

FIDUCIARY RESPONSIBILITY

Part III: What Will it Take to Make it a Profession?



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Shouldn't we be held to at least the same, if not arguably higher, fiduciary standards than those of our clients?

In Part I of this series on fiduciary responsibility, we talked about the need for having the investment consulting industry regulated by one entity with preference given to the SEC. In Part II, we discussed developing professional standards of conduct, referencing IMCA's "Code" as an excellent starting point. This article will attempt to tackle the third critical requirement for defining our profession: establishing formal, professional practice standards.

"The adoption of written practice standards is an inevitable stage in the maturation of a profession."¹ Though we may currently lack formal practice standards, oddly enough, those clients who sit as trustees and fiduciaries already have clear uniform standards of conduct and care. I use the word "uniform" because whether a fiduciary is involved with a pension plan, foundation/endowment or even private trust, there are well-defined investment management functions that must be met and documented.

A side-by-side comparison of the three Acts that define investment fiduciary responsibility (ERISA, UPIA and MPERS, and related case law²) reveals six requirements that are common to each Act. I would propose that these requirements also become the foundation for our own industry practice standards.

1. Prepare and maintain an investment policy statement. ERISA Sec. 402(a)(1), 402(b)(1)-(2), 404(A)(1)(D); UPIA, Sections 2 and 4; MPERS Section 7 and 8(b).
2. Diversify the portfolio to meet the specific risk/return profile of the investor. ERISA Section 404(a)(1)(C); UPIA Section 3; MPERS Section 8(a)(2).
3. Prudently select investment options and service vendors. ERISA Section 404(a)(1)(B); UPIA Sec. 9; MPERS Section 6(a)(b).

4. Control and account for all investment-related expenses. ERISA Section 404(a); UPIA Section 7; MPERS Sections 5 and 7.
5. Monitor and supervise all investment options and service vendors. ERISA Section 405(a); UPIA Section 9; MPERS Section 6.
6. Avoid prohibited transactions and conflicts of interest. ERISA Section 404(a)(2); UPIA Sections 5 and 6; MPERS Section 7.

Quite simply, there is a duality to the above list – it outlines the requirements that our fiduciary clients must meet, and it helps define the minimum practice standards for our profession. Even if the client engages the consultant to perform a single task, such as a manager search, the practice standards would still apply. In such an engagement, the consultant would still be responsible for ensuring that the search is consistent with the client's IPS; that the manager's fees are negotiated and all associated expenses are accounted for; and that the client's current performance measurement reports will be able to adequately assess and measure the manager's performance. (IMCA has already established excellent practice standards in this area.)

What Will It Take To Make It A Profession?

What will it take to make it a profession? Basically, it will take:

- one regulatory authority,
- a code of conduct, and
- practice standards.

Investment consulting will never be considered a profession until minimum standards are established and enforced.

Notes:

¹Richard G. Pichette, J.D., "Life in the World of Written Practice Standards," *Journal of Financial Planning*, November 1999, p. 88.

²Employee Retirement Income and Retirement Act of 1974 (ERISA); Uniform Prudent Investor Act (UPIA) and Uniform Management of Public Employees Retirement Systems Act (MPERS).