

Chapter 10

Disaster Planning for Louisiana Lawyers

Disaster Planning and Business Continuity

Effective disaster planning dictates whether your office will survive a disaster. **Keep in mind that during a disaster, natural or otherwise, a lawyer's professional and ethical obligations are not suspended.**

A destructive hurricane is certainly an example of a potentially business-ending event. However, the mundane (and more common) event, such as an employee termination gone awry or a computer malfunction (virus or other technology issues) can also wreak havoc on a law office. Other examples of business-interrupting events might include: illness or disability on your part, or on the part of a key member of your office; theft or burglary; workplace violence; sudden staff changes; client trust account theft; etc.

It is in your and your clients' best interests to have a basic disaster plan in place. Regardless of your firm size or practice, an easy-to-implement plan will assist you, or anyone in your office, in the event of an unexpected practice interruption.

Before the Disaster: Disaster Plan Basics

As a disaster can take many forms, so can a disaster plan. You cannot anticipate everything, but a little preparation ahead of the disaster will save you a lot of time.

Best advice: Keep it simple and be redundant in the way you keep basic firm information.

The more complicated the plan, the more likely that it will not be implemented. Place important information in several safe places, both electronically and in hardcopy. **Redundancy increases the chances that the information will be accessible when needed.**

An effective disaster plan accounts for these two challenges: interrupted access to your client's data; and/or a power or communication outage.

A Basic Disaster Plan should include the following:

- “No Tech” Solutions: Disaster “Basic Office Info Binder” and “Office Contact Wallet Card”
- Identification of Alternative Location(s) for Office.
- Communication Plan for Clients and Staff.
- Back-Up of Client Files.
- Plan for Cash Reserves and Emergency Line of Credit.
- Business Interruption Insurance.
- Family Plan.

The extent to which you will need to implement any of these elements will depend on the kind of disaster you are confronting. However, these items should be in place **BEFORE** a disaster occurs.

No Tech Solutions - Disaster Basic Office Info Binder and Office Contact Wallet Card

These “no tech” solutions address the need for basic office information in the event of a power outage and/or when electronic access to your data is not possible.

SMALL THREE-RING “DISASTER BINDER”: The binder should contain hard copies of the following items (and should be reviewed yearly):

1. Staff Contact List: Create a printed list of staff contact information including alternative email addresses, emergency contact information, and a possible location that each person may go if evacuating.
2. Client and Opposing Counsel Contact List: Create a printed list of your clients and opposing counsel, along with contact information, including email addresses.
3. Directory File List: Print a list of your directory files on your computer system or “in the cloud.”
4. Trust Accounts/Other Accounts: Banks; Bank Contact Information; and account numbers.
5. Copy of Insurance Policies.
6. Inventory of Office Equipment & Furnishings with Photos.
7. Copies of Software Licenses/Installation Disks.
8. Important Passwords: Firm social media and website passwords, account passwords, etc.
9. Vendor and Supplier Contact Information.
10. Cell Phone Charger (include a solar cell phone charger).

**Make electronic copies of the binder’s contents in several places as follows,

- Email as an attachment to an email to yourself and to someone else you trust who lives in another area from you;
- Flash/Thumb drive (you can keep in your wallet or on your key chain);
- Electronic tablets (e.g., iPad);
- On the Hard Drive of your desktop or laptop;
- Directory on your local server; and/or
- A secure “cloud provider” (Dropbox, Box.net and others).

**Provide an electronic and hard-copy of the binder’s contents to another responsible person (key staff member or partner or other).

LAMINATED “WALLET CARD”: Create a simple, credit-card-size card with key contact information. Laminate the card and keep in your wallet with your driver’s license. One side of the card might contain key staff member contact information and the other side could be court contact information and community emergency numbers. Give a copy of this card to all staff.

Identification of Alternative Location(s) for Office: Create a list of possible temporary office locations should a disaster occur and require a temporary move. You might talk to a colleague about having a reciprocal agreement that either could use the other's office temporarily in the event of a disaster. Your alternative places to work might include your home or someone else's home. Inform staff ahead of time of these potential places. In the event of an area-wide power outage, these potential relocation spots, if known ahead of time, will also optimize your chances of finding or being found by your staff.

Communication Plan for Clients and Staff: Communication is often the first to go in a disaster. Create a default plan on what to do if you cannot communicate with each other.

- Be able, or have someone on staff able, to post remotely critical firm information on your firm website, email, Facebook, Twitter, LinkedIn, and/or other social media;
- Create a simple post-disaster default message for these sites that informs clients and staff of alternative methods of reaching and finding you; and
- Ensure that all important cell phone numbers and email addresses are stored on each other's cell phones.

Investigate other forms of communication (for example: Skype, Google voice, social media, and other electronic chat formats). Many are free.

Other tips: If you have a traditional telephone company landline, have a plain, non-cordless phone which connects directly into the phone line. When the power goes down, traditional phone lines often remain functional.

In extreme situations, the Red Cross will have satellite phones and may allow you to place a call or two.

Check your bar association for communication. During Katrina, the LSBA set up an open forum where people posted temporary location information and contact information. Local bar associations are likely to set up to respond similarly in a disaster.

After a disaster strikes, use all communication tools early and often. Do not assume what communication issues your target audience is having. Be prepared to send the same **message several different ways to optimize the chances that your intended recipient will receive it.**

Back-up Client Files and Important File Information: Back-up your client files and test your backup periodically.

Your backup method will depend on how you keep client files. Some lawyers are paper only, while others are nearly totally electronic. The vast majority are a blend of both. **Back-up methods favor the lawyer who digitizes data.** Lawyers should consider scanning/digitizing active files.

If not digitizing complete files, identify vital client records and other data that are essential for your business to continue operating. Use a small desktop scanner to scan these documents, and store copies off-site. At the very least, if you are storing paper files in your office, put them, whenever possible, in a file cabinet away from areas that potentially could suffer water damage.

There are several easy electronic back-up methods, and most are quite easy and inexpensive to do. The top methods used by lawyers are:

- **SIMPLE EXTERNAL HARD DRIVE:** Favored by the solo and small firm practitioner, this method is simple to use, easy-to-carry and inexpensive. A disadvantage is that if the device is left at the office and/or the lawyer is prevented from getting to the office, the back-up won't be available. Additionally, lawyers relying on this option often depend on only themselves to remember to do regular back-ups.
- **OFF-SITE STORAGE:** Many large firms backup data on tapes and then store them securely off-site in a safe place, like a bank, storage facility or firm administrator's home. A disadvantage is that backed-up data kept off-site is not always current.
- **ONLINE "CLOUD" STORAGE:** An increasingly popular method, secure "cloud" storage providers offer cost-effective backups, either in real time or at set times that you choose (e.g., at the end of the day or twice a day). A good "cloud" storage provider will have planned internally for its own disaster by making sure that it has multiple storage sites for its customers' data – providing easy access to your data. Research your provider before choosing. These services are very easy to use and back-ups can be scheduled so that it does not need to depend on your remembering to do so. Further, you can access your data anywhere there is internet access. Most "cloud" providers offer this as a subscription service, with cost depending on the amount of data stored. (Carbonite and Mozy are two examples of "cloud" data storage providers.)
- **PERSONAL or PRIVATE "CLOUD":** A relatively-new technology, lawyers not wanting an online "cloud" arrangement can create their own "cloud" relatively inexpensively. If you share files, often work remotely, and do not have a server for your firm, this could be a relatively inexpensive way to set up remote file storage, sync files, and file sharing. Such a device would allow you to access your documents from any device and collaborate with clients and colleagues while staying in control of your data. (Transporter is an example.)
- **OTHER METHODS:** Data can also be backed up to a network server, tape and even USB thumb drives and CDs. These methods are inexpensive and very easy to implement. A disadvantage is that these items are fragile, easily lost, and depend largely on your remembering to do the backup. Keep in mind that a disaster may cause you to move around frequently and risk damaging or losing these items.

Optimally, lawyers are storing and securely encrypting their client data and files, online and offline, in many different ways, and backing up in real time, or at least once a day. See Rule 1.6(c).

Whichever method(s) you employ, test your backup and make sure it is secure and works correctly.

Plan for Cash Reserves and Emergency Line of Credit. In major disasters, local ATMs do not always work and local banks are not open. Have cash ready to sustain you for at least a month. Establish an emergency line of credit.

Business Interruption Insurance: Know what your policy covers. Does your policy cover building contents as well as the structure? Do you have coverage for business interruption and extra expenses?

Family Plan: If the disaster affects an entire region, you will not be an effective steward of your clients' information and matters unless your family is safe. You will not be at your best in putting your office back together again unless and until your family is safe. Give some thought as to how you and your family might respond in the case of a regional disaster. Keep in mind the type of accommodations that you might need if your family has to evacuate. Consider pets or elderly members of your family who might need to accompany you.

A family plan also might include important family information in another hard-copy binder similar to the one previously described for your office where you can keep essential important papers, passwords and contact information. As with the binder for your office, scan your "family plan" binder's contents and save electronic copies in several places.

After the Disaster

So the disaster has occurred and you have a basic disaster plan. What now?

- **Attend to your family.** If necessary, take care of your family and yourself first. If your family and loved ones are not safe, you will not be useful to your firm, your staff or your clients. Encourage your partners and your staff to take care of their own families as well.
- **Keep a level head.** Everything goes wrong all at once during a major disaster and many will be at their wit's end. With a basic disaster plan binder and with your family safe and sound, you can be the level head to handle the next step.
- **Triage your issues and resolve the one having the biggest impact.** Re-establishing communications with your clients and staff is most likely going to be your biggest and most important task towards beginning recovery.
- **Implement your communication plan.**

ADDITIONAL RESOURCES

- *Backing Up Your Law Practice* by Allison Shields (*The Lawyerist*, November 16, 2011).
- *Disaster Planning: It's Not Just for Hurricanes. Are you Ready?* (LSBA 2012).
- *Resources for Lawyers & Law Firms* (Webpage by the ABA's Committee on Disaster Response and Preparedness and listing articles on "Technology Resources," "Disaster Planning and Recovery for Law Firms," and "Law Practice Management Resources.").
- *Surviving a Disaster: Lawyer's Guide to Disaster Planning* (American Bar Association, ABA Special Committee on Disaster Response and Preparedness by BDA Global LLC, 2011).
- *Surviving a Disaster: Are You Prepared?* (video by American Bar Association, ABA Special Committee on Disaster Response and Preparedness, 2011).