

## Mediation

# The personality factor: How to handle different types in a family law mediation

By Cheryl Suann Williams



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(July 5, 2017, 8:45 AM EDT) -- People who choose mediation do so to achieve a quick, efficient and legally binding settlement. They also do so in hopes of achieving positive and constructive interactions with the other party, gaining closure and moving on with their lives. Regardless of the reason, the mediator is tasked with understanding the differing personality types of the participants and their goals and interests to effectively conduct the mediation.

In the judicial system, the judge controls both the process and the outcome while the parties control neither. However, the mediator has a major influence over the process and substantial issues to be resolved, but allows the parties to define the issues and the ultimate outcome. This commences by setting the ground rules for the mediation which often involve honesty, openness, good faith and decorum.

The most powerful tool of the mediator is being able to sort through the clutter of emotions, accusations and recriminations that parties bring to the table and gain a non-judgmental assessment of their needs. This is the starting point for the mediator to use his or her influence to guide them toward settlement.

When tasked with timid or difficult personality types, the question becomes whether and when the mediator should intervene to foster justice and self-determination or how far the mediator should go to maintain the status quo of "neutrality," despite the myriad of problems that can flow from that.

While the mediator should be cognizant of the need to remain neutral, he or she should take intervening measures to equalize power imbalances and achieve procedural fairness. In doing so, it is likely that the mediator will be perceived as biased by one of the parties, likely the more dominant party. Intervention by the mediator can raise the possibility of overreaching and supplanting his or her views for the parties' views, but non-intervention and silence can signify bias as well, particularly by the less dominant party.

Transformative mediators focus on party empowerment, mutual recognition and reconciliation. The goal is to identify and address power imbalances between the parties and to achieve equality and justice so as to foster self-determination in the disadvantaged party and awareness in the dominant party.

Narrative mediators focus on the parties' "stories" including their narrative of the conflict and their underlying interpretations that frame their understanding of the world. The goal of the mediator is not only to allow the parties to be heard, but to also deconstruct the conflict-saturated narrative and help the parties rebuild a constructive story which they will use in the future to build a more positive relationship.

These narratives compete for importance and legitimacy during the mediation as the party who responds to the initial narrative may use the same framework and historical context and become defensive about statements made in the initial narrative. Thereafter, the more dominant party often establishes the framework and baseline narrative for the mediation. Without active prevention of this by the mediator, how the mediation is conducted may reinforce this narrative, thereby giving this

party even more dominance and reinforcing the less-advantaged party's lower status in the mediation.

It is very important for the mediator to model good verbal and non-verbal communication skills for the parties to follow by: (1) using communication as one of, but not the only tool; (2) intervening with the parties and educating them on good communication techniques; and (3) creating an environment that encourages good communication. Being cognizant of the communication styles of differing cultures particularly in conflict situations is also important.

When good communication is challenged, it is best for the mediator to caucus between the parties.

On the extreme end of personalities are those deemed to be high-conflict personalities and who have diagnoses of narcissistic, histrionic, antisocial and borderline personality disorders within Cluster B of the Diagnostic and Statistical Manual (DSM-IV-TR published in 2000) or carry traits of these personalities. The mediator should use good communication skills to set limits on the high-conflict party in a respectful way. Offering empathy, attention and respect to that party will not permanently change the high-conflict thinking, but it will reduce his or her immediate assessment of danger and, therefore, aggressive behaviour and escalating conflict within the mediation.

Overall, a good mediator reaches a deeper level of personal connection with the parties so that reframing of their narratives resonates with them. This is particularly so when positional, negative and accusatory statements are made. In doing so, he or she seeks to gain an understanding or clarity of the statement; neutralizes its language; aids a submissive party to speak; helps both parties achieve a different perspective; aids the parties in constructing a common issue in dispute and common goal; focus the resolution process; and mostly, aids the parties in creating a new relationship paradigm.

*Cheryl Suann Williams is managing partner of Williams Family Lawyers, Markham, Ont., and can be reached at [Cheryl@williamsfamilylawyers.com](mailto:Cheryl@williamsfamilylawyers.com).*

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