

Bracing for Impact: A Practical Guide to Preparing for Disasters

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I. Introduction

In the hours preceding Hurricane Harvey's landfall, citizens across Texas rushed their storm preparations to completion. For many, these activities included stocking up on bottled water, gasoline, batteries and flashlights. Some business owners took their own steps to reduce the damage to their stores, offices and other facilities.

Over the last several years, a number of articles and CLE presentations pertaining to preparing for and recovering from disasters have filled the offerings of various state bar association publications and seminars. As these contributions to the body of literature on the subject continue to grow, some lawyers are beginning to ask whether they have an ethical and business obligation to implement disaster readiness and recovery plans into their respective practices. This presentation provides an overview of those obligations as well as guidance on how law firms can improve their resiliency.

II. What Do The Rules Say?

The Texas Disciplinary Rules of Professional Conduct (hereinafter "The Rules") provide little guidance to the practitioner on the obligations for preparing a law firm for a disaster. Perhaps the authority that provides the most guidance can be found in Rule 1.14, **Safekeeping Property**. In Comment 1 to the rule, we read:

A lawyer should hold property of others with the care **required of a professional fiduciary**. Securities should be kept in a safe deposit box, except when some other form of safekeeping is warranted by special circumstances.

(emphasis added).

If a fiduciary is holding property on behalf of a client, what sort of safeguards might the client reasonably expect the fiduciary to make to keep the property safe from damage or destruction from natural and man-made hazards?

Courts outside of Texas have addressed this head on. In *Florida Bar v. Ward*, 599 So.2d 650, 652 (Fla. 1992) the Florida Supreme Court cited the Ohio State Law Journal in its opinion on the obligations of the profession to protect client property: "The responsibility of preserving client property rests in the hands of both individual attorneys and the legal profession itself." *Ward*, citing *Philip F. Downey, Comment, Attorneys' Trust Accounts: The Bar's Role in the Preservation of Client Property*, 49 *Ohio St. L.J.* 275, 275, 280 (1988).

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