



**Welcome to the 27th Annual
AB 1058 Child Support
Training Conference**

High-Conflict Management Workshop

Honorable Bryant Y Yang, Superior Court Judge, Los Angeles County

Honorable Cheryl McCann, Superior Court Commissioner, San Joaquin County

Dan Sweeney, Family Law Facilitator, San Diego County

September 1, 2023



Why Addressing High-Conflict Litigants is Important

- 1. Impact on children.** High-conflict divorces increase emotional and behavioral adjustment problems in children by approximately 200%. The effect on male children is even more pronounced, with increases in aggressive, disruptive and acting-out behaviors. (Ellis, E., *Divorce Wars, Interventions with Families in Conflict* (APA Books 2000).)
- 2. Impact on the parties themselves.** Litigants involved in high-conflict family law cases are at a higher risk of experiencing psychological and substance abuse issues. (Inman, T., Carter, P., Vincent, J., “High-Conflict Divorce: Legal and Psychological Challenges” (2008) 45-APR Hous. Law. 24.)
- 3. Strain on the family court system, criminal system and child welfare system.** Estimates find that between 15-30% of dissolution cases involve high-conflict cases. (Maccoby, E. E., & Mnookin, R. H., *Dividing the Child: Social and Legal Dilemmas of Custody* (Harvard University Press 1992); Amato, P.R., Loomis, L.S., & Booth, A., “Parental Divorce, Marital Conflict, and Offspring Well-Being During Early Adulthood” (1995) 73 *Social Forces* 895.)



High-Conflict Litigants Defined

There's no universally excepted definition of a high-conflict litigant. (Savard, S. "Through the Eyes of a Child: Impact and Measures to Protect Children in High-Conflict Family Law Litigation" (2010) 84-Apr Fla. B.J. 57.)

There are, however, common behaviors.



High-Conflict Behaviors

Interpersonal Issues Between Parties

1. Distrust
2. Non-communication
3. Hostile or abusive communication
4. Domestic violence



High-Conflict Behaviors

Co-Parenting Issues

1. Inflexibility
2. Criticizing the other parent and/or the other parent's family in front of the child
3. Involving the child in disputes
4. Consistently cancelling visits or arriving late to exchanges
5. Withholding the child
6. Parental alienation
7. Withholding support



High-Conflict Behaviors

Legal Issues

1. Refusing to negotiate in good faith and forcing unnecessary litigation
2. Refusing to provide complete/honest disclosures or discovery responses
3. Suppressing income for purposes of support
4. Making false claims



Roots of High-Conflict Behavior

Personal Issues

1. Conflictual relationship that carry on through litigation
2. History of domestic violence
3. Using the litigation process as a tool of punishment or control
4. Psychological Issues, including borderline personality disorders that cause parties to externalize their behavior, blame others for their problems and fail to appreciate their responsibility for their issues (Duryee, Lynn & Sulmeyer, Stephen, "Managing the High-Conflict Litigant" (2008), Fall Cal. Courts Review 22.)
5. Substance abuse
6. Involvement of family members, friends and new spouses/mates



Roots of High-Conflict Behavior

Litigant Issues with the Family Law System

1. Judicial strictures on parenting time and decision making
2. Natural conflict that arises in support and financial issues
3. Court procedure
 1. Finding the right form and completing it correctly
 2. Filing and service issues
 3. Collecting and admitting evidence
 4. Wait times for hearings and case dispositions
4. Representation Issues
 1. Expense
 2. Difficulty in choosing the right attorney



Roots of High-Conflict Behavior

Practical Issues

1. Language and cultural issues
2. Job-related complications
3. Parking and traffic issues involved with visiting the courthouse
4. Homelessness
5. Philosophical leanings that don't accept the authority of the courts



High-Conflict Solutions

Self-Help Solutions

- 1. Recognition.** Understand that when we're assisting litigants in a self-help context, we're not interacting with them in normal life. We're dealing with a group of people that are typically confused, stressed and emotional about their case. Add to that, they've taken time out of their schedule to come in and wait for the opportunity to receive help in their case. Reset your expectations to allow the litigant more leeway than what we would normally permit in day-to-day interactions. Give them some reasonable space to express themselves emotionally and don't be surprised when that happens.



High-Conflict Solutions

Self-Help Solutions

- 2. Empathy.** Litigants will be more likely to take procedural direction and work constructively on their case when they feel the help they're receiving is coming from someone who cares and wants to help. Small interjections, like “that must be difficult” or “you have a lot on your plate” help litigants feel heard and appreciated.



High-Conflict Solutions

Self-Help Solutions

- 3. Tact.** There are many ways to tell a litigant that they may have gotten something wrong without making them feel bad about it. Ultimately, we want the litigant to receive our direction, so why communicate it in a way they'll have difficulty accepting? Giving litigants bad news in a sympathetic way while highlighting practical ways to address the issue is a constructive way to communicate with litigants. Be careful about using phrases like "this document is defective", which can sound harsh.



High-Conflict Solutions

Self-Help Solutions

4. **Explain Why.** Litigants often feel the laws that govern their case are arbitrary, or worse, scientifically engineered to cause them maximum pain. If they don't understand the court has ruled a certain way, help them appreciate the criteria the court is legally bound to apply.



High-Conflict Solutions

Self-Help Solutions

- 5. Don't Be the Gatekeeper.** Self-help and court system staff provide service by helping litigants obtain a clean disposition of their request. It's not up to a self-help service to pre-judge a litigant's request. We can alert a litigant to the problems associated with an ill-advised course of action and review alternatives, but ultimately, it's the litigant's case and decision.



High-Conflict Solutions

Self-Help Solutions

- 6. Provide Good Service.** Ultimately, the best way we can assist any litigant is by giving professional assistance in a procedurally correct manner. It's important to show some humanity to a litigant that's struggling, but providing a litigant with help that will lead to problems when they arrive at their hearing or attempt to get a default judgment will only exacerbate the issues they're having with the system. Even when helping high-conflict litigants, please take care to provide proper help.



High-Conflict Solutions

Self-Help Solutions

- 7. Create and Enforce Clear Limits.** Despite our best efforts, there are some self-represented litigants that can't be reached. Maintaining clear guidelines on when staff should terminate assistance and ask a litigant to leave is crucial. So is enforcing those guidelines in an even-handed way.



High-Conflict Solutions

Courtroom Solutions

- 1. Be Proactive.** Take the time to train staff and have a working relationship with DCSS so that they know they can contact the bailiff if issues arise at the meet and confer or outside the department prior to the hearing.



High-Conflict Solutions

Courtroom Solutions

- 2. Be Observant.** When taking roll, take note of how the litigants are seated, who is with them and whether they're staring down the other party.



High-Conflict Solutions

Courtroom Solutions

- 3. Setting Expectations.** When giving the Advisement, inform litigants what to expect, DCSS's role, describe the meet and confer process, and explain the importance of guideline calculations. Make sure that the litigants understand that the court is bound to follow the law and that there are limitations on what a judicial officer can and can't do. Litigants should understand that the Court has a duty to manage order in a proceeding. (Code Civ. Proc. § 128; *Cottle v. Superior Court* (1992) 3 Cal.App.4th 1367, 1377.)



High-Conflict Solutions

Courtroom Solutions

- 4. Enforcing Rules of Conduct.** Give each party an opportunity to properly address the court without interruptions. Use hand gestures to communicate to a litigant who is attempting to interrupt. Offer litigants paper and writing utensils for taking notes. Prompting a litigant to address an issue they attempted to raise while the other litigant was addressing the court.



High-Conflict Solutions

Courtroom Solutions

- 5. Use Expressive Listening.** Use body language to let litigants know they're being heard. Make eye contact, nod your head, and lean forward to communicate that you're engaged. When necessary, interject with questions if the litigant isn't clear. Summarize arguments made by the litigant in the filings and/or hearing. Express empathy and give litigants time to show emotions.



High-Conflict Solutions

Courtroom Solutions

- 6. Redirect.** When a litigant strays from the topic at hand, make a comment to refocus them (“do you agree to the income used in the calculation?”; “do you wish to comment on the proposed support amount?”; “after support, your net income will be _____.”; “is the expense listed for _____ accurate?”). This gives the court control of the proceeding while allowing the litigant to be heard.



High-Conflict Solutions

Courtroom Solutions

- 7. Explain.** Litigants who do not understand the law and how it applies to the facts of the case at hand may feel as if your decisions are arbitrary. Take time to explain the law and your reasoning supporting your orders. Where appropriate, you can explain their options after orders have been made, including filing a request for order to modify.



High-Conflict Solutions

Courtroom Tactics

- 8. Don't Take it Personal.** Don't react to personal attacks. Instead, redirect the litigants to the substantive issue at hand.



High-Conflict Solutions

Courtroom Solutions

- 9. Pick and Choose Your Battles.** Don't get bogged down on superfluous issues. Redirect litigants to the important issues that will be the basis of the court's decision.



High-Conflict Solutions

Courtroom Solutions

- 10. Dealing with Counsel.** Ideally private attorneys can help clarify factual issues and reduce conflict, but that's often not the case. When possible, judicial officers should attempt to direct private attorneys away from obfuscation and towards resolution.



High-Conflict Solutions

Courtroom Solutions

- 11. Enforcement Tools.** When appropriate, sanctions or contempt proceedings may be necessary. Consider providing initial warnings and less severe sanctions such as ordering the parties to return after the lunch recess. The Court has authority to issue sanctions and to hold a party in contempt for violating court orders. (Code Civ. Proc. § 128.5, 177.5, 1209-1222; Fam. Code § 271; Cal. Rules of Court, rule 5.14; *In re Liu* 273 Cal.App.2d 135.)



High-Conflict Hypotheticals

Self-Help Hypothetical 1

You sit down with a self-represented litigant to assist with their case. After introducing yourself they inform you that they'd prefer to meet with someone of the opposite gender.

What do you do?



High-Conflict Hypotheticals

Courtroom Hypothetical 1

Custodial parent is on Public Assistance/CalWorks. You have informed the parties that they will be given a chance to present their side of the case, but that it is important they do not interrupt each other. The custodial parent goes first, and the non-custodial does not interrupt. When it is the non-custodial parent's time to speak, the custodial parent interrupts, and even after the court reminds her not to interrupt and that she will have another chance to speak, the custodial parent continues to interrupt.

What do you do?



High-Conflict Hypotheticals

Self-Help Hypothetical 2

Before meeting with a self-represented litigant, you review their case and find that the SRL owes extensive support arrears, has had their support obligation interrupted by incarceration, and is currently restrained from contacting the custodial parent. When you sit down with the SRL, they start by telling you that they're frustrated because they believe the court and the other party has been unfair.

How do you respond?



High-Conflict Hypotheticals

Courtroom Hypothetical 2

During trial, one of the parents is having problems organizing their documents to present to the court and is becoming very frustrated. The significant other is in the back of the courtroom and keeps raising their hand, which you have motioned down. The other parent becomes angry at the involvement of the significant other. The significant other then states that the party has a learning disability.

What do you do?



High-Conflict Hypotheticals

Self-Help Hypothetical 3

You sit down with a self-represented litigant two days before their RFO hearing to modify support. When looking at their case, you see that their filed proof of service shows personal service to the opposing party's family member, but not the other party.

What do you tell the SRL?



High-Conflict Hypotheticals

Courtroom Hypothetical 3

During a child support hearing, the non-custodial parent who previously had his visitation restricted because of his behavior and has lost his medical license, demands that he still be addressed as "Doctor" over the custodial parent's objection.

What do you do?



High-Conflict Hypotheticals

Self-Help Hypothetical 4

You sit down with a self-represented litigant who is angry that the court is making them contribute half of the daycare expenses the other parent incurs during their scheduled parenting time. The SRL says this makes no sense and that this monthly bill is a hardship.

What do you do say?



High-Conflict Hypotheticals

Courtroom Hypothetical 4

The non-custodial parent files a motion for modification of child support. She refuses to provide her income information to the court or the other side, stating that the court has allowed the attorney for the custodial parent to repeatedly harass her. She mentions that the attorney has called her employers and had her fired. She then states that she has hired an attorney to sue the custodial parent's attorney. Non-custodial parent did agree to provide information to DCSS, but then provided very little information. When DCSS presents their guideline calculations, the non-custodial parent claims that her income used is outdated.

What do you do?



High-Conflict Hypotheticals

Self-Help Hypothetical 5

You sit down with a self-represented litigant who tells you they need help going in ex parte for an order determining support arrears and setting a monthly payment amount. After informing the SRL that the court is extremely unlikely to make that kind of order, they tell you that because of the non-payment of support this year, the SRL is about to be evicted.

What do you do?



High-Conflict Hypotheticals

Courtroom Hypothetical 5

The supporting parent says he cannot pay the guideline child support because he is helping to fund his adult child's higher education and to cover medical costs for a sick parent. He says he cannot cover living expenses and pay for child support. He has a stack of papers that he wants to show you. He then starts crying in the hearing and accuses you of being biased and heartless.

What do you do?



High-Conflict Hypotheticals

Self-Help Hypothetical 6

You sit down with the most notorious, high-conflict litigant in your court system. They tell you that they need help doing something that makes little sense, is disorganized and not supported by the facts of the case. After reviewing their alternatives, they insist on the original misguided course of action.

What do you do?



High-Conflict Hypotheticals

Courtroom Hypothetical 6

A custodial parent files an RFO for child support orders, but failed to file or bring a proof of service to the hearing. The non-custodial parent finds out about the hearing and makes an appearance. The custodial parent attends the hearing with a small infant and says she could not find childcare. When you ask about the proof of service, the custodial parent says she served the non-custodial parent herself. You explain that another person 18 years or older must serve the non-custodial parent. When asked, the non-custodial parent refuses to waive service. The custodial parent expresses frustration because the other party is present and she wants the orders. When you say that the hearing has to be continued for failure to serve, the custodial parent gets up and directs several four-letter words at you and heads towards the exit.

What do you do?



Thank for your participation!

Contact Info:

Hon. Bryant Y Yang: byang@lacourt.org

Hon. Cheryl McCann: cmccann@sjcourts.org

Dan Sweeney: daniel.sweeney@sdcourt.ca.gov

