
GETTING THE INEFFECTIVE DIRECTOR OFF THE BOARD

"The time has come," the Chairman said, "to talk of many things." Topic 1: Departure

* * *

As many of you know, I facilitate numerous planning sessions for community banks each year. Each of those sessions involves sending confidential questionnaires to the directors and officers involved. Often, when the participants respond to the question regarding management and/or board succession, the questionnaires come back basically inquiring how the bank can get rid of a well-entrenched but ineffective director without causing a major brouhaha.

The answer is simple: You probably can't.

Who are you calling "ineffective"?

First of all, what is an ineffective director? Is an ineffective director someone who comes to meetings and does not participate? Is an ineffective director a director who comes to meetings unprepared? Who does not come to meetings? Who spends more time in Phoenix than in the home office of the bank? Who has given up his or her trade or business? Who is no longer involved in the community? Who is disruptive in board meetings? Who is difficult to deal with? Who will not be a team player?

Any of those circumstances could describe the "ineffective" or "undesirable" director. The question is, once you have identified the problem, what is the solution?

A question of ownership

If the director and/or the director's family is a large shareholder in the bank, realistically, there is probably not a solution. In that case, the board simply needs to work around that particular individual, with the hope that eventually he or she will go off the board and the heir-apparent in the family will be more effective.

If the ineffective director is not a major shareholder, then there are a number of ways to address this that can result in something other than a boardroom or public relations disaster.

The frontal assault. The easiest way mechanically is to just deal directly with the ineffective board member-Chairman to

director-and suggest to the director that he or she resign. Unfortunately, while the direct approach is the easiest mechanical way to do it, it is often the road less taken in connection with getting rid of a director.

Implement boardroom evaluations. Another route, which a number of our client community banks have taken, is to begin evaluations of the board and its directors.

Director evaluations are best understood in the context of a "continuum." At one end of the continuum, there are boards that do not do director evaluations. At the other end of the continuum are boards that utilize an outside third party to evaluate their directors. I rarely recommend this and, frankly, believe it is a waste of time, although our consulting firm has performed this service on occasion.

Somewhere in the middle of the continuum are three alternatives:

- Evaluation of the board as a whole-which does not really deal with the individual director.
- Self-evaluation by the individual director of his or her own performance.
- Peer evaluation of the director by all the other directors.

If you rule out the direct approach, the easiest way to eliminate an ineffective director is either going to involve the self-evaluation or the peer evaluation. If each individual director conducts a self-evaluation and then visits with the Chairman about what the director thinks of his or her own performance, versus what the Chairman thinks, then this would certainly be an easy entrée into discussing that perhaps the director should leave the board.

A word on the peer process

Peer evaluation provides significant peer pressure.

I have obtained several peer evaluation forms from clients. On one peer-to-peer evaluation form, the last question read: "Should this director be elected to another term next year?" That's pretty unambiguous.

The results of such a process can go like this. The Chairman meets with the director and gives the director the results of the peer evaluation. The conversation goes something like:

"Nine of our ten directors felt you should get off the board and not stand for reelection.

One felt that you should-and I assume that was you."

This allows a nice way for the director to gently resign and move on when he or she realizes that a majority of fellow board members believe continued service is not appropriate.

Handling the elderly director

The elderly director is another issue. Elderly directors are as difficult to get off as are younger directors that are ineffective-but the board generally feels "worse" about it.

So, go with "feelings."

Elderly directors can generally be "promoted" to Director Emeritus positions. These positions have numerous characteristics and need to be designed for the specific situation. I will deal with Director Emeritus in a later blog, because it's a special case. [That blog is now posted. [Read it](#)]

The long-term strategy of every community bank needs to be to have an effective board of directors. If you have directors that are not effective, then you either need to begin a remedial program to see if they can become effective, or move them off the board.

About the Author

Jeff Gerrish is chairman of the board of Gerrish McCreary Smith Consultants, LLC, and a member of the Memphis-based law firm of Gerrish McCreary Smith, PC, Attorneys. He is a frequent contributor to ABA Banking Journal and ABA Bank Directors Briefing, and frequently speaks at ABA events and telephone briefings.

Gerrish formerly served as Regional Counsel for the Memphis Regional Office of the FDIC, with responsibility for all legal matters, including cease-and-desist and other enforcement actions. Before coming to Memphis, Gerrish was with the FDIC Liquidation Division in Washington, D.C. where he had nationwide responsibility for litigation against directors of failed banks.

-

Gerrish can be reached at jgerrish@gerrish.com, and the firm's website, www.gerrish.com.

- You can get word about these columns the week they are posted by subscribing to ABA Banking Journal Report e-letter. It's free and takes only a minute to sign up for [Click here](#).