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The Quiet of Mediation Might Reveal the Truth

My wife is a litigator, and we have no children at home, so the challenge for us is to not “talk shop” when we get home after work. We like to visit the beach to mentally “check out.” Anyone who lives nearby will tell you, just heading over the intercoastal bridge is relaxing and makes a difference. On the beach, she and I are temporarily removed from family responsibilities, work emails, text messages or calls from clients. We do something like that in mediation. We ask you to turn off your phones, stop responding to emails, and we discourage multi-tasking. You are expected to focus on one problem—how to resolve the dispute.

Part of the reason why mediation works is because you have time to stop and see the problem with the mind’s eye rather than through the computer screen. That aspect of mediation is really important. It is easier to settle cases in mediation than it is during the daily grind of emails, texts, hearings, motion practice and the unpredictable tides of litigation. This is, in part, because you get two things in a mediation: a quiet environment and a quick response to proposals. You are told what pieces don’t work. You cannot get that any other way.

Like sitting on the beach under an umbrella, in mediation you have the luxury of slowly and thoughtfully pondering the open water and the horizon. When the mediator walks back to your caucus room with a new round of options, you have a quiet focus not easily had elsewhere. Outside of mediation, you may have multiple clients garnering your attention. From

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the beach you have found in mediation, you can search for the rocks and sandbars in the sea of the litigation, study the tides closely, and consider the risk from the harmful undertow of adjudication. In the quiet of mediation, you have time to focus on the options and hard choices, including the Scylla and Charybdis of risk-reward that one inevitably faces while navigating in the sea of a litigated dispute. With no slight to the role of talented mediators, in our task-saturated daily lives, settlements might be had, in part, as a natural by-product of a singularly focused state of mind afforded by the unusual quiet of a beach-like confidential mediation setting.

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