

Mediator's Corner



[Ben Hamburg](#)

The Definition of Success

by [Ben Hamburg](#)

I believe being an effective mediator means being respectful, actively listening, and combining a mix of empathy with the reality of litigation so that the parties feel their positions have been considered, and that they have not just been forced into a settlement. For me, settling a matter alone is not the sign of a successful mediation; if one or both of the parties reasonably feels that the system has failed them because they did not get heard, then I feel I have failed as a mediator. Perhaps that is why in the vast majority of my mediations, both parties walk away feeling happy that they settled, and thank me for helping to resolve their dispute.

In a successful mediation, the mediator will:

- Quickly analyze the main issues;
- Build rapport and credibility with attorneys and parties;
- Encourage participation in the process by the parties so that they have “buy-in” to the process;
- Not ridicule a party’s claims or defenses, or tell a party that their claims or defenses are foolish or “stupid”;
- Conceive creative, sometimes-non-monetary solutions; and
- Convincingly explain, with the aid of experience, the problems with proceeding to trial.

We should all recognize that some parties, no matter what is said by the mediator, view the mediator as part of the judicial system. By striving to make the experience a “success”, the mediator hopefully can produce a settlement, satisfied participants, and trust in the judicial system.

* Ben Hamburg, who recently joined The Mediation Society, is a 1979 graduate' of Boalt Hall, and mediates business, real estate and employment cases.