

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 . . .”
- 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.

§150.001 (2009)

- “Licensed or registered professional” means a licensed architect, licensed professional engineer, registered professional land surveyor, registered landscape architect, or any firm in which such licensed or registered professional practices
.....”

Questions about § 150.002

- When does the statute apply?
 - Negligence
 - Contract claims?
 - Breach of warranty claims?
 - Statutory violations?
 - Tortious interference?

Questions about § 150.002

- Does the statute apply to cross-claims, counterclaims, third-party claims or responsible third-party designations?

Questions about § 150.002

- What must be included in the affidavit?

Questions about § 150.002

- Do courts examine the substance of the claim or rely on the characterization of the claim by the claimant?

Recent Decisions

- *TIC N. Central Dallas 3, L.L.C. v. Envirobusiness, Inc. d/b/a EBI Consulting, et al.* 2014 WL 4722706 (Dallas, Sept. 24, 2014, pet. filed)
 - “May” is significant
 - Related to professional services

Recent Decisions

- *Bruington Engineering, Ltd., v. Pedernal Energy, L.L.C.*, 2014 WL 4211024 (San Antonio, August 27, 2014)
 - First-filed means first filed

Thank you.

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