

Mediation Exercise: Benefits and Drawbacks

Instructions: the authors identify several potential benefits and drawbacks to mediation. Reviewing this list, work with your group to decide if an item is a **(B)enefit**, **(D)rawback**, or potentially **(E)ither** or a benefit or drawback.

Indicate your results as follows:

B = Benefit

D = Drawback

E = Can be either – depends on the situation (you can't put "E" for all of them!)

- ___ Mediator cannot impose a settlement
- ___ High success rate (about 80% of mediations settle)
- ___ Relatively low cost (compared to litigation and arbitration)
- ___ Can lead to a better relationship among the parties
- ___ Can duplicate effort if it fails (more cost to go onto arbitration or litigation (i.e., attorney's fees, time) if mediation fails)
- ___ Confidential (this is not the same as "private")
- ___ Private (this is not the same as "confidential")
- ___ Relatively fast (at FINRA, average mediation is done in a few months)
- ___ Allows a creative approach that can't be found in litigation (or even arbitration)
- ___ Societal interest in settling cases out of court (resource issue)
- ___ At FINRA, AAA and other providers, established mediation procedures and rosters
- ___ May be "cheap discovery" – if mediation fails you give your opponent insights into your case