

Mediation Offices of Lisa Krakow

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MEDIATION BRIEF GUIDELINES

Ms. Krakow prepares extensively for each mediation, making your brief an extremely important component of the process. Without doubt, the mediation of a lawsuit is one of the most significant moments in the life of any litigation. Thought, time and attention devoted to a mediation brief will reap enormous value by allowing the mediator to be fully versed about the strengths of your client's position.

The following guidelines are intended to answer basic questions regarding the submission of mediation briefs, as well as offer suggestions to maximize their utility.

CONFIDENTIALITY

Your mediation brief should be submitted **confidentially**, i.e., not shared with the other side. If this is not your normal habit, and you are strongly opposed, please contact Ms. Krakow to discuss the matter **before** disclosing your brief to your opposing counsel.

METHOD OF SUBMISSION

If time permits, Ms. Krakow prefers to receive a hard copy of both the mediation brief and exhibits. But in either event, please submit at least one copy of the materials by email, as a safety measure in case of a snafu or unexpected postal delay.

DEADLINE

Generally speaking, mediation briefs are due five days in advance of the mediation. However, calendar complications may require a different deadline, so check the confirmation email you received to determine the specific deadline in your case.

If it will be difficult to comply with the stated deadline, please contact Ms. Krakow as early as possible to determine if a later deadline can be arranged.

FORMAT

Ms. Krakow strongly prefers that briefs be presented in the form of a letter (as opposed to a pleading format). She believes letter briefs encourage a more candid, informal, and effective communication style. The best briefs are those that read like a story, and are typically written in a casual voice, as if the author is informally talking to the mediator.

STYLE AND PURPOSE

A mediation brief is most useful when it aims simply to provide information and arguments that can be leveraged with the other side, and does so through a cohesive narrative. Avoid hyperbole and unbridled advocacy, both of which are distracting and can even diminish credibility.

Remember – the purpose of your brief is not to persuade a neutral mediator to adopt your perspective and condemn the other side's view as illegitimate. The goal, instead, is to cogently present the factual evidence that supports your legal theories and/or defenses.

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CONTENT

Your mediation brief should include:

- an introduction, briefly setting out the basic outline of the case, including the most relevant legal claims.
(If you want to list literally every cause of action asserted, do so in a footnote. What is more helpful to know is which claims comprise the essence of the case.)
- the procedural status of the litigation, including what discovery has been completed.
- a summary of the facts. Tell the story from your client's perspective.
- a legal discussion connecting the material facts to the relevant law.
- identification of what you believe are your client's strongest leverage points (which could be factual, legal or intangible).
- a discussion of damages.
- a summary of any prior settlement negotiations.
- any important exhibits.

Please do **not** submit a summary judgment motion in lieu of a mediation brief, as the content, emphasis, and overall objective of the two are different. If you believe Ms. Krakow would benefit from having a copy of your motion, feel free to submit it as an exhibit.

SUPPORTING EVIDENCE

Don't exaggerate. If you state a fact, be sure you can back it up. If you characterize a document, be certain it genuinely says what you claim. If you reference deposition testimony, be sure you haven't stretched it beyond what a transcript, if examined, would support. And if you do allude to deposition testimony, it is helpful if you include, as an exhibit, a highlighted copy of the relevant transcript pages.

SUPPORTING CASE LAW

Ms. Krakow practiced employment law – from both sides – prior to becoming a mediator. Therefore, while it is useful to have a section that connects the dots between the facts in the case and your legal arguments, you do not need to include a lengthy recitation of basic employment law concepts (e.g., prima facie elements or burden-shifting paradigms). To the extent you do refer to legal authorities, please include substantive parentheticals, not just the case citation.

DECLARATIONS

Litigation is often accompanied by distrust between the parties. As a result, it can be difficult to generate compelling leverage based solely on an attorney's representation of how a witness will testify. Declarations, on the other hand, often prove persuasive, especially those that focus on the declarant's personal knowledge of relevant facts (as opposed to unfounded or conclusory opinions).

LENGTH

There is no page limit, as cases will vary in their complexity. However, please avoid repetition.