



**LAWYER TO LAWYER MENTORING PROGRAM
WORKSHEET AA
INTRODUCTION TO PLANNING FOR RETIREMENT, DEATH OR DISABILITY**

Worksheet AA is intended to facilitate a discussion about the importance of planning ahead for how a lawyer's practice should be handled in the event of the lawyer's retirement, death or disability.

* * *

- Discuss the importance of planning ahead for one's practice if an unexpected absence such as disability or death occurs, including relevant considerations such as a lawyer's duty not to prejudice his or her clients' cases by making sure they have access to their files. See Prof. Cond. Rule 1.3, Comment 5; Gov. Bar R. V(8)(F); American Bar Association Formal Opinion 92-369, attached.
- If mentoring in-house (particularly in a small firm), discuss what plan is in place for firm lawyers to take over the cases of clients of a firm lawyer who unexpectedly has a long-term illness, dies, or becomes incompetent or otherwise disabled.
- Discuss a lawyer's obligation to colleagues and to the profession to assist with the inventorying of clients' files when an attorney in a solo practice dies or becomes incompetent or otherwise disabled, including relevant ethical considerations such as an inventorying attorney's duty to allow a colleague's clients to choose their own counsel.
- Discuss the importance of planning for disaster, different types of disasters which could realistically affect a practice, and specific ways to plan for disaster. Review and discuss the attached articles. Dan Pinnington, *Would You and Your Practice Survive These Common Disasters?*, LAW PRACTICE TODAY, Oct. 2005; Ellen Freedman, *Protect Your Clients and Yourself: Prepare for Disaster Before it Happens*, LAW PRACTICE TODAY, Oct. 2005.
- Discuss specific ways to plan for death, disability, and retirement, as well specific steps that should be taken by the lawyer is inventorying the files of the deceased, disabled or disappeared colleague. Review the attached checklists published by the Washington State Bar Association.

RESOURCES

Page AA1



**OHIO RULES OF PROFESSIONAL CONDUCT
RULE 1.3: DILIGENCE**

A lawyer shall act with *reasonable* diligence and promptness in representing a client.

Comment

[5] To prevent neglect of client matters in the event of a sole practitioner's death or disability, the duty of diligence may require that each sole practitioner prepare a plan, in conformity with applicable rules, that designates another competent lawyer to review client files, notify each client of the lawyer's death or disability, and determine whether there is a need for immediate protective action. *Cf.* Rule V, Section 8(F) of the Supreme Court Rules for the Government of the Bar of Ohio.

View complete comments at

http://www.supremecourtofohio.gov/rules/profConduct/profConductRules.pdf#Rule1_3

**SUPREME COURT RULES FOR THE GOVERNMENT OF THE BAR OF OHIO
RULE V(8)(F)**

(F) Appointed Attorney to Inventory and Protect Clients. Whenever an attorney is suspended for mental illness or pursuant to Section 5a of this rule, cannot be found in the jurisdiction for a period of sixty days or more or such shorter time as ordered by the Supreme Court, dies, refuses to meet or work with a significant number of clients for a period of sixty days or more, or fails to comply with division (E) of this section, and no partner, executor, or other responsible party capable of conducting the attorney's affairs is available and willing to assume appropriate responsibility, the Disciplinary Counsel or chair of a Certified Grievance Committee may appoint an attorney or attorneys to inventory the files of the attorney and take action, including action set forth in division (E) of this section, as is necessary to protect the interest of clients of the attorney. Upon approval by the Secretary of the Board, reasonable fees may be paid to the appointed attorney or attorneys from the Attorney Registration Fund. Except as necessary to carry out the order of appointment by the Disciplinary Counsel or chair of a Certified Grievance Committee, the appointed attorney or attorneys shall not disclose any information contained in inventoried files without the written consent of the client to whom the files relate. An appointed attorney may not represent that client.

The Missouri Bar, *Planning Ahead: A Guide to Protect Your Client's and Your Survivor's Interests in the Event of Your Disability or Death*, <http://www.mobar.org/3f8a2f55-4407-44a2-ba10-39396c2d790c.aspx>.

The Washington State Bar Association, *Protecting the Client's Interests in the Event of the Lawyer's Death or Disability*, <http://www.wsba.org/lawyers/ethics/closing+a+practice-intro.htm>.

AMERICAN BAR ASSOCIATION

STANDING COMMITTEE ON ETHICS AND PROFESSIONAL RESPONSIBILITY

Formal Opinion 92-369

December 7, 1992

Disposition of Deceased Sole Practitioners' Client Files and Property

To fulfill the obligation to protect client files and property, a lawyer should prepare a future plan providing for the maintenance and protection of those client interests in the event of the lawyer's death. Such a plan should, at a minimum, include the designation of another lawyer who would have the authority to review client files and make determinations as to which files need immediate attention, and who would notify the clients of their lawyer's death.

A lawyer who assumes responsibility for the client files and property of a deceased lawyer must review the files carefully to determine which need immediate attention. Because the reviewing lawyer does not represent the client, only as much of the file as is needed to identify the client and to make a determination as to which files need immediate attention should be reviewed. Reasonable efforts must be made to contact all clients of the deceased lawyer to notify them of the death and to request instructions in accordance with Rule 1.15.

The Committee has been asked to render an opinion based on the following circumstances. A lawyer who has a large solo practice dies. The lawyer had hundreds of client files, some of which concern probate matters, civil litigation and real estate transactions. Most of the files are inactive, but some involve ongoing matters. The lawyer kept the active files at his office; most of the inactive files he removed from the office and kept in storage at his home.

The questions posed are two:

- 1) What steps should lawyers take to ensure that their clients' matters will not be neglected in the event of their death?
- 2) What obligations do lawyers representing the estates of deceased lawyers, or appointed or otherwise responsible for review of the files of a lawyer who dies intestate, have with regard to the deceased lawyer's client files and property?

I. Sole Practitioner's obligations with regard to making plans to ensure that client matters will not be neglected in the event of the sole practitioner's death

The death of a sole practitioner could have serious effects on the sole practitioner's clients. See Program: Preparing for and Dealing with the Consequences of the Death of a Sole Practitioner, prepared by the ABA General Practice Section, Sole Practitioners and Small Law Firms Committee, August 7, 1986.

AMERICAN BAR ASSOCIATION STANDING COMMITTEE ON ETHICS AND PROFESSIONAL RESPONSIBILITY, 541 N. Fairbanks Court, Chicago, Illinois 60611 Telephone (312)988-5300 CHAIR: David B. Isbell, Washington, DC □ Daniel Coquillette, Newton, MA □ Ralph G. Elliott, Hartford, CT □ Lawrence J. Fox, Philadelphia, PA □ Margaret Love, Washington, DC □ William C. McClearn, Denver, CO □ Richard McFarlain, Tallahassee, FL □ Truman Q. McNulty, Milwaukee, WI □ CENTER FOR PROFESSIONAL RESPONSIBILITY: George A. Kuhlman, Ethics Counsel; Joanne P. Pitulla, Assistant Ethics Counsel

© 1992 by the American Bar Association. All rights reserved.

Important client matters, such as court dates, statutes of limitations, or document filings, could be neglected until the clients discover that their lawyer has died. As a precaution to safeguard client interests, the sole practitioner should have a plan in place that will ensure insofar as is reasonably practicable that client matters will not be neglected in the event of the sole practitioner's death.

Model Rules of Professional Conduct 1.1 (Competence) and 1.3 (Diligence) are relevant to this issue, and read in pertinent part:

Rule 1.1 Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

Rule 1.3 Diligence

A lawyer shall act with reasonable diligence and promptness in representing a client.

Furthermore, the Comment to Rule 1.3 states in relevant part:

A client's interests often can be adversely affected by the passage of time or the change of conditions; in extreme instances, as when a lawyer overlooks a statute of limitations, the client's legal position may be destroyed. Even when the client's interests are not affected in substance, however, unreasonable delay can cause a client needless anxiety....

According to Rule 1.1, competence includes "preparation necessary for the representation," which when read in conjunction with Rule 1.3 would indicate that a lawyer should diligently prepare for the client's representation. Although representation should terminate when the attorney is no longer able to adequately represent the client,¹ the lawyer's fiduciary obligations of loyalty and confidentiality continue beyond the termination of the agency relationship.²

Lawyers have a fiduciary duty to inform their clients in the event of their partnership's dissolution.³ A sole practitioner would seem to have a similar

1. See Model Rule of Professional Conduct 1.16 ("... a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of the client if: ... (2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client....")

2. See *Murphy v. Riggs*, 213 N.W. 110 (Mich.1927) (fiduciary obligations of loyalty and confidentiality continue after agency relationship concluded); *Eoff v. Irvine*, 18 S.W. 907 (Mo.1892) (same.)

3. See *Vollgraff v. Block*, 458 N.Y.S.2d 437 (Sup.Ct.1982) (breach of fiduciary duty if partnership's clients not advised of dissolution of partnership). A state bar association is considering creating an "archive form"--indicating the location of client files--which lawyers would complete and file with the state bar association in the event they terminate or merge their practice, thus enabling clients to locate their files. See ABA ETHICSearch, September 1992 Report. Such a form would be consistent with the duty discussed in *Vollgraff*, as simply informing a client of a firm's dissolution without telling the client where the client's files are located would be tantamount to saying "your files are no longer here."

duty to ensure that his or her clients are so informed in the event of the sole practitioner's dissolution caused by the sole practitioner's death. Because a deceased lawyer cannot very well inform anyone of his or her death, preparation of a future plan is the reasonable means to preserve these obligations. Thus, the lawyer ought to have a plan in place which would protect the clients' interests in the event of the lawyer's death.⁴

Some jurisdictions, operating under the Model Code of Professional Responsibility, have found lawyers to have violated DR6-101(A)(3) when the attorneys have neglected client matters by reason of ill-health, attempted retirement, or personal problems.⁵ The same problems are clearly presented by the attorney's death, thus suggesting that a lawyer who died without a plan for the maintenance of his or her client files would be guilty of neglect. Such a result is also consistent with two of the three justifications for lawyer discipline.⁶ Sanctioning of lawyers who had inadequately prepared to protect their clients in the event of their death would tend to dissuade future acts by other lawyers, and it would help to restore public confidence in the bar.⁷

Although there is no specifically applicable requirement of the rules of ethics, it is fairly to be inferred from the pertinent rules that lawyers should make arrangements for their client files to be maintained in the event of their own death. Such a plan should at a minimum include the designation of another lawyer who would have the authority to look over the sole practitioner's files and make determinations as to which files needed immediate attention, and provide for notification to the sole practitioner's clients of their lawyer's death.⁸

4. The Fla.Bar, Professional Ethics Comm., Op. 81-8(M) (Undated) discussed the obligations of a lawyer who was terminally ill with regard to client files:

After diligent attempt is made to contact all clients whose files he holds, a lawyer anticipating termination of his practice by death should dispose of all files according to his client's instructions. The files of those clients who do not respond should be individually reviewed by the lawyer and destroyed only if no important papers belonging to the clients are in the files. Important documents should be indexed and placed in storage or turned over to any lawyer who assumes control of his active files. In any event, the files may not be automatically destroyed after 90 days.

5. See *In re Jamieson*, 658 P.2d 1244 (Wash.1983) (neglect due to ill-health and attempted retirement); *In Re Whitlock*, 441 A.2d 989 (D.C.App.1982) (neglect due to poor health, marital difficulties and heavy caseload); Committee on Legal Ethics of West Virginia State Bar v. Smith, 194 S.E.2d 665 (W.Va.1973) (neglect due to illness and personal problems).

6. See *In Re Moynihan*, 643 P.2d 439 (Wash.1982) (three objectives of lawyer disciplinary action are to prevent recurrence, to discourage similar conduct on the part of other lawyers, and to restore public confidence in the bar).

7. Obviously, sanctions would have no deterrent effect on deceased lawyers.

8. Although the designation of another lawyer to assume responsibility for a deceased lawyer's client files would seem to raise issues of client confidentiality, in that a lawyer outside the lawyer-client relationship would have access to confidential client information, it is reasonable to read Rule 1.6 as authorizing such disclosure. Model Rule of Professional Conduct 1.6(a) ("A lawyer shall not reveal information

II. Duties of lawyer who assumes responsibility for deceased lawyer's client files

This brings us to the second question, namely the ethical obligations of the lawyer who assumes responsibility for the client files and property of the deceased lawyer. Issues commonly confronting the lawyer in this situation involve the nature of the lawyer's duty to inspect client files, the need to protect client confidences and the length of time the lawyer should keep the client files in the event that the lawyer is unable to locate certain clients of the deceased lawyer.

At the outset, the Committee notes that several states' rules of civil procedure make provision for court appointment of lawyers to take responsibility for a deceased lawyer's client files and property.⁹ Since the lawyer's duties under these statutes constitute questions of law, the Committee cannot offer guidance as to how to interpret them.¹⁰

A. Duty to inspect files

Many state and local bar associations have explored the issues presented when a lawyer assumes responsibility for a deceased lawyer's client files.¹¹ The ABA Model Rules for Lawyer Disciplinary Enforcement also address

relating to representation of a client ... except for disclosures that are impliedly authorized in order to carry out the representation.") Reasonable clients would likely not object to, but rather approve of, efforts to ensure that their interests are safeguarded.

9. See, e.g., Illinois Supreme Court Rule 776, Appointment of Receiver in Certain Cases:

Appointment of Receiver. When it comes to the attention of the circuit court in any judicial circuit from any source that a lawyer in the circuit is unable properly to discharge his responsibilities to his clients due to disability, disappearance or death, and that no partner, associate, executor or other responsible party capable of conducting that lawyer's affairs is known to exist, then, upon such showing of the presiding judge in the judicial circuit in which the lawyer maintained his practice, or the supreme court, may appoint an attorney from the same judicial circuit to perform certain duties hereafter enumerated ...

Duties of Receiver. As expeditiously as possible, the receiver shall take custody of and make an inventory of the lawyer's files, notify the lawyer's clients in all pending cases as to the lawyer's disability, or inability to continue legal representation, and recommend prompt substitution of attorneys, take appropriate steps to sequester client funds of the lawyer, and to take whatever other action is indicated to protect the interests of the attorney, his clients or other affected parties.

10. Lawyers who act as administrators of estates have fiduciary duties to all those who have an interest in it, such as beneficiaries and creditors. Questions involving the lawyer's fiduciary responsibility to the estate of a deceased lawyer are also questions of law that this Committee cannot address. See, e.g., *In Re Estate of Halas*, 512 N.E.2d 1276 (Ill.1987); *Aksomitas v. Aksomitas*, 529 A.2d 1314 (Conn.1987).

11. See, e.g., Md. State Bar Ass'n, Inc., Comm. on Ethics, Op. 89-58 (1989); State Bar of Wis., Comm. on Professional Ethics, Op. E-87-9 (1987); Miss.State Bar, Ethics Comm., Op. 114 (1986); N.C. State Bar Ass'n, Ethics Comm., Op. 16 (1986); Ala. State Bar, Disciplinary Comm'n., Op. 83-155 (1983); Bar Ass'n of Nassau County (N.Y.), Comm. on Professional Ethics, Ops. 89-43 and 89-23 (1989); Ore.State Bar, Ethics Comm., Op. 1991-129 (1991).

some aspects of the question.¹² A lawyer who assumes such responsibility must review the client files carefully to determine which files need immediate attention; failure to do so would leave the clients in the same position as if their attorney died without any plan to protect their interests. The lawyer should also contact all clients of the deceased lawyer to notify them of the death of their lawyer and to request instructions, in accordance with Rule 1.15.¹³ Because the reviewing lawyer does not represent the clients, he or she should review only as much of the file as is needed to identify the client and to make a determination as to which files need immediate attention.¹⁴

B. Duty to maintain client files and property

Questions also arise as to how long the lawyer who assumes responsibility for the deceased lawyer's client files should keep the files for those clients he or she is unable to locate. ABA Informal Opinion 1384 (1977) provides general guidance in this area. We believe that the principles set out in that opinion are applicable to the instant question. Informal Opinion 1384 states as follows:

A lawyer does not have a general duty to preserve all of his files permanently. Mounting and substantial storage costs can affect the cost of legal services, and the public interest is not served by unnecessary and avoidable additions to the cost of legal services.

But clients (and former clients) reasonably expect from their lawyers that valuable and useful information in the lawyers' files, and not otherwise readi-

12. ABA Model Rules for Lawyer Disciplinary Enforcement (1989), Rule 28 states in relevant part:

APPOINTMENT OF COUNSEL TO PROTECT CLIENTS' INTERESTS WHEN RESPONDENT IS TRANSFERRED TO DISABILITY INACTIVE STATUS, SUSPENDED, DISBARRED, DISAPPEARS, OR DIES. A. Inventory of Lawyer Files. If a respondent has been transferred to disability inactive status, or has disappeared or died, or has been suspended or disbarred and there is evidence that he or she has not complied with Rule 27, and no partner, executor or other responsible party capable of conducting the respondent's affairs is known to exist, the presiding judge in the judicial district in which the respondent maintained a practice, upon proper proof of fact, shall appoint a lawyer or lawyers to inventory the files of the respondent, and to take such action as seems indicated to protect the interests of the respondent and his or her clients.

B. Protection for Records Subject to Inventory. Any lawyer so appointed shall not be permitted to disclose and information contained in any files inventories without the consent of the client to whom the file relates, except as necessary to carry out the order of the court which appointed the lawyer to make the inventory.

13. Model Rule of Professional Conduct 1.15(b) ("Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person.")

14. Again, while issues of client confidentiality would appear to be raised here, a reasonable reading of Rule 1.6 suggests that any disclosure of confidential information to the reviewing attorney would be impliedly authorized in the representation. See note 8, *supra*.

ly available to the clients, will not be prematurely and carelessly destroyed to the clients' detriment.

Informal Opinion 1384 then lists eight guidelines that lawyers should follow when deciding whether to discard old client files. One of these guidelines states that a lawyer should not "destroy or discard items that clearly or probably belong to the client. Such items include those furnished to the lawyer by or in behalf of the client, and original documents." Another suggests that a lawyer should not "destroy or discard information that the lawyer knows or should know may still be necessary or useful in the assertion or defense of the client's position in a matter for which the applicable statutory limitations period has not expired."

There is no simple answer to this question. Each file must be evaluated separately. Reasonable efforts must be made to contact the clients and inform them that their lawyer has died, such as mailing letters to the last known address of the clients explaining that their lawyer has died and requesting instructions.¹⁵

Finally, questions arise with regard to unclaimed funds in the deceased lawyer's client trust account. In this situation, reasonable efforts must be made to contact the clients. If this fails, then the lawyer should maintain the funds in the trust account. Whether the lawyer should follow the procedures as outlined in the applicable Disposition of Unclaimed Property Act that is in effect in the lawyer's state jurisdiction is a question of law that this Committee cannot address.¹⁶

15. Responding to a recent inquiry, the Committee on Professional Ethics of the Bar Association of Nassau County suggested that an attorney assuming responsibility for a deceased attorney's client files has an ethical obligation to treat the assumed files as his or her own. Bar Ass'n of Nassau County (N.Y.), Comm. on Professional Ethics, Op. 92-27 (1992).

16. There are at least 27 state and local bar opinions that discuss a lawyer's obligations when the lawyer cannot locate clients who have funds in lawyer trust accounts. See, e.g., State Bar of S.D., Ethics Comm., Op. 91-20 (1991); State Bar of Ariz., Comm. on Rules of Professional Conduct, Op. 90-11 (1990); R.I.Sup.Ct., Ethics Advisory Panel, Op. 90-21 (1990); Alaska Bar Ass'n, Ethics Comm., Op. 90-3 (1990); Md.State Bar Ass'n, Inc., Comm. on Ethics, Op. 90-25 (1990); Bar Ass'n of Nassau County (N.Y.), Comm. on Professional Ethics, Op. 89 (1990).

Would You and Your Practice Survive These Common Disasters?

By [Dan Pinnington](#)

October 2005

None of us like to think about disasters, and most of us have an "it won't happen to me" attitude. This short quiz will help you determine your ability to survive some common "disaster" scenarios. ¹

1. If all of the computers in your office were stolen over the weekend, do you have all the serial numbers of the equipment, the original cost of the equipment, the value of the equipment, and the ability to recreate all of the data on the computers?
2. If your office was completely destroyed by fire, how long would it take you to contact all of your clients, recreate all your computer data, contact your insurance company, process invoices, contact opposing counsel and generally get your practice operational again? Who would be responsible for performing each of these functions?
3. If you had a heart attack tonight, are your files organized so that someone could pick up your caseload without your clients suffering any disadvantage?
4. If you could suddenly not come into the office on Monday, have you designated the person who could pick up your caseload? Even if you have a partner, how much does he/she really know about your caseload?
5. If you were unable to come into the office for a few days or weeks, could anyone actually find anything on your desk or in your files? Does the answer change if your assistant was off sick or away on vacation at the same time?
6. If your secretary/legal assistant/bookkeeper suddenly quit, do you know their filing systems so that you can find information in their desks, in their (or your) files, or on their computers? Do you have copies or know where they keep the keys for filing cabinets, etc.? Do you know all their respective passwords (including voice mail, computer login, e-mail, the accounting package and any other software applications they use)?
7. If one of your staff members disappeared with client trust funds, would you have sufficient records to determine what was taken and when?
8. If you have a partner/associate who was suddenly disabled, do you or someone in your office know his/her schedule for the next three months? Do you or someone in your office know the status of all matters in your office?
9. If you or a partner in your firm were disabled for an extended period of time, will you be able to draw a salary? If so, how much and for how long? If you are a sole practitioner and the only rainmaker, how will expenses of the firm be paid while you are out and unable to make rain?
10. 10. If you were to die or be completely unable to return to work, what would your desk, client files, and office organization say about you to anyone who would have to step in to assume responsibility? What burdens would this place on your partners and spouse? Is this the way you want to be remembered?

If you were unable to answer all of these questions as quickly or as adequately as you would like, then you need to do some disaster recovery planning. Regardless of the size of your practice, you need to create an easy to implement plan which will assist you, or anyone in your office, if there were an unexpected practice interruption affecting you, your staff or your firm.

¹ This was adapted, with permission, from Disaster Planning: Protecting Your

Firm, Your Clients And Your Family, 2001, by Patricia Yevics, Director, Law Office Management Maryland State Bar Association, Inc.

Although you're unlikely to ever experience a major, practice-ending disaster, the fact is disaster can strike anyone, anywhere, anytime. More likely you'll have to be prepared to deal with a computer crash or loss of data, theft or malicious damage, fire or flood, or the loss of a key lawyer or staff person. And being prepared involves planning.

Why have a disaster recovery plan?

The better prepared you are to respond to an event that disrupts your practice, the faster you will have your firm back up and running, with minimal financial loss or service interruption. To ensure this continuity – and ability to bounce back quickly – you need a plan. That plan starts with a thorough assessment of your exposure, details how you will minimize the impact of each exposure on your practice, and provides a roadmap for how you will deal with all stages of an emergency or practice interruption. practicePRO has created a spreadsheet that you can use to help identify and assess your vulnerabilities. It is available for download at www.practicepro.ca/disasterrecovery.

To be successful, the plan needs the support of senior management, and the appropriate allocation of budget and resources. Put your plan in writing, and distribute it to all firm employees (and their family members, if appropriate) to ensure everyone is aware of how to prepare for, and respond to, a practice interruption.

Make two copies of your plan; keep one in the firm disaster recovery file, along with other critical information for responding to a disaster or interruption. Put the second in a secure, offsite location. Some firms post their plans and all supporting information on a secure web site.

How detailed should the plan be?

The larger the firm and the more complex its operations, the more detailed our plan likely will have to be. For example, large firms that have multiple offices often set up mirror servers, with all of the accompanying data and people issues to manage, while a small firm or sole practitioner might plan to work out of a home office.

As well, the level of detail in your plan will reflect the scope of your recovery planning efforts. Plans typically address two top priorities: the need to ensure the safety of your staff; and the need to recover your data centre and critical applications.

However, many firms today aim to have in place a well-designed and tested practice-wide recovery and continuity plan. This type of plan will address the following:

- **Preparation and Prevention:** Preparation and Prevention are essentially about risk management. What can you do to lessen the possibility or the impact of an adverse interruption or disaster occurring to your practice?
- **Response:** Response is the immediate reaction to an incident or emergency. It addresses matters of personal safety, and the policies, procedures and actions to be followed in the event of a practice interruption.
- **Resumption:** Resumption refers to the process of planning for and/or implementing the resumption of time-sensitive practice operations immediately following a disaster (ideally within a specified time).
- **Recovery:** Recovery is the process of planning for and/or implementing the restoration of all firm operations and services to pre-disaster levels.

A minimal plan

Even if you do not plan to implement a full-scale recovery plan, you can minimize some of your exposures – at relatively little cost – through three very simple steps:

- Make proper backups.
- Create emergency contact lists.
- Maintain adequate and proper insurance coverage

Is your own house in order?

Putting your personal house in order could help you and/or your partners deal with a firm emergency. In any emergency, quick access to certain pieces of personal information is essential. Prepare a list with the following critical personal information (if applicable):

1. Name, address, passport, health card and social insurance numbers of you and your spouse or partner;
2. All of your, and your spouse or partner's, phone numbers (home, work, cell, pager, personal fax, cottage, etc.) and e-mail addresses;
 - drivers' license and vehicle insurance information;
 - name, phone number and address of one or more emergency contacts;
 - other special contact numbers (e.g., daycare for your kids);
 - name, address and all phone numbers of your direct employees;
 - names, addresses and phone numbers of your personal representative, lawyer, accountant, physician and landlord;
 - location of your will, power of attorney and/or trust agreement; names, addresses, phone numbers, policy numbers, and contact persons for all insurance policies;
 - location, box number, and where to locate key to safe deposit box(es);
 - list of contents of safe deposit boxes and signatory information; and name, address, phone numbers, account numbers, signatory information on all business financial accounts.

You, and other key partners or employees in your office should have this information at their fingertips, including at your respective homes.

Make a photocopy of everything (both sides) in your wallet, and store this information in one or more safe locations that you or someone else could access. Include the 800 numbers for reporting lost credit cards. Having access to this information will save you many hours of work if your wallet is stolen or lost.

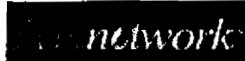
This is an excerpt from *managing practice interruptions*, a booklet prepared by the Lawyers' Professional Indemnity Company (www.lawpro.ca). It provides a comprehensive review of the steps you can take to prepare for unexpected minor and major practice interruptions, and how you should respond to them. It also reviews how you can protect your people, your practice, and your premises and property. It is available at www.practicepro.ca/disasterrecovery.

[Back to Top](#)

Dan Pinnington (dan.pinnington@lawpro.ca) works for the Lawyers' Professional Indemnity Company (www.lawpro.ca) to help the 20,000 practising lawyers in Ontario avoid malpractice claims. He speaks and writes frequently on a variety of risk management

and legal technology topics. Through practicePRO (www.practicepro.ca) he provides Ontario lawyers with practical how-to resources aimed at helping them succeed in the practice of law.

© The American Bar Association. All rights reserved. [ABA Privacy Statement](#)
10/12/2005 01:10 PM



[CLICK HERE TO RETURN TO PREVIOUS PAGE](#)

Protect Your Clients and Yourself: Prepare for Disaster Before it Happens

By [Ellen Freedman, CLM](#)

October 2005

Disasters come in many forms. There are those that affect the firm principal(s), those that affect the firm as a whole, and those that affect an entire region.

One generally thinks of disaster in terms of fire or flood. Certainly, we have seen a significant increase in Pennsylvania recently in occurrences of flood and hurricane damage. Maybe it is encroaching age which makes catastrophic events stand out in my mind, but I believe we have also seen an increase in other natural calamities such as twisters, lightning strikes, snowstorms and gale winds. These are the types of disasters which can affect not just the firm, but our employees, and even the region as a whole, making it even more difficult to recover as emergency resources are both diverted and strained to the limit.

Disasters can also come in unusual ways too, such as a sewer backup. I once worked for a firm which experienced a sewer main break, which inundated the building with festering foul liquid, cresting at five feet. Believe me, it was a true disaster, with all the associated disruption and loss, in every sense of the word. Even an extended power outage when a deadline is looming large can have a severe adverse impact on the firm's ability to render timely service to its clients.

Another type of disaster affects firm principals. These include events such as stroke, heart attack, or even an accident resulting in coma. For the solo or small firm, these events can be as crippling as a hurricane.

When it comes to disaster, reaction after the fact is no substitute for planning beforehand. I am constantly amazed at the number of attorneys who do not practice the most elementary form of disaster prevention — backing up the critical information on their computer system daily and taking that back-up off-site every night. The purpose of this article is to identify some of the areas of vulnerability, and to provide some options which you can implement to minimize disruption and hasten recovery. Foresight and planning can make the difference between your practice surviving a disaster, or not.

Let's deal first with disaster which affects your entire firm, or maybe even your region. These include events like hurricane, blizzard, flood, fire and so forth. Here are some of the things you need to think about:

1. **Notification to clients, employees and vendors:** without access to your office, do you have the names, addresses and phone numbers of your clients handy? Can you quickly get in touch with all your employees to keep them informed and make sure they're ok too? Can you contact your vendors for emergency assistance? If you use something like Outlook or GroupWise personal productivity software for all your contacts, or a case management package which has a Palm interface, like TimeMatters, you can keep the information on a hand-held device for quick access, or print a master list and keep it off-site. If you use the print method, remember to do it regularly, like once a month or at least once a quarter. Put it on your to-do list so you don't forget.

2. **Access to firm documents, and client files:** If you have been smart enough to make a regular back-up of your computer system, and take it off-site, you will have access to all your form documents and client documents you created. If in addition your office has worked to embrace the "paper-less office concept" by scanning in as much of incoming documents as feasible, keeping telephone messages electronically, getting depositions on disk, using case management, and so forth, you will have access to most of the contents of your client files, even if the physical file is inaccessible or destroyed. (After the Meridian Bank building fire in Philadelphia, for example, law firms whose offices were not significantly damaged still could not gain access to retrieve their files for quite some time while it was being determined if there were building structural problems.) Keep in mind that having a current back-up tape off-site is one thing, having a computer capable of restoring the data (meaning compatible operating system and sufficient disk space) is another. Some forethought has to go into that, or you need a good vendor relationship you can count on in a crisis.
3. **Access to insurance records:** Very few people think to keep a duplicate copy of their critical business insurance policies, or medical and other benefit policies, in a location outside the office. When the office burns down and you want to know your coverage, it isn't very helpful if the policy burned too, is it? Your agent can speak to your coverage, but waiting for a duplicate copy of the actual policy to arrive, should there be any disagreements, can take quite some time.
4. **Appearance on behalf of clients:** What critical dates are looming? Few people physically keep their calendar in their pocket anymore, unless it's in the form of a PDA (personal digital assistant, like the PALM device). If you don't computerize your calendar, and have it on your off-site back-up tape or on a PDA, how will you know what deadlines are coming up?
5. **Cash flow issues:** How will you record time, collect your receivables, and bill out your inventory? Will you know what is owed to you, or depend on the kindness and honesty of clients to send in their checks? Will they hold back payment because they are not sure where to send checks? If you are using a time & billing system, it also should be backed up, with the back-up stored off-site, so that you can restore it if necessary to have access to critical financial records.
6. **Keeping the doors open:** What if you are the sole principal of the firm and become seriously and suddenly disabled. Who will write checks? Who has authority to sign checks? Who can deal with your escrow account and disburse payments if necessary? Who will make sure that your rent and insurance premiums are paid? Who is designated to step in and temporarily handle deadline work for clients? Are they cleared for potential conflicts? Who will pay your staff, and if necessary deal with the media and/or notify clients on your behalf? You don't want to emerge from a coma only to find your client base eroded, your trusted staff gone, your insurance coverages cancelled, and several malpractice cases pending due to missed deadlines. Even if you have one or more partners, don't assume that they can access all the necessary accounts or information without preplanning. Have they been included as signatories on any individual interest-bearing escrow accounts you've established? Can they get to your calendar to anticipate deadlines? Can they access all documents, or are some passworded, or hand scribbled?

This is not by any means a comprehensive list. It should, however, get you started thinking in the right direction about where you are vulnerable, and what you can do to plug up the holes. Three excellent reference sources for you are "Managing Emergency Situations in Law Firms: Minimizing the Damage" by Nina Wendt and L.J. Sklenar; "Emergency Management for Records & Information Programs" by Virginia A. Jones, CRM and Kris E. Keyes; and "Disaster Survival Planning: A Practical Guide for Businesses" by Judy Kay Bell (all available through the Association of Legal Administrators at 847-816-1212).

This article originally appeared in the Solo & Small Firm Section Newsletter of the Pennsylvania Bar Association

[Back to Top](#)

Ellen Freedman, CLM, is the Law Practice Management Coordinator for the Pennsylvania Bar Association. In that capacity she assists PBA's members with management issues and decisions on the business side of their practice, including areas like technology, human resources, risk management, setting up a practice and so forth. Members are encouraged to contact Ellen through the 800 "Hot Line" at PBA headquarters, (800-932-0311 x2228) or through e-mail (lawpractice@pabar.org).

Ellen has managed inside law firms for twenty years. Most of that time has been spent in a mid-size (thirty+ attorney) firm environment. Ellen has achieved the designation of Certified Legal Manager through the Association of Legal Administrators. She holds a Certification in Computer Programming from Maxwell Institute, a Certification in Web Site Design from Temple University, and a B.A. from Temple University, where she also did graduate studies in Criminology.

Ellen has been a frequent author and speaker on law firm management issues on a national, regional and local level.

© The American Bar Association. All rights reserved. [ABA Privacy Statement](#)
10/12/2005 01:10 PM

**CHECKLIST FOR LAWYERS PLANNING TO PROTECT CLIENTS'
INTERESTS IN THE EVENT OF THE LAWYER'S
DEATH, DISABILITY, IMPAIRMENT, OR INCAPACITY**

1. Use retainer agreements that state you have arranged for an Assisting Attorney to close your practice in the event of death, disability, impairment, or incapacity.
2. Have a thorough and up-to-date office procedure manual that includes information on:
 - a. How to check for a conflict of interest;
 - b. How to use the calendaring system;
 - c. How to generate a list of active client files, including client names, addresses, and phone numbers;
 - d. Where client ledgers are kept;
 - e. How the open/active files are organized;
 - f. How the closed files are organized and assigned numbers;
 - g. Where the closed files are kept and how to access them;
 - h. The office policy on keeping original documents of clients;
 - i. Where original client documents are kept;
 - j. Where the safe deposit box is located and how to access it;
 - k. The bank name, address, account signers, and account numbers for all law office bank accounts;
 - l. The location of all law office bank account records (trust and general);
 - m. Where to find, or who knows about, the computer passwords; and
 - n. How to access your voice mail (or answering machine) and the access code numbers.
 - o. Where the post office or other mail service box is located and how to access it.
3. Make sure all of your file deadlines (including follow-up deadlines) are on your calendaring system.
4. Document your files.
5. Keep your time and billing records up-to-date.
6. Avoid keeping original documents of clients, such as wills and other estate planning documents.
7. Have a written agreement with an attorney who will close your practice (the "Assisting Attorney") that outlines the responsibilities involved in closing your practice. Determine whether the Assisting Attorney will also be your personal attorney. Choose an Assisting Attorney who is sensitive to conflict of interest issues.
8. If your written agreement authorizes the Assisting Attorney to sign trust or general account checks, follow the procedures required by your local bank. Decide whether you want to authorize access at all times, at specific times, or only upon the happening of a specific event. In some instances, you and the Assisting Attorney will

have to sign bank forms authorizing the Assisting Attorney to have access to your trust or general account.

9. Familiarize your Assisting Attorney with your office systems and keep him or her apprised of office changes.
10. Introduce your Assisting Attorney to your office staff. Make certain your staff knows where you keep the written agreement and how to contact the Assisting Attorney if an emergency occurs before or after office hours. If you practice without regular staff, make sure your Assisting Attorney knows who to contact (the landlord, for example) to gain access to your office.
11. Inform your spouse or closest living relative and the personal representative of your estate of the existence of this agreement and how to contact the Assisting Attorney.
12. Renew your written agreement with your Assisting Attorney each year. If you include the name of your Assisting Attorney in your retainer agreement, make sure it is current.

[Editor's Note: These materials are based upon a booklet published by the Oregon State Bar Professional Liability Fund and entitled, *Planning Ahead: A Guide to Protecting Your Clients' Interests in the Event of Your Death or Disability*, which have been edited for Washington lawyers.]

copyright Washington State Bar Association