



**The Catholic Lawyers
Guild of Chicago**

March 7, 2018

Hon. John C. Anderson, Twelfth Judicial Circuit
Illinois Supreme Court Rules Committee, Chair
Administrative Office of the Illinois Courts
222 N. LaSalle Street, 13th Floor
Chicago, IL 60601

Re: Proposal 17-07

Dear Judge Anderson:

The Catholic Lawyers Guild of Chicago (“Guild”) strongly supports Proposal 17-07, providing a privilege for parties participating in a restorative justice practice.

At the Guild’s 2015 Annual Lenten Retreat, Cardinal Blase J. Cupich, Archbishop of Chicago, charged members of the Guild with advancing the use of restorative justice practices in the courts, in the schools, and in the community. In response, the Guild formed the Restorative Justice Committee to examine how the legal community might best support restorative justice practices. Under the leadership of the committee’s chair, R. Matthew Simon, President of the Helen Brach Foundation, we studied restorative justice practices by speaking with practitioners from the community: Father Dave Kelly C.P.P.S., Precious Blood Ministry of Reconciliation; Judge Colleen Sheehan, Circuit Court of Cook County; Professors Shelia Murphy and Michael Seng, John Marshall Law School, and many others.

While we grew to appreciate how restorative justice very effectively repairs harm inflicted upon the victim and the community, we discovered that offenders risk their liberty by participating in restorative justice practices. Offenders are encouraged to be totally honest about their past. Indeed, this honesty allows the victim and community representatives to understand fully the offender’s situation and for the circle to come up with a truly appropriate resolution. Thus complete honesty makes for the best outcomes. However, absent a legal guarantee of

confidentiality, any admissions by offenders would be admissible in other proceedings. Consequently, defense lawyers are understandably wary about allowing their clients to participate in restorative practices. For these reasons, the lack of a confidentiality law seriously imperils the future of restorative justice in Illinois.

To tackle this problem, a subcommittee was formed under the leadership of the Honorable Stuart Katz of the Circuit Court of Cook County's Juvenile Justice Division and Member of the Juvenile Justice Committee of the Illinois Supreme Court. That subcommittee drafted Proposal 17-07. The proposed rule makes inadmissible in any tribunal all communications occurring during a legitimate restorative justice practice. The proposed rule also delineates exceptions to the privilege and circumstances under which the privilege may be waived.

By adopting the proposed rule, the Illinois Supreme Court would be acting consistently with the restorative justice policies endorsed by American Bar Association. In 1994, the ABA passed a resolution regarding confidentiality in victim-offender mediation: the law should make "statements made by the victims and offenders and documents and other materials produced during the mediation/dialogue process inadmissible in criminal or civil proceedings."¹

By privileging communications occurring within a restorative justice practice, the Illinois Supreme Court will foster the use of restorative justice and empower communities to explore local remedies. If adopted, the proposed rule would also allow the courts to operate effectively. Consistent with Juvenile Justice Reform Act of 1998, courts throughout the state have adopted the principles of balanced and restorative justice. Expanding restorative justice to emerging adults, the Circuit Court of Cook County recently launched the Restorative Justice Community Court in North Lawndale, where offenders take accountability for their actions and then work out an agreement with the person harmed and the community. Without the protections offered under the proposed rule, few defendants will participate fully in these court-approved restorative practices. For these court initiatives to succeed, Proposal 17-07 must be adopted.

For all of the above reasons, the Guild strongly urges the Rules Committee to recommend adoption of proposal 17-07 to the Illinois Supreme Court. This privilege will make widespread use restorative justice practices possible. Such practices will help us build more just and peaceful communities in Illinois.

Very truly yours,



Hon. Thomas More Donnelly, President

c: Jan Zekich, Secretary, Illinois Supreme Court Rules Committee

¹ Appendix: Requirement No. 8

https://www.americanbar.org/content/dam/aba/directories/policy/1994_am_101b.authcheckdam.pdf