

'Surrender' Note Warrants Med Mal Retrial, Ill. Justices Hear

By [Lauraann Wood](#) · [Listen to article](#)

Law360 (November 18, 2025, 9:30 PM EST) -- A below-the-knee amputee who lost his medical malpractice trial urged the [Illinois Supreme Court](#) to order a retrial in his case Tuesday, arguing a note stating a juror sided with the defense simply to end deliberations proves the verdict was not unanimous.

Counsel for plaintiff Robert Schilling said during oral arguments that the state high court should reverse the two lower courts that refused to order a redo in his case against Dr. Greg Love and his employer Quincy Physicians and Surgeons Clinic because the juror's so-called "surrender note" makes clear that Schilling's constitutional right to a unanimous jury verdict was violated.

The jury signaled a potential deadlock in deliberations before the juror note at issue, and after sending the surrender note received the court's so-called Prim instruction to continue deliberating with open minds and without abandoning their personal convictions to reach a unanimous decision, Andrew Mahoney of Crowley Prill & Mahoney told the state high court.

But "in order to make the verdict work here, we have to speculate about what that juror did after the Prim instruction was issued," he said. Love and the lower courts have speculated that the juror reassumed the civic duty he or she had already clearly abandoned, continued deliberating and had reached a genuine verdict, but no evidence exists to support any such assumptions, he argued.

"Ultimately, I think there is one clear way in this case in which we could all stop using that word ... and that's if there had been some further polling" of the jurors beyond asking them individually in each other's presence whether it had been and still was their decision to side with Love, Mahoney argued.

Court precedent outlines steps other courts have taken to poll jurors deeper without asking them to divulge any deliberation details, Mahoney told the state high court. The trial court could have taken that route but been "a little more targeted" in its approach by asking the jurors, individually and outside other jurors' presence, whether they authored the note, whether they were still experiencing issues and whether their rationale had changed, he said.

"In that way, we eliminate this idea of speculation, and we can correct the record," Mahoney argued.

The trial court's failure to probe the note any deeper constitutes an abuse of discretion because it led to lacking any correction to the juror's explicit reasoning for deciding to side with the defense, Mahoney told the state high court.

"And the only way that we can come to terms with a verdict in this case is to essentially interpret the surrender note away from what was meant or assume without evidence that the juror did change their mind," he argued. "I think that's the problem we're left with."

However, James Hansen of [Schmiedeskamp Robertson Neu & Mitchell LLP](#), who represents Love and his employer, argued the lower courts were right to leave his client's trial win intact, and the state high court should follow suit.

The jury's deliberation timeline is important to consider because although the surrender note stated a juror was going to sign the verdict form, the jury instead continued deliberating for 50 minutes after receiving the court's Prim instruction before it eventually delivered a defense verdict, Hansen told the court.

The jury also sent an additional note regarding the governing standard of negligence before it ultimately came back with its verdict, Hansen said.

"It is our position that the Prim instruction did exactly what it should do in these types of cases," he argued.

Requiring further polling of the jury in Schilling's case could lead courts down "a very slippery slope," Hansen told the state high court. Part of Schilling's case stems from observing a juror who sighed and paused before answering the court's polling question, but in further polling, "what if [that juror] said 'no, I'm just exasperated and glad this is all over?'" he said.

The same question could be asked of a juror who pauses and closes their eyes, or looks up or down, or coughs, or shrugs their shoulders during polling, Hansen told the state high court.

"The point in all of that is a pause and a 'yes' does not equal 'no,'" he argued.

Schilling, who is diabetic, sued Love and Quincy Physicians for medical negligence after he sought treatment for foot pain but only received a podiatrist referral and treatment for cellulitis before learning at his referral appointment that he had several fractures that required surgeries and eventual foot amputation. Schilling claimed he wouldn't have need either surgery or amputation if Love had ordered an X-ray following the initial complaint and told him to keep weight off his affected foot.

In the surrender note, a juror stated "for the record" that the individual was "firm" in supporting Schilling but would sign a verdict form in Love's favor "only" to end deliberations after several hours of deadlocked deliberations.

An intermediate appellate panel said the trial court correctly denied Schilling's request for a mistrial because its post-verdict polling method was not clearly unreasonable, as it asked the jury the "standard" polling question after receiving the verdict. The trial court had the opportunity to observe the sighing and pausing juror during polling but didn't discern a need for further polling, and "we cannot substitute our judgment for the trial court's" to determine whether the response justified more questioning, the intermediate appellate panel said.

Schilling is represented by Andrew Mahoney and Edward Prill of Crowley Prill & Mahoney.

Love and Quincy Physicians and Surgeons Clinic are represented by James Hansen of Schmiedeskamp Robertson Neu & Mitchell LLP.

The case is Schilling v. Love et al., case number 131411, before the Illinois Supreme Court.

--Editing by Kristen Becker.

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