

Getting Physical

Are You Ready for an Office Catastrophe?

Most of us thought when we decided to go to law school that we had found a way out of dealing with the humdrum and tedious details of making a living that most people have to face. No punctilious attention to little stuff like where do office supplies come from or how the office gets cleaned. Someone else would take care of all that nitty-gritty. The practice of law would be uninterrupted excitement and professional satisfaction. Reality turned out to be quite different from those idealistic expectations. We all soon learn that there is no avoiding managing the physical aspects of practicing law. One must have office space, employees, money, expensive office equipment, libraries, etc., etc. And then it is necessary to contemplate that it all might go up in smoke. Who does that thinking for your practice? Who plans for how you will manage anything from a total office wipe out to a simple power outage of a few hours, but at a critical time?

The purpose of this article is to focus on the practical aspects of risk management that relate to how you physically operate your practice. There are serious malpractice risks and professional responsibility issues when client files and property are destroyed, work control dockets are lost causing missed deadlines, and client appointments cannot be kept. Every practice must have a plan, formal or informal, for the continuity of the practice when a catastrophe occurs. This process involves planning for how to immediately respond when trouble happens, how to quickly resume time sensitive activities, and ultimately how to restore your practice to normal operations.

Fortunately, my fellow risk managers at Wisconsin Lawyers Mutual Insurance Company (WLMIC) have done some outstanding work on disaster planning for the Wisconsin Bar. They have generously permitted me to make extensive use of their work in this article so that it can be shared with the Kentucky Bar.¹

Can It Happen To You? Let Me Count The Ways!

Disasters, catastrophes, and sudden emergencies come in all shapes and sizes. The following list includes many of them:

- Serious illness, injury to, or death of you, a partner, an associate, secretary, legal assistant, office manager, or technical support person
- Natural disasters, including:
 - a. flood
 - b. tornado
 - c. severe weather
 - d. fire
- Technology failure, including:
 - a. computer or telecommunication system failure
 - b. electrical storm damage

- c. security breaches (hackers, viruses, etc.)
- Acts of terrorism or war
- Interruptions in normal transportation systems
- Environmental disasters, including chemical spills or leaks, nuclear reactor malfunction, etc.ⁱⁱ

The potential losses as a result of a catastrophe are enormous. Some of the more important are:

- Loss of current income and clients
- Loss of future or potential income or potential clients
- Lost productivity and idle employee costs
- Unanticipated business expenses, such as late fees or penalty payments, missed deadlines and appointments
- Malpractice claimsⁱⁱⁱ

Add to these risks that there is a budding new tort theory of “negligent failure to plan” and even the most planning averse lawyer should see the necessity of getting physical about risk management.

Before It Happens – Anticipate and Plan

The first priority in anticipating a disaster in the office is the safety and welfare of the people in the office. People are the top priority for obvious reasons and also because failure to plan for their safety is the most likely reason that a negligent failure to plan suit could be brought. Begin the process with a risk assessment covering office safety considerations and insurance requirements. Make a complete inventory of all office contents. Be sure to include computer hardware and software specifications. Make lists of critical contacts to include emergency help contacts, clients, opposing counsel, courts, and business contacts (e.g., landlord, suppliers, etc.). Review insurance policies to assure adequate coverage. In addition to malpractice, property, and general liability coverage, consider adding policies or endorsements that cover business interruption, valuable paper destruction, and cleaning expenses. Make sure that policy limits are high enough to realistically cover your anticipated losses.

WLMIC suggests this approach for establishing a disaster plan:

- Establish an evacuation procedure.
- Establish a procedure for notifying, and accounting for all employees. Include in your plan steps to be taken in the event telephone service is unavailable. Will you arrange to meet at a specific location?
- Decide upon a meeting place outside the office, with instructions to employees about when to meet in the event of a disaster. Take a head count of your employees at the alternate meeting site. Keep a current directory, at a location other than your office, of employees' home addresses; phone numbers, including cell phones and pagers; and emergency contact persons. Be sure key people in your office know the location of this directory.

- Arrange for an alternative work site. An alternative site might be anything from someone's garage or basement to formal workspace at a satellite office or rented facility. Consider a *mutual aid agreement*—a prearranged agreement developed between two or more entities to render assistance to the parties of the agreement in the event disaster strikes.
- Protect your computer data. Establish program backup procedures and be sure to test them on a regular basis. You don't want to discover during a disaster that your data backup system is faulty. Make sure your office administrator or other key employee has information (duplicated in a location off-site) about your hardware and software, including: location; serial number; original price and purchase date; and vendor.
- Protect your paper files. One such plan is the Paper LESS Office™. For information, go to www.microlaw.com.
- Every employee should receive a written copy of your disaster plan or business recovery plan. Every employee should know his or her responsibilities in carrying it out.^{iv}

WLMIC advises that these documents be maintained in an off-site location:

- Your firm's insurance policies, including policy numbers, agents' names and telephone numbers, and instructions for filing claims.
- Your lease and name and phone number of the office building manager, if applicable.
- The location of computer equipment for restoring data, along with the location of your off-site backup disks or tapes.
- Detailed records of firm income, accounts receivable, payroll and other documentation for filing a claim under your business interruption insurance.
- A recent valuation of your property (building and contents) for filing a property insurance claim.
- A list of all library contents and subscriptions.
- A list of pertinent information about office equipment, including furniture, fax machines, photocopiers, dictation equipment, telephone equipment, etc. Should include serial numbers, purchase dates and prices, vendor, warranty information, and service contracts.
- Maintain at least one off-site calendar and keep it up-to-date.
- Clerk of court and key court personnel contact information for all courts in which you have active files.^v

Planning for office records protection and recovery is the most critical requirement in quickly resuming operations after a disaster and the successful restoration of normal operations. WLMIC offers these checklists for managing paper and electronic files before disaster strikes:

Paper files:

- **Define and identify "vital" records.** Vital records – defined as those essential for business to continue – make up 3 to 15 percent of all records.
- **Scan or microfilm active or mission-critical files** and store the copies off- site. Microfilm is preferred medium for high-volume, long-term storage. As long as you have light and a magnifier, you can access the information. Microfilm eliminates concerns about "data migration," a term of art that describes the challenge of maintaining access to electronic data stored in formats that quickly become obsolete.
- **Label or color code your files** or file cabinets in such a way that active or vital records can be identified and recovered first following a disaster.
- **Store paper files in metal cabinets** that can be closed and locked at the end of each workday. Store files off the floor, where water damage is less likely to occur. Encourage employees to put files away at the end of the workday. Fireproof file cabinets are expensive, heavy, and offer very little protection in a fire.
- **Contract in advance with a document recovery service** that has expertise and equipment for salvaging and restoring paper documents. These services typically vacuum dry or vacuum freeze dry documents, either at their facility or trucks that can be parked outside your building. Ask if the cost of "pack out," i.e., packing and removing damaged documents, is included.
- **Evaluate the security of off-site records storage.** Is the facility staffed? Does it have a sprinkler system? Fire alarm? How often are those systems tested? How are the temperature and humidity controlled? What insurance does the facility owner carry to cover your property?
- **Review your property insurance coverage.** Does your business owners policy cover the building contents, as well as the structure? Do you have business interruption insurance or extra expense insurance? Does your insurance cover the expense of removing and recovering destroyed and damaged files?
- **Consider purchasing valuable papers insurance** to cover the cost of restoring or replacing valuable papers, such as client files and operating records. This coverage typically is added by endorsement.
- **Keep a camera and film or video recorder** and tape handy to document property damage before clean up begins.
- **Develop a system for making and prioritizing files** for recovery. Describe the system in your disaster recovery plan.
- **Keep a supply kit** - preferably off-site - for recovering damaged files. Your property insurance requires you to take steps to prevent further damage from occurring after a disaster.
- **Identify freezer space** where you can safely store damaged files for recovery later. Freezing inhibits mold and mildew growth and slows deterioration while you determine if the files merit recovery.^{vi}

Electronic files:

- **What information will you store electronically?** You will want access to current client matters, prototype documents, electronic forms, calendar and docket

system, contact information, time records, and firm financial data.

- **Will you scan and store incoming information as well as firm-generated documents?** To image everything that comes into the office could be difficult, but it's not hard to make a copy and send it to the clients. Combine that with referencing all the important points made in incoming correspondence in your own outgoing correspondence, which routinely is copied to the client and also is part of your internal backup system, and a lot can be salvaged without the paper file.
- **How will you identify records?** Is your file and document naming convention descriptive, intuitive, and scalable?
- **What formats will your firm use to archive information?** Portable document format, better known as .pdf, is recommended for archiving records. The latest version of PaperPort® now scans directly to .pdf files. Corel WordPerfect® has .pdf format as one of its “save document” formats. There is an add-in for Microsoft® Word to do likewise.
- **How will you recover your electronic records after a disaster?** Can you electronically search multiple formats? Software exists that can search scanned documents and .pdf files as well as internally generated documents for key words and phrases. Make sure you archive earlier versions of operating systems and software to access stored information.
- **What hardware and software will you need to access your data?** Periodically test your ability to recover data from backup media at a remote location. If your computer equipment is damaged by water, smoke, heat, flying debris, or other hazards, a data recovery service may be able to retrieve data from computer hard drives and magnetic media. Check your property insurance to see if the cost of data recovery is covered.
- **What media will you use for electronic records storage?** Magnetic storage media (disks, tapes) have a life span. Maintain a regular schedule for replacing tapes and disks. Alternatively, there are web-based data storage services, where you can rent space by the gigabyte or by the month. Evaluate the information security measures used and the long-term viability of the service provider.
- **How frequently will you backup the information?** Daily, weekly, monthly, yearly? If a tornado destroys your firm at 3 p.m. today, will current work product –probably the most urgent, got-to-have-it-now information – be secured? Think about what you can do to capture today's work product, as well as all prior work product. Try automatic file saves to multiple storage locations, for example, Zip disks, external universal serial bus (USB) hard drives, or flash memory products.
- **How long will you keep electronic records?** The Wisconsin statute of limitations for attorney malpractice is six years from the date of *discovery* of the error or omission. Ethics grievances may be investigated for up to 10 years. At the time you close a file, assign a date for future review and purging. [Note: *Lawyers Mutual of Kentucky recommends that records be kept for at least ten years. For more on file retention see “The Secret Life of Client Files” at www.LMICK.com in the Bench & Bar section of Risk Management.*]
- **How will you ensure confidentiality of client information?** Who will have access rights to electronically stored documents? If you work with outside service

providers or store your data on commercial web storage, take steps to safeguard confidential information.

- **Who will be responsible for backing up your firm's records?** Who is that person's backup when she or he is out of the office?
- **Where will the backup media be stored?** You need to store backup media off-site, far enough away that it won't be affected by the same disaster, yet in a place where you can access it.^{vii}

Finally, don't forget emergency supplies must be readily available. The following list is a helpful guide:

- First aid supplies
- Flashlights
- Blankets
- Tarpaulins and plastic sheeting
- Plastic storage boxes
- Fans and/or dehumidifiers
- Wet and dry vac
- Waterproof, grounded, heavy duty extension cords
- Sponges, brushes, and hoses
- Wheeled cart
- Absorbent paper and freezer or wax paper
- Cell phone or other portable communications device
- Petty cash, as ATMs may not be operable during some types of disasters
- Emergency water and food supplies
- Wet weather gear and warm clothing such as boots, hats, gloves, etc.
- Portable battery operated radio^{viii}

When The Worst Happens Execute The Plan

Follow these steps in reacting to a disaster:

- **Wait for permission to re-enter the building.** Smoldering fire, falling debris, and high water levels are clearly identifiable hazards; less obvious perils include downed electrical wires, natural gas leaks, and toxic chemical release. At a disaster scene, the fire department is in charge – not the police or utility.

Check the surroundings:

1. Check electrical, HVAC, and plumbing systems. Make sure they are in order; i.e., no loose wires, no damaged or leaking water or gas pipes, etc.
2. Check for standing water and other water damage.
3. Ensure employees aren't in danger of being struck by falling objects.
4. If there was a fire, carefully open all metal storage units and cabinets. They could still be hot, and could start a flash fire upon opening.

- **Call your property insurance agent** to report the damage and get instructions. Your insurance company may be able to arrange for repairs more quickly or affordably than you can on your own.
- **Photograph or videotape** the premises to document damage, once you regain access.
- **Act quickly** to freeze or recover vital records. Water-damaged paper begins to mold, mildew and disintegrate within 36 to 48 hours.
- **Contact a document recovery service**, if available. Look in the phone book under "business documents and records-storage and management." Widespread disaster will create a high demand for these services.
- **Assess damage and classify records for recovery.** Color code files with color tape, markers, chalk, or paper tags with wire holders.
 - i. Black = Destroy – file is not salvageable
 - ii. Red = Recover – file is vital to firm operations
 - iii. Yellow = Freeze – recover only when needed
 - iv. Green = Use – no recovery needed
- **Remove unharmed and salvageable files** from the premises and protect them from further damage.
- **List the destroyed records** (if possible), including the client or file name and when, why, how, and by whom the file was disposed.^{ix}

For electronic files take these actions:

- **Prevent further damage** to computer servers and storage media. Remove from the premises, if possible.
- **Rinse damaged electronic media** in clear water. Store in sealed, waterproof bags. Do not attempt to dry or freeze disks and tapes, as you would paper documents.
- **Dispose of damaged computer equipment properly.** Landfills cannot accept computer equipment until hazardous materials within have been removed. Plus, confidential information stored on hard drives or electronic media may still be accessible.^x

After taking the forgoing steps in immediate reaction to the crisis, proceed to execute the portion of the plan that concerns identifying time-sensitive matters that require prompt attention. Once these are under control work can begin on restoring the practice to normal operations.

Summing Up

Regardless of the size of your practice a disaster plan is essential. Smaller firms do not have the same requirements as a firm occupying three floors of an office high-rise in Louisville, but they still need a plan. Solo practitioners can have backup computers at their home and at the home of a secretary or paralegal. Cell phones mean that you are never without telephone service. There are numerous practical and relatively inexpensive methods for smaller firms to adequately prepare for catastrophe including a Buddy System that provides for reciprocal backup with a qualified peer. Use this article as a

starting point in making your plan. The Internet has a number of sites that provide further information to assist in planning. One that was a helpful resource for this article is “managing Practice interruptions” at www.practicepro.ca/disasterrecovery.

ⁱ The primary resource for this article is WLMIC’s manuscript “Recovering from Disaster Step by STEP,” by Ann Massie Nelson, Director of Marketing, Communications and Risk Management; Sally Anderson, Director of Claims; and Deborah Kilbury Tobin, Risk Management Specialist. My thanks to them for their gracious permission to use these materials with minor formatting and editorial modifications.

ⁱⁱ *Id.* at 3.

ⁱⁱⁱ *Id.* at 4.

^{iv} *Id.* at 4.

^v *Id.* at 5. This list with some modification appeared in the article *Disaster Recovery Plan Can Help You Manage Risk* by Ann Massie Nelson in the *Wisconsin Lawyer*, December 2001 at page 34.

^{vi} *Id.* at 14. This list with some modification appeared in the article *Act Quickly to Recover Damaged Records* by Ann Massie Nelson in the *Wisconsin Lawyer*, June 2003 at page 23.

^{vii} *Id.* at 17. This list with some modification appeared in the article *Electronic Records Plan Aids Recovery* by Ann Massie Nelson in the *Wisconsin Lawyer*, August 2003 at page 23.

^{viii} *Id.* at 6.

^{ix} *Id.* at 7, 16. This list with some modification appeared in the article *Act Quickly to Recover Damaged Records* by Ann Massie Nelson in the *Wisconsin Lawyer*, June 2003 at page 23.

^x *Id.* at 18. This list with some modification appeared in the article *Electronic Records Plan Aids Recovery* by Ann Massie Nelson in the *Wisconsin Lawyer*, August 2003 at page 24.