

# Chicago Daily Law Bulletin®

Volume 162, No. 221

Serving Chicago's legal community for 161 years

## High-conflict clients: Helping your clients while saving your sanity

**D**ivorce often brings out the worst in our clients. The process is full of emotional triggers and minefields.

Professionals involved in the divorce process must be equipped to work with and interact with clients throughout this emotionally vulnerable time. Assisting clients becomes a greater challenge when professionals must navigate the divorce process with high-conflict clients.

High-conflict personalities are drawn to the litigious nature of our adversarial court system. Blame, anger and denial of responsibility runs rampant in high-conflict clients, which may lead to outbursts in the courtroom, in your office or even a client's refusal to follow court orders. Some clients approach the process looking to punish the other party by seeking countless evaluations or refusing to disclose relevant financial information.

Anger is often misplaced and directed at the client's attorney. Working with a high-conflict client is challenging as he or she often demands a great deal of time and attention yet contests the billing process. Finding a balance with these clients can be frustrating. Learning strategies to manage these clients not only aids in more effective negotiations but also can benefit the professional's own mental health and shield against burnout.

### Strategies for managing high-conflict clients

Conflict any time is unavoidable in the divorce process, regardless of whether the client elects to litigate, mediate or utilize a collaborative divorce approach. There are ways professionals can manage high-conflict clients in an attempt to minimize conflict rather than to ignite the flames.

Because emotions rather than legal considerations underlie disagreements and impasses within the divorce process, professionals cannot expect to eliminate conflict. Rather, professionals and attorneys alike should aim to reframe and transform anger in an effort to help clients consider legal consequences for their actions

and alter their course.

Paulette Janus, a licensed clinical social worker of Janus Behavioral Health Services, is a therapist, mediator and coach with more than 15 years of experience. When working with high-conflict individuals or in high-conflict situations, Janus attempts to focus the parties on contributions — both how the individual contributes to the issue and how the individual can contribute to a resolution.

Focusing on both parties contributions, Janus said, "is empowering and shifts the parties from blame to control; we can only control our own actions and reactions, not that of the other person."

One communication strategy utilized and taught by Janus is known as "BIFF" — brief, informative, friendly and firm. This strategy originated in the work of Billy Eddy, a lawyer and licensed clinical social worker who is founder of High Conflict Institute in San Diego.

*Working with a high-conflict client is challenging as he or she often demands a great deal of time and attention yet contests the billing process.*

According to Eddy, this form of communication helps individuals restructure the way they speak to one another. On this strategy Eddy stated, "Emotions are contagious and intense emotions are intensely contagious" indicating that it is often important to avoid the three "A's of advice, admonishments and apologies."

Janus utilizes the BIFF strategy frequently in her practice.

"I find this (strategy) helps clients to respond rather than to react to personal attacks or angry e-mails," she explained. "It provides a structure for clients to evaluate their communication patterns, and it focuses on the problem not the person."

As a professional she finds that she is constantly asking clients, "Was that BIFF?" If not, she works to encourage them to use



*Beth Fawver McCormack is a partner at Beermann. She practices exclusively in family law matters and is a collaborative law fellow, mediator and child representative.*

their BIFF moving forward to pave the road for effective communication.

A second strategy Eddy recommends is known as the "what's your proposal" strategy. Here, one party makes a proposal, the other party is allowed to ask basic questions and then must respond simply yes, no or maybe. If the party does not agree, they are asked to make a follow-up proposal. This strategy is designed to generate

options and minimize instances of potential reactivity from either party.

Janus explained, "This strategy proves helpful in shifting the parties from blame, criticism and steadfast positions to problem-solving. Ultimately, the goal is for parties to resolve their own differences." This reframes the disagreements from head-to-head battling to side-by-side problem-solving.

### High conflict and alternative dispute resolution

One of the benefits of alternative dispute resolution processes such as mediation or collaborative divorce is that these processes focus on facilitating the parties to have more effective, businesslike and emotionless communication. For high-conflict clients, ADR eliminates the adversarial compo-

nent. For those unable to engage in ADR, a divorce coach is a good alternative.

Attorney Karen Covy utilizes Eddy's work to successfully navigate through her high-conflict cases.

"BIFF and the 'what's your proposal' strategy are practical tools for keeping emotions in check. They focus clients on concrete facts, rather than allowing them to get swept away in a whirlwind of destructive emotions," Covy explained.

When managing conflict and high-conflict individuals, Janus focuses on the parties' assumptions and perceptions. To this end, Janus noted, "When intentions are not concretely stated, parties often make assumptions based on their history; particularly in divorce, these assumptions tend to be negative." Parties often mistake these assumptions for reality. Unfortunately, these assumptions are often mere perceptions and are rarely objective.

### Additional resources

For a deeper look into high-conflict resolution strategies, Janus suggested resources including the works from the Harvard Negotiation Project, "Getting To Yes" (Fisher, Ury, Patton), and "Difficult Conversations" (Stone, Patton, Heen).

For example, "Getting to Yes" discusses BATNA (best alternative to a negotiated settlement) and WATNA (worst alternative to a negotiated settlement). This strategy focuses on interests, concerns and options, rather than positions. It is effective because it helps parties evaluate proposals from the perspective of what might happen if an agreement is not reached rather than evaluating a proposal from the bottom line.

If you want to learn more about effectively managing high conflict individuals, the Collaborative Law Institute of Illinois will host Billy Eddy for a daylong seminar on Nov. 18. Contact CLII at collablaw-il.org or (312) 882-8000 to register.

— *The author would like to acknowledge the substantial contributions to this article by law clerk Missy Turk.*