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Are You Prepared?

TECHNOLOGY FOR DISASTER-PROOFING YOUR PRACTICE.

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Lawyers and law firms throughout Texas are no strangers to the challenge of coping with natural disasters. From Hurricane Harvey in 2017 to the statewide power outages of February’s “icepocalypse,” we’ve survived regular reminders from Mother Nature of how severe weather can threaten lives and impact business continuity. And while there are many resources to consider when it comes to disaster preparedness, having a plan is paramount and technology should be near the top of your list. In fact, according to the International Legal Technology Association’s 2020 Technology Survey, 75% of responding lawyers indicated that their firms have disaster plans in place; another 22% responded that they were working on such a disaster plan.

Preparing and adopting a disaster recovery plan is a top priority. Even a solo or small firm practice should have a comprehensive plan that covers everything from data protection, employee contingencies, safety and first aid, communication options, and maintaining the confidentiality of your client communications. If you’re unsure what to address in your disaster plan, there are helpful resources to consult, including the American Bar Association’s guide “Surviving a Disaster: A Lawyer’s Guide to Disaster Planning” (prepared by the ABA Special Committee on Disaster Response and Preparedness and accessible along with other resources at www.americanbar.org/disaster). This guide addresses issues like alternate

facilities, communications continuity, and vital records management. Another handy resource for planning ahead is the “Disaster Planning and Recovery” guide prepared by Lawyers Mutual Liability Insurance Company of North Carolina,¹ which includes some sample forms and checklists. Ideally, your plan should address who in your firm is responsible for critical tasks like emergency communications and IT data safety and recovery, and it should include cross-designations—just in case some people have lost communications or are physically prevented from performing their designated emergency preparedness task. If possible, always have a backup ready to step in.

Planning ahead and addressing the technology needed to help you cope in the event of a natural disaster isn’t just a practical necessity—it’s an ethical imperative as well. In September 2018, the ABA Standing Committee on Ethics and Professional Responsibility issued Formal Ethics Opinion 482, titled “Ethical Obligations Related to Disasters.”² In it, the ABA examined a number of topics, including practice by lawyers displaced by a disaster and lawyer advertising directed to disaster victims. But it also reminds lawyers of their duty under Model Rules of Professional Conduct Rule 1.1 (Texas Disciplinary Rules of Professional Conduct Rule 1.01) to develop sufficient competence in technology to meet their ethical obligations after a disaster. These other ethical duties include our obligations to communicate with clients and to safeguard client property (including data) and funds. For the former, Opinion 482 reminds lawyers to

... evaluate in advance storing files electronically so that they will have access to those files via the [i]nternet if they have access to a working computer or smart device after a disaster. If [i]nternet access to files is provided through a cloud service, the lawyer should (i) choose a reputable company, and (ii) take reasonable steps to ensure that the confidentiality of client information is preserved, and that the information is readily accessible to the lawyer.³

So besides formulating a disaster plan and being aware of your ethical obligations, what other technology-related steps should you take to get your practice through a natural disaster? First, if you aren’t already making use of cloud-based solutions to backup and store data, you should be. Onsite backup on network-attached storage (NAS) or a storage area network (SAN) may allow you to recover data more quickly because the local backup is in the same place as your original device, but unlike offsite backup in the cloud, it is vulnerable to natural disasters. There are many cloud-based options to store data and documents, including Carbonite, Google Drive, iCloud, One Drive, Dropbox, and more. Second, besides storing data in the cloud, you may wish to consider cloud-based practice management solutions, enabling you to not only access your data once you have an internet connection, but also to keep track of your calendar, court deadlines, document management and integration, timekeeping, and so on. There are many cloud-based practice management solutions out there that are user-friendly, including Clio, Rocket Matter, Amicus Attorney, and others.

What about email? Before disaster strikes, make sure you have an email service vendor that “spools” (retains) your email for delivery when power is restored or—even better—synchronizes with your mailbox and provides an alternate mail transport mechanism. Some vendors will not only provide this, but also features like encryption, spam filtering, and phishing prevention. Your service vendor may even be so seamless that your clients won’t even know that your primary email technology was down. And be sure to have your system passwords encrypted in the cloud, since you may need them during the recovery phase. Visit with your IT specialist as soon as possible to get a handle on what is functional versus what’s not, and what it will take to get all your systems up and running. And in the event that any of your lawyers and staff have lost laptops, iPads, or other mobile devices in the disaster event itself, be sure that you have the capability to “remote wipe” them to make sure the data on these devices doesn’t fall into the wrong hands. What might have sounded like something out of a spy thriller just years ago is now a standard feature for many law firms, not only on firm-issued laptops but also—thanks to the “Bring your own device” era—on personal devices that an individual attorney owns, such as iPhones.

There are even more basic concerns if you lose power (like so many did during the Winter Storm Uri). First, you should have surge protectors to protect your computer hardware; a storm surge or even quick flash can corrupt the data on your hard drives, making it impossible to retrieve a document you were working on just minutes before. Combined with cloud-based backup, a surge protector can be a lifesaver. You should also be prepared for power outages by having backup batteries for your computer, so that

your practice can keep running even without electricity. Also known as “uninterruptible power supply” units, these backup batteries (which often feature built-in surge protectors) are fairly inexpensive. And when the grid goes down, that handy phone charger plugged into your home or office wall is useless. During the winter storm, my alternative was the phone charger that I could plug into my car (my car was our makeshift “warming station” as well). However, to save gas, I recommend having a portable phone charger (already powered up, of course); ZAGG, for example, makes one in the \$50 range. Or you could go “renewable,” with a solar-powered phone charger from companies like Anker. In any event, when your phone is your only working lifeline, you need to make sure its power lasts as long as possible. Quick tip: until you can get recharged using your car or a portable power bank, save battery life by turning off Bluetooth, Wi-Fi, GPS, and location services—all of which can quickly drain a smartphone’s battery.

Finally, if you’ve got devices you can charge, but your home or office internet has gone out, consider using a mobile hotspot or a “Mi-Fi” device (portable broadband) to stay connected to the internet through your wireless cellular network. Handy during the best of times, such devices can be godsend when the local Starbucks has lost power just like you and the weather conditions make getting out for some “coffee shop Wi-Fi” a dangerous proposition.

In short, you don’t have to be MacGyver to keep your practice going during the next natural disaster. But some prior planning when it comes to technology can go a long way.^{7B]}

Notes

1. Disaster Planning and Recovery: Risk Management Practice Guide of Lawyers Mutual, Lawyers Mutual Liability Insurance Company of North Carolina (Jan. 2017), https://nmcdn.io/e186d21f8c7946a19faed23c3da2f0da/556712d9bf0f4cb2a916cc810687d52b/files/risk-management-resources/practice-guides/Disaster_Planning.pdf.
2. Formal Ethics Opinion 482 (Sept. 19, 2018), https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/aba_formal_opinion_482.pdf.
3. *Id.*



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