

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

ORDER AMENDING

**RULE 61(e) OF THE
SUPERIOR COURT RULES OF CRIMINAL PROCEDURE**

This 29th day of May, 2015, **IT IS SO ORDERED** that:

(1) Superior Court Criminal Rule 61(e)(5), (6) is amended by deleting these subparts in their entirety and by substituting in lieu thereof the following new Rule 61(e)(5), (6):

(e) Appointment of counsel and withdrawal of counsel.

(5) Continuing duty of counsel. Unless the judge appoints counsel for a limited purpose, it shall be the duty of counsel to assist the movant in presenting any substantial ground for relief available to the movant. Upon entry of a final order in a postconviction proceeding, counsel's continuing duty shall be as provided in Supreme Court Rule 26, unless counsel has been permitted to withdraw under subparagraph (6) of this subdivision.

(6) Motion to withdraw. If counsel considers the movant's claim to be so lacking in merit that counsel cannot ethically advocate it, and counsel is not aware of any other substantial ground for relief available to the movant, counsel may move to withdraw. The motion shall explain the factual and legal basis for counsel's opinion and shall give notice that the movant may file a response to the motion within 30 days of service of the motion upon the movant. If counsel's motion to withdraw is granted:

(i) before final disposition of the the movant's motion for postconviction relief -- counsel's continuing duty is limited to: (A) notifying the movant in writing of the court's ruling on the motion to

withdraw; (B) advising the movant in writing that it is the movant's burden to proceed on the motion for postconviction relief without counsel; and (C) advising the movant in writing of the right to appeal the final disposition of the motion for postconviction relief, the rules for filing a timely notice of appeal, and that it is the movant's burden to file a notice of appeal of the final disposition if desired.

(ii) simultaneously with a denial of the movant's motion for postconviction relief -- counsel's continuing duty is limited to: (A) notifying the movant in writing of the court's ruling; and (B) advising the movant in writing of the right to appeal, the rules for filing a timely notice of appeal, and that it is the movant's burden to file a notice of appeal if desired.

(2) These amendments shall take effect June 1, 2015.

oc: Prothonotaries
cc: Superior Court Judges
Superior Court Commissioners
Hon. Matthew Denn
Hon. Brendan O'Neill
Court Administrator
Law Libraries
Margaret Derrickson
File