



Drafting Orders




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 Conducting Hearings: Essentials for Clerks
 March 3-4, 2010




Components

- **INTRODUCTORY PARAGRAPH**
 –Nature of Matter and Hearing;
 Jurisdiction
- **FINDINGS OF FACT**
- **CONCLUSIONS OF LAW**
- **ORDER/DECREE**



The Law

- **General requirement:**
 – “In all actions tried upon the facts without a jury,...the court shall find facts specially and state separately its conclusions of law thereon and direct the entry of the appropriate judgment.” G.S. § 1A-1, Rule of Civil Procedure 52(a)(1).



The Law

- In estates and trusts cases:
 - “In matters covered by this section, the clerk shall determine all issues of fact and law. The clerk shall enter an order or judgment, as appropriate, containing findings of fact and conclusions of law supporting the order or judgment.” G.S. § 1-301.3

Why findings and conclusions?

Gives parties better understanding of your decision.

Why findings and conclusions?

Encourages you to make a careful review of the evidence.

Why findings and conclusions?

Helps ensure you address all relevant issues.



Why findings and conclusions?

Provides a basis for review by Superior Court and Court of Appeals.



Appellate Review

In Estates and Trusts matters:

§ 1-301.3(d)

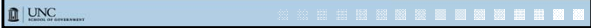
Upon appeal, the judge of the superior court shall review the order or judgment of the clerk for the purpose of determining only the following:

- (1) Whether the findings of fact are supported by the evidence.
- (2) Whether the conclusions of law are supported by the findings of facts.
- (3) Whether the order or judgment is consistent with the conclusions of law and applicable law.



What is “finding fact”?


Determining what the facts are from the disputed evidence.



What is “finding fact”?


Steps:

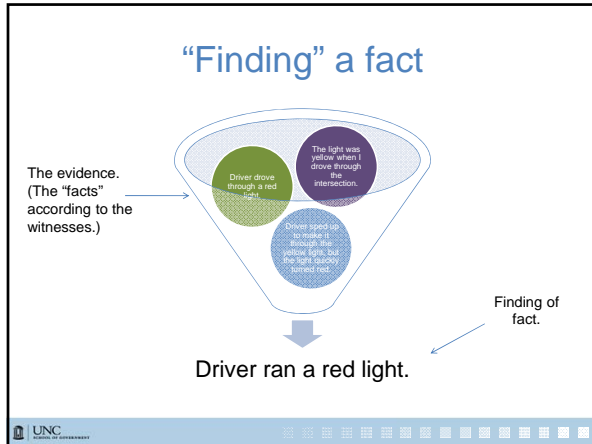
- Take all the admissible evidence on both sides.
- Decide (“find”) what the “facts” are among the disputed evidence.
- State in your order the facts necessary to determine all the issues in the case
 - The “controlling” or “ultimate” facts.



What is a conclusion of law?

Application of the law at issue to the facts you have just found.





“Finding” a fact

Findings of fact should not merely recite or recount the evidence.

They present what you have decided the facts are.

- ### “Finding” a fact
- NO:
“Mr. Davis testified that he did not sign the contract in issue.”
 - YES:
 “Mr. Davis did not sign the contract at issue.”

“Finding” a fact

How do I get there?

- Listen to the evidence.
- Assess the credibility of the witnesses.
- Weigh the value of the various bits of evidence.
- Make the necessary deductions.
- **Have confidence.**



“Finding” a fact

Findings of fact should not sound equivocal or uncertain.

Avoid leaving the reader with uncertainty about whether you have actually decided what the facts are.



“Finding” a fact

- NO:
“*It would seem* that Mr. Davis did not sign the contract at issue.”

(“It seems that...”; “The Court is inclined to find that...”; It appears to the Court that...”)

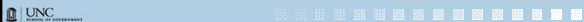
- YES:
“Mr. Davis did not sign the contract at issue.”



How many of the facts do I have to include?

Orders only have to contain “controlling facts”.

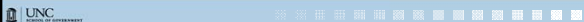
Usually called “ultimate facts”.



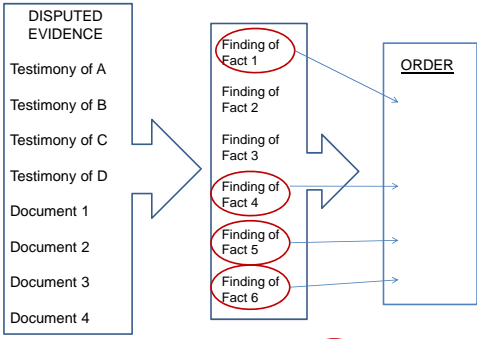
“Ultimate” facts

- “Ultimate facts are the final facts required to establish the plaintiff’s cause of action or the defendant’s defense.”

Woodward v. Mordecai, 234 N.C. 463, 470, 67 S.E.2d 639, 644 (1951).



“Ultimate” facts



DISPUTED EVIDENCE

Testimony of A

Testimony of B

Testimony of C

Testimony of D

Document 1

Document 2

Document 3

Document 4

Finding of Fact 1

Finding of Fact 2

Finding of Fact 3


Finding of Fact 4

Finding of Fact 5

Finding of Fact 6

ORDER

○ = “ultimate” fact



Drafting Tips

- Remember to find all the facts necessary to dispose of all the legal issues.
- So...
 - Know what the issues are.
 - Check off the issues as you go.



Drafting Tips

- Okay to have attorneys draft the orders?
 - Certainly
- Review carefully
- Avoid wholesale adoption of one party's draft of complicated orders.



Drafting Tips

- Remember appearances!
 - Lack of thorough review
 - Partiality



Drafting Tips

- *Habitat for Humanity of Moore Co., Inc. v. Pinebluff*, 653 S.E.2d 886, 889 (2007):
 - Trial judge’s order was “printed, signed, and filed on the ruled stationary of [prevailing party’s] trial attorney.”
 - Court of Appeals: “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 stationary bearing the name of the law firm. Such orders could call into question the impartiality of the court.”



EXERCISE: *In Re Dinwiddie Trust*