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**IN THE SUPREME COURT
IN AND FOR THE STATE OF ARIZONA**

In the matter of:

Petition to Amend Ariz. R. Crim. P. 6.3
to Protect a Defendant's Post-Conviction
Rights and Comply with *Garza v. Idaho*,
586 U.S. 232 (2019)

Arizona Supreme Court
No. R-26- _____

**Petition to Amend Ariz. R. Crim. P.
6.3 to Protect a Defendant's Post-
Conviction Rights and Comply with
Garza v. Idaho, 586 U.S. 232 (2019)**

Pursuant to [Rule 28\(a\) of the Arizona Supreme Court Rules](#), the Pinal County Public Defender and Pinal County Office of Public Defense Services jointly petition this Court to amend [Ariz. R. Crim. P. 6.3](#). This petition seeks to amend [Rule 6.3\(b\)&\(c\) of the Arizona Rules of Criminal Procedure](#) to require that trial or plea counsel, before being permitted to withdraw, must take necessary *ministerial steps* to preserve the defendant's right to appellate or post-conviction review. Specifically, the proposal extends the continuing duty of representation under Ariz. R. Crim. P. 6.3(b) to include the filing of a notice of post-conviction relief. Additionally, the

proposal amends Ariz. R. Crim. P. 6.3(c) to require that, before a court grants a motion to withdraw after a judgment, the motion to withdraw must reflect that (1) counsel has advised the defendant of their rights and the defendant has not directed counsel to file a notice of appeal, or if applicable, a notice of post-conviction relief, or that (2) such a notice has already been filed.

This amendment ensures that withdrawal cannot operate as a procedural forfeiture of the defendant's constitutional right to review. It also harmonizes Arizona's procedural framework with *Garza v. Idaho*, 586 U.S. 232 (2019), *Roe v. Flores-Ortega*, 528 U.S. 470 (2000), and *McCoy v. Louisiana*, 584 U.S. 414 (2018), while resolving the ambiguity exposed by *State v. Ainsworth*, 250 Ariz. 457 (App. 2021).

A. The Ministerial Filing Duty Under *Garza v. Idaho*.

The Supreme Court's decision in *Garza v. Idaho*, 586 U.S. 232 (2019), provides the controlling constitutional framework for this amendment. *Garza* reaffirmed and clarified a principle first recognized in *Rodriguez v. United States*, 395 U.S. 327 (1969), and elaborated in *Roe v. Flores-Ortega*, 528 U.S. 470 (2000): when a defendant instructs counsel to file a notice of appeal, the Sixth Amendment requires counsel to do so, and prejudice is presumed if counsel fails to comply.

1. *Garza*'s Holding and Core Rationale

In *Garza*, the defendant signed two plea agreements that contained broad appeal waivers. 586 U.S. at 236. After sentencing, he directed his attorney to file an appeal, but counsel refused, believing the waivers foreclosed review. *Id.* The Idaho courts denied post-conviction relief, holding that no prejudice could result because the appeal was waived. *Id.* at 236–37.

The U.S. Supreme Court reversed, reaffirming that it had:

long held that a lawyer who disregards specific instructions from the defendant to file a notice of appeal acts in a manner that is professionally unreasonable. This is so because a defendant who instructs counsel to initiate an appeal reasonably relies upon counsel to file the necessary notice. Counsel's failure to do so cannot be considered a strategic decision; filing a notice of appeal is a purely ministerial task, and the failure to file reflects inattention to the defendant's wishes.

Id. at 241 (quoting *Flores-Ortega*, 528 U.S. at 477.)

Garza emphasized that the act of filing a notice of appeal is “purely ministerial” and “a simple, nonsubstantive act” that “does not necessarily breach a plea agreement.” *Id.* at 240–41. Whether any issue on appeal ultimately falls within the waiver is a separate question for later determination, but “the bare decision whether to appeal is ultimately the defendant’s, not counsel’s to make.” *Id.* at 241.

2. Presumed Prejudice Due to the Denial of Counsel at a Critical Stage.

Garza applied the presumption of prejudice recognized in *Flores-Ortega* to cases involving appeal waivers because “whenever ‘the accused is denied counsel at

a critical stage,’ it makes even greater sense to presume prejudice when counsel's deficiency forfeits an ‘appellate proceeding altogether.’” 586 U.S. at 242-243 (quoting *Flores-Ortega*, 528 U.S. at 483).

Garza underscored that the right to decide whether to appeal belongs to the defendant personally, even when a defendant pleads guilty and the guilty plea provides for a limited appeal waiver. 586 U.S. at 244. Accordingly, the lawyer’s strategic judgment about whether an appeal would succeed is irrelevant. The duty arises solely from the defendant’s expressed instruction. *Garza*’s presumed prejudice analysis thus hinges on its determination that the decision to initiate appellate review is a critical stage of the proceedings for which the Constitution requires professionally reasonable representation. 586 U.S. at 244. Although constitutionally required, it is not a demanding requirement, but merely “ministerial.” *Id.* at 239.

3. *Garza*’s Characterization of Filing as a “Ministerial Act”

Garza rejected Idaho’s argument that counsel’s refusal to file could be viewed as strategic, reasoning that, “Filing such a notice is a purely ministerial task that imposes no great burden on counsel.” *Id.* at 239 (quoting *Flores-Ortega*, 528 U.S. at 474). *Garza* explained that the very simplicity of the task makes failure to perform it constitutionally deficient. *Id.*

4. Application to Pleading Defendants and Rule 33.

Arizona's pleading defendants stand in a more compelling posture than *Garza's* petitioner. By pleading guilty, they sign away direct-appeal rights but retain the right to seek review under Rule 33, Ariz. R. Crim. P. As this Court has long recognized, a post-conviction proceeding is the functional equivalent of a direct appeal for a pleading defendant, a necessary procedure to ensure pleading defendants do not lose their right to appeal under the Arizona Constitution. "It was precisely because of art. 2, § 24 that this court expressly left open the avenue of appellate review by PCR in lieu of direct appeal when it amended the rules with respect to cases involving [guilty pleas]." *Wilson v. Ellis*, 176 Ariz. 121, 123 (1993). Thus, the Notice of Post-Conviction Relief serves the same jurisdictional and ministerial role as a notice of appeal.

Under *Garza*, a lawyer who fails to file a requested notice of PCR has committed the same constitutional error as one who refuses to file a requested notice of appeal. Both acts are ministerial. Both protect a defendant's Sixth Amendment autonomy interest to decide whether to seek review. And in both contexts, the loss of that opportunity constitutes "the loss of an entire proceeding" requiring a presumption of prejudice. 586 U.S. at 243.

5. Consequences of Non-Compliance and the Rule's Role.

When counsel withdraws without filing a requested notice, pleading defendants frequently lose their only opportunity for review. Arizona courts must then resort to belated-filing relief under [Rule 33.1\(f\)](#) or face post-conviction ineffective-assistance claims. Codifying *Garza's* ministerial-filing duty within [Rule 6.3\(b\)&\(c\)\(3\)](#) by requiring counsel to file or ensure filing of any requested notice before withdrawal is thus both constitutionally compelled and administratively efficient.

This amendment simply implements the constitutional floor established by *Garza*: a lawyer's obligation to preserve a defendant's chosen right to review does not depend on the likelihood of success, the existence of a waiver, or the lawyer's continued representation beyond filing.

B. The Autonomy Principle Requires an Amendment to Rule 6.3.

1. *McCoy v. Louisiana* and the Right of Defendant Autonomy.

Garza also relied on the Court's recent autonomy jurisprudence, particularly *McCoy v. Louisiana*, 584 U.S. 414 (2018), which held that a defendant possesses the ultimate authority to determine the objectives of representation, including whether to admit guilt, testify, or pursue an appeal. *Garza*, 586 U.S. at 241 ; *McCoy*, 584 U.S. at 422. *Garza* cited *McCoy* to underscore that "the defendant has the ultimate authority to decide whether to take an appeal." 586 U.S. at 241.

That autonomy right does not vanish upon entry of a plea. Whether a defendant wishes to test the legality of a sentence, the voluntariness of a plea, or the effectiveness of counsel, the decision to seek review is an “objective of representation” reserved to the defendant alone. *McCoy*, 584 U.S. at 422. Counsel’s unilateral refusal to file a notice, even out of a mistaken belief that doing so would be futile, impermissibly usurps that autonomy.

The proposed amendment to *Rule 6.3(b)&(c)* therefore codifies not only *Garza’s* Sixth Amendment duty but also *McCoy’s* autonomy principle: before withdrawing, counsel must perform or ensure any ministerial act the defendant has requested to preserve the right to review. This ensures that the defendant, not counsel, determines whether the case proceeds into post-conviction or appellate stages.

2. Amendments to Rule 6.3 are Necessary.

By embedding this duty within *Rule 6.3(b)&(c)*, this Court would align Arizona practice with federal constitutional doctrine. Before withdrawal is granted, proposed Rule 6.3(c)(3) requires that the court’s record must show either (1) a knowing and voluntary waiver of a notice of appeal or post-conviction notice, or (2) that the notice has been filed. This approach ensures that the defendant’s autonomy and review rights, recognized in *Garza*, *Flores-Ortega*, and *McCoy*, are fully honored at the point of withdrawal.

C. *State v. Ainsworth* and the Structural Gap in Rule 6.3

1. Background and Procedural Posture.

The problem this amendment addresses is not theoretical. It has already manifested in Arizona law. In *State v. Ainsworth*, 250 Ariz. 457 (App. 2021), the Court of Appeals confronted precisely the scenario *Garza* warned against: a pleading defendant whose trial counsel withdrew after sentencing, leaving the defendant unrepresented while the deadline to appeal was rapidly approaching.

Ainsworth had entered a guilty plea and was sentenced to a term of imprisonment. But Ainsworth did not file a notice of post-conviction within the deadline. Instead, Ainsworth argued that his counsel was “required to file a notice of post-conviction relief based on Rule 6.3(b).” *Ainsworth*, 250 Ariz. at 459, ¶ 7. The superior court dismissed the proceeding as untimely, and the Court of Appeals affirmed. 250 Ariz. at 459 ¶ 8.

2. *Ainsworth*’s Interpretation of Rule 6.3(b).

The Court of Appeals reasoned that Rule 6.3(b), which provides that “counsel who represents a defendant at any stage of a case has a continuing duty to represent the defendant in all further proceedings in the trial court, including the filing of a notice of appeal.” did not extend to filing a notice of post-conviction relief. *Id.* at 460 ¶ 8. *Ainsworth* held that because the rule’s language expressly referenced notice of appeal but not “notice of post-conviction relief,” counsel’s duty did not include

filing a post-conviction relief notice, even where the client’s instruction was clear and the filing deadline had not yet expired. *Id.*

Ainsworth rested on three fatal flaws, each perpetuated, presumably by Ainsworth’s pro se status.¹

The first is that no authority supported Ainsworth’s argument that his attorney was required to effectuate his constitutional right to appeal by filing a notice of post-conviction relief. *Compare Ainsworth, 250 Ariz. at 460, ¶8 with Garza, 586 U.S. at 244.*

Building off the first, relying on former Ariz. R. Crim. P. 32(b)(2), *Ainsworth* wrongly concluded that a pleading defendant does not have the right to counsel at the critical stage of the proceedings of filing a notice of appeal. *Compare Ainsworth, 250 Ariz. at 459, ¶ 9 with Garza, 586 U.S. at 241.*

And third, *Ainsworth* rejected Ainsworth’s claim that counsel was required to inquire to see if he desired to seek post-conviction relief. *Compare Ainsworth, 250 Ariz. at 460, ¶ 7 with Flores-Ortega, 528 U.S. at 480* (holding that “counsel has a constitutionally imposed duty to consult with the defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal (for

¹ *Garza* noted the procedural inefficiency of relying on pro se litigants to raise ineffective assistance of counsel claims to demonstrate that they were denied the right to appeal by ineffective counsel. *586 U.S. at 246-47. Ainsworth* demonstrates this inefficiency and its unfairness by failing to account for constitutional infirmities in its own analysis.

example, because there are nonfrivolous grounds for appeal), or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing.”)

3. The Gap Exposed by *Ainsworth*.

Ainsworth exposes a critical procedural void: for pleading defendants, the Rule 33 notice functions as the jurisdictional trigger for appellate review, yet Rule 6.3(b)&(c) fails to require counsel to ensure that this ministerial act occurs before withdrawal. The result is that pleading defendants are left unprotected at the precise moment their rights are most vulnerable.

This gap effectively creates two tiers of protection in Arizona. Non-pleading defendants (those convicted after trial) are guaranteed by Rule 6.3(b) that counsel will continue through the filing of a notice of appeal.² Pleading defendants, however, receive no such protection, even though the filing of a notice of post-conviction relief is their only path to judicial review.

That disparity is inconsistent not only with *Garza’s* Sixth Amendment holding but also with Arizona’s own recognition that post-conviction proceedings ensure that

² Rule 6.3(b) does not expressly require a notice of appeal to be filed before a court may grant a motion to withdraw. Thus, under the current plain language of Rule 6.3(b), defense counsel may believe s/he can withdraw with the court’s permission before filing a notice of appeal.

a pleading defendant maintains the constitutional right to appeal. *Wilson v. Ellis*, 176 Ariz. 121, 123 (1993).

Crucially, *Ainsworth* neither cited, discussed, nor distinguished *Garza v. Idaho*. The opinion contains no reference to the Supreme Court’s 2019 decision, even though *Garza* had been decided two years earlier and directly addressed counsel’s duty to file a notice of appeal when requested. That omission is almost certainly explained by the procedural posture of *Ainsworth*: the defendant was self-represented in the appellate proceedings and did not raise *Garza* or rely on Sixth Amendment jurisprudence in his briefing. Consequently, the Court of Appeals resolved the case solely as a matter of state rule construction, interpreting Rule 6.3(b) narrowly without engaging the constitutional principles governing a lawyer’s ministerial duties.

For that reason, *Ainsworth* cannot fairly be read to hold that *Garza’s* reasoning does not extend to the filing of a notice of post-conviction relief. It stands only for the proposition that, under the rule’s current text, trial counsel’s continuing-representation obligation was limited to filing a notice of appeal. The decision did not consider—much less reject—the Sixth Amendment principle that counsel must carry out a client’s express instruction to initiate review, regardless of waiver language or plea posture.

Moreover, given that *Garza* held the assistance of counsel in filing a notice of appeal on behalf of a pleading defendants is a critical stage of the criminal proceedings for which adequate representation is constitutionally required, and that *Ainsworth* noted that new counsel is appointed after the court receives such notice, this proposed rule-change is constitutionally necessary.

Accordingly, the proposed amendment does not contradict *Ainsworth*; it fills the constitutional silence that case left unaddressed. By explicitly incorporating *Garza's* ministerial-filing duty into Rule 6.3(b)&(c), the amendment harmonizes Arizona's procedural law with binding federal precedent and prevents future uncertainty about whether *Garza's* protection applies to post-conviction relief notices. In doing so, it ensures that no defendant's right to review depends on whether counsel or a pro se litigant happens to invoke the correct federal authority.

4. Why the Proposed Amendment Corrects the Problem

Amending Rule 6.3(b)&(c) to include the obligation to file a notice of post-conviction relief when requested ensures that withdrawal will not operate as an inadvertent forfeiture of review. Adding "or the filing of a notice of post-conviction relief" to the end of the Duty of Continuing Representation in Rule 6.3(b) fills a procedural void and imposes no more of a duty than already exists concerning the filing of a notice of appeal. The amendment to add Rule 6.3(c)(3) to require that counsel adhere to their professional and constitutional obligations to a defendant

upon conviction by requiring that, “The court must not grant a motion to withdraw unless the motion reflects that either (1) counsel has advised the defendant of their rights and the defendant has not directed counsel to file a file a notice of appeal or, if applicable, a notice of post-conviction relief (2) such a notice has already been filed,” codifies *Garza’s* ministerial-duty principle and forecloses the outcome seen in *Ainsworth*.

This change provides a clear, administrable rule.

For trial judges, it creates a simple checkpoint before granting withdrawal: has counsel either filed the requested notice, or documented the absence of a client directive to do so?

For defense counsel, it removes ambiguity about post-judgment obligations.

For defendants, it guarantees parity of protection regardless of whether their case proceeds by direct appeal or by post-conviction relief.

D. Ethical and Professional Standards Reinforce the Duty to File Ministerial Notices.

1. Professional Standards Mirror *Garza’s* Core Principle.

The ethical and professional standards that govern criminal defense practice already embody the very rule *Garza* constitutionalized: that a lawyer must carry out the client’s decision to initiate review, even if the lawyer believes the action lacks merit. The *American Bar Association Standards for Criminal Justice: Defense Function* (4th ed. 2017) are explicit. Section 4-9.1(b) provides that, “The ultimate

decision whether to appeal should be the client's." And Standard 4-9.1(c) provides that "Defense counsel should take whatever steps are necessary to protect the client's rights of appeal, including filing a timely notice of appeal in the trial court, even if counsel does not expect to continue as counsel on appeal." These Standards treat the filing of jurisdictional documents as ministerial acts essential to safeguarding the client's autonomy and preserving the right to appellate review.

The proposed amendment to [Rule 6.3\(b\)&\(c\)\(3\)](#) would thus codify, not innovate, these established professional norms. It ensures that every Arizona defense lawyer's withdrawal practice complies with an attorney's ethical baseline.

2. Arizona's Ethical Rules Compel the Same Result.

Arizona's own Rules of Professional Conduct independently require this protection. [ER 1.2\(a\)](#) provides that "a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by [ER 1.4](#), shall consult with the client as to the means by which they are to be pursued."³

Further, [ER 1.16\(d\)](#) requires that, upon termination of representation, a lawyer "shall take steps to the extent reasonably practicable to protect a client's interests," including giving reasonable notice and allowing time for the client to secure other counsel. Filing a notice of appeal or notice of post-conviction relief is the

³ Currently, [E.R. 1.2](#) omits an ethical requirement to abide the client's decision to appeal. [Garza](#) also requires reconsideration of this omission.

quintessential “reasonably practicable” step. It is simple, non-adversarial, and the only act that can preserve a client’s right to review after representation ends.

3. Ethical Alignment with *Garza* and the Sixth Amendment.

These professional norms parallel *Garza*’s Sixth Amendment reasoning. The duty to file a ministerial notice is not merely aspirational ethic. It is constitutionally compelled. *Garza* described filing a notice as “a simple, non-substantive act that is within the defendant’s prerogative, not counsel’s.” 586 U.S. at 244–45. Ethical Rule 1.2(a) similarly enshrines that the client, not counsel, determines whether to pursue an appeal. Thus, Rule 6.3(b)&(c)’s proposed amendment would bring Arizona’s procedural rule into direct alignment with both constitutional doctrine and ethical obligation.

4. Codifying Best Practice, Not Creating New Burden.

Finally, embedding this duty within Rule 6.3(b)&(c) imposes no new substantive burden. The filing of a notice—whether of appeal or post-conviction relief—is a ministerial act requiring minimal time and no adversarial advocacy. The amendment simply ensures that every Arizona lawyer meets the same uniform standard already demanded by *Garza*, *Flores-Ortega*, and the ABA and Arizona ethical frameworks. It replaces uncertainty and uneven compliance with a clear, enforceable rule that honors both constitutional rights and professional integrity.

Respectfully submitted this 8th day of January, 2026

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APPENDIX A
Proposed Amendments to Ariz. R. Crim. P. 6.3

Arizona Rules of Criminal Procedure
(deletions shown with strikethrough, new language is underlined)

Rule 6.3. Duties of Counsel; Withdrawal

(a) Notice of Appearance.

(1) *Generally.* Before representing the defendant in court, counsel--whether privately retained or appointed by the court--must file a notice of appearance.

(2) *Earlier Appearance in a Limited Jurisdiction Court.* Counsel who has filed a notice of appearance in a felony case in a limited jurisdiction court does not need to file a new notice of appearance if the defendant is bound over to superior court.

(b) Duty of Continuing Representation. Unless the court permits counsel to withdraw, counsel who represents a defendant at any stage of a case has a continuing duty to represent the defendant in all further proceedings in the trial court, including the filing of a notice of appeal or the filing of a notice of post-conviction relief.

(c) Withdrawal.

(1) *If the Defendant Is Ineligible for Appointed Counsel.* Appointed counsel may not withdraw after arraignment on the ground that the defendant is ineligible for appointed counsel unless counsel shows that withdrawal will not disrupt the orderly processing of the case.

(2) *If the Case Is Set for Trial.* After a case is set for trial, the court may not permit counsel to withdraw unless counsel files a motion that provides:

(A) the name and address of new counsel and a signed statement from the new counsel that acknowledges the trial date and avows that the new counsel will be prepared for trial; or

(B) ethical grounds for withdrawing.

(3) *If the Case has Resulted in a Judgment.* The court must not grant a motion to withdraw unless the motion reflects that either:

(i) counsel has advised the defendant of their rights and the defendant has not directed counsel to file a notice of appeal or, if applicable, a notice of post-conviction relief, or

(ii) such a notice has already been filed.

(d) Duty of Defense Counsel to Preserve the File. Defense counsel must:

(1) maintain records of the case in a manner that will inform successor counsel of all significant developments relevant to the case; and

(2) make available to successor counsel the client's complete records and files, as well as all information regarding every aspect of the representation.

(e) Duty of Successor Counsel to Collect the File in a Capital Case. Immediately upon undertaking representation of a defendant in a capital case in which the defendant was previously represented by counsel, defense counsel must collect the complete file from prior counsel and maintain the records and files in a manner that complies with (d).

(v) Victims' Rights.

(1) *Court Consideration of the Victim's Rights Under (c).* If a motion to withdraw under (c) could result in a continuance of the trial date, the court in deciding the motion must consider the victim's right to a speedy disposition.

(2) *Appearance and Withdrawal of the Victim's Attorney.* Before representing a victim in a criminal proceeding, a victim's attorney must file a notice of appearance. Unless the court orders otherwise, a victim's attorney may file a notice of withdrawal at any time.