SUPREME COURT OF DELAWARE

E. NORMAN VEASEY
CHIEF JUSTICE

DELAWARE STATE OFFICE BUILDING
820 NORTH FRENCH STREET
P.O. BOX 1997
WILMINGTON, DELAWARE 19899

TELEPHONE: (302) 577-8700
FAX: (302) 577-5697

ADMINISTRATIVE DIRECTIVE NUMBER 131

This 11th day of July, 2001,

IT APPEARS THAT:

(1) This Directive supplements Administrative Directive Number 130, effective July 1, 2001, which implements certain recommendations contained in the Final Report of the Committee on Speedy Trial Guidelines, dated November 1, 2000.

(2) This Directive is for the sole purpose of expediting the administration of capital murder cases and is not designed to enlarge or diminish the legal rights of those charged with capital murder.

(3) In its Final Report, the Committee on Speedy Trial Guidelines recommended that there be a modification of the speedy trial standard contained in Administrative Directive Number Eighty-Eight, dated February 5, 1992, which provides for monitoring of capital murder cases from "arrest

to disposition." As the Committee observed, the courts are not responsible for moving cases through the criminal justice system between the time of arrest and indictment/information and, therefore, their reporting responsibility should encompass only the period under their control—that is, from "indictment/information to disposition." In line with this observation, the Committee recommended that capital murder cases be subject to a disposition standard encompassing only the time period between indictment and disposition.

NOW, THEREFORE, IT IS DIRECTED, with the unanimous approval of the members of the Supreme Court (Del. Const., art. IV, § 13), that all capital cases be subject to the following standards:

(A) SUPERIOR COURT

(1) All cases must be tried and/or otherwise adjudicated within one year from the date of indictment.

(2) Upon the return of an indictment for murder in the first degree, the President Judge of the Superior Court shall assign each case, in writing, to a judge of the Superior Court who thereafter will be responsible for ensuring compliance with this Directive.

(3) Within thirty (30) days after the indictment, the assigned judge shall schedule an office conference with the prosecution and defense attorneys to plan disposition of the case in the Superior Court within the one-year period. The judge shall consider such pre-trial matters as motions and discovery, and shall establish a schedule to ensure adjudication of the case within the one-year period. A trial date shall be scheduled, and capital cases shall be given priority status on the criminal trial calendar.

(4) Because of their complexity, capital cases occasionally may present unique problems that preclude a trial or other disposition within the one-year period. A judge therefore may depart from these guidelines when the interests of justice require. In so doing, however, the judge shall provide a written explanation to this Court within ten (10) days of any order that would preclude compliance with the one-year standard.

(5) The judge shall ensure that in every capital case all pre-trial and trial proceedings in the Superior Court, including all conferences between the court and counsel, shall be recorded by a court reporter and shall be promptly transcribed as provided in the rules of court or upon request of either party or by direction of the judge. The following documents shall be promptly filed

with the Prothonotary and made part of the record in each capital case: (a) transcripts of all proceedings described in the first sentence of this standard; (b) a minute order or notation of such a proceeding that has taken place and been recorded but not yet transcribed; (c) all correspondence between the court and counsel; (d) all internal court correspondence that relates to the assignment of judicial officers; and (e) all case-specific administrative determinations, including scheduling directives.

(6) In every case in which a defendant is sentenced to death, the court reporter shall comply with this Court's Rule 9(e) (iv) and deem preparation of the transcript a first priority.

(B) SUPREME COURT

The following standards will govern proceedings in the Supreme Court unless otherwise directed by the Court.

(1) Compliance with briefing schedules in the Supreme Court will be strictly enforced and only in extraordinary circumstances will this Court grant extensions totaling more than sixty (60) days.

(2) Oral arguments shall be scheduled within forty-five (45) days after the prosecution's answering brief and appendix have been served and filed.

(3) This Court will issue its decision within ninety (90) days after the case has been submitted for decision. The Court will determine motions for reargument within thirty (30) days after their filing.

(C) POST APPEAL PROCEEDINGS

(1) If the Supreme Court issues a mandate affirming the imposition of a death sentence, the Superior Court judge to whom the case had been assigned shall re-sentence the defendant within ten (10) days following receipt of the mandate. In the absence of a waiver by the defendant, the execution date shall be scheduled not less than ninety (90) days nor more than one hundred twenty (120) days from the date of re-sentencing to afford the defendant the opportunity to petition either the United States Supreme Court for a writ of certiorari or the Superior Court for postconviction relief pursuant to Superior Court Criminal Rule 61. The judge may issue, upon the defendant's written motion, a stay of execution to allow for disposition of the petition for a writ of certiorari or a motion for postconviction relief.

(2) If the defendant seeks a writ of certiorari and the petition is dismissed or denied, the Superior Court judge shall re-sentence the defendant within ten (10) days after receipt of an order of dismissal or denial. In the absence of a waiver by the defendant, the execution date shall be scheduled not less than thirty (30) days nor more than sixty (60) days from the date of dismissal or denial of the petition for a writ of certiorari to afford the defendant the opportunity to file an initial motion in the Superior Court for post-conviction relief pursuant to Superior Court Criminal Rule 61. The judge may issue, upon the defendant's written motion filed with the Rule 61 motion, a stay of execution to allow disposition of the Rule 61 motion.

(3) If the United States Supreme Court grants a writ of certiorari, and subsequently affirms a defendant's conviction and sentence, or dismisses the writ as improvidently granted, the Superior Court judge shall re-sentence the defendant within ten (10) days after receipt of an order or opinion of affirmance or dismissal. In the absence of a waiver by the defendant, the execution date shall be scheduled not less than thirty (30) days nor more than sixty (60) days from the date of affirmance of a defendant's conviction and sentence or dismissal of the writ of certiorari to afford the defendant the

opportunity to file an initial motion in the Superior Court for postconviction relief pursuant to Superior Court Criminal Rule 61. The judge may issue, upon the defendant's written motion filed with the Rule 61 motion, a stay of execution to allow disposition of the Rule 61 motion.

(4) All initial Rule 61 motions filed in capital cases shall be adjudicated within two hundred seventy (270) days of the denial of certiorari by the United States Supreme Court or, if certiorari was not sought, of the Delaware Supreme Court's mandate affirming the imposition of the death sentence.

(5) Within thirty (30) days after the filing of a Rule 61 motion seeking to vacate a death sentence, the judge shall schedule an office conference with the prosecution and defense attorneys to plan disposition of the Rule 61 motion within the two hundred seventy (270) day period. The judge shall consider the need for evidentiary hearings and briefing, and shall establish a schedule to ensure adjudication of the Rule 61 motion within the two hundred seventy (270) day period.

(6) Circumstances occasionally may preclude disposition of an initial Rule 61 motion within the two hundred seventy (270) day period. A judge

therefore may depart from these guidelines when the interests of justice require. In so doing, however, the judge shall provide a written explanation to the Supreme Court within ten (10) days of any order that would preclude compliance with the two hundred seventy (270) day standard. The judge shall ensure that a record of all post-conviction proceedings in the Superior Court be made and kept available for transcription by the court stenographer.

(7) If the Superior Court denies the defendant's initial Rule 61 motion and the defendant appeals to the Delaware Supreme Court, the same procedures and time limits applicable to the defendant's direct appeal will apply to review of the denial of postconviction relief.

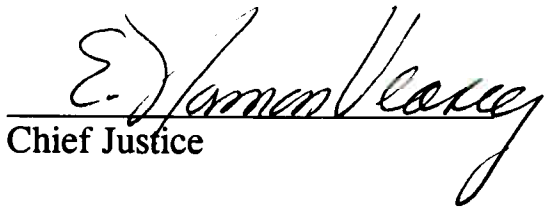
(8) All subsequent Rule 61 motions shall be decided promptly, and in no event more than sixty (60) days after filing. A judge may depart from this guideline when the interests of justice require. In so doing, however, the judge shall provide a written explanation to the Supreme Court within ten (10) days of any order that would preclude compliance with the sixty (60) day standard. If the defendant was represented by counsel in a prior post-conviction proceeding under Rule 61, the bars enumerated in Rule 61 shall be strictly enforced.

(9) In every case in which the defendant appeals the Superior Court's denial of a subsequent Rule 61 motion, the briefing schedule established in Supreme Court Rule 15 shall be strictly enforced.

(10) Upon affirmance of a subsequent Rule 61 motion, the Superior Court judge shall re-sentence the defendant within ten (10) days following receipt of the mandate. In the absence of a waiver by the defendant, the execution date shall be scheduled within thirty (30) days from the date of re-sentencing.

* * *

This Administrative Directive shall be effective July 1, 2001, and supersedes and repeals Administrative Directive Number Eighty-Eight, dated February 5, 1992.



Chief Justice

cc: The Honorable Ruth Ann Minner
The Honorable Joseph T. Walsh
The Honorable Randy J. Holland
The Honorable Carolyn Berger
The Honorable Myron T. Steele
Members of the Judicial Conference
The Honorable M. Jane Brady
The Honorable Lawrence M. Sullivan
Court Administrators
Clerk of the Supreme Court