

State of New York
Commission on Judicial Conduct

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

Determination

WALTER F. DUDZINSKI,

a Justice of the Macedon Town and Village
Courts, Wayne County.

THE COMMISSION:

Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
John J. Bower, Esq.
David Bromberg, Esq.
E. Garrett Cleary, Esq.
Dolores DelBello
Victor A. Kovner, Esq.
Honorable William J. Ostrowski
Honorable Isaac Rubin
Honorable Felice K. Shea
John J. Sheehy, Esq.

APPEARANCES:

Gerald Stern (John J. Postel, Of Counsel)
for the Commission

Gilmore and Power (By Thomas J. Gilmore, Jr.)
for Respondent

The respondent, Walter F. Dudzinski, a part-time justice of the Macedon Town Court and Macedon Village Court, Wayne County, was served with a Formal Written Complaint dated May 1, 1984, alleging that he received unlawful gratuities in

connection with his full-time employment. Respondent filed an answer dated May 31, 1984.

By order dated June 7, 1984, the Commission designated Peter N. Wells, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on July 30 and August 27, 1984, and the referee filed his report with the Commission on October 29, 1984.

By motion dated November 16, 1984, the administrator of the Commission moved to confirm the referee's report and for a finding that respondent be removed from office. Respondent opposed the motion on November 29, 1984. Oral argument was waived. On December 13, 1984, the Commission considered the record of the proceeding and made the following findings of fact.

1. Respondent is a justice of the Macedon Town Court and has been since January 1, 1980. He is also a justice of the Macedon Village Court and has been since April 1, 1982.

2. From April 1974 to February 15, 1984, respondent was also employed as sewage treatment operator for the Village of Macedon.

3. Until November 1980, respondent was solely responsible for ordering chemicals used at the sewage treatment plant. Respondent himself ordered and purchased the chemicals.

4. In 1978, respondent received a flyer which offered a free color television in exchange for the purchase of chemicals from the Car-Chem Chemical Co.

5. Respondent thought that the offer of a television to a municipal employee was "kind of strange."

6. Nonetheless, in April 1978, respondent ordered \$1,146.20 in chemicals from the company.

7. After the chemicals were received and paid for, respondent received a portable color television.

8. Respondent testified that the television was kept in a closet at the sewage treatment plant for use by municipal employees and was destroyed in a flood at the plant. However, he acknowledged that he had never told any other village employees about the television. The assistant operator at the time testified that he was unaware of it and did not recall seeing it during the flood clean-up.

9. In December 1978, respondent placed a second order with Car-Chem for \$1,166.88 in chemicals.

10. After the second order, respondent received a second television set at his home.

11. In July 1979, respondent ordered \$1,202.36 in chemicals from Car-Chem.

12. Thereafter, respondent received at his home an AM/FM radio from Car-Chem. The radio was kept at respondent's home.

13. In November 1980, concerned about the high cost of operating the sewage treatment plant, the Macedon Village Board instituted a competitive bidding procedure which required awards by the village board to companies providing chemicals for the plant.

14. Thereafter, respondent made recommendations to the board as to which company should be awarded contracts for chemicals, and he conducted demonstrations before the board to indicate the efficacy of certain chemicals.

15. On February 11, 1981, on respondent's recommendation, the village board awarded the first competitively-bid contract to Car-Chem for \$11,177.58.

16. Thereafter, the president of Car-Chem, Mickey Carson, took respondent and his wife to dinner and asked respondent to act as a "salesman" for the company.

17. Respondent agreed the following day and was given \$1,500 on April 10, 1981, for the sales made to the Macedon plant.

18. In July 1981, the village purchased \$9,487.50 in chemicals from Car-Chem.

19. By check dated September 10, 1981, respondent was paid \$850 by Mr. Carson.

20. In December 1981, the village purchased another \$9,487.50 in chemicals from Car-Chem.

21. By check dated January 5, 1982, respondent was paid \$1,159.84 by Mr. Carson.

22. At respondent's request, all of the checks were drawn on an account of another company of Mr. Carson, National Utilities Supply Co., instead of Car-Chem. The checks were negotiated by respondent at a branch of his bank out of Macedon. The money was used for his personal benefit.

23. Respondent did not solicit business for Car-Chem from other treatment plant operators in the area. He testified that his only work as a salesman was to provide Mr. Carson with the names of other plant operators and that he talked informally about his experiences with Car-Chem products at meetings with other operators.

24. Respondent never informed any officials of the village of his receipt of the televisions, the radio and the checks from Mr. Carson or of his employment as a salesman for Car-Chem, as required by Section 803 of the General Municipal Law.

25. On February 6, 1984, respondent pled guilty in the Arcadia Town Court to Receiving Unlawful Gratuities, a Class A misdemeanor, in connection with his receipt of gifts and money from Car-Chem. He was given a \$900 fine.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1 and 100.2(a) of the Rules Governing Judicial Conduct and

Canons 1 and 2A of the Code of Judicial Conduct. The charge in the Formal Written Complaint is sustained, and respondent's misconduct is established.

Respondent accepted gifts and more than \$3,500 over a period of nearly four years from a company with which he did business in his official capacity as a municipal sewage treatment plant operator.

'The awarding of gifts thus related to an employee's official acts is an evil in itself...because it tends, subtly or otherwise to bring about preferential treatment by Government officials or employees, consciously or unconsciously, for those who give gifts as distinguished from those who do not....The iniquity of the procuring of public officials, be it intentional or unintentional, is...fatally destructive to good government...'

Irwin v. Board of Regents,
27 NY2d 292, 298 (1970),
quoting United States v.
Irwin, 354 F2d 192
(2d Circ. 1965).

Respondent's acceptance of gratuities constituted a violation of the Penal Law, which he acknowledged by his plea of guilty, and his failure to report to village officials his relationship with the chemical company was also a violation of law. From the outset, respondent was aware that the offer of gifts was "strange." His request that the checks from the chemical company come from a different firm with the same

principal and his habit of depositing the checks out-of-town indicate that he was aware of the impropriety and was attempting to conceal their receipt.

The public can have no faith in a judicial officer who participates in criminal activity. "Any conduct, on or off the Bench, inconsistent with proper judicial demeanor subjects the judiciary as a whole to disrespect and impairs the usefulness of the individual Judge to carry out his or her constitutionally mandated function." Matter of Kuehnel v. State Commission on Judicial Conduct, 49 NY2d 465, 469 (1980).

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

Mrs. Robb, Mr. Bower, Mr. Bromberg, Mr. Cleary, Judge Ostrowski, Judge Rubin, Judge Shea and Mr. Sheehy concur.

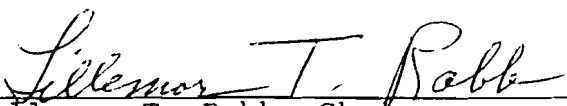
Judge Alexander, Mrs. DelBello and Mr. Kovner were not present.

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: January 24, 1985



Lillemor T. Robb, Chairwoman
New York State
Commission on Judicial Conduct