

# Writing Your Mediation Brief: A Focused Guide

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The mediation brief is not a trial/arbitration brief! It's an opportunity to shape a negotiation process, highlight what matters, and help the mediator understand where resolution may be possible.

## 1. Format

- Talk to your mediator about their preferred format, page limit, number of exhibits, etc.. Typically, a mediation brief is more informal than traditional court/arbitral submissions; letter format is often preferred.
- If the statement is being shared with other parties:
  - Consider how this exercise will serve the goal of creating a collaborative negotiation environment. Shared statements with accusations or underhanded comments may feel satisfying to write; think about how these messages will be received by the other side and if they ultimately serve your client in mediation.
  - Omit sensitive information that you are not ready to share and omit information on your negotiation strategy in shared statements. This information may be shared with the mediator in a separate, confidential submission for mediator eyes only.
  - Shared statements may be helpful when the mediation happens early in the life of the dispute, in order for the parties to be better educated on one another's interests, goals, and perspectives. But care must be taken in making sure that the statement is not overly adversarial, thus making the mediation a much harder conversation than is perhaps necessary.
  - Parties may wish to consider sharing these briefs with the mediator before they share them with one another, in order for the mediator to help protect against the exchange of any unintentionally inflammatory information.

- If the statement is for mediator eyes only:
  - Be candid. It's a confidential submission – any information you share helps the mediator and ultimately, your client.
  - Be circumspect – discuss the dispute from the perspective of your client but think about the other parties involved as well.

## 2. Sections to Consider Including

- Brief overview of the case and procedural history.
  - Summary of factual background relevant to resolution.
  - Concise explanation of liability and damages positions (yours, and your understanding of theirs).
  - Status of settlement discussions to date. If no settlement discussions have happened yet, explain why.
  - Any key/dispositive legal issues or cases the mediator should be aware of (attach where helpful).
- Explanation of negotiation plan
  - Assessment of the litigation risks on both sides.
  - Client's reasonable settlement range (with an explanation as to how these numbers were reached).
  - Exploration of non-monetary options for settlement.
  - Impediments to settlement, including emotional or third-party constraints.
  - Identification of attendees and confirmation of full settlement authority.
  - Include specific requests of the mediator (perhaps relating to the need for some information exchange, an evaluation, handling delicate emotional issues, etc.).

### 3. Substantive Tips

- Focus on how to resolve the case—not why you’re right.
- Avoid rehashing pleadings; the mediator should review these materials separately.
- Use a candid tone; this is a confidential communication.
- Share useful insights about client interests, timing pressures, or relational dynamics.
- Demonstrate you’ve thought through both your position and theirs.
- Be realistic about what is achievable through mediation.
- If impasse is likely, flag any creative proposals or fallback options to explore.

#### **Disclaimer:**

This Writing Your Mediation Brief: A Focused Guide document is provided for informational and educational purposes only. It is not intended to offer legal advice, predict outcomes, or substitute for professional judgment. Use of this document does not create an attorney-client, mediator-party, or any other professional relationship. Parties and counsel should adapt the contents to fit their specific context, goals, and jurisdictional requirements. Mediation processes vary widely, and preparation strategies should be tailored accordingly. If you require legal advice or representation, you should consult a qualified attorney. If you need support in designing or conducting a mediation process, consider engaging a professional mediator or dispute resolution specialist.