

CIVIL ORDERS: WHEN FINDINGS OF FACT
AND CONCLUSIONS OF LAW ARE REQUIRED

A. Rule of Civil Procedure 52

1. Judgments in non-jury trials

a) In bench trials (trials without jury), the judge not only makes the legal conclusions but also is the finder of fact.

b) 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).

c) Findings of fact must be set forth separately from the conclusions of law.

(1) Failure to set forth the findings and conclusions separately is likely to be reversible error. *Pineda-Lopez v. North Carolina Growers Assoc., Inc.*, 151 N.C. App. 587, 566 S.E.2d 162 (2002).

d) Normally the findings and conclusions will appear in the judgment. In the less common event a judge prepares a detailed written opinion or memorandum of decision, it is sufficient if the judge includes the findings of fact and conclusions of law in that document. Rule 52(a)(3).

e) Amendments:

(1) Judge may amend judgment in non-jury trial upon motion made within 10 days or upon Rule 59 motion. Rule 52(b).

(2) Judge should be careful to include all necessary findings of fact and conclusions of law in amended judgment.

2. Rule 41(b) dismissals (dismissals in non-jury trials)

a) In bench trials, upon motion of the defendant, a judge may render a decision (involuntary dismissal) against the plaintiff at the close of plaintiff's evidence. Rule 41(b).

b) Upon doing so, judge must make written findings of fact and conclusions of law (just as if he or she had heard both parties' evidence). *Id.*; Rule 52(a)(2).

(1) Failure to make findings and conclusions as required by Rule 41(b) is reversible error and requires remand. *Greensboro Masonic Temple v. McMillan*, 142 N.C. App. 379, 382, 542 S.E.2d 676, 678 (2001) (citing *Hill v. Lassiter*, 135 N.C. App. 515, 520 S.E.2d 797 (1999)).

3. Orders on motions

a) Default Rule: Findings and conclusions are not required on decisions on motions (or the court's own orders without a motion). Rule 52(a)(2).

b) Exception: When requested by a party, findings and conclusions are required.

(1) Request should be made prior to entry of the trial court's written order (if any). *J.M. Dev. Group v. Glover*, 151 N.C. App. 584, 566 S.E.2d 128 (2002).

c) BUT NOTE: Certain types of orders should not contain findings of fact, even if the party requests them:

(1) Summary judgment motions (Rule 56)

(a) The court's task is to determine only whether genuine issues of material fact exist, and not to decide those facts one way or the other.

(b) Findings of fact are inappropriate.

(c) Judge may *recite* the undisputed facts, but not required to do so.

(2) Motions under Rule 12(b)(6)

(a) The court's only task is to determine whether complaint contains sufficient allegations. Allegations must be accepted as true.

(b) Findings of fact are inappropriate.

(3) Motions for judgment on the pleadings. (Rule 12(c))

(a) The court's task is to determine whether the allegations in the complaint and admissions in the answer establish that movant is entitled to judgment as a matter of law.

(b) Findings of fact are inappropriate.

4. Preliminary Injunctions and TROs
 - a) Findings of fact and conclusions of law not required unless requested by a party. Rule 52 (a)(2).
 - b) Court must, however, include the following:
 - (1) In a TRO entered without notice, the order must state the date and hour of issuance; must define the injury; state why it is irreparable; and state why it was issued without notice. Rule 65(b).
 - (2) In every injunction and restraining order, the order must set forth the reasons for issuance; must be specific in its terms; and must describe in reasonable detail the act or acts enjoined or restrained. Rule 65(d).

B. Other Types of Civil Orders (Outside Rule 52)

1. Rule 11 Sanctions
 - a) Findings of fact and conclusions of law should be included in an order granting or denying sanctions in order to allow appellate review. *Sholar Bus. Assocs., Inc. v. Davis*, 138 N.C. App. 298, 303, 531 S.E.2d 236, 240 (2000); *Lowry v. Lowry*, 99 N.C. App. 246, 393 S.E.2d 141 (1990).
2. Attorney Fees.
 - a) Findings and conclusions are required both as to (1) the entitlement to attorney fees and as to (2) the amount of attorney fees awarded. See Bench Book.
3. Consent Judgments
 - a) Findings and conclusions not required. *In re Estate of Peebles*, 118 N.C. App. 296, 454 S.E.2d 854 (1995).
 - b) There are no facts to be determined. Court is merely reciting parties' agreement and allowing formal entry of the agreement into the record. *Crane v. Green*, 114 N.C. App. 105, 107, 441 S.E.2d 144, 145 (1994).

Note for district court judges: The statutes governing juvenile and domestic cases often include their own requirements for findings and conclusions, and they vary depending on the type of order being entered. When in doubt about whether to include findings and conclusions in these matters, consult the specific statutes at issue.