

LawBiz® TIPS

YOUR PRACTICAL GUIDE TO PROFIT™



Week of **September 29, 2009**

Insure to Ensure Your Business Continuity

At this time of year, when the anniversary of Hurricane Katrina is in the news, my thoughts inevitably turn toward the issue of disaster recovery - which, as I've emphasized many times, is really a matter, not of recovery, but of business continuity. I recently received a call from someone who acknowledged his firm did not have a plan for dealing with disaster and asked for recommendations on creating a "Plan B" for contingencies. My response was that if you don't have a contingency plan, then get one quickly - otherwise, when disaster strikes you simply will not be prepared. Disaster is not usually a Hurricane Katrina or an earthquake. It's more typically a burst water pipe or a fire in the office, which can wreak almost as much destruction.

Any lawyer and law firm needs contingency planning to ensure that the firm remains functional in the wake of a disaster. And the standard way to do this is through the purchase of insurance. Adequate insurance coverage is a fundamental ethical issue for any practice. Consider that the responsibility to protect and preserve client property and files requires precautions against the likelihood of harm to those materials. Fire is an ever-present risk. If you are a lawyer in leased office space, are you or your landlord responsible for obtaining fire insurance? How about specialized coverage for earthquakes, floods and hurricanes? Is client property covered? Do you have a complete inventory of the client property you maintain? Do you know the value of the client property and files in order to effectively insure them? If you can't answer these questions affirmatively, it would be wise to call your carrier and make sure your policy provides the necessary protection.

Ethical concerns about insurance extend even further. The ethical duties of a lawyer to serve clients are paramount, and some authorities hold that failing to reasonably anticipate and be prepared to service



Disaster Preparedness & Recovery Planning for Law Firms

It isn't a question of if your firm will face a disaster but when it will. How will you and your people respond? Disaster planning is one of the most specialized, most overlooked, and most vital business planning endeavors. The goal is to develop a recovery strategy to get your firm up and running again and thus ensure its survival. This volume gives you the critical steps, including:

- The essentials of a comprehensive recovery plan
- How to create a team to plan the firm's response
- Where legal ethics and disaster planning intersect
- Must-dos to safeguard and support your people

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clients in the wake of a disaster is a failure to act competently. Even if you carry property, general liability and fidelity insurance to cover loss to facilities and equipment, business interruption coverage may be another option to consider.

Such policies cover the business side of your law practice when it is interrupted by a disaster that drastically reduces or even eliminates current revenues. It can be provided as part of your general property insurance or as a specialized product. Coverage is designed to replace income that would otherwise have been earned by the business had no loss occurred, and is intended to allow the firm to remain in business - and to continue serving clients - even in the event of a major disaster. Certainly there is up-front cost to purchasing such coverage. But the cost of not having a "Plan B" is far greater.

Personal Commentary

I've been asked on more than one occasion how long we must hold clients' files. There is no one answer. Previously, I've suggested one way to address this issue: First, seek to contact the client to get him/her to pick up the file. If no luck there, second, scan clients' files electronically and then dispose of notes, court files that can be retrieved from the court if needed in the future and other matter in the file. Retain only original documents such as wills, trusts, deeds of trust, etc. Place them in a safe deposit box. This is for old files. For all new matters, include a provision in your engagement agreement specifying the file destruction protocol you wish to implement. The client's agreement gives you permission to destroy the file. Consult your local rule to see if there are any specifics.

Since most attorneys are "pack rats" by nature, the above procedure should work fine. However, what if the attorney dies unexpectedly? What is the estate obligated to do? Act in the shoes of the attorney... and this may prove difficult for the administrator who is not a lawyer. What would you do?

If you would like to read more about this issue, you can read my [blog post](#) about Old Files.

Best wishes,

Ed Poll

What Readers Are Saying...

"This publication provides excellent guidance on how to develop plans to prepare for and respond to all types of catastrophes, whether acts of God or of man, and whether local or national in scope. Such planning can be critical to the ability to survive following such events. I highly recommend it for attorneys and law firms as a basic document on how to be prepared to respond to and recover from disasters."

*-Michael Hirsch, Former FEMA Deputy
General Counsel*

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