

WHEN DISASTER STRIKES

Disaster Planning for Lawyers

By Laura Walker Plunkett, Walter F. Wolf III, and Kathryn M. Knight

Hurricane Katrina has reminded lawyers and their firms of the importance of disaster preparedness and disaster recovery planning. The threat of a natural disaster, however, is not limited to the Gulf Coast states. This year marks the 100th anniversary of the 1906 San Francisco earthquake, and San Francisco Bay area residents have vivid memories of the 1989 Loma Prieta earthquake. The 1994 Northridge earthquake in Los Angeles surpassed Loma Prieta in terms of damage cost. In 1993 flooding significantly affected areas in Missouri, and tornados, wild fires, and mudslides can devastate large areas.

Natural disasters are not the only risk that law practices face. The acts of terrorism on September 11, 2001, the Oklahoma City bombing, and the anthrax scare signify the continuing threat of terrorism on U.S. soil and the attendant potential for death, personal injury, property loss, and business interruption. More common risks faced are building fires, plumbing and sprinkler eruptions, and similar catastrophes.

To protect against these hazards, any law practice should have a disaster recovery plan in place that suits its size, type of practice, and locale. A firm that does have a plan will be in better shape than one that does not because having a plan reduces the extent of necessary improvisation to respond to a catastrophic event.

Formulate a Plan

Depending on the firm's size and management structure, a team of lawyers and administrative and support personnel should devise and implement a disaster recovery plan and should routinely review and assess the strengths and weaknesses of the plan. The plan should be kept in both hard copy and electronic form. The plan also should be backed-up off-site, so that it is readily accessible if the firm's offices cannot be entered in the wake of a disaster.

Laura Walker Plunkett is a member of Stone Pigman Walther Wittmann L.L.C. in its New Orleans, Louisiana, office. Walter F. Wolf III and Kathryn M. Knight are associates in the firm's litigation section.

This article provides suggestions for a firm's disaster recovery plan and for reacting to the unanticipated. Many resource materials are available for law firm disaster recovery plans. The Department of Homeland Security's web site, Ready.gov—From the U.S. Department of Homeland Security, www.ready.gov (last visited May 10, 2006), provides sample disaster preparedness plans for individuals and businesses. Professional organizations, such as the Association of Legal Administrators, the International Legal Technology Association, and the Association of Records Managers and Administrators, can be invaluable resources.

The Human Element

Most lawyers assume that technology is the linchpin of disaster planning and recovery. Technology is extremely important and technological resources can greatly assist in recovering quickly from a disaster. With time and sufficient money, most technology problems can be solved. But what Katrina taught was the primacy of the "people" issues. Without talented people focused on client needs, a law practice does not exist.

Leadership Team

In the wake of a catastrophic event, a firm must be prepared to assemble a team of key leaders to manage the disaster. Although the management structure may evolve over time during the recovery process, a disaster management plan should set forth who will be on that team, how they will locate one another, and where they should assemble. The team likely will consist of lawyers in management positions and key administrative personnel. Firm leaders will have to make decisions under pressure. A plan should minimize the number of reactive decisions the firm will face. Nevertheless, the leadership team must remain flexible to meet the challenges at hand. Once they make decisions, the firm leaders then will need to work with firm members and personnel to build a consensus and avoid divisiveness.

Finding People

One of the first steps after any catastrophic event is to locate

firm personnel and keep them abreast of the firm's plans for responding to the catastrophe and getting back to work. The firm should plan for more than one means of communication. If a widespread natural disaster or a serious act of terrorism occurs, then electricity, cell phones, PDAs, land lines, and public transportation may not function or may work only intermittently. Hurricane Katrina destroyed cell towers and interrupted utilities, rendering cell phones, corporate e-mail, web sites, and other means of communicating inoperative.

Voice Mail. In most disasters, land phone lines will be working. Hurricane Katrina and September 11th may be more the exception than the norm in their effect on telephone communications. A firm should maintain a designated extension or voice mailbox that employees may call for updated information. A firm already may have a designated number for more routine work interruptions, such as snow days. If a catastrophic event renders its phone service inoperable, a firm should establish another number as quickly as possible to serve that function—preferably in a different area code or with a 1-800 number. A single analog telephone number with voice mail from the telephone company also may be a useful backup.

Phone Lists. A firm should maintain, and regularly update and back up, a contact list for personnel that includes home and cell phone numbers. If feasible, personnel also should provide, and regularly update, contact information for a family member in another locale. Employees often evacuate to the home of a relative living outside of the directly affected area.

E-mail. Blast e-mails can be extremely useful in providing current information to firm personnel. A catastrophic event, however, may disable a firm's e-mail system. Lawyers and, at a minimum, key firm personnel should be encouraged to maintain separate web-based e-mail accounts. The personnel contact list should include those e-mail addresses. Once they are able to move to a safe location, personnel may very well have access to web-based e-mail. A more expensive option is to hire e-mail continuity services that use alternate servers in other cities to keep e-mail accounts active. The advantage of an e-mail continuity service is that clients can still reach lawyers at their regular e-mail addresses.

Text Messaging. Although mobile phones may not carry voice messages, text messaging uses much lower bandwidth and may continue operating. Short messages are easily sent in this manner. Katrina proved that text messaging is not just for teenagers.

PDAs. Instructions should be provided for "PIN to PIN" communications. Blackberries can communicate using PIN to PIN communication when regular wireless links are severed. Each Blackberry has a PIN number. By using that number and the PIN of the receiving Blackberry, messages can be sent even if the e-mail server is not available. The plan's contact list should include PIN numbers.

Firm Web Site. The firm should get its web site back up and running as soon as possible. Employees should be instructed to check the firm's web site for updated information in the event of an emergency. If a firm has a backup server or

hot site facility, it can quickly set up a prepared web site with contact information. Another option is to have the firm's web site hosted in a distant locale. Backup servers and hot sites are described in more detail below.

Contact Trees. A firm should set up a mechanism within departments, practice groups, or other logical groupings of people so that someone is responsible to contact others in the group (or to have them, in turn, contact other members of the group). It is a testament to human ingenuity how employees can be located through friends, family, or word of mouth.

Reminders. In the event of a natural disaster for which there is some advance warning, the firm should send reminders of all these communication options to personnel along with current contact lists. Whether or not there is advance warning of a catastrophic event, one or more firm personnel should be designated to begin working on these forms of communication as soon as possible.

Putting People to Work

Getting lawyers and support staff back to work in some form is critical for numerous reasons. The first and foremost reason is client service. Depending on the severity and extent of the catastrophic event, even if courts are closed and deadlines are delayed in the hardest hit areas, there may be filing or other deadlines that must be met in other jurisdictions. With an isolated event, such as a building fire, business in the rest of the legal community will go on as normal. The firm should remind lawyers and other personnel of these facts and emphasize the need to check deadlines and calendars. The disaster management plan should provide that, if feasible, the firm's lawyers should evacuate with a printout of their electronic calendars or their paper desk calendars. In the case of a widespread disaster, clients may have new problems requiring urgent attention.

A firm's financial health and its ability to continue employing its staff also depend on getting back to work. Business interruption insurance can provide a cushion, but it is no substitute for resuming operations. Putting people back to work in some semblance of a routine can aid the recovery process. As discussed below, office space may be temporary and limited in availability. The management team will need to make decisions about the extent to which lawyers and other personnel will be allowed to work from home or other remote locations. A balance must be struck between the ability to work quietly off-site and having as many people as possible working together. In addition, having personnel physically present can aid in quick decision making.

Housing

A natural disaster that affects a widespread area can displace people from their homes for a long time. Although Hurricane Katrina may be unique in the degree to which it affected housing stock, FEMA trailers are still at sites in Plantation, Florida, as a result of Hurricane Andrew in 1992. Even the largest firms cannot have a ready source of housing available for all of its employees on the chance that there might be a cat-

astrophic event. Nevertheless, a firm should consider housing soon after any catastrophic event that affects a large number of residents. Depending on a firm's size and financial resources, it could itself rent apartments or other housing units. As time and finances permit, a firm may also want to rent hotel rooms or apartments in advance for its key personnel. If the firm itself cannot make the financial commitment for housing, it could serve as a clearinghouse for housing information, such as by maintaining a bulletin board or through regular e-mail updates. The clearinghouse mechanism also could include postings by employees who are willing to share housing arrangements.

Schools

A catastrophe of widespread geographic effect can close schools. Lawyers and employees who are worried about their children's schooling cannot perform at their best. Knowing that schools may be an issue, and being prepared to serve as a resource for school information, will go a long way to supporting firm personnel.

Cross-training

After a significant catastrophic event, everyone may not return to work immediately. Firm personnel should be cross-trained to perform additional tasks in case of an emergency. Every lawyer should have someone else in the firm who knows the current matters on which he or she is working and where calendars, files, and other critical information are located. That way, someone else can step in and take over a matter, as needed.

Counseling and Support

A catastrophic event can take an enormous emotional toll on people. Some may lose their homes of many years. Others may lose photographs, wedding albums, keepsakes, and other family mementos. In the worst of circumstances, employees may lose family members or co-workers, or they or their family members may sustain serious personal injuries. The firm's leadership must give people the "space" to deal with the grieving and healing process, while at the same time getting them back in the routine of work. Depending on the nature of the disaster, more formal counseling may be in order.

In some instances, employees may sustain substantial economic losses. As appropriate, a firm may want to establish a disaster relief fund or make other financial accommodations for affected employees. Bonuses or other benefits may be a way to acknowledge employees who have made extraordinary contributions to the recovery effort.

Firm personnel may face the daunting task of applying for federal disaster assistance, insurance claims, and other benefits. Making available firm lawyers with the requisite expertise for employee informational sessions can help rebuild employee morale. Other consultants, such as accounting firms, with whom a law firm has relationships also may be willing to host informational sessions at no charge.

Layoffs and Furloughs

In the aftermath of a catastrophic event, a firm's leadership must think carefully about whether to lay off or temporarily furlough any employees. The firm must decide and implement a uniform policy for how long employees will be paid before they must return to work at an acceptable location. Any decisions to terminate an employee should not be made in haste. There will be some natural attrition. A major disaster can be a life-changing experience, leading some people to rethink career choices. An interruption in business may be temporary, causing a firm to regret having laid off employees. Moreover, everyone involved must be mindful of anti-discrimination laws, employee benefit rights, insurance coverage issues, and similar concerns in making any decision to lay off an employee. Finally, the public image of any business that lays off employees in the wake of a disaster cannot be ignored.

Technology

Protecting a law office's data and records can make all the difference in post-disaster business survival. Furthermore, clients may assume that their lawyers will protect their records and data better than the clients could. Although each disaster presents unique problems for managers and IT staff, certain fundamental principles of technology and data protection apply under almost any circumstances.

Back Up Data on a Daily Basis

There are numerous ways to back up data depending on the size and needs of a law office. Tapes, CDs, DVDs, disks, and separate hard drives can all serve as backups depending on how much information is generated on a daily basis.

Store Backed Up Data in a Secure Location

Until recently, law firms generally believed that saved data could be stored in the same city as its office. This is logical if the disaster is a single building fire or similar event. Large-scale events that affect an entire city or region dictate that a set of backup data should be transmitted electronically or physically to another city for storage. It even may be advisable to have a backup computer facility—either a "cold site" or "hot site" as discussed below.

Protect Hardware

Protecting servers, routers, and hard drives is as important as protecting the software and data generated. Computer facilities should be located in a secure part of the building that is high enough to avoid flooding and where a loss of windows or a roof will not damage the system. Fire protection is essential, such as halon gas dispensers or the newer FM 200 system.

Ideal protection can be provided by creating a backup facility. This facility can be a "cold site" or shell location, or it can be a fully equipped "hot site." A cold site is a space that is prepared and wired for rapid installation of computers and servers. The hardware is in place, but the

user must configure servers and restore data. A hot site is a place where actual computers and servers with duplicate software and data are stored. A hot site can be activated in a matter of hours, whereas a cold site will be usable only after servers are configured and data have been restored. A vendor can set up a hot site on short notice for a fee. If cost permits, the most advantageous option is to maintain a hot site and use real-time replication of data to minimize a firm's downtime in the wake of a disaster.

In smaller offices without a computer network, the firm may remove the hard drives, transport them to a new location, purchase new computer shells, and insert the hard drives. This does not relieve an office of the necessity of data backup, and it will be most effective in offices of under 15 to 20 people at most. Another alternative is to have a reciprocal agreement with another law firm in another city to store each other's data. That kind of arrangement, nevertheless, will depend on whether the two firms can preserve the attorney-client privilege and avoid conflicts of interest.

Protect Power Sources

The Department of Homeland Security guidelines make the distinction between evacuation plans and shelter-in-place plans. If circumstances prevent evacuation, then the firm should consider alternate power plans such as generators. A disaster plan should take into account how long a generator may operate unattended.

The firm should keep a checklist of items needed to power its electronic devices. Mobile phones, laptop computers, PDAs, and other devices should have an AC adapter for both houses and cars and spare batteries. Personnel may end up evacuating to an area that loses power for several days. Base units and software for PDAs are also useful if time permits those items to be retrieved.

Preserve Lines of Communication

The same principles for contacting employees apply to communications with clients, vendors, and other third parties with whom a law firm deals on a regular basis. The firm needs to consider how clients and others will reach it. In some cases, programmable call forwarding of main telephone lines may allow call forwarding to an emergency location.

A firm should consider whether all of its laptops should be equipped with wireless cards in the eventuality that DSL lines are disabled. Similarly, the firm should encourage individuals with their own laptops to have wireless Internet service.

Firm personnel may be accustomed to dialing in to the office using remote access applications, such as Citrix. On the assumption that not everyone will be dialing in at the same time, a firm may have fewer licenses for its remote application software than the number of personnel who may be dialing in in the wake of a catastrophic event. A disaster recovery plan should include an assessment of

how many licenses the firm holds, how many it might need in the event of an emergency, and how it can quickly obtain additional licenses.

Inventory Software and Hardware

The firm should keep an emergency package off-site in its remote location, or at its cold or hot site facility, that contains inventory lists of hardware and software, including serial numbers for hardware, license numbers for software, and contact numbers for vendors and suppliers. This will help account for lost items and give an accurate picture of prior technology needs and capacity. Having software license numbers is imperative if servers must be rebuilt.

Office Space

A catastrophic event may make a law office uninhabitable for days, weeks, months, or forever. Understandably, a law firm cannot have backup office space at the ready in the event of a catastrophe. A disaster recovery plan, however, should include some key matters to consider immediately if disaster strikes.

A plan should be made for accessing the damaged office space as soon as feasible to retrieve necessary data, equipment, files, and other personal property. There should be a priority list of items to recover. Inoperable elevators, damaged floors, and other physical factors may limit how much can be removed. The plan must contemplate a scenario in which the offices are completely destroyed or there is no access for a very long time.

Next, the plan should address the need for new or temporary quarters. If a firm has more than one office, then the unaffected offices are likely points of refuge for the lawyers and personnel from the affected office. Even that, however, is not so simple. Suddenly having a branch office double or triple in population can make even the most harmonious of relationships more than a bit testy. Someone from the leadership team should facilitate that transition. Routine items such as phones, computers, and desk space may have to be shared.

For a single-office law practice, the challenges are even more daunting. The firm should dispatch someone immediately to deal with space issues. Office space may be scarce and leasing rates at a premium. Finding temporary space is something that must be done quickly, but not rashly. The firm should take as little space as it can for as short a term as is possible. A longer-term lease with some cancellation rights might serve the same purpose. Depending on the severity of the disaster, space may be available in a "suite" office facility. Firm leaders should not lose sight of the fact that the space is temporary and is being leased to fulfill a short-term need.

Insurance

Insurance coverage should be a primary consideration for every law firm's disaster recovery plan. Depending on the nature of the catastrophic event, property, business interruption, rent, and liability claims may be involved. If the disaster

involves death or personal injury, employees also may be looking to the firm's life, disability, and health care coverage.

Designate an Insurance Coordinator

Every firm should designate one of its lawyers with insurance expertise as an insurance coordinator. Although administrative personnel likely will have primary, day-to-day responsibility for insurance matters, it is essential to have a designated lawyer who is well versed in coverage issues. Depending on the size of the practice, the firm may want to designate a backup lawyer in case the primary coordinator is unavailable.

The firm's insurance coordinator can serve as the point person for pursuing the firm's insurance claims in the event of a covered loss. Having a firm expert will enhance the firm's ability to respond to a disaster and to return as soon as possible to the business of serving its clients. Ideally, the firm's insurance coordinator should assist the firm in reviewing and assessing its insurance coverage and needs at least annually and as changes occur.

Survey Insurance Needs and Existing Coverage

During the initial stages of preparing a disaster plan, the firm's insurance coordinator and appropriate administrative personnel should evaluate the firm's existing insurance coverages, including primary, excess or umbrella, and special risk coverages, to determine whether coverage is adequate for current needs. They should ascertain what risks are covered, what risks are specifically excluded, and whether the firm needs any special coverage, such as coverage for earthquake, flood, wind, computer data or equipment, artwork, excess expense, payroll, or any other special coverages unique to the firm's needs. The firm should compile a comprehensive list of its insured assets, including serial numbers or other identifying data. One option is to photograph or videotape all of the firm's assets, in addition to maintaining a hard-copy list. The firm's insurance team should play "what-if" games: What if the firm experienced some disaster that caused the loss of most of these assets? Only a few of them? All of them? Would existing insurance coverage adequately compensate the firm for the loss? Could firm operations be restored with payments from its insurance?

Coverage may be based on the actual cash value of the assets or on replacement cost. A cash value policy generally will pay the replacement value at the time of loss *less* a percentage of depreciation based on the assets' age and condition. A replacement cost policy generally will pay the amount it costs the firm to replace or rebuild the assets in kind or quality. This is not the end of the inquiry, however. A policy may contain a coinsurance provision. If it does, the firm must ensure that its assets are insured to value, meaning that the insurance limits provided in the policy must be greater than or equal to a certain stated percentage (provided by the policy) of the assets' replacement costs. If assets are not insured to value, a covered loss is paid only proportionately, based on the amount of insurance carried over the amount of insurance required.

Business risk interruption insurance also must be reviewed for the kind of event that will trigger coverage, the length of the coverage period, and the income and cost items that are covered.

Finally, the firm should confirm all of its coverages and the correct policy forms with its insurance companies, *not* the agent or broker, unless the agent or broker is a dedicated agent or broker, is selling only that insurer's policy, and is considered an "employee" of that insurer.

Compile Essential Materials

The firm should compile essential insurance materials in a portable format that will be readily accessible in a casualty and should retain a copy of the current form of each of its insurance policies in both hard copy and in backed-up electronic form off-site. If disaster strikes, immediate access to this information is essential for the firm to respond quickly and to begin remediation and restoration as soon as possible. All these hard and electronic copies should be updated whenever there is a change in a policy form or coverage, so that the most current version is always accessible.

The firm also should have a brief summary of the coverage provided by each policy, the coverage exclusions, the requirements for complying with the policies' claims provisions, and any deadlines for filing claims. The insurance file also should include, in hard copy and electronic form, current contact information for each insurance company, the agent or broker from which the firm purchased the coverage, and the firm's asset inventory.

Pursue Insurance Claims

If disaster strikes, the firm's insurance coordinator will become the firm's "first responder" for initiating the necessary insurance claims process and helping the firm plan its recovery. The insurance coordinator should notify each carrier of the firm's losses, making sure to comply with all terms of the applicable policy for notice. Next, the firm must begin the process of assessing the damages (by category of covered loss) and determining the cause of each type of damage sustained (wind-driven water damage versus flood damage, for example). A financial analysis also will be necessary for a business interruption claim. This can be a team effort, with different areas of potential damage assigned to different firm personnel. Careful, detailed documentation of the damages and their extent is essential to prompt (and hopefully full) payment of the firm's claims.

Property Claims. For property losses, if possible, the firm should prevent further damage and document as much of the damage as possible before undertaking mitigation or restoration efforts, including photographing or videotaping the damage. As restoration begins, the firm should maintain detailed records of expenditures that may apply toward any relevant deductibles.

Business Interruption Claims. Business interruption claims come with their own unique set of coverage and claims

issues. The firm must be able to convince its business interruption carrier of the financial loss sustained because of the casualty. Even a few days of downtime for a law practice can be costly. As part of its advance disaster planning, a firm should maintain and update good financial data on its average monthly billings, average hourly rates billed and collected, average number of hours billed each month, average monthly collections, and typical realization rates. After a disaster, the firm should meticulously track time recorded, amounts billed, and fees collected. These data will help in recovering lost income from a business interruption. Firm budgets are a great starting point, but a carrier will be looking for historic and current data, not just annual goals. Similar information for payroll and other line-item costs are also key.

The firm may want to engage a forensic accountant. Even if the firm does not have its own forensic accountant, it should request from the insurer all work papers of the insurer's adjuster or accountant that support payments the insurer proposes to make. The firm should pay careful attention to the method that the insurer uses to calculate lost revenue. Lost revenue likely will be the largest part of any business interruption settlement. Someone unfamiliar with a firm's practice may make wrong assumptions about the firm's ability to generate fees and their ultimate collection.

One helpful tool is to create a separate time writing file or account within the firm's time writing system to allow all lawyers and other professionals to account for downtime they experience as a result of the disaster. Lawyers may be spending time on firm relocation, personnel, or insurance issues that otherwise might be devoted to client work. Likewise, in the case of a widespread natural disaster, those same professionals may need time away from work to deal with their own insurance and personal affairs.

The firm also needs to look carefully at the triggering and wind-down events for the business interruption claim. Most policies require physical damage to start the coverage. Coverage also may be triggered if damage to other property results in the denial by civil authorities of access to the firm's premises. A flood alone will not trigger business interruption coverage. Most policies have a "wind down" or "tail" period. The policy will assume that a business may have to relocate to a temporary facility and that there will be some ramping-up time required if the business returns to its existing facility. Therefore, the coverage will be effective for some number of days (45, for example) after the business resumes operations. The firm needs to give some thought to, and make persuasive arguments about, when it has resumed operations at its damaged facility.

Work with Adjusters. As the claims process progresses and the firm's restoration continues, the insurance coordinator should work with the claims adjusters to resolve the firm's claims. The firm should document all communications with the adjusters by letter or e-mail—for example, confirming the firm's understanding of what the adjuster has said about the claim, any requests to extend deadlines established by the con-

trolling policy, and any other deviations from the requirements of the policy. If disputes develop, the firm will be better positioned to pursue full recovery of its losses within the provisions of its policies.

Other Financial Issues

Other issues could have a direct effect on the income and cash flow of a law practice and its ability to recover quickly from a catastrophic event.

Banking

As part of its advance disaster planning, a law firm should consider the banking institution or institutions with which it maintains a customer relationship. Is the bank locally based? Is it a large national or international institution? Where a firm's accounts are maintained—such as a local, regional, or national bank—can play a part in its ability to get back up and running. Soon after the occurrence of any catastrophic event, someone from the firm should make contact with the firm's bankers to help financial matters operate as smoothly as possible.

Payroll

Meeting the firm's payroll in the wake of a disaster is very important. Many law firms pay employees by direct deposit, which can solve most problems. Firm personnel then will be able to access funds through banks or ATMs located outside of the immediately affected area. Nevertheless, planning will be needed to ensure that a firm's payroll is funded, even if the pay date is in the midst of a catastrophic event.

Mails

Hurricane Katrina caused a significant disruption in mail service in Southern Louisiana, which is still being felt as of the writing of this article. Terrible mail disruptions also occurred as a result of the anthrax postal scare, especially in the Washington, D.C., area. In this age of e-mails, facsimiles, and overnight deliveries, lawyers can easily forget how dependent they remain on the U.S. mail for basic services—such as getting paid. As part of a disaster recovery plan, a lawyer or firm should think about where mail should be sent if an office suddenly cannot be occupied. The firm should likewise consider sending bills by e-mail and requesting payment by wire or overnight delivery.

Cash

Lawyers can forget how much they depend on electricity and phones and how seldom transactions are conducted in cash. If ATMs and bank accounts suddenly become inaccessible, a modest stash of cash can be a lifesaver to secure immediate goods, services, and manual labor. A supply of firm checks located off-site, and accessible to key firm personnel, is an additional option to consider.

Original Documents

Client Documents

More and more firms are imaging and backing up important client documents, including final documents from closings. Imaged documents may not be sufficient protection for all client documents. This factor is especially true in the estate planning arena. In most states, copies of wills may be "proved" to the court if the original will has been destroyed, but at a significant additional administrative burden and expense. If the will was destroyed in a law firm's office, the client may expect the firm (or its insurer) to absorb those additional costs.

Banks, brokers, and hospitals will not accept photocopies of powers of attorney or living wills (sometimes referred to as advance health care directives). Most institutions, however, will accept a copy of a power of attorney certified as a "true copy" of the original document by the original notary. In many jurisdictions, living wills are not notarized documents and, therefore, cannot be certified. Because they are not notarized, they can be re-created easily as long as the client is conscious and has capacity. Most hospitals keep forms on hand.

Natural disasters are particularly hard on the older, more vulnerable population. The mere act of evacuating may exacerbate health problems. An extended evacuation can interrupt routines and prescription refills may not be readily available. Elderly clients may suffer premature emergency hospitalizations and even death. Many older clients simply will not want to deal with the enormity of the insurance and reconstruction issues that follow a natural disaster and will choose to rely on their children and professional advisors to handle these issues. Clients' family members will call in the weeks following a natural disaster looking for powers of attorney and living wills in a much higher volume than is customary. To minimize the disruption a catastrophic event may cause, a firm should consider some or all of the suggested practices for client documents in the box on pages 65.

Firm Documents

Client documents are not the only critical documents to be preserved. Important firm documents should be imaged and backed up to an off-site location to allow immediate retrieval. Other key firm documents may include: office space lease or leases; documents relating to any loans or equipment leases; partnership agreements or limited liability company operating agreements; any employment contracts, especially for key employees; employee manuals and policies; tax returns for the firm for at least the last three years; employee W-2 forms for at least the last three years; and, as discussed above, insurance documentation.

Post-disaster Marketing

Marketing is not the first thing that may come to mind in the wake of a disaster. Consistent messages of reassurance to clients and the community are nevertheless important. A firm should let its clients know where its personnel are after

a natural disaster and what services are available. If local clients also have evacuated, a firm should have means to find them.

Blast E-mails

If the firm maintains a client relationship management database, then one e-mail can be sent to all clients and contacts that gives them a status report. If the firm does not have a client relationship management database, then each lawyer can send the blast e-mail form to his or her personal contact list. This e-mail should go out with the addressees listed in the "bcc" field so that the addresses cannot be read by the recipients.

Access to Contact Lists

The firm's client relationship management database should be accessible from the web so that client and contact addresses can be pulled together quickly and easily from an evacuation point. If the size of a law practice does not justify the costs of a central or web-based database, a PDA that is synchronized to the contacts on each lawyer's hard drive can be indispensable.

Consistency

Communications to clients and the outside world should be consistent. For example, a uniform statement should be sent to clients instead of each lawyer writing his or her own informational piece. One person or a small designated group should write blast e-mails and other firm communications, and the management team should approve them.

Visibility

A firm should let its clients know that their lawyers are okay and available as soon as possible after the disaster. Remember that the clients also may be in crisis and may welcome the contact, viewing it more as support and reassurance than a marketing pitch.

Information

As soon as the firm has a temporary location, it should send out the first blast e-mail telling clients and other contacts that the firm is up and running. After a disaster, alternative working arrangements may occur in phases, with moves from one emergency location to another "more permanent" temporary location and then back to the old or new permanent quarters. As soon as the firm returns or has a new location, it should send another blast e-mail. If legislation or administrative orders are issued in response to the natural disaster, the firm may want to inform clients of their existence and include a link to more information (for example, a copy of the act, or a press release announcing the new regulation).

Newspaper Advertising

A law practice may never have advertised before. A catastrophic event may be the time to make an exception. Let clients know that the firm is displaced. Express commitment

to the community and to the effort to return and rebuild. Once back in permanent quarters, a firm may want to run another advertisement letting people know that it is back and the date on which the firm returned. Local citizens and business leaders will look favorably on a timely return to the community after a disaster. Do not forget to thank the city that hosted the firm and key private parties that may have assisted the firm during the crisis.

Firm Web Site

A web site provides a central location where clients in need of services know to go to find the firm. Post all the information outlined above on the firm's web site. As previously mentioned, there should be a private place for information exchange among employees. A lawyer or firm does not want clients to see the inevitable post-disaster chaos attendant to finding employees and telling them where and when to report.

Courts, Filing Offices, and Governmental Contacts

Another consideration for a firm's disaster recovery plan is access to local courts and filing offices. In the case of widespread disaster, these public offices may be damaged, displaced, or destroyed. If the public offices have temporarily relocated, how will the firm access these offices for filing documents or obtaining necessary copies? How will the firm know where these offices have relocated and their schedules for providing public services? How can the firm make filings if mail and facsimile services are unavailable or unreliable after a disaster? How will the firm meet client deadlines or other needs if public offices are not accessible? How will the public's inability to access the courts affect statutes of limitation? The disaster recovery plan should address these concerns.

Moreover, knowing how and where to reach key public officials and first responders may be critical to regaining access to the firm's offices in order to gather important materials. Those kinds of contacts also may be useful in locating personnel and assisting them with their own personal needs.

Admittedly, it is hard for a firm to prepare for the way in which third parties and government offices will respond to a disaster. Nevertheless, the firm can determine in advance, and its disaster recovery plan should include, a list of resources to consult for vital information on the continued operation of courts, filing offices, and other public offices required to meet clients' and the firm's needs. The plan should include a dedicated person responsible for continued monitoring and updating that list for the entire firm. The list should be kept in both hard copy and backed-up electronic form.

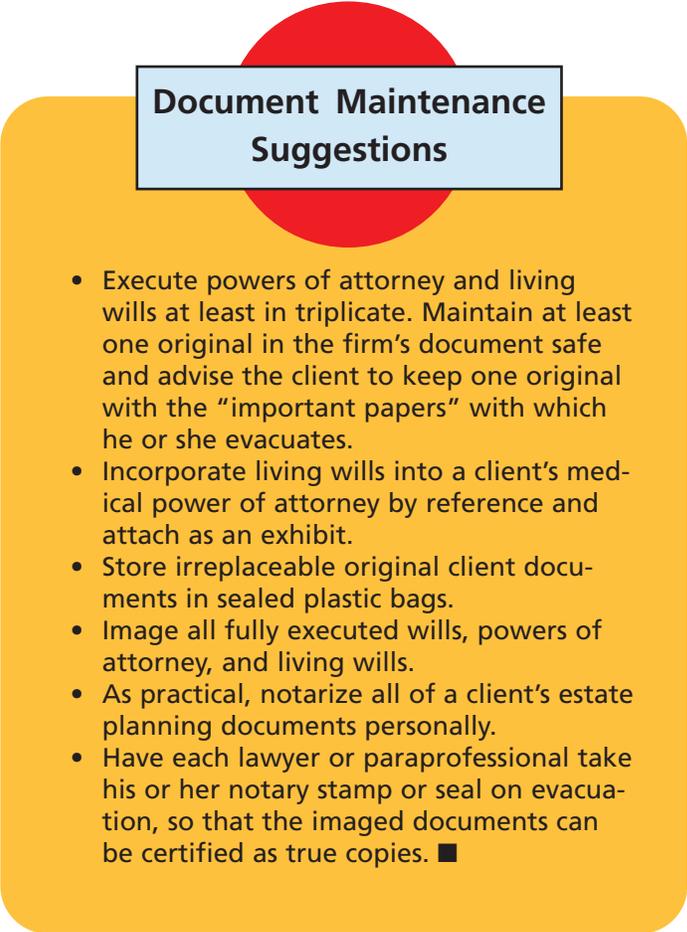
Office Supplies

A disaster recovery plan should include mundane items such as office supplies that may be needed in a temporary location. A group of lawyers and support personnel suddenly occupying temporary offices or another of the firm's branch offices will look for what may be considered the basics of law practice: tablets, paper, staplers, copiers, pens, pencils, coffee, soda,

water, and snacks. In a sudden disruption, the firm may need to purchase additional computer hardware to get up and running. These purchases may need to be made in an overheated market with other businesses scrambling for the same resources. A disaster recovery plan should give some thought to the basics of everyday practice. Soon after a catastrophic event, a member of the firm's staff should be dedicated to that job.

Conclusion

Every lawyer hopes that a catastrophic event will never befall his or her practice or firm. Of course, history has taught lawyers that everyone is at risk of a natural disaster, casualty, or other catastrophic event. Although a disaster recovery plan may not prevent catastrophe, it will go a long way in aiding a law practice in a timely and successful recovery. ■



Document Maintenance Suggestions

- Execute powers of attorney and living wills at least in triplicate. Maintain at least one original in the firm's document safe and advise the client to keep one original with the "important papers" with which he or she evacuates.
- Incorporate living wills into a client's medical power of attorney by reference and attach as an exhibit.
- Store irreplaceable original client documents in sealed plastic bags.
- Image all fully executed wills, powers of attorney, and living wills.
- As practical, notarize all of a client's estate planning documents personally.
- Have each lawyer or paraprofessional take his or her notary stamp or seal on evacuation, so that the imaged documents can be certified as true copies. ■