

Executive Team:

Dominic D. Brown, CPA, CFE
Chief Executive Officer

Daryn Miller, CFA
Chief Investment Officer

Jennifer Zahry, JD
Chief Legal Officer

Matthew Henry, CFE
Chief Operations Officer



Board of Retirement:

David Couch, Chair
Dustin Contreras, Vice-Chair
Deon Duffey
Phil Franey
Ajaib Gill
Joseph D. Hughes
Jordan Kaufman
Rick Kratt
John Sanders
Tyler Whitezell
Chase Nunneley, Alternate
Robb Seibly, Alternate

January 16, 2025

Members, Board of Retirement
Employee Bargaining Units
Requesting News Media
Other Interested Parties

Subject: Special Meeting of the Kern County Employees' Retirement Association
Board of Retirement

Ladies and Gentlemen:

A special meeting of the Kern County Employees' Retirement Association Board of Retirement will be held on Wednesday, January 22, 2025, at 10:00 a.m. in the KCERA Boardroom, 11125 River Run Boulevard, Bakersfield, California, 93311.

How to Participate: Listen to or View the Board Meeting

To listen to the live audio of the Board meeting, please dial one of the following numbers and enter ID# 848 1590 9244:

- (669) 900-9128; U.S. Toll-free: (888) 788-0099 or (877) 853-5247

To access live audio and video of the Board meeting, please use the following:

- <https://us02web.zoom.us/j/84815909244?pwd=kphq8hShblr6xWDn1AAX1NvMUqSHuE.1>
- Passcode: 125647

Items of business will be limited to the matters shown on the attached agenda. If you have any questions or require additional service, please contact KCERA at (661) 381-7700 or send an email to administration@kcera.org.

Sincerely,

A handwritten signature in blue ink that reads 'Dominic D. Brown'.

Dominic D. Brown
Chief Executive Officer

Attachments

AGENDA:

All agenda item supporting documentation is available for public review on KCERA's website at www.kcera.org following the posting of the agenda. Any supporting documentation that relates to an agenda item for an open session of any regular meeting that is distributed after the agenda is posted and prior to the meeting will also be available for review at the same location.

**AMERICANS WITH DISABILITIES ACT
(Government Code § 54953.2)**

Disabled individuals who need special assistance to listen to and/or participate in the meeting of the Board of Retirement may request assistance by calling (661) 381-7700 or sending an email to administration@kcera.org. Every effort will be made to reasonably accommodate individuals with disabilities by making meeting materials and access available in alternative formats. Requests for assistance should be made at least two (2) days in advance of a meeting whenever possible.

CALL TO ORDER

ROLL CALL (IN PERSON)

SALUTE TO FLAG / MOMENT OF SILENCE

AB 2449 REMOTE APPEARANCE(S)

Items 1 and/or 2 withdrawn from agenda if no trustee(s) request to appear remotely:

1. JUST CAUSE CIRCUMSTANCE(S):
 - a) The following Trustee(s) have notified the Board of a “Just Cause” to attend this meeting via teleconference. (See Government Code § 54953).
 - NONE
 - b) Call for Trustee(s) who wish to notify the Board of a “Just Cause” to attend this meeting via teleconference. (See Government Code § 54953) – RECEIVE/ HEAR REQUEST(S); NO BOARD ACTION REQUIRED

2. EMERGENCY CIRCUMSTANCE(S):
 - a) The following Trustee(s) have requested the Board approve their attendance of this meeting via teleconference due to an “Emergency Circumstance.” (See Government Code § 54953).
 - NONE
 - b) Call for Trustee(s) requesting the Board approve their attendance of this meeting via teleconference due to an “Emergency Circumstance.” (See Government Code § 54953) – TAKE ACTION ON REQUEST(S) FOR REMOTE APPEARANCE DUE TO EMERGENCY CIRCUMSTANCE

CONSENT MATTERS

All items listed with an asterisk () are considered to be routine and non-controversial by staff and will be approved by one motion if no member of the Board or public wishes to comment or ask questions. If comment or discussion is desired by anyone, the item will be removed from the consent agenda and will be considered in the listed sequence with an opportunity for any member of the public to address the Board concerning the item before action is taken. Staff recommendations are shown in caps after each item.*

- *3. Application for service-connected disability pension benefits for Bradley Brazeau, Fire (Safety) – **ADOPT RECOMMENDATION OF SDAG TO GRANT SERVICE-CONNECTED DISABILITY PENSION**
- *4. Application for service-connected disability pension benefits for Travis Gaetzman, Sheriff (Safety) – **ADOPT RECOMMENDATION OF SDAG TO GRANT SERVICE-CONNECTED DISABILITY PENSION**
- *5. Application for non-service-connected disability pension benefits for Sandra Meeks, Behavioral Health & Recovery (General) – **ADOPT RECOMMENDATION OF SDAG TO GRANT NON-SERVICE-CONNECTED DISABILITY PENSION**

PUBLIC COMMENTS

- 6. The public is provided the opportunity to comment on agenda items at the time those agenda items are discussed by the Board. This portion of the meeting is reserved for persons to address the Board on any matter not on this agenda but under the jurisdiction of the Board. Board members may respond briefly to statements made or questions posed. They may ask a question for clarification and, through the Chair, make a referral to staff for factual information or request staff to report back to the Board at a later meeting. Speakers are limited to two minutes. Please state your name for the record prior to making a presentation.

ADMINISTRATIVE MATTERS

- 7. [Annual Trustee education regarding Fiduciary Duties presented by KCERA Governance Consultants Julie Becker and Benita Falls Harper, Aon](#) – **RECEIVE EDUCATIONAL TRAINING (45 MINUTES TRUSTEE EDUCATION CREDIT)**

EXECUTIVE SESSION

Items 3-5 are withdrawn from Executive Session if approved on the consent agenda:

- 3. **PUBLIC EMPLOYMENT** (pursuant to Government Code § 54957) Application for service-connected disability pension benefits:

Bradley Brazeau

Fire

Safety

4. PUBLIC EMPLOYMENT (pursuant to Government Code § 54957) Application for service-connected disability pension benefits:

Travis Gaetzman Sheriff Safety

5. PUBLIC EMPLOYMENT (pursuant to Government Code § 54957) Application for non-service-connected disability pension benefits:

Sandra Meeks Behavioral Health & Recovery General

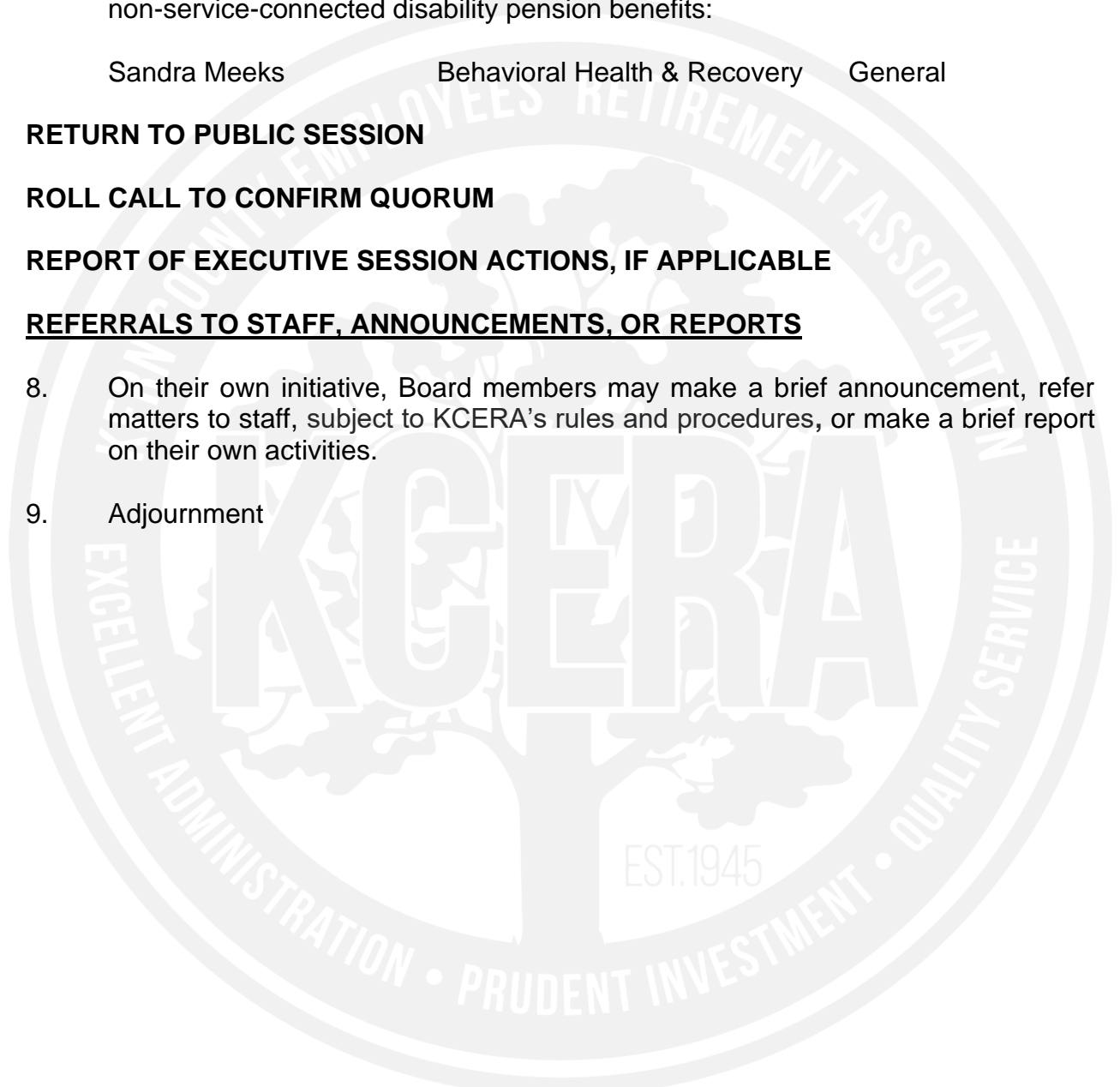
RETURN TO PUBLIC SESSION

ROLL CALL TO CONFIRM QUORUM

REPORT OF EXECUTIVE SESSION ACTIONS, IF APPLICABLE

REFERRALS TO STAFF, ANNOUNCEMENTS, OR REPORTS

8. On their own initiative, Board members may make a brief announcement, refer matters to staff, subject to KCERA's rules and procedures, or make a brief report on their own activities.
9. Adjournment



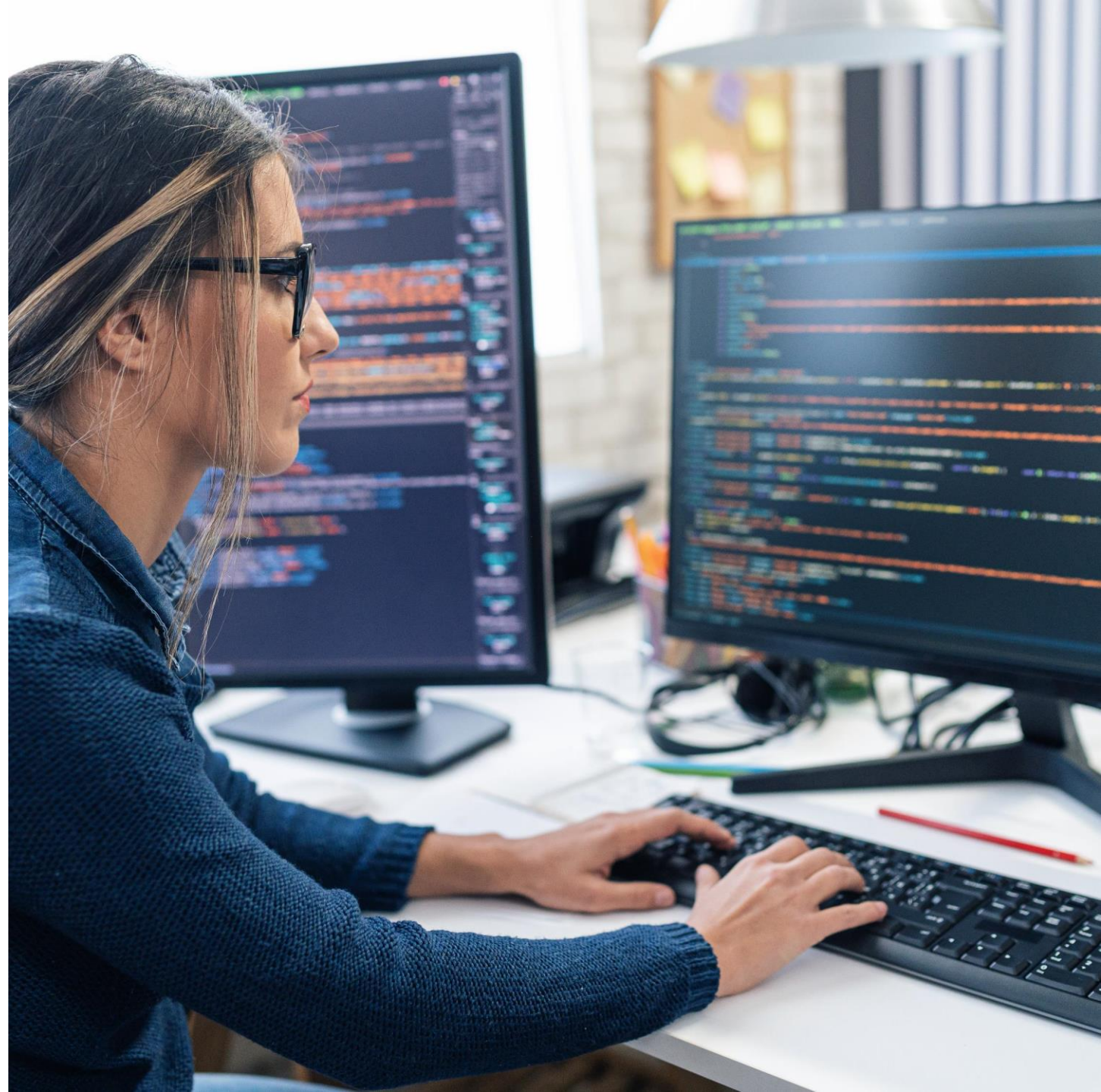


Kern County Employees' Retirement Association Board Education Fiduciary Duties

Julie Becker, Partner

Benita Falls Harper, Associate Partner

January 22, 2025



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Fiduciary Concepts



Who is a Fiduciary?

Property is entrusted to a “trustee” on behalf of a beneficiary who receives money from the trust.

There are two ways in which one is a fiduciary under the law:

1 The “designation” approach where the law or plan documents specifically designate a person as a fiduciary, or

2 The “functional” approach, where a person is deemed to be a fiduciary by virtue of their discretionary authority and control over plan assets, e.g., investment managers and investment consultants, certain staff.

Who is a Fiduciary?

- A person's fiduciary duty is limited to the scope of responsibility delegated to them.
- A fiduciary may not avoid fiduciary status through documentation stating they are not a fiduciary.
- Usually those performing ministerial tasks are not fiduciaries.
- Typically, accountants, attorneys, actuaries and record keepers are not considered to be fiduciaries.

You don't have to be identified as a fiduciary or accept fiduciary status to be a fiduciary.

Key Fiduciary Standards

Loyalty	Prudence	Diversification	Follow Plan Document	Prohibited Transactions
<p>Key Fiduciary Standards</p> <p>Loyalty requires an unwavering commitment to act solely in the best interests of the beneficiaries for the exclusive purpose of providing them with benefits, also known as the “exclusive benefit rule.”</p>	<p>Prudence means having the required expertise, and if you do not have expertise, seeking it out. It is also how you make decisions and document the process.</p>	<p>Diversify to minimize risk unless it is not prudent.</p>	<p>Following plan documents is abiding by the applicable laws, regulations, policies and guidelines.</p>	<p>Refrain from prohibited transactions.</p>

Duty of Loyalty

ERISA Exclusive Benefit Rule:

A fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and —

For the exclusive purpose of:

- Providing benefits to participants and their beneficiaries
- Defraying reasonable expenses of administering the plan

ERISA § 404(a)(1)

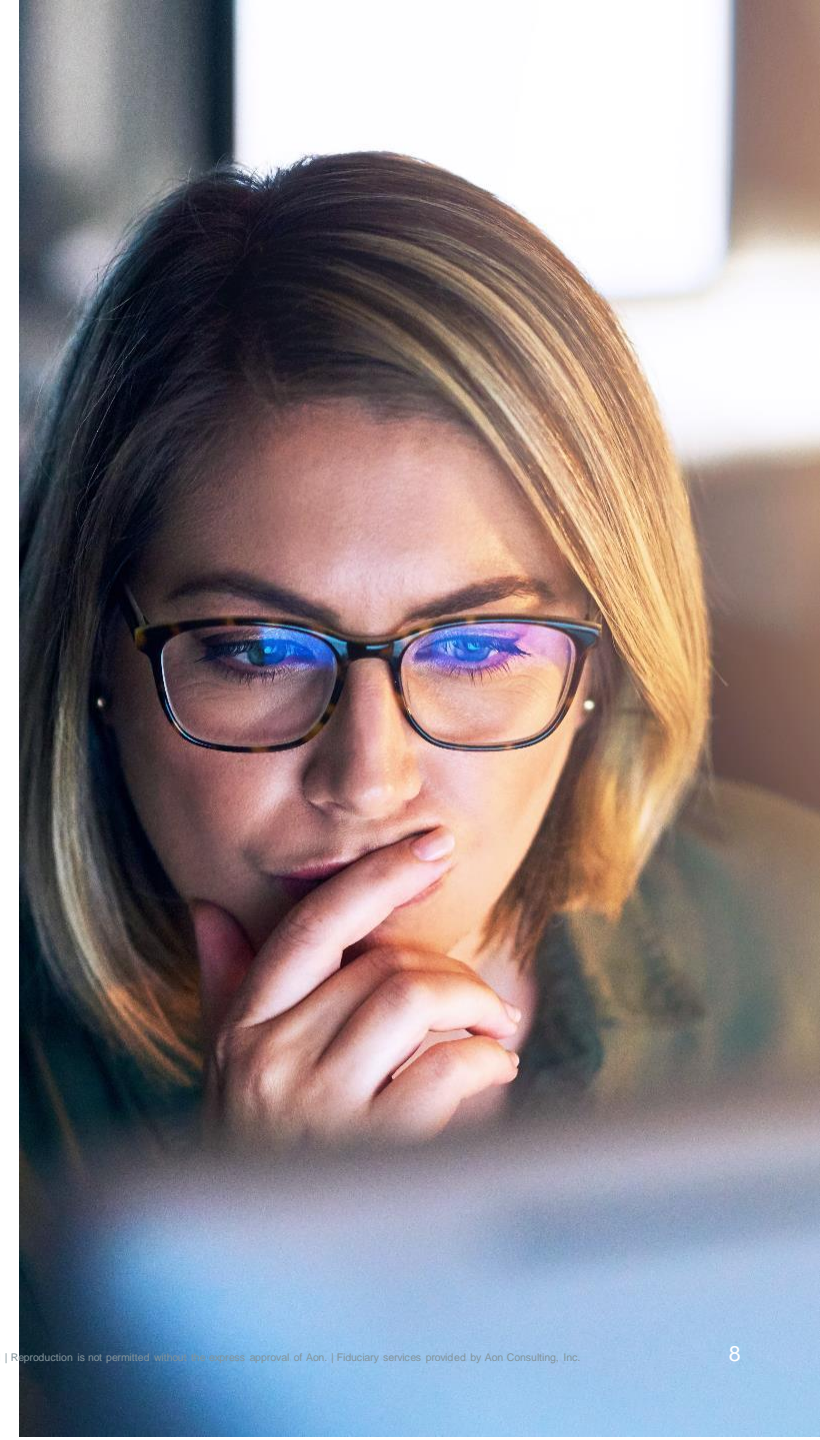
Duty of Loyalty

Avoid conflicts; if you cannot, then disclose and mitigate.

When making decisions, fiduciaries may not balance interests.

When acting as a fiduciary, you may not put others' interests ahead of the System's interests.

The duty of loyalty has not evolved — courts strictly interpret.



Examples of Areas Where Duty of Loyalty Comes into Play



Conflicts of interest



Acting in your self-interest



Kickbacks from investment managers

Duty of Prudence

Fiduciaries are judged by the prudence of their process.

“The test of prudence is one of conduct, and not a test of the result of performance of the investment. The focus of the inquiry is how the fiduciary acted in his selection of the investment, and not whether his investment succeeded or failed.”

Donovan v. Cunningham, 716 F.2d 1455, 1467 (5th Cir.1983)

Duty of Prudence

- A good process is more important than a good outcome and is the best defense to potential liability.
 - **Written documentation is critical** to demonstrate that you acted prudently. Hard to prove your conduct or process if it is not documented.
- The law requires prudence, not perfection.
- Contemplates comparison to peers.
- It is judged on an objective standard — prudent fiduciary behaves as other similarly situated fiduciaries would behave.

Examples of Areas Where Duty of Prudence Usually Comes into Play



Setting the
Asset Allocation



Documentation
of Processes



Retaining
Expert Advice



Reviewing
Performance



Managing Risk



Delegations of
Authority



Standards of Prudence Evolve

Prudence standards evolve over time.

- Fiduciaries need to stay current.
- Due diligence practices of the past may not be enough.
- Investments with the potential for high returns are often higher risk and require more due diligence.

Decisions should be made using contemporary standards of prudent experts.

- More specialized advice from independent consultants/ service providers may be needed.
- More written opinions rather than verbal “off the cuff” comments may be helpful.

Duty of Prudence in Practice

Collect and understand information before making a decision.

- Consult with knowledgeable, independent outside external and/or internal experts (other staff).
- Review information on what others are doing, i.e., your peers.
- Decisions should be consistent with information and policy.
- Decisions should be made using contemporary standards of prudent experts — remember the duty of prudence evolves over time.

Document steps taken in the deliberative decision-making process (evidence of prudent process).



Duty of Prudence — Delegation

A trustee has a duty personally to perform the responsibilities of trustee except as a prudent person might delegate those responsibilities to others. In deciding whether, to whom and in what manner to delegate fiduciary authority in the administration of a trust, and thereafter in supervising agents, the trustee is under a duty to the beneficiaries to exercise fiduciary discretion and to act as a prudent person would act in similar circumstances. (Restatement of Trusts 3rd)

- Delegation is allowed and even encouraged by the Prudent Investor Act and ERISA.
- Failure to delegate may be a fiduciary breach.

Duty of Prudence — Delegation

- To be prudent, when delegating the following generally applies:
 - Duty of prudence in selecting qualified professionals;
 - Duty to specify the scope of the delegation;
 - Duty to monitor the professionals to ensure the delegation is carried out in a manner consistent with the delegation, and the delegation continues to be prudent.
- Board members may delegate but they cannot abdicate their fiduciary responsibility.

Duty to Follow Plan Documents

- A fiduciary shall discharge his or her duties with respect to the plan in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of the law. ERISA §404(a)(1)(D)
 - **Plan document can include** multiple documents (By-laws, Investment Policy Statement, policies adopted by the Board)
- Fiduciaries cannot be arbitrary and capricious in their application of applicable law(s) or plan.
- Familiarity with plan documents is essential.

Duty to Monitor

U.S. Supreme court opinion held fiduciaries have a continuing duty —separate and apart from the duty to exercise prudence in selecting investments at the outset — to monitor and remove imprudent investment options. *Tibble v. Edison International*, 135 S.Ct. 1823 (2015), *Hughes v. Northwestern Univ.*, 595 U.S. ___(2022).



The board's role is to establish policies and procedures that staff can implement to protect the fund and ensure the highest level of services from external advisors.

Adequate reporting is necessary for prudent monitoring.

Duty to Diversify

Diversification is key to minimize the risk of large losses unless under the circumstances it is clearly prudent not to do so.

The duty to diversify emanates from the duty of prudence.

Modern Portfolio Theory typically applies



Consider each investment within the context of the entire portfolio



Create an “optimal” portfolio given the board’s risk/return preferences

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Fiduciary Pitfalls



Prohibited Transactions



Prohibited Transactions = Conflicts of Interest



Conflicts of interest can arise if personal financial gain impairs objective decision-making

Prohibited Transactions

- Conflicts of interest can arise if personal financial gain impairs objective decision-making.
- ERISA bars fiduciaries from engaging in certain transactions, e.g., conducting business with the plan and/or conducting business with the employer, employees, stakeholders, plan fiduciaries, service providers, and statutorily defined owners, officers, and relatives of parties-in-interest.

Prohibited Transactions

- “Prohibited transactions” include:
 - A sale, exchange, or lease of any property between the plan and party-in-interest;
 - Lending money or other extension of credit between the plan and party-in-interest;
 - Furnishing goods, services, or facilities between the plan and party-in-interest.
- “Self-dealing” means:
 - Using the plan’s assets in one’s own interest;
 - Acting on both sides of a transaction involving the plan;
 - Receiving anything of value for one’s personal account from any party doing business with the plan related to that business.

Ways to Mitigate Fiduciary Liability

A thorough orientation and continuing education on fiduciary responsibility

A good understanding of common scenarios where fiduciary duties come into play

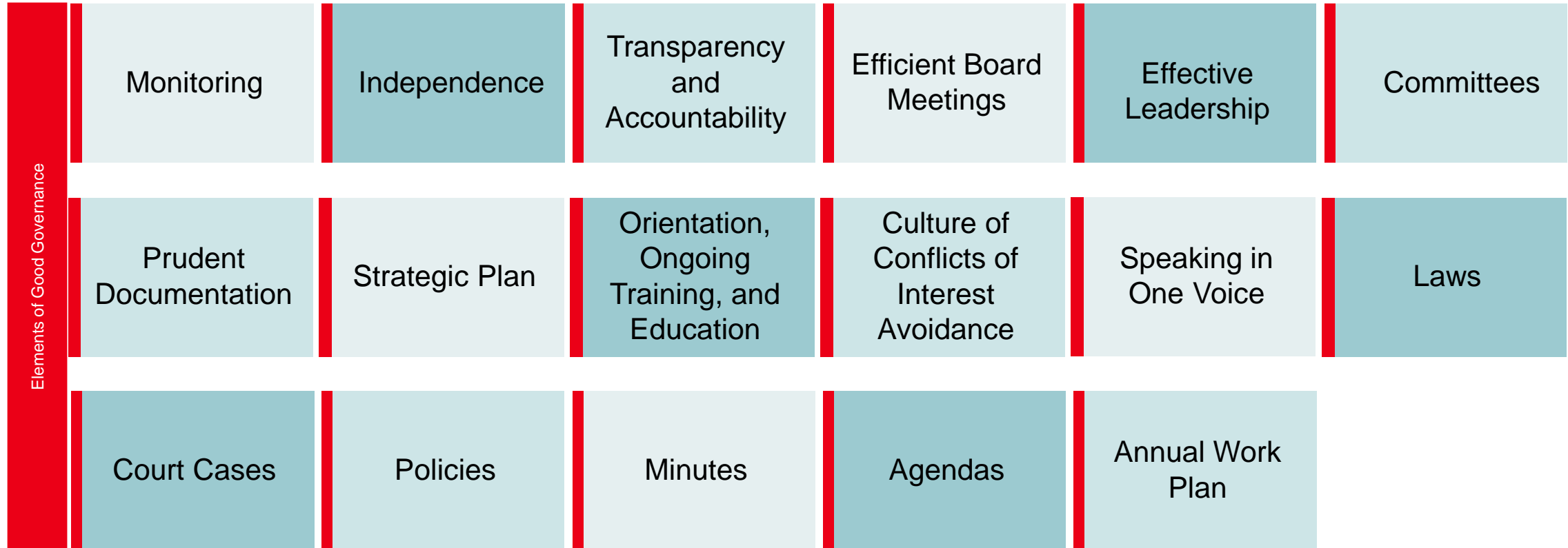
A thorough decision-making process with clear documentation of actions and rationale

Obtain expert advice from the staff, legal counsel, and others when needed

Prudent delegation and diligent oversight—understand what authority has been delegated and what authority has been retained

Good governance policies including clear accountability and a commitment to ongoing oversight activities

Utilize Good Governance



Examples of Fiduciary Pitfalls

Failing to operate the System prudently and for the exclusive benefit of participants	Failure to document decisions	Failure to periodically review policies	Failure to engage in ongoing education
Failure to engage in succession planning	Inconsistent actions	Failure to identify problems and act when needed	Failure to follow the plan documents (unless inconsistent with law)
Overreaction to recent information	Failure to have a strategic plan and/or follow it	Failure to properly select and monitor service providers	Operating in a vacuum, not knowing what the industry and your peers are doing

Independence

- It is important for a pension fund to be independent.
- Independence is often measured by evidence of a pension fund's:
 - Procurement authority
 - Budgetary authority
 - Personnel authority — hire, evaluate, compensate, and terminate staff
- If non-fiduciaries are able to exert control over pension fund fiduciaries, the duties of loyalty and prudence could be compromised.

Independence

- The duty of loyalty demands independence from:
 - The appointing body
 - The plan sponsor
 - Taxpayers
 - The public
 - Sub-groups of the participants

Legal Disclosures and Disclaimers

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