

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 20-057

Judge: Keith D. Barth

Complainant: Peter Pototsky

ORDER

The complainant alleged a city court magistrate abused the prestige of judicial office.

Judge Barth currently serves as the part-time magistrate for Huachuca City Magistrate Court. As a part-time judge, Judge Barth is permitted to engage in some political activities. See Parts C and D of the Application Section of the Code of Judicial Conduct. Currently, Judge Barth is seeking to be elected Santa Cruz County Sheriff. As part of his campaign, Judge Barth maintains a website and various social media accounts, including a Facebook page “Keith Barth for Sheriff.” The following posts appeared on the Facebook page:

- Feb 11 at 5:16 PM: Judge Barth attended the Life and Legacy of Raul Castro event. Celebrating Mr. Castro’s life and being amongst friends and supporters is a true honor. (A photograph of Judge Barth in a suit under a Raúl H. Castro banner accompanied this post.)
- Feb 10 at 5:10 PM: Friendly Judge Barth loves to stop what he’s doing and meet all community members. Even the stuffed ones! Judge Barth with Eileen and her sloth family at Walmart. (A photograph of Judge Barth wearing a shirt with the sheriff’s emblem and a girl holding several stuffed sloths accompanied this post.)
- Feb 22 (approximate date): “Congratulations to the newly weds . . . We are honored to be apart [sic] of your special day!” (A photograph of Judge Barth in a black robe along with the newlywed couple and family accompanied this post.)

In his response to the complaint, Judge Barth indicated that his campaign’s social media director had been replaced, and there was a lapse in training for the new director to understand the requirements under the Code. With respect to the

February 22, 2020 post related to the wedding, Judge Barth claimed he was also an ordained minister and the robe was a clerical robe. However, he removed this post from his page. Additionally, he stated that corrections had been made to the other two posts to delete references to the term “judge” and that there would be no further reoccurrences of this violation. However, as of the date the Commission considered this matter, the posts on his Facebook page were as follows:

- Feb 11 at 5:16 PM: Judge Barth attended the Life and Legacy of Raul Castro event. Celebrating Mr. Castro’s life and being amongst friends and supporters is a true honor. (Remains on the page as originally posted.)
- Feb 10 at 5:10 PM: Friendly Keith Barth loves to stop what he’s doing and meet all community members. Even the stuffed ones! Judge Barth with Eileen and her sloth family at Walmart. (Remains on the page with the one change underlined. The second reference to Judge Barth remains as originally posted).

Judge Barth’s conduct in using his judicial title/status in connection with his campaign for Santa Cruz County Sheriff violated Rule 1.3 of the Code, which states, “A judge shall not abuse the prestige of judicial office to advance the personal or economic interests of the judge or others, or allow others to do so.” As an aggravating factor, the Commission found that Judge Barth had previously been reprimanded by the Commission regarding an election-related matter, in which part of his defense was that a member of his campaign committee had acted without his knowledge.

Judge Barth also requested to appear before the Commission and to delay the disposition of this matter until after the August primary. The Commission found no good cause for either request, and therefore, those are denied.

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 judicial officer’s response, and this order shall be made public as required by Commission Rule 9(a).

///

Commission members Louis Frank Dominguez and Christopher P. Staring did not participate in the consideration of this matter.

Dated: June 10, 2020

FOR THE COMMISSION

/s/ Colleen E. Concannon

Colleen E. Concannon
Commission Secretary

Copies of this order were distributed to all appropriate persons on June 10, 2020.

Comp
20-057
2/13/20

From: p² p²
Sent: Thursday, February 13, 2020 8:12 AM
To: Elliott, April
Subject: Barth, again and again

Barth was recently given a warning letter about using the prestige of his office for personal benefit. Didn't take long for him to forget...



Sent from [Mail](#) for Windows 10



Keith Barth for Sheriff

February 10 at 5:10 PM · 🌐



Friendly Judge Barth loves to stop what he's doing and meet all community members. Even the stuffed ones! Judge Barth with Eileen and her sloth family at Walmart.



From: p² p²
Sent: Thursday, February 13, 2020 3:31 PM
To: Elliott, April
Cc: brock fuller
Subject: RE: Barth, again and again

To the Commission: Barth has been running a campaign for SCC Sheriff for well over a year. He was issued a Letter of Reprimand for beginning the campaign while still a sitting Judge and other acts of misconduct. Last July, he entered a July 4th parade, with “Judge Barth for Sheriff” sign on his truck. The Commission issued a warning letter and dismissed the complaint. Obviously, the Commission did not consider the matter that egregious. Barth’s current actions are probably of the same caliber. The difference? He was told not to do that and has repeated the same behavior.

When Barth was demoted fully from SGT at the Cochise County Sheriff’s Office, he filed a complaint against the Chief of Deputies for sexual harassment of his 1st wife. Chief Crosswaith issued Barth a warning letter. Barth did not heed the warning.

When the Commission issued Barth a Letter of Reprimand, Barth filed charges against me just days after the letter hit the streets. That case has been ongoing for almost a year without an end in sight.

It is not Barth’s “misconduct” that the Commission needs to decide, but his REPEATED and continued ignoring of letters that seek to correct his behavior. He just doesn’t learn.

Barth is running against a fifth-generation Nogales rancher and retired DEA Station Chief. JD Hathaway only lost the last election by 360 votes against a 30+ year incumbent. Barth has NO CHANCE OF getting elected as SCC Sheriff.

“In any event, the County had a legitimate business purpose for demoting Plaintiff (Barth), requiring a Fitness for Duty exam, ordering a polygraph, and taking the other actions it did” (From Barth v Cochise County S-0200-CV-200300554)

And...

“To summarize, the above information clearly reflects that you continue to fail to meet the expectations of a supervisor with this department and that your continued failures and misconduct tends to bring discredit upon the department and your fellow supervisors.”

From Letter of Demotion also from the above cited case.

Please consider something stronger than a Letter of Reprimand or Warning Letter.

Peter Pototsky

Sent from [Mail](#) for Windows 10

Sent: Saturday, February 22, 2020 1:02 PM
To: Elliott, April
Subject: In support of recent complaint

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Re: Keith Barth using his judicial position to enhance his political ambitions.....

[Keith Barth for Sheriff](#)

5 hrs ·

Congratulations to the newly weds Ramon and Martha Castillo. We are honored to be apart of your special day!



[2525](#)

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From: p² p²
Sent: Tuesday, May 26, 2020 10:11 AM
To: Commission on Judicial Conduct
Subject: Keith Barth

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

To April Elliot:

My complaint against Barth is taking considerable time for a very simple matter.

By CJC Decision 2014-165, JP Watters was issued a Letter of Reprimand for having a picture on his firm's website showing him wearing a judicial robe. The complaint was filed by his opponent in the election for Justice of the Peace 1, Anne Segal, in Pima County. Watters lengthened the process by requesting a hearing, obviously to place it aside so as not to "interfere" with his campaign.

Watters also claimed that a "close family member" posted the picture without his knowledge.
(Sound familiar?)

There are some differences in the Barth case. First, it is irrelevant WHO filed the complaint. The matter should be decided on the actions of Barth, ONLY. Second, the CJC should not consider WAITING until AFTER the election to return a decision. The Citizens in Santa Cruz County NEED to be "educated" on a candidate for the County's highest law enforcement office.

This complaint should result in, AT LEAST, a Letter of Reprimand. To dismiss the complaint with, or without comments, would be a disservice to the Citizens of this State. The very similar finding in the Watters case, should demand such action.

The most significant difference in this complaint is that Barth was WARNED about using the prestige of his office in his campaign. HE CHOSE TO STICK HIS THUMB UP AT THE COMMISSION ON JUDICIAL CONDUCT. To have the highest law enforcement official in the county ignore rules, flaunt those rules and make a mockery of the laws that keep our nation intact is tantamount to sedition.

Barth, in his response to the complaint in 18-261, claimed he was a "part-time" judge. The CJC found him to be a full-time judge. How the CJC could accept such a direct FALSEHOOD from a judge is bewildering and only serves to seriously degrade the confidence in our legal system.

A Letter of Censure will be appealed. A removal from office is absolutely a necessity. Maintaining the INTEGRITY of our JUDICIAL SYSTEM is paramount.

Peter Pototsky

Sent from [Mail](#) for Windows 10

May 8, 2020

Arizona Commission on Judicial Conduct

1501 West Washington St., Suite 229

Phoenix, AZ 85007

RE: Response to Complaint #20-057

Honorable Commission Members:

My belief is this Commission was established to protect the integrity of the judiciary as a whole and the reputation of the system represented by the elected and appointed members.

I had made a request to the Commission to present my response to this complaint in person. The Commission denied this request. Although I am presenting the facts in this written version, I am respectfully requesting to provide the Commission with an oral presentation of these facts and to stand for any follow-up questions the Commission members may have of me. In light of the COVID-19 precautions, I could appear via video presentation means.

I'll address Mr. Pototsky's primary complaint at the beginning of this correspondence. If the Commission were to take the complaint as a stand-alone item without the advantage of the background I will be providing, the Commission would have no choice but to conclude that I have violated the rules of conduct as outlined in Mr. Peter Pototsky's most recent complaint.

My Sheriff's race Campaign Facebook page did have a reference to me being a Judge. It also contained a photograph of me in Clerical robe after performing a no-cost marriage ceremony (I am an ordained minister). These references and photographs have been removed from the Facebook page. In March 2020 my campaign committee replaced our social media director and there was a lapse in training for this person to understand the rules in affect that prohibit the use of the terms "Judge" or pictures showing me in my Clerical robe. My social media director has been made aware of the restrictions placed upon me and my campaign and there will be no reoccurrence of these violations.

I ask that in your review of this complaint the Commission also review all additional complaints filed against me by Mr. Pototsky to ensure the Commission members have a well-rounded picture of the level of harassment this person has engaged in at the expense of me, my wife and our children. In this review, the Commission Members will see my responses which includes descriptions of Mr. Pototsky using expletives in describing my wife when making on-line posts.

In his complaint, Mr. Pototsky mentions me filing a criminal complaint against him. This criminal case mentioned is moving forward, although the Santa Cruz County Attorney and the Santa Cruz County Superior Court have recused themselves. Mr. Pototsky has attacked the presiding Judge, Thomas Fink, in writing and has questioned his integrity and lifestyle choices. Judge Fink has cautioned me about the dangers posed by Mr. Pototsky. I have filed a complaint with the Santa Cruz County Sheriff's office and the Nogales Police Department for witness harassment / intimidation regarding Mr. Pototsky's using this Commission's complaint process in an apparent effort to sway my resolve about moving forward with the criminal prosecution.

It would appear Mr. Pototsky is a mentally unstable person and has fixated his nefarious intentions upon me and my family. Because of the position I held on the bench, my family and I had to previously endure years of abuse at the hands of a stalker and the only relief was found when the Arizona Attorney General's office conducted a criminal investigation which resulted in the conviction and ultimate jailing of this stalker. The ramblings in Mr. Pototsky's many complaints are a window into his level of depravity. I described these behaviors in my response to complaint # .

I have filed a formal criminal complaint with the Arizona Attorney General regarding this complaint and how I believe Mr. Pototski is attempting to use this Commission in his electioneering efforts for the 2020 political campaign for Santa Cruz County Sheriff. This criminal investigation will most likely endure delays due to the COVID-19 situation and the fact most personnel from the Attorney General's office are working outside their normal office environments and most courts have restrictions to the previous "normal" procedures.

Mr. Pototsky has declared his candidacy for Santa Cruz County Sheriff and has portrayed himself as me on his "Keith Barth For Sheriff" Facebook page. I will be pursuing criminal charges for Identity Theft against Mr. Pototsky. On this same Facebook page, he has done nothing but smear the reputation of my wife, me and our children.

Mr. Pototsky stated one of my current competitors in the race for Santa Cruz County Sheriff (David Hathaway), is the best choice and there is no reason I should be running for sheriff. This is another example of Mr. Pototsky's use of this Commission in his electioneering efforts. I truly believe Mr. Pototsky is using the Judicial Commission to affect the outcome of an election in Santa Cruz County.

I understand when I chose to become a public figure, most of my rights against verbal and written attacks were diminished. This places the burden of proof upon me as the victim to prove the malicious intent. I believe I have more than enough evidence to prove this malicious intent in a criminal court as well as a civil suite against Mr. Pototsky.

Whatever the decision of the Commission, I respectfully ask the public disclosure of the decision be withheld until after the August 4, 2020 primary election results have been tabulated, canvassed and affirmed by the Santa Cruz County Board of Supervisors. Failure to afford this reasonable request for disclosure would only lend to Mr. Pototsky's successful use of this Commission in the furtherance of his electioneering activities.

Respectfully Submitted,

Judge Keith D. Barth