



HEARSAY AND EVIDENTIARY ISSUES AT SOAH

**"It's Not What You Know, It's What You
Can Prove"**

UTLAW CLE

19th Annual Advanced Administrative Law Course

September 17-18, 2024

1



LOOK WOODY. CHANGE,

CHANGE EVERYWHERE

2



In the words of David Bowie, “Turn and face the strange changes . . .”

- Virtual Hearings are the New Normal . . . Forever.
 - Must file exhibits in advance (Movelt or Party Sharefile)
 - Must display exhibits virtually
 - File Cross-Examination exhibits the night before
 - Must provide proposed exhibits to court reporter before, and file actual admitted exhibits with court reporter afterward
 - Avoid exhibits that require special software (such as GIS files)
- Evidentiary Rules Appear to be More Strictly Applied at SOAH.

3



Expert Witnesses

- Testifying Experts – Most everything is fully discoverable in state regulatory proceedings (what they review, what they have been provided, communications, etc.)
- Consulting Experts – If hired by attorney for purposes of assisting in the rendering of legal advice, then they are an extension of the lawyer and most everything is privileged

4



It has been presumed by many that, if a client offers testimony as an expert witness, then the attorney-client privilege may be waived in regard to communications with the witness that related to the subject matter of the "expert" testimony, pursuant to Tex. R. Evid. 192.3(e)(6)

AUSTIN | DALLAS | FORT WORTH | HOUSTON | SAN ANGELO | SAN ANTONIO | JW.com

5



Tex. R. Evid. 192.3(e)(6):

“A party may discover . . . all documents, tangible things, reports, models, or data compilations that have been provided to, reviewed by, or prepared by or for [an] expert in anticipation of a testifying expert’s testimony.”

AUSTIN | DALLAS | FORT WORTH | HOUSTON | SAN ANGELO | SAN ANTONIO | JW.com

6

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: Hearsay and Evidence Issues at SOAH

Also available as part of the eCourse

[2024 Advanced Texas Administrative Law eConference](#)

First appeared as part of the conference materials for the
19th Annual Advanced Texas Administrative Law Seminar session
"Hearsay and Evidence at SOAH"