

How Could Anyone Possibly Have Comments on My Masterpiece?

Joshua Stein

If they care enough to review your document, they will have comments. And, believe it or not, these comments can make your document better.

WHEN YOU PREPARE A LEGAL DOCUMENT, writing it is sometimes one of the easiest parts of the job. But it's only the beginning. Your document also needs to satisfy anywhere from a few to a few dozen other people. In the context of a particular transaction, those people might include: your supervisor or colleagues; your client; your opposing counsel; their client; and any number of other principals, other par-

ties, and their attorneys. Each of these people will want (or you may want them) to review your document. Each will probably suggest changes.

You will need to push that process along and ultimately produce a document that satisfies everyone. Until you have completed that process for every document in your transaction, you are not ready to close.

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If anyone reviews your work, but doesn't have any comments on it, that usually means they're not paying attention, they're asleep, they don't care, or perhaps they're not really lawyers.

For any significant document, you will usually need to respond to at least three categories of comments, each requiring a somewhat different approach:

- First, your supervisor and colleagues may want or need (and you may want them) to review your document, in most cases before it goes out of the office to anyone;
- Second, your client may want (or you may want your client) to review your document, sometimes before you send it to the other side; and
- Third, the other side (sometimes more than one "other side") and its (or their) counsel will have comments on your document, both the first draft and one or more redrafts.

This article discusses the entire process approximately in the order just listed, with suggestions for how you can make it work better. This article disregards a fourth piece of the review process: obtaining comments from parties who are primarily "on the same side of the transaction" as your client, but represented by separate counsel—such as a limited partner of an entity for which you are negotiating a purchase and sale transaction or a participant in a

loan you are closing for the lending group. Comments of this type are functionally not too different from comments from other attorneys you work with in your own office, and raise most of the same concerns with a few nuances (mostly of an optical and/or political nature) not covered here.

As with any other "how to" article, the validity of all the advice offered will vary with the circumstances. Above all, you need to take into account the people involved. What do they want? What do they expect? What are their hot buttons and idiosyncrasies? How do they like to do things?

Although the suggestions here have worked well for me, other people will often have other ideas. And although many of these suggestions may sound "obvious" in retrospect, they are not necessarily as easy or quick to learn in actual practice as they may sound when collected on paper in one place. This article is therefore intended for any attorneys who have not yet figured out all these things on their own.

COMMENTS FROM YOUR COLLEAGUES

- The first people whose comments you will need to consider are the people on "your side" of the transaction, starting with the lawyers who work with you. One or more of them may want or need, or you may want them, to review your document before you send it out to anyone.

It took me over a decade of practicing law to finally learn that if anyone I work with—a colleague, a supervisor, or anyone else on "my side" of a transaction—reviews a document I am preparing, they will almost always have comments on it. I also finally figured out that these comments do not necessarily mean that: (a) I am a bad lawyer; (b) the person who has comments on my work is a jerk; (c) I did a bad job or "missed the mark"; or (d) my feelings should be hurt.

The process of reviewing, commenting, and editing is part of how attorneys who work together in a law firm or other organization multiply their efforts and experience to produce the best possible work product for clients and the best possible training for lawyers. It's part of what lawyers do. Don't fight it. Don't resent it. And don't take it personally. Your more senior colleagues will have a decade or two more experience than you do. It would be most unusual if they could not improve your work.

If anyone reviews your work, but doesn't have any comments on it, that usually means they're not paying attention, they're asleep, they don't care, or perhaps they're not really lawyers.

At a minimum, the person who reviews your document may approach it from a slightly different angle, with a slightly different collection of experiences and knowledge. That difference in orientation, and the combination of two different viewpoints, can itself make all the difference.

Planning for Review

As you plan the schedule to distribute any document you are preparing, identify who will need to review your work. Then build into your schedule enough time for that person to review your document, for the two of you to talk about it if necessary, and for you to make whatever further revisions your document may need.

When the client or "the other side" asks you to commit to a particular schedule, don't assume you will be able to distribute your work right after you finish your own editing. Instead, build in some time for review.

Before you give your work to someone in your office to review, though, look through it again yourself, critically as if you had never seen it before. Print it out on paper and read it. Any written work looks different on paper than it does on a computer screen.

Particularly for a first draft, though, don't always feel you have to make the document perfect. If parts of it are beyond the subject matter with which you are comfortable, flag them for the reviewer. You may want to do that (and raise any questions you have) by typing little notes to the reviewer in bold type in the text of your document. Your reviewer can then focus particular attention on these areas and give you more guidance or edits, as appropriate.

This system will work particularly well if you and your reviewer use a document management system that gives both of you access to the same computer files and allows you to take turns editing the document on your computers.

Of course, both of you then need to remember to remove any straggling notes before you distribute the document.

Format for Review

If you started today's document by using a model document or a document from another transaction, you will usually streamline the review process if you ask your assistant to prepare a computerized comparison on paper (still often referred to as a "redline") for review. In that redline, you should mark all the changes you made from your starting point, whatever it was, to your current draft document. If you're not sure where to start your "redline," choose whichever starting point will show the most changes you made. If you are distributing a redraft of the document, redline to show changes from the last draft you distributed.

Use cross-outs at the point where each deletion occurred to show deletions. If your document has an identification number, include it.

Unless the redline is really a mess, you usually don't need to give the reviewer a "clean" version too. Just give him or her one version of your document to look at. The project seems less daunting that way.

If you are dropping the document off or discussing it in person, and you know your reviewer may want to edit it directly on the computer screen, make sure the document is not presently on your own computer screen. If you leave it on your screen, your reviewer will probably not be allowed to edit it.

If your reviewer does want to edit it on the screen, think about whether that makes sense under the circumstances. Although doing so will often come as a natural instinct to any reviewer who is facile with computers, you may end up as a spectator on the sidelines of a great-computer show rather than someone who owns and understands their work product and learns as much as possible from the process.

If that is the case and your relationship with your supervisor permits it, and the schedule allows it, try to persuade your supervisor to resist the urge to edit on-screen. Do the work yourself instead. You'll learn more that way.

When your colleague reviews your draft document, think about what other resources your colleague will want or need. For a set of loan documents, for example, you should probably include the following:

- A term sheet for the deal, unless you know the reviewer already has it;
- A current closing checklist; and
- A proposed cover letter or memo for the ultimate recipient of the drafts you are preparing.

Drop and Run?

The process of reviewing, discussing, and revising your work is a crucial element of what attorneys do when they work together as a team. Usually it doesn't make much sense just to drop your work off and wait to get it back, like having a roll of film developed at the drugstore.

Talk with the reviewer about the timing requirements of the transaction, the context of your document, when you should try to talk

about it, and how you can work together on the document in a way that best meets the client's needs.

Sometimes the reviewer should look at the document as soon as you have it ready, and give you quick comments orally. Other times other options will make more sense, or you may have no choice. But it's something you should discuss and figure out together with the reviewer.

Ultimately, a colleague's review of a document often works best as a two-way conversation. But remember that a reviewer may see dozens of memos, documents, and other deliverables every day. The easier you can make it for him or her to deal with your work product, the quicker you will get a response and the less likely your work will fall into a deep dark hole.

Therefore, try to explain, briefly, what it is that you need to have reviewed. Try to provide any necessary background papers, but not an unnecessary pile of potentially relevant history. Include some kind of short handwritten cover note, with a date and maybe even a time. (A date and time will help make your reviewer feel guilty.) If you've identified a half dozen loose ends or open questions, you might want to list them as a page of short "bullet points," especially if you know your colleague likes that format. Do whatever you reasonably can to simplify and shorten the reviewer's task.

Petty Changes to Your Document

A more senior attorney reviewing your work will often make comments that may seem like "nit picking" in the context of this particular document, needless "document polishing" that does make this document a little better but doesn't seem justified when you are under time pressure to get the document out the door.

In those cases, though, remember that when your colleagues review your work, they do it for two reasons. First, they want to produce a

better work product today. Second, the process is supposed to teach you generally how to produce better work product for all future documents and transactions. Today's document is, after all, not the only document you will ever prepare.

When you consider a "minor" comment in the narrow context of today's document, it might not seem justified. But when you consider it in the broader and longer-term context, it may make a great deal of sense as a way to teach you something useful for all your future work. And because the best way to learn is often to do, you will maximize your learning if you think about today's "minor" comment, take it seriously, and make whatever change it requires in today's document. Then you've internalized it and learned something for the next project.

Moreover, a seemingly minor comment may relate to some small difference in wording that sounds meaningless to someone who hasn't yet lived through the disputes, problems, and issues that a particular type of transaction can ultimately produce. A more senior reviewer may have that experience and may know why a trifling difference in word choice could make a major difference.

Some comments you receive, however, won't even rise to the level of "minor improvements." They'll be meaningless stylistic editing. They'll be nothing more than proof that two different people can express any proposition in at least two different ways; if you structure a document one way someone else can always suggest some other way; and anyone who wants to find something to change in a document always can, absolutely without limit and absolutely without regard to how many people have already seen it.

Endless Beautification

The process of making stylistic improvements or changes in reviewing a document is much like cleaning your house or office. Once

you start, you can continue as long as you want—you can work all night if you want—and still not finish. You or your friend or spouse can just keep finding new things to clean up and reorganize. And your house or office will definitely be cleaner as a result. You can make it cleaner still if you just keep cleaning longer. It's an easy (and probably fake) form of achievement in a world where achievement is not always so easy. The same applies to documents and the people who review them and who can, if they want, make stylistic improvements without end. Even if you do a great job, someone else will always have comments.

In a construction contract, for example, you might say "Contractor shall build the Project on the Site." Someone reviewing your document may want to change "build" to "construct." (But if you had said "construct" they would have suggested you should say "build" instead.) And they may want to add the word "entire" before "Project" even though the defined term "Project" already describes the entire job.

In a memo in which you've used a perfectly good word like "counterintuitive," your reviewer may say they don't think this is a very good word and you should express the concept in some other way.

You might resent receiving comments like these. You might not want to make the nonsubstantive changes they require. Your feelings or ego might be hurt because you learned in college or law school that whenever a paper comes back with lots of marks and comments on it, you must have done a lousy job.

Get over it. When you prepare legal documents, you're not writing a private journal in which you are expressing The Essential You in words that must be exclusively your own from beginning to end. No rule says that someone reviewing your document can make only comments that have substantive significance or merit.

When someone reviews your document, they will (one hopes) make substantive improvements. They may also flag parts of your document that they just don't like as a matter of taste. Let them have their way. At least they're paying attention and thinking about your document. Just make their pointless changes, as long as they cause no harm. It's easier and requires less energy than trying to persuade your reviewer that any purely stylistic changes are meaningless. Dealing with stylistic changes is just part of the cost of doing business.

You can often find out whether a "stylistic" change is really a "substantive" change—and gently and indirectly convince your reviewer to withdraw comments that are truly pointless—through the following technique.

Politely say to your reviewer that you want to learn what purpose a particular change served. Ask why the reviewer wanted to make it. Don't challenge, confront, or question the change; merely use it as a learning opportunity. If the change was in fact a subtle substantive improvement, the reviewer will be able to explain why in a second. If it was pure style, the reviewer will probably acknowledge it and either ask that you still go ahead and make the change or say sheepishly that it doesn't really matter. Any of these outcomes will make you feel better about your work. You may even learn something.

After you receive comments of whatever nature from your colleagues on any document, when you redraft or go on to the next step, whatever it may be, first cross-check and confirm you have considered each of the comments. If you think about a comment, you might also sometimes deliberately not deal with it because you conclude, based on the exercise of judgment, that you've addressed the reviewer's concern another way, or the reviewer misunderstood the deal or the situation, or the reviewer couldn't really have meant anything as dumb as what you think he or she said. In any

of these cases, though, you should probably check back with the reviewer if time permits or somehow at least tell the reviewer what you did or didn't do.

Don't unintentionally "drop" any of your colleagues' comments. You should strongly presume that you should make some change in your document in response to every comment you receive from a more senior colleague. (In some sense, you should think of your more senior colleagues as your clients.)

Although the process of internal review will always improve your document, you and your colleagues also need to know when to stop. If you show the same document to every lawyer in your office, each will be able to improve it in one way or another. If your organization occupies an entire floor in a building, you can keep circling around the entire floor forever, asking for comments, endlessly improving your document.

By the time you circled the building once, you would have received dozens of comments. Some of the people giving you those comments would have objected to changes you made in response to earlier comments. And if someone couldn't find a substantive improvement to make, they'd make a stylistic change—perhaps undoing someone else's prior stylistic change.

In addition to not taking any of this personally, you need to control the process. Figure out who needs to see the document, particularly lawyers in any specialty areas other than your own that may be relevant. Get their comments. Make the necessary changes as well as the unnecessary (but not harmful) ones. Then move on.

YOUR CLIENT'S COMMENTS • If the document you are working on is sensitive, or if you have heavily edited it in response to substantive negotiations, or if your client just likes to review

documents (a common trait among lawyers who have only recently moved to the business side of the organization), he or she may want to see your work before you send it out to the other side.

You will rarely go wrong by asking your client whether they want to see your work before you send it out. And if they do want to see it, you give yourself a great opportunity to either build your relationship with that client or to erode it more quickly and easily (if you neglect their comments) than you can through almost any other method.

If you want to use the review process to build your client relationship, first try to give your client as much time as they need to review your work. If the other side is clamoring to see papers, protect your client from that pressure by saying you haven't finished your work yet—an excuse that has the added advantage of being accurate.

When you give your client a draft for review, you may want to highlight particular sections that your client should emphasize. At least offer to do that. It all depends on your client's overall approach.

When your client has had a chance to review your draft, try to call to get his or her comments before your client calls you to discuss them. But don't pester. Try to discuss your client's comments orally, in person if those comments are extensive and practicalities permit. Use the whole process as an opportunity to learn more about how your client thinks and how the transaction and your client's business work. As you talk through your client's concerns and thoughts, you will often identify further improvements and changes you should make in your document. You also maximize the likelihood that your documents will accurately reflect the deal.

When you speak to or meet with your client to discuss your draft of a document, pay close

attention to what your client says. Take good notes. If your client tells you that he or she does not like something in the document, and you lose track of that comment and forget to make the change, your client will rapidly lose confidence in you. This may be the single quickest and easiest way to destroy your relationship with that client.

Even more so than when you receive comments from your colleagues, you should go out of your way to act upon each and every comment you receive from your client, even if you think a particular comment is unimportant or unnecessary, as long as it does no harm. Ultimately, your client (far more than you) will have to live with the document over the long term. Your client has probably lived with and learned from similar documents in the past. Make sure your document fully reflects your client's desires, comments, and concerns.

COMMENTS FROM "THE OTHER SIDE" •

Once you have prepared draft documents and distributed them to "the other side," the monkey is off your back, at least for a short time. While the other side reviews your documents, you may want to read through them again yourself, as if you had never seen them before. These periods also give you a great opportunity to keep pushing the parts of the transaction that do not consist of documents you can control, and are often much harder to deal with as a result.

After a decent interval, you may want to remind opposing counsel to review your draft documents and get back to you. When the finger-pointing begins about why the transaction isn't moving or hasn't closed, it's nice to be able to point your finger at the other side ("we're still waiting for comments on the redraft"). But then someone else will point their finger at you and ask why you didn't push the other side harder. So push, within reason.

In my experience, the majority of comments (even from the other side) merely make the document work better or read better. They clarify, improve, remove possible ambiguity, and make the document easier to use.

Try to encourage opposing counsel to give you their comments in whatever format requires the least amount of time and effort for you to deal with, consistent with the progress of the transaction.

I usually ask opposing counsel to prepare a written markup of the draft document, showing just the specific line-edit changes that he or she would like to make—the exact language they think should be added to the document. (When I'm at the "commenting" end of a document draft, I always mark up the draft with pencil, in case I change my mind during the process. If any insertion is more than a few words, I type it up in a single document that contains all my insertions, sequentially numbered by page number and order within the page. But whenever I send out a "pencil job" markup of this type, I ask my assistant to "shrink" the photocopy slightly and set the photocopier for "light" original or "dark" copying. Otherwise, the pencil is unreadable. In my opinion, this type of markup is the best possible format to communicate written comments on a document draft.)

At least for an early draft, the use of markups with specific line-edit changes will usually be more efficient than any of the following alternatives:

- Scrawling brief comments in the margin, either comprehensibly or incomprehensibly;
- Discussing the documents on the telephone or in person; or
- Exchanging and then having meetings about long conceptual memos that explain what's wrong with the documents and describe in general terms how they need to be changed as a result, but without providing specific language.

As the documents move toward finality and the attorneys have resolved as many points as they can, and narrowed the scope of the remaining business issues, a meeting or conference call may make more sense.

Regardless of the format, whenever you receive comments on documents from the other side, resist the natural urge to forward them straight to your supervisor, in the hope that he or she will read through them and tell you what to do. Instead, think about each comment and try to make sense of it. Why is the other side requesting this change? What's reasonable? What isn't? Which comments do you think you can handle yourself?

When a comment is reasonable and appropriate, you should usually go ahead and make the change.

If a comment is purely stylistic, you might instinctively want to ignore it, because it adds nothing to the document. But why? If it's an easy give—a truly meaningless change to your document (and you're sure)—maybe you should just accept the comment, make the change, and move on. It's one less discussion you will need to have with the other side. Build up some goodwill and save your ammunition for other fights.

In my experience, the majority of comments (even from the other side) merely make the document work better or read better. They clarify, improve, remove possible ambiguity, and make the document easier to use. When a comment falls in one of those categories (and you're sure), you have no reason to resist it.

On the other hand, some comments from the other side may sound routine and nonsubstantive, but would produce small changes in substance with meaningful consequences. Comments of this latter type sometimes require experienced eyes to identify.

Finally, some comments from the other side are simply misguided, incorrect, tricky, a test of whether you are awake and know what you are doing, or a request for a substantive concession to which "the other side" is not entitled or that requires your client to make a business judgment. You should typically discuss comments of these types with the person who gave them to you and then with your supervisor or client.

Just in case you were wrong about your assessment of any comments from the other side, you might want to ask one of your colleagues or your client to review all the changes you propose to make, by looking at another redlined copy of the document, before you send the document back to the other side.

WHAT TO DO ABOUT COMMENTS • As you receive comments on a document, whether from others on your team, the other side, or some other reviewer, you may instinctively think of each comment as a burden—just something that will interfere with getting your documents out and slow you down. With that attitude, you will try to do the minimum possible to be able to say you have dealt with each comment, so you can move on to the next thing. That's the wrong approach.

Think of each comment as an opportunity to improve your work product. If it is substantive and it comes from the other side, you will not necessarily accept it. But even in those cases, think about what's driving the comment and what the reviewer wants to achieve. Maybe you can make some lesser change that addresses the other side's underlying concerns without prejudicing your client. Or maybe, upon due consideration, the comment is simply correct and you should make the change.

Whenever you receive comments and want to reflect them in your document, you need to take at least the following steps.

New Changes; New Version

As soon as you start editing your document to reflect any batch of changes, create a new version of the document in your document management system. Make all your new changes in that new version, so you will be able to mark the next distribution of documents (a "redline") to show all changes from the last version. And label each version of each document in your document management system, so you will always know exactly what you sent out when, and which version reflects which round of comments.

Respond Strategically

Understand what the reviewer wants to achieve. Ask whether the change he or she proposes, at the place where he or she proposes it, actually represents the best and most sensible way to make the change. As a trivial example, if the reviewer has gone through every page of your document to find every use of the word "include" and has then carefully inserted the words "without limitation," wouldn't it make more sense to say once, somewhere in the back of your document, that "include" means "without limitation"?

As the author of the document, you are ultimately responsible for producing a document that someone else can read and understand later. As you respond to comments, do so in a way that helps keep your document as comprehensible, straightforward, simple, and internally consistent as you reasonably can.

Translate and Coordinate

You have to translate conceptual comments (of a type you might receive from your supervisor or client or the other side) into legal language that interacts properly with the rest of the document. For example, the reviewer might write you a note in the margin saying "with prepayment premium?" next to a sentence that requires the borrower to repay the loan if event X, Y, or Z occurs. The quick-and-easy way to deal with this comment is to add the following language: "and Borrower shall pay [or shall not be required to pay] a prepayment premium." You can then say with a straight face that you responded to the reviewer's comment.

But you need to be much more precise and careful about dealing with the comment. That's part of your job. We write legal documents precisely and formally, and not like business memos. When you receive comments (particularly from your client or supervisor) that have no more precision than a business memo, you need to add enough precision so a judge will understand exactly what the parties intended.

In this example, you might ask yourself what's the right word for a prepayment premium. Use it! If the documents require a "Prepayment Fee," that's the term you should use.

But does the underlying business deal contemplate a Prepayment Fee only through month 17 or only if event Y occurs? Does the Borrower have to pay the Prepayment Fee now or later?

Think about those nuances, or the change you make now might create an ambiguity or unintended result later. Here's a more careful version of the language you might add to deal with this comment: "Whenever Borrower repays the Loan in whole or in part, Borrower shall simultaneously and as a condition to such prepayment pay a Prepayment Fee, unless the repayment occurs either (a) on or after March 1, 2001; or (b) as the result of a Transmogrification Event."

If those various qualifications have already been described in detail somewhere else, then maybe you simply need to say: "At the same time Borrower repays the Loan, Borrower shall also pay a Prepayment Fee, but only if (a) Borrower failed to satisfy any or all of the Free Prepayment Conditions or (b) Borrower has not yet obtained the release of Greenacre from the Collateral Pool."

As another possibility, perhaps someone else has previously thought through all the appropriate language for this issue in some previous transaction. If you find and use their work product, you can save the time and trouble of reinventing this particular wheel.

Other Changes

When you make any change to a document, also ask yourself whether this particular change also requires some other change somewhere else in the document or in the other documents for the transaction. Such changes may be necessary either: (a) to make the documentation work better as an integrated whole; or (b) to conform the other provision to this one.

Suppose, for example, that you are preparing a lease for a landlord. The first draft simply prohibits the tenant from assigning or subletting to anyone ever. In response to comments from the tenant's lawyer and discussions with your client, you add language saying the tenant can

assign or sublet with the landlord's consent, not to be unreasonably withheld. To do a complete job of preparing the lease, though, you should probably do two more things.

First, think about whether your client, the landlord, needs any new rights or protections in connection with the new understanding that the landlord will be reasonable about an assignment or subletting. For example, should your client still have the absolute right to block any assignment or subletting to a government agency? Should you add language to protect the landlord from liability for acting "unreasonably"? Should you add a requirement that the assignor sign a formal guaranty of the lease at the time of assignment?

From the perspective of tenant's counsel in our hypothetical example, if you have just negotiated some flexibility on assignment and subletting, you should then make sure that the "use" clause doesn't trap your client. An open-ended right to assign or sublet doesn't do a tenant much good if, for example, the lease says the premises can only be used to produce a particular very narrow product and the original tenant is the only company that produces that product.

Your second job as landlord's counsel is to think about whether you need to change any other language in the lease to conform to the concession that the parties negotiated.

For better or worse (mostly worse), many legal documents address the same issue many times in many locations. If you negotiate the issue once in one location but don't change your document in the second location, you create an instant inconsistency and a potential future dispute. Although you might hope in the back of your mind that your client will be able to use any such inconsistency or ambiguity to its advantage, your client more likely will resent the sloppiness.

For better or worse
(mostly worse), many legal documents address the same issue many times in many locations. If you negotiate the issue once in one location but don't change your document in the second location, you create an instant inconsistency and a potential future dispute.

Five or 10 years later, your client will probably want to know why part of the document (actually the part that you changed in response to negotiations) doesn't support the position your client wants to take (based on the part of the document you neglected to change). Your client will neither remember nor appreciate that your client actually intended to make a concession to the other side, and the inconsistency and problem arose only because you didn't make the same concession in enough places.

To prevent this kind of problem, whenever you make a change in your document in response to a comment, look for other places where the same issue arises, both in this document and in every other document for the transaction. Treat the same issue consistently throughout. "Conform" every reference to the issue to reflect the change you made the first time the issue arises.

No drafter enjoys the chore of making conforming changes. It simply burns up legal time and increases the likelihood of inconsistency

and mistakes. And then if the parties later agree to make some other change regarding the same issue, you have to make another whole set of conforming changes later.

Instead of going through this process, you should usually structure your document set so that the particular issue arises only once—in a single integrated way—in only one location in only one document. You might, for example, use defined terms to spell out all the negotiable elements of a particular transaction in one place. Refer to the same set of defined terms in all your documents. Then you can deal with any necessary changes as they arise, only once, by changing those definitions as needed. For more on the use of defined terms, see Joshua Stein, *How To Use Defined Terms To Make Transactional Documents Work Better*, *The Practical Lawyer*, October 1997.

Institutional Learning

If the comment you just accepted relates to a document that you prepared using a “template” document, consider whether you should update and improve the template to conform to the change you just made. If the change represents a general improvement in the “template,” as opposed to a concession that you will not want to make automatically in the future, you might want to capture it in your “template” document for future transactions. This will save the trouble of making the change next time.

You should bring changes like these to the attention of whoever maintains and updates the “template” document, so that this person can handle it as appropriate.

THE DOWNSIDE OF COMMENTS • Comments and the resulting changes to documents are a leading causes of mistakes, shocking legal fees, and last-minute crises when the parties finally want to close their transaction.

On the other hand, comments and the process of thinking about them and responding to them are often interesting and intellectually stimulating. They are a great way to learn how deals work. They can sometimes be gratifying because it’s nice to see that someone cares about what you write.

Comments force you to think about why your documents say the things they do and how you might have to change them to better meet the needs of the parties. This is the kind of work you went to law school to do. And the process of working through comments is what will truly turn your document into the work of art that you maybe thought it was when you started.

Try to control the process, though, at least to the extent you can. Although the other side will rarely drop or forget about a comment just because you tell them to, there comes a point where you should counsel your client to just say “no” and end the process.