



Keep Cool and in Compliance: Tackling Client Commitments One Step at a Time

In May 2015, Intapp Risk Consulting was assessing an international law firm's new-business inception program. When consultants asked a billing partner representing a U.S. bank how he handled his client's outside counsel guidelines (OCGs), he said, "I signed them and threw them into my bottom desk drawer." Seeing the consulting team's incredulous looks, he continued, "I guess that's not the right answer."

A lot has changed since 2015 — when Intapp Risk Consulting was asking billing partners and responsible partners whether they received OCGs from their clients — to present day, when law firms have established administrative teams that review these broad and complex agreements. Altman Weil's 2019 Chief Legal Officer Survey reports that 81% of surveyed corporate legal departments "provide guidelines for billing, expenses, matter staffing and matter management." Matter management comprises compliance with business policies and procedures, which includes ethical and business conflicts; data security and privacy; as well as records and information management.

To put this in perspective, the same survey did not even mention OCGs in 2015. At that time, corporate legal officers focused narrowly on reducing billing rates (68%) and negotiating alternative fee arrangements (60%). The tide has changed so completely in the past five years that — in addition to the annual Altman Weil survey — two 2019 studies measured the effectiveness of OCGs from the law firm perspective.

The District of Columbia Bar Rules Review Committee performed the first of these surveys in May 2019. Its goal was to assess whether "changes should be recommended to regulate and clarify the extent to which clients may contractually require lawyers to engage or refrain from engaging in certain conduct or practices." On December 3 of the same year, the Association of Legal Administrators and Bellefield Systems published the second survey, which concentrated on the "impact of Outside Counsel Guidelines (OCGs), e-billing, and billing compliance on law firms."

Managing an Administrative Tsunami

The need to manage client commitments – including those presented in requests for proposals, OCGs, engagement letters, and waivers – has been an administrative tsunami. To draw on the African proverb – it takes a village to raise a child – law firms have discovered it takes a village of administrators to review potential client commitments substantively and negotiate final terms. The evolving leading practice involves subject matter experts from various disciplines, including:

- **Office of general counsel and the risk organization** to review the definition of the proposed client, advance waivers, positioning of business affiliate and competitor conflicts, restrictions on services, constraints on legal positions, and broader underlying risk issues such as indemnifications, insurance, and representations and warranties.
- **Accounting and finance** to review requirements for time entry, expenses, and billing as well as proposed pricing, discounts, and special fee arrangements.
- **Records and information management** to review requirements for protection and disposition of client records and information.
- **Information technology services** to review requirements for information security and data privacy.
- **Human resources** to review requirements for team composition, diversity, and obligations to report on such.
- **Practice management** to review requirements for the resource management and reporting.

In the Intapp 2018 Risk Staffing Survey, respondents identified the following distribution of roles:

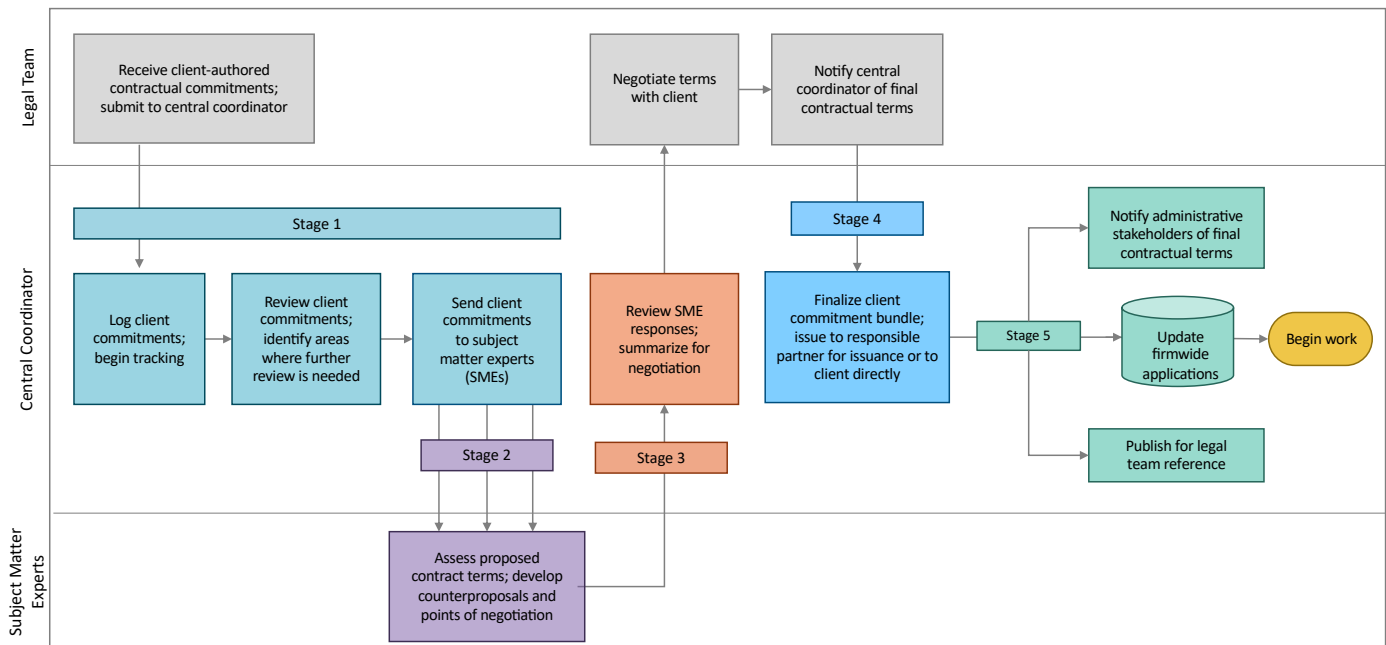




Mapping It Out

Given the size and diversity of subject matter experts involved in the assessment of client commitments, it is a leading practice to formally map out the process, so all parties clearly understand the responsibilities and account for them in current job responsibilities.

Consider this model process:



From this model, a number of leading practices become apparent.

Stage 1

Regardless of how the firm receives potential client commitments, or the form that the commitments take (e.g., RFP, OGC, or client-authored engagement letter), they should be forwarded to a centralized coordinating team to track and distribute. This gatekeeping role is usually the responsibility of an office of general counsel or accounting department.

One or more members of the gatekeeping team must have the wherewithal to review the content of the commitment, identify potential issues, and forward it to subject matter experts who can assess the proposed terms, provide counter proposals, and define points of negotiation.

Stage 2

For expediency, subject matter experts must work in parallel. This works best if the review team establishes an editing protocol and dictates that this protocol will be used to document the final terms and conditions. Given the number of simultaneously moving parts — and to provide for long-term editability — edits should be controlled via modifying addenda rather than redlining.

Another successful leading practice asks the subject matter experts to create predefined authoritative contractual term proposals — e.g., for records and information management, information security, and data privacy — that can counter terms proposed by clients. Such standards can obviate the need for the coordinator to circulate proposed terms to the SME teams. The term proposals also demonstrate the law firm's expertise, a reassuring standard of care, and service efficiency to the client.

Stage 3

Following the SMEs' review, the coordinator summarizes the points of negotiation that need to be addressed. Although this interaction often proves uncomfortable, it's critical that the partner responsible for the client relationship engage with the client directly to ensure the clearest mutual understanding of the contractual commitments.

Stage 4

At the conclusion of negotiations, the firm must finalize the engagement terms — often a bundle — and issue them to the client. Today, this responsibility is usually handled by the responsible partner, but — given the number of administrative tasks dependent on the execution of the agreement — Intapp predicts it will become a responsibility of a central coordinator team.

Stage 5

Once client commitments are executed, several steps must happen quickly and simultaneously so client work can begin. First, the administrative teams responsible for executing against the agreed commitments must understand those commitments. Second, the firm must update its client-matter management systems — financial management, budgeting, document management, timekeeping, expense tracking, conflicts, records management, ethical walls, and case management/docketing — to ensure the proper, synchronized management of engagement data. Third, the firm must make the terms of the engagement available to the legal team for reference.

Following Service Level Agreements

To meet the competitive demands of accepting new business and ensure that appropriate staff are allocated to the tasks, the coordinator team and SMEs should perform against prescribed service level agreements. The model presented above includes five administrative stages. (It almost goes without saying that legal team tasks are not controlled by the SLAs.) Administrative time commitments typically take two days per stage, for a total elapsed time of two business weeks — one week for reviewing the proposed commitments and preparing negotiation points, and a second week of putting approved client commitments into effect.

Applying Technology

Technology can clearly enhance the business processes associated with the management of client commitments. The business goals are simple to understand, but challenging to accomplish:

- Know what's been committed.
- Comply with the commitments throughout the client lifecycle, i.e., as they are renewed or updated, or when evolving firm policies necessitate a change.
- Analyze trends by client industry, nature of the work, and administrative team.

Technology can help. The first step is to establish all-inclusive repository of active client agreements. To facilitate access, analysis, compliance, and reporting, materials must be categorized consistently, e.g., by subject matter, commitment type, corporate family, or financial grouping.

Next, the firm must publish the executed engagement terms so legal team members know what's needed to comply. Publishing can take several paths. The simplest option is for the key terms to be summarized in a "rules of engagement" email that is sent to legal team members as they join the engagement. More robust options, which require more technology and centralized maintenance, include:

- Filing the terms in a document management system in a client workspace, which requires that placement of materials in the workspace be tightly controlled (i.e., verified, executed terms) and in a view-only format.
- Publishing a summary of the executed terms on client pages on the firm's intranet.

It's likely the firm's document management system and intranet are already governed by ethical and confidential wall security — a clear benefit of these last two options.

With appropriate technology, firms can configure workflows that support a distributed review and approval process. Software can apply automated rules to ensure essential terms are present in the document and have not been modified. Engagement terms can be integrated with other firmwide client-management systems including:

- **Timekeeping** — from simply making timekeeping requirements available at the point of time entry to notifying timekeepers that a time entry violates a client requirement (such as prohibited block billing) or even preventing a time entry from being released.
- **Intake workflow** — from presenting an existing client's key engagement terms in a new business intake work form to answering work form questions based on these terms.
- **Conflicts** — automatically importing names of associated parties, such as client competitors or affiliates that have been specifically called out in the engagement terms; giving notice of existing waivers | waiver requirements or other impactful terms.

Getting Started

Not surprisingly, all of this is easier said than done. In parallel with establishing the repository of active client agreements, the team responsible for the review of client commitments must develop a lexicon to categorize the materials. Firms must take care to ensure that this lexicon is unambiguous and provides the right level of detail. Where SMEs maintain overlapping responsibility, they must reach agreements regarding which team assumes responsibility for each area of classification.

Get Assistance from Artificial Intelligence Processing

Categorization of relevant terms proves to be the most time-consuming step in the management of client commitments. AI-assisted categorization — a newly added feature used to manage client commitments identifies and classifies key terms in client commitments automatically, thereby reducing the amount of time required for this task. AI uses machine learning; it's initially trained via the manual application of the lexicon against the client commitments. As the body of classifications increases, the AI categorizations become more accurate.

Move Forward on Two Fronts

Many firms struggle to proceed on two fronts simultaneously: tackling a repository of several thousand executed commitments (“backlog”) that need to be categorized, and addressing new client commitments as they’re received or generated by the law firm (“in process”). Intapp recommends the following approach.

- 1. Prioritize backlog processing.** Common criteria include:
 - Active versus inactive clients (focusing first on active clients)
 - Commitments in an accessible format (as some might be so old as to require conversion)
 - Client importance (based on revenue, industry, or practice area)
 - Critical terms (e.g., billing arrangements, unusual definition of client, onerous data security)
 - Umbrella | panel terms that apply to multiple client entities
 - Time frame (recently executed versus oldest first)
 - Type of commitment (e.g., OCGs, nonstandard firm-authored engagement letters, and requests for proposal)
- 2. Test the suitability of the lexicon** for clarity, level of detail, and comprehensiveness against a variety of commitment types, jurisdictions, and practice areas. Most firms identify a surprising number of revisions through the testing. Don't skimp on this essential task; use it to train the AI.
- 3. Document the processing steps;** they need to foster collaboration across a number of independent teams. The resulting documentation should be reviewed collectively by the SMEs. Again, many teams identify a surprising number of ambiguities that they need to resolve before processing can begin.
- 4. Hire a managed-review vendor for the backlog.** The firm's SMEs already have full plates and responsibility for the constant flow of in-process commitments. Categorizing contractual documents is not dissimilar to coding litigation evidence. Managed-review vendors specialize in this type of work, as do contract lawyers the firm might already have on staff. Use them.

Typically, firms encounter a steep learning curve during the first three weeks of categorization. Consider hiring more staff than needed initially to ensure the flexibility to release and replace personnel as needed.
- 5. Train permanent staff on the new responsibilities.** Monitor throughput and confirm that current staffing levels can meet service commitments.
- 6. Train temporary staff to categorize commitments.** Depending on the complexity of the commitments being coded, it might make sense to organize coders into specialized teams. Initially, firms need to assure the quality of all work to address problems early on, and monitor throughput to project how long temporary staff will be needed.

Conclusion

Managing a law firm's formal client commitments is becoming a permanent administrative function. It's essential that firms understand and comply with their obligations. Success requires the collaboration of subject matter experts from a broad range of disciplines, centralized management, clearly mapped and articulated business processes, and technology that supports the evolving requirements.

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