In yesterday's post, I wrote that admittance of non-directors to the corporate board meetings should rest within the discretion of the board as a whole. If a board should decide to allow directors to bring personal lawyer to a meeting, these alien attorneys will nonetheless face ethical challenges.

Rule 4.2(a) of the California Rules of Professional conduct provides:

“In representing a client, a lawyer shall not communicate directly or indirectly about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer.”

Because “person” has the meaning set forth in Section 175 of the California Evidence Code, the person represented by counsel may be the corporation itself and/or the individual directors. Cal. Rules of Professional Conduct, Rule 1.0.1(g-1). Thus, it may be necessary to obtain the consent of the corporation’s lawyer and/or counsel representing other individual directors.

Even when the corporation and/or the other directors are unrepresented by counsel, the attorney must be mindful of his or her ethical obligations. Rule 4.2(b) of the California Rules of Professional Conduct provides:

“In communicating on behalf of a client with a person who is not represented by counsel, a lawyer shall not seek to obtain privileged or other confidential information the lawyer knows or reasonably should know the person may not reveal without violating a duty to another or which the
lawyer is not otherwise entitled to receive.”

A future post will consider still other issues may arise from the presence of outsiders in the boardroom.

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