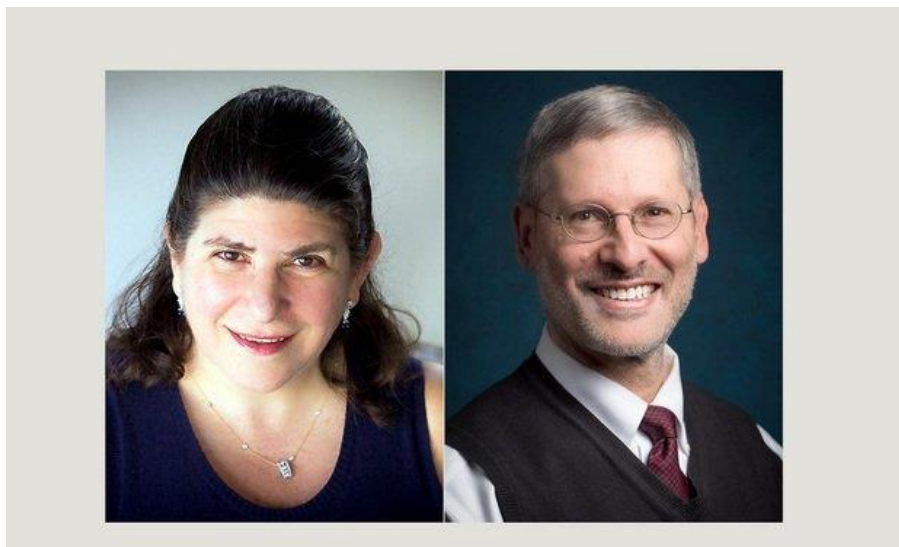


Family lawyers: You can be friendly with colleagues while fiercely representing your clients

Elisa Reiter & Daniel Pollack | August 23, 2021



The U.S. Supreme Court has recognized a parent’s fundamental right to the care and custody of his or her child, and decided that a state may not terminate that right unless there is an individualized determination of parental unfitness. Absent a finding that a parent is unfit, it is presumed that children are best served by remaining with their parents. Like other aspects of child welfare and family law, child custody is based on the best interests of the child. In making this determination, many factors are taken into consideration. Two of the key factors are the emotional relationship between the child and each parent, and the

capacity of each parent to provide for the needs of the child. To demonstrate these capacities in court requires great skill and zeal on the part of an attorney.

All attorneys know that they are obliged to zealously represent their clients at all times. What does that mean in practice? It means they must be ardently active, devoted, and diligent in representing their client. When attorneys know each other well—maybe they're even close friends—does their tenacity on behalf of their client inadvertently wane? Especially in family law, where things can get truly nasty, do attorneys unconsciously become a bit less determined than they otherwise should be if they oppose an attorney who also happens to be a longtime friend?

In the Model Rules of Professional Conduct, “Preamble & Scope,” the concept of zealous representation is mentioned three times:

- “As advocate, a lawyer zealously asserts the client’s position under the rules of the adversary system.
- ... when an opposing party is well represented, a lawyer can be a zealous advocate on behalf of a client and at the same time assume that justice is being done.
- These principles include the lawyer’s obligation zealously to protect and pursue a client’s legitimate interests, within the bounds of the law, while maintaining a professional, courteous and civil attitude toward all persons involved in the legal system.”

We commend attorneys who represent a diverse range of clients. However, there are strict legal and ethical guidelines regarding what constitutes a conflict of interest. This means attorneys may not have a duty to more than one client when there are realistically potential adverse interests between the parties. Does being friendly with the opposing attorney or the judge constitute a divided loyalty such that the

attorney should refuse to represent the prospective client? How closely must the attorney consider the concept of having a conflict of interest prior to taking on a client who wishes their attorney to be zealous in every sense of the word?

Zealous representation should not include offensive tactics, nor treating people, including litigants or opposing counsel, disrespectfully. To insult opposing counsel, or to attempt to use intimidating tactics does not serve the goal of issue resolution.

One court in Florida, weighing in on a two-year suspension of an attorney opined:

“Screaming at judges and opposing counsel, and personally attacking opposing counsel by disparaging him and attempting to humiliate him, are not among the types of acceptable conduct but are entirely unacceptable.” The court concluded that it took no pleasure in sanctioning the errant attorney, but that to be respected, “we must hold ourselves to a higher standard.”

Ethical canons often focus on closer relationships than simply being friends. Think of the old Spencer Tracy and Katherine Hepburn movie, Adam’s Rib. Their attorney characters were more than friends; they were married. In this era, they would have needed to disclose their relationship to their respective clients and to the tribunal. In litigation, there is a great deal of information to parse, particularly in family law cases. Dueling attorneys can actually slow the process rather than expedite it. Sometimes, a dose of friendship and civility can actually help move the case along. Indeed, one of the benefits of friendship is that each

advocate is acquainted with the other's depth of knowledge and courthouse tricks.

Attorneys should be able to shake hands, but to retain a willing suspension of disbelief. If trial is required, even with a dear friend on the other side, one must suit up for battle, but the battle can be won without belittling the opposition. Our opponents must realize that our respective client's needs must be prioritized over our friendship, and that we will come to shake hands again—at the end of the trial.

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