

Minute Madness

Good Minutes are Like Free Throws – They Only Look Easy

Meeting minutes are a critical component of good corporate recordkeeping, but preparing meeting minutes can be deceptively difficult. After all, how hard can it be to take notes at a meeting and write them up in minute format? Those new to the process and unfamiliar with the pitfalls of minutes often fall into one of two extremes: a detailed, verbatim recitation of all conversations, or a bare bones summary of just the decisions made at the meeting. Experience dictates the need for a hybrid that considers the legal ramifications of minutes. This is an art more than a science.

The highly detailed approach has some obvious advantages, notably completeness. If the meeting is recorded, a transcript would serve the same purpose, however not everything mentioned in a meeting is relevant to the decisions being made. Directors often joke, relay personal stories or ramble off on tangent discussions. Recording these statements verbatim is not only unnecessary but could appear unprofessional if the minutes are obtained in the course of litigation. Litigators love minutes as they can provide fodder for claims against a Board or company.

Those hardened by litigation and related depositions on minutes often like the “less is best” approach, with cryptic sentences sprinkled with resolutions recording the actions taken. This minimalist format creates its own legal problems. Boards must exercise their fiduciary duties and show they acted in the best interest of shareholders. Minutes approving an acquisition, merger, sale, significant financial commitment, or new Board member need to show careful deliberation, relevant discussion of pros and cons, and other alternative proposals. In this context, details matter.

We recommend counsel attend all Board of Directors’ meetings. Counsel can assist with striking the right balance and protecting attorney-client privileged discussions, something that is not possible if counsel is absent. Good coaching is critical for the teams that reach the “Final Four” and good counsel is critical to well-prepared minutes.



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