

## Drowning in Contracts?

*Here are 30 ways lawyers can get their heads above the flood of contract details flowing into the legal department.*

By REES W. MORRISON

**W**hat activity consumes the largest amount of law department time? Contract review and preparation. Contracts—a term I am using here to cover agreements and all other forms of legal commitments by companies with both other companies and individuals—flow incessantly into and out of the law department.

Roughly half the lawyers in a typical law department support a business unit, and much of their work involves contracts. They vet them, revise them, negotiate and draft them, interpret and enforce them. How effectively they and their colleagues—paralegals, specialists, secretaries, and others—process contracts determines in a major way their clients' satisfaction with the department and the department's managerial prowess.

Listed below are 30 ideas for actions that can help you expedite your treatment of contracts. Each day for 30 days, consider one of these techniques and, if you decide to make one or more of them happen, your department can cure even a serious bout of contractitis.

To give the actions some framework, I have clustered them according to their relative ease of implementation. Based on eight years of consulting with law departments, these are the fruits of my learning.

### EASY TO IMPLEMENT

1. Understand the number and kinds of contracts coming to the law department. One way to do this is to keep a log for a few months, which is what a leading office products **IN-HOUSE COUNSEL** law department does. Another method is to ask clients, who track their agreements, for a summary of activity over the past year. Your matter management system may provide additional information.

2. Beyond volume and type, track additional information about incoming contracts, such as client source, date received, person assigned, and approximate time needed to handle it. You need to do this to be able to calculate turnaround time. You might even let clients see online the status of their contracts.

3. Give clients term sheets that ask them to provide the basic facts

for a new contract, the desired turnaround time, and the ultimate approver. State in writing the level of the person in the company who can sign a contract, and be sure the lawyers know that ladder of authority. If you can get clients to complete the term sheet online, so much the better.

4. Commit to clients to meet relatively quick turnaround times, such as within a three-day period for typical review of the other side's contracts. Set the expectations of your clients, and push yourselves, by stating when a contract will be returned.

5. Remove the responsibility from lawyers for shepherding the agreement through other groups that have to sign off. This is quasi-legal work which is more properly the responsibility of the business unit that wants to enter into the contract.

6. Create online form contracts. For commonly used contracts, have a form available on the company's intranet for clients to use. So long as they simply fill in the form, they can use it without the law department's blessing.

### TAKES MORE EFFORT

7. Streamline the response your lawyers send to clients after they review a contract, for instance, by creating a check-off sheet. Even better, have that response form online so lawyers and paralegals can complete and e-mail it in one motion.

8. Establish a contracts practice group (sometimes called a "community of practice," another term for lawyers who share a common legal interest). A large manufacturer, which has several business units, links together its dispersed lawyers who handle contracts. They share forms, come to consensus on how to handle issues, educate each other, and generally share contract knowledge.

9. Designate a "contract coordinator" for each business unit or staff group that pours out a stream of contracts. That person should be trained to handle process impediments, to be the liaison with the law department, and even to serve as something akin to a paralegal.

10. Create a repository of former contracts. If the law department has a shared drive, secretaries can make sure that every completed

contract is stored on it. It is important to designate whether a contract has been negotiated or whether it is the version first sent out by the department. To create a useful repository, you need to create naming conventions and sub-directories so that future generations of lawyers, paralegals, and secretaries have a hope of finding a useful precedent.

11. Conduct client training and annual certification. If you subscribe to a model of empowering clients, you need to train them to understand the legal issues of contracting and how best to team with the law department. For example, if a client who is negotiating a contract understands indemnification and limitations on it or the legal notion of "materiality," that client will be more effective, and relieve lawyers of some effort.

12. Arrange so that lawyers review contracts when they are ripe for review, not before intermediate or senior executives have signed off.

13. Balance legal review and business acumen. When lawyers point out legal risks in a contract, they should push themselves to rank the risks from most important (the likelihood of the adverse event happening and the severity of the consequences) to least important. Even further, they should attach some kind of percentage likelihood to help clients understand. For example, "The risk of default is on the order of 10 percent, while the risk of a meteor annihilating the planet is less than 1 percent."

14. Map the flow of contracts end to end. Process maps, which show each step of a contract's journey along with how long the typical stages take and who has a hand in them, can help your department figure out where to streamline. The vogue term for this analysis is "business process review."

15. Define categories of contracts to deal with them differently. For example, contracts involving less than \$25,000 should not come to the law department at all.

### **SIGNIFICANT WORK BUT LARGER RETURNS**

16. Develop a sense of how efficient your various lawyers are in handling contracts. Workload imbalances, out-of-sync priorities, lack of skills, or poor work-flow discipline often cause backlogs that tar the entire law department. Law department managers can make this assessment from client feedback, data about contract turnaround and complexity, discussions with the contract lawyers, and reviewing a sample of contracts.

17. Agree on the best form to use for the common contracts handled by the law department. If several lawyers are involved, this seemingly simple task can bog down. A more fruitful approach is to designate certain provisions as mandatory and certain provisions as good practice, along with some variations.

18. Distribute guidelines for clients about contracts. If you cannot teach clients in person, at least prepare answers to frequently asked questions.

19. Annotate form contracts. A law department goes beyond storing executed contracts online when it builds a library of contracts that show variant language for parts of the contracts that are often negotiated. But progressive departments go further than just showing alternative acceptable language. They annotate the alternative provisions to explain the pluses and minuses of the different language. By doing that, departments help clients and lawyers find the best-choice provision.

20. Define *de minimis* exceptions (such as copier service agreements) that do not need law department review. Lop off the low end of contracts, and you can devote more time to higher-level issues.

One company moved to use purchase orders more than contracts, because the method of attaching addenda allowed commerce to flow without legal review.

21. Arrange before a crush of contracts to have temporary lawyers or paralegals step in (or a secondee from a law firm). One law department turns to a former lawyer who knows the field well but has retired.

22. Do not burden your lawyers with responsibility for contract administration. Each business unit legal group should have (or can draw on) one or more contract administrators, whose primary tasks are preparing routine agreements and using databases that track key dates under agreements, such as renewals, changes in charges, and required notices.

### **ADVANCED TECHNIQUES**

23. Invest in a document management system. With disciplined use, such a system can help your lawyers find examples of similar contracts prepared in the past.

24. Encourage paralegal review and involvement. For many routine contracts, consider having a paralegal review them first, and having a lawyer review only those that present unusual issues or risks.

25. Designate other groups to review certain contracts, at least for the first round. An example of this could be severance agreements for lower-level employees, agreements that someone with experience in human resources could review. Those deputized reviewers would always be able to get additional advice from a lawyer.

26. Charge time for review of certain agreements. A law department might say to its clients, "We will review contracts that do not reach a certain defined threshold of importance, but we will charge you our fully-loaded internal hourly rate." At least this imposes a degree of discipline.

27. Negotiate fixed fees with outside counsel to review contracts. If the flow of contracts has enough predictability and volume, the law department might choose a law firm to become its outsource partner for that work.

28. Use document-assembly software or macros in Word or WordPerfect. One beverage company has used HotDocs to create a template for agreements having to do with sponsoring events. It takes some time to create a robust expert system, but if the volume justifies it, there are many benefits. Users can answer questions and the software then puts together the appropriate provisions, renumbers the paragraphs, fills in dates and amounts, and does as much as it has been programmed to do.

29. Prepare guidelines for lawyers as to key provisions. If the lawyers who review agreements of a certain kind step back, they can pick out the major issues and better draft revisions to frequently negotiated paragraphs. As a consultant, for example, I often deal with paragraphs on proprietary information, so I have stored some examples.

30. Create contract management systems. For very sophisticated companies with major needs for tracking the contract process, software can assist with many aspects.

In this orchard of ideas, several should help your law department prune its contract flow and harvest more fruitfully.

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*Rees W. Morrison, co-head of law department consulting at Hildebrandt International, hosts the blog, [www.LawDepartmentManagement.typepad.com](http://www.LawDepartmentManagement.typepad.com). He can be reached at [rwmorrison@hildebrandt.com](mailto:rwmorrison@hildebrandt.com).*