

[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 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.

(b) Duty to Make Findings and Conclusions [Alternatives]

The judge must state findings of fact and conclusions of law on each ground raised by the pleadings and evidence in broad form whenever feasible and in the same manner as questions are submitted to the jury in a jury trial.

[OR]

The judge must state findings of fact and conclusions of law on each ground raised by the pleadings and evidence in sufficient detail to give fair notice as if the grounds had been submitted to the jury in a jury trial.

[OR]

The judge must state 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 shall 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. The judge should make conclusions of law on each ground of recovery or defense.

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.

[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 21 a 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. FILING OF FINDINGS OF FACT AND CONCLUSIONS OF LAW

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 fifty days after the date a final judgment is signed and promptly send a copy to each party.

[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 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 state the specific additional or amended findings requested and be made before the later of twenty days after the filing of the original findings and conclusions by the court or seventy days after the judgment is signed. Each party making a request must serve it on all other parties in accordance with Rule 21a.

(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 ninety 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.

[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

When findings of fact are filed by the trial judge they shall form the basis of the judgment upon all grounds of recovery or defense. Upon appeal, a ground or defense not conclusively established under the evidence, no element of which have been requested or found, is waived.

(b) Presumed Findings

When an element of a ground of recovery or defense has been found by the trial judge, a finding is presumed in support of the judgment on an omitted element of the ground to which the element found is necessarily referable, when supported by factually sufficient evidence. No finding, however, shall be presumed on an omitted element for which an additional finding has been requested.

[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. 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
(January 14, 2010)

Rule 300. Finality of Judgment or Order.

(a) **Applicability.** This rule governs finality for purposes of appeal and plenary power.

(b) **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.

(c) **Disposition of all claims and parties.** A judgment or order is final if it:

- (1) specifically 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 parties and all claims and is appealable.

(d) **Presumption after conventional trial.** A judgment rendered after a conventional trial on the merits that does not comply with section (c) is presumed to dispose of all claims between all parties and is presumed to be final and appealable.

COMMENT

1. Rule 300 codifies the holdings stated in *Lehmann v. Har-Con Corp.*, 39 S.W.3d 191 (Tex. 2001). It is not intended to apply to when there are special rules of finality, such as probate and receivership. *See, e.g.* *De Ayala v. Mackie*, 193 S.W.3d 575, 577-80 (Tex. 2006) (probate orders); *Huston v. Federal Deposit Ins. Corp.*, 800 S.W. 2d 845, 847 (Tex. 1990). *See also* TEX. FAM. CODE § 105.001 (temporary orders before final order).

Rule 301. Motions Relating to Judgments [Updated April 8, 2010]

(a) Prejudgment Motions.

- (1) 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 as to any requested relief not granted by a final judgment under Rule 300.
- (2) Motion for Judgment Notwithstanding the Verdict or to Disregard Jury Finding. A party may move for judgment notwithstanding the verdict after receipt of the jury's verdict, if a directed verdict would have been proper or may move to disregard one or more jury findings that will not support a judgment under the law or that have no support in the evidence. The motion is overruled by operation of law as to any requested relief not granted by a final judgment under Rule 300.
- (3) Form of Judgment. A party must submit a proposed form of judgment with a motion for judgment.

(b) Postjudgment Motions.

- (1) Ordinary Motion for New Trial. A party may move to set aside a judgment and seek a new trial pursuant to Rule 302.

An ordinary motion for new trial may be filed within 30 days after the final judgment is signed.

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 for new trial has been overruled.

The clerk must immediately call such a motion to the attention of the judge. But the failure of the clerk to do so does not affect the preservation of complaints made in the motion.

If not determined by signed written order within 75 days after the final judgment was signed, an ordinary motion for new trial is overruled by operation of law on expiration of that period.

As long as the trial court retains plenary power over its judgment, the trial court has discretion to consider and rule on an amended motion for new trial that was not filed within 30 days after the signing of the trial court's final judgment. The trial court's substantive ruling on the merits of such a late-filed motion is subject to review on appeal.

- (2) Motion to Modify Judgment. After a judgment has been signed, a party may move to modify the judgment in any respect, including (without limitation) by moving for judgment on the verdict, moving for judgment notwithstanding the verdict, or by moving to disregard one or more jury findings. Complaints and requests for relief included in motions to modify must be specific.

A motion to modify a judgment must be filed and determined within the time [and in the manner] prescribed by subdivision (b)(1) of this rule for an ordinary motion for new trial.

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.

- (3) Motion for New Trial on Judgment Following Citation by Publication. If judgment has been rendered on citation by

publication a motion for new trial based on Rule 302(a)(8) may be filed within two years after the final judgment was signed.

The parties adversely interested in such judgment must be served with citation as in other cases.

- (4) 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.

A motion for judgment nunc pro tunc 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

- (c) 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 will run from the time the modified judgment is signed.

If a correction to a judgment is made pursuant to subdivision (b)(4) of this rule after expiration of the trial court's plenary power, all periods provided in these rules which run from the date the judgment is signed will run from the date of the signing of the corrected judgment for any complaint that would not apply to the original judgment.

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

Rule 301. Motions Relating to Judgments [alternative draft]

(a) Motions for Judgment and for New Trial.

After the verdict is returned and within thirty days of the date the judgment is signed, a party may file a motion for judgment on all or part of the verdict, a motion to disregard one or more jury findings, a motion for judgment as a matter of law (notwithstanding the verdict), a motion for new trial pursuant to Rule 302, a motion to modify the judgment in any respect, or any other motion with respect to a judgment.

A party may file more than one motion and may amend any such motion while the court retains plenary power over its judgment as provided in Rule 304, regardless of whether the court has already denied such a motion. Any ground raised in a motion is preserved for appeal if the motion was timely filed and such relief was not granted by a final judgment, or if the motion, though not timely filed, is expressly denied by court order.

[State effect on plenary power, probably in plenary rule, and effect on appellate timetable in Appellate Rule 26].

(b) Motion for New Trial on Judgment Following Citation by Publication.

[see prior draft]

(c) Motion for Judgment Nunc Pro Tunc.

[see prior draft]

(d) Periods Affected by Modified Judgment.

[see prior draft]

RULE 302. MOTIONS FOR NEW TRIAL [New]

(a) **Grounds.** 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:²

Deleted: For good cause, a

(1) when the evidence is factually insufficient to support a jury finding;³

(2) when a jury finding is against the overwhelming weight of the evidence;

Deleted: preponderance

(3) when the damages awarded by the jury are manifestly too small or too large because of the factual insufficiency or overwhelming weight of the evidence;

Deleted: preponderance

(4) when the trial judge has made an error of law that probably caused rendition of an improper judgment;

(5) when harm 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;

Deleted: injury

(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;⁴

² At the January 23, 2010, meeting, the Committee voted (16 to 13) in favor of a non-exclusive list. The Committee also asked that authorities be provided to support the stated grounds, along the lines of the PJC.

³ At the January 23, 2010, meeting, the comment was made that these subsections, to the extent they overlap with Rule 324(b) grounds, should use the same language. Alternatively, reference could be made to new proposed Rule 303(e).

(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, provided that the court specifies the reasons for its order.⁵

(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.

⁴ At the January 23, 2010, meeting, the suggestion was made to delete this section or group with the preceding section, with a reference to what is now covered by proposed Rule 301(e).

⁵ In re Columbia Medical Center, 290 S.W.3d 204, 215 (Tex. 2009).

(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, but consists solely of portions of current rules.⁶]

- (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 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
- (2) the trial court:
- (A) ruled on the request, objection, or motion either expressly or impliedly; or
- (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 in relation to the judgment made pursuant to Rule 301 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.

⁶ Subsections (a), (b), and (c) repeat verbatim Appellate Rule 33.1(a)(b)(c). Subsection (d) repeats verbatim current Rule 324(a). Subsection (e) repeats verbatim current Rule 324(b). Subsection (f) repeats verbatim current Appellate Rule 33.1(d). No changes from January 22-23, 2010, meeting.

- (c) **Formal Exception and Separate Order Not Required.** Neither a formal exception to a trial court ruling or order not a signed, separate order is required to preserve a complaint for appeal if the ruling is otherwise reflected in the record.
- (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 nonjury case, except as provided in subsection (e).
- (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.
- (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.

**PROPOSED RULE 304. PLENARY POWER OF THE TRIAL
COURT [New.]⁷**

(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;

⁷ No changes from January 22-23, 2010, meeting.

(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