

Column | Ethics

# Riding Out the Storm: Creating a Resilient Law Practice

BY JEANNE M. HUEY

As recent history has reminded us, disasters are unforeseen and unavoidable. The problem is that, as lawyers, we are charged with maintaining the highest level of professionalism at all times. There are no excuses and no exceptions when it comes to legal ethics. To avoid falling short of your professional obligations to your clients when emergencies strike, take steps now to protect your practice from disruption.

Start with a business continuity plan. You likely have such a plan for your personal life and your law practice deserves the same kind of protection.

Helpful resources are plentiful: The ABA and the SBOT both have disaster preparedness materials on their websites, and ABA Formal Opinion 482 specifically addresses advance planning to avoid an ethics breach.

Consider making a plan for varying degrees of disaster. A temporary inability to work due to local or personal disruptions requires a different action plan than more extreme disruptions like a weather event or long-term health crisis that impacts your ability to get to your office, connect to the internet, or contact your clients.

The first priority in a disaster plan is maintaining communication among your firm and clients. In a true disaster—like a tornado or flood—you will want to first determine where everyone is and if they are safe. If a client or their business has been compromised, you will want to know about it and offer to help if you can. To do this without the internet, you will need a piece of paper with firm and client information where you can quickly access it.

You need a plan to keep the firm's essential functions and processes running. How will you monitor court and case information, including orders coming from local judges or the Supreme Court? You need to contact opposing counsel to get any upcoming events rescheduled so that your clients' matters are not neglected (Rule 1.01). And if you cannot reach your active clients by phone or email, you need a plan for meeting your duty to communicate with them regarding their legal matters (Rule 1.03). You will also want to check in with your insurance company, bank, landlord, and significant vendors, including your payroll service.

If you are a true solo, with no staff or other lawyers to back you up, planning for continuity of your practice requires that you employ the "buddy system" with a colleague or two. This is a cooperative arrangement whereby you each agree to assume responsibility for the others' practice in the event of a sudden or short-term emergency. At its most basic, it means you have someone who has agreed to get your mail and check your email and voicemails for a couple of days to make sure that clients are attended to and bad things do not happen while you are unavailable. In a larger disaster situation it is

more likely that other lawyers in your area will be affected, but even then it is important to have a short list of colleagues with whom you can share information and resources to weather the storm until you can get up and running again.

If you are not confident that you could meet your duties in a disaster to safeguard client property (Rule 1.14), including stored confidential client information (Rule 1.01 comment 8, Rule 1.05), you are not alone. The nature of technology is such that most of us could benefit from updating our computer and cloud storage systems regularly; taking the time now to learn more about the technology you rely upon and to make any changes necessary will keep you compliant with your duty of competence in your daily practice as well as in a disaster.

Finally, do not forget to put a succession plan in place. Go to the SBOT succession planning page and fill out the forms and instructions necessary to designate who will step in and take care of your clients in the event you are suddenly unable to do so on a more permanent basis.

None of us could have foreseen the changes that COVID-19 has brought to the practice of law and we cannot know what new challenges lay ahead. Advance planning is the only way to make your law practice resilient and reduce the risk of violating your professional obligations to your clients when the unexpected happens. **HN**

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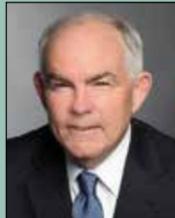
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