

[THIS BOOKLET SHOULD ALWAYS BE ATTACHED TO L.C.MEDIATION.DATE, TIME, SUMMARY, AND BOOKLET.PI ; L.C.MEDIATION.DATE, TIME, SUMMARY (INSURANCE) AND L.C.MEDIATION.DATE, TIME, SUMMARY, AND BOOKLET (EMPLOYMENT). ANY REVISIONS TO THIS BOOKLET MUST ALSO BE MADE TO (1) TEMPLATE COPY OF BOOKLET ATTACHED TO THE ABOVE LETTER AND (2) TEMPLATE COPY IN ANCILLARY TAB/CATEGORY -- ALWAYS UPDATE TABLE OF CONTENTS]



JOHN BALES
ATTORNEYS

MEDIATION PREPARATION BOOKLET

www.JohnBales.com

Bradenton	(941) 758-9100
Bushnell	(352) 793-7365
Citrus County	(352) 341-0555
Clearwater/Tarpon Springs	(727) 461-9100
Dade City	(352) 458-9200
Ft. Myers	(239) 768-9100
Lakeland	(863) 686-9100
Naples	(239) 263-9101
New Port Richey/Port Richey/ Hudson	(727) 843-9100
Sarasota	(941) 951-9100

CARE

QUALITY

RESPECT

Spring Hill	(352) 683-9727
St. Petersburg	(727) 823-9100
Tampa	(813) 224-9100
Winter Haven	(863) 325-9100

Toll Free
1-800-CALL-JOHN
(1-800-225-5564)

Facsimile
St. Petersburg: (727) 579-9109
Tampa: (813) 224-9109

ALWAYS UPDATE TOC PAGE NUMBERS AFTER EDITING
MEDIATION PREPARATION BOOKLET

The purpose of this booklet is to provide you with some background information and suggestions about the mediation. **Please read the entire booklet before our pre-mediation conference and let me know of any questions or comments you may have.**

This booklet is a confidential communication protected by the attorney-client privilege, work product doctrine, and other Florida and Federal laws. In order to preserve these privileges, do not make copies of this booklet, or discuss its contents with anyone except an attorney, law clerk, or client manager from John Bales Attorneys

The following Table of Contents – Reference Guide is provided to aid review.

TABLE OF CONTENTS – REFERENCE GUIDE

<u>Section</u>	<u>Description</u>	<u>Page</u>
A.	DO NOT LET THE OPPOSING ATTORNEY OR PARTY GET YOU ANGRY OR EXCITED.	
	6	
B.	YOU ARE NOT REQUIRED TO GIVE INFORMATION THAT YOU LEARN IN A CONFERENCE WITH YOUR ATTORNEY.	
	6	
C.	NEVER JOKE DURING MEDIATION.	
	6	
D.	BEFORE, DURING, AND AFTER MEDIATION, DO NOT CHAT WITH THE OPPONENTS OR THE OPPOSING ATTORNEY.	
	7	

I. **PURPOSE OF A MEDIATION CONFERENCE**

As discussed, the purpose of mediation is to bring the parties together with a mediator to determine whether the case can be resolved. A Mediation Conference can be a good opportunity to listen to and discover the opposing party's position and possibly settle your case. Of course, we will not know if the opposing party is prepared to seriously consider settlement, but at least we will hear their position.

II. **DESCRIPTION OF A MEDIATION CONFERENCE**

Mediation is a confidential, informal conference where the parties to a dispute meet with a neutral, impartial person called a mediator, in an effort to reach a mutually acceptable agreement. A judge or jury is not present during mediation; only the lawyers, the parties, and the mediator. The mediator controls the mediation, but does

CARE

QUALITY

RESPECT

not have authority to make a binding decision or force the parties to accept a settlement with which they are not satisfied. The mediator helps the parties voluntarily reach a settlement of the dispute. **They are** not to be biased in favor of either party, but may bring up positive and negative issues in an attempt to have all parties understand the entire case.

Typically, the parties sit at a table with the mediator in the head chair and the parties on each side. You will attend with your attorney and the opposing party is to attend with their attorney. Each side usually states their position in front of the mediator and the other parties. The mediator will then decide whether to have all parties remain in the same room or place them into different rooms and discuss the claims with each party separately. Please understand that this is a slow process and patience is an important part of trying to reach a resolution at Mediation.

Mediation is designed to educate the parties about the facts and law involved in the dispute. This gives the parties the opportunity to understand both strengths and weakness of their position. In an attempt to encourage all parties to speak candidly, everything said is privileged and confidential. However, you should still be aware that all other parties are considering and evaluating every word that is said. Therefore, you must be careful about what you say.

Mediation can be effective because it enables those with the ultimate decision making authority - the parties, their attorneys, the insurance company representatives, and other interested parties to meet at the same time. If the parties do not reach an agreement at Mediation, they can still pursue other options, such as a trial. One of the strong motivators for trying to reach an agreement at mediation is that each party faces the uncertainty (the risk) of having a decision imposed upon them by someone else - the jury.

III. **DRESS AND APPEARANCE**

Your appearance is important. The opposing attorney and mediator's first impression of you will be based on your appearance and your attire.

- A. **Attire:** Please dress in a business-appropriate manner. Below is a list of appropriate attire for mediation.

DO:

Woman:

1. Dress. If you wear a dress, it should be no shorter than the bottom touching the top of your knee and no longer than mid-calf.
2. Skirt and matching blouse. If you wear a skirt, it should be no shorter than the bottom touching the top of your knee.

CARE

QUALITY

RESPECT

3. Dress slacks and matching blouse. If you wear dress slacks, they should at least touch your ankles.
4. Dress shoes, polished and unscuffed.

Man:

1. Dress slacks with collared shirt.
2. Dress shoes, polished and unscuffed.

DO NOT:

1. Wear any jewelry. The only jewelry that should be considered is conservative earrings, a watch, a conservative necklace, and/or a wedding ring. However, this jewelry is not necessary.
2. Wear jeans, leggings, capris, t-shirts (including any shirts that have printed comments or wording), shorts, tennis shoes, thigh high boots, slippers, or flip flops.

B. Appearance: (such as hair, makeup, nails, body piercings, tattoos)

DO:

1. Wear hair clean and pulled back out of your face.
2. Wear light makeup.
3. Have neatly manicured nails, clean, fully polished, or unpolished.
4. Remove body piercings, i.e., nose ring, tongue ring, eyebrow ring. If you have your ears pierced more than once, please only wear one pair of earrings.
5. Cover all tattoos, either by wearing long pants, long sleeve shirts, or if you wear a dress or skirt, wear dark colored pantyhose to match.

DO NOT:

1. Have any visible tattoos or body piercings.
2. Wear heavy makeup.

IV. SUGGESTIONS FOR MEDIATION AND PITFALLS TO AVOID

A good “rule of thumb” is to conduct yourself as if a judge and jury were sitting in the mediation with you, observing your behavior, listening to the questions and answers, and deciding the case on the basis of whom they believed and whom they liked more. A helpful perspective is to assume that the judge and jury are of diverse race, age, religion, and status in life. Assume that some would naturally like you and some would naturally dislike you. Obviously, this setting suggests caution and careful selection of words.

CARE

QUALITY

RESPECT

Please understand that the main purpose of mediation is to try to settle your case. Please understand that the opposing counsel has other objectives as well, including the following:

- A. They want to know how we plan to present your case. They are interested in knowing now how the trial will look.
- B. They want to hear the “story.” This can reduce surprises at trial.
- C. They hope to catch you in any type of misstatement so that they can claim at the mediation that you are not a truthful person, and therefore, your testimony should not be believed on any of the points, particularly the trial.
- D. They want to look at you, observe your manner, and form an impression of the type of witness you will be in court. Perhaps this last consideration is the most important, for the lawyer is really trying to determine the probable effect your testimony will have on an impartial listener (the jury). Lawyers are discouraged when opposing witnesses are confident, informed, solid, and apparently unshakable.

The following is a series of general rules developed as a result of participation in hundreds of Mediations. Please review them carefully; they can be of assistance.

A. Do Not Let The Opposing Attorney Or Party Get You Angry Or Excited.

This destroys the effect of your testimony and you may say things which may be used to your disadvantage later. Attorneys sometimes try to get the opposing party mad, hoping that he or she will say things, which may be used against him. Under no circumstances should you argue with the opposing attorney.

B. You Are Not Required To Give Information That You Learn In A Conference With Your Attorney.

If you are asked a question that would require you to give such information, simply state that your answer would have to be based upon information learned from your attorneys and say nothing more.

C. Never Joke During Mediation.

Humor may not be apparent and you may look crude or cavalier about the truth. Avoid flippancy. Never use profanity—not even “hell” or

CARE

QUALITY

RESPECT

“damn.” Never use racist, sexist, ethnic, religious, or other slurs. (This is easy if you remember to conduct yourself as if a jury were present.) A Mediation Conference is serious business.

D. Before, During, And After Mediation, Do Not Chat With The Opponents Or The Opposing Attorney.

Remember, the other attorney and the opposing parties are not your “friend” for purposes of this case. Do not let **their** friendly manner cause you to drop your guard. Also, while I will be “friendly” and professional, it does not mean that I believe they are acting reasonably. This is a decision that we will make as the Mediation progresses.

V. DO NOT DISCUSS YOUR CASE WITH THE OPPOSING PARTY

Remember, the other attorney and the opposing party(ies) are not your “friend” for purposes of this case. Do not let his or her friendly manner cause you to drop your guard. Again, attorneys sometimes try to get the opposing party mad hoping that **they** will say things that may be used against **each other**. Under no circumstances should you discuss your case with the opposing attorney or speak to me about your case while anyone else is present. If there is something you wish to discuss, ask me to speak with you in private, so I can discuss such with you.

VI. RESIST THE TEMPTATION TO GIVE YOUR SIDE OF THE CASE

The time to present your case will come later—in a forum much more receptive than mediation with opposing counsel. You need not elaborate, explain, or justify any facts or allegations made during the mediation. You can discuss them with me in private.

I apologize for the length of these instructions. However, the mediation is important, and I want to give you the benefit of these suggestions. Actually, mediation is not difficult if we are well prepared, confident, and relaxed. I believe that you will be more confident, well prepared, and relaxed if you read and re-read these instructions carefully and participate in your pre-mediation conference.