

# DON O'CONNELL

## From Chief Judge to Most Wanted

by John Flynn Rooney

Nearly nine years after Donald P. O'Connell stepped down as Cook County's top judge, his services as a private mediator remain in high demand.

O'Connell's business is called **O'Connell Mediation Services**. Since leaving the bench, O'Connell says he has successfully mediated more than 3,500 cases. He handles about 400 mediations a year.

"In every case, the mediation is driven by the facts and the law," O'Connell says. "The job of a mediator is not to run numbers back and forth" between the parties.

Among the matters he mediated were the \$100 million settlement two years ago stemming from the 2003 Cook County Administration Building fire that killed six people and injured 16. In 2006 he also mediated a \$75.2 million settlement in litigation resulting from a 2002 scaffolding accident at the John Hancock Center that led to the deaths of three women and the injuries of six other people.

Both of those cases involved multiple parties and were overlaid with numerous insurance coverage issues, O'Connell says.

"There's no question that Judge O'Connell is at the top of everybody's list" when seeking a private mediator, says C. Barry Montgomery of Williams Montgomery & John Ltd.

"He is very good at steering the parties toward compromise, which is the ultimate goal of mediation," Montgomery says. "He does it very subtly."

Chicago personal injury attorney Robert A. Clifford, principal of Clifford Law Offices, says O'Connell "has demonstrated terrific staying power. By that I mean from the very beginning of his second career as a mediator, he has been regarded as fair and impartial by both sides. That reputation has not only continued, but it's become rock solid and anchored, which you cannot say about (all) mediators."

Thomas A. Demetrio, another personal injury lawyer with Corboy & Demetrio P.C. in Chicago, says O'Connell is very smart. "His ability to grasp the nuances of the legal issues and the facts, and his command of the insurance industry are a recipe for success."

O'Connell returns the compliment to lawyers who appear before him as a mediator.

"I generally deal with the very top-tier lawyers on both sides in complex cases," O'Connell says. "So, those lawyers don't have any problem keeping their eyes on the ball."

Clifford and Demetrio say that O'Connell's word is his bond.

"He's a man of his word," Clifford says. "So, you should not hesitate to confide in him on confidential (matters)."

Demetrio says O'Connell has earned the admiration of the entire trial bar.

"When you have an individual like that who has maintained his credibility for decades, it's much easier for the lawyers to confide in him and know that any confidences will be preserved and protected," Demetrio says. "And when he has lawyers who are free to open up to him, that supplies him the ability to apply his good judgment, based on decades of experience in handling these kinds of cases going back to the trial level.

"It allows him to be the successful mediator he clearly is," says Demetrio, who estimates he has handled about 50 cases that settled before O'Connell when he was on the bench and about another seven matters where O'Connell served as a



private mediator.

### Path to the Bench

O'Connell was the youngest of John and Mary O'Connell's three children, including two sons and a daughter, June Platenka. O'Connell's parents and older brother are deceased.

O'Connell attended Morton High School, and his graduating class had 1,200 members. From there it was on to Beloit College in Wisconsin, where he met his future wife, Susan.

While a student, O'Connell worked summers, cleaning neon signs, loading trucks and working on assembly lines.

O'Connell says that early in high school, he decided he wanted to become a lawyer. He graduated from Northwestern University School of Law in 1968 and passed the Illinois bar the same year.

While in law school, O'Connell worked part-time for the Cook County Circuit Court going through court files while computers came to the Law Division, a job he continued after he passed the Illinois bar in 1968.

O'Connell worked with Gerald W. Shea and Associates in Chicago from mid-1969 to late 1972, practicing administrative agency law. He also spent about six months working on the staff of the minority leadership of the Illinois General Assembly. By then, Shea was assistant minority leader.

Then O'Connell became the court's

mediation class at the National Judicial College in Reno, Nevada.

"I started doing (mediations) because I got greater satisfaction out of settling a case than going to verdict," O'Connell says. "When you settled the case, nobody won and nobody lost. That was despite the fact that productivity was measured by the number of verdicts reached."

The late judge Pasquale A. Sorrentino was the Law Division's presiding judge when O'Connell assumed his assignment there as a young judge. Sorrentino had requested O'Connell's assignment to the Law Division, O'Connell says.

"I never spent a day in Traffic Court or the misdemeanor courts," O'Connell says.

Sorrentino encouraged O'Connell to keep settling cases, O'Connell says.

O'Connell was named presiding judge of the First Municipal District in June 1984, while being additionally assigned to the Law Division. In late 1990, O'Connell became presiding judge of the Law Division. He was credited with instituting reforms in the First Municipal District and with cutting the Law Division's backlog nearly in half during his tenure.

In September 1994, Circuit Court judges elected O'Connell as chief judge of the county's massive court system, replacing Comerford, who had retired. O'Connell often put in 12-hour days as chief judge.

In addition to handling administrative matters while chief judge, O'Connell also regularly handled Law Division motions and conducted mediations in high-stakes tort cases. He settled more than 500 cases each year as a judge.

Among the numerous big cases O'Connell helped resolve while on the bench were the roof collapse at the Rosemont Horizon and the 1989 crash of a DC-10 in Sioux City, Iowa.

In 1999, O'Connell held two days of marathon negotiations resulting in the four settlements totaling more than \$48 million arising from the 1994 crash of USAir Flight 427 near Pittsburgh.

Demetrio, lead plaintiff counsel for the plaintiffs in the USAir cases, noted those settlements were reached while O'Connell was heading the county's court system.

"When (O'Connell) assumed that role, he did not skip a beat in being the administrator he needed to be or in being an active judge" handling cases, Demetrio says.

In 1999 O'Connell also accomplished the \$100 million settlement on behalf of Duane and Janet Willis, who lost six young children in a fiery traffic accident in Wisconsin.

### The Private Mediation Route

O'Connell resigned from the bench in

August 2001. He was considered innovative and progressive in court management positions. He also instituted various reforms and was credited with improving the judiciary's image after two court scandals.

He then joined the University of Illinois as a special counsel for medical negligence cases and also launched his private mediation practice. In September 2004, O'Connell gave up the position with the University of Illinois and devoted his efforts to full-time mediation.

O'Connell, 67, says he's working harder now than when he was a judge. He typically puts in 60 to 70 hours weekly. He usually handles mediations all day Monday through Friday and will work until 9 p.m. or 10 p.m., if necessary.

"I love it because every case is different," O'Connell says. "You get a short window of opportunity to try and quickly learn the case and settle it. And the next day, generally you're off to the next case."

Weekends are also filled with work by preparing for upcoming mediation sessions. But O'Connell has a change of scenery after driving to his family's weekend home in Antioch, overlooking Lake Marie.

"I have a nice office set up there and I do my work looking at the lake," O'Connell says.

Among the complex mediations O'Connell has handled in more recent years, was the Hancock Building scaffolding collapse case. O'Connell held 19 mediation sessions over about 18 months in that matter.

Demetrio says O'Connell thrives on complicated matters. "He's got a photographic memory, which helps him a great deal in complex mediations," says Demetrio, who along with Clifford jointly represented seven plaintiffs in the case. "He juggled dozens of insurance companies, their representatives and their positions and sorted out...the various plaintiffs' claims with respect to primarily the injury cases."

Demetrio adds that O'Connell is "a happy person who is relaxed in a setting where oftentimes it can be tense. He knows how to bring everybody to the table, take a deep breath, and help them achieve justice for all of us. And our parties feel good about the end result."

O'Connell has long possessed that talent, Demetrio says.

"It's not something that can be taught," Demetrio says. "It's an innate ability that he possesses. He's sharing it to this day with lawyers and parties."

William B. Bower, executive director of claims and litigation for Northwestern Memorial Hospital, says O'Connell keeps the proceedings on an even keel for both sides. "By him being able to keep everyone's heads cool, it results in more successful resolutions," Bower says.

O'Connell says that he continues to learn about the dynamics of mediation each day. Successful mediations result from thorough preparation, O'Connell says.

"He is extremely well prepared," says Richard H. Donohue, a principal of Donohue Brown Mathewson & Smyth LLC

in Chicago, who has represented defendants, mostly in medical malpractice mediations before O'Connell. "He has his yellow legal pad of notes and he very carefully reviews whatever written materials are sent to him.

"Even though he doesn't wear a robe any longer, people know the jobs he's held, and he has a lot of credibility and respect," Donohue says. "I think that's particularly true if you have out-of-town parties or insurance companies involved."

Bower says O'Connell understands every angle of a case and "it is a rare case that does not get resolved before him."

Bower adds, "Going in with just his knowledge base, you get so much more done than with someone who you have to bring up to speed on the mediation. You start out with him completely understanding the case."

O'Connell believes confrontational approaches at mediation don't work, and he encourages the parties to avoid issuing ultimatums.

O'Connell won't push ahead with mediation if the sides are at loggerheads, says Donohue, who also serves as a mediator in cases involving professional negligence, insurance coverage and commercial claims.

"He'll spend as much time as necessary getting cases resolved," Donohue says. "But if he thinks the opposing side is in never-never land, he tells you to go home. There's no point in negotiating against yourself."

Donohue calls O'Connell a "damned good lawyer" who has "very good judgment about...the value of cases."

The first step at mediation sessions for O'Connell is to meet with both sides in a case. He then gets a feel for where the sides are in terms of an initial offer and counteroffer.

O'Connell next meets privately with the plaintiff to determine what information the plaintiff deems important. He then conducts a similar session with the defendant. If the parties can't reach agreement at the initial mediation session, O'Connell often invites them to continue working on the matter and sets a follow-up mediation session.

The mediation process must remain as fluid as the dynamics of the case and the parties require, O'Connell says.

"No single format is always the right format," O'Connell says. "We need to be flexible in our approach."

If O'Connell is set to handle a case over the course of a day, he will start at 9 a.m. and work until resolution of the matter or determine that more work needs to be done.

If two cases are scheduled on a day, the first runs from 9 a.m. to 1 p.m. The second matter runs from 1:30 p.m. to 5:30 p.m. or later. "I certainly don't cut off discussions," O'Connell says.

Northwestern Hospital's Bower, says O'Connell is indefatigable. "There are times when it seems like the only person not exhausted in the room is him," Bower says. "But he keeps pushing."

O'Connell "treats these things truly as an ongoing dialogue and never seems to give up," Bower adds.

Bower recalls several occasions when he has packed up his materials and said he's leaving an O'Connell mediation session. But O'Connell will ask the parties to keep working on the case. "He is one of the few mediators when he says something like that, you stay," says Bower.

Recently, Montgomery and others were in the midst of completing a commercial matter with two plaintiffs and about nine defendants. O'Connell conducted mediation sessions over a five-month period. Initially the matter was set as a two-day mediation.

"Two days became five months because he never gave up," Montgomery says. "He kept everyone involved to the point where it looks like the case will be completely settled."

The mediation sessions stemming from matters filed in the Cook County Circuit Court's Law or Chancery divisions, are typically conducted by O'Connell at the lawyers' offices or at the Mandatory Arbitration Program center at 222 N. LaSalle St. in Chicago.

## A Personal Service

With numerous retired judges and litigators setting up mediation practices with alternate dispute resolution firms, O'Connell opted to set out on his own. "Mediation from my perspective is a very personal service," O'Connell says.

O'Connell's lone employee, daughter Kathleen Cunningham, works as his administrative assistant and schedules her father's mediation sessions.

"She's got the worst part, scheduling," O'Connell says.

It's sometimes difficult to schedule a mediation session with O'Connell because he's booked up, Donohue says. If O'Connell is too busy, he will turn business down. Donohue says he's not surprised by the continued demand for O'Connell's services.

"It doesn't surprise me because he has built up a lot of credibility and good will with lawyers," Donohue says. "He doesn't need anyone to put his picture in the paper [and state that] he's now available to do mediations."

Clifford says that O'Connell has not worn himself out, and he continues to learn.

"He's not winging it," Clifford says. "I think that adds to why he's had this staying power."

"He doesn't take the demand for his services for granted," Clifford adds. "He knows he has to earn it. He does that by knowing both sides of the case in an impartial way."

While O'Connell was known initially for handling negligence and personal-injury cases, he now also handles other matters.

"I enjoy doing tort cases, commercial cases, insurance coverage cases, and cases involving developments of condominiums and shopping centers," O'Connell says. "What I don't do is divorce cases."

Clifford says, "The breadth of his

caseload has substantively grown to well beyond the tort litigation arena, so that now he's called upon to mediate a wide range of cases, both tort law and commercial."

O'Connell also has developed a national reputation, say plaintiff and defense lawyers alike.

Montgomery says he appeared before well-known mediators who are former federal judges on both coasts.

"I would put Judge O'Connell up there with the best of the best on a national basis," Montgomery says.

O'Connell says he receives requests to travel outside the Chicago area for mediations.

He recently handled a mediation involving a condominium development where a case was pending in Honolulu and the parties wanted him to head to Hawaii. But O'Connell says he declined the offer, and the parties came to him in Chicago.

"There are no time economies for me to travel because I'm busy five days a week," O'Connell says.

O'Connell says he charges substantial fees for his services, though he has also handled some mediation matters on a pro bono basis.

In September 2004, then-Governor Rod R. Blagojevich tapped O'Connell as a special mediator to oversee negotiations among various parties involved in medical malpractice issues. O'Connell acted as the special mediator on a pro bono basis. But that issue was never resolved through mediation.

The Illinois Supreme Court most recently resolved the medical malpractice issue in February by striking down a statute that put caps on non-economic damages in medical malpractice cases in a case known as *Abigaille Lebron v. Gottlieb Memorial Hospital*.

"I spent a lot of time doing that," O'Connell says referring to his role as special mediator. "I've done other pro bono mediations and would continue to be willing to do those under the right circumstances."

O'Connell says at this point, he has no plans to retire.

"As long as it continues to exhilarate me, I'll continue doing it," O'Connell says. "If I get to a point where I don't enjoy it, I will stop."

"I just love what I'm doing," O'Connell adds. "I think the reason I love it is because I'm dealing with the very best lawyers in the most complex cases."

But O'Connell says that while in previous years he took two weeks' vacation, he plans to double that amount this year. He expects to take off one week during each of this year's four quarters.

O'Connell enjoys fishing in Lake Marie. But his current schedule doesn't allow for much fishing.

O'Connell and his wife are the parents of four adult children. They also have two grandchildren under the age of five.

"In a few years, I'll find time to get out there with them with a fish pole," O'Connell says. ■