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**ABA**  
AMERICAN BAR ASSOCIATION  
**General Practice,  
Solo & Small Firm  
Division**

**Expanding Your Practice Areas and  
Minimizing Your Expenses**

**Saturday, October 17, 2009  
1:15 p.m. - 2:15 p.m.**

**2009 Fall Meeting and  
National Solo and Small Firm Conference  
October 16 - 17, 2009  
Millennium Biltmore Hotel  
Los Angeles, CA**



**Patrick W. Begos** is a founding member of Begos Horgan & Brown LLP, with offices in Westport, Connecticut and Bronxville, New York. He heads in the firm's trial and appellate group. Patrick's practice includes litigating ERISA benefits disputes, and resolving business and personal disputes in a wide variety of commercial areas.

Patrick has written and lectured on a wide range of topics relating to law firm practice management, ERISA litigation, business disputes, and the credit crisis.

He is a member of the American Bar Association, the New York and Connecticut Bar Associations, and the Defense Research Institute.

Patrick received his legal education from Columbia University School of Law (J.D with honors) and did his undergraduate work at Johns Hopkins University (BA with honors). He is admitted to the state and federal bars in New York and Connecticut, the Second Circuit, and the U.S. Supreme Court.



**Sande Goltart**  
Regional Vice President, West Region  
Regus Americas

In the role of Regional Vice President, Sande Goltart oversees all strategic and operational aspects for nearly 90 Regus business centers throughout the western United States. Prior to his current role Goltart held the same position at Regus, with responsibilities for more than 125 business centers in the northern United States and Canada. Goltart has a proven track record of dramatically improving operational and revenue performance. Prior to joining Regus in 1999 Goltart was responsible for establishing and overseeing western region operations for two major start-ups. Goltart is often quoted on real estate issues and trends affecting small-to-medium sized businesses. He has been featured on ABC News, *Los Angeles Times*, *Sacramento Bee*, *Seattle Post Intelligencer*, *Puget Sound Business Journal* and various other media outlets. Goltart attended the University of Colorado on a basketball scholarship. He earned a Bachelors Degree in Business Administration.

**American Bar Association**

**General Practice, Solo and Small Firm Division**

**EXPANDING YOUR PRACTICE  
AND MINIMIZING YOUR EXPENSES**

**Looking, Then Leaping:  
Do's and Don't's of Expanding Your Practice Areas**

**Patrick Begos  
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## **Looking, Then Leaping: Do's and Don't's of Expanding Your Practice Areas**

Virtually every solo or small firm practitioner who has been in business for more than a few months has come across one of the following types of situations:

- ▶ Your residential real estate practice is slow, and you are thinking of seeking work in a related field, such as commercial real estate.
- ▶ You've read all those news reports saying that everyone is filing bankruptcy, and you figure it's time to add "bankruptcy lawyer" to your resume.
- ▶ The client for whom you handled a slip-and-fall case calls to see if you can take on her employment discrimination claim.

There are hundreds, if not thousands, of variations on these themes. But they illustrate what are probably the most common situations where a solo or small firm lawyer might be considering a practice expansion: your existing practice is insufficient; you perceive a greater opportunity in other areas; and you have a new case fall into your lap.

The aim of this presentation is to explore the issues that you should consider in expanding practice areas. The bottom line is that if you're a conscientious lawyer, with sufficient time and resources, you can take on virtually any practice area you desire.

Several aspects of practice expansion are beyond the scope of this presentation. We're not going to try to tell you whether expanding your practice in general, or expanding into a particular area, makes economic sense for you. Those questions require detailed examinations of your particular practice and marketplace. We're also not going to try to discuss what you need to know or consider before taking on any particular practice area, whether it may be bankruptcy, criminal law, or estate planning, or anything else.

## Ethical Considerations

Taking on a new practice area raises the question of *competence*. Are you competent to handle a bankruptcy, or prepare a trust, or represent a criminal defendant, if you've never done that before?

The ethical requirement of competence is covered in Model Rule 1.1:<sup>1</sup>

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

### *Comment*

#### *Legal Knowledge and Skill*

[1] In determining whether a lawyer employs the requisite knowledge and skill in a particular matter, relevant factors include the relative complexity and specialized nature of the matter, the lawyer's general experience, the lawyer's training and experience in the field in question, the preparation and study the lawyer is able to give the matter and whether it is feasible to refer the matter to, or associate or consult with, a lawyer of established competence in the field in question. In many instances, the required proficiency is that of a general practitioner. Expertise in a particular field of law may be required in some circumstances.

[2] A lawyer need not necessarily have special training or prior experience to handle legal problems of a type with which the lawyer is unfamiliar. A newly admitted lawyer can be as competent as a practitioner with long experience. Some important legal skills, such as the analysis of precedent, the evaluation of evidence and legal drafting, are required in all legal problems. Perhaps the most fundamental legal skill consists of determining what kind of legal problems a situation may involve, a skill that necessarily transcends any particular specialized knowledge. A lawyer can provide adequate representation in a wholly novel field through necessary study. Competent representation can also be provided through the association of a lawyer of established competence in the field in question.

[3] In an emergency a lawyer may give advice or assistance in a matter in which the lawyer does not have the skill ordinarily required where referral to or consultation or association with another lawyer would be impractical. Even in an emergency, however,

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<sup>1</sup> This discussion will focus on the model rule, and some illustrative cases from various parts of the country. Though it goes without saying, we'll say it anyway: check your own state's rules, ethics opinions or case law.

assistance should be limited to that reasonably necessary in the circumstances, for ill-considered action under emergency conditions can jeopardize the client's interest.

[4] A lawyer may accept representation where the requisite level of competence can be achieved by reasonable preparation. This applies as well to a lawyer who is appointed as counsel for an unrepresented person. See also Rule 6.2.

#### *Thoroughness and Preparation*

[5] Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners. It also includes adequate preparation. The required attention and preparation are determined in part by what is at stake; major litigation and complex transactions ordinarily require more extensive treatment than matters of lesser complexity and consequence. An agreement between the lawyer and the client regarding the scope of the representation may limit the matters for which the lawyer is responsible. See Rule 1.2(c).

#### *Maintaining Competence*

[6] To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject

Comment 1 goes a long way toward providing an effective checklist to work through in evaluating whether to expand your practice, as we'll see later.

Comment 2 essentially tells you to *go for it*. It starts by saying that you don't need "special training or prior experience to handle legal problems of a type with which [you are] unfamiliar." Rather, you "can provide adequate representation in a wholly novel field through necessary study." In other words, there's a first time for everything. The comment reassures newly admitted lawyers that they "can be as competent as a practitioner with long experience."

Perhaps the most significant part of Comment 2 is the following: "Some important legal skills, such as the analysis of precedent, the evaluation of evidence and legal drafting, are required in all legal problems. Perhaps the most fundamental legal skill consists of determining what kind of legal

problems a situation may involve, a skill that necessarily transcends any particular specialized knowledge.” What this says is that competence is generally going to focus on your competence *as a lawyer*, not as an *estate planner* or *litigator*.<sup>2</sup>

Case law supports the notion that violating the duty of competence can require some effort. First, *negligence* does equal *incompetence*. *Attorney Grievance Comm. of Md. v. Kemp*, 335 Md. 1, 18, 641 A.2d 510, 518 (1994) (“While we do not condone, and certainly do not encourage, attorney negligence or carelessness in the handling of client affairs, neither do we routinely treat negligence or carelessness as a violation of the Rules of Professional Conduct”).

A second, related, point is that courts will draw a distinction between a lawyer’s shoddy handling of a specific matter and the lawyer’s general competence: “where the deficiency implicates the lawyer’s thoroughness or preparation, is not egregious, and/or an objectively reasonable explanation for the deficiency may be found, the conduct is more likely to be negligent or careless.” *Kemp*, 641 A.2d at 518. The Maryland court went on to say that what was critical in the disciplinary context was whether the lawyer knew or should have known that that he was not competent:

This case does not involve an area of the law which is esoteric or complex and in which, the record shows, the respondent does not regularly practice, from which the respondent’s knowledge of his incompetence to handle the matter can be inferred. Nor can the respondent’s performance be characterized as grossly negligent, which could then substitute for such knowledge.

*Id.*

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<sup>2</sup> It bears emphasizing that the ethical requirement of competence is the minimum standard. We do not suggest that one should strive merely for the level of competence mandated by this rule, as that would likely lead to a short and unhappy legal career. What is important for purposes of this discussion is that Rule 1.1 does not place much of an ethical hurdle in the way of expanding your practice.

Third, attorneys are not typically disciplined for being incompetent. Rather, they usually commit other, more substantial, ethical sins that attract the attention of the bar:

The question of when ordinary legal malpractice becomes an ethical violation is somewhat unclear. Strictly speaking, virtually any time an attorney allows his client's case to prescribe or to become abandoned, it could be said the attorney lacks competence in violation of Rule 1.1 and failed to act with diligence in violation of Rule 1.3. However, as a practical matter, disciplinary sanctions are not always appropriate in every instance in which an attorney commits minor violations of the Rules of Professional Conduct. *In re: Hartley*, 03-2828 (La.4/2/04), 869 So.2d 799. When significant discipline has been imposed in this context, the cases typically involve situations in which the malpractice is combined with additional misconduct, such as where the attorney acts with deceit or misrepresents facts in an effort to conceal the malpractice from the client. *See, e.g., In re: Blanson*, 05-2561 (La.6/2/06), 930 So.2d 943 (attorney suspended for three years for allowing a suit to become abandoned and falsely assuring the client the suit was still pending when it had been dismissed).

The instant case does not involve any elements of deceit or misrepresentation. To the contrary, we find respondent's actions were not the product of an evil or dishonest motive, nor did they cause any actual harm. Under the totality of the circumstances, we believe the matter would be more appropriately considered in a civil malpractice action rather than a disciplinary proceeding.

Nonetheless, we are cognizant that the ODC has proved disciplinary violations by clear and convincing evidence. In light of the presence of aggravating factors, particularly respondent's prior disciplinary record, we will impose a public reprimand upon respondent, cautioning him to be more diligent in attending to his client's legal matters in the future.

*In re Brown*, 967 So.2d 482, 486-87 (La. 2007).

The requirement of competence is certainly one that any lawyer expanding into a new practice area should be aware of. If you are conscientious, diligent and honest, however, expanding your practice rarely should cause ethics problems.

## **A Practical Checklist**

Deciding whether it is appropriate for you to expand your practice requires professional judgment. As a guide to your exercise of that judgment, we have developed a checklist of items that you should consider.

### **1. How Long Have You been Practicing?**

Practicing law is not easy. And as anyone who has made the transition from law student to lawyer can attest, most law schools do not prepare students particularly well for the day-to-day practice of law.

When you're a new lawyer, almost everything is new, and questions abound about every day tasks. What do you do when your client receives a summons and complaint? How do you respond to that motion? What are the requirements for executing a will? A trust? A deed?

There is also much about the practice of law that transcends practice area. How to talk to clients, adversaries, clerks and judges. How to write a solid contract or a persuasive court paper. How to analyze a complex legal issue. If you're still feeling your way around the nuts and bolts of practicing in general, you'll have less time and brain capacity to focus on the complexities of a new area.

### **2. What's Your Current Stress Level**

What's going on in your professional and personal life? Expanding into a new practice area is going to increase your stress in the immediate future. Make sure you're able to handle it.

### **3. Are You Comfortable With Your Current Practice Areas?**

The more comfortable you are with what you are currently doing, the easier it will be to add something new to the mix. Challenging yourself keeps you fresh, so if you can do a deposition or closing with your eyes closed, it may be a good idea to try something new. But if you're not used to walking on a high-wire, you don't want to add a unicycle to the act.

### **4. Have You Expanded Your Practice Before?**

Learning new things is a skill – you can become adept at the process of learning. If you have continually grown, expanded, changed your practice over the years, you may find it easier to expand it yet again, than if you have been doing the same thing, in the same place, for the last twenty years.

### **5. How Specialized is the New Practice Area?**

Are there a lot of general practitioners in this area, or is it filled with specialists? The more esoteric it is, the harder it will be to become sufficiently knowledgeable in it to succeed.

### **6. How Complex is the New Practice Area?**

Certainly there are complexities in any practice area. But some are more complex than others. All things being equal, becoming adept at trust preparation is generally going to be easier than mastering securities regulation.

### **7. How Close Is it to Your Current Practice Area?**

If you do residential closings, it's going to be a lot easier for you to start doing commercial closings than bankruptcy.

### **8. Do You Know What You Don't Know?**

This is one of the trickiest, but most important, issues to consider. It involves spending some time analyzing the substance of the new practice area that you are considering. I'm a litigator, and

if I take on a matter in a new forum, I know that the forum has procedures. I don't know what they are, but I know enough to find the appropriate rules, and study them until I understand how the forum works. But a lawyer who had never litigated a case before, might not know that individual courts, and sometimes judges, have their own rules that can significantly affect how cases are litigated. She wouldn't know that there was important information that she didn't know.

#### **9. Do You Have Time To Devote to Learning?**

You don't want to be expanding your practice area while in the midst of preparing for a lengthy trial. Or childbirth.

#### **10. Do You Have Teachers?**

The single most helpful resource when expanding into a new practice area is having a trustworthy colleague who has experience in that practice area. Every area of the law has dozens of questions and issues that you can't really answer from reading books, cases or statutes. Much better to have someone to ask than to have to resort to trial and error.

### **Putting it All Together**

Here's how you should use the checklist. Spend some time thinking about each of the ten items, and any others that you think are relevant to your particular situation. Then decide, for each, whether it favors expanding the practice or opposes it. If you really want to be analytical about it, you can rate each one on a scale from 1 to 5, or 1 to 10. When you're done, go back and see whether the factors balance on the side of expanding, or waiting. There's no magic number. No one can tell you that 4 of 10 factors is enough, or that you need 7 of 10, for example. But the result should point you in a direction; it may solidify your feeling that you're ready to expand, or it may suggest that further consideration is warranted.



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**EXPANDING YOUR PRACTICE  
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How Small Firms Can Get a Good Deal on Office Space

**Sande Gorgart  
The Regus Group**

**October 17, 2009  
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## How Small Firms Can Get a Good Deal on Office Space

One of the early challenges small firms will face is establishing a professional image to help get their burgeoning practice off the ground. Sure you can establish a home-based practice, but what do you do when you need a more professional environment to meet with clients or how do you deal with every day distractions like kids, barking dogs or television?

“Securing professional office space doesn’t have to be an expensive proposition. There are cost-effective options like fully furnished, move-in ready offices that can help small firms establish the professional presence they need to help grow their practice,” said Sande Goltart, West Region Vice President, The Regus Group Americas. “The good news is these options are available for a fraction of the cost of leasing traditional space.”

When looking for office space there are some common pitfalls that small firms should avoid. To reduce expenses and secure room for future growth, the office experts at Regus encourage lawyers to use the “SPACE” test below to help ensure they’re getting the right office at the right price before they sign on the dotted line:

- **S – Savings**

There are ways to limit upfront costs and save money beyond the price of rent. If a traditional lease, which typically lasts five to 10 years, makes sense, negotiate a smaller upfront deposit, which usually consists of six months rent or up to half of the total cost of the lease. Attorneys also can save up to 60 percent on office space costs by using ready-to-work space that includes furnishings, most office equipment and maintenance.

- **P – Productivity**

In order to grow their practice Solos and small firms have to carefully manage their budget and their time in order to be as efficient and productive as possible. This may call for leasing full-time office space even though you’re not there on a full-time basis. Carefully review whether you really have to be at a physical office, and if you could possibly telecommute from home or a shared office space location. This can help save on overhead by reducing the amount of space needed.

- **A – Address**

Having a Park Avenue address in New York or working from the John Hancock Center in Chicago can add a level of prestige to your practice that’s hard to calculate in dollars. But leasing traditional space in those key business districts may still be cost prohibitive. Consider using a virtual office instead of leasing physical space to obtain a Pennsylvania Avenue address in Washington, D.C., or an “office” in Rockefeller center.

- **C – Clauses**

Not understanding the fine print in your leasing contract could mean unwelcome and unexpected fees at a later date. Clauses in your leasing agreement dictate everything from when rent is due to limitations of use and your maintenance obligations. It’s important to read and understand all clauses before signing your lease.

- **E – Expansion**

If your practice changes drastically, will your space change with you? Ask your potential landlord about what options exist to expand, or shrink, your space should the need arise. Consider exploring other leasing options, such as subleasing or shared spaces. Adding or contracting space as needed prevents small firms from paying for space they aren’t using at startup or cramming into a small space when growth exceeds expectations.

To learn more about start-up solutions for solo practitioners and small firms, visit [www.regus.com](http://www.regus.com).



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**The Virtual Office: A Small Firms Gateway to Growth**

**Sande Golgart  
The Regus Group**

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## **The Virtual Office: A Small Firm's Gateway to Growth**

by Sande Golgart

For solo practitioners, image is everything and finding a way to establish the image that your practice needs to thrive and grow doesn't have to be an expensive proposition.

Traditionally, Solos have had two choices when deciding where to "set up shop": turn a spare bedroom at home into an office or lease commercial office space.

Unfortunately, neither option presents a particularly attractive business case. Although convenient and cost-effective, the home office can be wrought with distractions such as kids and pets and they are not the most conducive place to host important client meetings or depositions.

Leasing commercial space can be expensive and often times risky. Not to mention the time and energy required to find a suitable office, negotiate the lease terms, purchase furnishings and equipment, hire office staff and services, etc.

For years, many small practices have wrestled with these challenges. Many are surprised to find that there is another way.

### **The Best of Both Worlds**

A virtual office can be a powerful tool for small firms that want to limit their start-up costs and establish themselves alongside larger competitors. For a fraction of the cost required to set up and maintain a full-time office, solo practitioners can use virtual offices to create a more professional image, enhance productivity, and offer service in new markets.

Essentially, a virtual office acts as an extension of your practice's physical presence. While you continue to work at home or at your current office, an assistant at the "virtual" location handles incoming calls answering them in the business' name, and receives and forwards mail and faxes.

A virtual office gives you a prestigious business address and local phone number, which can make a positive impression on potential clients. For example, The Regus Group, the world's largest provider of workplace solutions, boasts a worldwide network of more than 1,000 business centers in 450 cities worldwide. All of the centers are located in first-class office buildings like the Chrysler Building, the John Hancock Center, Spear Tower, and the Crescent Center in key business districts, and you could establish a virtual office at any of them.



Virtual offices can also be used as a tool to test and enter new markets. If a market is not as successful as initially planned, the investment and risk exposure is minimal. Consequently if the market is successful, the practice has gained an immediate presence in a viable market.

### **Meetings Rooms and Videoconferencing Too**

All of these benefits are great, but what happens when your client asks to visit the office or you need to hold a meeting with the client? Some providers such as The Regus Group provide virtual office clients the use of furnished offices or meeting rooms at their virtual office location for a set number of days every month. And if you require additional meeting room time, they are available by the hour, at very cost-effective rates.

In addition to on-demand meeting rooms, videoconferencing can also be a great tool for the solo firm. The Regus Group, which has experienced nearly 40 percent growth in its videoconferencing business in recent years, operates the world's largest network of publicly available videoconferencing studios. Much of the increased demand in videoconferencing has come from those in the legal profession seeking more efficient, professional and cost-effective ways to do business such as holding client meetings or conducting depositions.

In terms of tangible amenities like Fortune 500 corporate-style meeting rooms and the latest in videoconferencing technology, the virtual office is anything but "virtual".

The flexibility of the virtual office opens a new realm of possibilities for solo practitioners seeking to grow their firms. With no long-term contracts, small firms can be more agile in the marketplace. Free from the high costs and constraints of traditional real estate, the virtual office just may be your gateway to growth.

*Sande Goltart is the West Region Vice President for The Regus Group Americas. Regus offers a full range of fully furnished and equipped offices, meeting rooms, business lounges, videoconferencing facilities, and supporting services. For information on workplace resources visit [www.regus.com](http://www.regus.com) for more information.*