

**State of New York**  
**Commission on Judicial Conduct**

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In the Matter of the Proceeding Pursuant to Section 44,  
subdivision 4, of the Judiciary Law in Relation to

JOSEPH W. KOSINA,

**Determination**

a Justice of the Plainfield Town Court,  
Otsego County.

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THE COMMISSION:

Henry T. Berger, Esq., Chair  
Jeremy Ann Brown, C.A.S.A.C.  
Stephen R. Coffey, Esq.  
Lawrence S. Goldman, Esq.  
Christina Hernandez, M.S.W.  
Honorable Daniel W. Joy  
Honorable Daniel F. Luciano  
Honorable Frederick M. Marshall  
Alan J. Pope, Esq.  
Honorable Terry Jane Ruderman  
Honorable Eugene W. Salisbury

APPEARANCES:

Gerald Stern (Cathleen S. Cenci, Of Counsel) for the  
Commission

Honorable Joseph W. Kosina, pro se

The respondent, Joseph W. Kosina, a justice of the Plainfield Town Court,  
Otsego County, was served with a Formal Written Complaint dated May 12, 1999,  
alleging five charges of misconduct. Respondent failed to answer the Formal Written  
Complaint.

By motion dated June 25, 1999, the administrator of the Commission moved for summary determination and a finding that respondent had engaged in judicial misconduct. Respondent failed to file any papers in response thereto. By Decision and Order dated September 15, 1999, the Commission granted the motion in all respects.

The administrator submitted a memorandum as to sanction. Respondent failed to file any papers and waived oral argument.

On October 28, 1999, the Commission considered the record of the proceeding and made the following findings of fact.

As to Charge I of the Formal Written Complaint:

1. Respondent has been a justice of the Plainfield Town Court since 1992.
2. Between January 1995 and June 1998, as denominated in the appended Schedule A, respondent failed to file reports and remit court funds to the state comptroller by the tenth day of the month following collection, as required by UJCA 2020 and 2021(1), Town Law §27(1) and Vehicle and Traffic Law §1803(8).

As to Charge II of the Formal Written Complaint:

3. Between October 1996 and July 1998, respondent failed to issue receipts for fines, complete dockets of his cases or report cases and remit court funds to the

comptroller for the matters that he had handled. Instead, respondent agreed with his fellow judge, Connie L. Cook, that she would issue receipts, prepare dockets and report and remit to the comptroller in her own name, even though respondent had adjudicated the cases. Respondent agreed to adjudicate all of the cases in the court during that period except those from which he might be disqualified.

As to Charge III of the Formal Written Complaint:

4. Between March 1995 and August 1997, as denominated in the appended Schedule B, respondent failed to deposit court funds within 72 hours of receipt, as required by the Uniform Civil Rules for the Justice Courts, 22 NYCRR 214.9(a).

5. A \$350 fine paid by Linda Miller on February 7, 1996, remained undeposited as of the date of the charges.

As to Charge IV of the Formal Written Complaint:

6. Even though he reported only 51 cases in his own name between January 1995 and March 1998:

a) as denominated in the appended Schedule C, respondent failed to issue receipts in 15 of the 33 cases in which he received court funds, in violation of Town Law § 31(1)(a);

b) respondent failed to maintain suitable records and dockets of all criminal and civil cases, in violation of UJCA 2019 and the Uniform Civil Rules for the Justice Courts, 22 NYCRR 214.11; and,

c) respondent failed to maintain a cashbook, in violation of the Uniform Civil Rules for the Justice Courts, 22 NYCRR 214.11(a)(3).

As to Charge V of the Formal Written Complaint:

7. In October 1995, in the small claims case, Paul Aikens v Dennis Grosfent, respondent sent a summons to the defendant which stated that a warrant would be issued for his arrest if he did not appear in court in response to the claim.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated the Rules Governing Judicial Conduct, 22 NYCRR 100.1; 100.2(A); 100.2(C); 100.3(A) and its predecessor, Section 100.3, and 100.3(C)(1) and its predecessor, Section 100.3(b)(1).<sup>\*</sup> Charges I, II, III, IV and V of the Formal Written Complaint are sustained, and respondent's misconduct is established.

Despite a small caseload, respondent has consistently failed to perform the administrative duties of his judicial office.

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<sup>\*</sup> Renumbered effective Jan. 1, 1996

He failed to promptly deposit money in his court account, raising questions about its interim use. (See, Matter of More, 1990 Ann Report of NY Commn on Jud Conduct, at 140, 141). He failed to promptly remit money to the state comptroller, as the law requires. (See, Matter of Ranke, 1992 Ann Report of NY Commn on Jud Conduct, at 64). A fine of \$350 was apparently never deposited or remitted. He failed to issue receipts in numerous cases, failed to maintain a cashbook and failed to maintain suitable records and dockets in criminal and civil cases. The mishandling of public funds by a judge is serious misconduct, even when not done for personal profit. (Bartlett v Flynn, 50 AD2d 401, 404 [4<sup>th</sup> Dept]).

The situation was significantly complicated by respondent's arrangement with his fellow judge whereby he adjudicated cases but she handled fines and paperwork, then reported them as her own. Respondent should have known that this unconventional division of labor would create considerable confusion in the recordkeeping and accounting of the court.

Moreover, respondent's threat to arrest a litigant in a civil action indicates fundamental misunderstanding of the difference between civil and criminal cases and the respective powers of a judge in each type of proceeding. (See, Matter of Schiff, 83 NY2d 689, 694).

Respondent is clearly unable or unwilling to perform his duties or to fulfill the requirements for the proper administration of justice.

By reason of the foregoing, the Commission determines that the appropriate sanction is removal.

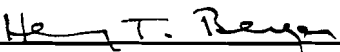
Mr. Berger, Ms. Brown, Mr. Coffey, Mr. Goldman, Judge Joy, Mr. Pope, Judge Ruderman and Judge Salisbury concur.

Ms. Hernandez, Judge Luciano and Judge Marshall were not present.

CERTIFICATION

It is certified that the foregoing is the determination of the State Commission on Judicial Conduct, containing the findings of fact and conclusions of law required by Section 44, subdivision 7, of the Judiciary Law.

Dated: November 9, 1999

  
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Henry T. Berger, Esq., Chair  
New York State  
Commission on Judicial Conduct

Schedule A

<u>Month</u>	<u>Date Submitted</u>	<u>Days Late</u>
January 1995	2/27/95	17
February 1995	3/28/95	18
March 1995	5/26/95	46
April 1995	5/30/95	20
May 1995	6/7/95	0
June 1995	9/22/95	74
July 1995	9/22/95	43
August 1995	9/22/95	12
September 1995	11/27/95	48
October 1995	11/27/95	17
November 1995	12/14/95	4
December 1995	1/18/96	8
January 1996	2/26/96	16
February 1996	5/1/96	52
March 1996	5/2/96	22
April 1996	5/31/96	21
May 1996	8/16/96	67



<u>Month</u>	<u>Date Submitted</u>	<u>Days Late</u>
June 1996	8/16/96	37
July 1996	8/16/96	6
August 1996	12/16/96	97
September 1996	1/10/97	92
October 1996	1/10/97	61
November 1996	12/13/96	3
December 1996	1/10/97	0
January 1997	4/7/97	56
February 1997	7/24/97	136
March 1997	4/4/97	0
April 1997	7/24/97	75
May 1997	7/24/97	44
June 1997	7/23/97	13
July 1997	8/12/97	2
August 1997	9/29/97	19
September 1997	11/25/97	46
October 1997	11/25/97	15

<u>Month</u>	<u>Date Submitted</u>	<u>Days Late</u>
November 1997	1/28/98	49
December 1997	1/28/98	18
January 1998	3/18/98	36
February 1998	3/18/98	8
March 1998	5/22/98	42
April 1998	5/22/98	12
May 1998	8/10/98	61
June 1998	8/10/98	31

Schedule B

<u>Defendant</u>	<u>Date Received</u>	<u>Date Deposited</u>
Seamus McNulty	3/1/95	3/28/95
Troy Diehl	5/17/95	5/26/95
Keith Smith	10/18/95	11/16/95
Jennifer Barringer	11/2/95	11/16/95
John Barringer	11/2/95	11/16/95
Ryan Hanson	11/2/95	11/16/95
William Christian	12/6/95	12/13/95
Carl Belden	12/28/95	1/17/96
Lloyd Harris	1/31/96	2/28/96
Linda Miller	2/7/96	Undeposited
Mandy Ostrosky	2/21/96	5/30/97
Justin Benedict	9/30/96	11/13/96
Michael Lyon	3/19/97	4/3/97
Jason Belisle	5/21/97	5/30/97
Paul Coughlin	8/6/97	9/2/97

Schedule C

<u>Defendant</u>	<u>Date of Receipt</u>	<u>Amount Received</u>
<u>Hibbard v Luther</u>	8/95	\$ 10
Timber Rooney	11/16/95	70
Kendra Myers	4/17/96	50
Diane Getman	4/17/96	50
Gary Lee	4/17/96	75
Derek Kleban	4/17/96	350
Ralph Sterusky	4/18/96	275
Ruth Stillwell	11/10/96	75
Justin Benedict	9/30/96	375
Cheryl Baird	11/10/96	75
Joseph Pittman	11/10/96	50
Michael Lyon	3/19/97	50
Mandy Ostrosky	6/18/97	100
Jason Belisle	6/18/97	50
Paul Coughlin	8/6/97	50