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**IN THE SUPREME COURT
STATE OF ARIZONA**

In the Matter of:

**PETITION TO AMEND RULE 6.3
OF THE ARIZONA RULES OF
CRIMINAL PROCEDURE**

Supreme Court No. R-25-0007

**STATE BAR OF ARIZONA
COMMENT**

Pursuant to Rule 28(e) of the Arizona Rules of Supreme Court, the State Bar of Arizona (the “State Bar”) hereby submits the following as its Comment to the above-captioned Petition. The State Bar supports the proposed amendments in the Petition because they would promote fairness, advance established constitutional law, and impose a minimal burden on criminal defense practitioners.

First, the proposed amendments would promote fairness by correcting what appears to be an oversight in the current Rules—the absence of a duty of withdrawing defense counsel to file a notice of post-conviction relief (“PCR”) for their pleading clients. *See State v. Ainsworth*, 250 Ariz. 457, 460 ¶ 8 (App. 2021) (holding that Rule 6.3(b) applies to notices of appeal, not PCRs). The State Bar agrees that the duties of withdrawing defense counsel should be the same for

1 pleading and non-pleading defendants because PCR for pleading defendants is the
2 constitutional equivalent of an appeal for non-pleading defendants. *State v. Petty*,
3 225 Ariz. 369, 372 ¶ 9 (App. 2010) (“for a pleading defendant, Rule 32 is ‘the only
4 means available for exercising the [defendant's] constitutional right to appellate
5 review.’” (quoting *Montgomery v. Sheldon*, 181 Ariz. 256, 258 (1995))).

7 Second, the proposed amendments find support in established constitutional
8 law. In *Garza v. Idaho*, the U.S. Supreme Court held that defense counsel performs
9 deficiently, and presumptively prejudices a pleading defendant, by failing to file a
10 notice of appeal upon request. 586 U.S. 232, 247 (2019). Thus, imposing a duty on
11 withdrawing defense counsel to file a notice of PCR—the Arizona equivalent of a
12 notice of appeal for pleading defendants—if desired by their pleading clients would
13 help ensure constitutionally effective performance.

16 Third, although some members expressed concern that the proposed
17 amendments would impose costly new burdens on defense counsel, the majority
18 determined these burdens would ultimately be minimal and otherwise justified. The
19 proposed amendments require what will likely be a relatively short consultation and
20 the filing of a short form pleading. And, as discussed above, counsel is already
21 required to file a notice of appeal upon the defendant’s request under *Garza*.
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24 Further, although the form PCR notice requires indicating what grounds the
25 defendant is seeking relief under, the State Bar anticipates that practitioners will

1 simply indicate all possible grounds. Importantly, this requirement, particularly in a
2 first PCR notice, does not affect what claims PCR counsel can ultimately raise in the
3 final PCR petition. *See State v. Pruett*, 185 Ariz. 128, 132 (App. 1995) (“Not until
4 the subsequent petition . . . must a petitioner identify his particular claims for
5 relief.”); *State v. Kerl*, No. 1 CA-CR 23-0129 PRPC, 2023 WL 8826599, at *2 (Ariz.
6 App. Dec. 21, 2023) (“Rule 32 neither permits nor prohibits a defendant from raising
7 claims in the petition that are different from those raised in the notice.”). Thus, in
8 filing the notice required by the proposed amendments, trial counsel would not be
9 tasked with the burden of identifying, researching, and developing the precise, final
10 PCR claims that will be raised in the petition and can simply indicate that all possible
11 claims may be raised in the petition.
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15 As a final note, the State Bar does not believe that an ethical issue arises if
16 trial counsel indicates in the notice that their client intends to raise an ineffective
17 assistance of counsel (“IAC”) claim. This is because the requirement to indicate
18 whether an IAC claim will be raised merely functions as an alert to the trial court to
19 appoint PCR counsel in an office different from that of trial counsel to avoid a
20 conflict of interest. *See State v. Rosales*, 205 Ariz. 86, 89 ¶ 9 (App. 2003) (“we
21 understand [the IAC] allegation [in the notice] to have been made only in support of
22 appellate counsel's request that different Rule 32 counsel be appointed to avoid any
23 potential conflict of interest”).
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1 **CONCLUSION**

2 The State Bar respectfully requests that the Court adopt the proposed
3 amendments set forth in the Petition because they promote fairness, advance
4 established constitutional law, and impose a minimal burden on criminal defense
5 practitioners.
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8 RESPECTFULLY SUBMITTED this 1st day of May, 2026.

9 *Jessica J. Fotinos*

10 _____
11 Jessica J. Fotinos
12 General Counsel
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14 Electronic copy filed with the
15 Clerk of the Supreme Court of Arizona
16 this 1st day of May, 2026.

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