

# The Texas Lawbook

Free Speech, Due Process and Trial by Jury

## Offers You Can't Refuse – When Aggressive Demand Letters Cross the Legal Line

May 1, 2019 | By Randy Johnston

In 2001, San Antonio attorney Mary Roberts had sex with four married men after she learned that her lawyer husband, Ted Roberts, had been unfaithful with her.



The couple later reconciled and Mr. Roberts proceeded to send demand letters to the four paramours—a lawyer, an accountant, and two chief financial officers—threatening to file petitions for rule 202 pre-suit depositions about their sex with his wife. Or, if they preferred, they could avoid the depositions and the resulting public

record by “making him whole

The men paid hush money totaling \$115,000 to avoid being deposed under oath to answer to the adultery claims. They also called the authorities. The happy couple ultimately were indicted and convicted of multiple counts of theft by coercion and deception.

Just last month, celebrity TV lawyer Michael Avenatti was indicted for extortion in connection with demands he made on Nike in which he threatened to expose a fraud and kickback scheme involving his client, a youth basketball coach who had recently lost a Nike sponsorship. He demanded from Nike \$1.5 million for his client and around \$22 million for himself to avoid what he promised would be a PR scandal that would wipe away billions from Nike's market cap. The criminal indictments mark a shockingly swift fall from grace for Avenatti, who just months ago talked of running for president.

And earlier this year, Amazon founder Jeff Bezos exposed what he described as a blackmail plot by supermarket tabloid National Enquirer. Emails published by Mr. Bezos reveal Enquirer CEO David Pecker threatening to release embarrassing photos and text messages of Bezos and his mistress unless Mr. Bezos made a public statement denying that the tabloid's exposes

about him had been politically motivated.

Successful lawyers know an aggressive demand letter can cut like a knife to get opposing parties to the settlement table, but at what point does aggressive bluster and bravado cross the line to extortion and its criminal cousins? Is this just a “know it when we see it” situation? Well, the exact line may not clear, but there are certainly some red-flag guidelines. To paraphrase Jeff Foxworthy, you may be an extortionist if:

- *Your demand letter threatens a claim that doesn't exist or one that you purposely structured.*
- *Your demand letter contains known falsehoods or misrepresentations rather than the truth.*
- *Your demand letter seeks a benefit for you instead of your client, such as a recommendation that they hire you as their attorney to avoid all this mess.*
- *You threaten a press conference or bad publicity if your demands are not met, and you justify the monetary demand based on losses you will cause through adverse publicity as opposed to your client's losses.*
- *Your letter mentions ruining reputations if demands are not met.*
- *You demand far more money than your client's claim is worth.*
- *Your letter promises secrecy or confidentiality if the demand is paid and/or that you will go away and take no more cases against them if they pay up.*

Probably no one factor, standing alone, transforms your demand letter into Exhibit 1 in a criminal trial for extortion. And there is certainly nothing wrong with a lawyer referencing in a demand letter or settlement discussions the real-world public relations consequences of refusing your client's reasonable settlement offer. So where is the line? Extortion claims against lawyers are rare, so it is worthwhile to look at the facts of cases where lawyers have been indicted for guidance.

# The Texas Lawbook

In the case of the Roberts family, the couple had reconciled, the wife had confessed her adultery and the husband had emails documenting the affairs, so the deposition served no purpose other than to harass and embarrass the four men. And Ms. Roberts apparently cooperated with the assertion of the claim against her former lovers and may have even helped plan the demand.

In the case of Michael Avanetti, surreptitiously recorded conversations revealed that he demanded that Nike retain him to do an internal investigation on amateur player recruiting—for a fee of \$15 – \$25 million.

Alternatively, Nike could just pay him \$22 million and make the whole thing go away. Refusal to meet his demands would, according to Avenatti, result in a press conference that would destroy Nike's reputation and sink its stock price.

The shakedown emails exposed in the Bezos matter unfolded in communications that were apart from litigation. A criminal investigation continues and there have been no indictments so far, but it's shocking that Enquirer Deputy GC Jon Fine would articulate such unvarnished threats and intimidation in emails.

Somewhere in these cases there should be enough guidance for lawyers to represent their clients zealously while still keeping a safe distance from the cliff that separates an appropriate settlement offer from an extortion demand.

**Randy Johnston** is a cofounder of *Johnston Tobey Baruch* in Dallas where he focuses on cases involving professional malpractice and breaches of fiduciary duty as well as other business disputes.