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

In the Matter of:

Supreme Court No. R-26-0007

PETITION TO AMEND
ARIZ. R. CRIM. P.63

**Comment to Petition to Amend
Ariz. R. Crim. P. 6.3, Rules of Criminal
Procedure**

Pursuant to Rule 28(D), Rules of the Supreme Court, Michelle Villanueva Skura, Esq.,

respectfully submits this Comment for the Court's consideration. The undersigned is a criminal defense attorney licensed in Arizona and practicing exclusively in the area of felony sex crime defense across Maricopa, Pinal, Pima, and Yuma Counties. Our practice regularly involves representation through sentencing and withdrawal, and we have direct professional familiarity with the procedural obligations at issue in this petition.

I. Reasons the Proposed Rule Amendment Should Not Be Adopted As Currently Drafted

This comment does not dispute the constitutional principles underlying *Garza v. Idaho*, 586 U.S. 232 (2019), which are well-established and important. Rather, it offers a practitioner's perspective on the scope of the proposed amendment and identifies distinctions embedded in existing Arizona law and ethical doctrine that deserve more careful treatment before the Court adopts a rule that could inadvertently create ambiguity rather than resolve it.

1 ***A. The Scope of Garza v. Idaho Is Properly Limited to Counsel's Duties During Active Representation***

2 The petition's central argument is that *Garza's* ministerial-duty holding extends to post-
3 conviction proceedings under Rule 33, such that counsel who withdraws without filing a requested
4 notice of post-conviction relief commits the same constitutional error as counsel who refuses to file a
5 requested notice of appeal. While that syllogism has surface appeal, it elides a distinction that both the
6 Supreme Court and Arizona courts have treated as fundamental: the difference between obligations
7 arising during ongoing representation and obligations that may survive withdrawal.
8

9
10 *Garza* arose from circumstances in which counsel remained the defendant's attorney of record at
11 the time the defendant directed counsel to file a notice of appeal. The Court's holding, specifically that
12 the Sixth Amendment requires counsel to carry out that ministerial instruction and that prejudice is
13 presumed when counsel fails to do so, was explicitly anchored in the existence of a continuing attorney-
14 client relationship. 586 U.S. at 241. The Court did not hold, and did not need to hold, that the duty
15 persists after the attorney-client relationship has been formally terminated by court order.
16

17 Arizona's procedural framework has long recognized this distinction. Under ER 1.16(d) of the
18 Arizona Rules of Professional Conduct, a withdrawing lawyer's obligations upon termination of
19 representation are limited to taking reasonably practicable steps to protect the client's interests, including
20 providing notice, advising of applicable deadlines, and returning property. The rule does not impose an
21 affirmative duty to initiate new proceedings after the attorney-client relationship has concluded. Arizona
22 case law reinforces this framework. *Montgomery v. Sheldon*, 181 Ariz. 256 (1995), *State v. Rosales*, 205
23 Ariz. 86 (App. 2003), and *State v. Pruett*, 185 Ariz. 128 (App. 1995), collectively establish that Rule 33
24 proceedings are collateral in nature and are initiated independently by the defendant or by subsequently
25 appointed counsel. They are not a continuation of the trial-level representation that withdrawal formally
26 terminates.
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1 The petition's proposed amendment does not merely codify *Garza*; it extends *Garza*'s holding
2 beyond the factual predicate on which it rests. A rule requiring counsel to either file a notice of post-
3 conviction relief or document the defendant's knowing waiver before withdrawal is granted would
4 effectively convert the withdrawal proceeding into a mandatory post-conviction consultation, a
5 requirement that has no basis in the Supreme Court's existing jurisprudence. If the Arizona Supreme
6 Court wishes to impose that requirement as a matter of Arizona procedural policy, it may do so, but it
7 should do so on expressly policy grounds rather than by mischaracterizing the constitutional
8 compulsion.
9

10
11 ***B. State v. Ainsworth Does Not Demonstrate a Constitutional Violation Requiring Rule Amendment***

12 The petition relies heavily on *State v. Ainsworth*, 250 Ariz. 457 (App. 2021), as evidence of the
13 structural gap this amendment would fill. The petition argues that *Ainsworth* was wrongly decided
14 because the Court of Appeals failed to engage with *Garza*'s constitutional reasoning. That critique may
15 have merit as a matter of federal constitutional law. But the petition overstates the significance of
16 *Ainsworth* as a basis for the proposed rule change.
17

18 As the petition itself acknowledges, *Ainsworth* was a pro se case in which the defendant did not
19 invoke *Garza* or raise Sixth Amendment arguments in his appellate briefing. The Court of Appeals
20 therefore decided the case as a matter of state rule construction, and its silence on *Garza* reflects the
21 limits of the issues presented rather than a deliberate rejection of federal doctrine. The appropriate
22 remedy for the constitutional deficiency the petition identifies in *Ainsworth* is not necessarily a rule
23 amendment. It could be achieved through litigation that directly presents the *Garza* argument to the
24 Court of Appeals or the Arizona Supreme Court in a case where the record supports it. A rule
25 amendment of the breadth proposed here should not be driven primarily by a decision that never
26 engaged the constitutional question.
27
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1 the proposed rule, counsel in that situation could be placed in the position of being unable to withdraw,
2 because the client has not confirmed or denied a desire to seek post-conviction relief, even when
3 continued representation is ethically untenable under ER 1.16.
4

5 Additionally, the proposed amendment applies equally to situations in which the defendant has
6 expressly waived post-conviction rights as part of a plea agreement and situations in which no such
7 waiver exists. The rule as drafted does not meaningfully distinguish between these circumstances, even
8 though *Garza* itself acknowledged that the enforceability of appeal waivers remains a distinct question
9 from the ministerial obligation to file a requested notice. Some clarification of how the proposed Rule
10 6.3(c)(3) interacts with contractual appellate waivers embedded in plea agreements would strengthen the
11 amendment if the Court elects to adopt it.
12

13 II. Alternative Proposal

14
15 The procedural concern at the heart of this petition, specifically that pleading defendants may
16 lose their only avenue of review when counsel withdraws without ensuring that a Rule 33 notice is filed,
17 deserves the Court's serious attention. The constitutional principles articulated in *Garza v. Idaho*, *Roe v.*
18 *Flores-Ortega*, and *McCoy v. Louisiana* are not in dispute.
19

20 However, the proposed amendment as drafted goes beyond what *Garza* constitutionally requires,
21 conflates obligations that arise during active representation with obligations that survive withdrawal, and
22 does not adequately account for existing Arizona procedural and ethical protections that already address
23 the advisement gap the petition identifies.
24

25 As an alternative, the undersigned respectfully suggests that the Court consider a narrower
26 amendment to Rule 6.3 that would require counsel, before filing a motion to withdraw after sentencing
27 in a case resolved by guilty plea, to certify in the motion that the defendant has been advised of the Rule
28 33 filing deadline and the consequences of failing to meet it. This approach would codify the advisement
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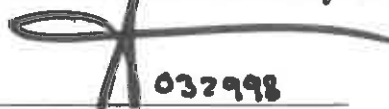
1 obligation that already exists as a matter of sound practice and ethical duty under ER 1.4 and ER
2 1.16(d), without imposing the affirmative filing obligation the petition proposes and without creating the
3 practical difficulties that arise when withdrawal is sought in circumstances where client communication
4 has broken down.
5

6 If the Court adopts any version of the proposed Rule 6.3(c)(3), the undersigned further suggests
7 that the provision be revised to include an exception permitting withdrawal where counsel certifies that
8 communication with the defendant has been attempted and has been unsuccessful, so that the rule does
9 not inadvertently trap counsel in ethically untenable representations.
10

11 The undersigned appreciates the Court's consideration of these comments and commends the
12 petitioner for raising issues of significant importance to the integrity of Arizona's post-conviction review
13 process.
14

15 **RESPECTFULLY SUBMITTED** this 02nd April, 2026.
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17
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