



Mediating High Conflict Disputes

Hosts:
Justice Marie L.
Garibaldi American Inn
of Court for Alternative
Dispute Resolution
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Hello, We Are High Conflict Institute.

Founded in 2008 by Bill Eddy, LCSW, Esq. and Megan Hunter, MBA, we take a skills approach:

- understand & manage interactions with high conflict people (HCPs)
- communicate respectfully
- we train legal professionals, workplace professionals, and family professionals

HIGH
CONFLICT
INSTITUTE



High Conflict Personalities

4

PRIMARY TRAITS
of the High Conflict
Personality

BLAMING OTHERS

preoccupied
with focusing
on a Target
of Blame

ALL-OR- NOTHING

problem-solving
dominated by
all-or-nothing
thinking

UNMANAGED EMOTIONS

which are
intense and can
completely
take over

EXTREME BEHAVIOR

or threats,
which 90% of
people would
never do

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3

Adapt your approach
accordingly

The 4 Forget About Its

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FORGET ABOUT:

1 Trying to give
them insight

Instead,
focus on choices

2 Focusing on
the past

Instead,
focus on the future

3 Emotional
confrontations or asking
about emotions

Instead,
focus on thinking and
doing

4 Telling them they have
a high conflict conflict
personality

Instead,
focus on what to do

4

3 Key Mediator Skills

1. **CONNECT** with Empathy, Attention and Respect throughout the process
2. **STRUCTURE** the dispute resolution process from the start by focusing on proposals. *We're going to focus on the future by making proposals and making agreements*
3. **EDUCATE** them about their present choices and possible consequences of each choice (rather than exploring the past, interests, or emotions).

Connect with an EAR Statement™

You'll be frustrated by the HCP's emotional reactivity and thinking distortions. It's easy to get "emotionally hooked" or defensive, and to withhold any positive responses. It's easy to feel a powerful urge to attack or criticize.

Instead, consciously give them EAR Statements that show:

- EMPATHY
- ATTENTION
- RESPECT

Connect with an EAR Statement™

Example: “I can **understand** your frustration – this is a very important decision in your life. Don’t worry, I will pay full **attention** to your concerns about this issue and any proposals you want to make. I have a lot of **respect** for your commitment to solving this problem, and I look forward to solving it too.”

But you don’t have to address all three.
Even a sentence showing Empathy, OR Attention, OR Respect can help.

Empathy

- Acknowledge the person is upset:
 - “I can see this is upsetting.”
 - “Wow! You’re really upset.”
- Let person know you are invested in them:
 - “I really want to help you.”
 - “I want you both to succeed here.”
- Connect with their feelings:
 - “I can **understand** how frustrating this is.”
 - “I can **see** how hard this has been.”
 - “I can **hear** your concerns about this issue.”
 - (Avoid: “I know how you feel.”)

New Ways for Mediation®

The Simple Structure

Stage of Mediation Process	Client Mediation Task
Stage 1: Establishing the Process	➔ Asking Questions
Stage 2: Making the Agenda	➔ Making Their Agenda
Stage 3: Making Proposals	➔ Making Their Proposals
Stage 4: Making Decisions	➔ Making Their Decisions

Stage 1: Establishing the Process

Stage of Mediation Process	Client Mediation Task
Stage 1: Establishing the Process	➔ Asking Questions
Stage 2: Making the Agenda	
Stage 3: Making Proposals	
Stage 4: Making Decisions	

Stage 1: Establishing the Process

- Establish control (Mediator talks; clients listen)
- Any client diversionary issues will have to wait until process is explained.
- Explain the process and briefly explain the **four stages**:

4 Stages	Client Mediation Task
Stage 1: Establishing the Process	Asking Questions
Stage 2: Making their Agenda	Making Their Agenda
Stage 3: Making Proposals	Making Their Proposals
Stage 4: Making Decisions	Making Their Decisions

Stage 1: Establishing the Process

Emphasize the Mediator's role:

- Control and guide the process
- Answer questions
- Educate about options and possible outcomes
- **Ask clients if any questions about this**

Emphasize the Clients' role:

- Asking questions
- Making their Agenda (With Mediator's guidance)
- Making their Proposals (With Mediator's guidance)
- Making their Decisions (With Mediator's guidance)
- **Ask clients if any questions about this**

Stage 1: Establishing the Process

Emphasize that the focus is on the future

- Will be very little discussion of the past
- We can't mediate the past
- Don't have to agree about the past
- Don't have to defend the past
- **Ask clients if any questions about this**

Explain ordinary ground rules (confidentiality, okay to take breaks, etc.)

Stage 2: Making their Agenda

Stage of Mediation Process	Client Mediation Task
Stage 1: Establishing the Process	
Stage 2: Making the Agenda	➔ Making Their Agenda
Stage 3: Making Proposals	
Stage 4: Making Decisions	

Stage 2: Making their Agenda

A. In this method we don't ask for:

- an opening statement
- their points of view
- the concerns that brought them here
- anything that opens up the past

INSTEAD, ask them:

“Any questions you have about the mediation process or the decisions you need to make today?”

This will help me know what information to tell you to help you prepare for making your proposals.

Be strict about taking turns. It will help them feel safe and focused.

Stage 2: Making their Agenda

B. Then its time for them to make their Agenda.

Tell me what you each propose to put on today's agenda.

Each gets an uninterrupted turn while you write their list.

Now, what do you agree should be the items that we address today, and in what order?

- **This should be totally up to them.**
- **You want them to practice making joint decisions.**

Stage 3: Making their Proposals

Stage of Mediation Process	Client Mediation Task
Stage 1: Establishing the Process	
Stage 2: Making their Agenda	
Stage 3: Making Proposals	➔ Making Their Proposals
Stage 4: Making Decisions	

Stage 3: Making their Proposals

Ask if they have any questions about the topic they chose to discuss first. Then, ask who wants to go first with making a proposal, using these steps:

1. **Propose:** WHO will do WHAT, WHEN and WHERE.
2. **Ask questions:** The other person then asks questions about the proposal, such as: "What's your picture of what this would look like, if I agreed to do it?" "What do you see me doing in more detail?" "When would we start doing that, in your proposal?"
(Be strict about them asking questions before letting them respond.)
3. **Respond:** Other person then responds with:
"Yes." "No." Or: "I'll think about it."

And if you say "No," then you make a new proposal.

Stage 3: Making their Proposals

Help them Analyze “What’s important” in their proposals

IF NO AGREEMENT, ask for new proposals.

IF STILL NO AGREEMENT, tell them what you saw was important in each.

You can write these on a white board.

THIS IS *reverse interest-based negotiations*:

- Reframe any positions as “proposals.”
- Mediator helps analyze proposals with questions.
- Mediator identifies:
 - “what’s important”
 - checks if parties agree
 - adds whatever they wish

“What’s important” is really their *interests*.

Stage 3: Making their Proposals

Educate them about options

IF NO AGREEMENT, avoid probing questions (they open up the past).

INSTEAD:

- Give them at least 3 options that others have done or that you can envision, which might give them new ideas for proposals.
 - **1 option** is too directive for mediator
 - **2 options** risks one likes one and other likes other
 - **3 options** gets them thinking

IF STILL NO AGREEMENT:

- Discuss sources of information they might investigate.
 - reading resources
 - people to consult with
 - plan to meet again after their research

Stage 4: Making their Agreements

Stage of Mediation Process	Client Mediation Task
Stage 1: Establishing the Process	
Stage 2: Making their Agenda	
Stage 3: Making Proposals	
Stage 4: Making Decisions	Making Their Decisions

Stage 4: Making Decision (Their Agreements)

- A. **When they appear to have an agreement**, write it down. Ask for all details.
- B. If they have been **“thinking about it”** on an issue, ask them now if it’s a **Yes or NO** or need more time to think.
- c. If they appear to have an agreement, **encourage them to think about it** and know they aren’t locked in until they sign.
- D. **Warn them** about buyer’s remorse, so make sure its what you want now.
- E. Advise them to see **reviewing professionals**, such as lawyers, financial professionals, parenting professionals.
- F. Warn them that professionals **may want them to fight for “more.”** Tell them they are the **decision-makers**, so hear what professionals have to say, but then decide for themselves.
- G. Can always make **new proposals** if necessary, until its signed.

Teach BIFF Responses® For Future Communication

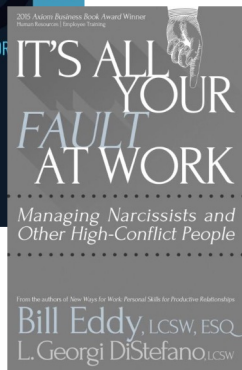
Brief: Keep it brief. Long explanations and arguments trigger upsets for HCPs.

Informative: Focus on straight information, not arguments, opinions, emotions or defending yourself (you don't need to)

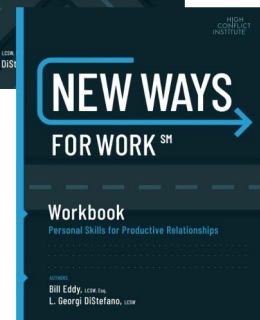
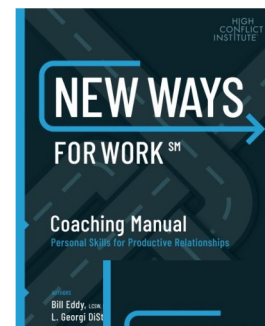
Friendly: Have a friendly greeting (such as “Thanks for responding to my request”); close with a friendly comment (such as “Have a good weekend”).

Firm: Have your response end the conversation. Or give two choices on an issue and ask for a reply by a certain date.

Resources



- [BIFF at Work®](#) book release by Bill Eddy, LCSW, Esq. and Megan Hunter, MBA
- *It's All Your Fault: At Work
- *New Ways for Work Coaching Manual
- *New Ways for Work Workbook
- Authors * Bill Eddy and L. Georgi DiStefano, LCSW
- www.HighConflictInstitute.com/store
- unhookedbooksau.com (Sydney, AUS Distributor)



BIFF Response® for CoParenting Book



- [BIFF Response®](#) latest book release by Bill Eddy, LCSW, Esq., Annette T. Burns, JD & Kevin Chafin, LPC
- A Guide to difficult CoParent texts, emails and social media posts
- Reducing the back-and-forth rant
- A *bible* for CoParents and Professionals
- Real life examples
- [Poster](#) and [Notepad](#) available for purchase

Mediation Resources

1. Book: *Mediating High Conflict Disputes* (2021)
2. 12-Hour Training in *New Ways for Mediation®*
3. Online Demonstration Video: 75-minute Seminar AND 3-hour Demonstration (“Dawn & Skip”)

And More: www.highconflictinstitute.com

THANK YOU

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INSTITUTE®

the missing peace

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