

ATTORNEY-CLIENT PRIVILEGED COMMUNICATION

MEMORANDUM

RE: Best Practices Regarding Board Meeting Minutes

Minutes are an official and legal record of a board meeting. Board meeting minutes are subject to subpoena and are presumed to be correct and can be used as legal evidence of the facts they report. Accordingly, meeting minutes should accurately reflect the actions and intentions of the board of directors, reflect that they are performing their fiduciary duties as board members, but should not provide specific or extraneous details. Boards have legal liability, so keep information basic and language simple to avoid any legal complications that place the organization at a disadvantage in any legal proceedings.

Notwithstanding the foregoing, there is a wide variety of styles of minutes, depending on the needs of the organization and the Board. Fundamentally, meeting minutes must be useful to both the staff and the Board.

Best Practices:

- Use the meeting agenda as the outline for the minutes. Follow the meeting agenda even if the Board goes out of order.
- Include the date of the meeting and the time the meeting was called to order and adjourned.
- Include the names and titles of the meeting participants and absentees.
- The chair should state, and the minutes should reflect, that a quorum is present.
- The chair should also ask whether there are any perceived or real conflicts of interest based on the agenda. The minutes should reflect that this question was asked and that no conflicts were declared or that a potential conflict was declared and what action was taken based on such declaration.
- Minutes should reflect the motion made, who made it, and who seconded it, and the outcome of the vote; the minutes should not record names (other than who made and seconded the motion) or the specific votes cast.
- Minutes should include topics of discussion based on the agenda but should not reflect specific details of such discussion. To state it in another way, the minutes should not record the dialogue of the discussion.

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- Minutes may also include actions taken or agreed to be taken, items to be held over, new business, open discussion, whether the board goes into executive session, and the time adjournment.
- Use official names of third parties invited to attend the meeting.

Hard Guidelines

Regardless of style, there are a few hard guidelines to follow when preparing meeting minutes.

Do Not Include:

- Any legal advice as it is subject to attorney-client privilege. The minutes can reflect that there was a discussion with the attorney and the Board and legal advice was provided.
- Specific financial information with dollar amounts (unless required by a third party such as an auditor).
- Generally, do not include names of board members other when motions are made and seconded.
- Do not record dialogue between board members unless a board member specifically requests that their names and statement (often, objections) are reflected in the minutes.
- There can be a lot of debate that happens at a meeting as people offer their opinions, research, and experience, which should not be recorded. The minutes should summarize the outcome of the discussion, not every single point that was considered.
- Acronyms.
- Specific information about specific employee issues and employment matters.

Conclusion

Minutes should be useful to the Board, the staff, and to auditors and other third parties which require Board authorization on specific matters. They should reflect that the Board is discussing important issues that impact the organization so that, even without specific details, the reader can see that the Board is performing its fiduciary duties. Other than the hard guidelines noted above, there are a variety of styles and of best practice as to taking minutes to ensure they are useful and clear without providing extraneous information.

Finally, it is important to know that although meeting minutes are subject to subpoena, protective orders can be requested, as can redaction of certain matters (such as attorney-client privileged information, which should not be in the minutes but sometimes sneak in).