

Summary of complaints to the Constable Ethics, Standards and Training Board (CESTB) Fiscal Year 2017

For the fiscal year period July 1, 2016 through June 30, 2017, there were a total of 24 complaints filed with the CESTB against Constables for a variety of allegations. In addition one request was made to reopen a complaint closed in FY2014, which was declined. At this time, all complaints have been closed. Of these, twelve have been dismissed by the Board, one resulted in the Constable resigning prior to a Board investigation, and eleven complaints resulted in disciplinary action being taken by the CESTB.

Those complaints were as follows:

CNA189-2017 was filed on September 8, 2016 against **Constable Jon Acton** accusing him of failing to serve in a timely fashion. After considering all the facts in this case the CESTB agreed that the constable did not perform his duties in a professional and expedient manner. The CESTB consequently voted to issue the constable a reprimand citing a continuing pattern of similar behavior Constable Acton has previously been reprimanded for.

CNA190-2017 was filed on September 15, 2016 against **Constable Bennett Bernal**. The complainant stated that while serving an eviction notice, Constable Bernal made the decision to allow the tenants an extra day to vacate due to the health of one of the children in the home. After considering all the facts in this case the CESTB determined there was no ethical violation in allowing the tenant an extra day to vacate due to the health of one of the children in the home was. However, when the constable completed the service document, he stated the "Defendant Not Home", which was not accurate. Consequently the CESTB board voted to issue a warning for not recording the service document properly.

CNA193-2017 was filed on February 14, 2017 against **Constable Jimmy Munoz**. The Constable had been absent from his duties for over a month and service documents were accumulating in his "in box". The constable was on medical leave, however elected officials are responsible for making arrangements for their work to be completed during their absence. The complainant alleged the Constable made no effort to see that his workload was covered.

The CESTB found that Constable Munoz failed to carry out his duties per A.R.S. § 22-131 section A which states that "Constables shall attend the courts of justices of the peace within their precincts when required, and within their counties execute, serve and return all processes, warrants and notices directed or delivered to them by a justice of the peace of the county or by competent authority."

Citing Canon #3 from the Code of Conduct for Constables which states "Constables shall perform their duties diligently, without regard for kinship, social or economic status, political interests, public opinion or fear of criticism or reprisal" the CESTB determined Constable Munoz was not able to perform his duties and voted to request he resign his position immediately. In addition, this complaint was referred to the Maricopa County Attorney's office for investigation of nonfeasance in public office. On May 31, 2017 Constable Munoz resigned his position.

CNA194-2017 was filed on February 15, 2017 against **Constable Bruce Austin** by the CESTB. Constables are required to complete a minimum of 16.0 training hours each calendar year.

Proof of training must be submitted to the CESTB within 30 days of completion. Constable Austin did not complete any of the required training. The constable did not seek re-election, but the position was not filled. Law dictates that the current constable is still required to perform the duties until the constable resigns or is replaced. The CESTB met and voted to send a letter to the constable urging him to resign immediately. Further, a legal notice of job abandonment was filed with the county superior court asking for his removal.

CNA195-2017 was filed on February 15, 2017 against **Constable Roger Curtis** by the CESTB. Constables are required to complete a minimum of 16.0 training hours each calendar year. Proof of training must be submitted to the CESTB within 30 days of completion. Constable Curtis fell short of the required training by 4.0 hours in 2016. The CESTB met and voted to issue the constable a warning and require the constable to make up the 4.0 hours during the 2017 calendar year. These hours will be in addition to the 16.0 requirement for 2017.

CNA196-2017 was opened on April 19, 2017 against **Constable Virginia Duarte**. The constable was called upon to clear a property where a Writ of Restitution had previously been served. Constable Duarte stated that she attempted to make arrangements to do so but admitted she may not have followed up and apologized. The CESTB consequently voted unanimously to issue a letter of warning citing Canon 4 of the Constables Code of Conduct.

CNA197-2017 was opened on April 19, 2017 against **Constable John Acton**. The allegation was Constable Acton failed to serve a Writ of Restitution. The constable responded to the complaint that he had not handled this type of document before and sought guidance from several sources. But he did not take proper steps to make sure it was completed. Citing a pattern of failing to perform his duties based on previous complaints in addition to this situation, the CESTB voted unanimously to urge the constable to retire from office immediately.

The CESTB referred to the following Canons from the Code of Conduct for Constables:

- Canon 3B which states: “Constables shall perform their duties diligently, without regard for kinship, social or economic status, political interests, public opinion or fear of criticism or reprisal. Commentary: Constables should make every reasonable effort to carry out their duties diligently and promptly as required by law. Court papers should be served as quickly as practical and reasonable under the circumstances, and litigants should be notified promptly when papers cannot be served.”
- Canon 4A which states: “Constables shall maintain high professional and personal standards. Commentary: This canon relates to all other canons and involves the manner in which a constable approaches his or her duties. One of the hallmarks of professionalism is the willingness to follow a code of conduct in professional and personal life, and the expectation that everyone in the profession will follow similar standards.
- Canon 4B which states in part: “Constables shall act appropriately at all times, taking into account their duties and responsibilities as elected public officials. Commentary: Election to public office is a sacred trust, and constables must follow the highest

standards of conduct at all times by striving to meet and exceed the standards set forth in this code.”

CNA203-2017 was filed on May 24, 2017 against **Constable Doug Middleton**. The complainant indicated the constable was rude and made inappropriate offensive statements while serving a Writ of Restitution. The CESTB met and determined Constable Middleton performed the required duties, however, in the course of doing so, he made offensive comments to the property owner. The CESTB consequently voted to issue a letter of warning citing violations of the following sections of the Constables Code of Conduct:

- Canon 1 B “Constables shall maintain high standards of conduct in order to preserve public confidence in their offices”
- Canon 3 A “Constables shall perform their duties without bias or prejudice, and shall not manifest by words or conduct bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status.”
- Canon 4 C “Constables shall be courteous, patient and respectful toward those who come in contact with their offices.”

CNA208-2017 was filed on June 1, 2017 against **Constable Oscar Vasquez**. The complaint documented numerous occasions of speeding, illegally displaying a handicap placard, and not reporting vehicle damage. The Board determined the infractions were serious and after being advised by his superiors to discontinue the behavior, Constable Vasquez continued to do so. This is clearly a violation of the Code of Conduct for Constables. Consequently, the board voted unanimously to issue a letter of reprimand, which is two steps above the minimum punishment the Board can administer.

CNA209-2017 was opened on June 12, 2017 against **Constable Ed Malles**. The constable failed to serve a Writ of Restitution, stating in his response he wanted to see a post judgment agreement prior to executing the writ. The Board concluded that the constable’s sole responsibility was to serve the writ as directed by the court, and the fact there was post judgment agreement had no bearing on this responsibility. The Board also considered prior offenses that resulted in disciplinary action and voted unanimously to issue a letter of admonishment, which is 1 step above the minimum punishment the Board can administer.

CNA211-2017 was opened on June 21, 2017 against **Constable John Acton**. The constable did not process paperwork for a service document causing the complainant to make a wasted trip to the court as well as delay his requested action. The Board considered prior offenses showing a continued pattern of failing to process paperwork. They also considered the fact that the constable has been coached and received additional training on numerous occasions to no avail. The Board had previously requested the Constable to voluntarily resign from office which he refused to do. Consequently the Board voted unanimously to recommend to the Pinal County Board of Supervisors that Constable Acton be placed on a 30 day suspension without pay.