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**IN THE SUPREME COURT
STATE OF ARIZONA**

In the Matter of:

**PETITION TO AMEND RULE 6.3,
ARIZ. R. CRIM. P.**

Supreme Court No. R-26-0007

COMMENT

The Post-Conviction Clinic at the Arizona State University Sandra Day O'Connor College of Law hereby submits this comment in support of the above-captioned Petition under Rule 28(e) of the Arizona Rules of the Supreme Court. The Post-Conviction Legal Clinic supports the amendments proposed in the named petition because the slight burdens of ministerial filings are well worth the preservation of the defendant's appeal rights and because requiring counsel to file a notice of post-conviction relief aligns with established ethical standards for defense counsel.

The ASU Post-Conviction Clinic is a pro bono legal aid clinic that has been housed in the Sandra Day O'Connor College of Law for the past 17 years. The Post-Conviction Clinic is primarily staffed by Rule 39 certified law students and their supervising attorneys. The Post-Conviction Clinic investigates claims of wrongful

1 conviction and manifest injustice from prisoners convicted of crimes in Arizona. The
2 clinic regularly represents clients who are in various stages of post-conviction
3 proceedings.

4 The burden of filing a notice of post-conviction relief on trial counsel for
5 pleading defendants, or on appellate counsel for defendants who exercise their trial
6 rights, is minor and ministerial, whereas the risk of waived claims for the defendant
7 is substantial. The decision whether to pursue an appeal belongs solely to the
8 defendant. It falls squarely outside the strategic considerations of counsel. *Roe v.*
9 *Flores-Ortega*, 528 U.S. 470, 477. The decision whether to pursue post-conviction
10 relief is also exclusively within the defendant's purview. As such, imposing the
11 requirement that counsel file a notice of post-conviction relief or get the defendant's
12 waiver in writing before withdrawing from the case is consistent with the
13 requirement to file an appeal at the defendant's request. Imposing this requirement
14 will protect defendants' appellate rights from unintentional waiver without
15 meaningfully altering counsel's obligations of time or effort at the end of a case.

16 Furthermore, the Post-Conviction Clinic has a practice of filing the notice of
17 post-conviction relief on clients' behalf because it is relatively easy for attorneys to
18 fill out and submit the form. However, the form's complexity to those unfamiliar
19 with it, and the high risk of waiver in an incorrectly prepared filing, make it much
20 less suitable for a client without law training to complete. Although Form 24(b) may
21 seem simple to an attorney, clients are often not aware of the legal nature of their
22 claims or the grounds for relief they are planning to raise. Even a clerical error, as
23 simple as not checking the appropriate box, could potentially waive a defendant's
24 opportunity to bring meritorious claims. *See* Ariz. R. Crim. P. 32.2(a)(3) (precluding
25 any claim not raised in an initial PCR unless the defendant can demonstrate good
reason why the claim was not raised); *Lee v. Thornell*, 118 F.4th 969, 991 (2024)

1 (holding that Arizona regularly applies an established procedural bar on claims not
2 raised on direct appeal or in *first* post-conviction proceedings). Requiring trial
3 counsel to file a notice of post-conviction relief would preserve the rights of the
4 defendant in a well-prepared filing and save the court precious time compared to
5 wading through the best attempts of *pro se* litigants to convey the basis for claims
6 they would like to raise. It would also be minimally invasive to a trial attorney, who
7 will necessarily have all the required information the form calls for by virtue of her
8 existing representation of the client.

9 Imposing this requirement perfectly aligns with the professional standards of
10 legal ethics set forth by both the American Bar Association and the State Bar of
11 Arizona. These authorities both dictate that the decision to seek review belongs
12 exclusively to the client and that withdrawing counsel must take all reasonable steps
13 to protect a client’s interests upon termination of representation. Ariz. ER 1.2(a);
14 Ariz. ER 1.16(d); *ABA Standards for Criminal Justice: Defense Function*, Standard
15 4-9.1 (Am. Bar Ass’n 4th ed. 2017). These norms mirror the Sixth Amendment
16 reasoning in *Garza v. Idaho*, 586 U.S. 323 (2019), proving that filing a ministerial
17 notice is a baseline constitutional duty rather than just an optional “best practice.”
18 *Garza*, 586 U.S. at 244. Thus, by requiring the filing of a ministerial notice before
19 withdrawal, this amendment simply codifies established professional and
20 constitutional duties into a clear, easily enforceable procedural safeguard.

21 While this proposed amendment codifies existing constitutional and ethical
22 principles, it is an important practical necessity—not a mere redundancy. Currently,
23 despite existing Supreme Court precedent and ethical standards, this gap in Rule 6.3
24 has effectively resulted in two disparate “tiers” of procedural protection for
25 convicted defendants. Following the interpretation in *State v. Ainsworth*, 250 Ariz.
457 (App. 2021), defendants convicted at trial receive assistance in filing a notice of

1 appeal while pleading defendants are left unrepresented in filing a notice of PCR.
2 There is a clear structural gap here: defendants convicted at trial are owed a duty to
3 preserve their avenue to review while pleading defendants are not.

4 Rule 6.3's structural gap is not merely hypothetical. Rather, the Post-
5 Conviction Clinic regularly encounters the fallout from this procedural disparity.
6 Frequently, pleading defendants contact the Clinic only after their window for post-
7 conviction review has closed because their trial counsel withdrew without filing a
8 notice of PCR. This problem disproportionately affects indigent clients entering state
9 custody because their inability to afford legal assistance during this disorienting
10 transition makes it nearly impossible for them to meet these strict filing deadlines on
11 their own. Even when a client manages to file a *pro se* notice, this structural gap
12 sometimes manifests as lost claims they unknowingly omitted or as other difficulties
13 in the representation. Consequently, this unnecessary procedural hurdle inevitably
14 forces parties and courts to expend significant resources litigating and navigating
15 around belated filings just to restore defendants' baseline rights. A simple mandatory
16 filing at the time of withdrawal would eliminate this systemic inefficiency and
17 ensure defendants' cases are evaluated on their merits, rather than dismissed due to
18 an easily avoidable procedural trap.

19 This proposed amendment closes Rule 6.3's structural gap. It clarifies defense
20 counsel's post-conviction duties by providing straightforward, authoritative
21 language defining counsel's exact obligations upon withdrawal. This guarantees that
22 defense attorneys throughout Arizona uniformly adhere to the baseline standards
23 already demanded by Supreme Court precedent in *Garza v. Idaho*, the ABA, and the
24 State Bar of Arizona.
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CONCLUSION

The Post-Conviction Clinic respectfully requests that the Court **adopt** the proposed amendments as the substantial interests of defendants in having trial counsel submit a notice of post-conviction relief far outweigh the burdens on counsel and would codify existing ethical best practices for defense counsel.

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POST-CONVICTION LEGAL CLINIC

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