2013 Ethical Dilemma
By Kristen Blankley

You are a mediator who successfully completed an online mediation in a products liability case. The mediation concerned a baby crib that had an unexpected defect that caused the bottom of the crib to collapse if the baby jumped up and down too hard in the crib. Baby Beds, Inc. manufactures the cribs, and has since fixed the defect. Baby Beds also issued a recall for the cribs that were thought to be affected by the defect. Baby Beds has suffered a lot of bad press because of the incidents. To date, the newspapers have reported upwards of 65 incidents of cribs that experienced a complete or partial collapse of the floor of the crib. Newspapers have also reported seven deaths associated with these cribs, and upwards of 20 hospitalizations. So far, only a handful of lawsuits have been filed regarding the cribs, none of which have been class action lawsuits.

The mediation that you conducted involved the first of the filed lawsuits. The lawsuit was filed on behalf of a minor child who suffered serious injuries as a result of falling through the crib. The child, C.J. (18 months), has already incurred approximately $20,000 in medical expenses, and due to brain injury incurred, C.J. will never mature to a fully functioning adult. The lawsuit seeks damages for medical expenses incurred, future care expenses, pain and suffering, and punitive damages. You mediated the case after the exchange of expert witness reports.

Prior to the mediation, you engaged in extensive email correspondence with the attorneys for the parties. Each party’s attorney submitted to you a confidential pre-mediation submission statement outlining the party’s settlement positions and the strengths and weaknesses of their cases. At the mediation, the parties and their counsel were all present online via Skype. During the Skype mediation, the mediator used the private chat function to send messages privately. Ultimately, the parties settled the case during the session, and you worked with the parties after the session to help with agreement writing and other lingering issues.

Four months after your last contact with anyone involved in the mediation, you received a subpoena from an attorney on a different case regarding the same defect in a Baby Beds crib.
The subpoena asks for all documents, including e-mail messages, attachments, and any chat records from your mediation. You live in a Uniform Mediation Act jurisdiction. After receiving the subpoena, what do you do? How do mediator ethics influence the actions that you take both practically and legally?

Click here to submit your answer:  https://americanbar.qualtrics.com/SE/?SID=SV_9z3rE5bidFjr1DT

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