

PRESENTED AT

31st Annual Conference on State and Federal Appeals

June 10-11, 2021
Austin, Texas

**How to Draft Good Findings of Fact and
Conclusions of Law**

Laurie Ratliff

Author Contact Information:

Laurie Ratliff
Laurie Ratliff LLC
Austin, Texas

laurie@laurieratliffllaw.com
512.422.3946

TABLE OF CONTENTS

- I. INTRODUCTION..... 1
- II. FINDINGS OF FACT AND CONCLUSIONS OF LAW 1
 - A. What Are Findings of Fact and Conclusions of Law and What Is Their Purpose?..... 1
 - B. When Are Findings of Fact Appropriate and When Are They Not? 3
 - 1. When Findings of Fact Are Required..... 3
 - 2. When Findings of Fact Are Helpful and May Be Considered on Appeal. 4
 - 3. When Findings of Fact Are Not Appropriate and Should Not Be Requested. 7
 - C. Procedure for Requesting Findings of Fact and Conclusions of Law and Strategies for Both Parties..... 8
 - 1. The a Request for Findings of Fact and Conclusions of Law and Strategies When Drafting 9
 - 2. Notice of past Due Findings of Fact and Conclusions of Law and Strategy Considerations 13
 - 3. Request for Additional Findings of Fact and Conclusions of Law and Strategies When Drafting 15
 - D. Proper Form of the Trial Court’s Findings of Fact and Conclusions of Law..... 20
 - 1. In Writing, but What About Findings of Fact Stated on the Record?..... 20
 - 2. In Writing, but Does a Judge's Prejudgment Letter Suffice?..... 21
 - 3. Separate from the Judgment, but what if Findings are Included in the Judgment 23
 - 4. Who Can File Findings of Fact After the Original Judge Leaves Office?..... 24
 - E. What if the Trial Court Refuses to File Findings of Fact when a Party is Entitled to Them and Properly Requested Them 25
 - F. Other Strategy Considerations and Issues that Arise with Findings of Fact 25
 - G. Appellate Issues Relating to Findings of Fact and Conclusions of Law 27
 - 1. Effect on Appellate Deadlines 27
 - 2. Appellate Review of Bench Trials..... 27
- III. CONCLUSION 32

HOW TO DRAFT GOOD FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. INTRODUCTION

There are many similarities with appeals of jury trials and bench trials. Appeals of bench trials, however, involve a key difference from an appeal of a jury trial – unlike having a jury verdict to illuminate the facts underlying the result, the underlying reasons for a judgment in a bench trial are not always apparent. The rules of procedure allow a litigant to obtain factual findings that replace a jury’s verdict and to obtain the trial court’s legal bases for its rulings. The findings of fact and conclusions of law form the basis for the appeal.

Findings of fact and conclusions of law serve many purposes. They allow litigants to know the reasons for the trial court’s ruling. This in turn narrows the issues for appeal. Findings of fact and conclusions of law are also necessary for appellants and appellees to preserve certain errors.

While findings of fact and conclusions of law provide a roadmap to the trial court’s decision – both the factual basis and the legal reasons – they are an important tool for attorneys who draft them early in a case. Like in preparing a proposed jury charge early in a case, having proposed findings of fact and conclusions of law prepared well in advance assists in maintaining focus on the grounds of recovery and defenses, the elements of the grounds and defenses, and the evidence need to establish them. Further, preparing the findings of fact early on assists with drafting the appropriate discovery.

Understanding the procedure, preservation, and strategy issues is critical for obtaining findings of fact and conclusions of law. This article discusses the procedure for obtaining findings of fact and conclusions of law, strategies for requesting additional findings of fact, how to avoid waiver, issues to raise on appeal with findings of fact, and finally appellate review of findings of fact and conclusions of law.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. What Are Findings of Fact and Conclusions of Law and What Is Their Purpose?

Findings of fact take the place of a jury’s verdict and provide the factual support for the court’s judgment. Findings of fact are the “who did what, when, where, how, or why.” *State v. Sheppard*, 271 S.W.3d 281, 291 (Tex. Crim. App. 2008). As one court described, “findings of fact are ultimate determinations of what specifically occurred, who did or did not do certain acts, what the values of services and property are worth, and the answer to any other specific inquiry necessary to establish conduct or the existence or nonexistence of a relevant matter.” *Pacific Emp’rs Ins. Co.*, 86 S.W.3d 353, 356-57 (Tex. App.—Texarkana 2002, no pet.).

Findings of fact in a bench trial have the “same force and dignity” as a jury’s answers to jury questions. *In re H.S.*, 550 S.W.3d 151, 167 (Tex. 2018); *Anderson v. City of Seven Points*, 806 S.W.2d 791, 794 (Tex. 1991); *Keisling v. Landrum*, 218 S.W.3d 737, 740 (Tex. App.—Fort Worth 2007, pet. denied).

“Conclusions of law may be a statement of a principle of law or the application of the law to the ultimate facts in the case.” *Pacific Employers Ins. Co.*, 86 S.W.3d at 357.

Together, findings of fact and conclusions of law provide the trial court's reasoning for its judgment. *Allstate Ins. Co. v. Hegar*, 484 S.W.3d 611, 615 (Tex. App.—Austin 2016, pet. denied).

Which are more important? The applicable standard of review confirms that findings of fact are the more important of the two. Findings of fact are reviewed for sufficiency of the evidence; conclusions of law are reviewed *de novo*. *Ortiz v. Jones*, 917 S.W.2d 770, 772 (Tex. 1996); *Perry Homes v. Cull*, 258 S.W.3d 580, 598 (Tex. 2008). The court of appeals treats findings of fact as it would jury findings but does not give any weight to the trial court's legal conclusions. When reviewing conclusions of law, courts of appeals will make their own legal determination. *First Trust Corp. TTEE FBO v. Edwards*, 172 S.W.3d 230, 233 (Tex. App.—Dallas 2005, pet. denied). An erroneous conclusion of law is not binding on an appellate court. *Bexar Cnty. Crim. Dist. Atty's Ofc. v. Mayo*, 773 S.W.2d 642, 643 (Tex. App.—San Antonio 1989, no writ). Further, if there is a conflict between a finding of fact and a conclusion of law, the fact finding prevails. *Buzbee v. Buzbee*, 870 S.W.2d 335, 340 (Tex. App.—Waco 1994, no writ).

What are the purposes of findings of fact and conclusions of law? First, findings of fact and conclusions of law narrow the issues for appeal and provide a basis for attacking the judgment. *Vickery v. Commission for Lawyer Discipline*, 5 S.W.3d 241, 252, 255 (Tex. App.—Houston [14th Dist.], pet. denied). Findings of fact assist the losing party by ascertaining the true basis for the trial court's decision. *Nicholas v. Env't Sys. (Internat'l) Ltd.*, 499 S.W.3d 888, 894 (Tex. App.—Houston [14th Dist.] 2016, pet. denied).

In a bench trial, there is a presumption of validity of the judgment and that all evidence necessary to support it was admitted at trial. To limit the scope of the presumption, an appellant should request findings of fact. *Vickery*, 5 S.W.3d at 252; *Larry F. Smith, Inc. v. Weber Co., Inc.*, 110 S.W.3d 611, 614 (Tex. App.—Dallas 2003, pet. denied).

Without findings of fact, the court of appeals implies all necessary findings in support of the judgment. *Combs v. Newport Resources, Inc.*, 422 S.W.3d 46, 49 (Tex. App.—Austin 2013, no pet.); *Burnett v. Motyka*, 610 S.W.2d 735, 736 (Tex. 1980); *Schoeffler v. Denton*, 813 S.W.2d 742, 744 (Tex. App.—Houston [14th Dist.] 1991, no writ). If there are no findings of fact requested and none filed, the appellate court must affirm the judgment if any legal theory is supported by the evidence. *Newpark Resources*, 422 S.W.3d 46, 49; *Schoeffler*, 813 S.W.2d at 744.

Findings of fact also define the parameters of issues tried for purposes of res judicata. *Igal v. Brightstar Information Technology Group, Inc.*, 250 S.W.3d 78, 89-90 (Tex. 2008).

Second, a request for findings of fact extends the appellate deadlines. TEX. R. APP. P. 26.1(a)(4). The extended deadline only applies, however, in Rule 296 findings or in cases where findings of fact may be considered on appeal. *Id.* This is important because if not a proper case for findings of fact, the request does not extend the appellate deadlines and an appeal that relied on the extended deadlines would be dismissed for lack of jurisdiction.

Third, preparing findings of fact and conclusions of law early in a case can provide a valuable pretrial tool. Attorneys often prepare a charge early in a case; it should be no different with a bench trial. Preparing draft findings of fact and conclusions of law early in the case assists with formulating discovery and with presenting evidence at trial. See Hon. Tracy Christopher, *Findings of Fact and Conclusions of Law—Do I Have to?*, 76 THE ADVOCATE (TEXAS) 44, 44 (2016) (“a well-done draft [of findings of fact and conclusions of law] can be a blue print for the judge and

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: How to Draft Good Findings of Fact and Conclusions of Law

Also available as part of the eCourse

[2021 eConference on State and Federal Appeals](#)

First appeared as part of the conference materials for the 31st Annual Conference on State and Federal Appeals session "Findings of Fact and Conclusions of Law"