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## Summary Letters as Mediation Tools

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Diana Mercer, Attorney-Mediator, is the founder of Peace Talks Mediation Services in Los Angeles ([www.peace-talks.com](http://www.peace-talks.com)) and the co-author of *Your Divorce Advisor: A Lawyer and a Psychologist Guide You Through the Legal and Emotional Landscape of Divorce*, (Fireside 2001).

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## Summary Letters as Mediation Tools

We insist on doing summary letters after all of our mediation sessions. The letter sets forth the agenda, the tentative agreements, and the issues and things to think about before the next mediation session as well as a detailed to-do list. The letters are long and time-consuming to draft, despite some model language we use about often-cited topics, but we think it's a valuable part of the mediation process.

Since the summary letter isn't legally binding, and it's simply a record of the session, we tell clients:

These tentative agreements and offers are exactly that—tentative. Nothing is final until it's signed by both of you and submitted to the court. Please think of this letter as a starting place, or a set of building blocks, building toward your ultimate agreement. You may change your mind about some of the agreements or discussions—that's okay. Our only request is that if you do change your mind, please have some alternatives in mind that *will* work for you when you come to the next session. This letter is provided as a basis for further discussions, and we hope that it will help you to measure the considerable progress you made in the first session.

Because mediation is confidential, we also are clear about how we hope clients will use the letters: Although these summary letters are confidential and not admissible in court, we fully expect that you will share them with your lawyer, accountant, therapist or other advisors.

In our practice, it used to be optional, but in the name of saving a few dollars too many clients went without the summary letter and too many mediations fell apart between sessions because neither client had an accurate record of what went on during the session. Our case management compromise (so far) is that we bill for about an hour for the summary letter, even though in reality it takes us 2-3 hours to write. It's worth it to us not to have the mediations fall apart, and the clients see it as a manageable expense. We also don't give them the option of refusing a summary letter—it's just too valuable a tool both for the clients and the mediators.

**What the mediation summary letter does:** The summary letter accomplishes multiple goals: giving clients an opportunity to think about agreements before they become binding, providing an institutional memory of the session, fleshing out discussions that were not finished, encouraging clients to think of creative solutions between sessions and underscoring progress made during the sessions.

To avoid pressuring people to make a decision about an important issue on the day of the mediation, we often leave the agreement about the issue as simply that they will investigate their options. The summary letter will outline the discussion, delineate questions to ask their advisors, and set forth a to-do list so that the clients don't have to take copious notes during the session. For clients interested in saving money and doing as much as possible outside of the session, the to-do list can give them some guidance.

Another advantage of the summary letter is that it gives both the clients and the mediator an "institutional memory" of what went on at the session. A good, detailed summary letter can eliminate much of the he said/she said. Even if the mediator makes a mistake in the summary, at least everyone is starting from the same place.

The summary letter can also flesh out discussions that didn't quite get finished, or which might be too technical to be of use during the session. A good example of this is the explanation of how Qualified Domestic Relations Orders work. "There's a special court order you can use to divide up a pension, so don't worry about how that will happen," might suffice for the mediation session itself, but ultimately the client will need more detail than that. The summary letter is a good place to make sure the clients get the information they need to make a good decision.

We also use the summary letters to ask the clients to expand their range of options between sessions. We'll ask them to think of different ways to resolve things, or whether they would consider a particular solution, even on a temporary basis. The summary letter is also an opportunity to acknowledge high points in



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the mediation, point out progress made, and gently encourage clients to keep thinking about certain issues.

Sometimes it's hard to convey the benefits of the summary letters to clients before they've actually seen one, but most are grateful that you've insisted once they see the finished product. It makes case management and mediation session planning easier because you have a great summary of the last meeting, and it helps clients stay organized, too.