

OP-ED PIECE

The time is now for disaster planning

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Why should law firms plan for a disaster?

As any solo practitioner can tell you, it takes a number of years to build trust with a client and a serviceable client list, but only one event to lose a client forever. This is particularly true in the competitive economic and legal marketplace of the tri-state area. Insert a disaster into this competitive environment and the result could be tragic for New Jersey law firms.

Statistics from the Federal Emergency Management Agency indicate that forty percent of small businesses never reopen following a disaster. The US Department of Labor reports that of businesses that do reopen after a disaster, twenty-five percent of those close within two years of reopening. Other disaster planning industry experts note that ninety percent of businesses that lose significant data as a result of a disaster will close their doors within two years.

Couple that information with reports from the New Jersey Department of Commerce and Economic Development indicating that only eight percent of businesses in the state have continuity plans, and a Touche Ross report that there is less than a ten percent survival rate without a plan and the enormity of the problem becomes clearer.

According to an America Telephone and Telegraph, "despite recent events, ranging from security breaches to natural disasters, ... "Disaster Planning in the Private Sector: A Look at the State of Business Continuity in the U.S.," finds that in a survey of more than 1,200 businesses conducted from January to August 2005, nearly 40 percent stated that business continuity planning was not a priority." The survey also found that nearly one-third of U.S. businesses do not have emergency continuity plans in place which is an 8 percent increase from one year ago.

Obviously, we are not taking the threat of a disaster very seriously. We hope to change that for the legal community in New Jersey.

New Jerseyans were exposed to what happens when a disaster occurs on September 11th when two planes were driven by terrorists into the World Trade Center. NJSBA Mass Disaster volunteers worked with the NJ Attorney General's Office to counsel victim families at the Jersey City Family Assistance Center. Last year, we observed the awesome power of nature when Hurricane Katrina ravaged the coasts and inland in Louisiana and Mississippi when it made landfall. Some of our members volunteered and witnessed the carnage first hand.

The Trust for America's Health issued a report in early December of 2006 which questioned New Jersey's preparedness to address a health emergency. According to the report, if the state were to suffer from a pandemic or other act of bioterrorism it would be ill-equipped to handle the disaster.

Those are major disasters which can impact an entire state or region. However, there are just as many less minor disasters which can have a significant impact on a lawyer's practice. There have been a number of recent disasters in the tri-state region which have had a negative impact on businesses including the flooding of the Delaware River earlier this year and of the Raritan River in past years, the Edison Pipeline explosion, and the New York energy grid failure that left businesses and residents without power for days. Many businesses complained with each passing day that recovery would become more and more difficult.

Other states have felt a greater sense of urgency than New Jersey because of their history as sites for frequent natural disasters.

The Florida Bar Association has long had to confront the issue of disaster planning because of hurricane season. It has extensive materials regarding what to do after a hurricane in terms of retrieving data, information, and other potentially destroyed documents available from its Law Office Management Assistance Service. The NJSBA is hopeful that New Jersey attorneys will act similarly now so that they too can mitigate the potential loss of work product.

The Southern Conference of Bar Presidents has come together to provide assistance to displaced members of the Louisiana bar. This effort will likely survive the Katrina recovery and serve the region during future events.

In an informal survey of 200 NJSBA members, 22 or 11 percent had developed plans, and 19 or 9.5 percent were in the process of developing plans, leaving 79.5 percent of the respondents not having a plan or not in the process of developing one. More positive was the fact that 189 or 94.5 percent of members answering the survey did back up their files, though only 56 or 28 percent did so off-site which is necessary to safeguard against the threat of all disasters.

The best way to guarantee survival of a disaster, major or minor, is by planning. Disaster planners suggest that not only should businesses and law firms have disaster plans, but employees should be encouraged to have personal disaster plans so that contingencies are explored for family members. This allows employees to be secure in the knowledge that their families are taken care of so that they can put their efforts into fulfilling their job responsibilities which are keeping a business going. New Jersey has over 237,000 businesses according to 2003 Census figures, and small businesses represent the vast majority of employers in the state with law firms counted among them. Our survey bears these facts out with 168 or 84 percent of our respondents stating that they were solo or small firm practitioners.

This point needs to be driven home to New Jersey attorneys since eighty percent of businesses without a disaster plan are forced to close within 12 months of a flood or fire. Can New Jersey law firms afford to be among the twenty percent who do not survive a disaster? The NJSBA does not think so.

This is why in the wake of the events surrounding Hurricane Katrina, and following the lead of the American Bar Association's Task Force on Disaster Planning, the New Jersey State Bar Association established a complementary task force in New Jersey. That group has been charged with engaging in a statewide effort to survey disaster planning, identifying the areas where we need to improve, developing resources and programming to accomplish those goals, and to bringing together bar and governmental leaders from local, state and regional bar associations who have a common stake in this mission.

With the support of the NJ State Bar Foundation the Task Force developed and has available for distribution a planning guide *Disaster Planning, What To Do Now*. It includes a disaster planning document that can be used by law firms and solo practitioners to list critical firm functions, essential contacts, critical documents that must be preserved, insurance information, services and contractors that can be called, and recovery support resources. The planning guide is a valuable tool for you to use, and it can be downloaded from the NJSBA website (www.njsba.com). The NJSBA has more information on disaster planning at its website.

At the NJSBA's General Council Annual Meeting on October 27th a panel of experts discussed disaster preparedness steps law firms can take, including evaluating hazards and risks, reviewing insurance policies, creating an inventory list, compiling staff contact information, identifying alternate work locations, protecting and storing computer files, to list but a few. The commentary focused on two themes: the need for planning; and the planning that is or should be taking place within New Jersey law firms and the State of New Jersey. One speaker, Brian Bender, a member of the law firm Harris Beech which was located in the World Trade Center on September 11 noted that planning for the potential "Y2K" provided some level of preparedness. However, the level of the catastrophe on 9/11 was staggering. He urged New Jersey lawyers to take seriously the need for planning.

On March 28th, the NJSBA will be holding a summit on disaster planning inviting New Jersey county and specialty bar associations, and bar associations from the region including Connecticut, Delaware, the District of Columbia Maryland, New York, New York City, Pennsylvania, and Philadelphia. By planning with similarly situated bar associations we intend to safeguard our mutual interests should a natural or unnatural disaster strike the Mid-Atlantic region. The purpose of the gathering would be to share information on disaster planning that has taken or will take place, identify areas where further efforts need to be undertaken, discuss the responsibility and role of bar associations to provide such assistance and develop bar association disaster plans, and develop protocol defining how city, county and state bar associations partnering can assist each other in the event a disaster occurs.

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