

I'm a Director and We Need to Fix This. But What If Other Directors Stonewall?

Following up on [my blog](#) about a director finding out about impropriety at the company, perhaps the most painful scenario for a director who wants to do the right thing is one in which they find themselves very lonely. On an island. No one else on the board shares their views. Or at least, they're not willing to voice support and take action. When a director's efforts to cause the board to take actions to fix a situation are resisted - and perhaps even blocked - the director might be forced into considering resigning as their ability to effect change has been compromised. In that case, the departing director should seek independent counsel to help reduce any risk that regulators or a court could see the director as being drawn into the company's wrongdoing. This is true because directors bear responsibility for their own actions and those of the board until their resignation takes effect. These matters tend to have a "long fuse" that extends back and starts in an innocent way. You might not realize it at first. Your board departure might just be the beginning of a long and agonizing farewell if things hit the fan. Your lawyer should remind you that your resignation should be in writing - perhaps in draft form - and it then goes to the board chair, with instructions for it to be circulated to the full board. You should also consider if the resignation goes to shareholders as well. And if you resign in protest, any resignation letter to the company will be public as it will be required to be filed as an exhibit to the company's Form 8-K announcing the resignation. That should be borne in mind as you put pen to paper.

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