

Federal Appeals Court Holds Recordkeeper Contract Can Be Plan Document

The 4th Circuit's decision conflicts with other circuits in that administrative service agreements are not required by ERISA to be furnished to participants.

Reported by [EMILY BOYLE](#)

The U.S. 4th Circuit Court of Appeals in August held that an administrative services agreement between a recordkeeper and a plan sponsor counts as a document that a plan administrator is required to produce upon a participant or beneficiary's request.

Richard Kelly, a former employee of Altria Client Services LLC, filed a complaint in November 2023 in U.S. District Court for the Eastern District of Virginia alleging his plan administrator's refusal to provide him with a copy of the contract between the plan and recordkeeper Fidelity Workplace Services LLC violated Employee Retirement Income Security Act Section 104(b)(4), in pursuit of a breach of fiduciary duty claim against Altria. Under ERISA Section 104(b)(4), an administrator must furnish a copy of the "contract, or other instrument under which the plan is established or operated," upon written request of a participant or beneficiary.

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The administrative services agreement at question in *Kelly v. Altria Client Services LLC et al.* governed the relationship between Altria and Fidelity, Altria's plan recordkeeper. In March 2025, U.S. District Judge Henry Hudson granted summary judgment for Altria, concluding that while the document was relevant, it did not establish the operation or management of the plan itself. Hudson concluded that the agreement "simply memorialized Fidelity's obligations to provide certain services to Altria."

The Appeal

Kelly appealed to the 4th Circuit, where the case was considered by a three-judge panel. U.S. Circuit Judge A. Marvin Quattlebaum wrote the panel's unanimous decision that the meaning of "operate" "hinges on whether [a recordkeeper's] duties help the plan work or perform part of its process."

Quattlebaum wrote that because the ASA included details about the duties that helped Altria perform its work—including directing Fidelity to answer calls and communicate with Altria and its plan participants, fulfill literature requests, take customer service calls, respond to inquiries about the plan, provide fund balances and answer questions about investment performance—it was a document under which the plan operated.

The 4th Circuit remanded the case back to the district court to evaluate whether to award penalties to Altria for not having furnished the ASA to Kelly.

Circuit Split

Brian Giovannini, a counsel at Haynes and Boone LLP who was not involved in the case, says the decision is part of an ongoing split between appellate courts on this question. The 4th and 10th Circuits have used a "plain text reading" to determine whether a document governs operations. The 9th Circuit, in contrast, has interpreted ERISA Section 104(b)(4) more narrowly, holding that ASAs are not covered documents because they govern only the relationship between the employer and a service provider.

Andrew Oringer, an ERISA attorney and head of the Wagner Law Group’s New York office who was not involved in the case, says close questions tend to be resolved in favor of producing documentation—but with limitations. He says ERISA is constructed favorably toward giving participants the tools they need to pursue claims they think are valid, but with the recognition that companies should not have to give out every document that has theoretical bearing on the way the plan is administered.

Oringer says that the ASA in *Kelly* was a “middle ground” situation—an agreement that controlled the way services were performed, but not one that controlled the establishment of the plan itself. The 4th Circuit found the ASA focused on the plan operation component of ERISA, he says.

Given the differences among circuits, Oringer recommends companies facing document production requests speak with counsel to determine whether there is authority on whether their plan administrators must comply. He adds that when there is no authority in a particular jurisdiction, an employer can conduct a “risk-reward assessment” as to whether to produce the document.

Kelly was represented by the Hawkins Law Firm P.C. Altria was represented by Hunton Andrews Kurth LLP. Fidelity was represented by Littler Mendelson P.C.

Attorneys for neither the plaintiff nor for the defendants immediately responded to requests for comment.

Tags	ERISA Litigation , plan documents , retirement plan administration
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