

PRACTICE HINTS: "POWER BALANCE"

The mediator must observe the dynamics of the negotiation between the parties. This is often referred to as the "power balance." "Power balance" is the relative ability of the parties to bargain with each other effectively. Only seldom is it clear cut, although many tend to make static judgments about who has power and who does not based on stereotypes, values or political orientations. Many lawyers and others suggest that one party, the man, will out-negotiate, overwhelm or intimidate the woman in negotiation or mediation. However, the "power balance" between parties frequently eludes clear, unequivocal judgments and as well, may shift in the course of the negotiations. The mediator must be able to assess and know when and how to intervene when the "power balance" becomes so unbalanced that an informed, consensual agreement is in jeopardy.

The mediator's most fundamental responsibility is to protect the integrity of the process to assure that agreements are informed and consensual. However, for the mediator to make judgmental/policy determinations for the parties as to who can or cannot mediate based on gender, occupation or experience alone, goes against the grain of mediation as a process where party's make their own decisions. The power balance of the parties—their ability to obtain information, consider options and make decisions or, in short, negotiate—must be understood in dynamic, interactional terms.