

# 12 Paradigm Shifts of High Conflict Mediation

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Mediating high conflict disputes requires a shift from many standard mediation approaches. When one or more of the parties has a high conflict personality, the process should have more structure and focus away from common mediation topics, such as emotions, the past, and interests, and instead focus more strictly on problem-solving. By having the clients participate more actively in the process, and the mediator serve more as a guide for their active participation, they are more likely to reach their own agreements and follow them. Over the past dozen years, Michael Lomax and I have developed a method that addresses these concerns called *New Ways for Mediation*® which adapts the mediation process with at least 12 paradigm shifts. While designed for high conflict mediation, any of them can be used in any mediation at any time.

## 1. **Avoid trying to give the parties insight into themselves.**

With high conflict people, this triggers defensiveness and a feeling that you do not like them as they are. It doesn't matter whether you say it loudly, softly, or in writing, they won't get the insights about themselves and instead it will worsen your relationship with them. If you find yourself thinking "How can I make him see his part in this problem" or "How can I make her see how she's sabotaging herself," just forget about it. They just can't connect the dots from their own behavior to what happens to them, even when their part in their own problems is significant. They have a psychological barrier to self-awareness and self-reflection. Instead, focus on educating them about their options.

## 2. **Avoid emphasizing the past; emphasize the future.**

High conflict people are preoccupied with the past, defending their own behavior and criticizing other people's behavior. When you focus on the past, you get stuck in their attack-defend cycle, which is endless. They are often looking for vengeance and vindication about the past, based on their distorted perceptions of others being totally at fault. While you may need to discuss the past somewhat, put the emphasis on the future and what they can do about it now. At the beginning of the mediation say that you are going to be focusing on the future and talking very little about the past. Don't say you're not talking at all about the past, because you may have to talk about it some. Whenever they get stuck blaming or talking about the past, remind them that you are focusing on the future and their proposals for what to do going forward.

## 3. **Avoid emotional confrontations or even asking about feelings.**

High conflict people do not seem to go through the normal grieving and healing process that helps most people move forward in their lives after a significant loss. Sad to say, they are carrying around a lot of unresolved emotional upsets. When they focus on how they feel, they usually feel vulnerable, weak, and like a victim-in-life. Since they can't connect the dots to their own behavior, they are confused about why things go wrong for them and feel helpless. If you ask them how they are feeling, they will usually tell you how awful they feel, because of what

everyone else has done to them recently or years ago. Focusing on their feelings just makes them feel worse. Instead, focus on thinking and doing, which is when they feel better.

**4. Avoid asking probing questions; teach them to ask you questions instead.**

Mediators are skilled at asking questions and often ask probing questions about what the parties have done before or why certain problems exist in an effort to get to “the root of the problem.” Such questions often open up the past, which is not advisable as described above. With high conflict personalities, the root of the problem is often not an “issue,” but their ongoing inability to take responsibility for their part in problem-solving. Instead, mediators should teach the parties to ask them questions, especially about what their options are going forward and what others have done.

**5. Avoid Opening Statements; instead ask for questions about the mediation process.**

There is a long-standing principle in mediation that the parties need to be heard, by allowing them each to make an open-ended Opening Statement. However, this is where many high conflict mediations fall apart. Such statements open up the past and unresolved emotions. This leads to an increase in tensions, not a decrease, especially when a high conflict person focuses on how terribly the other party or parties have behaved. This often includes some distorted perceptions that cannot be negotiated and don’t need to be discussed. The speaker often becomes more emotional and more rigid in their thinking about the dispute, and the listener often becomes angry at being attacked in front of the mediator. Instead, it is usually more productive to ask for their thoughts and questions about the mediation process and the decisions they are facing, so that they each get a chance to briefly say something, but without going into the past or trying for insight.

**6. Teach the parties to make the Agenda.**

Traditionally, mediators have developed the Agenda after hearing the parties’ Opening Statements. Mediators are usually very good at this. However, this is a relatively simple task which should be given to the parties for several reasons. By making their own Agenda, with the guidance of the mediator, it helps the parties focus on the future and problem-solving rather than reacting to each other. It also is a joint decision-making project which can help the parties build toward making larger joint decisions. Lastly, during the mediation they often change topics or bring in new issues, so that the mediator can help them stay focused or consciously agree to change topics, rather than getting into a power struggle over the mediator’s agenda.

**7. Teach the parties to decide who goes first and other small process decisions.**

Throughout the mediation process, it helps to have the parties make the little process decisions, like who goes first in each discussion, rather than the mediator. This gives them more responsibility, keeps the emphasis on problem-solving, and gives more practice at joint decision-making.

**8. Skip exploring interests.**

This may seem like the biggest paradigm shift of all in the *New Ways for Mediation* method. For the past forty years, since *Getting to Yes* was published, the idea of interest-based negotiations has taken hold everywhere that negotiations occur. This totally makes sense, because identifying interests helps people see how their conflicts may be able to be resolved with both getting much or most of their interests met. This approach is much better than the previous way of just negotiating from positions. However, high conflict people are generally unable to realistically identify their own interests and the other party's interests. It requires too much insight when they are highly defensive at the beginning of a mediation. Instead, they come in with demands or rigid positions. By recasting their positions as proposals, we are able to meet the parties where they are by hearing their proposals early in the process. (See next paragraph.)

**9. Teach the parties to make proposals.**

After the parties have made their Agenda, then the mediator can ask for proposals, starting with the first Agenda item. Ideally, they are expecting this before they come into the mediation and have proposals ready. Then, each proposal is analyzed with questions from the other party and the mediator. If an agreement can come from the proposal and question process, that's great. If not, then eventually the mediator can say what appears to be most important to each party to try to help them make new proposals. In other words, the mediator identifies their interests, if necessary.

**10. Avoid focusing on the negative.**

Throughout the mediation process, high conflict people often make many little negative comments toward each other. "That's stupid." "You wish." "You're lying." Most of these can be ignored. If you admonish a party for their side comments, you will end up going down the endless rabbit holes of high conflict. If necessary, stop and make a general announcement: "Hey folks, let's all try to avoid making side comments and let's all try to avoid reacting to side comments." That way it's about all of us, rather than disciplining one party and triggering their defensiveness. If something is said and the other party says, "I need to defend myself here," you can just say "No you don't. Not in mediation. Our focus is on the future and your proposals." Also, avoid "suggesting the negative," such as emphasizing what they should not do (which they hear as a criticism about their past behavior), rather than what they should do. And if the parties start a proposal by saying "I don't know why you won't agree to do such-and-such," you can redirect them immediately by saying they should try not to "lead with the negative" in making their proposal. Just say state the proposal with a positive tone that suggests it will be seriously considered.

**11. Avoid the apology quicksand.**

It's not unusual that high conflict people demand an apology from a reasonable person who has attempted to set limits on them, such as a supervisor in a workplace dispute or someone in a neighbor dispute. For example: "I told you not to park in front of my house; you should apologize" when they have no right to restrict such parking. On the other hand, reasonable people sometimes want an apology from a high conflict person for their misbehavior. However,

it is rare to get an apology from a high conflict person, so this is a waste of time. Instead, just say: "Apologies take us back to the past and its better to focus on proposing how you want things to go in the future."

## **12. Resist hammering out agreements.**

High conflict people have a hard time accepting agreements and may suddenly change their positions when agreements are about to be made. It can be tempting to twist arms and try to hammer out an agreement. However, when you do that, they often seek to overturn their agreements and claim they were unduly pressured. It is often better to emphasize the importance of them feeling certain about their agreements, including asking whether they think they will actually follow the terms or if it needs more details in it. Finalizing and signing an agreement can sometimes take as long as the mediation session(s) themselves. Overall, high conflict mediations can take 2-3 times as long to complete compared to normal mediations, yet they can settle their cases most of the time.

## **Conclusion**

With these paradigm shifts and others, high conflict mediations can be successful. For more information about the *New Ways for Mediation* method, please read our book ***Mediating High Conflict Disputes*** (B. Eddy and M. Lomax, Unhooked Books, 2021) or sign up for our 12-hour training on this method at [www.HighConflictInstitute.com](http://www.HighConflictInstitute.com).

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