

# Expect the Unexpected

Disaster and Succession Planning for Lawyers

BY JOSHUA B. ZUGISH



In Colorado, many have experienced significant weather, natural disasters, illness, and social events that have personal and professional impacts. The past year has certainly reminded us of the power of unforeseen risks as the state endured the pandemic, another harsh fire season, social unrest, and severe weather. Through February 2021, Colorado experienced over 424,000 COVID-19 cases and 6,000 deaths.<sup>1</sup> In 2020 alone, Colorado was the subject of five FEMA disaster declarations related to wildfires.<sup>2</sup> Denver businesses suffered millions in disruptions and damage surrounding protest activities,<sup>3</sup> while mountain communities like Estes Park had major evacuations and disruptions from fires. In addition, recent weather and corresponding utility issues in Texas serve as a stark reminder that our daily routines can be severely disrupted in the blink of an eye. Such events highlight the importance of taking time for disaster and succession planning to help protect law practices and ensure client needs are met in response to unforeseen events.

Disaster and succession planning helps mitigate risks to law practices and clients, provides a competitive advantage in overcoming the negative effects of unforeseen events, and promotes ongoing practice viability. It also ensures that ethical obligations to clients remain intact despite the range of adversities law practices may grapple with. For example, the American Bar Association (ABA) has specifically

opined that lawyers have an ethical obligation to implement reasonable measures to safeguard property and funds they hold for clients or third parties, prepare for business interruption, and keep clients informed about how to contact the lawyers or successor counsel.<sup>4</sup> Similarly, the commentary to Colorado Rule of Professional Conduct (Colo. RPC) 1.3 explains:

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.<sup>5</sup>

So, where to start? The Colorado Supreme Court and the ABA offer planning resources and forms to efficiently guide you through disaster and succession planning.<sup>6</sup> These are excellent resources to consult when developing or updating your plans.

When starting the planning process, it may be beneficial to frame your thoughts around two overarching goals: (1) preserving the physical safety of yourself, employees, and clients; and (2) ensuring essential client and business records may be accessed to resume or transfer practice operations. With those goals in mind, consider potential risks and how they may impact your current operations. For example,

if a tornado destroys your office, are you able to access backup copies of essential records, communicate with your clients, and perform work in an alternate location for an extended period? If a large gathering or protest limits access to your office for a few days, are you able to adjust and meet pending deadlines or secure extensions so your clients are not prejudiced? If you are severely injured in an accident, do you have a stand-by attorney who knows how to access your files and can respond to your clients' needs while you are absent? To address these concerns, consider the planning steps below.

## 1. Determine Who's Responsible for Creating and Executing the Disaster Plan

Whether you practice as a solo or in a small or large practice, identify who is responsible for adversity planning and its implementation. This can be an individual or a small committee. Either way, be sure to commit sufficient time and resources to adequately plan for adverse situations.

## 2. Identify Risks

While it is impossible to create an exhaustive list of potential risks, most can be categorized in the following areas:

- natural disasters, such as tornadoes, forest fires, severe weather, or flooding
- unforeseen issues that may arise due to

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fire, power failures, flooding, explosions, or tech-related outages

- human events such as protests, bomb threats, workplace violence, or vandalism that may prevent access to your normal workspace for an indeterminate period
- health disasters, whether on a broad scale like COVID-19 or personal health disasters arising from accidents, illness, disability, or death.

### **3. Analyze Current Operations Against Identified Risks**

After identifying risks, consider how current workspaces and business operations match up with potentially adverse events. For example:

- How does your building location, type, and age affect risks associated with access, safety, and security?
- Are your electrical, computer, and phone systems at risk, and are you able to provide alternate or backup sources of communication and services to colleagues and clients?
- Are essential business records in a secure physical location or, ideally, duplicated and backed up off-site using available technology resources?

### **4. Inventory and Protect Records and Equipment**

Make a complete office inventory including computer and hardware information, vendors, and lease agreements; software information, including what is installed on each computer and any applicable license and account information; usernames and passwords for computers and software; and any applicable office subscriptions such as Westlaw, LexisNexis, or practice management software.

Establish regular, automatic back-up procedures with off-site storage for all digital data, including essential data such as your calendar, contact lists, client/matter lists, client files, email, billing, governing documents, leases or contracts, insurance records, and personnel files. Many solo practitioners and small firms use cloud-based practice management systems, which offer an effective, affordable way to back up critical data and allow for work in alternate locations.

Beyond digital records, ensure you have a plan for physical items in your office or other locations that are not replaceable. For example, if you handle cases involving substantial physical evidence, do you have fireproof filing cabinets, an office safe, or access to a secure off-site location for safekeeping?

### **5. Review Insurance Coverage**

Periodically review your existing insurance coverage with your broker to make sure it applies to the types of disasters you are most likely to face. Common coverages to consider include:

- damage to or loss of real or personal property
- business interruption/loss of revenue
- disability
- general liability
- valuable papers coverage
- accounts receivable coverage
- applicable natural disaster coverages.

### **6. Remember Personal Safety**

To help protect the safety of employees and clients, consider emergency escape routes or shelter-in-place options based on your physical work location. These may vary greatly based on building location, size, and age, but the concepts are similar. Are there accessible emergency exits, shelter-in-place options, and other building tenants to coordinate with? Once plans are in place, post them, make them available, and calendar periodic reminders to review them for accuracy and to remind personnel. And ensure all employees have emergency contact information available.

Also maintain basic emergency supplies in the office and have a schedule for inspection and replacement of necessary items. At a minimum, include a first aid kit, flashlights, extra batteries, a solar or wind-up radio, emergency food and water, petty cash, and standalone charging products for your electronic devices.

### **7. Returning to Work**

Assuming the worst has happened and the office you left yesterday afternoon is destroyed or inaccessible the following morning, what do you do next? If you have previously developed a carefully thought-out plan, you need only

execute the business resumption portion of that plan to be back in business. Here are some basic steps for a business resumption plan:

1. Communicate with all office staff and let them know how further instructions will be delivered. Depending on the nature of your firm or practice, this can be done by direct calls, a phone tree, a pre-established phone number they can call to receive updates, or through a third-party communications vendor that assists with email, text, and phone communications.
2. Contact your insurance agent and begin assessing potential claims as soon as possible. Having the aforementioned office inventory will be helpful in processing your claims.
3. If you are a solo practitioner, contact your stand-by attorney if help is needed.
4. Execute your plan for temporary office space, whether it is securing an alternate location or arranging for remote work from home.
5. Secure temporary or new equipment that is essential for continuity of your practice. This may include short-term leases, purchasing new computers, or an agreement to share excess equipment with another firm.
6. Load all backed-up software and data or use cloud-based practice systems.
7. If applicable, review your calendar and docket to obtain any necessary continuances and make sure statutes of limitations do not run.
8. Contact your clients and let them know what has happened. When informing them of the adverse event, reassure them that you are taking the necessary steps to protect their interests.
9. Consider short-term cash needs related to payroll and other expenses and take steps to access or quickly establish a line of credit, or discuss options with your insurer if there are pending claims.

### **8. Health and Succession Planning**

In addition to preparing for natural disasters, solo attorneys and small firms should have a succession plan for unforeseen health issues or death. This includes arrangements for case

coverage by a stand-by attorney, with advance authority from clients to allow for associated counsel in case of emergency. Maintain files so the current status and ongoing case needs are ascertainable, and prepare a document that explains your practice and its needs in the event temporary coverage or business closure is necessary. The following steps are critical when succession planning:


1. Identify a stand-by lawyer who can triage your practice and execute a written agreement regarding the closing, sale, or transfer of the practice.
2. Maintain an accessible record of clients and active matters, passwords, and login information for electronic devices and digital assets, billing and banking information, and malpractice insurance.
3. Work with your bank to authorize another signatory on trust accounts.

4. Maintain an accessible record regarding all office related leases and contracts, business insurance policies, service providers, staff names and contacts, and bank accounts.

5. Create or update estate planning documents to include information and desires related to your succession plan. Let people know where your will, powers of attorney, bank information, safe deposit boxes, and stored files and other assets or records are located so the executor of your estate and attorney who will assist with your practice are informed and have the tools they need.<sup>7</sup>

**Conclusion**

Sound planning for unexpected events that impact you and your practice will provide peace of mind, mitigate risks, and help ensure you continue serving your clients well. Schedule some time soon to create or review your disaster

and succession plans. The Colorado Supreme Court and the ABA have a wealth of resources to assist you and make the process efficient. And, once you get your plans in place, you can rest assured knowing it will be appreciated someday by your clients, your staff, your loved ones, and the profession. 



**Josh Zugish** served in private practice in Fort Collins before joining the Office of the General Counsel with the Colorado State University System, where he worked from 2008 to 2018. He has served as president of the Larimer County Bar Association and as a trustee for the Colorado Legal Aid Foundation. Zugish currently resides in Savannah, Georgia, and works remotely in the areas of employment, education, and litigation for Ogletree Deakins Nash Smoak & Stewart P.C.—joshua.zugish@ogletreedekins.com.

**Coordinating Editor:** Jeffery Weeden, jlweeden@weedenlaw.com

**NOTES**

1. Colorado Coronavirus Map and Case Count, <https://www.nytimes.com/interactive/2020/us/colorado-coronavirus-cases.html>.
2. Dep’t of Homeland Sec., Fed. Emergency Mgmt. Agency (FEMA), 2020 Federal Disaster Declarations, <https://www.fema.gov/disasters/disaster-declarations>.
3. Sealover, “Absolutely the worst time for pandemic-addled Denver businesses to suffer setback with riots,” *Denver Bus. J.* (June 2, 2020), <https://www.bizjournals.com/denver/news/2020/06/02/downtown-denver-setback-coronavirus-riots.html>.
4. See ABA Standing Comm. on Ethics and Prof’l Responsibility, Formal Op. 482, Ethical Obligations Related to Disasters (Sept. 19, 2018).
5. See Colo. RPC 1.3 cmt. 5.
6. See ABA, A Lawyer’s Guide to Disaster Planning, [https://www.americanbar.org/content/dam/aba/administrative/disaster/surviving\\_a\\_disaster\\_a\\_lawyers\\_guide\\_to\\_disaster\\_planning.pdf](https://www.americanbar.org/content/dam/aba/administrative/disaster/surviving_a_disaster_a_lawyers_guide_to_disaster_planning.pdf); ABA, Lawyers in Transition/Succession Planning, [https://www.americanbar.org/groups/professional\\_responsibility/resources/lawyersintransition/successionplanning](https://www.americanbar.org/groups/professional_responsibility/resources/lawyersintransition/successionplanning); Colo. Supreme Court, Office of Attorney Regulation Counsel, Planning Ahead: A Guide to Protecting Your Clients’ Interests in the Event of Your Disability or Death (2019), [https://www.coloradosupremecourt.com/PDF/Regulation/Closing\\_Practice.PDF](https://www.coloradosupremecourt.com/PDF/Regulation/Closing_Practice.PDF).
7. See ABA, 5 musts for an effective succession plan (Oct. 2018), <https://www.americanbar.org/news/abanews/publications/youraba/2018/october-2018/identify-a-triage-lawyer--and-other-steps-to-creating-a-successi>.

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