CHAPTER 2

The First Seventy-Two Hours:
A Guide for Helpers

What to do following realization of a casualty emergency.

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Figure 2-1 Nominated Helpers List
Consider this story. An esteemed trial lawyer owned a firm employing two associates and three staff members. Although the associates dreamed of being successors, neither was on a partnership track. While piloting his private plane to an important deposition one day, a malfunction occurred and the plane crashed, killing the trial lawyer. The catastrophe made headlines in the local newspaper.

This is a story from a small town many years ago, and opposing counsel did not file defaults, and judges understood the need to reschedule litigation. But even back then, in the age of courtesy, clients still panicked. Despite the assurances given by the associates, many clients with active litigation pending raced to pick up their files. By day one, the staff realized that there was no provision to continue paying salaries, so by day two, they were gone. The associates stayed long enough to protect themselves from claims, but by the end of the week they simply locked the office door and walked to new jobs.

The decedent’s personal representative, the accountant, and the estate’s lawyer worked hard and were proud that it only took thirty days before someone was empowered to unlock the office door and inventory what was there. But in that time, the esteemed practice and its entire value to the estate had disappeared.

2-1 INTRODUCTION

This section has been prepared for helpers who have the authority to act on behalf of the affected lawyer and for those parties who are looking out for the best interest of the affected lawyer during an unexpected event or casualty. Helpers may be family, friends, colleagues, staff, or third parties designated as the information safekeepers.

If a crisis has occurred, it is imperative that, as a first responder, you act promptly, because the first seventy-two hours following the onset of a crisis is a critical time for the survival of the law practice. It is assumed here that if properly managed, most practices can survive for a few weeks after a serious interruption, but few can weather much more than a month of being closed. This guide will lead the helper through the management steps.

2-2 DAY ONE AND THE FIRST FIVE MINUTES

Shock! You, the first responder or other helper, have just received the news of an unexpected casualty to the lawyer for whom you agreed to provide emergency support. For purposes of using this manual, it does not matter whether the casualty is an unexplained absence following some natural or civil disruption, the onset of sudden illness, or an injury from an accident. Regardless of the lawyer’s physical state, there are some immediate actions that must be taken to protect an active law practice and its clients.

2-3 THE FIRST THIRTY MINUTES

If you are reading this guide as a first responder who has not previously been nominated to fulfill one of the helping roles in a crisis, you first need to determine whether the lawyer has already prepared an emergency casualty plan. To determine what the lawyer has put together, review the following:

1. If the lawyer has not previously prepared for such an event, there will be some additional problems to tackle, such as finding what you as a first responder need to know, figuring out who needs to do what, and obtaining the legal authority to do it! Even if this is the
situation, this manual will still be helpful because it will outline and describe the issues that will need to be resolved and aid in what matters attention should be acted on.

2. If the lawyer has completed an emergency manual and formed the relationships needed to execute the emergency casualty plan, you as a first responder can breathe a sigh of relief because a person with authority to carry out the plan and the information needed to implement the plan have been prepared.

a. First, determine whether the lawyer has prepared for the interruption. Review Chapter 1, section 1-4, “Overview of the Law Office Emergency Information,” which would have a completed Critical Contact Emergency Calling Chart. The Nominated Helpers List found at the end of this chapter (see Figure 2-1) should contain a list of nominated helpers. If any part of these forms has been completed (or the information requested on that form is otherwise provided), then at least some preparation has been made.

b. Turn the law practice issues over to one of the nominated helpers who will know how to start the procedures established in the emergency casualty manual.

c. Refer to the questionnaires and forms contained in Chapter 1 and the nominated helpers list in Chapter 2 for help and initial guidance.

2-4 THE FIRST TWO HOURS

When this news hit, you as the first responder or helper were most certainly shocked and unsettled, but fortunately you were provided with this action plan. The lawyer, so dedicated to his or her career, clients, and family, used good judgment in formulating a plan that will aid you, the designated helper(s), with a smooth transition in the wake of this most unfortunate and unexpected event. This manual has been provided to guide and assist you through procedures that will help the affected lawyer not only fulfill his or her ethical and malpractice prevention responsibilities, but also preserve the law practice and its value. So now, assuming that you are one of the nominated helpers in the lawyer’s support network, let’s get started by reviewing our paradigm.

There are many different roles fulfilled in the lawyer’s casualty support network. The description of these roles provided in Chapter 1, Figure 1-1, is only confusing to the extent that all these roles may be fulfilled by one person or assigned to several people. (Some of the roles are merely transactional; that is, the role describes a step more than a specific person, but others’ roles will refer to a specific individual.) The application of the structure depends on whom the affected lawyer nominated as designated helpers. Then, the emergency plan set up and its effect will depend on the type of crisis.

The responder who alerts the support network to the crisis, along with the roles or steps involved in dealing with a law practice crisis, are summarized as follows:

1. **Custodian of the Emergency Casualty Manual.** The lawyer has prepared this manual to be used in case of an emergency. The use of the term “manual” does not mean that all the information has been written down and stored in one place. Some parts of this manual may be stored in an electronic form. However it is stored, the collective information is referred to as the manual. Moreover, someone (or some group of people) must either have custody of the information or the ability to gain access to it. Whatever the arrangement, whoever fills this role is collectively referred to as the “custodian” of the emergency casualty manual. (How parts of the manual are stored and who is entrusted with its access may depend on the confidentiality level required by the material.) The manual is a collection of essential information, together with a description of the immediate steps required to preserve and maintain the integrity of the law practice and the value of the law firm.
2. **Business Manager.** It is assumed that the lawyer has some business aspects to the practice that are not best handled by the person fulfilling the role of the lawyer’s own lawyer. Sometimes, the business management role can be best filled by the lawyer’s personal representative. The manual can specify whether the custodian of the information, the business manager, and the helper are all one person or several people. The manual should also provide a chain of command; that is, who is supervising whom. Once the information from the manual has been retrieved, this guide assumes that it is speaking to the business manager, but as with all of this, the actual voice will depend on what is to be faced at the time of an actual crisis. If you are a non-lawyer steward of the business elements of the practice, you must be careful to refer the lawyer’s functions to the helping lawyer.

3. **Lawyer Helping Roles.** First, to preserve client confidentiality and to prevent malpractice, a lawyer needs to be called in to review client files, client and court calendars, hearings, and deadlines to the extent necessary to discern whether any immediate protective action is needed. Clarify whether the lawyer will perform as follows:

- work gratis or for a fee;
- primarily represent the client or the law practice;
- act as a short-term substituting/helping lawyer or long-term successor lawyer; or
- some combination of the above.

Even if the helping lawyer is appointed to be the chief supervisor, office management and business functions may still be delegated.

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**CAUTION:** The affected lawyer may only be just a victim of an unexplained delay or absence. Whatever the emergency situation may be, three days of unavailability with its concomitant loss of client supervision could cause ethical or malpractice exposure. If the lawyer is simply unavailable, you might want to delay making any business decisions until more is known about the lawyer’s condition. Regardless of the cause, most small firms can’t survive more than a month of downtime. So, no matter what the circumstances and no matter if you are the friend, interested relative, business manager, or lawyer, if the days turn into weeks, some business decisions about the future of the practice will need to be made. However, a good transition at the thirty-day mark is built on the foundation laid in the first three days, and that foundation starts forming in the first hour. Hand in hand, a smooth return to practice from a temporary crisis is likewise built on that initial foundation.

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**2-5 THE FIRST FOUR HOURS**

Within the first four hours, all key persons should be notified. At least parts of the emergency information should have been accessed. This guide is written as if the affected lawyer is still alive but incapacitated or missing, or at least death has not yet been determined. At death, powers of attorney are void and an executor will have to be appointed to fully effectuate the plan. In that event, the business decisions about what to do with the law practice will need to be greatly accelerated. Even if the lawyer is dead, there is still an urgent need for another lawyer to access client information to determine whether any immediate protective action needs to be taken on behalf of the clients. Also, the business manager still needs to make sure that the premises and property of the practice are safe and secure. If necessary, the transition to a successor lawyer can occur later.
THE FIRST EIGHT HOURS

You as the first responder or helper have now had some time to digest the shocking news, but because you have agreed to steward the law office through this crisis and you have displayed the ability to handle the affairs caused by this most unfortunate event, you are being relied on to get the practice through this most difficult time.

There will be a lot of matters to get through in the coming days, but the emergency manual should make carrying out your responsibilities a little easier during this trying time. Of course, this manual can’t predict how much time has already lapsed or how many more days will be needed to see this process through, but the first seventy-two hours has started. It is the most critical time for protecting and maintaining the affected lawyer’s practice. Part of you will wonder what you got yourself into and the other part of you will want to worry or grieve. You must stay calm and get organized for the responsibilities you have been entrusted to handle. To get organized quickly, do the following:

1. Find the emergency manual.
   Follow its instructions and familiarize yourself with the overview of the law firm operation and what your duties entail. As mentioned, all the information may not be in a written manual. Access the information. We may be talking about something sophisticated like computer passwords, or something basic like a safe or safe deposit box. Even if the detailed information is stored away, the basic information should be included in the manual or otherwise easily available. By gaining control you will avoid panic, worry, and uncertainty.

2. Make the phone calls. You have been provided with a calling chart. Assuming that you are not also the primary helping lawyer, you will now need to review and confirm arrangements with the helping lawyer(s). On the other hand, if you are both the custodian of the emergency casualty manual and the helping lawyer, then you might want to make a decision to delegate some of the business and office management functions.

3. Since news travels fast, you need to be faster, so call all the staff, associates, partners, affiliates, and anyone else set forth on the calling tree.

4. Arrange for the helping lawyer to meet with all the key people. In other words, arrange for an emergency meeting(s).

DAY TWO AND THE FIRST THIRTY-SIX HOURS

(This is and will be dependent on the day and time when the circumstance, event, or casualty occurred.) The next thing to do is to gain access to the lawyer’s office. Depending on the lawyer, this may mean a regular business office, home office, traveling personal computer or PDA, or even an outsourced “virtual” assistant (or combination of all these.) Following the directions contained in the Law Office Emergency/Casualty Manual, you should have a description of the lawyer’s practice setting with instructions for obtaining keys, codes, passwords, and so forth to allow office and computer entry. The first things to do after gaining access follow:

1. The first responder or helper must be sure that the physical premises, electronics, files, financial information, and property are safe and secure. If this function is performed by a non-lawyer, make sure specific client information is not inspected so confidentiality is maintained. This manual cannot presume to know the time or circumstances within which the crisis is unfolding, or when the authorized helping lawyer will be available, so the first responder may have to make some immediate common-sense decisions about what is prudent with respect to the overall operation of the law firm.
Being Prepared

2. The first responder or helper needs to ascertain who the key staff, practice, and business associates are for the law firm.
   a. Did the affected lawyer have a secretary, paralegal, associate, outsourced assistant, or partner working with him or her? If so, contact them to determine whether they believe there are any urgencies or exigent matters. Determine whether these are client matters or business matters. Defer business matters to Day 3 and arrange for a meeting with the helping lawyer to discuss client matters.
   b. Refer to Chapter 3, of this manual for an overview of the law office.

   This will be an emotional time for the staff, for they most often tend to be very close and loyal to the lawyer for whom they are working. In some situations, they might feel this lawyer and law firm are part of their extended family. Careful, accurate facts should be communicated to all. Stress the need to have an office meeting and that there is a Law Office Emergency Casualty Manual that has been activated. At the emergency staff meeting, set out a course of action to make sure the law practice is operating smoothly. If the crisis appears to be temporary, the key people will need reassurance to help them get through the crisis. Even if the crisis appears to be long term or permanent, you still want to have the key people stay long enough to assist with an orderly winding-down. This is why the manual should have all staff numbers, including cell phone and emergency numbers.

2-8 THE FIRST FORTY-EIGHT HOURS

Whatever role the helping lawyer plays, it is now time for him or her to confer with the staff. This communication will aid in forming an initial impression of what client and case emergencies must be handled immediately. This will further aid in determining what needs to be done to begin the emergency procedures in the law practice to continue its operation and caring for the clients’ needs. The helping lawyer needs to do the following:

1. This human contact goes hand-in-hand with a check of dockets and calendars that will come next. Although some lawyers practice with only a single computer, others may rely on knowledgeable staff people; sometimes much of what they know may not be written down.

2. The helping lawyer needs to check the calendars, dockets, ticklers, to-do lists, and deadline lists—both written (if any) and electronic (if any). Physically perusing any “pulled” or “out” files and desk notes might also be prudent.

3. Put this knowledge together with information gained from the key person’s briefings. Be careful to review only as much as needed to determine whether any immediate protective action is required. Then depending on your lawyer’s role (substituting/helping lawyer, successor lawyer, or representative of the absent lawyer), take action by delegating or assigning matters as needed with the primary directive of minimizing any ethical exposure or malpractice exposure. (See Chapter 4 for details.)

4. The helping lawyer then needs to make such client and other contacts as necessary, and take such case action that will effect any immediate client protection that is necessary.

5. Even if the affected lawyer has died, an orderly review and disposition of client matters is necessary to prevent post-mortem claims of malpractice, ethical lapse, or complaints for return of fees paid.

6. Refer to Chapter 4 of this manual for information specific to protecting clients.

The second day’s activities include a plan where all the necessary documents and people are to assemble to expedite the helping lawyer. To do this, an attempt has been made to parse and separate the business functions from the lawyer functions. However, since circumstances
can vary widely, individuals are urged to exercise the following caution: Be mindful about preserving client confidentiality while at the same time being vigilant to ensure that client rights and deadlines are not lost, even if that means deviating from this plan to take care of an emergency.

2-9 DAY THREE AND THE FIRST SEVENTY-TWO HOURS

The lawyer’s practice and its value can quickly disappear without proper administration at the time of the affected lawyer’s casualty or death. In addition, there can be significant liability for the estate if the practice is not properly taken care of in this time of crisis. If the affected lawyer is impaired or has died, it may be important to the lawyer’s estate and his or her family to ensure that the value of the practice is maintained to allow it to be sold or merged pursuant to state regulations. Depending on your defined role, you should work with legal counsel to be certain that the proper steps are being taken to maintain the value of the practice within the estate. Keeping this in mind will assist in taking the following steps to properly protect and preserve the affected lawyer’s practice. So, now on the third day, you need to ask yourself whether you have enough information to make a decision about how long the law office should be kept open, and if not, how much longer you can go before making a decision. The contingencies will be as follows:

1. The crises are temporary and the lawyer has or will soon be returning to the practice.
2. The lawyer will be permanently incapacitated but is alive and can still make decisions about the practice and supervise it, so you are entering into a phase of deliberate transition.
3. The lawyer is both permanently incapacitated and unable to make decisions about the practice or supervise, but because the appropriate durable powers of attorney have been previously formed, the practice can wind down in an orderly manner.
4. The lawyer has died, but because of the planning set out in the lawyer’s will and other documents, the executor can preside over a rapid and orderly closing of the law office.

If the affected lawyer can still supervise the practice remotely or will soon be returning to practice, you may now be in a holding action, needing only to continue monitoring upcoming client deadlines and perhaps keeping an eye on business payables and receivables.

However, if the lawyer is incapacitated and will not be soon returning to practice, a decision needs to be made for an orderly transition. If durable powers of attorney have been prepared (grants of corporate authority made, if practicing under an entity form), and if continuity clauses have been included in client contacts, and if the emergency manual is complete, the process should go smoothly. A practical question to ask at this point is: Do the lawyer’s health or life insurance premiums need to be paid so that the policy will remain in force?

If the affected lawyer has died, the powers of attorney are void and an executor will have to be appointed to approve business decisions. In this event, a prompt transition of clients to a successor lawyer will be even more important. This may be made easier if the affected lawyer has included a law office provision instruction within a will or has otherwise provided for law practice succession. If you are dealing with death, then you must also ask, “Is there a personal representative for the lawyer who is someone other than the helpers already referred to here?” If so, the executor should be conferred with and a line of communication opened with whoever is going to be the estate’s attorney (if it is a different person from those who have been already mentioned).

With this knowledge, the helping lawyer can now make longer-term client-funds decisions such as whether pre-paid fees have been collected, if trust account retainers are being held, or if receivables are due. Client funds need to be accounted for. Finally, if by the end of the first seventy-two hours, the affected lawyer has not regained the ability to supervise the practice or is
not expected to return to practice, it may be time to notify the lawyer’s malpractice carrier and update them as to the current status.

2-10 LOOKING PAST THE FIRST SEVENTY-TWO HOURS

(This section speaks to the first responder and the helping lawyer.)

After the helping lawyer takes care of any discovered immediate client needs, the interim client needs and obligations will have to be satisfied. Actions will differ depending on whether the prepared lawyer is dead, permanently incapacitated, or temporarily unavailable. The helping lawyer needs to get a handle on open and active files. Letter notices should be sent to clients regarding the status of their case. Any clients for whom immediate action had to be taken deserve an explanation. Their agreement or contrary direction should be obtained and confirmed in writing. Matters for which a substitution of counsel is needed should be approved by the client. Other clients may have to be disengaged, and you must request them to assign their file to a successor lawyer or retrieve their file. However, since possible malpractice exposure can continue for years, the law office should still keep a copy of all documents that leave the office. So, as this happens, review the firm’s policies regarding closing and archiving files. Again, if the affected lawyer is deceased, a further grant of authority from the executor or estate attorney may be needed. But, assuming proper authority to action continues to exist, long-term client decisions now need to be made.

2-11 LOOKING AHEAD AT THE FIRST THIRTY DAYS

(This section speaks to the first responder and the affected lawyer’s support network.)

If the decision was made to wind down the practice, then the foundation of the first three days provides a means to both stay out of trouble and preserve some liquidation value. If the decision was made that the affected lawyer would soon be returning to his or her practice, either full-time or at a reduced level, then some longer-term business and financial decisions should be addressed within the first month. Many of these issues are discussed in Chapters 3 and 5 (whoever is reading this should make sure that the person charged with authority over business matters refers to these chapters at this point). Some of the financial issues will include the following:

1. Do rent, firm contribution, employee salaries, or taxes and other payables need to be paid?
2. Does a decision about retention of staff or other services need to be made?
3. Do bills for work performed need be issued, or money for work performed need to be collected and deposited?
4. Does the practice need to keep running, or should it be winding down?

This has been a very emotional time, and a lot has been covered in this manual. Now it is time to familiarize yourself with the details of the practice (see Chapter 6) and review the introduction to this manual (Chapter 1). After this review, continue with the plan that has been put into place.

Finally, congratulate yourself on making the best of a bad situation, thank the members of the affected lawyer’s support network, and appreciate the example of professionalism set by the affected lawyer who, through proper planning and organization, was prepared for such an unexpected event.
### Figure 2-1 Nominated Helpers List

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<th>NOMINATED HELPERS LIST NAMING</th>
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<td>THE HOLDERS OF IMPORTANT ROLES</td>
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Custodian(s) of the Law Office Emergency Casualty Manual:

Appointed Business Manager: ________________________________

Personal Representative or Executor: ________________________________

Lawyer(s) to contact in case of emergency:

- Primary Helping Lawyer: ________________________________
- Other substituting lawyer(s): ________________________________
- Any nominated successor lawyer(s): ________________________________

Other key person(s), specify if applicable: ________________________________

Contact details for these people can be found in Chapter 1, section 1-4, “Overview of the Law Office Emergency Information,” which should have the completed calling chart named “Critical Contact Emergency Calling Chart.”