

Preparing For The Unexpected: Anticipate and Plan for Law Office Disasters

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Over the last decade the nightly news seems to have been full of stories of natural and man made disasters. Flooding wiped out or caused the relocation of entire towns along the Mississippi River. Drought conditions caused broken water mains in Texas, resulting in widespread flooding. There have been stories about gas line explosions, the derailment of trains carrying volatile cargo, and the unexpected discovery of toxic chemicals in the soil. Tornadoes, which we here in the South thought we were accustomed to and knew how to plan for, cut a swath through many inhabited areas, leaving a trail of incomprehensible destruction in their wake. No lawyer now living will ever forget the events of September 11, 2001, and their effects on our colleagues who practiced from the twin towers of the World Trade Center. And all this was before Hurricanes Katrina and Rita arrived, reminding us that, even in the 21st century, nature is still capable of rendering an entire city uninhabitable in the blink of an eye.

These events tell us that we lawyers are not immune to the forces of nature or the whims of the demented. Likewise, as our communities continue to grow and age, we are subject to the increased likelihood of infrastructure failure. Advance planning cannot entirely prevent the unexpected, or the unimaginable, but it can give you and your firm an edge in overcoming the long-term effects of what could, otherwise, be a catastrophe from which your practice will not recover.

Any disaster preparedness plan should have two goals. First, it should be designed to protect the people in your office, both staff and clients, and your vital business records. Second, it should also protect your clients and your future livelihood by providing a framework within which to replicate your office and have you up and running, in a new location if necessary, as quickly as possible.

In order to devise a successful disaster recovery plan, you need to first think about what sort of potential disaster situations you will be most likely to face, and then assess whether there is anything about the way in which you currently operate that could make a potential disaster worse. As with any program to be carried out in a group situation, if your disaster recovery plan is to be successful, one person needs to be assigned overall responsibility for its development and implementation. That person then needs to be given the authority, time and resources necessary to accomplish the task.

I. Analyze Your Potential Risk

The following is a list of potential problems to anticipate and plan for. Carefully evaluate this list in light of what you know about your physical setting, your equipment, your clients, and your community and the surrounding environs.

- Natural Disasters – Do you practice in an area that is subject to hurricanes, tornados, floods, drought, lightening strikes, forest fire or wildfire, landslides, or earthquakes?
- Technology-Related Disasters – Are you subject to fire; power failure; water line, gas line, or sewer break; train derailment; pipeline explosion; industrial explosion; hazardous materials accident; hard drive crashes; extended internet outages?
- Antisocial Activities – Can you imagine a situation involving arson, bomb or bomb threat, theft or vandalism, a violent intruder (former client, opposing attorney or party or terminated employee), computer hacker or civil disturbance?
- Health-Related Disasters – Could your community ever be subject to pollution related problems or epidemics?
- Personal Problems (yourself and your employees) – There is always the possibility of unexpected accident, long term illness or disability, suspension or disbarment, or death.

II. Analyze Your Present Situation

Once you have evaluated and ranked your potential risks, you should conduct an analysis of your physical facilities and current office procedures to determine if they will help or hurt you in the event of a disaster. The following are some things to think about:

- How do your building size, type, and age affect safety and security considerations?
- How do the number and use of doors and windows affect security considerations?
- Is free access during business hours really necessary, or could restricted access work?
- Would posting a security guard be appropriate or useful during certain times?
- Are your electrical, computer, and phone system exposed to sabotage?
- Is your computer system exposed (both physically and through connection to the Internet)?

- Do you duplicate important materials and back up all electronic data?
- Do you have off-site backup in case of office destruction?
- Is your off-site backup storage location subject to the same potential disasters as your office?
- Do you periodically restore from your backup medium to make sure your backup system is working properly?
- Will your file storage/retention policies cause additional problems in a disaster?

When it comes to building security, an important part of any security systems is its deterrent value. If security measures are sufficiently visible, many potential intruders will simply go elsewhere.

III. Plan for Personal Safety

There are many steps that can be taken to ensure the safety of your personnel and your clients, and they will differ depending on your physical setting and the type of potential disasters you face. If you practice in a small freestanding building, develop appropriate emergency escape routes and procedures, and appropriate places to shelter if the office must be abandoned during the work day. Make sure all exits are unblocked and accessible. For those who practice in large buildings, make time to review your building's emergency procedures and coordinate your emergency plans with those of adjoining tenants.

Post vital safety information where everyone can find it, including fire exit locations, fire extinguisher locations and how to use them, escape routes and emergency phone numbers, first aid kit locations, and basic first aid procedures.

Take time and make the effort to educate your personnel. In particular, send your safety coordinator to appropriate classes or seminars. Prepare a safety section within your office manual and make sure your employees are familiar with it. Train personnel regularly and issue periodic memos about emergency procedures. Conduct unannounced fire drills and other safety preparation drills, and critique the results. Establish a method for keeping up with visitors within your office space, and train one person to be responsible for escorting clients out of the building during an emergency.

You should also develop a written intra-office emergency communication plan. Here are the basic elements any plan should have:

- Collect and store all employee's home and cell phone, along with at least one other emergency contact number, in a secure off-site location. This could include numbers for parents, adult children, close friends, etc., in the event that phone service is severely disrupted.
- Revise this list on a regular schedule in addition to relying on memory to make changes as they occur.

- If your office staff is large, develop a phone tree to facilitate spreading information within the firm in the event of a disaster.
- Obtain and publish an alternative phone number or a series of numbers employees can call for instructions in case of destruction of the office or office phone system.
- Develop a plan for letting your clients know what has happened to your office and what you are doing to establish a new office.

Every office should have a minimum store of emergency supplies, which should be inspected and replaced on a regular schedule. Some things to include are:

- First aid kit
- Flashlights
- Battery operated or wind-up radio or mini-TV
- Emergency food and water
- Petty cash in case banks and ATMs are not operational
- Fresh spare batteries for all your battery operated items

In addition to preparation for natural or man-made disasters, every lawyer should make plans for his or her own unforeseen disability or demise. Planning steps include:

- Arranging in advance for one or more lawyers to cover your practice and drafting an agreement to cover the process.
- Getting advance authority from clients (in you fee agreement or an addendum to it) to allow for associate counsel in case of emergency.
- Getting your files organized and up to date, including preparing a “to do” list of uncompleted tasks and placing it in each file.
- Preparing a letter of instruction for your spouse, your partner, your staff, and any attorneys who will be covering or, in the event of the worst, taking over and closing out your practice.

IV. Safeguard your Records and Equipment

Once you're sure all personnel and clients are safe, your thoughts will immediately turn to your files and other client and practice data. If you take these steps now, you'll be in much better shape if disaster strikes.

First, make a complete office inventory including:

- All computer hardware and peripherals, including serial number, purchase date, purchase price, and vendor. Update your inventory immediately as equipment is replaced.

- All software, including version number, serial number, purchase date, purchase price, and vendor. It's also helpful to keep a list of what is installed on each computer, along with a notation of all upgrades and patches.
- Information on cloud-based systems used, including product name and log-in information.
- All usernames and passwords.
- All library contents, including both books and active subscriptions.
- All office furnishings, including purchase date and price.
- All office equipment, including serial number, purchase date, price, and vendor.
- All other equipment, such as coffee makers, TVs, DVD players, tape recorders, still cameras, video cameras, Dictaphones or other dictation and transcription equipment.
- All office supplies you regularly stock.

Consider making a set of photos or a video of your office once a year and storing it off-site with your written inventory. Pictures will help establish the age and condition of the things you have lost, facilitating the settlement of your insurance claims. They will also serve to jog your memory about things you may not use very often and, therefore, may not remember that you've lost.

Every lawyer and firm should establish a regular, automatic back-up procedure with off-site storage for all digital data, and follow it religiously. You should be backing up computer files and/or making off-site storage copies of:

- Calendar or docket
- Contact list
- Client/matter list, including conflict of interest system
- Word processing and spreadsheet files
- Email files
- Billable time and other accounting information
- Trust account records and records of all physical property held for clients or 3rd parties
- Telephone programming (speed dial numbers, etc.)
- Firm organizational or operating agreements and all firm minutes
- Leases (building and equipment) and other contracts
- Insurance records
- Personnel records
- Firm inventory
- File inventory, including off-site storage inventory

Review your current back-up procedures carefully. Many firms don't follow a regular back-up schedule, don't back-up everything they should, or don't store the back-up copies in a safe off-site location. Many faithfully practice back-up procedures,

but have never tested them to see if data can be successfully restored from. Make back-up testing part of your regularly scheduled safety precaution drills.

The need for off-site backup has led many lawyers to adopt “cloud based” practice management systems. Such systems provide a web-based interface for functions such as calendaring; contacts and conflict of interest checking; time keeping, billing, trust accounting and financial reporting; and also provide storage for documents, allowing the user to practice almost paperlessly and from anywhere and internet connection is available. These systems have been determined to be ethical in many jurisdictions and lawyers should consider them as an easy and affordable way to back-up their critical data in a safe, off-site way. If you do use such a system, however, you should not let it lull you into the sense that you’re adequately prepared for a disaster. You must have, and continue to work, a plan for all of the physical items in your office and any other information that is not entered into the system and backed-up to the cloud.

After you’ve reviewed your back-up procedures, take a moment to consider how you handle your most important client papers. If you are trying a case involving physical evidence or “smoking gun” memos, make sure that you have taken the steps necessary to safeguard them against ALL contingencies. Consider a fire-proof file cabinet, an office safe, or establishing procedures for storing in a bank vault or safe deposit box all “irreplaceable” client papers and physical evidence. Work from copies in your office until shortly before trial.

You should also periodically review your existing insurance coverage to make sure it is tailored to the type or types of disasters you are most likely to face. You should consider whether you have, or need, the following types of coverage:

- Damage to or loss of real and personal property
- Flood Insurance (usually excluded from standard policies)
- Loss of Revenue (business interruption)
- Disability
- Long Term Care
- General Liability
- Umbrella Coverage
- Valuable Papers Coverage
- Accounts Receivable Coverage

V. Get Back to Work!

Assuming the worst has happened and the office you left yesterday afternoon is nothing but a smoldering hole in the ground this morning, what do you do next? If you have previously developed a carefully thought-out disaster contingency plan, you

need only execute the business resumption portion of that plan to be back in business. Here are some basic steps for a business resumption plan:

- Notify office staff of the nature of the disaster and, if their homes are not also involved, let them know where and when to call for further instructions. This can be done by direct calls to them, by a phone tree, or by having them call a specified number at specified times to receive live or recorded information and updates.
- Contact your insurance agent, and begin assessment of damage as soon as authorities allow it. If your complete office inventory is available, this should greatly facilitate settling your insurance claim.
- Contact your stand-by attorney to make sure he or she is aware of your situation and is in a position to help you. It is a good idea to have more than one standby, or a standby who doesn't live in the same town you do. Often, when a natural disaster destroys one law office, it destroys many in the same location.
- Execute your plan for temporary office space.
- Execute your plan for temporary or new equipment. This could be a short term lease arrangement, purchase of new computers "off the shelf," or an agreement to share excess equipment with another firm in your area. Use your supply inventory list to purchase enough supplies to get back in business at your new location.
- Notify staff of where and when to return to work.
- Load all backed-up software and data. This is where complete daily backups of both programs and data prove that they are worth the extra time and trouble they take. Cloud-based practice management systems are also great for business continuity purposes.
- Immediately review your calendar and docket to obtain any necessary continuances and make sure statutes of limitations do not run.
- Contact your clients and let them know what has happened. When informing them of the crisis, you should be truthful about the condition of your office but convey that the firm has a disaster plan in place and is taking all necessary steps to protect their interests.

- Review your client/matter list and obtain copies of all pleadings from opposing counsel or the court to re-establish your files if you have not already implemented a “paperless” office or your backup system has failed.
- Contact your banker and ask him or her to be ready to disburse on your previously arranged disaster line of credit. You will need to be able to meet your payroll and other accounts payable even if your cash flow is interrupted because of the disaster. Also, you may need to lease or purchase equipment before your insurance claims have been settled.

Statistics indicate that the majority of small businesses which experience a major disaster are no longer in operation five years later. If you hope for the best but plan for the worst, you’ll be able to take a disaster in stride and continue to provide the highest level of service for your clients.

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