



AMERICAN
IMMIGRATION
LAWYERS
ASSOCIATION

Navigating Rough Waters: Guiding Your Law Firm Through Times of Crisis¹

By Kirby Gamblin Joseph and Jeff Joseph

Immigration attorneys, like us, who were practicing during the 2008 global financial crisis remember the impact that the crisis had on the immigration law practice. One of the lessons we learned from this crisis is that our diversified practice and the flexibility of our systems allowed us to weather the storm and steer our ship to calmer waters.

Having navigated our law firm through that crisis, and having learned some valuable lessons, the purpose of this article is to share some theoretical tips to plan for hard times in general, as well as very practical tips for getting through this particular crisis. The goal is that with proper planning, your law firm can survive any crisis whether financial, pandemic, or natural disaster.

This article is just meant to be a guideline. Every law firm is different, and this plan should be adapted so that it makes sense for the size and nature of your individual practice. Nevertheless, the considerations and principles remain the same despite your specific practice.

SELF-CARE COMES FIRST

Before we get to taking care of your practice in times of crisis, let's start with you.

You know how every time you get on a plane; they tell you, "in the event of an emergency, secure your own safety mask before assisting others?" There is a reason for that. We cannot take care of our businesses, look out for the welfare of our employees, and zealously advocate for our clients, if we are not first taking care of ourselves. Especially in times of crisis, our first and primary obligation must be to our own self-care.

Immigration lawyers are already having to fight twice as hard and having to do three times the amount of work to get approvals, and now, we face a global pandemic. This is the very definition of crisis. In times like these, we, as lawyers, must care for ourselves and each other. Job fatigue, stress, mental health, and substance abuse issues are realities of our profession. We can get through this in a healthy way.

Utilize the resources that are available to you to seek help. AILA has resources available to assist lawyers in times of crisis. AILA's Self-Care Center on AILA.org is a resource dedicated to helping AILA lawyers in rough times. Materials and resources are added on a rolling basis to provide lawyers with information and techniques for mindfulness and wellness.

¹ This article is meant to provide general guidance only and does not constitute legal advice. Prior to relying on the advice in this article or implementing any of the policies or procedures discussed herein, it is recommended that you consult with a labor and employment and/or crisis management attorney in your state.

Additionally, many state bar associations have help lines and lawyer assistance programs that will help lawyers in various ways with counseling recommendations, substance abuse treatment, financial assistance, and other matters. Regardless of where you get help, get help if you need it.

HAVING A CRISIS PLAN OF ACTION

Preparedness is the key to success.

One of the most important things that you can do to prepare for a law firm crisis is to have a plan of action in place before a crisis occurs. There are a number of resources available to attorneys who are looking for specific guidance for specific scenarios, but experts have recommended that the successful crisis management plan in any environment have the following components:

1. Essential Functions and Processes;
2. Order of Succession;
3. Delegation of Authority;
4. Alternate Facilities;
5. Continuity of Communications;
6. Vital Records Management;
7. Human Capital
8. Devolution of Control;
9. Test, Training and Exercise;
10. Reconstitution.²

Essential Functions and Processes

During a law firm crisis, the ability to operate the law firm under normal operating circumstances becomes limited. Personnel may be unavailable; the physical facilities may be inaccessible, and resources may be damaged. In such circumstances, it is important to determine which functions and processes are critical to continue operations, even if on a limited basis.

As a starting point, each team member should be asked to prepare a crisis impact plan. The individual team members are often in the best position to make a detailed analysis of the essential functions necessary to perform the job as well as the technology, supplies, vendors, time investment, and resources necessary to do each task. The worker who performs the job daily is also most familiar with what would be necessary to make adaptations for times of crisis. Have each team member draft a very detailed step-by-step description of every duty he or she performs throughout the day, as well as every office supply used, every technology employed, every vendor impacted, and every database or firm intellectual property accessed. Separately, have the employee list and provide a brief summary of the five most critical

² Adapted from the Federal Emergency Management Agency, *Pandemic Influenza Continuity of Operations Annex Template Instructions*, available at https://www.fema.gov/media-library-data/1396880633531-35405f61d483668155492a7cccd1600b/Pandemic_Influenza_Template.pdf

functions he or she performs in the office, the records that the team member needs to access, the vendors with whom the team member must interact to function properly, the technology resources needed to perform critical functions and the anticipated recovery time to come back on board should a disaster occur. The more granular the detail in such a plan, the better.³

In addition to having each team member prepare a crisis impact plan, the office administrator or managing partner should make a firm-wide crisis impact plan that identifies the firm-wide processes, technology, resources, essential functions, and alternatives to mitigate any issues that will occur firm-wide. Are there personnel whose functions cannot be performed outside the physical office? Is there an alternate means of performing the function? The functions that are performed outside the firm should also be analyzed. Are there vendors that are absolutely essential to the function of your firm? For example, if the firm uses outside vendors for paralegal work or accounting, the managing partner should coordinate with those outside service providers to determine what their contingency plan might involve and how your firm fits into their adapted processes.

Order of Succession and Delegation of Authority

Another key component of the crisis management plan is a clear explanation of the hierarchy of authority within the firm and the order of delegation of authority. Succession and authority are two different concepts and must be explained separately.

Succession refers to who is in charge in the circumstance where the principal is not available. For example, if the managing partner is not available or accessible, who is the next in command, etc. This succession plan should be very clear in the order of succession, as well as the functions that the person is legally authorized and competent to perform. It should be determined if there are any signature requirements for such authority and whether the necessary permissions have been obtained so that the person who succeeds has signatory authority.

Delegation of authority, on the other hand, refers to the exchange of authority for particular functions when the normal decision-making channels are not available. For that purpose, it may be necessary to have a formal and legal durable power of attorney in place to provide the individual with delegated authority to have legal access to any records and accounts and to make legal decisions on behalf of the person from whom the authority was delegated.

In the immigration context, where checks get written every day and G-28s must be completed on behalf of clients, the delegation and legal authority to write checks and sign legal documents on behalf of clients becomes of critical importance and must be clearly outlined in writing.

Once the succession and delegation plan is created, it should be circulated to all team members who are involved in the plan and all involved should be cross-trained on the necessary functions as relevant.

³ This information is not only valuable to create a crisis management plan but could also be cross-utilized to create a detailed job description for the position, training manual, employee policies and procedures manual, and other resources.

Alternate Facilities

How disruptive will it be if your facility is not available in the time of a crisis? The good news for immigration law firms is that the technology exists, and the nature of the practice is such that remote work is very achievable. The flexibility that teleworking provides is something that makes it attractive for immigration lawyers independent of whether there is a crisis.

Nevertheless, if you really want remote work to be seamless, you must be willing to invest in the latest and fastest technology or rent somewhere where you have access to it. The effective remote attorney will require:

1. A high-speed internet connection;⁴
2. Cloud-based technology platforms across the board; or an application or software product such as Microsoft Remote Desktop that allows remote access to the law firm server or access to the employee's desktop hard drive; and
3. A remote computer or laptop.

In addition to the above, the firm should think about what other types of software or applications will allow the firm to function remotely given the nature of the practice. From our experience, the most successful remote environments utilize mostly cloud-based software products.

One of the critical applications to investigate is virtual meeting software. For law firms with staff, it is important to have the ability to have virtual meetings with your team regularly to stay in touch and maintain law firm culture and morale. Zoom (www.zoom.us) and GoToMeeting (www.gotomeeting.com) allow users to show the contents of their computer screen to other participants. To initiate the meeting, you just provide a link to participants. Those participants log in to a virtual meeting. The meeting can be set up to be audio only or video and audio. If the participant has a camera, his or her face will appear with everyone else on the computer screen. In addition, the share screen function allows you to review documents and forms with the person on the other side and to mutually review what appears on the screen. This means that the software can be utilized not only for staff meetings, but also client meetings. If your clients operate primarily by cell phone rather than computer, ensure that your virtual meeting software can accommodate mobile access.

Other software that is necessary for functions should also be investigated. For example, stamps.com allows all team members to access a single account and print out postage on a firm account to mail documents. FedEx can also be set up on a firm account so that a firm can email and print large print jobs remotely.

Despite the flexibility that remote work provides; it also presents challenges with regard to security and client confidentiality. It is critical that all remote workers be educated, trained, and tested on the importance and ethical significance of shielding client confidences. All

⁴ Speedtest.net is an internet-based software that will allow you to test the internet speed in any location.

remote technology should be installed with the latest virus and malware protection software, and this software should be set up to automatically update on an interval that is appropriate and recommended by your firm technology administrator.

Another consideration is cost. Who is going to be responsible for what costs? Should remote employees be required to provide their own equipment, or will the firm purchase the necessary equipment to make them functional outside of the office. Depending on the size and nature of your practice, some firms may decide to purchase the necessary equipment to make their remote employees productive. This may be cost prohibitive for other firms. Either way, a system should be created so that employees can keep track of their actual expenses and invoice the firm for the costs of doing business from home.

Every computer should also be accessed by means of a strong password and should then involve a two-factor authentication to access confidential client information. Firewalls should be installed to restrict access to remote desktop listening ports and remote access should be set up so that it is limited to one individual who can log in to that device.

Continuity of Communications

One of the most important parts of a crisis management plan is to determine how the change in firm operations will implicate the communication systems of the firm.

A communication plan should be implemented for both internal and external communications. The firm should analyze the existing communication system and determine how that system will be impacted in the case of a crisis. For example, in the case of a crisis, will the firm continue to utilize a traditional receptionist to answer the phones or will the firm utilize a virtual receptionist? Does the current phone system have the capability of forwarding calls directly to remote employees? How will calls be handled and forwarded?

Additionally, what will be the expectation with regard to availability of remote employees? Will those employees be required to be accessible at all hours of the business day or will remote work mean that they have more flexibility as long as they perform their work functions during the week? How quickly should employees be required to answer phone calls, emails, and texts? How should this availability be communicated to clients?

Once the changes in communication systems have been identified, those changes for a time of crisis should be communicated both internally and externally to employees, clients, vendors, service providers and others. A plan should be created that outlines how personnel will be notified of crisis management plans and procedures and how they will be trained on such procedures. The plan should explain how the firm will continue to operate, how communication will occur going forward, explain the hierarchy of succession and delegation, and discuss backup plans for communications and contingencies should communication become impossible.

Vital Records Management

The crisis plan should identify all of the law firm records, information systems, processes, data management, and other resources that are necessary to run the operation. This will include the firm calendar, client files, corporate documents, financial and accounting records, personnel files, policies and procedures manuals, warranties, leases, vendor contracts, contact information for all essential law firm contacts, insurance documents, I-9 records, and other important records. These records should also include all of the crisis management documents and protocols that are being put into place, as well as emergency contact information for all law firm personnel.

Once all of the records have been identified, time should be spent to preserve all of these documents electronically and storing them electronically, as well as physically. Ideally, a cloud-based software should be used to store the documents and the security of that storage method should be verified. The electronic record should then be organized by category and a plan should be developed for who is responsible for maintaining the storage of critical documents, as well as backing those documents up and retaining them. Additionally, the hard copies of the vital documents should be stored off-site in a fireproof and waterproof storage site.

The use of physical files and the movement of physical client files from the office headquarters to remote locations is something that needs to be discussed and procedures need to be put in place to protect client confidences. Ideally, the firm should use the necessity of remote work to start to transfer the firm from paper-based to electronic and paperless, but that is a large project. If files must be removed and taken home, every staff member must be trained on the Rules of Professional Conduct with regard to client property, client confidences, attorney-client privilege, and other ethical implications.

Human Capital

The names, addresses, phone numbers, emails, and emergency contact information for all employees should be saved and secured in an easily accessible place. This list should be updated every time a new staff member is added, and the list should be circulated frequently through the office. This should be treated as one of the vital documents that should be stored and protected in the time of a crisis.

A crisis management plan should determine which jobs can be performed remotely in a time of crisis. For those employees able to work from home, it should be determined whether, based on your state employment laws, the employee is an exempt or non-exempt employee. Exempt employees are not entitled to overtime pay under the Fair Labor Standards Act. Non-exempt employees must be paid overtime. Most states consider attorneys and office administrators to be professional exempt employees but consider paralegals to be non-exempt. For that reason, remote work policies should explicitly state whether an employee is considered exempt or non-exempt, and if non-exempt, the remote work policy should limit the hours that an employee may work in a particular work week absent specific written permission of the manager.

Exempt employees should continue to be paid their annual salary as usual and should be expected to maintain their same level of productivity in the remote work situation to justify their continued annual salary.

If non-exempt employees are going to be working remotely, they should be required to record the time spent working on firm matters in a timekeeping software such as Timeslips, Capterra, or others. Time spent on client matters should be itemized and billed to a particular client and time spent doing administrative work should be billed to the firm. Those bills should be reviewed to determine inefficiencies in the system and with particular employees and accommodations and adjustments should be made accordingly. If a particular non-exempt employee is paid a salary, the salary should be converted to hourly and the employee should be compensated on an hourly basis for all time spent working on firm-related matters in the given week.

Firms will have to figure out how to handle already accrued and future vacation time and paid time off and whether to require remote employees to take vacation time and paid time off toward illness, quarantine, and disaster-related time off. Each firm will have to decide for itself what kind of cultural impact will be caused by requiring individual employees to access their own vacation time or contribute in some way depending on the circumstances. This is not an easy decision, but one that should be made meaningfully and communicated clearly.

Unfortunately, the greatest human capital cost in a time of crisis comes for administrative staff. It is simply an inevitable reality. Despite the difficulty of such circumstances, consideration must be given to who will perform administrative tasks and whether any of those tasks can be consolidated into less persons or outsourced. For example, in times of crisis, it might make sense to utilize a virtual receptionist rather than employ a receptionist to answer the phones. With regard to the mail, it should be set to be forwarded to someone who can scan the mail, upload the mail to the client database, and then email the lead attorney and paralegal working on the case with a copy of what was received.

To the greatest extent possible, all administrative tasks should be automated.

Protocols and procedures should be implemented so that it is clear how administrative functions will be performed and who will be responsible for performing them in the event of a crisis, and all administrative staff should be cross-trained, consolidated as much as possible, outsourced where appropriate and automated where at all possible.

Devolution of Control

In cases of dire emergency, a plan should be in place for shifting responsibilities from one law firm to another. If for example, the firm is a solo practice and the lone lawyer is incapacitated or dies, there needs to be a plan for what will happen to the law firm. Such emergency situations are rare, but there must be someone who is capable of stepping in, inventorying the existing client situation, making sure all deadlines, court dates, interviews, RFE response and other matters are properly ticklered and calendared, making sure that bills are being paid and staff are being compensated and have fiduciary responsibility for the firm in times of crisis. This individual should have full durable power of attorney in such situations and the

individual assuming this responsibility should be able to fully practice law in compliance with the applicable state Rules of Professional Conduct.

To ensure that this individual has the capacity and resources to take on this responsibility, “key person” insurance should be set up such that, in the case of incapacity, death, or other unavailability, an insurance policy would be paid out to allow an individual assuming responsibility for your practice to take over and assume the practice while having the financial capability to address any outstanding debt, liabilities, or other issues that may arise.

Test, Training and Exercise

Once the entire crisis management plan is in place, all components of the plan must be tested, employees must be properly trained, and the procedures must be implemented in a “sandbox” environment to be tested, tried, and troubleshooted. For the first implementation, this “sandbox” should be consistently used for a meaningful period of time to identify any kinks in procedures, inefficiencies, log jams, technology issues, or other problems.

The procedures should be reviewed and tested annually. At each annual review, careful attention should be paid to any procedures, technologies, lists, vital records, systems, procedures, parts of the crisis management plan, successors and delegated responsible parties, and other components. The entire plan should be updated and all parties should be trained on the changes and new procedures as appropriate.

Every year that a new technology or procedure is implemented, it should be employed in a “sandbox” environment to iron out any issues.

Reconstitution

The reconstitution phase is the coming back home phase of the plan. This part of the plan would outline the procedures for assessing all parts of “getting back to business.” The first part of the plan assesses the relative successes and challenges of the crisis management plan and does a debrief of everyone who participated in the plan as to what worked, what did not work, what could have been better, what lessons were learned, and what would have made the job easier. Encourage complete honesty with regard to this phase.

Take the information received and lay everything out on paper without any particular comment being attributed to any particular party. Look for common comments and common concerns and trends, but do not ignore outlier statements that raise significant issues. Then, consider hiring an expert in crisis management to tinker with and improve the existing plan, or, at a minimum, make meaningful changes to the existing plan.

Then, discuss the return, if possible, to the actual physical facility. Is it possible? Will remedial measures need to be taken to return? Will all employees return or will remote work remain a possibility? If so, under what terms and conditions?

Will a physical move be required? What is the timeline and budget for that? Will work need to be outsourced?

Policy Template
COVID-19: What to Expect

What is Acme Law Firm, P.C. doing?

- We are monitoring CDC and other authoritative directives. Please refrain from sharing any unsubstantiated rumors with staff and/or clients.
- The office manager will be your point of contact if you become sick or have sick family members.
- The administrative team has bleach cleaning products at the reception desk and the admin desk outside of the conference room. They will be regularly cleansing the conference rooms and the reception areas throughout the day.
- We have large bottles of sanitizer placed at the reception desk, copy room, staff kitchen, and downstairs admin desk outside of the conference room. Clean your hands after meeting with clients or others from outside the office.
- The regular janitorial service will take extra care in cleaning surface areas.
- Reminding employees about short-term disability coverage which is 100% paid for by Acme Law Firm and kicks in after 14 days of unemployment and provides 11 weeks of coverage for anyone that may become ill for an extended period of time.

What should Acme Law Firm staff do?

- Wash your hands frequently with soap and water or sanitizer when soap and water are not immediately available.
- Do not shake hands or hug right now.
- Sneeze and cough into your elbow or a tissue.
- Stay home or go home if you begin to feel sick.
- Inform the office manager if you think that you have been exposed to the virus.
- Make sure that your cell phone number is up to date with the office manager.
- Be aware and cautious of implicit bias. Do not make judgements or assumptions about clients and illness without information.

Who is eligible for teleworking?

- Attorneys are able to telework from home in the event of a quarantine. Paralegals may be eligible to telework from home in the event of a quarantine if they have the capacity to do so and based on business necessity.
 - When teleworking employees must have their phones next to them at all times from 8am-5pm and be accessible by phone and email throughout the day.
 - Determine whether attorneys and qualifying paralegals will be using firm-issued computers and phones or their own personal devices and ensure that the arrangements meet your security protocols.
 - As always, teleworking employees must maintain a secured wireless connection with firewalls, do updates, and maintain up-to-date malware and

virus protection on their device while they are teleworking. They must maintain a safe and confidential work environment in their home.

- Attorneys are expected to make their bill or collection requirements for the year regardless of whether they are working from the office or from home.
- Paralegals are expected to make their required billable hours regardless of whether they are working from the office or from home.
- An employee's inability to maintain their collection or billable hour requirements may result in their inability to work from home.
- In many cases, administrative staff are not able to telework from home due to the nature of their jobs. In the event of illness or quarantine, these staff members should use their PTO and/or floating holidays first. In the event that an employee does not have accrued PTO, Acme Law Firm will advance up to 10 days. If PTO is advanced the employee will not accrue for the months that were advanced. If the employee's employment is terminated for any reason prior to making up the advanced PTO days, the employee will be responsible for paying Acme Law Firm back for the days advanced but not yet earned.

Teleworking Template
GUIDELINES FOR WORKING REMOTELY

Updated: 03/12/2020 (will be updated regularly)

- Attorneys are able to telework from home in the event of a quarantine. Paralegals may be eligible to telework from home in the event of a quarantine if they have the capacity to do so and based on business necessity.
- Attorneys and qualifying paralegals are expected to have and use their own firm-provided computer, printer, and phone. The firm will provide a video camera (webcam) to each attorney and paralegal if they don't already have one on their computer so that they can participate in regular video conference calls.
- When teleworking employees must have their phones next to them at all times from 8am-5pm and be accessible by phone and email throughout the day. All attorneys and paralegals need to log in and practice forwarding their office calls to their cell phone.
- As always, teleworking employees must maintain a secured wireless connection with firewalls, do updates, and maintain up-to-date malware and virus protection on their device while they are teleworking. They must maintain a safe and confidential work environment in their home.
- Attorneys are expected to make their billing or collection threshold for the year regardless of whether they are working from the office or from home. An attorney's inability to maintain their collection requirement may result in their inability to work from home.
- Paralegals will be paid for the time that they are actually working from home. Paralegals are eligible for payment up to 40 hours per week but may be paid less than 40 hours per week if they work less than 40 hours in any given week.
- All attorney and paralegals need to be set up with remote access by _____. If you have a laptop you can bring it into the office, and we will help you. Otherwise you can take the instructions home and we can have the technology company assist you if necessary.
- All attorneys and paralegals are expected to sign up for a free subscription to the firm's video conferencing program and download the program to their home computers and work computers by_____.
- When working remotely, you are expected to make virtual meetings at the time the in-person meeting was scheduled.
- You will check in every morning and afternoon through the video conferencing program.
- All employees are expected to provide deliverables at the same rate as before wherever possible.
- If there are forms and filings a client must sign, you can fully review it with them online before you print. You can then email, mail, or have them print out the forms to sign and return to you. Consider delays caused by this and schedule completion with enough time to not miss deadlines.

- We have an account with Stamps.com so you will be able to print postage from home if necessary.
- You must take measures to protect client confidences and information to the highest standard.
- If you become ill or you have sick family members or children with school closures, we ask that you take time off from work as necessary, even if you have the tools and capacity to telework. Please take care of yourself and your family, and refrain from doing things that will prolong poor health.
- We ask that you do your best to protect your productivity and attention to your work, despite distractions you may be experiencing due to school closures or other distractions in your household.

Even though times of crisis cause us to go into panic mode and may, in fact be times of economic downturn for our practices, it is also a time where we can devote energy and resources to areas of our practice that have otherwise gone neglected or undervalued. Use this time to reinvigorate and energize your practice and implement better systems that enable you, when the crisis goes away, to enjoy better work/life balance.

If you are able and the crisis is over, please take time for yourself. Psychologists agree vacations are an important way to take a break from a busy, stressful schedule. Be sure to take annual holidays, plan ahead, and do not schedule a court appearance for days immediately following your return. Leave someone competent in charge of your files. Don't over-plan your vacation. Scheduling too many things can be counterproductive to a relaxing vacation. Avoid rushing to do anything and leave time to be spontaneous. And just make time to do nothing. If you feel you must bring along work, laptop, or cell phone, limit the amount of time you spend using them so that you can enjoy a meaningful, refreshing experience with your family or friends.