

TYPES OF DILEMMAS IN MEDIATION PRACTICE

Table I: Types of Dilemmas	
"Mediators encounter situations presenting dilemmas about"	
A. Keeping Within the Limits of Competency	
1. When "diagnostic" competency is lacking	
(a) to diagnose a history of violence	
(b) to diagnose mental incapacity	
2. When substantive or skill competencies are lacking	
B. Preserving Impartiality	
1. In view of relationships with parties or lawyers	
(a) after disclosure and waiver of objections	
(b) when relationships arise after mediation	
(c) when class or group "relationships" exist	
2. In view of a personal reaction to a party in mediation	
(a) antipathy to a party	
(b) sympathy for a party	
C. Maintaining Confidentiality	
1. Vis-à-vis outsiders	
(a) reporting allegations of violence or crime	
(b) communicating to a court or referring agency	
(c) communicating to a party's lawyer	
2. Between the parties	
(a) when disclosure would prevent "uninformed" settlement	
(b) when disclosure would break "uninformed" impasse	
D. Ensuring Informed Consent	
1. In cases of possible coercion of one party	
(a) by the other party	
(b) by the part's own lawyer/advisor	
(c) by the mediator's "persuasive" measures	
2. In cases of party incapacity	
3. In cases of party ignorance	
(a) of factual information known to the mediator	
(b) of legal/expert information known to the mediator	
E. Preserving Self-Determination/Maintaining Nondirectiveness	
1. When tempted to give the parties a solution	
(a) at the parties' request	
(b) on the mediator's own initiative	
2. When tempted to oppose a solution formulated by the parties	
(a) because the solution is illegal	
(b) because the solution is unfair to a weaker party	
(c) because the solution is unwise	
(d) because the solution is unfair to an outside party	
F. Separating Mediation from Counseling and Legal Advice	
1. When the parties need expert information	
(a) therapeutic information	
(b) legal information	
2. When tempted to express a professional judgment	
(a) therapeutic advice	
(b) legal advice	
3. When a party needs a therapist or advocate	
G. Avoiding Party Exposure to Harm as a Result of Mediation	
1. When mediation may make a bad situation worse	
2. When mediation may reveal sensitive information	
3. When mediation may induce "detrimental reliance"	
H. Preventing Party Abuse of the Mediation Process	
1. When a party conceals information	
2. When a party lies	
3. When a party "fishes" for information	
4. When a party stalls to 'buy time'	
5. When a party engages in intimidation	
I. Handling Conflicts of Interest	
1. Arising out of relations with courts or referring agencies	
2. Arising out of relations with lawyers/other professionals	

The Dilemmas of Mediation Practice: A Study of Ethical Dilemmas and Policy Implications by Robert A. Baruch Bush, Professor of Law, Hofstra Law School.