

#2

**COURT-ANNEXED
EARLY MEDIATION PROGRAM**



**QUESTIONNAIRE
FINDINGS**

**UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA**



DECEMBER 1992

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COURT-ANNEXED EARLY MEDIATION PROGRAM

United States District Court
for the
Eastern District of Pennsylvania



Introduction

THE COURT-ANNEXED EARLY MEDIATION PROGRAM was implemented on an experimental basis in response to the concerns of cost and delay facing civil litigants in the United States District Court for the Eastern District of Pennsylvania. The program's goal is to increase the rate of case resolution early in the litigation process, without the expenditure of judicial resources. As part of its commitment to monitoring the early operation and effectiveness of this experimental program, the court has conducted a survey of attorneys and mediators involved in the initial period of the program's operation. This report presents the results of that survey and provides some important information about the program to date.

BACKGROUND

The Court-Annexed Early Mediation Program is the product of a bench-bar initiative that linked informal suggestions by leading Eastern District practitioners and a receptivity on the part of local judiciary that has been recognized for its efforts to reduce court congestion via Alternative Dispute Resolution (ADR). After intensive committee deliberations, an early mediation program emerged and took effect on an experimental basis beginning January 1, 1991.

In the experimental program, cases in one-half of the docket of the Eastern District are chosen at random (all cases assigned an "odd" docket number when filed), excluding certain categories,¹ and are subjected to a mandatory settlement conference conducted by a volunteer lawyer-mediator at an early point in the litigation. The even-numbered cases, which do not go to mediation, serve as a control group for comparison purposes. Attorney mediators are assigned to cases on a random basis, without regard to the kind of practice, substantive specialty, or background. The Program Guidelines describe the mediation as a "facilitated negotiation process," in which the mediator tries

¹Social security cases, cases in which a prisoner is a party, cases eligible for arbitration pursuant to Local Civil Rule 8, asbestos cases, and any case that a judge determines, *sua sponte*, or on application by an interested party (including the mediator) is not suitable for mediation (Rule 15).

“to bring the parties to, or closer to, a negotiated settlement.”

In order to evaluate the effectiveness of the experimental program from January 1, 1991 through June 10, 1992, a representative of the Federal Judicial Center, along with the members of the Alternative Dispute Resolution Subcommittee of the Federal Courts Committee of the Bar Association of Philadelphia, one judge, and the Clerk of Court, created two questionnaires on the Early Mediation Program—one for attorneys and one for mediators. The questionnaires were mailed to approximately 2,000 attorneys and 350 mediators between August 1, 1992 and September 30, 1992, to cover a total of 788 cases. Questionnaires were mailed to all attorneys and mediators who participated in the program.

Although more than one attorney was associated with each case, usually only one attended the mediation conference, but it was not known which attorneys attended at the time the questionnaires were mailed; therefore, questionnaires were mailed to all of the attorneys, and only those who were actually involved in the mediation conference responded. The number of attorney questionnaires returned, then, actually reflects the number of mediated *cases* in which attorneys were involved. Likewise, many mediators were involved in more than one case, so the number of mediator responses actually reflects the number of *cases* in which they were involved, not the number of mediators.

Data from the first sixteen months of operation suggest that the new program may be accomplishing its intended purpose of increasing the rate of early settlement without expending additional judicial resources. An analysis of all of the District’s civil cases filed in 1991, other than those categories excluded from the mediation program, reveals that, during the case stage in which mediation usually takes place (91 to 180 days after complaint filing), the rate of settlement for mediated cases was 41 percent higher than the rate for cases in the control group.²

RESPONSES

As of December 4, 1992, mediators had completed and returned 347 questionnaires, and attorneys had completed and returned 742 questionnaires.

The responses for all questions are given in the *Findings* section, which follows. It was not always possible for all respondents to answer every question, depending on the time that had elapsed between the mediation conference and the completion of the questionnaire. Thus, the percents shown in the *Findings* section represent the proportion of respondents who actually answered the question. The *Summary & Conclusions* section provides a review and analysis of the responses to the questionnaires. The questionnaires themselves are reproduced in the Appendix.

²Settlement includes voluntary dismissals and consent judgments.

Findings

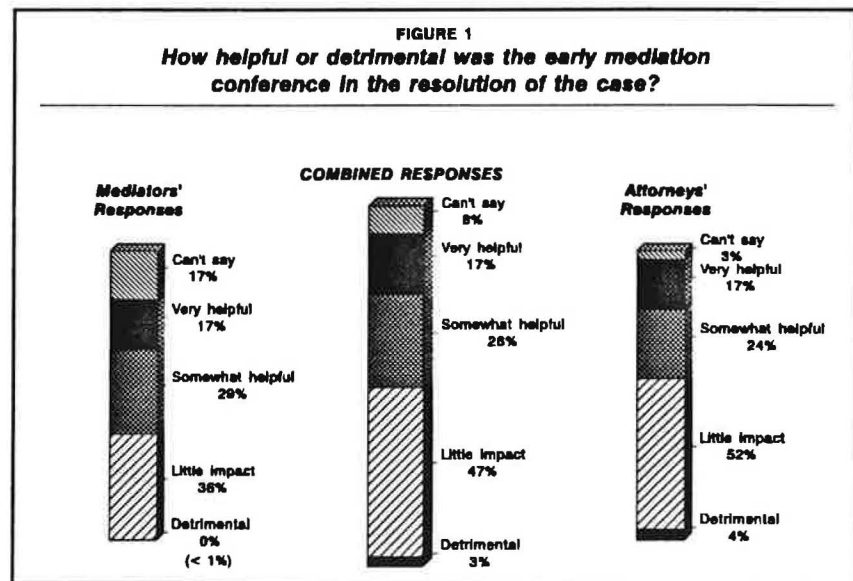
THE RESPONSES TO THE QUESTIONNAIRES are presented here in three parts. The first section, *Comparative Results*, discusses responses to those questions that were identical in the mediator and attorney questionnaires. Question-by-question findings for each questionnaire are then reported in *Questionnaire for Mediators* and *Questionnaire for Attorneys*.

COMPARATIVE RESULTS

The mediators' and attorneys' responses to identical questions are presented together here, to facilitate their comparison.

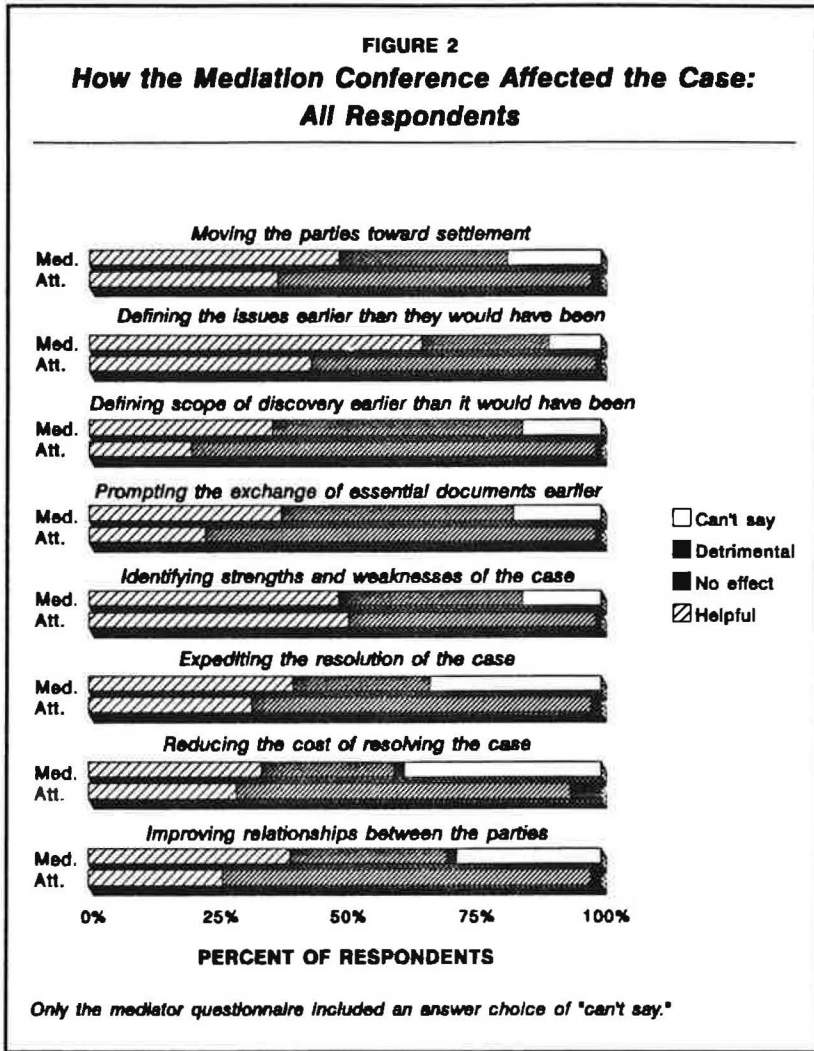
IMPACT OF THE MEDIATION CONFERENCE. As shown in Figure 1, 46 percent of the mediators found the early mediation conference to be helpful in the resolution of the case, compared with 41 percent of the attorneys, and 43 percent of all respondents. Only one mediator reported that the conference was detrimental, and only 4 percent of the attorneys reported that it was detrimental.

Because the conference may have been helpful or detrimental in a number of different ways, the respondents were asked to break their answers down in greater detail. Figure 2 presents the answers that the mediators and attorneys gave to eight questions on



specific ways in which the early mediation conference was helpful, had no effect, or was

detrimental. (The mediators were given an answer choice of "can't say" for this group of questions, but the attorneys were not.) The responses to this question generally confirmed the findings from the previous question about whether the conference was helpful or detrimental. Virtually none of the mediators said that the conference was detrimental in any way, and very few of the attorneys said so. The mediators (66 percent) found the conference to be most helpful in terms of defining the issues earlier than they otherwise would have been

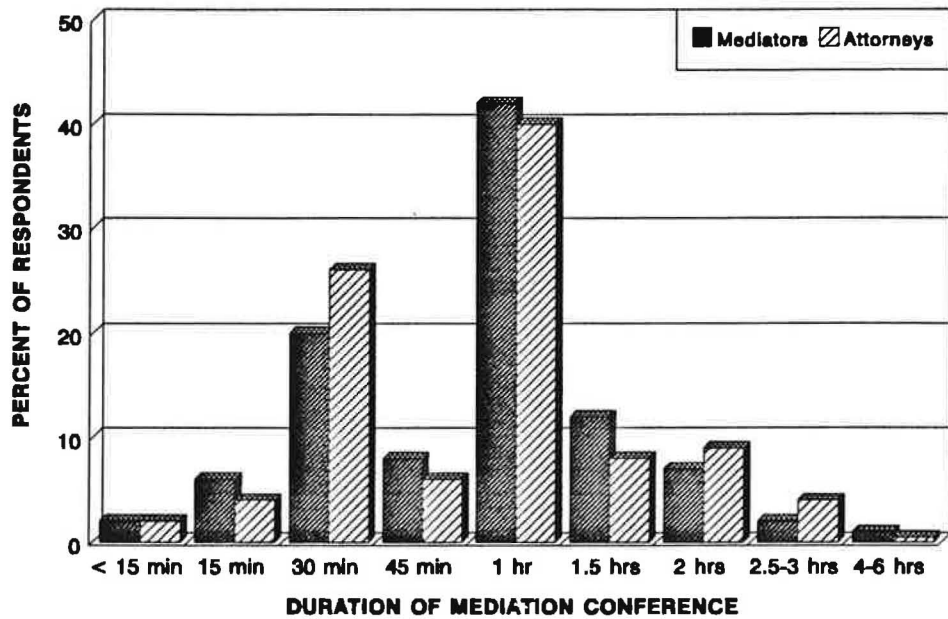


(compared with 44 percent of the attorneys). About half of the mediators found the conference to be helpful in terms of moving the parties toward settlement (49 percent). Fifty-one percent of the attorneys and 49 percent of the mediators reported that the conference was helpful in identifying strengths and weaknesses in the case.

CONFERENCE OUTCOME AND DURATION. Nine percent of the mediators and the same percentage of the attorneys reported that a settlement was reached during the mediation process. One hour was the most frequently reported duration for a mediation conference among all respondents, with 42 percent of mediators reporting that their conference lasted for an hour, and 40 percent of attorneys reporting the same. Very few of the conferences took less than 30 minutes or more than two hours. (See Figure 3.)

FACTORS AFFECTING THE IMPACT OF THE CONFERENCE. Overall, the attorneys and the mediators agreed about the impact of various factors on the mediation conference, as shown in Figure 4. About half of all respondents felt that the mediation conference

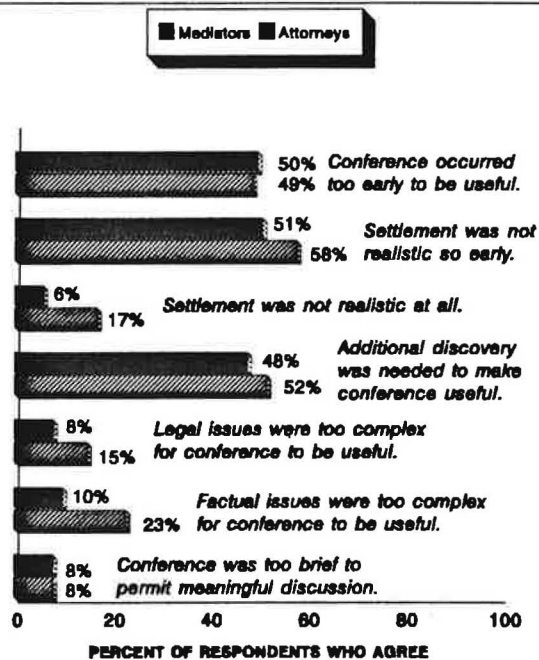
FIGURE 3
Duration of the Mediation Conference:
Comparative Findings



occurred too early in the case for it to be useful, and that additional discovery was needed. The timing of the conference, therefore, appears to be the single most important factor in the attorneys' and mediators' appraisal of the early mediation conference.

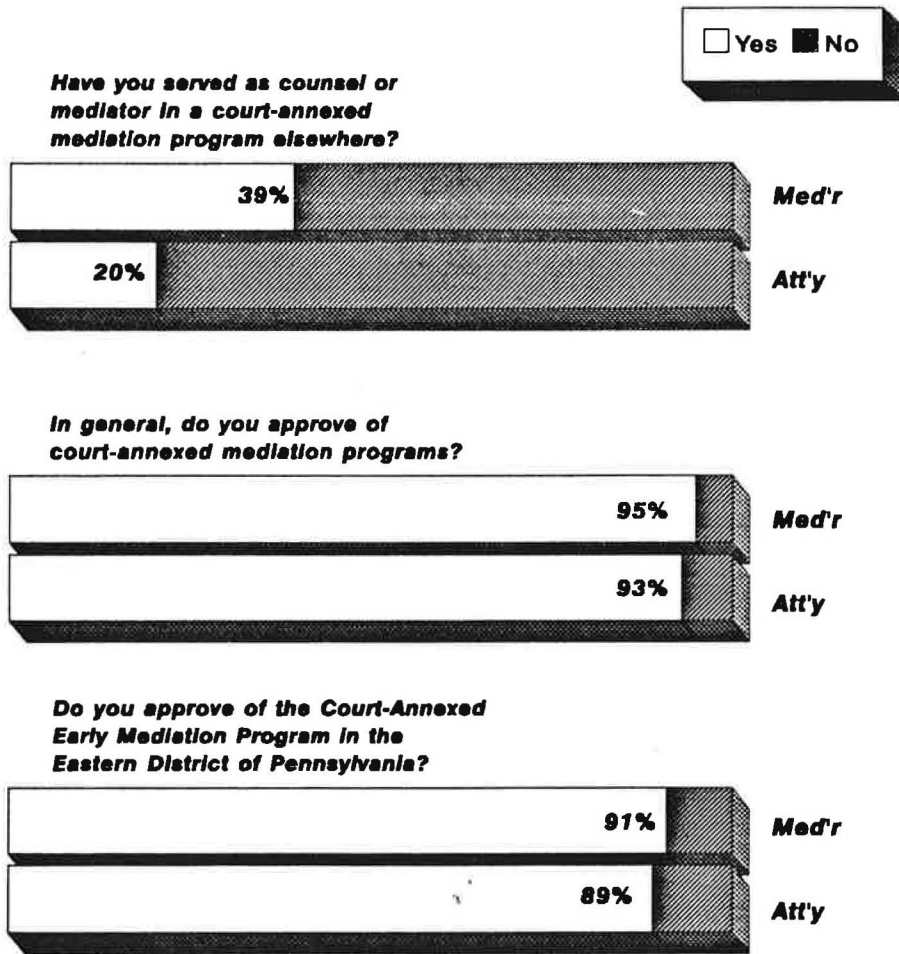
PRIOR EXPERIENCE. Thirty-four percent of the mediators had served as counsel in a case mediated in the Early Mediation Program in the Eastern District of Pennsylvania,

FIGURE 4
Factors That Affected the Impact
of the Early Mediation Program



and 11 percent of the attorneys had served as mediators in such cases. Figure 5 shows the percent of mediators and attorneys who served as counsel or mediators in a court-annexed program in another federal or state court and the respondents' level of approval of the court-annexed mediation program. Nearly all of the respondents approved of court-annexed mediation programs in general (94 percent) and of the program in the Eastern District of Pennsylvania in particular (90 percent).

FIGURE 5
Experience With and Attitudes Toward
Early Mediation Programs



PERCENT OF RESPONDENTS

**Questionnaire for
Mediators**

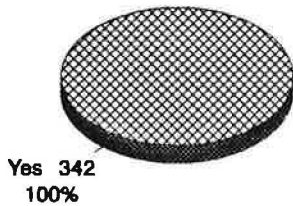
QUESTIONNAIRE FOR MEDIATORS

The Questionnaire for Mediators, which is reproduced in the Appendix, contained questions about the mediators' experience with the early mediation program. The questions and the mediators' responses are presented in the charts that follow.

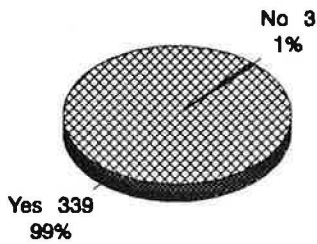
1. The first several questions ask about the administration of the mediation program in this case.

Did you receive...

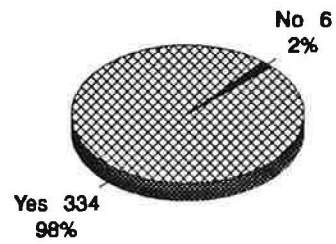
a. timely notice of the date of the mediation conference?



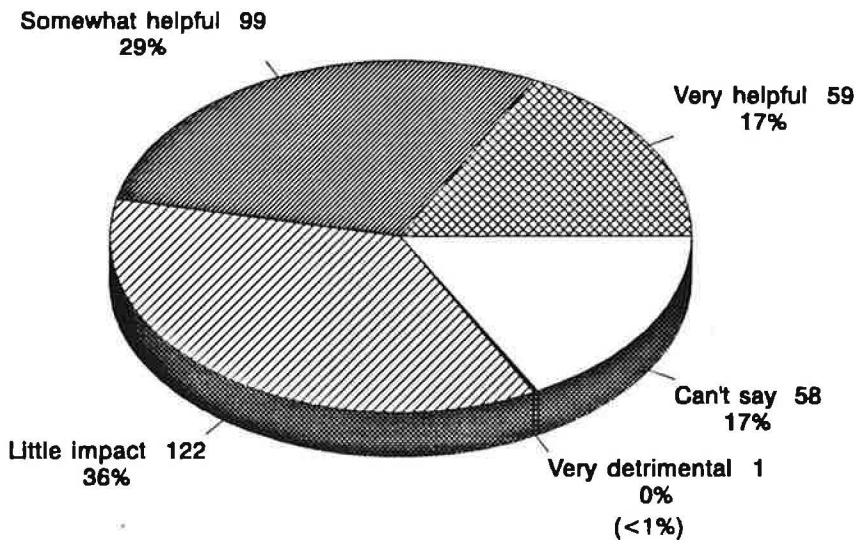
b. adequate information about the time and location of the conference?



c. the case documents far enough in advance to prepare adequately for the conference?

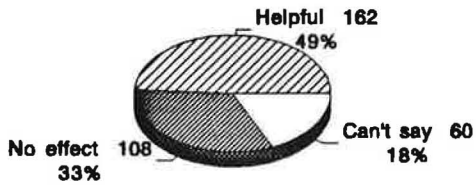


2. Overall, how helpful or detrimental do you believe the early mediation conference was in the resolution of the case?

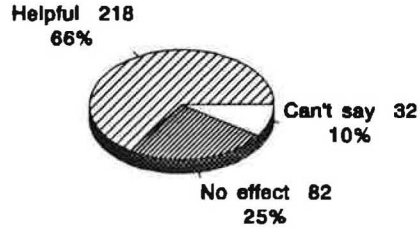


3. Please indicate whether you believe the mediation conference was helpful or detrimental in...

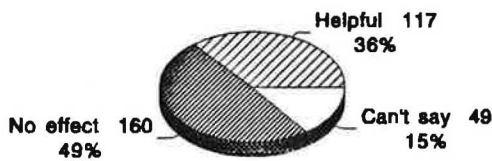
(a) moving the parties toward settlement



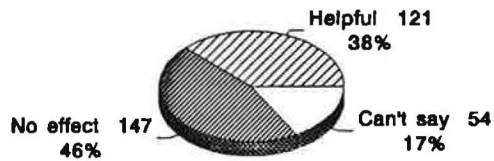
(b) helping the parties define the issues earlier than they otherwise would have



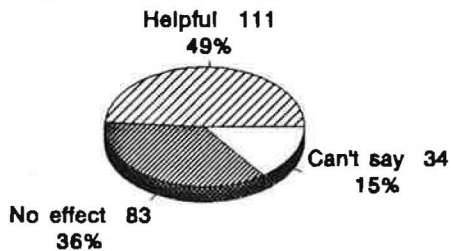
(c) helping the parties define the scope of discovery earlier than they otherwise would have



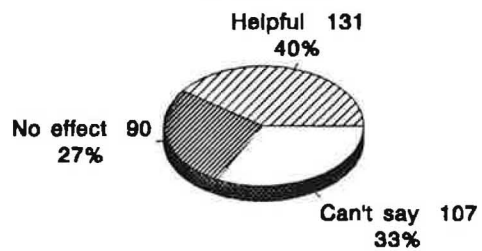
(d) prompting the parties to exchange essential documents earlier than they otherwise would have



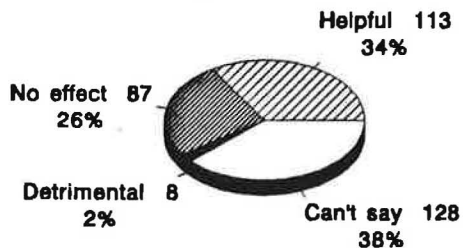
(e) helping the parties identify the strengths and weaknesses of the case



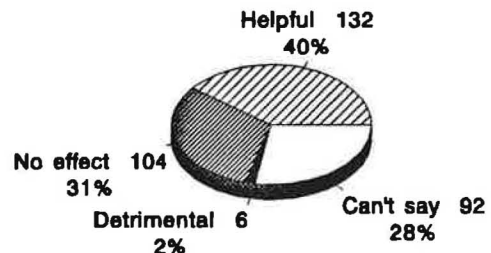
(f) expediting the resolution of the case



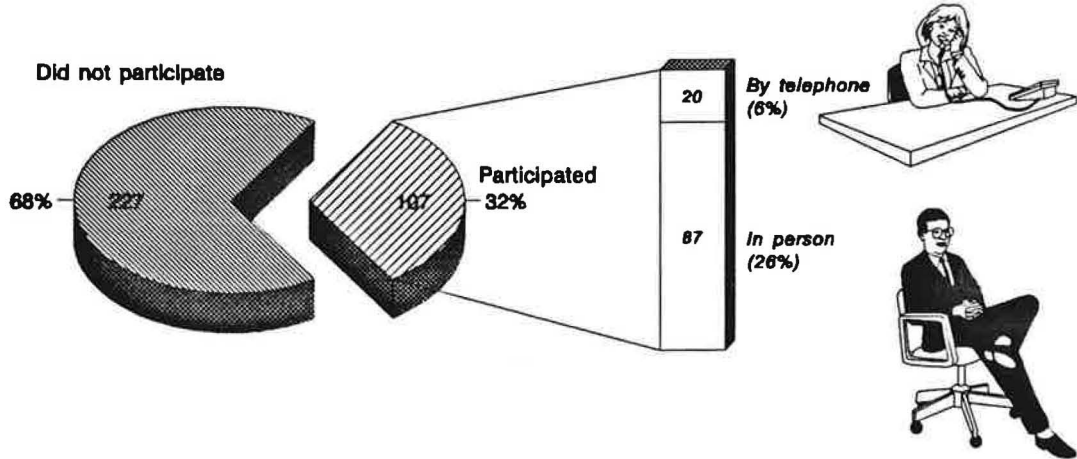
(g) reducing the cost to litigate the case



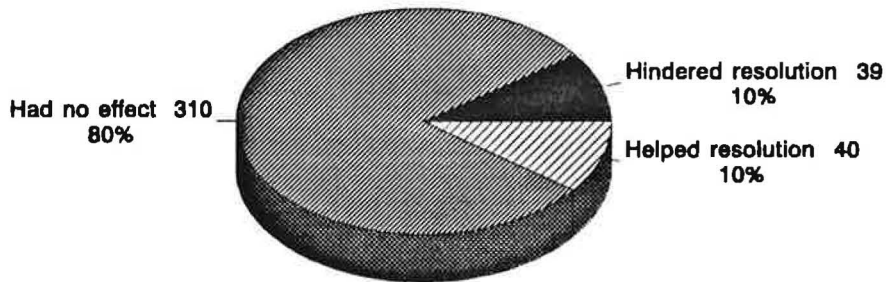
(h) improving the relationship between the parties



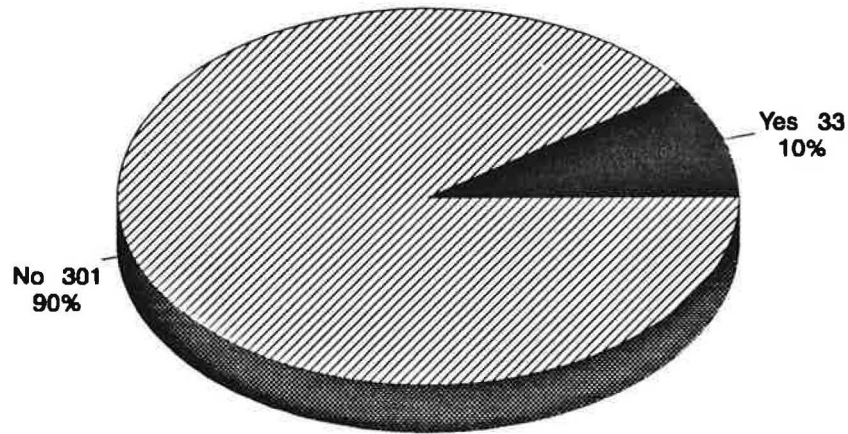
**4. Did any of the parties participate in the mediation conference?
By telephone or in person? How did their absence
or participation affect the resolution of the case?**



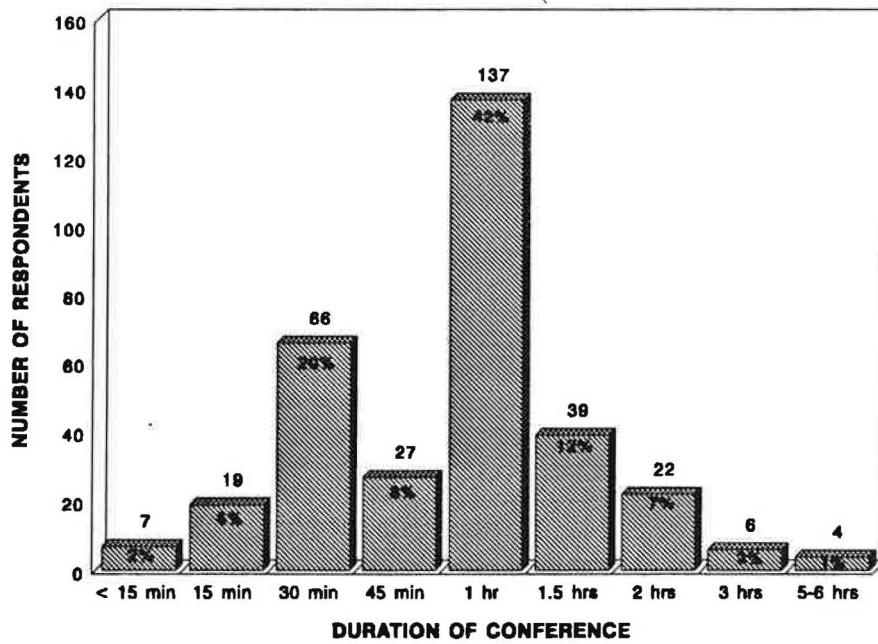
Their absence or participation...



5. Was a settlement reached during the mediation process?

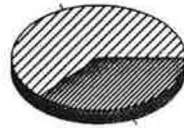


6. Approximately how long did the mediation conference last?



7. Was the location of the conference helpful to the mediation process?

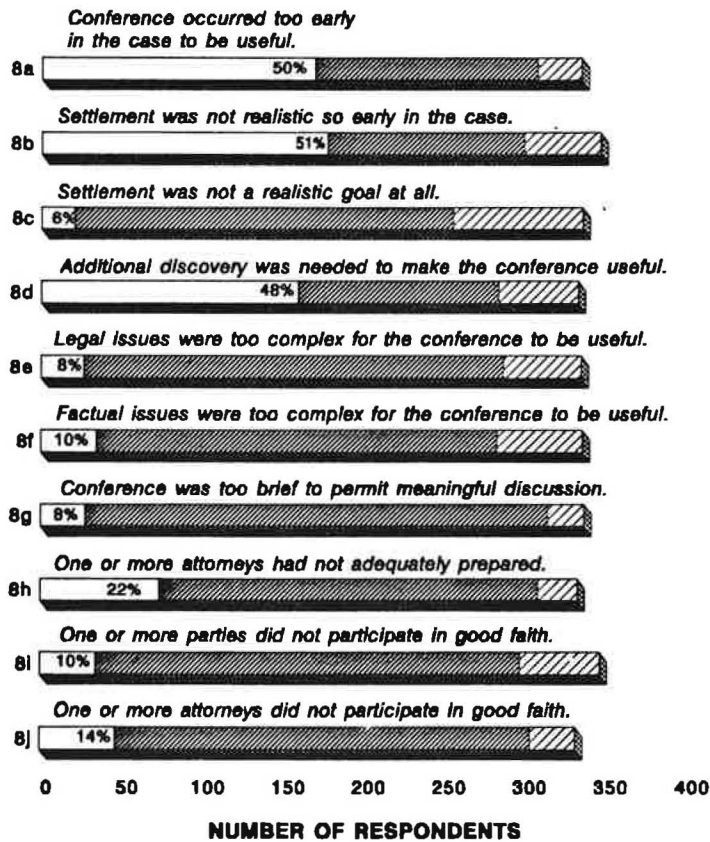
Location helpful 67
63%



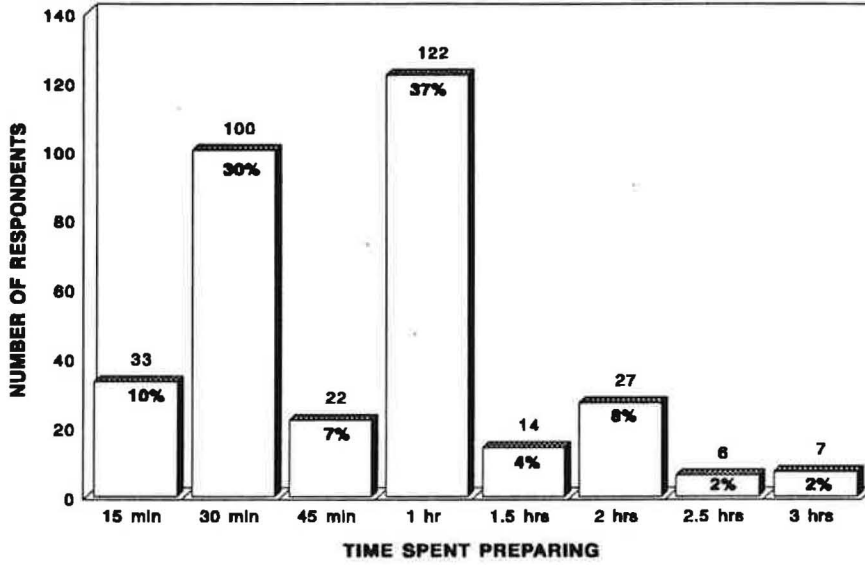
Location not helpful 39
37%

8. For each statement below, please indicate whether you agree or disagree.

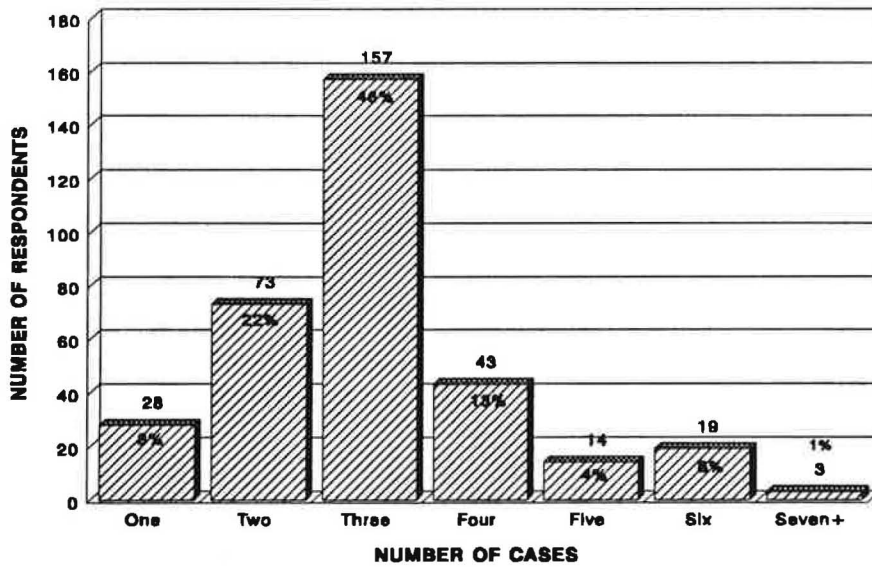
Agree Disagree Can't Say



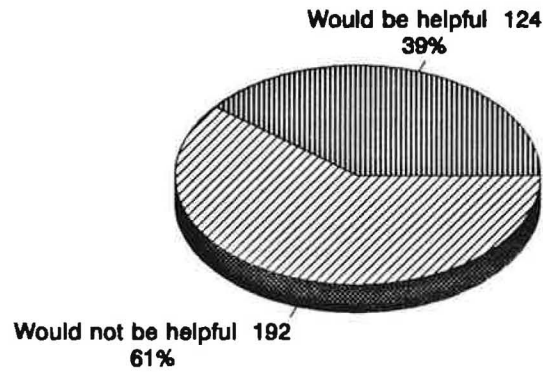
9. How much time did you spend in preparing for the mediation conference?



10. Including this case, how many cases have you mediated in the Court-Annexed Early Mediation Program in this district?



**11. Would training as a mediator be helpful to you
in your participation in the mediation program?**



**12. The following questions ask about your experience with
court-annexed mediation programs and your views toward them.**

**a. Have you served as counsel
in a case mediated in the
Early Mediation Program in
this district?**



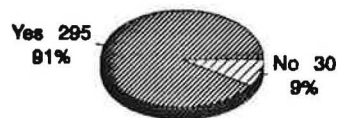
**b. Have you served as counsel
or mediator in a court-annexed
program in another federal or
state court?**



**c. In general, do you approve
of court-annexed mediation
programs?**



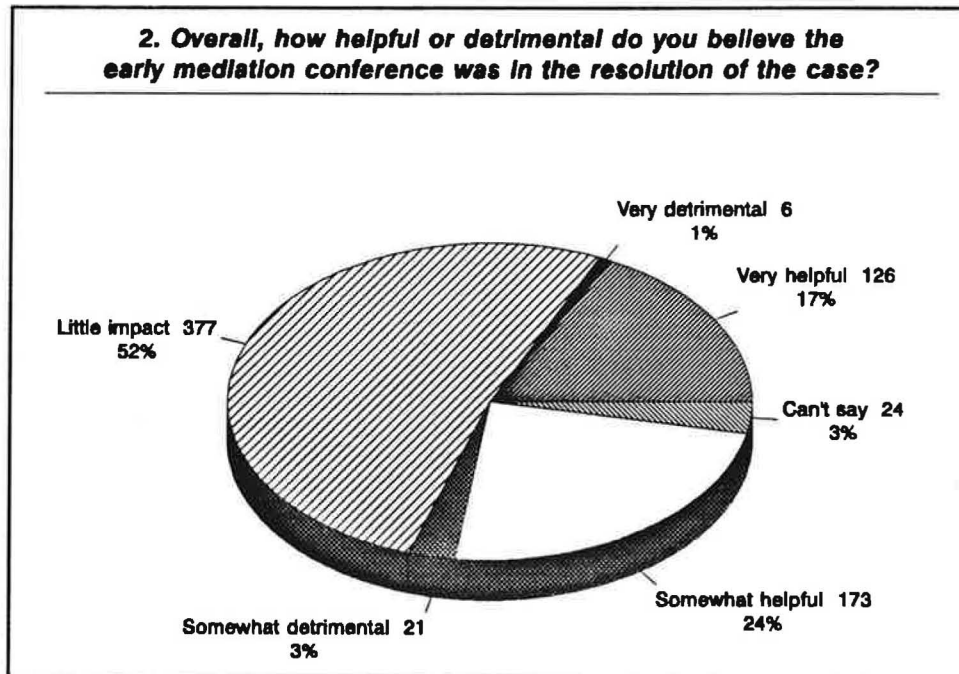
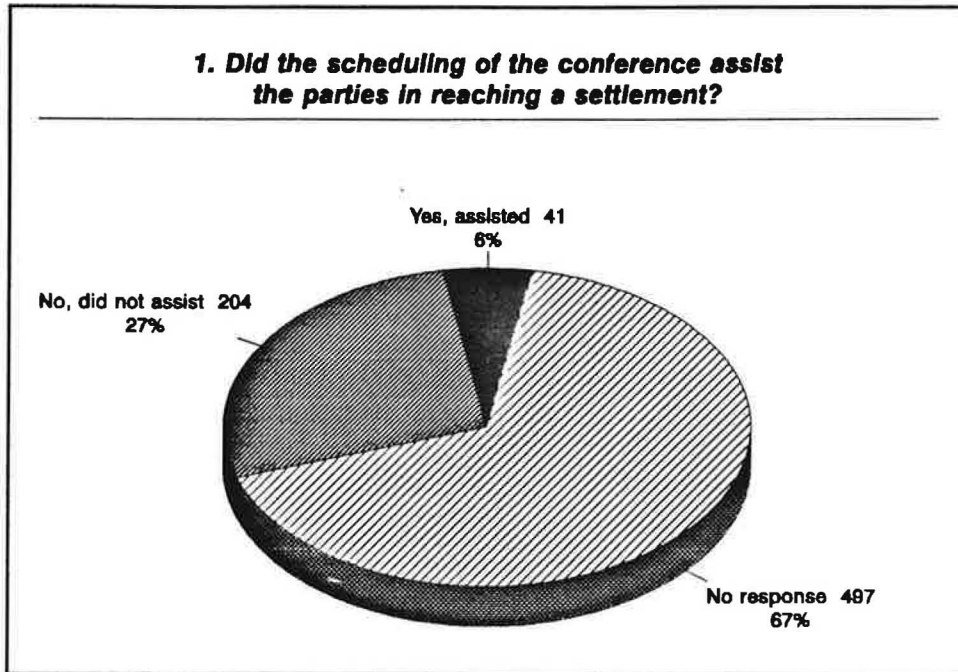
**d. Do you approve of the Court-
Annexed Early Mediation Program
in the Eastern District of PA?**



**Questionnaire for
Attorneys**

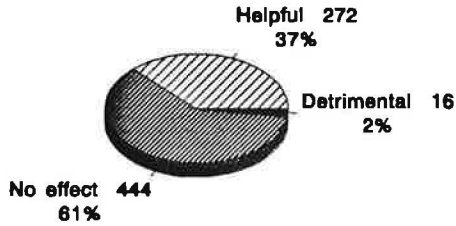
QUESTIONNAIRE FOR ATTORNEYS

The Questionnaire for Attorneys, which is reproduced in the Appendix, contained questions about the attorneys' experience with the early mediation program. The questions and the attorneys' responses are presented in the charts that follow.

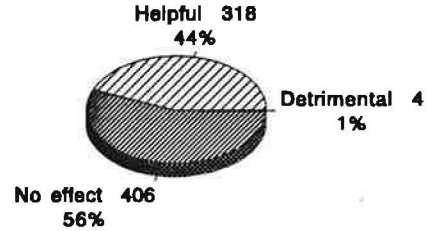


3. Please indicate whether you believe the mediation conference was helpful or detrimental in...

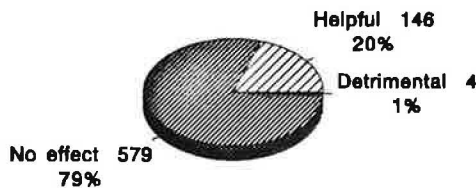
a. Moving the parties toward settlement



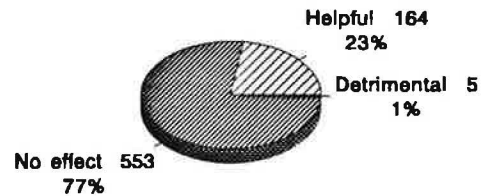
b. Helping the parties define the issues earlier than they would have



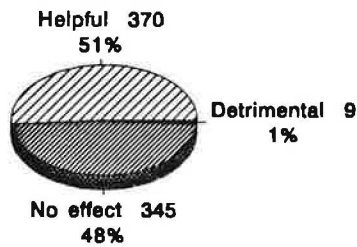
c. Helping the parties define the scope of discovery earlier than they would have



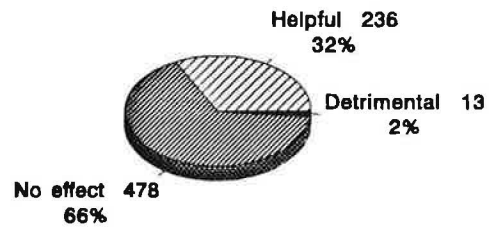
d. Prompting the parties to exchange essential documents earlier than they would have



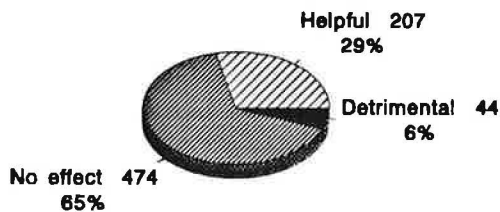
e. Helping the parties identify the strengths and weaknesses of the case



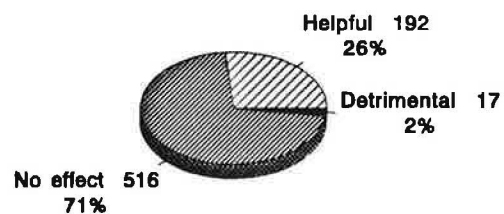
f. Expediting the resolution of the case



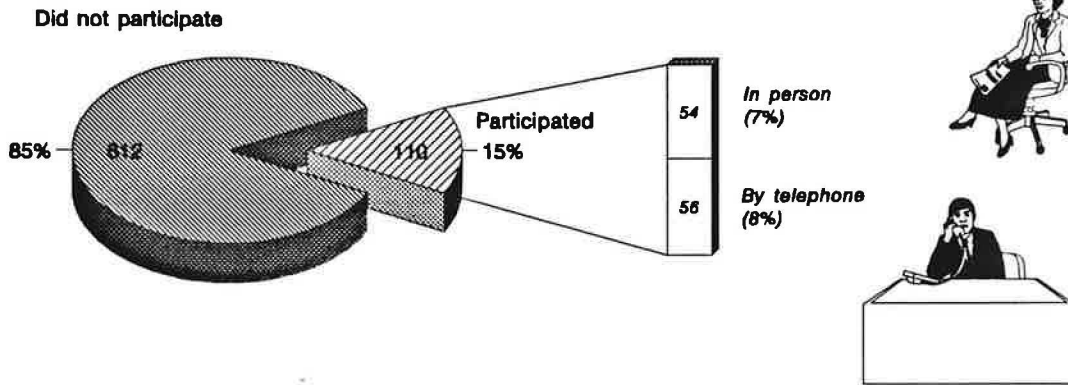
g. Reducing the cost of resolving the case



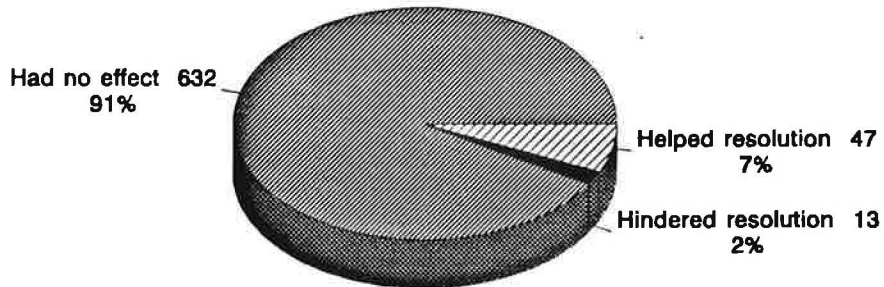
h. Improving relationships between the parties



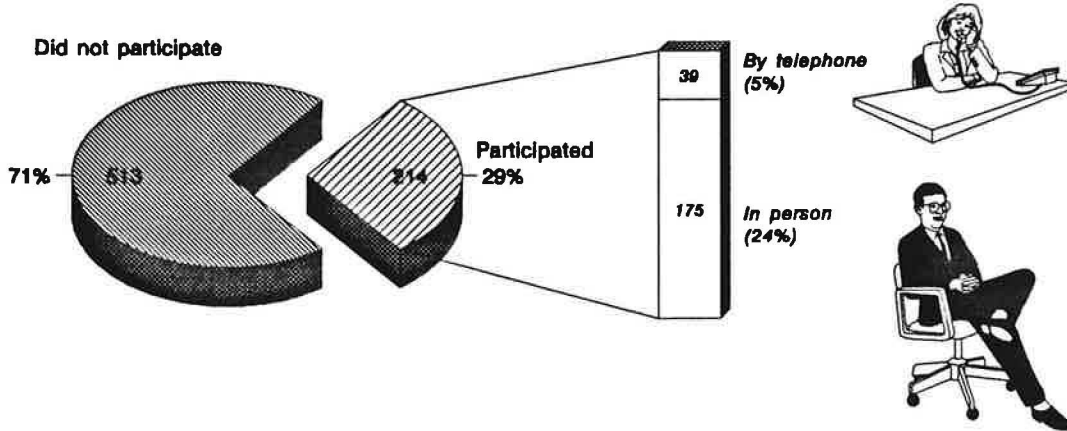
**4. Did your client participate in the mediation conference?
By telephone or in person? How did your client's absence
or participation affect the resolution of the case?**



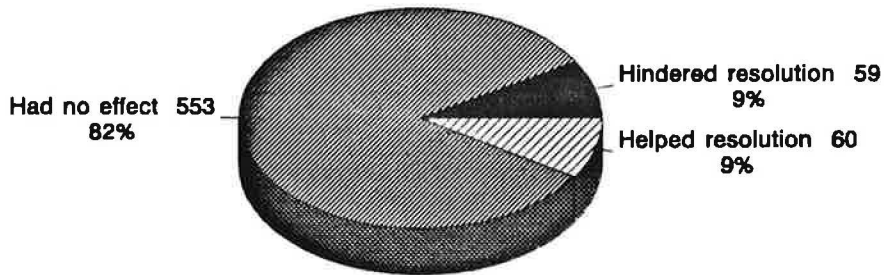
My client's absence or participation...



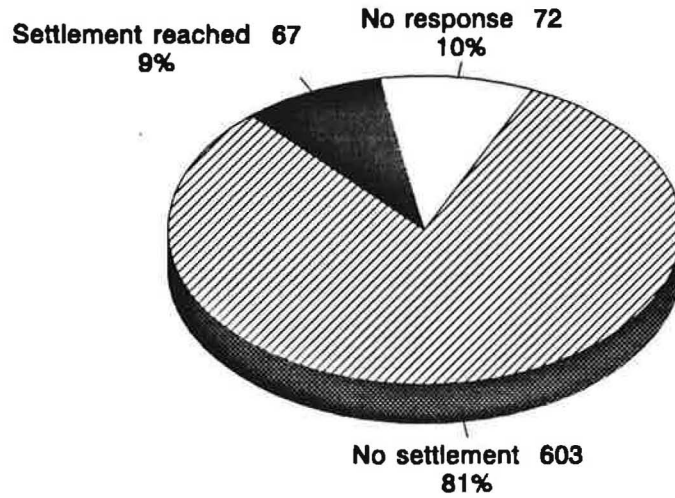
**5. Did any opposing party participate in the mediation conference?
By telephone or in person? How did their absence
or participation affect the resolution of the case?**



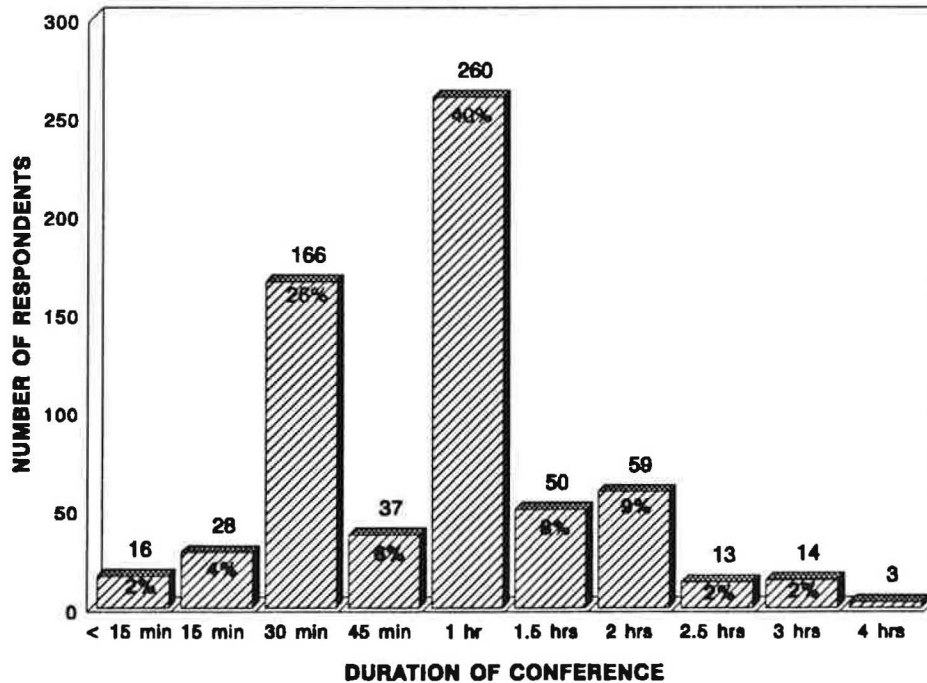
**The absence or participation
of the opposing party...**



6. Was a settlement reached during the mediation process?

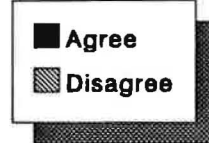


7. Approximately how long did the mediation conference last?



8. For each statement below, please indicate whether you agree or disagree.

a. Conference occurred too early in the case to be useful.



b. Settlement was not realistic so early in the case.



c. Settlement was not realistic at all.



d. Additional discovery was needed to make the conference useful.



e. Legal issues were too complex for the conference to be useful.



f. Factual issues were too complex for conference to be useful.



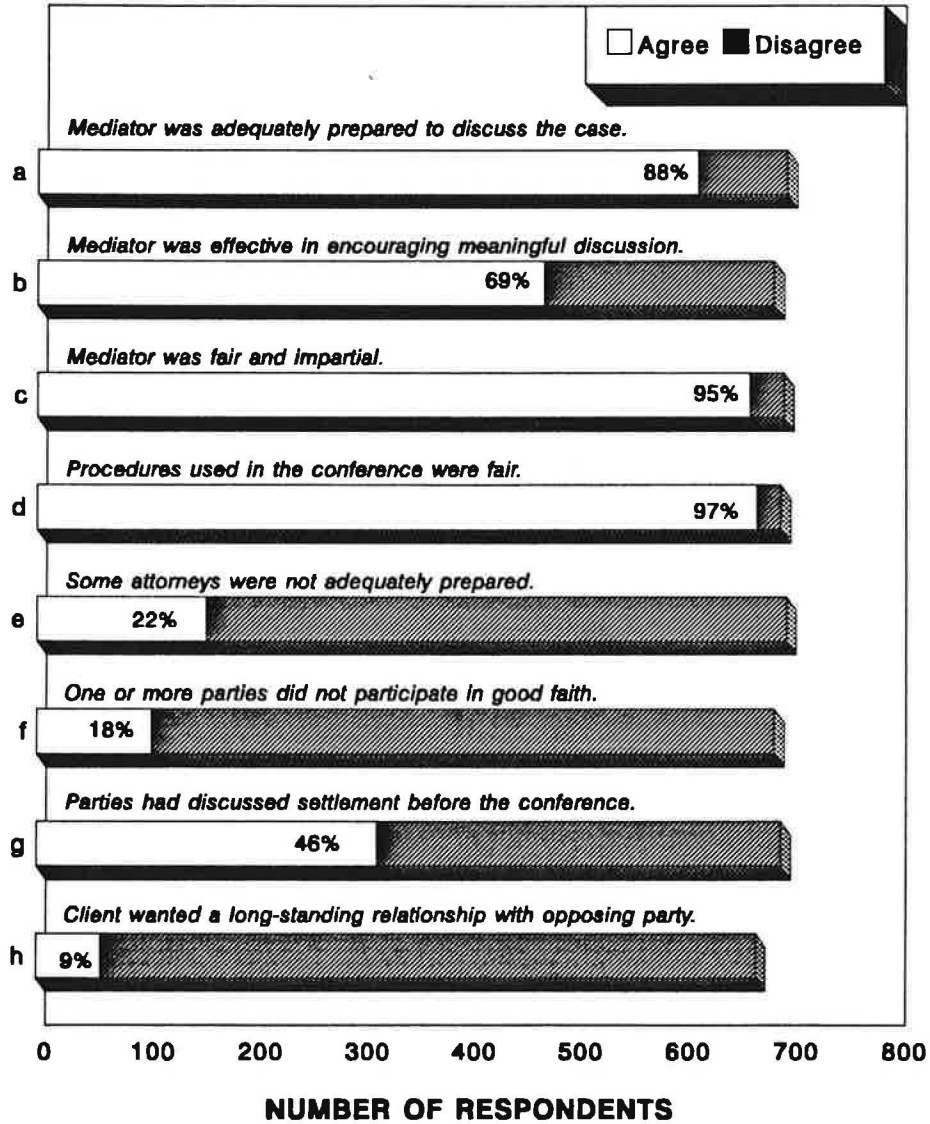
g. Conference was too brief to permit meaningful discussion.



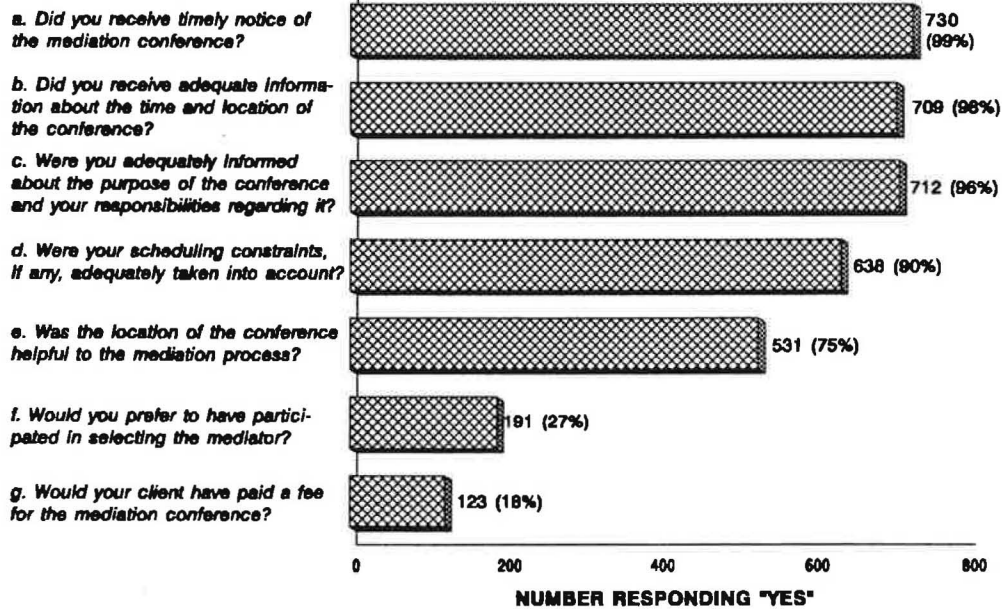
h. Conference would have been more effective if mediator had more experience in the subject matter.



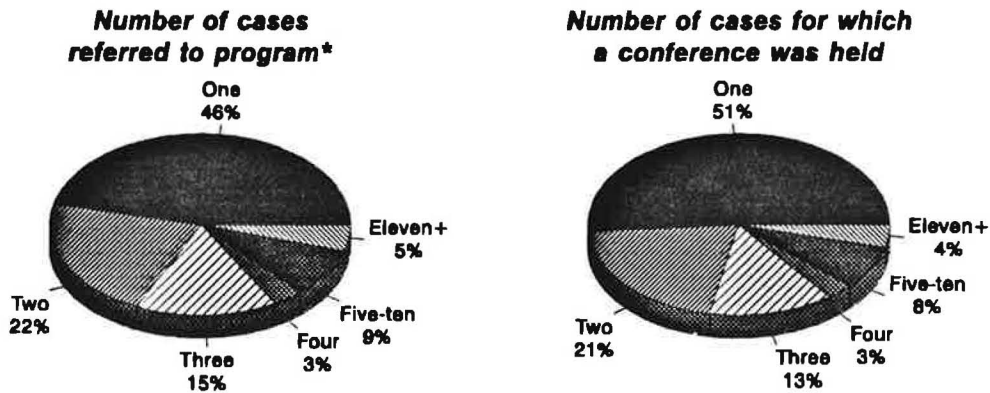
9. For each statement below, please indicate whether you agree or disagree



10. The questions below ask about the administration of the mediation program in this case.

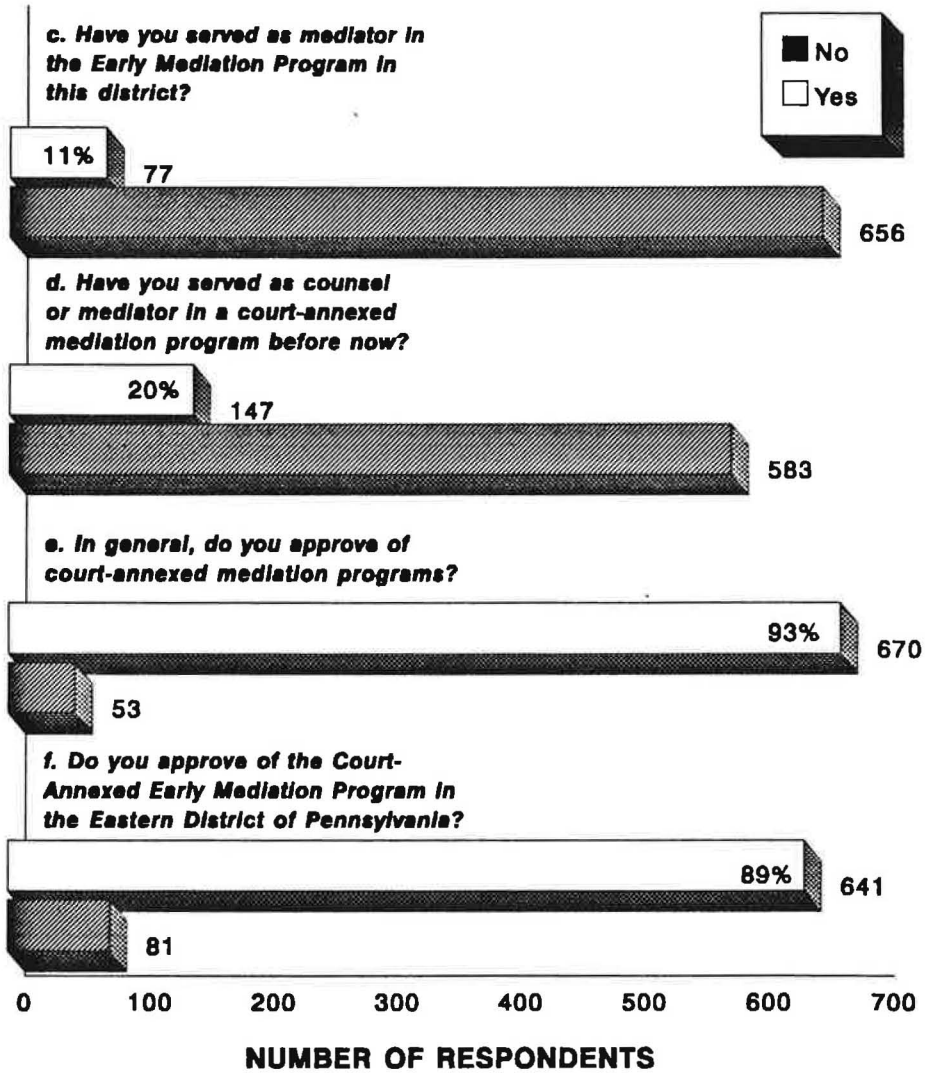


11a. How many of your cases have been referred to the Court-Annexed Early Mediation Program in this district?
11b. In how many cases was a conference actually held?



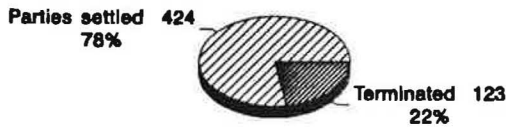
*Including the current case.
 Total respondents for this question = 653.

11 (continued). The following questions ask about your experience in mediation programs and your general view toward the program.

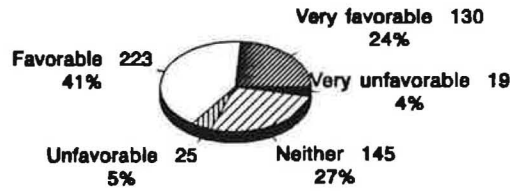


12. If the case has terminated, please answer the following questions.

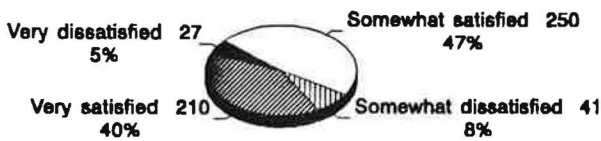
a. Did the parties settle the case or was it otherwise terminated?



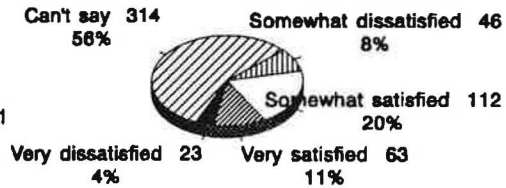
b. How favorable to your client was the final result in the case?



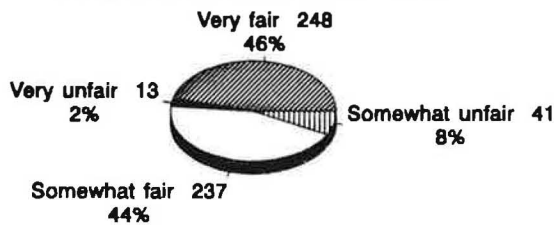
c. How satisfied was your client with the final result in the case?



d. How satisfied was your client with the mediation process?



e. How fair was the final result to the parties involved in the case?



Summary & Conclusions

IN QUESTIONS 3 AND 13 OF BOTH QUESTIONNAIRES, the respondents were invited to add any comments or suggestions that they had about the experimental Early Mediation Program. In general, these additional comments and suggestions supported the answers to the specific questions, and serve as a useful summary of the questionnaire findings.

GENERAL COMMENTS

Nearly all of the attorneys and mediators who responded to the questionnaire thought that the Early Mediation Program was worthwhile and should be continued. Many attorneys praised the efforts of their mediators. The general feeling was that notification was prompt and the conferences were held in suitable locations. Attorneys and mediators broadly agreed that mediation helped to bring the parties together, by forcing them to confront the important issues of the case, encouraging them to approach a middle ground, and highlighting points of agreement between them.

The main complaint that attorneys and mediators expressed was that the conference was scheduled far too early to be of value in helping to settle the case.³ The attorneys thought an early conference was useful in defining the issues of the litigation but of little value in helping the case settle before the discovery process had begun. This was particularly a problem in FELA cases. Some attorneys suggested that counsel should have input into selecting the timing of the conference, so that where extensive discovery is necessary to unearth the facts, a conference may be held at a later date. Some mediators felt that follow-up conferences should be scheduled in which the same mediator presides, that the mediator should retain contact with the case to facilitate discovery, and that the mediator should meet again with the parties when settlement is more likely to occur.

³However, one of the attorneys commented that, "The conference was held after a full hearing on a preliminary injunction and, as a consequence, after there had been substantial discovery, testimony, and court rulings. Accordingly, although the arbitrator did a good job, there was—in essence—little for him to do. It *might* have been worthwhile if the conference had been earlier."

The general feeling was that the more complex the issues were, the less likely the conference was to be successful. Many attorneys claimed that medical malpractice, for example, is too complex to be resolved in a mediation conference. This response reflected an overall finding that mediation, while effective in some circumstances, is not appropriate for every case—for example, product liability cases, complex factual cases, and cases where an important principle is involved.

The respondents also stressed that, in order for early mediation to be effective, attorneys and mediators must be fully prepared, all parties must cooperate fully, and all information must be exchanged in advance of the conference. It is possible that those mediators who were found to be inadequate by the attorneys in the mediated cases did not spend enough time preparing for the mediation conference or had not had enough experience in mediating cases, or both. They might also benefit from mediator training; indeed, 39 percent of the mediators said that they would find such training helpful.

The in-person appearance of all parties in the case was also emphasized as an important component in the success of an early mediation conference.

SUGGESTIONS

Following is a summary of the respondents' general suggestions for improving the early mediation process:

- ▶ Judges should press for settlement at the mediation conference.
- ▶ Parties that are uninterested in participating in the mediation process should be permitted to forgo the conference.
- ▶ The location of the mediation conference should be convenient: the cost-effectiveness of the mediation program could be improved by appointing mediators whose offices are reasonably close to the offices of respective counsel.
- ▶ Schedule more than one meeting with the mediator.
- ▶ Have a follow-up meeting to verify the status of the case, with assigned judge.
- ▶ In the event a settlement is not possible, allow the mediator to obtain an agreement for admission of documents at trial, set the terms and agreements for completion of discovery, and require the adversaries to clarify their respective issues for trial.
- ▶ The mediator should be able to file a report with a suggested settlement. The

report should not be shown to the judge. However, at the end of the case, the report should be admissible in a Rule 11 type of proceeding if it is clear to the mediator that a defense/claim is without merit.

CONCLUSION

The responses to the questionnaires sent to mediators and attorneys indicate that the Court-Annexed Early Mediation Program, with certain modifications based on the statistical information compiled by the Court and the survey findings reported here, has the potential to increase the successful resolution of cases early in the litigation process. A well-run mediation program can thereby reduce unnecessary costs and delays to civil litigants in the United States District Court for the Eastern District of Pennsylvania.



**Appendix:
The Questionnaires**

**COURT-ANNEXED EARLY MEDIATION PROGRAM
EASTERN DISTRICT OF PENNSYLVANIA
QUESTIONNAIRE FOR MEDIATORS**

Our records show that you served as mediator in a case referred to the Court-Annexed Early Mediation Program established by Local Rule 15. The Mediation Program is an experimental program. To help us determine whether it is useful we need the views of those who have participated in the program. This questionnaire asks about your experience in the case identified below. Your responses are confidential and will not be disclosed to the court, the attorneys, or the parties. Only aggregate information about the program will be reported. If you did not mediate this case, please check the box to the right and return the blank questionnaire.

DID NOT MEDIATE THIS CASE.

PLEASE ANSWER ALL QUESTIONS WITH REFERENCE TO THE FOLLOWING CASE ONLY:

_____ v. _____

Docket Number: _____ Mediation Conference date: _____

Type of Case: _____

1. The first several questions ask about the administration of the mediation program in this case.

✓ PLEASE CHECK ONE RESPONSE FOR EACH QUESTION.

- | | <u>1</u> | <u>2</u> |
|---|--------------------------|--------------------------|
| | <u>YES</u> | <u>NO</u> |
| 1a. Did you receive timely notice of the date of the mediation conference? | <input type="checkbox"/> | <input type="checkbox"/> |
| 1b. Did you receive adequate information about the time and location of the conference? | <input type="checkbox"/> | <input type="checkbox"/> |
| 1c. Did you receive the case documents (pleadings, motions) far enough in advance to prepare adequately for the conference? | <input type="checkbox"/> | <input type="checkbox"/> |

2. Overall, how helpful or detrimental do you believe the early mediation conference was in the resolution of the case?

✓ PLEASE CHECK ONE RESPONSE.

- | | |
|---|---|
| <input type="checkbox"/> 1 Very helpful. | <input type="checkbox"/> 4 Somewhat detrimental. |
| <input type="checkbox"/> 2 Somewhat helpful. | <input type="checkbox"/> 5 Very detrimental. |
| <input type="checkbox"/> 3 It had little impact. | <input type="checkbox"/> 6 I can't say. |

3. An early mediation conference may be helpful or detrimental in a number of different ways. Please indicate whether you believe the mediation conference was helpful or detrimental in:

✓ PLEASE CHECK ONE RESPONSE FOR EACH STATEMENT.

	<u>1</u> <u>Helpful</u>	<u>2</u> <u>No</u> <u>Effect</u>	<u>3</u> <u>Detri-</u> <u>mental</u>	<u>4</u> <u>Can't</u> <u>Say</u>
3a. Moving the parties toward settlement.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3b. Helping the parties define the issues earlier than they otherwise would have.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3c. Helping the parties define the scope of discovery earlier than they otherwise would have.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3d. Prompting the parties to exchange essential documents earlier than they otherwise would have.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3e. Helping the parties identify the strengths and weaknesses of the case.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3f. Expediting resolution of the case.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3g. Reducing the cost to litigate the case.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3h. Improving relationships between the parties.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

If you wish, please list any other ways in which you believe the early mediation conference was helpful or detrimental in this case.

4a. Did any parties participate in the mediation conference?

✓ *PLEASE CHECK ONE.*

- 1 YES. And the participation of the parties ⇒
- 2 No. And the absence of the parties ⇒ ⇒ ⇒

✓ *PLEASE CHECK ONE.*

- 1 helped the resolution of the case
- 2 had no effect on the resolution of the case
- 3 hindered the resolution of the case

4b. If the parties participated, was the participation ⇒ 1 in person 2 by telephone

5. Was a settlement reached during the mediation process? 1 YES 2 No

6. Approximately how long did the mediation conference last? _____ hours

7. Was the location of the conference helpful to the mediation process? 1 YES 2 No

8. For each statement below, please indicate whether you agree or disagree.

✓ *PLEASE CHECK ONE RESPONSE FOR EACH STATEMENT.*

	<u>1</u> <u>Agree</u>	<u>2</u> <u>Disagree</u>	<u>3</u> <u>Can't Say</u>
8a. The mediation conference occurred too early in the case for it to be useful.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8b. Settlement was not a realistic goal at such an early stage in the case.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8c. Settlement was not a realistic goal for the case at all.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8d. Additional discovery was needed to make a mediation conference useful.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8e. The legal issues in the case were too complex to make an early mediation conference useful.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8f. The factual issues in the case were too complex to make an early mediation conference useful.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8g. The early mediation conference was too brief to permit a meaningful discussion of the case.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8h. One or more attorneys in the case were not adequately prepared for the mediation conference.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8i. One or more parties did not participate in good faith in the mediation conference.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8j. One or more attorneys did not participate in good faith in the mediation conference.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

9. How much time did you spend in preparing for the mediation conference? _____ hours
10. Including this case, how many cases have you mediated in the Court-Annexed Early Mediation Program in this district? _____ cases
11. Would training as a mediator be helpful to you in your participation in the mediation program? 1 YES 2 No
12. The following questions ask about your experience with court-annexed mediation programs and your views toward them.

✓ PLEASE CHECK ONE RESPONSE FOR EACH QUESTION BELOW.

- | | <u>1</u>
<u>YES</u> | <u>2</u>
<u>NO</u> |
|---|--------------------------|--------------------------|
| 12a. Have you served as counsel in a case mediated in the Early Mediation Program in this district? | <input type="checkbox"/> | <input type="checkbox"/> |
| 12b. Have you served as counsel or mediator in a court-annexed program in another federal or state court? | <input type="checkbox"/> | <input type="checkbox"/> |
| 12c. In general, do you approve of court-annexed mediation programs? | <input type="checkbox"/> | <input type="checkbox"/> |
| 12d. Do you approve of the Court-Annexed Early Mediation Program in the Eastern District of Pennsylvania? | <input type="checkbox"/> | <input type="checkbox"/> |
13. We welcome any comments or suggestions you may have about the mediation program or its application to this case.

THANK YOU

**Please return this questionnaire in the enclosed envelope.
If you have any questions, you may call the Mediation Clerk
for the Eastern District of Pennsylvania at
215-597-5760**

**COURT-ANNEXED EARLY MEDIATION PROGRAM
EASTERN DISTRICT OF PENNSYLVANIA
QUESTIONNAIRE FOR ATTORNEYS IN MEDIATED CASES**

Our records show that you represented a client in a case referred to the Court-Annexed Early Mediation Program established by Local Rule 15. The Mediation Program is an experimental program. To help us determine whether it is useful we need the views of those who have participated in the program. This questionnaire asks about your experience in the case identified below. Your responses are confidential and will not be disclosed to the court, other attorneys, the mediator, or the parties. Only aggregate information about the program will be reported.

PLEASE ANSWER ALL QUESTIONS WITH REFERENCE TO THE FOLLOWING CASE ONLY:

_____ v. _____

Docket Number: _____ Type of case: _____

Mediator: _____ Mediation Conference date: _____

- | | 1 | 2 |
|---|--------------------------|--------------------------|
| | <u>YES</u> | <u>NO</u> |
| 1. If the case was settled after notice of a mediation conference but before the conference was held, did the scheduling of the conference assist the parties in reaching a settlement? | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. Overall, how helpful or detrimental do you believe the early mediation conference was in the resolution of the case? | | |

✓ PLEASE CHECK ONE RESPONSE.

- 1 Very helpful.
- 2 Somewhat helpful.
- 3 It had little impact.
- 4 Somewhat detrimental.
- 5 Very detrimental.
- 6 I can't say.

3. An early mediation conference may be helpful or detrimental in a number of different ways. Please indicate whether you believe the mediation conference was helpful or detrimental in:

✓ PLEASE CHECK ONE RESPONSE FOR EACH STATEMENT.

	<u>1</u> <u>Helpful</u>	<u>2</u> <u>No Effect</u>	<u>3</u> <u>Detri- mental</u>
3a. Moving the parties toward settlement.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3b. Helping the parties define the issues earlier than they otherwise would have.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3c. Helping the parties define the scope of discovery.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3d. Prompting the parties to exchange essential documents earlier than they otherwise would have.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3e. Helping the parties identify the strengths and weaknesses of your client's case.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3f. Expediting the resolution of the case.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3g. Reducing the cost to litigate the case.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3h. Improving relationships between the parties.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

If you wish, please list any other ways in which you believe the early mediation conference was helpful or detrimental in this case.

4a. Did your client participate in the mediation conference?

✓ PLEASE CHECK ONE.

- 1 YES. And the participation of the client =>
- 2 NO. And the absence of my client =>=>=>

✓ PLEASE CHECK ONE.

- 1 helped the resolution of the case
- 2 had no effect on the resolution of the case
- 3 hindered the resolution of the case

4b. If your client participated, was the participation => 1 in person 2 by telephone

5a. Did any opposing party participate in the mediation conference?

✓ PLEASE CHECK ONE.

- 1 YES. And the participation of the opposing party ⇒
- 2 NO. And the absence of the opposing party ⇒ ⇒ ⇒

✓ PLEASE CHECK ONE.

- 1 helped the resolution of the case
- 2 had no effect on the resolution of the case
- 3 hindered the resolution of the case

5b. If any opposing party participated, was the participation 1 in person 2 by telephone

6. Was a settlement reached during the mediation process? 1 YES 2 No

7. Approximately how long did the mediation conference last? _____ hours

8. For each statement below, please indicate whether you agree or disagree.

✓ PLEASE CHECK ONE RESPONSE FOR EACH STATEMENT.

	<u>1</u> Agree	<u>2</u> Disagree
8a. The mediation conference occurred too early in the case for it to be useful.	<input type="checkbox"/>	<input type="checkbox"/>
8b. Settlement was not a realistic goal at such an early stage of the case.	<input type="checkbox"/>	<input type="checkbox"/>
8c. Settlement was not a realistic goal for the case at all.	<input type="checkbox"/>	<input type="checkbox"/>
8d. Additional discovery was needed to make a mediation conference useful.	<input type="checkbox"/>	<input type="checkbox"/>
8e. The legal issues in the case were too complex to make an early mediation conference useful.	<input type="checkbox"/>	<input type="checkbox"/>
8f. The factual issues in the case were too complex to make any early mediation conference useful.	<input type="checkbox"/>	<input type="checkbox"/>
8g. The early mediation conference was too brief to permit a meaningful discussion of the case.	<input type="checkbox"/>	<input type="checkbox"/>
8h. The early mediation conference would have been more effective if it had been conducted by a mediator with expertise in the subject matter of the case.	<input type="checkbox"/>	<input type="checkbox"/>

9. For each statement below, please indicate whether you agree or disagree.

✓ PLEASE CHECK ONE RESPONSE FOR EACH STATEMENT.

	<u>1</u> <u>Agree</u>	<u>2</u> <u>Disagree</u>
9a. The mediator was adequately prepared to discuss the case with the parties.	<input type="checkbox"/>	<input type="checkbox"/>
9b. The mediator was effective in getting the parties to engage in meaningful discussion of the case.	<input type="checkbox"/>	<input type="checkbox"/>
9c. The mediator was fair and impartial.	<input type="checkbox"/>	<input type="checkbox"/>
9d. The procedures used in the mediation conference were fair.	<input type="checkbox"/>	<input type="checkbox"/>
9e. Some attorneys were not adequately prepared for the mediation conference.	<input type="checkbox"/>	<input type="checkbox"/>
9f. One or more parties did not participate in good faith in the mediation conference.	<input type="checkbox"/>	<input type="checkbox"/>
9g. The parties had discussed settlement before the mediation conference.	<input type="checkbox"/>	<input type="checkbox"/>
9h. My client wanted to maintain a long-standing relationship with the opposing party.	<input type="checkbox"/>	<input type="checkbox"/>

10. The questions below ask about the administration of the mediation program in this case.

✓ PLEASE CHECK ONE RESPONSE FOR EACH QUESTION.

	<u>1</u> <u>YES</u>	<u>2</u> <u>NO</u>
10a. Did you receive timely notice of the date of the mediation conference?	<input type="checkbox"/>	<input type="checkbox"/>
10b. Did you receive adequate information about the time and location of the conference?	<input type="checkbox"/>	<input type="checkbox"/>
10c. Were you adequately informed about the purpose of the conference and your responsibilities regarding it?	<input type="checkbox"/>	<input type="checkbox"/>
10d. Were your scheduling constraints, if any, adequately taken into account?	<input type="checkbox"/>	<input type="checkbox"/>
10e. Was the location of the conference helpful to the mediation process?	<input type="checkbox"/>	<input type="checkbox"/>
10f. Would you prefer to have participated in selecting the mediator?	<input type="checkbox"/>	<input type="checkbox"/>
10g. Would your client have paid a fee for the mediation conference?	<input type="checkbox"/>	<input type="checkbox"/>

11. The following questions ask about your experience in mediation programs and your general view toward such programs.

11a. Including this case, how many of your cases have been referred to Court-Annexed Early Mediation Program in this district? _____ cases

11b. In how many of these cases was an early mediation conference actually held? _____ cases

✓ PLEASE CHECK ONE RESPONSE FOR EACH QUESTION BELOW.

- | | <u>1</u>
<u>YES</u> | <u>2</u>
<u>NO</u> |
|---|--------------------------|--------------------------|
| 11c. Have you served as mediator in the Early Mediation Program in this district? | <input type="checkbox"/> | <input type="checkbox"/> |
| 11d. Have you served as counsel or mediator in a court-annexed program in another federal or state court? | <input type="checkbox"/> | <input type="checkbox"/> |
| 11e. In general, do you approve of court-annexed mediation programs? | <input type="checkbox"/> | <input type="checkbox"/> |
| 11f. Do you approve of the Court-Annexed Early Mediation Program in the Eastern District of Pennsylvania? | <input type="checkbox"/> | <input type="checkbox"/> |

12. If the case has terminated, please answer the following questions.

✓ PLEASE CHECK ONE ANSWER FOR EACH QUESTION.

12a. Did the parties settle the case or was it terminated by some other method?

- 1 Parties settled the case. 2 Case terminated by some other method.

12b. How favorable to your client was the final result in the case?

- | | |
|--|---|
| <input type="checkbox"/> 1 Very favorable | <input type="checkbox"/> 4 Unfavorable |
| <input type="checkbox"/> 2 Favorable | <input type="checkbox"/> 5 Very unfavorable |
| <input type="checkbox"/> 3 Neither favorable nor unfavorable | |

12c. How satisfied was your client with the final result in the case?

- | | |
|---|--|
| <input type="checkbox"/> 1 Very satisfied | <input type="checkbox"/> 3 Somewhat dissatisfied |
| <input type="checkbox"/> 2 Somewhat satisfied | <input type="checkbox"/> 4 Very dissatisfied |

12d. How satisfied was your client with the mediation process?

- | | |
|--|--|
| <input type="checkbox"/> 1 Very satisfied | <input type="checkbox"/> 4 Very dissatisfied |
| <input type="checkbox"/> 2 Somewhat satisfied | <input type="checkbox"/> 5 I can't say |
| <input type="checkbox"/> 3 Somewhat dissatisfied | |

12e. How fair was the final result to the parties involved in the case?

- | | |
|--|--|
| <input type="checkbox"/> 1 Very fair | <input type="checkbox"/> 3 Somewhat unfair |
| <input type="checkbox"/> 2 Somewhat fair | <input type="checkbox"/> 4 Very unfair |

13. We welcome any comments or suggestions you may have about the mediation program or its application to this case. Please use the back of this page.

THANK YOU

**Please return this questionnaire in the enclosed envelope.
If you have any questions, you may call the Mediation Clerk
for the Eastern District of Pennsylvania at
215-597-5760**