

# Findings of Fact & Conclusions of Law Update

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## Importance of Non-Jury Trials

- Jury trials declining.
- Arbitrations decreasing.
- Non-jury trials increasing.

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## Effect of FOF and COL

- Findings of Fact are equivalent of a jury verdict.
- Conclusions of Law are the functional equivalent of the judge's ruling on legal matters regarding the charge, the admission of evidence, and directed verdict motions.

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## When Should FOF & COL be Requested?

- Bench trial: Rule 296 anticipates a “case tried” to the court.
  - Liability and damages tried to a jury and attorneys' fees tried to the court.
- Damages tried to the jury and injunction tried to the court.

*Operation Rescue-Nat'l v. Planned Parenthood of Houston & Se. Tex., Inc.*, 937 S.W.2d 60, 82 (Tex. App.—Houston [14th Dist.] 1996, *aff'd as modified*, 975 S.W.2d 546 (Tex. 1998)).

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## Injunctive Relief: Trap

- “FOF are not required to challenge the validity of an injunctive order that fails to state a *reason* for its issuance.”

*Operation Rescue-Nat'l*, 937 S.W.2d at 82 (emphasis added).

- Problem: Rule 683: “Every order . . . shall set forth the *reasons* for its issuance . . . .”

- “[I]f the enjoined party wishes *additional, detailed findings*, the party may make a request . . . .” Failure to do so constitutes a waiver.

*Operation Rescue-Nat'l*, 937 S.W.2d at 82 (emphasis added).

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## Solution

- The problem is that “findings” used in Rules 296-299 are not the same as “reasons” used in Rule 683.
- If no reasons in the order—object?
- If reason is vague/ambiguous—object and/or request finding.
- If you need additional or more detailed findings—request or waive.

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