

CAN UNSUCCESSFUL MEDIATIONS BE BENEFICIAL?

In a recent survey of New York litigators' views of mediation, which I conceived and directed, 86.4% of the interviewees stated that even when settlement was not achieved, there were other beneficial effects that made mediation worthwhile. These included:

- The opportunity to understand and assess adversary's case and witnesses
- The opportunity to assess strengths and weaknesses of your case
- It starts a process that may lead to later settlement
- There is an exchange of information without discovery
- It often makes parties more realistic
- It may narrow or clarify issues
- It provides people with an opportunity to explain their case in their own words and in some cases to vent
- It can lower the emotional temperature
- The mediator may provide an impartial assessment of case
- It sometimes improves attorney communication
- It may force attorneys to consider each party's needs and interests
- It focuses parties on damages

The General Counsel of a prominent corporation summed up this point succinctly: "*Even unsuccessful mediations help you understand the passion and determination of each side, give you the opinion of a neutral on the merits of your case and keep the settlement channels open for future discussions.*"

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