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

- Virtual Hearings are the New Normal . . . Forever.
  - Must file exhibits in advance (MoveIt 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)



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.”

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## Title search: Hearsay and Evidence Issues at SOAH

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19<sup>th</sup> Annual Advanced Texas Administrative Law Seminar session  
"Hearsay and Evidence at SOAH"