



BENCH & BAR

The newsletter of the ISBA's Bench & Bar Section Council

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Chair's column

By Hon. Michael Kiley

This issue of the Bench and Bar Newsletter focuses on "Colleagues in Crisis." This is the title of a CLE program being offered

as part of the ISBA's Mid-Year meeting with the Illinois Judges Association. This issue also features articles on the Lawyer's Assistance Program by Justices

Michael Murphy and Warren Wolfson and a personal story. More information on the CLE program at the Mid-Year meeting follows.

Lawyers under the influence: Lives, livelihoods, and legacies

By Justices Michael J. Murphy and Warren D. Wolfson

Addictions. Alcohol, drugs, and gambling. Are these topics important enough to take your valuable time? Of course they are. You owe it to your colleagues, friends, family and yourself to read on. Work can wait.

THE LAWYERS' ASSISTANCE PROGRAM ("LAP") DEALS with "impairments"—not only alcohol, drugs, and gambling, but also depression, anxiety and stress—emotional and physical conditions. By impairments we mean the condition is

impairing someone's life. Perhaps at work, perhaps at home, perhaps both.

LAP no longer waits for the impaired person to hit bottom—the curbstone. By then we see too much destruction to an individual's profession, family, health and life. There is too much suffering. So, we try to raise that bottom. We try to intervene before a tragedy takes place and disciplinary action begins.

We believe that LAP's efforts have saved some livelihoods, some families and some lives. We have seen the sick get well and we have seen lives turned around. That is the business of LAP, and business is booming.

We want to make it clear that this is not a temperance article. We don't ask you to say no to anything. But every one of us should be aware of possible problems in our lives and in the lives of people we care about. Neither a lawyer's license nor a black robe confers immunity.

If we are going to talk about alcohol, drug or gambling addiction, we have to know what addiction is all about. The medical evidence is clear:

addiction is not a defect of character or a failure of will power. The disease is chronic; it's progressive, and it's incurable. It gets worse, and, if not treated, people die.

The Illinois Supreme Court agrees with the disease approach. In a 1988 lawyer discipline case concerning alcohol abuse, the Court said, "Our approach to these cases conforms to the modern view that alcoholism is better characterized as a treatable disease than as a moral failure." *In re Kunz*, 122 Ill. 2d 547, 552-3 (1988).

Symptoms of Abuse

Put aside, if you will, the skid row image of the drunk on a curbstone, bottle of wine in one hand, a live chicken in the other. Instead, look for loss of control and disruption of life.

Loss of control does not mean every time an alcoholic drinks he or she gets crazy or collapses or falls apart. It means that once alcoholics take a drink, drug users use, or chronic gamblers start betting, they cannot predict with any degree of reliability what will happen next or whether they will stop.

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Control is gone. A normal person can elect not to drink or only have one. The impaired person cannot. Simply saying: "I can drive," "I can get to court," "I can try my cases," does not address the issue of loss of control and disruption of life. The problems are there. See, Warning Signs on the next page.

Has the pressure of the practice or decision-making finally brought lawyers and judges to the breaking point? In a word, "No." In matters of alcohol, gambling or drug abuse, lawyers and judges are not much different from most people. And that's the problem. A 2003 study of Illinois households found that about 15 percent of all adults need alcohol control treatment, about 2.4 percent need drug treatment, and about 5.5 percent need treatment for chronic gambling. That includes lawyers, judges, plumbers, housewives, police, the unemployed—from the highest paid to the lowest. We are talking about an equal opportunity disease that crosses all socio-economic groups, races, educational backgrounds, and sexes.

Lawyers and judges probably are on the high end of that 15 percent. This is not because they are more susceptible, but because they have more opportunities and resources for substance abuse and gambling. We are also more visible; it is difficult for us to hide a hangover.

Since addiction is a disease, it means that it's not the addicted person's fault. There is no need for guilt. No one intends to become an addict. But, it also means that it's a responsibility to get well and addiction is not an excuse. Each impaired person is responsible for his or her own recovery. The disease can be treated and arrested, which almost always means total abstinence. No cutting down. No stopping for two weeks. No giving it up for Lent. It means a program of personal change, in effect a new life. That change takes time and usually enlists the help of Alcoholics Anonymous or a similar program.

In Illinois we bear the cross of the Greyford scandal. That investigation led to the imprisonment of many judges and lawyers for corrupt conduct. It turns out almost all the convicted Greyford judges had serious alcohol problems. The tragedy is that everyone knew it. Which came first, alcohol

or corruption, no one knows, but the connection cannot be ignored.

It is not our purpose to make the impaired lawyer or judge feel guilty. Rather our goal is to make all of the profession more sensitive to the warning signs. A caring profession will deal with impairment. It will offer help, not punishment; understanding, not accusations; hope, not desperation. What are needed are the courage, the will, and the compassion. LAP helps offer this each and every day.

How LAP Helps

When a troubled lawyer calls LAP asking for help, a trained professional or trained volunteer takes the next step. It might be obtaining an evaluation, attending an Alcoholics Anonymous, Narcotics Anonymous or Gamblers Anonymous meeting, or getting inpatient or outpatient treatment. This is the easy way—the caller taking personal responsibility, overcoming self-denial and admitting that he or she has a problem. The hard way is when there is intervention.

It is harder because the law student, the lawyer or the judge with the control problem is not ready to ask for help or admit the need for help. The troubled lawyer is in denial; lying to himself or herself and to everyone, not ready to accept reality. It becomes the job of the LAP volunteer to bring reality to the troubled lawyer. That is where intervention comes in. A lawyer or judge, trained by health care professionals and certified as an intervener, becomes involved.

In most cases LAP receives a phone call from a friend, family member, partner, or co-worker. In many cases, involving impaired judges, one of the many judges active in LAP will receive the initial call. LAP checks to make sure the call is in good faith and not a crank or hoax. We then form a three-person panel. If the subject is a judge, all three interveners are judges. Only judges are involved in a judge's intervention. If the subject is a lawyer, one of the three panel members will be a judge. At least one member of the panel will be recovering from the impairment, with at least one year of recovery.

We gather information from those close to the subject—family, friends, anyone. We talk to them and explore their memory—as lawyers we know

how to do that. It is not always easy.

Addiction is a disease—a contagious disease. Often those close to the impaired person are damaged. They, too, are in denial. They make excuses; they call in for the impaired person saying he or she is sick. They are covering up. They are "Enabling".

"Enabling" is conduct or lack of conduct that helps the alcoholic to drink or drug abuser to use or any impaired person to continue a destructive lifestyle. Enabling is covering up the consequences of the impairment. We are talking about the lies, the deceptions, and the excuses. It's looking the other way and ignoring the obvious, such as picking up the tab, emptying the bottle, or hiding the empties. It is making excuses for the impaired person's conduct. That's enabling—the cover up. Instead of doing a favor for the impaired person, enabling allows the harmful behavior to continue. We urge law students, lawyers, judges, friends and family to stop enabling. No more lies and no more cover-ups.

We hear remarks like: "I don't know much about her drinking, she is just sick a lot." "Yes, he does hit me, but not often and only when he drinks." "He does hide bottles. He does pass out. He does sleep in the car." And so it goes.

We get them to write things down on yellow pads. Lawyers and judges respect yellow pads—it's authority. We rehearse the way they will confront the impaired person as many times as needed. It will be done with love, care, and compassion. There will be no accusations, no name-calling and no one will say, "You are a drunk."

The Call

When we are ready, people close to the impaired person will present information not open for dispute or debate. The information must be specific like the foundation for a conversation: places, dates, who was there, what happened. We try to engage all the parts of his or her life—job, family, friends. We want to leave no place to escape. We contrast behavior while using to behavior free from the addicting influence and describe how the addiction affects the person and changes his or her life.

A child once said: "You didn't come to my graduation. When I got home I

found you passed out on the couch. You smelled like booze. I was so hurt. I was so ashamed of you. I cried."

A spouse once said: "I waited for the club dance. I bought a dress. You promised you would go. You were too drunk. I felt anger, guilt, resentment and hate."

A teenage girl said: "Daddy, I love you. But I cannot bring my friends over to the house because I cannot tell whether you will be the Dad I love or the Dad I am ashamed to let them see. You asked me why I don't go out on dates as much. I do, but I meet the boy elsewhere instead of having him come to our house."

A partner once said: "Last week we had to cover your deposition and court dates. You were once a fine lawyer—not now. It is painful to us. I fear for our firm and for your health."

All of this is done, whenever possible, in the chambers of the LAP panel judge. The chambers may not always be hallowed territory, but it is neutral. Lawyers are trained to behave in a judge's chambers.

We want to overcome denial. Once the subject of the intervention recognizes the problem, we can show how and where to get help. We are not here to punish or to criticize; but rather, to give information out of concern because we care, as a lawyer, as a judge, and as a human being. We make it clear that we have no connection with the disciplinary agencies. We don't tell those agencies what we do and they don't ask. We want to reach lawyers and judges before the complaints and before the reasons for those complaints.

Intervention works best when someone can set limits. A supervisor might say: "Get help or get out." A wife might say: "Get help or I'm gone." A presiding judge may say: "Get help or I will have to transfer you and report you to the JIB. " We do not create limits. If they are there we encourage people to state them, but only if they really mean it.

Does the subject appear for the session? Almost always. That's where the judge comes in. The judge calls the subject. "I want to see you in my chambers tomorrow morning. We are meeting with some people who are worried about your (impairment)." The impaired lawyer comes. Why? Maybe it's curiosity, maybe it's a cry for help,

maybe it's because a judge called. But they come, and listen. This is true for lawyers and judges. Dignity is retained. We don't ambush or surprise the subject.

Support for LAP

What is our success rate? We believe 100 percent. Does that mean the person always says: "OK you got

me, where do I go, what do I do?" No. It happens most of the time but not always. Sometimes it takes awhile for the impaired person to be ready and all we can accomplish is to plant a seed so progress is possible. Now they know the secret is out. An impaired person can drive through the garage door, pass out on the lawn, or throw up in the gutter, and think no

Warning Signs

Those in the legal profession do well at hiding their impairment. Colleagues often don't recognize the signs of the impairment. Some of the signs that frequently indicate a problem appear in different areas of the impaired person's life. There are many overlaps.

PERSONAL

- Deteriorating personal hygiene and dressing habits.
- Multiple physical complaints.
- Emergency room visits.
- Accidents.
- Blood shot eyes.
- Baggy eyes.
- Facial puffiness.
- Personality and behavioral changes.
- Inappropriate tremulousness and/or sweating.
- Many prescriptions for self.
- Emotional crises.
- Irritable and short-tempered behavior.
- Increased tolerance – able to use more and more.
- Loss of control – inability to predict if he will or will not use.
- Broken promises to self and others to stop.
- Depression.
- Anxiety.
- Stress.
- Blackouts – memory loss.

HOME AND FAMILY

- Behavior excused by family and friends.
- Making drinking activities a priority.
- Fights, arguments, violent outbursts.
- Sexual problems: impotence, extra-marital affairs.
- Withdrawal from family and fragmentation of family.
- Neglecting children.
- Abnormal, illegal, anti-social actions of children including alcohol and drug abuse.
- Hiding bottles.
- Efforts to dispose of empty bottles / substance so others will not know quantities.
- Promises made and broken.
- Lying.
- Financial crises.
- Separation or divorce.
- Unexplained absences from home.

FRIENDS AND COMMUNITY

- Sneaking drinks.
- Hangovers and lie.
- Promises made and broken.
- Personal isolation.
- Embarrassing behavior.
- Drunk driving.
- Legal problems.
- Neglect of social commitments.
- Unpredictable behavior.
- Inappropriate spending.

OFFICE

- Workaholism.
- Disorganized schedule.
- Unreasonable behavior.
- Inaccessibility to clients and staff.
- Frequent office absences.
- Excessive medication use.
- Frequent complaints by clients to staff regarding his or her behavior.
- Altercations with clients.
- Prolonged lunch brakes.
- Alcohol on breath.
- Decreased work load and tolerance.

COURT

- Often late, absent or ill.
- Decrease work.
- Not prepared.
- Missed filing dates.
- Inappropriate remarks.
- Slurred or incoherent speech.
- Subject of courthouse gossip regarding the behavior.
- Unavailable for conferences.
- Altercations with court personnel.
- Negative client feedback.
- Negative feedback from opposing attorneys.

OTHER PROFESSIONAL PROBLEMS

- Frequent assignment changes.
- Unusual medical history.
- Inappropriate qualifications.
- Reports to ARDC or JIB.
- Malpractice claims.

My story

By Justice Michael J. Murphy

I have struggled with allowing this story to be published. Part of me wants this part of my life to be forgotten. I am certainly not proud of what I did and did not do while I was under the influence of alcohol. I realize also that there are still many who view alcoholism as a moral failure and not as a disease. I do not intend to hold myself out as a moralist or as the model recovering alcoholic. Let me make it clear that I am not asking anyone to say no to anything. I don't pass judgment on those who use. Most people can use and never get into trouble or get addicted. Neither do I claim to be the model person in recovery. I do claim progress, not perfection, in my recovery.

Recovery has not always been easy and I more than once asked the question, "Why me?" There is always the fear of the possible relapse. I realize that I could remain anonymous and not be subject to the watchful eyes and the judgment of others. In allowing this to be published it is my prayer that those who read this who suffer from the disease of addiction will see themselves, and seek help.

You will not find this on my resume but all who know me know my story. In 1979 I walked into my first Alcoholics Anonymous meeting. I have been on the never-ending road to recovery ever since. What this means is that I don't drink. I go to AA meetings.

It is now your turn to know my story and how it is that I became a recovering alcoholic. And to know that I don't drink and, with the grace of God and the fellowship of AA, I will not drink for the rest of today.

The going hasn't always been easy. My struggle with alcohol lasted about a decade. During law school I drank, but seldom excessively. I was committed to the study of law. My grades reflected my efforts. And, in hindsight, reflected my absence from heavy drinking.

When I got out of law school in 1970, I found myself alone. As a young prosecutor I became attracted to a crowd that would stop after work for a few—a few too many. Soon,

when the others would stop, I kept going.

I started drinking every day. At some point I felt I could not, not drink. I no longer drank for the taste. Whether you call it a willing servitude or an overwhelming compulsion, I needed to drink. I was an alcoholic.

I began to preemptively stock up on alcohol. I feared that I would have no liquor and the stores would be closed. I could not bear to run out.

I lived alone, yet I found myself hiding bottles in the bathroom and in closets. I feared that if I had a visitor I did not want that person to know how much booze I had around. I carefully disposed of the emptied bottles in the garbage. I didn't want my cleaning person to know I drank that much.

If I were out with friends or on a date, I would excuse myself and sneak off to the bar for a quick shot or two. I was ashamed of how much I could and did consume. My tolerance increased at an alarming rate.

I found myself going to different bars and different liquor stores so the bartenders and storeowners would not detect the copious amounts I was downing. When I was drinking I tried to avoid people I knew. Normal drinkers would not understand my remarkable ability to immerse myself in the strong waters, which drain the soul rather than cleanse it.

At some point I realized that I had lost control over my drinking. Alcohol had me in a cruel vise. Drink became my closest friend, my lover, and my life. Too often I promised others or myself that I was quitting, only to break that promise and fall into depression over my failure. I would often say to myself that I was only going to have one or none at all, then wake up hung over in the morning.

Then the blackouts started. A blackout is a permanent or temporary loss of memory caused by alcohol. An alcoholic can act quite normally and carry on a logical conversation and not recall it the next day. The person need not be drunk. I would drive home and have no recollection of the drive or where I parked my car.

One incident stands out over the

one knows. After an intervention, the impaired person knows that other people know and that they are being hurt as well. At the very least, we have screwed up the person's addiction and he or she will never again use without thinking about the intervention. The person will know that by "using" he or she is hurting others. That is one reason why we say we have no intervention failures.

We have said before that addictions and stress, anxiety and depression are contagious illnesses. Those close to the impaired person will develop symptoms. They will enable and lie in making excuses and assist in cover-ups. They will feel their own stress, anxieties and depression over the conduct and lack of conduct of the impaired person. LAP will assist in their recovery. That may be individual or family therapy, attending Al-Anon, Alateen, and open AA meetings. In their recovery they will be better equipped to assist the impaired person. This assistance to those close to the impaired person is another reason why we believe we have no failures.

There may be times when the impaired person refuses treatment and refuses to change the destructive behavior. That behavior can lead to disgrace and death. Those who extended themselves in a caring effort to help will be better equipped to accept the ultimate result. One more reason for our belief that there are no failures.

LAP has the enthusiastic support of the agencies that make up our legal system. The Illinois Supreme Court supports our work. The court gave us a rule of confidentiality to protect people who come to us for help. Any communication between the staff and among those involved in an intervention is that of an attorney—client. Rule 1.6 of the of Illinois Rules of Professional Conduct. The Court also passed the rule by which LAP is now funded from a portion of the attorneys' annual registration fee. The Supreme Court also appoints the 14 member Board of Directors of the Lawyers' Assistance Program. The State Legislature gave LAP and its volunteers immunity from lawsuits except for willful and wanton acts. 735 ILCS 35/2, 35/3, and 35/4.

The Attorney Registration and Disciplinary Agency works with LAP by referring attorneys for help. The ARDC passed a rule, which enables an attorney to continue to practice while his or her recovery is established. This

others. I was stopped on Lake Shore Drive going 45 in a 40 zone. It turned out that I knew the officer well. He had messed up with his commander and was placed on traffic detail as a result. We talked for some time and then I went on my way. The next day I could not recall either the stop or the ride home. I found my car, and to me it was just another memory loss. The next week I ran into the officer at a social gathering. He began talking of our meeting on the Drive and how he was now off of the traffic detail. The more he talked, the more my memory came back. I asked him if he thought that I had too much to drink that night and he replied that he did not think I had anything to drink.

During this time I continued working and, apparently, I did an acceptable job. I spent twice as many hours producing the same amount of work as a sober lawyer. I tried to do routine things in the morning, and as my mind cleared in the afternoon, I would take on more challenging tasks. Like many alcoholic attorneys, the last thing to go is the professional pride.

The end did come. And it came quickly. I needed more and more alcohol. Blackouts occurred too frequently. My health began to deteriorate. I was depressed over the drinking and faced periods of anxiety over the prospect of stopping. I remained alone drinking for five days and then on a Friday afternoon I picked up the telephone. I called for help. That night a man picked me up and took me to my first AA meeting.

What happened to me is not "normal." Normal people do not act the way I was acting. But I was a "normal alcoholic." Most normal people do not hide bottles, do not sneak drinks, do not go to different bars and stores to purchase booze so they will not be noticed, and they most certainly do not have blackouts. Most people can elect to drink or not to drink. Alcoholics cannot, not drink. Alcoholics act the way I acted because it is the nature of the illness.

Yes, when I started in recovery in 1979 I fought it. I was addicted to alcohol. My body and my mind craved it. I was being asked to give up the number one thing in my life. It came before my friends, before my work and before my family. I loved it, but hated it for what it was doing to me. That personal struggle was difficult

and intense. Yet with the help of the people in the AA program, I was able to get dry and then work on changing my life.

In recovery I learned that I was powerless not only over alcohol but over so many other aspects of my life. I began to accept this powerlessness, and my life became more manageable. I came to accept that there was a Higher Power and I turned my problems over to that power. In the beginning that Higher Power was the AA program and the people in the program. As time passed I accepted the spirituality of the program and now the Higher Power is God, as I understand God.

Today, each day, I make a conscious decision to turn over my will, my life, and the many problems that I face to God's care. This does not mean that I don't continually strive to solve the problem, but by turning the problem over I am accepting the outcome.

I embraced the 12-steps of AA and integrated them into my life. As a result, my life changed. I found myself in a more peaceful, accepting place. I returned to my family. I united with old friends and made new ones who accepted me the way I am, for what I am. My work improved, and I was promoted. I reached out and began helping others in the program.

In my early recovery I learned of the newly formed Lawyers Assistance Program. I was attracted to it and its basic goal. LAP then, as now, offers help and hope to the impaired attorney, law student or judge. All of the help and hope is given in the strictest of confidence. As long as I have been associated with LAP I have never heard of a breach of this confidence. In LAP I have seen professions saved. I have seen families saved. I have seen lives saved.

Recovery and helping others has shaped my personal and professional life. I was elected as an Associate Judge in 1985 and elected a Circuit Judge in 1994. I joined the Appellate Court in 2005. I am most grateful not only for the opportunities I have had since recognizing my inner-storm but also for the strength to overcome it and again live in a way that expresses my deepest values.

With the help of my Higher Power I shall always have my door and my heart open to someone in need of assistance with his or her recovery. ■

almost always involves a referral to LAP. Disciplinary Commission Rule 108. The Judicial Inquiry Board also works with LAP by sending referrals. It is important to realize that neither agency requests any information from LAP. If they did LAP would have to refuse pursuant to Rule 1.6. The former head of the ARDC often said: "We are aware of what LAP does. The more work that LAP does, the less work we have to do."

Everyone likes us. Everyone helps us. That's an important message to send to troubled judges, lawyers and law students who fear disclosure.

Understanding alcohol and drug abuse will make us better judges, better attorneys and better law students. We will understand why some people behave the way they do. We will have a better idea of what to do about it. Alcohol and drug abuse keeps coming up in criminal, domestic violence, and domestic relation cases. Not to mention our own lives and the lives of people close to us.

Either you will be part of the solution by reaching out to offer help, or you will be part of the problem by doing nothing. When you come across an impaired person in our profession, and you will, we urge you to take appropriate responsible action, which can start with a call to LAP. Warning Signs

Editor's note: The preceding articles by Justices Warren Wolfson and Michael Murphy were first published in the October issue of the CBA Record and are reprinted with permission.

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Chicago, Illinois 60603
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200 West Third Street, Suite 305
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toll free: 800.LAP.1233
email: gethelp@illinoislap.org
Web site: www.illinoislap.org

An MCLE program on "Colleagues in Crisis"

By Julie Ann Sebastian

On Friday, December 7, 2007, at 9:30 a.m., at part of the ISBA Midyear Meeting at the Sheraton in Chicago, the ISBA Bench & Bar Section and Illinois Judges Association, together with the Commission on Professionalism of the Illinois Supreme Court, will present "Colleagues in Crisis." The hope—and intent—of this CLE program is to empower each of us, in our professional community, to assist colleagues in need, as we would help family members and friends. The Chicago program is an encore. The first program in DuPage County, with the assistance and leadership of Judge Ann Jorgensen, a member of the ISBA Bench & Bar Section Council, followed the tragic death of three lawyers. That program highlighted the need for more discussion and education about members of the profession at risk—at risk of alcoholism, depression, and other mental health issues including drug addiction and gambling, also an addiction. Brigid Suffield recruited each of the panelists, all of whom have participated in either a lawyer or non-lawyer intervention, for

this Midyear Meeting CLE. The panel members will discuss recognizing early warning signs of problems and ways to address the problems. Hon. Ann Jorgensen, of the 18th Judicial Circuit, Wheaton, will introduce the distinguished panel members:

Hon. Michael Caldwell, 22nd Judicial Circuit Court, Woodstock;

Carol A. Coon, M.S., J.D., L.C.P.C., Hinsdale;

Brigid Duffield, Law Office of Brigid A. Duffield, P.C., Wheaton;

Mary T. Robinson, Ethics and Professional Responsibility Consulting, Downers Grove; and,

Benedict Schwarz II, Law Offices of Benedict Schwarz, II, West Dundee.

As part of the Midyear Meeting, the ISBA offers this CLE program free to attendees. Preregistration is required. Call the ISBA at 800-252-8908 or register at isba.org. The ISBA has applied for two hours of MCLE credit and requested two hours of PMCLE credit.

Recent appointments and retirements

1. The Illinois Supreme Court, pursuant to its constitutional authority, has appointed the following to be Circuit Judge:
 - Hon. John J. Kinsella, 18th Circuit, October 9, 2007
 - Richard M. Stock, 18th Circuit, October 15, 2007
2. Pursuant to its constitutional authority, the Supreme Court has recalled the following to be Circuit Judge:
 - Hon. Donald J. Hennessy, 18th Circuit, October 1, 2007
3. The Circuit Judges have appointed the following to be Associate Judges:
 - Paul M. Fullerton, 18th Circuit, October 11, 2007

- Raymond A. Nash, 12th Circuit, October 19, 2007
 - Luis A. Berrones, 19th Circuit, October 29, 2007
 - Veronica M. O'Malley, 19th Circuit, October 29, 2007
4. The Illinois Supreme Court has accepted the resignations of the following judges:
 - James F. Henry, Cook County Circuit, 14th subcircuit, October 31, 2007
 - Angus Sinclair More, Jr., 17th Circuit, October 31, 2007
 - Brian M. Nemenoff, 10th Circuit, October 31, 2007

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