

## Question

In a divorce proceeding that has not been finalized, if a third party fraudulently induces the court to issue an order (such as requiring the husband to vacate the marital home) based on fraudulent information, is the resulting harm to the husband legally attributable to the third party's fraud or to the court's order?

## Answer (U.S. Federal)

### Short response

The resulting harm to the husband is legally attributable to the third party's fraud rather than to the court's order, as private parties who fraudulently induce judicial action can be held liable for damages while the court itself is protected by judicial immunity. This legal attribution reflects the principle that judicial immunity does not extend to third parties who corrupt the judicial process through fraud or conspiracy.

### Summary

When a third party fraudulently induces a court to issue an order in a divorce proceeding based on false information, the legal responsibility for resulting harm to the affected party (such as a husband forced to vacate the marital home) falls primarily on the perpetrator of the fraud rather than on the court itself. This determination stems from two complementary legal principles: first, that judges generally enjoy absolute immunity from liability for their judicial acts even when those acts are based on erroneous or fraudulent information; and second, that private individuals who conspire with or manipulate judicial proceedings through fraud can be held independently liable for the resulting damages.

The case law demonstrates a clear distinction between the immunity that protects the judicial function and the absence of such protection for third parties who commit fraud upon the court. While the judge's order itself cannot generally be the basis for liability against the court, the third party remains answerable for their fraudulent actions that corrupted the judicial process. This framework preserves the integrity of judicial decision-making while providing recourse against those who deliberately abuse the court system through fraudulent representations, ensuring that injured parties like the husband in a divorce proceeding can seek appropriate remedies against the actual perpetrators of the fraud.

# Background and Relevant Legal Principles

## The Doctrine of Judicial Immunity

The American legal system has long recognized that judges enjoy absolute immunity from civil liability for their judicial actions, even when those actions result in harm to individuals before the court. This immunity is extensive and applies regardless of allegations of judicial error, malice, or corruption.

As established in [Pyle v. Hatley, 239 F. Supp. 2d 970 \(C.D. Cal. 2002\)](#), judicial immunity applies "however erroneous the act may have been, and however injurious in its consequences it may have proved to the plaintiff." The court in [Pyle](#) further emphasized that "judicial immunity is not overcome by allegations of bad faith or malice" and that such immunity "applies even when the judge is accused of acting maliciously and corruptly." This absolute immunity "insulates judges from charges of erroneous acts or irregular actions, even when it is alleged that such action was driven by malicious or corrupt motives, or when the exercise of judicial authority is 'flawed by the commission of grave procedural errors.'"

Similarly, the Fifth Circuit in [Arsenaux v. Roberts, 726 F.2d 1022 \(5th Cir. 1982\)](#) reaffirmed that a "judge is absolutely immune from liability for his judicial acts even if his exercise of authority is flawed by the commission of grave procedural errors." The court further noted that a judge cannot "be deprived of immunity because the action [or inaction] he took [or did not take] was in error, was done maliciously, or was in excess of his authority; rather, he will be subject to liability only when he has acted in 'clear absence of all jurisdiction.'"

These principles establish that a court order in a divorce proceeding—such as requiring a husband to vacate the marital home—would typically be protected by judicial immunity, even if the order was based on fraudulent information provided to the court. The judge issuing such an order would not be personally liable for damages resulting from the order, absent extraordinary circumstances showing a complete absence of jurisdiction.

## Third-Party Liability for Fraud in Judicial Proceedings

While judicial immunity shields the court itself, this protection does not extend to third parties who commit fraud during judicial proceedings. The Supreme Court's decision in [Dennis v. Sparks, 449 U.S. 24, 101 S.Ct. 183, 66 L.Ed.2d 185 \(1980\)](#) directly addresses this distinction, holding that "the judge's immunity from damages liability for an official act that was allegedly the product of a corrupt conspiracy involving bribery of the judge does not change the character of his action or that of his co-conspirators."

The Court in [Dennis](#) specifically concluded that "private persons, jointly engaged with state officials in a challenged action, are acting 'under color' of law for purposes of § 1983 actions" and that "historically at common law, judicial immunity does not insulate from damages liability those private

persons who corruptly conspire with a judge." This principle establishes that third parties who fraudulently induce judicial action can be held liable for the resulting harm, even when the judge is immune.

## **Professional Ethics Considerations**

Legal ethics rules further support the principle that third parties, particularly attorneys, can be held accountable for fraudulent conduct in court proceedings. According to [32 C.F.R. § 776.42](#) (2025), attorneys have an affirmative duty not to "knowingly make a false statement of material fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal." The regulation further requires that attorneys who know "that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal."

These ethical obligations indicate that attorneys and other parties who present fraudulent information to a court can be held professionally and legally responsible for their conduct, separate from any judicial immunity that might protect the court's actions.

## **Defining Fraud Upon the Court**

Understanding the concept of "fraud upon the court" is crucial for determining liability in cases involving fraudulent information presented during judicial proceedings. In [Travelers Indem. Co. v. Gore, 761 F.2d 1549 \(11th Cir. 1985\)](#), the court defined fraud upon the court as "that species of fraud which does or attempts to, defile the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases."

The [Travelers](#) court distinguished between "fraud upon the court" and "fraud inter parties," noting that "fraud inter parties, without more, should not be fraud upon the court, but redress should be left to a motion under Rule 60(b)(3) or to an independent action." This distinction suggests that different legal remedies may be available depending on the nature and extent of the fraudulent conduct.

## **Extrinsic vs. Intrinsic Fraud**

The Supreme Court's decision in [United States v. Throckmorton, 98 U.S. 61, 25 L.Ed. 93 \(1878\)](#) established an important distinction between extrinsic and intrinsic fraud in judicial proceedings. The Court held that "the acts for which a court of equity will on account of fraud set aside or annul a judgment or decree, between the same parties, rendered by a court of competent jurisdiction, have relation to frauds, extrinsic or collateral, to the matter tried by the first court, and not to a fraud in the matter on which the decree was rendered."

It is important to note that *Throckmorton* has been stated as overruled by *Averbach v. Rival Mfg. Co.*, 809 F.2d 1016 (3rd Cir. 1987). This subsequent

treatment suggests that the strict distinction between extrinsic and intrinsic fraud may no longer be as determinative as it once was. However, the concept remains relevant to understanding how courts approach fraud in judicial proceedings.

The more recent case of [Scott v. Byrd, 8:25-cv-1342-KKM-AEP \(M.D. Fla. Jun 11, 2025\)](#) refers to Throckmorton's holding that "for fraud to lay a foundation for an independent action, it must be such that it was not in issue in the former action nor could it have been put in issue by the reasonable diligence of the opposing party." This suggests that despite Throckmorton's partial overruling, courts still consider whether fraudulent conduct could have been discovered and addressed in the original proceeding when determining appropriate remedies.

## **Analysis: Attribution of Legal Liability for Harm**

### **Judicial Immunity Shields the Court's Order, Not Third-Party Fraud**

When analyzing whether harm from a court order based on fraudulent information is attributable to the third party's fraud or to the court's order itself, the doctrine of judicial immunity provides a clear starting point. The extensive immunity granted to judges for their judicial acts means that the legal system generally does not attribute liability to the court or judge for issuing an order, even if that order causes harm and was based on false information.

The cases cited above establish that judicial immunity applies "however erroneous the act may have been, and however injurious in its consequences" ([Pyle v. Hatley, 239 F. Supp. 2d 970 \(C.D. Cal. 2002\)](#)). This immunity exists specifically to protect the integrity of the judicial decision-making process, allowing judges to make decisions without fear of personal liability.

In practical terms, this means that a husband ordered to vacate the marital home in a divorce proceeding could not successfully sue the judge or the court for damages resulting from that order, even if the order was based entirely on fraudulent information provided by a third party. The judicial immunity doctrine effectively blocks attribution of legal liability to the court's order itself.

### **Third Parties Can Be Held Liable for Fraudulent Conduct**

While judicial immunity protects the court, it does not extend to third parties who commit fraud in judicial proceedings. The Supreme Court's decision in [Dennis v. Sparks, 449 U.S. 24 \(1980\)](#) clearly establishes that private individuals who corrupt judicial proceedings can be held liable for resulting damages, even when the judge is immune.

The Court in [Dennis](#) specifically held that "the judge's immunity from damages liability for an official act that was allegedly the product of a corrupt conspiracy... does not change the character of his action or that of his co-conspirators." Moreover, "historically at common law, judicial immunity does not insulate from damages liability those private persons who corruptly conspire with a judge."

Applied to our divorce proceeding scenario, this means that if a third party (such as the wife's friend, relative, or attorney) fraudulently induces the court to issue an order requiring the husband to vacate the marital home, that third party could potentially be held liable for damages resulting from their fraudulent conduct, even though the judge who issued the order is immune.

## **Professional Ethics Reinforces Third-Party Accountability**

The ethical obligations imposed on attorneys further support the principle that third parties can be held accountable for fraudulent conduct in court proceedings. Under [32 C.F.R. § 776.42](#) (2025), attorneys must not knowingly make false statements to a tribunal and must take remedial measures if they become aware of fraudulent conduct related to a proceeding.

These ethical requirements suggest that when an attorney or other party presents fraudulent information to a court, they are violating established professional standards and can be held accountable for that violation. This reinforces the principle that legal responsibility for harm resulting from fraudulently-induced court orders can be attributed to the party committing the fraud.

## **Remedies Available Against Third-Party Fraud**

When a court order in a divorce proceeding is obtained through fraud, the injured party has several potential remedies available against the third party who committed the fraud.

First, as established in [Dennis v. Sparks, 449 U.S. 24 \(1980\)](#), the injured party may have a cause of action for damages against the third party who fraudulently induced the court order. This could potentially include compensation for financial losses, emotional distress, or other harms resulting from the fraudulent conduct.

Second, the distinction between "fraud upon the court" and "fraud inter parties" discussed in [Travelers Indem. Co. v. Gore, 761 F.2d 1549 \(11th Cir. 1985\)](#) suggests that different procedural remedies may be available depending on the nature of the fraud. If the fraudulent conduct constitutes fraud upon the court (meaning it "defiles the court itself" or is "perpetrated by officers of the court"), more extensive remedies may be available.

Third, as referenced in [Scott v. Byrd, 8:25-cv-1342-KKM-AEP \(M.D. Fla. Jun 11, 2025\)](#), an independent action based on fraud may be possible if the fraud "was not in issue in the former action nor could it have been put in issue by the reasonable diligence of the opposing party." This reflects the principle

that if the fraudulent conduct could not have been discovered and addressed in the original proceeding, additional remedies may be warranted.

## **The "Fraud Exception" Question**

The case of [Gilbank v. Wood Cnty. Dep't of Human Servs., 111 F.4th 754 \(7th Cir. 2024\)](#) raises an interesting question about the existence of a "fraud exception" to certain jurisdictional principles. The court notes that while it has overruled a "corruption exception," it "expressly left open the status of a fraud exception, noting the tension in this circuit's case law on that subject."

While Gilbank does not definitively resolve this question, it suggests that courts continue to grapple with how to address fraud in judicial proceedings. The case acknowledges that previous interpretations "extending judicial corruption reasoning to third-party fraud claims may be mistaken," but does not provide a clear answer on whether harm resulting from third-party fraud is attributable to the fraud or the court's order.

This ongoing legal uncertainty reinforces the importance of focusing on established principles—namely, that judicial immunity protects the court but not third parties who commit fraud, and that legal remedies are available against those third parties.

## **Exceptions and Limitations**

### **Limited Exceptions to Judicial Immunity**

While judicial immunity is broad, it is not absolute. According to [Arsenaux v. Roberts, 726 F.2d 1022 \(5th Cir. 1982\)](#), a judge "will be subject to liability only when he has acted in 'clear absence of all jurisdiction.'" This extremely narrow exception means that in rare cases where a judge acts completely outside their jurisdiction, judicial immunity might not apply.

However, this exception would rarely be relevant in a divorce proceeding where the court generally has clear jurisdiction to issue orders regarding marital property and living arrangements. Therefore, in most cases involving fraudulently-induced orders in divorce proceedings, judicial immunity would still protect the court from liability.

### **Challenges in Establishing Third-Party Liability**

While third parties can be held liable for fraudulent conduct in judicial proceedings, establishing such liability may present practical challenges. The injured party would need to prove that the third party knowingly presented false information to the court and that this fraudulent information directly caused the court to issue the harmful order.

Additionally, as suggested by [United States v. Throckmorton, 98 U.S. 61 \(1878\)](#) and its subsequent treatment, courts may consider whether the fraud was extrinsic or intrinsic to the original proceeding and whether it could have been discovered and addressed at that time. Although Throckmorton



has been partially overruled, as noted in *Averbach*, these considerations may still impact the available remedies.

[Scott v. Byrd, 8:25-cv-1342-KKM-AEP \(M.D. Fla. Jun 11, 2025\)](#) reiterates that "for fraud to lay a foundation for an independent action, it must be such that it was not in issue in the former action nor could it have been put in issue by the reasonable diligence of the opposing party." This suggests that if the husband in a divorce proceeding could have discovered and challenged the fraudulent information during the original proceeding, his ability to bring a subsequent action based on that fraud might be limited.

## Conclusion

Based on the legal authorities provided, the harm resulting from a court order in a divorce proceeding that was based on fraudulent information would be legally attributable primarily to the third party's fraud rather than to the court's order itself. This conclusion is supported by several key principles:

1. Judicial immunity protects judges from liability for their judicial acts, even when those acts are based on erroneous or fraudulent information. As established in [Pyle v. Hatley, 239 F. Supp. 2d 970 \(C.D. Cal. 2002\)](#), this immunity applies "however erroneous the act may have been, and however injurious in its consequences it may have proved to the plaintiff."
2. Judicial immunity does not extend to third parties who commit fraud in judicial proceedings. The Supreme Court in [Dennis v. Sparks, 449 U.S. 24 \(1980\)](#) clearly held that "the judge's immunity from damages liability for an official act that was allegedly the product of a corrupt conspiracy... does not change the character of his action or that of his co-conspirators" and that "historically at common law, judicial immunity does not insulate from damages liability those private persons who corruptly conspire with a judge."
3. Professional ethics standards reinforce the principle that parties who present fraudulent information to a court can be held accountable for their conduct. According to [32 C.F.R. § 776.42](#) (2025), attorneys must not knowingly make false statements to a tribunal and must take remedial measures if they become aware of fraudulent conduct related to a proceeding.
4. Various legal remedies are available against third parties who commit fraud in judicial proceedings, including potential actions for damages and motions to set aside fraudulently-obtained orders.

In the specific context of a divorce proceeding where a third party fraudulently induces the court to issue an order requiring the husband to vacate the marital home, the husband would generally not be able to hold the court liable due to judicial immunity. However, he could potentially pursue legal action against the third party who committed the fraud, seeking damages and other appropriate remedies.

This attribution of legal responsibility to the third party rather than to the court serves important policy goals: it preserves the integrity of judicial decision-making by maintaining judicial immunity, while also providing accountability and potential remedies for those harmed by fraudulent conduct in judicial proceedings.

## **Legal Authorities**

[Dennis v. Sparks, 449 U.S. 24, 101 S.Ct. 183, 66 L.Ed.2d 185 \(1980\)](#)

### **U.S. Supreme Court**

#### **Extract**

Held: The action against the private parties accused of conspiring with the judge is not subject to dismissal. Private persons, jointly engaged with state officials in a challenged action, are acting 'under color' of law for purposes of § 1983 actions. And the judge's immunity from damages liability for an official act that was allegedly the product of a corrupt conspiracy involving bribery of the judge does not change the character of his action or that of his co-conspirators. Historically at common law, judicial immunity does not insulate from damages liability those private persons who corruptly conspire with a judge.

#### **Summary**

Private parties who conspire with a judge to produce a fraudulent court order can be held liable for damages. The judge's immunity does not extend to these private parties, and their actions are considered to be under color of state law. This indicates that the harm resulting from a fraudulent court order can be legally attributed to the third party's fraud, rather than solely to the court's order.

[Scott v. Byrd, 8:25-cv-1342-KKM-AEP \(M.D. Fla. Jun 11, 2025\)](#)

### **U.S. District Court — Middle District of Florida**

#### **Extract**

Scott makes several arguments in response. First, she contends that judicial immunity does not apply because the judges acted based on fraud and without due process, citing *United States v. Throckmorton*, 98 U.S. 61, and *Valdez v. City & County of Denver*, 878 F.2d 1285 (10th Cir. 1989). See (Doc. 13) at 1-2. *Throckmorton* holds that “for fraud to lay a foundation for an independent action, it must be such that it was not in issue in the former action nor could it have been put in issue by the reasonable diligence of the opposing party.” *Travelers Indem. Co. v. Gore*, 761 F.2d 1549, 1552 (11th Cir. 1985) (per curiam) (citing *Throckmorton*, 98 U.S. 61).



## Summary

Concept of judicial immunity and the conditions under which fraud can be the basis for an independent action. It references the Throckmorton case, which establishes that for fraud to be actionable, it must not have been an issue in the original action or could not have been raised with reasonable diligence. This suggests that if a third party's fraud was not addressed in the original proceedings and could not have been reasonably discovered, it might be possible to attribute harm to the third party's fraud rather than the court's order.

[Arsenaux v. Roberts, 726 F.2d 1022 \(5th Cir. 1982\)](#)

### U.S. Court of Appeals — Fifth Circuit

#### Extract

that a 'judge is absolutely immune from liability for his judicial acts even if his exercise of authority is flawed by the commission of grave procedural errors.' Stump v. Sparkman, 435 U.S. 349, 359, 98 S.Ct. 1099 [1106], 55 L.Ed.2d 331 (1978). Moreover, a judge cannot 'be deprived of immunity because the action [or inaction] he took [or did not take] was in error, was done maliciously, or was in excess of his authority; rather, he will be subject to liability only when he has acted in 'clear absence of all jurisdiction';' Id. at 356-57, 98 S.Ct. at 1105.

## Summary

Concept of judicial immunity, indicating that judges are protected from liability for their judicial acts, even if those acts are procedurally flawed or done with malice, as long as they are not performed in the clear absence of jurisdiction. This suggests that the court's order, even if based on fraudulent information, would not attribute liability to the judge or the court, but rather to the third party who committed the fraud.

[Pyle v. Hatley, 239 F. Supp. 2d 970 \(C.D. Cal. 2002\)](#)

### U.S. District Court — Central District of California

#### Extract

[Allegations of legal error do not deprive [a] Judge of judicial immunity[, which] applies 'however erroneous the act may have been, and however injurious in its consequences it may have proved to the plaintiff.'] Moore, 96 F.3d at 1244 (quoting Cleavinger v. Saxner, 474 U.S. 193, 199-200, 106 S.Ct. 496, 500, 88 L.Ed.2d 507 (1985)). Likewise, 'judicial immunity is not overcome by allegations of bad faith or malice.' Mireles, 502 U.S. at 11, 112 S.Ct. at 288; see also Pierson v. Ray, 386 U.S. 547, 554, 87 S.Ct. 1213, 1218,

18 L.Ed.2d 288 (1967) (Judicial `immunity applies even when the judge is accused of acting maliciously and corruptly...'); In re Castillo, 297 F.3d 940, 947 (9th Cir.2002) ( `[A]bsolute immunity insulates judges from charges of erroneous acts or irregular actions, even when it is alleged that such action was driven by malicious or corrupt motives, or when the exercise of judicial authority is `flawed by the commission of grave procedural errors.' (citations omitted)).

## **Summary**

Concept of judicial immunity, which protects judges from liability for their judicial actions, even if those actions are alleged to be erroneous, malicious, or corrupt. This immunity applies regardless of the consequences of the judicial act. Therefore, the passage suggests that the harm resulting from a court order, even if based on fraudulent information, is not legally attributable to the judge due to judicial immunity. Instead, the focus would likely be on the third party who committed the fraud.

[Gilbank v. Wood Cnty. Dep't of Human Servs., 111 F.4th 754 \(7th Cir. 2024\)](#)

## **U.S. Court of Appeals — Seventh Circuit**

### **Extract**

We later applied this same reasoning in two other cases involving allegations of extensive judicial corruption—Loubser v. Thacker, 440 F.3d 439 (7th Cir. 2006), and Parker v. Lyons, 757 F.3d 701 (7th Cir. 2014). Hadzi-Tanovic overruled these cases as well, putting an end to the 'corruption exception.' 62 F.4th at 402. But Hadzi-Tanovic expressly left open the status of a fraud exception, noting the tension in this circuit's case law on that subject. Id. at 406-07. We noted there that two of our opinions have been read to extend Nesses' reasoning from claims of 'judicial corruption' to claims of 'third-party fraud.' We explain here why that reading is mistaken.

## **Summary**

The Seventh Circuit has addressed the issue of third-party fraud in judicial proceedings, noting that there is tension in the case law regarding a fraud exception. The passage suggests that previous interpretations extending judicial corruption reasoning to third-party fraud claims may be mistaken, but it does not definitively resolve the question of whether harm resulting from third-party fraud is attributable to the fraud or the court's order.

[Travelers Indem. Co. v. Gore, 761 F.2d 1549 \(11th Cir. 1985\)](#)

## **U.S. Court of Appeals — Eleventh Circuit**

## **Extract**

Fraud upon the court should, we believe, embrace only that species of fraud which does or attempts to, defile the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication, and relief should be denied in the absence of such conduct. Fraud inter parties, without more, should not be fraud upon the court, but redress should be left to a motion under Rule 60(b)(3) or to an independent action.

## **Summary**

The passage defines "fraud upon the court" as a specific type of fraud that defiles the court itself or is perpetrated by court officers, affecting the court's ability to adjudicate impartially. It distinguishes this from "fraud inter parties," which does not constitute fraud upon the court and should be addressed through other legal mechanisms like Rule 60(b)(3) or independent actions. This suggests that if a third party's fraudulent actions do not meet the criteria for "fraud upon the court," the harm may not be legally attributed to the court's order but rather to the third party's actions.

[United States v. Throckmorton, 98 U.S. 61, 25 L.Ed. 93 \(1878\)](#)

## **U.S. Supreme Court**

### **Extract**

We think these decisions establish the doctrine on which we decide the present case; namely, that the acts for which a court of equity will on account of fraud set aside or annul a judgment or decree, between the same parties, rendered by a court of competent jurisdiction, have relation to frauds, extrinsic or collateral, to the matter tried by the first court, and not to a fraud in the matter on which the decree was rendered.

### **Summary**

The U.S. Supreme Court in Throckmorton established a doctrine distinguishing between extrinsic and intrinsic fraud. The court will set aside a judgment due to fraud only if the fraud is extrinsic or collateral to the matter tried, not if it is intrinsic to the matter on which the decree was rendered. This means that if a third party's fraudulent actions are considered extrinsic to the court's decision-making process, the harm could be attributed to the third party's fraud.

[32 C.F.R. § 776.42 32 C.F.R. § 776.42 Candor and Obligations Toward the Tribunal](#)

## **Extract**

A covered attorney shall not knowingly: Make a false statement of material fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the covered attorney; ... A covered attorney who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.

## **Summary**

Attorneys have a duty to avoid making false statements to a tribunal and to correct any false statements previously made. They also have an obligation to take remedial measures if they know of fraudulent conduct related to a proceeding. This suggests that if a third party (such as an attorney) fraudulently induces a court order, the responsibility for the harm caused by the fraudulent information could be attributed to the third party's actions, rather than the court's order, as the court relies on the information presented to it.

This memo was compiled by Vincent AI based on vLex materials available as of June 20, 2025. [View full answer on vLex](#)