

MEMORANDUM

DATE: February 14, 2024
TO: Melissa Manriquez, Clerk of the Board
FROM: Adelita Grijalva, Chair and District Five Supervisor
REGARDING: Item for the February 20, 2024 Agenda Addendum




Please add the following to the February 20 Agenda Addendum:

Board of Supervisors

Discussion/Direction/Action. Based on the February 12, 2024 recommendation of the State of Arizona Constable Ethics, Standards and Training Board suspend Pima County Constable Oscar Vasquez without pay or declare his office vacant and begin a process to replace him.(District 5)

Thank you

FEB 14 24 PM 03:19 PC CLK OF BD 



**State of Arizona
Constable Ethics, Standards & Training Board**

February 12, 2024

Pima County Board of Supervisors
130 W Congress St 5th floor,
Tucson, AZ 85701

Re: Recommendation for Disciplinary Action for Constable Oscar Vasquez

Dear Pima County Board of Supervisors,

The purpose of this letter is to notify you that the Constable Ethics, Standards and Training Board (Board) had received the enclosed complaints against Constable Oscar Vasquez by the complainants referenced in the case files accompanying this letter.

The Board recommended to the Pima County Board of Supervisors that Constable Oscar Vasquez be suspended without pay. Additionally, the following complaints were also referred to the Presiding Judge of Pima County and the Pima County Attorney's Office. This recommendation includes violations listed in the case report for each of the complaints.

If you have any questions, please feel free to contact the Board at the contact information listed below.

Dennis Dowling
Chairman

FEB 13 24 PM 03:51 PC CLK OF BD

**CLERK'S NOTE:
COPY TO SUPERVISORS
COUNTY ADMINISTRATOR**

DATE 2/13/24 PM

PO Box 13116. Phoenix, AZ 85002
Phone: (602) 343-6280 Fax: (602) 712-1252
cestb@azcapitolconsulting.com / <https://cestb.az.gov>

CC: Sam Brown,
Stefanie Gillie,
Presiding Constable
NUM

Complaint Form: (151) Mon, 09/11/2023 - 12:49

Name of Constable

Oscar Vasquez

Precinct/Court

Pima County JP4

Is this complaint related to a lawsuit?

No

If Yes, Name of Court

{Empty}

Case Number

{Empty}

Name of Case

"Plaintiff" vs. "Defendant"

Your Name

Eric Krznarich, Presiding Constable

Your Phone

5203398602

Your Address

111 W. LaMina

Your City State Zip

Ajo, Az 85321

Your Email Address

eric.krznarich@pima.gov

Statement of Facts

On April 26th Constable Vasquez began what he stated as "medical leave". As of today he has not returned to work and his case load is being distributed to other Constables which is increasing their already high case loads. I have asked him to provide documentation from his health care provider on numerous occasions. Phone, E mail and text messages. Associate Presiding Constable Francisco Lopez has also asked him for documentation. His last document served was on April 26th 2023. His absence is causing delays in the delivery of papers. Constables are driving long distances, 100+ miles to serve them and others are adding to their already busy precincts. We understand if he is not able to legitimately come back to work, but he is refusing to provide documentation.

I attempted to upload the images but it will not allow the files to upload. I can send them via e mail.

Attachment 1

{Empty}

Attachment 2

{Empty}

Attachment 3

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Disclaimer

By checking this box and typing my name below, I am electronically signing my complaint form.

Signature

Eric Krznarich

Captcha

{Empty}

**CESTB
CASE SUMMARY
INITIAL BOARD REVIEW**

CONSTABLE: Oscar Vasquez **Case No. CNA360-2024,
and CNA363-2024**
COUNTY: Pima
JUSTICE PRECINCTS: Justice Precinct 4
SOURCE OF COMPLAINT: William Lake-Wright, Pima County Constable
Eric Krznarich, Pima County Presiding Constable
BOARD ACTION NEEDED: Determine whether to Initiate an Investigation, Refer to
Outside Agency, or Dismiss.

ALLEGATIONS BY COMPLAINANT:

1. Beginning April 26, 2023, to present, Pima County Constable Oscar Vasquez has continuously committed nonfeasance by his failure to perform his constable duties in violation of A.R.S. §§ 22-131.A, 38-291(7) & 38.443.
2. For the months of August 2022 through August 2023, Constable Oscar Vasquez has failed to submit a standardized daily activity log in violation of A.R.S. § 11-445.I & J.

COMPLAINT SUMMARY:

On September 8, Pima County Constable William Lake-Wright submitted a Complaint Form to the Constable Ethics, Standards and Training Board (CESTB) alleging Pima County, Justice Precinct 4, Constable Oscar Vasquez, has failed to perform his duties for over four months; additionally, on September 11, 2023, Pima County Presiding Constable Eric Krznarich, likewise submitted a Complaint Form to the CESTB alleging Constable Vasquez has not performed constable duties since April 26, 2023. Given the complaints received allege the same misconduct by Constable Vasquez, both complaints will be addressed herein.

CASE NOTES:

1. As noted above, on September 9, 2023, Constable Lake-Wright submitted a complaint to the CESTB which, in part, reports the following:

“Oscar Vasquez, Pima County Constable, JP4 has not worked for over 4 months. Additionally, he has not turned in logs or mileage for over 7 months. Constable Vasquez did not make arrangements for coverage for his district.”

2. Also, as noted above, on September 11, 2023, Constable Krznarich submitted a complaint to the CESTB which, in full, reports the following:

“On April 26th Constable Vasquez began what he stated as ‘medical leave’. As of today [11 Sep 23] he has not returned to work and his case load is being distributed to other Constables which is increasing their already high case loads. I have asked him to provide documentation from his health care provider on numerous occasions. Phone, E mail and text messages. Associate Presiding Constable Francisco Lopez has also asked him for documentation. His last document served was on April 26th 2023. His absence is causing delays in the delivery of papers. Constables are driving long distances, 100+ miles to serve them and others are adding to their already busy precincts. We understand if he is not able to legitimately come back to work, but he is refusing to provide documentation.”

3. Constable Vasquez has a lawful duty to comply with A.R.S. § 22-131.A, which, in part, states:

*“Constables shall attend the courts of justices of the peace within their precincts when required, and within their counties **shall 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** [emphasis added].”*

4. On September 15, 2023, contact was made with Pima County Presiding Constable Krznarich who confirmed information provided in the above complaints. After a request, Constable Krznarich contacted the Clerk for the Pima County Board of Supervisors who provided him with a copy of the last activity log submitted by Oscar Vasquez and, although Constable Krznarich reports knowing the “... *last document served [by Vasquez] was on April 26th 2023,*” the last activity log he (Vasquez) submitted to the Clerk was for the month of July 2022. It is also known that Constable Vasquez was performing duties during February 2023, as he was the subject of a complaint for his failure to promptly serve an emergency writ of restitution (CNA331-2023 – Dowty v Vasquez). In addition to the above statute, Constable Vasquez also has a lawful duty to accurately complete and submit a standardized daily activity log as required by A.R.S. § 11-445, which, in part, reads as follows:

“I. Constables shall maintain a standardized daily activity log of work related activities, including a listing of all processes served and the number of processes attempted to be served by case number, the names of the plaintiffs and defendants, the names and addresses of the persons to be served except as otherwise precluded by law, the date of process and the daily mileage.” and

“J. The standardized daily activity log maintained in subsection I of this section is a public record and shall be made available by the constable at the constable's office during regular office hours. The standardized daily activity log shall be filed monthly by the tenth day of the following

month with the clerk of the board of supervisors. The board of supervisors shall determine the method for filing the standardized daily activity log.”

5. In addition to his above quote, in his complaint, Constable Lake-Wright references two applicable statutes, as follows:

A.R.S. § 38-291. An office shall be deemed vacant from and after the occurrence of any of the following events before the expiration of a term of office: (7) The person holding the office ceasing to discharge the duties of office for the period of three consecutive months; and

A.R.S. 38-443. Nonfeasance in public office: A public officer or person holding a position of public trust or employment who knowingly omits to perform any duty the performance of which is required of him by law is guilty of a class 2 misdemeanor unless special provision has been made for punishment of such omission.

6. During 2017, the CESTB adjudicated case CNA193-2017, regarding a similar matter where a Maricopa County Constable failed to perform duties for a period of three consecutive months. As part of the adjudication process, a letter, dated April 19, 2017, addressed to Mr. Dennis Barney, Chairman, Maricopa County Board of Supervisors, was jointly prepared by the Honorable Janet E. Barton, Maricopa County Presiding Judge, and Constable Mike Cobb, Chairman, Constable Ethics Standards and Training Board, and, although the letter is attached, following are two excerpts from the letter:

[Page 1, paragraph 1] “We are writing to you in our respective capacities as (a) Presiding Judge for the Maricopa County Superior Court and (b) chair of the Constable Ethics Standards and Training Board (‘CESTB’) to inform you that Maricopa County Constable Jimmie Munoz (South Mountain Precinct) has vacated his position by falling to appear for work for three consecutive months. Consequently, we are hereby giving notice to the Maricopa County Board of Supervisors (‘Board of Supervisors’) of the matters described in detail below, and recommending that the Board of Supervisors appoint a replacement constable.” and

[Page 4, beginning second full paragraph] “Two cases note that illness is an exception to the rule. Johnson v. Collins, 11 Ariz.App. 327,464 P.2d 647 (1970); McCluskey v. Hunter, 33 Ariz. 513, 266 P. 18 (1928). However, these cases, both of which are over 40 years old, were decided before the 1913 Civil Code was revised in 1971. The statute that is in effect presently, unlike the one that was in effect when these cases were decided, does not recognize illness as an exception.

When the legislature deletes language from a statute, it ‘is strong

evidence that [the] Legislature did not Intend [the] omitted matter should be effective.' *Gravel Resources of Ariz. v. Hills*, 217 Ariz. 22, 170 P.3d 282 (App. 2007) (citing *Stein v. Sonus USA, Inc.*, 214 Ariz. 200, 203, 150 P.3d 773, 776 (App.2007)). Therefore, even if Constable Munoz could prove that his illness prevented him from discharging his duties, it is unlikely that the Courts would find that his illness prevents A.R.S. §38-291 (7) from applying in this case.

Under the 'Notice of Vacancy' statute, A.R.S. §38-292,

When an officer is removed, declared insane or convicted of a felony or an offense Involving a violation of his official duties, or when his election or appointment is declared void, the body, judge or officer before whom the proceedings were had shall give notice thereof to the officer empowered to fill the vacancy.

The CESTB is the body that would determine whether Constable Munoz's (sic) is in 'violation of his official duties.'

As the memo from the Maricopa County Attorney's Office states: **If, pursuant to A.R.S. §§22-137(A) & 38-291(7), CESTB determines that Constable Munoz has not reported to work and discharged the duties of his office for over three months and his position is therefore vacant, CESTB should then 'give notice' to the Maricopa County Board of Supervisors, who is 'empowered to fill the vacancy.'** (emphasis added). [emphasis by letter author]

The Board of Supervisors may note that the Arizona Legislature amended A.R.S. §22-137 In 2016 to give the CESTB the power to place a constable on probation for up to thirty days - extendable in additional 30-day increments up to a total length of probation of 180 days - and/or to recommend to the Board of Supervisors that a constable previously on probation be suspended without pay for up to the remainder of the constable's term (prior to the Legislature's amendment of this statute, the strongest sanction available to the CESTB was recommending that a constable resign/retire, which the CESTB already has done in the letter attached as Exhibit 26). In light of Constable Munoz' past history we do not believe that suspension is appropriate. The burden of performing his work should not be placed on other constables. Moreover, even if suspension were under consideration, the CESTB is still working on drafting rules and it will likely be at least a year before the CESTB will be able to have these rules approved; in other words, while the CESTB now has statutory authority to place a constable on probation and/or request suspension without pay, the procedural rules necessary to implement this statutory authority are not yet in place.

Under the McCluskey decision cited in Exhibit 28, no notice or hearing

is required for an office to be deemed vacant on grounds that the officeholder has failed to perform the duties of the office for three consecutive months. See id. at 33 Ariz. 513, 519-25, 266 P. 18, 21-23 (rejecting the former officeholder's argument that notice and an opportunity were necessary before the office could be deemed vacant and a replacement appointed, and holding that the replaced officer's remedy is to bring 'a proper proceeding' in order to 'question the [replacement] appointee's right to the office either before he takes possession of it, or afterwards ... '). Instead of being required to hold a hearing and take evidence, 'The board or officer in whom this power rests [here, the Board of Supervisors] may, in such instance, exercise it upon receiving satisfactory information of the happening of the event creating the vacancy ' Id. at 33 Ariz. 523, 266 P. 22. In other words, if the Board of Supervisors finds that this letter and the attachments hereto provide 'satisfactory information of the happening of the event creating the vacancy,' the Board of Supervisors need not give Constable Munoz notice and/or hold a hearing before finding that Constable Munoz has vacated his office and appointing a replacement. If Constable Munoz wishes to then challenge the Board of Supervisors' actions, the burden would be on Constable Munoz to bring a court action to prove up his version of events.

Based on the foregoing, we, in our capacities as (a) Presiding Judge for the Maricopa County Superior Court and (b) chair of the CESTB, hereby inform you that Constable Munoz has vacated his position by failing to appear for work for three consecutive months, and recommend that the Board of Supervisors appoint a replacement constable."

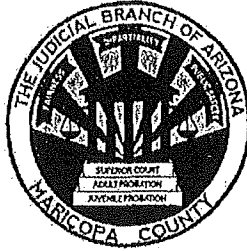
7. It should be noted that the cited letter was written by the Presiding Judge for Maricopa County, not Pima County, where Constable Vasquez is an elected official; however, one might assume that the courts would share a similar interpretation of the laws governing this matter.

BOARD ACTION TAKEN:

None – New agenda item.

ATTACHMENT:

April 19, 2017, Letter written by Janet E. Barton, Presiding Judge, Maricopa County



CNA 193-2017

SUPERIOR COURT OF ARIZONA
COUNTY OF MARICOPA

Janet E. Barton
Presiding Judge

Old Courthouse
125 West Washington, 5th Floor
Phoenix, Arizona 85003
Office (602) 506-5340
Fax (602) 372-8616

April 19, 2017

Mr. Dennis Barney, Chairman
Maricopa County Board of Supervisors
301 West Jefferson Street
10th Floor
Phoenix, Arizona 85003

Re: Maricopa County Constable Jimmie Munoz (South Mountain Precinct)

Members of the Board:

We are writing to you in our respective capacities as (a) Presiding Judge for the Maricopa County Superior Court and (b) chair of the Constable Ethics Standards and Training Board ("CESTB") to inform you that Maricopa County Constable Jimmie Munoz (South Mountain Precinct) has vacated his position by failing to appear for work for three consecutive months. Consequently, we are hereby giving notice to the Maricopa County Board of Supervisors ("Board of Supervisors") of the matters described in detail below, and recommending that the Board of Supervisors appoint a replacement constable.

Over the years, numerous complaints have been made regarding Constable Munoz's failure to carry out his duties, which taken together show an escalating pattern by Constable Munoz of failing to carry out his duties and obligations:

A. CESTB-097-2010

Exhibit 1: 5/8/2010 complaint regarding Constable Munoz's failure to serve certain court documents, despite repeated requests that he do so.

Exhibit 2: 5/3/2010 letter from CESTB to Constable Munoz, informing him of this complaint and giving him an opportunity to respond. [it appears that the date is a typo]

Exhibit 3: 6/18/2010 CESTB Letter of Censure, issued after the CESTB received no response from Constable Munoz.

Exhibit 4: 7/13/2010 letter from Constable Munoz to the CESTB, alleging that he did not receive the documents he failed to serve, admitting that he failed to respond to the

CESTB's letter (Exhibit 2), and requesting removal of the Letter of Censure (Exhibit 3) from his file.

Exhibit 5: 7/20/2010 modified Letter of Censure, deleting reference to Constable Munoz's failure to serve the court documents in issue, but citing him for his failure to respond to the CESTB's letter (Exhibit 2).

B. CNA-123-2014

Exhibit 6: 2/3/2014 complaint, stating that Constable Munoz repeatedly failed to appear for his appointments.

Exhibit 7: 3/21/2014 letter from Constable Munoz, denying the allegations against him.

Exhibit 8: 7/17/2014 CESTB Letter of Reprimand to Constable Munoz, notifying Constable Munoz of the CESTB's finding that Constable Munoz had failed to perform his duties, reprimanding Constable Munoz, and as a consequence directing Constable Munoz "to attend the new Constable training in January 2015."

Exhibit 9: 10/29/2014 CESTB letter to Constable Munoz, reminding him of his obligation to attend the new constable training in January 2015.

Exhibit 10: 1/26/2015 CESTB letter to Constable Munoz, noting his failure to attend the new constable training held in January 2015 and requesting an explanation from Constable Munoz for his failure to attend this training.

Exhibit 11: 1/20/2015 letter from Constable Munoz, stating that he failed to attend training because he attended the funerals of two friends instead.

Exhibit 12: 2/26/2015 CESTB letter to the Hon. Norman Davis, Presiding Judge for the Maricopa County Superior Court, informing Judge Davis of the problems with Constable Munoz and further stating that:

On January 12, 2015, the first day of training, Constable Munoz arrived prior to the start of class and announced to the training facilitators he would not be able to attend the training due to funerals he had to attend. In a letter to the Board dated January 20, 2015 Constable Munoz stated that he was unable to attend the required January training session because he had to attend funeral services on Monday January 12th, Tuesday January 13th and Wednesday January 14th. The Board researched the deaths and found obituaries confirming the deaths and services. Service times for one death would have prevented Constable Munoz from attending the session for the entire day on January 14th. However, the times for the other services might have allowed for Constable Munoz to participate in at least some of the training, which he made no attempt to do. Constable Munoz also made no indication that his involvement was anything further than attending the services. This particular training is only offered every 2 years, so there isn't any alternative for Constable Munoz to receive the required training at this time.

Exhibit 13: 2/27/2015 CESTB letter to Constable Munoz, informing Constable Munoz of the CESTB's decision to bring his conduct to the attention of Judge Davis.

Exhibit 14: 5/14/2015 letter from Judge Davis to Constable Munoz that, among other things, issued the following directions to Constable Munoz:

... To ensure that you fully and timely execute the duties of constable, I am directing you to submit your monthly activity logs as prescribed by A.R.S. §11-445(J) to the CESTB for six months, from July 2015 through December 2015. The logs must be submitted by the 2nd Monday of each month.

You may not have another Maricopa County Constable or Deputy Constable perform your duties during this six month period, except in the event of illness or authorized vacation. In addition, you must comply with the CESTB "Best Practices and Standards" concerning the service of civil documents.

Exhibit 15: 11/20/2016 CESTB letter to the Hon. Janet Barton, Judge Davis' successor as the Presiding Judge for the Maricopa County Superior Court, informing Judge Barton that "It appears that Constable Munoz's log entries are being manipulated in a deceptive manner to avoid showing his unauthorized use of a Deputy Constable or another Constable," and providing details regarding Constable Munoz's prohibited use of others to do his assignments.

Exhibit 16: 2/16/2016 letter from Judge Barton to the CESTB, recommending that the CESTB bring the matter to the attention of the Maricopa County Attorney's Office.

Exhibit 17: 2/20/2016 CESTB letter to the Maricopa County Attorney's Office, following through on Judge Barton's recommendation and expressing the CESTB's "wishes to have [the Maricopa County Attorney's Office] review this case for possible action."

C. CNA-153-2015

Exhibit 18: 3/25/2015 CESTB letter to Constable Munoz, notifying Constable Munoz that the CESTB had filed a formal complaint against him for his failure to fully complete the 2014 annual training required for constables.

Exhibit 19: 6/18/2015 CESTB Letter of Reprimand, reprimanding Constable Munoz for his failure to complete his required training for 2014.

D. CNA-162-2015

Exhibit 20: 4/30/2015 complaint against Constable Munoz for his repeated failure to appear for his appointments.

Exhibit 21: 5/11/2015 letter from Constable Munoz denying the allegations against him.

Exhibit 22: 6/18/2015 CESTB Letter of Reprimand, reprimanding Constable Munoz for his failure to perform his duties.

E. CNA-193-2017

Exhibit 23: 1/9/2017 complaint from Jeff Fine, Justice Court Administrator, Maricopa County Justice Courts, regarding Constable Munoz's failure to serve a total of 44 documents.

Exhibit 24: 3/9/2017 Constable Munoz's response, alleging that a series of illnesses had prevented him from doing his job.

Exhibit 25: A series of Internet posts showing Constable Munoz vacationing at a brewery in Colorado, engaging in holiday activities, and attending a reunion during the time he claimed he was incapacitated by illness.

Exhibit 26: 3/24/2017 CESTB letter to Constable Munoz, issued after Constable Munoz failed to attend the CESTB hearing, finding that Constable Munoz had failed to carry out his duties, recommending that he resign, and notifying him that the matter was again being referred to the Maricopa County Attorney's Office, this time "for investigation of nonfeasance in public office."

Exhibit 27: 3/24/2017 CESTB letter referring the matter of Constable Munoz's failure to perform his duties to the Maricopa County Attorney's Office.

Exhibit 28: 3/28/2017 Maricopa County Attorney's Office memo stating as follows:

According to ID scans, as of March 14, 2017, Constable Jimmie Munoz has not reported to his court or discharged his duties as constable since December 14, 2016.

Under A.R.S. §38-291(7), an "office shall be deemed vacant . . . before the expiration of a term of office" when "the person holding the office ceas[es] to discharge the duties of office for the period of three consecutive months."

Two cases note that illness is an exception to the rule. *Johnson v. Collins*, 11 Ariz.App. 327, 464 P.2d 647 (1970); *McCluskey v. Hunter*, 33 Ariz. 513, 266 P. 18 (1928). However, these cases, both of which are over 40 years old, were decided before the 1913 Civil Code was revised in 1971. The statute that is in effect presently, unlike the one that was in effect when these cases were decided, does not recognize illness as an exception.

When the legislature deletes language from a statute, it "is strong evidence that [the] Legislature did not intend [the] omitted matter should be effective." *Gravel Resources of Ariz. v. Hills*, 217 Ariz. 22, 170 P.3d 282 (App. 2007) (citing *Stein v. Sonus USA, Inc.*, 214 Ariz. 200, 203, 150 P.3d 773, 776 (App.2007)). Therefore, even if Constable Munoz could prove that his illness prevented him from discharging his duties, it is unlikely that the Courts would find that his illness prevents A.R.S. §38-291(7) from applying in this case.

Under the "Notice of Vacancy" statute, A.R.S. §38-292,

When an officer is removed, declared insane or convicted of a felony or an offense involving a violation of his official duties, or when his election or appointment is declared void, the body, judge or officer before whom the proceedings were had shall give notice thereof to the officer empowered to fill the vacancy.

The CESTB is the body that would determine whether Constable Munoz's is in "violation of his official duties."

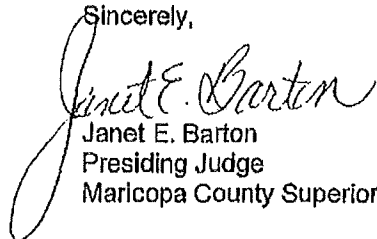
As the memo from the Maricopa County Attorney's Office states: If, pursuant to A.R.S. §§22-137(A) & 38-291(7), CESTB determines that Constable Munoz has not reported to work and discharged the duties of his office for over three months and his position is therefore vacant, CESTB should then "give notice" to the Maricopa County Board of Supervisors, who is "empowered to fill the vacancy." (emphasis added)


The Board of Supervisors may note that the Arizona Legislature amended A.R.S. §22-137 in 2016 to give the CESTB the power to place a constable on probation for up to thirty days – extendable in additional 30-day increments up to a total length of probation of 180 days – and/or to recommend to the Board of Supervisors that a constable previously on probation be suspended without pay for up to the remainder of the constable's term (prior to the Legislature's amendment of this statute, the strongest sanction available to the CESTB was recommending that a constable resign/retire, which the CESTB already has done in the letter attached as Exhibit 26). In light of Constable Munoz' past history we do not believe that suspension is appropriate. The burden of performing his work should not be placed on other constables. Moreover, even if suspension were under consideration, the CESTB is still working on drafting rules and it will likely be at least a year before the CESTB will be able to have these rules approved; in other words, while the CESTB now has *statutory authority* to place a constable on probation and/or request suspension without pay, the *procedural rules* necessary to implement this statutory authority are not yet in place.

Under the *McCluskey* decision cited in Exhibit 28, no notice or hearing is required for an office to be deemed vacant on grounds that the officeholder has failed to perform the duties of the office for three consecutive months. See *id.* at 33 Ariz. 513, 519-25, 266 P. 18, 21-23 (rejecting the former officeholder's argument that notice and an opportunity were necessary before the office could be deemed vacant and a replacement appointed, and holding that the replaced officer's remedy is to bring "a proper proceeding" in order to "question the [replacement] appointee's right to the office either before he takes possession of it, or afterwards. . ."). Instead of being required to hold a hearing and take evidence, "The board or officer in whom this power rests [here, the Board of Supervisors] may, in such instance, exercise it upon receiving satisfactory information of the happening of the event creating the vacancy. . . ." *id.* at 33 Ariz. 523, 266 P. 22. In other words, if the Board of Supervisors finds that this letter and the attachments hereto provide "satisfactory information of the happening of the event creating the vacancy," the Board of Supervisors need not give Constable Munoz notice and/or hold a hearing before finding that Constable Munoz has vacated his office and appointing a replacement. If Constable Munoz wishes to then challenge the Board of Supervisors' actions, the burden would be on Constable Munoz to bring a court action to prove up his version of events.

Based on the foregoing, we, in our capacities as (a) Presiding Judge for the Maricopa County Superior Court and (b) chair of the CESTB, hereby inform you that Constable Munoz has vacated his position by failing to appear for work for three consecutive months, and recommend that the Board of Supervisors appoint a replacement constable.

Sincerely,


Janet E. Barton
Presiding Judge
Maricopa County Superior Court


Constable Mike Cobb, Chairman
Arizona Constable Ethics, Standards
and Training Board



**State of Arizona
Constable Ethics, Standards & Training Board**

October 18, 2023

The Hon. Eric Krznarich, Constable
240 N Stone Ave, LL
Tucson, AZ 85701

Re: CNA363-2024

Dear Constable Krznarich,

The purpose of this letter is to notify you that the Constable Ethics, Standards and Training Board (Board) received your 09/11/2023 complaint against Pima County Constable Oscar Vasquez and assigned the case number above.

The Board has contacted the constable and allows him forty-five (45) days to respond to the complaint.

The Board is scheduled to address this complaint on December 14, 2023 at which time they will review the facts of the complaint along with any written response offered by the constable and may take possible action. You are welcomed to attend this meeting, time and location can be found on our website at www.cestb.az.gov.

You will be informed in writing of any decision in this matter.

If you have any questions, please feel free to contact the Board by email at the contact information below.

Sincerely,

A handwritten signature in black ink, appearing to read "D Dowling".

Dennis Dowling
Chairman

PO Box 13116. Phoenix, AZ 85002
Phone: (602) 343-6280 Fax: (602) 712-1252
cestb@azcapitolconsulting.com / <https://cestb.az.gov>

Chandni Bhakta

From: Oscar Vasquez <Oscar.Vasquez@pima.gov>
Sent: Saturday, December 2, 2023 9:56 PM
To: CESTB
Cc: Oscar Vasquez
Subject: Attention Constable Ethics, Standards & Training Board

Follow Up Flag: Follow up
Flag Status: Completed



Subject: Response Memorandum - Constable Ethics, Standards, Training Board

From: Oscar Vasquez, Constable

Over the past 15 months, a challenging period marked by significant events such as the unfortunate passing of Constable Martinez and my involvement in a seemingly minor accident four days later, I have encountered considerable pain and distress. On April 26, 2023, I appropriately notified the department of my absence following the incident. After seeking medical treatment, my anticipated return to work by the end of July or early August was adjusted due to the necessity for surgery. My delay in return was further exacerbated by additional injuries discovered post-surgery. Despite medical advice, I encountered pressure from the presiding constable to expedite my return to duty.

Upon my return, albeit not fully recovered and still experiencing discomfort, I find myself requiring further surgery. Consequently, I persist in placing myself at risk of injury during fieldwork. The oversight regarding mileage logs was unintentional and can be attributed to the challenges posed by my current injuries. These injuries have compelled me to reduce my mobility, affecting my ability to enter and exit vehicles, navigate stairs, uneven terrain, and refrain from working in hazardous nocturnal environments. Given my compromised physical condition, I am unable to defend myself adequately if the situation demands it.

Despite these challenges, I have remained focused on fulfilling the urgent requirements of my position in an effort to support the department as the issue in manpower worsens. I appreciate your understanding of these circumstances as I work towards a resolution that ensures both my well-being and the effective execution of my duties.

Best Regards,
Oscar Vasquez, Constable
Get [Outlook for iOS](#)



**State of Arizona
Constable Ethics, Standards & Training Board**

October 18, 2023

The Hon. Oscar Vasquez, Constable
240 N Stone Ave, Lower Level
Tucson, AZ 85701

Re: CNA363-2024

Dear Constable Vasquez,

The purpose of this letter is to notify you that the Constable Ethics, Standards and Training Board (Board) has received the enclosed complaint against you by Constable Krznarich referenced by the case number above.

You are invited to respond in writing to the complaint and give your statement regarding the events surrounding the complaint. The Board allows you forty-five (45) days from the date of this letter to respond to the complaint. You may submit your written response by mail to CESTB PO Box 13116, Phoenix, AZ 85002 or by fax to (602) 712-1252 or by e-mail to cestb@azcapitolconsulting.com no later than December 2, 2023.

The Board will address this complaint at their board meeting currently scheduled for December 14, 2023, at which time they may take possible action. Any statements or evidence you provide in your response will be reviewed by the Board and taken into consideration at that meeting. While your presence is not required, you may wish to attend this meeting in the event board members have any questions for you. Time and location of the meeting can be found on our website at cestb.az.gov.

You will be informed in writing of any decision in this matter.

If you have any questions, please feel free to contact the Board at the contact information listed below.

A handwritten signature in black ink, appearing to read "D. Dowling".

Dennis Dowling
Chairman

PO Box 13116, Phoenix, AZ 85002
Phone: (602) 343-6280 Fax: (602) 712-1252
cestb@azcapitolconsulting.com / <https://cestb.az.gov>

**CESTB
CASE SUMMARY
CONSTABLE RESPONSE REVIEW**

CONSTABLE: Oscar Vasquez **Case No. CNA360-2024,**
COUNTY: Pima **and CNA363-2024**
JUSTICE PRECINCTS: Justice Precinct 4
SOURCE OF COMPLAINT: William Lake-Wright, Pima County Constable
Eric Krznarich, Pima County Presiding Constable
BOARD ACTION NEEDED: Determine whether to: Continue investigation if more
information is needed; Dismiss; Take action, per
A.R.S. § 22-137.A.5; or Refer to County Attorney, per
A.R.S. § 22-137.C.

ALLEGATIONS BY COMPLAINANT:

1. Beginning April 26, 2023, to present, Pima County Constable Oscar Vasquez has continuously committed nonfeasance by his failure to perform his constable duties in violation of A.R.S. §§ 22-131.A, 38-291(7) & 38.443.
2. For the months of August 2022 through August 2023, Constable Oscar Vasquez has failed to submit a standardized daily activity log in violation of A.R.S. § 11-445.I & J.

COMPLAINT SUMMARY:

1. On September 8, Pima County Constable William Lake-Wright submitted a Complaint Form to the Constable Ethics, Standards and Training Board (CESTB) alleging Pima County, Justice Precinct 4, Constable Oscar Vasquez, has failed to perform his duties for over four months; additionally, on September 11, 2023, Pima County Presiding Constable Eric Krznarich, likewise submitted a Complaint Form to the CESTB alleging Constable Vasquez has not performed constable duties since April 26, 2023. Given the complaints received allege the same misconduct by Constable Vasquez, both complaints will be addressed herein.
2. On October 12, 2023, the CESTB voted to further this matter and afforded Constable Vasquez 45 days to respond. On December 2, 2023, an email was received from Constable Vasquez reporting, in full, the following:

“Over the past 15 months, a challenging period marked by significant events such as the unfortunate passing of Constable Martinez and my involvement in a seemingly minor accident four days later, I have encountered considerable pain and distress. On April 26, 2023, I appropriately notified the department of my absence following the incident. After seeking medical treatment, my anticipated return to work by the end of July or early August was adjusted due to the necessity for

surgery. My delay in return was further exacerbated by additional injuries discovered post-surgery. Despite medical advice, I encountered pressure from the presiding constable to expedite my return to duty.

Upon my return, albeit not fully recovered and still experiencing discomfort, I find myself requiring further surgery. Consequently, I persist in placing myself at risk of injury during fieldwork. The oversight regarding mileage logs was unintentional and can be attributed to the challenges posed by my current injuries. These injuries have compelled me to reduce my mobility, affecting my ability to enter and exit vehicles, navigate stairs, uneven terrain, and refrain from working in hazardous nocturnal environments. Given my compromised physical condition, I am unable to defend myself adequately if the situation demands it.

Despite these challenges, I have remained focused on fulfilling the urgent requirements of my position in an effort to support the department as the issue in manpower worsens. I appreciate your understanding of these circumstances as I work towards a resolution that ensures both my well-being and the effective execution of my duties.”

CASE NOTES:

1. As noted above, on September 9, 2023, Constable Lake-Wright submitted a complaint to the CESTB which, in part, reports the following:

“Oscar Vasquez, Pima County Constable, JP4 has not worked for over 4 months. Additionally, he has not turned in logs or mileage for over 7 months. Constable Vasquez did not make arrangements for coverage for his district.”

2. Also, as noted above, on September 11, 2023, Constable Krznarich submitted a complaint to the CESTB which, in full, reports the following:

“On April 26th Constable Vasquez began what he stated as ‘medical leave’. As of today [11 Sep 23] he has not returned to work and his case load is being distributed to other Constables which is increasing their already high case loads. I have asked him to provide documentation from his health care provider on numerous occasions. Phone, E mail and text messages. Associate Presiding Constable Francisco Lopez has also asked him for documentation. His last document served was on April 26th 2023. His absence is causing delays in the delivery of papers. Constables are driving long distances, 100+ miles to serve them and others are adding to their already busy precincts. We understand if he is not able to legitimately come back to work, but he is refusing to provide documentation.”

3. On September 15, 2023, contact was made with Pima County Presiding Constable

Krznarich who confirmed information provided in the above complaints. After a request, Constable Krznarich contacted the Clerk for the Pima County Board of Supervisors who provided him with a copy of the last activity log submitted by Oscar Vasquez and, although Constable Krznarich reports knowing the "... last document served [by Vasquez] was on April 26th 2023," the last activity log he (Vasquez) submitted to the Clerk was for the month of July 2022. It is also known that Constable Vasquez was performing duties during February 2023, as he was the subject of a complaint for his failure to promptly serve an emergency writ of restitution (CNA331-2023 – Dowty v Vasquez). In addition to the above statute, Constable Vasquez also has a lawful duty to accurately complete and submit a standardized daily activity log as required by A.R.S. § 11-445, which, in part, reads as follows:

"I. Constables shall maintain a standardized daily activity log of work related activities, including a listing of all processes served and the number of processes attempted to be served by case number, the names of the plaintiffs and defendants, the names and addresses of the persons to be served except as otherwise precluded by law, the date of process and the daily mileage." and

"J. The standardized daily activity log maintained in subsection I of this section is a public record and shall be made available by the constable at the constable's office during regular office hours. The standardized daily activity log shall be filed monthly by the tenth day of the following month with the clerk of the board of supervisors. The board of supervisors shall determine the method for filing the standardized daily activity log."

4. As a public officer, Constable Vasquez has a lawful duty to comply with:

A.R.S. § 22-131, which, in part, states:

"A. Constables shall attend the courts of justices of the peace within their precincts when required, and within their counties shall 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."

A.R.S. § 11-445, which, in part, states:

"I. Constables shall maintain a standardized daily activity log of work related activities, including a listing of all processes served and the number of processes attempted to be served by case number, the names of the plaintiffs and defendants, the names and addresses of the persons to be served except as otherwise precluded by law, the date of process and the daily mileage."

“J. The standardized daily activity log maintained in subsection I of this section is a public record and shall be made available by the constable at the constable's office during regular office hours. The standardized daily activity log shall be filed monthly by the tenth day of the following month with the clerk of the board of supervisors. The board of supervisors shall determine the method for filing the standardized daily activity log.”

5. In his written response, Constable Vasquez admits that he failed to complete his logs, stating that: *“The oversight regarding mileage logs was unintentional and can be attributed to the challenges posed by my current injuries.”* As an “officer,” Constable Vasquez not only has a duty to complete his daily logs, but he also has a duty to submit his daily logs, as required by A.R.S. § 11-445. Constable Vasquez’ failure to complete and/or maintain public records may also be in violation of A.R.S. § 39-121.01.B, which states: *“All officers and public bodies shall maintain all records, including records as defined in section 41-151, reasonably necessary or appropriate to **maintain an accurate knowledge of their official activities** [emphasis added] and of any of their activities that are supported by monies from this state or any political subdivision of this state.”*
6. Also in his complaint, Constable Lake-Wright references two applicable statutes, as follows:

A.R.S. § 38-291. An office shall be deemed vacant from and after the occurrence of any of the following events before the expiration of a term of office: (7) The person holding the office ceasing to discharge the duties of office for the period of three consecutive months; and

A.R.S. 38-443. Nonfeasance in public office: A public officer or person holding a position of public trust or employment who knowingly omits to perform any duty the performance of which is required of him by law is guilty of a class 2 misdemeanor unless special provision has been made for punishment of such omission.

7. During 2017, the CESTB adjudicated case CNA193-2017, regarding a similar matter where a Maricopa County Constable failed to perform duties for a period of three consecutive months. As part of the adjudication process, a letter, dated April 19, 2017, addressed to Mr. Dennis Barney, Chairman, Maricopa County Board of Supervisors, was jointly prepared by the Honorable Janet E. Barton, Maricopa County Presiding Judge, and Constable Mike Cobb, Chairman, Constable Ethics Standards and Training Board, and, although the letter is attached, regarding this matter, the following is noted:

[Page 4, beginning second full paragraph] *“Two cases note that illness is an exception to the rule. Johnson v. Collins, 11 Ariz.App. 327,464 P.2d 647 (1970); McCluskey v. Hunter, 33 Ariz. 513, 266 P. 18 (1928). However, these cases, both of which are over 40 years old, were*

*decided before the 1913 Civil Code was revised in 1971. **The statute that is in effect presently, unlike the one that was in effect when these cases were decided, does not recognize illness as an exception** [emphasis added].*

*When the legislature deletes language from a statute, It 'Is strong evidence that [the] Legislature did not Intend [the] omitted matter should be effective.' Gravel Resources of Ariz. v. Hills, 217 Ariz. 22, 170 P.3d 282 (App. 2007) (citing Stein v. Sonus USA, Inc., 214 Ariz. 200, 203, 150 P.3d 773, 776 (App.2007). **Therefore, even if Constable Munoz could prove that his illness prevented him from discharging his duties, it is unlikely that the Courts would find that his illness prevents A.R.S. §38-291 (7) from applying in this case** [emphasis added].*

Note: The cited letter (attached) was written by the Presiding Judge for Maricopa County, not Pima County, where Constable Vasquez is an elected official; however, one might assume that the courts would share a similar interpretation of the laws governing this matter

8. As noted herein, Constable Vasquez has a duty to perform his duties as required A.R.S. § 22-131 and complete and maintain Daily Activity Logs as required by A.R.S. § 11-445 (both cited, in part, above). According to A.R.S. § 38-443: *"A public officer or person holding a position of public trust or employment who **knowingly omits to perform any duty the performance of which is required of him by law** [emphasis added] is guilty of a class 2 misdemeanor unless special provision has been made for punishment of such omission."*
9. If the CESTB determines Constable Vasquez committed nonfeasance for his failure to perform his duties and complete/maintain public records, this matter should be referred to the Pima County Attorney as prescribed by A.R.S. § 22-137.C, which states: *"If the board determines that a constable has committed a criminal act, the board **shall** [emphasis added] refer the investigation to the county attorney's office in the county in which the conduct at issue occurred. The board shall submit the investigation's findings to the county attorney. If the county attorney determines that a crime has not occurred or does not file a criminal complaint against the constable, the board shall adjudicate the complaint pursuant to subsection A, paragraph 5 of this section.*
10. The CESTB may also consider that a referral to the Pima County Presiding Judge may be warranted as noted in A.R.S. § 22-131.A, which in part states: *"... these duties may be enforced by the presiding judge of the superior court in the county, including the use of the power of contempt."* In addition to the above statutes, Constable Vasquez may also be in violation of Arizona Administrative Codes and the Code of Conduct for Constables as follows:

A.A.C. § R13-14-103.A requires constables to:

1. *Comply with all federal, state, and local law;*
2. *Act in a manner that promotes public confidence in the constables office;*
3. *Be honest and conscientious in all professional and personal interactions;*
6. *Maintain accurate public information regarding the performance of the constable's duties including the daily activity log required under A.R.S. § 11-445;*
8. *Act at all times in a manner appropriate for an elected official.*

CANON 1

- A. *Constables shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the office of constable.*
- B. *Constables shall maintain high standards of conduct in order to preserve public confidence in their offices.*
- C. *Constables shall maintain and observe the highest standards of integrity, honesty, and truthfulness in their professional and personal dealings.*

CANON 3

- C. *Constables shall furnish accurate, timely information and shall provide access to public records according to established procedures. Constables shall not disclose any confidential information received in the course of official duties, except as required in the performance of such duties, or use such information for personal gain or advantage.*

CANON 4

- A. *Constables shall maintain high professional and personal standards.*
- B. *Constables shall act appropriately at all times, taking into account their duties and responsibilities as elected public officials.*

11. It should further be noted that if the CESTB determines disciplinary action under A.R.S. § 22-137(A)(5) is warranted, then in accordance with A.A.C. § R13-14-204, the CESTB "shall consider factors including, but not limited to, the following when determining the appropriate discipline:"

3. *Pattern and frequency of misconduct;*
7. *Harm caused to a member of the public.*

12. As it relates to “*harm to a member of the public,*” Constable Vasquez’s actions have had a direct impact on the citizens of Pima County due to the delays in having orders and writs served and his (Vasquez’) actions have been the catalyst for the discontent of constables serving in Pima County as reflected by complaints CNA360-2024 thru CNA365-2024. As it relates to “*pattern and frequency of misconduct,*” a cursory examination of CESTB meeting minutes covering the past four years found the following information:

CNA245-2020

The 180 day probationary period this Board placed Constable Vasquez on ended June 30th and staff reported that while Vasquez registered for the required training classes, he did not complete them during that time. The training entity provided a log of the numerous contacts they made with Constable Vasquez over several months time regarding his status, and they consider him non-compliant. Constable Cobb made a motion to send a letter to the Pima County Board of Supervisors requesting they suspend Constable without pay until he completes the training. Motion died for lack of second.

Judge Dowling discussed previous offenses this Board has admonished Constable Vasquez for, and efforts by this Board and others to effectuate a change in Vasquez’s behavior. At this point he has shown no desire to correct what appears to be a pattern of behavior that is not appropriate and Constable Vasquez poses a threat to public safety. Judge Dowling believes this Board has exhausted all remedies available and it should be turned over to Pima County, either referring to the County Attorney’s office or the County Board of Supervisors. Constable Cobb made a motion to request the Pima County Board of Supervisors suspend Constable Vasquez without pay for or a minimum of 30 days and that the suspension remain in place until he has completed the required course work. Melissa Buckley seconded. Constable Cobb clarified that it will ultimately be up to Pima County if they choose to suspend and for what length of time. The motion passed with a roll call vote of 6-0.

CNA245-2020 (addressed a second time)

Chairman Cobb introduced the complaint and reviewed the history on this complaint as well as other related complaints against Constable Vasquez regarding his use of motor vehicles. This board previously placed the Constable on a 30-day probation following a traffic altercation. Constable Vasquez is no longer allowed to use a county vehicle, and is now using his personal vehicle to conduct his duties. The constable claims because of this, the CESTB has no jurisdiction over his vehicle use. Board members discussed all details at length

and concluded that Constable Vasquez is a risk to public safety and further action is required to effectuate any change in his behavior. Valerie Beckett made a motion to place Constable Vasquez on 120 days probation, require him to complete Life Skills Driver Improvement and Anger Management courses and provide proof of completion within the probationary period. Christine Shipley seconded. Judge Dennis Dowling made a motion to amend to also require Constable Vasquez to report any traffic related violations to the CESTB. Sheriff Shepherd seconded the amendment. Constable Blake made a motion to further amend to change the probationary period to 180 days. Judge Dowling seconded. The amended motion passed 6-0.

CNA250-2020

Chairman Blake reviewed the complaint and constable response. He indicated his concern about 3rd party complaint submissions. He also stated the residents affected by the actions of Constable Vasquez refused to speak about the issue. Constable Vasquez expressed remorse for his actions in his response. At the April meeting the board had voted to hire an investigator, however, consensus was this is no longer necessary. Constable Cobb made a motion to issue a letter of reprimand to Constable Vasquez and Sheriff Shepherd seconded. The motion passed unanimously with a roll call vote 6-0 with Judge Dowling abstaining.

CNA267-2021

Chairman Blake reviewed the complaint with board members in which Constable Vasquez was accused of making the decision to delay an eviction, contrary to what is expected. Dennis Dowling reiterated the eviction order was issued out of the court, the issue was heard in the court, it was decided in court, Constable Vasquez received the writ and he chose on his own not to follow the law due to his personal beliefs about evictions during the COVID pandemic. Dennis concluded this is a direct violation of R13-14-103 Code of Conduct A1. Mike Cobb pointed out that the action violated R13-14-103 Code of Conduct A2 as well. Mike also stated that a constable's personal opinions or beliefs should not come into play while carrying out his/her duties. As elected officials, constables are required to follow rules and regulations associated with the office, and Vasquez did not do that. Christine Shipley stated her concern that in the constable's response to the complaint, he advised that he will act in the same manner if this were to occur again in the future. She went on to state that if he finds it morally unjust to be forced to remove someone when they don't have alternate accommodations, he should not remain in the position. Matt Giordano also expressed concern with Vasquez's written response stating that he is not going to follow the law in the future.

Dennis Dowling made a motion to urge the constable to resign citing the following factors as stated in AZ Administrative Code Rules R13-14-204:

- *Prior disciplinary offenses – the constable has been disciplined by the CESTB numerous times*
- *Dishonest or self-serving motive – the constable is following his beliefs rather than the law*
- *Pattern and frequency of misconduct – numerous prior offenses that resulted in disciplinary action by the CESTB were cited*
- *Bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the Board – the Constable has ignored directives by the CESTB in past cases*
- *Refusal to acknowledge wrongful nature of conduct – the constable stated he will continue to act in the same manner in the future*

Mike Cobb inquired about past sanctions by this board and staff indicated the constable has received various letters of reprimand, has been placed on probation several times, and the CESTB also requested the Pima County Board of Supervisors suspend the constable without pay for 30 days for a previous infraction.

Mike Cobb seconded the motion to urge the constable to resign with a requested amendment to include a request to the Pima County Board of Supervisors suspend the constable without pay for a minimum of 30 days. Dennis Dowling seconded the amendment. Discussion ensued. Constable Vasquez was offered an opportunity to speak and addressed the previous probationary period and stated that he completed the required training in question. He also described the homeless situation due to COVID-19 and the lack of resources for those who are evicted so finding alternate accommodations takes much longer. He stated in the case in question, justice was served; it just took longer than usual.

Dennis Dowling asked Constable Vasquez a number of questions to clarify what authority he had to determine the eviction should not take place due to COVID. The Constable answered that the reason he delayed the eviction was because the tenant didn't have a place to go, and he needed to find alternate accommodations for the tenant before he would complete the eviction.

Mike Cobb pointed out that in the case of nearly every eviction, the tenant/defendants do not typically have anywhere to go. The job of

constable is to follow court orders and rules and laws of the state, and it is not the constable's choice to postpone things because of personal beliefs.

Melissa Buckley stated her appreciation of Constable Vasquez's empathizing with the tenant, however there are laws in place that govern elected officials and he did not abide by them.

Scott Blake requested an amendment to the motion to extend the request for suspension without pay to 180 days. Blake's justification was due to the serious nature of the offense given the constable decided he was not going to obey a lawful order signed by a judge. Dennis Dowling seconded the amendment.

The motion to urge the constable to retire and request the Pima County Board of Supervisors suspend Constable Vasquez without pay for 180 days passed with a roll call vote 6-0.

Correspondence received 10-18-21 from Pima County Administrator Huckelberry v Vasquez

Chairman Blake reviewed the correspondence which included a complaint filed with the Pima County Board of Supervisors stating the constable got into an altercation with a family member. Constable Vasquez was placed on 180 day suspension by Pima County at the end of June.

Christine Shipley questioned jurisdiction while the constable is suspended. Mike Cobb stated his belief that CESTB does have jurisdiction as long as he is still a constable, even if suspended. Mike went on to say that no charges have been filed and no orders have been violated, and the situation described in the complaint was not related to the constable's duties so it does not meet the standards for the board to pursue, and consequently made a motion to not move forward with the complaint process. Christine Shipley requested clarification about what, if any notification is sent to the constable when a complaint is not moved forward. Staff clarified that constables are notified when the CESTB receives a complaint, even when the CESTB does not move forward with a complaint investigation. Mike Cobb amended his motion to include advising Constable Vasquez in the notification that he is not acting responsibly as an elected official and the CESTB will continue to monitor the situation. Christine Shipley seconded the motion. Motion passed with a roll call vote unanimously 5-0.

CNA322-2023

Staff reviewed all remedies available to the Board for mitigating

constable complaints. Matt Giordano made a motion to issue a letter of admonishment cautioning the constable to be more careful with the information he publishes on social media. Constable Hoggard seconded and the motion passed with a roll call vote 4-0 with Chairman Dowling abstaining.

CNA331-2023

The complaint and initial review report from the investigator were circulated to the board prior to the meeting. Vice Chair Hoggard pointed out that the complainant had withdrawn the complaint and made a motion to dismiss. Board members were polled, and all agreed the complaint should be dismissed.

CNA367-2024 (Initial Board review November 9, 2023)

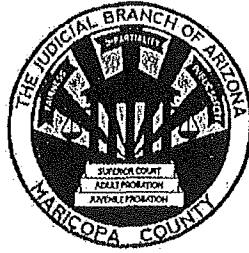
On a date following October 13, 2023, Pima County Constable Oscar Vasquez abused his authority by attempting to take possession of property left behind by an evicted tenant in violation of A.R.S. § 22-131.E; A.A.C. § R13-14-103.A.1, 2 & 8; and the Code of Ethics for Constables Canon 1.A, B & C; Canon 2.A & C; and Canon 4.A & B.

BOARD ACTION TAKEN:

The Board voted to further this matter on October 12, 2023.

ATTACHMENT:

April 19, 2017, Letter written by Janet E. Barton, Presiding Judge, Maricopa County



CMA 193-2017

SUPERIOR COURT OF ARIZONA
COUNTY OF MARICOPA

Janet E. Barton
Presiding Judge

Old Courthouse
125 West Washington, 5th Floor
Phoenix, Arizona 85003
Office (602) 506-5340
Fax (602) 372-8616

April 19, 2017

Mr. Dennis Barney, Chairman
Maricopa County Board of Supervisors
301 West Jefferson Street
10th Floor
Phoenix, Arizona 85003

Re: Maricopa County Constable Jimmie Munoz (South Mountain Precinct)

Members of the Board:

We are writing to you in our respective capacities as (a) Presiding Judge for the Maricopa County Superior Court and (b) chair of the Constable Ethics Standards and Training Board ("CESTB") to inform you that Maricopa County Constable Jimmie Munoz (South Mountain Precinct) has vacated his position by failing to appear for work for three consecutive months. Consequently, we are hereby giving notice to the Maricopa County Board of Supervisors ("Board of Supervisors") of the matters described in detail below, and recommending that the Board of Supervisors appoint a replacement constable.

Over the years, numerous complaints have been made regarding Constable Munoz's failure to carry out his duties, which taken together show an escalating pattern by Constable Munoz of failing to carry out his duties and obligations:

A. CESTB-097-2010

Exhibit 1: 5/8/2010 complaint regarding Constable Munoz's failure to serve certain court documents, despite repeated requests that he do so.

Exhibit 2: 5/3/2010 letter from CESTB to Constable Munoz, informing him of this complaint and giving him an opportunity to respond. [it appears that the date is a typo]

Exhibit 3: 6/18/2010 CESTB Letter of Censure, issued after the CESTB received no response from Constable Munoz.

Exhibit 4: 7/13/2010 letter from Constable Munoz to the CESTB, alleging that he did not receive the documents he failed to serve, admitting that he failed to respond to the

CESTB's letter (Exhibit 2), and requesting removal of the Letter of Censure (Exhibit 3) from his file.

Exhibit 5: 7/20/2010 modified Letter of Censure, deleting reference to Constable Munoz's failure to serve the court documents in issue, but citing him for his failure to respond to the CESTB's letter (Exhibit 2).

B. CNA-123-2014

Exhibit 6: 2/3/2014 complaint, stating that Constable Munoz repeatedly failed to appear for his appointments.

Exhibit 7: 3/21/2014 letter from Constable Munoz, denying the allegations against him.

Exhibit 8: 7/17/2014 CESTB Letter of Reprimand to Constable Munoz, notifying Constable Munoz of the CESTB's finding that Constable Munoz had failed to perform his duties, reprimanding Constable Munoz, and as a consequence directing Constable Munoz "to attend the new Constable training in January 2015."

Exhibit 9: 10/29/2014 CESTB letter to Constable Munoz, reminding him of his obligation to attend the new constable training in January 2015.

Exhibit 10: 1/26/2015 CESTB letter to Constable Munoz, noting his failure to attend the new constable training held in January 2015 and requesting an explanation from Constable Munoz for his failure to attend this training.

Exhibit 11: 1/20/2015 letter from Constable Munoz, stating that he failed to attend training because he attended the funerals of two friends instead.

Exhibit 12: 2/26/2015 CESTB letter to the Hon. Norman Davis, Presiding Judge for the Maricopa County Superior Court, informing Judge Davis of the problems with Constable Munoz and further stating that:

On January 12, 2015, the first day of training, Constable Munoz arrived prior to the start of class and announced to the training facilitators he would not be able to attend the training due to funerals he had to attend. In a letter to the Board dated January 20, 2015 Constable Munoz stated that he was unable to attend the required January training session because he had to attend funeral services on Monday January 12th, Tuesday January 13th and Wednesday January 14th. The Board researched the deaths and found obituaries confirming the deaths and services. Service times for one death would have prevented Constable Munoz from attending the session for the entire day on January 14th. However, the times for the other services might have allowed for Constable Munoz to participate in at least some of the training, which he made no attempt to do. Constable Munoz also made no indication that his involvement was anything further than attending the services. This particular training is only offered every 2 years, so there isn't any alternative for Constable Munoz to receive the required training at this time.

Exhibit 13: 2/27/2015 CESTB letter to Constable Munoz, informing Constable Munoz of the CESTB's decision to bring his conduct to the attention of Judge Davis.

Exhibit 14: 5/14/2015 letter from Judge Davis to Constable Munoz that, among other things, issued the following directions to Constable Munoz:

. . . To ensure that you fully and timely execute the duties of constable, I am directing you to submit your monthly activity logs as prescribed by A.R.S. §11-445(J) to the CESTB for six months, from July 2015 through December 2015. The logs must be submitted by the 2nd Monday of each month.

You may not have another Maricopa County Constable or Deputy Constable perform your duties during this six month period, except in the event of illness or authorized vacation. In addition, you must comply with the CESTB "Best Practices and Standards" concerning the service of civil documents.

Exhibit 15: 11/20/2015 CESTB letter to the Hon. Janet Barton, Judge Davis' successor as the Presiding Judge for the Maricopa County Superior Court, informing Judge Barton that "It appears that Constable Munoz's log entries are being manipulated in a deceptive manner to avoid showing his unauthorized use of a Deputy Constable or another Constable . . .," and providing details regarding Constable Munoz's prohibited use of others to do his assignments.

Exhibit 16: 2/18/2016 letter from Judge Barton to the CESTB, recommending that the CESTB bring the matter to the attention of the Maricopa County Attorney's Office.

Exhibit 17: 2/20/2016 CESTB letter to the Maricopa County Attorney's Office, following through on Judge Barton's recommendation and expressing the CESTB's "wishes to have [the Maricopa County Attorney's Office] review this case for possible action."

C. CNA-153-2015

Exhibit 18: 3/25/2015 CESTB letter to Constable Munoz, notifying Constable Munoz that the CESTB had filed a formal complaint against him for his failure to fully complete the 2014 annual training required for constables.

Exhibit 19: 6/18/2015 CESTB Letter of Reprimand, reprimanding Constable Munoz for his failure to complete his required training for 2014.

D. CNA-162-2015

Exhibit 20: 4/30/2015 complaint against Constable Munoz for his repeated failure to appear for his appointments.

Exhibit 21: 5/11/2015 letter from Constable Munoz denying the allegations against him.

Exhibit 22: 6/18/2015 CESTB Letter of Reprimand, reprimanding Constable Munoz for his failure to perform his duties.

E. CNA-193-2017

Exhibit 23: 1/9/2017 complaint from Jeff Fine, Justice Court Administrator, Maricopa County Justice Courts, regarding Constable Munoz's failure to serve a total of 44 documents.

Exhibit 24: 3/9/2017 Constable Munoz's response, alleging that a series of illnesses had prevented him from doing his job.

Exhibit 25: A series of Internet posts showing Constable Munoz vacationing at a brewery in Colorado, engaging in holiday activities, and attending a reunion during the time he claimed he was incapacitated by illness.

Exhibit 26: 3/24/2017 CESTB letter to Constable Munoz, issued after Constable Munoz failed to attend the CESTB hearing, finding that Constable Munoz had failed to carry out his duties, recommending that he resign, and notifying him that the matter was again being referred to the Maricopa County Attorney's Office, this time "for investigation of nonfeasance in public office."

Exhibit 27: 3/24/2017 CESTB letter referring the matter of Constable Munoz's failure to perform his duties to the Maricopa County Attorney's Office.

Exhibit 28: 3/28/2017 Maricopa County Attorney's Office memo stating as follows:

According to ID scans, as of March 14, 2017, Constable Jimmie Munoz has not reported to his court or discharged his duties as constable since December 14, 2016.

Under A.R.S. §38-291(7), an "office shall be deemed vacant . . . before the expiration of a term of office" when "the person holding the office ceas[es] to discharge the duties of office for the period of three consecutive months."

Two cases note that illness is an exception to the rule. *Johnson v. Collins*, 11 Ariz.App. 327, 464 P.2d 647 (1970); *McCluskey v. Hunter*, 33 Ariz. 513, 266 P. 18 (1928). However, these cases, both of which are over 40 years old, were decided before the 1913 Civil Code was revised in 1971. The statute that is in effect presently, unlike the one that was in effect when these cases were decided, does not recognize illness as an exception.

When the legislature deletes language from a statute, it "is strong evidence that [the] Legislature did not intend [the] omitted matter should be effective." *Gravel Resources of Ariz. v. Hills*, 217 Ariz. 22, 170 P.3d 282 (App. 2007) (citing *Stein v. Sonus USA, Inc.*, 214 Ariz. 200, 203, 150 P.3d 773, 776 (App.2007)). Therefore, even if Constable Munoz could prove that his illness prevented him from discharging his duties, it is unlikely that the Courts would find that his illness prevents A.R.S. §38-291(7) from applying in this case.

Under the "Notice of Vacancy" statute, A.R.S. §38-292,

When an officer is removed, declared insane or convicted of a felony or an offense involving a violation of his official duties, or when his election or appointment is declared void, the body, judge or officer before whom the proceedings were had shall give notice thereof to the officer empowered to fill the vacancy.

The CESTB is the body that would determine whether Constable Munoz's is in "violation of his official duties."

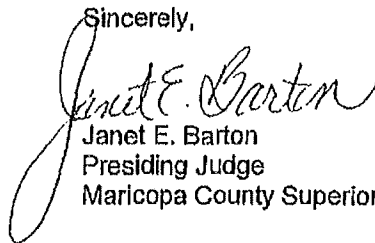
As the memo from the Maricopa County Attorney's Office states: **If, pursuant to A.R.S. §§22-137(A) & 38-291(7), CESTB determines that Constable Munoz has not reported to work and discharged the duties of his office for over three months and his position is therefore vacant, CESTB should then "give notice" to the Maricopa County Board of Supervisors, who is "empowered to fill the vacancy."** (emphasis added)


The Board of Supervisors may note that the Arizona Legislature amended A.R.S. §22-137 in 2016 to give the CESTB the power to place a constable on probation for up to thirty days – extendable in additional 30-day increments up to a total length of probation of 180 days – and/or to recommend to the Board of Supervisors that a constable previously on probation be suspended without pay for up to the remainder of the constable's term (prior to the Legislature's amendment of this statute, the strongest sanction available to the CESTB was recommending that a constable resign/retire, which the CESTB already has done in the letter attached as Exhibit 26). In light of Constable Munoz' past history we do not believe that suspension is appropriate. The burden of performing his work should not be placed on other constables. Moreover, even if suspension were under consideration, the CESTB is still working on drafting rules and it will likely be at least a year before the CESTB will be able to have these rules approved; in other words, while the CESTB now has *statutory authority* to place a constable on probation and/or request suspension without pay, the *procedural rules* necessary to implement this statutory authority are not yet in place.

Under the *McCluskey* decision cited in Exhibit 28, no notice or hearing is required for an office to be deemed vacant on grounds that the officeholder has failed to perform the duties of the office for three consecutive months. *See id.* at 33 Ariz. 513, 519-25, 266 P. 18, 21-23 (rejecting the former officeholder's argument that notice and an opportunity were necessary before the office could be deemed vacant and a replacement appointed, and holding that the replaced officer's remedy is to bring "a proper proceeding" in order to "question the [replacement] appointee's right to the office either before he takes possession of it, or afterwards. . ."). Instead of being required to hold a hearing and take evidence, "The board or officer in whom this power rests [here, the Board of Supervisors] may, in such instance, exercise it upon receiving satisfactory information of the happening of the event creating the vacancy. . . ." *Id.* at 33 Ariz. 523, 266 P. 22. In other words, if the Board of Supervisors finds that this letter and the attachments hereto provide "satisfactory information of the happening of the event creating the vacancy," the Board of Supervisors need not give Constable Munoz notice and/or hold a hearing before finding that Constable Munoz has vacated his office and appointing a replacement. If Constable Munoz wishes to then challenge the Board of Supervisors' actions, the burden would be on Constable Munoz to bring a court action to prove up his version of events.

Based on the foregoing, we, in our capacities as (a) Presiding Judge for the Maricopa County Superior Court and (b) chair of the CESTB, hereby inform you that Constable Munoz has vacated his position by failing to appear for work for three consecutive months, and recommend that the Board of Supervisors appoint a replacement constable.

Sincerely,


Janet E. Barton
Presiding Judge
Maricopa County Superior Court


Constable Mike Cobb, Chairman
Arizona Constable Ethics, Standards
and Training Board



**State of Arizona
Constable Ethics, Standards & Training Board**

December 21, 2023

The Hon. Oscar Vasquez, Constable
240 N Stone Ave, Lower Level
Tucson, AZ 85701

Re: CNA363-2024

Dear Constable Vasquez,

This letter will serve as official notice in the decision of the Constable Ethics, Standards and Training Board (Board) regarding the above referenced complaint against you by Constable Krznarich referenced by the case number above.

The Board met on December 14, 2023 to discuss the facts of the case as prepared by the complainant and the response provided by you.

After considering all the facts in this case, the Board voted to refer the complaint to the Pima County Presiding Judge, Pima County Board of Supervisors for suspension without pay, and urge you to resign from office for violations of, but not limited to, the Arizona Administrative Code and Code of Conduct for Constables.

A.A.C. § R13-14-103.A requires constables to:

1. *Comply with all federal, state, and local law;*
2. *Act in a manner that promotes public confidence in the constables office;*
3. *Be honest and conscientious in all professional and personal interactions;*
6. *Maintain accurate public information regarding the performance of the constable's duties including the daily activity log required under A.R.S. § 11-445;*
8. *Act at all times in a manner appropriate for an elected official.*

CANON 1

- A. *Constables shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the office of constable.*
- B. *Constables shall maintain high standards of conduct in order to preserve public confidence in their offices.*
- C. *Constables shall maintain and observe the highest standards of integrity, honesty, and truthfulness in their professional and personal dealings.*

PO Box 13116. Phoenix, AZ 85002
Phone: (602) 343-6280 Fax: (602) 712-1252
cestb@azcapitolconsulting.com / <https://cestb.az.gov>



**State of Arizona
Constable Ethics, Standards & Training Board**

CANON 3

C. Constables shall furnish accurate, timely information and shall provide access to public records according to established procedures. Constables shall not disclose any confidential information received in the course of official duties, except as required in the performance of such duties, or use such information for personal gain or advantage.

CANON 4

A. Constables shall maintain high professional and personal standards.

Constables shall act appropriately at all times, taking into account their duties and responsibilities as elected public officials.

You will be kept abreast of any further deliberations or matters regarding this complaint.

If you have any questions, please feel free to contact the Board at the contact information listed below.

A handwritten signature in black ink, appearing to read "D. Dowling".

Dennis Dowling
Chairman



**State of Arizona
Constable Ethics, Standards & Training Board**

December 21, 2023

The Hon. Eric Krznarich, Constable
240 N Stone Ave, Lower Level
Tucson, AZ 85701

Re: CNA363-2024

Dear Constable Krznarich,

The purpose of this letter is to inform you that the Constable Ethics, Standards and Training Board (Board) met on December 14, 2023 and deliberated over the complaint referenced above against Pima County Constable Oscar Vasquez.

After considering all the facts in this case the Board voted to refer the complaint to the Pima County Presiding Judge, Pima County Board of Supervisors for suspension without pay, and urge Constable Vasquez to resign from office.

You will be kept abreast of any further deliberations or matters regarding this complaint.

If you have any questions, please feel free to contact the Board by email at the contact information below.

Sincerely,

A handwritten signature in black ink, appearing to read "Dennis Dowling".

Dennis Dowling
Chairman

Complaint Form: (165) Wed, 10/18/2023 - 09:02

Name of Constable

Oscar Vasquez

Precinct/Court

4/Pima County Consolidated Justice Court

Is this complaint related to a lawsuit?

Yes

If Yes, Name of Court

Pima County Consolidated Justice Court

Case Number

CV 2023 024895

Name of Case

AZ Tierra Ridge DBA Tierra Ridge Apts v David Mejias

Your Name

Grace Howard

Your Phone

[REDACTED]

Your Address

[REDACTED]

Your City State Zip

Tucson

Your Email Address

trmanager@scotiagroup.com

Statement of Facts

When Constable Oscar Vasquez comes to the property to complete the Writ of Restitution, he doesn't clear the unit in a timely manner. He begins going through the resident's belongings. I'm unsure what he is looking for but has asked for us to keep certain items for him to pick up at a later date. I have never had a constable request personal belongings from an eviction and am beyond words to have it happen now. This is unacceptable. I have to specifically ask him to clear the unit so that we can change locks and know there is no one else in the unit. He also talks an excessive amount. He also does not wear a vest. I understand that he is responsible for his own safety. However, with the fact that a constable and property manager were killed just last year completing the Writ, that it's best to err on the side of caution. I feel that he is extremely unprofessional and will be requesting a different constable, if possible.

Attachment 1

{Empty}

Attachment 2

{Empty}

Attachment 3

{Empty}

Disclaimer

By checking this box and typing my name below, I am electronically signing my complaint form.

Signature

Grace Howard

Captcha

{Empty}

**CESTB
CASE SUMMARY
INITIAL BOARD REVIEW**

CONSTABLES: Oscar Vasquez **Case No. CNA367-2024**
COUNTY: Pima
JUSTICE PRECINCTS: Justice Precinct 4
SOURCE OF COMPLAINT: Grace Howard, Citizen
BOARD ACTION NEEDED: Determine whether to Initiate an Investigation, Refer to Outside Agency, or Dismiss.

ALLEGATIONS BY COMPLAINANT:

On a date following October 13, 2023, Pima County Constable Oscar Vasquez abused his authority by attempting to take possession of property left behind by an evicted tenant in violation of A.R.S. § 22-131.E; A.A.C. § R13-14-103.A.1, 2 & 8; and the Code of Ethics for Constables Canon 1.A, B & C; Canon 2.A & C; and Canon 4.A & B.

COMPLAINT SUMMARY:

On October 18, 2023, Ms. Grace Howard submitted a Complaint Form to the Constable Ethics, Standards and Training Board (CESTB), detailing concern regarding the behavior of Pima County Constable Oscar Vasquez. In her complaint, Ms. Howard alleges, in part, that Constable Vasquez:

- a. Has to be specifically asked to clear an evicted property;
- b. Spends time going through a tenant's personal property instead of clearing the property in a timely manner;
- c. Requested property from an evicted apartment be held until he was able to return and retrieve the property; and
- d. Fails to wear a vest for personal safety.

CASE NOTES:

1. As noted above, on October 18, 2023, Ms. Grace Howard submitted a complaint alleging that Constable Howard has requested her staff at the Tierra Ridge Apartments to keep property from an evicted apartment until he (Vasquez) would be able to return and retrieve the property. Ms. Howard, in full, writes:

"When Constable Oscar Vasquez comes to the property to complete the Writ of Restitution, he doesn't clear the unit in a timely manner. He begins going through the resident's belongings. I'm unsure what he is looking for but has asked for us to keep certain items for him to pick up

at a later date. I have never had a constable request personal belongings from an eviction and am beyond words to have it happen now. This is unacceptable. I have to specifically ask him to clear the unit so that we can change locks and know there is no one else in the unit. He also talks an excessive amount. He also does not wear a vest. I understand that he is responsible for his own safety. However, with the fact that a constable and property manager were killed just last year completing the Writ, that it's best to err on the side of caution. I feel that he is extremely unprofessional and will be requesting a different constable, if possible."

2. In her complaint, Ms. Howard fails to report the date Constable Vasquez executed the applicable writ of restitution. Ms. Howard did, however, provide a case number regarding the matter and a check of the Pima County Justice Court website did locate the below pictured case record which documents the writ being issued October 13, 2023; the actual date Constable Vasquez executed the writ, however, is not documented.

Case Number: CV23-024895-EA

Filed: 09/19/2023

Case Status: Disposed

Assigned Judge: HON. KRISTEL ANN FOSTER

Next Court Date: None Found

Parties:

	Name	Attorney	Service Date	Extension Service Date	Answer Date	Judgment For	Judgment Type	Judgment Date
Plaintiff	AZ TIERRA RIDGE LLC	SCOTT E WILLIAMS				Plaintiff	Court	9/26/2023
Defendant	MEJIAS, DAVID		9/20/2023			Plaintiff	Court	9/26/2023

Case Events:

Date	Time	Matter Type	Event	Result
10/13/2023		Writ	Writ of Restitution	Issued
9/26/2023	09:00 AM	Hearing	Eviction Action	Completed

Documents: (Available at Court House)

Document Type	Document SubType	Document Caption	File Date
Civil Documents	CIV - WRIT OF RESTITUTION	CIV - WRIT OF RESTITUTION	10/13/2023
Civil Documents	CIV - PAYMENT RECEIPT	Payment	10/13/2023
Civil Documents	CIV - MINUTE ENTRY	CIV - MINUTE ENTRY	9/26/2023
Civil Documents	CIV - SERVICE	CIV - SERVICE	9/21/2023
Civil Documents	CIV - NOTICE OF HEARING	CIV - NOTICE OF HEARING	9/19/2023
Civil Documents	CIV - PAYMENT RECEIPT	Payment	9/19/2023
Civil Documents	CIV - SUMMONS	CIV - SUMMONS	9/19/2023
Civil Documents	CIV - COMPLAINT NON PAYMENT	CIV - COMPLAINT NON PAYMENT	9/19/2023
Civil Documents	CIV - EVICTION NOTICE	CIV - EVICTION NOTICE	9/19/2023

3. It is not clear in the complaint if Constable Vasquez provided a specific reason for having property management hold property on his (Vasquez') behalf, what type of property was subject to Constable Vasquez' request, or how many times Constable Vasquez has requested property in the past. To obtain clarification regarding these concerns, contact was made with the complainant, Ms. Howard, who explained that she has only been working as the property manager for about a month and was present when Constable Vasquez asked maintenance to put a tricycle aside for him (Vasquez) so that he (Vasquez) could return later to pick the tricycle up. Ms. Howard also related that her maintenance supervisor informed her that Constable Vasquez has made similar requests on numerous occasions in the past. Ms. Howard was asked if her maintenance supervisor would provide a

written statement regarding his personal knowledge of Constable Vasquez acquiring property from evicted residences and she agreed to ask. If a written statement is not provided prior to the November 2023 CESTB meeting, it may be beneficial to meet with the maintenance supervisor and question him regarding applicable events.

4. If information provided by Ms. Howard is factual, it appears Constable Vasquez exceeded his authority as a constable which, in accordance with A.R.S. § 22-131.A, is limited to the acts necessary to “... *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.*” As noted, the removal or acquisition of personal property from an evicted residence is not a duty nor a responsibility of a constable.
5. For a constable to remove or come into possession of property from an evicted residence without lawful authority, the constable, the County, landlord, property manager, etc., may be subject to criminal and/or civil liability. According to A.R.S. § 33-1368.E: “*On the day following the day that a writ of restitution or execution is executed pursuant to section 12-1181, the landlord shall comply with section 33-1370, subsections D, E, F, G, H and I regarding the tenant's personal property,*” and, in part, the applicable subsections of A.R.S. § 33-1370 follow:
 - D. *After the landlord retakes possession of the dwelling unit, and if the tenant's personal property remains in the dwelling unit, the landlord shall prepare an inventory and notify the tenant of the location and cost of storage of the personal property in the same manner prescribed in subsection A of this section.*
 - F. *The landlord shall hold the tenant's personal property for a period of fourteen calendar days after the landlord retakes possession of the dwelling unit. The landlord shall use reasonable care in moving and holding the tenant's personal property. A landlord that complies with this section is not liable for any loss to the tenant or any third party that results from moving, storing or donating any personal property left in the dwelling unit.”*
 - G. *For a period of twelve months after the sale, the landlord shall:*
 1. *Keep adequate records of the outstanding and unpaid rent and the sale of the tenant's personal property.*
 2. *Hold for the benefit of the tenant any excess proceeds that have been returned as undeliverable.*
 - H. *If the landlord fails to surrender possession of the personal property to the tenant, the tenant may recover the possessions or an amount equal to the damages determined by the court if the*

landlord has destroyed or disposed of the possessions before the fourteen days specified in this section or after the tenant's offer to pay."

6. A.R.S. § 33-1368 makes a landlord responsible for any personal property left by an evicted tenant for at least fourteen days and responsible for any proceeds from property sales for up to twelve months following the sale. The State Legislature, thru the enactment of A.R.S. § 33-1370, has given a landlord the lawful responsibility to "... prepare an inventory and notify the tenant of the location and cost of storage of the personal property;" that the "... landlord shall use reasonable care in moving and holding the tenant's personal property;" "[k]eep adequate records of the outstanding and unpaid rent and the sale of the tenant's personal property," and "[h]old for the benefit of the tenant any excess proceeds that have been returned as undeliverable." The State Legislature has not empowered a constable with any authority to become involved in any manner with property left behind by an evicted tenant.
7. If it is determined that Constable Vasquez abused his authority, as alleged, by using his position as a constable to gain information regarding property left in a residence following eviction and further used his position to possibly unduly influencing a person to make such property available to him (Vasquez), he (Vasquez) may be in violation of Arizona Revised Statutes, Arizona Administrative Codes and the Code of Conduct for Constables as follows:

A.R.S. § 22-131.E, which, in part, states:

"Constables shall attend the courts of justices of the peace within their precincts when required, and within their counties shall 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."

A.A.C. § R13-14-103.A. A constable shall:

1. Comply with all federal, state, and local law;
2. Act in a manner that promotes public confidence in the constable's office;
8. Act at all times in a manner appropriate for an elected public official.

A.A.C. § R13-14-103.B. A constable shall not:

1. Use or attempt to use the constable position to obtain a privilege or exemption for the constable or any other person;
7. Use information received in the course of performing an official duty for personal gain or advantage.

CANON 1

- A. Constables shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the office of constable.
- B. Constables shall maintain high standards of conduct in order to preserve public confidence in their offices.
- C. Constables shall maintain and observe the highest standards of integrity, honesty, and truthfulness in their professional and personal dealings.

CANON 2

- A. Constables shall not use or attempt to use their positions to secure special privileges or exemptions for themselves or any other person.
- C. Constables shall not solicit or accept gifts or favors from attorneys, litigants, employees, or other persons known to do business with the court. Constables shall not request or accept any payment in addition to their regular mandated compensation for assistance rendered as part of their official duties.

CANON 4

- A. Constables shall maintain high professional and personal standards.
- B. Constables shall act appropriately at all times, taking into account their duties and responsibilities as elected public officials.

BOARD ACTION TAKEN:

None. New Agenda Item.



**State of Arizona
Constable Ethics, Standards & Training Board**

November 16, 2023

Grace Howard
[REDACTED]

Re: CNA367-2024

Dear Ms. Howard,

The purpose of this letter is to notify you that the Constable Ethics, Standards and Training Board (Board) received your 10/18/2023 complaint against Pima County Constable Oscar Vasquez and assigned the case number above.

The Board has contacted the constable and allows him forty-five (45) days to respond to the complaint.

The Board is scheduled to address this complaint on January 11, 2024 at which time they will review the facts of the complaint along with any written response offered by the constable and may take possible action. You are welcomed to attend this meeting, time and location can be found on our website at www.cestb.az.gov.

You will be informed in writing of any decision in this matter.

If you have any questions, please feel free to contact the Board by email at the contact information below.

Sincerely,

A handwritten signature in black ink, appearing to read "D Dowling".

Dennis Dowling
Chairman

PO Box 13116. Phoenix, AZ 85002
Phone: (602) 343-6280 Fax: (602) 712-1252
cestb@azcapitolconsulting.com / <https://cestb.az.gov>



**State of Arizona
Constable Ethics, Standards & Training Board**

November 16, 2023

The Hon. Oscar Vasquez, Constable
240 N Stone Ave, Lower Level
Tucson, AZ 85701

Re: CNA367-2024

Dear Constable Vasquez,

The purpose of this letter is to notify you that the Constable Ethics, Standards and Training Board (Board) has received the enclosed complaint against you by Grace Howard referenced by the case number above.

You are invited to respond in writing to the complaint and give your statement regarding the events surrounding the complaint. The Board allows you forty-five (45) days from the date of this letter to respond to the complaint. You may submit your written response by mail to CESTB PO Box 13116, Phoenix, AZ 85002 or by fax to (602) 712-1252 or by e-mail to cestb@azcapitolconsulting.com no later than December 31, 2023.

The Board will address this complaint at their board meeting currently scheduled for January 11, 2024, at which time they may take possible action. Any statements or evidence you provide in your response will be reviewed by the Board and taken into consideration at that meeting. While your presence is not required, you may wish to attend this meeting in the event board members have any questions for you. Time and location of the meeting can be found on our website at cestb.az.gov.

You will be informed in writing of any decision in this matter.

If you have any questions, please feel free to contact the Board at the contact information listed below.

A handwritten signature in black ink, appearing to read "D Dowling".

Dennis Dowling
Chairman

PO Box 13116, Phoenix, AZ 85002
Phone: (602) 343-6280 Fax: (602) 712-1252
cestb@azcapitolconsulting.com / <https://cestb.az.gov>

Chandni Bhakta

From: Oscar Vasquez [REDACTED]
Sent: Sunday, December 31, 2023 11:29 PM
To: CESTB
Subject: Response to complaint

This complainant I've worked with before on a few evictions has never shown or told me of any issues, questions or concerns she has with with me whatsoever. Ever since Constable Martinez's death and before for over 6+ years I've performed all eviction actions slow to ensure a safe, calmer mood and deescalated eviction action where everyone gets home alive. Since I always greatly favor to err on CAUTION. By generally assessing and looking through some of tenants belongings as I clear the area secures the safety of all of us as I've encountered different types of weapons and potential weapons such as firearms, baseball bats, 2x4's/rebar/metal pipe sections with a taped end, knives, machetes, and even partially carved tree limbs as ugly sticks. I relocate said weapon(s) nearby in the unit since I've had several instances where the tenant arrives as I'm clearing the unit. Let me stress that this is the GREATEST RISK to all of us since only the tenant knows where weapons if any are located and I don't know how the tenant will react while I finish the eviction action. I've never had a tenant object to this and they've been OK to relocate their firearms in the trunk of my vehicle and they retrieve it as they leave. This slow and calm method as I question the manager, maintenance man/locksmith and sometimes neighbors about police encounters, noise, parties, domestic violence and any constant foot traffic throughout the day and night. I've used for years greatly deescalates the potential for violence and consistently increases the safety and reduces liability to all of us a as I finish the eviction action. with no complaints from any manager ever. I've only asked for an item (a near new tricycle) to donate (only after 14 days) to poor children as I help a social group donate bicycles to low income children during the holidays. Through all the years and hundreds of eviction actions, I've used my protective gear appropriately with backup from police and/or sheriff's deputies after properly assessing the situation and safety/risk concerns. I've never shown any type of unprofessionalism since my my number one priority is executing the eviction action safely keeping the mood calm by engaging with the tenant, answering any questions, offering social services information fliers and deescalation of any potential violence or argument so we all get home safely.

**CESTB
CASE SUMMARY
CONSTABLE RESPONSE REVIEW**

CONSTABLES: Oscar Vasquez **Case No. CNA367-2024**
COUNTY: Pima
JUSTICE PRECINCTS: Justice Precinct 4
SOURCE OF COMPLAINT: Grace Howard, Citizen
BOARD ACTION NEEDED: Determine whether to: Continue investigation if more information is needed; Dismiss; Take action, per A.R.S. § 22-137.A.5; or Refer to County Attorney, per A.R.S. § 22-137.C.

ALLEGATIONS BY COMPLAINANT:

On October 20, 2023, Pima County Constable Oscar Vasquez abused his authority by attempting to take possession of property left behind by an evicted tenant in violation of A.R.S. § 22-131.E; A.A.C. § R13-14-103.A.1, 2 & 8; and the Code of Ethics for Constables Canon 1.A, B & C; Canon 2.A & C; and Canon 4.A & B.

COMPLAINT SUMMARY:

1. On October 18, 2023, Ms. Grace Howard submitted a Complaint Form to the Constable Ethics, Standards and Training Board (CESTB), detailing concern regarding the behavior of Pima County Constable Oscar Vasquez. In her complaint, Ms. Howard alleges, in part, that Constable Vasquez:
 - a. Has to be specifically asked to clear an evicted property;
 - b. Spends time going through a tenant's personal property instead of clearing the property in a timely manner;
 - c. Requested property from an evicted apartment be held until he was able to return and retrieve the property; and
 - d. Fails to wear a vest for personal safety.
2. On November 9, 2023, the CESTB voted to further this matter and provided Constable Vasquez 45 days to respond to the complaint. On December 31, 2023, an email was received from Constable Vasquez who, in full, provided the following information:

"This complainant I've worked with before on a few evictions has never shown or told me of any issues, questions or concerns she has with with (sic) me whatsoever. Ever since Constable Martinez's death and before for over 6+ years I've performed all eviction actions slow to

ensure a safe, calmer mood and deescalated eviction action where everyone gets home alive. Since I always greatly favor to err on CAUTION. By generally assessing and looking through some of tenants belongings as I clear the area secures the safety of all of us as I've encountered different types of weapons and potential weapons such as firearms, baseball bats, 2x4's/rebar/metal pipe sections with a taped end, knives, machetes, and even partially carved tree limbs as ugly sticks. I relocate said weapon(s) nearby in the unit since I've had several instances where the tenant arrives as I'm clearing the unit. Let me stress that this is the GREATEST RISK to all of us since only the tenant knows where weapons if any are located and I don't know how the tenant will react while I finish the eviction action. I've never had a tenant object to this and they've been OK to relocate their firearms in the trunk of my vehicle and they retrieve it as they leave. This slow and calm method as I question the manager, maintenance man/locksmith and sometimes neighbors about police encounters, noise, parties, domestic violence and any constant foot traffic throughout the day and night. I've used for years greatly deescalates the potential for violence and consistently increases the safety and reduces liability to all of us as I finish the eviction action with no complaints from any manager ever. I've only asked for an item (a near new tricycle) to donate (only after 14 days) to poor children as I help a social group donate bicycles to low income children during the holidays. Through all the years and hundreds of eviction actions, I've used my protective gear appropriately with backup from police and/or sheriff's deputies after properly assessing the situation and safety/risk concerns. I've never shown any type of unprofessionalism (sic) since my my (sic) number one priority is executing the eviction action safely keeping the mood calm by engaging with the tenant, answering any questions, offering social services information fliers and de-escalation (sic) of any potential violence or argument so we all get home safely."

CASE NOTES:

1. As noted above, on October 18, 2023, Ms. Grace Howard submitted a complaint alleging that Constable Howard has requested her staff at the Tierra Ridge Apartments to keep property from an evicted apartment until he (Vasquez) would be able to return and retrieve the property. Ms. Howard, in full, writes:

"When Constable Oscar Vasquez comes to the property to complete the Writ of Restitution, he doesn't clear the unit in a timely manner. He begins going through the resident's belongings. I'm unsure what he is looking for but has asked for us to keep certain items for him to pick up at a later date. I have never had a constable request personal belongings from an eviction and am beyond words to have it happen now. This is unacceptable. I have to specifically ask him to clear the unit so that we can change locks and know there is no one else in the

unit. He also talks an excessive amount. He also does not wear a vest. I understand that he is responsible for his own safety. However, with the fact that a constable and property manager were killed just last year completing the Writ, that it's best to err on the side of caution. I feel that he is extremely unprofessional and will be requesting a different constable, if possible."

2. In her complaint, Ms. Howard failed to report the date Constable Vasquez executed the applicable writ of restitution. Ms. Howard did, however, provide a case number regarding the matter and a check of the Pima County Justice Court website did locate the below pictured case record which documents the writ being issued October 13, 2023 and served October 20, 2023.

Case Number: CV23-024895-EA

Filed: 09/19/2023

Case Status: Disposed

Assigned Judge: HON. KRISTEL ANN FOSTER

Next Court Date: None Found

Parties:

	Name	Attorney	Service Date	Extension Service Date	Answer Date	Judgment For	Judgment Type	Judgment Date
Plaintiff	AZ TIERRA RIDGE LLC	SCOTT E WILLIAMS				Plaintiff	Court	9/26/2023
Defendant	MEJIAS, DAVID		9/20/2023			Plaintiff	Court	9/26/2023

Case Events:

Date	Time	Matter Type	Event	Result
10/13/2023		Writ	Writ of Restitution	Issued
9/26/2023	09:00 AM	Hearing	Eviction Action	Completed

Documents: (Available at Court House)

Document Type	Document SubType	Document Caption	File Date
Civil Documents	CIV - SERVICE	CIV - WRIT OF REST	10/20/2023
Civil Documents	CIV - WRIT OF RESTITUTION	CIV - WRIT OF RESTITUTION	10/13/2023
Civil Documents	CIV - PAYMENT RECEIPT	Payment	10/13/2023
Civil Documents	CIV - MINUTE ENTRY	CIV - MINUTE ENTRY	9/26/2023
Civil Documents	CIV - SERVICE	CIV - SERVICE	9/21/2023
Civil Documents	CIV - NOTICE OF HEARING	CIV - NOTICE OF HEARING	9/19/2023
Civil Documents	CIV - PAYMENT RECEIPT	Payment	9/19/2023
Civil Documents	CIV - SUMMONS	CIV - SUMMONS	9/19/2023
Civil Documents	CIV - COMPLAINT NON PAYMENT	CIV - COMPLAINT NON PAYMENT	9/19/2023
Civil Documents	CIV - EVICTION NOTICE	CIV - EVICTION NOTICE	9/19/2023

3. It is not clear in the complaint if Constable Vasquez provided a specific reason for having property management hold property on his (Vasquez') behalf, what type of property was subject to Constable Vasquez' request, or how many times Constable Vasquez has requested property in the past. To obtain clarification regarding these concerns, contact was made with the complainant, Ms. Howard, who explained that she has only been working as the property manager for about a month and was present when Constable Vasquez asked maintenance to put a tricycle aside for him (Vasquez) so that he (Vasquez) could return later to pick the tricycle up.
4. In his written response, Constable Vasquez admits to having made a request to obtain a tricycle from the evicted property when he writes: *"I've only asked for an item (a near new tricycle) to donate (only after 14 days) to poor children as I help a social group donate bicycles to low income children during the holidays."* It is permissible for a landlord to donate unclaimed property in accordance with A.R.S. § 33-1370.F, which, in part, states: *"The landlord shall hold the tenant's personal property for a period of fourteen calendar days after the landlord retakes possession of the dwelling unit. ... If the landlord holds the property for this period and the tenant makes no reasonable effort to recover it, the landlord may donate*

the personal property to a qualifying charitable organization as defined in section 43-1088 or otherwise recognized charity or sell the property" For a constable to request property from a landlord, however, may be a violation of A.R.S. § 38-444, which states: "A public officer who knowingly asks or receives any emolument, gratuity or reward, or any promise thereof, excepting those authorized by law, for doing any official act, is guilty of a class 6 felony."

5. When questioned, Ms. Howard also related that her maintenance supervisor informed her that Constable Vasquez has made similar requests on numerous occasions in the past. Ms. Howard was asked if her maintenance supervisor would provide a written statement regarding his personal knowledge of Constable Vasquez acquiring property from evicted residences and she agreed to ask, but to date, no response has been received. If the CESTB determines further investigation is warranted, it might be beneficial to meet with Ms. Howard and her maintenance supervisor to learn more regarding this matter.
6. Without further investigation, however, Constable Vasquez has admitted to conduct that may constituted a criminal act and the CESTB may consider referring the matter to the Pima County Attorney as prescribed by A.R.S. § 22-137.C, which states: *"If the board determines that a constable has committed a criminal act, the board **shall** [emphasis added] refer the investigation to the county attorney's office in the county in which the conduct at issue occurred. The board shall submit the investigation's findings to the county attorney. If the county attorney determines that a crime has not occurred or does not file a criminal complaint against the constable, the board shall adjudicate the complaint pursuant to subsection A, paragraph 5 of this section.*
7. In addition the above statute, Constable Vasquez' attempt to gain a benefit from an eviction may also be in violation of Arizona Administrative Codes and the Code of Conduct for Constables as follows:

A.A.C. § R13-14-103.A. A constable shall:

1. Comply with all federal, state, and local law;
2. Act in a manner that promotes public confidence in the constable's office;
8. Act at all times in a manner appropriate for an elected public official.

A.A.C. § R13-14-103.B. A constable shall not:

1. Use or attempt to use the constable position to obtain a privilege or exemption for the constable or any other person;
4. Solicit or accept payment other than mandated compensation for providing assistance that is part of an official duty;

7. Use information received in the course of performing an official duty for personal gain or advantage.

CANON 1

- A. Constables shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the office of constable.
- B. Constables shall maintain high standards of conduct in order to preserve public confidence in their offices.
- C. Constables shall maintain and observe the highest standards of integrity, honesty, and truthfulness in their professional and personal dealings.

CANON 2

- A. Constables shall not use or attempt to use their positions to secure special privileges or exemptions for themselves or any other person.
- C. Constables shall not solicit or accept gifts or favors from attorneys, litigants, employees, or other persons known to do business with the court. Constables shall not request or accept any payment in addition to their regular mandated compensation for assistance rendered as part of their official duties.

CANON 4

- A. Constables shall maintain high professional and personal standards.
 - B. Constables shall act appropriately at all times, taking into account their duties and responsibilities as elected public officials.
8. In his written response, Constable Vasquez also reports that "*... as I finish the eviction action. (sic) with no complaints from any manager ever. ... I've never shown any type of unprofessionalism (sic) since my my (sic) number one priority is executing the eviction action safely*" Constable Vasquez' assertion that he has never been the subject of a complaint from a manager and that he has never displayed unprofessionalism is inconsistent with his history before the CESTB which, over the past four years, has had the following issues heard by the Board:

CNA245-2020

The 180 day probationary period this Board placed Constable Vasquez on ended June 30th and staff reported that while Vasquez registered for the required training classes, he did not complete them during that time. The training entity provided a log of the numerous contacts they

made with Constable Vasquez over several months time regarding his status, and they consider him non-compliant. Constable Cobb made a motion to send a letter to the Pima County Board of Supervisors requesting they suspend Constable without pay until he completes the training. Motion died for lack of second.

Judge Dowling discussed previous offenses this Board has admonished Constable Vasquez for, and efforts by this Board and others to effectuate a change in Vasquez's behavior. At this point he has shown no desire to correct what appears to be a pattern of behavior that is not appropriate and Constable Vasquez poses a threat to public safety. Judge Dowling believes this Board has exhausted all remedies available and it should be turned over to Pima County, either referring to the County Attorney's office or the County Board of Supervisors. Constable Cobb made a motion to request the Pima County Board of Supervisors suspend Constable Vasquez without pay for or a minimum of 30 days and that the suspension remain in place until he has completed the required course work. Melissa Buckley seconded. Constable Cobb clarified that it will ultimately be up to Pima County if they choose to suspend and for what length of time. The motion passed with a roll call vote of 6-0.

CNA245-2020 (addressed a second time)

Chairman Cobb introduced the complaint and reviewed the history on this complaint as well as other related complaints against Constable Vasquez regarding his use of motor vehicles. This board previously placed the Constable on a 30-day probation following a traffic altercation. Constable Vasquez is no longer allowed to use a county vehicle, and is now using his personal vehicle to conduct his duties. The constable claims because of this, the CESTB has no jurisdiction over his vehicle use. Board members discussed all details at length and concluded that Constable Vasquez is a risk to public safety and further action is required to effectuate any change in his behavior. Valerie Beckett made a motion to place Constable Vasquez on 120 days probation, require him to complete Life Skills Driver Improvement and Anger Management courses and provide proof of completion within the probationary period. Christine Shipley seconded. Judge Dennis Dowling made a motion to amend to also require Constable Vasquez to report any traffic related violations to the CESTB. Sheriff Shepherd seconded the amendment. Constable Blake made a motion to further amend to change the probationary period to 180 days. Judge Dowling seconded. The amended motion passed 6-0.

CNA250-2020

Chairman Blake reviewed the complaint and constable response. He

indicated his concern about 3rd party complaint submissions. He also stated the residents affected by the actions of Constable Vasquez refused to speak about the issue. Constable Vasquez expressed remorse for his actions in his response. At the April meeting the board had voted to hire an investigator, however, consensus was this is no longer necessary. Constable Cobb made a motion to issue a letter of reprimand to Constable Vasquez and Sheriff Shepherd seconded. The motion passed unanimously with a roll call vote 6-0 with Judge Dowling abstaining.

CNA267-2021

Chairman Blake reviewed the complaint with board members in which Constable Vasquez was accused of making the decision to delay an eviction, contrary to what is expected. Dennis Dowling reiterated the eviction order was issued out of the court, the issue was heard in the court, it was decided in court, Constable Vasquez received the writ and he chose on his own not to follow the law due to his personal beliefs about evictions during the COVID pandemic. Dennis concluded this is a direct violation of R13-14-103 Code of Conduct A1. Mike Cobb pointed out that the action violated R13-14-103 Code of Conduct A2 as well. Mike also stated that a constable's personal opinions or beliefs should not come into play while carrying out his/her duties. As elected officials, constables are required to follow rules and regulations associated with the office, and Vasquez did not do that. Christine Shipley stated her concern that in the constable's response to the complaint, he advised that he will act in the same manner if this were to occur again in the future. She went on to state that if he finds it morally unjust to be forced to remove someone when they don't have alternate accommodations, he should not remain in the position. Matt Giordano also expressed concern with Vasquez's written response stating that he is not going to follow the law in the future.

Dennis Dowling made a motion to urge the constable to resign citing the following factors as stated in AZ Administrative Code Rules R13-14-204:

- Prior disciplinary offenses – the constable has been disciplined by the CESTB numerous times
- Dishonest or self-serving motive – the constable is following his beliefs rather than the law
- Pattern and frequency of misconduct – numerous prior offenses that resulted in disciplinary action by the CESTB were cited
- Bad faith obstruction of the disciplinary proceeding by intentionally

failing to comply with rules or orders of the Board – the Constable has ignored directives by the CESTB in past cases

- Refusal to acknowledge wrongful nature of conduct – the constable stated he will continue to act in the same manner in the future

Mike Cobb inquired about past sanctions by this board and staff indicated the constable has received various letters of reprimand, has been placed on probation several times, and the CESTB also requested the Pima County Board of Supervisors suspend the constable without pay for 30 days for a previous infraction.

Mike Cobb seconded the motion to urge the constable to resign with a requested amendment to include a request to the Pima County Board of Supervisors suspend the constable without pay for a minimum of 30 days. Dennis Dowling seconded the amendment. Discussion ensued. Constable Vasquez was offered an opportunity to speak and addressed the previous probationary period and stated that he completed the required training in question. He also described the homeless situation due to COVID-19 and the lack of resources for those who are evicted so finding alternate accommodations takes much longer. He stated in the case in question, justice was served; it just took longer than usual.

Dennis Dowling asked Constable Vasquez a number of questions to clarify what authority he had to determine the eviction should not take place due to COVID. The Constable answered that the reason he delayed the eviction was because the tenant didn't have a place to go, and he needed to find alternate accommodations for the tenant before he would complete the eviction.

Mike Cobb pointed out that in the case of nearly every eviction, the tenant/defendants do not typically have anywhere to go. The job of constable is to follow court orders and rules and laws of the state, and it is not the constable's choice to postpone things because of personal beliefs.

Melissa Buckley stated her appreciation of Constable Vasquez's empathizing with the tenant, however there are laws in place that govern elected officials and he did not abide by them.

Scott Blake requested an amendment to the motion to extend the request for suspension without pay to 180 days. Blake's justification was due to the serious nature of the offense given the constable decided he was not going to obey a lawful order signed by a judge. Dennis Dowling seconded the amendment.

The motion to urge the constable to retire and request the Pima County

Board of Supervisors suspend Constable Vasquez without pay for 180 days passed with a roll call vote 6-0.

Correspondence received 10-18-21 from Pima County Administrator Huckelberry v Vasquez

Chairman Blake reviewed the correspondence which included a complaint filed with the Pima County Board of Supervisors stating the constable got into an altercation with a family member. Constable Vasquez was placed on 180 day suspension by Pima County at the end of June.

Christine Shipley questioned jurisdiction while the constable is suspended. Mike Cobb stated his belief that CESTB does have jurisdiction as long as he is still a constable, even if suspended. Mike went on to say that no charges have been filed and no orders have been violated, and the situation described in the complaint was not related to the constable's duties so it does not meet the standards for the board to pursue, and consequently made a motion to not move forward with the complaint process. Christine Shipley requested clarification about what, if any notification is sent to the constable when a complaint is not moved forward. Staff clarified that constables are notified when the CESTB receives a complaint, even when the CESTB does not move forward with a complaint investigation. Mike Cobb amended his motion to include advising Constable Vasquez in the notification that he is not acting responsibly as an elected official and the CESTB will continue to monitor the situation. Christine Shipley seconded the motion. Motion passed with a roll call vote unanimously 5-0.

CNA322-2023

Staff reviewed all remedies available to the Board for mitigating constable complaints. Matt Giordano made a motion to issue a letter of admonishment cautioning the constable to be more careful with the information he publishes on social media. Constable Hoggard seconded and the motion passed with a roll call vote 4-0 with Chairman Dowling abstaining.

CNA331-2023

The complaint and initial review report from the investigator were circulated to the board prior to the meeting. Vice Chair Hoggard pointed out that the complainant had withdrawn the complaint and made a motion to dismiss. Board members were polled, and all agreed the complaint should be dismissed.

CNA367-2024 (Initial Board review November 9, 2023)

On a date following October 13, 2023, Pima County Constable Oscar Vasquez abused his authority by attempting to take possession of property left behind by an evicted tenant in violation of A.R.S. § 22-131.E; A.A.C. § R13-14-103.A.1, 2 & 8; and the Code of Ethics for Constables Canon 1.A, B & C; Canon 2.A & C; and Canon 4.A & B.

CNA360-2024 and CNA363-2024

Beginning April 26, 2023, to present, Pima County Constable Oscar Vasquez has continuously committed nonfeasance by his failure to perform his constable duties in violation of A.R.S. §§ 22-131.A, 38-291(7) & 38.443 and for the months of August 2022 through August 2023, Constable Oscar Vasquez has failed to submit a standardized daily activity log in violation of A.R.S. § 11-445.I & J.

BOARD ACTION TAKEN:

The Board voted to further this matter on November 9, 2023.



**State of Arizona
Constable Ethics, Standards & Training Board**

January 18, 2024

Grace Howard
[REDACTED]

Re: CNA367-2024

Dear Ms. Howard,

The purpose of this letter is to inform you that the Constable Ethics, Standards and Training Board (Board) met on January 11, 2024 and deliberated over the complaint referenced above against Pima County Constable Oscar Vasquez.

After considering all the facts in this case the Board voted to forward the recommendation to Pima County Board of Supervisors for suspension without pay.

You will be kept abreast of any further deliberations or matters regarding this complaint.

If you have any questions, please feel free to contact the Board by email at the contact information below.

Sincerely,

A handwritten signature in black ink, appearing to read "Dennis Dowling".

Dennis Dowling
Chairman



**State of Arizona
Constable Ethics, Standards & Training Board**

DATE

The Hon. Oscar Vasquez, Constable
240 N Stone Ave, Lower Level
Tucson, AZ 85701

Re: CNA367-2024

Dear Constable Vasquez,

This letter will serve as official notice in the decision of the Constable Ethics, Standards and Training Board (Board) regarding the above referenced complaint against you by Grace Howard referenced by the case number above.

The Board met on January 11, 2024 to discuss the facts of the case as prepared by the complainant and the response provided by you.

After considering all the facts in this case the Board voted to forward the recommendation to Pima County Board of Supervisors for suspension without pay.

You will be kept abreast of any further deliberations or matters regarding this complaint.

If you have any questions, please feel free to contact the Board at the contact information listed below.

A handwritten signature in black ink, appearing to read "Dennis Dowling".

Dennis Dowling
Chairman

PO Box 13116, Phoenix, AZ 85002
Phone: (602) 343-6280 Fax: (602) 712-1252
cestb@azcapitolconsulting.com / <https://cestb.az.gov>

Complaint Form: (148) Fri, 09/08/2023 - 16:27

Name of Constable

Oscar Vasquez

Precinct/Court

JP4

Is this complaint related to a lawsuit?

No

If Yes, Name of Court

{Empty}

Case Number

{Empty}

Name of Case

"Plaintiff" vs. "Defendant"

Your Name

William Lake-Wright

Your Phone

52059067035

Your Address

240 N Stone Ave, LL

Your City State Zip

Tucson, AZ 85701

Your Email Address

william.lake-wright2@pima.gov

Statement of Facts

Oscar Vasquez, Pima County Constable, JP4 has not worked for over 4 months. Additionally, he has not turned in logs or mileage for over 7 months. Constable Vasquez did not make arrangements for coverage for his district.

Under ARS 38-291. "An office shall be deemed vacant from and after the occurrence of any of the following events before the expiration of a term of office: 7. The person holding the office ceasing to discharge the duties of office for the period of three consecutive months."

ARS 11-445:

I. Constables shall maintain a standardized daily activity log of work related activities, including a listing of all processes served and the number of processes attempted to be served by case number, the names of the plaintiffs and defendants, the names and addresses of the persons to be served except as otherwise precluded by law, the date of process and the daily mileage.

J. The standardized daily activity log maintained in subsection I of this section is a public record and shall be made available by the constable at the constable's office during regular office hours. The standardized daily activity log shall be filed monthly by the tenth day of the following month with the clerk of the board of supervisors. The board of supervisors shall determine the method for filing the standardized daily activity log.

ARS 38-443 Nonfeasance in public office: classification: "a public officer or person holding a position of public trust or employment who knowingly omits to perform any duty the performance of which is required of him by law is guilty of a class 2 misdemeanor unless special provision has been made for punishment of such omission."

Attachment 1

{Empty}

Attachment 2

{Empty}

Attachment 3

{Empty}

Disclaimer

By checking this box and typing my name below, I am electronically signing my complaint form.

Signature

William J Lake-Wright

Captcha

{Empty}

**CESTB
CASE SUMMARY
INITIAL BOARD REVIEW**

CONSTABLE: Oscar Vasquez **Case No. CNA360-2024,**
COUNTY: Pima **and CNA363-2024**
JUSTICE PRECINCTS: Justice Precinct 4
SOURCE OF COMPLAINT: William Lake-Wright, Pima County Constable
Eric Krznarich, Pima County Presiding Constable
BOARD ACTION NEEDED: Determine whether to Initiate an Investigation, Refer to
Outside Agency, or Dismiss.

ALLEGATIONS BY COMPLAINANT:

1. Beginning April 26, 2023, to present, Pima County Constable Oscar Vasquez has continuously committed nonfeasance by his failure to perform his constable duties in violation of A.R.S. §§ 22-131.A, 38-291(7) & 38.443.
2. For the months of August 2022 through August 2023, Constable Oscar Vasquez has failed to submit a standardized daily activity log in violation of A.R.S. § 11-445.I & J.

COMPLAINT SUMMARY:

On September 8, Pima County Constable William Lake-Wright submitted a Complaint Form to the Constable Ethics, Standards and Training Board (CESTB) alleging Pima County, Justice Precinct 4, Constable Oscar Vasquez, has failed to perform his duties for over four months; additionally, on September 11, 2023, Pima County Presiding Constable Eric Krznarich, likewise submitted a Complaint Form to the CESTB alleging Constable Vasquez has not performed constable duties since April 26, 2023. Given the complaints received allege the same misconduct by Constable Vasquez, both complaints will be addressed herein.

CASE NOTES:

1. As noted above, on September 9, 2023, Constable Lake-Wright submitted a complaint to the CESTB which, in part, reports the following:

“Oscar Vasquez, Pima County Constable, JP4 has not worked for over 4 months. Additionally, he has not turned in logs or mileage for over 7 months. Constable Vasquez did not make arrangements for coverage for his district.”
2. Also, as noted above, on September 11, 2023, Constable Krznarich submitted a complaint to the CESTB which, in full, reports the following:

“On April 26th Constable Vasquez began what he stated as ‘medical leave’. As of today [11 Sep 23] he has not returned to work and his case load is being distributed to other Constables which is increasing their already high case loads. I have asked him to provide documentation from his health care provider on numerous occasions. Phone, E mail and text messages. Associate Presiding Constable Francisco Lopez has also asked him for documentation. His last document served was on April 26th 2023. His absence is causing delays in the delivery of papers. Constables are driving long distances, 100+ miles to serve them and others are adding to their already busy precincts. We understand if he is not able to legitimately come back to work, but he is refusing to provide documentation.”

3. Constable Vasquez has a lawful duty to comply with A.R.S. § 22-131.A, which, in part, states:

*“Constables shall attend the courts of justices of the peace within their precincts when required, and within their counties **shall 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** [emphasis added].”*

4. On September 15, 2023, contact was made with Pima County Presiding Constable Krznarich who confirmed information provided in the above complaints. After a request, Constable Krznarich contacted the Clerk for the Pima County Board of Supervisors who provided him with a copy of the last activity log submitted by Oscar Vasquez and, although Constable Krznarich reports knowing the “... *last document served [by Vasquez] was on April 26th 2023,*” the last activity log he (Vasquez) submitted to the Clerk was for the month of July 2022. It is also known that Constable Vasquez was performing duties during February 2023, as he was the subject of a complaint for his failure to promptly serve an emergency writ of restitution (CNA331-2023 – Dowty v Vasquez). In addition to the above statute, Constable Vasquez also has a lawful duty to accurately complete and submit a standardized daily activity log as required by A.R.S. § 11-445, which, in part, reads as follows:

“I. Constables shall maintain a standardized daily activity log of work related activities, including a listing of all processes served and the number of processes attempted to be served by case number, the names of the plaintiffs and defendants, the names and addresses of the persons to be served except as otherwise precluded by law, the date of process and the daily mileage.” and

“J. The standardized daily activity log maintained in subsection I of this section is a public record and shall be made available by the constable at the constable's office during regular office hours. The standardized daily activity log shall be filed monthly by the tenth day of the following

month with the clerk of the board of supervisors. The board of supervisors shall determine the method for filing the standardized daily activity log.”

5. In addition to his above quote, in his complaint, Constable Lake-Wright references two applicable statutes, as follows:

A.R.S. § 38-291. An office shall be deemed vacant from and after the occurrence of any of the following events before the expiration of a term of office: (7) The person holding the office ceasing to discharge the duties of office for the period of three consecutive months; and

A.R.S. 38-443. Nonfeasance in public office: A public officer or person holding a position of public trust or employment who knowingly omits to perform any duty the performance of which is required of him by law is guilty of a class 2 misdemeanor unless special provision has been made for punishment of such omission.

6. During 2017, the CESTB adjudicated case CNA193-2017, regarding a similar matter where a Maricopa County Constable failed to perform duties for a period of three consecutive months. As part of the adjudication process, a letter, dated April 19, 2017, addressed to Mr. Dennis Barney, Chairman, Maricopa County Board of Supervisors, was jointly prepared by the Honorable Janet E. Barton, Maricopa County Presiding Judge, and Constable Mike Cobb, Chairman, Constable Ethics Standards and Training Board, and, although the letter is attached, following are two excerpts from the letter:

[Page 1, paragraph 1] “We are writing to you in our respective capacities as (a) Presiding Judge for the Maricopa County Superior Court and (b) chair of the Constable Ethics Standards and Training Board (‘CESTB’) to inform you that Maricopa County Constable Jimmie Munoz (South Mountain Precinct) has vacated his position by failing to appear for work for three consecutive months. Consequently, we are hereby giving notice to the Maricopa County Board of Supervisors (‘Board of Supervisors’) of the matters described in detail below, and recommending that the Board of Supervisors appoint a replacement constable.” and

[Page 4, beginning second full paragraph] “Two cases note that illness is an exception to the rule. Johnson v. Collins, 11 Ariz.App. 327,464 P.2d 647 (1970); McCluskey v. Hunter, 33 Ariz. 513, 266 P. 18 (1928). However, these cases, both of which are over 40 years old, were decided before the 1913 Civil Code was revised in 1971. The statute that is in effect presently, unlike the one that was in effect when these cases were decided, does not recognize illness as an exception.

When the legislature deletes language from a statute, it ‘ls strong

evidence that [the] Legislature did not Intend [the] omitted matter should be effective.' *Gravel Resources of Ariz. v. Hills*, 217 Ariz. 22, 170 P.3d 282 (App. 2007) (citing *Stein v. Sonus USA, Inc.*, 214 Ariz. 200, 203, 150 P.3d 773, 776 (App.2007)). Therefore, even if Constable Munoz could prove that his illness prevented him from discharging his duties, it is unlikely that the Courts would find that his illness prevents A.R.S. §38-291 (7) from applying in this case.

Under the 'Notice of Vacancy' statute, A.R.S. §38-292,

When an officer is removed, declared insane or convicted of a felony or an offense Involving a violation of his official duties, or when his election or appointment is declared void, the body, judge or officer before whom the proceedings were had shall give notice thereof to the officer empowered to fill the vacancy.

The CESTB is the body that would determine whether Constable Munoz's (sic) is in 'violation of his official duties.'

As the memo from the Maricopa County Attorney's Office states: If, pursuant to A.R.S. §§22-137(A) & 38-291(7), CESTB determines that Constable Munoz has not reported to work and discharged the duties of his office for over three months and his position is therefore vacant, CESTB should then 'give notice' to the Maricopa County Board of Supervisors, who is 'empowered to fill the vacancy.' (emphasis added). [emphasis by letter author]

The Board of Supervisors may note that the Arizona Legislature amended A.R.S. §22-137 In 2016 to give the CESTB the power to place a constable on probation for up to thirty days - extendable in additional 30-day Increments up to a total length of probation of 180 days - and/or to recommend to the Board of Supervisors that a constable previously on probation be suspended without pay for up to the remainder of the constable's term (prior to the Legislature's amendment of this statute, the strongest sanction available to the CESTB was recommending that a constable resign/retire, which the CESTB already has done in the letter attached as Exhibit 26). In light of Constable Munoz' past history we do not believe that suspension Is appropriate. The burden of performing his work should not be placed on other constables. Moreover, even if suspension were under consideration, the CESTB Is still working on drafting rules and it will likely be at least a year before the CESTB will be able to have these rules approved; in other words, while the CESTB now has statutory authority to place a constable on probation and/or request suspension without pay, the procedural rules necessary to Implement this statutory authority are not yet In place.

Under the McCluskey decision cited In Exhibit 28, no notice or hearing

is required for an office to be deemed vacant on grounds that the officeholder has failed to perform the duties of the office for three consecutive months. See id. at 33 Ariz. 513, 519-25, 266 P. 18, 21-23 (rejecting the former officeholder's argument that notice and an opportunity were necessary before the office could be deemed vacant and a replacement appointed, and holding that the replaced officer's remedy is to bring 'a proper proceeding' in order to 'question the [replacement] appointee's right to the office either before he takes possession of it, or afterwards ... '). Instead of being required to hold a hearing and take evidence, 'The board or officer in whom this power rests [here, the Board of Supervisors] may, in such instance, exercise it upon receiving satisfactory information of the happening of the event creating the vacancy ' Id. at 33 Ariz. 523, 266 P. 22. In other words, if the Board of Supervisors finds that this letter and the attachments hereto provide 'satisfactory information of the happening of the event creating the vacancy,' the Board of Supervisors need not give Constable Munoz notice and/or hold a hearing before finding that Constable Munoz has vacated his office and appointing a replacement. If Constable Munoz wishes to then challenge the Board of Supervisors' actions, the burden would be on Constable Munoz to bring a court action to prove up his version of events.

Based on the foregoing, we, in our capacities as (a) Presiding Judge for the Maricopa County Superior Court and (b) chair of the CESTB, hereby inform you that Constable Munoz has vacated his position by failing to appear for work for three consecutive months, and recommend that the Board of Supervisors appoint a replacement constable."

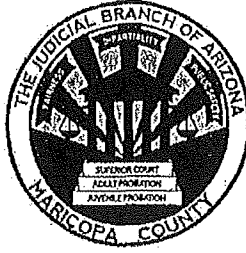
7. It should be noted that the cited letter was written by the Presiding Judge for Maricopa County, not Pima County, where Constable Vasquez is an elected official; however, one might assume that the courts would share a similar interpretation of the laws governing this matter.

BOARD ACTION TAKEN:

None – New agenda item.

ATTACHMENT:

April 19, 2017, Letter written by Janet E. Barton, Presiding Judge, Maricopa County



CMA 193-2017

SUPERIOR COURT OF ARIZONA
COUNTY OF MARICOPA

Janet E. Barton
Presiding Judge

Old Courthouse
125 West Washington, 5th Floor
Phoenix, Arizona 85003
Office (602) 506-5340
Fax (602) 372-8616

April 19, 2017

Mr. Dennis Barney, Chairman
Maricopa County Board of Supervisors
301 West Jefferson Street
10th Floor
Phoenix, Arizona 85003

Re: Maricopa County Constable Jimmie Munoz (South Mountain Precinct)

Members of the Board:

We are writing to you in our respective capacities as (a) Presiding Judge for the Maricopa County Superior Court and (b) chair of the Constable Ethics Standards and Training Board ("CESTB") to inform you that Maricopa County Constable Jimmie Munoz (South Mountain Precinct) has vacated his position by failing to appear for work for three consecutive months. Consequently, we are hereby giving notice to the Maricopa County Board of Supervisors ("Board of Supervisors") of the matters described in detail below, and recommending that the Board of Supervisors appoint a replacement constable.

Over the years, numerous complaints have been made regarding Constable Munoz's failure to carry out his duties, which taken together show an escalating pattern by Constable Munoz of failing to carry out his duties and obligations:

A. CESTB-097-2010

Exhibit 1: 5/8/2010 complaint regarding Constable Munoz's failure to serve certain court documents, despite repeated requests that he do so.

Exhibit 2: 5/3/2010 letter from CESTB to Constable Munoz, informing him of this complaint and giving him an opportunity to respond. [it appears that the date is a typo]

Exhibit 3: 6/18/2010 CESTB Letter of Censure, issued after the CESTB received no response from Constable Munoz.

Exhibit 4: 7/13/2010 letter from Constable Munoz to the CESTB, alleging that he did not receive the documents he failed to serve, admitting that he failed to respond to the

CESTB's letter (Exhibit 2), and requesting removal of the Letter of Censure (Exhibit 3) from his file.

Exhibit 5: 7/20/2010 modified Letter of Censure, deleting reference to Constable Munoz's failure to serve the court documents in issue, but citing him for his failure to respond to the CESTB's letter (Exhibit 2).

B. CNA-123-2014

Exhibit 6: 2/3/2014 complaint, stating that Constable Munoz repeatedly failed to appear for his appointments.

Exhibit 7: 3/21/2014 letter from Constable Munoz, denying the allegations against him.

Exhibit 8: 7/17/2014 CESTB Letter of Reprimand to Constable Munoz, notifying Constable Munoz of the CESTB's finding that Constable Munoz had failed to perform his duties, reprimanding Constable Munoz, and as a consequence directing Constable Munoz "to attend the new Constable training in January 2015."

Exhibit 9: 10/29/2014 CESTB letter to Constable Munoz, reminding him of his obligation to attend the new constable training in January 2015.

Exhibit 10: 1/26/2015 CESTB letter to Constable Munoz, noting his failure to attend the new constable training held in January 2015 and requesting an explanation from Constable Munoz for his failure to attend this training.

Exhibit 11: 1/20/2015 letter from Constable Munoz, stating that he failed to attend training because he attended the funerals of two friends instead.

Exhibit 12: 2/26/2015 CESTB letter to the Hon. Norman Davis, Presiding Judge for the Maricopa County Superior Court, informing Judge Davis of the problems with Constable Munoz and further stating that:

On January 12, 2015, the first day of training, Constable Munoz arrived prior to the start of class and announced to the training facilitators he would not be able to attend the training due to funerals he had to attend. In a letter to the Board dated January 20, 2015 Constable Munoz stated that he was unable to attend the required January training session because he had to attend funeral services on Monday January 12th, Tuesday January 13th and Wednesday January 14th. The Board researched the deaths and found obituaries confirming the deaths and services. Service times for one death would have prevented Constable Munoz from attending the session for the entire day on January 14th. However, the times for the other services might have allowed for Constable Munoz to participate in at least some of the training, which he made no attempt to do. Constable Munoz also made no indication that his involvement was anything further than attending the services. This particular training is only offered every 2 years, so there isn't any alternative for Constable Munoz to receive the required training at this time.

Exhibit 13: 2/27/2015 CESTB letter to Constable Munoz, informing Constable Munoz of the CESTB's decision to bring his conduct to the attention of Judge Davis.

Exhibit 14: 5/14/2015 letter from Judge Davis to Constable Munoz that, among other things, issued the following directions to Constable Munoz:

. . . To ensure that you fully and timely execute the duties of constable, I am directing you to submit your monthly activity logs as prescribed by A.R.S. §11-445(J) to the CESTB for six months, from July 2015 through December 2015. The logs must be submitted by the 2nd Monday of each month.

You may not have another Maricopa County Constable or Deputy Constable perform your duties during this six month period, except in the event of illness or authorized vacation. In addition, you must comply with the CESTB "Best Practices and Standards" concerning the service of civil documents.

Exhibit 15: 11/20/2016 CESTB letter to the Hon. Janet Barton, Judge Davis' successor as the Presiding Judge for the Maricopa County Superior Court, informing Judge Barton that "It appears that Constable Munoz's log entries are being manipulated in a deceptive manner to avoid showing his unauthorized use of a Deputy Constable or another Constable . . .," and providing details regarding Constable Munoz's prohibited use of others to do his assignments.

Exhibit 16: 2/16/2016 letter from Judge Barton to the CESTB, recommending that the CESTB bring the matter to the attention of the Maricopa County Attorney's Office.

Exhibit 17: 2/20/2016 CESTB letter to the Maricopa County Attorney's Office, following through on Judge Barton's recommendation and expressing the CESTB's "wishes to have [the Maricopa County Attorney's Office] review this case for possible action."

C. CNA-153-2015

Exhibit 18: 3/25/2015 CESTB letter to Constable Munoz, notifying Constable Munoz that the CESTB had filed a formal complaint against him for his failure to fully complete the 2014 annual training required for constables.

Exhibit 19: 6/18/2015 CESTB Letter of Reprimand, reprimanding Constable Munoz for his failure to complete his required training for 2014.

D. CNA-162-2015

Exhibit 20: 4/30/2015 complaint against Constable Munoz for his repeated failure to appear for his appointments.

Exhibit 21: 5/11/2015 letter from Constable Munoz denying the allegations against him.

Exhibit 22: 6/18/2015 CESTB Letter of Reprimand, reprimanding Constable Munoz for his failure to perform his duties.

E. CNA-193-2017

Exhibit 23: 1/9/2017 complaint from Jeff Fine, Justice Court Administrator, Maricopa County Justice Courts, regarding Constable Munoz's failure to serve a total of 44 documents.

Exhibit 24: 3/9/2017 Constable Munoz's response, alleging that a series of illnesses had prevented him from doing his job.

Exhibit 25: A series of Internet posts showing Constable Munoz vacationing at a brewery in Colorado, engaging in holiday activities, and attending a reunion during the time he claimed he was incapacitated by illness.

Exhibit 26: 3/24/2017 CESTB letter to Constable Munoz, issued after Constable Munoz failed to attend the CESTB hearing, finding that Constable Munoz had failed to carry out his duties, recommending that he resign, and notifying him that the matter was again being referred to the Maricopa County Attorney's Office, this time "for investigation of nonfeasance in public office."

Exhibit 27: 3/24/2017 CESTB letter referring the matter of Constable Munoz's failure to perform his duties to the Maricopa County Attorney's Office.

Exhibit 28: 3/28/2017 Maricopa County Attorney's Office memo stating as follows:

According to ID scans, as of March 14, 2017, Constable Jimmie Munoz has not reported to his court or discharged his duties as constable since December 14, 2016.

Under A.R.S. §38-291(7), an "office shall be deemed vacant . . . before the expiration of a term of office" when "the person holding the office ceas[es] to discharge the duties of office for the period of three consecutive months."

Two cases note that illness is an exception to the rule. *Johnson v. Collins*, 11 Ariz.App. 327, 464 P.2d 647 (1970); *McCluskey v. Hunter*, 33 Ariz. 513, 266 P. 18 (1928). However, these cases, both of which are over 40 years old, were decided before the 1913 Civil Code was revised in 1971. The statute that is in effect presently, unlike the one that was in effect when these cases were decided, does not recognize illness as an exception.

When the legislature deletes language from a statute, it "is strong evidence that [the] Legislature did not intend [the] omitted matter should be effective." *Gravel Resources of Ariz. v. Hills*, 217 Ariz. 22, 170 P.3d 282 (App. 2007) (citing *Stein v. Sonus USA, Inc.*, 214 Ariz. 200, 203, 150 P.3d 773, 776 (App.2007)). Therefore, even if Constable Munoz could prove that his illness prevented him from discharging his duties, it is unlikely that the Courts would find that his illness prevents A.R.S. §38-291(7) from applying in this case.

Under the "Notice of Vacancy" statute, A.R.S. §38-292,

When an officer is removed, declared insane or convicted of a felony or an offense involving a violation of his official duties, or when his election or appointment is declared void, the body, judge or officer before whom the proceedings were had shall give notice thereof to the officer empowered to fill the vacancy.

The CESTB is the body that would determine whether Constable Munoz's is in "violation of his official duties."

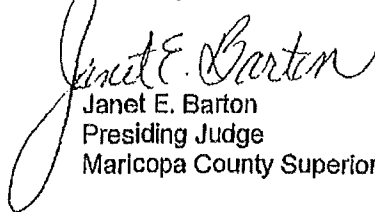
As the memo from the Maricopa County Attorney's Office states: If, pursuant to A.R.S. §§22-137(A) & 38-291(7), CESTB determines that Constable Munoz has not reported to work and discharged the duties of his office for over three months and his position is therefore vacant, CESTB should then "give notice" to the Maricopa County Board of Supervisors, who is "empowered to fill the vacancy." (emphasis added)


The Board of Supervisors may note that the Arizona Legislature amended A.R.S. §22-137 in 2016 to give the CESTB the power to place a constable on probation for up to thirty days – extendable in additional 30-day increments up to a total length of probation of 180 days – and/or to recommend to the Board of Supervisors that a constable previously on probation be suspended without pay for up to the remainder of the constable's term (prior to the Legislature's amendment of this statute, the strongest sanction available to the CESTB was recommending that a constable resign/retire, which the CESTB already has done in the letter attached as Exhibit 26). In light of Constable Munoz' past history we do not believe that suspension is appropriate. The burden of performing his work should not be placed on other constables. Moreover, even if suspension were under consideration, the CESTB is still working on drafting rules and it will likely be at least a year before the CESTB will be able to have these rules approved; in other words, while the CESTB now has *statutory authority* to place a constable on probation and/or request suspension without pay, the *procedural rules* necessary to implement this statutory authority are not yet in place.

Under the *McCluskey* decision cited in Exhibit 28, no notice or hearing is required for an office to be deemed vacant on grounds that the officeholder has failed to perform the duties of the office for three consecutive months. See *id.* at 33 Ariz. 513, 519-25, 266 P. 18, 21-23 (rejecting the former officeholder's argument that notice and an opportunity were necessary before the office could be deemed vacant and a replacement appointed, and holding that the replaced officer's remedy is to bring "a proper proceeding" in order to "question the [replacement] appointee's right to the office either before he takes possession of it, or afterwards. . ."). Instead of being required to hold a hearing and take evidence, "The board or officer in whom this power rests [here, the Board of Supervisors] may, in such instance, exercise it upon receiving satisfactory information of the happening of the event creating the vacancy. . . ." *Id.* at 33 Ariz. 523, 266 P. 22. In other words, if the Board of Supervisors finds that this letter and the attachments hereto provide "satisfactory information of the happening of the event creating the vacancy," the Board of Supervisors need not give Constable Munoz notice and/or hold a hearing before finding that Constable Munoz has vacated his office and appointing a replacement. If Constable Munoz wishes to then challenge the Board of Supervisors' actions, the burden would be on Constable Munoz to bring a court action to prove up his version of events.

Based on the foregoing, we, in our capacities as (a) Presiding Judge for the Maricopa County Superior Court and (b) chair of the CESTB, hereby inform you that Constable Munoz has vacated his position by failing to appear for work for three consecutive months, and recommend that the Board of Supervisors appoint a replacement constable.

Sincerely,


Janet E. Barton
Presiding Judge
Maricopa County Superior Court


Constable Mike Cobb, Chairman
Arizona Constable Ethics, Standards
and Training Board



**State of Arizona
Constable Ethics, Standards & Training Board**

October 18, 2023

The Hon. William Lake-Wright, Constable
240 N Stone Ave, Lower Level
Tucson, AZ 85701

Re: CNA360-2024

Dear Constable Lake-Wright,

The purpose of this letter is to notify you that the Constable Ethics, Standards and Training Board (Board) received your 09/08/2023 complaint against Pima County Constable Oscar Vasquez and assigned the case number above.

The Board has contacted the constable and allows him forty-five (45) days to respond to the complaint.

The Board is scheduled to address this complaint on December 14, 2023 at which time they will review the facts of the complaint along with any written response offered by the constable and may take possible action. You are welcomed to attend this meeting, time and location can be found on our website at www.cestb.az.gov.

You will be informed in writing of any decision in this matter.

If you have any questions, please feel free to contact the Board by email at the contact information below.

Sincerely,

A handwritten signature in black ink, appearing to read "D Dowling".

Dennis Dowling
Chairman

PO Box 13116. Phoenix, AZ 85002
Phone: (602) 343-6280 Fax: (602) 712-1252
cestb@azcapitolconsulting.com / <https://cestb.az.gov>

Chandni Bhakta

From: Oscar Vasquez <Oscar.Vasquez@pima.gov>
Sent: Saturday, December 2, 2023 9:56 PM
To: CESTB
Cc: Oscar Vasquez
Subject: Attention Constable Ethics, Standards & Training Board

Follow Up Flag: Follow up
Flag Status: Completed



Subject: Response Memorandum - Constable Ethics, Standards, Training Board

From: Oscar Vasquez, Constable

Over the past 15 months, a challenging period marked by significant events such as the unfortunate passing of Constable Martinez and my involvement in a seemingly minor accident four days later, I have encountered considerable pain and distress. On April 26, 2023, I appropriately notified the department of my absence following the incident. After seeking medical treatment, my anticipated return to work by the end of July or early August was adjusted due to the necessity for surgery. My delay in return was further exacerbated by additional injuries discovered post-surgery. Despite medical advice, I encountered pressure from the presiding constable to expedite my return to duty.

Upon my return, albeit not fully recovered and still experiencing discomfort, I find myself requiring further surgery. Consequently, I persist in placing myself at risk of injury during fieldwork. The oversight regarding mileage logs was unintentional and can be attributed to the challenges posed by my current injuries. These injuries have compelled me to reduce my mobility, affecting my ability to enter and exit vehicles, navigate stairs, uneven terrain, and refrain from working in hazardous nocturnal environments. Given my compromised physical condition, I am unable to defend myself adequately if the situation demands it.

Despite these challenges, I have remained focused on fulfilling the urgent requirements of my position in an effort to support the department as the issue in manpower worsens. I appreciate your understanding of these circumstances as I work towards a resolution that ensures both my well-being and the effective execution of my duties.

Best Regards,
Oscar Vasquez, Constable
Get [Outlook for iOS](#)



**State of Arizona
Constable Ethics, Standards & Training Board**

October 18, 2023

The Hon. Oscar Vasquez, Constable
240 N Stone Ave, Lower Level
Tucson, AZ 85701

Re: CNA360-2024

Dear Constable Vasquez,

The purpose of this letter is to notify you that the Constable Ethics, Standards and Training Board (Board) has received the enclosed complaint against you by Constable Lake-Wright referenced by the case number above.

You are invited to respond in writing to the complaint and give your statement regarding the events surrounding the complaint. The Board allows you forty-five (45) days from the date of this letter to respond to the complaint. You may submit your written response by mail to CESTB PO Box 13116, Phoenix, AZ 85002 or by fax to (602) 712-1252 or by e-mail to cestb@azcapitolconsulting.com no later than December 2, 2023.

The Board will address this complaint at their board meeting currently scheduled for December 14, 2023, at which time they may take possible action. Any statements or evidence you provide in your response will be reviewed by the Board and taken into consideration at that meeting. While your presence is not required, you may wish to attend this meeting in the event board members have any questions for you. Time and location of the meeting can be found on our website at cestb.az.gov.

You will be informed in writing of any decision in this matter.

If you have any questions, please feel free to contact the Board at the contact information listed below.

A handwritten signature in black ink, appearing to read "D. Dowling".

Dennis Dowling
Chairman

PO Box 13116. Phoenix, AZ 85002
Phone: (602) 343-6280 Fax: (602) 712-1252
cestb@azcapitolconsulting.com / <https://cestb.az.gov>

**CESTB
CASE SUMMARY
CONSTABLE RESPONSE REVIEW**

CONSTABLE: Oscar Vasquez **Case No. CNA360-2024,**
COUNTY: Pima **and CNA363-2024**
JUSTICE PRECINCTS: Justice Precinct 4
SOURCE OF COMPLAINT: William Lake-Wright, Pima County Constable
Eric Krznarich, Pima County Presiding Constable
BOARD ACTION NEEDED: Determine whether to: Continue investigation if more
information is needed; Dismiss; Take action, per
A.R.S. § 22-137.A.5; or Refer to County Attorney, per
A.R.S. § 22-137.C.

ALLEGATIONS BY COMPLAINANT:

1. Beginning April 26, 2023, to present, Pima County Constable Oscar Vasquez has continuously committed nonfeasance by his failure to perform his constable duties in violation of A.R.S. §§ 22-131.A, 38-291(7) & 38.443.
2. For the months of August 2022 through August 2023, Constable Oscar Vasquez has failed to submit a standardized daily activity log in violation of A.R.S. § 11-445.I & J.

COMPLAINT SUMMARY:

1. On September 8, Pima County Constable William Lake-Wright submitted a Complaint Form to the Constable Ethics, Standards and Training Board (CESTB) alleging Pima County, Justice Precinct 4, Constable Oscar Vasquez, has failed to perform his duties for over four months; additionally, on September 11, 2023, Pima County Presiding Constable Eric Krznarich, likewise submitted a Complaint Form to the CESTB alleging Constable Vasquez has not performed constable duties since April 26, 2023. Given the complaints received allege the same misconduct by Constable Vasquez, both complaints will be addressed herein.
2. On October 12, 2023, the CESTB voted to further this matter and afforded Constable Vasquez 45 days to respond. On December 2, 2023, an email was received from Constable Vasquez reporting, in full, the following:

“Over the past 15 months, a challenging period marked by significant events such as the unfortunate passing of Constable Martinez and my involvement in a seemingly minor accident four days later, I have encountered considerable pain and distress. On April 26, 2023, I appropriately notified the department of my absence following the incident. After seeking medical treatment, my anticipated return to work by the end of July or early August was adjusted due to the necessity for

surgery. My delay in return was further exacerbated by additional injuries discovered post-surgery. Despite medical advice, I encountered pressure from the presiding constable to expedite my return to duty.

Upon my return, albeit not fully recovered and still experiencing discomfort, I find myself requiring further surgery. Consequently, I persist in placing myself at risk of injury during fieldwork. The oversight regarding mileage logs was unintentional and can be attributed to the challenges posed by my current injuries. These injuries have compelled me to reduce my mobility, affecting my ability to enter and exit vehicles, navigate stairs, uneven terrain, and refrain from working in hazardous nocturnal environments. Given my compromised physical condition, I am unable to defend myself adequately if the situation demands it.

Despite these challenges, I have remained focused on fulfilling the urgent requirements of my position in an effort to support the department as the issue in manpower worsens. I appreciate your understanding of these circumstances as I work towards a resolution that ensures both my well-being and the effective execution of my duties.”

CASE NOTES:

1. As noted above, on September 9, 2023, Constable Lake-Wright submitted a complaint to the CESTB which, in part, reports the following:

“Oscar Vasquez, Pima County Constable, JP4 has not worked for over 4 months. Additionally, he has not turned in logs or mileage for over 7 months. Constable Vasquez did not make arrangements for coverage for his district.”

2. Also, as noted above, on September 11, 2023, Constable Krznarich submitted a complaint to the CESTB which, in full, reports the following:

“On April 26th Constable Vasquez began what he stated as ‘medical leave’. As of today [11 Sep 23] he has not returned to work and his case load is being distributed to other Constables which is increasing their already high case loads. I have asked him to provide documentation from his health care provider on numerous occasions. Phone, E mail and text messages. Associate Presiding Constable Francisco Lopez has also asked him for documentation. His last document served was on April 26th 2023. His absence is causing delays in the delivery of papers. Constables are driving long distances, 100+ miles to serve them and others are adding to their already busy precincts. We understand if he is not able to legitimately come back to work, but he is refusing to provide documentation.”

3. On September 15, 2023, contact was made with Pima County Presiding Constable

Krznarich who confirmed information provided in the above complaints. After a request, Constable Krznarich contacted the Clerk for the Pima County Board of Supervisors who provided him with a copy of the last activity log submitted by Oscar Vasquez and, although Constable Krznarich reports knowing the "... last document served [by Vasquez] was on April 26th 2023," the last activity log he (Vasquez) submitted to the Clerk was for the month of July 2022. It is also known that Constable Vasquez was performing duties during February 2023, as he was the subject of a complaint for his failure to promptly serve an emergency writ of restitution (CNA331-2023 – Dowty v Vasquez). In addition to the above statute, Constable Vasquez also has a lawful duty to accurately complete and submit a standardized daily activity log as required by A.R.S. § 11-445, which, in part, reads as follows:

"I. Constables shall maintain a standardized daily activity log of work related activities, including a listing of all processes served and the number of processes attempted to be served by case number, the names of the plaintiffs and defendants, the names and addresses of the persons to be served except as otherwise precluded by law, the date of process and the daily mileage." and

"J. The standardized daily activity log maintained in subsection I of this section is a public record and shall be made available by the constable at the constable's office during regular office hours. The standardized daily activity log shall be filed monthly by the tenth day of the following month with the clerk of the board of supervisors. The board of supervisors shall determine the method for filing the standardized daily activity log."

4. As a public officer, Constable Vasquez has a lawful duty to comply with:

A.R.S. § 22-131, which, in part, states:

"A. Constables shall attend the courts of justices of the peace within their precincts when required, and within their counties shall 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."

A.R.S. § 11-445, which, in part, states:

"I. Constables shall maintain a standardized daily activity log of work related activities, including a listing of all processes served and the number of processes attempted to be served by case number, the names of the plaintiffs and defendants, the names and addresses of the persons to be served except as otherwise precluded by law, the date of process and the daily mileage."

“J. The standardized daily activity log maintained in subsection I of this section is a public record and shall be made available by the constable at the constable's office during regular office hours. The standardized daily activity log shall be filed monthly by the tenth day of the following month with the clerk of the board of supervisors. The board of supervisors shall determine the method for filing the standardized daily activity log.”

5. In his written response, Constable Vasquez admits that he failed to complete his logs, stating that: *“The oversight regarding mileage logs was unintentional and can be attributed to the challenges posed by my current injuries.”* As an “officer,” Constable Vasquez not only has a duty to complete his daily logs, but he also has a duty to submit his daily logs, as required by A.R.S. § 11-445. Constable Vasquez’ failure to complete and/or maintain public records may also be in violation of A.R.S. § 39-121.01.B, which states: *“All officers and public bodies shall maintain all records, including records as defined in section 41-151, reasonably necessary or appropriate to **maintain an accurate knowledge of their official activities** [emphasis added] and of any of their activities that are supported by monies from this state or any political subdivision of this state.”*
6. Also in his complaint, Constable Lake-Wright references two applicable statutes, as follows:

A.R.S. § 38-291. An office shall be deemed vacant from and after the occurrence of any of the following events before the expiration of a term of office: (7) The person holding the office ceasing to discharge the duties of office for the period of three consecutive months; and

A.R.S. 38-443. Nonfeasance in public office: A public officer or person holding a position of public trust or employment who knowingly omits to perform any duty the performance of which is required of him by law is guilty of a class 2 misdemeanor unless special provision has been made for punishment of such omission.

7. During 2017, the CESTB adjudicated case CNA193-2017, regarding a similar matter where a Maricopa County Constable failed to perform duties for a period of three consecutive months. As part of the adjudication process, a letter, dated April 19, 2017, addressed to Mr. Dennis Barney, Chairman, Maricopa County Board of Supervisors, was jointly prepared by the Honorable Janet E. Barton, Maricopa County Presiding Judge, and Constable Mike Cobb, Chairman, Constable Ethics Standards and Training Board, and, although the letter is attached, regarding this matter, the following is noted:

[Page 4, beginning second full paragraph] *“Two cases note that illness is an exception to the rule. Johnson v. Collins, 11 Ariz.App. 327,464 P.2d 647 (1970); McCluskey v. Hunter, 33 Ariz. 513, 266 P. 18 (1928). However, these cases, both of which are over 40 years old, were*

*decided before the 1913 Civil Code was revised in 1971. **The statute that is in effect presently, unlike the one that was in effect when these cases were decided, does not recognize illness as an exception** [emphasis added].*

*When the legislature deletes language from a statute, It 'Is strong evidence that [the] Legislature did not Intend [the] omitted matter should be effective.' Gravel Resources of Ariz. v. Hills, 217 Ariz. 22, 170 P.3d 282 (App. 2007) (citing Stein v. Sonus USA, Inc., 214 Ariz. 200, 203, 150 P.3d 773, 776 (App.2007). **Therefore, even if Constable Munoz could prove that his illness prevented him from discharging his duties, it is unlikely that the Courts would find that his illness prevents A.R.S. §38-291 (7) from applying in this case** [emphasis added].*

Note: The cited letter (attached) was written by the Presiding Judge for Maricopa County, not Pima County, where Constable Vasquez is an elected official; however, one might assume that the courts would share a similar interpretation of the laws governing this matter

8. As noted herein, Constable Vasquez has a duty to perform his duties as required A.R.S. § 22-131 and complete and maintain Daily Activity Logs as required by A.R.S. § 11-445 (both cited, in part, above). According to A.R.S. § 38-443: "*A public officer or person holding a position of public trust or employment who **knowingly omits to perform any duty the performance of which is required of him by law** [emphasis added] is guilty of a class 2 misdemeanor unless special provision has been made for punishment of such omission.*"
9. If the CESTB determines Constable Vasquez committed nonfeasance for his failure to perform his duties and complete/maintain public records, this matter should be referred to the Pima County Attorney as prescribed by A.R.S. § 22-137.C, which states: "*If the board determines that a constable has committed a criminal act, the board **shall** [emphasis added] refer the investigation to the county attorney's office in the county in which the conduct at issue occurred. The board shall submit the investigation's findings to the county attorney. If the county attorney determines that a crime has not occurred or does not file a criminal complaint against the constable, the board shall adjudicate the complaint pursuant to subsection A, paragraph 5 of this section.*"
10. The CESTB may also consider that a referral to the Pima County Presiding Judge may be warranted as noted in A.R.S. § 22-131.A, which in part states: "*... these duties may be enforced by the presiding judge of the superior court in the county, including the use of the power of contempt.*" In addition to the above statutes, Constable Vasquez may also be in violation of Arizona Administrative Codes and the Code of Conduct for Constables as follows:

A.A.C. § R13-14-103.A requires constables to:

1. *Comply with all federal, state, and local law;*
2. *Act in a manner that promotes public confidence in the constables office;*
3. *Be honest and conscientious in all professional and personal interactions;*
6. *Maintain accurate public information regarding the performance of the constable's duties including the daily activity log required under A.R.S. § 11-445;*
8. *Act at all times in a manner appropriate for an elected official.*

CANON 1

- A. *Constables shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the office of constable.*
- B. *Constables shall maintain high standards of conduct in order to preserve public confidence in their offices.*
- C. *Constables shall maintain and observe the highest standards of integrity, honesty, and truthfulness in their professional and personal dealings.*

CANON 3

- C. *Constables shall furnish accurate, timely information and shall provide access to public records according to established procedures. Constables shall not disclose any confidential information received in the course of official duties, except as required in the performance of such duties, or use such information for personal gain or advantage.*

CANON 4

- A. *Constables shall maintain high professional and personal standards.*
- B. *Constables shall act appropriately at all times, taking into account their duties and responsibilities as elected public officials.*

11. It should further be noted that if the CESTB determines disciplinary action under A.R.S. § 22-137(A)(5) is warranted, then in accordance with A.A.C. § R13-14-204, the CESTB "shall consider factors including, but not limited to, the following when determining the appropriate discipline:"

3. *Pattern and frequency of misconduct;*
7. *Harm caused to a member of the public.*

12. As it relates to “*harm to a member of the public,*” Constable Vasquez’s actions have had a direct impact on the citizens of Pima County due to the delays in having orders and writs served and his (Vasquez’) actions have been the catalyst for the discontent of constables serving in Pima County as reflected by complaints CNA360-2024 thru CNA365-2024. As it relates to “*pattern and frequency of misconduct,*” a cursory examination of CESTB meeting minutes covering the past four years found the following information:

CNA245-2020

The 180 day probationary period this Board placed Constable Vasquez on ended June 30th and staff reported that while Vasquez registered for the required training classes, he did not complete them during that time. The training entity provided a log of the numerous contacts they made with Constable Vasquez over several months time regarding his status, and they consider him non-compliant. Constable Cobb made a motion to send a letter to the Pima County Board of Supervisors requesting they suspend Constable without pay until he completes the training. Motion died for lack of second.

Judge Dowling discussed previous offenses this Board has admonished Constable Vasquez for, and efforts by this Board and others to effectuate a change in Vasquez’s behavior. At this point he has shown no desire to correct what appears to be a pattern of behavior that is not appropriate and Constable Vasquez poses a threat to public safety. Judge Dowling believes this Board has exhausted all remedies available and it should be turned over to Pima County, either referring to the County Attorney’s office or the County Board of Supervisors. Constable Cobb made a motion to request the Pima County Board of Supervisors suspend Constable Vasquez without pay for or a minimum of 30 days and that the suspension remain in place until he has completed the required course work. Melissa Buckley seconded. Constable Cobb clarified that it will ultimately be up to Pima County if they choose to suspend and for what length of time. The motion passed with a roll call vote of 6-0.

CNA245-2020 (addressed a second time)

Chairman Cobb introduced the complaint and reviewed the history on this complaint as well as other related complaints against Constable Vasquez regarding his use of motor vehicles. This board previously placed the Constable on a 30-day probation following a traffic altercation. Constable Vasquez is no longer allowed to use a county vehicle, and is now using his personal vehicle to conduct his duties. The constable claims because of this, the CESTB has no jurisdiction over his vehicle use. Board members discussed all details at length

and concluded that Constable Vasquez is a risk to public safety and further action is required to effectuate any change in his behavior. Valerie Beckett made a motion to place Constable Vasquez on 120 days probation, require him to complete Life Skills Driver Improvement and Anger Management courses and provide proof of completion within the probationary period. Christine Shipley seconded. Judge Dennis Dowling made a motion to amend to also require Constable Vasquez to report any traffic related violations to the CESTB. Sheriff Shepherd seconded the amendment. Constable Blake made a motion to further amend to change the probationary period to 180 days. Judge Dowling seconded. The amended motion passed 6-0.

CNA250-2020

Chairman Blake reviewed the complaint and constable response. He indicated his concern about 3rd party complaint submissions. He also stated the residents affected by the actions of Constable Vasquez refused to speak about the issue. Constable Vasquez expressed remorse for his actions in his response. At the April meeting the board had voted to hire an investigator, however, consensus was this is no longer necessary. Constable Cobb made a motion to issue a letter of reprimand to Constable Vasquez and Sheriff Shepherd seconded. The motion passed unanimously with a roll call vote 6-0 with Judge Dowling abstaining.

CNA267-2021

Chairman Blake reviewed the complaint with board members in which Constable Vasquez was accused of making the decision to delay an eviction, contrary to what is expected. Dennis Dowling reiterated the eviction order was issued out of the court, the issue was heard in the court, it was decided in court, Constable Vasquez received the writ and he chose on his own not to follow the law due to his personal beliefs about evictions during the COVID pandemic. Dennis concluded this is a direct violation of R13-14-103 Code of Conduct A1. Mike Cobb pointed out that the action violated R13-14-103 Code of Conduct A2 as well. Mike also stated that a constable's personal opinions or beliefs should not come into play while carrying out his/her duties. As elected officials, constables are required to follow rules and regulations associated with the office, and Vasquez did not do that. Christine Shipley stated her concern that in the constable's response to the complaint, he advised that he will act in the same manner if this were to occur again in the future. She went on to state that if he finds it morally unjust to be forced to remove someone when they don't have alternate accommodations, he should not remain in the position. Matt Giordano also expressed concern with Vasquez's written response stating that he is not going to follow the law in the future.

Dennis Dowling made a motion to urge the constable to resign citing the following factors as stated in AZ Administrative Code Rules R13-14-204:

- *Prior disciplinary offenses – the constable has been disciplined by the CESTB numerous times*
- *Dishonest or self-serving motive – the constable is following his beliefs rather than the law*
- *Pattern and frequency of misconduct – numerous prior offenses that resulted in disciplinary action by the CESTB were cited*
- *Bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the Board – the Constable has ignored directives by the CESTB in past cases*
- *Refusal to acknowledge wrongful nature of conduct – the constable stated he will continue to act in the same manner in the future*

Mike Cobb inquired about past sanctions by this board and staff indicated the constable has received various letters of reprimand, has been placed on probation several times, and the CESTB also requested the Pima County Board of Supervisors suspend the constable without pay for 30 days for a previous infraction.

Mike Cobb seconded the motion to urge the constable to resign with a requested amendment to include a request to the Pima County Board of Supervisors suspend the constable without pay for a minimum of 30 days. Dennis Dowling seconded the amendment. Discussion ensued. Constable Vasquez was offered an opportunity to speak and addressed the previous probationary period and stated that he completed the required training in question. He also described the homeless situation due to COVID-19 and the lack of resources for those who are evicted so finding alternate accommodations takes much longer. He stated in the case in question, justice was served; it just took longer than usual.

Dennis Dowling asked Constable Vasquez a number of questions to clarify what authority he had to determine the eviction should not take place due to COVID. The Constable answered that the reason he delayed the eviction was because the tenant didn't have a place to go, and he needed to find alternate accommodations for the tenant before he would complete the eviction.

Mike Cobb pointed out that in the case of nearly every eviction, the tenant/defendants do not typically have anywhere to go. The job of

constable is to follow court orders and rules and laws of the state, and it is not the constable's choice to postpone things because of personal beliefs.

Melissa Buckley stated her appreciation of Constable Vasquez's empathizing with the tenant, however there are laws in place that govern elected officials and he did not abide by them.

Scott Blake requested an amendment to the motion to extend the request for suspension without pay to 180 days. Blake's justification was due to the serious nature of the offense given the constable decided he was not going to obey a lawful order signed by a judge. Dennis Dowling seconded the amendment.

The motion to urge the constable to retire and request the Pima County Board of Supervisors suspend Constable Vasquez without pay for 180 days passed with a roll call vote 6-0.

Correspondence received 10-18-21 from Pima County Administrator Huckelberry v Vasquez

Chairman Blake reviewed the correspondence which included a complaint filed with the Pima County Board of Supervisors stating the constable got into an altercation with a family member. Constable Vasquez was placed on 180 day suspension by Pima County at the end of June.

Christine Shipley questioned jurisdiction while the constable is suspended. Mike Cobb stated his belief that CESTB does have jurisdiction as long as he is still a constable, even if suspended. Mike went on to say that no charges have been filed and no orders have been violated, and the situation described in the complaint was not related to the constable's duties so it does not meet the standards for the board to pursue, and consequently made a motion to not move forward with the complaint process. Christine Shipley requested clarification about what, if any notification is sent to the constable when a complaint is not moved forward. Staff clarified that constables are notified when the CESTB receives a complaint, even when the CESTB does not move forward with a complaint investigation. Mike Cobb amended his motion to include advising Constable Vasquez in the notification that he is not acting responsibly as an elected official and the CESTB will continue to monitor the situation. Christine Shipley seconded the motion. Motion passed with a roll call vote unanimously 5-0.

CNA322-2023

Staff reviewed all remedies available to the Board for mitigating

constable complaints. Matt Giordano made a motion to issue a letter of admonishment cautioning the constable to be more careful with the information he publishes on social media. Constable Hoggard seconded and the motion passed with a roll call vote 4-0 with Chairman Dowling abstaining.

CNA331-2023

The complaint and initial review report from the investigator were circulated to the board prior to the meeting. Vice Chair Hoggard pointed out that the complainant had withdrawn the complaint and made a motion to dismiss. Board members were polled, and all agreed the complaint should be dismissed.

CNA367-2024 (Initial Board review November 9, 2023)

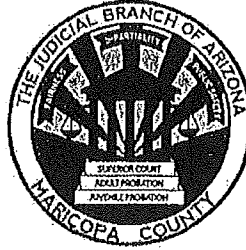
On a date following October 13, 2023, Pima County Constable Oscar Vasquez abused his authority by attempting to take possession of property left behind by an evicted tenant in violation of A.R.S. § 22-131.E; A.A.C. § R13-14-103.A.1, 2 & 8; and the Code of Ethics for Constables Canon 1.A, B & C; Canon 2.A & C; and Canon 4.A & B.

BOARD ACTION TAKEN:

The Board voted to further this matter on October 12, 2023.

ATTACHMENT:

April 19, 2017, Letter written by Janet E. Barton, Presiding Judge, Maricopa County



CMA 193-2017

SUPERIOR COURT OF ARIZONA
COUNTY OF MARICOPA

Janet E. Barton
Presiding Judge

Old Courthouse
125 West Washington, 5th Floor
Phoenix, Arizona 85003
Office (602) 506-5340
Fax (602) 372-8616

April 19, 2017

Mr. Dennis Barney, Chairman
Maricopa County Board of Supervisors
301 West Jefferson Street
10th Floor
Phoenix, Arizona 85003

Re: Maricopa County Constable Jimmie Munoz (South Mountain Precinct)

Members of the Board:

We are writing to you in our respective capacities as (a) Presiding Judge for the Maricopa County Superior Court and (b) chair of the Constable Ethics Standards and Training Board ("CESTB") to inform you that Maricopa County Constable Jimmie Munoz (South Mountain Precinct) has vacated his position by failing to appear for work for three consecutive months. Consequently, we are hereby giving notice to the Maricopa County Board of Supervisors ("Board of Supervisors") of the matters described in detail below, and recommending that the Board of Supervisors appoint a replacement constable.

Over the years, numerous complaints have been made regarding Constable Munoz's failure to carry out his duties, which taken together show an escalating pattern by Constable Munoz of failing to carry out his duties and obligations:

A. CESTB-097-2010

Exhibit 1: 5/8/2010 complaint regarding Constable Munoz's failure to serve certain court documents, despite repeated requests that he do so.

Exhibit 2: 5/3/2010 letter from CESTB to Constable Munoz, informing him of this complaint and giving him an opportunity to respond. [It appears that the date is a typo]

Exhibit 3: 6/18/2010 CESTB Letter of Censure, issued after the CESTB received no response from Constable Munoz.

Exhibit 4: 7/13/2010 letter from Constable Munoz to the CESTB, alleging that he did not receive the documents he failed to serve, admitting that he failed to respond to the

CESTB's letter (Exhibit 2), and requesting removal of the Letter of Censure (Exhibit 3) from his file.

Exhibit 5: 7/20/2010 modified Letter of Censure, deleting reference to Constable Munoz's failure to serve the court documents in issue, but citing him for his failure to respond to the CESTB's letter (Exhibit 2).

B. CNA-123-2014

Exhibit 6: 2/3/2014 complaint, stating that Constable Munoz repeatedly failed to appear for his appointments.

Exhibit 7: 3/21/2014 letter from Constable Munoz, denying the allegations against him.

Exhibit 8: 7/17/2014 CESTB Letter of Reprimand to Constable Munoz, notifying Constable Munoz of the CESTB's finding that Constable Munoz had failed to perform his duties, reprimanding Constable Munoz, and as a consequence directing Constable Munoz "to attend the new Constable training in January 2015."

Exhibit 9: 10/29/2014 CESTB letter to Constable Munoz, reminding him of his obligation to attend the new constable training in January 2015.

Exhibit 10: 1/26/2015 CESTB letter to Constable Munoz, noting his failure to attend the new constable training held in January 2015 and requesting an explanation from Constable Munoz for his failure to attend this training.

Exhibit 11: 1/20/2015 letter from Constable Munoz, stating that he failed to attend training because he attended the funerals of two friends instead.

Exhibit 12: 2/26/2015 CESTB letter to the Hon. Norman Davis, Presiding Judge for the Maricopa County Superior Court, informing Judge Davis of the problems with Constable Munoz and further stating that:

On January 12, 2015, the first day of training, Constable Munoz arrived prior to the start of class and announced to the training facilitators he would not be able to attend the training due to funerals he had to attend. In a letter to the Board dated January 20, 2015 Constable Munoz stated that he was unable to attend the required January training session because he had to attend funeral services on Monday January 12th, Tuesday January 13th and Wednesday January 14th. The Board researched the deaths and found obituaries confirming the deaths and services. Service times for one death would have prevented Constable Munoz from attending the session for the entire day on January 14th. However, the times for the other services might have allowed for Constable Munoz to participate in at least some of the training, which he made no attempt to do. Constable Munoz also made no indication that his involvement was anything further than attending the services. This particular training is only offered every 2 years, so there isn't any alternative for Constable Munoz to receive the required training at this time.

Exhibit 13: 2/27/2015 CESTB letter to Constable Munoz, informing Constable Munoz of the CESTB's decision to bring his conduct to the attention of Judge Davis.

Exhibit 14: 5/14/2015 letter from Judge Davis to Constable Munoz that, among other things, issued the following directions to Constable Munoz:

. . . To ensure that you fully and timely execute the duties of constable, I am directing you to submit your monthly activity logs as prescribed by A.R.S. §11-445(J) to the CESTB for six months, from July 2015 through December 2015. The logs must be submitted by the 2nd Monday of each month.

You may not have another Maricopa County Constable or Deputy Constable perform your duties during this six month period, except in the event of illness or authorized vacation. In addition, you must comply with the CESTB "Best Practices and Standards" concerning the service of civil documents.

Exhibit 15: 11/20/2015 CESTB letter to the Hon. Janet Barton, Judge Davis' successor as the Presiding Judge for the Maricopa County Superior Court, informing Judge Barton that "It appears that Constable Munoz's log entries are being manipulated in a deceptive manner to avoid showing his unauthorized use of a Deputy Constable or another Constable . . . ," and providing details regarding Constable Munoz's prohibited use of others to do his assignments.

Exhibit 16: 2/16/2016 letter from Judge Barton to the CESTB, recommending that the CESTB bring the matter to the attention of the Maricopa County Attorney's Office.

Exhibit 17: 2/20/2016 CESTB letter to the Maricopa County Attorney's Office, following through on Judge Barton's recommendation and expressing the CESTB's "wishes to have [the Maricopa County Attorney's Office] review this case for possible action."

C. CNA-153-2015

Exhibit 18: 3/25/2015 CESTB letter to Constable Munoz, notifying Constable Munoz that the CESTB had filed a formal complaint against him for his failure to fully complete the 2014 annual training required for constables.

Exhibit 19: 6/18/2015 CESTB Letter of Reprimand, reprimanding Constable Munoz for his failure to complete his required training for 2014.

D. CNA-162-2015

Exhibit 20: 4/30/2015 complaint against Constable Munoz for his repeated failure to appear for his appointments.

Exhibit 21: 5/11/2015 letter from Constable Munoz denying the allegations against him.

Exhibit 22: 6/18/2015 CESTB Letter of Reprimand, reprimanding Constable Munoz for his failure to perform his duties.

E. CNA-193-2017

Exhibit 23: 1/9/2017 complaint from Jeff Fine, Justice Court Administrator, Maricopa County Justice Courts, regarding Constable Munoz's failure to serve a total of 44 documents.

Exhibit 24: 3/9/2017 Constable Munoz's response, alleging that a series of illnesses had prevented him from doing his job.

Exhibit 25: A series of Internet posts showing Constable Munoz vacationing at a brewery in Colorado, engaging in holiday activities, and attending a reunion during the time he claimed he was incapacitated by illness.

Exhibit 26: 3/24/2017 CESTB letter to Constable Munoz, issued after Constable Munoz failed to attend the CESTB hearing, finding that Constable Munoz had failed to carry out his duties, recommending that he resign, and notifying him that the matter was again being referred to the Maricopa County Attorney's Office, this time "for investigation of nonfeasance in public office."

Exhibit 27: 3/24/2017 CESTB letter referring the matter of Constable Munoz's failure to perform his duties to the Maricopa County Attorney's Office.

Exhibit 28: 3/28/2017 Maricopa County Attorney's Office memo stating as follows:

According to ID scans, as of March 14, 2017, Constable Jimmie Munoz has not reported to his court or discharged his duties as constable since December 14, 2016.

Under A.R.S. §38-291(7), an "office shall be deemed vacant . . . before the expiration of a term of office" when "the person holding the office ceas[es] to discharge the duties of office for the period of three consecutive months."

Two cases note that illness is an exception to the rule. *Johnson v. Collins*, 11 Ariz.App. 327, 464 P.2d 647 (1970); *McCluskey v. Hunter*, 33 Ariz. 513, 266 P. 18 (1928). However, these cases, both of which are over 40 years old, were decided before the 1913 Civil Code was revised in 1971. The statute that is in effect presently, unlike the one that was in effect when these cases were decided, does not recognize illness as an exception.

When the legislature deletes language from a statute, it "is strong evidence that [the] Legislature did not intend [the] omitted matter should be effective." *Gravel Resources of Ariz. v. Hills*, 217 Ariz. 22, 170 P.3d 282 (App. 2007) (citing *Stein v. Sonus USA, Inc.*, 214 Ariz. 200, 203, 150 P.3d 773, 776 (App.2007)). Therefore, even if Constable Munoz could prove that his illness prevented him from discharging his duties, it is unlikely that the Courts would find that his illness prevents A.R.S. §38-291(7) from applying in this case.

Under the "Notice of Vacancy" statute, A.R.S. §38-292,

When an officer is removed, declared insane or convicted of a felony or an offense involving a violation of his official duties, or when his election or appointment is declared void, the body, judge or officer before whom the proceedings were had shall give notice thereof to the officer empowered to fill the vacancy.

The CESTB is the body that would determine whether Constable Munoz's is in "violation of his official duties."

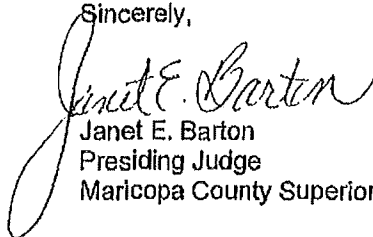
As the memo from the Maricopa County Attorney's Office states: **If, pursuant to A.R.S. §§22-137(A) & 38-291(7), CESTB determines that Constable Munoz has not reported to work and discharged the duties of his office for over three months and his position is therefore vacant, CESTB should then "give notice" to the Maricopa County Board of Supervisors, who is "empowered to fill the vacancy."** (emphasis added)


The Board of Supervisors may note that the Arizona Legislature amended A.R.S. §22-137 in 2016 to give the CESTB the power to place a constable on probation for up to thirty days – extendable in additional 30-day increments up to a total length of probation of 180 days – and/or to recommend to the Board of Supervisors that a constable previously on probation be suspended without pay for up to the remainder of the constable's term (prior to the Legislature's amendment of this statute, the strongest sanction available to the CESTB was recommending that a constable resign/retire, which the CESTB already has done in the letter attached as Exhibit 26). In light of Constable Munoz' past history we do not believe that suspension is appropriate. The burden of performing his work should not be placed on other constables. Moreover, even if suspension were under consideration, the CESTB is still working on drafting rules and it will likely be at least a year before the CESTB will be able to have these rules approved; in other words, while the CESTB now has *statutory authority* to place a constable on probation and/or request suspension without pay, the *procedural rules* necessary to implement this statutory authority are not yet in place.

Under the *McCluskey* decision cited in Exhibit 28, no notice or hearing is required for an office to be deemed vacant on grounds that the officeholder has failed to perform the duties of the office for three consecutive months. *See id.* at 33 Ariz. 513, 519-25, 266 P. 18, 21-23 (rejecting the former officeholder's argument that notice and an opportunity were necessary before the office could be deemed vacant and a replacement appointed, and holding that the replaced officer's remedy is to bring "a proper proceeding" in order to "question the [replacement] appointee's right to the office either before he takes possession of it, or afterwards. . ."). Instead of being required to hold a hearing and take evidence, "The board or officer in whom this power rests [here, the Board of Supervisors] may, in such instance, exercise it upon receiving satisfactory information of the happening of the event creating the vacancy. . . ." *Id.* at 33 Ariz. 523, 266 P. 22. In other words, if the Board of Supervisors finds that this letter and the attachments hereto provide "satisfactory information of the happening of the event creating the vacancy," the Board of Supervisors need not give Constable Munoz notice and/or hold a hearing before finding that Constable Munoz has vacated his office and appointing a replacement. If Constable Munoz wishes to then challenge the Board of Supervisors' actions, the burden would be on Constable Munoz to bring a court action to prove up his version of events.

Based on the foregoing, we, in our capacities as (a) Presiding Judge for the Maricopa County Superior Court and (b) chair of the CESTB, hereby inform you that Constable Munoz has vacated his position by failing to appear for work for three consecutive months, and recommend that the Board of Supervisors appoint a replacement constable.

Sincerely,


Janet E. Barton
Presiding Judge
Maricopa County Superior Court


Constable Mike Cobb, Chairman
Arizona Constable Ethics, Standards
and Training Board



**State of Arizona
Constable Ethics, Standards & Training Board**

December 21, 2023

The Hon. William Lake-Wright, Constable
240 N Stone Ave, Lower Level
Tucson, AZ 85701

Re: CNA360-2024

Dear Constable Lake-Wright,

The purpose of this letter is to inform you that the Constable Ethics, Standards and Training Board (Board) met on December 14, 2023 and deliberated over the complaint referenced above against Pima County Constable Oscar Vasquez.

After considering all the facts in this case the Board voted to refer the complaint to the Pima County Presiding Judge, Pima County Board of Supervisors for suspension without pay, and urge Constable Vasquez to resign from office.

You will be kept abreast of any further deliberations or matters regarding this complaint.

If you have any questions, please feel free to contact the Board by email at the contact information below.

Sincerely,

A handwritten signature in black ink, appearing to read "Dennis Dowling".

Dennis Dowling
Chairman

PO Box 13116. Phoenix, AZ 85002
Phone: (602) 343-6280 Fax: (602) 712-1252
cestb@azcapitolconsulting.com / <https://cestb.az.gov>



**State of Arizona
Constable Ethics, Standards & Training Board**

December 21, 2023

The Hon. Oscar Vasquez, Constable
240 N Stone Ave, Lower Level
Tucson, AZ 85701

Re: CNA360-2024

Dear Constable Vasquez,

This letter will serve as official notice in the decision of the Constable Ethics, Standards and Training Board (Board) regarding the above referenced complaint against you by Constable Lake-Wright referenced by the case number above.

The Board met on December 14, 2023 to discuss the facts of the case as prepared by the complainant and the response provided by you.

After considering all the facts in this case, the Board voted to refer the complaint to the Pima County Presiding Judge, Pima County Board of Supervisors for suspension without pay, and urge you to resign from office for violations of, but not limited to, the Arizona Administrative Code and Code of Conduct for Constables.

A.A.C. § R13-14-103.A requires constables to:

- 1. Comply with all federal, state, and local law;*
- 2. Act in a manner that promotes public confidence in the constables office;*
- 3. Be honest and conscientious in all professional and personal interactions;*
- 6. Maintain accurate public information regarding the performance of the constable's duties including the daily activity log required under A.R.S. § 11-445;*
- 8. Act at all times in a manner appropriate for an elected official.*

CANON 1

- A. Constables shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the office of constable.*
- B. Constables shall maintain high standards of conduct in order to preserve public confidence in their offices.*
- C. Constables shall maintain and observe the highest standards of integrity, honesty, and truthfulness in their professional and personal dealings.*

PO Box 13116, Phoenix, AZ 85002
Phone: (602) 343-6280 Fax: (602) 712-1252
cestb@azcapitolconsulting.com / <https://cestb.az.gov>



**State of Arizona
Constable Ethics, Standards & Training Board**

CANON 3

C. Constables shall furnish accurate, timely information and shall provide access to public records according to established procedures. Constables shall not disclose any confidential information received in the course of official duties, except as required in the performance of such duties, or use such information for personal gain or advantage.

CANON 4

- A. Constables shall maintain high professional and personal standards.*
- B. Constables shall act appropriately at all times, taking into account their duties and responsibilities as elected public officials.*

You will be kept abreast of any further deliberations or matters regarding this complaint.

If you have any questions, please feel free to contact the Board at the contact information listed below.

A handwritten signature in black ink, appearing to read "Dennis Dowling".

Dennis Dowling
Chairman



Oscar Vasquez

Apr 27

To William Lake-Wright, +8



Hope you received my phone msg of my medical leave starting yesterday 04/26 until approximately 07/15 or until my medical condition allows. Under quite a bit of pain right now -G'day

Get [Outlook for iOS](#)



Physician notes



You

Aug 21

To Oscar Vasquez and Francisco Lopez



Oscar,

Just wanted to send you a reminder to please submit documentation from your doctor regarding your current leave situation as we are receiving questions about it. Thank you.

Eric Krznarich
Constable JP-3

Presiding Constable
Pima County Constables Office

520-339-8602

Ajo Justice Court
111 LaMina Ave.
Ajo Az, 85321

Mon, Aug 28 at 13:50

Oscar, can you please send either me or Crystal documents from your physician regarding your medical leave please. Starting from when your leave first started. I would like to have an answer in case the County asks for it. Thanks!

Delivered