



EVICTIION MEDIATION

INTRO TO THE ROCK ISLAND COUNTY EVICTION DIVERSION PROGRAM (EDP)

MEDIATOR SKILLS & RESPONSIBILITIES



- This training is being recorded.
- If you are watching the live training, please put your questions in the chat and we will address them at the end.
- Additional questions:
 - Jennifer Kincaid, j.kincaid@silvislaw.com
 - Michelle Fitzsimmons, mfitzsimmons@co.rock-island.il.us



QUESTIONS?

WHAT IS COVERED TODAY?

- Local Rule Part 26A for EDP
- EDP Mediation Logistics
- Eviction 101
- The Mediation Process
- Ethical Considerations
- Confidentiality
- Distance Mediation
 - Telephone
 - Video
- Interpreters
- Handling Emotions
- Power Imbalance





**BUT FIRST,
WHY DO WE NEED AN EVICTION DIVERSION PROGRAM?**



COVID-19 AND EVICTIONS

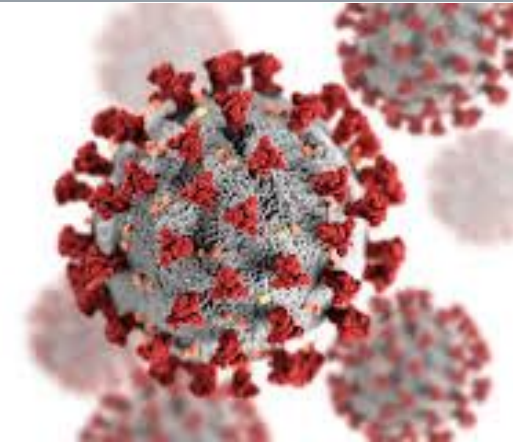
- The IL Supreme Court has strongly encouraged circuits to develop Eviction Diversion Programs to lessen the burden on the court schedule, abate the number of people removed from their homes, and reach agreements that will allow parties time to apply for available federal funds.



DEFINITIONS

Words like “eviction” and “diversion” are commonly understood. Unfortunately, they are often understood differently by different people.

- ❑ Eviction – The legal process whereby a landlord goes to court to remove a tenant and regain possession of the property.
- ❑ Diversion – Avoiding an eviction filing or avoiding a judgment for possession. Some programs divert cases prior to the filing of an action in court while other divert cases after they are on the court’s docket.
- ❑ Eviction Diversion Program – A program to help resolve landlord-tenant issues without a judgment for possession being entered against the tenant, usually with multiple components and partners.



EVICTION DIVERSION PROGRAM (EDP)

Local Rule - Part 26A

EDP -- LOCAL RULE PART 26A

- Fourteenth Judicial Circuit Local Court Rules, Part 26A — Addendum to Rule 26
- All eviction cases will be assigned to an automatic case management court date, scheduled at least 14 days after the eviction is filed (similar in nature to the previous “return date”).
- At the case management date, the judge will assign the case to mediation. The court will determine if cases are not appropriate for mediation and set for trial.
- Cases referred to EDP: A second case management date is set 7-14 days following the first court date to allow for mediation. Agreements can be entered prior to or at this second court date. Unresolved matters can then be scheduled for trial.
- At least one continued case management date is allowed if the parties are referred to EDP but are unable to meet with the mediator prior to the court date.

EDP, CONT.

- Parties required to be present for mediation.
 - If the party is represented by an attorney, the attorney must attend mediation unless excused by court order (Rule 26).
 - If the party is a public entity or is not a natural person, a representative with authority to negotiate on behalf of the party must be present along with the counsel of record.
- A mediator may communicate with a party outside the presence of the other party.
- Parties and their counsel are allowed to caucus or confer privately at any time.
- The mediator may adjourn the meeting at any time and set a time to reconvene. Mediator shall provide in writing (or email) the date, time & place for reconvening the adjourned session.
- On motion of either party, the court may enter an order terminating mediation for good cause shown.
- Mediation may be done remotely via video or telephone.



HOW MEDIATION IS HANDLED

- Mediators who complete this training shall notify Court Administrator, Victoria Bluedorn at vbluedorn@co.rock-island.il.us, providing their contact information.
- Assigned Mediators will be provided the names of the parties and their contact information (e-mail and phone). Mediators will need to do a conflict check before beginning mediation.
- Mediators will have access to the court file and may review pleadings and other filings prior to mediation.
- Mediators will contact the parties to schedule mediation. Mediators may choose how mediation is done (i.e., in-person, via zoom, etc.)
- Mediators will notify clerk when mediation has concluded and complete a short form regarding outcome.
- Mediators will email proposed agreed orders or written settlement agreements to the clerk (cr302@co.rock-island.il.us); the parties will reappear before the Judge to submit the agreement for entry.



MEDIATION Cont.

The mediator is responsible for:

- Contacting the parties and clerk if the mediation date must be rescheduled. Mediator should notify court administration if mediation cannot be completed before the next court date.
- Arranging the place if the mediation is in person. The Arbitration Center is available for in-person mediations and can be scheduled through Court Admin.
- Setting up the call and contacting the parties, if mediation is done by phone. Arranging the video platform, such as Zoom or Teams, and providing that login info to the parties.
- Making sure the agreement is signed and submitted to the clerk (if no attorneys of record).



RESOLUTIONS UNDER EDP

Resolution Reached

- Parties with attorneys may submit signed agreements as proposed orders via e-filing
- Mediators will submit signed agreements to the clerk via email to: cr302@co.rock-island.il.us
- The court will determine if the proposed order disposes of the case or if another status hearing is necessary to ensure compliance.
- Parties may also agree to a compliance hearing.

NO Resolution Reached

If no agreement is reached in mediation, OR if the parties have failed to meet the terms of the agreement:

- Mediators will notify the clerk via e-mail to: cr302@co.rock-island.il.us (include the case #)
- The court will decide how to proceed—likely a contested trial will be scheduled.



SETTLEMENT AGREEMENT -- FORMS

IL Statewide Eviction Forms: <http://www.illinoiscourts.gov/forms/approved/eviction/eviction.asp>

- Agreed Dismissal Order
 - Best option -- allows for repayment agreements and selection of either a move-out date or allowing tenants to remain. No compliance date needed; matter may be reinstated if Defendants violation the agreement.
- Agreed Settlement Order with Status Date (Defendants Agree to Move)
 - Plaintiff agrees to dismiss the case if Defendants move out by a certain date.
- Agreed Settlement Order with Status Date (Pay & Stay)
 - Plaintiff agrees to let Defendants stay if Defendants pay a specific amount of money by a certain date. Case dismissed if money paid as agreed.
- Compliance (Follow Up) Order in Eviction Case
 - Typically needed if using one of the Agreed Settlement Orders above.



EVICTION 101

BASICS TO HELP YOU NAVIGATE & REACH AN AMICABLE RESOLUTION



THE EVICTION ACT –735 ILCS 5/9-101 ET SEQ

- Governs the procedure for evicting tenants and obtaining judgments against them for unpaid rent.
- “The sole means for settling a dispute over the possession of real property,” Harper Square Housing Corp. v. Hayes, 305 Ill. App. 3d 955 (1st Dist. 1999)
- Strict compliance with the statute is required

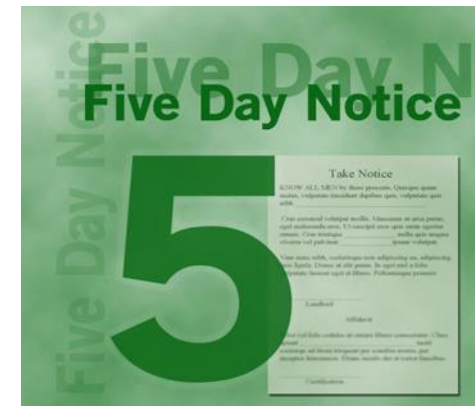


TERMINATION NOTICES

- In most cases, the LL must serve the tenant with a termination notice before filing a lawsuit to recover possession of the premises.
- Exceptions: term of tenancy fixed, tenant has waived right to written notice, dangerous criminal activity
- All notices must provide a date that the lease will terminate; however, the notice period will not begin until the day *after* the notice is properly served.
- Several different kinds of notices—we will cover the 5-Day Notice, 10-Day Notice, and the 30-Day Notice.

THE 5 DAY NOTICE -- 735 ILCS 5/9-209

- 5-Day Notice for nonpayment of rent—if rent is not paid in five days after service with the notice, tenancy will be terminated. Notice must include a “legal demand for a sum certain.”
- Notice cannot be served until the day after rent is due.
- Tenant may “cure” notice by paying the rent due within the 5 day period.
- Count additional business day if 5th day falls on weekend or holiday



THE 10 DAY NOTICE -- 735 ILCS 5/9-210

- 10-Day Notice—for violation of lease provision(s). Must include description of breach. For written leases only.
- No opportunity to cure (unless provided for in the notice). Low-income housing may have right to meet with LL to discuss notice.
- Must specify move-out date.
- Notice does NOT have to be notarized; however, must be properly served.
- Not required to be served by the sheriff.



THE 30 DAY NOTICE -- 735 ILCS 5/9-207(b)

- Used in month-to-month tenancies
- “In all cases of tenancy for any term less than one year, other than tenancy from week to week, where the tenant holds over without special agreement, the landlord may terminate the tenancy by 30 days' notice, in writing, and may maintain an action for eviction or ejection.”
- No reason for the 30 Day Notice required
- Must be served no later than 30 days prior to date of termination (e.g., to terminate tenancy at the end of February, the notice must be served on or before January 29th).

SERVICE OF THE NOTICE -- 735 ILCS 5/9-211

- Hand-deliver to the tenant
- Leave with someone 13 years of age and up who lives in the residence
- Send copy by certified or registered mail with return receipt requested
- Posting when no one is in actual possession (common mistake by landlords)
 - American Management v. Carter, 392 Ill.App.3d 39 (3rd Dist. 2009)
 - Figueroa v. Deacon, 404 Ill.App.3d 48 (1st Dist. 2010)

OTHER CONSIDERATIONS...

- Will the LL collect on the money judgment for unpaid rent?
- 735 ILCS 5/12-803—Wages subject to collection. The wages, salary, commissions and bonuses subject to collection under a deduction order, for any work week shall be the lesser of (1) 15% of such gross amount paid for that week or (2) the amount by which disposable earnings for a week exceed 45 times [the minimum wage -- state or federal, whichever is higher]
 - $45 \times \$10.00 = \$450/\text{week}$
- Other income protected from collection include (but not limited to): Social Security benefits, unemployment insurance, Veteran's benefits, child support, maintenance, SNAP.
- Current Moratorium stays collection efforts.



THINGS TO KNOW

- Late fees can only be charged if they are allowed in the lease (must be reasonable and compensate for actual costs; otherwise may be considered unenforceable)
 - For properties covered under the CARES Act, no late fees can be charged for the period of March 27 – July 24, 2020
- Tenant only responsible for fees and charges allowed in a valid lease
- Tenant may be able to seek a rent reduction for habitability or conditions issues with the residence
- Security Deposits:
 - LL under no obligation to return or apply deposit before the termination of tenancy. LL has 30 days to refund or send itemized list of damages.
 - Deposit may be applied to rent owed, damages caused by the tenant and anything beyond “normal wear and tear.”

AVAILABLE FINANCIAL RESOURCES

IL Housing Development Authority (IHDA) program -- IL Rental Payment Program

- Rental assistance for tenants behind on rent
- Grants are specific to the individual's needs; up to \$25,000 or 15 months
- No SSN or citizenship requirements for tenants
- Tenants and LLs must have email addresses set up before applying



Online applications will be available at <https://illinoishousinghelp.org/>. LLs or Tenant may start the application process.

LOCAL RESOURCES

- Project NOW
 - (309) 793-6391 (Rock Island); (309) 764-8092 (Moline)
 - <https://www.projectnow.org/housing-programs.php>
 - info@projectnow.org
 - *Provides funds to pay for rent and deposits to help prevent people from becoming homeless. These funds may be accessed to keep someone in their current housing or obtain new housing.*
- Quad Cities Salvation Army
 - (563) 324-4808
 - <https://centralusa.salvationarmy.org/quadcities/>
 - *The Salvation Army provides emergency assistance to help with mortgage/rent, utility bills, clothing, medication bills, and other needs in order to keep families in their homes.*
- Humility Homes - VALOR
 - 563-322-8065
 - <https://www.humilityhomes.org/what-we-do-2>
 - hmsiowa@gmail.com
 - *24/7 helpline. Provides financial assistance and supportive services for Veterans and their families who are experiencing homelessness or at significant risk of becoming homeless.*
- Rock Island County Veterans Assistance Commission
 - (309) 558-3545
 - <https://www.rockislandcounty.org/VeteransAssistance/Home/>
 - *A financial supportive program designed to assist the eligible veterans of Rock Island County and their families with basic necessities. Must have served on active duty in the Armed Forces of the United States and have proof of being Honorably discharged.*



The Mediation Process

Philosophy & 7 Stage Model



MEDIATION: PHILOSOPHY & VALUES

Mediation is a forum in which a neutral third party facilitates communication between parties to promote settlement. A mediator may not impose his or her own judgment on the issues for that of the parties.

Mediation is based on the principle of self-determination by the parties. It requires that the mediation process rely upon the ability of the parties to reach a voluntary, uncoerced agreement. The primary responsibility for the resolution of a dispute and the shaping of a settlement agreement rests with the parties.

Mediation has a:

- Structure
- Set of ethical and pragmatic guidelines
- Focus on interests at its core



7 STAGE MODEL -- STEPS 1 & 2

1. Introductions

- a. Opening by the mediator - benefits of mediation & reminder of the mediator's role
- b. Agreement to confidentiality
- c. Ensure all parties present have settlement authority
- d. Joint sessions v. one-on-one sessions (caucus)
- e. Ending mediation -- by either party or the mediator. What happens if there is or isn't an agreement?
- f. Technology overview (emails, breakout rooms, chat) -- email and phone numbers in chat box

2. Problem Determination

- a. Each party will have an opportunity to explain their position (specific solutions which a party proposes)
- b. Use **active listening skills** to draw out the underlying interests of the parties

ACTIVE LISTENING -- FACES

Active Listening in a mediation session accomplishes the following:

- Lets the parties know they are being heard and understood
- Accurately assesses the situation as it is
- Helps clarify what is being said
- Communicates acceptance of feelings without agreeing with or approving of them
- Reduces emotions that block problem solving

FACES

Focus: Posture and eye contact should reflect you are listening

Attend: Pay attention to the speaker's words and emotional affect

Clarify: Paraphrase what you heard to be sure you have not made incorrect assumptions; use open-ended questions to encourage parties to elaborate

Empathize: Acknowledge feelings as valid, that each is entitled to his or her own point of view

Summarize: Using neutral language, re-state your understanding of the person's concerns & issues, providing the speaker with the chance to confirm or amend the meaning of what he/she said.

7 STAGE MODEL, CONT. -- STEPS 3 & 4

3. **Summarizing**

- a. Mediator will summarize each party's position, focusing on interests.
- b. Interests are needs which must be satisfied to resolve the conflict.

4. **Issue Identification**

- a. Reach an agreement on issues to discuss.
- b. Issues are elements of a dispute which are capable of being addressed in mediation -- the "agenda" for the mediation.
- c. Frame the issues in neutral language and in terms of interests. Reframing is a tool used to restate another person's statement to make it less provocative and more productive.
- d. Prioritize issues -- help the parties choose one topic area and begin to discuss it

7 STAGE MODEL, CONT. -- STEPS 5 & 6

5. **Generation and evaluation of alternatives**

- a. Ensure participation by all parties
- b. Ask neutral non-threatening questions. “What do you most hope can be done here?”
- c. Brainstorm. Emphasize quantity not quality, but set a time limit. Record every idea.
- d. Mediator suggestions in response to parties’ requests (last resort). “Would this be a feasible alternative?”
- e. Important for the mediator to not coerce the parties to accept any particular option.

6. **Selection of appropriate alternatives**

- a. Reality testing -- does the solution meet the parties’ needs or interests?
- b. Help parties compare options and consider BATNA and WATNA (Best Alternative v. Worst Alternative to a Negotiated Settlement).
- c. Focus on benefits and costs of settling or not settling.

KEY POINTS

- Remember your job is not to come up with the options
 - The mediator empowers the parties reach their own results
- The information gathering portion of the mediation is going to be critical
 - Do not jump into options until all of the information is on the table
 - Some people respond better to negotiations if they felt heard by a neutral party

7 STAGE MODEL, CONT. -- STEP 7

7. Conclusion

- a. Impasse: case moves forward as if mediation did not occur
- b. No agreement: case moves forward as if mediation did not occur
- c. Agreement: agreement written and submitted to the Court

Report to the Court that mediation concluded and whether or not there was a settlement

If the parties have arrived at a settlement agreement:

- Review the specifics of the agreement to be certain there is a meeting of the minds on each point.
- Discuss what will happen if the agreement is breached.
- If one or both of the parties has an attorney present in mediation, designate who will draft the agreement and what form will be used.





ETHICAL OBLIGATIONS & CONFIDENTIALITY



ETHICAL OBLIGATIONS

- To be effective, fair and professional, mediators must act as impartial and neutral parties.
- Mediators have an ethical duty to:
 - maintain the privacy and confidentiality of all parties involved in the proceedings and
 - foster an atmosphere of trust.
- It should be made clear from the beginning of the proceedings that no information from the mediation sessions can be used at a later date without permission.

CONFIDENTIALITY

- Ensuring confidentiality can be tricky with distance mediation

- Others could be in the room
- Ask your party if anyone is in the room
- Insist that all unnecessary persons leave the room
- Make sure you are also alone

- Recording

- If the parties agree to record the mediation (option available on platforms such as Zoom, Google Meets, etc.), be sure to include that agreement at the start of the recording with each party stating their consent.



CAUCUSING -- WHEN AND HOW

A caucus is a private meeting between the mediator and each of the parties (and their attorney) individually. It may be initiated by the parties or the mediator.

If you caucus with one party always caucus with the other.

Given the limited time frame, caucusing may assist in establishing each party's interests and prioritize the issues.

In a mediation done by Zoom, mediators can place each party (and their attorney) in a separate breakout room so the mediator can talk privately in the main room with the remaining party.



HOW TO CHOOSE THE MODE OF MEDIATION

PHONE, VIDEO OR IN-PERSON?



THINGS TO CONSIDER WHEN PLANNING MEDIATION

- Mediation may be dictated by COVID restriction or geographical location of the parties or mediator
 - Can consider a hybrid version
- Things to contemplate when choosing your mode of mediation:
 - Do the parties have access to proper equipment?
 - Computers in Court Admin (3rd floor) available. If using computers, schedule mediation before 3:00 p.m.
 - Knowledge of how to use the program and necessary technology skills?
- Have a back-up plan if technology fails
 - E.g., if the Zoom connection is lost, have a conference call line
 - Get all parties phone numbers and emails when the mediation is scheduled



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TELEPHONE TIPS

- Acknowledge the disadvantage: no body language cues
- Ground Rules:
 - No interrupting, unless can't hear or get a word in
- Place phone on mute when not talking
- Remember to speak clearly/loud enough
- Ask everyone to identify themselves each time before speaking



TELEPHONE TIPS, CONT.

- Have everyone introduce themselves
- Ask if anyone is in the room with parties on the phone (confidentiality)
- Acknowledge if there is an audio pause and ask people to wait a bit before jumping in
- Address questions to specific people by name if appropriate
- If you have a hybrid session (some in person, some on phone) be mindful of what is going on in the room and let the phone person know



TELEPHONE & CAUCUS

For caucus between mediator/party or party/attorney:

- You'll have to get creative
- Consider 2 phones: use one phone for conference & use a second phone for caucus
- Ask everyone to disconnect, leaving only parties caucusing on the line
 - Must have a plan for notifying other party when it's time to call back in
 - If the mediator is not part of the caucus, may need to stay on the line to keep the call going. Mediator can place him/herself on hold & mute conversation
- If you have other ideas, please put them in the chat



VIDEO TIPS

- Test your equipment before the call!
- If hybrid video/phone, put parties on the phone on speaker so they can be heard on video
- Consider the background that will be showing on camera
- Look directly into the camera
- There may be a slight audio delay, so make sure to pause after questions
- Avoid big gestures and noises (like tapping a pencil), as this will cause the camera to focus on you rather than whoever is speaking

VIDEO TIPS

- Some video programs like Zoom have a “breakout room” and a “waiting room” feature. Both can be used for caucus. Can also use a phone for caucus.
 - Become very familiar with breakout/waiting rooms and their limitations
- Set time limits for the breakout rooms and inform the parties of the time restrictions
- Host can “barge in” on breakout rooms, if necessary
- Parties in breakout room can elect to return to the main room at any time unless restrictions in place

INTERPRETERS

- Interpreters should be provided through the court
- Allow extra time
- Check with parties about their needs
- Ask your interpreter about breaks
 - Plan a signal
- Speak slowly, don't pause unnaturally
- Look at the party, not the interpreter
- Avoid idioms (words or phrases that aren't meant to be taken literally, i.e. "cold feet")





THERE WILL BE EMOTIONS

MEDIATION SKILLS TO HANDLE HIGH EMOTIONS

- Use good information gathering techniques
 - Open-ended (rather than closed) questions
- Active listening skills
 - “You have said a lot. Let me see if I understand...”
 - “What I think I hear you saying is...”
 - “As I understand it, you feel that...”
- Acknowledge emotions to help people feel heard
 - “It sounds as if this is causing you a lot of stress”
- Summarize throughout the mediation
 - “You are making progress. It appears you’d both like to amend the lease to...”



HOW TO DEAL WITH A ZINGER: HIERARCHY OF COMMUNICATION SKILLS

1. Ignore
2. Ask a question or summarize
3. Acknowledge
4. Reframe to positive
5. Normalize
6. Identify triggers
7. Inform speaker of effect on listener





ISSUE: POWER IMBALANCE



DEALING WITH THE POWER IMBALANCE

There will be a power imbalance here

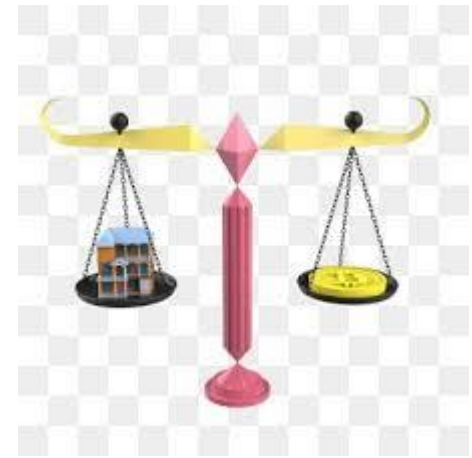
- Resist the temptation to “re-balance” power
 - Actions cannot change disparities
 - Mediator’s role will likely be compromised
- Cultivate **empowerment** through facilitative encouragement, belief in **self-determination** and maintaining impartiality and neutrality



TIPS FOR DEALING WITH POWER IMBALANCE

Techniques:

- Let the less powerful person speak first
- Do not let a more powerful person/bully dominate
- Caucus if you feel it is out of control to see if you can facilitate a different approach



SAMPLE ZOOM MEDIATION

<https://drive.google.com/file/d/14nZQKLYfcHWqXAZXOfPNhJ2Pjc0teSKe/view?usp=sharing>





POSSIBLE RESOLUTIONS



WHAT DOES A RESOLUTION LOOK LIKE?

Use Statewide Forms--But, keep in mind that resolution can be whatever the parties want!

- Actual amount owed
- Firm move out date
- Property left cleaned and in good repair
- Security Deposit returned, applied, waived
- No referral to collections or reflection on credit report
- Continuing the case pending approval of assistance application
- No eviction (cases dismissed and sealed)
- Positive or neutral references
- Agreement to waive or reduce amounts due
- Renegotiation/consolidation of past repayment plans



WHAT DOES A RESOLUTION LOOK LIKE? (CONT.)

- Exchange of goods and services for rent
 - Pledge of future unemployment payouts or stimulus payments
 - Cooperating to apply for rental assistance
 - Sublease, assignment, roommate(s)
 - Reductions in monthly rent amount, temporary or permanent
 - Termination of lease without penalty
- Repayment agreements
 - No rent until X date then Y amount going forward (base rent plus some additional amount)
 - Partial payments of X amount until Y happens, then Z amount going forward
 - No rent until X happens, then full payment of back rent and full or reduced rent forward



WHAT DOES A RESOLUTION LOOK LIKE? (CONT.)

The only resolution that will work is one that is sustainable

- No payment plan or agreement makes sense if it is likely to result in a breach, nonpayment, and eviction
- Rental assistance programs focus on keeping people housed; not just back rent is available. A party may be eligible for moving expenses, deposits, and first-month rent
- What's the plan going forward?



WRAPPING UP -- IMPORTANT EMAILS

To register as a volunteer:

- Provide your name, phone number and email address to [Vicki Bluedorn](#) at vbluedorn@co.rock-island.il.us

When you reschedule a mediation, or need to relay information about a mediation:

- Send an email to cr302@co.rock-island.il.us
- Include the case number in your email

When the mediation has concluded, regardless of the outcome:

- Send the Agreed Orders (if any) and the mediation report to the [circuit clerk](#) at cr302@co.rock-island.il.us
- Include the case number on the forms and in the subject of your email

- Eviction Toolkit and Mediation Information is provided—available on the Rock Island County Circuit Clerk’s website
- Additional training available through the Center for Conflict Resolution (CCR) -- contact Michelle or Jen for more information
- Slides are available--provide email in chat
- Thank you for volunteering!!!



THE END

Remember to e-mail Jen or Michelle with Questions