

Report of SCAC Subcommittee on TRCP 216-299a

1) Rule 226a Jury Instructions

By a 12-10 vote at the October SCAC meeting, the full committee endorsed David Beck's suggestion to amend Rule 226a and include language in jury instructions describing the role of counsel. After further study, the subcommittee suggests the addition of the following language to Rule 226a:

"Before the attorneys begin their questioning, you need to be aware that our judicial system is an adversary system. This is a system where the interested parties participate in the decisional process by presenting evidence of their claims or defenses through their attorneys, who are their advocates. This procedure enables the jurors to have before them the relevant admissible evidence from each party so that the jury can determine the true facts and arrive at a just verdict based on such evidence.

Under the rules of our adversary system, each attorney, owes entire devotion to the interest of the client and is to zealously, vigorously and using the attorney's utmost skill and ability, present the client's claims or defenses, which the attorney believes there is a basis for so doing that is not frivolous. The attorney acts for and seeks for the client, every remedy and defense that is authorized by law. Our system has served us well for over 200 years, and trial attorneys have been and continue to be a critical part of the adversary process."

Query: Whether Rule 226a should be reviewed in its entirety and modified in light of plain English principles?

2) Findings of Fact and Conclusions of Law. The subcommittee was asked to consider the following issues:

Should Rule 296 include a statement as to when findings of fact are required and when findings are discretionary?

Should findings of fact be mandated in broad form when feasible- i.e parallel the jury charge rules? The current situation encourages voluminous and unnecessary evidentiary findings. (Some statutes and rules require particularized findings.)

Should the timing of requests for findings of fact be modified? Is the federal approach desirable allowing (or requiring) the trial judge to make findings at the conclusion of the case, rather than weeks or months later? Should the federal clearly erroneous standard apply?

The subcommittee recommendations are as follows:

The subcommittee does not recommend amending Rule 296 to include a statement as to when findings of fact are required and when findings are discretionary as the Texas Supreme Court's decision in *IKB Industries v. Pro-Line Corp.*, 938 S.W.2d 440 (Tex. 1997) sets forth the law on the subject.

The subcommittee does not support mandating broad form findings of fact but does endorse amending Rule 296 to make clear the trial court has discretion to make broad form findings of fact.

The subcommittee does not endorse a requirement that a trial judge make findings of fact in every case. Federal courts have much lighter dockets and have law clerks to assist the court in achieving such a task. However, the subcommittee does endorse an amendment of the rule to allow trial court discretion to make oral findings on the record at the conclusion of the case, provided the trial court has an opportunity to later amend or make additional findings of fact.

The subcommittee does not support the inclusion in the rules of a clearly erroneous appellate standard to review findings of fact.

The subcommittee considered addition of the following language, but ultimately voted not to include a statement in the rules as to when findings of fact are required or discretionary. The following proposal was rejected:

"Following a conventional trial on the merits in any case tried in 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....." In all other instances unless otherwise provided by law, the trial court may, but is not required to, make findings of fact and conclusions of law in support of a judgment based in any part on an evidentiary hearing.

Recommended Rule Changes:

The subcommittee recommends the following amendments:

Rule 296

If findings are properly requested, the judge shall state findings of fact on each ground of recovery or defense raised by the pleadings and evidence. Unless otherwise required by law, the trial court's findings of fact may be in broad form."

A minority view would require a certain level of specificity in findings of fact. Under that proposal, the following additional sentence would be added to Rule 296:

"The trial courts findings are to include only as much of the evidentiary facts as is necessary to disclose the basis for the court's ultimate conclusion."

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

To effectuate the subcommittee's recommendation, additional rule changes would be required as follows:

Add to Rule 297:

The court shall file its findings of fact and conclusions of law within twenty days after a timely request is filed. However, it will be sufficient if the findings of fact and conclusions of law are stated orally and recorded in open court in the presence of counsel, following the close of the evidence. The court shall cause a copy of its findings and conclusions to be mailed to each party in the suit.

Amend Rule 298:

After the court ~~makes~~ files original finding 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 conclusion. The request for these findings shall be made within ten days after the filing or oral pronouncement of the original findings and conclusions by the court in accordance with Rule 297. Each request made pursuant to this rule shall be served on each party to the suit in accordance with Rule 21a.....

Amend Rule 299a:

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. However, original findings of fact stated orally and recorded in open court following the close of the evidence shall

satisfy this requirement. Any additional or amended findings of fact and conclusions of law must be in writing and filed with the clerk.