

## Respect Boundaries, Avoid ‘Too Much Togetherness’: Relationship Tips From A Pair of Married Wilmer Litigators

Securities litigators Susan and Kevin Muck, who have been married for more than 30 years, practiced together at Brobeck Phleger & Harrison, Clifford Chance, and Fenwick West before joining Wilmer earlier this year.

By Ross Todd  
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With the pandemic forcing many of us to work from home long-term, family members have become de facto co-workers.

With homes doing double-duty as co-working environments, at least for the immediate future, the Lit Daily decided to check in with **Susan and Kevin Muck**, a pair of married securities litigators who have decades of experience working and living together, to ask how they make their personal and professional partnership work.

The Mucks, something of a Silicon Valley institution, moved this fall to **Wilmer Cutler Pickering Hale and Dorr** after spending 16 years at **Fenwick & West**, where they founded the firm’s securities litigation practice. The couple also practiced together at **Brobeck Phleger & Harrison**, where they met, and **Clifford Chance**. The following has been edited for length and clarity.

**Lit Daily:** Let’s start off with the story of how you met.

**Susan Muck:** I was a first-year associate. Kevin was a second-year associate at Brobeck, Phleger & Harrison, which was an old San Francisco firm. I had graduated from the University of Virginia Law School and was starting on my first day and one of my friends from Virginia who was already an associate at the firm was taking me out to lunch. She included Kevin. And so we ended up meeting on my very first day of work in San Francisco. We were friends for several months after that and then we started dating.

**Kevin Muck:** Then about a year-and-a-half later we got married.

**Lit Daily:** Wow!

**Susan:** (Laughs.) Yeah. And worked together at Brobeck for about three years total and then I had an



Courtesy photos

Susan Muck, left, and Kevin Muck, right, of Wilmer Cutler Pickering Hale and Dorr.

opportunity to move to **Shearman & Sterling**. I became a partner there. Kevin became a partner at Brobeck. After several years we realized it made more sense for us to work together than separately.

Securities litigation is very competitive, as you know. When a securities class action is filed, every firm that does defense work tries to pitch to win the engagement. Kevin and I often would be competing against each other for the very same work. So, we realized after running into each other at several pitches that it probably wasn’t a good long-term marital strategy to compete with one another.

**Kevin:** And it wasn’t a good business strategy for me to try to compete with Susan. Rather than to compete with her and lose, I thought it would be better to join forces and win them.

**Susan:** (Laughs.) Oh, thank you, honey. But we realized that we actually enjoy working together a lot. Kevin was always the first person I would go to for advice and I was at least within the first five people he would go to, and so

we decided we would join forces and we've been working together ... gosh ... 20 years now.

**Lit Daily:** So, you're both securities litigators, but are you securities litigators of the same flavor? I gather Susan you might be a little bit more on the enforcement agency side and Kevin, you're more purely in the class action defense side of things. Or does that oversimplify it?

Kevin: It's generally correct. I would say 80% of what I do is traditional shareholder litigation, class actions, derivative cases. But probably about 20% is corporate governance, board investigations and SEC enforcement work. I think Susan's split is probably closer to 50-50. But obviously, it depends from time-to-time.

**Lit Daily:** So do you tend to work for the same clients?

Susan: We do have clients that we work on together, and we both have clients that we have developed our own separate relationships with. At any given point of time, I would say that we have a couple of matters that we are working on together. Like right now we're doing an investigation for a client where both of us were engaged by the client jointly together. We pitched it together.

Kevin: I'll give you another example. I have a client I am representing in a class action and derivative litigation. An SEC matter came up and there's some overlap in the underlying facts. So Susan is taking the lead on that.

Sometimes we'll be representing different aspects of the same basic matters. Sometimes it's just completely separate. Susan's working on a board investigation right now that I have no involvement in. I've been working on a case in Delaware Chancery Court that Susan isn't involved in. So, it's a mixture.

**Lit Daily:** So, what would say are your respective strengths? And I won't make you poke at each other's weaknesses, but how do you decide "this is a better assignment for Kevin" or "this is a better assignment for Susan?"

Susan: Boy that's a tough question and a great one. Kevin is a really gifted writer and a very efficient writer. He does a terrific job on briefs, and so oftentimes we will conclude that he's the right person to take the lead on a particular brief.

Both of us love strategy. I think both of us are very skilled at defense strategy and developing arguments. Both of us enjoy and have a lot of skill at oral argument and governance issues and board issues.

I enjoy the challenge of dealing with the government and SEC enforcement work and I have probably more experience developing strategies for handling government and internal investigations. I think we do have different skills but they mesh very well.

Kevin: And I think a lot of times it comes down to what experience we might have in a particular experience in a particular industry or what connections we have with a particular company. Sometimes you just get a sense that for whatever reason that a general counsel or CFO or CEO or an audit committee is going to communicate better with one type of person as opposed to another. A lot of that frankly comes down to gut instinct.

I also find that clients have a way of making sure what they expect from you and what they want from you. So, if we're working on a matter together, we make it very clear to the client that if the client is uncomfortable with that that they should let us know. I think that they would if there ever was a situation.

The first time I can ever really remember the two of us working on something together was a number of years ago where Susan and I had both been independently recommended for an audit committee investigation of a company. We were at the same firm and they decided to hire both of us. I remember having dinner with the chair of the audit committee and telling him if there was any discomfort on his part that he should tell us right away. There would be no hard feelings if he thought it was odd or a potentially fraught situation to have both a husband and wife working together.

He laughed and said, "Are you kidding? I know that the two of you are going to be talking to each other about this matter all the time and you're not going to be billing for it. I feel like I'm getting the best bargain imaginable."

He was right.

Susan: He was right.

Kevin: It is true that there are many times where we will be having dinner or going for a walk and something will pop up and one of us will start talking about a case that we're working on and we'll bounce ideas off each other and we won't bill for that.

Susan: Of course, we're not going to bill for every time that we're having a discussion about a case, and I think

clients know that and realize that they're getting a really efficient team. They're getting two good minds at the same time.

Kevin: We also have to be really sensitive about working with associates.

Susan: And partners.

Kevin: We have a discussion every time we work with associates on a case together to try to make clear to the associates that if they have an issue with me or with Susan that they should never hesitate to let the other one know. We recognize that that could potentially be an issue in some circumstances. I don't think it's ever been an issue. I think we both spend a lot of time trying to make sure that never would become an issue. But we're certainly sensitive to the possibility, and we want to make sure if there ever were a situation that the associates with whom we work were very comfortable raising them with us.

Susan: We know that we're not going to be everybody's cup of tea, that not each of us will necessarily be liked by each associate to the same degree. We want to make sure that the associates know that we have separate relationships with the associates. They don't have to feel like it's Kevin and Susan Muck as a joint entity.

**Lit Daily: Setting boundaries seems to be a conversation that lots of folks are having as work life bleeds into home life during the pandemic. It sounds like in your walks and in your dinners that the lines always have been blurred. What tips do you have for folks who are trying to sort of find those lines amid pandemic work?**

Kevin: I think one thing that has been really important has been physical boundaries. I recognized that not everybody necessarily has a home environment where it's easy for people to be physically separate, but that is one thing that has been really important for us: To have different parts of our home as our "offices" as we're working during the pandemic. That's been critical for us. And again, we realize that we're fortunate that we have enough space.

Susan: We started out in the same office space together. We had converted a bedroom into a home office in our house years ago. But working in the same room was too

much togetherness. I now sit in our living room and Kevin sits in our home office. I get the fireplace that's in our living room. (Laughs.) I feel like I've got the greatest home office in the world.

We're able to be on calls and Webexes separately. Even when we're on the same Webex, we call in separately. It gives us some space and I think it gives the people that we're talking to comfort that we're not sitting together as we're talking about their matter.

Kevin: A couple of other things that I think have worked for us. I think it is really important to set boundaries. So when we are talking over dinner about something we always make sure to ask permission beforehand. We never do it when our kids are around, for any number of reasons including confidentiality reasons, but also, probably more importantly from their standpoint, they don't want to hear mom and dad talk about work.

I'll give you an example: Last week I was dealing with a really thorny issue for a case, and I really needed to just sort of think it through and bounce some ideas off of someone. Susan was obviously my first choice for that. So, I suggested we go for a walk. We try to get as much exercise as we can during the pandemic, and I said, "Do you mind taking a 20-minute walk? I want to bounce some ideas off of you?" If she had said a) "I don't really feel like it" or b) "I'm too busy" that would have been fine. But fortunately, she wasn't too busy and she did feel like it.

So we try to set boundaries in that way. We try to, as much as possible, keep evenings and weekends as personal time and not work time, but again it's just the nature of what we do: We don't have 9-to-5 jobs. Our clients need us often 24-seven. But we always try to make sure we are asking the other person and not presuming that we can talk to them about what it is that we're dealing with.

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