

Effective February 1, 2014 for Superior Court's new amendment to the first sentence of **Criminal Rule 61(e)(1)** which has been approved by the Supreme Court.

All petitions filed after February 1, 2014 will be governed by the new rule. Criminal Rule 61(e)(1) now reads, in its entirety, as follows:

(e) Appointment of counsel. (1) Order of appointment. The court will appoint counsel for an indigent movant's first timely postconviction proceeding. For an indigent movant's untimely first postconviction proceeding or an indigent movant's second or subsequent postconviction proceedings, the court will appoint counsel only in the exercise of discretion for good cause shown, but not otherwise. 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.

Therefore, if a first petition is filed after the one year time period has elapsed, counsel is not to be appointed except in the exercise of discretion for good cause shown or unless the judge is persuaded that the motion falls within 61(i)(5), that is, that it alleges that the court lacked jurisdiction or makes a colorable claim that there was a miscarriage of justice because of a constitutional violation that undermined the fundamental legality, reliability, integrity or fairness of the proceedings leading to the judgment of conviction.