

Question

Explain the importance of family code 6.405(b) and what it means when it's violated. (a litigant claimed to have an active order of protection with a finding of family violence to waive the 60-day waiver requiring this order to be attached to the petition to protect the rights of the person being accused). the court held a hearing without 6.405(b) protections allowing the mother to make blatantly false allegations and never provide the required alleged order

Answer (Texas)

Short response

Texas Family Code § 6.405(b) is crucial because it requires that any claimed protective order be attached to the divorce petition or, if unavailable, be filed before any hearing, ensuring due process and protecting the rights of the accused. When this requirement is violated—such as by holding a hearing without the order—the accused is deprived of a fair opportunity to review and challenge the alleged order, undermining procedural fairness and potentially allowing unsubstantiated claims to influence the proceedings.

Summary

Section 6.405(b) of the Texas Family Code mandates that if a party in a divorce proceeding claims the existence of a protective order, a copy of that order must be attached to the petition or, if not available at filing, must be provided to the court before any hearing takes place. This procedural safeguard is designed to ensure that both the court and the opposing party have access to the actual terms and existence of the protective order, thereby protecting the due process rights of the person against whom the order is claimed.

If a court proceeds with a hearing without the required order being provided, as described in the scenario, it violates the statutory protections intended to prevent unfair surprise and to allow the accused party to respond meaningfully to the allegations. This failure can result in the court considering unverified or false claims about the existence or content of a protective order, which may prejudice the accused and compromise the integrity of the judicial process.

Background and Relevant Law

The central legislative authority governing this issue is Texas Family Code § 6.405, specifically subsection (b), as reflected in the 2025 version of the statute. This provision applies to all suits for dissolution of marriage in Texas

and addresses the handling of protective orders and related orders in the context of divorce proceedings.

Section 6.405(a) requires that a divorce petition must state whether there is an active protective order, an order under the Code of Criminal Procedure, or an application for such an order pending. Subsection (b) then imposes a further requirement: the petitioner must attach a copy of each such order to the petition. If a copy is not available at the time of filing, the petition must state that the order will be filed with the court before any hearing occurs.

The legislative intent behind this requirement is to ensure transparency and procedural fairness. By mandating disclosure and timely provision of the actual order, the statute seeks to prevent situations where one party claims the existence of a protective order—potentially to gain a procedural or substantive advantage—without allowing the other party or the court to verify the order's existence, terms, or relevance.

This statutory framework is designed to protect the due process rights of the accused party, who may otherwise be subject to adverse consequences (such as the waiver of the 60-day waiting period for divorce or the imposition of restrictions) based on unsubstantiated or misrepresented claims.

Analysis

The Importance of Section 6.405(b)

Section 6.405(b) serves several critical functions in Texas family law:

- 1. Ensuring Due Process and Fair Notice:** By requiring the attachment or timely filing of any protective order, the statute ensures that the accused party receives fair notice of the specific allegations and the legal basis for any requested relief. This allows the accused to prepare a defense, challenge the validity or applicability of the order, and avoid being blindsided by unsubstantiated claims.
- 2. Preventing Abuse of Process:** The requirement to provide the actual order deters parties from making false or exaggerated claims about the existence or content of protective orders. Without this safeguard, a party could allege the existence of an order to gain procedural advantages—such as waiving the 60-day waiting period for divorce—without any evidentiary support.
- 3. Facilitating Judicial Review:** The court must have access to the actual order to determine its terms, scope, and relevance to the issues before it. This is especially important when the existence of a protective order is used to justify waiving statutory requirements or to influence the court's decisions regarding custody, visitation, or other matters.
- 4. Protecting the Accused's Rights:** The accused party has a right to know the specific allegations and the legal instruments being invoked against them. Section 6.405(b) ensures that the accused is not deprived

of this right by requiring the petitioner to provide the relevant documentation before any hearing.

Consequences of Violating Section 6.405(b)

When a court holds a hearing without the protections of section 6.405(b)—that is, without the required order being attached to the petition or filed before the hearing—the following consequences may arise:

- **Deprivation of Due Process:** The accused party is denied the opportunity to review and respond to the alleged order, undermining the fairness of the proceedings.
- **Risk of Unsubstantiated Allegations:** The court may be influenced by claims about the existence or content of a protective order that have not been verified, increasing the risk of decisions based on false or misleading information.
- **Procedural Irregularity:** The court's failure to enforce the statutory requirement may constitute a procedural error, potentially subjecting its orders to challenge or appeal.
- **Potential Prejudice:** The accused may suffer prejudice if the court acts on the assumption that a protective order exists or contains certain findings (such as family violence) without having seen the actual order.

In the scenario described, the mother claimed to have an active protective order with a finding of family violence, which would allow her to waive the 60-day waiting period for divorce. However, she did not provide the required order, and the court proceeded with a hearing without ensuring compliance with section 6.405(b). This deprived the accused (the other party) of the opportunity to review and contest the alleged order, and allowed the mother to make unverified allegations in court.

Application to the Scenario

The facts presented illustrate a textbook violation of section 6.405(b). The petitioner (the mother) claimed the existence of a protective order with a finding of family violence, which, if true, would have significant procedural consequences (such as waiving the 60-day waiting period). However, she failed to attach the order to her petition or to file it before the hearing, as required by law.

Despite this, the court proceeded with a hearing, during which the mother made serious allegations against the accused party. Because the required order was never provided, the accused was denied the opportunity to review the order, challenge its existence or terms, or contest the underlying allegations. This not only undermined the accused's due process rights but also allowed the court to consider unsubstantiated claims, potentially affecting the outcome of the case.

Section 6.405(b) was designed precisely to prevent this type of scenario. By requiring the actual order to be provided before any hearing, the statute ensures that all parties and the court have access to the relevant evidence and can make informed decisions based on verified facts.

Broader Implications

The violation of section 6.405(b) in this context has broader implications for the integrity of the judicial process. If courts routinely allow hearings to proceed without the required documentation, parties may be incentivized to make false or exaggerated claims about protective orders, knowing that they will not be required to provide proof. This undermines public confidence in the fairness and reliability of the legal system.

Moreover, the failure to enforce section 6.405(b) can have serious consequences for the accused, who may be subject to adverse findings or restrictions based on unverified allegations. This is particularly concerning in cases involving claims of family violence, where the stakes are high and the potential for abuse of process is significant.

Exceptions and Caveats

Section 6.405(b) does provide a limited exception: if a copy of the protective order is not available at the time of filing, the petition must state that the order will be filed with the court before any hearing. This recognizes that there may be legitimate reasons why a party cannot provide the order immediately, but it does not excuse the failure to provide the order before the court takes any action.

There are no exceptions in the statute that would allow a court to proceed with a hearing on the basis of an alleged protective order without the order being provided. The statutory language is clear that the order must be attached to the petition or filed before any hearing. Any deviation from this requirement constitutes a violation of the statute and undermines the procedural protections it was designed to provide.

Conclusion

Texas Family Code § 6.405(b) is a critical procedural safeguard in divorce proceedings involving claims of protective orders. It requires that any claimed protective order be attached to the petition or, if unavailable at filing, be provided before any hearing. This ensures due process, prevents abuse of process, and protects the rights of the accused.

When a court holds a hearing without the required order being provided, it violates the statute and deprives the accused of a fair opportunity to review and challenge the alleged order. This can result in unsubstantiated claims influencing the outcome of the case and undermines the integrity of the judicial process. The scenario described exemplifies the dangers of failing to enforce section 6.405(b), highlighting the importance of strict compliance with this statutory requirement to ensure fairness and due process for all parties.

Legal Authorities

[Tex. Fam. Code § 6.405 Tex. Fam. Code § 6.405 Protective Order and Related Orders](#)

Extract

The petition in a suit for dissolution of a marriage must state whether... there is in effect: (A) a protective order under Title 4; (B) a protective order under Subchapter A, Chapter 7B, Code of Criminal Procedure; or (C) an order for emergency protection under Article Code of Criminal Procedure 17.292, Code of Criminal Procedure; or an application for an order described by Subdivision is pending. (b) The petitioner shall attach to the petition a copy of each order described by Subsection (a)... If a copy of the order is not available at the time of filing, the petition must state that a copy of the order will be filed with the court before any hearing.

Summary

The statute requires two things when a party claims the existence or pendency of a protective order: (1) disclosure in the petition, and (2) attachment of the order. If the copy is unavailable at filing, the petition must promise filing "before any hearing." This protects due process by ensuring the court and the opposing party see the actual order and its terms before hearings proceed. Holding a hearing without the order, after a party has invoked it, contravenes § 6.405(b)'s procedural requirement.

This memo was compiled by Vincent AI based on vLex materials available as of December 13, 2025. [View full answer on vLex](#)