

# Extortion in Divorce Litigation

By K. Dean Kantaras and Joanna Hotalen

Marital and family law is perhaps the area of law most heavily fraught with raw emotion. The road through divorce is often paved with fear and sometimes clouded judgment, making it easy to drift across the line from empty threats to the crime of extortion. Extortion is one of the most used, abused, misunderstood and ignored legal precepts haunting marital and family law.

Extortion is where one spouse either holds something “hostage” from the other spouse, or obtains something from them without their consent through coercion, which typically involve threats of abuse or violence, or threats to destroy someone’s reputation or relationships. Florida Statute 836.05 (2021) also provides that malicious threats to accuse or expose another for the commission of any crime or offense with the intent to extort any pecuniary advantage constitute the second-degree felony of extortion, subject to prosecution, and act as a basis to invalidate any agreement or judgment based thereon.

Considering the intimate nature of marriage and the amount of time spent together, spouses learn a lot about each other, including perhaps past indiscretions or incriminating information. Extortionary tactics often used in family law include threats to reveal the other party’s criminal activity, most often dealing with tax fraud. In *Berger v. Berger*, the husband’s threats that he would report the wife and her business partners to the IRS constituted the completed crime of extortion. Threats to report violations of professional regulations, (e.g., a doctor’s violation of the professional rules regarding prescription writing), may also rise to the level of extortion.

Divulging salacious secrets to friends and family regarding the parties’ sex life may also constitute extortion. In *Paris v. Paris*, the court found that the husband’s threat to inform their children of the wife’s illicit affair, or of another child from a previous marriage could constitute



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extortion and was an illegal act sufficient to support a finding of duress and coercion.

The weaponization of the tools of discovery to surreptitiously invade the spouse’s privacy by publicizing scandalous or embarrassing details about the divorce is not an uncommon tactical maneuver that may constitute extortion. In an effort to pressure a spouse into entering a settlement, the other spouse’s counsel may issue subpoenas to the other spouse’s employees for depositions, despite knowing that they have scant knowledge of matters related to the case and that the ongoing divorce proceedings will only serve to jeopardize the other spouse’s reputation and cause embarrassment.

Any premarital or post-marital settlement agreement obtained by extortion is subject to being nullified, set aside, or not enforced by the courts. In *Cooper v. Austin* in the course of protracted mediation negotiations, the wife sent to

the husband an “extortionate” note, in which she threatened to have him arrested if he did not give in to her demands. Soon thereafter, the parties “settled.” The court invalidated the agreement, finding that it resulted in a grossly unequal distribution of marital assets in favor of the wife due to the wife’s extortion.

While mediation negotiations are shielded from being introduced in court, *Cooper* provides an exception in that the confidentiality of mediation does not shield a party from liability for the crime of extortion since crimes are not protected by the mediation confidentiality privilege codified in Florida Statutes. Thus, statements made by an attorney or a client during mediation that rose to the level of extortion may be introduced before the court at a later date.

Family law cases touch upon criminal issues, often with such subtleties that they are often overlooked and deemed par for the course of the standard conflict. Thus, it is easy to prey on one’s emotions for financial and strategic gain. However, as demonstrated, preying on a party’s emotions can easily become extortion, subjecting a party to criminal liability. Attorneys have a particular obligation to raise the issue of extortion in court to protect their clients and their interests. ❖

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