UT LAW CLE | THE UNIVERSITY OF TEXAS SCHOOL OF LAW

PRESENTED AT

29th Annual Conference on State and Federal Appeals
June 20–21, 2019
Austin, TX

Findings of Fact and Conclusions of Law

Hon. Tracy Christopher

Tracy Christopher
Justice, Fourteenth Court of Appeals
301 Fannin, Room 245
Houston, TX 77002

tracy.christopher@txcourts.gov

Findings of Fact and Conclusions of Law

By Hon. Tracy Christopher

Practitioners generally do not like requesting findings of fact and conclusions of law, and judges generally do not like preparing them. Findings are often voluminous, contradictory, and difficult to handle on appeal. Mixed questions of law and fact are difficult to distinguish. If you do not have findings, the appellate process is much harder for the appellant. Why have we created this complicated mess? While I cannot answer that question, I hope that this paper will shed light on the process and perhaps even simplify it.

Civil courts seem to be trying more bench trials and less jury trials. Generally, parties consider bench trials to be easier and quicker than jury trials. And most of the time, they are. Many bench trials last less than a day and generally do not have multiple causes of action. Those cases are rarely appealed and the parties often do not need or request findings of fact and conclusions of law. Bench trials are common in family law cases, because the trial judge, rather than the jury, decides many issues. This paper will not cover the Family Code requirements. With the rise in the number of self-represented litigants, those cases are often tried to the bench because a jury trial is procedurally more difficult for the self-represented litigant. Even the side with a lawyer will often waive a jury because of the perception that a jury can be more sympathetic to the self-represented.

With the enforceability of jury waivers in contracts and a distrust of jury verdicts in general, bench trials in larger commercial cases are becoming more common. *See In re Prudential Ins. Co. of Am.*, 148 S.W.3d 124 (Tex. 2004). Some parties will try their case to the bench because "it is too boring" or "too complicated" for a jury. Some parties will even agree to a bench trial in lieu of an agreed-upon arbitration provision in their contract.

So, if you know you are going to try your case to the bench, what should you do to help both your case and the trial judge?

1. Prepare a draft of findings before trial

Some trial judges ask that the litigants prepare draft findings of fact and conclusions of law before trial. A well-done draft can be a blueprint for the judge and will help you prepare your case. For a plaintiff, the draft does not have to be voluminous, but it should cover all causes of action that have been pleaded. The draft should also set out your damages, unless you would prefer to leave the actual amount of "soft damages" such as pain or mental anguish for the judge. I recommend that you use the pattern jury charges to ensure that you have all elements of your causes of action covered. A typical draft for a fraud cause of action would include: the defendant said_____, it was false because_____, the plaintiff relied on it by_____, the reliance damaged the plaintiff because_____, and the plaintiff is entitled to the following damages_____. It really does not need to be more complicated than this.

The defense may have a more difficult time preparing draft findings (especially in a case with no discovery). But at a minimum, the defendant should prepare findings for its own counterclaim and for its affirmative defenses. For example, a draft might say: The plaintiff waived its claim for breach of contract by_____. The contract provides that the prevailing party can recover its attorney's fees. The defendant has incurred $_____ in fees through _____(date) and will incur more.

It is not necessary for either side to put undisputed facts into the draft! *See Barker v. Eckman*, 213 S.W.3d 306, 310 (Tex. 2006).

2. After the trial

A trial judge often announces its decision at the end of the bench trial—who won and how much. Sometimes the announcement will come via a letter that gives more information—but you should not rely on this letter as a substitute for official findings of fact and conclusions of law. *Compare Cherokee Water Co. v Gregg Cnty. Appraisal Dist*., 801 S.W.2d 872, 878 (Tex. 1990) (letter filed before judgment did not constitute formal findings of fact, where formal findings were made) *with Kendrick v. Garcia,* 171

Title search: Findings of Fact and Conclusions of Law

Also available as part of the eCourse
2019 eConference on State and Federal Appeals

First appeared as part of the conference materials for the
29th Annual Conference on State and Federal Appeals session
"Findings of Fact"