

THE CERTIFICATE OF MERIT STATUTE

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- “(1) is competent to testify;
(2) holds the same professional license or registration . . . ; and
(3) is knowledgeable in the area of practice of the defendant and offers testimony based on the person’s:
 - (A) knowledge;
 - (B) skill;
 - (C) experience;
 - (D) education;
 - (E) training; *and*
 - (F) practice.”

Key provisions in current statute

The affidavit needs to specifically set out

- “For *each theory* of recovery . . .the negligence, if any, or other action, error, or omission of the licensed or registered professional . . . and the factual basis of each such claim.”
- The affiant “shall be licensed or registered *in this state* and actively engaged in the practice
.....”

Key provisions in current statute

- The failure to file the affidavit “shall result in dismissal” Such dismissal may be with prejudice.
- An order granting or denying the dismissal may be immediately appealed.
- The court, after hearing, may for good cause “extend such time [to file the affidavit] as it shall determine justice requires” when limitations comes into play.

Questions about § 150.002

- Does the statute apply to third-party claims?

No – see *Jaster v. Comet II Const., Inc.*,
438 S.W.3d 556 (Tex. 2014)

but see, Macina, Bose, Copeland and Associates v. Yanez,
2017 WL 4837691 (Tex. App. – Dallas 2017)

Questions about § 150.002

- What must be included in the affidavit?

Texas Supreme Court Cases

- *Levinson Alcoser Associates, L.P. v. El Pistolon II, Ltd.*, 513 S.W.3d 487 (Tex. 2017)
 - Purported expert needs to be shown to be qualified to render certificate of merit.
 - Knowledge requirement not the same as licensure requirement under § 150.002.
 - Language indicates the affidavit *or* the record can show qualification and knowledge.

Texas Supreme Court Cases

- *Pederal Energy, LLC v. Bruington Engineering, Ltd.*, 2017 WL 1737920 (Tex. 2017)
 - Statute allows dismissal without prejudice.
 - In this case, not an abuse of discretion.

Query: When is it an abuse of discretion?

Texas Supreme Court Cases

- *Melden & Hunt, Inc. v. East Rio Hondo Water Supply Corp.*, 520 S.W.3d 887 (Tex. 2017)
 - Registered engineer qualified to provide affidavit.
 - Statute does not require affidavit to address elements of various causes of action.

Other Texas Cases Raise Questions

- *Jaster-Quintanilla & Associates, Inc. v. Prouty*, 2018 WL 455508 (Tex. App. – Austin – 2018)
 - Are conclusory affidavits enough?
- *Macina, Bose, Copeland and Associates v. Yanez*, 2017 WL 4837691 (Tex. App. – Dallas 2017)
 - When is affidavit sufficient for multiple defendants?
 - When is 3rd party plaintiff obligated to get affidavit?

Other Recent Cases

- *SSOE, Inc. v. Tokio Marine America Ins. Co.*, 2018 WL 6793627 (Tex. App. – San Antonio 2018, no writ)
- *Kayne Anderson Capital Advisors, L.P. v. Hill & Frank, Inc.*, 2018 WL 6613656 (Tex. App. – Houston (1st Dist.) 2018, no writ)
- *Gignac & Associates, LLP v. Hernandez*, 2018 WL 898144 (Tex. App. – Corpus Christi – Edinburg, 2018) (R’hg *en banc* denied)
- *TIC N. Cent. Dallas 3, LLC v. Envirobusiness, Inc. v. Perkins & Will, Inc., et al.*, 463 S.W.3d 71 (Tex. App. – Dallas 2014, pet. denied)

Thank you.

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