

# The Art and Science of Corporate Board Minutes

06.30.2011

Three reasons why lawyers ought to want to know about preparing corporate minutes:

## **1. Compliance and control.**

Increasingly, courts and regulatory agencies expect corporate minutes to evidence the “governing board’s” compliance with relevant standards of performance (e.g., the Business Judgment Rule) and other statutory or regulatory requirements (e.g., Sarbanes-Oxley, Dodd-Frank, intermediate sanctions). Internally, minutes can serve as checks and controls on how boards operate, and promote boards’ awareness of their own processes. Lawyers are best suited to assist boards with this.

## **2. Leadership and strategy.**

Minutes provide an opportunity for an organization to view its operations in the context of its mission and business plan; they can be an instrument of leadership, strategy and accountability. Often, lawyers (either as advisors or as board members) are best able to provide this perspective.

## **3. Credibility and marketing.**

People commonly turn to lawyers, if not actually to draft the minutes, then to speak authoritatively about their form and content. So, lawyers who work with organizations (either as advisors or as board members) will want to have a vision of how minutes should be prepared in order to project professional competence and authority.

Among corporate lawyers the traditional point of view was that minutes should record final board actions and otherwise say as little as possible. This was based on the theory that the less you say, the less chance you have of creating problems. That approach is changing now, prompted by the Disney litigation and also fueled by changing social expectations and increasing federal regulation of boards and governance.

There's not much law to know. Most of it is below. That is followed by admittedly idiosyncratic comments about how minutes might be understood, designed and written.

## The corporate law of corporate minutes

Form and content of minutes. The North Carolina Business Corporation Act and the Nonprofit Corporation Act require only that boards of directors keep minutes of their meetings as permanent records of the corporation. They don't address form or content. A scattered and growing number of statutes and regulations are beginning to require that specific data of different kinds must be recorded in or kept with the minutes of some types of organizations, such as banks and publicly-held companies, but those statutes and regulations do not address minutes in general.

Generically, minutes are "minute" accounts of organizational proceedings. North Carolina's Supreme Court has said,

'the purpose of minutes is to provide a record of the actions taken by a board and evidence that the actions were taken according to proper procedures. ...' Their purpose is to reflect matters such as motions made, the movant, points of order, and appeals – *not to show discussion or absence of action*.

This accords with the common understanding of the purpose of minutes. Generally, "they should contain mainly a record of what was done at the meeting, not what was said by the members." Henry M. Robert, Robert's Rules of Order Newly Revised § 47, at 458 (9th ed. 1990).

Maready v. Winston-Salem, 342 N.C. 708, 733, 467 S.E.2d 615, 630-31 (1996); see Multimedia Publishing of North Carolina, Inc. v. Henderson County, 145 N.C. App. 365, 550 S.E.2d 846 (2001) (emphasis added).

Mr. Winslow is a frequent speaker on corporate governance law matters. If you would like to schedule him for a presentation on corporate minutes, please contact him at [ewinslow@brookspierce.com](mailto:ewinslow@brookspierce.com) or (336) 271-3112.

## PEOPLE

Edward C. Winslow III