

AVOIDING ETHICAL DISASTERS WHEN NATURAL DISASTERS STRIKE

STEPS TO TAKE IN RECOVERY EFFORT

From Planning to Living the Reality

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Suzanne Rose is a practice management specialist focusing exclusively on the legal industry; and, more specifically, on the critical area of risk management – addressing how law firm governance, compensation systems, practice management philosophy and associate development may lead to or help a firm avoid malpractice and ethics complaints.

Ms. Rose served as the practice management advisor for the Tennessee Bar Association from 1998 to 2004 and worked with both individual lawyers and law firms, advising them in the areas of business, practice and risk management. She served as the director and management consultant for the TBA's TnBar Management Services program for six years and served as the TBA's risk manager for two years. Suzanne also works with the Tennessee Board of Professional Responsibility as an advisor to lawyers who have experienced client complaints relating to poor business and practice management systems and who need assistance to improve those areas. She has experience assessing a firm's risk profile and has conducted risk management assessments of firms for the bar's malpractice provider.

Prior to becoming a practice management advisor to law firms across the state, Suzanne served as the office administrator for mid-size law firm for twelve years.

Ms. Rose is a faculty member of the Tennessee Bar Associations' TennBarU (Tennessee Bar Association University) and has written and published for TennBarU four on-line CLE programs on the subjects of trust account management, a law firm's culture as a risk factor, ethics and technology and a firm's financial position as a risk factor.

Ms. Rose is a frequent speaker on law office, practice and risk management topics for local and state bar associations as well as for the ABA's Law Practice Management section and the ABA's Bar Leader Institute. She co-authored an article entitled "*Disaster and Recovery Planning*" for GPSolo, a publication of the General Practice, Solo and Small Firm Section of the ABA. She authored an article on disaster planning and recovery which appeared in the March, 1999 edition of the Tennessee Bar Journal. Her most recent published article is in the July issue of the Tennessee Bar Journal entitled, "*Firm Culture: Is the culture of your firm inviting malpractice or ethics violations?*" She is also a contributor to the ABA's LPM section e-zine, "Law Practice Today".

She is a graduate of the University of Tennessee with a bachelor's degree in Business Administration.

STEPS TO TAKE IN RECOVERY EFFORT

From Planning to Living the Reality

Introduction

Anecdotally, I'd say that most firms do not have an adequate, recently updated disaster plan. And, as much as we might preach of the benefits of planning for a disaster; as much as you intend to develop one or update your current plan when you get home, it is more likely that you will place this material and your good intentions in a file and ask your assistant to tickle a date – probably months down the road – to pull the file so you can begin the task of developing a plan.

Then, before you get around to developing the plan, a disaster strikes your firm, your building, your community. In the midst of that chaos, absent a plan, it will be hard to think; to know how to respond.

The course material is designed to give you practical information about what you need to be doing when and after the disaster strikes. If you don't do anything else with the material, put it in a place off-site. If disaster strikes, pull these checklists and tips out of storage and follow them. Let these instructions be your brain, during and immediately after the crisis . . . until you can settle yourselves and are able to move forward with recovery in a focused way.

Disaster Response

If during office hours . . .

1. Determine extent of disaster and evacuate the office if necessary
2. Evacuation team
3. Evacuation route
4. Employees with disabilities
5. Pre-determined meeting site

6. Call for emergency services assistance at the disaster site, if needed

7. Get a headcount; assist the injured, track the missing and account for fatalities

8. Notify families of injured employees and deaths

Disaster Recovery

When danger has passed . . .

Damage Assessment

1. Secure the premises
 - a. Replace doors and windows; install fencing or barriers to keep unauthorized persons out of the space

- b. If access is restricted for several days, arrange for the removal of file servers, equipment and critical documents
2. Assess damage to client documents and files and begin recovery efforts immediately. (See Section ____ of course materials for information about the recovery of client records.)
3. Assess damage to office and other contents to determine what, if anything is salvageable and how long recovery efforts will take
4. Take photos of damage
5. Contact property/casualty insurer
6. Contact owner of building or building management to determine the steps that need to be taken to limit further damage to the space and obtain approval to begin salvage operations
7. Contact E&O carrier to inform of disaster; degree of damage and potential impact on client services
8. Contact local emergency operations center, if a natural disaster, to register claim for relief

Business Continuation

Recovery Site

1. Locate a recovery site where the firm can gather until temporary office space is found; where recovery of critical client documents can immediately take place; where critical equipment and systems can be secured and services re-established.
2. Obtain supplies needed for recovery effort.

Communication

1. Contact all firm members and employees to inform them of the disaster, the degree of damage to the office and when and where the recovery site will be located to meet and begin recovery efforts.
2. Communicate with Clients, Courts and Other Counsel
 - a. Inform clients of the incident, the degree of damage, its impact on operations; provide contact information and the address of the recovery site and/or temporary office.
3. Upon retrieval and review of the firm's docket and calendar information . . .
 - a. Contact courts and other counsel to reschedule meetings, hearings, court appearances if needed
 - b. Give clients a status report of any immediate critical dates/deadlines for meetings, hearings, etc. and whether those will go forward or be postponed.
 - c. Assure clients of the firm's ability to be up and operational quickly.
4. After alternative work space has been secured . . .
 - a. Provide clients, courts and other counsel new contact information and temporary office location
 - b. Contact mail and courier services to re-direct mail to the temporary office location
 - c. Contact vendors with new contact and temporary office location

5. Contact your webmaster to set up a disaster status page and direct clients to your site for updated information

Human Factor

1. Assess the need for and provide counseling needs that may occur at the time of the disaster and during the process of recovery
2. Assess and fill after-disaster staffing needs

Office Space/ Furnishings

1. Identify alternative work locations.
 - a. Additional space in current office building
 - b. Call local realtor to find office space.
 - c. Share space with others temporarily (lawyers, accountants, hotels)
2. Obtain (rent, borrow or purchase) furnishings (desks, chairs, lamps, filing cabinets, bookshelves)
3. Alternative: employ professional business continuity firms for space and furnishings

IT Recovery

1. Refer to the firm's "process plan" to begin to reconstruct the system
2. Acquire additional server(s) with enough capacity to run your applications
 - a. Back-up servers at a geographically separate location (mirror data centers/servers)
 - b. Personnel available and mobile to install and manage server operations at a remote site
 - c. Back-ups of server configurations
 - d. Data and application changes backed up
3. Obtain network map to begin reconstructing the network
4. Acquire desktop computers and printers

Insurance

1. Review business insurance, computer equipment, valuable papers policy language; talk with representative about coverage. Specifically discuss:
 - a. Loss of income/extra expense and business interruption coverage
 - b. Discuss how to record and submit expense information for reimbursement
 - c. Understand how "loss of income" coverage is calculated
2. Set up disaster account codes to distinguish disaster purchases and expenses from normal operating expenses. Include such expenses as overtime, special supplies/materials, and temporary personnel.

Financial Matters

1. Contact banks to request replacement checks and deposit books; copies of prior bank statements and other records, if needed. Be sure your trust account documents are either recovered or replaced by copies from banking institutions.
2. Determine any short-term cash flow needs that might be needed and discuss/arrange with insurance company/bank.
3. Be sure your payroll service will not be interrupted and that the service has your temporary address for the delivery of checks

Office Operations

1. Telephone
 - a. Use cell phones for communication until temporary service is obtained
 - b. Arrange temporary service with local telephone company at temporary location
 - c. Arrange to have phone calls forwarded to new number; or
 - d. Arrange for a telephone answering service with a prepared message to answer the old number until new system is in place.
 - e. Arrange for fax and internet use.
2. Mail/Courier Services
 - a. If disaster is widespread, affecting postal service as well, check to see that anything mailed with a required deadline was/will be received on time.
 - b. Notify other courts and counsel of damage to postal service and obtain an extension of deadlines due to circumstances
 - c. Contact postal office and courier services of new, temporary address.
3. Equipment
 - a. Contact equipment vendors re: existing leases/contracts and your/their performance obligations under the terms of lease or contract.
 - b. Types of replacement equipment needed:
 - i. Computers
 - ii. Printers
 - iii. Fax machine
 - iv. Copier
 - v. Dictation equipment
 - vi. Typewriters
 - vii. Computer network
 - viii. Portable computers
 - ix. Hand-held devices
 - x. Cell phones
 - c. Identify portable computers/home computers that might be pulled back from home use during recovery period.
4. Office Supplies
 - a. Contact supply vendor to obtain office supplies
 - b. Contact printer to print stationery, business cards, etc.
 - c. Contact forms vendors (billing forms, other forms)

5. Recover Client Documents

If documents/files have been lost . . . opposing counsel/clients/Secty of State's office/Registrar's office can assist with copies and reconstruction of events, dates, deadlines, etc. Documents to recover:

- a. Leases
- b. Original Wills***
- c. Agreements
- d. Settlements
- e. Corporate records
- f. Docket and calendar records***
- g. Pleading files and court papers
- h. Current address of client's counsel and contacts
- i. Correspondence

6. Recover Firm Documents

- a. Leases/Subleases (landlord, leasing companies may have copies)
- b. Maintenance/licensing agreements (other party may have copy)
- c. Insurance policies, broker information (insurance company has policy)
- d. Inventory of physical assets***
- e. Partnership/shareholder agreement***

7. Recover Financial Records

- a. Client list of names, addresses, phone numbers***
- b. Client billing records ***
- c. Accounts receivable information (clients may can provide copy)
- d. Work in process information***
- e. **Financial statements** and tax returns (CPA/IRS can provide copies)*
- f. Payroll and employee records (payroll service, employees may be able to provide information to reconstruct)

8. Library

- a. Assess damage
- b. Evaluate possibility/cost of repairing books.
- c. Identify subscriptions/volumes to be replaced immediately.
- d. Arrange with other firms/universities to use library facilities.
- e. Establish link with electronic research providers, etc.
- f. Publish a resource list for attorneys re: where to go for library services.

***The firm may be the single source for these documents. It is critical that the firm maintain updated copies of these documents off-site in order to continue business.**