

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 18-260 and 18-261

Judge: Keith D. Barth

Complainants: Brock Fuller
Peter Pototsky

ORDER

The complainants in two separate matters filed nearly identical complaints alleging a justice of the peace engaged in improper political activity.

Judge Barth served as a full-time justice of the peace in Santa Cruz County until December 31, 2018. In August 2018, a Facebook page went live promoting Judge Barth as a candidate for Santa Cruz County Sheriff in 2020. When confronted by Judge Thomas Fink, Presiding Judge, Santa Cruz County Superior Court, regarding the Facebook page and the Code provision requiring a judge to resign before becoming a candidate for a nonjudicial elective office, Judge Barth took the Facebook page down. While it is unknown how long the Facebook page was live, it was up long enough for other individuals to appropriate photographs and other images from the site. The Commission’s investigation also revealed that an internet search using the term “Keith Barth Sheriff” produced a result entitled, “Keith D. Barth, Considering a Run for Sheriff for the 2020 . . .” for a website – www.sonoitaelgin.com/elections-2020, though the link to the story was no longer active.

In his response to the Commission, Judge Barth stated he was only considering the possibility of running for Santa Cruz County Sheriff in 2020. He denied making any public announcement of his candidacy. Judge Barth also claimed that a supporter took the Facebook page live without his knowledge, though he initially refused to disclose the name of that person, claiming the individual wished to remain anonymous. After being advised by the Commission that such information was material to its consideration, Judge Barth identified the individual as a close family member. Judge Barth also disclosed he was not recusing from matters involving the Santa Cruz County Sheriff’s Office for the remainder of his term as justice of the peace.

This order may not be used as a basis for disqualification of a judge.

The Commission found that by publicly disclosing his candidacy for sheriff, Judge Barth violated Rule 4.5(A), which states: “Upon becoming a candidate for a nonjudicial elective office other than as a candidate to a constitutional convention, a judge shall resign from judicial office.” *Cf.* Terminology Section of the Code (“A person becomes a candidate for judicial office as soon as he or she makes a public announcement of candidacy . . .”). Judge Barth also violated Rule 4.1(A)(5), which states, “A judge . . . shall not . . . actively take part in any political campaign other than his or her own campaign for election, reelection or retention in office.” The Commission interprets “own campaign” as a campaign for *judicial* office.

The Commission further found that by initially refusing to disclose the identity of the individual who took the Facebook page live, Judge Barth violated Rule 2.16(A), which states, “A judge shall cooperate and be candid and honest with judicial . . . disciplinary agencies.”

The Commission further found that by publicly announcing his candidacy for sheriff, Judge Barth violated the following Code provisions:

Rule 1.2, which states, “A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.”

Rule 2.2, which states, “A judge shall uphold the law, and shall perform all duties of judicial office fairly and impartially.”

Rule 2.11, which states, “A judge shall disqualify himself or herself in any proceeding in which the judge’s impartiality might reasonably be questioned . . .”

Accordingly, Judge Keith D. Barth is hereby publicly reprimanded for his conduct as described above and pursuant to Commission Rule 17(a). The record in this case, consisting of the complaint, the judge’s response (excluding the supplemental response received December 14, 2018), and this order shall be made public as required by Rule 9(a).

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This order may not be used as a basis for disqualification of a judge.

Commission members Christopher W. Ames, Roger D. Barton and Christopher P. Staring did not participate in the consideration of this matter.

Dated: February 14, 2019

FOR THE COMMISSION

/s/ Louis Frank Dominguez

Hon. Louis Frank Dominguez
Commission Chair

Copies of this order were distributed to all appropriate persons on February 14, 2019.

This order may not be used as a basis for disqualification of a judge.

CONFIDENTIAL

Arizona Commission on Judicial Conduct
1501 W. Washington Street, Suite 229
Phoenix, Arizona 85007

FOR OFFICE USE ONLY

2018-261

COMPLAINT AGAINST A JUDGE

Name: Peter Pototsky Judge's Name: Keith D. Barth

Instructions: Use this form or plain paper of the same size to file a complaint. Describe in your own words what you believe the judge did that constitutes judicial misconduct. Be specific and list all of the names, dates, times, and places that will help the commission understand your concerns. Additional pages may be attached along with copies (not originals) of relevant court documents. Please complete one side of the paper only, and keep a copy of the complaint for your records.

Keith D. Barth is the Justice of the Piece for Precinct 2 in Santa Cruz County. His antics in office earned him the ire of the Santa Cruz County Board of Supervisors. In March, that Board voted 3-0 to close down JP2. Since then he has not done much (even less that before). JP2 is scheduled to close by January 1, 2019.

About two weeks ago, Barth announced his candidacy for the elected office of the Santa Cruz County Sheriff. This announcement violates the Judicial Canon 4, specifically 4.1, 4.2, 4.4 and 4.5. (See Exhibit 1)

Barth ' s announcement to run for Sheriff more than implies that he cannot be IMPARTIAL when dealing with the Sheriff ' s Department and, indeed, would FAVOR the department in any proceeding:

A JUDGE OR CANDIDATE FOR JUDICIAL OFFICE SHALL NOT ENGAGE IN POLITICAL OR CAMPAIGN ACTIVITY THAT IS INCONSISTENT WITH THE INDEPENDENCE, INTEGRITY, OR IMPARTIALITY OF THE JUDICIARY

He must be precluded from hearing any cases involving the Sheriff ' s office.

Rule 4.5:

(A) Upon becoming a candidate for a nonjudicial elective office other than as a candidate to a constitutional convention, a judge shall resign from judicial office.

This Rule is very clear and without any way to interpret the rule in any other fashion. Barth should have RESIGNED PRIOR to any announcement to run for a " nonjudicial elected office. " Since Barth FAILED to follow the Canons, for which he has been trained, HE MUST BE IMMEDIATELY REMOVED FROM OFFICE for his flagrant violations of the rules.

DO NOT take the easy was out by allowing him to resign. The Cochise County Sheriff ' s Office allowed Barth to resign instead of facing termination proceedings (because it would have been an embarrassment for the office). He was allowed to keep his AZPOST certification and move out of county and perform similar activities in Santa Cruz County.

REMOVE BARTH FROM OFFICE, IMMEDIATELY!

Resp
9/25/18
18-261

FROM THE CHAMBERS
OF
KEITH DAVID BARTH
JUSTICE OF THE PEACE



East Justice Court
COUNTY OF SANTA CRUZ

POST OFFICE BOX 1330
3147 HIGHWAY 83
SONOITA, ARIZONA 85637
520-761-7887

May 10, 2018

Dear Commission Members,

I am a part-time Justice of the Peace in Santa Cruz County. My term ends December 31, 2018. I am exploring running for Santa Cruz County Sheriff in 2020. If I choose to run, I will announce my campaign sometime in 2019.

Many people in my community want me run for this office. One asked if they could build a Facebook page for the campaign if I do run. While the page was under construction, without my knowledge or authorization, it went live. On August 20, 2018 when I was informed it was live, I immediately had it removed.

As a Judge, upholding the canons is paramount. It does not matter if I was unaware the Facebook page went live. I take full responsibility for what some may view as violating sections of the judicial canons.

My responsibility as a judge is to conduct my personal and professional life as to avoid the appearance of impropriety. I apologize for any negative light this situation has placed on my office or the office of the judiciary.

Please let me know if you have any questions. I look forward to your response and direction so that I can maintain and exceed the high standards the canons provide.

Respectfully,

Keith D Barth

From: Barth, Keith D.
Sent: Friday, October 12, 2018 2:18 PM
To: Elliott, April
Cc: Barth, Keith D.
Subject: RE: Commission on Judicial Conduct Case Nos. 18-260 & 18-261 - Request for Supplemental Response

Hello Ms. Elliot,

In reference to the three additional questions here are the answers:

1. I have not pulled nor filled any paperwork with the Country Elections Office regarding candidacy for Sheriff.
2. I have not made any public announcement that I am running for Sheriff.
3. The individual who made the FaceBook page wishes to remain anonymous.

Respectfully,

Judge Keith D. Barth

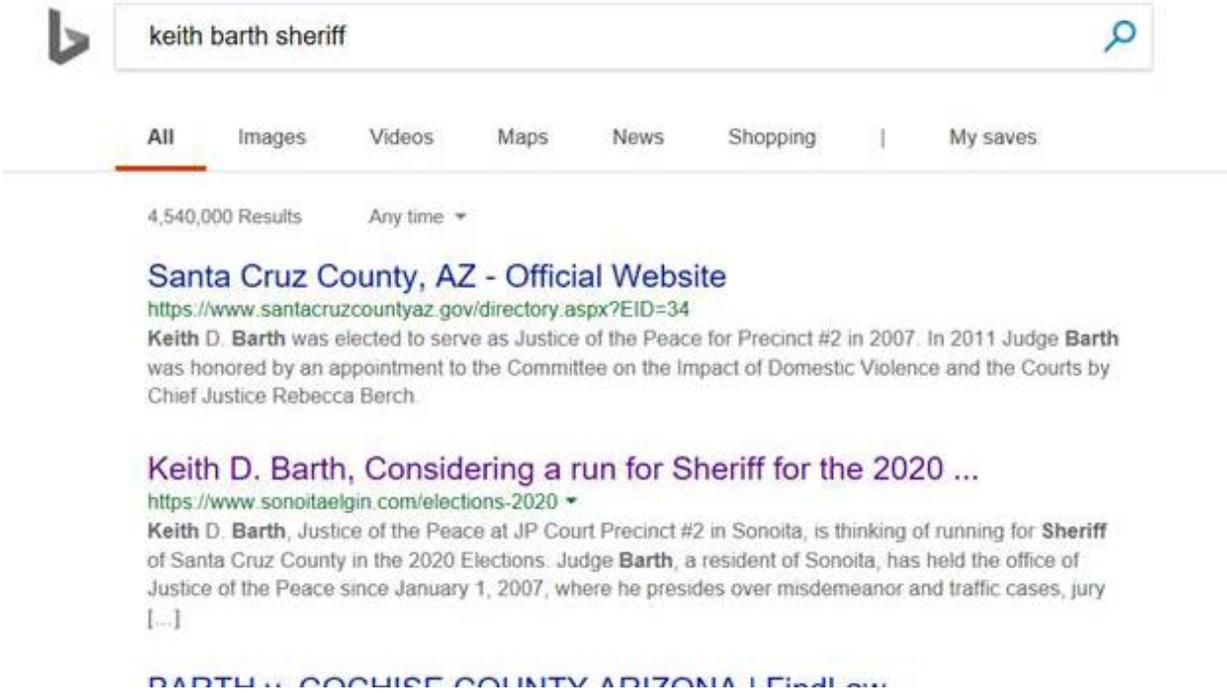
From: Elliott, April
Sent: Thursday, September 27, 2018 2:32 PM
To: Barth, Keith D.
Subject: Commission on Judicial Conduct Case Nos. 18-260 & 18-261 - Request for Supplemental Response

Good afternoon Judge Barth:

Thank you for your response to the complaints in this matter that you submitted on Tuesday. After reviewing your response, I do have some additional questions for you:

1. Have you filed any paperwork with the Santa Cruz County Elections Department related to your candidacy for sheriff – statement of organization, etc.?
2. Have you made any public statements regarding your candidacy for sheriff in 2020? As noted by the internet search results shown below, it appears at one point

that www.sonoitaelgin.com had a story about your candidacy. If you have made such statements, please provide details regarding those statements such as when they were made, to whom they were made, etc.



3. Who built the Facebook page for you and took it live without your permission?
Please provide contact information for this individual.

Please provide this additional information by **Friday, October 12, 2018**. Thank you.

April P. Elliott
Disciplinary Counsel
Arizona Commission on Judicial Conduct
1501 W. Washington, Suite 229
Phoenix, AZ 85007
602-452-3200 (Main)

From: Barth, Keith D.
Sent: Tuesday, October 16, 2018 11:25 AM
To: Elliott, April
Subject: RE: Commission on Judicial Conduct Case Nos. 18-260 & 18-261 - Request for Supplemental Response

Hello again April,

The answer to the question, if I'm still hearing Santa Cruz County Sheriff Office cases?

The Answer is yes with the caveat that I have taken an Oath to be fair and un bias, and I have conducted myself with Integrity, Justice and Fairness throughout my career as a Police Officer and as a Judge.

With all due respect
Judge Barth

From: Elliott, April
Sent: Monday, October 15, 2018 1:44 PM
To: Barth, Keith D
Subject: RE: Commission on Judicial Conduct Case Nos. 18-260 & 18-261 - Request for Supplemental Response

Hi Judge Barth:

I had one additional question for you. Are you continuing to handle any cases involving the Cochise County Sheriff's Office in your court? If you could please answer this question asap, but no later than Thursday, October 18, 2018, I would appreciate it. I want to include this matter on the agenda for the Commission's next meeting on November 2, 2018, and I need to have all materials together to submit to the members by this Friday, October 19, 2018. Thank you for your prompt attention to this matter.

April P. Elliott
Disciplinary Counsel
Arizona Commission on Judicial Conduct
1501 W. Washington, Suite 229
Phoenix, AZ 85007
602-452-3200 (Main)

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Sent: Friday, October 12, 2018 2:18 PM

To: Elliott, April

Cc: Barth, Keith D.

Subject: RE: Commission on Judicial Conduct Case Nos. 18-260 & 18-261 - Request for Supplemental Response

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2. I have not made any public announcement that I am running for Sheriff.

3. The individual who made the FaceBook page wishes to remain anonymous.

Respectfully,

Judge Keith D. Barth

From: Elliott, April

Sent: Thursday, September 27, 2018 2:32 PM

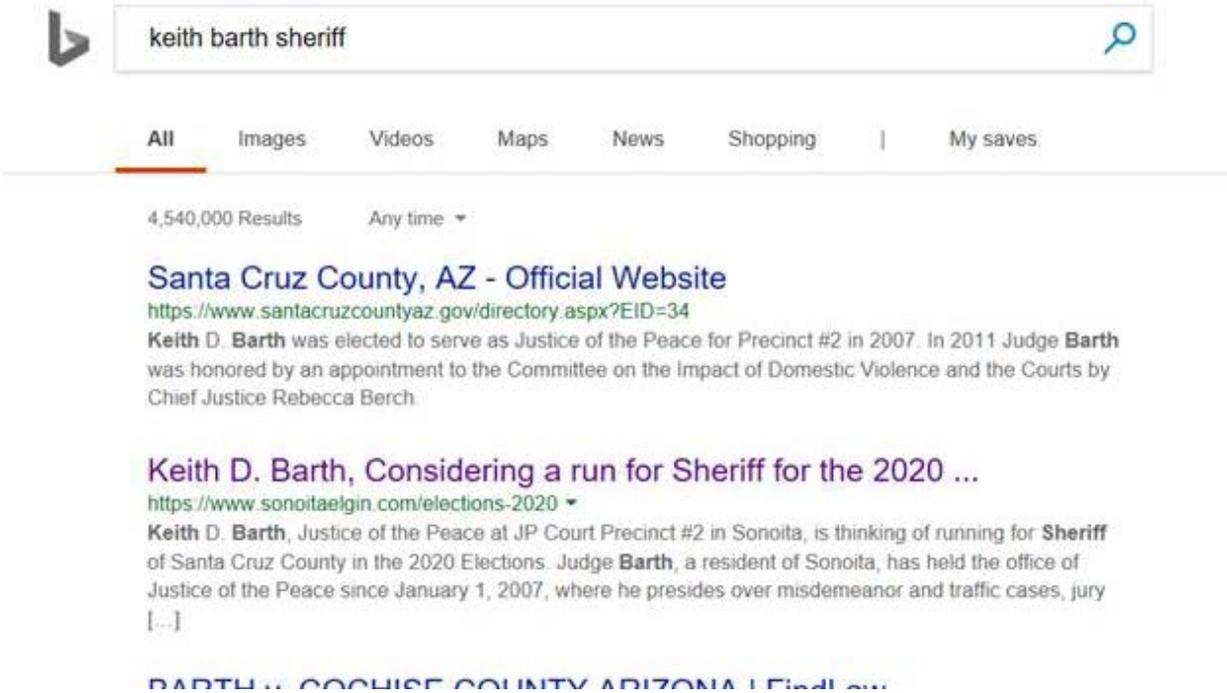
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April P. Elliott
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