

(No. 95 CC 1. — Respondent censured.)

In re Circuit Judge MICHAEL F. O'BRIEN of the
Circuit Court of Kane County, Respondent.

Order entered July 24, 1995.

SYLLABUS

On April 14, 1995, the Judicial Inquiry Board (Board) filed a complaint with the Courts Commission, charging the respondent with conduct that is prejudicial to the administration of justice and conduct that brings the judicial office into disrepute. In summary form, the complaint alleged that the respondent, while in private practice, purchased two Congressional Medals of Honor, had his name and military service number engraved on the back of each, and counterfeited a government pamphlet which identified him as a recipient of the medal and described the purported basis for the award of the medal; that after becoming a judge, the respondent kept one of the medals and the pamphlet in the desk in his chambers and willingly showed the medal to those persons who asked about it; and that by such conduct the respondent violated Supreme Court Rules 61 and 62A. The Board and the respondent agreed to tender the matter to the Courts Commission by agreed stipulation of facts and agreed to waive oral argument.

Held: Respondent censured.

Sachnoff & Weaver, Ltd., of Chicago, for Judicial Inquiry Board.

Martin, Breen & Merrick, Oak Park, for respondent.

Before the COURTS COMMISSION: HEIPLE, J. chairman, EGAN, GORMAN, RARICK, and VIRGILIO JJ., commissioners. ALL CONCUR.

ORDER

Judge Michael O'Brien, Judge of the Circuit Court of Kane County (respondent), is charged with conduct that is prejudicial to the administration of justice and conduct that brings the judicial office into disrepute.

The relevant facts are undisputed. The respondent served in the United States Navy Reserve from 1954 to 1962. He received an honorable discharge, but did not receive any medals for valor. In the early 1970s, while in private practice, the respondent purchased two Congressional Medals of Honor; he subsequently had his name and military service number engraved on the back of each. Continuing his posturing, in 1975 or 1976, he counterfeited a government pamphlet in which he falsely identified himself by name as a recipient of the Congressional Medal of Honor. The pamphlet also contained a detailed but wholly fictitious description of the purported basis for the award of the medal. It stated that, after an explosion which rendered unconscious his fellow crew members of the U.S.S. Kermit Roosevelt, the respondent removed the remaining live ammunition from the vessel and pitched the shells into the sea. The pamphlet indicated that the respondent's "inspiring valor, indomitable determination and extraordinary courage at the repeated risk of his own life, reflect the highest credit upon himself and enhance the finest tradition of the United States Naval Service." In addition to the pamphlet, the respondent also counterfeited a government certificate which stated that he was a recipient of the Congressional Medal of Honor.

The respondent first became a judge when he was appointed as an associate judge in May of 1981. In March of 1986, he was named as a full circuit court judge to fill a vacancy. He was subsequently elected to that position where he continues to serve.

From the late 1980s until mid-1994, the respondent kept one of the medals and the pamphlet in the drawer of his judicial chambers' desk. During this period, he willingly displayed the medal to those persons who inquired about it. In 1992, the respondent sought information about obtaining special automobile license plates which are only available to medal recipients, although he never filed a formal application. At no time did the respondent attempt to correct the false impression he had created concerning his holding of the medals. Rather, the pose continued unabated. Later, however, when the respondent learned of the Judicial Inquiry Board's investigation into the situation, he belatedly admitted the truth.

The stipulated facts also indicate that the respondent suffers from alcoholism and that, from the late 1960s to 1982, he was actively drinking. Moreover, his alcoholism was at its most severe state during 1975 and 1976, the period during which the respondent acquired the medals and counterfeited the pamphlet and certificate. Since 1982, however, the respondent's alcoholism has been in remission, except for a brief relapse in 1992. He attends Alcoholics Anonymous meetings on a regular basis, and has worked extensively to assist others who suffer from alcoholism.

Finally, the stipulated facts demonstrate the respondent's undisputed reputation as a trial judge--excellent-- as well as the high esteem in which he is held by his peers.

Based on the stipulated facts, it is conceded that the allegations of the complaint have been proven by clear and convincing evidence. Thus, the

Commission need only determine the appropriate sanction. By virtue of the Constitution of the State of Illinois, the Commission is authorized to remove from office, suspend without pay, censure or reprimand the respondent for his misconduct. Ill. Const. 1970, art. VI, § 15.

The Board has not recommended a particular sanction but, rather, has asked the Commission to enter such sanction as it deems appropriate. Although the respondent acknowledges that his conduct has tended to bring the judicial office into disrepute, and is, accordingly, prejudicial to the administration of justice, the respondent contends that the mitigating circumstances warrant the least severe sanction available to the Commission, to wit, a reprimand. The respondent requests this sanction for two reasons. First, he suggests that his conduct was the result of his alcoholism for which he sought appropriate treatment and is now in full remission. Second, the respondent contends that his misconduct bore no relation to his judicial duties. We shall examine each purported mitigating factor in turn.

It is true, as the respondent suggests, that the Supreme Court has deemed alcoholism a mitigating factor in the context of certain attorney disciplinary cases. (See *In re Driscoll*, 85 Ill. 2d 312 (1981).) Although the respondent urges the Commission to extend this analysis by analogy to this judicial disciplinary case, we do not deem the present situation to be an appropriate occasion to do so. The respondent engaged in a pattern of deliberate, coolly crafted, fraudulent behavior for nearly two decades. This is not a case, therefore, of an isolated incident of misconduct brought on by an alcoholic stupor. Even after the respondent was in alcoholic remission, was attending Alcoholics Anonymous meetings with regularity, and was assisting others with alcoholism, he continued to falsely hold himself out to others as a recipient of the Congressional Medal of Honor. At no

time did the respondent attempt to set the record straight regarding his posturing and concocting of the wholly spurious story and false supporting evidence of his military heroism and valor. Rather, the posturing continued for over a decade after the respondent's alcoholism was in remission. Under these circumstances, the Commission considers it reprehensible that the respondent now attempts to use alcoholism to both justify his behavior and to avoid acceptance of full personal responsibility for it. As the Supreme Court stated in *Driscoll*, "Alcoholism . . . is not an excuse." (*Id.* at 316.) Alcoholism certainly does not excuse the conduct which occurred here. Rather than constituting a mitigating factor as he claims, the Commission regards this assertion as an evasion of responsibility and, therefore, a further aggravating factor.

The Commission recognizes, however, that the misconduct which occurred here took place outside of the respondent's official duties. The record attests to the respondent's good reputation and ability as a trial judge. Moreover, there is no indication that his false posturing had any impact upon the discharge of his official judicial duties in the courtroom.

Nevertheless, the respondent's conduct necessarily raises serious questions in the public mind concerning the reliability and credibility of a person entrusted with judicial duties. That is to say, can a judge who is himself flying under false colors be trusted to adjudicate judicial matters for others? It is an open question. However, there is no question whatever that such conduct tends to bring ridicule, disrepute, and prejudice to the judiciary. The Congressional Medal of Honor is the highest military honor which this country can bestow. By arrogating this honor to himself, the respondent has engaged in conduct that is prejudicial to the administration of justice and conduct which has brought the office into disrepute.

Accordingly, it is the judgment of the Commission that the conduct of the respondent, Judge Michael O'Brien, warrants the imposition of censure, rather than the lesser sanction of reprimand which he seeks.

It is so ordered.

Respondent censured.