

Better Safe than Sorry: Emergency Preparedness for Lawyers

Here in Charleston, we count down the days until November 1st when hurricane season officially ends and then anxiously await its return on June 1st. This is the case now more than ever since over the past few years we have endured record-breaking flooding from storms and hurricanes, some of which had hit hundreds of miles from the city. Whether a hurricane, earthquake, tornado, winter storm, or any other disaster, sudden disruptions can cause professional issues for lawyers and law firms if not planned for properly. Therefore, it is a good idea for all lawyers and law firms to have procedures in place to ensure a continuity of client care, secure technology and information storage, and a plan for returning to normal business operations.

A few years ago, the American Bar Association published, "Surviving a Disaster: A Lawyer's Guide to Disaster Planning." It provides an excellent starting point for a lawyer or firm to address their current emergency preparedness plan and/or create a new one. It includes a sample Business Continuity Plan ("BCP"). A BCP is your firm's action plan for responding to a disaster or disruption prohibiting access to the main business location for more than 24 hours. This plan can include everything from building evacuation maps and important

emergency numbers to procedures for remotely accessing client files and critical business systems.

BCPs are not "one size fits all," so it is important for lawyers and firms to create a plan that specifically addresses how they intend to carry on business operations in the event of a natural disaster, or even a non-weather disruption like a power outage (my firm's building recently had one that lasted 3 days!). If you are a sole practitioner, this may be a daunting task, as you serve many different roles beyond providing legal work. However, creating emergency checklists and compiling backup contact lists in the event of an emergency is time well spent. Likewise, for a firm, it is important to clearly identify specific roles for each employee while operating during a disruption in order to resume normal business operations. While you can not avoid natural disasters, you can take steps to ensure your clients are protected and business activity resumes as quickly as possible.

The BCP should be divided into three phases: 1.) Activation and Response 2.) Alternate Facility Operations and 3.) Reconstitution.

The first phase should address the firm's activation and response plan. In this phase, the level of disruption must be identified and then an effective strategy should

be devised. This strategy can be tailored to your firm, but should account for the different challenges presented by minor complications, major emergencies, and disasters. The anticipated time and extent of the disruption will assist you in prioritizing response activity.

The second phase, which addresses alternate facilities operations, focuses on solutions for when the firm's main physical location is unavailable. While the activation and response phase entails creating checklists, contact lists, and various other written tasks, this step requires actual set up and testing of systems and processes. Technology allows many of us to access our firm's network remotely, allowing us to continue working, but does it enable full business functioning? Logging in to draft emails and documents is one thing, but filing pleadings, sending and collecting bills, and other activities might be more difficult. In this phase, assessing how your practice operates and what the essential business functions are will allow you to prepare an effective BCP.

The final phase involves reconstitution. Whether it is at your original location or your back-up site, this stage addresses how the firm is going to return to business as usual.

For a law firm, the BCP is going to have two primary goals: 1) ensuring existing clients' needs are being addressed, and 2) enabling productivity (revenue) during a business interruption. Depending on the size of your organization, you will need to develop policies and procedures for employees, including compensation/time off, access to technology, communication with outside vendors, record retention and management, among the other considerations discussed previously.

While those of us along the coasts, near a fault line, or in tornado alley may be more prone to natural disaster, an unexpected disruption can happen to anyone or any firm, and a good plan will help you maintain your expected level of service to your clients and keep your practice running smoothly even in the most difficult of circumstances.

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AttPro Snippets

According to the ABA's most recent Profile of Legal Malpractice Claims, "Failure to Know/Properly Apply Law," was the most commonly alleged error committed by attorneys. Based on the data, this type of error accounted for more than 15% of all alleged errors. Lawyers who are giving advice or working on matters outside their usual practice area should be cognizant of complex legislation, increased regulations and ever-evolving case law. That is why it is important that lawyers regularly participate in CLE programs relevant to their practice areas in order to maintain a current knowledge of the substantive law.

Visit the Attorney Protective website at www.attorneyprotective.com/webinar for a complete listing of our FREE CLE webinars and registration information.