

GOT CONFLICT?
3 Hot Tips For Negotiating Anything



Presenters:

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Presenters' Biographies

SUSAN R. BULFINCH, J.D., The Mediation Offices of Susan Bulfinch is in private practice as a professional neutral. Susan is the immediate past president of the Arizona Association for Conflict Resolution (AACR), a non-profit association of mediators, arbitrators, educators, peacemakers and those interested in the field of dispute resolution. She specializes in mediation, facilitation, negotiation and conflict resolution training. Her practice focuses on workplace and employment, family, personal injury and general business matters. She mediates for the California Department of Insurance, United States Postal Service and the Maricopa County Justice Courts and serves on the Employment Mediation Panel for the American Arbitration Association. She was a consultant for the newly revised Mediation and Dispute Resolution Professional Certificate Program at University of California, Santa Barbara and teaches at UCSB.

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PAMELA DONISON, J.D., is the owner of **Donison Law Firm, PLLC**, a boutique family law firm in Scottsdale, Arizona. In practice for over 10 years, Pamela has litigated, negotiated, mediated and settled hundreds of family law cases, ranging from premarital agreements to post-decree custody issues.

Pamela has extensive experience in Double Divorce: divorcing couples who are also business owners, dividing both personal and business assets. Pamela's practice is concentrated on Alternative Dispute Resolution (ADR), including arbitration, mediation, negotiation, Collaborative Divorce, cooperative divorce, and consulting. Pamela is on the Maricopa County Superior Court Roster as an approved Attorney Mediator and is a Judge Pro Tempore for the Family Court Bench.

Pamela frequently presents on family law issues, including guest lecturer at Arizona State University and Flagstaff Community Mediation Program, as well as to various private groups and organizations throughout the state.

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Agenda

- 7:30** **Introductions**
- 7:35** **Hot Tip #1: Active Listening (Team Exercise)**
- 7:50** **What is Conflict and What is Conflict Resolution?**
- 8:00** **Hot Tip #2: Reframing (Team Exercise)**
- 8:15** **Hot Tip #3: “I Messages” and how to use them with
colleagues and clients**
- 8:25** **Conclusion**

Question and Answers

Hot Tips In A Nutshell

The 3 Hot Tips we are sharing this evening are all Collaborative Problem Solving Skills and can be summarized as follows:

Active Listening: Listening is key to good communication in any relationship whether it be family, business, community, governmental agency or organization. Empathetic and attentive listening demonstrates to a speaker that his/her message has been heard. Concentrate on what is being said and feed back accurately the emotional content of a speaker’s message.

Reframing: To listen to a positional or toxic statement and identify the underlying interests to restate them in a constructive manner so that all parties can problem solve on how to satisfy those interests. Restate the phrase in different words keeping the same message. In short, you take out the hostility and turn the phrase into a kinder and more palatable or acceptable question or statement.

I-Messages: Taking responsibility for what you feel: When, I Feel, Because.

HOT TIP #1

ACTIVE LISTENING EXERCISE: GETTING CLEAR

One of you will be the “Speaking Partner” and the other will be the “Listening Partner.” After doing the exercise one time, reverse roles as “Speaking Partner” and “Listening Partner” and repeat.

Speaking Partner: Think of a real life situation you are in at work or in your personal life where you feel unsure, uncertain, or unclear about what you should do to address this situation. Describe this situation to your Listening Partner.



Listening Partner: Respond in any way you can which helps the Speaking Partner gain greater clarity or insight for himself or herself about the situation, without telling your partner what to do or how to do it.

Active Listening Tips

When another person is talking, listen actively in order to:

- Convey respect and interest
- Role model respectful listening
- Convey empathy
- Learn the person's perspectives
- Discover the person's interests
- Identify underlying causes of conflict
- Hear the person's "terms" or "positions"
- Learn the person's responses to offers
- Discover what you have in common
- Discover room for movement
- Discern a softening of attitudes and readiness to come to a common understanding

Empathetic listening helps the parties let go of their anger and defensiveness and join together to design creative and collaborative agreements.

Phrases For Active Listening

Encouraging:	Can you tell me more?
Clarifying:	When did this happen?
Acknowledging:	I can see you are feeling very angry right now.
Open Questions:	Why? What would you like to see happen?
Responding:	I see it this way. How do you see it?
Summarizing:	Let me see if I understand what you just said.
Soliciting:	I would like your advice on how to solve this.
Empathizing:	How would you feel if it were you?
Normalizing:	Many people feel the way you do.
Appreciating:	I can appreciate why you feel that way.
Validating:	I appreciate your willingness to be here.

What is Conflict?

Conflict is actual or perceived opposition of needs, values and interests. A conflict can be internal (within oneself) to individuals. Conflict as a concept can help explain many aspects of social life such as social disagreement, conflicts of interests, and fights between individuals, groups, or organizations. In political terms, "conflict" can refer to wars, revolutions or other struggles, which may involve the use of force as in the term "armed conflict". Without proper social arrangement or resolution, conflicts in social settings can result in stress or tensions among stakeholders. When an interpersonal conflict does occur, its effect is often broader than two individuals involved, and can affect many associate individuals and relationships, in more or less adverse, and sometimes even humorous way.

A clash of interests, values, actions or directions often sparks a conflict. Conflicts refer to the existence of that clash. Psychologically, a conflict exists when the reduction of one motivating stimulus involves an increase in another, so that a new adjustment is demanded. The word is applicable from the instant that the clash occurs. Even when we say that there is a potential conflict we are implying that there is already a conflict of direction even though a clash may not yet have occurred.



Interpersonal Conflict – disagreement that occurs when group members dislike one another or dislike each other's values, politics, behavior in meetings, communication styles, the way they dress, and/or their personality traits.

Interpersonal conflict may play as strong – or even stronger – role than incompatible interests in initiating conflict.

Substantive Conflict – disagreements over issues that are relevant to the goals and outcomes of the work group or neighborhood (i.e., how things get done, how decisions are made etc.)

What is Conflict Resolution?

Conflict resolution refers to a range of methods for alleviating or eliminating sources of conflict. The term "conflict resolution" is sometimes used interchangeably with the term dispute resolution or alternative dispute resolution. Processes of conflict resolution generally include negotiation, mediation, and diplomacy. The processes of arbitration, litigation, and formal complaint processes such as ombudsman processes, are usually described with the term dispute resolution, although some refer to them as "conflict resolution." Processes of mediation and arbitration are often referred to as alternative dispute resolution.

Dispute resolution processes fall into two major types:

1. Adjudicative processes, such as litigation or arbitration, in which a judge, jury or arbitrator determines the outcome.
2. Consensual processes, such as collaborative law, mediation, conciliation, or negotiation, in which the parties attempt to reach agreement.



The list of tools available to practitioners includes: negotiation, mediation, community building, advocacy, diplomacy, activism, nonviolence, critical pedagogy, prayer, and counseling. In real-world conflict situations, which range in scale from kindergarten bullying to genocide, practitioners will creatively combine several of these approaches as needed. Additionally, practitioners will often specialize in a particular scale (e.g. interpersonal, community, or international), or a particular variety of conflict (such as environmental, religious, or organizational), and repertoires of tools which they find most useful.

What is Mediation?

Mediation is a voluntary and confidential dispute resolution process whereby a neutral third-party, called a *mediator*, facilitates the communication between the parties to better understand the issues and helps the parties reach their own agreement. The mediator helps disputants understand one another's perspective and assists the parties to explore solutions.

The fundamental principles underlying the mediation process include: voluntariness, informed consent, self-determination, neutrality, and confidentiality. Confidentiality provides that all information and communications are kept private in the mediation session; any exceptions to confidentiality must be made clear to the parties prior to their participation in mediation.

Arizona has a confidentiality statute: ARS 12-2238 applies to all communications made in mediation.



Benefits of Mediation:

- Allows parties to avoid the expense and stress of litigation
- Solutions can be creative in ways that are not possible in court
- Agreements reached are mutually satisfactory---not simply a compromise. There is opportunity for mutual gain.
- Is a win-win endeavor; mediation focuses on exploring solutions with a spirit of cooperation, accommodation and good faith
- Parties are empowered to create their own resolution rather than have one imposed on them by a judge or arbitrator
- Parties who have reached their own agreement are generally more likely to comply with its terms as opposed to parties who have a decision imposed on them.
- Provides a process for restoring relationships, if desired; and allows for the termination of relationships in an amicable manner.
- Safe and private setting for negotiating in good faith

What is Collaborative Law?

Collaborative Practice, including Collaborative Law and interdisciplinary Collaborative Divorce, is a new method for resolving disputes respectfully -- without going to court -- while working with trained professionals. The term incorporates all of the models developed since Minnesota lawyer Stu Webb created collaborative law ideas in the 1980s.

The heart of Collaborative Practice or Collaborative Divorce (also called “no-court divorce,” “divorce with dignity,” “peaceful divorce”) is to offer the support, protection, and guidance of independent lawyers without going to court. Additionally, Collaborative Divorce allows the benefit of including child and financial specialists, divorce coaches and other professionals in an interdisciplinary team model.



Collaborative Practice at a Glance

- Reduces financial, time, and emotional costs
- Avoids going to court
- Helps maintain important relationships
- Protects confidentiality and avoids publicity
- Keeps the parties in control of the process
- Encourages mutual respect
- Provides open communication
- Uses a problem-solving approach
- Identifies and addresses all parties' interests and concerns

A Solution-oriented Approach to Civil Law

Civil Collaborative Practice begins with something both sides can agree on: settlement by design. Disputes affecting business, partnerships, employment issues, medical malpractice, and probate and estate matters are financially and emotionally disruptive for everyone involved. Litigation often adds to the problems by creating entrenched positions, damaging or severing relationships, and imposing ineffective, unresponsive solutions. It doesn't have to be this way.

Collaborative Law is a voluntary dispute resolution process developed by a family lawyer disenchanted with traditional litigation. His goal was to preserve the integrity and dignity of families in conflict-and his process translates to civil and commercial law as well:

- Probate/Trust and Estates
- Healthcare
- Employment
- Construction

Civil Collaborative Practice is a reasoned approach to dispute resolution based on:

- A commitment by the parties and their attorneys to resolve their dispute outside the court system
- A process intentionally geared toward settlement from the outset
- An open, honest, yet confidential exchange of information by the parties
- An approach focused on the parties' interests

The goals of Civil Collaborative Practice

A Pledge to Collaborate:

- Solve problems mutually and privately
- Preserve key relationships
- Prevent draining, costly court battles

The important difference between Collaborative Practice and conventional litigation is the commitment to reach an agreement without going to court. The parties maintain control of the process and the decisions instead of relinquishing them to a judge or jury. To reach this goal, the parties agree not to seek court intervention by committing to stay in the negotiation process and focus on settlement by design from the outset.

HOT TIP #2 REFRAMING

Restating is paraphrasing what a person has said using different words. The purpose of restating is to clarify what has been said and confirm that it has been correctly understood.

Reframing is restating what has been said in a more positive manner. The purpose of reframing is to defuse the conflict by giving a positive perspective on the issue or the event. Reframing takes out the negativity and hostility of what was said and uses words that are more respectful. Reframing changes the focus from the past to focusing on the future. By taking the toxicity out of statements and focusing on common concerns and goals, reframing encourages collaborative and creative thought and discussion and movement towards solutions.

Examples:

ORIGINAL STATEMENT	REFRAMED STATEMENT
Everyone did a lousy job last month and our stats prove it.	Let's talk about the reasons our stats were down and how we can do a better job this month.
She is always criticizing my work. She makes everyone at work miserable.	It sounds as if an important item to discuss would be improving workplace morale and creating a process for constructive evaluation of employees.
This sucks! I can't do my job because I'm always waiting for Jim to deliver his reports.	I'm feeling stressed about deadlines, so we need to come up with a solution to my reliance on Jim's reports.
This glass is half empty.	This glass is half full.

PRACTICE REFRAMING EXERCISES

REFRAME THE FOLLOWING STATEMENTS:

1. I am sick and tired of looking at my coworker's desk. It looks like a hellhole. Papers are 2 feet tall and there is personal stuff everywhere. Each day it gets worse and my morale goes down. He wants respect? I can't work with him any longer.

2. My assistant is always hanging out in the lobby with the receptionist. It really makes the office look bad, and I'm ready to fire her.

3. My client delivers all of his tax documents in grocery bags and then complains when I charge for our time to sort the receipts. This guy is such a jerk, and lazy too!

HOT TIP #3 “I” MESSAGES

When you use “I” instead of “you,” you’re taking responsibility for your own feelings.

For example, you get so frustrated when a co-worker comes late to meetings – who does he think he is?

Ask yourself these questions:

- What is the specific behavior that bothers you? (When)
- How do you feel about that behavior? (I Feel)
- How does the behavior affect you? (Because)

Now make a statement that conveys responsibility for your feelings, such as:

WHEN you arrive late to the meetings

I FEEL angry and frustrated

BECAUSE it disrupts the meeting and appears that you have no respect for me and others who arrive on time.

Try it out ...

- Your child breaks curfew
- Your spouse wrecks the car
- Your parent criticizes your _____
- Your boss cuts you down in a meeting with others
- Your co-worker takes the credit for your work
- Your assistant blames you for his mistake
- Your neighbor’s dog barks all night before an important meeting
- Your babysitter cancels at the last minute
- Your client complains about your work to others
- Your co-worker’s client complains about his work to you

Resources

Arizona Association for Conflict Resolution

www.mediate.com/acrarizona

American Arbitration Association

www.adr.org

National Association for Community Mediation (NAFCM)

www.igc.org

nascm@igc.apc.org

Nonviolent Communication

www.nonviolentcommunication.com

International Academy of Collaborative Professionals

www.collaborativepractice.com

Books:

Beer, Jennifer E. and Stief, Eileen, *The Mediator's Handbook*, 3rd Ed., Canada: New Society Publishers, 2006.

Fisher, Roger and Shapiro, Daniel, *Beyond Reason: Using Emotions as you Negotiate*, New York: Penguin Books, 2006

Fisher, Roger and Ury, William, *Getting to Yes: Negotiating Agreement Without Giving In*, Boston: Houghton Mifflin Co., 1981.

Ury, William, *Getting Past No: Negotiating Your Way from Confrontation to Cooperation*, New York: Bantam Books, 1993.

Rosenberg, Marshall B., *Nonviolent Communication: A Language of Life*, Encinitas, CA: PuddleDancer Press, 2003.

Shell, G. Richard, *Bargaining for Advantage: Negotiation Strategies for Reasonable People*, Boston: Penquin Books, 2006.

Stanfield, Brian, Ed., *The Art of Focused Conversation*, Canada: New Society Publishers, 2000.