

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ORDER AMENDING SUPREME      §  
COURT RULE 26                      §

Before **SEITZ**, Chief Justice; **VALIHURA, TRAYNOR, LEGROW**, and **GRIFFITHS**, Justices, constituting the Court *en Banc*.

**ORDER**

This 2<sup>nd</sup> day of February 2026, it appears to the Court that:

WHEREAS, Supreme Court Rule 26(a) sets forth counsel's continuing obligations in appeals from criminal or juvenile delinquency proceedings;

WHEREAS, consistent with the standards announced by the United States Supreme Court in *Anders v. California*<sup>1</sup> and its progeny,<sup>2</sup> Rule 26(c) permits counsel to move to withdraw if, after a conscientious examination of the record and the law, counsel concludes that the appeal is wholly without merit;

WHEREAS, Rule 26(c) also establishes procedures that counsel must follow before filing such a motion to withdraw; permits the appellant to provide counsel with a written statement of any "point" that the appellant wants the Court to consider; requires that counsel file certain documents with the motion to withdraw, including the appellant's points, if any; and sets forth deadlines for compliance;

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<sup>1</sup> 386 U.S. 738, 744 (1967).

<sup>2</sup> *E.g.*, *Penson v. Ohio*, 488 U.S. 75, 83 (1988); *McCoy v. Court of Appeals of Wisconsin*, 486 U.S. 429, 442 (1988).

WHEREAS, “[i]t is well-settled that a knowing and voluntary guilty plea waives a defendant’s right to challenge any errors occurring before the entry of the plea;”<sup>3</sup>

WHEREAS, the Court receives inquiries from criminal defense attorneys concerning their continuing obligations in appeals from pleas and the procedures for their withdrawal in criminal cases other than in accordance with Rule 26(c);

WHEREAS, members of the Supreme Court Rules Committee worked with Supreme Court staff attorneys to prepare amendments to Rule 26 to address these inquiries and other issues that arise under Rule 26;

WHEREAS, the Court has determined that it is appropriate to amend the procedures and deadlines established in Rule 26(c) and to make certain other amendments to Rule 26, including to clarify the procedures for motions to withdraw in criminal cases other than in accordance with Rule 26(c);

NOW, THEREFORE, IT IS ORDERED that:

(1) Delaware Supreme Court Rule 26 shall be amended to add the underlined text and delete the strikethrough text as indicated in Exhibit A to this order.

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<sup>3</sup> *Scarborough v. State*, 119 A.3d 43, 2015 WL 4606519, at \*3 (Del. July 30, 2015) (TABLE).

(2) The amendments will apply to appeals filed on or after March 16, 2026.

The Clerk of this Court is directed to transmit a certified copy of this order to the clerk for each trial court in each county.

BY THE COURT:

/s/ Collins J. Seitz, Jr.  
Chief Justice

## EXHIBIT A

### Rule 26. Appeals in criminal and juvenile delinquency cases.

(a) *Continuing obligation of and representation by counsel.* (1) Every trial Until this Court orders otherwise, every attorney who (1) represented a criminal defendant or delinquent child at the time of sentencing, whether privately retained, court appointed, or provided by the Office of the Public Defender Defense Services, shall in every case in which the client has been convicted or adjudged delinquent; and (2) every attorney was appointed by the trial court to represent a criminal defendant or juvenile delinquent child at State expense in postconviction proceedings, unless the such attorney had been was permitted to withdraw under the trial court's rules, shall in every case in which postconviction relief is denied continue to represent the client on appeal. Such attorney shall:

- (i) *Advise client.* Advise the client of any right to appeal, the possible grounds for appeal, and counsel's opinion of the probable outcome of an appeal;
- (ii) *Docket appeal.* Docket an appeal whenever if the client informs the attorney, within the thirty-day period for taking an appeal, that the client desires to appeal, whether or not the appeal appears meritorious; and
- (iii) *Prepare documents.* Prepare and file all documents relating to the appeal, including those relating to the transcript as required by Rule 9.

Such attorney, until this Court orders otherwise, shall continue to represent the client on appeal. But, if If a postconviction attorney's motion to withdraw was granted by the trial court, and postconviction relief was denied, that attorney's continuing obligation is limited to that prescribed by the trial court's rules.

(b) *Appointment of counsel.* The Court will appoint counsel in any case in which it determines that an indigent defendant or child desires but does not have counsel on direct appeal. The Court may, in the interest of justice, appoint additional or substitute counsel for any indigent defendant or delinquent child upon the application of either counsel or client. In appeals from rulings made under Superior Court Criminal Rule 61 or other post conviction postconviction rulings of a trial court, the Court may in its discretion appoint counsel for an indigent defendant or child.

(c) *Appeals without merit.* If the trial appellant's attorney, after a conscientious examination of the record and the law, concludes that an appeal is wholly without merit, the attorney may file a motion to withdraw. A mere representation by counsel that there were no errors of law below or that the appeal is without merit does not satisfy this requirement. Such motion shall be accompanied by the Rather, the following procedures shall apply:

- (i)(a) *Brief and appendix required.* The in trial cases. If the appellant was convicted or adjudicated delinquent after a trial, the appellant's attorney is required to must file with the motion a brief referring to anything in the record which that may arguably support the appeal. The brief shall contain the following under distinctive titles and commencing on a new page, in the listed order: a statement of the charges; the nature of the defense made at trial; a summary of the evidence; the significant pretrial and trial applications and rulings; and the sentence; and, the

~~defendant's points, which shall not exceed 35 pages.~~ Appropriate pages from the record, including the sentencing order and appropriate pages from the transcript, shall be contained in a separately bound appendix. ~~A statement by counsel that there were no errors of law below or that the appeal is without merit does not meet the requirements of this requirementsubsection.~~

(i)(b) *Contents of motion in plea cases.* If the appellant pleaded guilty or nolo contendere, the motion to withdraw shall contain the following under distinctive titles, in the listed order: a statement of the charges, a summary of the plea proceeding, and the sentence. Appropriate pages from the record, including the plea documents, the sentencing order, the plea hearing transcript, and the sentencing hearing transcript, shall be contained in a separately bound appendix. ~~A statement by counsel that there were no errors of law in the plea and sentencing proceedings does not meet the requirements of this subsection.~~

Neither the motion nor the brief shall be an argument against the client's interest.

(ii) *Attorney statement.* ~~A~~The motion to withdraw shall be accompanied by a statement by the attorney that the attorney, after a conscientious examination of the record and the law, has concluded that an appeal is wholly without merit and:

(A) *Copy to client.* Supplied the client with a copy of the motion, brief, (if required under Rule 26(c)(i)(a)), and appendix.

(B) *Advice to client.* Advised the client that the client could state in a writing of no more than 35 pages, delivered to the attorney within ~~30~~45 days, any point that the client wanteds the Court to consider, ~~and that such a writing would be included in the brief.~~ Such statement by the attorney shall state the date on which the attorney ~~delivered~~supplied a copy of the motion and brief to the client ~~and whether or not any writing was received in response thereto.~~

(iii) *Client response.* ~~Any statement by the client which is received by the~~ The attorney in response to ~~shall file and serve upon the State within 5 days after the expiration of the motion to withdraw.~~

Neither the motion nor the brief shall be an argument against~~45-day period either~~ the client's interest. ~~The client shall have 30 days in which to review the proposed brief and proposed motion to withdraw and to prepare and~~points or notice that the client did not submit any points ~~for the~~ Court's consideration, prior to the filing by counsel of said brief and motion. ~~The motion and the brief shall be served upon the State; and the State shall file within~~

(iv) *State response.* Within 20 days ~~of~~after service upon the State of the appellant's points or the notification that the appellant has not submitted points, the State shall file a response or make any application it deems appropriate.

~~Upon the expiration of such 20-day period~~

(v) *Thereafter,* the Court shall determine, without oral argument, whether the appeal, on its face, is wholly without merit. If the Court so determines, the Court may order that the judgment below be affirmed. If the Court does not so determine, the motion for withdrawal may be granted and the Court may appoint substitute counsel who shall thereafter have 30 days in which to submit an opening brief.

(d) *Withdrawal.* An attorney for a defendant in a criminal appeal, including a child adjudged delinquent, may withdraw only upon written motion and order of the Court, entered under Rule 26(c)(v) or in the following circumstances:

(i) ~~Consent Substitution of Counsel~~. An attorney may be permitted to withdraw, after complying with paragraph (a) of this rule, at any time after other counsel has entered an appearance for the client. See Official Form H.

(ii) ~~Non consent. Without the consent of the client, a~~(ii) *Privately retained counsel.* A privately retained attorney may be permitted to withdraw, after complying with paragraph (a) of this rule, on motion served upon the client with notice of a stated time for presentation thereof to the Court. The motion shall state that the Office of Defense Services and, if applicable, the Office of Conflicts Counsel have declined to enter an appearance for the client and the reasons therefor. The motion shall also state whether the client claims to be indigent and, if so, be accompanied by a motion and affidavit to proceed in forma pauperis.

(iii) *Waiver of counsel.* Prior to the filing of any brief, or motion to withdraw under Rule 26(c), a defendant who is represented by an attorney may apply to the Court for leave to proceed pro se and to discharge the ~~defendant's~~appellant's attorney. The motion must be served upon the attorney and the State and be accompanied by an affidavit in a form supplied by the Clerk. Upon receipt of a motion in the proper form, in cases where the defendant has a constitutional or statutory right to counsel, the Court shall remand the case to the Superior Court for an evidentiary hearing on the defendant's waiver of counsel. In all other cases the Court may, in its discretion, remand the case to the Superior Court for an evidentiary hearing on the defendant's motion to ~~appear~~proceed pro se. Upon any remand, the attorney shall be present at the hearing in the Superior Court. ~~Pursuant to Rule 19(c), the~~ The Superior Court shall make and report its findings of fact within 30 days of the remand, unless some other time is ordered by the Court. If it is not feasible for the trial court to do so within the permitted time period, the trial court shall file a status report in accordance with Rule 19(c). Motions to ~~appear~~proceed pro se are otherwise governed by the procedures set forth in Rule 30. In the event the ~~defendant's~~appellant's motion is granted, the responsibility of the attorney to represent the ~~defendant~~appellant shall terminate. The Court in its discretion may, however, appoint an attorney to render advisory assistance to the ~~defendant~~appellant.

(iv) *All other cases.* In all other cases an attorney may be permitted to withdraw, after complying with paragraph (a) of this rule, only in the interest of justice and upon good cause shown. Any such application shall state the grounds thereof and shall be served upon the client with notice of a stated time for presentation to the Court. ~~See Official Form H.~~

(e) *Waiver of nonrefundable filing fee.* —In any appeal from a conviction ~~in the Superior Court or adjudication of delinquency~~, any person who, by reason of indigence, seeks relief from the nonrefundable filing fee required by Rule 20(a) may file with the Clerk a motion setting forth the facts relied upon. If the Court is satisfied that the appellant is ~~qualified to proceed as an~~ indigent, it shall enter an order waiving such payment. If the appellant was represented ~~at~~in the trial court by counsel appointed by the Superior Court or provided by the Office of ~~the~~ Public

**Defender**[Defense Services](#), the payment of the docketing deposit shall be waived upon the filing of an affidavit stating that such representation was previously afforded, setting forth the court and proceeding in which it was afforded, and stating that there has been no substantial change in the appellant's financial circumstances.

(f) *Trial transcript.* —If the ground of an indigent appellant's appeal requires a review of the evidence, the indigent appellant's counsel shall be furnished, on request and without charge, a copy of the transcript of the relevant trial testimony. Subject to the provisions of Rule 9(e), any such request shall describe with specificity the particular portion of the transcript that is relevant to the appeal. Counsel's request shall be made initially to the trial judge, whose denial of the request shall be reviewable by this Court. The cost of such transcript shall be certified by the Superior Court for payment.

(g) *Application for fees and disbursements of court-appointed counsel.* —A separate claim for compensation and reimbursement of expenses shall be made to this Court and to each other court before which the court-appointed counsel represented the client. Each claim before this Court shall be supported by a written statement specifying in-court and out-of-court time expended, services rendered and expenses incurred while the case was pending before this Court, and all compensation and reimbursement applied for, expected or received in the same case from any other sources. The Court shall thereupon fix the compensation and reimbursement to be paid to counsel, and shall certify such amount to the Administrative Office of the Courts for payment.

(h) *Standards for setting counsel fees.* —Any attorney appointed under this rule shall be compensated at a rate not exceeding \$50 per hour, and shall be reimbursed for expenses reasonably incurred. Compensation paid hereunder for services performed in this Court shall not exceed \$2,000 for each attorney in an appeal in which 1 or more felonies, or acts of delinquency which would be felonies if committed by an adult, are charged; or \$1,000 for each attorney in an appeal in which only misdemeanors, or lesser acts of delinquency, are charged. These maximum amounts shall not prevent any such attorney from being compensated for services performed in other courts involving the same representation.

(i) *Waiver of maximum amounts.* —Payment to court-appointed counsel in excess of the maximum amounts provided herein may be made for extended or complex representation if the Court finds that the amount of such payment is necessary to provide fair compensation and the payment is approved by the Court. Any application for a fee exceeding \$2,000 shall be made only upon reasonable notice to the Attorney General. Application for lesser amounts may be ex parte unless, in a specific instance, the Court otherwise directs.

(j) *Timing of fee applications.* — All fee applications should be submitted within 90 days after issuance of the mandate.

(k) *Appeals in habeas corpus.* —The foregoing procedures shall be applicable in an appeal from a denial of a petition for writ of habeas corpus filed by any indigent appellant.

(l) *Appeals in violation of probation proceedings.* —Notwithstanding the provisions of Rule 26(a), the defense attorney of record in the proceedings in which the client has been found in

violation of probation satisfies the continuing obligation of and representation by counsel when the defense attorney advises the client, in writing:

- (i) of any right to appeal;
- (ii) whether the defense attorney will continue representation on appeal; and
- (iii) that, if the client wants to pursue an appeal without representation, the client must file, in the office of the Clerk of this Court, a notice of appeal within 30 days after a sentence from the violation of probation is imposed.

The defense attorney's advice to the client shall be made part of the record at the violation of probation proceedings.