

MEDIATION & ADR NEWS

Mediation and Arbitration News Aug. 2023

brought to you by:

Lou Chang Mediation-Arbitration-Neutral Services

Tact is the art of making a point without making an enemy.

Diplomacy is the art of letting someone else have your way.

Negotiating and Mediating with Hot Heads, Bullies and Difficult Personalities



How can we effectively negotiate or mediate with such “my way or the highway” people? We all come across them--individuals who are Saggresive, stubborn, unreasonable, whose tactics, attitudes and strategies make our gut tighten and days miserable.

Psychologists and psychiatrists are trained to diagnose and provide therapy for individuals identified as narcissists, borderline, antisocial, paranoid or histrionic. For those of us who are not professional psychologists or psychiatrists, we can only conclude that such individuals are very difficult to deal with. We just know they are erratic,

uncooperative, difficult and unpleasant and in our minds think of them as hotheads, bullies and difficult personalities.

Negotiating with Hot Heads, Bullies and Difficult Personalities: Max Factor's One-Two Punch.

When you find yourself negotiating with an aggressive, abusive, hardball “My way or the highway, first and last best offer” type of negotiator, consider using Max Factor, III’s One-Two Punch Strategy.

Max Factor, III, an accomplished attorney and mediator, suggests that you pick a response from a first list of possible responses (Punch One) and combine it with a list of responsive options in a second column of options (Punch Two). Among the Punch One options are the following:

- Respond in kind
- Ignore the tactic
- Call out hardball tactic. State conditions for continuing
- Acknowledge the firmness of their belief/opinion
- Co-opt and offer the potential of future dealings
- Humor to defuse
- Take a time out
- Respond with a slightly bigger demand

Then you combine that with a Punch Two option, such as:

- Play the hardball game...better
- Continue interest-based negotiation.
- Reframe positions to interests. Explore options that meet interests.
- Switch to reaching agreements on all other issues, except hardball issue.
- Negotiate a new process. Unless tactic is changed, terminate discussion

- Invite new negotiation session, with a mediator.
- Add or change players

You do not capitulate. You don't back down. You confront the tactic and work to change the dynamics. For more information, see, <http://www.factoradr.com/docs/How%20To%20Use%20%20Defuse%20Hardball%20Bargaining%20Tactics.pdf>, and also the YouTube Case Western Law School lecture, Hardball Negotiating Tactics: Why They Work & How They Can Fail So Badly, <https://www.youtube.com/watch?v=VFFRYiTWbds>

Mediating and Negotiating with High Conflict Personalities: The EARS Model and EARS Model 2.0

In 2011, when Craig Robinson, a Hawaii Psychologist and mediator, and I were preparing a training presentation on working with people in pain, anger and denial, we came upon the work of Bill Eddy, an attorney and psychologist, and Nadine Ryan Bannerman. They presented a model for interaction and working with what they characterized as HCPs (high conflict personalities). No psychological labels or diagnoses needed.

They called their model EARS (Empathy, Attention, Respect and Set Limits). Briefly, the EARS Model instructs us to do the following:

1. Empathy. Try to genuinely empathize with the person and the danger or threat they perceive. Try to find something that you can agree with. (Ex. Good intentions, willingness to make things better.)

“I can hear how upset you are.” “I can see how important this is to you.” Can you tell me more about that?” Distinguish between empathic behavior and empathic feeling. You don't have to feel the hurt, you want to convey that recognize it (Using verbal and non-verbal cues.)

Things to avoid:

- Do not be an opposing force. Do not reality test, especially during the early stages of your interaction with HCPs.

- Avoid believing or agreeing with content. “You might be right.”
- Avoid volunteering to “fix it”. Maintain an arms-length relationship. Keep the burden and responsibility of resolving the matter on the parties. “You have a dilemma. How do YOU want to resolve it?”

2. Attention. Give the person your complete, undivided attention. Verbally and in body language (eye contact, nod, leaning forward, hands soft and open). “Tell me what’s going on.” “I will listen as carefully as I can.” Confirm that you understand the concerns and issues they are raising. You do not need to validate the correctness of perspective of the HCP. You do not need to agree or disagree.

3. Respect. HCPs hunger and demand respect. So, in working with HCPs, be respectful in your tone, words and body language.

Respectful interactions lower the emotional intensity of interactions and deescalates the conflict.

“I respect your efforts.” Remember that by your conduct, you are modeling the behavior of how we should all treat others.

4. Set Limits. With HCPs, you need to establish and set limits. You do not have to listen forever to rants, diatribes, epithets and discourtesies. You can say something like “Is this productive? Is this getting us to where we want to be? I can work with you on this. If I see (e.g. swearing, yelling, epithets, name calling) occurring, I will have to stop working on this with you until things calm down.”

Things to do:

- Notice and give positive feedback, even on small improvements.
- When ready to move to problem solving, provide structure to the process.
- Try to create a focus on the future and on making specific proposals. Turn complaints of the past to the future: “So, what is/are your proposals/ideas?”
- Apply interest-based negotiation principles, identify and brainstorm multiple options, assess and relate to individual needs and interests, reality test, look for external reasons (guides, policies, rules, laws) for new behavior. (Let’s work together on this.” “Let’s figure out how we can help you succeed...”
- Use EAR statements that communicates empathy, attention and respect: “I can see how upset you are. It must be a very hard time for you. Tell me what’s going on. I’ll try to do whatever I can to be helpful and attentive to your concerns. I respect your efforts to deal with this situation.”.

When negotiating or mediating with HCPs:

- Avoid the labels.
- Observe the behaviors.
- Apply the EARS process.

Remember that HCPs are often fearful, defensive and distrustful. HCPs tend to exhibit aggressive personalities and utilize aggressive and abusive tactics and negotiation strategies that seem to work for them. HCPs frequently:

- Make “Mistaken Assessments of Danger” (MAD),
- Engage in “Behaviors that are Aggressively Defensive” (BAD)... extreme behaviors, attacking, unmanaged

emotions, all or nothing thinking, my way or highway, entitled, aggressive, abusive, blaming others, and

- Attack Targets of Blame

In working with HCPs, building any level of trust is challenging. Negotiators and mediators need to be calm and non-threatening. HCPs are often distrustful and have high levels of suspicion. When trust levels are low, negotiators and mediators need to build trust with HCPs through careful and consistent non-verbal behavior. A slower pace and lower, calming tone of voice, attentive and soft eye contact and a welcoming, caring and interested bearing are non-threatening and helpful. Establishing and sharing connections and commonality is recommended as in one's interaction with persons generally. Sharing a situation and gender appropriate touch, whether by a formal handshake, fist bump or gentle touch of the person's elbow or shoulder while greeting or guiding a person to a chair can also be helpful. Trust is also built by your demonstration of understanding of the file, issues and pertinent events and your demonstration of process knowledge and skills. For more info on dealing with HCPs, see: [Bill Eddy](https://www.highconflictinstitute.com/hci-articles/dont-let-hcps-ruin-your-life?rq=EAR)
<https://www.highconflictinstitute.com/hci-articles/dont-let-hcps-ruin-your-life?rq=EAR>

After more than a decade of mediating and working with HCPs and applying the EARS Model, Psychologist Bill Eddy has revised the model. The updated model which I call EARS, Version 2.0, challenges some of our previous training and thinking about what works when we are negotiating and mediating with HCPs. Interestingly, Bill Eddy maintains that his updated model works not only with HCPs but with “regular” folk as well. Some of the revised thinking is characterized as paradigm shifts for mediators and negotiators who strive to be facilitative mediators and interest-based negotiators.

Key paradigm shifts suggested by Bill Eddy are:

- ❖ Don't open up emotions and feelings. Avoid asking questions like "How are you feeling? Are you feeling better?" Focus instead on thinking and doing.
- ❖ Avoid dwelling on the past. Some reference to what happened in the past may be unavoidable and necessary to understand what happened and how parties got to where they find themselves. Try to change or move the focus instead on the future.
- ❖ Don't try to change the HCP. Avoid giving HCPs insight into themselves. That is pointless.
- ❖ Of course, don't describe or call person an HCP. That violates the Respect rule in the EARS Model.
- ❖ Engage and involve the party(ies) in making the decisions, setting agendas and crafting proposals and ideas for resolution.
- ❖ Encourage the HCP to convert demands, must haves, last best offers to concrete proposals that are specific as to what is to be done, when and by whom. Have the HCP make the proposals for moving forward.
- ❖ Establish an Accept, Think About It or Make a Different Proposal protocol for the consideration of proposals for resolution. With this protocol, the party receiving any proposal cannot just simply reject it. Instead, if the proposal is not acceptable, the party receiving the proposal should be encouraged to either think about it and if after doing so finds it still not acceptable, the receiver must make a different proposal. This process continues until there is agreement or conclusion that there is an impasse and further negotiations at this time are fruitless.

Since learning about Bill Eddy's EARS Model 2.0, I've been experimenting and applying it with Hot Heads, Bullies and HCPs but also with "regular" people. So far, my tentative conclusion is that it does indeed work, with HCPs and regular folk. The future focus and protocol for considering and responding to proposals (Accept, Think About It or Make a Different Proposal) appears to be effective and productive. If

you decide to try this model, I hope you will share your experience with me. Good luck!