



# Making & Responding to Objections at SOAH: Playing Offense & Defense & Preservation of Error

Susan Dillon Ayers  
W. Brad Anderson  
Jackson Walker LLP  
100 Congress Avenue  
Suite 1100  
Austin, Texas 78701  
(512) 236-2336  
[sayers@jw.com](mailto:sayers@jw.com)  
[banderson@jw.com](mailto:banderson@jw.com)



© 2021 JACKSON WALKER LLP

1



Texas Administrative Code  
Texas Government Code  
Texas Rules of Civil Procedure

2

### (a) Rules of evidence.

(1) The Texas Rules of Evidence as applied in a nonjury civil case in district court govern contested case hearings conducted by SOAH.

(2) Evidence may be admitted if it meets the standards set out in Texas Government Code § 2001.081. . . . .

1 Tex. Admin. Code § 155.429

The rules of evidence as applied in a nonjury civil case in a district court of this state shall apply to a contested case **except that evidence inadmissible under those rules may be admitted if** the evidence is:

(1) necessary to ascertain facts not reasonably susceptible of proof under those rules;

(2) not precluded by statute; and

(3) of a type on which a reasonably prudent person commonly relies in the conduct of the person's affairs.

Tex. Gov't Code § 2001.081

Parties have the discovery rights provided in this section, the APA, and the TRCP, other than the provisions relating to discovery control plans and except as modified by this chapter.

1 Tex. Admin. Code § 155.251(c)

**193.6 Failing to Timely Respond—Effect on Trial** (eff. for cases filed on or after Jan. 1, 2021).

**(a) Exclusion of Evidence and Exceptions.** A party who fails to make, amend, or supplement a discovery response, including a required disclosure, in a timely manner **may not introduce in evidence** the material or information that was not timely disclosed, or offer the testimony of a witness (other than a named party) who was not timely identified, unless the court finds that:

- (1) there was good cause for the failure to timely make, amend, or supplement the discovery response; or
- (2) the failure to timely make, amend, or supplement the discovery response will not unfairly surprise or unfairly prejudice the other parties.

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 \(utcle.org/elibrary\)](http://utcle.org/elibrary)

## Title search: Making and Responding to Objections at SOAH: Playing Offense & Defense & Preservation of Error

First appeared as part of the conference materials for the  
17<sup>th</sup> Annual Advanced Texas Administrative Law Seminar session  
"Making and Responding to Objections at SOAH"