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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-26-0007

**Reply Re: 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 submit this Reply in support of the petition to amend [Ariz. R. Crim. P. 6.3](#). The comments overwhelmingly confirm the [Petition's](#) central premise: the current version of [Rule 6.3](#) creates a procedural gap that leaves pleading defendants vulnerable to the loss of their only avenue of appellate review through the failure to perform a simple ministerial act. Even the opposing comment reinforces the need for reform by establishing how a drafting oversight in the current rule has contributed to constitutional and ethical misunderstandings. This Court should adopt the proposal.

I. The Petition Does Not Extend *Garza* Beyond Its Constitutional Rationale.

The opposing comment argues that *Garza* was limited to circumstances in which counsel remained attorney of record at the time the defendant directed counsel to appeal. *Skura Comment at 2*. But that assertion ultimately proves the *Petition's* point rather than undermining it.

The constitutional violation identified in *Garza* occurs when counsel's failure to perform a ministerial filing forfeits the defendant's opportunity for review. 586 U.S. at 241–44. If counsel could avoid that constitutional obligation simply by withdrawing before filing the notice, *Garza's* protections would become largely illusory. The constitutional right cannot depend on the timing of a withdrawal motion.

The cases cited in the *Skura Comment* supporting the claim that counsel has neither an ethical nor a constitutional duty to “initiate new proceedings after the attorney-client relationship has concluded” do not support the contention. *Skura Comment at 2* (citing *Montgomery v. Sheldon*, 181 Ariz. 256 (1995); *State v. Rosales*, 205 Ariz. 86 (App. 2003); *State v. Pruett*, 185 Ariz. 128 (App. 1995).)

Montgomery reinforced that a post-conviction proceeding is required for pleading defendants as the “only means available for exercising the constitutional right to appellate review.” 181 Ariz. at 258. By holding that a defendant has a right to file a pro-se petition if his appointed PCR counsel files a notice of no-colorable

claim, *Montgomery* did nothing to suggest that counsel who represents a defendant in plea negotiations cannot be required to file a notice of post-conviction relief if so directed by the defendant. *Id.* at 261. *Montgomery's* rationale aligns with the proposal, not its opposition.

Rosales held that an initial grant of post-conviction relief to remedy his counsel's failure to timely file a notice of appeal did not preclude or waive substantive claims following a second post-conviction relief proceeding. 205 Ariz. at 91. Rather than support the *Skura Comment*, *Rosales* reinforces the need for counsel to timely file notices to ensure defendants are afforded their rights under the Arizona Constitution.

And *Pruett* reinforced *Montgomery's* logic that “a pleading defendant's first petition for post-conviction is ‘the appeal for a defendant pleading guilty’” in holding that the first post-conviction proceeding triggered the same deadline as “the direct appeal” for filing a second notice of post-conviction relief. *Pruett*, 185 Ariz. at 131 (quoting *Montgomery*, 181 Ariz. at 258) (emphasis in original). *Pruett*, too, supports the proposal, not the opposition.

That any criminal defense attorney could read any case, including *Montgomery*, *Rosales*, and *Pruett*, to support the conclusion that counsel can refuse to initiate a post-conviction proceeding by withdrawing before a client directs counsel to file the notice solidifies the necessity of amending Rule 6.3.

The proposed amendment does not require counsel to litigate a post-conviction proceeding, investigate claims, or continue substantive representation after withdrawal. It requires only the same type of ministerial preservation step already required for notices of appeal under [Rule 6.3\(b\)](#). The comments submitted by AACJ, the State Bar, and the ASU Post-Conviction Clinic all correctly recognize that the filing obligation is minimal, ministerial, and fully consistent with *Garza*, *Flores-Ortega*, and existing ethical standards. [AACJ Comment at 4-5](#); [State Bar Comment at 2](#); [ASU Post-Conviction Clinic Comment at 3](#).

II. Existing Advisements Are Not an Adequate Substitute.

The opposing comment suggests existing [Rule 17](#) advisements and sentencing advisements sufficiently protect defendants. Experience and Sixth Amendment case law establish otherwise. [Skura Comment at 4](#).

As AACJ and the ASU Post-Conviction Clinic explain, defendants routinely lose appellate and post-conviction rights because notices are not timely filed despite receiving generalized advisements at sentencing. [AACJ Comment at 4-5](#); [ASU Post-Conviction Clinic Comment at 2](#).

The problem is not lack of abstract notice. The problem is forfeiture caused by the failure to perform a jurisdictional ministerial act during a narrow filing window immediately following sentencing, often while defendants are entering custody and are least capable of navigating procedural requirements.

And, contrary to the [Skura Comment](#), defense counsel has a constitutional duty to consult with a client post-sentencing to ascertain whether the client wishes to appeal the outcome. *See* [Skura Comment at 3](#) (claiming the proposal would create a “mandatory post-conviction consultation, a requirement that has no basis in the Supreme Court’s existing jurisprudence.”)

“By ‘consult,’ the [United States Supreme] Court means advising the defendant about the advantages and disadvantages of taking an appeal and making a reasonable effort to discover the defendant's wishes. Counsel who consults with the defendant performs in a professionally unreasonable manner only by failing to follow the defendant's express instructions about an appeal.” [Roe v. Flores-Ortega](#), 528 U.S. 470, 471 (2000) (summary in syllabus.) “It follows then that since the decision to appeal ‘cannot be made intelligently without appreciating the merits of possible grounds for seeking review, and the potential risks to the appealing defendant, a lay defendant needs help *before* deciding.’” [Lewis v. Johnson](#), 359 F.3d 646, 656 (3d Cir. 2004) (quoting [Flores-Ortega](#), 528 U.S. at 489 (Souter, J.) (granting habeas relief under AEDPA following counsel’s failure to consult and file notice of appeal despite client’s “unequivocal desire to challenge his sentence and guilty plea, and abandon his client at this critical stage in the proceedings.”)

“[A]dequate consultation requires informing a client about his right to appeal, advising the client about the advantages and disadvantages of taking an appeal, *and*

making a reasonable effort to determine whether the client wishes to pursue an appeal, regardless of the merits of such an appeal.” *Thompson v. United States*, 504 F.3d 1203, 1206 (11th Cir. 2007); *see also Frazer v. South Carolina*, 430 F.3d 696, 711 (4th Cir. 2005) (“Simply demonstrating that the defendant was actually or constructively aware of his right to appeal is insufficient to relieve defense counsel of his obligations under *Flores–Ortega*.”)

Nor is [Rule 33.1\(f\)](#) an adequate substitute. As the [Petition](#) explained, [Rule 33.1\(f\)](#) is a remedial mechanism requiring additional litigation after rights have already been forfeited. The existence of a remedial process does not eliminate the need for a rule designed to prevent the forfeiture from occurring in the first place. [Petition at 6](#).

III. The Proposed Amendment Does Not Create Practical Implementation Concerns

The opposing comment also hypothesizes situations involving communication breakdowns or unresponsive clients. [Skura Comment at 4](#). But the [AACJ Comment](#) supporting the [Petition](#) correctly notes that these concerns are largely theoretical and easily resolved. [AACJ Comment at 6-7](#).

The proposed amendment imposes no substantial burden. Filing a notice of post-conviction relief is a short, non-substantive, ministerial filing. As noted above, counsel has a constitutional obligation to consult and advise clients to ensure that

the decision of whether to challenge a conviction is knowingly, intelligently, and voluntarily asserted or waived.

IV. The Amendment Properly Places Pleading Defendants on Equal Footing.

Ultimately, the current version of [Rule 6.3](#) creates unequal procedural protection between pleading and non-pleading defendants. After filing this proposal and speaking with various stakeholders who did not file comments, undersigned counsel learned that it is widely believed that [Rule 6.3](#)'s omission of the requirement to file a notice of post-conviction relief before withdrawal was simply a drafting oversight.

The comments supporting the [Petition](#) uniformly recognize this disparity and the practical harms it causes. And the [Skura Comment](#) itself demonstrates **that** the omission of a requirement to file a notice of post-conviction relief in [Rule 6.3](#) has led some criminal defense attorneys to take unconstitutional positions concerning their post-sentencing obligations. [Skura Comment at 2.](#)

The proposal clarifies confusion, promotes constitutionally adequate post-sentencing representation, and closes the gap in the current rule through a narrow, administrable, ministerial safeguard fully consistent with [Garza](#), [Flores-Ortega](#), [McCoy](#), Arizona's ethical rules, and existing professional standards. For these reasons, Petitioners respectfully request that the Court adopt the proposed amendments to [Rule 6.3](#).

Respectfully submitted this 21st day of May, 2026

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