



Drafting Orders

2024 District Court Judges Summer Conference

By: Sara DePasquale, UNC Sch. of Gov't

Today's Topics



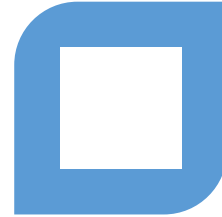
BASICS



FINDINGS



CONCLUSIONS



DECREE



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ENTRY

An Order Should:

1

Accurately memorialize the court's ruling, including any required findings of fact, conclusions of law, and decree provisions.

2

Guide actions of the parties and avoid future conflict.

3

Provide a foundation for future modifications or contempt actions.

Know the law



- Order must cover what is required
 - Know what the issues are
- Starts before or during the trial
- Address the issues as you go

SOG Resources

NC Superior Court Judges' Benchbook

benchbook.sog.unc.edu

UNC School of Government | NORTH CAROLINA SUPERIOR COURT JUDGES' BENCHBOOK

CIVIL ORDERS: FINDINGS OF FACT AND CONCLUSIONS OF LAW

Ann M. Anderson, UNC School of Government (Nov. 2017)

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I. **Introduction.** When must a civil order include written findings of fact and conclusions of law? Some types of orders must always include at least some findings and conclusions; some orders need only include them if a party asks for them; and for others, findings of fact are inappropriate whether requested or not. [Rule 52 of the Rules of Civil Procedure](#) gives us the core rules, but exceptions and clarifications abound, and some types of orders are governed by separate, more specific statutes. This benchbook chapter covers the fundamentals.

II. **Rule of Civil Procedure 52.**

A. **Judgments in Non-Jury Trials.**





1. **Findings and Conclusions Required in Non-Jury Trials.** In bench trials the judge not only makes the legal conclusions but also is the finder of fact. Written findings of fact and conclusions of law are required in all actions tried without a jury, whether or not requested by a party. Rule 52(a)(1). See, e.g., *Traber v. Crawford*, 28 N.C. App. 694, 698-99 (new trial where findings did not cover all issues).

2. **Separate Findings of Fact From Conclusions of Law.** Findings of fact must be set forth separately from the conclusions of law. Failure to set

District Court Judges Benchbook

Volume I, Family Law

Volume 1

-  Introduction (2021).pdf
-  Ch 01 Spousal Agreements (2021).pdf
-  Ch 02 Alimony (2021).pdf
-  Ch 03 Child Support (2021).pdf
-  Ch 04 Child Custody (2021).pdf
-  Ch 05 Divorce (2021).pdf
-  Ch 06 Equitable Distribution (2021).pdf
-  Ch 07 Domestic Violence (2021).pdf
-  Ch 08 Adoption (2021).pdf
-  Ch 09 Minors Abortion (2021).pdf
-  Ch 10 Paternity (2021).pdf
-  All Checklists (2021).pdf
-  All Chapters (2021).pdf





CONTENT BY CHAPTER

- 1: Overview of NC Child Welfare System
- 2: Court, Key People, Rights of Children and Parents
- 3: Jurisdiction, Venue, Overlapping Proceedings
- 4: Procedural Rules and Orders
- 5: From Report through Pre-Adjudication
- 6: Adjudication of Abuse, Neglect, Dependency
- 7: Dispositional Phase: Initial, Review, Permanency
- 8: Voluntary Placements and Foster Care 18–21
- 9: Termination of Parental Rights
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- 11: Evidence
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- 13: Relevant Federal Laws
- 14: Confidentiality and Information Sharing
- Appendix
- Checklists

MICROSITE

Abuse, Neglect, Dependency, and Termination of Parental Rights

<https://www.sog.unc.edu/resources/microsites/abuse-neglect-dependency-and-termination-parental-rights/>

On the Civil Side

The screenshot shows a blog post from the UNC School of Government. The header includes the UNC logo and 'SCHOOL OF GOVERNMENT'. A navigation bar contains links for Home, About, Contributors, and Categories. The article title is 'Do I Need to Include Findings of Fact in this Order?'. Below the title is a social media sharing section with icons for Twitter, Facebook, LinkedIn, Email, and Print. The text of the article discusses the requirements for including findings of fact and conclusions of law in civil orders, citing various North Carolina Rules of Civil Procedure and case law.

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Home | About | Contributors | Categories

Do I Need to Include Findings of Fact in this Order?

This entry was contributed by Ann Anderson on March 15, 2017 at 11:52 am and is filed under Civil Practice, Civil Procedure-General.

When must a civil order include specific findings of fact and conclusions of law? Some types of orders must always include at least *some* findings; some orders need only include them if a party asks for them; and for other orders, findings of fact are inappropriate whether requested or not. [Rule 52](#) of the North Carolina Rules of Civil Procedure gives us the core rules, but exceptions and clarifications abound. And, of course, some types of orders are governed by separate, more specific statutes. Here are the fundamentals:

Orders (judgments) after bench trials. In all actions tried without a jury, the judge (as finder of fact) must include specific findings of fact and conclusions of law in the written judgment or written memorandum. Rule 52(a)(1), (3). The requirement is mandatory and does not depend on a party's request. If the court later amends the judgment under Rule 59(e) or 52(b), the court must include any necessary additional findings and conclusions.

Findings of fact and conclusions of law are also required when the judge in a bench trial dismisses the case under Rule 41(b) after the plaintiff's evidence. Rule 52(a)(2); *Hill v. Lassiter*, 135 N.C. App. 515 (1999). If, however, the court properly dismissed the case because the evidence was insufficient as a matter of law (as in a directed verdict)—rather than because the judge was simply unpersuaded by it—there are no facts to be found and including them would be inappropriate. *Bauman v. Woodlake Partners, LLP*, 191 N.C. App. 441, 445 (2009).

Orders on motions. The general rule for orders on a party's or the court's own motion is this: Findings of fact and conclusions of law are not required *unless a party requests them*. Rule 52(a)(2). For example, the court of appeals remanded a case where a party's motion to dismiss for lack of personal jurisdiction included such a request, and the trial court failed to include them in the order. *Agbemavor v. Keteku*, 177 N.C. App. 546 (2006). The party is required to make its request before the court enters an order. *J.M. Dev. Grp v. Glover*, 151 N.C. App. 584 (2002).

To this general rule there are two significant categories of **exceptions**:

Findings of fact inappropriate — Summary judgment and similar dispositive orders. Even if a party requests them, findings of fact are *not* appropriate in orders disposing of summary judgment motions. The court's task at summary judgment is to determine whether genuine issues of material fact exist for a jury to resolve, not to actually resolve those issues ("find" those facts). *Hodges v. Moore*, 205 N.C. App. 722 (2010). The court may, however, include a recitation of undisputed facts (ideally labeled "undisputed") in order to set the stage for its ruling. *War Eagle*

NC Criminal Law Blog

Beyond a Reasonable Doubt: Findings Required in Delinquency Adjudication Orders



May 24, 2022 by [Jacquelyn Greene](#)

Last month the Court of Appeals held in *In re J.A.D.*, 2022-NCCOA-259, that the findings in an adjudication order were deficient because they did not include an affirmative statement by the court, beyond the pre-printed language on the form, that the allegations in the petition were proven beyond a reasonable doubt. Given the minimal legal ... [Read more](#)



Bulletins



UNC
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JUVENILE LAW BULLETIN

NO. 2013/02 | SEPTEMBER 2013

Drafting Good Court Orders in Juvenile Cases

Janet Mason

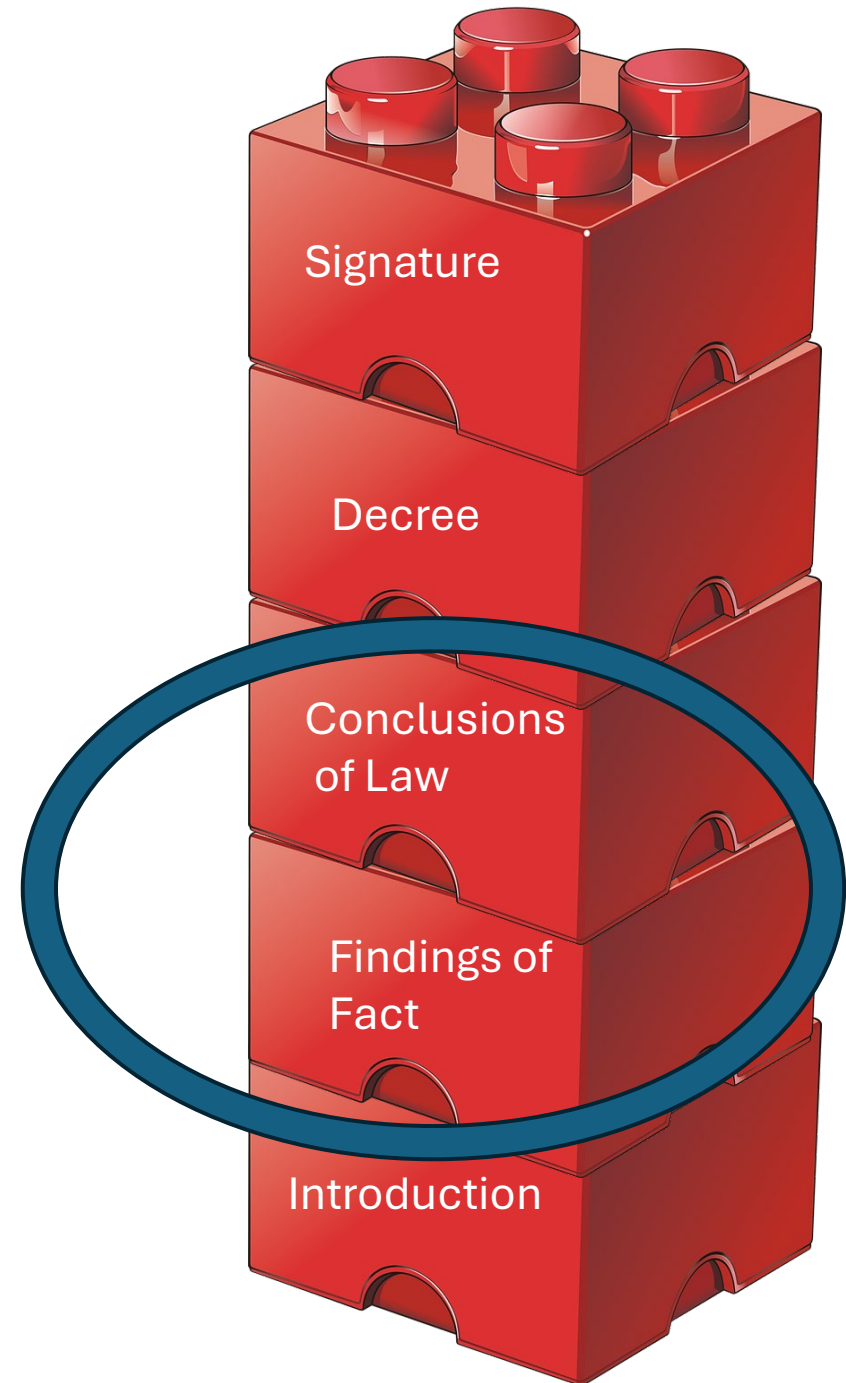
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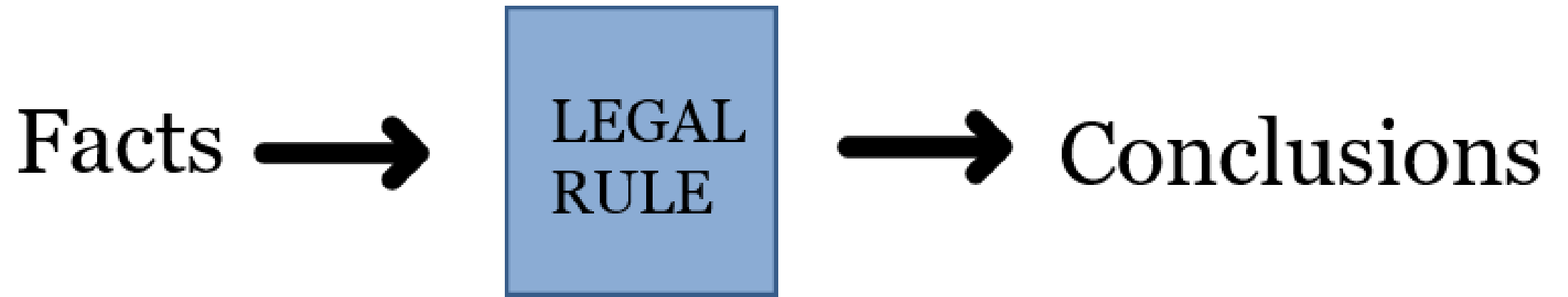
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Building Blocks of an Order



Big Focus on Appeal





Today's Topics



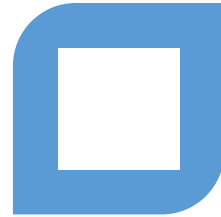
BASICS



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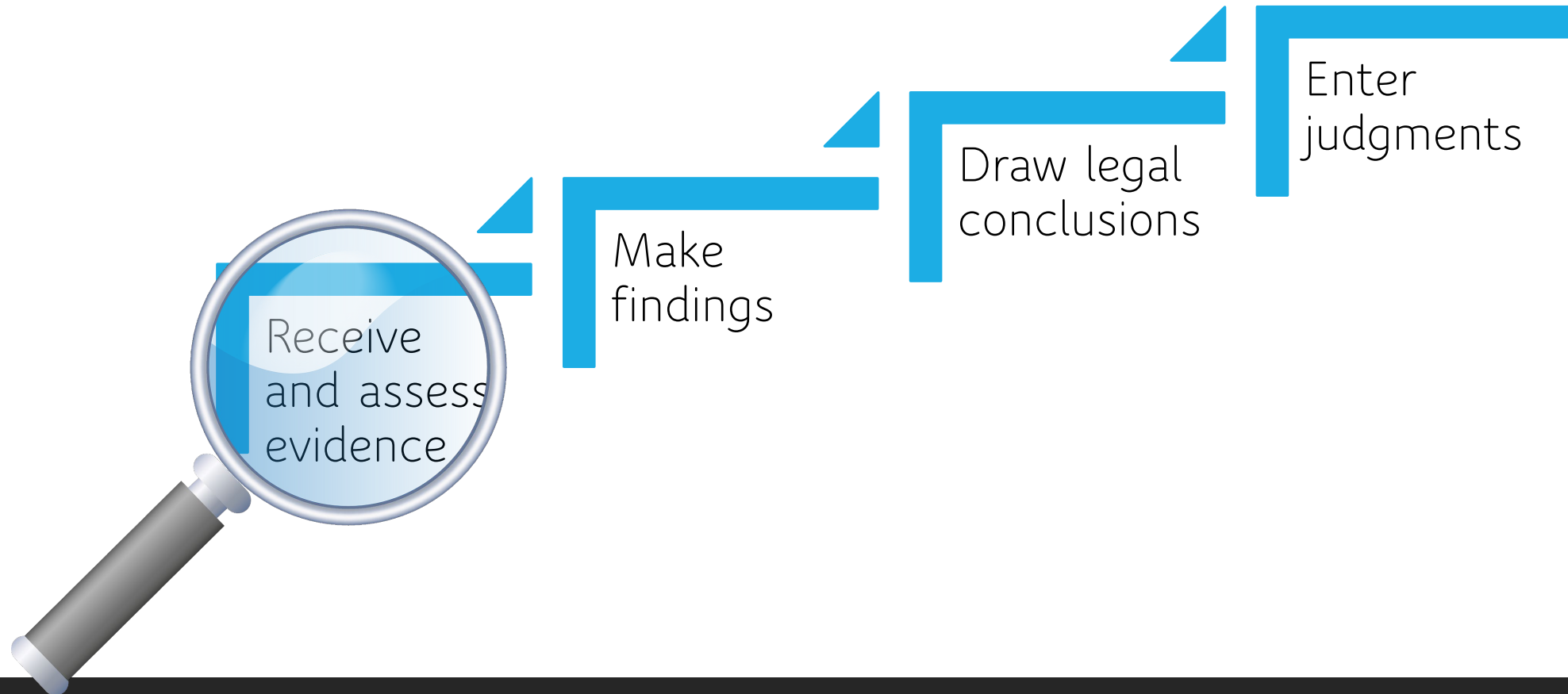


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ENTRY

The Steps



2 Types of Facts

In re G.C., 384 N.C. 62 (2023)

Evidentiary

- Subsidiary facts required to prove ultimate facts
- Things in space and time that can be objectively ascertained by 1 or more of the 5 senses, In re M.N.C., 176 N.C. App. 114 (2006))

Rule 52

Rule 52. Findings by the court

Findings –

(1) In all actions tried upon the facts without a jury or with an advisory jury, the **court shall find the facts specially** and state separately its conclusions of law thereon and direct the entry of the appropriate judgment.



Why?

- Supports conclusions of law
- Allows for appellate review
 - Are the facts supported by competent evidence?
 - Are the facts supported by the proper evidentiary burden?



Making A Finding: Competent Evidence

- Things the court should consider
 - Relevance and Admissibility
 - Witness credibility
 - Weight of the value of the different evidence presented
 - Make reasonable inferences

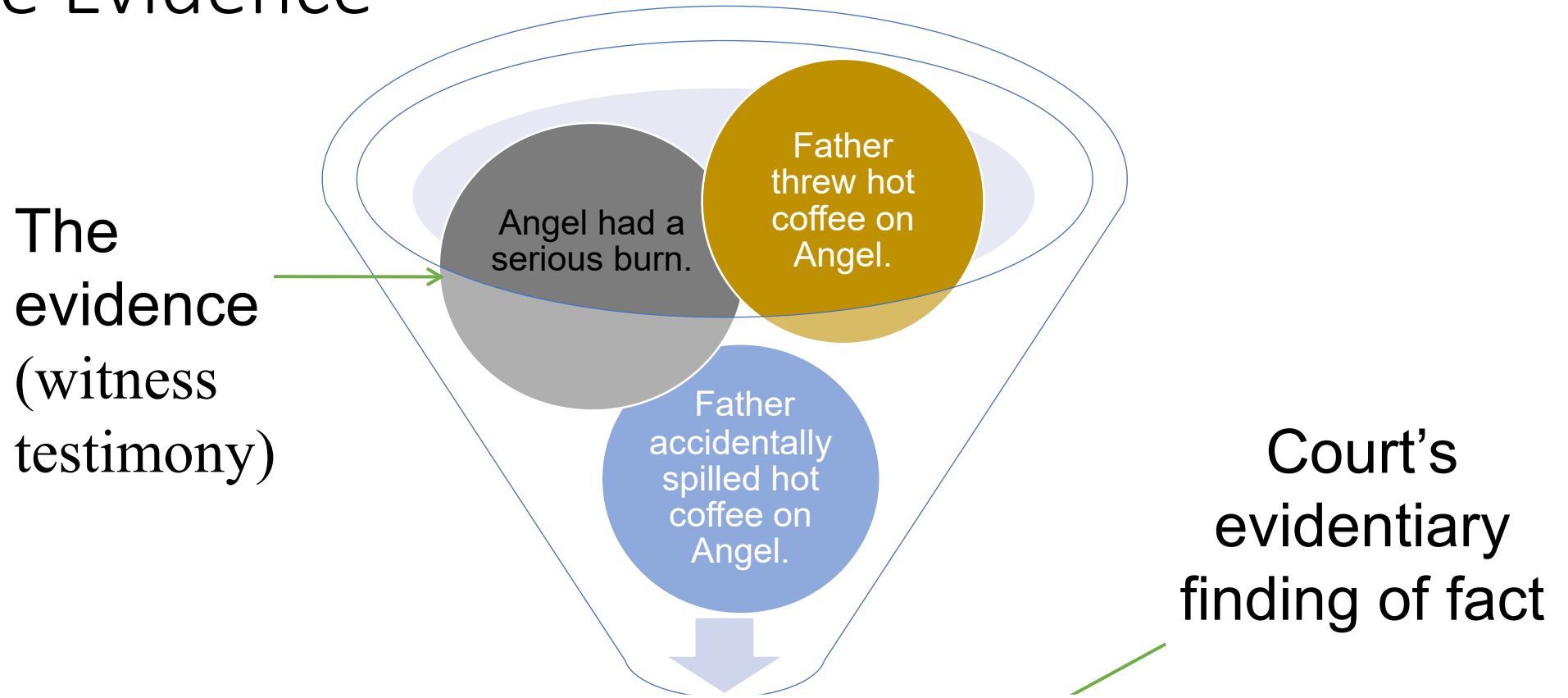
—

Competent evidence does not include

- statements by counsel
- court's knowledge from earlier proceedings



Sufficient Findings Supported by the Evidence



Evidentiary
fact

- Father threw hot coffee on Angel, causing a serious burn

Ultimate
fact

- Angel suffered serious physical injury due to nonaccidental means while in father's care

How did that work?

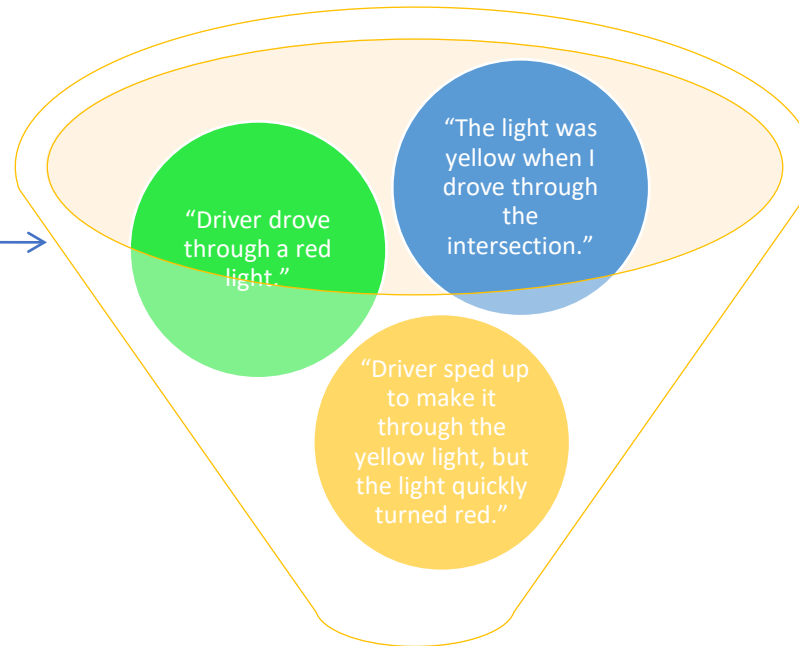
§ 7B-101. Definitions.

As used in this Subchapter, unless the context clearly requires otherwise, the following words have the listed meanings:

- (1) Abused juveniles. – Any juvenile less than 18 years of age (i) who is found to be a minor victim of human trafficking under G.S. 14-43.15 or (ii) whose parent, guardian, custodian, or caretaker:
 - a. Inflicts or allows to be inflicted upon the juvenile a serious physical injury by other than accidental means;

“Finding” a fact

The evidence.
(The “facts”
according to the
witnesses.)

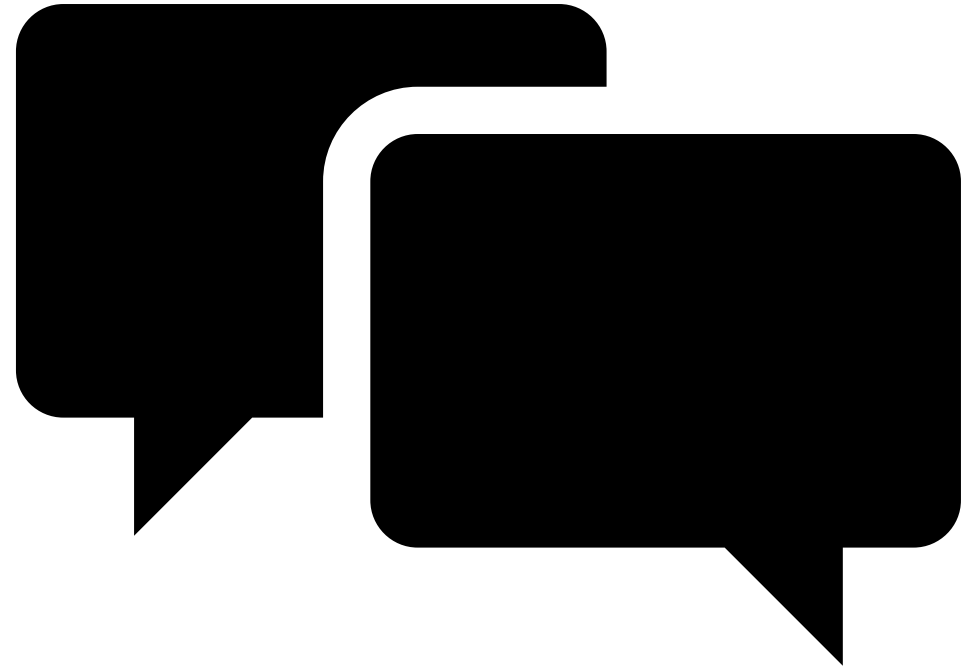


What is a possible
finding of fact?



Testimony

- Recitation of testimony
“Doctor testified that Bobby had two broken bones.”
- Finding based on testimony
“Bobby had two broken bones.”

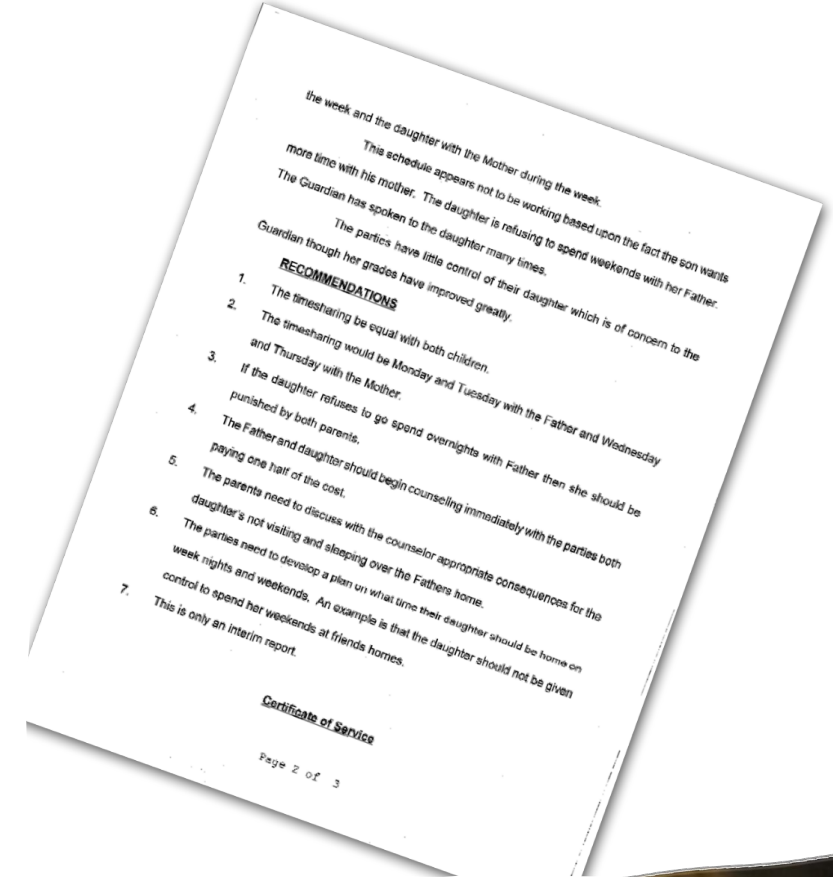


Report

- Report or Document by Itself
“The GAL report is incorporated...”

VS

“after reviewing the GAL report, the court finds there was the mother arrived at the supervised visitation center drunk.”



Do Not Give A Description

- Description of Evidence
“DSS introduced a case plan setting out steps respondents agreed to take.”

vs.

“On [date] respondents and DSS agreed on a case plan that provided for”



Other Issues with Findings

Should not be equivocal

NOT: “It appears that Mrs. Parker suffers from depression.”

YES: “Mrs. Parker suffers from depression.”

Lack of Specificity

“Father has a serious drinking problem.”

vs.

“Father regularly gets drunk on weekends. When he is drunk, he is easily angered and sometimes violent toward his wife and children. The children try to avoid him. On weeknights he regularly drinks at least a 6-pack of beer. . .”

Can you think of other descriptors you shouldn't use?

- Plaintiff presented evidence that showed
- The parties disagree about
- Defendant contends
- Plaintiff claims



Statutory Compliance re: Findings

- Pay attention to the language of the statutes
 - Does it say
 - Considered
 - Written
 - Each of the factors or “relevant” factors?
- Failure to comply = Remand

Does the statutory language have to be used?

- NO
- Substance of statute must be addressed



Can an order cut and paste from a pleading?

- Yes, not per se reversible error
- But, must demonstrate court used process of logical reasoning to make ultimate facts based on evidentiary facts
- Make sure based on evidence admitted



Today's Topics



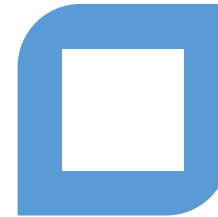
BASICS



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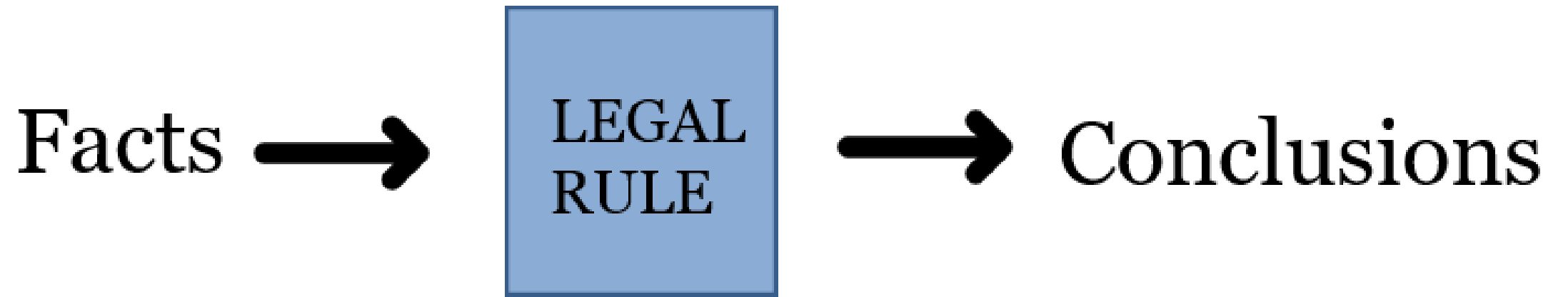
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ENTRY



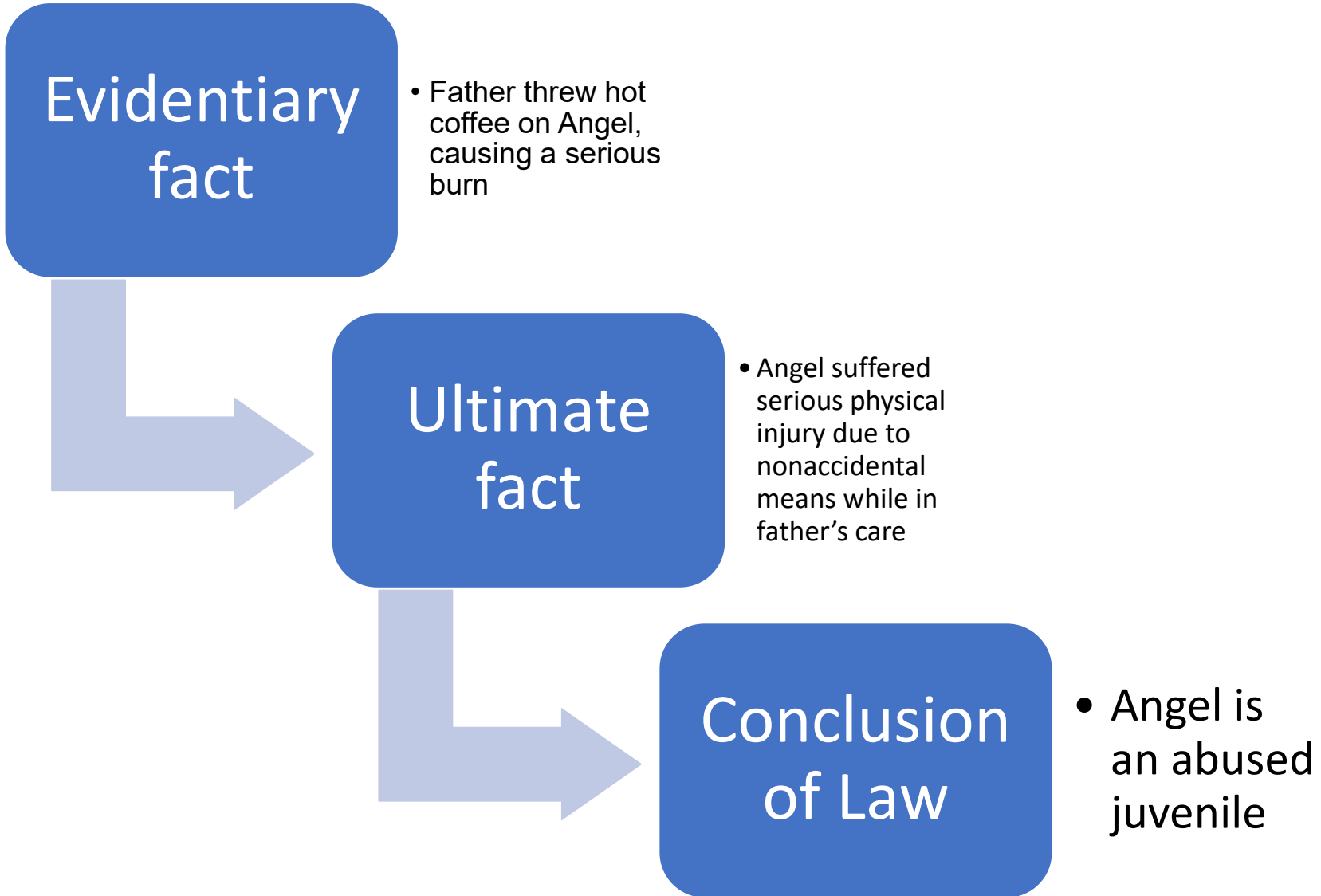
Conclusions of Law



Judicial determination requiring the exercise of judgment or the application of legal principles



Give Examples of
Conclusion of Law



How did that work?

§ 7B-101. Definitions.

As used in this Subchapter, unless the context clearly requires otherwise, the following words have the listed meanings:

- (1) **Abused juveniles** - Any juvenile less than 18 years of age (i) who is found to be a minor victim of human trafficking under G.S. 14-43.15 or (ii) whose parent, guardian, custodian, or caretaker:
 - a. Inflicts or allows to be inflicted upon the juvenile a serious physical injury by other than accidental means;

*Chapel Hill-Carrboro
Schools v. Chavioux, 116
N.C. App. 131 (1994).*

*“A bare conclusion such as the one
in this case does not meet the
requirements of Rule
52(a)(1).”...We cannot determine
what the judge’s factual and legal
grounds for his judgment were and,
thus, may not review it on appeal.”*

The trial judge’s order reads as follows:

THIS MATTER COMING ON FOR HEARING and having been heard by the undersigned Judge, sitting without a jury, at the December 3, 1992, Civil Session of the District Court and

This matter appearing on the regular printed calendar, copies of which were mailed to both parties as Notice of the hearing, and

The plaintiff was represented by counsel; the defendant was not present for trial but the defendant’s spouse was present Pro Se, and

Upon call of the case for trial the defendant’s spouse requested a continuance, which was denied.

Having reviewed the pleadings and having heard the evidence the Court concludes that the plaintiff should recover nothing of the defendant.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that the plaintiff recover nothing of the defendant.

This the 11th day of December, 1992.

Rule 52

Rule 52. Findings by the court

Findings –

(1) In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and **state separately its conclusions of law** thereon and direct the entry of the appropriate judgment.

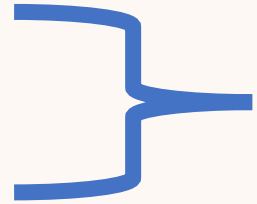
“Separately”

Use headings

Findings of Fact

Conclusions of Law

Order/Decree



If mislabeled, will be treated appropriately

It Matters for Appellate Review

Findings of fact

- Are they supported by competent evidence / burden of proof

Conclusion of law

- De novo review; do findings support conclusion

Pop Quiz!



CLIPPBA



Which clip has the facts?

- CLIP A

- CLIP B

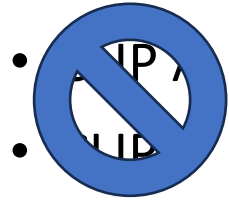


Which clip has the legal rule?

- CLIP A
- CLIP B



Which clip has the conclusion of law?



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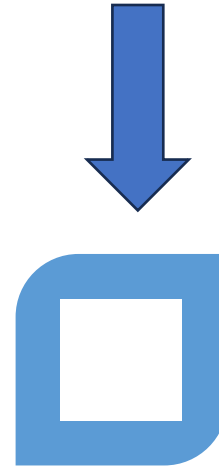
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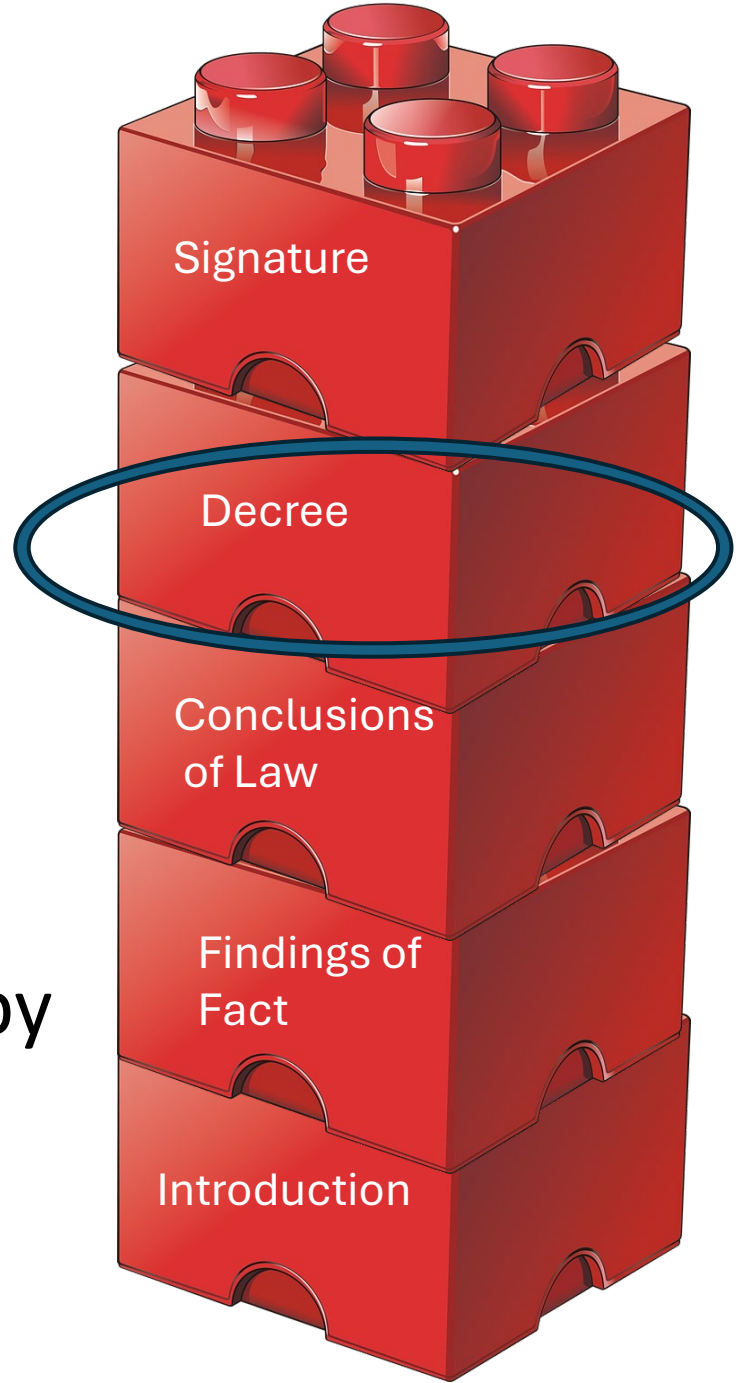
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ENTRY

Concisely state the court's ruling

Direct **exactly** who is required to do what by when



Answer Everything



Find all the facts necessary to dispose of all the legal issues



Make conclusions as to all the legal issues



Not a checklist, it's a process!



Be precise and clear

Today's Topics



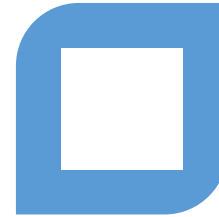
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OK to Delegate Drafting

"This Court has previously held that pursuant to the provisions of N.C. Gen. Stat. § 1A-1, Rule 58 of the Rules of Civil Procedure, after 'entry' of judgment in open court, a trial court retains the authority to approve the judgment and direct its prompt preparation and filing." *Hightower v. Hightower*, 85 N.C. App. 333,

In re J.B., 172 N.C. App. 1 (2007)

It's Your Order

Form of the Custody Order

[4] Orders and judgments in civil actions are orders of the court, and not the orders of the parties. *See Walters v. Walters*, 307 N.C. 381, 386, 298 S.E.2d 338, 342 (1983). The Custody Order

Heatzig v. McLean, 191 N.C. App. 451 (2008)

In re A.B., 239 N.C. App. 157

First, the order is the responsibility of the trial court, no matter who physically prepares the draft of the order. See *In*

Explain what should be in order

- Facts
- Conclusion
- Not just outcome



In re J.B., 172 N.C. App. 1 (2007)

The trial court directed petitioner to draft an order terminating respondent's parental rights, and it designated "specific findings of fact" it wanted included in the order. Following presentation of evidence and argument regarding John's best interests, the trial court concluded that "[u]nder the statute I will terminate the parental rights of [respondent]." In light of the foregoing, we conclude that the trial court did not err in directing petitioner to draft the termination order on its behalf. Accordingly, we overrule this argument.

Set deadlines

“A lawyer shall act with reasonable diligence and promptness in representing a client.” RPC 1.3



2019 FEO 4, Opinion #5

Judge instructs lawyer to send briefs to judge via email with copy to opposing counsel. Is this ok?

Yes. If the presiding judge has instructed counsel to communicate directly with the court, the communication is not a prohibited ex parte communication under Rule 3.5 and is not prejudicial to the administration of justice under Rule 8.4(d) even if the requested communication will be on the merits of a pending matter. This conclusion applies to any appropriate request from a judge to all counsel for communication, including trial briefs and proposed orders. Again, the Rules of Professional Conduct are not meant to disable or abridge “the inherent powers of the court to deal with its attorneys.” N.C. Gen. Stat. § 84-36. The presiding judge has the authority to determine how counsel are to communicate with the court; except as prohibited by law or court rule, such communications are within the discretion and preference of the tribunal and the presiding official.



Attorney Drafts

Tips

- Instruct parties how to communicate with you about drafts (email, etc.)
- Remind parties to copy the other parties on all communications



Attorney Drafts

Review Draft Orders Carefully

- Avoid rubber stamping one side's draft of an order
- Lack of thorough review can lead to appearance of partiality
- Watch out for substantive typos

Can revise

For years Me...
hen to white, then back to brown...
ews have been working hard against Mexicans in...
ould be allowed at all. Because of these views points Mexicans are see...
e given a low status even if entered through the proper channels with Yes!

Who is this? defines racism to be "the belief that a particular race is superior or inferior to
person's social and moral traits are predetermined by his or her inborn biological
s." Racism is not just labeled to one defined as two different races like white and black. Many
nicities can have racism among themselves within itself. Racism can also be just unprovoked blind hatred between
duals. It can also be due to skin color, background, sex, language, birth places, or even
atoms. Racism can influence many things like slavery or the formation of countries and
s. The belief of inferiority was not this automatic creation. Not all skin types or colorings
originally considered inferior. Many years ago the Portuguese discovered how much mo
anced Africans than themselves. An important feature of race is that how on
Source?
Specifics?

In re T.M.H., 186 N.C. App. 451 (2007)

We further note that the termination order was printed, signed, and filed on the ruled stationery of petitioner's trial attorney. It is important that our trial courts not only be impartial, but also have every appearance of impartiality. We strongly discourage judges from signing orders prepared on stationery bearing the name of any law firm.

Habitat for Humanity of Moore Co., Inc. v. Pinebluff, 187 N.C. App. 764 (2007)

III. Order

We note that Judge Webb's order was printed, signed and filed on the ruled stationery of Habitat's trial attorney. Without deciding whether this practice violates either the Code of Judicial Conduct or the Revised Rules of Professional Conduct, we strongly discourage lawyers from submitting or judges from signing orders printed on attorneys' ruled stationery bearing the name of the law firm. Such orders could call into question the impartiality of the trial court. *In re TMH*, 186 N.C.App. 451, 652 S.E.2d 1 (2007).

Heatzig v. McLean, 191 N.C. App. 451 (2008)

This Court has held that a trial court should not sign orders prepared on stationery bearing the name of the law firm that prepared the order, since it does not convey an appearance of impartiality on the part of the court. See *In re T.M.H.*, 186 N.C.

Attorney Drafts

Heatzig v. McLean, 191 N.C. App. 451 (2008)

764, 653 S.E.2d 886 (2007). Similarly, the signing of an order marked as "Defendant's Proposed Order" does not convey an appearance of impartiality on the part of the court. We also note

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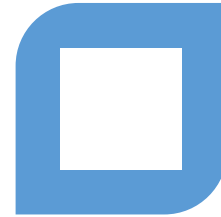
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ENTRY



Rendition: oral judgment pronounced in open court

The child is neglected based on the following findings of fact, which are based on clear and convincing evidence

...



Is that an
order?

Is it
enforceable?

When Is an Order Entered?

Rule 58

1. In Writing
2. Signed by Judge
3. Filed by Clerk

Roger V. Bradford

Judge Roger V. Bradford



Kerchunk!

What's the Problem with Rendition?

An oral order does not become enforceable until it is reduced to writing, signed by the judge, and filed with the clerk of court.

Dabbondanza v. Hansly, 249 N.C. 18 (2016)
Carland v. Branch, 164 N.C. App. 403 (2004)

What About New
Evidence after
Render?

In re O.D.S., 247 N.C. App. 711 (2016)

this Court has held that the trial court can consider evidence presented *following* the oral rendering of the judgment in order to better inform its subsequent written judgment.

Can the entered order
differ from rendition?

In re O.D.S., 247 N.C. App. 711 (2016)

[1] [2] Furthermore, this Court has not generally required written entered judgments to adhere to the prior non-entered, orally rendered judgments upon which they were based. “ ‘The announcement of judgment in open court is the mere rendering of judgment,’ and is *subject to change* before ‘entry of judgment.’ ‘A judgment is entered when it is reduced to writing, signed by the judge, and filed with the clerk of court.’ ” *Morris v. Southeastern Orthopedics Sports Med.*

What Are the Effects of Delay in Entry of Order?

Not Effective



Not Enforceable



No Appeal



No Contempt



No Modification

What Are the Effects of Delay in Entry of Order?

Frustrating for parties



Stressful for you



Memory fades



Judicial Canon 3.A(5): dispose promptly of
business of the court

Recap

