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How My Emergency Plan Saved My Practice

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By Lloyd D. Cohen

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My office is under a short emergency shutdown caused by a sudden and unexpected illness. Because part of the problem affects one of my eyes, I am writing this article on the first day that I can read or write more than a few words. At this time, I still find the backlit glare of a computer screen to be very harsh. However, because I prepared an office emergency and disability manual, I am able to delegate responsibilities to protect both my clients and myself while taking time to get well.



Although a terminal situation is often emphasized as the compelling reason to develop emergency procedures, it is the weakest actual motivator. In truth, the same procedures used to react to a drastic situation also help when there is a temporary disability or emergency. Moreover, the steps needed to protect your clients in the event of your disability are much the same as the steps needed to protect yourself. Frankly, most people will procrastinate putting in place a plan to protect clients, but many will have serious interest in a plan that protects their immediate family and themselves. For the solo lawyer, the goals are much the same, and the protections put in place will often cover all the goals simultaneously.

The steps needed to protect a practice in the event of a death are just an extension of the steps needed to permit a lawyer to step back owing to a temporary disability. In fact, what most lawyers fear is not death but returning to a neglected practice. Additionally,

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GPSolo magazine is published six times a year (January/February, March/April, May/June, July/August, September/October, and November/December) by the ABA Solo, Small Firm, and General Practice Division.

GPSolo is devoted to themes of critical importance to your practice. Each issue contains articles exploring a particular topic of interest to solos, small firms, and general practitioners, as well as articles related to technology and practice management. And to keep you up to date, each issue contains five *Best of ABA Sections* digests, reprinting the top articles published by other ABA entities that will be of the greatest interest to you.

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a procedure manual is also helpful if you are attempting to sell a practice. The formation of clear definitions, descriptions, and directions about the various aspects that comprise your practice are a helpful and necessary part of preparing a practice for sale. Often, a law practice is not sold outright, but there is a transition period. A procedure manual helps the selling lawyer manage the key functions of a firm remotely during transition.

During my absence from the office, my manual is getting its first real-life test. The good news is that having a manual available has been a comfort that helped the office to continue to run smoothly. Those closest to me were able to check the physical and clerical aspects of the office. Lawyers with whom I've developed a rapport for such a contingency were notified. A lawyer was able to screen both the physical and electronic calendars for appointments, court appearances, and deadlines. Rescheduling client appointments far ahead of time was appreciated. Immediately directing e-mail to auto-reply "out due to illness" worked well. Bill-pay and money-transfer functions were attended to. Having my medical contacts and information organized was helpful. I found that keeping updated with the continuing evolution of technology and proliferation of passwords to be a challenge, but overall, client confidence was maintained and opposing counsels cooperated.

If you are a solo or small firm lawyer, where do you start? If you are not exactly solo because you practice independently within a group, where do you start? No matter if you are preparing a practice for sale or safeguarding a practice from your own disability, start with five steps: *Define, Enable, Empower, Keep, and Inform.*

Define Roles for Lawyers and Non-Lawyers

Start by thinking about those whose help you could tap. Even if you practice all alone in an upstairs bedroom, socializing only over the web, you still need to have a network of real and accessible people to fall back on occasionally. This is not as difficult as it sounds because a law office is an enterprise made up of more than just clients. You probably already have a natural group of people around you, and many will not be lawyers. During my recent illness, the first to respond was family. No, family members cannot assume the roles of lawyers, but they can perform some support functions and can be instructed how to contact your associates. You will find that family and close friends are often ready volunteers who understand that there is only a thin line between your personal life and professional life. You can distribute functions among lawyers, staff, other professionals, and volunteers. If absence is long-term, and you can distribute attorney functions among several caretaker lawyers.

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The review of client files must be restricted to lawyers, but there are many roles that non-lawyers can fill, such as securing the physical plant, maintaining and backing up computers, keeping the office open, paying bills, and answering the phone. Roles for lawyers include checking calendar deadlines, checking work in progress, and reviewing client files to see if any immediate protective action is necessary. When planning, take the opportunity to define if your caretaker lawyer is primarily representing you, the clients, or both. If you have a choice, specify that in the event of conflict your caretaker primarily represents you.

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Enable Helpers with your Firm's Institutional Memory

Next, get some instructions together. A few decades ago lawyers were mostly surrounded by lots of staff, but now we are mostly surrounded by automation. As inefficient as staff was, it was a core of people who often knew how the office was to run when you were absent. Live staff naturally formed your firm's institutional memory—a working knowledge of the things and procedures needed to run your enterprise and serve your clients. Because that is no longer the usual situation, you need to enable the helpers coming to your aid by memorializing your institutional memory in some type of easily available form. The form can be a computer, cloud file, images on a memory stick, or even an old-fashioned notebook, but it has to be something that the people who want to help can get to. Some lawyers use password-management software and final messages encrypted on the web, but I like the old-fashioned notebook. First, it's easy to remember where it's kept, and second, updating can be accomplished by simply adding or editing pages.

The bottom line: Knowledge about how your office functions needs to get out of your head and into some type of instruction set. Consider what things are needed in order to provide service. Start with the basics. Instructions about gaining entry to your office might include explanations about keys, alarms, and building managers. Instructions about electronics might include consultants, backups, and passwords. Explain calendars, appointments, deadlines, and file management, including where they are kept and how to get to them. From there, anticipate an event that might last longer than a few days by including your desires about paying or laying off staff, collecting and spending money, and perhaps managing your Internet presence. Have someone who can be a backup signature for your trust account. Also, use the formation of an office emergency manual to centralize your personal emergency information. Remember, we are not just talking about your clients. You are important, and you

must also think about yourself, your health, and your finances. Include a list of your own emergency medical contacts, family contacts, and insurance information. Finally, include anything else that might be useful to those helping you. (For a useful template, see the article "[How a Key Technology Information Form Can Save Your Practice.](#)")

Empower Helpers with Authority

Some helpers can just begin acting on your behalf, but others will need specific authority. Letters of understanding can be used to educate potential helpers about their roles and the importance of their help. It may be simple to informally arrange to have a reciprocal lawyer so that you can cover for each other, but outside of immediate family, other professionals will feel better about taking quick action if an enabling letter has been provided. So think about establishing some actual agency relationship with another lawyer and weigh the benefits of mentioning something about that in your attorney-client agreements.

Sometimes a power of attorney is required, and it can be simple or complicated. Decisions need to be made about the extent of the power being granted and when the power should spring into effect. This would also be a good time to complete your personal estate plan. If you have any desires about the sale or transition of your practice, make your wishes known. Consider the amount of overlap or separateness that should exist between the law practice and your personal life. Consider if your personal representative should be the same person as your law office caretaker. A few bar associations circulate free sample forms that can be used to formalize relationships and intentions; the New York State Bar Association has an excellent library of forms available at www.nysba.org.

Keep Emergency Information Safe but Available

As mentioned, some of your emergency instructions such as calendar access ought to be easily findable, whereas others, such as the keys to your finances, need to be very secure. Still other information will fall somewhere in between. Whatever the configuration, back it up with a copy kept at a safe remote location. Then leave enough clues around to enable your helpers to have appropriate access at the appropriate time. When pondering how to make the information both safe and accessible, evaluate the trust and confidence that you have in the others around you. Because you need to simultaneously guard against identity theft, consider who will need access and under what conditions access should be permitted. Consider having an independent person keep your information and powers of attorney ready to distribute when

appropriate. Whatever you decide, the information should be updated annually.

Inform Others

Because you do not know what may happen, you need to provide for flexibility. So not only inform potential caretakers, but also let others know that you have a plan. By making a simple calling tree or contact information list available, the first volunteer can quickly notify the important helpers. Moreover, I have found inclusion of a "continuity of care" clause in new client agreements to be great public relations. My clause says that in the event of my death, disability, or absence, a caretaker lawyer may review the client file and contact the client to see if any immediate protective action is necessary. The clause specifies that the caretaker lawyer will be acting as my agent included in the circle of confidentiality and attorney-client privilege that we are forming.

Conclusion

Having an emergency and disability manual prepared is helping me concentrate on rest while I am recovering. I will soon be returning to work and expect to be back to a full schedule by the time of this article's publication. However, it's comforting to know that if my disability had been long-term, the same procedures could have been used to fill my empty chair while my office was under transition. The trend of the future is to require all solo lawyers to have a backup plan. When that day comes, you will want your own plan so that it puts your needs first. Regardless of any new regulations on the horizon, think of your emergency and disability instructions as you would any other backup. That is, the more that we practice alone, the more we need to institutionalize our backup procedures.