



Using the Memorandum of Understanding as a draft settlement agreement to streamline settlement

Drafting an MOU at the beginning of negotiations gives you the control of the discussion that follows in the mediation.

This story is for you if:

- You have a class action or a multiple-issue case that requires more than a standard release agreement;
- In the past, the terms of the release agreements used in these types of cases tended to cause lengthy challenges;
- You want to quickly diffuse any anticipated impediments to the release agreement.



Krivis

JEFFREY KRIVIS

The problem:

A common assumption during the negotiation process is that attorneys talk first and then write the release agreement last. Through a series of steps, the parties state their positions, provide concessions and adjustments, make a deal and then finally put the deal in writing. Every attorney has been in this position at one time or another. After spending all that time in negotiations, you finally have a deal, but you spend the next four hours trying to clarify exactly what the parties meant.

The solution:

Draft a Memorandum of Understanding, or a draft settlement agreement, at the beginning of the negotiation process. The benefits gained from

preparing a Memorandum of Understanding at the beginning of the negotiation are numerous. First, it allows you to create focused discussion points with the other side that will set the agenda for further discussion. Second, it provides you with an opportunity to consult with people on your side so that you know how far you can go in the negotiation. Third, it helps inform the other side about the points that your side favors.

By preparing a Memorandum of Understanding first, you will be able to control the discussion that follows in the mediation. You have set the agenda and established the conceptual framework of the agreement. Moreover, having a draft settlement agreement puts the other side in the position of responding to your proposals, rather than advancing their own.

