### Table I: Types of Dilemmas

*Mediators encounter situations presenting dilemmas about*

**A. Keeping Within the Limits of Competency**
- When “diagnostic” competency is lacking
  - (a) to diagnose a history of violence
  - (b) to diagnose mental incapacity
- When substantive or skill competencies are lacking

**B. Preserving Impartiality**
- 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
- In view of a personal reaction to a party in mediation
  - (a) antipathy to a party
  - (b) sympathy for a party

**C. Maintaining Confidentiality**
- 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
- Between the parties
  - (a) when disclosure would prevent “uninformed” settlement
  - (b) when disclosure would break “uninformed” impasse

**D. Ensuring Informed Consent**
- 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
- In cases of party incapacity
- 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**
- When tempted to give the parties a solution
  - (a) at the parties’ request
  - (b) on the mediator’s own initiative
- 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**
- When the parties need expert information
  - (a) therapeutic information
  - (b) legal information
- When tempted to express a professional judgment
  - (a) therapeutic advice
  - (b) legal advice
- When a party needs a therapist or advocate

**G. Avoiding Party Exposure to Harm as a Result of Mediation**
- When mediation may make a bad situation worse
- When mediation may reveal sensitive information
- When mediation may induce “detrimental reliance”

**H. Preventing Party Abuse of the Mediation Process**
- When a party conceals information
- When a party lies
- When a party “fishes” for information
- When a party stalls to ‘buy time’
- When a party engages in intimidation

**I. Handling Conflicts of Interest**
- Arising out of relations with courts or referring agencies
- Arising out of relations with lawyers/other professionals

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