



MEDIATION SUBMISSION GUIDELINES

TIMING, DELIVERY, AND CONFIDENTIALITY

Please provide your mediation memorandum at least seven days before the mediation. This gives me time to read the submissions carefully and contact counsel before the mediation. Send the memorandum electronically to Chris@WhittenADR.com. Mediation memoranda will remain confidential and should not be exchanged with the other parties unless the parties agree otherwise. If supporting materials are too large for email, please contact me to arrange a secure method of delivery.

WHAT TO INCLUDE

After explaining the factual and procedural background of the case, please address the four subjects that are most useful to me in preparing for mediation: (1) the strengths of your client's position; (2) the weaknesses and meaningful risks in your client's position; (3) prior settlement efforts and why they did not result in resolution; and (4) any barriers to settlement that I should understand before the mediation. Also provide a summary of your view of potential damages or other relief claimed, and any insurance, indemnity, lien, contribution, allocation, or other issue that may affect settlement.

KEEP IT FOCUSED

There is no page limit. Use the space reasonably necessary to help me understand the dispute, but focus on what matters to settlement. Please do not cut and paste lengthy sections from motions or briefs. Write the memorandum for the mediation. Attach the most important exhibits and materials that I should review, such as key contracts, correspondence, deposition excerpts, medical records, expert materials, photographs, damages summaries, or significant court rulings.

NEGOTIATION HISTORY

Please provide a complete negotiation history. For each demand and offer, include the date, amount, and any material non-monetary terms. If negotiations stopped or a proposal was rejected for a reason that may matter at mediation, explain why. If there have been no prior negotiations, please say so.

SETTLEMENT AND RELEASE TERMS

Please identify any terms or provisions that must be included in a settlement agreement or release when the case settles. This includes material nonmonetary terms and any known issues involving confidentiality, releases of additional persons or entities, indemnity, liens, payment timing, dismissal, tax treatment, or other provisions that could prevent the parties from completing an agreement at the mediation.

PRE-MEDIATION CALLS

After reviewing the submissions, I will normally schedule a short telephone or video conference with counsel for each party. These calls are part of my preparation. They allow me to clarify positions, identify obstacles to settlement, and address issues before the mediation begins. Counsel and the parties are expected to cooperate in scheduling and participating in that process.

THE GOAL

The submission is not a summary-judgment brief. Its purpose is to help me understand the dispute, the risks each side faces, what has prevented resolution, and what may create a path to settlement. Candor and practical judgment are more helpful than advocacy alone.