

**What Happens Before the First Mediation Session?
An Empirical Study of Pre-Session Communications**

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Mediator, lawyer, and party preparation in advance of the first formal mediation session is widely seen as important for the effectiveness of the mediation. Communications between the mediator and the mediation participants before the first mediation session, along with the submission of case information and documents to the mediator, are two primary means of information exchange to aid preparation. Despite their centrality to mediation, few studies have looked at what happens during these early stages. The present Article reports the findings of a study of more than 1,000 mediators in different mediation settings and dispute types across eight states that begins to fill the gaps in our empirical knowledge of what happens before the first formal mediation session. The study examines whether and when pre-session communications take place, what case information the mediators have access to before the first mediation session, what factors are related to pre-session communications and document submissions, whether the disputants themselves are present and how much they speak, and which process and substantive issues are discussed.

The findings suggest that current practices contravene conventional mediation thinking and advice and negatively impact the mediators', lawyers', and disputants' ability to prepare for the first mediation session and to customize the mediation process to the needs of the individual case. Moreover, blanket assertions cannot be made about what "typically" occurs before the first mediation session, as what takes place varies between civil and family cases, by the case referral source, and by whether the parties do or do not have counsel, among other factors. The present Article helps lay the groundwork for future empirical research that can deepen our understanding of how mediators and mediation participants can most effectively use pre-session communications and document submissions to prepare for mediation and enhance the quality of the mediation process and its outcomes.