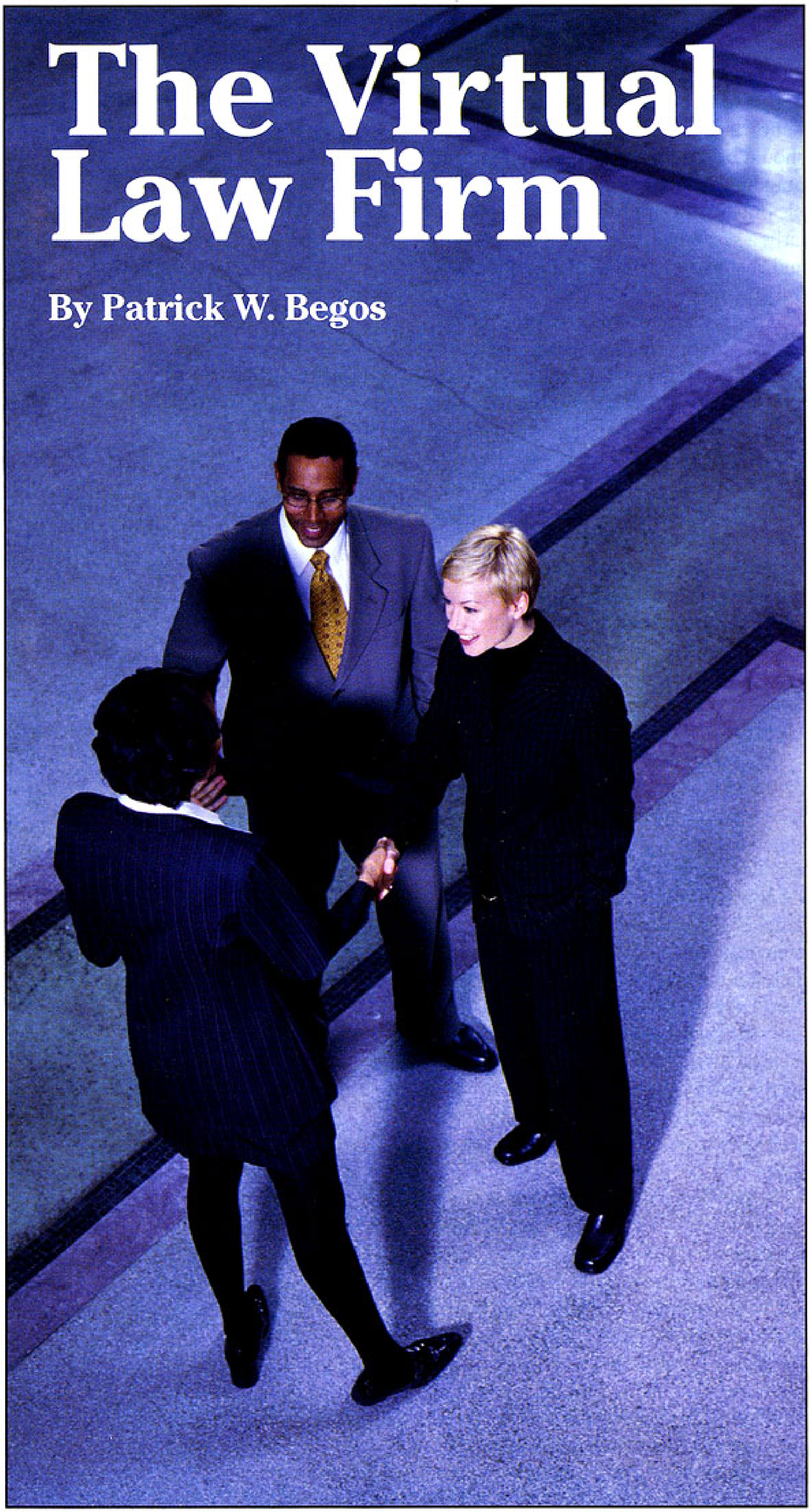

The Virtual Law Firm

By Patrick W. Begos

The idea of the virtual law firm took root early in the now-forgotten history of the Internet, say four or five years ago. The virtual firm was envisioned as a group of independent lawyers located throughout a state, a country, or the world and linked via the Net. A lawyer who needed assistance in a far-off locale could contact one of the virtual partners, and together they could satisfy the client's needs. Groups of lawyers would assemble as needed and disband once the project was finished. It would revolutionize the practice of law. It never happened.

In order for a group of independent lawyers to raise the tide of business, and everyone's boat in the process, you need some things you can't get in a purely Net-based relationship. A group of lawyers in Westport, Connecticut, believed they uncovered the keys to a "real" virtual firm. Of course, like anything these days, there was first a beta version.

The Beta

In the mid-1990s, several professionals (most of them lawyers) leased space in a Westport office building. It was essentially a real estate deal not much different from a typical office-suite rental arrangement, but relations among all parties were typically very collegial, and the space "felt" like a law firm. Still, there was nothing about it that hasn't been replicated dozens of times.

What is interesting is what happened next. A subset of the lawyers in the suite began to do a lot of business together. It was haphazard but lucrative. Lawyers with complementary practice areas who passed one another every day in the hallway and bounced questions back and forth began to see their suitemates as sources and destinations for referrals. A

Patrick W. Begos is a partner in Begos & Horgan, LLP, and practices commercial litigation in Connecticut and New York. He is a founding member of RiverSide West and can be reached at begos@attglobal.net.

In analyzing the potential ethical issues, the best place to start is the point at which the client physically approaches the door of the suite. Model Rule 7.5, Comment (2) cautions against lawyers in shared office space giving the impression that the suite is in fact some form of law firm. Each lawyer's name should be identified separately at the entrance to the suite, and each office should be separately identified as well. Letterhead should reflect only the lawyers associated with that particular practice.

If one of the firms in the suite has multiple lawyers (not an uncommon occurrence), the offices should be arranged to keep the members of that firm together and avoid the appearance of the solos being part of that firm. An informal grouping can create the aura of a partnership, which may extend responsibility and liability for professional acts of other lawyers. Part of the planning process should include ways in which lawyers can provide backup and assistance without creating the impression that they are part of a law firm in the suite.

Another up-front place for risk is a shared receptionist. This is a common position in a shared suite but carries professional and ethical dangers. The receptionist has a particularly difficult job, handling calls and clients for a number of independent and separate professionals without revealing confidential information or creating the impression that the office is a firm, not a group of solo practitioners in shared space. The receptionist has information about all of the clients who come to the office and, with training, can serve an important role in avoiding conflicts. However, the job description must be carefully defined and the individual carefully trained to recognize both confidentiality and conflicts issues.

People sitting in the waiting room should not be privy to information about the clients—phone messages, comments on the phone, comments to clients in the waiting room. Such matters must be handled in a way that protects confidentiality and reflects the utmost professionalism. The same risks exist in a traditional law firm setting but are somewhat ameliorated by the partnership relationship, in which information is presumed to be shared.

The same level of forethought must go into designing the common area of the office as well, because the same confidentiality issue exists here. Fax machines should be sequestered, and incoming and outgoing documents must remain accessible only by the appropriate lawyer. Similarly, a system to protect files and records and ensure their confidentiality should be implemented.

The final area of concern is the referral of cases among the lawyers in the suite, covered generally by Model Rule 1.5. Referral of cases has been the subject of some concern among regulators, and the Model Rules sought to clarify the issue by demanding shared responsibility and/or work before fee-splitting is allowed. The referral itself is generally not the problem; the referral fee creates the problem. Client consent is also necessary, and some states even require judicial approval. Referring cases to lawyers in a shared office suite can be both a lure to new tenants and a good source of business growth. However, there are risks.

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The client must be confident that the matter has been referred to a competent attorney and that the new attorney will maintain confidentiality. If fees are shared, the client must believe that there has been a sharing of responsibility and performance. These issues are harder to clarify in the confined space of a shared suite. Finally, for the referring attorney, the referral must be based on the assumption that the new attorney has the skills and knowledge to handle the matter. Clients have been known to sue the referring attorney when the referral goes south and use the sharing of fees to prove the continuing relationship.

In many respects sharing office space is a good solution for the solo practitioner; but the ethical risks and need for rigorous planning and procedures in advance of the move mean the solo practitioner must enter this arrangement warily. The rewards can be great and can enhance the success of the practice, but the ethical and practice risks must be fully anticipated and resolved in order to reap the benefits of practice enhancement. GPSOLO