

Draft Proposal May 28, 2010

[Current Rule]

RULE 296. REQUESTS FOR FINDINGS OF FACTS AND CONCLUSIONS OF LAW

In any case tried in the district or county court without a jury, any party may request the court to state in writing its findings of fact and conclusions of law. Such request shall be entitled "Request for Findings of Fact and Conclusions of Law" and shall be filed within twenty days after judgment is signed with the clerk of the court, who shall immediately call such request to the attention of the judge who tried the case. The party making the request shall serve it on all other parties in accordance with Rule 21a.

[Proposed New Rule]

RULE 296. REQUESTS FOR FINDINGS OF FACTS AND CONCLUSIONS OF LAW

(a) Request for Findings and Conclusions

In any case tried in the district or county court without a jury, any party may request the court to make findings of fact and conclusions of law. Such request should be entitled "Request for Findings of Fact and Conclusions of Law" and must be filed with the clerk of the court within thirty days after judgment is signed. The clerk must immediately call such request to the attention of the judge who tried the case.

(b) Duty to Make Findings and Conclusions

The judge must make findings of fact and conclusions of law on each ultimate issue raised by the pleadings and evidence. Unless otherwise required by law, findings of fact should be in broad form whenever feasible. The trial court's findings must include only so much of the evidentiary facts as are necessary to disclose the factual basis for the court's decision. Unnecessary or voluminous evidentiary findings are not to be made.

[Current Rule]
**RULE 297. TIME TO FILE FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

The court shall file its findings of fact and conclusions of law within twenty days after a timely request is filed. The court shall cause a copy of its findings and conclusions to be mailed to each party in the suit.

If the court fails to file timely findings of fact and conclusions of law, the party making the request shall, within thirty days after filing the original request, file with the clerk and serve on all other parties in accordance with Rule 21a a "Notice of Past Due Findings of Fact and Conclusions of Law" which shall be immediately called to the attention of the court by the clerk. Such notice shall state the date the original request was filed and the date the findings and conclusions were due. Upon filing this notice, the time for the court to file findings of fact and conclusions of law is extended to forty days from the date the original request was filed.

[Proposed New Rule]
**RULE 297. MAKING FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

Upon timely request, the court must make and file its findings of fact and conclusions of law within fifty days after the date a final judgment is signed and promptly send a copy to each party. [The trial court may state its findings and conclusions on the record, in the presence of counsel, after the close of the evidence.]

Subcommittee Comment:

The subcommittee debated the merits of adopting the federal practice of allowing trial court the discretion to orally make findings of fact and conclusions of law at the close of the evidence and on the record. The following pros and cons were evaluated:

Pros:

Parties would be getting the trial court's fresh unscripted impression of the evidence and the court's findings (as opposed to findings drafted by counsel and

adopted by the court). The findings would likely be succinct and not numerous and voluminous. Findings rendered after the close of the evidence would expedite the time frame for the court to set forth the grounds relied upon in support of the court's judgment.

Cons:

Most cases are not appealed, so judicial resources are best preserved by the trial court making findings of fact only in those cases formally requested.

The trial court's rulings pertaining to the judgment may be misinterpreted as broad form findings of fact. It may be difficult in bench trials to discern if the court intends, in its pronouncements accompanying rendition of judgment, to be making findings of fact that trigger the potential necessity to file a request for additional or amended findings of fact. The failure to so act may have adverse consequences on appeal. (Presumed findings for example) Also, counsel will have to bear the expense of obtaining the transcript.

While the trial court's findings of fact will be of record, counsel will need to get an expeditious transcript of the court's recitals to determine if a request for additional or amended findings of fact is in order. How will an unavailable or uncooperative court reporter affect the timeframe to make such a request? What if the court reporter was not present when the court made its oral findings?

If the trial court's pronouncement of oral findings of fact is the trigger event on the time frame to request additional or amended findings, satellite litigation is likely to ensue: Were all counsel present in the court room when the court made its oral findings of fact? Are oral pronouncements of the court findings of fact or a mere announcement of the court of its rulings pertaining to the judgment? If the judge makes a broad pronouncement of its "findings" such as the Defendant is negligent and owes the Plaintiff \$500,000 is that sufficient broad form findings of fact or are these findings at all? Now must the losing party request additional findings on causation or risk a presumed finding?

[Current Rule]
**RULE 298. ADDITIONAL OR AMENDED FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

After the court files original findings of fact and conclusions of law, any party may file with the clerk of the court a request for specified additional or amended findings or conclusions. The request for these findings shall be made within ten days after the filing of the original findings and conclusions by the court. Each request made pursuant to this rule shall be served on each party to the suit in accordance with Rule 21a.

The court shall file any additional or amended findings and conclusions that are appropriate within ten days after such request is filed, and cause a copy to be mailed to each party to the suit. No findings or conclusions shall be deemed or presumed by any failure of the court to make any additional findings or conclusions.

[Proposed New Rule]
**RULE 298. ADDITIONAL OR AMENDED FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

(a) Request for Additional or Amended Findings and Conclusions

After the court makes original findings of fact and conclusions of law, any party may file a request for additional or amended findings of fact or conclusions of law. The request must state the specific additional or amended findings of fact requested and be made no later than twenty days after the filing of the court's original findings of fact and conclusions of law [or the court's oral pronouncement of the original findings and conclusions as the case may be].

(b) Duty to Make Additional or Amended Findings and Conclusions

The court must make and file any additional or amended findings of fact and conclusions of law that are proper within twenty days after the request is filed and promptly send a copy to each party. Any additional or amended findings of fact and conclusions of law made by the trial court must be in writing and filed with the clerk.

[Current Rule]

RULE 299. OMITTED FINDINGS AND PRESUMED FINDINGS

When findings of fact are filed by the trial court they shall form the basis of the judgment upon all grounds of recovery and of defense embraced therein. The judgment may not be supported upon appeal by a presumed finding upon any ground of recovery or defense, no element of which has been included in the findings of fact; but when one or more elements thereof have been found by the trial court, omitted unrequested elements, when supported by evidence, will be supplied by presumption in support of the judgment. Refusal of the court to make a finding requested shall be reviewable on appeal.

[Proposed New Rule]

RULE 299. OMITTED FINDINGS

(a) Omitted Grounds

Findings of fact filed by the trial judge shall form the basis of the judgment upon all grounds of recovery or defense embraced therein. If no request is made for a finding on any element of a ground of recovery or defense and the ground has not been found by the trial court, the unrequested ground is waived unless the ground has been conclusively established under the evidence.

(b) Presumed Findings

When the trial court has made findings on some but not all elements of a ground of recovery or defense, the omitted elements that are necessarily referable to the elements found are presumed in support of the judgment when supported by factually sufficient evidence. There is no presumed finding on the omitted element if a finding on that element has been requested.

(c) Trial Court's Failure To Make Finding

A trial court's failure to make a requested additional finding will not result in a presumed finding. Refusal of the court to make a requested finding shall be reviewable on appeal.

[Current Rule]
**RULE 299a. FINDINGS OF FACT TO BE SEPARATELY FILED
AND NOT RECITED IN A JUDGMENT**

Findings of fact shall not be recited in a judgment. If there is a conflict between findings of fact recited in a judgment in violation of this rule and findings of fact made pursuant to Rules 297 and 298, the latter findings will control for appellate purposes. Findings of fact shall be filed with the clerk of the court as a document or documents separate and apart from the judgment.

[Proposed New Rule]
**RULE 299a. FINDINGS OF FACT TO BE SEPARATELY FILED
AND NOT RECITED IN A JUDGMENT**

Findings of fact must be filed apart from the judgment as a separate document. [Original findings of fact stated orally and recorded in open court following the close of the evidence shall satisfy this requirement.] If there is a conflict between recitals in a judgment and findings of fact made pursuant to Rules 297 and 298, the latter findings will control for appellate purposes. Rules 296-299a do not apply to any recitals of findings of fact in a judgment.