

August 2008

## Does It Take Two to Tango? Not Always

by Molly Kenny and Grace Healy

How many times have you heard a judge or mediator say: "Counsel, it takes two to tango" or something similar to imply that the problem is caused by both sides? Is it always true? Sometimes, but the idea that both parties are "guilty" and should be treated (or chastised) equally does not help resolve the conflict.

Why don't more people recognize that a conflict can be created by one party? Possibly, because the very nature of the judicial system is adversarial — just being there means there is a conflict. For the plaintiff: You hurt me and I want to be made whole. For the defendant: You sued me and now I have to hire a lawyer to defend myself. Although the system is, in theory, adversarial, there are conflicts that go beyond the nature of the system and undermine its fairness and effectiveness. These are problems caused by a client or lawyer being unreasonably litigious: Some do not understand or comprehend the risks in litigation or the legal basis for their claims; some may think that their claim involves what is "a matter of principle"; others understand that there are weaknesses in their case and hope to manipulate the system.

Why acknowledge that sometimes it takes only one to create conflict? Because, as lawyers and problem-solvers, it helps to change our view of conflict and enables us to represent our clients more effectively. As judges, it helps promote an understanding that both parties could have vastly different roles or motives in bringing the matter to court. Lawyers and judges need to recognize those with high-conflict personalities (HCPs) and the problems they may cause.

People with HCPs many times have emotional disturbances that result in their need for high-intensity conflict. Some HCPs may have diagnosable personality disorders. HCPs tend to jump to conclusions and have "all-or-nothing" thinking, exaggerated emotions, lots of blame, and make little effort to take responsibility for resolving the dispute. When engaged in conflict with an HCP, it can be difficult to stay focused on the real legal issues, it can become personal and it can be difficult to resolve the problem. When an HCP is involved, the issue in dispute is quickly overshadowed by the high-conflict personality.

When dealing with most HCPs (whether an opposing party or an opposing attorney), the usual panoply of negotiating tactics generally won't work — chiefly because an HCP does not rely principally on logical or legal reasoning (their feelings become "facts" for them) and because an HCP has great difficulty seeing the problem from another person's point of view.

A good strategy for dealing with HCPs is to remain calm, be scrupulous, and gather evidence in detail. HCPs produce a lot of accusations and a lot of paper. The better prepared you are to respond with a well-thought evidential plan (and not resort to

emotions), the better your case will come together. Cases with HCPs require more patience than most cases. Explain to your client what is going on, how it might affect the outcome, and that this sort of adversary may drive up the cost of the litigation. Don't waste a lot of time trying to negotiate informally. Unless an HCP gets his way, negotiations are likely to be wasted effort and cost your client unnecessary fees. Any concession you make to an HCP will be seen as weakness, and not advance your client's interests. Move right to mediation or to court for a resolution by motion on the issues as you move through the case.

A skilled mediator may be the answer to resolving a case. Sometimes the high-conflict client or attorney needs the assistance of a mediator to hear that his case may not be as solid as he thought, and compromise may be worthwhile. While judges do not have the same leeway as do mediators in resolving a case, judges can fashion results based on the understanding that both parties are not equal contributors to the problem — but each party has equal contribution to the solution.

For more detailed information about HCPs and strategies for dealing with these individuals, take a look at Bill Eddy's book *High Conflict People in Legal Disputes*. It is short, easy to read, and will assist you in becoming a better lawyer and problem-solver. Eddy reports that this problem is increasing in our society — identifying and finding productive ways to deal with an HCP will improve the profession for both lawyers and clients.

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