

## **IDENTIFYING AND MANAGING HIGH CONFLICT PERSONALITY CLIENTS IN LAW**

Grace Lawson<sup>1</sup>

### **1. Introduction**

Lawyers deal with diverse clients on a daily basis. It is estimated that some 90% of the average client base consists of clients considered to be wonderful, model clients.<sup>2</sup> They acknowledge that they need legal assistance and follow to the advice of their lawyers. The remaining 10% are considered difficult clients. They may be difficult from the outset, or they may first appear to be appealing and charming but soon exhibit adversarial, manipulative, inflexible and unreasonable behaviours.<sup>3</sup> Their expectations become too high, they are impossible to please, and take no responsibility for their actions in contributing to their legal issue or dispute.<sup>4</sup> This 10% of the lawyer's client base is "an extraordinary drain on a lawyer's time, attention, and emotional energy",<sup>5</sup> and is said to cause 90% of their grief.<sup>6</sup>

The demanding or difficult client is often referred to as a high conflict personality client. Their demands range from "simply irritating to unethical and sometimes even illegal".<sup>7</sup> They can exhibit enormous pressure on a lawyer who may already be struggling with workplace issues such as meeting deadlines and budgets, and issues in their personal life. Lawyers are part of a profession that already deals with a high rate of depression and suicide.<sup>8</sup> Identifying and managing high conflict personality clients is therefore crucial for lawyers. It will enable them to manage their daily workload and meet client expectations in an effective and satisfying way. It will also enable them to develop strategies to manage difficult clients. This paper examines the professional skills a lawyer needs to achieve this outcome.

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<sup>1</sup> Grace Lawson is a Barrister and Mediator at the private bar in Brisbane.

[www.gracelawson.com.au](http://www.gracelawson.com.au);

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<sup>2</sup> Fisher, Paul. 2012. "Identifying and managing difficult, high conflict personality clients". *Probate and Property*, January-February: 56; Condliffe, Peter. 2012. *Conflict management: a practical guide*. LexisNexis Butterworths: 81.

<sup>3</sup> Fisher, above n 2: 56; Condliffe, above n 2: 81.

<sup>4</sup> Fisher, above n 2: 56.

<sup>5</sup> Ibid: 57.

<sup>6</sup> Ibid: 56.

<sup>7</sup> Lynn, Jacqueline. 1996. "Dealing with difficult client". *Commercial Law Bulletin*, 11(6): 10.

<sup>8</sup> Pickering, Anne C. 2012. "Halting the hidden toll: why wellbeing is critical to our profession". *Proctor*, May: 52; Di Stefano, Gianna. 2010. "Courting the blues: attitudes towards depression in Australian law students and legal practitioners". *Bulletin (Law Society of S.A.)*, 32(4) May: 18-20.

First, this paper reviews the various personality types identified in the general population. Next, difficult personality types are examined in greater detail. Approaches to better manage difficult personality types, as suggested by professionals, are outlined. In addition, other factors and enablers of destructive behaviour are discussed. This paper concludes with an overview of strategies lawyers may implement to obtain the best results when dealing with difficult clients, and when building a case to end a client relationship.

## 2. What is a personality?

Each individual person is characterised by a particular combination of emotional responses, behaviours, thought patterns, and traits that make up their personality.<sup>9</sup> Personalities start to develop early on and “remain remarkably consistent throughout life”.<sup>10</sup> Sometimes people “change and behave out of character”.<sup>11</sup> This is because personalities can change after a specific event in the person’s life. A person may not recall an event experienced in early childhood, but it may influence their behaviours later in life. For example, a newborn may not remember being ignored and neglected, but the influence of such mistreatment may manifest itself years later when the adult develops issues of trust and care.<sup>12</sup> Understanding personality types and how people ordinarily behave will enable lawyers to appreciate that a person might behave or react differently if they were exposed to traumatic life experiences or difficult living conditions.<sup>13</sup>

Personality types differ from personality disorders. Personality disorders are disease oriented and are dealt with by the study of psychiatry. Lawyers are not expected to analyse a client’s personality to diagnose them with a personality disorder. However, a lay person can generally identify a personality type, including a high conflict personality. Once identified, strategies can be implemented by lawyers to effectively deal with clients who exhibit such personalities. These strategies may also be adopted when dealing with a client who may be exhibiting signs of something more extensive than a high conflict personality. This is because the behaviours of clients with a high conflict personality and those with a personality disorder are similar.

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<sup>9</sup> Weinstein, Ian. 2014-2015. “Learning and lawyering across personality types”. *Clinical Law Review*, vol. 21: 427 and 430; Edelstein, Linda. 2006. *Writer’s guide to character traits*. 2<sup>nd</sup> ed. Writer’s Digest books, Ohio: 6 and 7.

<sup>10</sup> Edelstein, above n 9: 18.

<sup>11</sup> *Ibid.*

<sup>12</sup> *Ibid.*

<sup>13</sup> *Ibid.*

This paper analyses the specific behaviours a high conflict personality client, or one with a personality disorder, exhibits. First, an overview of personality types is provided.

### 3. Overview of personality types

A number of personality type theories were developed over the years.<sup>14</sup> One of the earlier theories dates back to Hippocrates and the four humours, which helped identify temperamental characteristics such as courage, hope, ambition, patience or peace.<sup>15</sup> These theories led to the development of modern theories of personality types. For example, some of the theories more familiar to the general population are:

- a) Cardiologists Friedman and Rosenman's Type A and Type B personality theory, developed by observing patient behaviour. It suggests that those personalities that are impatient, anxious and achievement oriented have a Type A personality, and those that are easy going, relaxed and sociable have a Type B personality;<sup>16</sup>
- b) Carl Jung's Extrovert and Introvert personality theory, which suggests that an extrovert person is action oriented, directed towards people and objects, and prefers to spend time with people (often exhibited by politicians, teachers and actors). An extrovert is often labelled as a chatterbox. An introvert person is thought oriented, directed towards concepts and ideas, and prefers to spend time alone (often exhibited by research scientists and linguists). An introvert is often labelled as a nerd;<sup>17</sup>
- c) Carl Jung's theory of the four elements, or modes of relating to the world, being thinking, sensation, feeling and intuition. He calls the sensation/intuition pair as a perceptual function, and the thinking/feeling pair as a judging function. He suggests that these functions assert themselves in our personality in various combinations;<sup>18</sup>
- d) Karen Horney's theory of three types of personalities being those apt to compliance, to aggression, and to detachment, which are often compared to what exists in any

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<sup>14</sup> Karasik, Vladimir I. and Gillespie, David. 2014. "Discourse personality types". *Procedia – Social and Behavioural Sciences*, v. 154: 23.

<sup>15</sup> Weinstein, above n 9: 428.

<sup>16</sup> Taylor, Ross. 2013. *Confidence at work: get it, feel it, keep it*. 2<sup>nd</sup> ed. Kogan Page: 57 to 60.

<sup>17</sup> Karasik and Gillespie, above n 14: 25; Weinstein, above n 9: 432; Totton, Nick and Jacobs, Michael. 200. *Character and Personality Types*. Open University Press, Philadelphia: 59-61.

<sup>18</sup> Totton and Jacobs, above n 17: 54-58.

pack of animals such as the alpha who dominate the pack, the beta who are ready to be dominated, and the gamma who try to be independent; and<sup>19</sup>

- e) Sedov's theory of the courteous, invective and rational personality types. Sedov suggests that the courteous avoid all possible conflict, the invective try to dominate, and the rational try to settle any disruptive situation.<sup>20</sup>

In addition to personality theories, various personality tests were developed to determine what type of personality a person has. For example, the Myers-Briggs Type Indicator (MBTI) is the most widely used personality inventory in the world. It makes the theory of Carl Jung easy to understand and useful in people's lives, for example, by determining why some people fail in a certain job, and others succeed.<sup>21</sup> It is designed as a tool for individuals to learn more about themselves, their personality type, and how they differ to other people. It identifies and describes 16 distinctive personality types across four scales: the extrovert vs. the introvert, sensing vs. intuition, thinking vs. feeling, and judging vs. perceiving.<sup>22</sup> Interestingly, it found that lawyers most frequently exhibit the extrovert, intuitive, thinking and judging functions. In contrast, nurses most frequently exhibit the introvert, sensing, feeling and judging functions.<sup>23</sup> The majority of judges (62%), on the other hand, are 'thinking' decision makers rather than 'feeling' decision makers, and are considered to have a Type A personality.<sup>24</sup>

A person's personality type will dominate their individual speech, thoughts, mood, feelings and behaviour.<sup>25</sup> Awareness and a basic understanding of the various personality types will enable lawyers to identify which personality they are, which personality their client might be, and how they and the client may behave in a given situation. Recognising difficult personality types goes a step further. It will enable lawyers to recognise a high conflict client, and to implement strategies to address the situation. This will be discussed next.

#### 4. Overview of difficult personality types in clients

<sup>19</sup> Karasik and Gillespie, above n 14: 26.

<sup>20</sup> Karasik and Gillespie, above n 14: 26.

<sup>21</sup> The Myers and Briggs Foundation, <http://www.myersbriggs.org/my-mbti-personality-type/mbti-basics/>, accessed 30 May 2017; Larry, Richard. 1993. "The lawyer types". *ABA Journal*, v. 79: 74; Pearman, Roger and Albritton, Sarah. 1996. *I'm not crazy, I'm just not you*. Davies-Black Publishing, California: xiii and 4.

<sup>22</sup> Weinstein, above n 9: 443.

<sup>23</sup> Ibid: 446.

<sup>24</sup> Kennedy, John F. 1999. "Personality type and judicial decision making". *General Practice Solo and Small Firm*, v. 16: 42.

<sup>25</sup> Portnoy, Sandford. 2002. "Client selection with potentially difficult clients: how to know when to take the case". *American Journal of Family Law*, 16(4): 236.

High conflict personality clients are said to be demanding, controlling, thrive on conflict, and have unrealistic expectations.<sup>26</sup> Although most clients work well with their lawyers in developing a resolution to their legal problem, some create high conflict. McNamara<sup>27</sup> describes these clients in the following way:

*Some of these clients may be cold and calculating and have a desire for vengeance. Others may be erratic, dramatic, and emotionally “all over the place”. Still others may be unduly fearful, suspicious or accusatory, seeking unreasonable restrictions and protections for themselves. .... Their emotional reactivity often leads them to sabotage their own best interests, and yet, quite amazingly, they will justify their behaviour despite its ineffectiveness. When unfavourable legal outcomes occur, they are quick to blame you and may demand compensation or relief from obligations.*<sup>28</sup>

Lawyers generally label their clients as difficult or high conflict clients, because the client:

1. Is difficult to manage;
2. Fails to pay their bill;
3. Formally complains about the lawyer; or
4. Sues the lawyer.<sup>29</sup>

However, high conflict personality clients may exhibit additional behaviours that can be characterised into general difficult behaviours, unreasonable demands, unreasonable approaches, and great dissatisfaction. Examples of each are given below.

General difficult behaviours include the client:

1. Weeping continually or uncontrollably and exhibiting a histrionic type of behaviour;
2. Exhibiting paranoia or behaving in a passive-aggressive style;
3. Behaving in an aggressive or threatening manner to or in the presence of the lawyer;
4. Showing indications of a possible personality disorder such as borderline, narcissistic or antisocial personality disorder; or

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<sup>26</sup> McNamara, Kathleen. 2012. “Understanding & managing difficult clients: what law school didn’t teach”. *Family Advocate*, Spring: 20; Portnoy, *ibid*: 236.

<sup>27</sup> *Ibid*.

<sup>28</sup> *Ibid*: 20.

<sup>29</sup> Curtin, Carole. 2006. “Dealing with the difficult client. *Canadian Family Law Quarterly*, v. 25: 292.

5. Showing indications of a possible psychological disorder such as clinical depression or severe anxiety disorder (but still having capacity to provide instructions).<sup>30</sup>

Unreasonable demands include the client:

1. Expecting to be treated differently because they are a special client;
2. Voicing unrealistic and unreasonable expectations or misguided motivations;
3. Spending an excessive time telephoning or emailing their lawyer, asking the same type of questions, or bombarding the lawyer with new information that may be completely irrelevant; or
4. Insisting they know better, debating with their lawyer rather than following their advice, and demanding that the lawyer conduct their file as the client wishes.<sup>31</sup>

Unreasonable approaches include the client:

1. Being emotionally driven or emotionally unstable, failing to see the relevant issues and obsessing about the irrelevant issues;
2. Blaming others for their legal problem and refusing to acknowledge their part or the other party's allegations of their poor conduct; or
3. Refusing to be flexible, insisting on a specific course of action and refusing to consider alternatives, for instance, because of 'the principle of it'.<sup>32</sup>

Great dissatisfaction can result in the client:

1. Complaining about their lawyer's work to the managing partner as being grossly unsatisfactory when in fact it is not;
2. Continually sacking their lawyers and showing a chronic dissatisfaction with their representation; or
3. Lodging a formal complaint against the lawyer with the Legal Services Commission, even though the complaint may be unfounded.<sup>33</sup>

These behaviours may be exhibited by high conflict personality clients, or those suffering from a personality disorder. In fact, the most common high conflict personalities are said to

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<sup>30</sup> McNamara, above n 26: 21; Portnoy, above n 25: 236; Curtin, above n 29: 291, 298, 299, 301, 302; Lapin, Raphael. 2010. "Managing problem clients". *Research*, November: 1.

<sup>31</sup> Ibid.

<sup>32</sup> Ibid.

<sup>33</sup> Ibid.

be caused by personality disorders such as the borderline, histrionic, narcissistic, and antisocial personality disorders, mentioned above.<sup>34</sup> The next section of this paper outlines the strategies that may be adopted when dealing with difficult personality clients. A brief mention will be made of the additional strategies recommended for dealing with clients with a personality disorder. These may be useful particularly when a client discloses to the lawyer that they have been diagnosed with a personality disorder. Otherwise, because a lawyer is not qualified to diagnose and therefore distinguish between a difficult personality and a personality disorder, any of the approaches suggested by professionals may be implemented.

## **5. Approaches to better manage difficult personality types**

Some argue that “difficult” is a relative term,<sup>35</sup> because what one lawyer considers a difficult client, another may consider to be refreshingly challenging. The difference lies in how the lawyer handles the client. One lawyer’s personality type may make them more or less tolerant, and therefore affect how the lawyer handles a client.<sup>36</sup> A lawyer who makes decisions ‘feeling’ rather than ‘thinking’ may be more susceptible to experiencing stress and anxiety when dealing with a difficult client. A lawyer who makes decisions ‘thinking’ rather than ‘feeling’ may not consider the client to be difficult at all. Therefore, understanding one’s personality type is the first step in considering how a lawyer will manage a difficult client.<sup>37</sup>

Further, lawyers’ responses to difficult clients will vary. Lawyers may:

1. Immediately tell the client to seek advice from a different law firm;
2. Compete with the client using their power to achieve their desired outcome such as a forced submission by the client;
3. Accommodate the client by avoiding the problem and allowing the client to vent and complain, but stress about it later; or
4. Compromise and collaborate with the client trying to communicate in a way that will both control the situation and keep the client happy, and search for integrative solutions where the relationship can be managed.<sup>38</sup>

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<sup>34</sup> Fisher, above n 2: 56.

<sup>35</sup> Curtin, above n 29: 291.

<sup>36</sup> Curtin, above n 29: 291.

<sup>37</sup> Condliffe, above n 2: 66 to 69.

<sup>38</sup> Ibid: 36-37.

In some instances the first conference, or even the first telephone call, may give a lawyer an indication that the client will be a high conflict client.<sup>39</sup> However, immediately telling the client to go somewhere else may be premature or an overreaction. If there are grounds not to accept the retainer, such as the client providing unlawful, improper and incompetent instructions, or not being able to meet the lawyer's fees under the retainer, then it would be prudent not to accept the client.<sup>40</sup> The lawyer may consider the following questions to determine whether they have grounds not to accept the retainer:

1. How many lawyers has this client consulted?
2. How many lawyers represented this client?
3. Why are the previous lawyers no longer acting for this client?
4. Has the client failed to pay the previous lawyer's bills?
5. What are this client's expectations and can I meet them?<sup>41</sup>

The lawyer may need to accept the retainer either because they have no grounds not to do so,<sup>42</sup> or because they can't afford to refuse it.<sup>43</sup> If the client then does prove to be a difficult client, the lawyer needs to manage the relationship. Avoiding or ignoring the problems caused by a difficult client is not considered to be effective or healthy. Reacting in like manner and competing with the client may worsen the situation.<sup>44</sup> What the lawyer wants to avoid is the difficult client turning the lawyer into a difficult lawyer, unhappy lawyer or depressed lawyer.<sup>45</sup> Compromising and collaborating with the difficult client will prevent this from occurring. This requires effective communication, as discussed below.

## 5.1 Effective communication

The high conflict personality client may be critical, complaining or threatening. This creates a barrier to effective communication.<sup>46</sup> To counteract this, the lawyer needs to utilise the following skills:

1. Active listening;

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<sup>39</sup> Ibid: 292.

<sup>40</sup> Rule 8, *Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015*.

<sup>41</sup> Curtin, above n 29: 292 and 293.

<sup>42</sup> Fisher, above n 2: 63 and 64; Rule 13, *Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015*.

<sup>43</sup> Lynn, above n 7: 12.

<sup>44</sup> Fisher, above n 2: 63; Condliffe, above n 2: 68

<sup>45</sup> Curtin, above n 29: 295.

<sup>46</sup> Condliffe, above n 2: 59.

2. Assertiveness; and
3. Empathetic understanding.<sup>47</sup>

Active listening will enable the lawyer to probe for clarification by asking tactful questions, or summarising and paraphrasing what they understand the client to have said.<sup>48</sup> Listening also gives the client space.

Assertiveness is the “ability to clearly communicate one’s opinions, needs, wants, interests and feelings to another person in a non-defensive and non-threatening way”.<sup>49</sup> It requires carefully choosing one’s words and being respectful to the client.<sup>50</sup> The lawyer may set boundaries on the client’s behaviour by assertively stating that although the client’s view is noted, the way the client has behaved is unacceptable and will not be tolerated. The reasons for this will include the firm having policies on what behaviour is acceptable because it impedes communication and prevents the lawyer and the client from effectively working on their case.

Empathy is the ability to put oneself in the other person’s shoes. It will enable the lawyer to see things from the client’s perspective and appreciate other underlying causes of their difficult personality such as the fact that they are going through a legal dispute, and that this can cause stress even in the most stable individuals.<sup>51</sup>

Being assertive, communicating respect, and avoiding retaliation will prevent any conflict between the lawyer and the difficult client from escalating.<sup>52</sup> Staying focused on resolving the client’s legal dispute while setting limits on the client’s behaviour is crucial. This can be accomplished by adopting specific strategies, which will be outlined in the following section.

## 5.2 Specific strategies

Specific strategies were developed to assist lawyers deal with high conflict personality clients, or clients who are particularly demanding, antagonistic, pessimistic, critical, or threatening. Each will be addressed below.

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<sup>47</sup> Ibid: 58.

<sup>48</sup> Ibid: 61.

<sup>49</sup> Ibid: 70.

<sup>50</sup> Evenson, Renee. 2014. *Powerful phrases for dealing with difficult people: over 325 ready-to-use words and phrases for working with challenging personalities*. AMACOM, accessed online at Permalink on 15 October 2015.

<sup>51</sup> McNamara, above n 26: 21; Lynn, above n 7: 10.

<sup>52</sup> Condliffe, above n 2: 68 and 70.

### Strategies recommended for dealing with all high conflict clients

These can be characterised into setting clear expectations, setting emotional boundaries, having clear policies and training, and referring when required. Examples of each are provided below.

Setting clear expectations includes:

1. Determining what the client's expectations are about the services, time frames, results and costs and advising the client which expectations can be met;
2. Being clear about the role of the lawyer, what can be done and what will not be done, and confirming this in writing;
3. Providing the client with structure of how their case and each conference will be conducted as this will help contain emotions and focus on the goal. For example, if the client tells long irrelevant stories then interrupting early, acknowledging the client's emotions, suggesting to take a couple of minutes to get the facts of the event to determine if they are relevant, and then moving on to progress the matter to a resolution, is recommended; and
4. Reminding the client of what relevant material includes, that each and every email and telephone conversation is billed, and how they can minimise their costs.<sup>53</sup>

Setting emotional boundaries includes:

1. Being empathetic and showing the client respect even if they are frustrating;
2. Being reassuring but setting limits on the support that can be provided, reminding the client to stay focused (reaching a balance between being supportive within the limits set);
3. Setting boundaries on acceptable and unacceptable behaviour and conduct, and enforcing them from the start; and
4. Never reacting emotionally to the client but containing own emotions, and implementing the "one minute scold". This involves a 30 second explanation why what the client did was inappropriate and that it is disapproved of, and 30 seconds of

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<sup>53</sup> McNamara, above n 26: 22 and 23; Lynn, above n 7: 12; Fisher, above n 2: 63; Curtin, above n 29: 293 to 297, 302; Condliffe, above n 2: 68.

confirming that the firm is invested in helping the client to successfully resolve their dispute with their cooperation.<sup>54</sup>

Having clear policies and training includes:

1. Having a clear client service agreement that outlines the firm's policies, expectations, roles, boundaries, and general approaches to how cases are managed;
2. Referring the client to the service agreement frequently during consultations;
3. Training and educating staff, including support staff, in managing angry, volatile and unstable clients; and
4. Following through with firm policies and the agreement, and billing for all time.<sup>55</sup>

Suggesting, where necessary and appropriate, that the client consult a counsellor, psychologist, or other professional to help them deal with the stress of the case, is recommended.<sup>56</sup>

Finally, documenting all communications thoroughly, and always confirming verbal advice in writing (including legal aid matters where funding is limited, is essential.<sup>57</sup>

#### Strategies recommended for dealing with demanding clients

For clients who are simply demanding of their lawyer's time or seem frustrated with their advice, the following strategies are recommended:

1. Understanding the client's context and the various pressures they are under;<sup>58</sup>
2. Listening to the client to understand what they really want and need;<sup>59</sup>
3. Explaining, educating and reality-testing about what can and cannot be done;<sup>60</sup> and
4. Concentrating on finding a solution to the client's problem.<sup>61</sup>

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<sup>54</sup> Ibid.

<sup>55</sup> Ibid.

<sup>56</sup> Ibid.

<sup>57</sup> McNamara, above n 26: 22 and 23; Lynn, above n 7: 12; Fisher, above n 2: 63; Curtin, above n 29: 293 to 297, 302; Condliffe, above n 2: 68.

<sup>58</sup> Rigotti, Mark. 2015. "What they don't teach you at law school – how to deal with difficult clients". *Legal Week*, March: 10.

<sup>59</sup> Ibid.

<sup>60</sup> Lynn, above n 7: 12.

<sup>61</sup> Rigotti, above n 51: 10.

It will become evident to the client that the lawyer has placed limits and boundaries on their behaviour, but also that the lawyer is committed to providing the client with the best possible representation.

### Strategies recommended for dealing with antagonistic clients

For clients who are antagonistic, it is recommended that their attention be directed away from the offended party back to them. This can be done by reframing their complaint to a concern, and reflecting past focused blame to the current or future focused discussion.<sup>62</sup> For example, when a client complains or blames someone else, the lawyer may say:

*Bill, I hear your frustration and concern about this legal issue that you are facing. Tell me, what can you do to assist me in addressing the current problem?*

This will avoid a potential confrontation and guides the client towards constructive problem solving.<sup>63</sup> It also sends a subtle message to the antagonistic client that their behaviour will not be tolerated and that the lawyer will not engage in an argument.<sup>64</sup>

### Strategies recommended for dealing with pessimistic clients

When dealing with a pessimistic client, the lawyer may try to compel the client to justify their criticism, and place responsibility on the client to brainstorm ideas to resolve the issue.<sup>65</sup> For example, when a client considers the lawyer's advice to be weak and ineffective, the lawyer may say:

*Mary, what specifically about this strategy do you find ineffective? What is it exactly about this recommendation that gives you cause for concern?*

After allowing the client to answer, the lawyer may ask:

*Mary, how might we build on this idea to make it more effective? How would you like to improve this strategy to make it more workable?<sup>66</sup>*

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<sup>62</sup> Lapin, above n 30: 2.

<sup>63</sup> Ibid.

<sup>64</sup> Ibid.

<sup>65</sup> Ibid.

<sup>66</sup> Ibid.

This type of questioning averts a potential argument or debate about whether or not a strategy will work, and engages the client in the discussion about the strategies recommended by the lawyer without the client noticing the aversion.<sup>67</sup>

#### Strategies recommended for dealing with complaining clients

When the client is critical of the lawyer, the following question may be put to them:

*Bill, how can I do this differently next time, and how would you like to deal with a situation where you and I differ about a strategy in the future?<sup>68</sup>*

This question appears to acknowledge that the lawyer has made a mistake. However, it does not. This type of questioning forms part of good complaint management because it prevents the dispute from escalating. Where a complaint has merit, this question can lead to an improved service being provided by the firm.<sup>69</sup> Where a complaint is made vexatiously and without merit, the firm should develop policy guidelines for dealing with such complaints. These may include:

1. Adequately defining or categorising a persistent complainant;
2. Responding to complaints quickly, possibly moving them up through the normal process;
3. Recording all dealings with the client in writing;
4. Allocating the client to a particular person or team such as the HR manager;
5. Providing support for staff; and
6. Focusing on the behaviour of the client rather than labelling them as a difficult person.<sup>70</sup>

Training staff on how to handle such clients is particularly important as it will give them the confidence they need to manage vexatious complaints and difficult clients in general.

#### Strategies recommended for dealing with threatening or aggressive clients

The above strategies may be inadequate when dealing with aggressive or threatening clients. Although there will be times when a client's behaviour and conduct will warrant an

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<sup>67</sup> Ibid.

<sup>68</sup> Ibid.

<sup>69</sup> Condliffe, above n 2: 78.

<sup>70</sup> Ibid: 83.

immediate termination of the retainer,<sup>71</sup> the majority of such clients can be managed by implementing other techniques. The recommended techniques are:

1. Being respectful and courteous;
2. Being open-minded;
3. Not being afraid to ask questions;
4. Understanding that clients are responsible for their own actions;
5. Identifying the main problem and exploring alternatives; and
6. Being firm but professional.<sup>72</sup>

In extreme cases the lawyer should immediately remove themselves from the situation and call the police.<sup>73</sup> In other non-urgent situations it is recommended that the lawyer remain calm and polite at all times, but also firm. The lawyer needs to be clear that they are not intimidated by the behaviour.<sup>74</sup> This kind of reaction generally calms the aggressive client.<sup>75</sup> In addition, the “higher-lower” method has been suggested. When the client’s voice becomes louder, the lawyer’s becomes quieter. This will force the client to pause and ask for the lawyer to repeat what they said. It can also prevent an angry client from re-escalating the confrontation.<sup>76</sup>

As mentioned earlier, the behaviours exhibited by high conflict clients and clients with a personality disorder may be similar. Any of the above strategies may be implemented when dealing with difficult clients. Where a lawyer has medical evidence, such as a medical report that the client is suffering from a personality disorder, additional strategies have been recommended. These will be discussed next.

### **5.3 Dealing with clients with mental health or personality disorders**

The type of mental health or personality disorders that a client may be diagnosed with includes anxiety, depression, or the borderline, histrionic, narcissistic, or antisocial personality disorder. For these clients, the following strategies have been recommended:

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<sup>71</sup> Rule 13, *Legal Profession Uniform Law Australian Solicitors’ Conduct Rules 2015*.

<sup>72</sup> Wagner, Jo Anne. 1990. “The difficult client: maintaining sanity in the law office”. *Paralegal Today*, 7(5): 18; Fisher, above n 2: 3.

<sup>73</sup> Curtin, above n 29: 292.

<sup>74</sup> Portnoy, above n 25: 237.

<sup>75</sup> *Ibid*: 236.

<sup>76</sup> Wagner, above n 65: 18.

### Borderline personality disorder clients

These clients' greatest fear is abandonment, and it is perceived by them in everyday events. Their coping mechanism is to control and manipulate. They can have intense, angry outbursts, and severe mood swings. One day they may idolise their lawyer, and the next they will criticise them. If they feel abandoned by their lawyer, they may seek revenge by lodging formal complaints or law suits.<sup>77</sup>

It is recommended that lawyers deal with these clients by reality checking their expectations, reminding them of the ups and downs of their legal dispute, and reaffirming the lawyer's commitment to work through these difficulties. The lawyer needs to be realistic and reassuring, and must never reaffirm unrealistic expectations. If the client becomes angry, the lawyer should not react in like manner, and avoid criticising the client or becoming defensive.<sup>78</sup>

### Histrionic personality disorder clients

These clients' greatest fear is being ignored. They do not understand why other people do not agree with how they see things, and often disagree with their lawyer's advice. When challenged, they can become defensive. These clients also tend to blame others and deny any contribution to their problem. They will often exaggerate stories and seek constant attention, affection and approval.<sup>79</sup>

It is recommended that lawyers deal with these clients by independently checking and verifying the information they give. They should strive to give the client full attention, maintain eye contact, and be empathetic.<sup>80</sup>

### Narcissistic personality disorder clients

These clients' greatest fear is failure. They are often preoccupied with themselves, lack empathy, and feel that they are inferior to others. They may first appear confident and arrogant, but become demanding and inflexible. They exploit personal and professional relationships and refuse to accept responsibility for their actions. These clients do not react

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<sup>77</sup> Fisher, above n 2: 57; Edelstein, above n 9: 98 and 99.

<sup>78</sup> Ibid.

<sup>79</sup> Fisher, above n 2: 57 and 58.

<sup>80</sup> Ibid.

well to criticism. They are self-centered and self-absorbed, oblivious to the consequences of their actions, and when criticised, become depressed and abusive. They often use the court system to prove that they are right.<sup>81</sup>

It is recommended that lawyers deal with these clients by being patient and empathetic, and not confronting them about their behaviour as they can become defensive. Instead, the lawyer should be polite, but firm. They need to remind the client that the relationship is a professional one and not a personal one, and that therefore the lawyer's opinions are professional and not personal. The lawyer may allow brief venting, but should bring the client back to productive discussions about their legal dispute.<sup>82</sup>

### Antisocial personality disorder clients

These clients' greatest fear is being dominated. They are most likely to be encountered by criminal lawyers and are considered to be the most dangerous clients. This is because they not only take advantage of people, fooling lawyers, judges and mediators, but they enjoy committing violent crimes. They may exhibit aggression, charm, impulsiveness, lack of empathy, reckless disregard for the safety of others or themselves, and a desire to dominate others. Further, they tend to be pathological liars and have a tendency for revenge. Clients with an antisocial personality tend to use the legal system to hurt other people, such as a business partner or a former spouse.<sup>83</sup>

It is recommended that lawyers deal with these clients by independently investigating and verifying their claims, and explaining the consequences of any action they indicate they want to take which may be against the lawyer's advice. However, the lawyer is warned not to be surprised if their advice is ignored. The lawyer should enforce consequences of such behaviour, which may include terminating the retainer.<sup>84</sup>

Clients may be suffering from a mental health disorder rather than a high conflict personality or a personality disorder. Their mental health disorder may be responsible for or contribute to their difficult behaviour. Lawyers are not trained to diagnose their clients, and should never attempt to do so. However, some authors recommend that if a lawyer suspects that there is something more significant going on with the client, the client should be referred for a

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<sup>81</sup> Fisher, above n 2: 59 and 60; Edelstein, above n 9: 104.

<sup>82</sup> Ibid.

<sup>83</sup> Fisher, above n 2: 60 and 61; Edelstein, above n 9: 113 and 114.

<sup>84</sup> Ibid.

mental health assessment.<sup>85</sup> An example of a valid suspicion of something more significant would be a client having “unusual or exaggerated beliefs about personal powers to influence events or recognise hidden meanings”.<sup>86</sup> While the client is being assessed, or if they refuse to do so, the following strategies may be implemented to effectively deal with the resultant behaviours:

1. Communicating clearly;
2. Setting boundaries of acceptable behaviour and quickly reinforcing them if they are breached;
3. Being consistent and following through with relevant policies;
4. If the client idolises the lawyer with praise of special skill, the lawyer should modestly convey that they are diligent but not super human;
5. Avoiding criticising or humiliating the client and being aware of any behaviour on the part of the lawyer that may provoke the client; and
6. Not ignoring the client's instructions but briefly obtaining the facts, verifying them, determining their relevance, and being assertive in reality checking the client.<sup>87</sup>

It is acknowledged that “not all personality disorders respond to the same treatment”.<sup>88</sup> In the same way, some strategies will be effective with one client, but not with another. Finding the best way to deal with a difficult client may be done by testing various recommendations, or in other words, by trial and error.

## **6. Other factors and enablers of destructive behaviour**

If the lawyer has implemented a number of strategies to deal with their difficult client, and is still unable to effectively manage the behaviour, there may be other factors involved. The client's behaviour and misconceptions may be encouraged by other people within their family or circle of friends.<sup>89</sup> These people are classed as ‘enablers’ of the destructive behaviour. They are generally family members, or close friends or associates.<sup>90</sup>

Enablers enable individuals to continue their self destructive behaviours, which may include alcohol or drug addiction, by actively or passively supporting such behaviour. Actively

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<sup>85</sup> McNamara, above n 26: 22; Portnoy, above n 25: 235.

<sup>86</sup> McNamara, above n 26: 22; Edelstein, above n 9: 114 to 118.

<sup>87</sup> McNamara, above n 26: 24.

<sup>88</sup> Fisher, above n 2: 57.

<sup>89</sup> Ibid: 56.

<sup>90</sup> Ibid: 62.

supporting the behaviour takes the form of providing the person with drugs or alcohol. Passively supporting the person takes the form of failing to challenge them or assist them in breaking the habit.

In a legal dispute, enablers are classed as “negative advocates” because they advocate the destructive behaviour of the client. They may do so actively by exhibiting the same behaviours, or passively by failing to challenge them. Enablers are often present in conferences with the lawyer and the client, and participate in these conferences as much as, or more than the client. Their participation often takes the form of:

1. Aiding the client by providing excuses for their poor actions or decisions;
2. Reinforcing the client’s behaviour by helping them avoid consequences of their actions;
3. Covering up for the client, allegedly out of concern, loyalty and love;
4. Adopting or agreeing with the client’s distorted view of reality;
5. Supporting the client in challenging or disagreeing with the lawyer’s advice; or
6. Pretending that nothing is wrong and being in denial of how bad the case may be.<sup>91</sup>

Enablers reinforce the client’s destructive behaviour. It is important to acknowledge, however, that enablers may be motivated by fear of creating a conflict or confrontation with the client themselves, or may be financially or emotionally dependent on that person.<sup>92</sup> Therefore, the enabler may not necessarily be a willing enabler, but may feel that they need to support the person’s destructive behaviour out of necessity for their own well being. They may themselves “fear confronting reality”.<sup>93</sup> They may not know how to address the problem.

If the enabler is a spouse or a close support person, their own perception may change once they hear the lawyer’s advice. Reality testing the enabler often works. If the enabler does not, however, change their position, they should not be present during conferences. Each individual case needs to be carefully assessed by the lawyer and dealt with accordingly.

The situation becomes more complex when the enabler is the lawyer. Lawyers who are easily influenced by the high conflict personality client fail to manage the behaviour, fail to

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<sup>91</sup> Ibid.

<sup>92</sup> Ibid.

<sup>93</sup> Ibid.

verify implausible claims, and act on instructions they otherwise would not. In this way they reinforce the client's difficult personality and destructive behaviour.

When the enabler is not the lawyer, then in order to effectively manage the enabler, the lawyer may adopt strategies that include initial responses, and setting clear boundaries for communication, behaviour, and instructions. Examples of these are provided below.

The lawyer's initial responses may include:

1. Being empathetic and supportive of the enabler but not their position;
2. Verifying all claims and information;
3. Avoiding openly confronting the enabler by denying or disbelieving what they say;  
and
4. Reality testing to give the enabler a new perspective on the case.<sup>94</sup>

Setting clear boundaries for communication includes:

1. Setting limits on how the lawyer will communicate with the enabler and the client; and
2. Reinforcing the limits on communication.<sup>95</sup>

Setting clear boundaries for behaviour includes:

1. Setting boundaries on appropriate and inappropriate behaviours; and
2. Reinforcing the boundaries on the behaviour of the enabler and the client.<sup>96</sup>

Setting clear boundaries for instructions includes:

1. Encouraging the enabler to allow the client to independently consider the lawyer's advice and provide instructions;
2. If necessary, appropriate and possible, asking the enabler to leave the room when conferencing the client; and
3. Making it clear to the client and the enabler that the lawyer will not take instructions from the enabler.<sup>97</sup>

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<sup>94</sup> Ibid: 62 and 63

<sup>95</sup> Ibid.

<sup>96</sup> Ibid.

<sup>97</sup> Ibid.

Recognising whether the client's difficult or destructive behaviours are influenced by an enabler is the final step in analysing how the lawyer may best deal with the high conflict client. Adopting the strategies recommended by experts in this field will enable the lawyer to achieve the best results when dealing with difficult clients. A summary of these strategies follows.

## **7. How to get the best results**

As a summary of the above strategies, to achieve the best results when dealing with a high conflict personality client, the lawyer should:

1. Consider their personality type and how it affects the relationship with this particular client;
2. Consider the client's personality type and how this influences the relationship;
3. Consider other causes of the client's difficult behaviour such as a personality disorder, a mental health disorder, or an enabler;
4. Recognise the specific behaviours that the client exhibits which hinder communication and the conduct of the client's matter;
5. Adopt the strategies recommended for the specific behaviours;
6. Develop effective communication skills; and
7. Never retaliate.

It is also recommended that lawyers who deal with a high conflict personality client debrief with their colleagues as it is an effective way of dealing with a stressful situation.<sup>98</sup> These strategies will allow the lawyer to establish and maintain a positive working relationship even with a difficult client.<sup>99</sup> This in turn will enable the lawyer to end the client relationship amicably rather than acrimoniously. The final section of this paper concludes with final suggestions on building a case to end a client relationship.

## **8. Building a case to end a client relationship**

Every client is a potential referral basis and lawyers recognise that ending a client relationship successfully is crucial to their practice. When a lawyer accepts a retainer, they

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<sup>98</sup> Ibid: 64.

<sup>99</sup> McNamara, above n 26: 22.

may very quickly realise that the client will be a difficult client. Ending this relationship amicably may be difficult. The priority for the lawyer may be to service the client efficiently, but also avoid unnecessary stress on themselves, and additional pressure on support staff. Most importantly, the lawyer wants to avoid any potential complaints by the difficult client.

One of the options discussed in this paper is the refusal or termination of the retainer. When the client is abusive or threatening, or gives unlawful instructions, and the lawyer decides to take this option, the reasons for the termination should be clearly set out in a letter to the client. All incidents of the client's behaviour should be documented and retained on file. If the client's behaviour does not warrant termination of the retainer, but the client is still difficult, then implementing the strategies set out in this paper will assist the lawyer in managing the behaviour. When the matter is complete, the relationship will end naturally.

One of the most important strategies a lawyer or their firm can implement to deal with high conflict personality clients and end the relationship successfully is developing policies for dealing with complaints and with difficult clients. Educating staff about these policies is essential. Implementing them is critical. Perseverance will make the lawyer resilient, sharpen their communication skills, and may even result in the difficult client becoming a good source of referrals in the future.

## **9. Conclusion**

Lawyers solve problems. However, sometimes solving a problem requires more than knowing the law. Dealing with a high conflict client is one situation where knowing the law is not enough. It necessitates an understanding of a vast array of underlying issues. It requires lawyers to delve into the fields of other professions, such as psychology and psychiatry. Then, it calls for lawyers to trust that the advice of those professions is the right advice, and to implement their recommendations in their practice. These recommendations offer a proven framework for facing challenges that arise as lawyers work with the "infinite variety of individuals" they meet, and "in the myriad roles in which lawyers work with others".<sup>100</sup> They help lawyers to help their clients while achieving satisfaction in their work.

This paper analysed the wide variety of personality types and the behaviours that high conflict personality clients exhibit. The options available to lawyers who are faced with the

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<sup>100</sup> Weinstein, above n 9: 453.

challenge of dealing with such clients were discussed. Although there will be occasions when lawyers will need to terminate the retainer, this paper recognises that dealing with difficult clients can be done effectively, leading to a successful resolution of the client's matter and an amicable conclusion to the lawyer-client relationship.

Grace Lawson  
Barrister-at-Law  
Accredited Mediator  
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