

Changes noted to February 13, 2009 version – April 15, 2009

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RULE 296. REQUESTS FOR FINDINGS OF FACTS AND CONCLUSIONS OF LAW [Revised]

(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 state in writing its findings of fact and conclusions of law. Such request must be entitled "Request for Findings of Fact and Conclusions of Law" and 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. Each party making a request must serve it on all other parties in accordance with Rule 21a.

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(b) Duty to Make Findings and Conclusions

If findings are requested, the judge must state findings of fact and conclusions of law on **each [theory of recovery? Elements of grounds or defenses?]** raised by the pleadings and evidence. The findings **must** include only as much of the evidentiary facts as **are** necessary to disclose the **factual** basis for the court's decision.

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Comment to Rule 296: Unnecessary or voluminous evidentiary findings are not to be included in the court's findings of fact and conclusions of law.

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

Provided a timely request is made pursuant to Rule 296, the court must make and file its findings of fact and conclusions of law within days after the date a final judgment is signed and promptly send a copy to each party.

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

(a) Request for Additional or Amended Findings and Conclusions

After the court makes and files original findings of fact and conclusions of law, any party may file a request for specified additional or amended findings or conclusions. The request for these findings must be made before the later of twenty days after the filing of the original findings and conclusions by the court or ~~_____~~ days after the judgment is signed. Each party making a request must serve it on all other parties in accordance with Rule 21a.

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

The court must make and file any additional or amended findings and conclusions that are appropriate within the later of twenty days after such request is filed or ~~_____~~ days after the judgment is signed, and promptly send a copy to each party. No findings or conclusions will be deemed or presumed by any failure of the court to make any additional findings or conclusions.

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RULE 299. OMITTED FINDINGS AND PRESUMED FINDINGS
[Revised]

(a) Basis of Judgment

When findings of fact are filed by the trial court they must form the basis of the judgment on all grounds of recovery and of defense embraced therein.

(b) Presumed Findings

The judgment may not be supported on 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 ~~necessary~~ to the ground ~~or defense have been found~~, omitted unrequested elements, when supported by the evidence, will be supplied by presumption in support of the judgment. Refusal of the court to make a finding requested is reviewable on appeal.

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

Findings of fact must be filed apart from the judgment as a separate document. 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.

PROPOSED REVISED RULE 300 [New]

Rule 300. Finality of Judgment or Order.

(a) Final judgment. At the conclusion of the litigation, the court shall render a final judgment or order by disposing of all claims between all parties. A judgment or order that does not dispose of all claims between all parties remains interlocutory.

(b) Disposition of all claims between all parties. A judgment or order is final if it:

- (1) expressly disposes of all claims between all parties, by itself or in combination with earlier judgments and orders
or
- (2) states with unmistakable clarity, in language placed immediately above or adjacent to the judge's signature, that it finally disposes of all claims between all parties and is appealable.

(c) Judgment after conventional trial. A judgment rendered after a conventional trial on the merits is presumed to dispose of all claims between all parties and is presumed to be final and appealable.

Rule 301. Motions Relating to Judgments [New]

- (a) Motion for Judgment on the Verdict. A party may move for judgment on the verdict at any time before a final judgment has been signed. A motion for judgment on the verdict is overruled by operation of law when a final judgment is signed that does not grant the motion.
- (b) Motion for Judgment Notwithstanding the Verdict or to Disregard Jury Finding. A party may move for judgment notwithstanding the verdict if a directed verdict would have been proper or may move the court to disregard one or more jury findings that have no support in the evidence. The motion may be made after the rendition and receipt of the jury's verdict. The motion is overruled by operation of law on the date when the court's plenary power expires.
- (c) Motion to Modify Judgment. After a judgment has been signed, a party may move to modify the judgment in any respect and may include a request for judgment on all or part of the verdict; a request for judgment notwithstanding the verdict, if a directed verdict would have been proper; or one or more requests to disregard jury findings that have no support in the evidence.

A prejudgment motion for judgment on the verdict, for judgment notwithstanding the verdict or to disregard jury findings is not a prerequisite to a postjudgment motion to modify a judgment.

A motion to modify a judgment in any respect may be filed within 30 days after the final judgment is signed, but a late filed motion may be considered within the discretion of the trial court and granted or denied by signed written order while the court retains plenary power over its judgment. The court's ruling on a late-filed motion is subject to review on appeal. One or more amended or additional motions may be filed without leave of court within 30 days after the final judgment is signed, regardless of whether a prior motion containing the same requests for relief has been overruled. If not determined by

signed written order within 75 days after the final judgment was signed, any such motion is overruled by operation of law on expiration of that period.

- (d) Motion for New Trial. A party may move to set aside a judgment and seek a new trial pursuant to Rule 302. A motion for new trial may be filed within 30 days after the final judgment is signed, but a late-filed motion may be considered within the discretion of the trial court and granted or denied by signed written order while the court retains plenary power over its judgment. The court's ruling on a late-filed motion is subject to review on appeal. One or more amended or additional motions may be filed without leave of court within 30 days after the final judgment is signed, regardless of whether a prior motion containing the same requests for relief has been overruled. If not determined by signed written order within 75 days after the final judgment was signed, any such motion is overruled by operation of law on expiration of that period.

If judgment has been rendered on citation by publication and the defendant did not appear in person or by counsel selected by the defendant, a motion for new trial must be filed within two years after the final judgment was signed.

- (e) Motion for Judgment Nunc Pro Tunc. A party may move for correction of clerical mistakes in the written judgment to conform it to the judgment previously rendered by the trial court. Such a motion may be filed at any time after a final judgment is signed, [but if the motion is filed within 30 days after the final judgment is signed, the motion will be overruled by operation of law on the expiration of 75 days after the final judgment was signed.]¹

- (f) Motion Practice. A motion identified in this rule must state the specific complaint or request for relief. A party may file one or more

¹ This rule is not intended to change existing case law.

motions identified in this rule and may renew or refile an additional motion of the same type containing additional complaints and requests for relief despite the denial of any previous motion. A party must also submit a proposed judgment or order with the motion.

Periods Affected by Modified Judgment. If a judgment is modified in any respect during the period of the trial court's plenary power, all periods provided in these rules that run from the date the final judgment is signed shall run from the time the modified judgment is signed; however, if the complaint applies to the original judgment and was urged by prior motion, then no new motion is required. If a correction to a judgment is made pursuant to subdivision (e) after expiration of the trial court's plenary power, all periods provided in these rules which run from the date the judgment is signed shall run from the date of the signing of the corrected judgment for any complaint

RULE 302. MOTIONS FOR NEW TRIAL [New]

(a) Grounds. For good cause, a new trial, or partial new trial under paragraph (f), may be granted and a judgment may be set aside on motion of a party or on the judge's own initiative, in the following instances:

- (1) when the evidence is factually insufficient to support a jury finding;
- (2) when a jury finding is against the overwhelming preponderance of the evidence;
- (3) when the damages awarded by the jury are manifestly too small or too large because of the factual insufficiency or overwhelming preponderance of the evidence;
- (4) when the trial judge has made an error of law that probably caused rendition of an improper judgment;
- (5) when injury to the movant has probably resulted from, (i) misconduct of the jury, or (ii) misconduct of the officer in charge of the jury, or (iii) improper communication to the jury, or (iv) a juror's erroneous or misleading answer on voir dire examination;
- (6) when new, non-cumulative evidence has been discovered that was not available at the trial by the movant's use of reasonable diligence and its unavailability probably caused the rendition of an improper judgment;
- (7) when a default judgment should be set aside upon either legal or equitable grounds;
- (8) when a judgment has been rendered on citation by publication, the defendant did not appear in person or by an attorney selected by the defendant and good cause for a new trial exists;
- (9) when there is a material and irreconcilable conflict in jury findings;

(10) when any improperly admitted evidence, error in the court's charge, argument of counsel, or other trial court occurrence or ruling probably caused rendition of an improper judgment; or

(11) when any other ground warrants a new trial in the interest of justice.

(b) Form. Complaints in general terms shall not be considered. Each complaint in a motion for new trial must identify the complaint with specificity.

(c) Affidavits. Supporting affidavits are required for complaints based on facts not otherwise in the record, such as:

- (1) jury misconduct;
- (2) newly discovered evidence;
- (3) equitable grounds to set aside a default judgment; or
- (4) good cause to set aside a judgment after citation by publication.

(d) Procedure For Jury Misconduct.

(1) Hearing. When the ground of the motion for new trial, supported by affidavit, is misconduct of the jury or of the officer in charge of the jury, or improper communications made to the jury, or a juror's erroneous or incorrect answer on voir dire examination, the judge shall hear evidence from members of the jury or others in open court and may grant a new trial if it reasonably appears from the evidence both on the hearing of the motion and from the record as a whole on the trial of the case that injury probably resulted to the complaining party.

(2) Testimony Of Jurors. A juror may not testify as to any matter or statement occurring during the jury's deliberations, or on any juror's mind or emotions or mental processes, as influencing any juror's assent to or dissent from the verdict. Nor may a juror's affidavit or any statement by a juror concerning any matter about which the juror would be precluded from testifying be admitted in

evidence for any of these purposes. But a juror may testify about whether (i) extraneous prejudicial information was improperly brought to the jury's attention, (ii) any outside influence was improperly brought to bear upon any jury, (iii) misconduct occurring before the jury retired to deliberate, or (iv) the juror was qualified to serve.

(e) Excessive Damages; Remittitur

(1) Excessive Damages. If the judge is of the opinion that the damages found by the jury are not supported by factually sufficient evidence, the judge may determine the greatest amount of damages supported by the evidence and may, as a condition of overruling a motion for new trial, suggest that the party claiming such damages file a remittitur of the excess within a specified period.

(2) Remittitur By Party. Any party in whose favor a judgment has been rendered may remit any part thereof in open court, or by executing and filing with the clerk a written remittitur signed by the party or the party's attorney of record, and duly acknowledged by the party or the party's attorney. Such remittitur shall be a part of the record of the cause. Execution may issue only for the balance of such judgment.

(f) Partial New Trial. If the judge is of the opinion that a new trial should be granted on a point or points that affect only a part of the matters in controversy that is clearly separable without unfairness to the parties, the judge may grant a new trial as to that part only, but a separate trial on unliquidated damages alone shall not be ordered if liability issues are contested.

PROPOSED RULE 303. PRESERVATION OF COMPLAINTS [New]

(a) **General Preservation Rule.** As a prerequisite to presenting a complaint for appellate review, the record must show that:

(1) the complaint was made to the trial court by a timely request, objection, or motion that:

(A) stated the grounds for the ruling that the complaining party sought from the trial court with sufficient specificity to make the trial court aware of the complaint, unless the specific grounds were apparent from the context; and

(B) complied with the requirements of the Texas Rules of Evidence ~~and the~~ Texas Rules of Appellate Procedure; and

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(2) the trial court:

(A) ruled on the request, objection, or motion, either expressly or ~~impliedly~~; or

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(B) refused to rule on the request, objections, or motion, and the complaining party objected to the refusal.

(b) **Ruling by Operation of Law.** In a civil case, the overruling by operation of law of a motion for new trial or a motion to modify the judgment preserves for appellate review a complaint properly made in the motion, unless taking evidence was necessary to properly present the complaint in the trial court.

(c) **Formal Exception and Separate Order Not Required.** Neither a formal exception to a trial court ruling or order nor a signed, separate order is required to preserve a complaint for appeal ~~if the ruling is otherwise reflected in the record.~~

NOTE: Subsections (a), (b), and (c) repeat verbatim Appellate Rule 33.1(a)(b)(c). SUGGESTION: Add a comment cross referencing Evidence Rule 103?

- (d) **Motion for New Trial Not Required.** A point in a motion for new trial is not a prerequisite to a complaint on appeal in either a jury or a nonjury case, except as provided in subdivision (e).

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NOTE: This repeats verbatim current Rule 324(a).

- (e) **Motion for New Trial Required.** A point in a motion for new trial is a prerequisite to the following complaints on appeal:
- (1) A complaint on which evidence must be heard such as one of jury misconduct or newly discovered evidence or failure to set aside a judgment by default;
 - (2) A complaint of factual insufficiency of the evidence to support a jury finding;
 - (3) A complaint that a jury finding is against the overwhelming weight of the evidence;
 - (4) A complaint of inadequacy or excessiveness of the damages found by the jury; or
 - (5) Incurable jury argument if not otherwise ruled on by the trial court.

NOTE: This repeats verbatim current Rule 324 (b).

- (f) **Sufficiency of Evidence Complaints in Nonjury Cases.** In a nonjury case, a complaint regarding the legal or factual insufficiency of the evidence—including a complaint that the damages found by the court are excessive or inadequate, as distinguished from a complaint that the trial court erred in refusing to amend a fact finding or to make an additional finding of fact—may be made for the first time on appeal in the complaining party's brief.

NOTE: This repeats verbatim Appellate Rule 33.1(d).

**PROPOSED RULE 304. PLENARY POWER OF THE TRIAL
COURT [New]**

(a) **Definition.** Plenary power is the power of the court to act, within its jurisdiction, according to law or equity, on any issue before the court. After the expiration of plenary power, a court may exercise only such power as is expressly authorized by rule or statute.

(b) **Duration.** Regardless of whether an appeal has been perfected, the trial court has plenary power, including the power to modify or vacate a judgment or grant a new trial:

(1) until the expiration of thirty days after the judgment is signed, or

(2) if any party has timely filed a (i) motion for new trial, (ii) motion to modify the judgment, or (iii) motion to reinstate a judgment after dismissal for want of prosecution, until the earlier of the expiration of thirty days after the motion is overruled or one hundred and five days after the judgment is signed.

(c) **After Expiration.** After expiration of the time prescribed by (b), the trial court cannot modify or vacate the judgment or grant a new trial, but the court may, after expiration of that time:

(1) correct a clerical error in the judgment;

(2) sign an order declaring a previous judgment or order to be void because signed after the court's power as prescribed in (b) has expired;

(3) issue any order or process or entertain any proceeding for enforcement of the judgment within the time allowed for execution;

(4) file findings of fact and conclusions of law if a timely request for such findings and conclusions has been filed;

(5) entertain and act for sufficient cause on any bill of review filed within the time allowed by law;

(6) grant a new trial for good cause on a motion filed within the time allowed by Rule 301(d) if citation was served by publication; or

(7) grant a new trial or modify the judgment within the time allowed by Rule 306(a) when the moving party did not have timely notice or knowledge of the judgment.

RULE 305.

Repeal – new Rule 300.

RULE 306.

Repeal – new Rule 300.

RULE 306(a).

RULE 306(c).

RULE 307.

RULE 308.

RULE 308(a).

RULE 309.

RULE 310.

RULE 311.

RULE 312.

RULE 313.

RULE 314.

RULE 315.

Repeal – Rule 302(e).

RULE 316.

Repeal – Rule 301(e)

RULE 320.

Repeal – Rule 301(d)-302

RULE 321.

Repeal – Rule 301(d)-302

RULE 322.

Repeal – Rule 301(d)-302

RULE 324.

Repeal – Rule 303

RULE 326.

RULE 327.

Repeal – Rule 302(d)

RULE 329.

Repeal – Rule 301(d)

RULE 329(a).

RULE 329(b).

Repeal – Rule 301-302