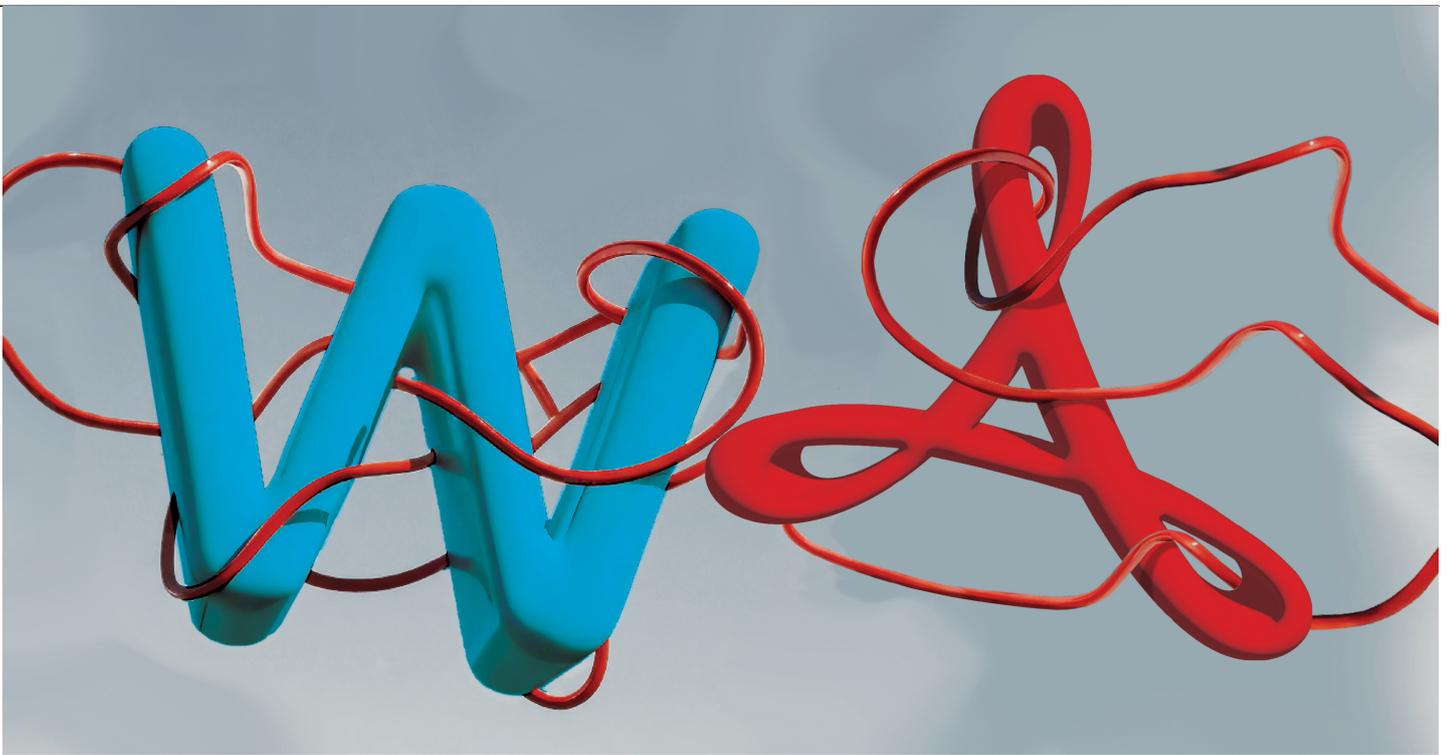




## **Contract Redlining Rules: How to Increase Efficiency During Negotiations**

**Commercial and Contracts**



Banner artwork by / Bussolati

## Cheat Sheet

- **Word vs. PDF.** In-house counsel often prefer Microsoft Word while outside counsel use PDFs for redlining contracts.
- **Moving toward alignment.** In-house and outside counsel should align on a standard process for redlining and negotiating contracts to work together more efficiently.
- **Early exposure.** Lack of formal education on contract redlining highlights importance of early training.
- **Data-backed standardization.** Recent data reveals standards that could improve negotiations, shorten closing cycles, and deepen relationships.

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Just the other day, I sent a construction agreement to outside counsel for contract review. Two weeks later, they sent back an email with a picture of hand-written markups to the agreement.

I couldn't believe my eyes. When I learned how to redline contracts back in 2008, I remember marking up contracts with pen and paper and exchanging contract redlines via fax. But in 2024 — the age of screens and generative AI — how is this still happening?

When I asked this outside counsel to send the markups in Microsoft Word's Track Changes, they told me they only knew how to provide PDF redlines and would have to send it to their paralegal for "word processing," because they were not familiar with Word. Another week and another invoice later, I finally received the contract redlines I had originally requested in the format that I was

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originally expecting.

This is one example of the many instances of contract redline misses that I have experienced as an in-house attorney working with outside counsel.

While in-house counsel and outside counsel work together frequently to complete transactions, there is often a disconnect in how they manage the contract redlining process. This misalignment leads to communication breakdowns, delayed contract closing times, unnecessary legal spend, and lost opportunities. And what's worse, these frustrations can lead to job dissatisfaction and weakened relationships.

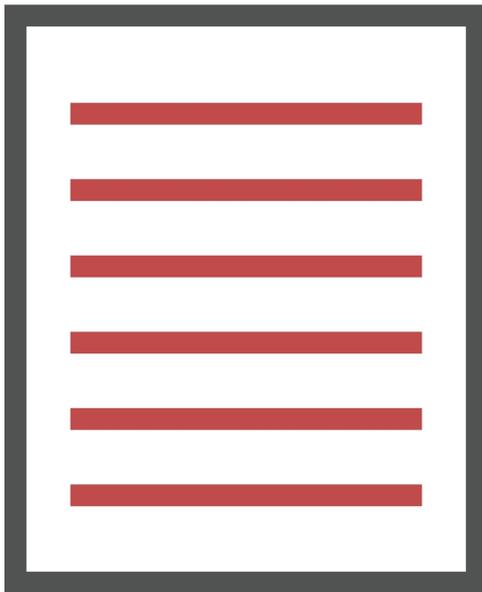
It doesn't have to be like this. With a little bit of understanding and collaboration, in-house and outside counsel can be better deal-negotiation partners.

## **How we learn to redline contracts**

According to a [November 2022 poll](#) conducted by [Contract Nerds®](#), 79 percent of lawyers and contracts professionals learn how to redline contracts on the job. Not in law school, not in a formal training program, and not from a mentor or boss.

In contrast, other more traditional legal skills are taught uniformly, such as research memoranda, citations, and briefs. Law students are exposed early to online legal search tools, like LexisNexis or Westlaw, but receive zero training on how to use Microsoft Word. This is an interesting dilemma given how infrequently transactional attorneys turn to Westlaw or case law citations, in contrast to their daily reliance on Word to perform their regular job functions.

Most transactional lawyers are left to figure it out on their own or mimic what others are doing. David Edgar, M&A partner at K&L Gates, said he “learned about redlining as a first-year associate. At that time, it was more of a technical skill to learn — rather than being a force for good that can drive a deal toward closing.” Similarly, I did not learn how to redline contracts in law school. Instead, I learned during a 2L internship for a software company. And by “learned,” I mean I was thrown into the fire, expected to understand how to annotate contracts and identify the critical aspects for markup. I gradually mastered the task by observing and emulating my boss's approach. Since then, I have refined my approach based on research, observation, and proven results.



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Because we learn how to redline contracts on our own and at different times in our legal career, we each end up redlining contracts differently, believing that our way is the correct or best way. This lack of uniformity within the contract redlining process creates many problems across the contracting lifecycle, including longer closing cycles, reduced negotiation leverage, broken trust, and loss of business revenue or inefficient legal spend.

Whereas the way we markup documents was historically an afterthought in the context of effective negotiations and drafting, it has evolved into one of the most central functions. When done properly, the way we redline contracts is one of our most powerful negotiating tools. How can we solve the issue of process variability across different lawyers and legal practices to create a more efficient, collaborative, and transparent contract redlining norm?

## **Solution: Formal education and alignment on process**

The long-term solution is formal training and education on a standardized contract redlining and negotiation process. Randall Green, professor of advanced negotiations at the University of Illinois College of Law, believes that “education is required at every level from law students to law firm partners and GCs to move towards increased uniformity in the deal negotiation process. It is also important to understand that lawyers are likely to encounter pockets where contracting customs are different and for them to learn how to lead the way in bridging those gaps.”

## **The power of conversation**

Those of us currently practicing law and working on deals can bridge the contract redlining gap by

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simply having a conversation about it. Ask each other what your preferences and expectations are before diving into the work. Having a conversation allows us to shed light on this issue, uncover expectation variances, and agree on a standard approach with our colleagues for the work at hand.



Differences can easily be fixed by communicating one's preferred style of redlining. fizkes / Shutterstock.com

## **The power of a standardized approach**

A standardized approach to contract redlining is needed. In my book, [Contract Redlining Etiquette](#), I outline proven best practices for redlining and negotiating contracts more efficiently. For example, the very first rule is to use explanatory comments with substantive markups. Another rule is to switch from email to a live negotiation call sooner rather than later. These and other tips mentioned are not only preferred by in-house counsel but also by business clients who value speed over perfection, collaboration over competition, and spend efficiency over excessive spend.

According to [Megan Fouty](#), general counsel at Glowforge, “Having clean processes and aligned professional etiquette around contracting makes for a better experience all around, allowing legal teams to focus on the important aspects (such as closing the deal, negotiating the merger, etc.) instead of getting caught up on the frustrating administrative issues that come from lack of intentionality and care in how we approach contracting.”

But we cannot create change without first understanding why things are the way they are.

**Differing preferences and values, similar goals lead to a variation of**

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## process

To initiate positive change, we need to dive a little deeper into understanding the current practices. I have spent the last few years asking lawyers of various practice areas, industries, and locations the big question — *why do you do things the way you do them?*

Why do outside counsel prefer to deliver contracts using PDF redlines? Common feedback I have received is that law firm attorneys don't trust the other parties involved in the negotiation enough to give them an editable document. According to Edgar, who has worked for major firms for 27 years, "Maintaining clear and consistent document control is critical in an M&A deal. The complexity of the agreements and the need for input from multiple internal and external stakeholders creates a challenge for M&A lawyers. Many find using PDFs to be an effective way to manage that process, especially because PDFs are often easier to read in different formats (such as mobile)."

Another common reason for preferring PDF over Word is technical limitations or unknowns. For example, law firm lawyers may not like or know how to use Microsoft Word; or, their law firm's document comparison tool may not be compatible with Word. Using Word can be tricky if lawyers don't spend at least some time getting familiar with its features and limitations.

Green explains, "While designed to promote collaboration and flexibility, certain functions within Word can lead to unintended, and sometimes undiscovered, consequences, if used incorrectly. For example, the *Reject Change* button and ability to easily toggle on and off tracked changes, can result in a redline that inadvertently does not truly reflect *all* changes to a document. That uncertainty makes outside counsel squirm. In a sense, static (or PDF) redlines at various stages of a contract's lifecycle can serve as checkpoints along the way. However, that rigidity comes at a cost in terms of transaction velocity, collaboration, and legal spend — only emphasizing the importance of developing alignment between in-house and outside counsel from the outset."

### Word or PDF?

According to a [January 2024 poll](#), 92 percent of contracts professionals prefer to exchange commercial contract redlines via Microsoft Word's Track Changes as opposed to PDF redlines.

We've established that there is a clear preference for Microsoft Word Track Changes on the in-house side and a preference for PDF redlines on the law firm, M&A, and government contracts side. The above poll supports this. But, again, we ask *why?*

Having studied this space for the last few years and worked with contracts for over 15 years, I think the key distinction behind the *whys* of Word vs. PDF lies in what each of the drafters value. Outside firm lawyers value control, precision, and autonomy. In-house counsel value speed, efficiency, and collaboration. Using an editable document format in a universally adopted platform is the best way to achieve in-house goals.

In any service industry, the long-proven model for success is that the "customer is always right." I would encourage those lawyers delivering contract redlines as work product to ask themselves, *who is your customer and what do they want?* Outside counsel with in-house clients should pay attention to the data and deliver contract redlines in a format their clients feel comfortable with.



In-house lawyers often prefer Microsoft Word while firm lawyers prefer PDFs for redlining. Roman Samborskyi / Shutterstock.com

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“As an executive in-house, “Fouty describes, “I have limited resources and even less time. Reviewing contracts should be quick and streamlined. It is frustrating to receive a document from another party that I cannot edit or run into formatting issues if I convert the document to an editable format or have to piece together comments from different locations. If the document is coming from outside counsel, I would expect it to be in a format that is collaborative and decreases my overall review time.” Be sure your outside firms are clear on your goals and values beyond just the terms of the agreement.

## **6 tips for improving the contract redlining process**

To in-house attorneys who engage outside counsel for contract review support, here are a few recommendations:

### **1. Define process expectations upfront**

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Don't assume your outside counsel operates the same way you do. Instead, define your deliverable requirements as soon as you assign the work. Be explicit about the document type, markup tool, negotiation style, and commenting method that you prefer.

## **2. Train internal business clients**

Oftentimes, it is our internal business clients that we don't trust with editable versions of an agreement. *What if they forward an internal version to external parties? What if they make changes without turning Track Changes on?* Training can help mitigate these risks and make all internal parties feel at ease, which will improve internal collaboration. If you're really worried about document control, schedule a meeting where you can screen-share the latest set of redlines and take notes to reflect your clients' feedback. Contract Nerds offers some [excellent resources](#) to assist with internal trainings.

## **3. Build trust**

You can work on building trust with your internal and external stakeholders (including opposing counsel) through relationship-building and proactive communication. For example, when you send over the editable redlines, set out your expectations ahead of time to better manage document control and comparisons. In addition, always be transparent about the changes made to a document. Whether it's a simple formatting update or a material change in terminology, your fellow drafters will appreciate the heads up.

## **4. Master your redlining tools**

Many of the complaints I hear about the redlining process are around frustrations with redlining tools, like Microsoft Word. When was the last time you took a course on [how to redline contracts](#) using Microsoft Word, or how to run document comparisons using a specific program? Lawyers should be masters of the technology platforms we use regularly.

## **5. Run your own redlines**

You can also run your own redlines (i.e., run a document comparison each time the draft leaves your hands) to have better oversight of the changes made by other parties. This will address your fear that someone else is going to mess up your document or make hidden changes.

## **6. Try something new**

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Change is inevitable, but it doesn't have to be big or sudden. It can be small and slow. My suggestion to anyone still using PDF redlines in the commercial contracting space is to try out some of these suggestions next time you have a low stakes deal that you can experiment with. Worst-case scenario, you still hate it and go back to PDFs. Although, I have a feeling you won't.

## **Define these key components when engaging outside counsel**

Just like statements of work define project deliverables, legal services engagement letters should define the expected contract redlining process. After all, for law firms or legal service providers supporting a deal negotiation, the work product is the contract redlines.

### **Contract redline document format**

As discussed above, the preferred format for contract redlines amongst in-house lawyers is Microsoft Word, because lawyers working on a deal want to work with an editable document that they can freely markup rather than being forced to review a static or locked document. Everything begins with the original document format, so aligning on this point first and foremost will make a big impact on the overall flow of the deal negotiation.



When engaging outside counsel, negotiate and agree on a document format. Wachiwit / Shutterstock.com

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## Where to place explanatory comments

According to an October 2023 [poll by Contract Nerds](#), **93 percent of contracts professionals prefer explanatory comments in the margins** for commercial contract negotiations. Not in-line notes to drafter (NTDs). Not footnotes. Comments in the margin are much easier and more efficient to use during a negotiation because they are visually clear, connected to the corresponding contract language with a dotted line, easy to delete with one click, easy to “resolve” when you want to preserve them for historical purposes, and easy to sift through using Microsoft Word’s Review Tab.

## How to protect attorney-client privilege and attorney work product

One easy way to protect attorney-client privilege and attorney work product is to label the document file name as external vs. internal. Within the document itself, the drafter can use a color-coding method to visually distinguish between internal facing comments and external facing comments. For example, highlighting a comment blue for internal review and green for external review. This makes it much easier to cleanse a contract draft of internal-facing comments before sharing it with an external party. This color-coding method is further described in my book, [Contract Redlining Etiquette](#).

## Which negotiation style to use?

There are five different [negotiation styles](#) that lawyers can use when engaging in a deal transaction. The key is to ensure that in-house and outside counsel are aligned on the approach and that the contract redlines support the chosen strategy. In a [July 2023 poll](#) with nearly 500 respondents, 79 percent of contract professionals said they see themselves as having a collaborative negotiation style. Only 3 percent see themselves as having a competitive negotiation style. So, many of us think we are being collaborative, but are we really? The way you markup contracts and use explanatory comments reveals your negotiation style. If you want to be a collaborative negotiator, then you should use more explanatory comments, send redlines in an editable format rather than a locked PDF, and only propose reasonable changes.

## Paving the way for positive change in deal transactions

As someone who lives and breathes contract redlines, I am regularly blown away by the level of interest, passion, and curiosity this subject receives from new and experienced lawyers. Which proves that contract redlining is an important skill for in-house counsel and outside counsel to master, and there is a big need for earlier, better, more practical education around this topic.

A lawyer's redlines show — in color! — how he or she envisions the relationship between the parties. It is the tangible expression of the negotiation process. By using the contract redline process in a thoughtful way, you can clarify your thinking, refine issues, and powerfully present ideas and interests in a compelling way.

Edgar adds, “I think of M&A as a creative process — much like an artist working on canvas. A lawyer’s redlines show — in color! — how he or she envisions the relationship between the parties. It is the tangible expression of the negotiation process. By using the contract redline process in a thoughtful way, you can clarify your thinking, refine issues, and powerfully present ideas and interests in a compelling way.”

Like I always say, "**Redlines are more than just markups. They are a powerful negotiation tool.**" Learn how to redline the right way, right now with [Contract Redlining Etiquette](#) and other resources offered by [Contract Nerds](#) and [ACC](#).



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