

The conflict-avoidant mediator: an unlikely paradox.
An analysis of how an aversion may be a success in conflict resolution
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Conflict is an essential part of mediation. By definition, the intention of a “mediator” is to help parties reach a mutually satisfactory resolution to a dispute or conflict.¹ In some contexts, mediators are described as “peacemakers,”² “interceders”³ and even “violence interrupters.”⁴ It can therefore be argued that conflict effectively forms the predominant “workplace” for mediators. However, it is fascinating that “a number of mediators have speculated that mediators are, to a surprising degree, uncomfortable with conflict.”⁵

According to the Thomas-Kilmann Conflict Mode Instrument (TKI), individuals who are uncomfortable with conflict are classified as possessing an “avoiding” conflict style. Although merely speculative, the concept of a Conflict Avoidant Mediator (CAM) warrants further analysis. How can a CAM be an effective mediator if he or she is averse to conflict? Does this make a CAM analogous to a professional swimmer who is afraid of water or a doctor who cannot stand the sight of blood?

It has been suggested that CAMs “may have chosen this work [mediation] to overcome their fear of conflict.”⁶ Surely, it is an extreme measure to pursue a career for the sole purpose

¹ Jay Folberg and Alison Taylor, *Mediation: A Comprehensive Guide to Resolving Disputes without Litigation*, San Francisco: Jossey-Bass (1984).

² Synonymous with “mediator.” See Merriam-Webster thesaurus online: <http://www.merriam-webster.com/thesaurus/mediator>

³ *Id.*

⁴ See CeaseFire, an organization that uses a public health approach to stopping the spread of violence, as featured in the documentary, *The Interrupters*.

⁵ David A. Hoffman, Mediation and the Art of Shuttle Diplomacy, *Negotiation Journal* (July 2011), at 307. See also commentary by Gini Nelson in the blog, *The Complete Lawyer*. “In my personal life, and in dealing with professional colleagues outside of the specifics of a case, I’m a conflict avoider.”

⁶ *Id.*, at 307.

of overcoming a fear? CAMs must offer a certain skillset that lends itself to effective mediation and conflict resolution.

This paper aims to analyze the “avoiding” conflict style (as defined by TKI) as well as the potential strengths and weaknesses of CAMs in being effective and successful mediators.

Part 1: TKI and the typology of conflict avoidance

Kenneth W. Thomas and Ralph H. Kilmann developed TKI almost 40 years ago. It is still the most popular classification scheme⁷ of “patterned responses” to and behavior in conflict.⁸ TKI assesses the behavior of an individual in “conflict situations,” which it defines as “situations in which the concerns of two people appear to be incompatible.”⁹ In conflict situations, TKI provides that behavior can be described along two basic dimensions:¹⁰

1. *assertiveness*: the extent to which the individual attempts to satisfy his own concerns; and
2. *cooperativeness*: the extent to which the individual attempts to satisfy the other person’s concerns.

These two dimensions of behavior are used to define five specific methods of dealing with conflicts (**Conflict Styles**). A Conflict Style is a “general way of thinking about and responding to conflict.”¹¹ The five Conflict Styles as defined by TKI are as follows: **Competing,**

Collaborating, Compromising, Avoiding and Accommodating.

⁷ Ellen Kandell, *Conflict Styles: An Overview*, published online on 1 April 2012: see <http://theworldofcollaborativepractice.com/?p=1088>

⁸ William Wilmot and Joyce Hocker, *Interpersonal Conflict*, New York, NY. McGraw Hill (2011).

⁹ Adapted from Kenneth W. Thomas, “Conflict and Conflict Management,” in *The Handbook of Industrial and Organizational Psychology*, edited by Marvin Dunnette (Chicago: Rand McNally: 1976).

¹⁰ *Id.*

¹¹ Roxanne Lulofs and Dudley Cahn, *Conflict from Theory to Action*, Allyn & Bacon (2000).

While all of these Conflict Styles have useful purposes in certain conflict situations,¹² no one of them can be considered “the best.”¹³ Generally, individuals have a “repertoire” of Conflict Styles in various types of conflict.¹⁴ The study of Conflict Styles is imperative to mediation as “the mediator and the parties in the mediation setting may have very different understandings of the social meaning of conflict.”¹⁵

This paper primarily focuses on CAMs, who are mediators that have a dominant Avoiding Conflict Style. This is not to say that Avoiding is the only Conflict Style of these mediators, however, it is the one that is heavily relied upon as it is their “clear favorite.”¹⁶

Part 2: An analysis of the Avoiding Conflict Style

TKI describes the Avoiding Conflict Style as “unassertive” and “uncooperative” across the two dimensions.¹⁷ It has been characterized as involving little concern for parties and outcomes.¹⁸ The common traits of an Avoiding Conflict Style are as follows:¹⁹

When avoiding, an individual does not immediately pursue his or her own concerns or those of the other person. He or she does not address the conflict. Avoiding might take the form of diplomatically side-stepping an issue, postponing an issue until a better time, or simply withdrawing from a threatening situation. (Emphasis added).

¹² Kandell, *supra* note 7.

¹³ As set out in the *Becoming a Better Supervisor: A Resource Guide for Community Service Supervisors* devised by the National Crime Prevention Council.

¹⁴ *Thomas-Kilmann Conflict Mode Instrument* Copyright 1974, 2002, 2007 by CPP, Inc., “all five modes are useful in some situations,” at 11.

¹⁵ Mary Jiang Bresnahan, William A. Donohue, Sachiyo M. Shearman and Xiaowen Guan, *Research Note: Two Measures of Conflict Orientation*, *Conflict Resolution Quarterly*, Vol 26, no. 3, Spring 2009, at 375.

¹⁶ TKI, *supra* note 14, at 11.

¹⁷ *Id.*, at 7.

¹⁸ Kenneth W. Thomas and Ralph H. Kilmann, *Developing a forced-choice measure of conflict handling behavior: The “MODE” instrument*, 37 *Educational and Psychological Measurement* (1977), at 309-325.

¹⁹ TKI, *supra* note 14, at 8.

An individual with an Avoiding Conflict Style will often share sentiments, such as, “conflict is *embarrassing* to me,” or “I believe that conflict usually *hurts* my relationships with other people.”²⁰ For these reasons, conflict is avoided.

2.1 Types of avoidance

Typically, “avoiding” is characterized by an individual either:

- doing nothing and abandoning the conflict;²¹ or
- using indirect communication with the other party.²²

Scholars suggest that there are two types of avoidance that underpin conflict avoidance:

1. *topic avoidance*: “withdrawal of information, as when people suppress arguments or avoid discussing some issues to prevent a conflict, to protect self-identity, to manage a relationship or to manage information.”²³
2. *person avoidance*: makes the person the focus of that which is being avoided. It usually involves staying away from the other person, being in proximity to the person but avoiding any communication or avoiding direct communication but using a third party through which to communicate.²⁴

2.2 Strategies and tactics of the Avoiding Conflict Style

An individual with an Avoiding Conflict Style may employ the following tactics when faced with conflict.²⁵

²⁰ Bresnahan et al, *supra* note 15, at 369.

²¹ Jeffrey Z. Rubin and Dean G. Pruitt, *Social conflict: Escalation, stalemate, and settlement* (2nd ed.) McGraw-Hill Book Company (1994).

²² Qi Wang, Edward L Fink & Deborah A. Cai, *The Effect of Conflict Gals on Avoidance Strategies: What Does Not Communicating Communicate?*, *Human Communication Research* 38 (2012), at 228.

²³ *Id.*, at 222.

²⁴ *Id.*, at 228.

²⁵ Adapted from Wang et al, *id.*, at 229-232.

- *Withdrawal*: a strategy to avoid both the person and the issue and often involves silence or leaving the scene.
- *Passive domination*: a strategy to avoid the issue but not the person and demonstrates a competitive intention to push one's own agenda over the person's agenda.
- *Pretending*: a strategy to avoid the issue but not the person and can involve acting as if there was no conflict and making non-committal or irrelevant remarks.
- *Exit*: a strategy to avoid the issue and the person and can include divorce or resignation. It may also include physically staying but disconnecting from both the relationship and the task.
- *Outflanking*: a strategy to avoid the person while pursuing the issue over the long term and may include resorting to authority, backstabbing, agreeing publicly but disagreeing privately and forming a coalition.
- *Yielding*: a strategy to avoid the issue but not the person over the long term and involves relational maintenance by giving up one's opposing ideas in order to satisfy the other's needs.

2.3 ***Cultural and gender biases and the Avoiding Conflict Style***

Some scholars suggest that there are cultural underpinnings of the Avoiding Conflict Style and it is prevalent in Asian Americans²⁶ and African Americans.²⁷ There are also suggestions of a gender bias within the Avoiding Conflict Style where women are less likely to engage in conflict than men.²⁸

²⁶ Bresnahan et al, *supra* note 15 at 366.

²⁷ *Id.*, at 373.

²⁸ Dale Eilerman, The Use and Misuse of an Avoiding Style in Conflict Management, *see* www.mediate.com/articles/eilermanD6.cfm (September 2006). See also Bresnahan et al, *supra* note 15, at 374.

2.4 *Strategic use of the Avoiding Conflict Style*

Although “avoiding” may have negative connotations of “dodging,” “evading” or “shirking,”²⁹ there are many contexts in which an Avoiding Conflict Style can be strategic and have a useful purpose. An Avoiding Conflict Style may appropriately be used in the following situations, where:³⁰

- the issue is trivial or when other issues are more pressing;
- there is a perception that concerns are unable to be satisfied;
- the potential damage of confronting a conflict outweighs the benefits of its resolution;
- people need to cool down – to reduce tensions to a productive level and to regain perspective and composure;
- gathering information outweighs the advantages of an immediate decision;
- others can resolve the conflict more effectively; and
- the issue seems tangential or symptomatic of another more basic issue.

The overwhelming majority of these situations bear striking parallels with mediation, forming a good base as to why CAMs may be successful mediators. Part 4 of this paper explores how and where these situations intersect with mediation, allowing CAMs to effectively navigate their way through the mediation process.

Part 3: How can CAMs function in the middle of conflict?

Given the characteristics of CAMs, it is unclear how they can effectively function in high conflict mediations. How do they prevent their dominant Avoiding Conflict Style from

²⁹ All these terms are synonymous with “avoiding.” See Merriam-Webster thesaurus: [see http://www.merriam-webster.com/thesaurus/avoid](http://www.merriam-webster.com/thesaurus/avoid)

³⁰ TKI, *supra* note 14.

interfering with their ability to assist parties in reaching an agreement? At this stage, as there has been very little research in this area, the reasons are purely speculative.

3.1 No personal involvement in the conflict

Some research shows that people have a tendency to become “less assertive, less demanding and more-conflict avoidant” in conflicts with people with whom they have a relationship.³¹ Fortunately, mediators are generally required to be neutral and impartial in the conflicts in which they act as mediators. The lack of personal interest and involvement in the conflict, may allow CAMs to be less affected by their Avoiding Conflict Style. This means that they may rely on their other (less dominant) Conflict Styles when mediating cases.

3.2 Presence of another supporting Conflict Style

CAMs cannot be characterized as having a single, rigid Conflict Style.³² Although CAMs may have a dominant Avoiding Conflict Style, there is likely another strong Conflict Style, for example, “Collaborating” or “Compromising” at play. The presence of this other Conflict Style may support CAMs abilities in mediation and may enhance their skills and techniques.

3.3 Emphasis on self-determination

In mediation, the mediator acts as a “facilitator” between the parties to the conflict, rather than the decision maker. For this reason, there is a strong emphasis on party autonomy and self-determination. It is therefore beneficial for the mediator to take a step back and allow the *parties* to come to an agreement. As the Avoiding Conflict Style is appropriate when others

³¹ Jane A. Halpert, Alice F. Stuhlmacher, Jeffrey L. Crenshaw, Christopher D. Litcher and Ryan Bortel, Paths to Negotiation Success, Vol. 3 Negotiation and Conflict Management Journal, No. 2, at 95.

³² TKI, *supra* note 14, at 11.

can resolve the conflict more effectively,³³ a CAM may skillfully defer to the parties in negotiating the terms of the agreement.

Part 4: Potential strengths of CAMs

Upon analysis of the Avoiding Conflict Style, it is likely that CAMs possess certain unique strengths that bolster their them to be effective and successful mediators.

4.1 *Accepting multiple realities*

Mediation often involves conflicts between parties who have completely different accounts of the relevant facts and events. It is easy for mediators to get caught up in the questions of “who is right?” and “who is telling the truth?” However, in mediation, whether a party is right or honest can sometimes have very little bearing on the ability to reach an agreement. CAMs are likely to “avoid stimulating an argument in which [the conflict parties] might express incompatible interpretations of the [conflicting] event.”³⁴

For this reason, CAMs may be better equipped to side-step these questions than other mediators as, due to their Avoiding Conflict Style, they are unlikely to align with a party and engage in the conflict. By “avoiding the appearance of taking sides by bonding too much with one side, mediators can be most helpful to [parties with] high conflict personalities.”³⁵ It may be the preferred approach for CAMs to accept both the realities of both parties and focus on a resolution to move forward.

While this may be a positive for dealing with parties who cannot agree on facts, there may also be negative implications of this approach as set out in section 5.2 of this paper.

4.2 *Good at “internalizing conflict”*

³³ TKI, *supra* note 14, at 15.

³⁴ Michael E. Roloff and Courtney E. Wright, *Conflict avoidance: a functional analysis*, in *Uncertainty and information regulation in interpersonal contexts: theories and applications*, Routledge (2009), at 321.

³⁵ Bill Eddy, *High Conflict People in legal disputes*, HCI Press (2009), at 183.

CAMs may be more likely to “hold in their thoughts and feelings until they are sure of their position and are compelled to act on it.”³⁶ They are also less likely to spontaneously reach to a conflict or to provoke one.³⁷ This may be beneficial in mediation as the process is about the *parties* and not the *mediator*. It is likely to be unhelpful for a mediator to be emotional and involved in the conflict between the parties.

4.3 Shuttle diplomats³⁸

Mediators often “use private caucus sessions, in which the mediator shuttles between or among parties in conflict, using these separate meetings to discuss the conflict and to advance the negotiations.”³⁹ It is in these private caucuses that “the distinctive aspect of mediation and the setting in which much of the most important work is done.”⁴⁰

Some scholars argue that joint sessions can result in destructive direct interactions between parties.⁴¹ Fortunately for CAMs, their discomfort with conflict “may reinforce the impulse to move from joint session to caucus.”⁴² Caucuses are strategically important, particularly in personal injury and employment termination cases.⁴³ They are also helpful in cases with heightened emotions and where the parties are “unwilling to meet face-to-face or even to acknowledge each other.”⁴⁴

³⁶ Eilerman, *supra* note 28, in reference to individuals with an Avoiding Conflict Style.

³⁷ *Id.*, at 28.

³⁸ The expression “shuttle diplomacy” was coined to describe the efforts of U.S. Secretary of State, Henry Kissinger, to broker peace in the Middle East following the Yom Kippur War in 1973.

³⁹ Hoffman, *supra* note 5, at 265.

⁴⁰ Dwight Golann, *Mediation legal disputes: Effective strategies for lawyers and mediators*, New York: Little Brown (1996), at 68.

⁴¹ Hoffman, *supra* note 5, at 269.

⁴² *Id.*, at 307.

⁴³ *Id.*, at 268.

⁴⁴ *Id.*

However, an over-emphasis on caucuses may also have a negative impact on the parties to a mediation, as set out in section 5.1 of this paper.

4.4 Agreed terms: the building blocks for CAMs

A key technique employed by mediators in facilitating settlement involves helping the parties “recall the success they have had thus far in the process, and build[ing] on the progress they have made.”⁴⁵ In order to do this, mediators endeavor to focus on any common ground or agreement between the disputing parties. It follows that CAMs, due to their aversion to conflict, may be well-placed to focus on points of agreement rather than points of contention, as compared to other mediators. By using a common “avoiding” tactic of pretending, CAMs are likely to “focus on positive communication and show more cooperative than competitive goal concerns.”⁴⁶

4.5 Reciprocity and mirror neurons

Due to the discomfort that CAMs have with conflict, they are unlikely to actively engage in any conflict between the parties. While this is appropriate for mediators, a mediator with a “competitive” Conflict Style may be more likely to make statements that have the effect of actively engaging in the conflict. This may or may not be beneficial to the mediation... it depends. However, a potential benefit of a mediator having a Avoiding Conflict Style, is largely attributable to the norm of reciprocity and the phenomenon of mirror neurons.

The reciprocity norm is “one of the strongest and most pervasive social forces in all human cultures”⁴⁷ and is based on the premise that “we should try to repay, in kind, what another person has provided us.”⁴⁸

⁴⁵ Alan J. Stitt, *Mediating Commercial Disputes*, Canada Law Book (2003), at 170.

⁴⁶ Wang et al, *supra* note 22, at 230.

⁴⁷ Robert B. Cialdini, *Influence: The Psychology of Persuasion*, HarperCollins (2007).

A “mirror neuron” is a neuron that fires both when an individual acts and when an individual observes the same action performed by another.⁴⁹ This means that the neuron “mirrors” the behavior of the other, as if the observer were the one acting.⁵⁰ The purpose of these “mirror neurons” is important for understanding the actions of other people, and for learning new skills by imitation.⁵¹

By observing a CAM who does not engage in and escalate the conflict, the parties are likely to *reciprocate, model* and *mirror* the behavior of the mediator.

4.6 Prioritizing issues: Who’s on first? What’s on second?

Mediations can be very complex and can involve layers of multiple intertwined issues between the parties. For this reason, it may be prudent for mediators to delay the resolution of certain issues pending resolution of other more pressing issues. A dominant Avoiding Conflict Style assists CAMs in prioritizing the pressing issues, as they are unlikely to engage conflict over trivial issues and issues that are tangential to or symptomatic of another issue. In taking this approach, CAMs are likely to assist the parties in also prioritizing the issues to be discussed and resolved.

Part 5: Potential weaknesses of CAMs

In some cases, “avoiding conflict only contributes to the problem and prevents it from being resolved.”⁵² Despite the potential strengths of CAMs, there may also be some significant

⁴⁸ Robert B. Cialdini and Noah J. Goldstein, *Social Influence: Compliance and Conformity*, 55 *Ann. Rev. Psychol.* 591 (2004), at 599.

⁴⁹ Giacomo Rizzolatti and Laila Craighero, *The Mirror-Neuron System*, *Annual Review Neuroscience* (2004), at 169–192.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² Eilerman, *supra* note 28.

disadvantages to the Avoiding Conflict Style and weaknesses that may hinder their abilities in mediation.

5.1 Limited potential for greater understanding

Over recent years, there has been a push towards a “no-caucus” model of mediation.⁵³ A focus on caucuses by CAMs may limit the opportunities for parties to have a greater understanding of each other, in turn, depriving them of the “transformative” aspect of mediation. Through joint sessions, the mediator seeks to “help the parties to reach a deeper level of understanding of the conflict, the other parties’ interests and their own interests.”⁵⁴

5.2 Less likely to delve into issues and emotions

A significant part of being a mediator can involve interacting in highly emotional and volatile situations. A skilled mediator should be effective at “managing and regulating emotions”⁵⁵ allowing them to “psych up, calm down or maintain a mood, as desirable.”⁵⁶ Anger is a common emotion in the “types of conflict that are often at issue in the legal context: violations of autonomy, perceived injustice and violations of procedural justice.”⁵⁷

The concern with CAMs and high emotion cases is that, due to their difficulty with conflict, it may make them less likely to engage in the emotions that often present themselves during the mediation process. This is potentially dangerous as, ideally, a mediator should feel comfortable when confronted with emotion and conflict, particularly because the parties look to the mediator to guide them through the process. It is possible that a mediator that feels

⁵³ Hoffman, *supra* note 5, at 266.

⁵⁴ Gary Friedman and Jack Himmelstein, *Challenging Conflict: Mediation through Understanding*, Chicago: American Bar Association (2008).

⁵⁵ Jennifer K. Robbenolt and Jean R. Sternlight, *Psychology for Lawyers*, American Bar Association (2012), at 57.

⁵⁶ David R. Caruso and Peter Salovey, *The Emotionally Intelligent Manager*, (2004).

⁵⁷ Robbenolt & Sternlight, *supra* note 55, at 53.

uncomfortable with emotion and conflict may try to “fast track” the process which may rob the parties of the healing abilities of mediation.

5.3 Potential to be perceived as passive or weak

It is often considered courageous to “face the fear and stress inherent in the dynamics of conflict.”⁵⁸ It follows that, if the parties to a mediation are aware of the fact that they have a CAM, they may perceive that mediator to be “passive” or “weak.” This is a common perception associated with conflict avoidance.⁵⁹ Some parties, if they perceive such a weakness in the mediator, may take the opportunity to “game” the mediator and try to blow up the mediation.

Part 6: The future of CAMs: paradox or prototype?

On its face, the notion of a CAM is paradoxical. The characterization as a “paradox” suggests that there is a social expectation that an effective or successful mediator possess a Conflict Style, *other than an Avoiding Conflict Style*, whether it is Competing, Collaborating, Compromising or Accommodating. However, based on an analysis of the Avoiding Conflict Style, it is clear that CAMs may possess certain specific strengths that they bring to the mediation table. It is therefore purely speculative to assume that CAMs pursue their careers in mediation solely as a means of overcoming their fear of or aversion toward conflict. For these reasons, the concept of a CAM warrants further analysis.

As a matter of practice, all mediators should be aware of their Conflict Style(s) and be conscious when they are at play during the mediation process, particularly if the Conflict Style negatively affects the process or the parties. It is beneficial for CAMs to be aware of their Avoiding Conflict Style and to have insight on the reasons underpinning their Conflict Style and

⁵⁸ Eilerman, *supra* note 28.

⁵⁹ *Id.*.

what they may be trying to achieve by employing that specific style.⁶⁰ CAMs who are aware of their own traits, can adjust the strategies and tactics their personalities induce them to adopt.⁶¹

To the extent that an Avoiding Conflict Style negatively affects the mediation, mediators should prioritize self-development and engage in exercises that strengthen their other (less dominant) Conflict Styles. For example, CAMs can engage in “role playing or writing out a plan of action”⁶² to give them confidence needed to deal with the conflict, if they wish to implement another Conflict Style.

However, it is important to understand that employing an Avoiding Conflict Style is *as strategic an approach* to managing conflict as Competing and Collaborating Conflict Styles.⁶³ Sometimes not communicating, communicates a great deal.⁶⁴

⁶⁰ Wang et al, *supra* note 22, at 223.

⁶¹ Roderick W. Gilkey and Leonard Greenhalgh, *The Role of Personality in Successful Negotiating*, *Negotiation Journal*, at 245.

⁶² Eilerman, *supra* note 28. See also, Kandell, *supra* note 7.

⁶³ Dean G. Pruitt & Jeffrey Z. Rubin, *Social Conflict: Escalation, Stalemate and Settlement*, New York, Random House (1986).

⁶⁴ Wang et al, *supra* note 22, at 224.