NY 9/11 Experience;
Personal Experience;
How The Bar Can Help You

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New York's Experience after 9/11:
How the Bar Association Can Help You

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1. New York's Experience Before the 2001 Terrorist Attacks
    a. Crash of TWA Flight 800 (1996)
        i. Major problem was solicitation of family members at Ramada inn at Kennedy Airport; disguised runners at memorial services
        ii. Another major problem was insurance company and airline representatives pressuring family members to sign releases and accept small settlements
        iii. Bar responded with a small team with a limited mission
            1. How to find a lawyer when you're ready
            2. Don't be pressured into signing anything
            3. No substantive advice was to be given
    b. Aftermath of the Kennedy Airport Experience (1996-99)
        i. Frustration at having done so little
        ii. Committees formed and protocols created
            1. Combating solicitation and other unlawful contact
                a. Signage at family assistance centers
                b. Informational flyer for families/victims
                c. Site monitoring and reporting of violations of solicitation laws and rules
                d. Some concerns about antitrust liability (for a voluntary bar association)
            2. Legal clinic to answer specific questions in the days following a disaster
                a. Acknowledgement that there is no attorney-client relationship
                b. Liability of volunteers (good Samaritan laws)
                c. Recent LSBA ethics opinion (No. 05-RPCC-005), issued Sept. 27, 2005, regarding lawyers providing hotline advice in the wake of a natural disaster (http://www.lsba.org/DocumentIndex/EthicOpinions/05-005RPCC.pdf)
            3. Worked with various governmental agencies to be sure we had appropriate linkages in place and that we would be called in if disaster struck
                a. National Transportation Safety Board
                b. Port Authority of New York and New Jersey
                c. Major airports

4. Worked with the joint task force of the NTSB and the Department of Transportation created by Congress to address problems in the way families of air crash victims had been treated in the past (nominally headed by Vice President Gore).
    a. The task force issued a report in 1997, Chapter 7 dealing with lawyers.

iii. All the product of the reactive mind:
    1. Focused on transportation disasters; what we knew had happened
    2. We thought we were ready by 2001
        a. Disaster response teams were ready to address the needs of families of victims and any survivors
        b. No attention paid to helping lawyers or businesses in general to recover

2. September 11, 2001
    a. Access to Justice Conference in Albany, NY (160 miles north of Manhattan)
        i. Many court officials present, including the Chief Judge of New York
        ii. Many state and local bar leaders present, including presidents of the New York State Bar Association, New York County Lawyers' Association, Brooklyn Bar Association, and representatives of the New York City Bar.
            1. Convened at the lunch break on 9/11 to begin assessing capabilities and coordinating our response
            2. Preliminary plan and allocation of responsibility was in place by 2 PM on the 11th.
            3. The NYSBA had secured a toll-free number to use as a clearing house by the 12th (1-877-HELP-321).
        iii. Being in Albany was a major advantage
            1. Communications better
                a. ABA President Hirshon called by noon on the 11th.
            2. No transportation lockdown as in Manhattan
            3. Almost a retreat-like atmosphere
    b. Meeting in New York City on the 13th at the headquarters of the New York City Bar (State, City and County bar presidents)
        i. Excellent relations among the three Presidents
        ii. Division of responsibility
            1. New York City: victims, families, businesses
            2. New York County: death certificates
            3. New York State: lawyers and overall coordination of state and local bar association response
                a. 14,000 lawyers were displaced from their offices for anywhere from six weeks to three months

        b. 1,300 lawyers had their offices completely destroyed
        c. 28 lawyers were killed
            i. Not that many law firms in the WTC
            ii. Lawyers in NYC tend to arrive at work by 9:30 AM, not 9:00 AM

c. New York State Bar Association actions
    i. Helped by other bar associations
        1. Reached out to other bar associations
            a. Oklahoma (1995 bombing of the Murrah Federal Office Building; 1999 tornado)
            b. Florida (1992 Hurricane Andrew; 1995 ValuJet crash)
        2. Many bar associations reached out to NYSBA, e.g.:
            a. ABA
            b. Central Bar of Iran
    ii. What the NYSBA did
        1. Toll free number and web site
            a. Pro bono legal services
            b. Clearinghouse for lawyers (contributions outstripped demand by 2:1)
                i. Office space
                ii. Equipment (computers, copiers, books, furniture)
                iii. Staff and support services
        2. Used buying power of 70,000 member association to secure discounted and free services
        3. Served as central meeting point for lawyers and clients seeking to locate one another (local bars played a major role here as well)
        4. Consulting services for lawyers reconstructing their practices
            a. Made easier by the fact that the courts were intact, as were most adversary attorney and client offices and residences
    iii. Cooperation between bench and bar
        1. Meeting on September 14th at the Office of Court Administration (in the frozen zone)
            a. Death certificate project
                i. Outgrowth of TWA 800
                ii. Coordinated by N.Y. County Lawyers' Assn (which was not able to gain access to its building, located ½ block from the WTC, for six weeks after the attacks)
            b. Expedited estate processing

                i. Product of the Trust and Estates Law Section of the NYSBA, in cooperation with the Surrogates' Court
            c. Free copies of court files made available to any displaced lawyer
            d. Standardized attorney hardship affidavit for adjournments and extensions
            e. Standardized affidavit regarding compliance with CLE requirements to provide extensions
        2. Governor of the State of New York issued an executive order tolling all statutes of limitations and statutory filing deadlines
    d. Other Projects Undertaken by the Organized Bar
        i. Adopt a Company: collaboration of business and legal community to provide advice and support to small businesses in lower Manhattan that were adversely affected by the attacks
            1. government grants
            2. insurance issues
            3. real estate issues
            4. business generation
            5. financial support
        ii. Handbooks for lawyers and businesses on disaster preparation and recovery
        iii. FAQs on web sites
3. Epilogue (2001-present)
    a. Moving forward, still fighting reactive impulses
    b. Still dealing with solicitation problems
        i. American Flight 587 in November 2001 (NYSBA Disaster Response Team members caught runners handing out attorney cards at family assistance center)
        ii. Staten Island Ferry crash in 2003 (crash at 4 PM, advertisement purchased in the local newspaper within 50 minutes)
    c. New York is actively considering adopting rules
        i. Banning solicitation and advertising for 30 days following an incident involving personal injury or death
        ii. Barring communications by potential defendants for the same 30 day period
        iii. Requiring lawyers accepting referrals to certify on filing a case that it was not obtained unlawfully by the referring attorney (e.g., through paid runners or solicitation)
    d. NYSBA Mass Disaster Response team is an integral part of the federal and state disaster preparation programs
        i. Included in drills
        ii. Included in training
        iii. Included in master response plan
    e. MDR team now has

        i. Enhanced foreign language capability (as a result of Flight 587, where knowledge of the Dominican dialect of Spanish was critical)
        ii. A notebook computer (the “football”) containing a broad range of information on disaster response and substantive legal issues
    f. Committee on Law Practice Continuity
        i. Death, disappearance or disability of solo practitioner
        ii. Disaster planning and recovery (developing a plan in advance is 90% of preparedness)

4. Four Key Lessons Learned in New York for Bar Associations
    a. Collaboration
        i. Bench-Bar
        ii. Government-Bar
        iii. Among lawyers
    b. Coordination
        i. Not stepping on each other or competing with each other
        ii. Harnessing outpouring of volunteers
    c. Information
        i. For lawyers and clients
        ii. For the public, whether directly affected or not
    d. Preparation
        i. For the future
        ii. Fighting reactivity
        iii. Anticipating problems before they happen

<u>Best Katrina/Rita Internet Resources</u>

Louisiana State Bar Association
http://www.lsba.org/home1/

American Bar Association
http://www.abanet.org/katrina/

LAW OFFICE DISASTER RECOVERY
AND RECONSTRUCTION

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October 2005

Communication with Staff
Contact Employees

The first concern after any disaster must 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. These items must be dealt with before any other action takes place. No employee will concentrate on the affairs of the firm until they have spoken with their family. Therefore the first step to take is to designate a crisis team and charge them with the responsibility of contacting and locating all employees. This will be an easier process if telephone 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:

* The firm has established voice mail capability for all employees. This need assumes the firm's voice mail system 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.

* Using a conferencing service provider. . ., arrange conference calls between all practice and administrative groups. Make as many of these calls as you can, and try to involve all work groups. Psychologist Donald Morrison of Morrison Associates in Wayne, Pa., suggests that during the call you encourage people to share their experiences and do not make light of their fears or anxieties. The psychological impact of being involved in a disaster can be devastating. The resultant anxiety can materialize in many forms, including the fear of returning to work.

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

Coping with Grief and Stress

"The first thing you do is sit down on the edge of the curb and cry." (Observation from a New York City attorney whose office burned down early in his practice.)

Coping With the Emotional Aftermath

When an event occurs that is tragic and devastating, employers should be especially mindful of the emotional toll this places on employees. Studies have shown that there is therapeutic value in employees' getting back to work soon after a traumatic event, with appropriate emotional support. The following are some ways in which employers can assist employees:

<u>Communication with Employees</u>: During times of crisis such as this, employees may become concerned about their employer's reaction to the events and the status of their employment. While this is particularly true with respect to those employers whose operations have been directly affected by this situation, it is typically of equal concern to those outside the affected areas. Employers should therefore consider the prompt development and communication of a response to the events. Such a response should reaffirm the employer's commitment to providing a safe work environment and advise employees of the manner in which their employment has been affected and of the steps their employer is prepared to take to help facilitate the healing process. Such steps may include:

<u>Matching Charitable Donations</u>: Some employers have agreed to match employees' individual donations to those charities whose aim is to assist the victims and families of, and help rectify the damage caused by, the disaster.

<u>Providing Time Off for Appropriate Charitable Acts</u>: Despite the sense of helplessness that these traumatic events may have engendered, employers can effectively help stave off what may otherwise be crippling emotions by providing additional time off, perhaps with pay, to employees who donate blood or time to relief efforts.

<u>Utilization of Employee Assistance Programs ("EAP")</u>: Many employers have EAP programs, which are typically capable of providing individual or group counseling and support. They can be very effective when the workplace as a whole has been affected by a traumatic event. The more quickly employees have access to such services, the more quickly the healing process can begin. Therefore, employees should be encouraged to use any existing EAP programs, and employers should offer the

services of outside grief counselors, if necessary or requested by employees, to help employees cope with emotional issues following a disaster. Employers with the necessary resources that do not yet have an EAP program in place may wish to consider implementing one as soon as possible. Employers may also wish to contact their insurance companies, as many medical insurance policies cover counseling and other services similar to those provided by an EAP program.

Encouraging Tolerance in the Workplace: In the wake of a devastating event, employers need to demonstrate concern and compassion. An employer whose main emphasis is upon "getting back to work" and maintaining productivity and profits is actually less likely to achieve such result. Thus, supervisors should be advised, for a short time following a catastrophe, to show more tolerance toward behavior that would otherwise be deemed inappropriate, such as talking to colleagues during work time about the disaster, an employee's inability to concentrate, emotional reactions by employees, and the like.

Expansion of Leave Policies: While we ordinarily recommend strict adherence to leave policies, under the circumstances it may be appropriate for employers to consider expanding or at least temporarily relaxing their existing leave policies. Of course, employers who do relax their policies need to do so in a consistent manner so as to avoid potential legal challenge. Other policies which employers may wish to examine include family and medical leave act policies (for employees who need time off due to their own or a covered family member's serious health condition resulting from the disaster), sick leave, vacation, and other paid or unpaid time off. Please note that in some states employers are required to communicate their leave policies in writing.

Americans With Disabilities Act/Reasonable Accommodation: While this is a complicated subject which is too broad in scope for this memorandum, employers should be aware that employees who are physically or emotionally (*e.g.*, posttraumatic stress disorder) injured as the result of a catastrophe may be entitled to reasonable accommodation under the Americans With Disabilities Act or corresponding state laws.

Implementation of Telecommuting Policies: Some employees may be physically capable of returning to work but fear returning to the location of their workplace. To accommodate these concerns, employers should consider whether it is feasible for employees to telecommute on a temporary basis.*

* Terri M. Solomon & David S. Warner, Coping with the Aftermath (Littler Mendelson, P.C., Sept. 2001).

Helping Lawyers and Administrative Support Personnel Cope with the Disaster

* Rallying the lawyer and support staffs in the wake of a disaster is a tremendous challenge. Listed below are some suggestions about how to help those around you cope with the effects of a disaster.
* Listen--Members of the professional and support staffs have to be able to hear each other and have to be able to listen to other people's stories. Get small groups together and let them talk their feelings out.
* Be visible--Lawyer and administrative management need to be visible. Managing Partners, Administrative Managers and others who are in managerial positions should show they care about the members of their staff.
* Turn off radios and TVs--Try to limit the amount of news coverage that members of the professional and administrative staffs are exposed to during the workday.
* Turn feelings of grief and despair to a constructive action plan--Get the members of the staff to focus on constructive activities to make them feel better, *i.e.*, collect relief supplies, support other types of charitable activities, etc.
* Remind lawyer and administrative support personnel of available resources--If Employee Assistance Programs are part of your firm's health care plan, remind them of its availability.
* Watch for Physical Symptoms--Persistent sleeplessness, loss of appetite, excessive anger, crying, loss of focus, distraction, new-found inability to deal with pressure may all be symptoms that members of the staff need extra help dealing with his or her emotions.
* Give it Time--Lawyer management must allow the members of the professional and administrative staffs time to get their emotions back to normal.

Signs and Symptoms of GRIEF

* Denial/disbelief
* Shock/confusion
* Sadness/crying
* Anger/rage/despair
* Lack of appetite/overeating
* Depression/suicide idea/hopelessness
  Guilt

What to Do (recommendations)

* Express your feelings
* Take care of your health
* Seek out people who are caring
* Seek outside help when necessary

It takes time to fully absorb the impact of a major loss. You never stop missing your loved one, but the pain eases after time allowing you to go on with your life.

Signs and Symptoms of STRESS

* Loss of interest in daily activities
* Isolation
* Avoidance of friends and family
* Mood swings
* Emotional agitation
* Tightened stomach
* Headaches Insomnia
* Fatigue
* Loss of concentration
* Procrastination

Stress Management

Physical

Eat proper diet
Get enough rest
Use relaxation tools (*i.e.*, music, walk, exercise)

Social

Interact with those who care about you
Share your feelings with friends and family

Mental

Make effort to enjoy life
Get help - there's no shame in reaching out for help

Business Continuation

"After you determine that your staff is OK, it is critical that you immediately look to your clients needs--contact them right away." (Observation from a California lawyer who went through two law office disasters.)

Contact Clients

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 the client of any interim or new contact information.

To assist in this process, consider the following:

* 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 10 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.

* 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.

* As clients are identified, they should be contacted first by telephone and then via a brief fax message or letter. Since the firm is likely to 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 them 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.

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

Contact Courts

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 can be a good source for obtaining records that have been lost or destroyed.

Banks

Contact banks for replacement checks and bank records.

Payroll Service

Contact payroll service.

Office Space/ Furnishings

Identify 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. Try to get in line first for a trailer if your office is totally destroyed. 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 sheet to record those new clients you will counsel as a result of some problem that arose from the storm. 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.

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

Other suggestions are to:

- Call local Realtor to find office space.
- Share space with others temporarily (lawyers, accountants, hotels)
- Obtain (rent, borrow or purchase) furnishings (desks, chairs, lamps, filing cabinets, bookshelves)

Report New Contact Information

As a result of any disaster, lawyers may need to relocate their law practice. In the case of the WTC disaster, telephone service, cable, and cell phone services were interrupted to lower Manhattan for a number of weeks following the attack, In order to sustain clients services, and to maintain day-to-day operations of your practice, you need to find a way to keep the public informed regarding your temporary office location. This may be a hotel room, your home office, or temporary space in another law. For the WTC Disaster, the New York State Bar Association worked with metropolitan bar associations to collect addresses for those attorneys displaced as a result of this disaster. NYSBA and the other local bar associations partnered with the New York Lawyers Diary and Manual (LDM) to create a central Web site to collect these new locations. Each bar association linked directly to the LDM Web site, where individuals could directly submit address changes. If people could not get to the Web site, LDM setup an 800 number for people to call.

Contact vendors re: temporary location.

Contact Post Office and other delivery services to stop delivery to damaged location and re-route to temporary location.

How to Obtain Assistance

Request for Products and Services
For Lawyers Impacted by the World Trade Center, an Assistance Request form was provided on the Web site to enable lawyers with Web access a way to request assistance. The form enabled lawyers to identify the services needed.
When lawyers or members of the public called the Bar Center for assistance, or to volunteer to help, NYSBA staff were able to interview the caller and input the information directly into the appropriate Web-based application.
Assistance from the Federal Government Federal Emergency Management Agency

FEMA offers the following types of assistance:

- crisis counseling to help families and victims deal with the attacks
- disaster unemployment assistance (and you may be eligible even if you [or your spouse] is self-employed)
- help with funeral expenses
- emergency food stamps
- weekly unemployment benefits
- low-interest loans or grants for housing
- low-interest loans or grants to repair or replace personal property
- business loans
- legal counseling

FEMA assistance will not normally compensate you for your entire loss. If you have insurance, the government may help to pay for part of the loss not covered by insurance.

Small Business Administration:
Business loans are available to people who have suffered damage to business property or economic injury. These low-interest loans are available through the Small Business Administration to repair or replace damaged property not covered by insurance, and to provide working capital. The SBA assists not only small businesses, but also offers loans to businesses of all sizes, nonprofit organizations, homeowners and renters.

SBA offers the following types of assistance:
Physical Disaster Loans for Small Businesses - Loans to businesses to repair or replace disaster damages to property owned by the business, including real estate, machinery and equipment, inventory and supplies. Businesses of any size may be eligible. Nonprofit organizations such as charities, churches, and private universities may also be eligible.

Economic Injury Disaster Loans (EIDL) for Small Businesses - Loans for working capital to small businesses to assist them through the disaster recovery period. These loans cover operating expenses the business could have afforded to pay, if the disaster had not occurred.

Disaster Assistance Loans for Homes & Personal Property - Loans to homeowners or renters to repair or replace disaster damages to real estate or personal property owned by the victim. Renters are eligible for personal property losses only.
SBA provides low-interest, long-term loans to repair or replace uninsured or underinsured losses. SBA does not duplicate benefits of other agencies or insurance companies.

Telephone Service
Arrange to have phone calls forwarded to new number or arrange for telephone answering service with prepared message until new system in place. Arrange temporary service with local telephone company at temporary location. Phones, fax, modem, internet use.

Equipment
Contact equipment vendors re: existing leases/contracts and your/their performance obligations under the terms of lease or contract. Types of equipment needed:
* Computer
* Printer
* Fax machine
* Copier
* Dictation equipment
* Typewriters
* Computer network

Identify portable computers/home computers that might be pulled back from home use during recovery period. Vendors and Other Offices Offer Volunteer Assistance . After a widespread disaster, local and national vendors and many individuals and businesses often volunteer products and services to those affected by the disaster.

Office Supplies
Contact supply vendor to obtain necessary supplies. Contact printer to print stationery, business cards, etc. Contact forms vendors (billing forms, other forms).

Library
Evaluate possibility/cost of repairing books. (Vacuum/freeze dry method). Arrange with other firms/universities to use library facilities. Establish link with computer assisted research services at your new office location. Publish a resource list for attorneys about where to go for library services.

Records to be Recovered
Client Documents (opposing counsel/clients/Secretary of State's office/Registrar's office may can assist with copies and reconstruction of events, dates, deadlines, etc.)
* Leases
* Wills
* Agreements
* Settlements
* Corporate records
* Docket and calendar records
* Pleading files and court papers
* Client billing information
* Current address of client's counsel and contacts
* Billable time and receivables information
* Correspondence

data may be a matter of public record. Foley recommends a search through, among other things, corporate, vehicular, property, and asset records. She also suggests a search on LexisNexis as well as other state and local databases.

Recreate the evidence—Clients, vendors, and opposing counsel all may have duplicate documents and data. Don't be shy about approaching them.

Communicate with your co-workers—Your fellow employees may have duplicate data in the form of email attachments, or documents that have been copied to personal hard drives, or even hard copies of documents. It's critical to get the firm communicating and working together on data retrieval.

Make sure the data stays—Now that you've gotten your data and documents back, it's a good time to come up with a prevention plan for the future. As all four panelists pointed out, the best time to get your firm to buy into data backup is right after a system crash. The panelists pointed out that data back-up is an unsexy part of life at the firm and one that's ignored and underappreciated most of the time. But back-up can save your firm countless hours in the event of a crisis. Don't wait until the crisis to find that out.*

*Emily Friedlander, Data Recovery: Finding What You Knew Was Once There, available at htti)://
www.lexisone.com.

First Steps in Recreating the Needed Records

Before any efforts are made, try to take pictures of what you have. Use the best quality camera you can get your hands on. Avoid using an instant picture camera if possible. While convenient, the photos produced are rarely of great quality. Detailed pictures of debris blown up later can be invaluable and produce far more than you can imagine at the time of the loss. Avoiding the calendar and confidentiality problems means recreating the office and client information. Before too much time elapses, sit down and write down the names of all of the clients and pending matters you can remember. Have all of the others in the office, especially the secretaries, do Likewise. Keep the lists and add to them as others are remembered over the next several days. Start a fresh office calendar and add to it in pencil as important appointments and deadlines become known. The combined memories of an office will usually produce a list that is amazingly complete. If nothing else is found match the lists to court dockets and any other case lists that are available. This will then allow the recreation of calendars and tasks for many cases.

Contact as many clients as you can and ask them to see you as soon as they are able. They should bring with them any records that will assist your restoration effort. If approached with compassion, clients will readily understand the need to recreate records and will be very willing to assist you in going forward with their work.

Handling Paper Records

First separate the records that can be read from those that are totally illegible. Any that can be dried out and used or copied for use in recreated tiles should be. None should be destroyed. If totally illegible, the documents should be dried to the extent possible and stored in sealed bags, preferably double strength and airtight. These bags should be kept for at least three years in a safe place, to allow any clients to seek you out for return of their original papers, and to protect yourself against these records being reconstituted by an unauthorized party. Even if no one will ever be able to reconstruct what these pages contained and they have no ultimate use (very likely), you can truthfully say you kept them for a reasonable period for client protection.

Protect and preserve all calendar and accounting records first. The checkbook registers should be saved at all costs. All files with bills from cases that are pending should be restored if at all possible. Pick up and dry out all client registers and the box that contains client and adverse panty cards used for conflict checking. In deciding what additional efforts may be needed to restore records, consider what may be available in the count tile and other sources, especially outside of the islands. Even if you find these materials and they appear to be totally lost, preserve and dry them out. There are a number of specialty companies that use a host of modern processes to recover apparently lost paper documents. This is true of antique and other books as well. Your claims adjuster should know of them and be able to point you in the right direction.

Recommendations for Computer System Recovery

Computer systems that were not running while in contact with water will many times work if clean and allowed to dry completely before being powered up again. If the system suffered some sort of trauma then the chances of the system coming up are reduced.

The main thing that we are concerned about is the data on the hard drives. Hard drives are vacuum sealed and do a good job of keeping water away from your data if they have not been immersed in water for a period of time. This doesn't mean that the motors and circuitry on the outside of the drive mechanism will work but the data inside is more than likely recoverable.

Possible Scenarios for Data Recovery

Take the system to a reputable computer repair center and explain what has happened to the system. Make it clear that you are more concerned with saving the data than the equipment itself. Have it checked out to see the extent of the damage. It may be just a thorough cleaning and testing is all your system needs. But....

If the logic board or power supply of the system is bad the hard drive can be removed from your existing system and placed in another system for diagnosis.

If the logic board seems to work fine and the hard drive is spinning but will not come up, the service center may try an over-the-counter recovery package like Norton Utilities. In many cases recovery packages will recover the data and only rarely do they actually make the situation worse. Give these utilities a try before engaging in more expensive efforts.

If the drive cannot be accessed by any of the methods described above you could send it out to a data recovery company. These companies will take your drive apart and place the planers (the disks) from your drive into a working mechanism to recover the data. They also have all of the software tools necessary to attempt to recover the data. These data recovery companies are fairly expensive but worth it if they save your data.

In any case if the drive is functioning and if you can recover the data, have the data transferred either to a tape, removable drive, or some other media that you can easily use. If you have a new system have the data transferred to it. If you are fortunate enough to recover all of the data before any hardware is repaired or available, contact a local computer vendor and see if a classroom or other large facility is available that you can use on a temporary basis. Often times these training facilities can be easily adapted for emergency use.*

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

<u>Assess Damage</u>—Once it is determined that disaster is over and space is accessible, begin assessing damage. Make sure all file cabinets or other containers that are to be opened are cold to the touch. If fire was involved, flash fires may occur upon opening a warm cabinet.

Call vendors and collect the following supplies:

* Freezer or waxed paper
* New boxes, file pockets and folders
* Plastic milk containers
* Refrigerated facilities or trucks
* Plastic garbage cans or pails
* Sawhorses, plywood and plastic sheeting to wrap wet records for removal
* Fans and dehumidifiers; pumps, if necessary
* Mops, buckets, sponges and rubber gloves
* Hand-held, two-way radios (walkie talkies) or cellular phones
* Irons, plastic clips and clothesline or nylon fish line if working with a small volume of records

<u>Assessment Procedures</u>—Prioritize damaged documents to be restored in order to protect the most critical documents from further damage. Separate those records that are of critical importance from those that can wait. Determine whether to freeze some of the documents in the hope that they will never need to be restored. It is less expensive to freeze documents than it is to freeze them and restore them. If back-up records are available, the originals should not be restored.

Identify the status of materials by the use of colored tape or markers.
Black - beyond hope and cannot be recovered
Red - to be recovered first and of the greatest importance
Yellow - to be frozen and recovered only when needed. Long term storage is possible.
Green - does not need any recovery service, not damaged and can be used immediately

<u>Documentation</u>: - Destruction of any material should be documented for legal and insurance purposes. Use a disposal certificate to indicate what is beyond recovery and why. Form should contain following information:

* Client/Matter No. or Record Title
* No. of file in pockets
* Inclusive dates
* Reason destroyed
* The form should be signed and dated.

<u>Records Storage Areas</u>—Areas where records are stored should be thoroughly repaired, sterilized and dry before records are returned to them. This includes shelving, cabinets, desks, etc. Carpeting should be removed, dried and treated for mold and mildew. Water damaged carpet liners or padding should be replaced with new. Hidden water dampness under tile or false flooring should be removed. Disinfectant should be used on all surfaces. Inspections of the damaged area for mold, rust and other damage should continue for at least a year after the disaster.

Types of disasters and corresponding responses:

<u>Water damage</u>

Paper—Deterioration of paper records will begin within two to three hours. Action must be taken within the first 24 hours to prevent mold, fungal or bacterial growth. Paper records must be removed from the water and then the water removed

* Firm Documents
* Leases/Subleases (landlord, leasing companies may have copies)
* Agreements (other party may have copy)
* Client list of names, addresses, phone numbers
* Client files and billing records (opposing counsel/clients may can provide copy)
* Accounts receivable information
* Work in process information
* Financial records (CPA may can provide copies)
* Insurance policies, broker information (insurance company has policy)
* Inventory of physical assets
* Payroll and employee records (payroll service, employees may can provide information to reconstruct)

Malpractice Insurance Issues

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. The following list contains some of the issues that may arise. The most frequent source of claims is failure to take action within a specified time period. Usually, this is seen in the failure to file an action within the statutory period. More and more we see 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. Lack of confidentiality may arise as records that were blown about are recovered. Some clients may allege that their rights or positions were not prosecuted with sufficient zeal as available records and evidence were lost. 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 the lawyer when no one else can solve the problem nor has sufficient assets to address the issues.*

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

If the disaster is widespread, the courts and government are likely to be sympathetic to the plight of those affected. For instance, 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. In any event, you should contact the courts and opposing counsel, notify them of your situation, new contact information and request copies of documents for pending cases and time extensions where necessary.
In addition, contact your 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 an omissions resulting from the disaster.

Damage Assessment

Contact local emergency operations center to register claim for relief. Contact property/casualty insurer. Review policy, talk with representative about loss and coverage. (Loss of income/extra expense, business interruption coverage, etc.)

Economic and Insurance Issues: A near certain development that many employers are reluctant to confront at this early stage is that of diminished economic output. In New York, for example, employers immediately affected by the collapse of the World Trade Center buildings have been scrambling to obtain alternate office space while employees telecommute where possible. Other employers are becoming increasingly concerned about their fiscal viability. Many companies have insurance, which will cover certain economic, as well as property, losses. In addition, as discussed [above], federal and state governments have enacted emergency relief legislation.

Death Benefits: For those unfortunate employers who have lost employees ..., we encourage a prompt review of the applicable policy coverage, including life insurance, accidental death and dismemberment, and workers' compensation. Appropriate information and forms should be communicated as promptly as possible to the next of kin. Employers should be aware that many states ... have legislation governing the distribution of final paychecks and death benefits, which may become an issue where a deceased employee has more than one beneficiary.

Property and Casualty Insurance: Employers who suffer losses of any type are urged to notify their applicable insurance carriers as soon as possible. Not only will this expedite the processing of claims and receipt of necessary benefits, but many insurance policies have strict time limits for reporting losses.*

* Terri M. Solomon & David S. Warner, Coping with the Aftermath (Littler Mendelson, P.C., Sept. 2001).

Assess damage to determine what, if anything, is salvageable and how long recovery efforts will take. Contact landlord, if applicable, to determine obligations under the lease agreement during time space cannot be accessed and to discuss recovery efforts they are making.

Records Recovery — Initial Response

Get the data back

Look through public records – As Tracey Foley, a senior consultant from Ernst and Young pointed out, much of your firm's

e. Examine methods of dealing with individual/personal disasters (e.g., sudden death or disability of a partner)

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 out side the office. If this does not exist, it must be created "on the fly" as attorneys make contact.

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 an other 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 them 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.

from the paper. The main short term goal should be to remove the paper from the wet environment and freeze it until it can be dried out. Freezing will preserve the paper up to six years if necessary.

Procedure:
* Stabilize atmosphere
* Maintain temperature at 50 to 60 degrees. Do not add heat until dehumidification and circulation are established.
* Maintain humidity at 25 to 33%. Request use of portable dehumidifiers.
* Maintain circulation with portable fans.
* Discard any plastic sheeting used as temporary protection.
* Assess records damage
* Work with the wettest records first, usually those on the bottom shelf or drawer or closest to the sprinkler system or leaking pipes.
* Remove metal fasteners or clips to prevent the formation of rust.
* Loosely pack in plastic sheeting or freezer paper approximately 200 sheets (2 inches) in an upright position with the spine down in crates. Do not stack records on top of each other.
* Use plastic milk crates to transport the records. Pack the crates about three quarters full.
* Remove records to be recovered to a dry location or freezers if possible.
* Maintain list of all records removed.

Small Volume of Paper
Put records that are waiting to be processed into refrigerator freezers if at all possible. This will delay the disintegration process. Separate the sheets of paper by hanging them out to dry on a clothesline, or interleaving them with absorbent paper stock if extremely wet or in bound volumes. The interleaved stack should be not more than six inches high and changed every four to eight hours. Use fans to circulate the air if using the line drying method. Iron individual sheets of loose paper with low heat from an iron or paper dryer as used in photography. An alternative is to microwave the paper. Remove all staples and metal fasteners first. Bound volumes should have the spine and all binding materials removed first. Photocopy papers by using mylar sheets to protect the damaged document; discard the original and use the photocopy. Create new file folders, pockets or boxes as required.

Large Volume of Paper
Locate outside sources with large freezers that can accommodate the wet records until a commercial service can rehabilitate them. Pack the records in freezer paper or waxed paper. Move the records to be recovered to these freezers as soon as possible after the disaster has occurred. Work with commercial service to have records recovered. They will freeze or vacuum dry the records.

Fire Damage
For charred records that are not wet, assess whether or not they are completely obliterated or just have charred edges. If the information is recoverable, photocopying of the document is the best method of recovery. Handle the records as little as possible.

CHECKLIST FOR LAWYERS' BUSINESS DISASTER PLANNING AND RECOVERY

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October 2005

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

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
   (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.

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.

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 a journment(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

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.

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 <u>very</u> 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, book shelves, 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

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