OH NO YOU DIDN’T!
THINGS NOT TO DO OR SAY IN MEDIATION.

Pre-Mediation Matters
Don’t Market Yourself as Aggressive, Domineering, Persuasive, etc.

Pre-Mediation Matters
Don’t Be Afraid To Bring Up Money (Yours!)

Pre-Mediation Matters
Don’t Let a Party Argue the Case in Advance.

Pre-Mediation Matters
Don’t Forget to Eat! And Don’t be Afraid to Feed Others ..... But Use Caution!

If you want to see this video, watch it here:
https://www.youtube.com/watch?v=VPIP9KXdmO0
Pre-Mediation Matters
Don’t Assume Everyone Understands The Process

Pre-Mediation Matters
Don’t Bore The Parties With Your Opening Statement

General Matters
Don’t Forget About (And Be Aware of) Your Personal Hygiene

General Matters
Don’t Make Yourself The Center of Attention

General Matters
Don’t Text and Mediate.

General Matters
Don’t Be Someone (or Something) You’re Not.
General Matters

Don’t Give Up.
It’s OK To Confront Unreasonable Behavior.

Don’t Get Angry.

Don’t Be Afraid to Make a Joke (as Appropriate and Timely).

Rule 10.220:
Mediator’s Role

“The role of the mediator is to reduce obstacles to communication, assist in the identification of issues and exploration of alternatives, and otherwise facilitate voluntary agreements resolving the dispute.”

Properly used, humor can do this!

Don’t Be Afraid To Try Something Unorthodox.

Don’t Forget to Tell People What to Expect

Introduce Yourself in Advance of Mediation

Disclose Your Fees and Policies

Avoid Surprises
Opening Statements

Don’t Forget to Give Proper Introductions

© 2015 Michael S. Bloom, Esq. and James Todd, J.D. Oh No You Didn’t!!! Things Not To Do Or Say In Mediation

Opening Statements

MEAC Opinion 2014—008

Rule 10.420(a), Florida Rules for Certified and Court-Appointed Mediators, by use of the term “shall,” makes delivering an opening statement (orientation session), by a mediator, mandatory.

© 2015 Michael S. Bloom, Esq. and James Todd, J.D. Oh No You Didn’t!!! Things Not To Do Or Say In Mediation

Opening Statements

Describe the mediation process

Consensual process

Mediator is impartial facilitator

Confidentiality

© 2015 Michael S. Bloom, Esq. and James Todd, J.D. Oh No YouDidn’t!!! Things Not To Do Or Say In Mediation

Conduct of Mediation

Don’t Give Opinions .. But DO Create Options.

People need to learn that their actions do affect other people. So be careful what you say and do, or not always just about you!

© 2015 Michael S. Bloom, Esq. and James Todd, J.D. Oh No You Didn’t!!! Things Not To Do Or Say In Mediation

Conduct of Mediation

Don’t Offer Advice, But DO Assist in Creating a Dialogue

© 2015 Michael S. Bloom, Esq. and James Todd, J.D. Oh No You Didn’t!!! Things Not To Do Or Say In Mediation

Conduct of Mediation

Don’t Play Judge, Jury or Executioner

© 2015 Michael S. Bloom, Esq. and James Todd, J.D. Oh No You Didn’t!!! Things Not To Do Or Say In Mediation
Conduct of Mediation

Don’t Forget Who Your Friends Are (or Your Family)
Disclose, Disclose, Disclose

© 2015 Michael S. Bloom, Esq. and James Todd, J.D. Oh No You Didn’t! Things Not To Do Or Say In Mediation

Conduct of Mediation

Don’t Make Suggestive Expressions or Gestures

© 2015 Michael S. Bloom, Esq. and James Todd, J.D. Oh No You Didn’t! Things Not To Do Or Say In Mediation

Conduct of Mediation

Don’t Diminish the Value of Small Gestures. They May Actually be a Starting Point.

© 2015 Michael S. Bloom, Esq. and James Todd, J.D. Oh No You Didn’t! Things Not To Do Or Say In Mediation

Conduct of Mediation

Don’t Judge a Book by its Cover

© 2015 Michael S. Bloom, Esq. and James Todd, J.D. Oh No You Didn’t! Things Not To Do Or Say In Mediation

MQB 2010-10 Findings: The mediator did not conduct a balanced process, did not act in a dignified manner, gave the appearance of partiality and did not show sensitivity toward the complainant parties; specifically in his comments about the complainant’s appearance, her jewelry and the possible outcome of the case.

What Happened?
During the mediation, the mediator made comments about a party’s physical appearance and jewelry.

© 2015 Michael S. Bloom, Esq. and James Todd, J.D. Oh No You Didn’t! Things Not To Do Or Say In Mediation

If you want to see this video, watch it here:
https://www.youtube.com/watch?v=84OT0NLlqfM

Conduct of Mediation

Don’t Solicit Business During Mediation

© 2015 Michael S. Bloom, Esq. and James Todd, J.D. Oh No You Didn’t! Things Not To Do Or Say In Mediation
Conduct of Mediation

Don’t Impose Arbitrary Rules

Conduct of Mediation

You Can’t Simply Ban Laptops and Tablets.

MEAC Opinion 2015-001

Certified mediators do not have the authority to ban use of laptop devices or tablets during mediation. Decisions regarding the reason for and the use of these devices are decisions for the parties to make unless there is a court order to the contrary.

But It’s Always The Parties Decision

THUMBS UP?
THUMBS DOWN?

THUMBS UP?
OR
THUMBS DOWN?

Inquiry: Is it appropriate for a mediator to advertise that he mediated “the largest settlement in the history of [the county]?"

“No, such an advertisement creates an appearance of partiality in favor of a plaintiff in future mediations. In addition, the advertisement may violate the mediator’s obligation to maintain confidentiality of all information obtained by the mediator in the mediation.”

ABA Section of Dispute Resolution
Committee on Mediator Ethical Guidance
Opinion SCIDE 2009-1

Big Case Mediation, Inc.

WE JUST MEDIATED THE LARGEST SETTLEMENT IN THE HISTORY OF ORANGE COUNTY!

WILL YOUR CASE BE NEXT?
Thumbs Up? Thumbs Down?

“I DON’T KNOW ABOUT YOU, BUT THAT SOUNDS LIKE A PRETTY SWEET OFFER.”

© 2015 Michael S. Bloom, Esq. and James Todd, J.D. Oh No You Didn’t! Things Not To Do Or Say In Mediation

Thumbs Up? Thumbs Down?

“I MEDIATED A CASE LIKE THIS ONCE BEFORE.”

© 2015 Michael S. Bloom, Esq. and James Todd, J.D. Oh No You Didn’t! Things Not To Do Or Say In Mediation

Thumbs Up? Thumbs Down?

“I MEDIATED A CASE LIKE THIS ONCE BEFORE. THAT WAS A REALLY TOUGH ONE.”

© 2015 Michael S. Bloom, Esq. and James Todd, J.D. Oh No You Didn’t! Things Not To Do Or Say In Mediation

Thumbs Up? Thumbs Down?

“I MEDIATED A CASE LIKE THIS ONCE BEFORE. THAT WAS A REALLY TOUGH ONE AND I NEVER THOUGHT THE PARTIES WOULD GET IT SETTLED.”

© 2015 Michael S. Bloom, Esq. and James Todd, J.D. Oh No You Didn’t! Things Not To Do Or Say In Mediation

Thumbs Up? Thumbs Down?

“This will be a tough one for a judge or jury to decide.”

© 2015 Michael S. Bloom, Esq. and James Todd, J.D. Oh No You Didn’t! Things Not To Do Or Say In Mediation
Thumbs Up? Thumbs Down?

"DO YOU REALLY EXPECT A JUDGE OR JURY TO BELIEVE THAT STORY?"

Is your answer different if the statement is made in joint or separate session?

© 2015 Michael S. Bloom, Esq. and James Todd, J.D. Oh No You Didn’t! Things Not To Do Or Say In Mediation

Thumbs Up? Thumbs Down?

"THIS CASE IS GOING TO COST YOU A FORTUNE TO TAKE TO TRIAL."

© 2015 Michael S. Bloom, Esq. and James Todd, J.D. Oh No You Didn’t! Things Not To Do Or Say In Mediation

Thumbs Up? Thumbs Down?

[TO THE ATTORNEY] "HAVE YOU EVER TAKEN A CASE LIKE THIS TO TRIAL BEFORE?"

© 2015 Michael S. Bloom, Esq. and James Todd, J.D. Oh No You Didn’t! Things Not To Do Or Say In Mediation

Closing The Deal

Don’t Plan on Coming Back Another Day To Sign the Agreement…

Unless, Of Course, You Don’t Have One.

© 2015 Michael S. Bloom, Esq. and James Todd, J.D. Oh No You Didn’t! Things Not To Do Or Say In Mediation

Closing The Deal

And If They Haven’t Agreed, Don’t Forget To Remind Them That’s It’s Never Too Late!

© 2015 Michael S. Bloom, Esq. and James Todd, J.D. Oh No You Didn’t! Things Not To Do Or Say In Mediation

Closing The Deal

Don’t Be Ambiguous.

You Can Draft The Settlement Agreement If You Choose. But If You Don’t, Help The Parties Resolve Any Ambiguities When They Do.

© 2015 Michael S. Bloom, Esq. and James Todd, J.D. Oh No You Didn’t! Things Not To Do Or Say In Mediation
Closing The Deal

What’s It All About? Getting Here!

© 2015 Michael S. Bloom, Esq. and James Todd, J.D. Oh No You Didn’t! Things Not To Do Or Say In Mediation

Complete Your Evaluations!

© 2015 Michael S. Bloom, Esq. and James Todd, J.D. Oh No You Didn’t! Things Not To Do Or Say In Mediation

Complete Your Evaluations!

© 2015 Michael S. Bloom, Esq. and James Todd, J.D. Oh No You Didn’t! Things Not To Do Or Say In Mediation

Questions ????

Buehler? Buehler? Buehler?

Michael S. Bloom, Esq.: mikebloom@lawyer.com
James Todd, J.D.: jrt3law@gmail.com

© 2015 Michael S. Bloom, Esq. and James Todd, J.D. Oh No You Didn’t! Things Not To Do Or Say In Mediation