B

THE

Board Chair Forum

NEWSLETTER

Opening the door to new ideas

Gerrish Smith Tuck, Consultants and Attorneys

May 2026

Well, it seems as though we moved from spring into summer pretty quickly in many parts of the country, with temperatures easily in the high 80s or low 90s. Sometimes, though, with the rise in air temperatures also comes a rise in tempers of individuals as well, and in this issue, we address a few issues that might fall into that category. While we did not start this edition intending to focus exclusively on areas where there could be conflicts or the need for conflict resolution, it did somewhat evolve into that because we are seeing a number of those kinds of issues across the country. We hope you read this with the intent that is behind it, which is to provide some less confrontational solutions to some of your issues, in hopes that your organizations continue to maintain safety and soundness, run without conflict, and create organizational value for the shareholders.

If you see anything in this edition of *The Board Chair Forum Newsletter* where you have had similar circumstances or found an alternative way to handle things, we would welcome the opportunity to hear from you. We hope you find constructive information in this month's edition. Don't hesitate to reach out to us anytime we can be of assistance.

Happy Reading!

Jeffrey C. Gerrish **Philip K. Smith** **Greyson E. Tuck**

Gerrish Smith Tuck
700 Colonial Road, Suite 200
Memphis, TN 38117
Phone (901) 767-0900
Website: www.gerrish.com

HOW TO CONTACT US:
If you have questions or comments about the newsletter or would like to ask a follow-up question,
please email Philip Smith at psmith@gerrish.com.

THE

Board Chair Forum

Opening the door to new ideas

NEWSLETTER

Gerrish Smith Tuck, Consultants and Attorneys

May 2026

Board Chair's Summary

- ***Use Board Executive Sessions Correctly***
- ***How Do You Manage Conflict Resolution?***
- ***When Should You Call a Professional?***
- ***Is There a Future For Our Bank?***

Use Board Executive Sessions Correctly

Recently, we have received a handful of questions from banks in different parts of the country asking questions about the use of an executive session by the Board of Directors. Interestingly, it seems like we receive quite a few questions about the use of an executive session every two to three years, and there continues to be some misunderstanding of how to use an executive session as a best practice, including what we often see as misuse of an executive session. So, we thought we might revisit this topic, clear up some misunderstandings, and make some key points for you to consider.

First, it is important to distinguish between a Board Executive *Session* and the use of a Board Executive *Committee*. Sometimes we see organizations misidentify those or somehow think they are the same thing. An Executive Committee is typically an actual standing committee of the Board of Directors that is appointed or selected in the same manner as all other Board-level committees. The Executive Committee is often comprised of the Board Chair, the Bank President and/or CEO, and one or more other key outside directors.

The purpose of the Executive Committee is to serve as a subset of the full Board, that has the power and authority to act on an emergency basis or on a special needs basis to handle matters in lieu of the full Board. For example, we sometimes see the Executive Committee used as a committee to recruit and vet new director candidates (if there perhaps is not an actual Nominating Committee). The Executive Committee is sometimes used as a special purpose committee to evaluate a potential merger transaction as a buyer or seller if the organization does not otherwise create or use a Merger and Acquisition Committee. The Executive Committee can also be used in a manner for crisis management or some other type of event such as the necessity of replacing a director or something serious. However, because the Executive Committee typically has the power to act on behalf of the full Board (often when expediency is needed and time is of the essence), then any matters to be taken up by the Executive Committee, on a best practices basis, should be referred to that Committee by a vote of the full Board, or the specific items over which the Executive Committee has responsibility should be outlined in the governing documents of the organization.

Keep in mind, the Executive Committee is, in fact, another committee of the Board, so it should function in the same fashion as all other board committees, with the taking and keeping of minutes, making appropriate reports back to the full Board, etc. Because it is simply another committee of the Board, it is distinguishable from the use of an Executive Session as further outlined below.

An Executive Session is quite a different animal than an Executive Committee and carries its own unique fiduciary and governance responsibilities. Simply put, an Executive Session of the Board is simply a meeting of the independent, outside directors of the Board, without directors who are insiders (members of Management) being present. Typically, the Board Chair or a majority of the independent outside directors can request the holding of an Executive Session. The calling of such a meeting is generally permissible at any time and it is permissible to exclude insiders or members of Management, even if they are directors. That is the whole purpose of the Executive Session, to allow the independent directors to engage in discussions without any members of Management being present. In the event the Board Chair is also a member of Management, then the organization should also have a "Lead Outside Director" who is not a member of Management, who chairs the Executive Session.

However, what occurs at the Executive Session is often not handled correctly, from our experience. In short, the Executive Session is merely an opportunity for the outside directors to gather and discuss various issues, but no votes should be taken and no formal decisions made, because the full Board, by definition, is not present. So, while members of Management who are board members can rightfully be excluded from these sessions, it would not be appropriate for formal decisions to be made in the Executive Session without inside members of the Board being present and having the opportunity to participate and share their views on various matters. In essence, you cannot deny a director who has been validly elected to the Board the right to attend an official board meeting and vote on Board matters, but the independent directors can certainly meet in Executive Session and have discussions without Management present.

We generally believe that the holding of periodic Executive Sessions is a good corporate governance practice to be done on a consistent, periodic (perhaps quarterly) basis, even if there are no key issues to be addressed. Doing so on a routine basis prevents the necessity of calling a special Executive Session which then can raise the suspicion of the Management Team where otherwise there may not be a need to do so.

Also, keep in mind that an Executive Session generally is not a secret session. If an Executive Session is called, for example, by the Board Chair, once the session is concluded, the Board Chair or a designated representative should immediately contact any inside directors that were not present during the discussion and give them a heads-up on what was discussed, and again, no formal decisions should be made except at a duly called meeting with appropriate notice where all parties have the opportunity to be heard on the matter and vote. A brief discussion with those inside directors about the topics that were discussed during the Executive Session is appropriate.

Executive Sessions should also be handled somewhat formally with an indication in regular Board minutes that the Board Chair or other appropriate party called an Executive Session, noting who attended the session and who did not, and designating the party to follow up with the members of Management that are directors not present during the meeting. We also believe it is appropriate to take separate minutes of the Executive Session meeting. However, we suggest those minutes be topical in nature rather than detailed minutes. In essence, the minutes should outline the topics that were discussed by the board members such as compensation matters for management, management succession candidates, results of the exam, etc. The minutes do not necessarily need to be as detailed as your typical board minutes.

There may be unique circumstances where there would be exceptions to these principles, but we believe these are the most appropriate corporate governance best practices for the majority of community banks. Keep in mind that if your holding company happens to be an SEC reporting company, then your organization, in addition to these basic principles, will likely have certain requirements for Executive Sessions on a regular basis, so the key principles still apply. If you have questions, let us know.

How Do You Manage Conflict Resolution?

We have had a number of circumstances in the past month or so that might best fall into the category of situations needing "conflict resolution." These have been disagreements among board members, disagreements between management direction and board direction, conflict with regulators, issues of termination of personnel, conflict between an organization and its shareholders, and similar matters.

Often, the Board Chair is somewhat forced into the role of trying to mediate a situation or lead the organization through the conflict. That is why it is important when selecting a Board Chair not to assume it is merely a passive role that anyone can do, but understand the unique skillsets that are required of the individual serving in that role which, in addition to the many other functions, may be to be the manager or facilitator of a difficult situation.

In doing so, seek professional assistance where needed, both on technical legal issues (such as state employment law matters or statutory interpretations of the rights of various parties) as well as for general advice and consultation on the "softer" people and managerial issues. In doing so, the Board Chair or other director or officer that is handling a situation may, in fact, be entitled to separate outside counsel and representation. The point is, you don't have to carry those burdens alone.

Is There a Future For Our Bank?

The past several weeks have seen us in different parties of the country meeting with boards of directors or sometimes with a family ownership group, to address a specific but recurring question among many organizations of whether there is a future for their bank, or how do they ensure that they have a future, or to honestly ask the next generation of potential shareholders in a family if they want there to be a future for the organization.

We find all of these discussions not only highly important in order to be able to strategically plan a typical buy, sell or hold strategy, but also very helpful for all of the participants to be able to air their thoughts and opinions on various matters, and to be heard. For example, an aging CEO may candidly say that she no longer wants to work as much as she has been working and is ready to begin transitioning duties. But if the organization does not have clear management succession, will her impending retirement threaten the long-term independence of the organization? Similarly, if an organization is family-owned and the family gathers together for a family discussion over the future ownership of the bank and none of the children desire to move back to the hometown and be involved in the day-to-day affairs of the Bank, then is it time to look for an exit strategy for the entire organization? Both of those are scenarios where we have participated recently and we encourage your organization to likewise hold these types of candid discussions.

As most of you know, our firm certainly has a bias in favor of banks remaining independent, but as we often say, independence is not a condition you have, independence is the action that you take. There are specific strategies you can employ to maintain your independence even in an M&A environment like we currently have, so getting together specifically not just for generic strategic planning, but to address whether we want to maintain the status quo, be a buyer, or pursue an exit strategy is a significant and important step to take as well. We often find that many organizations prefer to have those kinds of discussions independent of their general strategic planning. In this way, we often refer to it as a "targeted" strategic planning session, focused specifically on the independence question and the various issues that impact it, such as succession planning, capital, growth potential, etc. Even for organizations planning to remain independent, this could be a helpful exercise in defining the specific steps you will take and the actions that will be employed to maintain your independence.

When Should You Call a Professional?

If your car breaks down, would you take it to a mechanic to fix it, call a friend to help you fix it, or try to do it yourself? It may depend on whether you need to replace the entire transmission or just change the oil, but there are clearly times where each option would be preferable. The same is probably true when you are talking about retaining professionals such as lawyers, consultants, investment bankers, and the like. All of us on the advisor and professional side of the table of course would encourage you to contact your advisors with any questions, and hopefully your professional advisors are able to be candid with you about their ability to help and give an honest assessment of whether they can provide a benefit. However, as one banker told us, he would never call an investment banker and ask them if he should sell his bank, because it would be the equivalent of calling the barber and asking if he needed a haircut - the answer is always going to be yes! We don't necessarily think that is always true, but it does make a good point and is somewhat humorous!

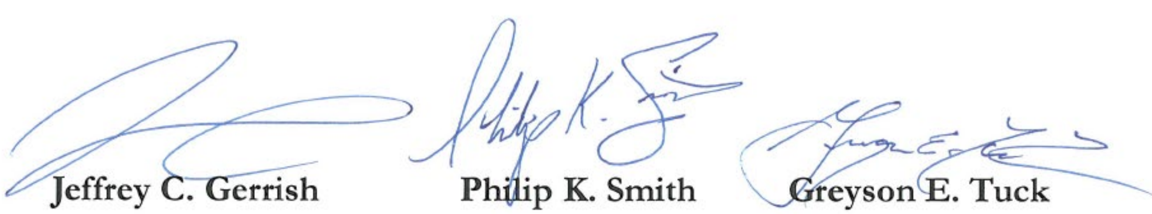
Recently, a couple of interactions with our own firm by clients and potential clients also showed the thinking of lots of bankers in this regard, and in case you ever feel this way too, we wanted to make you comfortable that you are not alone. One client contacted us and said he had been working on a particular matter for a while, had tried to do a few things himself, had even contacted a non-banking law firm to try to get some general advice, had sought the input of other bankers, and the like, but still was not pleased with the current status of things. He said he finally broke down and called us. Because we knew this individual, we jokingly asked why we were not his first resort rather than his last resort, and his response was a little interesting. His comment was he thought what he really needed was just a BB gun to resolve his problem, so he didn't call us because he thought we were more like utilizing a Bazooka! He immediately let us know he meant that in the best possible way, but of course it also seems to follow the comment of "Don't use an ax to remove a fly from the head of a friend." We assured him that if he needed our assistance, we could handle a range of things from as soft as a BB gun to the power of a Bazooka, and that even if we were a Bazooka, we would certainly accomplish the goal that the BB gun could! His final point was well-taken, though, which was, Yeah, but a Bazooka costs a lot more! Our response: You get what you pay for!

A similar client interaction resulted from a party who reads *The Board Chair Forum Newsletter* and *Gerrish's Musings* religiously. For those of you old enough to remember the times when you could actually call in on the telephone to talk radio shows or to your favorite disc jockey, you may recall the phrase people would say, "Long time listener, first time caller." This particular banker began the discussion by saying he loved the newsletters and he was a long-time reader, first time caller. So, we thought that was well put, that he reads a lot of the information we publish and had just now had the opportunity when a question came up where we could provide some counsel and feedback. So, we welcomed him being a first time caller and we would welcome the same from all of you (even if it is for a small "BB gun" item).

Meeting Adjourned

It is hard to believe we are almost halfway through the year, but we are certain there will be more interesting developments throughout the remainder of the year. Anytime you have specific questions you would like us to address in the newsletter or otherwise, please do not hesitate to contact us. Stay cool during the hot summer months and look for us at various speaking engagements around the country. We would love to have you visit us.

Until next time,



Gerrish Smith Tuck
700 Colonial Road, Suite 200
Memphis, TN 38117
Phone (901) 767-0900
Website: www.gerrish.com

HOW TO CONTACT US:
If you have questions or comments about the newsletter or would like to ask a follow-up question, please email Philip Smith at psmith@gerrish.com.