

Question

When an attorney fails to respond to an emergency motion that makes allegations against her client, says she'll respond in writing, but never does, and then shows up to the hearing and blindsides the father with temporary orders and hands the judge a proposed order asking him to deny the motion she never responded to, and the judge does it, how is this a major violation of due process and potentially criminal, especially when the associate judge was not vested with an order of referral, and the attorney is likely unauthorized to represent her client in the first place.

Answer (Texas)

Short response

The scenario described constitutes a significant violation of due process under Texas law, as it involves the issuance of temporary orders without proper notice, hearing, or jurisdiction—especially where the associate judge lacked a valid order of referral and the attorney may have been unauthorized to represent her client. While these actions undermine the integrity of the judicial process and may render the orders void, criminal liability would generally arise only if there is clear evidence of unauthorized practice of law or intentional fraud on the court.

Summary

Texas law requires strict adherence to procedural safeguards in family law proceedings, including proper notice, opportunity to be heard, and jurisdictional authority for both judges and attorneys. When an attorney fails to respond to an emergency motion, appears at a hearing without prior written response, and secures orders from an associate judge who lacks a valid referral, these actions collectively violate statutory and constitutional due process rights, potentially rendering any resulting orders void.

Furthermore, if the attorney was not authorized to represent her client, this could constitute unauthorized practice of law, which is subject to civil enforcement and, in some cases, criminal penalties. However, not every due process violation is criminal; criminality would depend on the presence of willful misconduct, such as knowingly practicing law without a license or engaging in fraud. The most immediate legal consequences are the voiding of improperly issued orders and potential disciplinary or civil action against the attorney and the associate judge.

Background and Relevant Law

Legislative Framework

1. Authority of Associate Judges: [Tex. Fam. Code § 201.006](#)

Under Texas Family Code § 201.006, an associate judge may only act in a case if the referring court has issued either an individual or general order of referral. This order is a jurisdictional prerequisite; without it, the associate judge lacks authority to hear the case or issue orders. Any action taken by an associate judge in the absence of a valid referral order is void or voidable for lack of jurisdiction, and the statute allows the referring court to limit the associate judge's powers through the referral order. This requirement is fundamental to the lawful exercise of judicial power in family law matters, ensuring that only properly authorized judicial officers preside over cases ([Tex. Fam. Code § 201.006](#)).

2. Temporary Orders and Due Process: [Tex. Fam. Code § 105.001](#)

Section 105.001 of the Texas Family Code governs the issuance of temporary orders in family law cases. It generally requires that such orders be made only after notice and a hearing, except in limited emergency circumstances (typically involving governmental entities under Chapter 262). The statute further restricts the court's ability to issue certain severe remedies—such as excluding a parent from possession or access to a child—unless supported by a verified pleading or affidavit. Orders issued without proper notice, hearing, or verification, except in narrowly defined emergencies, violate the procedural protections enshrined in this statute ([Tex. Fam. Code § 105.001](#)).

Case Law

1. Jurisdiction and Due Process: [In re Sproul](#)

The Texas Court of Appeals in [In re Sproul](#) emphasized that relief cannot be awarded in family law proceedings without proper pleadings and personal service or notice. Under Chapter 157, enforcement actions require specific allegations and at least 10 days' personal service before the hearing. Similarly, modification proceedings under Chapter 156 require citation and service in accordance with the Texas Rules of Civil Procedure. Failure to provide proper notice and service deprives the court of jurisdiction over the respondent, making any relief granted improper and a violation of due process. The court underscored that due process requires notice and an opportunity to be heard before any adverse action is taken ([In re Sproul, 04-24-00202-CV \(Tex. App. Jun 20, 2024\)](#)).

2. Associate Judge Authority and Notice: [Target Logistics, Inc. v. Office of the Attorney Gen. of Tex.](#)

In [Target Logistics](#), the appellate court held that an associate judge lacks jurisdiction to render orders in the absence of a valid referral order under § 201.006. Orders entered without such authority are void. The court also reaffirmed that entering orders without adequate notice violates the most

basic requirements of due process, rendering such judgments constitutionally infirm. The right to notice and an opportunity to be heard is fundamental, and any deviation from these requirements deprives a party of their constitutional rights ([Target Logistics, Inc. v. Office of the Attorney Gen. of Tex., 465 S.W.3d 768 \(Tex. App. 2015\)](#)).

3. Unauthorized Practice of Law: Torres v. Unauthorized Practice of Law Comm.

The Torres case confirms that only licensed attorneys may represent others in Texas courts. Non-lawyers who attempt to represent parties in litigation are engaging in the unauthorized practice of law (UPL), which is subject to civil enforcement and, in some cases, criminal penalties. The Unauthorized Practice of Law Committee (UPLC) is empowered to seek injunctions against UPL without meeting traditional requirements for injunctive relief. The case also notes that due process complaints regarding notice must be preserved by timely objection, but a complete lack of notice or deprivation of the right to respond can preserve error for appeal ([Torres v. Unauthorized Practice of Law Comm. For Supreme Court of Tex., 05-21-00651-CV \(Tex. App. Sep 09, 2022\)](#)).

Analysis

1. Due Process Violations

A. Lack of Notice and Opportunity to Be Heard

The scenario describes a situation where an attorney fails to respond in writing to an emergency motion containing allegations against her client, then appears at a hearing and presents new temporary orders, effectively ambushing the opposing party. Texas law, both statutory and case law, is clear that due process requires notice and an opportunity to be heard before any adverse action is taken in family law proceedings. Section 105.001 of the Family Code mandates notice and a hearing for temporary orders, with only narrow exceptions for emergency ex parte relief sought by governmental entities. The appellate courts have repeatedly held that orders issued without proper notice and service are constitutionally infirm and violate due process ([Target Logistics, Inc. v. Office of the Attorney Gen. of Tex., 465 S.W.3d 768 \(Tex. App. 2015\)](#); [In re Sproul, 04-24-00202-CV \(Tex. App. Jun 20, 2024\)](#)).

In [In re Sproul](#), the court found that failure to serve the respondent with notice and citation deprived the court of jurisdiction and made any relief improper. Similarly, in [Target Logistics](#), the lack of timely notice and opportunity to be heard was deemed a violation of fundamental due process. The described conduct—failing to respond in writing, then seeking relief at a hearing without proper notice—directly contravenes these requirements.

B. Jurisdictional Defects: Associate Judge Without Referral

The authority of an associate judge to hear and decide cases is strictly limited by statute. Section 201.006 of the Family Code requires a valid order

of referral from the referring court. Without such an order, the associate judge has no jurisdiction to act, and any orders issued are void. The [Target Logistics](#) case is directly on point, holding that orders rendered by an associate judge without a referral order are void for lack of jurisdiction. This is not a mere technicality; it is a fundamental safeguard to ensure that only properly authorized judicial officers exercise the power of the court ([Tex. Fam. Code § 201.006](#); [Target Logistics, Inc. v. Office of the Attorney Gen. of Tex.](#), 465 S.W.3d 768 (Tex. App. 2015)).

C. Unauthorized Practice of Law

If the attorney in question was not authorized to represent her client—either because she was not licensed or otherwise lacked authority—her actions may constitute the unauthorized practice of law (UPL). The Torres case confirms that only licensed attorneys may represent others in Texas courts, and that UPL is subject to civil enforcement and, in some cases, criminal penalties. The UPLC is empowered to seek injunctions against UPL, and the Texas Government Code prohibits non-lawyers from representing others in litigation. If the attorney was not licensed or otherwise unauthorized, her actions could be subject to disciplinary action, civil injunction, and potentially criminal prosecution if the conduct was willful ([Torres v. Unauthorized Practice of Law Comm. For Supreme Court of Tex.](#), 05-21-00651-CV (Tex. App. Sep 09, 2022)).

2. Potential Criminality

While the described conduct is a serious violation of due process and may render the resulting orders void, not every due process violation is criminal. Criminal liability would generally require proof of willful misconduct, such as knowingly practicing law without a license or engaging in fraud on the court. The Torres case indicates that UPL can be subject to criminal penalties, but the primary remedy is civil enforcement by the UPLC. If the attorney knowingly misrepresented her status or engaged in fraudulent conduct, criminal charges could be pursued, but this would require additional evidence beyond the procedural violations described.

3. Consequences of Due Process and Jurisdictional Violations

The most immediate legal consequence of the described conduct is that any orders issued by the associate judge without a valid referral order, or without proper notice and hearing, are void or voidable. Parties affected by such orders may seek to have them set aside on appeal or by collateral attack. The courts have consistently held that judgments entered without jurisdiction or in violation of due process are constitutionally infirm and cannot stand ([Target Logistics, Inc. v. Office of the Attorney Gen. of Tex.](#), 465 S.W.3d 768 (Tex. App. 2015); [In re Sproul](#), 04-24-00202-CV (Tex. App. Jun 20, 2024)).

In addition, attorneys who engage in such conduct may be subject to disciplinary action by the State Bar of Texas for violating ethical rules, including the duty of candor to the tribunal and the obligation to respect the

rights of opposing parties. If the attorney was not authorized to practice law, she may also face civil injunctions and, in egregious cases, criminal prosecution for UPL.

4. Preservation of Error and Waiver

The Torres case also addresses the importance of preserving due process complaints regarding notice. If a party is aware of a hearing and fails to object to insufficient notice, the issue may be waived. However, if there was a complete lack of notice or the party was deprived of the right to respond, error may be preserved for appeal. In the scenario described, if the father was truly blindsided and had no meaningful opportunity to respond, the due process violation would likely be preserved for appellate review ([Torres v. Unauthorized Practice of Law Comm. For Supreme Court of Tex., 05-21-00651-CV \(Tex. App. Sep 09, 2022\)](#)).

Exceptions and Caveats

There are limited exceptions to the notice and hearing requirements for temporary orders, primarily in cases involving emergency relief sought by governmental entities under Chapter 262 of the Family Code. However, these exceptions do not apply to private parties in standard family law disputes. Additionally, if the party affected by the orders had actual notice and an opportunity to be heard but failed to object, some due process arguments may be waived. The facts as described suggest a lack of meaningful notice and opportunity to respond, making waiver unlikely.

Criminal liability for unauthorized practice of law or fraud on the court requires proof of intent and knowledge. Mere procedural errors or negligence, without more, are unlikely to result in criminal prosecution. The primary remedies are civil—voiding the orders, disciplinary action, and injunctions against UPL.

Conclusion

The actions described—failure to respond to an emergency motion, ambushing the opposing party at a hearing, securing orders from an associate judge without a valid referral, and possible unauthorized representation—constitute serious violations of due process and jurisdictional requirements under Texas law. Orders issued under these circumstances are void or voidable, and the affected party has strong grounds to challenge them. While such conduct may also expose the attorney to disciplinary action and, in cases of willful unauthorized practice, criminal penalties, not every due process violation is criminal. The most immediate and significant consequence is the invalidity of the orders and the undermining of the integrity of the judicial process. The authorities make clear that strict adherence to procedural safeguards is essential to protect the rights of all parties in family law proceedings.

Legal Authorities

Texas Court of Appeals

Extract

Because Mother's motion to compel references the 2023 Order as a prelude to requesting relief, it could be seen as a motion to enforce under Chapter 157 of the Texas Family Code or a motion to modify under Chapter 156 of the Family Code. However, there are problems with both approaches that preclude the relief awarded by the trial court... A motion for enforcement must, in ordinary and concise language identify the provision of the order sought to be enforced and state the manner of the alleged noncompliance... It is undisputed that Mother's motion does not contain the required allegations to constitute a motion for enforcement... Additionally, Mother failed to comply with the notice and service provision of Chapter 157, which requires 'personal service of a copy of the motion and notice not later than the 10th day before the date of the hearing.'... Because Mother failed to have Father served personally, and because Mother's motion contained no allegations that Father failed to comply with the 2023 Order, it would be an abuse of discretion to award relief under Chapter 157... For the same reason, it would have been error for the trial court to have awarded relief to Mother if her motion were viewed as a motion to modify under Chapter 156... It is undisputed that Mother did not serve Father with notice and citation as required under the Texas Rules of Civil Procedure. Accordingly, it would have been error for the trial court to grant relief to Mother when it did not have jurisdiction over Father.. 'Put simply, a case is moot when the court's action on the merits cannot affect the parties' rights or interests.' ... Given Mother's pending claim for fees, Father's challenge to the trial court's jurisdiction can still affect the parties' rights and interests. Accordingly, a justiciable controversy exists.

Summary

The appellate court held that awarding relief without proper pleadings and without personal service/notice is error and an abuse of discretion. Under Chapter 157, enforcement requires specific allegations and 10-day personal service; under Chapter 156, modification requires citation and service per TRCP. Failure to serve deprives the court of jurisdiction over the respondent, making relief improper. This directly implicates due process (notice and opportunity to be heard). The case also notes that pending fee claims can keep controversies live. While the passages do not address criminality, unauthorized representation or lack of an order of referral to an associate judge would further undermine jurisdiction/authority, consistent with due-process violations.

Extract

In addition to the arguments made by the UPLC, the trial court had before it evidence that Torres was not a licensed attorney in the state of Texas, and that she filed motions and other requests for relief on behalf of the HR Entities in the Underlying Suit. The summary judgment evidence further showed that Torres stated her intention to continue to represent the HR Entities in the Underlying Suit despite being informed she could not legally do so. See *Rodriguez v. Marcus*, 484 S.W.3d 656, 657 (Tex. App.-El Paso 2016, no pet.) (a non-lawyer may not represent another party in litigation and corporation may not appear through officers that are not attorneys). Except in limited circumstances not applicable here, a person may not practice law in the state of Texas unless the person is a member of the state bar." ... "Section 81.104 of the Texas Government Code authorizes the UPLC to 'seek the elimination of the unauthorized practice of law by appropriate actions and methods, including the filing of suits in the name of the committee.' ... The statute's express authorization of the committee to eliminate the unauthorized practice law through legal action supersedes the common law requirements for injunctive relief such as imminent harm and irreparable injury." ... "A party who complains of less than twenty-one days' notice of a summary judgment hearing, but admits to knowing of the hearing date before it occurs, waives the defense of insufficient notice if the issue is not brought to the trial court's attention at or before the scheduled hearing or submission date. ... The party may preserve error in a post-trial motion only when they are not given notice of the summary judgment hearing or they are deprived of their right to seek leave to file additional affidavits or other written response.

Summary

The case confirms that non-lawyers cannot represent others in Texas courts; doing so is unauthorized practice of law. The UPLC can bring suits to stop UPL without meeting traditional injunction standards. The notice/waiver passage addresses preservation of due-process complaints in summary judgment—if a party knew of a hearing and didn't timely object, notice defects can be waived; lack of any notice or deprivation of ability to respond can preserve error. While the facts here involve family-law emergency motions and an associate judge referral issue, the passages provide relevant principles on UPL and on how due-process/notice objections must be preserved.

[Target Logistics, Inc. v. Office of the Attorney Gen. of Tex., 465 S.W.3d 768 \(Tex. App. 2015\)](#)

Texas Court of Appeals

Extract

Target presents two issues on appeal. In Issue One, Target asserts the associate judge lacked jurisdiction to render the default order due to the

lack of a referral order from the district court to the associate judge in this cause pursuant to Texas Family Code section 201.006. In Issue Two, Target contends its due process rights have been violated because the associate judge and trial court entered a default order in contravention of Texas Family Code section 157.062(c). Section 157.062(c) mandates that a hearing 'for enforcement of an existing order providing for child support ... shall be given to the respondent ... not later than the 10th day before the date of the hearing.' ... The lack of notice violates 'the most rudimentary demands of due process of law.' ... 'a judgment entered without notice or service is constitutionally infirm,' and violates due process. ... '[A]n elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action ...' ... 'trial court's failure to comply with the rules of notice in a contested case deprives a party of the constitutional right to be present at the hearing, to voice [her] objections in an appropriate manner, and results in a violation of fundamental due process.'

Summary

The case supports two key points relevant to the question: (a) an associate judge lacks authority to render orders without a proper referral under Tex. Fam. Code §201.006; orders entered without such referral are void for lack of jurisdiction. (b) Entering orders without statutorily adequate notice violates due process; lack of timely notice and opportunity to be heard renders the judgment constitutionally infirm. The passages do not address criminality or attorney authorization directly, but they squarely support due process and jurisdictional defects.

[Tex. Fam. Code § 201.006 Tex. Fam. Code § 201.006 Order of Referral](#)

Extract

In referring a case to an associate judge, the judge of the referring court shall render: an individual order of referral; or a general order of referral specifying the class and type of cases to be heard by the associate judge. The order of referral may limit the power or duties of an associate judge.

Summary

Section 201.006 mandates that a referring court must issue either an individual or general order of referral to empower an associate judge to hear a case. Without such an order, an associate judge's authority is not properly vested, and any actions taken may be void or voidable for lack of jurisdiction/authority. The statute applies broadly to all associate judge proceedings in family cases and allows limitations on an associate judge's powers via the referral order.

[Tex. Fam. Code § 105.001 Tex. Fam. Code § 105.001 Temporary Orders Before Final Order](#)

Extract

In a suit, the court may make a temporary order... Except as provided by Subsection (c), temporary restraining orders and temporary injunctions under this section shall be granted without the necessity of an affidavit or verified pleading... Except as provided by Subsection (h), an order may not be rendered under Subsection (a)... except after notice and a hearing." ... "Except on a verified pleading or an affidavit... an order may not be rendered: attaching the body of the child; taking the child into the possession of the court...; or excluding a parent from possession of or access to a child." ... "An order under Subsection (a) may be rendered without notice and an adversary hearing if the order is an emergency order sought by a governmental entity under Chapter 262.

Summary

Section 105.001 authorizes temporary orders but conditions most such relief on notice and a hearing. It also restricts certain severe remedies (e.g., excluding a parent from possession/access) unless supported by a verified pleading or affidavit. Ex parte orders without notice are permitted only in limited contexts and, for emergency orders without notice, only when sought by a governmental entity under Chapter 262. Thus, a court denying an emergency motion and issuing temporary relief without proper notice, hearing, or verification for relief that affects possession/access would contravene §105.001's procedural protections. However, §105.001 does not address associate judge referral requirements or attorney authorization/appearance issues, nor criminality.

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