

APPENDIX X

CHECKLIST FOR LAWYERS' BUSINESS DISASTER PLANNING AND RECOVERY

Imagine yourself as a lawyer whose offices have just been closed as a result of a “disaster,” whether it is a fire, flood, windstorm, terrorist attack or the product of some other natural or man-made event. Building management has notified you that, in all likelihood, you will not be permitted to re-enter the building for at least a week. And, they admit it might be longer. To heighten the sense of urgency, assume you or your firm have no disaster recovery plan to which you can refer and thus no step-by-step approach to handling the situation. This is not an event anyone expected, but, as demonstrated at the World Trade Center, it is a risk faced by every lawyer, regardless of practice setting or locale.

After you kick yourself for not having a disaster plan, what is your first move? The best answers are likely to fall into one of three categories. These are: How do we contact, reassure and communicate with our employees? How do we notify and communicate with our clients? What must be done to put the firm “back in business”?⁷

In order to protect your practice against the ill effects of a catastrophic event, you or your firm should have a business continuity plan in place. It is important that the plan is available in all events and not just literally left in a drawer in your office; for instance, once a plan is put in place, consider sending it to your firm’s attorneys at their homes for their retention there and/or making it available to relevant persons over the Internet, perhaps through a firm Website. Implementation of such a plan following the occurrence of a catastrophic event impacting your practice can help put you on a path to disaster recovery. The following outlines a methodology for developing a business continuity plan for catastrophic events and related considerations.

A. Impact Analysis

1. Perform an impact study of catastrophic events in order to identify functions and services the firm considers critical (i.e., for which continuity is required at all times)
 - a. Include specific disaster scenarios causing different levels of disruption
 - b. Examine alternative methods for conducting the firm’s business, depending on the degree of disruption
 - c. Examine methods for uninterrupted provision of services identified as critical
 - d. Examine recovery time frames for all functions and services
 - e. Examine methods of dealing with individual/personal disasters (e.g., sudden death or disability of a partner)

7. Randolph J. Burkart, *Disaster Recovery: After the Damage is Done*, N.Y.L.J., Mar. 9, 1993, p. 4. © NLP IP Company 1993.

B. Plan Preparation

1. Identify the location of at least the following:
 - a. List of all clients and client matters
 - b. Contact lists (e.g., rolodexes, computerized address books, etc.); in the case of all contacts which would need to be made, be sure to have specific names, addresses and telephone numbers
 - c. Client files
 - i. Physical
 - ii. Electronic
 - d. Calendar and docket for all client matters
 - e. Billing records
 - f. Financial records
 - i. Firm operating records
 - ii. Client funds
2. Write a business continuity plan (the "Plan") in case of a catastrophic event; overall, identify who in your firm will be responsible for each task set forth in the Plan
 - a. Contact employees
 - i. The first concern after any disaster should be to locate and ensure the safety of the firm's employees. It is equally important to let employees contact their families and to confirm that they are safe. This will be an easier process if telephone lists or directories with home numbers are routinely distributed (and mailed to all personnel). Facts which should be communicated to the employees during the initial call include:
 - (A) The firm has established voice mail capability for all employees. This need assumes that the firm has a voice-mail system and that it is inoperable. The approach will involve the use of a voice mail service bureau. If at all possible, communicate the needed voice mail log-on instructions to the employee during the first call. Service bureau-based voice mail is an easy and relatively inexpensive way to keep everyone posted on the status of the firm and in contact with each other. It will, if the disaster necessitates a long-term office closing, also become a useful tool for attorneys to stay in touch with their clients.
 - (B) For larger firms, using a conferencing service provider, arrange conference calls among all practice and administrative groups. This can only be done if telephone and fax numbers exist outside the office. If this does not exist, it must be created "on the fly" as attorneys make contact.⁸

8. Randolph J. Burkart, *Disaster Recovery: After the Damage is Done*, N.Y.L.J., Mar. 9, 1993, p. 4. © NLP IP Company 1993.

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- b. Contact clients
 - i. Once you have contacted all employees and ensured their safety, the next step is to contact your clients to assure them that the firm is in a position to continue to represent them and to notify them of any interim or new contact information.
 - ii. To assist in this process, consider the following:
 - (A) Establish a small command center immediately. Equip the site with at least five or six telephones, two fax machines, four to five personal computers (preferably with modems) and up to ten local telephone lines. This center will become home to your disaster team and, during the first several days, the focal point of all employees and clients. Do not worry about having calls to the firm's main number or DID lines transferred to the command center initially. For smaller firms or solo practitioners, make arrangements to use your home, a local hotel or motel or another lawyer's office (perhaps by making advance reciprocal arrangements with that lawyer).
 - (B) As client contact is made, the command center should be notified, and the client's name, contact and fax number centrally recorded. You do not want to alarm clients by repeatedly contacting them to assure them that your firm is "okay." Repeated and haphazard contact will send a different message; one that says all is not well and that you have no plan.
 - (C) As clients are identified, they should be contacted first by telephone and, then, via a brief fax message or letter. Since you or your firm may be contacting hundreds or even thousands of clients, you should not attempt to do this via your fax machines in the command center. You should look to your long distance vendor or fax vendor, who should be able to provide you with a method to "broadcast" the fax simultaneously to all addresses. The fax message should be brief, advising that the attorney responsible for the matter will contact the soon. The fax should list the command center's telephone and fax numbers. However, calls to the command center should be brief and should occur only until a temporary office is established.⁹
 - c. Contact courts
 - i. If you have cases pending, you will need to contact the courts to determine if their facilities were affected by the disaster and, if so, what plan of action they have devised. The courts are also a good source for obtaining records that have been lost or destroyed.
 - ii. Have "at the ready" a master application form to go to the administrative judge(s) requesting case adjournment(s) and designate a responsible attorney (e.g., head of litigation or deputy) to act on it when necessary.
 - d. Contact others
 - i. Contact banks for replacement checks and bank records

9. Randolph J. Burkart, *Disaster Recovery: After the Damage is Done*, N.Y.L.J., Mar. 9, 1993, p. 4. © NLP IP Company 1993.

- ii. Contact payroll service
- e. Office space/furnishings
 - i. Identify/communicate alternative work locations

It may be only a tent or other temporary shelter, but you need a temporary office during the time that your office is being repaired. You will want it to be as close to your office as possible. Whatever situation you arrange, assure that there is some private area in which you can converse with clients. Post a sign where your office was, directing interested parties to your temporary quarters.

If your local newspaper is up and running, consider placing an ad announcing that you have moved to a temporary location. Provide your address and your phone number and the working hours that you are available. Encourage clients to contact you to be sure you have all cases listed and that you have new locations for clients with pending matters.

Consider all that you will need to start a practice, for that is what you will be doing again. Make a list of supplies and call for them when you can. You will also need some common forms, especially a new case creation or intake sheet to record those new clients you will counsel as a result of some problem that arose from the disaster. In addition, the new case sheet may be valuable when starting to recreate a file from no available data. A copy of all of those sheets ought to be kept separate for later establishment of the necessary office databases and systems.¹⁰

Some firms have identified others similar to them—"twins," if you will—and made arrangements with their twin(s) for the firms to accommodate each other in case of a catastrophic event. Consider identifying a "twin" for your firm and establishing mutually cooperative contingency plans. Your firm's "twin" might not even be another law firm (e.g., consider accounting firms, brokerage firms, etc.). This is obviously intended as a possible temporary solution. Be very aware of the need to address conflict of interest and confidentiality issues in this context.
 - ii. Other suggestions
 - (A) Call local realtor to find office space
 - (B) Share space with others temporarily (lawyers, accountants, hotels)
 - (C) Obtain (rent, borrow or purchase) furnishings (desks, chairs, lamps, filing cabinets, bookshelves, etc.)
 - (D) Contact vendors concerning temporary location
 - (E) Contact Post Office and other delivery services to stop delivery to damaged location and re-route to temporary location
- f. Telephone and Internet service
 - i. Arrange to have telephone calls forwarded to new number or arrange for telephone answering service with prepared message until new system in place
 - ii. Arrange temporary service with local telephone company at temporary location

10. Robert D. Reis, *After the Hurricane, The ALPS Risk Management Report*, Vol. 3, No. 12 (Dec. 1995).

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- iii. Phones, fax, modem, Internet use
 - g. Equipment
 - i. Contact equipment vendors regarding existing leases/contracts and your/their performance obligations under the terms of lease or contract
 - ii. Types of equipment needed:
 - (A) Computer
 - (B) Printer
 - (C) Fax machine
 - (D) Copier
 - (E) Dictation equipment
 - (F) Typewriters
 - (G) Computer network
 - iii. Identify portable computers/home computers and other equipment owned by the firm that might be pulled back from home use during recovery period
 - h. Office supplies
 - i. Contact supply vendor to obtain necessary supplies
 - ii. Contact printer to print stationery, business cards, etc.
 - iii. Contact forms vendors (billing forms, other forms)
 - i. Library
 - i. Evaluate possibility/cost of repairing books (vacuum/freeze dry method)
 - ii. Identify subscriptions/volumes to be replaced immediately
 - iii. Arrange with other firms/universities to use library facilities
 - iv. Establish link with providers, such as Lexis, Loislaw, or Westlaw at your new office location
 - v. Publish a resource list for attorneys about where to go for library services
 - j. Documents and records
 - i. Client documents and records (opposing counsel/clients/Secretary of State's Office may be able to assist with copies and reconstruction of events, dates, deadlines, etc.)
 - (A) Leases
 - (B) Wills
 - (C) Agreements
 - (D) Settlements
 - (E) Corporate records
 - (F) Docket and calendar records
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- (G) Pleading files and court papers
- (H) Client billing information
- (I) Current address of client's counsel and contacts
- (J) Billable time and receivables information
- (K) Correspondence
- ii. Firm documents and records
 - (A) Leases/subleases (landlord, leasing companies may have copies)
 - (B) Agreements (other parties may have copies)
 - (C) Client list of names, addresses, phone numbers
 - (D) Client files and billing records (opposing counsel/clients may be able to provide copies)
 - (E) Accounts receivable information
 - (F) Work-in-process information
 - (G) Financial records (CPA may be able to provide copies)
 - (H) Insurance policies, broker information (insurance company has policy)
 - (I) Inventory of physical assets
 - (J) Payroll and employee records (payroll service, employees may be able to provide information to reconstruct)
- iii. Solo practitioners and small firm attorneys should give serious consideration to off-site backup of computer files, to the extent you have not already done so. You may also wish to start a process of scanning or electronic imaging of key documents in your files, back copies of which should also be stored off-site.
- k. Malpractice insurance issues
 - i. After a disaster, a law firm may be exposed to malpractice claims resulting from the difficult and time-consuming nature of recovering lost or destroyed records. Below are some of the issues that may arise.
 - (A) The most frequent source of claims is likely to be failure to take action within a specified time period. Usually, this is seen in the failure to file an action within the statutory period. Possibilities include lawyers sued for failure to file pleadings within the permissible time, failure to comply with orders for filing of any response or other document within a specified time and a host of other errors or omissions that all result from a failure to keep and adhere to a good calendar.
 - (B) Lack of confidentiality may arise as records that were blown about are recovered.
 - (C) Some clients may allege that their rights or positions were not prosecuted with sufficient zeal as available records and evidence were lost.

- (D) New clients may be in dire straits and become unreasonable if their concerns cannot be addressed and resolved promptly. Unrealistic expectations often turn into claims against a lawyer when no one else can solve the problem nor has sufficient assets to address the issues.¹¹
- ii. If the disaster is widespread, the courts and government are likely to be sympathetic to the plight of those affected. For instance, as a result of the World Trade Center disaster, Governor Pataki signed several executive orders designed to suspend and delay the statutes of limitations for certain actions. Chief Judge Judith Kaye also issued a statement to the members of the New York State Bar stating that the courts would be understanding and honor requests for adjournments where appropriate. Attorneys should apprise themselves of any such actions on the part of the government.
 - iii. In any event, you should contact the courts and opposing counsel, notify them of your situation and new contact information, and request copies of documents for pending cases and time extensions where necessary. In addition, contact your malpractice/"E&O" insurer to inform them of the disaster and obtain information and advice about how to avoid malpractice in event of missed deadlines and other potential errors or omissions resulting from the disaster.

11. Robert D. Reis, *After the Hurricane, The ALPS Risk Management Report*, Vol. 3, No. 12 (Dec. 1995).

