

Early Neutral Evaluation - preparation guidance

Introduction

To ensure you and your clients achieve the best outcome from the ENE process, adequate preparation, including preparing the clients, is important.

The case summaries and documents should be concise and informative. They should also be delivered promptly to allow the evaluator and the parties to keep to the agreed timetable.

In particular:

- Work with the clients on the issues to be evaluated
- Consider your objectives and those of the other party in terms of clarifying issues, minimising future cost and arguments, preparing for constructive negotiations
- Keep any meetings to minimum required.

CEDR guidance notes for advisers – preparation for ENE

Core submissions

These should be brief, clear statements to educate the evaluator. They should cover:

- a factual summary and background
- chronology of events if sequence is essential
- dramatis personae if relevant
- what are the legal issues in the dispute?
- what are the factual issues in the dispute?
- identify common ground and difference
- the court or arbitration timetable and next steps following ENE
- glossary of technical terms if relevant
- schedule of key documents - indexed and paginated
- List of issues for the Evaluator to determine.

Additional documents

Critical documentary evidence will vary from case to case – the aim/purpose is to provide a small relevant bundle of core documentation that adds to the ENE submission rather than replaces the submission.

What should you include?

- key contracts & agreements
- key correspondence
- photographs which assist understanding
- charts or diagrams that are particularly informative
- relevant and important excerpts from witness statements
- relevant and important excerpts from key expert reports
- excerpts from relevant legal authorities.

Generally you should avoid:

- including pleadings
- witness statements – other than extracts
- expert reports – other than extracts
- lengthy legal authorities.

Joint Submissions

An agreed submission setting out background and the issue(s) to be determined may be particularly helpful. However, parties should balance this value against possible additional costs in achieving an agreed document.

Responses and Submissions

Parties may wish to give each other the opportunity to respond to any submissions. Such responses should be kept brief.

Presentations

Oral presentations for the evaluator should be made within time-limits agreed/ determined in advance. They should enhance and illustrate the written submissions rather than replace them.