chair

Pennsylvania attorneys employ a unique system of self-regulation. This system is designed to protect the public while assisting lawyers who may encounter problems in their practice. The more each attorney becomes familiar with this system, the more each attorney gains pride in their chosen profession. To that end, the Reprimand Program is designed to help attorneys improve any perceived difficulties. Private Reprimands are just that, administered privately. Public Reprimands, however, are open for all to see. In light of the changing environment in which we live, the Disciplinary Board will now conduct Public Reprimands on its YouTube livestream page. These public proceedings will next take place on July 22, 2020 starting at 10:00 a.m. [here](#). All attorneys are encouraged to view, thereby personally witnessing the workings of our system of self-regulation.



At the same time, we must not forget our annual requirement of lawyer registration. All attorneys are required to register on or before July 1. For those who have not yet completed registration, you are

encouraged to visit the [site](#) as soon as possible to avoid the imposition of late payment penalties or, at worst, administrative suspension of your license. As of July 15, 2020, more than 95% of attorneys have completed their annual registration. Those who have not yet done so, are encouraged to take action.

Enjoy the rest of your summer and be safe.

James C. Haggerty
Board Chair

Attorney Registration

Annual Attorney Registration Past Due

For those 3,400 attorneys (only about 4.5%) still needing to complete their annual registration, remember to do so by tomorrow, July 16 to avoid the first late payment penalty.

Attorneys required to register annually include those on Active or Inactive status, as well as those with limited admissions of In-House Corporate Counsel, Defender or Legal Services Attorney, or Foreign Legal Consultant. Annual registration is to be completed through the Unified Judicial System's [Online Portal](#). An [Online Video Tutorial](#) and [Help Center](#) are available to assist with any problems that may arise.

While the option to "Pay by Mail" is still available, the Board encourages attorneys to "Pay Online" if at all possible. The COVID-19 pandemic has led to a minimal presence in the Board's physical offices making the processing of paper mail much more difficult than in prior years. The Board implores attorneys to use the mail-in option only if online payment is impossible due to the attorney's personal circumstances.

Important Dates

Payment Deadline JULY 1

First \$200 Late Fee Assessed After JULY 16

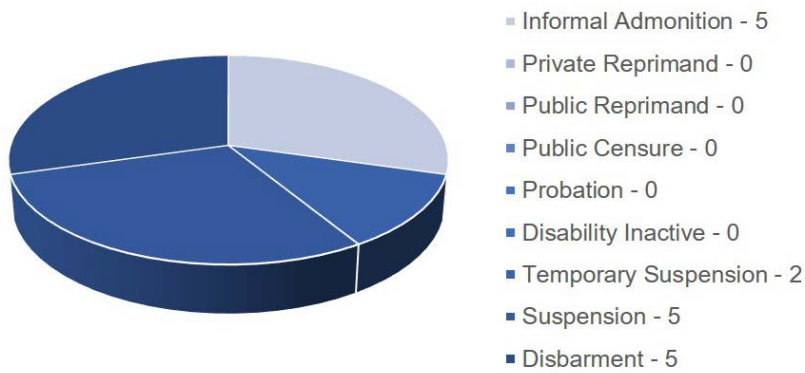
Second \$200 Late Fee Assessed After AUGUST 1

Social Media

Like us on [Facebook](#), follow us on [Twitter](#), and connect with us on [LinkedIn](#) for more news and information.

Discipline Imposed

June 2020



Temporary Suspension

[Jacqueline Patricia Gruhler](#)

[Andrew Russell Hurda](#)

Suspension

[Peter Jude Caroff](#)

[Asher Brooks Chancey](#)

[Michael B. Fein](#)

[Herbert Karl Sudfeld, Jr.](#)

[Katrina F. Wright](#)

Disbarment

[Candace Marie Stamos Ford](#)

[Kevin Michael Gogots](#)

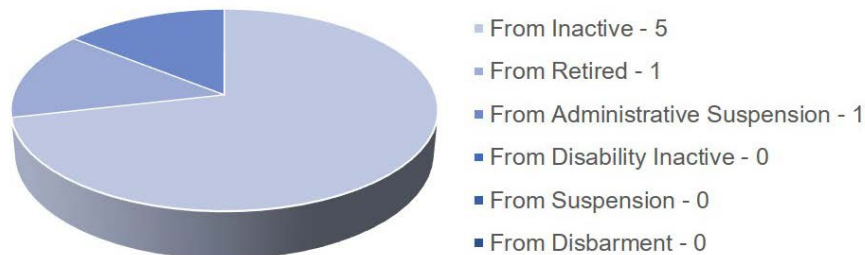
[Bert Theodore Lundberg](#)

[Neil I. Mittin](#)

[Anthony S. Rachuba, IV](#)

Reinstatement Granted

June 2020



From Inactive

[Allison Hedges Bacelli](#)

[Kathleen Quinn DePillis](#)

[Andrea D. Goodrich](#)

[Ryan Anthony Kraski](#)

[Mary Frances Ryan](#)

From Retired

[Frank John Keenan](#)

From Administrative Suspension

[Debra Zuckerman Anderson](#)

Note: The above-listed reinstatements reflect only those granted by Supreme Court Order. An attorney listed

above whose current license status does not reflect reinstatement has yet to submit the fees necessary to finalize reinstatement.

Vacancies

The Supreme Court of Pennsylvania is aided by select boards, committees, commissions, and councils consisting of more than 180 appointed volunteers - most, but not all, are lawyers and judges. The panels have a wide range of responsibilities and functions. Some make recommendations to the Court for amendments, revisions, or simplification of court procedural rules. Others regulate the practice of law, oversee continuing legal education for lawyers, and administer funds to assist individuals unable to pay for legal services. Still others advise on keeping the courts free of bias and discrimination and on long-range planning.

There is currently a vacancy on the following panel:

- [Committee on Rules of Evidence](#) - Applicants should be knowledgeable about the Pennsylvania Rules of Evidence and possess trial court experience.

Application Instructions

If you would like to be considered to serve on a board, committee, advisory group, or related independent entity, email the [application](#), cover letter, resume, and other pertinent information expressing your reasons of interest to SCApplications@pacourts.us. Click [here](#) for more application information. **Applications are due by July 31, 2020.**

Disciplinary Board News

Public Reprimands Scheduled for July; Available on YouTube Channel

The Disciplinary Board has scheduled 8 public reprimands for July 22. All of these may be viewed by members of the public on YouTube. The public may observe all disciplinary and reinstatement hearings, oral arguments, and public reprimands on the [Board's YouTube channel](#). View "Upcoming Public Proceedings" at the bottom of the Board's home page, www.padisciplinaryboard.org.

CDC Corner

Pennsylvania lawyers have new responsibilities pursuant to a recent amendment to the Rules of Professional Conduct. By order dated June 8, 2020, the Supreme Court amended Rule 8.4 to add a new subsection (g):

(g) [It is professional misconduct for a lawyer to] in the practice of law, by words or conduct, knowingly manifest bias or prejudice, or engage in harassment or discrimination, as those terms are defined in applicable federal, state or local statutes or ordinances, including but not limited to bias, prejudice, harassment or discrimination based upon race, sex, gender identity or expression, religion, national origin, ethnicity, disability, age, sexual



orientation, marital status, or socioeconomic status. This paragraph does not limit the ability of a lawyer to accept, decline or withdraw from a representation in accordance with Rule 1.16. This paragraph does not preclude advice or advocacy consistent with these Rules.

The ABA adopted a similar, but not identical, Model Rule 8.4(g) in 2016. Pennsylvania's rule amendment shares the ABA's goal of eliminating intentional harassment and discrimination in the legal profession.

New comments, numbered [3] and [4], offer guidance on the application of RPC 8.4(g):

1. The rule covers more than just conduct which constitutes practicing law within the meaning of *ODC v. Marcone*, 855 A.2d 654, 660 (Pa. 2004). It covers activity that has a nexus to practicing law, including -- but not limited to -- CLEs and bar conferences. See comment [3]. Other jurisdictions have sanctioned lawyers under their equivalent rules for conduct and comments manifesting bias or prejudice directed to staff and other attorneys' staff members, as well as to colleagues and witnesses.
2. The Rule directs attorneys to federal, state and local law to illuminate the meaning of "bias or prejudice" and "harassment or discrimination." See *also* comment [4].
3. Rule 2.3 of the Code of Judicial Conduct, which prohibits bias, prejudice and harassment, also provides guidance. Its comments define these terms and provide examples: "Examples of manifestations of bias or prejudice include but are not limited to epithets; slurs; demeaning nicknames; negative stereotyping; attempted humor based upon stereotypes; threatening, intimidating, or hostile acts; suggestions of connections between race, ethnicity, or nationality and crime; and irrelevant references to personal characteristics." Pa.R.J.C. 2.3, comment [2]. See *also id.* at comment[3](defining "harassment) and comment [4](defining sexual harassment).
4. To be violative of the new subsection, conduct must "knowingly" manifest bias or prejudice or harass or discriminate. This mens rea requirement excludes inadvertent conduct.

Rule 8.4(g) becomes effective in six months from the Court's June 8, 2020, Order.

Thomas J. Farrell
Chief Disciplinary Counsel

Articles of Interest

Lawyer Reprimanded for Press Interview

A Pennsylvania lawyer agreed to receive a public reprimand after he released information to the media that compromised his client's interests.

William C. Penglase, of Bucks County, entered into a [Joint Petition in Support of Discipline on Consent](#). In the Petition, Penglase stipulated that he was appointed to represent a defendant in a murder case. Initially the client agreed to plead guilty. Penglase obtained video recordings of the client admitting to guilt of the

crime. Without his client or co-counsel's knowledge, Penglase met with a reporter, conducted an interview about the pending guilty plea, and provided the reporter with a copy of the video.

Shortly later, the client changed his mind and informed Penglase and co-counsel that he did not want to plead guilty, insisting on going to trial. Co-counsel and the client only found out about Penglase's interview when he called the reporter's station from the courtroom, trying to prevent the interview from being broadcast.

After revelation of the interview, the client retained private counsel and went to trial where he was found guilty. The parties stipulated that the revelation of the video significantly impacted trial strategy and led to numerous pre-trial and trial issues. Penglase stated that he thought he was acting in the client's interest by releasing the information shared, and that it was not to be published until after the client's plea was entered. He conceded that the latter expectation was "imprudent and irresponsible."

The parties agreed that Penglase's conduct violated the following Rules of Professional Conduct:

1. RPC 1.1, competence;
2. RPC 1.2(a), failing to abide by the client's decisions as to objectives;
3. RPC 1.4(a), failing to consult with the client as to the means of achieving objectives;
4. RPC 1.6(a), confidentiality;
5. RPC 3.6(a), extrajudicial statement; and
6. RPC 8.4(c), conduct prejudicial to the administration of justice.

The Disciplinary Board approved the Joint Petition, and has scheduled a [Public Reprimand](#) for Penglase on July 22, 2020.

Social Media Present New Competency Challenges

Social media have transformed much of American culture over the past decade or two, and its pervasive effect on American lives is here to stay. As the Florida Law Journal noted, "it is inevitable that the social media accounts of at least one person involved in a dispute will have potentially relevant and discoverable information."

In [an article in the ABA Journal](#), Craig Carpenter and John Patzakas of X1 Discovery, a legal software firm, discuss how the reach of social media presents challenges for lawyers seeking to maintain their competence in finding and presenting evidence from social media. They note that many bar associations, including the ABA and the Pennsylvania Bar Association, have stated in ethics opinions that lawyers have a responsibility to know how to access, preserve, and use social media as a consequence of the duty of competence under Rule 1.1. [Comment \[8\] to Pennsylvania Rule 1.1](#) states, "To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology."

The authors outline several of the challenges associated with employee use of social media, noting that at least 34% of people admit to using personal social media on work time. Risks include that employees will make controversial statements reflecting negatively on the business, will disclose employer business that is confidential or private, or will disparage competitors or clients in ways harmful to the employer. They stress the importance of both establishing and enforcing social media policies.

They also discuss the importance of establishing a foundation for admission of social media content. Courts have generally held that a simple printed copy of a social media post is admissible without a foundation establishing its authenticity. Technological options enable wide and efficient searches of social media websites and preservation of the information found in a form that will be admissible as evidence.

Ethical Response to Negative Reviews

Another new reality of the 21st century world is that lawyers face reviews posted online for all to see. Positive reviews can be rewarding, but as law is a profession doused in controversy, negative reviews by unhappy clients have become an issue for many lawyers. Can a lawyer ethically respond to a negative review?

Philadelphia lawyer Cynthia Sharp addresses the question in an [article published in the ABA Journal](#).

The first point she makes is that lawyers remain bound by [Rule 1.6 of the Rules of Professional Conduct](#), involving confidentiality, in responding to client complaints. The “self-defense” exception of Rule 1.6(c)(4) does not apply to public communications outside of a proceeding. Based on a Los Angeles County Bar Association opinion, she notes that a lawyer may respond to a review if:

1. no confidential information is disclosed;
2. the response does not injure the former client relating to the representation; and
3. the response is “proportionate and restrained”.

Ethics opinions in several states, including Pennsylvania, have reached similar conclusions.

Thomas Wilkinson, Jr. of Philadelphia, a member of the ABA Standing Committee on Professionalism, suggests the following sample response to a negative review: “Lawyer confidentiality obligations prevent us from correcting the factual background in this post. We are very proud of our track record of client satisfaction and favorable results.”

Sharp cites several cases in which lawyers received discipline for ill-considered reactions to online reviews, for revealing confidential information, client identities, public criticism of the client, and false representations in response. She notes, “Common sense and restraint should be exercised, even when emotions make that difficult.”

Sometimes the best counters to bad online reviews are good ones. However, there is ethical risk in a lawyer seeking positive reviews from clients too vigorously. Promotion of positive client reviews may require a qualifier or disclaimer that past results do not guarantee a future outcome. Another risk is “astroturfing,” the practice of creating or soliciting positive reviews from people who are not actually clients. A lawyer who pays an individual or third-party vendor for the generation of positive reviews runs the risk of violating [Rule 7.2\(c\) of the Rules of Professional Conduct](#), which states, “A lawyer shall not give anything of value to a person for recommending the lawyer’s services,” subject to certain exceptions. Inducing clients by the use of solicited reviews may even lead to civil liability, as happened to a Pittsburgh law firm that directed staff to solicit five-star reviews from friends and family members.

ABA Opinion Explores Duties to Prospective Clients

Most lawyers are familiar with their duties to people with whom they have formalized a client-attorney relationship. But what responsibilities does a lawyer have to a person who approaches him or her about representation, if that relationship is not formed? [Formal Opinion 492](#) (6/20/2020) from the ABA’s Standing Committee on Ethics and Professional Responsibility addresses that question.

The primary source for understanding a lawyer’s duty to prospective clients is [Rule 1.18 of the Rules of Professional Conduct](#). Rule 1.18 defines a prospective client as “A person who consults with a lawyer about the possibility of forming a client-lawyer relationship with respect to a matter.”

Rule 1.18(b) is somewhat narrower than the confidentiality provisions of [Rule 1.6](#). It only requires that a lawyer who has learned information from a prospective client shall not use or reveal information which may be “significantly harmful” to that person. The Pennsylvania-adopted rule differs from the ABA Model Rule, which prohibits the lawyer to “use or reveal that information, except as [Rule 1.9](#) would permit with respect to information of a former client.” The ABA Model Rule does, however, incorporate the “significantly harmful” language into the disqualification provisions of Rule 1.18(c). Both the Pennsylvania and ABA versions provide that a lawyer is disqualified from representing another person with interests materially adverse to the prospective client in the same manner if they have learned information which could be “significantly harmful” from the prospective client. That disqualification extends to the lawyer’s entire firm, subject to certain narrow exceptions set forth in Rule 1.18(d).

The ABA opinion notes that the prospective client need not disclose confidential information to seek a lawyer’s disqualification, nor prove that the shared information actually resulted in harm. The opinion notes, “[T]he Model Rule addresses information that ‘could be significantly harmful,’ a standard that ‘focuses on the potential use of the information.’” The opinion cites cases finding that examples of significantly harmful information could include:

- sensitive or privileged information that the lawyer would not have received in the ordinary course of due diligence;
- information that has long-term significance or continuing relevance to the matter, such as motives, litigation strategies or potential weakness;
- premature possession of information that could have a substantial impact on settlement proposals and trial strategy;
- personal thoughts and impression about the facts of the case; or
- information that is extensive, critical, or of significant use.

The fact that information is detrimental or embarrassing may not, however, be sufficient to meet the “significantly harmful” standard.

The Committee notes that Comment 4 to Rule 1.18 advises that the lawyer should “should limit the initial consultation ... to only such information as reasonably appears necessary” to the decision whether to accept the case. This is not a recommendation to make decisions on inadequate information; it warns that the more information the lawyer gathers, the more likely it is they may be disqualified from representation related to the subject matter of the consultation.

Pants Vendetta Lawyer Suspended

We have over the years reported several incidents in the sad saga of District of Columbia lawyer Roy Pearson, Jr., who became the poster child for the dangers of obsession with his extended series of litigation over a lost pair of pants.^{[1](#)}

Pearson’s ruinous quest began in 2005, when he visited Custom Cleaners in Washington, DC, only to discover that a pair of pants brought in for alterations had been lost.^{[2](#)} Pearson sued the cleaner for \$15,000 for emotional distress and punitive damages under the District’s consumer protection law, based on signs at the cleaners that said, “Satisfaction Guaranteed,” “Same Day Service,” and “All Work Done on Premises.” After losing the case at every level, Pearson kept escalating his demands until the total he sought reached \$67 million, including \$90,000 to rent a car to drive to another dry cleaner, \$3 million for emotional distress, and \$500,000 in legal fees for 1200 hours of work. He also got into trouble for misquoting a case, accusing the trial judge of bias, and making numerous choices which made the case time intensive.

Stories about the case may have led to Pearson not being reappointed to his job as an administrative law judge.

Finally, on June 4, 2020, the District of Columbia Court of Appeals entered an [Order](#) suspending Pearson from the practice of law for 90 days. The Court noted that its Board of Professional Responsibility found that Pearson showed no remorse or change in attitude, but litigated the disciplinary case with the same uncompromising and unreasonable approach he brought to the pants litigation. The Court found that Pearson violated Rules 3.1 (frivolous litigation) and 8.4(c) (conduct prejudicial to the administration of justice), and suspended him for 90 days.³

¹ It turned out the cleaners said they found the pants, but Pearson claimed they altered another pair to look like his.

² It seems lawyers' pants have been [in the news a lot](#).

³ You were braced for a suspenders joke here, weren't you?

Attorney Well-Being

[Lawyers Concerned for Lawyers](#) has provided two articles, excerpts below, written by Dena Lefkowitz, Esq., a Peloton rider and lawyer coach.

Why it Helps to Admit You're Scared

What my dream about COVID-19 taught me

I had a dream last night about coronavirus. A group of friends were leaving a restaurant (remember those?) and I looked back at the table where we had just been sitting and said "oh my God, we forgot to social distance." The restaurant table was not spacious and, in the dream, I mentally calculated how far away I was from the person across from me, the person next to me. Well within 6 feet. Way too close. It was an intimate space and I began to panic that I had just contracted COVID-19. I woke up bemoaning my forgetfulness. [Read More...](#)

Cycling toward Sanity During COVID-19

Why Crying in Spin Class was Cathartic

It's not always easy to get on your bike, lace up your running shoes or step onto your yoga mat. Life sometimes conspires to prevent it but, more often, your mind leads you in a different direction. Last week, I signed up for a live-from-home class on Sunday with Peloton instructor [Jenn Sherman](#). Signing up in advance for things helps me show up. But, lying in bed on Sunday morning with the day stretching before me and no plans on the horizon, I could have easily stayed there until noon. Jenn Sherman certainly wouldn't notice if I was or wasn't in class. [Read More...](#)



**Depressed?
Stressed?
Anxious?
Overwhelmed?**

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1-888-999-1941**

[Lawyers Concerned for Lawyers](#) is a confidential and safe resource for Pennsylvania attorneys and their family members who may be struggling with their mental health or substance use. An astounding one in three legal professionals will face these issues at some point in their career. Over the past 32 years, LCL has confidentially assisted and supported thousands of individuals who have faced a myriad of challenges (including grief, stress, anxiety, depression, eating disorders, gambling problems, problematic alcohol or prescription drug use, etc.), helping them navigate through dark and difficult times. Members of our profession are dying because they are afraid or unable to ask for help. If you or someone you know is struggling, please call us. You may save a life. There is help and there is hope.

[Resources for the Legal Profession During COVID-19](#)

Confidential 24/7 Helpline: 1-888-999-1941

Lawyers-only support meetings
Peer and staff support & resource coordination
LCL resources are free, voluntary, & confidential
Free CLE, resources, and information at www.lclpa.org
Assessment by a healthcare professional to determine a customized treatment plan, if indicated

Around the Court



Over 34 million cases sealed from public view under Pennsylvania's Clean Slate Law

Since Pennsylvania's Clean Slate Law took effect last year on June 28, 2019, **over 34 million cases and nearly 47 million offenses** have been sealed from public view.

Under the law, the following criminal history record information is automatically shielded from public view: (1)

offenses with non-conviction dispositions, and (2) eligible summary and non-violent misdemeanor convictions more than 10 years old for which all court-ordered obligations have been completed.

The Administrative Office of Pennsylvania Court's IT Department developed an automation process to identify eligible cases and offenses and communicate with the Pennsylvania State Police and the relevant courts for validation.

The infographic below highlights data about the cases and offenses shielded under the Clean Slate Law from June 28, 2019 through May 5, 2020 – including counts of cases and offenses sealed by county. More information about Clean Slate is available [here](#).

Over 34 million cases sealed from public view under Pennsylvania's Clean Slate Law

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What is Clean Slate?

The process by which a court of common pleas issues an order of limited access sealing from public view criminal history record information pertaining to an eligible conviction of a misdemeanor offense, a summary offense and/or the nonconviction of any offense.

There are two methods by which a court may grant this status. In certain cases, a person must file a petition with the court of common pleas. In most instances, eligible cases will be identified and processed via an automatic process created and maintained by the AOPC and the Pennsylvania State Police.

The automatic process began on the law's effective date – June 28, 2019.

As of May 2020,

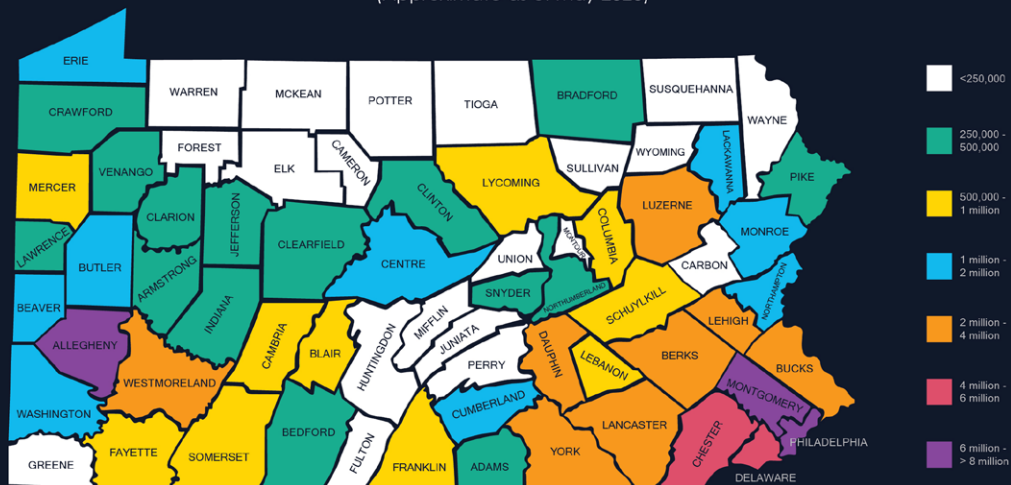
over 34 million cases and

nearly 47 million offenses

have been sealed

since Clean Slate took effect.

Number of cases and offenses sealed from public view under Clean Slate by County (Approximate as of May 2020)



*Data reflects all cases, offenses and misdemeanors sealed under Clean Slate from 6/28/2019 – 5/5/2020. Counts by county are available at <http://www.pacourts.us/assets/files/setting-7047/file-8210.pdf?cb=ce8fed>.

AOPC

We Want To Hear From You...

We are always on the lookout for stories of interest relating to legal ethics, new issues in the practice of law, lawyer wellness, and funny or just plain weird stories about the legal profession. If you come across something you think might be enlightening, educational, or entertaining to our readers or social media followers, [pass it along](#). If you're our original source, there may be a hat tip in it for you.

Resources

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