

Identifying and Managing Difficult, High-Conflict Personality Clients

By Paul Fisher

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How many times have you worked with a client who, at first, appears to be an appealing and charming individual or an unfortunate victim of someone else's wrongdoing? Later, you realize the client is chronically adversarial, manipulative, inflexible, unreasonable, impossible to please, and takes no responsibility for conflicts he or she has helped create. As explained by forensic psychologist Sherrie Bourg Carter: "They believe that their distorted or exaggerated views of a situation are accurate, making it difficult for them to understand why others do not agree with them. They tend to disagree with their attorney's assessment of the strengths and weaknesses of their case and legal strategies. When challenged they become defensive and entrenched." Sherrie Bourg Carter, *Representing Mentally and Emotionally Disturbed Clients in Family Law Practice*, 22 Am. J. Fam. L. 128 (Fall 2008).

Think back to your first meeting. Had you known then what you know now, you never would have accepted the case. Sometimes, however, you are stuck with the case and have to make the best of it. These are the 10% of clients who cause 90% of your grief. Attorneys have told me in mediation about the pain, agony, and mental torture they go through with difficult clients.

This article will help lawyers identify difficult, high-conflict personalities and present approaches on how to better manage them by discussing the four most common high-conflict personalities: borderline, histrionic, narcissistic, and antisocial. For these clients, the drive for conflict arises from their personalities, rather than the issues or amount of money involved. There is a lifelong pattern of blaming others and not taking responsibility for their actions. How these individuals are handled can either escalate or contain the dispute. This article also discusses enablers, the people who encourage difficult clients in their misperceptions. Tools that work with each disorder are explored, and because these clients may sue for malpractice if they are dissatisfied, how to protect yourself and, ultimately, how to fire such a client.

High-conflict personality disorders cause clients to see things differently. These disorders occur in 10% of the population. Another 10% to 15% of people have maladaptive traits that do not qualify as a disorder. Kathie Nichols, *Breaking Impasses: Strategies for Working with High Conflict Personalities*, 20 Am. J. Fam. L. 226 (Winter 2007). A personality disorder is "an enduring pattern of inner experience and behavior that deviates markedly from the expectations of the individual's culture." *Diagnostic and Statistical Manual of Mental Disorders* (4th ed.) (DSM-IV).

Albert Bernstein describes these personalities as emotional vampires: they look like everyday people, but they are dangerous in the dark. He cautions, "They walk into your office and end up in the court room with you or against you." They believe their needs are more important than anyone else's, that problems are not their fault, and that rules are for other people. They are an extraordinary drain on a lawyer's time, attention, and emotional energy.

Borderline Personality Clients

The hallmark of borderline personality individuals is "I hate you, don't leave me." Though they represent only 2% of the population, these individuals are the ones most often found in high-conflict litigation. Females make up 75% of this group. Their greatest fear is abandonment, which is perceived in everyday events. Their coping mechanism is to control and manipulate. They have intense, angry outbursts and severe mood swings. On a good day, they idealize their attorney: "You're brilliant." On a bad day, they devalue and berate: "You're the worst." They inflict abuse as a defense mechanism. Beware—they can appear sexually alluring and may abuse alcohol or drugs. If they feel abandoned by their lawyer, they may seek revenge through bar grievances and malpractice claims. These individuals may change their story from one meeting to the next.

When the relationship is new, clients with borderline personalities fantasize about how wonderful it will be and how great you are. Even if you agree, keep their expectations reality-based or you will be set up for devaluation. Let the client know there will be ups and downs in the case, and the relationship, and that you will work through them together. Be realistic and reassuring. Do not reinforce extreme expectations. Eventually, bad events will occur, and the client will be dissatisfied. Listen respectfully, even to outbursts, without being defensive.

Do not react to intense emotions. Your responses should be modest and conversational. Work with the client on his misperceptions rather than criticizing him. Though doubt may heighten his anxiety, you have to test his reality. You must balance supporting the person and being detached when you analyze and discuss his claims. Though necessary, addressing the weaknesses of his case will create doubt, causing a strong reaction. Patiently stand your ground. If you become emotional, effective communication will be lost, and he will feel abandoned. Though this client wants positive feedback, if a positive analysis conflicts with the law, giving that desired information will lead to unreasonably heightened expectations. Do not ignore or be abrupt with this client. Misunderstandings and poor treatment may lead to revenge for being abandoned.

Histrionic Personality Clients

Histrionic personality disorder makes clients see things differently. "They believe that their distorted or exaggerated views of a situation are accurate, making it difficult for them to understand why others do not agree with them. They tend to disagree with their attorney's assessment of the strengths and weaknesses of their case and legal strategies. When challenged they become defensive and entrenched." Carter, *supra*. For these clients, conflict is driven by personalities rather than issues or the money involved.

Some histrionic patterns include denial of inappropriate behavior, inability to accept responsibility for their actions, avoiding mental health treatment, and blaming others. Nichols, *supra*. How these clients are handled can escalate or contain conflict.

Histrionic personality disorder exists in 2% to 3% of the general population. The hallmarks of histrionic personality are fear of being ignored, drama, and exhibitionism. Bill Eddy, LCSW, *High Conflict People in Legal Disputes* (HCI Press 2005). "If they are not the center of attention, they may do something dramatic (make up stories, create a scene) to draw the focus of attention to themselves." DSM-IV, *supra*. These persons have underlying dependency needs, which they attempt to fulfill by seeking attention, affection, and stimulation, including seductive or sexually provocative behavior. They appear confident and self-assured but are actually deeply insecure and have shallow feelings. They manipulate with drama, charm, and temper tantrums as they seek attention, affection, and approval.

Histrionic personalities may exaggerate stories, create detailed non-existent facts, and attempt to persuade you that they are victims. They are not concerned about truth if distortion tells a better story. There are frequent crises, emergency phone calls, and dramatic reports about opponents. Emotions may be used to get your attention.

It is easy to become absorbed and seduced. Before acting, ask the histrionic client for supporting documents and witness verification. Independently verify the client's claims. Give the client full attention, including eye contact. Avoid distractions, and don't interrupt with questions. Be empathetic. Support the person, but don't immediately support the position. Supporting unverified claims validates high-conflict behavior. Expect and prepare for crises. This is a test of how you manage the situation and the relationship. Take the first crisis call as soon as possible to avoid enhancing client insecurities.

It is difficult to settle a dispute because histrionic clients may see it as acknowledgment of their contribution to the problem. Reframe the reason for compromise. There are enormous benefits for your client in reaching settlement. Do a trial budget. Include work for pleadings, discovery, motions, preparation for trial, and trial. Include fees for reporters at depositions and expert witnesses, as well as incidental costs. Discuss the time your client needs to dedicate to the litigation and trial, and how it will affect his life. Objectively analyze each issue that might come up at trial, but do so without challenging the client's honesty. Emphasize that even if the client is right, there is a risk that a judge or jury will believe the other party, the client will have to pay the attorney's fees and costs, and the quality of his life will be severely affected.

A recent illustration of this: Before the mediation, I spoke with plaintiff's attorney, who complained that he was receiving several multi-page e-mails from his client daily, indicating that she did not want to mediate, that she did not trust him, and arguing why she was right, the defendant was wrong, and why she should go to trial. During mediation caucuses with the plaintiff and her attorney, the plaintiff initially was very charming. She eventually berated her attorney, claimed she did nothing wrong, and refused to take responsibility for any of the conflict. When I discussed the difficult legal and factual issues, she tried to deflect the issues by changing the subject, having emotional outbursts, and accusing her attorney. When her attorney questioned her about apparent fabrication of new facts, she berated him. After 10 hours of mediation, we settled the case. When it was time to sign a settlement agreement, the plaintiff changed her mind, refused to sign, and left in a rage. Over the next two days, I had many telephone conferences with the plaintiff's counsel. The client had bombarded him with lengthy e-mails rearguing all the issues and complaining about what a poor job he did. The attorney told me his client was driving him crazy and that she owed him a lot of money. Eventually, the

client agreed to a conference call with both of us. We focused on the costs of trial, the time it would take, and the possibility that the jury might agree with the other party—not whether she was right or wrong. After the conference call, the client signed the settlement agreement.

Not all personality disorders respond to the same treatment. Be supportive of the histrionic client's emotional needs and his sense of being wronged, threatened, or damaged. Consider suggesting that the client see a mental health professional to help relieve the stress of the conflict. Most importantly, do not ignore this client when frustrated or angry, or you may be his next victim.

Narcissistic Personality Clients

Narcissistic personalities have an extreme preoccupation with themselves, lack empathy, and seek to be treated as superior and admired. They are oblivious to their own behavior and portray themselves as victims. They generally make good first impressions, appearing confident and perhaps arrogant. They may have a sense of entitlement, believing they are more talented, intelligent, and attractive than others. (Think of your brother-in-law.)

These individuals can be demanding and inflexible. They may exploit personal and professional relationships. Nichols, *supra*. Most importantly, they do not accept responsibility for their behavior. Criticism is met with an extreme reaction. They may see failure as unacceptable, becoming upset if they cannot win. They are self-centered, self-absorbed, and have no sensitivity to others' needs, interests, or feelings. Eddy, *supra*.

Narcissistic personalities believe everything is someone else's fault, not theirs. They are risk takers, disdainful of others, and oblivious to the consequences of their own actions. They are frequently in disputes with their attorneys. Many successful people (not including me) have some traits or moments of narcissism. An overinflated sense of success and talent are characteristic of narcissistic personalities, and this often alienates those around them. Carter, *supra*. Narcissistic personalities constantly feel injured by life events. Because they cannot accept responsibility, they find fault with others, and that leads to legal disputes.

Relationships are seen as opportunities for exploitation. Lying and exaggeration are common. In business relationships, they may be sued for breach of contract or breach of fiduciary duty because they do not believe their actions are harmful when others do. In employment relationships, they may be sued for harassment because they are insensitive to how they affect others. In trust and estate or family business conflicts, they may sue or be sued because of their sense of entitlement, sense of superiority or their complete disregard for the interests and feelings of their relatives. Eddy, *supra*, citing D. Dutton, *The Abusive Personality: Violence and Control in Intimate Relationships* (The Guilford Press 1998). Their sense of superiority and lack of empathy allows narcissistic personalities to be violent toward both family and nonfamily.

Often narcissists receive negative feedback from society, which leads to their anxiety and depression. As a result they may become abusive. According to psychiatrist Christine D. Forest, understanding this dynamic will help the attorney become more patient and empathetic. Narcissistic personalities have great difficulty reaching compromise and this leads to litigation because the court system is where narcissists can prove they are right. Compromise is difficult with these personalities because they feel they have done nothing wrong, have not contributed to the conflict, and are entitled to a better share of the outcome than others.

If their attorney confronts them with their own behavior, they become extremely defensive and may attack their attorney. They may even fire the attorney and find another who is more agreeable and provides the special treatment they expect. This pattern may be repeated. Dr. Forest suggests that, rather than confront the client, be polite but firm. Stress that the attorney-client relationship is professional, not personal, and that the attorney's opinions are professional, not personal. Beware of the prospective client with a history of discharged attorneys. Always ask why prior relationships ended.

Setting clear boundaries with the narcissistic client is necessary. Although he wants to bend the rules because he feels he is exempt, doing so will make the relationship unmanageable. Be firm and consistent. Allow brief venting. If given free reign, this client will talk about himself or rant for hours. Provide this client with positive feedback to support his sense of being wronged, victimized, or damaged. Do not support unverified claims, however, or this will further fuel his desire for justice or retribution.

Illustration: George bought a dry cleaning store and claimed the seller, Sam, did not disclose that the store had been cited by the city for failure to clean up a waste leak and that it would cost \$225,000 to remediate. George stopped making payments toward the purchase price. George and Sam were brothers-in-law, and George had borrowed the down payment from his wife's wealthy, elderly parents. Sam claimed the waste was not his responsibility because he owned the business for only three years and it had been run over 19 years, with each owner contributing to the mess. In caucus with Sam and his attorney, Sam said he sold the business to George because he did not want to deal with the citation and the cleanup was not his responsibility. He did

not tell George before the sale because he needed the money to purchase another, larger dry cleaning store. He also was not concerned about his family relationships. He was disdainful of George and felt he was from an inferior family and had no business intelligence. He was confident a judge or jury would understand that he had little to do with the accumulated waste. While in the hallway, Sam's attorney told me that Sam would not listen to him, berated him when they discussed trial risks, and expected to be vindicated. Back in caucus with Sam and his attorney, we supported Sam's sense of being victimized by the person he bought the store from and by George who stopped making payments. Once Sam felt supported, he was more trusting and was able to stop focusing on his emotions of being victimized and instead move his attention to solutions that would lead to resolution.

Suggest to this client the benefits of psychological counseling to relieve the stress of the conflict. There is no need to mention the narcissist's behavior. Counseling may allow the client to be more flexible and make your relationship more tolerable and productive.

Antisocial Personality Clients

Antisocial personalities are by far the most fascinating, challenging, and dangerous clients to deal with. This group is skilled at fooling attorneys, judges, and most mediators. They make up 2% to 4% of the general population and half of the prison population. Approximately 70% are men. There is a strong biological component involved. Nichols, *supra*. More than 75% of sociopaths are alcohol dependent and 50% abuse drugs. Martha Stout, *The Sociopath Next Door* (Broadway Books 2005.)

These individuals take advantage of people, and in the extreme some enjoy committing violent crimes to get what they want. Eddy, *supra*. Robert Hare, professor of psychology at the University of British Columbia, explains: "A good psychopath can play a concerto on *anyone's* heartstrings. . . . Your best defense is to understand the nature of these human predators." Self-awareness is impossible for the antisocial personality. Just as the sociopath has no genuine relationship with others, he has only a tenuous one with himself.

Antisocial personalities exploit others as a means of overcompensating for their fear of being dominated. Their hallmarks include some or all of the following: aggressiveness, charm, and deceit for their own benefit, reckless disregard for safety of others and themselves, desire to dominate others, impulsiveness, playing the victim, and a lack of empathy. They desire revenge for what they believe are past injustices. They may rationalize hurting, mistreating, or committing a crime against another. DSM-IV, *supra*. Some researchers say antisocial personalities have a glib, superficial charm that allows the sociopath to seduce others, have a kind of glow or charisma and grandiose sense of self-worth, and engage in pathological lying and conning, and parasitic relationships with friends. According to Dr. Martha Stout, there is always failure to acknowledge responsibility for problems, callousness, no empathy, no interest in bonding emotionally, and no consciousness.

Sociopaths, ultimately, are loveless. To these people, others—even "friends" and family—are serviceable game pieces at most. Sociopaths do not care about other people, but they learn to appear emotional. Dr. Forest describes the sociopath as capable of engaging in antisocial acts just for fun, to see how far they can push others. They then emotionally detach from them to watch them struggle. The true antisocials are remorseless; they are the grown-up version of the children who cruelly torture defenseless animals for fun.

These individuals may use the legal system to harm a business partner or family member. Gathering accurate information from this client may be difficult. An antisocial person may omit critical information and may try to deceive his attorney. Claims must be independently verified. Also, he may be in financial trouble.

Antisocial persons' lack of remorse makes it difficult to negotiate with them. They may do whatever helps them, including acting remorseful. The most useful approach with an antisocial person is to remain skeptical. Accept that some people have no conscience. Trust your instincts. Flattery may only be counterfeit charm and nearly always involves intent to manipulate. Likewise, do not be taken in by favors. Corroborate these clients' claims. Explain the consequences of future misconduct. Do not be surprised when your warnings are ignored. Be prepared to enforce consequences. They are adept at appearing normal and credible. They are not afraid of lying or using and hurting other people. They are not afraid of authority. They can be effective in legal disputes through their persuasion and suppression of evidence.

Antisocials know how to appeal to sympathy. When we pity, we are, for the moment, defenseless. Those who have no conscience use emotional vulnerability against us. Carter, *supra*. If you find yourself often pitying someone who consistently hurts you or others, and who actively campaigns for sympathy, chances are you are dealing with a sociopath. Never agree, out of pity or for other reasons, to help a sociopath conceal his or her true character. Ignore the plea, "Please don't tell." When he says, "You owe me," you don't. When he says, "You are just like me," you aren't. Others deserve to be warned.

Illustration: Petitioner was the mother of decedent and former spouse of respondent. Respondent was de-

cedent's father and successor trustee of decedent's trust. The trust called for equal distribution of the estate to the father and mother. The father, however, made distributions, which he called loans, from the trust to the parties' surviving daughter. Petitioner was elderly and claimed the distributions were gifts that would not be paid back during her lifetime. Respondent claimed he spent a lot of time administering the trust and claimed extremely high extraordinary fees. This became justification for his alleged wrongful acts, a plea for sympathy, which he repeated like a mantra.

During the first day of mediation he did not appreciate learning of the risk of loss and the attorney's fees he would incur at trial. On the second day of mediation, two weeks later, I learned from petitioner's attorney that respondent made an additional distribution to the surviving daughter. Respondent's attorney was not aware of this. Respondent tried to conceal this from his attorney, disregarding the effect this might have at mediation or trial. It was not until this distribution came to light that he began to come to grips with the reality of losing and the cost of going through trial. Though he appeared to be unable to say no to the surviving daughter's requests, he did not care about the consequences and was remorseless.

Double Trouble: Managing the High-Conflict Personality Client's Enabler

Beware the enabler. This is a person who is often present in meetings with you and your client and who participates as much or more. It may feel like there is a barrier or filter between you and your client. The enabler makes it feel like your job as the attorney is much more difficult than it should be. You may have double trouble: a high-conflict personality client and his enabler. Imagine trying to tame a two-headed dragon. Ignore one head and you will get burned.

An enabler aids another in persistent self-destructive behavior by providing excuses or helping that individual avoid the consequences of his or her behavior. *Merriam-Webster's Medical Dictionary* (2007). "Enabler" is a term coined in the alcohol recovery movement, referring to a person who enables a spouse, parent, child, or friend to continue either a substance or process addiction. Brian Luke Seaward, *Managing Stress: Principles and Strategies for Health and Wellbeing* (Jones & Bartlett Learning 2006). The enabler is sometimes referred to as a "negative advocate," one who advocates continued negative behavior.

Enablers may protect high-conflict personality persons from the consequences of their actions, either passively by not challenging the self-destructive behavior or actively by protecting the persons from the consequences of their actions. Enablers help high-conflict personality people by covering up for them, allegedly out of concern, loyalty, and love, but in fact they need to be needed. Thus, enablers may have an addictive nature, motivated by a desire to avoid arguments and conflict, and sometimes financial or emotional dependence on the other person. Theodore Millon & Seth Grossman, *Personality Disorders in Modern Life* (John Wiley & Sons 2004).

Dr. Forest indicates that enablers fear confronting reality and are too afraid to look at the tragic picture. They do not know how to address the problem, so they choose denial and become enablers. When you see the person with your client zealously covering up a problem and their position is illogical, and your gut tells you, "This does not make sense," this is the red flag for an enabler. The enabler's "helpfulness" is part of the problem, not the solution. The enabler's attempts to help maintain the problem, by minimizing consequences, make it easier for the high-conflict person to continue his behavior. Katie Evans & J. Michael Sullivan, *Treating Addicted Survivors Trauma* (Guilford Press 1995).

Enablers, intentionally or unintentionally, advocate for the negative behavior of the high-conflict person. Enablers adopt or agree with the high-conflict person's distorted view of reality. Being supportive of the high-conflict person, they focus attention on others' purported behavior. They help the high-conflict person avoid taking responsibility. Enablers pretend nothing is wrong. Eddy, *supra*. When enablers support the high-conflict person's distorted view of the world, the high-conflict person becomes more confident in his or her position. This can lead to legal entanglements.

Some attorneys also may be enablers. They do not carefully examine facts, documents, and other proof they need to successfully try the case. In a small number of my mediations, I am the first person who breaks the news to a high-conflict person that there are problems with his position. Before that moment, his attorney has not helped him objectively analyze the issues of law and fact and the risks of trial. This can be quite a shock to the high-conflict person. Occasionally this moment is also a shock to the attorney who bought the client's story without sufficiently verifying the claims or defenses.

To manage the enabler, be empathetic and supportive of the enabler, but not supportive of his position. Supporting unverified claims validates high-conflict behavior and the enabler. Provide consistent emotional support. If the client and enabler feel you are pulling away, it can be seen as rejection and lead to retaliation

against you. Dr. Forest suggests not openly confronting their denial of the facts. Try to give them a new perspective on reality, that is, "Have you considered . . ." or "Could the judge or jury conclude . . . ?" Do not get pulled into their world. Set limits on when and how you communicate. Do not believe everything they tell you. Verify what your client and his enabler tell you before acting on it. Encourage the enabler to let the high-conflict person independently do all preparation work for you rather than having the enabler do that work. Assist the enabler in letting the high-conflict person experience consequences, responsibility, and pain of litigation.

Managing High-Conflict Personality Clients

Set clear boundaries and maintain them. Do not get pulled into the high-conflict personality's world. Set limits on when and how you communicate. Do not give out your cell phone number. Don't be seduced physically or emotionally. Avoid bending boundaries to reduce emotional intensity. Insist that your retainer stay current because once this client falls behind, you have lost control. Remain professional and do not allow the client to be abusive. Verify what your client says before acting on it. Inform your staff of these limits and insist they follow them.

It will be tempting to bend boundaries to reduce emotional intensity. Avoid it. Always be professional and do not allow the client to become abusive. Though tempting, do not ignore the client when you are frustrated or angry. This will escalate problems. Above all, take care of yourself first.

These individuals evoke strong feelings. Listen to your mind and body. The immediate reaction may be flight, but other options include preparing and conferring with colleagues and setting limits. Give these clients your full attention—maintaining eye contact is imperative. Make sure there are no distractions. Initially, do not interrupt with questions. Be empathetic. Mimic body posture and then adopt more open posture. Be supportive of the person but not immediately supportive of the position. Supporting unverified claims validates high-conflict behavior.

Recognize that in some cases the personality disorder may be too severe to manage. Attempting to represent someone who will not follow legal advice, will not consider reasonable offers, and repeatedly makes life miserable for the attorney can be enormously frustrating. Consider withdrawing from the representation. Carter, *supra*. There is an adage, "Ten percent of your clients cause 90% of your problems. Get rid of them." The sooner, the better.

What we do as attorneys depends on what is going on inside ourselves. We are all limited by our thoughts, emotions, and habits. Be deliberately aware of what is going on in yourself and your environment, moment to moment. This gives you the opportunity to notice things that influence you, such as emotions and physical sensations. These distract us from what we should be paying attention to. First, become aware of sensations, and then decide to hold on to them or let them go. That is, if there is anger, irritation, or even attraction, if you are aware of it, make a choice about what is good for the client, not what is good for yourself. Mindfulness allows us to understand others and to respond to others with compassion and empathy. It helps eliminate emotional and physical distractions that interfere with good judgment.

Stay aware of your emotional and physical reactions to the client. Being aware of the reaction should be a warning alarm. Understand what you are reacting to and why you are reacting. Consider what is good for your professional relationship and the client. It may be necessary to detach from your reactions, to calm your mind and body, and then to come back. Then to calmly reply. With practice this can be done in moments.

Firing High-Conflict Personality Clients

Some high-conflict personality clients attempt to take over their attorney's life or are combative, abusive, and do not follow advice. Dr. Forest indicates there is no need to let the relationship get that far. As soon as you realize you have a high-conflict personality client that is causing difficulty, begin building a case for termination. There will be reasons to fire the client, but they must be objective, not personal, and within professional boundaries.

Create dissonance professionally. When the client is overly demanding of your time, set reasonable limits on when you will meet or speak, or space meetings farther apart. When the client does not want to meet or speak with you, require the client to meet you frequently. Require that the clients bring a check to pay fees current at each visit. Enforce these boundaries.

Reframe the relationship. When the client continually makes outrageous demands of you, indicate that the client would be better served by another attorney who is able to meet these demands. When it is possible to frame the legal issues as requiring the expertise of an attorney specialized in that area, suggest the client seek such an attorney.

Keep a record of all the ignored requests for information, ignored proposals, advice, warnings, missed appointments, and failure to keep current on billings. Be patient while building your case. Maintain sanity by

conferring with colleagues and detaching emotionally.

Dr. Forest recommends that, when you want to terminate representation, calmly and patiently have the client face the reality he is trying to avoid. During that time, provide the client with a CYA letter, summarizing the advice not followed, missed meetings, bills not paid, and so on. Always communicate on a professional level and never on a personal level. For the clients who do not listen and do not want to hear analysis and advice, do not continue trying to convince them. Do not create a power struggle. "This is as far as I can go. This is your case. Do what you want. This is final."