



## **High Conflict Personalities in Employment Cases**



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It is expected and understood by most people in the legal profession that because of the intensely personal nature of the issues that come up in family law, many if not most cases in Family Court will be driven by High Conflict Personalities (HCP's.) What is not so expected and understood is that the same personality driven conflicts that generate high conflict family law cases are the driving force behind many of the employment cases that the courts and mediators see today. Even if the parties are not HCP's, the intense emotions generated by a termination or a hostile work environment can easily make an otherwise rational person react in a very non-rational way.

Lawyers are well trained to spot and analyze legal and factual issues, and then to achieve their goals by persuading others to see and understand the facts and law (the issues) as they have analyzed them. In my years as a trial lawyer and early years as a mediator, and before I understood the nature of High Conflict Personalities, I was frustrated by those cases in which legal reasoning and logic, the stock and trade for a lawyer, seemingly meant nothing. I couldn't get my point across, but I kept trying, as if saying it over and over again it might somehow sink in.

In other cases, lawyers resort to high pressure tactics and threats in order to convince the other side to capitulate. Although this tactic may be effective in some cases, with HCP's it often drives them in the other direction.

Now I know that with HCP's the "issue" is not the issue, the personality is the issue, and I also know that in the context of a mediation, that personality is not going to change. In employment mediations, I am often asked or "tasked" with making someone understand a certain reality. Legal arguments are made and repeated, but usually to no avail. The lifelong pattern of thinking and behavior that dominates the HCP personality is not going to change in the limited time allotted for a mediation!

The HCP in an employment case likely has no insight that his or her own behavior is the cause of a problem. The life-long enduring pattern of blaming others for all of life's difficulties (which may very well have been the reason why the case is in court) is not going to disappear because of some well-crafted legal reasoning.

If we aren't likely to resolve the conflict by legal reasoning and persuasion, and if threats don't work, what can be done? Most importantly, we must remind ourselves what we shouldn't do. First and foremost, remember that HCP's are not logical thinkers and they do not respond well to negative feedback, therefore we must resist the urge to admonish or even advise them. Also remember that the HCP's behavior is fear driven, which may lead them to want to fight. We don't want to fight, but if we feel like we are being attacked, we have to remind ourselves that this isn't about us, its about the HCP's inability to manage his or her emotions.

The most important skill for those of us dealing with an HCP is to establish and maintain a connection with the HCP. How we communicate, both with what we say and how we say it is critical. With a connection to the person, we can begin the process of looking forward to a reflective discussion wherein possible consequences can be considered along with possible resolutions. Without a connection, we are likely doomed to the endless cycle of defensive thinking and behavior that characterizes the HCP mindset.

No matter how wedded to the conflict the parties appear to be, at some level of consciousness they usually want the case resolved. I have done my job if I have helped them understand their BATNA (Best Alternative to a Negotiated Agreement.) If they come to a rational, logical conclusion that they are better off continuing in court, then that is what they should do. It's their case, it's up to them. On the other hand, if their decision not to settle is based on reactive, defensive thinking and I have been unsuccessful in helping them calm down and engage their logical brain, I won't have been successful.

**To schedule a mediation, contact case manager Kathy Purcell at:**

**619-238-7282**