



## Q&A with Myron Steele: Former Delaware Supreme Court Chief Justice's Perspective on the Job of a Corporate Director

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*On Governance is a series of guest blog posts from corporate governance thought leaders. The series, which is curated by the Governance Center research team, is meant to serve as a way to spark discussion on some of the most important corporate governance issues.*

*(This post is part of The Conference Board Governance Center series on the job description of a corporate director from the perspective of various stakeholders. Quotes from this Q&A is highlighted in Just What Is the Corporate Director's Job? Delaware Bench and Bar's Perspectives on the Board Member's Job Description.)*

Myron T. Steele is a partner in Potter Anderson Corroon's Corporate Group. He is the former chief justice of the Supreme Court of Delaware.

Previously, he served as a judge of the Superior Court and a vice chancellor of the Delaware Court of Chancery after 18 years in private litigation practice.

Chief Justice Steele has published over 300 opinions resolving disputes among members of limited liability companies, and limited partnerships, and between shareholders and management of both publicly traded and close corporations. He speaks and writes frequently on issues of corporate document interpretation and corporate governance.

For 10 years he served as judicial advisor to the Mergers and Acquisitions Committee of the ABA Business Law Section. He also co-authored an article entitled "Freedom of Contract and Default Contractual Duties in Delaware Limited Partnerships and Limited Liability Companies" (46 Am. Bus. L.J. 221 (Summer 2009)) and an essay entitled "The Moral Underpinning of Delaware's Modern Corporate Fiduciary Duties" (26 Notre Dame

J.L. Ethics & Pub. Pol’y 3 (2012)). Chief Justice Steele served as adjunct professor of Law at University of Pennsylvania Law School from 2009–2013; University of Virginia Law School 2010–2017; and Pepperdine University Law School 2010–2014.

He recently spent some time talking with Gary Larkin, the author of The Conference Board report, about the job description of a corporate director from the point of view of the Delaware bench and bar. What follows are his thoughts:

**As a former Delaware Supreme Court justice, how do you see the job of a corporate director? What are the key attributes and skill set for a perfect corporate director?**

I think based on both the statutory framework and the Delaware Common law, the primary job of a corporate director is:

1. Direct the corporation
2. Work with stockholders
3. Achieve long-term success for the corporation.

The first attribute is devotion to the job. Be able to make oneself available. Directors must work to assure they meet their duties of loyalty and care. The worst mistake is to take a role as a director and not have the time for the job. They must have a skill set that contributes to the enterprise they serve. To me, the most important attribute is the willingness to be engaged. To speak out when you should speak out. Challenge management and be a robust contributor to the board. That also means not hesitating to ask for additional information from management whenever you have a question or don’t understand something.

**What role does Delaware law play for today’s directors and corporate governance?**

For the past 100 years, there have been two roles. Delaware has given its chartered companies a framework for analysis of director conduct and a method for assessing their accountability. The other role is to provide guidance to directors through the application of principles of law to contextual events litigated in the Delaware Courts.

**How much should they know about the history of Delaware law and the courts?**

They should have a fundamental understanding of the duties of loyalty and care and to be aware that the case law applies legal principles to directors’ real-life decisions or omissions. As my military father used to say, they should be “trained up” in this every year. Just like lawyers must get CLE credit, directors need to be educated. However, they don’t need to know the details of every case.

**Do you believe there is an expectations gap between Delaware law and what investors expect of corporate directors? If so, please explain.**

It's intriguing. What Delaware law continuously does is provide a **guidance** framework for directors to meet their fiduciary duties. Delaware case law does not encourage directors to micro-manage the corporation. There are investors who may have hoped the courts would create a prescriptive framework for a director's conduct. If so, their expectations will not be met. All investors' interests are not aligned. There are long- and short-term investors. The investor constituency is not a monolith. What Delaware law does do is attempt to balance the interests of the varied investors and provide a framework of accountability for director and officer conduct.

**What role should a director play in shareholder engagement? Should there be a formal plan?**

I think the business sector and each individual company's needs drives the role. It also depends on the personalities of the directors. In today's world, directors should be open-minded. There should be guidelines for shareholder engagement. A shareholder engagement plan should be very carefully orchestrated, so the directors are knowledgeable, understand their role and are careful to keep the corporations' constituencies' welfare in mind.

**What is the most important factor for directors when interacting with management? What information is the most important for management to share with the board, and how should they share it?**

The information exchange between management and the board is the most important factor. As far as what information is the most important, it depends on what situation you are talking about. It depends on what is going on. From a duty of care perspective, the director has to exercise sound judgment and be careful to review the information material to the decision to be made or action to be taken. As a director, you have to make sure you review the information you receive. If you think there is material information missing, you need to ask for it.

**What Delaware case precedent has had the most impact in defining the corporate directors' job?**

There are so many that could be deemed significant. I would put them into two categories: cases that involved the sales process of a company and management oversight.

One of the most important decisions was Caremark [International Inc. Derivative Litigation] Chancellor William Allen's written opinion established that a director has a responsibility to oversee management, and to assure there is a process in place to monitor compliance. As part of that process, there should be a way for the board to be alerted to a problem. Once the board is alerted, it must act. [He also referred to Stone v. Ritter, which followed the Caremark decision.]

Another case was Blasius [Industries v. Atlas Corp. in 1988]. It had to do with the stockholder franchise. Directors cannot interfere with stockholders right to vote. No principle of Delaware corporate law is more sacrosanct than the stockholder franchise. [Blasius, the company's largest shareholder proposed that Atlas sell off some of its assets, issue bonds, and distribute a large one-time dividend to shareholders. While Atlas directors rejected the idea, Blasius formalized its proposal and requested the election of eight new board members, which would have increased the size of the board from eight to 15 members. The Atlas board held an emergency meeting and amended the bylaws to increase the board to 10. This move was designed to prevent Blasius from taking over the board. It then sued Atlas, seeking to void the board's December 31, 1987 action as inequitable. [1]

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[1] [Blasius Industries Inc. v. Atlas Corp.](#), Harvard Law School, July 25, 1988.

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