

Consilio Institute: Practice Guide

OPERATIONALIZING CONTRACT REVIEW & NEGOTIATION

By Lee Holcomb

*Director of Enterprise Legal
Solutions Operations*

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OPERATIONALIZING CONTRACT REVIEW & NEGOTIATION

The in-house counsel’s guide to driving efficiencies into the cumbersome — yet critical — contract processes

The past few years have ushered in many changes in how organizations are working, and those changes have only accelerated in the past few months. Many legal departments, already tasked with mandates to do more with less, have had to make reductions in workforce while facing a swiftly-accelerating regulatory environment. Meanwhile, the shift to remote work – and the technology innovations that can support it – are bringing new solutions to bear on old legal problems. Now, more than ever, corporate legal leaders must take a realistic look at how their in-house team is operating, evaluate how to drive efficiencies, and assess when it may be time to bring in some help.

One area savvy corporate teams focus on first is their contract review and negotiation processes. Contracts are an essential part of business, but they can be time-consuming and costly. Many legal departments are swimming in contracts and don’t have a manageable, efficient system in place. Repetitive and inefficient processes are a drain on time and can result in missed opportunities and costly mistakes. The [International Association for Contract & Commercial Management \(IACCM\)](#) reported that “good Contract Development and Management could improve profitability by the equivalent of [a] massive 9%.”

How To Get Started: Review The Process

In many instances, a company and its business have expanded but the legal department hasn’t scaled at the same pace. When this happens, we frequently see a scenario where the number of service contracts and customer agreements has increased exponentially, but no additional resources are available to assist the legal department. Our clients often describe a scenario where their team has done their best to keep up with the increased workload, but they are no longer able to manage their growing corpus of contracts effectively and efficiently.

Here are some tips to help get your team started on an evaluation process to drive internal efficiencies and determine when and where you need help:

- ▶ Do you have any experts on your team that truly must stay involved in the weeds of the process or that may just be able to serve in an oversight/escalation role? Can you track who is working on what?

Good Contract Development & Management could improve profitability by the equivalent of [a] massive 9%

- ▶ Is your team focusing on the right contracts (value versus effort)? Can you track metrics around the type and complexity of contracts coming through your department?
- ▶ Do you have a playbook and workflow processes in place? If you do, when was it last reviewed?
- ▶ What is the average time it is taking to complete a contract from start to finish? Turn-around time can be an important metric and focus in the context of speeding up revenue generation. Can you track it?
- ▶ How many contracts are you reviewing on average each week/month?

Taking time to make this type of evaluation gives you the metrics you need to make strategic decisions by:

- ▶ Delivering the information you need to do a cost-benefit analysis
- ▶ Arming you with the insight you need make a persuasive argument to support your personnel and financial requests for changes in the process

Tip #2

Develop a central repository to house your contracts. This is a huge time saver and has downstream benefits, including easy access to and searchability for all contracts, and laying the groundwork for setting up playbooks.

Tip #1

Manual contract processes are missed opportunities for standardization — and the benefits that come with a repeatable process.

Perform A Cost-Benefit Analysis

To perform a basic cost-benefit analysis, look at how many contracts you have and the estimated time each contract takes to move to execution. For example, if your department sees approximately 30 new agreements each week and the estimated time to execute each contract takes between two to five hours, this can quickly consume 60-100 hours per week. A couple of factors that can complicate the evaluation are if the number of agreements you see are often unpredictable, or frequently require that you interface with both legal departments and customers to negotiate the contracts.

What Can You Do?

The standard approach to workload overload — hiring another attorney or sending the work to outside counsel — is often not viable even during normal economic times. In light of the current economic uncertainty, many legal departments are not onboarding new attorneys — and may have even implemented hiring freezes, furlough schemes, or layoffs.

Economy notwithstanding, hiring additional full-time lawyers is not always the most economically sound or efficient manner to proceed, when salaries for in-house legal help start in the six figures and go up

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from there. Sending the work to outside counsel is another option, but frequently an expensive one, with high billable hourly rates. You can see how moving 30 contracts a week through the system, even if they only take ~2 hours to review and execute would quickly get expensive. In just one week, at a billable rate of \$300, for example, you could be looking at expenses in the range of \$18,000+ per week.

The Flexible Talent Solution

If you need additional resources, but can't bring on a new hire, you might look at adding flexible team members to your team or outsourcing part of your services. Setting up a workflow process that incorporates the use of a flex attorney and/or sending a portion of the work to a contract review and negotiation team provides an added range of flexibility to your new virtual team. If you look at the same 30 contracts at ~2 hours each to review and negotiate, your one-week cost, assuming a rate of ~\$70 - \$100 per hour, would be in the range of \$4,200 - \$6,000. A savings of approximately 33%.

Design A Clearly-Defined Process

Now that you have the data to support your initiative, it is time to think about how to create and maintain a

sustainable workflow that allows you to seamlessly integrate the work of your virtual team into your daily operations.

This generally starts with developing a standard operating procedure that includes:

- ▶ An intake and outtake process for each sub-team
- ▶ A playbook
- ▶ A final deliverable

Tip #3

Set up Playbooks

These guides are where your organization's best practices and standards live. Playbooks define fallback and unacceptable language, ultimately saving time and decreasing errors.

Once clients have a workflow process and playbook in place, they can easily delegate a portion of work to a new in-house team member, flexible attorney, or a contract review team.

Proper Project Management Is Key To Success

Look for a provider with an experienced team of project managers to help with this setup process. A single contact who can manage workload, assignments, and metrics allows lawyers to focus on the contracts, and enables teams to scale up to meet high-volume spikes and focus on process improvement.

Having the oversight of an experienced project manager, combined with a documented, established workflow and memorialized playbooks, will create consistency in the company's responses to legal positions and, importantly, mitigate risk.

Leverage Technology To Level Up Your Operations

Good legal operations providers will offer the ability for their clients to track the metrics that matter most to them in a contract management system that they maintain. That means you don't have to build, deploy, or maintain a contract repository – or any pieces of technology – in-house.

This software delivers the ability for in-house teams to:

- ▶ See where each contract is in the negotiation phase
- ▶ Track productivity
- ▶ Evaluate time to completion
- ▶ Provide insight into the phases where delays are holding up the execution of each contract
- ▶ Deploy data-driven process improvements on the spot – no matter when or where the work is being performed

ABOUT THE AUTHOR

Lee Holcomb is an attorney, author, consultant, and legal solutions expert. A twenty-year industry veteran, she has lived and worked around the world. Lee's career has spanned from being a partner in a law firm to restarting her career in India in the early days of the legal process outsourcing industry. She has worked in positions at every level, from the project trenches to service design and final delivery. She is also the author of *Lifestyle Lawyer*, a book exploring the special challenges and opportunities female attorneys face in the new legal environment, both at work and in their personal lives. Lee is the Director of Operations for Enterprise Legal Solutions at Consilio. In her current position, she leverages her extensive and diverse background to deliver projects and design solutions for clients of all shapes and sizes. She prides herself on project delivery, process improvement, and driving value for clients and organizations.



Lee Holcomb

Director of Enterprise Legal Solutions Operations

e lee.holcomb@consilio.com

[consilio.com](https://www.consilio.com)