

Why You Need To Keep Minutes

The best evidence of a prudent process

So you've been reading our article series regarding retirement committees and how to be a good fiduciary. You've been preparing for meetings, attending and engaging in discussions at the meetings, considering your investment adviser's guidance and generally acting prudently. That's great! Now it is time to demonstrate that prudence. Taking and retaining good committee minutes is vital to protecting yourself as a fiduciary.

There is no legal requirement that you keep minutes. However, if you perform a thorough and prudent review when making a fiduciary decision, you must be able to prove it if later challenged. Having someone at each meeting take minutes is your best evidence that you followed a prudent process. Here, we provide general guidance regarding the content of meeting minutes, specifically what to include and what not to include, which are both important.

General Guidance

There is basic information that should always appear in the minutes, including, for example, the following:

- **Meeting date.** It seems basic, but if the date is not included, you have no idea when the meeting was held;
- **Meeting attendees.** The minutes should list everyone who attended—both committee and non-committee members. The minutes should also note that quorum was met;
- **Issues discussed.** See our discussion later in this article regarding level of detail;
- **Materials reviewed.** Copies of the materials presented should be included with the minutes;
- **Decisions made.** This is a key point to include; and
- **Action items.** Any next steps should be recorded so they can be addressed in the next meeting. For example, if the committee decides to put an investment option on a watch list, this should be noted so the committee can reassess the investment at the next meeting.

Documenting Discussions

The minutes do not need to be long or provide a detailed description of who said what to whom. In fact, it is probably best to exclude the specifics of a back and forth debate. Instead, when the committee considers a question, the minutes should state the issue, what information or materials were presented, and whether any advice or guidance was provided by a third-party

adviser. The minutes should note that the materials and recommendations were reviewed and discussed by the committee members. The committee's ultimate decision is also important to include—how else would you know, referring back, what the determination was? Finally, if a committee member is against a decision or abstains from the vote, this should be reflected in the minutes.

The committee's ultimate decision is also important to include—how else would you know, referring back, what the determination was?

Minutes Format

It can be helpful to develop a general format for the minutes to facilitate the process and create consistency. When following a set format, the meeting secretary knows what information to record each time. It also helps to use the meeting agenda as a road map for committee members, so that topics to be covered at the meeting do not get overlooked.

When a committee is responsible for more than one plan, it is a good idea to have separate minutes for each, or at least plan-by-plan separation within the minutes. That way, if you must provide minutes with respect to a plan—e.g., in response to a Department of Labor (DOL) investigation—you can limit what you produce to only the minutes for the relevant plan.

Ultimately, the key point to remember is that the minutes are evidence that the committee acted prudently. They should reflect the process the committee engaged in—i.e., that information was presented, reviewed and discussed in order for the committee to make its decision.

In our next article, we will discuss the process and related issues involved in taking and retaining minutes.

.....

Summer Conley is a partner in the Los Angeles office of Drinker Biddle and Reath LLP; **Michael Rosenbaum** is a partner in the firm's Chicago office.