MAPERS

NEW TRUSTEE WORKSHOP

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WELCOME
NEW TRUSTEE

Kermit the Frog (1970)

WELCOME ON **BOARD**

WELCOME A**BOARD**

YOU ARE NOW A **FIDUCIARY**

WHAT THE . . . FIDUCIARY?

FIDUCIARY

FIDUCIARY: fi·du·cia·ry | \ fə-ˈdü-shē-ˌer-ē , -shə-rē, -ˈdyü-, fī- \

Definition: of, relating to, or involving a confidence or trust: such as

1: held or founded in trust or confidence.
2: holding in trust.
3: depending on public confidence for value or currency.
4: one that holds a fiduciary relation or acts in a fiduciary capacity.

Etymology: Latin from fiducia “confidence”/ fidere “to trust”.

Merriam -Webster Dictionary

MICHIGAN PUBLIC ACT 314 OF 1965, AS AMENDED ("ACT 314")

Trustees of public employee benefit plans in the State of Michigan must comply with the fiduciary duties as provided by Public Act 314 of 1965, as amended.

Section 12c(1) of Act 314 defines "investment fiduciary" as a person who does any of the following:

1) Exercises any discretionary authority or control in the investment of a plan's assets; or
2) Renders investment advice for a fee or other direct or indirect compensation.

"ACT 314"

Section 13 of Act 314 establishes "fiduciary responsibilities" in pertinent part as follows:

(1) An investment fiduciary shall discharge his or her duties solely in the interest of the participants and beneficiaries and shall do all of the following-

a) Act with the same care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a similar capacity and familiar with those matters would use in the conduct of a similar enterprise with similar aims.

b) Act with due regard for the management, reputation, and stability of the issuer . . .

c) Make investments for the exclusive purpose of providing benefits to participants and participants' beneficiaries, and of defraying reasonable expenses of investing the assets of the system.

d) Give appropriate consideration to those facts and circumstances that the investment fiduciary knows or should know are relevant to the particular investment or investment course of action involved . . . and consideration of the following factors as they relate to the investment or investment course of action:

i. The diversification of the investments of the system.
ii. The liquidity and current return of the investments of the system relative to the anticipated cash flow requirements of the system.
iii. The projected return of the investments of the system relative to the funding objectives of the system.

e) Give appropriate consideration to investments that would enhance the general welfare of this state and its citizens if those investments offer the safety and rate of return comparable to other investments permitted under this act and available to the investment fiduciary at the time the investment decision is made.

f) Prepare and maintain written objectives, policies, and strategies with clearly defined accountability and responsibility for implementing and executing the system's investments.

g) Monitor the investment of the system's assets with regard to the limitations on those investments pursuant to this act. Upon discovery that an investment causes the system to exceed a limitation prescribed in this act, the investment fiduciary shall reallocate assets in a prudent manner in order to comply with the prescribed limitation.

Accordingly, a trustee has a duty to properly administer the provisions of the Plan and invest the funds of the Trust in accordance with Public Act 314 of 1965, as amended.

"EXCLUSIVE BENEFIT RULE"

TRUSTEES MUST ACT

SOLELY IN THE INTEREST

OF PLAN

PARTICIPANTS AND BENEFICIARIES.

NEW TRUSTEE ORIENTATION

WHAT'S THE PLAN?

The Plan documents establish and control the administration, management and operation of the Retirement System.

- Statute/Charter/Ordinance/Resolutions
- Collective Bargaining Agreements
- Summary Plan Description
- Plan Policies
- Actuarial Reports
- Audit Reports
- Legal Opinions and Advisory Memos
- IRS Qualified Plan Determination Letters
- Employee/Trustee Handbooks

Plan should maintain a copy of the these documents.

WHAT ARE THE RULES?

THE RULES AND REGULATIONS

CONSTITUTIONAL AND STATUTORY AUTHORITY

- Article 9, Section 24 of the Michigan Constitution
- Investment of Funds of Public Employee Retirement Systems
- Freedom of Information Act
- Open Meetings Act
- Eligible Domestic Relations Order Act
- Reciprocal Retirement Act
- Public Employee Health Care Fund Investment Act
- Civil Service and Retirement Supplemental Benefits
- Domestic Relations Act
- Public Employee Retirement Benefit Protection Act
- Public Employee Retirement Benefits Forfeiture Act
- Public Employment Relations Act (PERA)
- Social Security Number Privacy Act

COMPLIANCE

DOES THE PLAN HAVE A POLICY?

- Service Retirement Procedures and Forms
- Disability Retirement Procedures and Forms
- Disability Re-examination Policy, Procedures and Forms
- Certification of Earnings Policy (Earnings Offset)
- Workers Compensation Redemption Policy
- Final Average Compensation Policy
- Service Purchase Procedures
- Investment Policy
- Travel Policy
- Education Policy
- Ethics Policy
- Record Retention Policy
- FOIA Policy, Procedures, and Forms
- EDRO Policy, Procedures and Forms/Sample
- Actuarial Policy
- Verification of Retirement/Beneficiary Data Policy
- Election Procedures

YOU ARE NOT ALONE.

DELEGATION OF FIDUCIARY RESPONSIBILITY

RETENTION OF PROFESSIONALS

Fiduciaries may delegate responsibility with respect to the management or control of plan assets only to another recognized fiduciary and only if the plan document specifically authorizes the allocation or delegation.

Trustees are responsible to perform duties of trust, **except where prudent to delegate**.

Applicable law typically contemplates that trustees will use others, including professional advisors, to assist in the discharge of fiduciary responsibilities.

THE A TEAM

- ACTUARY
- ADMINISTRATOR
- AUDITOR
- ADMINISTRATIVE STAFF
- CUSTODIAN
- INVESTMENT CONSULTANT
- INVESTMENT MANAGER
- LEGAL COUNSEL
- MEDICAL DIRECTOR
- SPECIAL CONSULTANT

DO DUE DILIGENCE

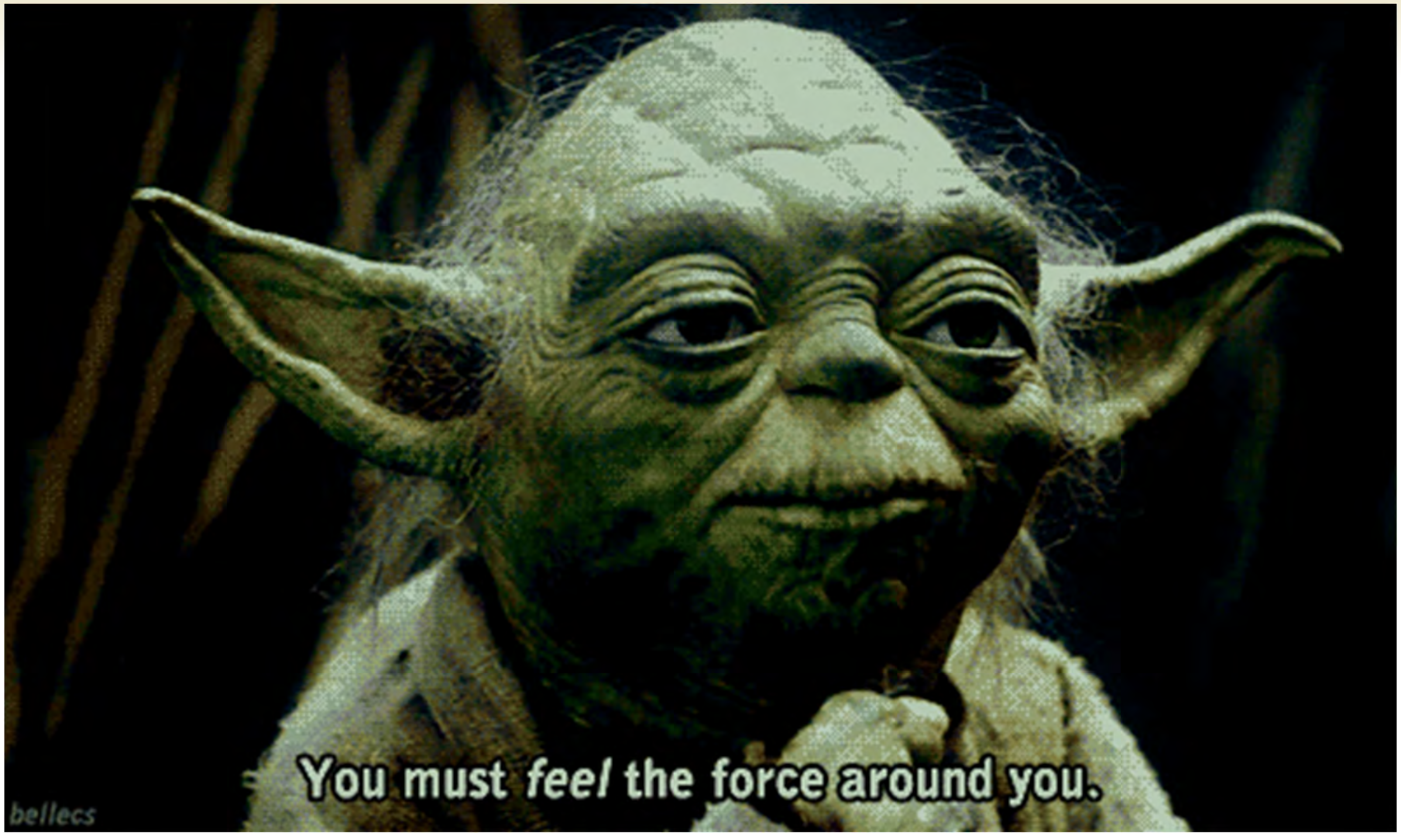
HOW ARE TRUSTEES EVALUATED?

PRUDENT EXPERT STANDARD

"Act with the same care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a similar capacity and familiar with those matters would use in the conduct of a similar enterprise with similar aims".

See Section 13 of Act 314 (above).

PRUDENT EXPERT STANDARD



FIDUCIARY STANDARDS

A trustee should be aware of the following:

1) Duty of Loyalty
2) Care, Skill and Diligence
3) Prudence
4) Diversity
5) Prohibited Transactions
6) Plan Compliance

"Do you know the difference between education and experience?

Education is when you read the fine print –

experience is what you get when you don't't".

Pete Seeger - Musician

PRUDENT EXPERT STANDARD

Prudence requires that trustees:

1. Understand the facts and circumstances.
2. Obtain knowledge/education.
3. Investigate options.
4. Focus on process.
5. Seek expert advice, when appropriate.

PRUDENT EXPERT STANDARD

Fiduciary duties are measured on an objective standard which is ever evolving.

Fiduciaries must be fair and impartial and cannot be "**ARBITRARY AND CAPRICIOUS**" in their actions.

- As one court put it, "*it is not sufficient that a trustee has a pure heart and an empty head*".

Trustees don't need to be **Perfect**, just **Prudent**

CONFLICT OF INTEREST

CONFLICT OF INTEREST

Fiduciaries should exercise extraordinary precaution to assure that decisions and transactions are fair to the participants and plan and such fairness is well documented.

Trustees must ensure that the sharing of information, advisors, or costs does not adversely impact the interests of the plan.

Independent advisors should be retained to advise the fiduciaries of their duties, the relevant factors which they may consider in making their decisions and the alternatives.

FIDUCIARY LIABILITY

Fiduciaries who breach their responsibilities shall be "**<u>PERSONALLY LIABLE</u>**" for any losses to the plans which they administer and shall be subject to other equitable or remedial relief, including removal from their positions.

- Fiduciaries cannot rely upon "exculpatory" provisions in the plan documents to protect themselves from liability,
- . . . but the plan can purchase liability insurance which covers their acts and omissions.

POTENTIAL AREAS FOR ERRORS

1. Not adequately preparing for a meeting.
2. Not using professionals effectively or specifically asking for verification.
3. Not requiring continuing education in the benefits and investment areas.
4. Failing to choose professionals that are independent.
5. Finding it hard to ask difficult questions of professionals who serve the Plan.

PUBLIC MEETINGS.

MEETING RULES?

- Provides a framework for the orderly and fair conduct of business.
- Any procedural rules should provide an accepted and understood format for timely consideration and resolution of the meeting’s issues. All too frequently, “traditional parliamentary procedures” can lead to confusion, disagreement and disruption.

  The focus of any procedural rules should be upon promoting timely consideration of the substance of the meeting rather than ritualistic procedure.

  Remember parliamentary rules were drafted by and for men wearing powdered wigs .

RULES OF ORDER

NEW TRUSTEE NOTE

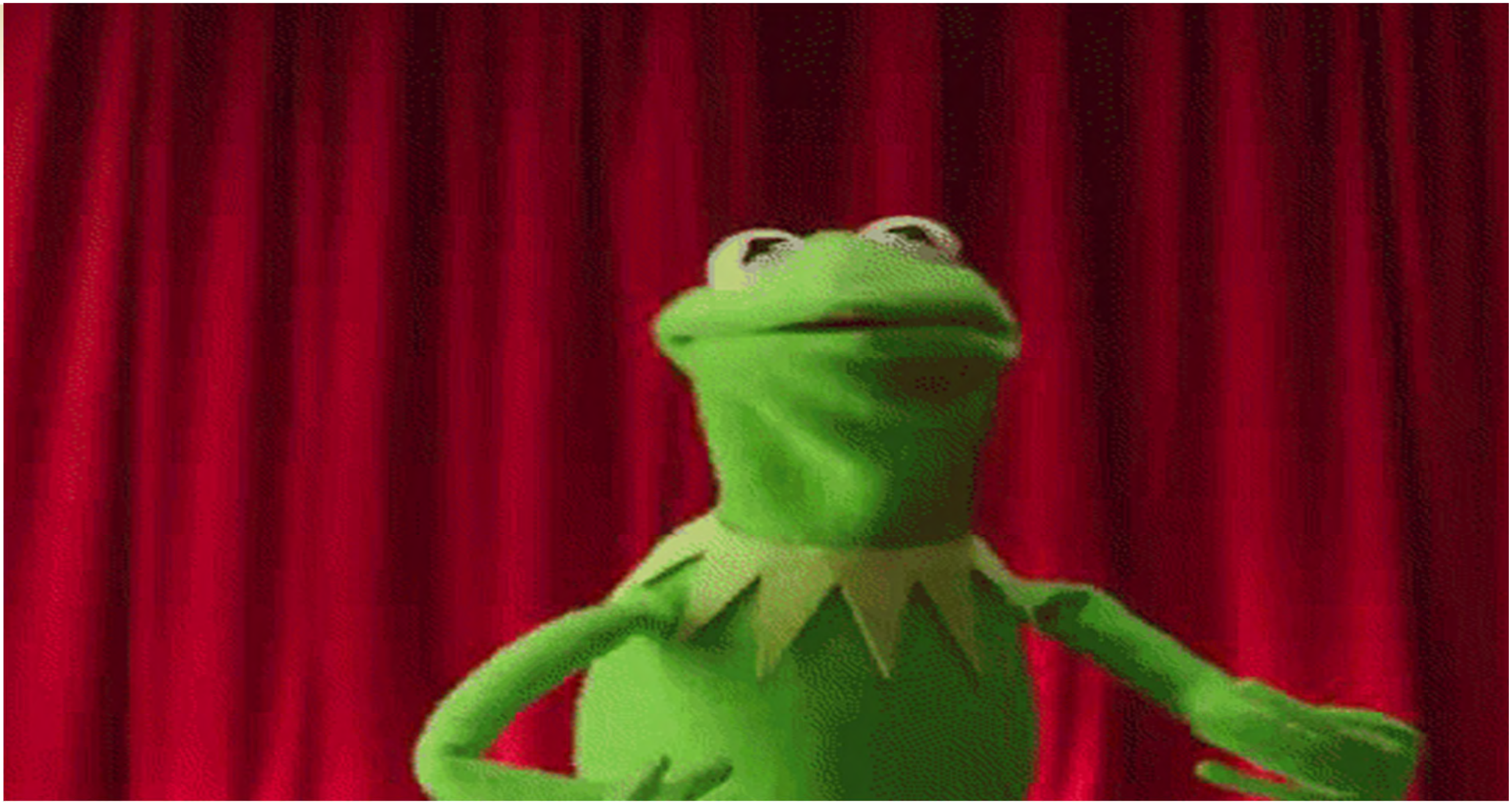
“The only source of knowledge is experience”

Albert Einstein - Physicist (1955)

“Experience is the teacher of all things”

Julius Caesar - Roman General/Statesman (44 BC)

THE END . . . OF THE BEGINNING.



THANK YOU. . .
FOR PLAYING.

Questions/Comments

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CREDITS:

MAPERS . . AND **YOU**.