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## **Findings of Fact and Conclusions of Law Update**

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## Findings of Fact & Conclusions of Law: Do They Really Matter?

### I. Introduction.

You've just tried a case to the bench, and the trial court has rendered judgment against your client. Now you're wondering if you should request findings of fact and conclusions of law and, if so, how much time and effort to expend in obtaining them. Will they really matter if your client decides to appeal?

The answer to this question is: "Yes!" Findings of fact, in particular, are of great importance on appeal; however, the procedure for requesting and obtaining them is fraught with pitfalls for the unwary. If you plan to request findings and conclusions—and you should, if you want to challenge the trial court's judgment—you'll want to do more than click your heels together three times and hope for the best. This paper is designed to alert you to some of the pitfalls associated with requesting findings of fact and conclusions of law and to provide you some tools so that you can request and obtain the findings that you need or be prepared to challenge on appeal the trial court's failure to make those findings.

As with all seminar papers, this article relies heavily on the works of others. The authors gratefully acknowledge the foundation provided in two excellent articles authored by Justice Eva M. Guzman of the Supreme Court and the Fourteenth Court of Appeals' Chief Staff Attorney, Nina Reilly: "*Think Before You Write*"—*Preparing Findings of Fact and Conclusions of Law*, STATE BAR OF TEXAS, 32ND ANNUAL ADVANCED FAMILY LAW PRACTICE COURSE (2006); and *Post-Trial Appellate Issues Including Findings of Fact: A View From the Appellate Court*, STATE BAR OF TEXAS, ADVANCED FAMILY LAW DRAFTING COURSE (2005).

### II. Why Are Findings of Fact and Conclusions of Law Important?

Findings of fact and conclusions of law form the basis of the trial court's judgment.<sup>1</sup> Findings of fact reflect the trial court's decisions regarding the ultimate and controlling factual issues of a plaintiff's claim or a defendant's defense. From the findings of fact, the trial court draws its conclusions of law that support the court's disposition of the case.<sup>2</sup> Findings of fact and conclusions of law filed after a bench trial are equivalent to a jury verdict returned after a jury trial.<sup>3</sup>

Findings of fact and conclusions of law are important because, without them, it is often difficult for the appellate court to determine what legal theory forms the basis of the trial court's judgment. Further, as discussed herein, if findings are not filed, it is often virtually impossible to attack the trial court's judgment on appeal.

### III. Who Should Request Them?

Any party to a case may request findings of fact and conclusions of law.<sup>4</sup> As a practical matter, however, generally only the losing party will request initial findings and conclusions, because a judgment rendered without them has the greatest possibility of being upheld on appeal. Findings of fact can provide a basis for overcoming the presumption of the validity of the judgment and demonstrating error on appeal.<sup>5</sup>

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<sup>1</sup> Tex. R. Civ. P. 299.

<sup>2</sup> *James Holmes Enters., Inc. v. John Bankston Constr. & Equip. Rental, Inc.*, 664 S.W.2d 832, 834 (Tex. App.—Beaumont 1983, writ ref'd n.r.e.) (op. on reh'g).

<sup>3</sup> *Anderson v. City of Seven Points*, 806 S.W.2d 791, 794 (Tex. 1991).

<sup>4</sup> Tex. R. Civ. P. 296.

<sup>5</sup> *Vickery v. Comm'n for Lawyer Discipline*, 5 S.W.3d 241, 253 (Tex. App.—Houston [14th Dist.] 1999, pet. denied).

When findings and conclusions are requested, unless the losing party submits proposed findings with his request, the trial court usually invites the prevailing party to prepare them based on the court's rulings.<sup>6</sup> If additional or amended findings are requested, however, Rule 298 contemplates that the request should not be a general request, but should specify the additional or amended findings that the party making the request wants the trial court to make.<sup>7</sup>

#### IV. In What Situations Should They Be Requested?

##### A. Following a Bench Trial on the Merits.

The parties have a right to written findings of fact and conclusions of law after a conventional bench trial on the merits.<sup>8</sup> Thus, if they are properly requested, the trial court must make and file them.<sup>9</sup> The request must be entitled "Request for Findings of Fact and Conclusions of Law" and must be served on all other parties to the case in accordance with Rule 21a.<sup>10</sup>

##### B. Other Situations.

In situations in which an abuse of discretion standard of review applies, the Texas Supreme Court has stated that trial court findings may aid an appellate court in determining whether the trial court exercised its discretion in a "reasonable and principled fashion."<sup>11</sup> Thus, findings of fact and conclusions of law are discretionary, but not required, after the following types of judgments and orders:

- a default judgment on a claim for unliquidated damages<sup>12</sup>
- a sanctions judgment<sup>13</sup>
- a ruling on a special appearance<sup>14</sup>
- a ruling request for a temporary restraining order or injunction<sup>15</sup>
- an order on a plea to the jurisdiction following an evidentiary hearing<sup>16</sup>
- a ruling following an evidentiary hearing on a motion for new trial<sup>17</sup>
- any judgment based in any part on an evidentiary hearing<sup>18</sup>

<sup>12</sup> *IKB Indus.*, 938 S.W.2d at 443.

<sup>13</sup> *Id.*

<sup>14</sup> *Allianz Risk Transfer (Bermuda) Ltd. v. S.J. Camp & Co.*, 117 S.W.3d 92, 95-96 & n.5 (Tex. App.—Tyler 2003, no pet.).

<sup>15</sup> *Tom James of Dallas, Inc. v. Cobb*, 109 S.W.3d 877, 884 (Tex. App.—Dallas 2003, no pet.).

<sup>16</sup> *Goldberg v. Comm'n for Lawyer Discipline*, 265 S.W.3d 568, 578 (Tex. App.—Houston [1st Dist.] 2008, pet. denied). The Texas Supreme Court has held that, if a plea to the jurisdiction challenges the existence of jurisdictional facts, the trial court may consider evidence and must do so when necessary to resolve the jurisdictional issues raised. *See Tex. Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 227-28 (Tex. 2004); *Bland ISD v. Blue*, 34 S.W.3d 547, 555 (Tex. 2000). In light of this rule, one court of appeals has held that whether findings of fact are proper following a ruling on a plea to the jurisdiction depends on whether the trial court was required to make factual determinations in order to resolve the jurisdictional issue. *Odessa, Tex. Sheriff's Posse, Inc. v. Ector County*, 215 S.W.3d 458, 464 (Tex. App.—Eastland 2006, pet. denied).

<sup>17</sup> *Puri v. Mansukhani*, 973 S.W.2d 701, 707 (Tex. App.—Houston [14th Dist.] 1998, no pet.); *see also Higginbotham v. Gen. Life & Accident Ins. Co.*, 796 S.W.2d 695, 695 (Tex. 1990) (reviewing findings from a hearing on a motion for new trial after a no-answer default judgment). The Texas Supreme Court also requires a trial court to specify the reasons that it disregarded a jury's verdict to grant a new trial. *In re Columbia Medical Ctr. of Las Colinas Subsidiary, L.P.*, 290 S.W.3d 204, 212-15 (Tex. 2009). Although it is not clear that these reasons must be in the form of findings of fact and conclusions of law, at least one court has determined that they are subject to appellate review. *In re Lufkin Indus., Inc.*, 2010 WL 2681570, slip op. at \*2-3 (Tex. App.—Texarkana July 8, 2010, orig. proceeding).

<sup>18</sup> *IKB Indus.*, 938 S.W.2d at 443; *see Int'l Union v. Gen. Motors Corp.*, 104 S.W.3d 126, 129 (Tex. App.—Fort Worth 2003, no pet.) (stating that findings and conclusions are appropriate if there is an evidentiary hearing and the

<sup>6</sup> *Id.*; *Grossnickle v. Grossnickle*, 935 S.W.2d 830, 837 n.1 (Tex. App.—Texarkana 1996, writ denied).

<sup>7</sup> *Grossnickle*, 935 S.W.2d at 838.

<sup>8</sup> Tex. R. Civ. P. 296; *IKB Indus. (Nigeria) Ltd. v. Pro-Line Corp.*, 938 S.W.2d 440, 442 (Tex. 1997).

<sup>9</sup> *IKB Indus.*, 938 S.W.2d at 442.

<sup>10</sup> Tex. R. Civ. P. 296, 21a.

<sup>11</sup> *Chrysler Corp. v. Blackmon*, 841 S.W.2d 844, 852 (Tex. 1992) (orig. proceeding); *accord In re BP Prods. of N. Am., Inc.*, 244 S.W.3d 840, 846 n.6 (Tex. 2008) (orig. proceeding).

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